

**Testimony of Jennifer Hardin, Subsistence Policy Coordinator, Office of Subsistence Management, U.S. Fish and Wildlife Service, Department of the Interior
before the Senate Committee on Indian Affairs regarding
“Keep What You Catch: Promoting Traditional Subsistence Activities in Native Communities.”**

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Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. I am Jennifer Hardin, Subsistence Policy Coordinator for the Office of Subsistence Management in Alaska, within the U.S. Fish and Wildlife Service. Thank you for the opportunity to testify before the Committee regarding the subsistence harvest of natural resources on Federal public lands in Alaska under the Alaska National Interest Lands Conservation Act (ANILCA).

The customary and traditional harvest and use of natural resources for food, shelter, clothing, transportation, handicrafts, customary trade barter and sharing, commonly called “subsistence,” has a long history in Alaska. Alaska Native peoples have depended on subsistence for thousands of years and these practices are interwoven with their unique cultural identities and social ways of life. In more recent history, non-Native peoples living in rural Alaska have come to rely on natural resources for their social and economic livelihoods as well.

The management of subsistence harvests of natural resources in Alaska is complex. It is governed by a variety of laws dictating who and what resources are eligible to harvest. For example, management of subsistence harvest of marine mammals is governed by the Marine Mammal Protection Act (MMPA). Under the MMPA, coastal dwelling Alaska Natives may harvest marine mammals for subsistence purposes or for the creation and sale of authentic native handicrafts or articles of clothing.

Management of subsistence harvest of migratory birds is governed by the Migratory Bird Treaty Act (MBTA). The MBTA was amended to allow for spring/summer subsistence harvest of migratory birds by Alaska Natives and permanent resident non-natives with legitimate subsistence hunting needs living in designated subsistence hunting areas in Alaska.

The customary and traditional harvest of land mammals, fish outside of marine waters and upland birds in Alaska is governed by Title VIII of ANILCA. For the Committee’s purposes today, my testimony will focus on the Federal Subsistence Management Program, which is charged with implementing the relevant provisions included in Title VIII of ANILCA.

Background of the Alaska National Interest Lands Conservation Act (ANILCA)

ANILCA, which was passed in 1980, is a wide-ranging lands law that established more than 100 million additional acres of Federal land in Alaska, thereby enlarging federal holdings dedicated to conservation in Alaska to more than 131 million acres. Recognizing the unique characteristics of Alaska and the long history and important role of the subsistence way of life in Alaska, Congress established, through Title VIII of ANILCA, a priority for the taking of wild renewable resources on Federal public lands in Alaska for subsistence uses by Native and non-Native rural

Alaskans. The Federal subsistence priority applies on approximately 50 percent of the lands within the state of Alaska.

Title VIII of ANILCA gave the State of Alaska the opportunity to implement the Federal subsistence priority for rural Alaskans on Federal lands. The State did so until 1989 when the State Supreme Court ruled in *McDowell v. State of Alaska* that providing a subsistence priority based on rural residency, as required by ANILCA, is unconstitutional because it violates several clauses of the Alaska State Constitution, including a clause that says that fish, wildlife and waters are reserved to the people for common use. As a consequence of this decision, the Federal government has engaged in subsistence management within Alaska's Federal public lands and waters since 1990.

In Title VIII of ANILCA, Congress found that the continuation of the subsistence way of life by rural Alaskans is essential to their physical, economic, traditional, cultural and social existence. Title VIII established a priority for the taking of fish and wildlife for nonwasteful subsistence purposes on Federal public lands in Alaska over the taking of those resources for other purposes. The subsistence hunting and fishing practices that are protected by ANILCA reflect and are an expression of vital relationships between people, land and cultural identity in rural Alaska.

The subsistence way of life is also a cornerstone of food security in rural Alaska. Approximately 34 million pounds of wild foods are harvested annually by rural Alaskans, which equates to about 275 pounds per person annually. If rural Alaskans did not have access to subsistence foods, substitutes would have to be purchased. Alaska is twice the size of the state of Texas but has only about 15,000 miles of public roads, most of which are gravel. The lack of roads in Alaska means that a large portion of rural residents have only limited access to stores. The variety of foods in many village stores is quite limited and the cost of store bought foods is prohibitively high for many rural Alaskans.

