



Central Council of the Tlingit & Haida Indian Tribes of Alaska

January 16, 2026

Honorable Doug Burgum
Secretary, Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

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

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RE: Program Review-Subsistence Management for Public Lands in Alaska of the Federal Subsistence Regulations

Dear Secretary Burgum and Secretary Rollins,

I write to you today on behalf of the Central Council of Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida), the regional Tribe of Southeast Alaska representing more than 38,000 Tribal Citizens. Tlingit & Haida submit the following comments in response to the Secretaries' notice of a limited review of the Federal Subsistence Management Program (FSMP) under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). For our peoples, our ways of life, recognized and protected under federal law as "subsistence" is not merely a use of resources—it is a living system of cultural, spiritual, economic, and intergenerational relationships that sustain our communities and our responsibilities to land and waters. Subsistence access is directly tied to food security, health, spirituality, cultural continuity, and community wellbeing. Subsistence governance must remain grounded in that expertise.

Congressional Purpose and Findings (ANILCA §§ 801–802)

Congress enacted Title VIII to address the "essential need" of Alaska Natives and rural residents for subsistence uses of fish and wildlife and to protect those uses as a matter of national policy (16 U.S.C. § 3111). Congress expressly found that subsistence uses are integral to Native physical, economic, traditional, and cultural existence and must be protected to ensure the continuation of these lifeways (§ 3111(1)-(4)). Section 802 establishes that subsistence uses are the priority consumptive use of fish and wildlife on federal public lands when restrictions are necessary (§ 3112).

For our people, subsistence is not optional, recreational, or symbolic, it is necessary to our ways of life and essential to our survival. Subsistence is not just harvest—it includes sharing, processing, and cultural use. Our people do not harvest for sport or trophy. We harvest to survive, to feed our families, to care for our Elders, to teach our children, and to fulfill our responsibility to one another. In Southeast Alaska, deer, salmon, marine mammals, shellfish, berries, and forest resources are central to our food security and cultural continuity. Once again, ANILCA Title VIII was enacted to protect these lifeways on federal public lands, not to maximize hunting access for non-local or non-subsistence users.

Opposition to Reducing Tribal and Public Representation on the FSB

Title VIII authorizes the Secretaries to implement regulations necessary to allocate subsistence uses among rural residents and to ensure the subsistence priority is met (16 U.S.C. §§ 3113-3115). The FSB and Regional Advisory Councils are the mechanisms Congress created to carry out this responsibility (§ 3115).

Reducing or eliminating public and Tribal representation on the FSB and to weaken the role of Regional Advisory Councils directly conflicts with § 805, which requires meaningful local and regional participation in subsistence decision-making. Congress did not intend subsistence management to be conducted solely by federal land managers divorced from the lived knowledge of subsistence users.

Public and Tribal representation is essential to ensuring that decisions reflect on-the-ground realities, customary and traditional use patterns, Indigenous Science, changing environmental conditions, interrelated harvest patterns, and real-world consequences of closures and regulatory decisions. Lived subsistence experience is not bias—it is expertise. Eliminating these voices would concentrate power away from subsistence users and toward centralized bureaucratic decision-making, contrary to ANILCA's intent.

Defense of Regional Advisory Councils (RACs)

RACs are one of the few formal mechanisms through which rural and Tribal subsistence users can meaningfully participate in federal decision-making. In Southeast Alaska, the RAC provides critical forums for sharing local knowledge about deer populations, access issues, climate impacts, and cumulative pressures from logging, development, and recreation. Efforts to reframe RACs as illegitimate or “stacked” ignore the reality that subsistence users are those most directly affected by federal subsistence decisions. Reframing subsistence governance as a matter of balancing recreational, commercial, or non-local interests fundamentally misunderstands subsistence. Subsistence is not discretionary; it is survival for our people and a legal obligation for the federal government. Weakening RAC authority would silence the very communities ANILCA was designed to protect.

Mischaracterization of FSB Closures and Special Actions

There have been repeated claims that the FSB has acted outside its authority by approving closures or special actions. From our perspective, these actions are often necessary responses to real conservation and subsistence concerns, including localized

depletion, access inequities, and changing ecological conditions. In Southeast Alaska, temporary closures or special actions are often necessary and narrowly tailored responses to localized depletion, access conflicts, or cumulative pressures affecting deer, salmon, and other subsistence resources. Temporary measures are sometimes the only tools available to ensure continued subsistence opportunity for Tribal citizens when resources are under stress when delayed action can result in irreparable harm to food security and community wellbeing. Characterizing these actions as unlawful “overreach” ignores the statutory standard of necessity and the reality that subsistence priority cannot be theoretical—it must be operational.

