Potential Changes to the Subsistence Framework in Alaska

Understanding Recent Federal Actions that will Impact Alaska Native Subsistence Rights and Uses

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Presented by Ben Mallott, AFN President,
Geoffrey Toy, AFN Staff Attorney, and Jaeleen Kookesh, Van Ness Feldman LLP

Why are we here?

Brief Overview on Alaska's Existing Subsistence Framework

Recent or Upcoming Federal Actions that Impact Subsistence Management

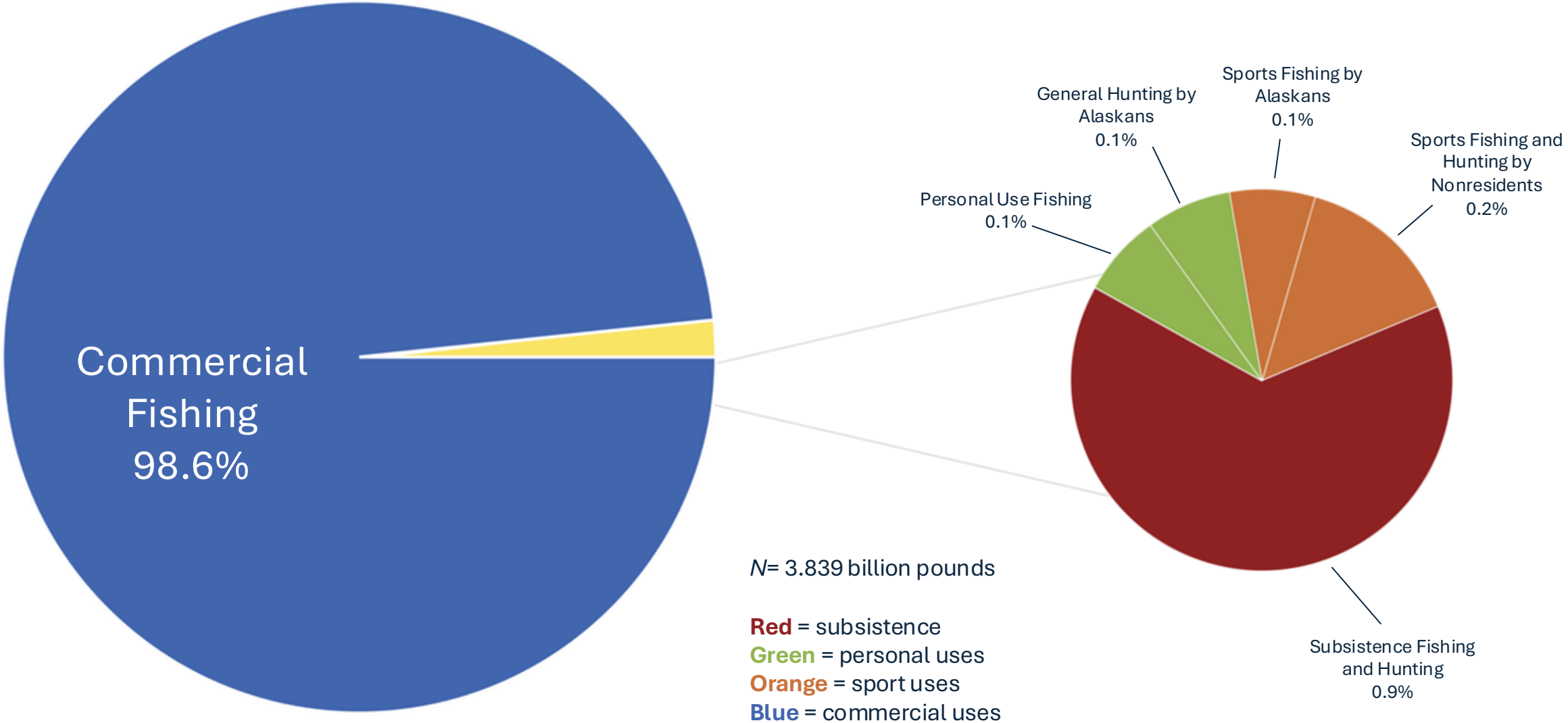
Engagement and Consultation to Protect Alaska Native Subsistence Rights and Uses

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



N= 3.839 billion pounds

Red = subsistence
Green = personal uses
Orange = sport uses
Blue = commercial 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).

