



May 5, 2025

Via Federal Express and Email

Honorable Doug Burgum
Secretary, Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240
exsec@ios.doi.gov

Honorable Brooke Rollins
Secretary, Department of Agriculture
1400 Independence Ave. S.W.
Washington, D.C. 20250
agsec@usda.gov

Re: Petition for Revisions to Federal Subsistence Board Regulations

Dear Secretary Burgum and Secretary Rollins:

For decades, Alaskans have been faced with the dual federal and state regulation of fish and wildlife harvest. This dual regulation obstructs the State's wildlife management efforts and is confusing and complicated by checkerboard land ownership. This is not what the Alaska National Interest Lands Conservation Act of 1980, Pub. L. No. 96-487 ("ANILCA"), intended or requires.

Safari Club International ("SCI") respectfully petitions for amendment of regulations pursuant to the Administrative Procedure Act, 5 U.S.C. § 553, and its implementing regulations at 43 C.F.R. § 14.2 and 7 C.F.R. § 1.28. This petition is ripe for action in light of President Trump's Executive Order titled, "Unleashing Alaska's Extraordinary Resource Potential." Section 3(xxii) of that Order directs:

all bureaus of the Department of the Interior to consider the Alaskan cultural significance of hunting and fishing and the statutory priority of subsistence management required by ANILCA, to conduct meaningful consultation with the State fish and wildlife management agencies prior to enacting land management plans or other regulations that affect the ability of Alaskans to hunt and fish on public lands, and to ensure the greatest extent possible that hunting and fishing

opportunities on Federal lands are consistent with similar opportunities on State lands.¹

This petition requests the Department of the Interior and the Department of Agriculture revise the “Subsistence Management Regulations for Public Lands in Alaska” at 36 C.F.R. Part 100 and 36 C.F.R. Part 242, respectively. Specifically, SCI requests the following primary revisions², listed in order of where they appear in the applicable regulations:

- (1) reduce the membership of the Federal Subsistence Board (“FSB”) to the five land management agencies, *see* 50 C.F.R. § 100.10(b) and 36 C.F.R. § 242.10(b);
- (2) revise criteria for regional advisory council membership, *see* 50 C.F.R. § 100.11(b) and 36 C.F.R. § 242.11(b);
- (3) require deference to and consultation with the State and the Alaska Department of Fish and Game (“ADFG”) on actions necessary for the conservation of fish and wildlife, *see* 50 C.F.R. § 100.10(d)(4), § 100.14 and 36 C.F.R. § 242.10(d)(4), § 242.14;
- (4) eliminate federal regulations that duplicate state regulations and add a subsection that requires the Board not duplicate State regulations, *see* 50 C.F.R. § 100.14 and 36 C.F.R. § 242.14; and
- (5) ensure that special actions are only for true emergency situations, *see* 50 C.F.R. § 100.19 and 36 C.F.R. § 242.19.

SCI also requests a number of deletions and revisions to conform the FSB’s regulations to the above recommendations. All these revisions will improve how the FSB’s processes comply with ANILCA. SCI’s proposal will realign management of the federal subsistence program to be consistent with the limited authorities Congress granted to the Secretaries in ANILCA, and course-correct FSB decisions that have increasingly overreached ANILCA’s authority and obstructed the State’s ability to manage fish and wildlife, thereby impacting hunting and fishing opportunities for subsistence and nonsubsistence users alike.

Safari Club International

SCI is an I.R.C. § 501(c)(4) nonprofit organization. SCI has over 100,000 members and advocates worldwide and 152 chapters throughout the U.S. and around the world. SCI has two chapters and approximately 1,200 members in Alaska. The Alaska Chapter is SCI’s largest.

¹ Unleashing Alaska’s Extraordinary Resource Potential (Jan. 21, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-alaskas-extraordinary-resource-potential/> (last accessed Mar. 31, 2025). While this provision refers to the Department of the Interior, its intent clearly applies to U.S. Forest Service lands, which allow for hunting and fishing and are subject to ANILCA (defined above). This petition is meant to implement a portion of the Order. SCI believes more changes will need to be made to fully implement the Order.

² The Alaska Department of Fish and Game has reviewed this petition and is aligned with the requests SCI is making.

SCI's missions are to protect the freedom to hunt, educate the public about hunting and its role as a conservation tool, and promote wildlife conservation worldwide. SCI is a leader in educating courts, elected officials, and policymakers on the essential role of hunting in the science-based management of wildlife and habitat, and the importance of hunting access. SCI has long been an advocate of fair and equitable access to game resources in Alaska, including significant litigation in Alaska courts to protect hunting access. SCI regularly submits written comments and oral testimony during the FSB public process, as well as in response to federal regulations that will impact the interests of Alaskans and SCI members who wish to hunt in Alaska.