ANILCA authorizes restrictions on non-subsistence uses only when necessary to:

1. conserve healthy populations of fish and wildlife, or
 2. continue subsistence uses of those populations
- (16 U.S.C. §§ 3114, 3125).

Section 810 further requires federal agencies to evaluate subsistence impacts, hold hearings, and consider alternatives whenever an action may significantly restrict subsistence uses (§ 3120). The FSB’s existing regulatory framework is essential to meeting these obligations. Weakening this framework would increase legal risk and subsistence harm.

Improper Elevation of State Authority Over Federal Trust Duties

While coordination with the State of Alaska is important, deference to the State would undermine the federal government’s independent obligations under ANILCA. The State has repeatedly failed to implement the rural subsistence priority required by federal law. Federal subsistence management exists precisely because the State failed to uphold this priority. Any regulatory changes that subordinate federal decision-making to State preferences risk recreating the very conditions that necessitated federal management.

Subsistence Rights & Indigenous Sovereignty

Tlingit & Haida maintains that recognition of Tribal sovereignty, Indigenous Knowledge, and the federal trust responsibility is not discretionary, but a binding obligation grounded in federal law, longstanding policy, and repeatedly affirmed by the courts. Framing subsistence management as a conflict between user groups, rather than as a matter of rights and federal obligations, is factually incorrect. This framing contradicts Congress’s express findings in § 801 and the statutory priority established in § 802. This framing is fundamentally incompatible with ANILCA and with modern federal Indian law and policy. For Southeast Alaska Tribes, subsistence is not discretionary or recreational; it is a right protected by federal law and the trust responsibility, rooted in millennia of Indigenous stewardship.

Any reforms to the Federal Subsistence Management Program must be developed in consultation with Tribes, must strengthen subsistence priorities, and must recognize Indigenous Peoples as the original stewards of these lands and waters. Subsistence is

not an inconvenience to be managed away. It is a right, a responsibility, and a living system that must be protected.

Specific Comments for the Federal Subsistence Management Program Review

Tlingit & Haida appreciates the opportunity to provide input during this scoping process and emphasize that any review of the Federal Subsistence Management Program must be grounded in the federal government's trust responsibility, Tribal sovereignty, and the original intent of Title VIII: to protect the subsistence priority for rural Alaska residents, particularly Alaska Native peoples.

Legal Framework and Federal Obligations

Title VIII of ANILCA establishes a clear statutory mandate to protect subsistence uses for rural Alaska residents and to ensure meaningful participation of subsistence users in management decisions (16 U.S.C. §§ 3111-3126).

Congress explicitly found that:

- “The continuation of the opportunity for subsistence uses by rural residents of Alaska... is essential to Native physical, economic, traditional, and cultural existence” (16 U.S.C. § 3111(1));
- Federal agencies have a responsibility to cause the least adverse impact possible on subsistence uses (16 U.S.C. § 3112);
- Subsistence uses are to be given priority over other consumptive uses when resources are limited (16 U.S.C. § 3114).

When the State of Alaska failed to comply with the rural subsistence priority, Congress authorized direct federal management of subsistence on federal public lands and waters (16 U.S.C. § 3115). The FSMP exists because of this failure, not as a discretionary program.

Federal courts have repeatedly affirmed this obligation. In *Alaska v. Babbitt* (*Katie John I & II*), the Ninth Circuit held that federal subsistence jurisdiction extends to federally reserved waters, including navigable waters necessary to fulfill the purposes of federal reservations (72 F.3d 698 (9th Cir. 1995); 247 F.3d 1032 (9th Cir. 2001)). These decisions are particularly relevant to Southeast Alaska, where subsistence is primarily marine-based and jurisdictional complexity is common.

