

A Special Trust Relationship — Part II

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Since the passage of the Alaska Native Claims Settlement Act, there has especially been a claim on the part of many from both the public and private sectors that here in Alaska, at least, the special trust relationship of American original peoples with the federal government has come to an end.

As was pointed out in the Arctic Coastal Zone Management Newsletter (February 1980), when Judge Robinson enjoined the U.S. government from accepting the bids on federal Beaufort Sea tracts, both government agencies and the oil multinationals pronounced once again (as they had during the bowhead

whale controversy) that the ANCSA "expressly extinguished aboriginal hunting and fishing rights," and thus "the continued existence of trust responsibilities claimed by the plaintiffs (the North Slope Borough and others) is open to serious question."

However, there seems to be no "serious question" to the continued commitment of Congress to this trust relationship in their passage of the Marine Mammal Protection Act of 1972, thus carrying on a policy traced back to the 1937 Reindeer Industry Act and through the 1947 Walrus Protection Act which expressly protects the special subsistence rights of Alaska Native peoples.

And it is with this issue of subsistence that the plaintiffs in the Beaufort Sea injunction disagree with the government and corporate technocrats. Although Alaska Natives may have given up their "aboriginal hunting and fishing rights," they did not give up their subsistence rights to acquire what they need in order to survive both as human beings and as Native people in their surrounding environment.

So it is this subsistence right, which is protected both by statute and generally under the umbrella of the trust relationship, that must be respected in any future decision to develop lands and resources near Alaska Native communities.

As the plaintiffs in the Beaufort Sea Sale charged, the federal government's careless Environmental Impact Statement (E.I.S.) violated Inupiat subsistence rights, and since it has been amply demonstrated that the government through its ac-



THE WRITER SUGGESTS PUBLIC HEALTH CARE TREATMENT OF NATIVES IS ONE OF MANY INDICATIONS THAT A SPECIAL TRUST RELATIONSHIP CONTINUES TO EXIST.

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tions (*) continues to recognize its "exacting fiduciary standards" (relating to the trust status), as trustee of these rights the federal government has been remiss and once again historically untrustworthy in its dealings with American Native peoples.

For Alaska Native leaders who find themselves in the position of having to bargain with govern-

ment and/or corporate technocrats, it would be well for them to be wary and above all to watch and listen and learn from the experience of the Inupiat.

(*) NOTE — In addition to the Marine Mammal Protection Act, the fact that the Public Health Service and the B.I.A. continue to treat Alaska Native peoples as special citizens supports further the contention that the U.S. government has indeed never abandoned its special trust relationship with Alaska Native peoples. In any case, the ANCSA in its Declaration of Policy specifically states that there will be no diminution of the "obligation of the U.S. . . . to protect and promote the rights or welfare of Natives as citizens of the U.S. or of Alaska." Since the Act recognizes Natives as being such, and since American Native peoples have the long history of special status mentioned in Part I, then it follows that the U.S. government should honor its trust commitment to Alaska Native peoples when dealing with them.