



Administrative Actions Needed to Ensure Food Security for Alaska Natives

Statement of the Issue:

Alaska Natives remain dependent on subsistence hunting and fishing for their economic and cultural survival. The ability of Alaska Natives to pursue their subsistence activities is closely linked to the economics of their food security and requires federal protection. The right to food security for oneself and one's family is a human right enumerated in the Universal Declaration of Human Rights of the United Nations Charter. Article 20(1) of the United Nations Declaration on the Rights of Indigenous Peoples also provides that "Indigenous peoples have the right . . . to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in their traditional and other economic activities." Although the umbrella of federal protection provided by Title VIII of ANILCA shelters both Natives and non-Native rural residents, competing federal and state administration of different "preferences" significantly impairs the ability of our people to continue to access their traditional foods. There is an urgent need for stronger federal protections.

The erosion of federal protections after more than twenty years of dual management and widespread dissatisfaction among subsistence users prompted the Secretary of the Interior in 2009, to initiate a Review of the Federal Subsistence Management Program. In doing so, he called for a "new approach" – one that would recognize and respect the voice of subsistence users in subsistence management. The Native community participated in the review, and submitted extensive comments and recommendations. Attached is a copy of the comments submitted by AFN. The Secretary completed his review in October 5, 2010. All of the changes outlined in the final report were ones that could be implemented by the Secretary of the Interior with the concurrence of the Secretary of Agriculture, or by the Federal Subsistence Board (FSB) – most by Secretarial directive or policy changes. We believe the actions taken to date as a result of the review are inadequate.

Solution: Recognizing that only Congress can address the necessary changes to the underlying federal law protecting our way of life, and the reality that those changes are not likely to be addressed in the current political climate, we focus here on steps the Administration can take immediately that would help provide better food security for our people without significant impacts on the federal budget.

The President should convene a high-level interagency workgroup consisting of key White House officials, including the Domestic Policy Council and departments with jurisdiction over subsistence similar to the White House Council on Native Affairs, but focused specifically on Alaska Natives and their relationship to the land and the continuation of their way of life, the impacts of climate change and federal responsibilities as a result of court decisions. Subsistence management and the legal rights of Alaska Natives cut across a number of departments, including Interior, Agriculture, Justice, State and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an ongoing dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of subsistence. Presidential involvement has been a hallmark of all of the major federal laws affecting Alaska, including the Alaska Statehood Act; the Alaska Native Claims Settlement Act (ANCSA); and the Alaska National Interest Lands and Conservation Act (ANILCA), including Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights and to fulfill the promises of the ANCSA. The same level of White House commitment and involvement is needed today.

The President and his Administration should take the following administrative and policy measures to ensure Alaska Natives are able to pursue their subsistence activities, which are central to the economies, food security, and cultures in villages across Alaska:

1. **Tribal compacting and contracting of subsistence programs:** Expand contracting with Alaska's tribes and Alaska Native corporations for operation of significant aspects of the federal subsistence program, including the staffing and administration of the RACs. Section 809 of ANILCA provides authority for contracting Office of Subsistence Management and Federal Subsistence Board functions. Not only would this improve federal interactions within the Native community, it would engage more Alaska Natives in management and research, integrate traditional ecological knowledge gained over thousands of years, foster new Alaska Native scientists, and create real jobs for Alaska Natives.
2. **Executive Order:** The President should issue an Executive Order to advise federal agencies and the Federal Subsistence Board (FSB) that Title VIII of ANILCA is "Indian Legislation," enacted under the plenary authority of Congress over Indian Affairs, and direct that the subsistence management program be implemented in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long-standing concern for, and obligation in, protecting subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Any ambiguities in the statute should be resolved in favor of protecting the subsistence way of life.
3. **Expand the federal government's jurisdiction under Title VIII of ANILCA:** The Secretary should voluntarily review and through rulemaking, extend federal jurisdiction to Alaska Native allotments and reserved waters upstream and downstream from federal conservation system units (CSUs). The federal district court in Alaska has acknowledged that the Federal Subsistence Board possesses the authority to determine that federal waters associated with federal lands extend to waters upstream and downstream from federal lands. *Katie John et al. v. United States*, No. 3:050-cv-00006-HRH (Sept. 29, 2009), at 65, affirmed, *State of Alaska v. Jewell and Katie John v. United States*, ___F.3d ___ (2013).
4. **Regional Advisory Councils:** Section 805 of ANILCA mandates that the FSB follow the recommendations of the RACs unless the 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." The Federal Subsistence Board (FSB) takes the position that it need only give deference to recommendations that involve the "taking" of fish or wildlife, and not on whether a community is "rural" or has customary and traditional use of fish or wildlife within their respective regions. The FSB should be directed to give deference to RAC recommendations on all matters relating to subsistence uses, including, among other things (1) rural determinations, (2) customary and traditional use determinations, (3) issues that arise out-of the normal regulatory cycle; and (4) special actions and emergency regulations.
5. **Comprehensive review of all subsistence regulations:** The Secretary should direct a comprehensive review of all federal subsistence regulations to ensure that no unnecessary restrictions are being imposed upon subsistence users unless necessary under Section 804 of ANILCA to protect the viability of the species and/or the continuance of subsistence uses.
6. **Composition of the Federal Subsistence Board:** During the Secretarial review, AFN recommended that the Federal Subsistence Board be replaced with a federally-chartered or authorized body composed of twelve (12) subsistence users from the twelve ANCSA regions, or the chairs of each of the Regional Advisory Councils. There is nothing in Title VIII of ANILCA that prohibits the Administration from creating a FSB structure composed of non-federal members. While the Secretary has recently added two public members to the FSB, the majority of the members are still federal employees.