



Understanding the Subsistence Framework in Alaska

Potential Options and Considerations for More
Comprehensive Alaska Native Subsistence Rights and Use

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Why are we here?

Education on Alaska's existing subsistence framework

Understand recent State efforts to amend Constitution
(i.e., HJR 22 (2/20/24))

Consideration of proactive protection and planning for more comprehensive Alaska Native subsistence rights and uses



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).



Existing Subsistence Management Framework

- Multi-faceted management structure based on location, species, purpose of harvest, status of species
- **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
- Federal lands and waters
- State and private lands and waters



Marine Mammal Protection Act (MMPA)

- *Applies to all marine mammals*
- **Jurisdiction split between NMFS and USFWS**
 - NMFS: dolphin, porpoise, seals, sea lion, whales
 - FWS: polar bear, sea otter, walrus
- **Prohibits the taking (harass, hunt, capture, or kill) of marine mammals**
 - Issuance of permits for incidental take or harassment, scientific research and enhancement of species
 - No “unmitigable adverse impact” on species availability for subsistence
 - Exemption for subsistence use and self-defense



MMPA Subsistence Exemption

- **Applies to:** any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean.
- **Exempts the take of any marine mammal:**
 1. for subsistence purposes; or
 2. for creating and selling authentic Native articles of handicrafts and clothing; and
 3. the taking must not be accomplished in a wasteful manner.



Photo by Alice Hunter

MMPA Regulation of Subsistence

- **NMFS or FWS may regulate subsistence take if a species or stock is determined to be “depleted.”**
 - “Depleted” means:
 - The species or population stock is below its optimum sustainable population; or
 - The species or population stock is listed as threatened or endangered under the Endangered Species Act.
- Requires notice and administrative hearing prior to implementation.
- Regulation must be removed as soon as the need for its imposition has disappeared.



MMPA Cooperative Agreements

- **Section 119**
 - NMFS and FWS can enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.
- **Section 112**
 - NMFS and FWS can enter into contracts, leases, cooperative agreements, or other transactions as may be necessary . . . with any Federal or State agency, public or private institution, or other person.
- *Various Alaska Native organizations have entered these agreements*



MMPA Title V

- Implements the U.S.-Russia Agreement on Conservation and Management of Alaska-Chukotka Polar Bear Population
- **Bilateral Commission**
 - Four Commissioners (two each from U.S. and Russia)
 - U.S. Commissioners represent Federal government and Alaska Native people
 - U.S. Commissioners must agree on any vote at Commission
 - Establishes sustainable harvest level and annual taking limit
 - 2019: 85 polar bears (no more than 1/3 female) split equally between the countries
- **FWS has authority for domestic implementation**
 - Prohibition on any taking of polar bear in violation of the Agreement or any annual taking limit or other restriction adopted by the Commission.
- FWS may share authority for management of polar bear subsistence taking with the Alaska Nannut Co-Management Council



Endangered Species Act (ESA)

- Applies to any species listed as threatened or endangered
- Designation of critical habitat
- **Prohibition on “take” (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) of endangered species**
 - Take prohibition can also be applied to threatened species
- Consultation on Federal agency actions
- Issuance of permits for incidental take, scientific research, enhancement of species, and experimental populations
- Exemption for subsistence and self-defense



Photo by Brian Kaganak

ESA Subsistence Exemption

- **Applies to:** any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or any non-Native permanent resident of an Alaskan Native village.
- **Authorizes the take of any listed species if primarily for subsistence purposes.**
 - Cannot be accomplished in wasteful manner.
 - Non-edible byproducts may be sold in interstate commerce when made into authentic Native articles of handicrafts and clothing.



ESA Regulation of Subsistence

- **NMFS or FWS may regulate subsistence take that materially and negatively affects the species.**
 - Requires notice and administrative hearing.
 - Removed as soon as Services determine need for regulation has disappeared.
- **Secretarial Order 3225 establishes consultation framework for subsistence exemption:**
 - Full and meaningful participation by Alaska Natives in evaluating and addressing conservation concerns.
 - Work collaboratively with Alaska Natives to develop cooperative agreements that conserve species, fulfill subsistence needs, co-manage subsistence uses, and preclude need for regulations.
 - Ensures participation of Alaska Natives to maximum extent practicable in all aspects of management of subsistence species.



Migratory Bird Treaty Act (MBTA)

- Applies to more than **1,000 species** of birds.
- **Unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, transport, etc. any migratory bird or any part, nest, or egg, or product consisting of bird part.**
 - Allows hunting of migratory game birds in fall-winter season.
- Authorizes FWS to issue regulations for the taking of migratory birds and collection of eggs by indigenous inhabitants of Alaska for nutritional and other essential needs during certain seasons.