Need for the Petitioned Actions

ANILCA explicitly protects the right to hunt and fish for all users on most federal public lands in Alaska. While ANILCA permits the Secretary to enact a closure of nonsubsistence harvest opportunity to protect subsistence harvest opportunity, that authorization is limited. Section 802 of ANILCA provides a priority harvest opportunity for subsistence use of fish and wildlife by certain rural users on federal lands.³ But ANILCA provides that nonsubsistence use may only be limited if “necessary for the conservation of healthy populations of fish and wildlife,” or “to continue subsistence uses of such populations or for health and human safety reasons.”⁴ Accordingly, ANILCA preserves rights of nonsubsistence hunters to share in harvest opportunities on federal public lands, unless “necessary” to protect either the viability of the wildlife resource or of the subsistence priority.

Yet the FSB has incrementally, and often unlawfully, restricted hunting on federal public lands to all but federally qualified subsistence users.⁵ Federal subsistence regulations exceed ANILCA's authority by enacting closures not based on a conservation need or providing the subsistence priority. For example, in 2020, the FSB closed **750,000 acres** of public land in Game Management Units (“GMU”) 13A and 13B to caribou and moose hunting by non-federally qualified subsistence users for reasons outside of a conservation need or providing the subsistence priority.⁶ The proponent based the request on “extreme hunting competition” in GMU 13.⁷ Tellingly, the FSB rejected an identical proposal in 2019, determining the closure was not warranted under ANILCA, before it approved this request.

In 2021 the FSB approved the closure of moose and caribou hunting by non-federally qualified subsistence users on **over 20 million acres** in GMUs 23 and 26A. Much like the closure in GMU

³ Section 802 of ANILCA provides for the “nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska.” Throughout the remainder of the petition, we will use the shorthand “subsistence priority” when referencing the priority created in Section 802. 16 U.S.C. § 3112.

⁴ 16 U.S.C. §§ 3112, 3125.

⁵ A “federally qualified subsistence user” is a permanent resident of a rural area that has a recognized customary and traditional use for that resource, including Alaska Natives and non-Natives alike. 16 U.S.C. § 3114.

⁶ Changes in Federal Moose and Caribou Hunting Regulations in Unit 13 (2020), available at www.doi.gov/sites/doi.gov/files/uploads/nr-unit-13-caribou-moose-closure-faqs_0.pdf (last accessed Mar. 31, 2025).

⁷ *Alaska v. Fed. Subsistence Bd.*, 574 F. Supp. 3d 710, 719-20 (D. Alaska 2021), *rev'd in part, vacated in part*, 62 F.4th 1177 (9th Cir. 2023).

13, the FSB based its conclusion on grounds outside of a conservation need or providing a subsistence priority; specifically, on assertions by the proponent that airplane flights by non-local hunters altered the migration pattern of the Western Arctic Caribou Herd.⁸ The proponent offered no evidence to support this assertion, nor any evidence of changes to moose behavior, and non-local harvest accounts for less than 5% of the annual caribou harvest and approximately 25% of the annual moose harvest in these areas. Nonetheless, the FSB approved the closure without meeting ANILCA's closure criteria.⁹

In July 2022, the FSB approved a special action the State vigorously opposed, and closed **2.1 million** acres of GMUs 24A and 26B to Dall sheep hunting by all users. The proponent based the proposal on a decline in the sheep population.¹⁰ While the State did not dispute a decline, it provided data to demonstrate the closure of full-curl sheep hunting would not benefit the sheep's recovery.¹¹ The proponents did not carry their burden of demonstrating the proposed closure complied with ANILCA. Against the science, the FSB approved the closure.¹²

The most egregious example includes the FSB's 2020 **opening** of deer and moose hunts for the Organized Village of Kake. Although ANILCA includes no language to allow a federal agency to **open** a hunt and the proponent offered no evidence of a hunt being necessary to provide the subsistence priority or supply chain disruptions or difficulties in purchasing food, the FSB granted the village's request for additional deer and moose harvest based on the Covid-19 pandemic.¹³

These actions demonstrate the FSB's continual overreach of the authority granted to the Secretaries in ANILCA. The FSB's actions obstruct state wildlife management and improperly and unnecessarily pit hunter-against-hunter in areas where resources are more than abundant to support the needs of federally qualified subsistence users and others. The FSB has exceeded the authority granted by Congress. It should be reined in through regulatory changes that ensure it

⁸ Staff Analysis Temporary Special Action WSA 21-01 (2021), available at www.doi.gov/sites/doi.gov/files/wsa21-01-fsb_0.pdf (last accessed Mar. 31, 2025); Staff Analysis Temporary Special Action WSA 21-01a (2021), Available at www.doi.gov/sites/doi.gov/files/wsa21-01-fsb_0.pdf (last accessed Mar. 31, 2025).