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."
- **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).
- 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

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

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 of Subsistence on Federal Lands

- **Federal Subsistence Board (FSB)** establishes all Federal subsistence hunting, trapping, and fishing regulations for species under ANILCA.
  - The Office of Subsistence Management (OSM), which administers the entire subsistence program, was recently moved from U.S. Fish and Wildlife Service to the Office of the Assistant Secretary for Policy, Management, and Budget.
  - The total number of FSB Seats is now 10, with the recent addition of 3 seats from the Native community
- **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.

ANILCA – Federal Subsistence "Rural Priority"

- **Priority for subsistence uses:**
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ANILCA – Application of Rural Priority

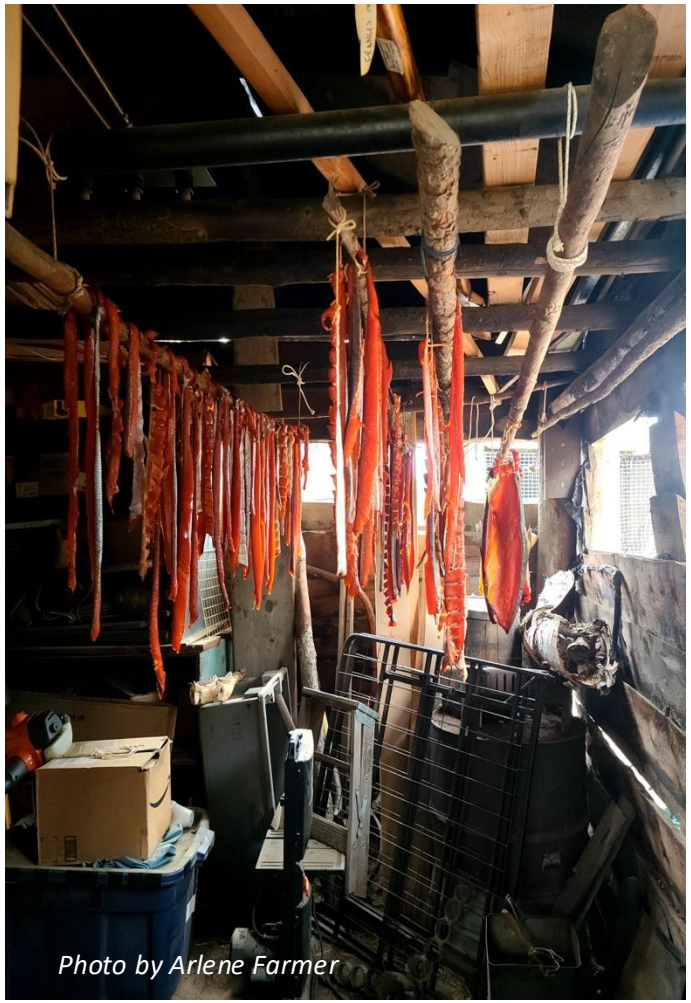


Photo by Arlene Farmer

- **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.

- **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.

State Management of Subsistence on State Lands

- 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.
  - Boards Consider regulatory changes on region-based, three-year scheduling cycles.
- **Local Advisory Committees**
  - 84 Advisory Committees throughout State.
  - Provide local forums for fish and wildlife issues; develop and evaluate regulatory proposals; make recommendations to Boards.

State Management of Subsistence on State Lands

- **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, the 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