ANILCA emphasizes the need to balance subsistence opportunity with conservation of healthy populations of fish and wildlife in order to ensure the continuation of the subsistence way of life for future generations. In striking this balance, Congress echoed a central tenet of the traditional ecological knowledge that guided resource management long before the passage of ANILCA and is consistently expressed today by rural Alaskans engaged in the subsistence way of life.

Federal Subsistence Management Program

The Secretaries of the Interior and Agriculture have delegated authority to manage the subsistence priority on Federal public lands to the Federal Subsistence Board (FSB). The FSB is comprised of eight members, including: the Regional Directors of the U.S. Fish and Wildlife Service, National Park Service, and Bureau of Indian Affairs; the State Director of the Bureau of Land Management; and the Regional Forester of the U.S. Forest Service. Three public members who represent rural subsistence users are also members of the board, and one serves as the FSB's chair. The public board members are appointed by the Secretary of the Interior, with the concurrence of the Secretary of Agriculture. The FSB establishes all Federal subsistence hunting, trapping, and fishing regulations for fish and wildlife addressed by ANILCA.

The Federal Subsistence Management Program (Program) is multi-faceted, highly collaborative and, reflects a “bottom-up” approach to management. The Program involves five Federal agencies, a Federal and public-member decision-making board, 10 Subsistence Regional Advisory Councils, partnerships with Alaska Native and rural organizations, as well as with the State of Alaska, and robust stakeholder input.

Subsistence Regional Advisory Councils are a large part of what makes Alaska’s Federal Subsistence Management Program unique. Title VIII required the establishment of at least six subsistence resource regions, with each having an advisory council whose members are local residents with knowledge of subsistence practices and uses in their respective areas. Alaska is currently divided into ten subsistence resource regions, each with its own Federal Advisory Committee Act (FACA) chartered subsistence regional advisory council to reflect subsistence harvest and cultural differences within the state and also balance population representation.

The Subsistence Regional Advisory Council system provides a direct conduit of local and traditional ecological knowledge in the decision making process. This approach has been crucial to the Program’s success. Each Council holds at least two public meetings every year to gather local information, and make recommendations to the FSB on subsistence issues. On issues related to the take of fish and wildlife within their respective regions, the Secretary (or his delegate, the FSB) is statutorily required to defer to the recommendations of the regional advisory councils unless a recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. To date, the FSB has adopted more than 90 percent of regional advisory council recommendations regarding the take of fish and wildlife on Federal lands.

The Federal Subsistence Priority

The Federal Subsistence Management Program’s focus on the sociocultural aspects of subsistence activities distinguishes it from other hunting and fishing programs. Title VIII explicitly defines “subsistence uses” as “customary and traditional.” Customary and traditional uses are essential components of the subsistence way of life for rural residents in Alaska, and as such, once recognized by the FSB, are protected under ANILCA, to the maximum extent possible. These recognized practices, along with rural status, define the pool of federally qualified subsistence users who are eligible for the subsistence priority on Federal public lands.

The Board recognizes customary and traditional subsistence uses by adopting specific determinations, which identify the fish stocks and wildlife populations that have been customarily and traditionally used for subsistence by rural residents of specific communities or areas. The framework for making Federal customary and traditional use determinations is outlined in the Federal subsistence implementing regulations.

The implementing regulations list eight factors that exemplify customary and traditional uses. The factors emphasize a pattern of use that includes the sharing of knowledge and resources across the generations. The eight factors make clear that customary and traditional uses are part of a community’s cultural, social, economic and nutritional wellbeing, affirming and codifying that the subsistence way of life in rural Alaska encompasses more than simply the acquisition of

calories. Furthermore, the factors acknowledge that the methods and means of subsistence harvest are characterized by efficiency and economy and, therefore, changes to community practices over time are expected with the development of new technologies. At times, this has created challenges for the FSB when faced with regulatory proposals seeking to authorize in regulation hunting or fishing practices under Title VIII of ANILCA that conflict with agency-specific regulations prohibiting such practices.

The eight-factor analysis applied by the FSB when considering customary and traditional use determinations is intended to protect subsistence use rather than limit it. Because of the important role of subsistence in rural Alaska, it is assumed that customary and traditional use determinations will necessarily be broad and inclusive. The Federal Subsistence Management Program does not employ a rigid checklist approach to assessing the eight factors. Instead, analyses in the Federal program take a holistic approach and the eight factors serve as a framework for considering whether an area or community generally exhibits the eight factors characteristic of customary and traditional uses. The regional advisory councils and the FSB recognize that there are regional, cultural, and temporal variations throughout the state and the application of the eight factors will likely vary by region and by resource depending on actual patterns of use. Therefore, the eight factors that characterize customary and traditional uses are applied in a manner that provides maximum flexibility to address regional variations across the state and offer protections for the subsistence way of life in rural Alaska.