⁹ Transcript available at <https://www.doi.gov/media/document/wildlife-special-action-wsa21-01> (last accessed Mar. 31, 2025).

¹⁰ Transcript unavailable online. Changes in Federal Sheep Hunting Regulations in Units 24A and 26B (2022), available at <https://www.doi.gov/media/document/view-full-news-release-70> (last accessed Mar. 31, 2025).

¹¹ WSA22-02 Analysis (2022), at 44, available at <https://www.doi.gov/sites/doi.gov/files/wsa22-02-fsb-508.pdf> (last accessed Mar. 31, 2025).

¹² The FSB extended this closure during their 2024 Wildlife Regulatory Cycle. Transcript available at www.doi.gov/sites/default/files/documents/2024-04/fsb-wildlife-regulatory-meeting-4-april-24.pdf.

¹³ The State sued the FSB over this decision. The district court initially ruled against the State, but that order was reversed in part, vacated in part, and remanded by the Ninth Circuit Court of Appeals. *Alaska v. Fed. Subsistence Bd.*, 574 F. Supp. 3d 710 (D. Alaska 2021), *rev'd in part, vacated in part*, 62 F.4th 1177 (9th Cir. 2023). The district court issued a new ruling, again against the State. 700 F. Supp. 3d 775 (D. Alaska 2023). The State's appeal of that ruling is pending before the Ninth Circuit Court of Appeals.

remains within ANILCA's parameters. Therefore, SCI requests the following regulatory changes.

1. The FSB should be reduced to only representatives from the five land management agencies, consistent with its original structure.

Part of the FSB's overreach comes from the significant expansion of its membership, which has crept up from six to eleven members. SCI requests that the Departments downsize the FSB back to a rational level compliant with ANILCA.

In 1992, the FSB was established to coordinate between the five federal land management agencies responsible for the management of federal public lands covered by ANILCA's subsistence title (Title VIII)¹⁴: the Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, Bureau of Indian Affairs, and U.S. Forest Service. The original structure also included a chair appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.¹⁵ Subsequently, the membership of the FSB has increased several times. Today, the FSB is comprised of the five Alaska Regional Directors and a chair, as well as five additional public members.¹⁶

However, as the Secretaries recognized in the 1992 Regulations, ANILCA does not authorize the delegation of authority to members of the public. Many commentors "generally wanted subsistence users to have as great an affect as possible on decisions, and thus recommended the [FSB] have subsistence users as members."¹⁷ In response, the Departments noted that:

The administrative structure established by these regulations enables rural Alaska residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands. The framework erected in § _____.11 and _____.12 of these regulations defines the mechanisms for including rural Alaska residents in the decisionmaking process, and establishes guidelines for decisionmakers when considering recommendations. *Neither ANILCA nor these regulations provide mechanisms for including rural Alaska residents beyond the scope of the advisory system.*¹⁸

¹⁴ The authority of the FSB extends only to Alaska federal public lands, primarily those administered by the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, and the U.S. Forest Service. ANILCA defines public lands generally to include all lands under federal ownership following the enactment of ANILCA, with certain exclusions. Exclusions include certain lands owned by the federal government pending conveyance to the state, Native corporations, or individuals under certain federal statutes (e.g., the Alaska Statehood Act and the Alaska Native Claims Settlement Act). 16 U.S.C. § 3102(3).

¹⁵ Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C, 57 Fed. Reg. 22940, 22954 (May 29, 1992) ("1992 Regulations").

¹⁶ In late 2024, the Department of the Interior finalized a proposal to add three additional public members who must be nominated or recommended by federally recognized Tribal governments. Subsistence Management Regulations for Public Lands in Alaska – Subpart B, Federal Subsistence Board Makeup, 89 Fed. Reg. 83622 (Oct. 17, 2024).

¹⁷ 1992 Regulations, 57 Fed. Reg. at 22944.

¹⁸ 1992 Regulations, 57 Fed. Reg. at 22944 (emphasis added).

Furthermore, several commentors suggested delegation of management authority to regional or local entities. The Departments repeated that “because ANILCA *does not authorize* the Secretaries to delegate their title VIII responsibilities to private persons or groups, these regulations *do not authorize* the [FSB] to delegate such responsibilities to private persons or groups.”¹⁹

ANILCA did not and does not authorize the delegation of authority to the six public members. To comply with ANILCA, the public members must be removed from the FSB. SCI requests the Departments amend 50 C.F.R. § 100.10(b)(1) and (2) and 36 C.F.R. § 242.10(b)(1) and (2) to reduce the FSB’s membership to the five land management agencies.²⁰

2. Members of Regional Advisory Councils should be nominated by local residents and represent all interests.

The FSB has stacked the membership of Regional Advisory Councils (“RACs”) with those who rubber-stamp federal overreach, instead of true representatives of local subsistence interests. SCI requests that the Departments remove undue federal influence by changing how RAC members are nominated.