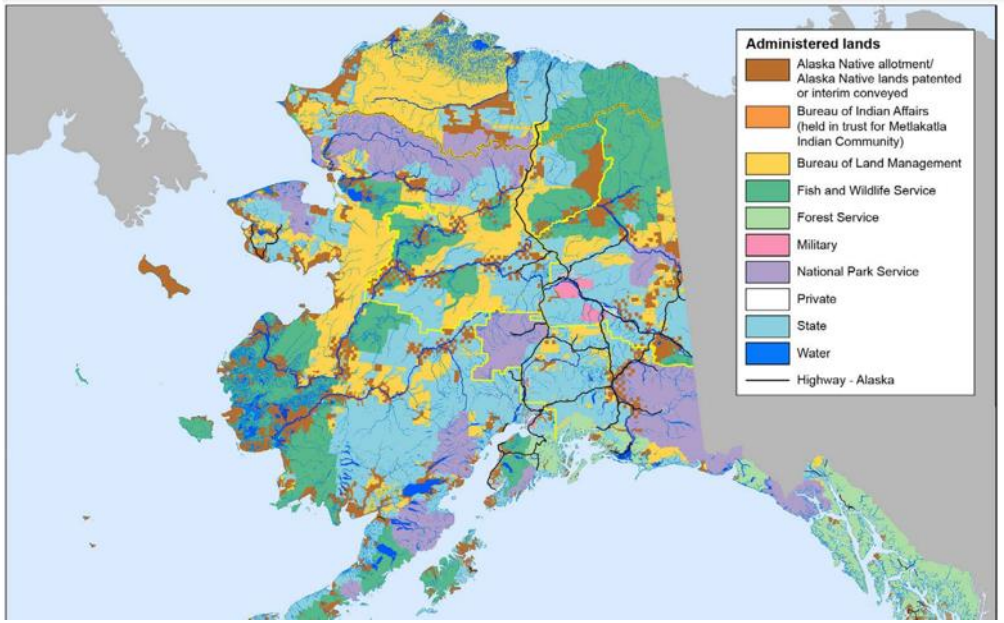
Current State of Affairs

- 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.).

Recent Federal Actions That Impact Subsistence

United States v. Alaska (Kuskokwim Case)

- This case involved a dispute between the State and federal government involving conflicting emergency orders related to subsistence salmon fishing on the Kuskokwim River. It focuses on the scope of the “rural subsistence priority” established under Title VIII of ANILCA.
- The District of Alaska and Ninth Circuit Court of Appeals ruled in favor of the federal subsistence priority and upheld the *Katie John* decisions.
- The State recently petitioned for review of those decisions by the Supreme Court. **The Supreme Court denied that petition on January 12, 2026**.
- That puts the Legal battles in the Judicial system to rest for the moment.



DOI Federal Subsistence Program Review

- In response to a Petition for Rulemaking from the Safari Club, the Department of the Interior (DOI) began a 60-day scoping period to review and develop proposed changes to the Federal Subsistence Management Program and Federal Subsistence Board. *See, Subsistence Management for Public Lands in Alaska, 90 Fed. Reg. 57,941 (Dec. 15, 2025).*
- *https://www.doi.gov/subsistence/fsmp_Scoping_Process*
- The Safari Club Petition asked DOI to significantly curtail the membership and authority of the FSB and require deference to Alaska Department of Fish & Game (ADF&G).
- The Scoping items do not exactly align with the Safari Club Petition, but there are a few similar issues.
- **Comments due February 13, 2026.**
- **Submit to:** subsistence@ios.doi.gov

- **DOI Requests Scoping Period Comments on:**
  - Office of Subsistence Management move from F&WS to Office of the Assistant Secretary for Policy, Management, and Budget
  - Federal Subsistence Board Membership
  - Criteria for RAC Membership
  - Review Federal and State Regulations for Duplication and Consistency
  - Regulations Governing Special Actions
  - Role of the State and ADF&G in the Subsistence Management Program
  - Process for Rural Determinations
- **DOI "Open House" in Anchorage on February 3, 2026 3-7 p.m.,** Gordon Watson Conference Room at 1011 E. Tudor Road, Anchorage, AK.
- **Request In-Person Consultation:**
  - Kara Moriarty, kara_moriarty@ios.doi.gov, 907-786-3888 (toll free 800-478-1456)

1. Relocation of the Office of Subsistence Management (OSM)

- The Department of the Interior recently moved OSM from the Fish and Wildlife Service to the Office of the Assistant Secretary for Policy, Management, and Budget.
- Alaska Tribes, Alaska Native Corporations, the public, and rural subsistence users strongly supported OSM's relocation.
- OSM's relocation promotes efficiency by allowing more money to go directly to work protecting subsistence and aligns the office more directly with the Secretary of the Interior.
- **AFN's Position is that the OSM should stay within the Office of the Assistant Secretary for Policy, Management, and Budget.**

