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of **ALASKA**
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Subject: Comments on Program Review of the Federal Subsistence Program in Alaska

To whom it may concern:

Across the Nation, states are the primary managers of fish and wildlife within their borders. These same rights were bestowed to Alaska by our statehood compact and reaffirmed in the Alaska National Interest Lands Conservation Act (ANILCA). Nevertheless, the State of Alaska's (State) role has been largely supplanted by the Federal Subsistence Management Program (Program), far exceeding the narrow federal authority ANILCA provides. Significant regulatory reforms are necessary to restore the State's proper role as the primary manager of Alaska's fish and wildlife. Consistent with the Administration's directives and the clear language of ANILCA, the Alaska Department of Fish and Game (ADF&G) submits the following comments and recommended reforms.

State Management is essential to providing Alaskans with reliable opportunities to hunt and fish on public lands, as the President recognized in Section 3(b)(xxii) of Executive Order 14153 'Unleashing Alaska's Extraordinary Resource Potential'. Section 3(b)(xxii) directs the Department of the Interior to conduct meaningful consultation with State fish and wildlife agencies prior to enacting land management plans or regulations affecting hunting and fishing opportunities on public lands, and to the greatest extent possible ensure hunting and fishing opportunities on federal lands are consistent with those on State lands.

This directive was reinforced by Secretarial Order 3447, which calls for removing unnecessary barriers to hunting and fishing, expanding access where compatible, improving coordination with State agencies, and ensuring transparent review of any proposed restrictions. Despite these directives, the Federal Subsistence Board (FSB) and the Office of Subsistence Management (OSM) continue to undermine State management authority by restricting harvests without conservation necessity, creating separate seasons, and regulating methods, means, and access.

This series of actions by the FSB and OSM far exceed the limited federal role outlined in ANILCA. ANILCA Section 1314(a) explicitly states: "Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in Title VIII . . ." Title VIII provides only a narrow exception allowing the Secretary to restrict State-authorized harvest when necessary to meet the subsistence needs of federally qualified rural residents. Section 802(2) establishes the policy that "nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive use of all such resources on the public lands of Alaska **when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population . . .**" [emphasis added]. Section 804 reiterates this policy and establishes criteria to implement a priority when the above conditions are met. It does not authorize wholesale replacement of State management.

Unfortunately, the FSB has expanded this limited authority into broad preemption, completely supplanting State management with federal management and imposing closures, opening off-season hunts, and adopting other methods and means regulations far beyond what ANILCA allows. This dual regulatory system confuses the public, complicates management, and impedes the State's constitutional mandate to manage fish and wildlife for the maximum benefit of all Alaskans.

To restore balance and comply with ANILCA, ADF&G recommends the following regulatory and organizational changes to the Program:

I. Reform the Board's Regulations and Regulatory Process

- Repeal all regulations that exceed ANILCA's limited closure authority including seasons, bag limits, and methods and means and direct the FSB in the future to only consider proposals recommending closures or restrictions. This repeal includes, but is not limited to:
 - Amend 43 CFR 51.14 to recognize that State regulations are the controlling authority except in the rare instance in which the Secretaries have used their limited authority to close or restrict State-authorized activities under the conditions specified in ANILCA Section 804, that State actions are not subject to FSB adoption, and that the FSB has no management responsibility other than recommending closures or restrictions to the Secretaries.
 - Repeal the vast majority of 43 CFR 51 Subpart D as being duplicative and in conflict with State regulations. The only public land in Alaska that ANILCA allows direct federal management are national parks and monuments under ANILCA Section 816(a) and in many cases that responsibility has been delegated to the State. The State has a complete set of regulations on season length, means and methods, harvest limits, usages, permitting, and subsistence