ANILCA created the RAC system to encourage local participation on subsistence issues and to report to the FSB about subsistence hunting, trapping, and fishing issues on federal public lands.²¹ Membership on a RAC is a significant way for the public to become involved in the federal regulatory process.

Under the Departments’ regulations, the FSB “will accept nominations and make recommendations to the Secretaries for membership on the Regional Councils,” but do not explain how these nominations are obtained or how the recommendations are made. It appears RAC membership is solicited by and recommended through an opaque screening process conducted by federal agency staff. Local residents represented by these members do not have input on the RAC appointment process.

This is in stark contrast to the 84 State-authorized Advisory Committees.²² Advisory Committees are local groups that meet to discuss fish and wildlife issues, provide a local forum for those issues, and make recommendations to the Alaska Board of Fisheries and Board of Game. Members of the Advisory Committees are elected by local residents that have personal

¹⁹ 1992 Regulations, 57 Fed. Reg. at 22944. (emphasis added)

²⁰ If a public member is appointed as Chair, SCI requests they are a nonvoting member of the Board. Requiring a public member to be nonvoting, meets the intention of the petitioned changes to maintain voting authority within the agencies.

²¹ RAC responsibilities include making recommendations to the FSB on proposals for regulations, policies, management plans, and other subsistence-related issues within their region; developing proposals for the subsistence harvest of fish and wildlife; making recommendations on customary and traditional use determinations of subsistence resources; appointing members to National Park Service Resource Commissions; and providing an open forum for public expression regarding any matter related to subsistence. 50 C.F.R. § 100.11(c); 36 C.F.R. § 242.11(c).

²² A.S. 16.05.260.

knowledge and information about local hunting, fishing, and trapping conditions.²³ Unlike the RAC appointments, these representatives are elected by those they represent.

Further, RACs should strive to be composed of 30% “commercial or sport” users and 70% “subsistence” users.²⁴ However, this “70/30 rule” has largely been ignored. The majority of RACs do not meet this requirement²⁵, in violation of *Safari Club International v. Demientieff*, which held that “a council comprised of only subsistence users is not fairly balanced. [Federally qualified s]ubsistence users are not the only persons directly affected by regional advisory council recommendations and [federally qualified] subsistence users are not the only persons who might be interested in the management of fish and wildlife on federal lands.”²⁶

Because RACs do not fairly represent their local regions, they have supported or even driven the FSB’s expansion of subsistence closures, at the expense of other subsistence and nonsubsistence users. This expansion of federal authority is unlawful and improper. Therefore, SCI requests the Departments amend 50 C.F.R. § 100.11(b) and 36 C.F.R. § 242.1(b) to ensure the process for nominations and selections for membership on RACs truly represents local residents as envisioned in ANILCA.

3. ANILCA requires the FSB to defer to and consult with the State on actions necessary for the conservation of fish and wildlife.

In recent years, the FSB has run roughshod over the views of its asserted partner, the State of Alaska (through the ADFG). The FSB’s repeated decisions to substitute its judgment for the State’s, and to ignore data presented by the State, has led to the extensive and unlawful closures of subsistence and nonsubsistence harvest opportunities on federal lands, as explained above. SCI requests amendments to constrain the FSB’s ability to ignore the State and restore the appropriate balance of state and federal authority by cabining the FSB’s ability to close areas to state-authorized harvest. These amendments will bring FSB practice back in line with ANILCA’s requirements.

A. ANILCA preserved the State’s management authority.

In ANILCA, Congress preserved the State’s “responsibility and authority” for “management of fish and wildlife on public lands.”²⁷ ANILCA repeatedly directs the Secretaries to consult with

²³ 5 A.A.C. § 96.040.

²⁴ 50 C.F.R. § 100.11(b); 36 C.F.R. § 242.11(b).

²⁵ Of the ten RACs, only two meet the “70/30 rule” (Kodiak/Aleutians and Bristol Bay). Two RACs have no “commercial or sport” user representation at all (Yukon-Kuskokwim Delta and North Slope). RAC membership is available at <https://www.doi.gov/subsistence/regions> (last accessed Apr. 28, 2025).

²⁶ No. A98-0414-CV (D. Alaska Jan. 16, 2004) (citing the Federal Advisory Committee Act, 5 U.S.C. app. 2 §§ 1-15 as codified in 2004).

