No. 25-320

In the Supreme Court of the United States

STATE OF ALASKA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3111 *et seq.*, the Secretaries of the Interior and Agriculture administer a priority for rural subsistence hunting and fishing on "public lands" in Alaska. The statute defines the term "public lands" to mean "lands, waters, and interests therein" the "title to which is in the United States." 16 U.S.C. 3102(1)-(3). The question presented is as follows:

Whether the term "public lands," as used in Title VIII of ANILCA, encompasses navigable waters in which the United States holds reserved water rights.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 151 F.4th 1124. The opinion of the district court (Pet. App. 41a-74a) is available at 2024 WL 1348632.

JURISDICTION

The judgment of the court of appeals was entered on August 20, 2025. The petition for a writ of certiorari was filed on September 15, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Through an 1867 treaty with Russia, the United States acquired the 365 million acres that ultimately became the State of Alaska. Treaty Concerning the Cession of the Russian Possessions in North America, Mar. 30, 1867, 15 Stat. 539. In 1958, the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339, admitted Alaska as the

country's 49th State and allowed it to select 103 million acres of "vacant, unappropriated, and unreserved" federal land for future conveyance to the State. § 6(a) and (b), 72 Stat. 340. At statehood, Alaska's navigable waters also became subject to the Submerged Lands Act, ch. 65, 67 Stat. 29, which generally grants each State "title to and ownership of the lands beneath navigable waters within [its] boundaries." 43 U.S.C. 1311(a).

Alaska's attempts to select lands pursuant to the Statehood Act led to conflict with Alaska Natives, who "asserted aboriginal title to much of the property the State was now taking." *Sturgeon* v. *Frost*, 587 U.S. 28, 35 (2019). In 1971, Congress addressed that conflict by enacting the Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, 85 Stat. 688. ANCSA extinguished claims of aboriginal title, while authorizing "corporations organized by groups of Alaska Natives" to "select for themselves 40 million acres of federal land." *Sturgeon*, 587 U.S. at 35. ANCSA also directed the Secretary of the Interior, subject to approval by Congress, to withdraw up to 80 million additional acres for inclusion in "the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems." 43 U.S.C. 1616(d)(2)(A). "The Secretary dutifully made his selections, but Congress failed to ratify them within the five-year period ANCSA had set." *Sturgeon*, 587 U.S. at 35. President Carter then invoked the Antiquities Act of 1906, ch. 3060, 34 Stat. 225, to "proclaim most of the lands (totaling 56 million acres) national monuments." *Sturgeon*, 587 U.S. at 35.

In 1980, in response to the "uproar" caused by President Carter's decision, *Sturgeon*, 587 U.S. at 36, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat.

2371. ANILCA set aside approximately 105 million acres of "lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values." 16 U.S.C. 3101(a). Those lands became "conservation system unit[s]," a defined term that refers broadly to national parks, refuges, and other federal lands managed by the Departments of the Interior and Agriculture. 16 U.S.C. 3102(4). Congress contemplated rules for the conservation of "waters," "freeflowing rivers," and "fish" in those areas. 16 U.S.C. 3101(a)-(c). Congress also aimed to "provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so," where "consistent with management of fish and wildlife" and other principles. 16 U.S.C. 3101(c).

Title VIII of ANILCA addresses those rural subsistence uses. §§ 801-816, 94 Stat. 2422-2430. The central objective of Title VIII is "to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents." 16 U.S.C. 3111(4). To further that objective, Title VIII mandates 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." 16 U.S.C. 3114. That provision is known as the rural subsistence priority. The term "subsistence uses" is defined to mean "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 re-

sources"; for "barter, or sharing for personal or family consumption"; and for "customary trade." 16 U.S.C. 3113.

In recognition of the States' traditional authority over fish and wildlife within their borders, Congress gave Alaska the option to enact its own Title VIII subsistence program, subject to judicial oversight, in place of a federal regulatory scheme. 16 U.S.C. 3115(d), 3117. Title VIII allows Alaska to implement its own program if it "enacts and implements laws of general applicability" that are consistent with Title VIII's requirements. 16 U.S.C. 3115(d). But if Alaska does not implement its own program, Title VIII requires the Secretaries of the Interior and Agriculture to "step in and do the job." *Kenaitze Indian Tribe* v. *Alaska*, 860 F.2d 312, 316 (9th Cir. 1988), cert. denied, 491 U.S. 905 (1989).

