

No. 25-320

IN THE
Supreme Court of the United States

ALASKA, et al.,

Petitioners,

v.

UNITED STATES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF SAFARI CLUB
INTERNATIONAL AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF SAFARI CLUB INTERNATIONAL¹

Safari Club International (“SCI”) is an Internal Revenue Code § 501(c)(4) nonprofit organization incorporated in Arizona. Founded in Los Angeles and headquartered in Washington, DC, SCI represents approximately 100,000 members and advocates worldwide. SCI has approximately 170 chapters throughout the United States and around the world. Three of these chapters are in Alaska. The Alaska Chapter is SCI’s largest.

SCI’s missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI fulfills its conservation mission in collaboration with its sister organization, Safari Club International Foundation. In addition, SCI recently incorporated the SCI Center for Conservation Law and Education which combines SCI’s in-house legal counsel, state liaisons, and the “Hunters’ Embassy” on Capitol Hill to advance SCI’s missions of education of the public and decision-makers regarding sustainable-use conservation and protection of hunting rights.

SCI has long been involved in litigation and other advocacy efforts to promote hunting, access to hunting, and sustainable-use conservation. SCI is a strong proponent

1. No counsel for any party authored this brief in whole or in part; no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person or entity besides SCI made a monetary contribution to the preparation or submission of this brief. Counsel for SCI provided notice to counsel of record for the parties on October 1, 2025 regarding SCI’s intent to file this brief.

of the North American Model of Wildlife Conservation and its corollary, which acknowledges the role of the States as primary managers of wildlife resources. SCI has been involved in several cases defending the State of Alaska’s interests from federal overreach.² SCI also submitted three amicus briefs to this Court in support of John Sturgeon’s successful challenges to a National Park Service rule that unlawfully restricted public use of navigable rivers.³ That challenge resulted in “*Sturgeon II*,” 587 U.S. 28 (2019), which is at issue in this case.

SCI regularly submits comments during the Federal Subsistence Board’s (“FSB”) public process and has advocated for reform of the FSB’s composition and process. In addition, SCI regularly comments on state and federal regulations that will impact the interests of Alaskans and SCI members who wish to hunt in Alaska.

SCI has a demonstrated interest in protecting hunting access in Alaska and throughout the world. SCI submits this brief as amicus curiae in support of the Petition for

2. For almost a decade, SCI was involved in litigation challenging administration of the subsistence priority and composition of regional advisory councils. *SCI v. Demientieff*, No. 98-CV-414 (D. Alaska). More recently, SCI and the State of Alaska challenged a federal agency rule prohibiting certain hunting activities on the Kenai National Wildlife Refuge, a case in which certiorari was requested but denied. *E.g.*, *SCI v. Jewell*, No. 17-CV-14 (D. Alaska), *cert denied*, 22-401 (Mar. 6, 2023). In 2020, SCI intervened to defend a National Park Service rule that withdrew hunting restrictions on National Preserves. *Alaska Wildlife All. v. Bernhardt*, 20-CV-209 (D. Alaska).

3. *Sturgeon v. Frost*, 577 U.S. 424 (2016) (“*Sturgeon I*”); *Sturgeon v. Frost*, 587 U.S. 28 (2019) (“*Sturgeon II*”).

Writ of Certiorari (“Petition”) by Petitioner State of Alaska.

In this brief, SCI will “bring[] to the attention of the Court relevant matter not already brought to its attention by the parties” and provide information that will “be of considerable help to the Court.” Sup. Ct. R. 37(1). Petitioners more than adequately set forth several grounds to support granting certiorari. SCI’s brief seeks to supplement Petitioners’ explanation of the importance of the Court reviewing this case and correcting the Ninth Circuit’s misinterpretation of the Alaska National Interest Lands Conservation Act of 1980 (“ANILCA”), Pub. L. No. 96-487, 94 Stat. 2371.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Petition seeks to set right actions by the federal government to upset the balance between state and federal authority over fish and wildlife resources in Alaska. The federal government has incrementally superseded the State of Alaska’s authority to manage its fish and wildlife resources. This overreach has undermined effective conservation efforts by the State, created regulatory confusion among Alaskans, and fostered unnecessary conflict among user groups. The Ninth Circuit’s decision impedes the State’s ability to effectively manage fish and wildlife. That was not Congress’s intent in ANILCA.