²⁷ 16 U.S.C. § 3202(a). ANILCA’s legislative history reinforces Congress’ intent that wildlife management authority remains with the State. *E.g.*, Senate Report on ANILCA Section 1314, S. Rep. 96-413, 308; 1980 U.S.C.C.A.N. 5070, 5252 (“This section... preserves the status quo with regard to the responsibility and authority of the State to manage fish and wildlife, and reconciles this authority with the Act, including the subsistence title. At the same time, the section confirms the status quo with regard to the authority of the Secretary to manage the wildlife habitat on federal lands.”); Hearing on Alaska

the State.²⁸ Current regulations direct that the State liaison to the FSB “*be actively involved as consultant[] to the Board.*”²⁹ Despite these directives, the FSB increasingly closes ever-expanded areas or even *authorizes* harvests that conflict with State decisions related to the conservation of fish and wildlife.

To align with Congressional directives, SCI requests the Departments add a subsection to 50 C.F.R. § 100.14 and 36 C.F.R. § 242.14 that requires meaningful consultation with and deference to the State of Alaska on actions necessary for the conservation of fish and wildlife. This regulation will help to clarify the cooperation and coordination between the state and federal governments as required by ANILCA and reduce the enforcement issues and interference with state constitutional authority and management objectives that exist under the current system.

B. The Departments must adopt clear guardrails for the FSB’s authority to close state-authorized harvest to avoid unnecessary impacts to all users and stop continued overreach.

As explained above, the FSB has closed millions of acres of federal land to harvest by non-federally qualified subsistence users. These closures – and one opening – have far exceeded ANILCA’s limited grant of closure authority, thereby unnecessarily impacting subsistence and nonsubsistence users. SCI requests that the Department restore the appropriate balance of state and federal authority by cabining the FSB’s ability to close areas to state-authorized harvest.

Section 804 of ANILCA establishes a subsistence priority, but only “[w]henver it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses.”³⁰ Likewise, Section 815 of ANILCA makes clear that ANILCA does not “authoriz[e] a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands ... *unless necessary* for the conservation of healthy populations of fish and wildlife ... [or] to continue subsistence uses of such populations, or pursuant to other applicable law.”³¹

The FSB has repeatedly ignored the limiting language in ANILCA and its implementing regulations.³² Therefore, SCI requests even stronger language in 50 C.F.R. § 100.14, § 100.14

National Interest Lands Conservation Act of 1979 before the Comm. on Interior and Insular Affairs, 96th Cong. 427 (Feb. 8, 1979) (Statement of Rep. Seiberling) (stating that ANILCA “not only protect[s] the State of Alaska’s right to manage fish and game but will be the first time in history that any statute has actually preserved those rights which traditionally existed as a matter of practice and custom rather than being in any Federal statute”).

²⁸ *E.g.*, 16 U.S.C. § 3126 (requiring consultation before any closure of harvest opportunity on federal lands); 16 U.S.C. § 3201 (requiring consultation in development of national preserve management plans); 16 U.S.C. § 3115 (requiring consultation in the development of the RACs).

²⁹ 50 C.F.R. § 100.10(c).

³⁰ 16 U.S.C. § 3114.

³¹ 16 U.S.C. § 3125 (emphasis added).

³² The Ninth Circuit Court of Appeals has recognized that, although ANILCA emphasizes the importance of subsistence lifestyles, its other goals include the preservation of recreational opportunities for sport hunting. *See Ninilchik Trad. Council v. United States*, 227 F.3d 1186, 1192 (9th Cir. 2000) (“ANILCA

and 36 C.F.R. § 242.10, § 242.14, to ensure that the FSB can be held accountable if it closes federal public lands outside its authority. Specifically, SCI requests the Departments limit the FSB's ability to preempt state wildlife management decisions by requiring the FSB to abide by the ADFG's recommendation on closure proposals, unless substantial evidence from credible sources exists to override the ADFG's evidence or demonstrates that the ADFG's recommendation violates recognized principles of fish and wildlife conservation.³³ The FSB must provide the factual basis and the reasons for declining to adopt the ADFG's recommendation in a writing published on the FSB website and provided directly to the ADFG.

4. The Departments should eliminate all regulations duplicative of the State's.

While SCI objects to the FSB's preemption and overreach of state regulatory authority, there are GMUs, species, and seasons for which state and federal regulations align. But rather than deferring to hunting, fishing, and trapping regulations in the Alaska Administrative Code, the FSB has duplicated all those state regulations in its own regulations. This duplication is unnecessary and fiscally irresponsible. It is confusing for Alaska residents. And as state regulations change as part of the Board of Fisheries and Board of Game processes, federal regulations do not change and are thus in unintentional conflict. SCI requests that the Departments amend the Code of Federal Regulations to de-duplicate them from Alaska state regulations and to take further actions to advance that process.

