



Understanding the Dual-Management Regulatory Framework of Subsistence in Alaska

**How Federal Statutes Impact Alaska Native Subsistence Rights
and Uses**

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Why are we here?

Brief Overview on Alaska's Existing Subsistence Framework

Potential Options for Improving this System

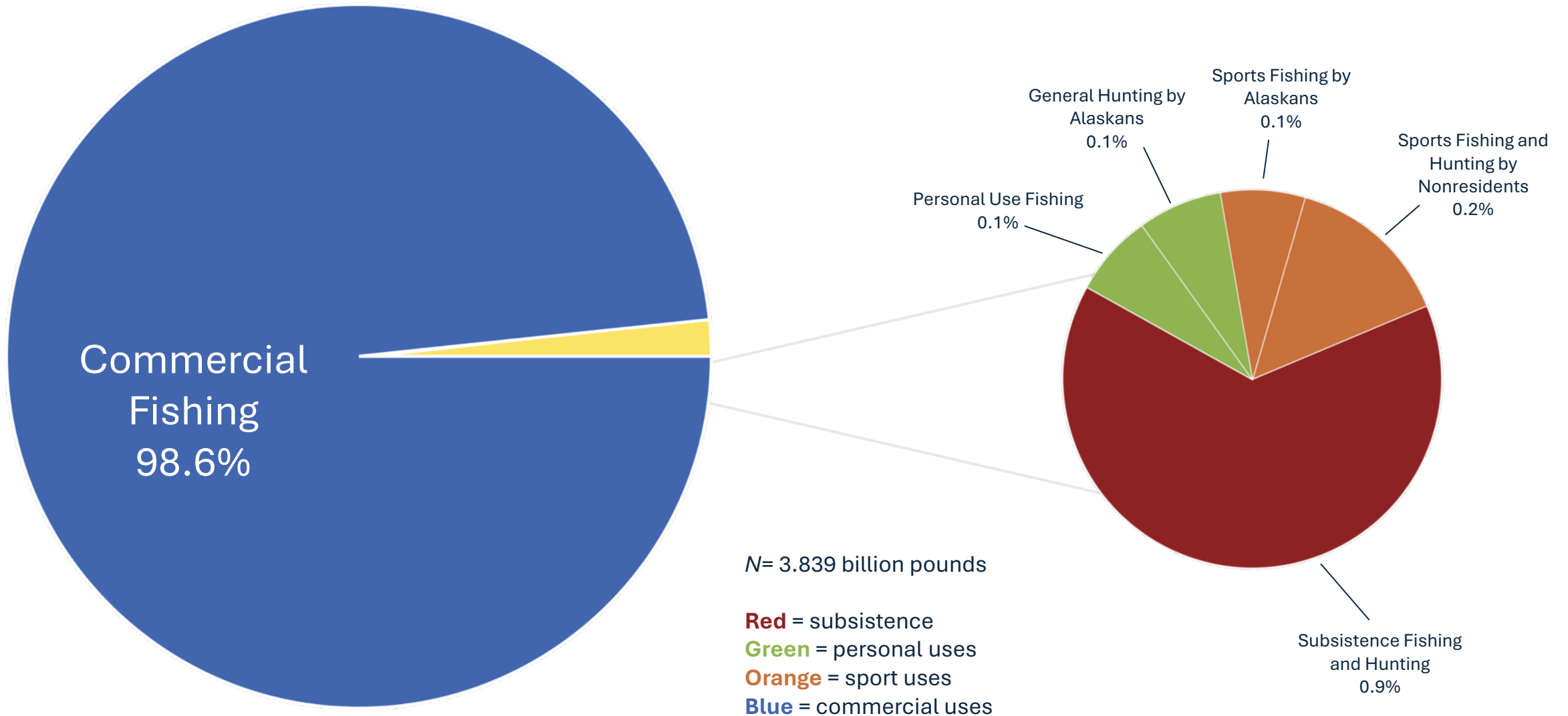
Partnering to Protect Alaska Native and Rural Alaskan
Subsistence Rights and Uses

What is Subsistence?

- **Cambridge Dictionary:**
 - “The state of having what you need in order to stay alive, but no more.”
- **ANILCA § 803:**
 - “As used in this Act, the term ‘subsistence uses’ means 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.”