Tlingit & Haida respectfully request that the Secretaries consider the following concerns as part of your deliberations:

- Subsistence is a way of life, not a program. Federal subsistence management must recognize Indigenous stewardship systems, seasonal round knowledge, and cultural practices that predate the State of Alaska and federal agencies.
- Alaska subsistence rights are a set of legally protected rights and priorities that recognize the continued reliance of Alaska Native peoples—and rural residents—on fish and wildlife for food, culture, and survival. We are rights-holders, not stakeholders. Consultation must be meaningful, early, and ongoing, and must respect Tribal authority and lived expertise.
- Regional differences matter. Southeast Alaska’s marine-based subsistence systems, mixed land ownership, and complex federal-state jurisdiction require region-specific solutions.

1. Move of the Office of Subsistence Management (OSM)

Under ANILCA § 805 (16 U.S.C. § 3115), the Secretaries must ensure that subsistence users have a meaningful role in decision-making. Any administrative reorganization that weakens OSM’s responsiveness to Regional Advisory Councils or Tribal input risks undermining this statutory requirement. The FSB has historically relied on OSM’s proximity to field expertise and subsistence communities to fulfill its duties (see FSB Policies and Procedures Manual, § 1.2). Tlingit & Haida support the relocating OSM away from the U.S. Fish and Wildlife Service and to the Office of the Assistant Secretary for Policy, Management and Budget under the Department of Interior, however, Tlingit & Haida maintains that any structural changes must:

- Preserve and strengthen OSM’s accountability to subsistence users;
- Ensure staff expertise in Indigenous subsistence systems and marine-based harvesting;
- Avoid distancing decision-making from Tribes and Regional Advisory Councils.

Tlingit & Haida requests regular updates and documentation showing how the relocation improves compliance with Title VIII obligations and requests transparency on how this move improves subsistence protections.

2. Criteria for Regional Advisory Council (RAC) Membership

ANILCA § 805 establishes RACs as the main conduit for subsistence user participation in federal decision-making (16 U.S.C. § 3115). In Southeast Alaska, the SE RAC has consistently documented concerns unique to a marine-dependent subsistence system, including access to salmon, halibut, herring, shellfish, marine mammals, and intertidal resources. FSB policy recognizes that RAC recommendations should be followed unless there is substantial evidence demonstrating they are not supported by conservation, legal, or factual concerns (FSB Policies & Procedures Manual, § 5.6).

ANILCA § 805(a) requires that RAC members be residents of the region and have “knowledge of fish and wildlife resources” and subsistence uses (16 U.S.C. § 3115(a)). Federal Subsistence Board precedent consistently recognizes local and traditional knowledge as central to this requirement (FSB 2001-02 Annual Report; FSB Policy § 5.2). To note, criteria that privilege formal credentials, employment status, or regulatory familiarity over lived subsistence experience are inconsistent with both the statute and Board practice. Tlingit & Haida emphasize that marine subsistence expertise, including harvest, processing, and sharing, is essential to fulfilling Congress’s intent.

Tribal recommendations to RACs must carry meaningful weight, consistent with Title VIII. RACs are intended to bring local and traditional knowledge into federal decision-making. Membership criteria should:

- Prioritize active subsistence practitioners with deep place-based knowledge;
- Remove barriers that disproportionately exclude Alaska Native and rural voices;
- Ensure balanced representation of Southeast Alaska Tribes, including island and coastal communities.

3. Membership of the Federal Subsistence Board (FSB)

While ANILCA does not prescribe exact Board composition, courts have emphasized that federal subsistence management must reflect the purpose of protecting subsistence users (*Kenaitze Indian Tribe v. Alaska*, 860 F.2d 312 (9th Cir. 1988)). Tlingit & Haida asserts that meaningful Alaska Native representation on the Board is necessary to meet the federal trust responsibility and the participatory requirements of Title VIII.

The Secretaries have discretion to appoint public members and shape Board practice; that discretion must be exercised in a manner consistent with ANILCA’s protective purpose, not merely administrative convenience.

Tlingit & Haida strongly recommends:

- Increased and sustained Alaska Native representation on the Board;
- Inclusion of members with direct subsistence experience in marine and coastal systems;
- Structural reforms that reduce agency dominance and elevate Indigenous perspectives.

Finally, the FSB support staff should strongly include expertise and personnel who possess a deep understanding of Indian federal law and policy, consultation requirements, and are embedded in statewide Alaska Native protocols and policies.