Rather, ANILCA codified the proper balance between federal and state governments, including on federal lands. Congress expressly preserved the State’s “responsibility and authority” for “management of fish and wildlife on the

public lands. 16 U.S.C. § 3202(a). Yet the Ninth Circuit’s opinion adopts an expansive view of federal authority, disregarding Congress’s clear intent and granting federal agencies unprecedented control over Alaska’s fish and wildlife resources.

This case is not merely about the definition of “public lands” under ANILCA. It is about who governs Alaska’s natural resources. The Ninth Circuit’s decision has the potential to impact every navigable river that flows through a conservation system unit in Alaska.⁴ The consequences of this decision warrant this Court’s review. As Petitioners note, “Getting this right is critical for Alaska.” Pet. at 2.

ARGUMENT

I. This Court should grant the Petition because the Ninth Circuit’s ruling has the potential to alter wildlife and fisheries management on 43,000 miles of rivers in Alaska.

As this Court has recognized, the decision whether a river qualifies as “public land” for purposes of ANILCA “touch[es] on vital issues of state sovereignty.” *Sturgeon I*, 577 U.S. at 441. The Ninth Circuit’s ruling greatly expands

4. “Conservation system units” in Alaska include “any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of [ANILCA], additions to such units, and any such unit established, designated, or expanded hereafter.” 16 U.S.C. § 3102(4).

the scope of the United States’ control and management of Alaska’s waters. Unless this Court overturns the decision below, the United States will have practically limitless authority over waters “traditionally fished” by rural subsistence users.

But this is not news to the Court, which has long been concerned with Alaska’s sovereignty over its waters. This Court has consistently granted review of controversies between Alaska and the United States over the State’s authority to manage its natural resources—especially its submerged lands—for the benefit of Alaskans. *See, e.g., Alaska v. Arctic Maid*, 366 U.S. 199 (1961); *United States v. Alaska*, 422 U.S. 184 (1975); *United States v. Alaska*, 503 U.S. 569 (1992); *United States v. Alaska*, 521 U.S. 1 (1997); *Alaska v. United States*, 545 U.S. 75 (2005).

More recently, this Court twice grappled with whether the federal government can regulate Alaska’s navigable waters that flow through a conservation system unit in the *Sturgeon* cases. *Sturgeon I*, 577 U.S. at 427–28; *Sturgeon II*, 587 U.S. at 32. As explained in the Petition, those cases, particularly *Sturgeon II*, have already settled this issue. Pet. at 25–34.

This Court should grant review for the legal reasons described in the Petition and for the practical reason that the Ninth Circuit’s holding empowers the federal government to an unprecedented takeover of non-federal waterways. Federal lands cover over 222 million acres in Alaska—more than 60% of the State. Alaska Dept. of Nat. Res., *Land Ownership in Alaska* (Mar. 2000), at 2.⁵ These

5. Available at <https://www.nrcs.usda.gov/sites/default/files/2022-10/Land%20Ownership%20in%20Alaska%20-%20Fact%20Sheet.pdf> (last accessed Oct. 13, 2025).

federal lands contain over 43,000 miles of rivers, many of them navigable. *See* Petition for Writ of Certiorari filed in *Sturgeon II*, 2018 WL 333817, at *25 (Jan. 2, 2018). Under the Ninth Circuit’s reasoning, the federal government can regulate subsistence fishing on these 43,000 miles of rivers by asserting that subsistence users “traditionally fished” these waters and therefore they are “public lands.” This cannot be what the drafters of ANILCA planned. The breadth of the potential consequences of the Ninth Circuit’s decision for other waterways in Alaska and the loss of state sovereignty warrant this Court’s grant of certiorari.

II. The decision below ignores the primacy of state fish and wildlife management authority.

The Court should grant certiorari because the State of Alaska potentially faces another loss—its ability to properly manage its fish and wildlife resources.

States are “unquestionably” the primary managers of natural resources within their jurisdiction. *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976). This broad management authority reflects “the legitimate state concerns for conservation and protection of wild animals.” *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979). Alaska is no exception. The Alaska Statehood Act of 1958 transferred “the administration and management of the fish and wildlife resources” to the State of Alaska. Pub. L. No. 85-508, § 6(e), 72 Stat. 341. Congress then protected the State’s ability to manage fish and wildlife when it enacted ANILCA. ANILCA explicitly preserves the State’s authority to manage fish and wildlife, while recognizing the federal management authority primarily to manage federal lands. 16 U.S.C. §§ 3202(a) & (b).