Confusion and regulatory conflicts could be minimized in the future if separate federal regulations are *only* adopted where a written finding is made by the FSB that state regulations do not provide a meaningful subsistence preference. Therefore, SCI requests the Departments direct the FSB to work with the ADFG to "de-duplicate" state and federal regulations within one year. Further, SCI requests that the Departments add a subsection to 50 C.F.R. § 100.14 and 36 C.F.R. § 242.14 to prohibit the FSB from duplicating state regulations that already provide the subsistence priority required under ANILCA.

5. Unrestricted special actions violate ANILCA and should be limited in time and scope.

Perhaps most egregiously, the FSB has repeatedly adopted "special actions"—so-called emergency or temporary actions—to address concerns about conservation need or the need to provide the priority for subsistence use of fish and wildlife populations, in situations that are not true "emergencies" or without sufficient endlines for the closures. These special actions are authorized in a truncated process with reduced periods for review, consideration, and public involvement. They are intended to respond to "emergency" situations, although they often involve ordinary course wildlife or subsistence issues. The FSB has closed millions of acres of federal lands to nonsubsistence harvest under these special actions—with little recourse. SCI requests that the Departments amend the subsistence regulations to ensure that emergency special actions are only used in emergency situations.

provides for a number of important purposes all of which must be balanced by the Secretary of the Interior. Subsistence living, although at the heart of ANILCA, is not per se preemptive statutory priority.").

³³ See Section 805 of ANILCA, 16 U.S.C. § 3115.

The FSB may approve “emergency special actions” and “temporary special actions,” which are out-of-cycle³⁴ changes to seasons, harvest limits, or methods of harvest, submitted by members of the public, RACs, or the ADFG. The FSB may take an emergency special action to restrict, close, or open the taking of fish and wildlife on federal lands and waters “[i]n an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons.” Emergency special actions may not exceed 60 days.³⁵ Temporary special actions may be taken “only after [the FSB] determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users.” Temporary special actions “will be confined to the minimum time period or harvest limit determined by the [FSB] to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.”³⁶ As a result, an out-of-cycle “temporary” special action may last up to two years.³⁷

As noted above, the FSB adopted a “temporary” special action to close *over 20 million acres* of public lands to nonsubsistence hunting—due to alleged user conflicts, not any conservation need, and certainly not for any wildlife or subsistence emergency. This type of unsupported closure negatively impacts Alaskans from other parts of the state, as well as the guiding industry, Alaska’s rural and overall economy, and the thousands of nonresident hunters who wish to enjoy Alaska’s vast natural resources.

Moreover, it is the FSB’s stated policy that “Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent the closure is no longer necessary.”³⁸ Contrary to this policy, the FSB has rubber-stamped temporary special actions for the full two years to “reduce administrative burdens associated with processing additional requests.”³⁹ Neither ANILCA, regulation, nor FSB policy justify a closure for the maximum allowable time merely to reduce “administrative burdens.”

³⁴ Proposed fish and wildlife regulations are considered every two years. The FSB is on a schedule of completing the process of revising subsistence taking of wildlife regulations in even-numbered years and subsistence taking of fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year.

³⁵ 50 C.F.R. § 100.19(a); 36 C.F.R. § 242.19(a).

³⁶ 50 C.F.R. § 100.19(b)(2); 36 C.F.R. § 242.19(b)(2).

³⁷ The regulatory cycle for changes to fish and wildlife regulations take place every two years. However, the FSB often cites “administrative burden” and extends these “temporary” closures without proper evaluation.

³⁸ Policy on Closures to Hunting, Trapping and Fishing on Federal Public Lands and Waters in Alaska, available at www.doi.gov/sites/doi.gov/files/uploads/closure-policy-revised-2020-08-04.pdf (last accessed Mar. 31, 2025).

³⁹ See *Alaska v. Fed. Subsistence Bd.*, 574 F. Supp. 3d 710, 719-20 (D. Alaska 2021), *rev’d in part, vacated in part*, 62 F.4th 1177 (9th Cir. 2023) (ADFG challenged the FSB’s partial temporary closure of game management GMU 13).

In light of this misuse of power, SCI requests the Departments amend the regulations at 50 C.F.R. § 100.19 and 36 C.F.R. § 242.19 to ensure that closures may only be adopted for true emergency situations.

Conclusion

For the foregoing reasons, SCI requests the Departments revise the FSB regulations. These revisions are necessary to be consistent with the limited authorities granted to the Secretaries in ANILCA. Moreover, these revisions implement Sec. 3 (xxii) of President Trump’s Executive Order “Unleashing Alaska’s Extraordinary Resource Potential” and reduce administrative regulations that have incrementally impacted the State of Alaska and Alaska residents. The text of the proposed revisions are attached. If you have any questions, please contact Madeline Demaske, SCI Litigation Associate, at litigation@safariclub.org.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Laird Hamberlin". The signature is fluid and cursive, with a long horizontal stroke at the end.