Alaska initially implemented its own Title VIII subsistence program. In 1982, the Secretary of the Interior certified that Alaska's program complied with ANILCA, and the State assumed responsibility for regulation of subsistence uses. *Kenaitze*, 860 F.2d at 314. But in 1985, the Alaska Supreme Court invalidated the State's regulations as inconsistent with state statutory law. *Madison* v. *Alaska Dep't of Fish & Game*, 696 P.2d 168, 178 (1985). The Department of the Interior concluded that the State's program no longer complied with Title VIII. *Bobby* v. *Alaska*, 718 F. Supp. 764, 768 (D. Alaska 1989). Alaska enacted further legislation to bring the program into compliance, but the Alaska Supreme Court held that the new legislation violated the equal-access provisions of the Alaska Constitution by "exclud[ing] all urban residents from subsistence hunting and fishing regardless of their individual characteristics." *McDowell* v. *State*, 785 P.2d 1, 9 (1989). Although the court stayed its decision until July 1, 1990, to give the State an op-

portunity to address the issue, the Legislature did not act. *John* v. *United States*, No. A90-484, 1994 WL 487830, at *4 (D. Alaska Mar. 30, 1994).

Because Alaska did not implement a compliant program, ANILCA required the Secretaries of the Interior and Agriculture to assume responsibility for administering Title VIII's subsistence requirements. 16 U.S.C. 3115. The Secretaries issued temporary subsistence-management regulations in 1990, with the expectation that Alaska would soon resume responsibility. 55 Fed. Reg. 27,114, 27,114 (June 29, 1990). When Alaska did not do so, the Secretaries published final subsistence-management regulations in 1992. 57 Fed. Reg. 22,940 (May 29, 1992). The Secretaries also established the Federal Subsistence Board (Board) and invested it with "authority for administering the subsistence taking and uses of fish and wildlife on public lands." 43 C.F.R. 51.10(a).

2. Soon after the Secretaries established a federal Title VIII subsistence program in 1990, the geographic scope of the Board's authority became the subject of litigation involving the federal government, the State of Alaska, and Alaska Natives. That litigation continued for decades, resulting in three court of appeals decisions that together are commonly known as the *Katie John* trilogy: *Alaska* v. *Babbitt*, 72 F.3d 698 (9th Cir. 1995) (*Katie John I*), cert. denied, 517 U.S. 1187 (1996); *John* v. *United States*, 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam) (*Katie John II*); and *John* v. *United States*, 720 F.3d 1214 (9th Cir. 2013) (*Katie John III*), cert. denied, 572 U.S. 1042 (2014).

a. The *Katie John* litigation addressed whether and to what extent the Board may regulate subsistence fishing on navigable waters within Alaska. As noted, the rural subsistence priority in Title VIII of ANILCA ap-

plies to the taking of fish and wildlife "on public lands." 16 U.S.C. 3114. Section 102 of ANILCA defines the term "public lands" to mean "land situated in Alaska which * * * are Federal lands." 16 U.S.C. 3102(3). "Federal land," in turn, means "lands the title to which is in the United States." 16 U.S.C. 3102(2). And "land" means "lands, waters, and interests therein." 16 U.S.C. 3102(1).

The federal government's 1992 final subsistence-management regulations construed the term "public lands" as generally excluding navigable waters, with some exceptions. See 57 Fed. Reg. at 22,941 (explaining that the regulations applied "to all non-navigable waters located on all public lands and to navigable waters located on certain public lands"). Katie John and other Alaska Natives sued the federal government in federal district court, arguing that the regulations had too narrowly construed the term "public lands." See *Katie John I*, 72 F.3d at 701. The Alaska Native plaintiffs argued that the term "public lands" encompasses all waters subject to the federal government's navigational servitude—in effect, all navigable waters in the State. See *ibid.* In addition to filing its own suit against the federal government, Alaska intervened in the Alaska Natives' suit to challenge the federal regulations' interpretation of "public lands" as too broad. See *ibid.* Alaska argued that the term "public lands" excludes navigable waters because the United States lacks any title to them. See Alaska Br. at 24-34, *Katie John I*, 72 F.3d 698 (No. 95-35480), 1994 WL 16012377, at *24-*34. The district court consolidated the suits. *Katie John I*, 72 F.3d at 701.