Photo by Sarah Stone

MBTA Regulation of Subsistence

- **Allows subsistence harvest of certain migratory birds and eggs between March 10 and September 1.**
 - Eligible participant is permanent resident of a village within a subsistence harvest area.
- **Alaska Migratory Bird Co-Management Council develops recommendations for management regulations.**
 - Representatives from FWS, ADF&G, and 12 Alaska Native regions (3 votes total; one for each group).
 - FWS: approves recommendations, publishes in Federal Register, and enforces harvest.
- Alaska Natives may sell or re-sell any authentic Native article of handicraft or clothing that contains inedible byproduct of identified bird species that were taken for food.



Whaling Convention Act (WCA)

- International Convention for the Regulation of Whaling (ICRW) and International Whaling Commission (IWC) regulate international whaling and subsistence harvest.
- WCA provides domestic implementation of ICRW and quota established by IWC.
- **Alaska Eskimo Whaling Commission co-manages bowhead whale subsistence harvest through cooperative agreement with NMFS.**
 - NMFS issues U.S.-share of catch limit to AEWC for allocation and enforcement.
 - Seven-year catch limit (2019-2025) of 392 bowhead whales with annual strike limit of 67 (plus unused strike quota carryover).
 - Automatic strike/catch limit renewal under status quo conditions.



Magnuson-Stevens Fishery Conservation and Management Act

- Applies to Federal fisheries from 3 to 200 miles offshore.
- **Alaska fisheries managed by North Pacific Fishery Management Council (NPFMC).**
 - Arctic Fishery Management Plan (2009) prohibits commercial harvest in Federal waters of all finfish, marine invertebrates, and other fish resources in Beaufort and Chukchi Seas.
- **Does not provide explicit subsistence exemption.**
 - NPFMC has established a subsistence halibut fishery in SE Alaska.
 - NPFMC developing protocols for use of traditional knowledge for ecosystem-based management of Bering Sea fisheries.
- State of Alaska manages fishing within 3-mile limit.



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 Subsistence “Rural” 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.”



ANILCA – Application of 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.





Photo by Arlene Farmer

- **Temporary closures** to subsistence uses
 - Only if necessary for reasons of public safety, administration, or to assure the continued viability of particular fish or wildlife population.
 - Requires prior consultation with State and adequate notice and public hearing.
- **Emergency closures** to subsistence uses
 - When extraordinary measures must be taken for public safety or to assure the continued viability of particular fish or wildlife population.
 - Effective immediately, and may not extend more than 60 days without notice and public hearing.

ANILCA – Other Subsistence-Related Provisions

- **Access.** Rural residents engaged in subsistence uses required to have reasonable access to subsistence resources on public lands subject to reasonable regulation. 16 U.S.C. § 3121.
- **Evaluation of Effects on Subsistence.** In determining whether to permit the use, occupancy, or disposition of public lands, Federal agencies are required to evaluate, and take reasonable steps to minimize, the effects subsistence uses and needs. 16 U.S.C. § 3120(a).
- **Cooperative agreements.** Authorizes cooperative agreements with other Federal agencies, the State, Native Corporations, other appropriate persons and organizations to achieve ANILCA's purposes and policies. 16 U.S.C. § 3119.
- **Judicial review.** Provides a private right of action for subsistence users, tribes, and organizations to sue the Federal (or State) government in Federal court for a failure to provide the priority for subsistence uses. If successful, can get injunctive relief and recoup costs and attorney fees. 16 U.S.C. § 3117(a).



ANILCA – Other Subsistence-Related Provisions *continued*

- **Research.** Secretary shall undertake research on species and subsistence uses on public lands, seek data from, consult with and make use of, the special knowledge of local residents engaged in subsistence uses. 16 U.S.C. § 3122.



Photo by Gabrielle Grady

ANILCA – Federal-State Relationship

State of Alaska authorized to manage subsistence uses on federal public lands *if* the State enacts law extending the priority for rural residents to all lands.

1982

Alaska assumed management responsibility with regulatory regime consistent with ANILCA

1989

Alaska Supreme Court found that “rural” priority for subsistence use was unconstitutional

1990-present

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



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.”