2. Federal Subsistence Board (FSB) Membership

- **FSB is currently comprised of:**
  - A chair appointed by the Secretary of the Interior, with Secretary of Agriculture concurrence.
  - Five federal agency representatives.
  - Two public members appointed by the Secretary of the Interior, with Secretary of Agriculture concurrence.
  - Three tribally-nominated public members appointed by the Secretary of the Interior, with Secretary of Agriculture concurrence. (*Recent Change That Took Much Advocacy)
- **AFN supports preserving public seats on the FSB, including the three tribally-nominated seats.**
- **Public members add to FSB's expertise, including subsistence uses and traditional ecological knowledge.**

3. Criteria for Regional Advisory Council (RAC) Membership

- RACs make recommendations to FSB on subsistence issues and FSB generally must defer to RAC recommendations.
- FSB accepts nominations for RAC members and recommends members to the Secretaries, who appoint the members.
- FSB must strive to ensure RAC membership is 70% subsistence interests and 30% commercial and sport interests within the region.
- RAC members must reside in the region and be knowledgeable about the region and subsistence uses of the public lands.
- **AFN supports maintaining the current RAC membership criteria.**

4. Federal Regulations and State Regulations for Duplication and Inconsistency

- The federal subsistence management program currently has its own set of regulations that in some cases can duplicate the State's hunting, fishing, and trapping regulations.
- There can be inconsistencies because Federal regulations do not always change when state regulations change.
- **The federal regulations should not defer to the State when there is an inconsistency; that would be contrary to ANILCA. Inconsistency should NOT be resolved in favor of the State regulations.**
- A review for duplication and inconsistency would be time consuming and unnecessary.
- The limited resources of the Department of the Interior would be better spent on efficient management of the subsistence program.

5. Regulations Governing Special Actions

- FSB may implement **temporary closures** if necessary for public safety, administration, or to assure the continued viability of particular fish or wildlife populations. Temporary closures require prior consultation with the State and notice and public hearing.
- FSB may implement **emergency closures** when extraordinary measures are required for public safety or continued viability of particular fish or wildlife populations. Emergency closures are effective immediately and may not extend more than 60 days without notice and public hearing.
- The Safari Club requests several items related to closures that would change these processes.
- **AFN supports preserving FSB's flexible special action authority in its current form.**

6. Role of the State of Alaska in the Federal Subsistence Management Program

- The federal government manages subsistence uses on federal public lands and affords priority to rural Alaskan subsistence uses.
- The State may not assume management responsibility over federal public lands because it cannot and will not implement a rural priority per the State Constitution.
- **AFN does not support FSB deferring to the State in its decision-making. Deferring to State law and regulations would be counter to the needs of rural subsistence users and a nullification of the Secretaries' responsibilities.**
- **Current requirements to consult with the State are sufficient for the State to have input on FSB actions.**

7. Federal Subsistence Board Process for Rural Determinations

- The existing rural determination process allows FSB to make nonrural determinations using a comprehensive analysis, taking into consideration population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, any other relevant material, and information provided by the public.
- **AFN supports preserving FSB's current system for making rural determinations.**
- **The current system provides flexibility in the making of rural determinations, allows for consideration of regional differences, and results in greater consideration of Native perspectives.**

Call to Action

TO PROTECT ALASKA NATIVE SUBSISTENCE RIGHTS AND USES

COMMENT AND ENGAGE

- **COMMENT:** Please review the scoping documents and issues on which the Interior Department is seeking comment and submit comments by February 13, 2026.
- AFN's comments are provided for your use and information, but you, individually, or your organization may have additional thoughts or concerns to raise.
- Overall, we do not want the interests of Safari Club International and its membership to weigh more heavily than subsistence users and our Native community in this scoping process.

