

# TITLE VIII OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

A BRIEF OVERVIEW OF THE STATUTE THAT CREATED THE  
FEDERAL SUBSISTENCE MANAGEMENT PROGRAM

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## DISCUSSION OVERVIEW

- What was Congress trying to accomplish?
- Certain provisions of ANILCA Title VIII that established the structure of federal subsistence program and its decision-making process

## A FEW KEY TERMS

- **Statute** – a law adopted by Congress and signed by the President
- **Regulation** – adopted by an agency for the purpose of fully implementing a particular statute. Has the same force of law as a statute.
- **Delegation** – the passing of authority from Congress to a Secretary, or from a Secretary to a bureau head, and so on. Federal authority cannot be delegated to a state government, tribe, or other non-federal entity except by Congress.

## WHAT DID CONGRESS CONCLUDE?

- Section 801. The Congress finds and declares that--
  - the continuation of . . . subsistence uses by rural residents of Alaska, including both Natives and non-Natives, . . . is essential to . . . physical, economic, traditional, and cultural existence . . .
  - the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies . . .

## THE HEART AND SOUL OF TITLE VIII

- Section 804 – first sentence:

“Except as otherwise provided in this Act and other Federal laws, 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.”

- But conservation comes first

## WHAT DOES SECTION 804 MEAN BY “SUBSISTENCE USES?”

- Section 803 defines “subsistence uses” as
  - the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

## WHAT DOES SECTION 804 MEAN WHEN IT REFERS TO “PUBLIC LANDS?”

- Section 102 -- The term "public lands" means land situated in Alaska which ... are Federal lands except [land selections by the State of Alaska or Native corporations].
  - Side note: there are some public lands where no hunting is allowed, including certain parks and military lands



## HOW TO ALLOCATE WHEN THERE AREN'T ENOUGH RESOURCES?

- Section 804 (second sentence) – Whenever it is necessary to restrict the taking . . . for subsistence uses in order to protect the continued viability of [fish and wildlife] populations, or to continue such uses, [the subsistence] priority shall be implemented . . . based on the application of the following criteria:
  - (1) customary and direct dependence upon the populations as the mainstay of livelihood;
  - (2) local residency; and
  - (3) the availability of alternative resources.



## THE BRAINS OF THE SUBSISTENCE PROGRAM

- Section 805 – Requires the creation of at least six subsistence resource regions with a regional advisory council (or RAC) composed of local residents for each region -- we have ten regions and ten RACs.



## DEFERENCE TO RAC RECOMMENDATIONS – THE “BOTTOM UP” APPROACH

- Section 805(c) – the Board must consider the recommendations of the RACs “concerning the taking of fish and wildlife” on public lands in their regions and may choose not to follow such a recommendation only if:
  - not supported by substantial evidence;  
or
  - violates recognized principles of fish and wildlife conservation;  
or
  - would be detrimental to the satisfaction of subsistence needs.

## PARK AND MONUMENT SUBSISTENCE RESOURCE COMMISSIONS (SRC)

- Section 808 establishes one SRC for each park or monument where subsistence uses are permitted
- Like the RAC, each SRC provides a forum for input by local residents and makes recommendations regarding that park's program for subsistence uses
- Each park and monument has its own regulations that are adopted by the National Park Service, not the Federal Subsistence Board

## NO UNNECESSARY CLOSURES TO NONSUBSISTENCE USERS

- Section 815(3) – Nothing in Title VIII shall be construed as authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on public lands unless necessary for:
  - the conservation of healthy populations of fish and wildlife; or
  - the continuation of subsistence uses; or
  - for reasons of public safety or administration.

## WHEN CAN THERE BE RESTRICTIONS ON SUBSISTENCE USES?

- Section 816(b) – [The Secretaries or Board may] designate areas where, and establish periods when, no taking of fish and wildlife shall be permitted on public lands for reasons of:
  - Public safety
  - Administration
  - To assure the continued viability of a particular fish or wildlife population

## HOW DOES THE PROGRAM ISSUE A TEMPORARY CLOSURE?

- Section 816(b) -- The Secretary may temporarily close public lands to subsistence uses after:
  - Consultation with the State and
  - Adequate notice and public hearing
- Closure can remain in effect no longer than the end of the regulatory cycle
- In practice, this process is used for all temporary closures – subsistence and nonsubsistence

## HOW DOES THE PROGRAM ISSUE AN EMERGENCY CLOSURE?

- Section 816(b) – If the Secretary determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, the Secretary may immediately close the public lands . . .
- No public process is required
- Such closure is effective when made and may not extend longer than 60 days unless there is notice and a hearing



QUESTIONS?