- applicable to each of Alaska's fish and wildlife units. There is no justification to have a second management regime in federal regulations.
 - Repeal the following regulations for exceeding the limited federal authority given under ANILCA: 43 CFR 51.10(d)(4)(iv), (v), (vi), (vii), and 51.10(d)(6).
 - Amend 43 CFR 51.10(d)(4)(xv), 51.10(e), 51.11(c)(iii), (vi), and 51.18 to allow the FSB to only consider proposals for closures or restrictions and limit such consideration to the conditions listed in ANILCA Section 804.
- Limit the FSB to an advisory role with final decisions on regulations and special actions being made by the Secretaries of the Interior and Agriculture. These limitations include, but are not limited to:
 - Repeal the delegation of authority to promulgate and sign regulations in 43 CFR 51.10(a).
 - Amend 43 CFR 51.10(a) to clarify that the Secretaries retain the exclusive authority to restrict or close hunting, fishing, or trapping activities under ANILCA Section 804.
 - Repeal 43 CFR 51.10(d)(4)(i), (ix), 51.10(d)(12), (13), and 51.13(a)(2) because they grant or recognize authorities that should be exclusive to the Secretaries themselves.
 - Amend 43 CFR 51.10(d)(4)(xvii), 51.10(d)(5), 51.13(a), and 51.19 to clarify that the FSB may only recommend actions or regulations to be adopted by the Secretaries.
- Reform regulations to limit special actions to emergency closures or restrictions, as provided by the clear language of ANILCA Section 804 which limits closures to the minimum area and duration necessary to provide for subsistence uses, require substantial evidence of declining subsistence opportunity, include expiration dates, and prohibits the consideration of values or ethnicity. This reform includes, but is not limited to:
 - Repeal 43 CFR 51.19(b).
 - Amend the remainder of 43 CFR 51.19 to clarify that the Secretaries, not the FSB, have the authority to take special actions and that special actions may only be a closure or a restriction of a State authorized activity and only with the above conditions and limitations.
- Revoke all other existing delegations of the Secretaries' authority. This includes, but is not limited to:
 - Repeal 43 CFR 51.10(d)(6) for the additional reasons that the FSB itself should not have the listed authorities and it is inappropriate to further delegate such authorities to field officials.

II. Reform the FSB Membership & Powers

- Restore the FSB to the original five-member board established in the 1992 final rule.
 - Repeal the addition of public members in 43 CFR 51.10(b) and adjust quorum requirements in 43 CFR 51.10(d)(2) accordingly.
- Relocate the administration of the Program back within the Alaska Region of the U.S. Fish and Wildlife Service.
- Prohibit OSM from modifying proposals or taking support/opposition positions.

III. Reform and Promote the Use of Regional Advisory Councils (RAC)

- Promote meaningful local participation by revising RAC appointment processes to rely on locally elected representatives, similar to the State's advisory committee system.

- Require RAC's to more strictly adhere to the “fairly balanced membership” requirements of the Federal Advisory Committee Act as currently that balance is not present.
 - Amendment is needed at 43 CFR 51.11(b)(1) to achieve fairly balanced membership.

IV. Strengthening State Involvement in the Federal Subsistence Process

- Require deference to State regulations in all instances unless unique federal regulations are necessary to achieve a non-discretionary statutory function.
- Establish clear, enforceable standards defining when consultation must occur and what consultation between the FSB, OSM, the relevant federal agencies, and ADF&G entails.
- Direct OSM to work collaboratively with ADF&G to ensure State expertise, data, and analysis meaningfully inform federal decision-making.
- Guarantee State participation in all FSB sessions, not just public meetings, to ensure transparency and accountability.

ADF&G respectfully request that these necessary actions be taken to ensure compliance with ANILCA and Executive Order 14153, recognizing the State of Alaska's primary management authority over fish and wildlife, and improving outcomes for all Alaskans who depend on these resources. We stand ready to work collaboratively with the Departments of the Interior and Agriculture, the FSB, and OSM to restore a cooperative, lawful, and effective subsistence management framework in Alaska.

Respectfully,



Doug Vincent-Lang
Commissioner
Alaska Department of Fish and Game