Resource Harvests by Use in Alaska (ADF&G Subsistence Update 2017)



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Background

Historical Background

- **Alaska Native subsistence use since time immemorial**
- **Russia “discovers” Alaska (1741)**
 - Under international law, discovering or colonizing nations had exclusive right to engage with Indigenous people with respect to land ownership and intergovernmental relations.
- **Treaty of Cession (1867)**
 - United States acquires Alaska from Russia.
- **Organic Act (1884)**
 - Established a civil government within Alaska.
 - “[T]he Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress....”
- **Other laws exempt Alaska Native people from harvest restrictions**
 - Extension of federal mining laws to Alaska provided that Alaska Native people were not to be disturbed in their use and occupancy of lands.
 - Hunting for food, clothing, and boat manufacture exempted from take restrictions on fur seals.
 - Hunting regulations exempted hunting for food or clothing by “native Indian or Eskimos or by miners, explorers, or travelers on a journey when in need of food.”



Early Statehood Era

- **Statehood Act (1958)**
 - Did not resolve Alaska Native land claims or subsistence rights.
 - Sec. 4: the State must disclaim any right to the property of Alaska Native people (including fishing rights) and that such property remained under the “absolute jurisdiction and control of the United States....”
 - Sec. 6(b): granted the State the right to select an amount of public lands (not to exceed 102,550,000 acres) which “are vacant, unappropriated, and unreserved at the time of their selection.”
- **Protests over State selection of lands**
 - Selected land was occupied and used by Alaska Native people under aboriginal title.
 - Formation of AFN in 1966.
- **Discovery of oil in Prudhoe Bay in 1968**



Alaska Native Claims Settlement Act (ANCSA) (1971)

- **ANCSA extinguished any aboriginal title and hunting/fishing rights**
 - 43 U.S.C. § 1603(b): “All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.”
- **No explicit protection of subsistence rights**
 - Congressional Conference Report states: “The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.” H.R. Rep. No. 92-746 at 37 (1971).



Alaska National Interest Lands Conservation Act (ANILCA) – Title VIII (1980)

- Protects subsistence uses on public lands:
 - “The continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, . . . is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.”
 - “The utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.”



ANILCA - Federal Rural Subsistence Priority

- **Priority for subsistence uses:**
 - “The taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded **priority** over the taking on such lands of fish and wildlife for other purposes.”
- **Subsistence uses are defined 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.”
- **Application of the Rural Priority:** If it is necessary to restrict subsistence uses to protect the continued viability of fish and wildlife populations, the rural priority is implemented through limitations based on the following criteria:
 1. customary and direct dependence as the mainstay of livelihood;
 2. local residency; and
 3. availability of alternative resources.





McDowell Decision

Alaska Supreme Court (1989)

McDowell Decision (1989)

- **Alaska Supreme Court found that “rural” priority for subsistence use was unconstitutional.**
 - Determined that a State statute granting preference to rural residents to take fish and game for subsistence purposes violated the Alaska Constitution’s “Equal Access” clauses.
 - **Article 8, Section 3:** “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”
 - **Article 8, Section 15:** “There shall be no exclusive right or special privilege of fishery ... in the natural waters of the state.”
 - **Article 8, Section 17:** “Laws and regulations governing the use or disposal of natural resources ... apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.”



Result of *McDowell*

- 1990 to present:
 - Alaska is not in compliance with ANILCA.
 - Federal subsistence regulations adopted for hunting (1990) and fishing (1999).
 - Federal Subsistence Board created in 1990.
- Dual Federal and State management.
 - Federal government assumes management of subsistence on federal public lands and affords priority to rural Alaskan subsistence uses.
 - State fishing, hunting, and trapping regulations apply to all Alaska residents.



Photo by Rosa Kruse



The *Katie John* Cases

1994–2026

The *Katie John* Cases: Where does the rural priority apply to fishing?

- ***State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995)**
 - *Katie John I*
 - Rural priority must apply in at least some navigable waters.
 - Supreme Court denied Alaska’s appeal.
- ***John v. U.S.*, 247 F.3d 1032 (9th Cir. 2001)**
 - *Katie John II*
 - Rehearing of *Katie John I*, affirmed.
- ***John v. U.S.*, 720 F.3d 1214 (9th Cir. 2013)**
 - *Katie John III*
 - Rural priority applies on waters “appurtenant to” federal lands.
 - Supreme Court denied Alaska’s appeal.
- ***Sturgeon v. Frost*, 587 U.S. 28 (2019)**
 - *Katie John* did not grant federal government unrestricted power over state-owned waterways for purposes unrelated to subsistence fishing.
 - *Katie John* expressly not overturned.
- ***U.S. v. Alaska*, 151 F.4th 1124 (9th Cir. 2025)**
 - Affirmed that *Katie John* still applies after *Sturgeon*.
 - Supreme Court denied Alaska’s appeal.



