

United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

ORDER NO. 3225

SIGNATURE DATE: January 19, 2001

Subject: Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)

Sec. 1 Purpose. The purpose of this Order is to supplement Secretarial Order No. 3206 by:

- a. Defining the application of Secretarial Order No. 3206 in Alaska.
- b. Establishing a consultation framework relative to the subsistence exemption in Sec. 10(e) of the Endangered Species Act (ESA).
- c. Reiterating the government-to-government consultation requirements relative to overall implementation of the ESA in Alaska.

Sec. 2 Application of Secretarial Order 3206 in Alaska. The Annette Island Reserve of the Metlakatla Indian Community is a formally designated Indian reservation that was exempted from the Alaska Native Claims Settlement Act and, as such, is appropriately covered by Secretarial Order 3206.

Sec. 3 Consultation Framework for the Subsistence Exemption from the ESA. At the earliest stage after information arises indicating conservation concerns relative to a species that is listed as endangered or threatened under the ESA and also used for subsistence, the Departments will promptly provide such information to affected Alaska Natives, tribes and other Native organizations, and will seek their full and meaningful participation in evaluating and addressing the conservation concerns. The Departments will seek input from, and will collaborate with, Alaska Natives when gathering information upon which to base findings relative to whether a subsistence take is materially and negatively affecting listed species. When a species is negatively impacted by a subsistence take, the goal of the Departments will be to work collaboratively with Alaska Natives to craft cooperative agreements that will conserve the species, fulfill the subsistence needs, and preclude the need for regulations. The Departments will seek to enter into cooperative agreements for the conservation of such species and the co-management of subsistence uses. The Departments will provide such technical, financial, and other assistance as may be appropriate and possible given available resources to assist Alaska Natives in developing and implementing such agreements. The participation of affected Alaska Natives will be ensured to the maximum extent practicable in all aspects of the management of subsistence species that are candidate, proposed or listed species under the ESA and their habitat including but not limited to:

- a. forming recommendations for management actions, plans, or regulations;
- b. population and harvest monitoring projects;
- c. law enforcement activities;
- d. education programs;
- e. research design, data collection and use of traditional knowledge;
- f. habitat protection programs; and
- g. recovery projects.

When regulations are needed, full consultation with the affected Alaska Natives will occur during the development and implementation of such regulations.

Sec. 4 Government-to-Government Consultation under ESA in Alaska. The Department of the Interior will ensure that consultation with Alaska Natives continues on a government-to-government basis as it has to date. It will comply with all relevant Executive Orders, policy directives, and FWS operating procedures.

The Department of Commerce will follow the American Indian and Alaska Native Policy of the U.S. Department of Commerce, dated March 30, 1995, which outlines principles to be followed in all Department of Commerce interactions with American Indian and Alaska Native tribal governments. In compliance with the relevant Presidential Orders and Departmental policies, appropriate consultation with, and assistance to, Alaska Natives will be ensured.

Sec. 5 Scope and Limitations

- a. This Order will not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor will this Order be construed to alter, amend, repeal, interpret or modify tribal sovereignty or the other rights of any Indian tribe, or to preempt, modify or limit the exercise of such rights.
- b. This Order does not preempt or modify the Departments' statutory authorities or the authorities of Indian tribes or the State of Alaska.
- c. Nothing in this Order will be implied to authorize direct takes of listed species not otherwise authorized by law or regulation, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

Sec. 6 Effective Date. This order shall be effective immediately.

/s/ Bruce Babbitt

/s/ Norman Y. Mineta