W. Laird Hamberlin
CEO, Safari Club International

Proposed Amendments to the Code of Federal Regulations

50 C.F.R. § 100.10 Federal Subsistence Board; 36 C.F.R. § 242.10 Federal Subsistence Board.

(a) ...

(b) Membership.

(1) ~~The voting members of the Board are: A Chair who possesses personal knowledge of and direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; five public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska, three of whom shall be nominated or recommended by federally recognized Tribal governments in Alaska and shall possess personal knowledge of and direct experience with subsistence uses in rural Alaska (including Alaska Native subsistence uses), to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.~~

~~(2) Public Board members serve at the will of the Secretaries. The Secretaries maintain their authorities for replacement of Federal agency members, public Board members, or any designees.~~

(2) [A nonvoting Chair who possesses personal knowledge of the direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.]¹

(c) ...

(d) Powers and duties.

(1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of ~~five~~ three members ~~when the total number of Board members is nine or fewer and six members when the total number of Board members is 10 or higher.~~

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent ~~necessary~~ delegated by the Secretaries, to implement Title VIII of ANILCA, to:

¹ If a public member is appointed as Chair, SCI requests they are a nonvoting member of the Board. Requiring a public member to be nonvoting meets the intention of the petitioned changes to maintain voting authority within the agencies.

- (i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands as necessary to implement the subsistence priority in Section 804 of ANILCA. The Board shall not issue regulations that duplicate any regulations issued by the State of Alaska with respect to harvest (subsistence or nonsubsistence) on the federal public lands encompassed within each relevant Game Management Unit;
- (ii) Determine which communities or areas of the State are rural or non-rural;
- (iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;
- ~~(iv) Allocate subsistence uses of fish and wildlife populations on public lands;~~
- (iv) (v) Ensure that 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. The Board shall not open or authorize the taking of fish and wildlife for subsistence uses for a season, species, opportunity, or with methods or means that is not otherwise authorized by State regulations;
- (v) (vi) Restrict the taking of fish and wildlife on public lands for nonsubsistence uses or close public lands to the take of fish and wildlife for nonsubsistence uses only when necessary for the conservation of healthy populations of fish or wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration, and for no other reason. Closures are restricted to a maximum allowable closure period of two years. Closures will be immediately revoked as specified in the proposal, two years after adoption by the Board, or the end of the current regulatory cycle, whichever is shortest. The Board shall ~~may also~~ reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted necessary;
- (vi) (vii) Restrict the taking of a particular fish or wildlife population on public lands for subsistence uses, close public lands to the take of fish and wildlife for subsistence uses, or ~~otherwise modify the requirements for take from a particular fish or wildlife population on public lands for subsistence uses~~ when necessary to ensure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. Closures are restricted to a maximum allowable closure period of two years. Closures will be immediately revoked as specified in the proposal, two years after adoption by the Board, or the end of the current regulatory cycle, whichever is shortest. As soon as conditions warrant, the Board ~~may also~~ shall reopen public lands to the taking of a fish and wildlife population for subsistence users to continue those uses;

- ~~(vii)~~ ~~(viii)~~ Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents as directed in ANILCA Section 804;
- ~~(ix)~~ ~~Restrict or eliminate taking of fish and wildlife on public lands~~;
- ~~(viii)~~ ~~(x)~~ Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;
- ~~(ix)~~ ~~(xi)~~ Authorize the Regional Councils to convene;
- ~~(x)~~ ~~(xii)~~ Establish a Regional Council in each subsistence resource region, solicit nominations for the Regional Councils, and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA and the following section;
- ~~(xi)~~ ~~(xiii)~~ Establish Federal Advisory Committees within the subsistence resource regions, if necessary, and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;
- ~~(xii)~~ ~~(xiv)~~ Establish rules and procedures for the operation of the Board, and the Regional Councils;
- ~~(xiii)~~ ~~(xv)~~ Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;
- ~~(xiv)~~ ~~(xvi)~~ Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;
- ~~(xv)~~ Consult meaningfully with the State as required by ANILCA;
- ~~(xvi)~~ ~~(xvii)~~ Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence; and
- ~~(xviii)~~ ~~Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action~~;
- ~~(xix)~~ ~~Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and~~

(xvii) ~~(xx)~~ Take other actions authorized by the Secretaries and consistent with ANILCA to implement Title VIII of ANILCA.

(5) ...

(e) Relationship to Regional Councils.

...