The United States initially defended the 1992 regulations' view that the term "public lands" generally excludes navigable waters. See *Katie John I*, 72 F.3d at 701. But the United States later changed its position and

argued that the term encompasses those navigable waters in which the federal government has an interest under the reserved water rights doctrine. See *ibid.* Under that doctrine, when the federal government establishes a reservation of land, the government implicitly reserves rights to those appurtenant waters that are necessary to accomplish the purposes of the reservation. See *Winters* v. *United States*, 207 U.S. 564, 576-577 (1908). The United States argued that its reserved water rights in navigable waters appurtenant to a federal reservation render those waters "public lands" for purposes of Title VIII. See *Katie John I*, 72 F.3d at 701. The district court rejected the United States' interpretation and agreed with the Alaska Native plaintiffs that, for purposes of Title VIII, the term "public lands" encompasses all navigable waters in Alaska, not just those appurtenant to a federal reservation. See *ibid.*

In *Katie John I*, the court of appeals reversed and remanded for further proceedings. 72 F.3d at 704. The court rejected Alaska's interpretation as contrary to the statute. *Id.* at 702. The court explained that ANILCA's text and history left "no doubt that Congress intended that public lands include at least some navigable waters." *Ibid.* The court therefore concluded that the statute ruled out Alaska's view that "public lands excludes all navigable waters." *Ibid.*; see *id.* at 704. But the court found that Congress had not clearly spoken "to the precise question of *which* navigable waters are public lands." *Id.* at 702. The court then upheld, as a "reasonable" interpretation of the statute, the federal government's view that "the definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Id.* at 703-704. In doing so, the court emphasized

that "[t]he issue raised by the parties cries out for a legislative, not a judicial, solution," and that "[o]nly legislative action by Alaska or Congress will truly resolve the problem." *Id.* at 704. Judge Hall dissented, expressing the view that the term "public lands" excludes navigable waters. See *id.* at 708.

After the court of appeals denied rehearing en banc, Alaska and the Alaska Native plaintiffs filed petitions for writs of certiorari, and this Court denied both petitions. See *Alaska* v. *Babbitt*, 517 U.S. 1187 (1996) (No. 95-1084); *Alaska Fed'n of Natives* v. *United States*, 517 U.S. 1187 (1996) (No. 95-1496).

b. After *Katie John I*, Congress recognized that the Secretary of the Interior was "required" to manage the rural subsistence priority because Alaska did not "provide a rural preference." Department of the Interior and Related Agencies Appropriations Act, 1998 (1998 Appropriations Act), Pub. L. No. 105-83, § 316(b)(3)(B), 111 Stat. 1592. In the same statutory provision, Congress also noted the Ninth Circuit's holding in *Katie John I* that ANILCA's rural subsistence priority "applies to navigable waters in which the United States has reserved water rights." *Ibid.* In order to give Alaska time to adopt its own Title VIII subsistence program, Congress paused implementation of the federal Title VIII subsistence program on navigable waters. See Department of the Interior and Related Agencies Appropriations Act, 1996, Pub. L. No. 104-134, Tit. I, sec. 1(d), § 336, 110 Stat. 1321-210; Department of the Interior and Related Agencies Appropriations Act, 1997, Pub. L. No. 104-208, Tit. I, sec. 101(d), § 317, 110 Stat. 3009-222; 1998 Appropriations Act § 316(a), 111 Stat. 1592; Department of the Interior and Related Agencies Appropriations

Act, 1999 (1999 Appropriations Act), Pub. L. No. 105-277, § 339(a)(1), 112 Stat. 2681-295.

