



## Alaska Federation of Natives 2008 Federal Priorities

### Protection of Subsistence Hunting, Fishing and Gathering in Alaska

**Topic 1: Federal Protections for Subsistence Hunting and Fishing.** In passing the Alaska Native Claims Settlement Act (ANCSA), Congress authorized village and regional Native corporations to select lands surrounding Native villages. These lands were selected in large part for their value in harvesting subsistence food resources. Although Congress did not expressly protect hunting and fishing rights in ANCSA, its legislative history stated that the Secretary of the Interior and the State were expected to take any action necessary to protect those rights. When that did not happen, Congress found it necessary to enact explicit protections when it passed the Alaska National Interest Lands Conservation Act (ANILCA).

Title VIII of ANILCA protects rural Alaska's subsistence users who hunt, fish and gather for personal consumption on U.S. public lands, including reserved navigable waters. It gives such users a priority over other users (e.g., sport or commercial harvesters) in times of resource shortage. Today, the only remaining protection of our villages' protein base and traditional way of life is this federal law. Without it, most villages cannot feed themselves and will slowly disappear through out-migration. The cost of the resulting economic collapse and social dislocation would fall on every Alaskan - Native or non-Native, urban or rural. Whether we recognize it or not, every resident of our state has a vested interest in the survival of the villages through their own productive labor, rather than through greater welfare dependency.

In enacting Title VIII, Congress used a "rural," rather than a "Native" priority, largely at the urging of the State of Alaska. Congress offered the State the option of keeping all subsistence management, if it would enact its own statute containing the rural priority. The State did so. But, in 1990, the Alaska Supreme Court declared this state rural priority unconstitutional, and the Secretaries of Interior and Agriculture took over management of subsistence on public lands and reserved waters, while the Alaska Boards of Fish and Game managed on state and private lands.

The State Boards have consistently failed to provide for the hunting and fishing needs of Alaska Natives on state and private lands (including Native lands from ANCSA), especially when the subsistence priority is most needed - because of competition for resources by sport, commercial users, transporters and guides. During the past three years, the State, in cooperation with federal officials, has engaged in a concerted effort to take control of the membership and processes of the Federal Subsistence Board, which is charged with implementing Title VIII. This campaign attempts to subvert the FSB and to turn it into an instrument of state policy (which has no priority), regardless of the congressional policy enacted in 1980.

Anti-subsistence interests have succeeded in changing the composition of Regional Advisory Councils (which funnel recommendations for local regulations up to the full FSB) by requiring that 30% of each RAC's members represent sport and/or commercial users. But the Federal Subsistence Board is not the "Federal Subsistence, Sport and Commercial Board." It exists to protect subsistence from a numerically overwhelming urban majority.

Under state management, Alaska Natives are increasingly unable to use their corporation lands and Native allotments for subsistence. Native villages that have been surrounded by urban areas have been re-classified as non-rural, and the Federal Subsistence Board recently denied "rural" status to the Native Village of Saxman, despite the fact that its people are heavily dependent on subsistence.

Recommended Actions: AFN urges Congress and the Secretaries to take the following actions:

1. To amend Federal regulations implementing the rural priority to ensure that Saxman and other communities do not lose their right to the subsistence priority based on questionable interpretations of socio-economic data.
2. To consider regulatory and statutory changes that will protect our way of life, in light of growing urban pressures on finite resources. Several federal laws now provide a "Native" or "Native-plus-rural" or "Native-plus-local" subsistence priority in Alaska (e.g., for marine mammals, migratory birds, and under the Endangered Species Protection Act). The North Pacific Fisheries Management Council has adopted subsistence regulations for halibut that provide harvest opportunities for members of Alaska's Tribes and other rural residents. The Secretary of the Interior and Congress should support efforts to strengthen federal protections and oppose any legislative or regulatory effort to undermine them.
3. To consider amending ANILCA to extend its protections to Native corporation lands and Native allotments, and to do so in a way that does not diminish the control and authority of the Native corporations and allotment owners to develop or otherwise utilize their lands.
4. To defend the subsistence regulations adopted in January, 1999 to implement the *Katie John* decision. The State sued seeking a reduction of waters subject to Title VIII. If the State succeeds, Alaska Natives will be left with virtually no protections for subsistence fishing, which provides 59% of the statewide rural subsistence diet. We urge the Secretary to interpret broadly the scope of federal jurisdiction to fulfill his trust responsibility to Alaska Natives.
5. To amend Title VIII in order to exempt the membership of its Regional Advisory Councils from the requirements of the Federal Administrative Committees Act (FACA).