This Court should review this case to safeguard Alaska’s uniquely significant need for control of state-owned lands and waters. The State is constitutionally bound to carefully manage these lands and waters, and the wildlife, fish, and other natural resources on or in them, for “the maximum benefit” and “common use” of the people. Alaska Const. art. VII, §§ 2, 3. The State manages lands and waters to advance that overall objective. The federal government does not, and its choices can (and often do) undermine the State’s conservation efforts. *E.g.*, Pet. at 14–15, 20–21, 22–23.

The Ninth Circuit’s opinion ignores the balance struck in ANILCA, and the need for cohesive State management along the length of a river or the migration route of caribou, or across moose range. That short-sightedness puts the State’s management strategy at risk; more than that, it elevates a federal land manager or administrative body (like the FSB) over the State. That runs counter to ANILCA and the intent of Congress.⁶

6. As mentioned in the Petition, the Ninth Circuit’s opinion also runs counter to recent precedent from this Court. *E.g.*, *Sackett v. Env’tl. Prot. Ag’y.*, 598 U.S. 651 (2023). Only Congress has the constitutional authority to preempt state regulation of fish and wildlife. *Id.* at 679 (Congress must be “exceedingly clear” that “it wishes to significantly alter the balance between federal and state power”). ANILCA does not include “exceedingly clear language” to change the state-federal balance. Pet. at 34. Rather, it includes an “express policy” **preserving** the State’s management authority. *See Sackett*, 598 U.S. at 680. Furthermore, as in *Sackett*, the area under federal control at issue is enormous—220 million acres, more than twice the size of California—which has enormous implications if the Ninth Circuit’s erroneous holding is allowed to stand.

III. Congress intended for the State to maintain primary management authority over its fish and wildlife.

ANILCA's legislative history affirms the lack of Congressional intent to alter the traditional state-federal balance. It bolsters the express statement that Congress did not intend to subordinate State wildlife management to the federal government—contrary to the Ninth Circuit's erroneous holding. This Court should correct this error and ensure that ANILCA is being administered as intended by Congress.

In enacting ANILCA, Congress understood the balance between preserving natural landscapes and wild-life in Alaska and giving Alaskans the opportunity for economic development and use of natural resources. Legislative history underscores Congress's intent that fish and wildlife management authority remains with the State. For example, the Senate Report on ANILCA Section 1314 states:

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.

S. Rep. No. 96-413 (1979); 1980 U.S.C.C.A.N. 5070, 5252 (1980). In “preserv[ing] the status quo,” Congress maintained the State's traditional authority to manage

hunting and fishing in Alaska. This point was reinforced during a hearing in 1979, when House Subcommittee Chair Seiberling declared 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.

Hearing on Alaska National Interest Lands Conservation Act of 1979 before the Comm. on Interior and Insular Affairs, 96th Cong. 427 (Feb. 8, 1979). From the initial drafting of ANILCA, Congress recognized the primacy of the State's fish and wildlife management authority. It would be illogical for the same legislators who preserved the State's authority to manage fish and wildlife to then strip that power away in defining "public lands" differently in Title VIII of ANILCA, as suggested by the Ninth Circuit.⁷

Decades later, Congress reemphasized its intent in the Alaska Statehood Act and ANILCA to protect the primacy of State wildlife management authority over federal overreach. In 2016, the U.S. Fish and Wildlife Service published a rule that prohibited certain State authorized hunting on all 16 National Wildlife Refuges in Alaska. 81 Fed. Reg. 52247 (Aug. 5, 2016) (the "Refuges

7. While Congress created a subsistence priority in Title VIII of ANILCA, that priority does not ignore the primacy of State management authority. As explained in the Ninth Circuit's opinion and the State's Petition, Congress fully expected that the State would manage this priority, consistent with its other obligations.

Rule”). In 2017, Congress invalidated the Refuges Rule and amended ANILCA through a Congressional Review Act resolution. Pub. L. No. 115-20, 131 Stat. 86 (Apr. 3, 2017). As Representative Young explained in introducing the resolution:

This House created the State of Alaska in 1959, under the Statehood Act. It clearly granted Alaska full authority to manage fish and game on all lands in the State of Alaska, including all Federal lands.

[ANILCA] in 1980 further, in fact, verified what the Statehood Act did: protecting the right of the State to manage fish and game.

163 Cong. Rec. H1259, H1260 (daily ed. Feb. 16, 2017).

Senator Sullivan of Alaska explained that, “[t]he Alaska Statehood Act ... specifically grant[ed] Alaska the authority to manage fish and wildlife on not only State lands but on Federal lands, unless Congress passes a law to the contrary.” 163 Cong. Rec. S1864 (daily ed. Mar. 21, 2017). Turning to ANILCA, Senator Sullivan noted:

Many Alaskans didn’t like [ANILCA]. Several saw this as a massive Federal usurpation of our land, but our congressional delegation fought to include explicit provisions in this Federal law that made it abundantly clear that the State of Alaska still had primacy in managing fish and game throughout the entire State – State lands and Federal lands.