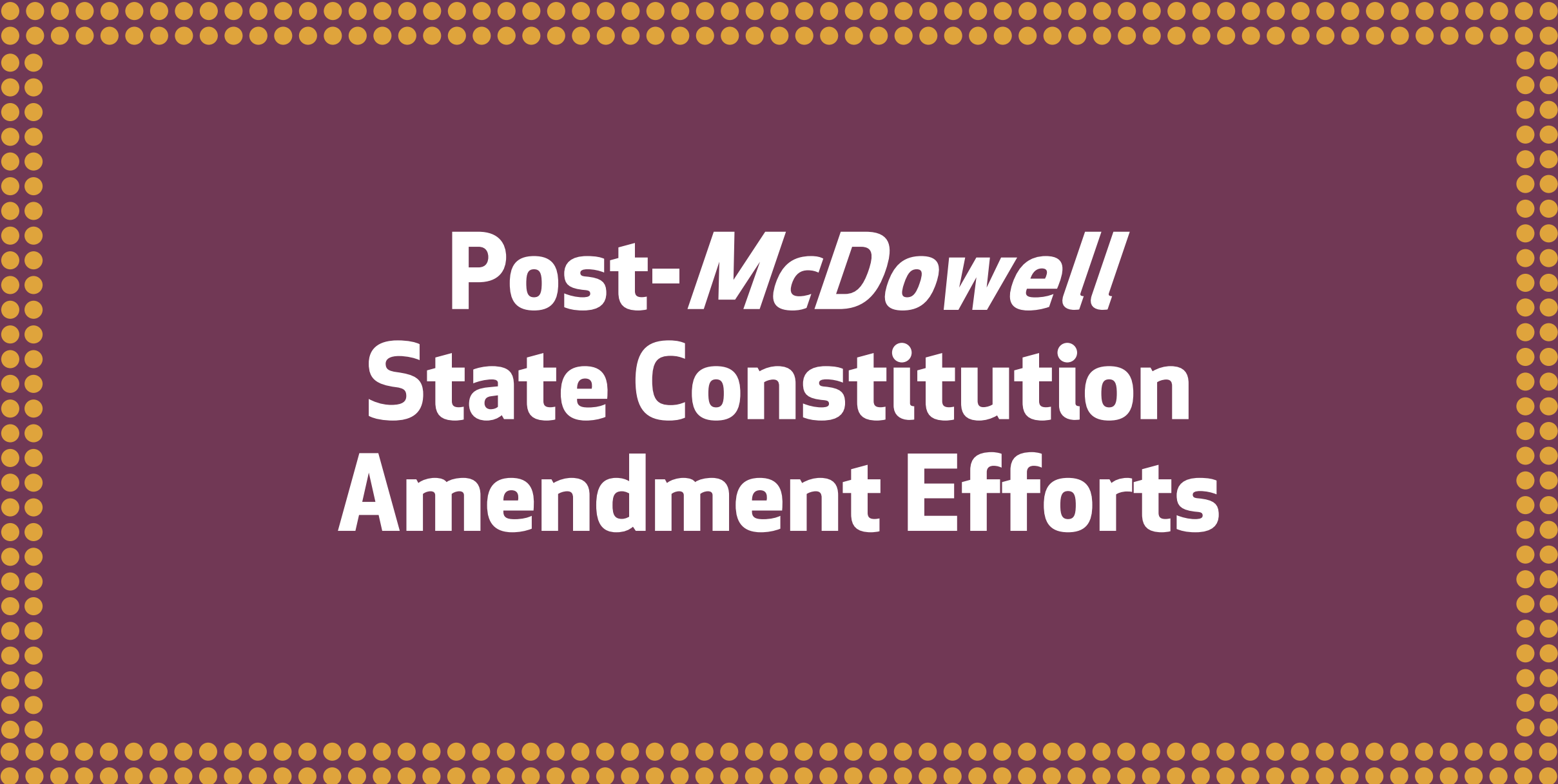


Result of *McDowell*

- 1990 to present:
 - Alaska is not in compliance with ANILCA.
 - Federal subsistence regulations for hunting (1990) and fishing (1999).
- 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



**Post-*McDowell*
State Constitution
Amendment Efforts**

Post-*McDowell* State Constitution Amendment Efforts

- Between 1990 and 2003, over 30 proposed amendments were introduced in the State Legislature.
- Four general variations:
 - Rural subsistence priority
 - Alaska Native and rural subsistence priority
 - Rural plus priority
 - Flexible priority
- ***Most of these amendments did not proceed to a vote.***

Photo by Essie Charlie

Sixteenth Legislature (1989-1990)

- **HJR 88 (introduced March 2, 1990)**

- “SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Nothing in this constitution prohibits the legislature from limiting the taking of fish and wildlife for subsistence uses to rural residents, and from providing for the allocation of that taking among rural residents on the basis of local or community residence, availability of alternative resources, and customary and direct dependence on a fish or wildlife population as the mainstay of livelihood.”
 - *Did not pass the House (20-20).*