(f) Relationship to the State of Alaska

(1) ANILCA requires meaningful consultation with the State, as well as acknowledges the State's primary responsibility for the management of fish and wildlife on the public lands, except as modified by Title VIII of ANILCA. Accordingly, the Board shall consider and follow the recommendations of the State of Alaska, as communicated by the Alaska Department of Fish and Game or such other representative as designated by the State, as set forth in Section 100.14 below.

**** 50 C.F.R. § 100.11 Regional advisory councils; 36 C.F.R. § 242.11 Regional advisory councils.**

(a) ...

(b) Establishment of Regional Councils; membership.

(1) The Secretaries, based on Board recommendation, will establish the number of members for each Regional Council. To ensure that each Council represents a diversity of interests and complies with the FACA, the Board will ~~strive to~~ ensure in its selection process that 70 percent of the members represent subsistence interests within a region and 30 percent of the members represent commercial and sport interests within a region. The portion of membership that represents the commercial and sport interests shall include, where possible, at least one representative from the sport community and one representative from the commercial community. A Regional Council member must be a resident of the region in which he or she is appointed and must be knowledgeable about the region and subsistence uses of the public lands therein. The Board will solicit and accept nominations from local residents, including current and former members of state Advisory Committees authorized in Alaska Statute 16.05.260, and make recommendations to the Secretaries for membership on the Regional Councils. In making their recommendations, the Board will identify the interest(s) the applicants propose to represent on the respective Regional Councils and identify whether the nominees are current and former members of state Advisory Committees authorized in Alaska Statute 16.05.260. The Secretary of the Interior with the concurrence of the Secretary of Agriculture will make the appointments to the Regional Councils.

(2) ...

50 C.F.R. § 100.14 Relationship to State procedures and regulations; 36 C.F.R. § 242.14 Relationship to State procedures and regulations.

- (a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part. The Board shall not adopt any regulations that duplicate State fish and game regulations.
- (b) The Board may close public lands to hunting, trapping, or fishing, or take actions to restrict the taking of fish and wildlife when necessary to conserve healthy populations of fish and wildlife, continue subsistence uses of such populations, or pursuant to other applicable Federal law. ~~The Board may review and adopt~~ All State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part are applicable except as closed or restricted by the Board.
- (c) When the Board receives any proposal to close public lands to hunting, trapping, or fishing, or to take actions to restrict the taking of fish and wildlife, the Board must solicit the State of Alaska's response to the proposal. The Board must provide at least 20 days' notice to the State, except in the case of emergency special actions as outlined in 50 C.F.R. § 100.19, to allow the State appropriate time to develop a response to the proposal.
 - (1) The Board must accept the State's recommendation on any proposal which purports to be necessary for the conservation of fish and wildlife unless substantial evidence from credible sources exists to override the State's evidence or demonstrates that the State's recommendation violates recognized principles of fish and wildlife conservation.
 - (2) If the Board does not accept the State's recommendation on any proposal which claims to be necessary for the conservation of fish and wildlife, the Board must provide, on its website and directly to the State, a written statement supported by substantial evidence that explains why:
 - (i) State regulations are insufficient to conserve the fish and wildlife at issue; and
 - (ii) The Board's decision will better conserve the fish and wildlife at issue.
- (d) ~~(e)~~ The Board may enter into agreements with the State in order to coordinate respective management responsibilities.
- (e) ~~(d)~~ Petition for repeal of subsistence rules and regulations.
 - (1) ...

* * *

50 C.F.R. § 100.19 Special actions; 36 C.F.R. § 242.14 Special actions.

- (a) Emergency special actions. In an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons, the Board may immediately ~~open or~~ close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish

and wildlife, or restrict the requirements for take for nonsubsistence uses. The existence of an “emergency situation” must be supported by substantial evidence.

- (1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § 100.18(a)(4).
- (2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended ~~unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.~~
- (3) When the Board receives any proposal to close public lands to hunting, trapping, or fishing, or to take actions to restrict the taking of fish and wildlife, due to an emergency situation, the Board must solicit the State of Alaska’s response to the proposal. The Board must provide at least ~~three~~ seven days’ notice to the State, to allow the State appropriate time to develop a response to the proposal.
- (4) The Board must accept the State’s recommendation on any emergency proposal which purports to be necessary for the conservation of fish and wildlife unless substantial evidence from credible sources exists to override the State’s evidence or demonstrates that the State’s recommendation violates recognized principles of fish and wildlife conservation.

~~(b) Temporary special actions. After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for subsistence take, or close public lands for the taking of fish and wildlife for nonsubsistence uses, or restrict take for nonsubsistence uses.~~

- ~~(1) The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.~~
 - ~~(i) — Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.~~
 - ~~(ii) — If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of §100.18(a)(4).~~
- ~~(2) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.~~

- ~~(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.~~
- ~~(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the Federal Register as soon as practicable.~~
- (e) ...