When [ANILCA] was passed, it explicitly stated: “Nothing in this act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for the management of fish and wildlife on public lands....”

That is pretty clear language, and it is very important language to Alaskans.

Id.

Such sentiments echoed throughout the House and Senate during debates on the Congressional Review Act resolution. Representative Duncan, co-chair of the Congressional Sportsmen’s Caucus, noted the Refuges Rule “removes Alaska’s authority to manage fish and wildlife.... Th[at] action ... violated the clear letter of the Alaska Statehood Act, [ANILCA], and the National Wildlife Refuge System Improvement Act.” 163 Cong. Rec. at H1261. Representative McClintock, Chair of the Subcommittee on Federal Lands, echoed his colleague in stating that, “Alaska was given explicit authority [in ANILCA] to manage its wildlife populations,” and the Refuges Rule “breaks that promise,” creating “a dangerous process of seizing control of fish and game management decisions which have by right, by law, and by custom belonged to the States.” *Id.* at H1262.

Likewise, Senator Murkowski of Alaska confirmed Congress’s understanding that, “Alaska holds legal authority to manage the fish and wildlife within its borders. This is clear. This is unambiguous. Congress explicitly provided that authority specifically to our State in not one, not two, but three separate laws.” 163 Cong. Rec. at S1867-68.

Simply put, the State has authority to manage fish and wildlife, including on Federal lands, and Congress has repeatedly reaffirmed this authority. The Ninth Circuit's holding that "public lands" is defined differently in ANILCA's Title I and Title VIII, allowing the United States to manage fish on State waters irrespective of the State's wishes, disregards Congress's intent to leave wildlife management in the State's hands. For those reasons, and the reasons provided by Petitioners, this Court should grant certiorari and reverse the Ninth Circuit's erroneous holding.

IV. The decision below perpetuates the FSB's incremental and unlawful restriction of hunting and fishing on public lands.

The Ninth Circuit's ruling creates a precarious framework that misplaces the management of fish and wildlife in the hands of the federal government on certain lands where State authority should prevail. This ruling emboldens the FSB to expand its jurisdiction beyond the limits Congress set in ANILCA. The management of the Kuskokwim River exemplifies this overreach, where federal intervention has disrupted the balance of conservation and access.

Although ANILCA "charges the secretaries with implementing its rural subsistence priority,"⁸ the

8. In passing ANILCA, Congress recognized and protected the right of rural Alaskans to use and benefit from wildlife resources. Section 802 of ANILCA states that 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." 16 U.S.C. § 3112. The remainder of

Secretaries do not implement that priority. The Secretaries established the FSB and assigned it responsibility for “administering the subsistence taking and uses of fish and wildlife on public lands.” 50 C.F.R. § 100.10. The Secretaries have given the FSB enormous powers. The FSB can, among other things, determine which communities or areas qualify for the subsistence priority, issue regulations managing subsistence uses, close public lands to nonsubsistence uses, establish priorities for subsistence taking, and more. *E.g.*, 50 C.F.R. § 100.10. Through this delegation, the FSB has incrementally, and often unlawfully, restricted fishing and hunting on public lands to all but federally qualified subsistence users.⁹

this brief will use the shorthand “subsistence priority” when referencing the priority harvest opportunity created in Section 802.

9. 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. In other words, Congress limited the subsistence priority to where and how individuals live, not who they are. ANILCA’s language represented a deliberate decision by Congress. *E.g.*, Statement of Rep. Seiberling, 124 Cong. Rec. 14162 (May 17, 1978) (the subsistence provision in ANILCA “must not be based upon race [or any other physical characteristic], that even though [Congress has] a commitment to the Natives of Alaska, we must honor that commitment in such a way that we do not set apart and above other people similarly situated”). Federally qualified subsistence users include a broad swath of Alaskans. *See* J.A. Fall, *Alaska Population Trends and Patterns, 1960-2018* (July 2019) (describing the breakdown of federally qualified subsistence users in Alaska). But “federally qualified subsistence user” also ignores a broad swath of Alaskans—those who have practiced and might wish to continue to practice customary and traditional uses of fish and wildlife, but who have moved out of rural areas, typically