Photo from U.S. Fish & Wildlife Service



Overview of Existing Subsistence Framework

Existing Subsistence Management Framework

- Multi-faceted management structure based on location, species, purpose of harvest, status of species
- Federal lands and waters
 - Alaska National Interest Lands Conservation Act (ANILCA)
- Major Federal Actions
 - National Environmental Policy Act (NEPA)
- **Resource specific federal statutes:**
 - Marine Mammal Protection Act
 - Endangered Species Act
 - Migratory Bird Treaty Act
 - Whaling Convention Act
 - Magnuson-Stevens Fishery Conservation and Management Act
- State and private lands and waters



ANILCA – Federal Management Structure

- Federal Subsistence Board (FSB) establishes all Federal subsistence hunting, trapping, and fishing regulations for species under ANILCA.
- The FSB is composed of 11 members:
 - A Chair and five public members, all appointed by the Secretaries of the Interior and Agriculture, and who “possess personal knowledge of and direct experience with subsistence uses in rural Alaska (including Alaska Native subsistence).”
 - Three of these five public members are selected from individuals nominated or recommended by federally recognized Tribal governments in Alaska.
 - The Alaska Regional Directors (or their designees) of the National Park Service, Fish and Wildlife Service, Forest Service, Bureau of Land Management, and Bureau of Indian Affairs.



ANILCA – Federal Management Structure

- The FSB is advised by the RACs:
- **Alaska is divided into 10 subsistence resource regions, each with a Regional Advisory Council (RAC).**
 - RAC members are local residents with knowledge of subsistence practices and uses in that area.
- RACs hold at least two public hearings a year to gather local information and make recommendations to the FSB on subsistence issues.
- FSB is required to defer to recommendations of each RAC unless not supported by substantial evidence, violates principles of fish and wildlife conservation, or would be detrimental to subsistence needs.



State Management

- Alaska has general management authority for fish and wildlife unless modified or diminished by acts of Congress.
- Managed through Alaska Department of Fish and Game
 - Board of Game
 - Board of Fisheries
- **Board Composition and Roles**
 - Each Board is comprised of seven members, and purpose is to conserve and develop Alaska's wildlife and fishery resources.
 - Consider regulatory changes on region-based, three-year scheduling cycles.





Photo by Evelyn Coopchiak

State Management *continued*

- **Local Advisory Committees**
 - 84 Advisory Committees throughout State.
 - Provide local forum for fish and wildlife issues, develop and evaluate regulatory proposals, make recommendations to Boards.

State Management of Subsistence

- **Alaska definition of subsistence:**
 - “the noncommercial, customary and traditional uses of wild, renewable resources **by a resident of the state** for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of inedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption...”
- Unlike ANILCA, State does not limit subsistence to “rural” residents.
 - If an Alaska resident for 12 consecutive months, both urban and rural residents can participate in subsistence harvests.
- Subsistence harvests are not authorized in “nonsubsistence areas.”
 - Where dependence on subsistence is not a principal characteristic of the economy, culture, and way of life. Areas around Anchorage, Fairbanks, Juneau, Ketchikan, and Valdez.



State Management of Subsistence


- Each Board identifies fish stocks or game populations that customarily and traditionally taken by Alaska residents for subsistence uses.
 - Determination is based on application of eight criteria.
- **If harvest can occur consistent with sustainable yield, each Board determines the amount of harvest that is reasonably necessary for subsistence uses.**
- Each Board adopts subsistence regulations that provide “reasonable opportunity” for subsistence uses before providing for other uses of harvestable surplus (“subsistence priority”).
- If harvestable portion insufficient for subsistence use, Board will limit subsistence users based on:
 - Customary and direct dependence on the fish or game population by the subsistence user for human consumption as a mainstay of livelihood, and
 - Ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.