**Topic 2: Federal Migratory Bird Hunting and Conservation Stamps.** Duck Stamps are federal licenses required for hunting migratory waterfowl. All persons over 16 must purchase a Duck Stamp each year, if they want to hunt migratory birds. At the time the legislation was enacted, Alaska Natives were prohibited, by the Migratory Bird Treaty between the U.S. and

Canada, from engaging in customary and traditional spring and summer harvests of migratory birds and their eggs. In 1996, the Treaty was amended to recognize and allow such harvests. The protocol in the amended treaty requires that any “regulations implementing the non-wasteful taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska shall be consistent with the customary and traditional uses of such indigenous inhabitants for their own nutritional and other essential needs.” Canada Protocol, Art. II, § 4(b)(1). The Migratory Bird Treaty Act, 16 U.S.C. § 708, implements the Treaty. The U.S. Fish & Wildlife Service grafted this licensure requirement onto the regulations implementing the Migratory Bird Treaty Act. Yet, Alaska Native hunters have long viewed the subsistence harvest of migratory birds and their eggs as a community tradition, and not as an individual entitlement that can be reduced to a system of individual permits. Requiring the purchase of duck stamps is inconsistent with custom and tradition and therefore inconsistent with the Treaty protocol.

Recommended Action: AFN requests that Congress amend the Duck Stamp Act by adding an exemption for “eligible indigenous inhabitants of the State of Alaska engaged in the customary and traditional harvest of waterfowl and their eggs.” We urge the Department of the Interior to support this amendment.

**Topic 3: Migratory Bird Co-Management:** The protocol in the amended treaties between the United States, Canada and Mexico recognizes the traditional subsistence harvest of migratory birds by indigenous inhabitants of Alaska and provides that they “shall be afforded an effective and meaningful role” in “the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of eggs” through their participation in co-management bodies. In 2000, the Fish and Wildlife Service established the Alaska Migratory Bird Co-Management Council and 12 regional management bodies. Under final regulations for indigenous harvest of birds and eggs during the spring and summer, the Council and regional bodies were tasked with collecting and analyzing information regarding bird population trends, past harvest levels, and local traditional knowledge to ensure that harvest regulations and limits are appropriate to maintain healthy populations. Neither the Migratory Bird Co-Management Council nor the regional bodies have been adequately funded..

Recommended Action: AFN requests that the Secretaries of State and Interior support the implementation of the Migratory Bird Treaty Act and its co-management councils by including a treaty-implementation line-item in the appropriate agency budget - and that Congress ensure adequate funding in the annual budget to allow these co-management bodies to conduct comprehensive wildlife surveys and to help insure that bird populations are managed appropriately.

#### **Topic 4:**

**Reauthorization of the Marine Mammal Protection Act.** The Indigenous Peoples’ Commission on Marine Mammals (IPCoMM), an AFN subcommittee, has negotiated with the federal agencies amendments to section 119 of the MMPA. Section 119 currently authorizes agreements between Alaska Native Organizations and federal agencies in order to conserve marine mammals and to provide for co-management of their subsistence uses by Alaska Natives,

and authorizes funding for the Secretaries of Commerce and Interior each year to carry out these purposes. The amendments we seek would allow the agencies, in coordination with Native organizations, to jointly develop harvest management plans within existing or newly developed cooperative agreements. These plans would implement measures taken by Native organizations and their member tribes to regulate the subsistence take of marine mammals prior to a finding of depletion. The proposed legislation also provides for an increase in the annual amount authorized for implementation of Section 119 to cover the funding needs of IPCoMM and its member Alaska Native Organizations engaged in co-management of marine mammals.

Recommended Action: Congressman Don Young has introduced HR 5429, a stand-alone bill that incorporates a package of amendments to the MMPA that strengthen the co-management role of Alaska's Native organizations engaged in co-management of marine mammals. The amendments will enable the Federal agencies and Alaska Native organizations to develop marine mammal conservation regimes collaboratively in order to avert management crises that can arise under the current system. The bill also increases the authorized funding for implementation of Section 119, and includes funding for IPCoMM in addition to the Alaska Native Organizations engaged in co-management activities. AFN urges passage of this bill during this Congress.

AFN also urges Congress to provide for annual, recurring funding through both the Interior and Commerce budgets for implementation of Section 119 agreements.