ANILCA’s subsistence priority arises in limited circumstances: specifically, when “necessary for the conservation of healthy populations of fish and wildlife,” or “to continue subsistence uses of such populations.” 16 U.S.C. § 3125(3). Under this statutory structure, the default land management position is that subsistence and nonsubsistence hunting shall occur concurrently on federal lands, as nonsubsistence hunting is closed only when “necessary.” The FSB’s decisions often exceed ANILCA’s authority by enacting closures that are not based on conservation need or related to protecting 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 two seasons based on “extreme hunting competition” in GMU 13—a reason outside of a conservation need or protecting the subsistence priority. FSB, *Changes in Federal Moose and Caribou Hunting Regulations in Unit 13* (2020), at 1¹⁰; *Alaska Dept. of Fish & Game v. FSB*, 574 F. Supp. 3d 710, 719–20 (D. Alaska 2021), *rev’d in part, vacated in part*, 62 F.4th 1177 (9th Cir. 2023). Tellingly, the FSB had rejected an identical proposal for the 2019-2020 season, determining that the closure was not warranted under

for economic reasons to support their families. These users are left behind by federal regulations and FSB closures—which is a large part of why the State and organizations like SCI routinely challenge unsupported losses of access.

10. Available at https://www.doi.gov/sites/doi.gov/files/uploads/nr-unit-13-caribou-moose-closure-faqs_0.pdf (last accessed Oct. 7, 2025).

ANILCA, before it approved the same proposal a year later. *Id.*

In challenging this closure, the State argued that the FSB unlawfully restricted State lands when it announced hunters could not “take moose and caribou between the edge of the river and ordinary high water mark along navigable waters.” *Id.* at 734. These narrow strips of land—often gravel or mud bars—between the edge of the river and the ordinary high-water mark are State lands as part of a navigable waterway, a point the FSB acknowledged. *Id.* at 734. Likewise, in 2021, the FSB approved the closure of moose and caribou hunting by non-federally qualified subsistence users on more than **20 million acres** in GMUs 23 and 26A based on assertions by the proponent that airplane flights by non-local hunters altered the migration pattern of the Western Arctic Caribou Herd. FSB, *Staff Analysis Temporary Special Action WSA 21-01* (2021), at 1.¹¹ The proponent offered no evidence to support this assertion, nor any evidence of declines in subsistence harvest or changes to moose behavior.

The FSB has also taken the unprecedented step of **opening** two hunts, although ANILCA includes no language to allow the FSB to open a hunt that is not already opened by the State. *Alaska Dept. of Fish & Game*, 574 F. Supp. 3d at 718 (opened a moose and deer hunt for the Organized Village of Kake); FSB, *Federal Subsistence Hunt and Public Meeting Notice, Fall 2025 Federal Caribou Hunt for Residents of Igiugig and*

11. Available at https://www.doi.gov/sites/doi.gov/files/wsa21-01-fsb_0.pdf (last accessed Oct. 7, 2025).

Kokhanok (Sept. 11, 2025)¹² (opened a caribou hunt on the Katmai National Preserve).

These actions demonstrate the FSB’s persistent overreach of the limited authority Congress granted in ANILCA to protect the subsistence priority. Rather than operating within statutory guardrails, the FSB’s actions have obstructed State wildlife management and improperly and unnecessarily fostered conflict—pitting hunter-against-hunter and angler-against-angler—even in areas where resources are more than abundant to support all users.

The Ninth Circuit’s decision validates the FSB’s pattern of overreach by approving the FSB’s decision to sideline the State’s fishing regulation on the Kusko-kwim River. As Petitioners rightly observe, “the decision below allows the federal government to override the State’s authority” resulting in overfish-ing, depriving upstream rural residents (Native and non-Native alike) of equal opportunity to participate in subsistence fishing, and preventing others from returning home to practice their culture and traditions. Pet. at 17–18. The Ninth Circuit’s ruling threatens to override State authority and restrict hunting on the very same gravel bars or mud bars that the FSB acknowledged were State lands a few years ago. While the practical impact on hunting may be limited, the legal implications are significant. The impropriety of this outcome underscores the Ninth Circuit’s flawed reasoning and reinforces the urgent need for this Court’s

12. Available at <https://www.doi.gov/sites/default/files/documents/2025-09/2025-katmai-preserve-subsistence-hunt-1.pdf> (last accessed Oct. 14, 2025).

review. Without review, the FSB can continue to override state fish and wildlife management, to the detriment of fish, wildlife, and users—including SCI members in and outside of Alaska.

CONCLUSION

Accordingly, for the above reasons, SCI respectfully requests that the Petition be granted.

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