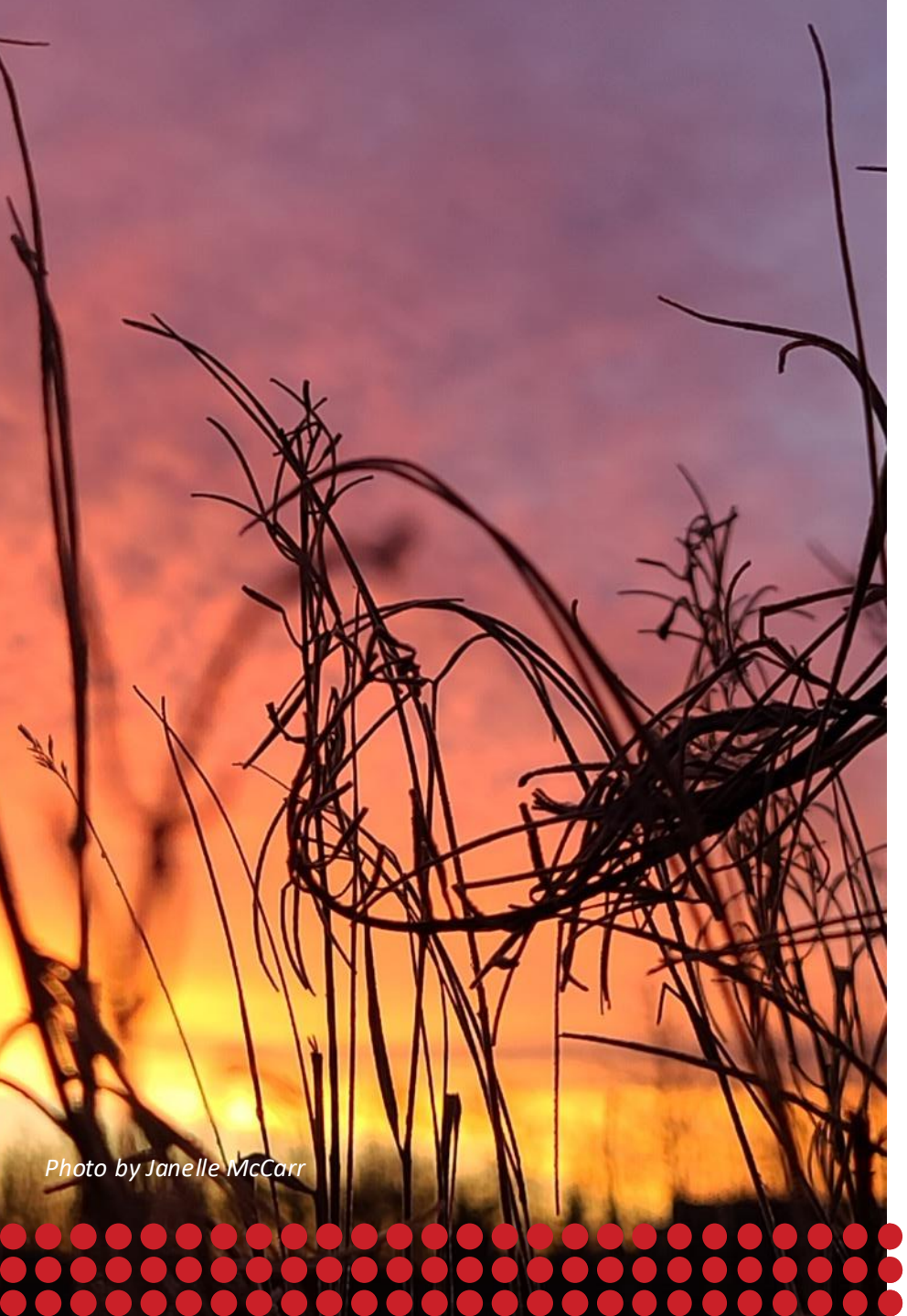


Photo by Janelle McCarr

Additional Recommendations for the Alaska Native Community

- **Monitor** – Monitor for all agency actions that might impact our subsistence rights.
- **Comment and Engage** – Engage on all agency actions that have an impact; participate and comment where the agencies are seeking government-to-government consultation.
- **Educate and Advocate** – All Alaska Native organizations should be engaging in Washington, D.C. with federal agencies, with Alaska Delegation, and with Members of Congress to educate on the importance of Subsistence and even more broadly the importance of the Trust Responsibility.
- **Litigate** – If necessary, be prepared to litigate to defend our traditional hunting, fishing and gathering rights in the current environment.

Quyanaqvaa | Gunalchéesh | Quyanaasinaq

Quyana cakneq | Quyanaqpak | Ariga taikuu

Chin’an | Qaĝaasakuq | Taikuullapiaq | Haw’aa

N'doyukshn | Anaa' baasee | Thank you