- **SJR 86 (introduced June 25, 1990, as amended)**

- “SECTION 19. SUBSISTENCE USES OF FISH AND WILDLIFE. Consistent with the sustained yield principle, the legislature may grant a preference to and among Alaska residents in the taking of fish and wildlife for subsistence uses on the basis of community or area characteristics, geography, customary and traditional use, direct dependence, local residence, or the availability of alternative resources.”
 - *Passed the Senate (14-6), did not pass the House (23-17).*



Twentieth Legislature (1997-1998)

- **HJR 101 (introduced May 26, 1998)**

- “Section 19. Subsistence. The legislature may, consistent with the sustained yield principle, provide a priority for subsistence uses in the taking of fish and wildlife and other renewable natural resources based on place of residence.”
 - *Did not pass the House (20-20).*

- **HJR 201 (introduced July 20, 1998)**

- “Section 19. Subsistence Priority. The legislature shall, consistent with the sustained yield principle, provide a priority for subsistence uses of a fish or wildlife resource by residents of a community or area that is substantially dependent on fish and wildlife for nutritional and other subsistence uses. The priority may be based on place of residence.”
 - *Did not pass the House (22-17).*




Twenty-First Legislature (1999-2000)

- **HJR 202 (introduced Sept. 25, 1999)**

- “Section 4. Sustained Yield. (a) Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

(b) The legislature may, consistent with the sustained yield principle, provide a preference to and among residents to take a wild renewable resource for subsistence uses on the basis of customary and traditional use, direct dependence, the availability of alternative resources, the place of residence, or proximity to the resource. When the harvestable surplus of the resource is not sufficient to provide for all beneficial uses, other beneficial uses shall be limited to protect subsistence uses.”

- *Passed the House (28-12), did not pass the Senate (12-8).*
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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)
- 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 – Rural Subsistence Priority

- **Priority for subsistence uses; 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.”
- 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.



ANILCA – Federal Management Structure

- Federal Subsistence Board (FSB) establishes all Federal subsistence hunting, trapping, and fishing regulations for species under ANILCA.
- **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.



In Sum:

- **ANCSA extinguished any aboriginal title and hunting/fishing rights.**
 - No explicit protection of subsistence rights, but Congress expected the federal government and State of Alaska would protect the subsistence needs of Alaska Native people.
- **ANILCA provides current subsistence management regime, but priority is for “rural” residents.**
 - Protects subsistence uses on federal lands.
- **State *could* have managed subsistence uses on federal lands if it had adopted a rural preference on non-federal lands.**
 - State lost regulatory authority over federal lands following *McDowell* (1989)

Result → dual federal-state management system




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.).



Some Challenges for Subsistence Management

- **Lack of priority for Alaska Natives' subsistence use**
 - Federal management based on rural residents
 - State management reflects interests of urban residents
 - **Different management approaches and values**
 - Western science versus indigenous knowledge
 - Species management versus traditional/cultural practices
 - **Multiple species and multiple management frameworks**
 - Complex interplay between jurisdictions, agencies, forums, entities
 - Different restrictions and seasons depending on location
 - Varying roles in subsistence management decisions
 - Obstacles to informed participation
 - **No consistent framework for co-management**
 - Approaches differ by statute, agency, and species
- 



Latest State Efforts to Amend Constitution

HJR 22 (2/20/2024)

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.



**What can be done to achieve
meaningful 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 VII 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

Revisions to other federal statutes to address discrete issues

- **Amend** 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** MSFCMA to add Alaska Native seat(s) to NPFMC
- **Address** resource allocation conflicts (e.g., subsistence versus other uses)
- **Advocate** for funding for ANOs to participate effectively in co-management



Address Alaska Native handicraft issues

- **Amend** MMPA to preempt any state bans on ivory
 - E.g., S. 804 (2019) (Sullivan); H.R. 1806 (2019) (Young)
- **Amend** MBTA to address issues of Alaska Native articles of handicraft
 - E.g., S. 2577 (2021) (Sullivan)



Photo by Sarah Stone



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.

Photo by William Beaver



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

- **Move 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 8 voting members:
 - One chair (historically an Alaska Native individual)
 - Two rural residents
 - 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



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

We invite you to share your thoughts on subsistence management reform or ask questions of our panelists. We ask that you please follow these rules:

1. Be respectful and constructive. Please focus on your questions or suggestions for reform and address the issues. Please do not assign blame or make complaints against specific people or organizations.

2. Limit personal anecdotes and stories. Please share personal experiences as they relate to the issues or ideas for reform being discussed.

3. Keep comments to three minutes. It is important that everyone have an opportunity to ask questions and suggest ideas for reform.

4. Respect our moderators. Our moderators are here to guide the discussion and keep the forum on track. Please respect their guidance and decisions.





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