Customary and traditional use determinations are not intended to restrict harvest or allocate resources among Federally qualified subsistence users. However, Title VIII of ANILCA also provides guidance on how the Federal subsistence priority should be implemented in the event that there are not enough resources available to meet all harvest demands on Federal public lands. The Federal prioritization process provides a multi-phased approach that reduces the number of users or uses authorized on Federal public lands. This process is generally triggered by threats to the conservation of healthy populations of fish or wildlife, threats to the continuation of subsistence uses, or threats to the viability of a fish stock or wildlife population. While the subsistence prioritization process often reduces the number of users and uses permitted on Federal public lands, the overall intent of these restrictions is to continue to provide harvest opportunity to as many users as possible in the long run.

When populations of fish or wildlife are abundant enough to support the harvest demands of all user groups and uses, then all harvest authorized by the State of Alaska as well as those authorized in Federal subsistence regulations for Federally qualified subsistence users are allowed on Federal public lands. However, if a conservation concern or increasing competition requires a reduction in harvest, ANILCA requires that subsistence uses by Federally qualified subsistence users are prioritized over other consumptive uses on Federal public lands. The ability to restrict or eliminate harvest by non-Federally qualified users due to threats to the continuation of culturally important harvest practices of rural Alaskans is a unique characteristic of the Program that is highly valued by rural Alaskans. This aspect of the Program has received greater focus and attention as the program has matured with the meaningful infusion of traditional ecological knowledge shared by rural Alaskans. ANILCA also stipulates that subsistence uses by rural Alaskans may be eliminated on Federal lands only in cases when there is a looming threat to the viability of a fish, shellfish or wildlife population.

Federal Subsistence Regulatory Process

Stakeholders and the general public play a vital role in initiating changes to Federal subsistence fishing, hunting and trapping regulations, and providing input on proposed changes to ensure regulations meet the needs of subsistence users while also conserving healthy populations of fish and wildlife. Any individual or group can submit proposals to request changes to the Federal subsistence regulations or the areas and users eligible for the subsistence priority. The FSB very rarely generates proposals to change Federal subsistence regulations. Instead, changes are almost exclusively initiated by users or resource managers through an annual public process.

The FSB receives administrative and technical support from the Department of the Interior Office of Subsistence Management (OSM), which is housed within the Alaska Regional Office of the U.S. Fish and Wildlife Service. The OSM is mandated to serve each of the agencies and rural members represented on the FSB.

The FSB recognizes the critical importance of local and traditional knowledge in informing management decisions in the Program. It relies on the knowledge shared by local people and strives to consider it equitably alongside of western scientific knowledge. This expertise can provide a spatial and temporal scale of knowledge that is otherwise unavailable to resource managers. All OSM analyses of proposals to change Federal subsistence regulations incorporate available traditional ecological knowledge to help the FSB better understand subsistence resources and the people who depend on them.

The FSB holds annual public meetings to make regulatory decisions. During its meetings, the FSB engages in tribal consultation, accepts verbal and written public comments, and hears regional advisory council recommendations as well as comments by the FSB's technical review committee called the Interagency Staff Committee and the State of Alaska. Only after receiving all of this input do the FSB members discuss and vote on each proposal.

Conclusion

Since 1990, the Federal Subsistence Management Program has endeavored to provide rural residents of Alaska the opportunity to pursue the subsistence way of life, as envisioned by Congress and enacted in ANILCA. One of the Program's greatest strengths is its bottom-up approach that relies on direct input from the local people who will be directly affected by the FSB's actions. The program is intentionally designed to be highly collaborative and primarily driven by stakeholder input, biological data and local and traditional knowledge. The Program will continue to seek balance between the harvest needs of rural subsistence users, conservation mandates of land management agencies and the diverse values that undergird each of the many user groups seeking opportunities to hunt and fish on Federal public lands.

We appreciate the Committee's interest in subsistence harvest on Federal public lands in Alaska under ANILCA. I would be happy to answer any questions the Committee may have.