4. Duplication and Inconsistency Between Federal and State Regulations

SE RAC recommendations have repeatedly identified confusion and enforcement inequity resulting from inconsistent federal and state regulations in Southeast Alaska's mixed-use fisheries. The FSB has previously acknowledged that:

- Federal subsistence users are often subject to more complex and shifting rules than non-subsistence users;
- Inconsistencies can result in inadvertent violations by subsistence harvesters.

FSB actions in Southeast Alaska have shown that when federal regulations closely mirror state regulations without independent subsistence analysis, the rural priority is weakened in practice, contrary to Title VIII's purpose.

The FSB has repeatedly acknowledged that when federal and state regulations conflict, federal regulations must control to preserve the rural subsistence priority (FSB 2012-01; FSB 2016-02). Continued duplication and inconsistency undermine food security and violate the statutory mandate to minimize adverse impacts on subsistence uses (16 U.S.C. § 3112). Tlingit & Haida request that the Secretaries prioritize regulatory clarity that defaults to subsistence protection, particularly in mixed-use fisheries and shared stocks. Persistent conflicts between federal and state regulations continue to create confusion, enforcement inequities, and barriers to subsistence access. Tlingit & Haida urge the Secretaries to:

- Resolve inconsistencies in favor of subsistence priority, as required by ANILCA;
- Reduce regulatory complexity for rural and Tribal subsistence users;
- Address the impacts of inconsistent seasons, methods, and closures on food security and sovereignty.

5. Regulations Applicable to Special Actions

ANILCA authorizes the Secretaries to take special actions to ensure subsistence priority when necessary (36 C.F.R. § 242.19; 43 C.F.R. § 51.19). Board precedent demonstrates that delayed action can result in irreparable harm to subsistence users. Tlingit & Haida request clearer standards requiring early intervention when conservation or allocation concerns threaten subsistence, particularly in Southeast Alaska's rapidly changing marine ecosystems. Special actions are often reactive and occur after harm is already occurring. Tlingit & Haida recommends:

- Earlier use of special actions when subsistence resources are at risk;
- Clear standards that prioritize subsistence over other consumptive uses during shortages;
- Greater Tribal involvement in identifying when special actions are necessary.

6. Role of the State of Alaska and ADF&G

Federal courts have consistently held that the State's failure to implement a rural subsistence priority triggered federal management (*Kenaitze*, 860 F.2d 312). While technical cooperation with ADF&G may occur, federal agencies may not defer to state positions that conflict with Title VIII. FSB policy already recognizes that state input is advisory, not controlling (FSB Policy § 3.4). This distinction must be reinforced in practice. While the State of Alaska plays a role in fish and wildlife management, it has repeatedly failed to implement the rural subsistence priority required by ANILCA. Tlingit & Haida request that:

- Federal agencies not defer to state positions that undermine subsistence priority
- State involvement be clearly limited to roles consistent with federal law;
- Tribal expertise be treated as equal to or greater than state technical input.

7. Board Policies and Procedures for Rural Determinations

Rural determinations must be consistent with ANILCA's purpose and legislative history, which emphasize customary and traditional dependence, not population size or proximity to urban centers (S. Rep. No. 96-413, at 229-30 (1979)).

The FSB has previously acknowledged that communities in Southeast Alaska retain strong subsistence dependence despite economic or geographic changes (FSB 1999-01; FSB 2007-02). Tribal input must be formalized and given decisive weight in any future determinations. Rural determinations have significant consequences for Southeast Alaska communities.

Tlingit & Haida urges:

- Transparent, consistent, and culturally informed criteria;
- Recognition that Southeast Alaska's communities remain deeply subsistence-dependent despite proximity to urban centers;
- Formal Tribal input and consent in determinations affecting our communities.

Conclusion

In summary, the FSMP review must strengthen compliance with ANILCA Title VIII's statutory mandates, controlling case law, and FSB precedent. For Southeast Alaska Tribes, subsistence protection is not optional—it is a legal obligation and a moral responsibility grounded in federal law and trust duties. This review presents an important opportunity to realign the FSMP with the spirit and intent of Title VIII. For Tlingit & Haida, success will be measured not by administrative efficiency, but by whether our tribal citizens can continue to harvest, share, and pass on subsistence traditions to future generations. We expect this process to include robust Tribal consultation and to result in concrete reforms that strengthen subsistence protections.

If there are any questions regarding our comments, please contact the Office of the President at otp@tlingitandhaida.gov.

Gunalchéesh, Háw'aa,



Richard J. Peterson
Tlingit & Haida President