Current State of Affairs

- Federal priority from ANILCA Title VIII applies on federal lands.
- Non-federal lands (including ANC-owned and tribally owned lands) are subject to the State's subsistence laws.
- Other federal statutes have subsistence implications (e.g., MMPA, ESA, MBTA, WCA, etc.).





**How can we achieve
subsistence management
reform?**

Federal Legislative Options

Repeal ANCSA extinguishment clause

- ANCSA extinguished any aboriginal title and hunting/fishing rights.
 - 43 U.S.C. § 1603(b): “All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.”
- Options:
 - Total repeal
 - Repeal limited to public lands
 - Repeal limited to ANCSA lands
- **Would require implementing a replacement framework.**



Amend ANILCA to provide Alaska Native or “Native Plus” priority

- ANILCA protects subsistence uses on public lands for rural residents of Alaska on public lands.
 - “The continuation of the opportunity for subsistence uses by **rural residents** of Alaska, **including both Natives and non-Natives**, . . . is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence.”
 - “The utilization of the public lands in Alaska is to cause the least adverse impact possible on **rural residents** who depend upon subsistence uses of the resources of such lands.”
- ANILCA priority for rural residents could be amended to provide a higher priority for Alaska Natives or Alaska Natives plus rural residents (“Native Plus”).



Revise definition of “Alaska Native”

- Revise definition to include members of recognized tribes in Alaska and/or “descendants” of Alaska Natives
- Revision of definition in ANCSA
- Statute-specific revisions
 - ANILCA, MMPA, etc.
- **Depending on context, could be addressed through regulation**



Photo by Heather Dingman

Revise ANILCA Title VIII to improve federal subsistence management program

- **Preclude** State management on federal lands
- **Address and protect** subsistence fisheries
- **Authorize** Alaska Native management of Alaska Native-owned land
- Alaska Native self-determination to support customary and traditional way of life
- **Recognize** that many Alaska Native subsistence users are not “rural”






Targeted ANILCA amendments to address specific management issues

- **Amend** ANILCA § 809 (cooperative agreements) to establish requirements for Alaska Native co-management
- Standards for Department of the Interior and Department of Agriculture
- **Incorporate lessons learned** from Ahtna and Kuskokwim efforts

Photo by Janelle McCarr



Revisions to other federal statutes to address discrete issues

- **Amend** Marine Mammal Protection Act (MMPA) to address standards for cooperative agreements to address co-management
- **Amend** MMPA to require consultation with ANOs/development of conflict avoidance agreements regarding incidental take permitting
- **Amend** Magnuson-Stevens Act to add Alaska Native seat(s) to North Pacific Fisheries Management Council
- **Address** resource allocation conflicts (e.g., subsistence versus other uses)
- **Advocate** for funding for ANOs to participate effectively in co-management





Photo by William Beaver

Appropriations

- Lack of funding is significant barrier to effective Alaska Native participation in federal management processes.
- Seek congressional appropriations for funding to implement existing programs and allow more effective participation.



Federal Administrative Options

Executive Order mandating co-management on federal lands

- **Current directives fall short of requiring co-management.**
 - 2016 Secretarial Order 3342 by Secretary of the Interior Sally Jewell
 - “Identifying Opportunities for Cooperative and Collaborative Partnership with Federally Recognized Indian Tribes in the Management of Federal Lands and Resources.”
 - 2021 Joint Secretarial Order 3403 by Secretary of the Interior Deb Haaland and Secretary of Agriculture Thomas Vilsack
 - “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters.”
- Executive Order would promote greater ability for Alaska Natives to inform and direct federal management decisions.
- Effectiveness could be constrained by existing statutes.



Incorporate IK/TEK into federal decision-making

- **Federal policy reflects different management approaches and values.**
 - Western science versus indigenous knowledge
 - Species management versus traditional/cultural practices
- **Revise regulations/policies to incorporate Indigenous Knowledge/Traditional Ecological Knowledge.**
 - For example, include IT/TEK as “best available science”
- **Recent agency initiatives:**
 - NOAA Fisheries and National Ocean Service Guidance and Best Practices for Engaging and Incorporating Traditional Ecological Knowledge in Decision-Making (2019)
 - Extends beyond federally recognized tribes and Alaska Native corporations to apply to the collection and use of TEK from Indigenous peoples regardless of federal recognition status
 - White House Office of Science & Technology Policy/Council and Environmental Quality Memorandum on Elevating ITEK in federal scientific and policy processes



Amend definition of “rural”

- Amend process for evaluating community status as rural or non-rural to curtail overbreadth of non-rural determinations.
- **Options:**
 - Treat tribes as a “community/population” like a city or census designated place or group of census designated places is treated.
 - Require FSB to give greater weigh to socioeconomic factors or community characteristics when considering aggregation of communities for purposes of determining rural/nonrural status.



Photo by Raven Cunningham



Photo by Roberta Alexie

Adopt regulations for Alaska Native co-management

- Amend regulations for more effective implementation of ANILCA Sec. 809.
- Move from “cooperative agreements” to “co-management agreements.”
- Regulations for co-management under MMPA and other statutes.

Extend federal jurisdiction under Title VIII of ANILCA to Alaska Native allotments

- Alaska Native allotments are currently managed under the State management regime.
- Could amend ANILCA regulations to bring allotments within the federal subsistence management framework.



Photo by Robin Beaudry



Photo by Nikki Peidlow

Secretarial Order declaring Title VIII of ANILCA as “Indian legislation”

- Would direct that the subsistence management program be implemented in a manner that resolves ambiguities in ANILCA in a manner that favors the Alaska Native people.

Expand tribal compacting/contracting of subsistence programs

- Encourage the federal government to expand its contracting with Alaska tribes and ANCs in operating significant portions of the federal subsistence management program.



Photo by Robyn Mills

Presidentially authorized working group to examine subsistence reform

- Request that the President convene a high-level interagency working group to examine and propose reforms to Alaska subsistence management.
 - Could examine multiple proposals for administrative reform.
 - Focus on Alaska Native relationship to land and continuation of traditional way of life.
- Potential model of White House Council on Native American Affairs.



Revise structure and operation of FSB and RACs

- **Recent move of Federal Subsistence Board to be stand-alone office that reports directly to the Secretary of the Interior.**
- **Make further changes to composition of Federal Subsistence Board.**
 - Currently comprised of 11 voting members:
 - One chair (historically an Alaska Native individual)
 - Five rural residents (three nominated by Alaska Tribes)
 - Five agency representatives (BIA, BLM, FWS, NPS, USFS)
- **Increase deference to Regional Advisory Councils.**



State Legislative and Administrative Options

State constitutional amendment authorizing a rural, Native, or “Native plus” subsistence priority

- Amendment adopting a rural preference would bring Alaska into compliance with Section 805 of ANILCA.
- Would allow State of Alaska to seek restoration of management on federal lands.



Photo by Tamra Andrew

HJR 22 (2/20/24)

- The resolution, introduced by Rep. Baker, would, in relevant part, amend Article VIII of the Alaska Constitution to add a section stating:
 - “Consistent with the sustained yield principle, the legislature may provide a preference to and among residents of the State in the taking of a replenishable natural resource for subsistence use based on customary and traditional use, direct dependence, the availability of alternative resources, place of residence, or proximity to the resource. When the harvestable surplus of a replenishable resource is insufficient to provide for all beneficial uses, other beneficial uses shall be limited to protect subsistence uses of the resource.”



HJR 22 (2/20/24)

- Would allow the State to:
 1. differentiate between subsistence users for purposes of providing a preference between users;
 2. provide for subsistence preferences that could comply with Title VIII of ANILCA.
- However, the resolution uses different terms than those in Title VIII; may lead to competing interpretations and potential outcomes that are contrary to the intended objective of State compliance with ANILCA and/or with the purpose of Title VIII of ANILCA.
 - Notably, the proposed amendment does not specifically refer to “rural” Alaska residents, which is the term utilized in ANILCA. While the State could provide for a preference to “rural” residents, it would not be required to do so.
- State Legislature would need to pass implementing legislation to effectuate any subsistence preference for Alaska residents, rural or others.
 - Unclear how the State intends to implement any Constitutional amendment.





Photo by Andre Simon

Governor commitment to co-management and/or other reforms

- Pursue executive action increasing or requiring co-management of resources on State lands, Alaska Native-owned lands, etc.
- Identify other opportunities for tribes, ANCs, and ANOs to increase participation in State subsistence management programs.



Discussion



Quyanaqvaa | Gunalchéesh | Quyanaasinaq
Quyana cakneq | Quyanaqpak | Ariga taikuu
Chin'an | Qağaasakuq | Taikuullapiaq | Haw'aa
N'doyukshn | Anaa' baasee | Thank you