Congress directed, however, that the federal regulations would take effect if Alaska did not amend its law to implement a Title VIII subsistence program that complied with ANILCA. See 1998 Appropriations Act § 316(d), 111 Stat. 1595 (providing that, if "[t]he Secretary [could not] certify before December 1, 1998 [that] such laws have been adopted in the State of Alaska," the limitations on operation of the federal regulations "shall be repealed on such date"); 1999 Appropriations Act § 339(b)(2), 112 Stat. 2681-296 (restriction "shall be repealed" on October 1, 1999, if the Secretary of the Interior does not make certification by that date); 16 U.S.C. 3102 note. Pursuant to the 1999 Appropriations Act, when the State did not enact measures to establish its own compliant subsistence program, the federal regulations went into effect. And Congress appropriated $11 million to the Departments of the Interior and Agriculture for post-*Katie John I* implementation of the federal Title VIII subsistence program on navigable waters. See 1999 Appropriations Act, 112 Stat. 2681-251 to 2681-252, 2681-271.

Meanwhile, the *Katie John* litigation remained pending on remand before the district court. In 1999, while the case was still on remand, the Secretaries of the Interior and Agriculture revised the federal subsistence-management regulations to conform them to the interpretation that the Ninth Circuit had upheld in *Katie John I*. See 62 Fed. Reg. 66,216, 66,216 (Dec. 17, 1997); 64 Fed. Reg. 1276, 1276 (Jan. 8, 1999). Specifically, the Secretaries revised the regulations to make them applicable to navigable waters "where the Federal Government holds a reserved water right or holds title to the

waters or submerged lands." 64 Fed. Reg. at 1279. After the 1999 regulations took effect, the district court entered final judgment effectuating the court of appeals' decision in *Katie John I*.

Alaska appealed, and the court of appeals granted initial hearing en banc. See *John* v. *United States*, 216 F.3d 885 (9th Cir. 2000). In *Katie John II*, the en banc court affirmed the district court's judgment in a per curiam decision that declined to "disturb[] or alter[]" the court of appeals' prior decision in *Katie John I*. 247 F.3d at 1033. Three judges concurred in the judgment, expressing the view that the term "public lands" in Title VIII encompasses all navigable waters. See *id.* at 1034 (Tallman, J., concurring in the judgment). Three other judges dissented, taking the position that the term excludes all navigable waters. See *id.* at 1047-1049 (Kozinski, J., dissenting). Alaska did not seek this Court's review.

c. In 2005, Alaska and the Alaska Native plaintiffs filed new suits against the federal government challenging the 1999 regulations. *Katie John III*, 720 F.3d at 1223-1224. The district court consolidated the suits and upheld the 1999 regulations. *Ibid.*

In *Katie John III*, the court of appeals affirmed. 720 F.3d at 1218. The court began from the premise that *Katie John I* was "controlling law." *Id.* at 1226. The court observed that the en banc court had been given "the opportunity to revisit *Katie John I* in *Katie John II*," but had left *Katie John I* undisturbed. *Ibid.* The court then rejected the challenges to the 1999 regulations, concluding that the Secretaries had "applied *Katie John I* and the federal reserved water rights doctrine in a principled manner" in identifying "the 'public lands' subject to ANILCA's rural subsistence priority." *Id.* at 1245.

Alaska filed a petition for a writ of certiorari, seeking review of the Ninth Circuit's holding (first articulated in *Katie John I*) that the term "public lands" includes those navigable waters in which the United States holds reserved water rights. See Pet. at i, *Alaska* v. *Jewell*, 572 U.S. 1042 (2014) (No. 13-562), 2013 WL 5936539, at *i. This Court denied review. *Jewell*, *supra* (No. 13-562).

3. Five years later, in *Sturgeon* v. *Frost*, *supra*, this Court addressed the meaning of "public lands" as used in Section 103(c) of ANILCA, 16 U.S.C. 3103(c). Section 103(c) provides that only "public lands" shall be considered part of a conservation system unit and thus subject to "regulations applicable solely to public lands within such units." *Ibid.* At issue in *Sturgeon* was whether the Nation River—a navigable river within a national preserve in Alaska—was "public land" for purposes of Section 103(c). See 587 U.S. at 42-45. The plaintiff, John Sturgeon, argued that the River was not "public land," and that the National Park Service's rule against hovercraft use in national preserves therefore could not be enforced on the River. See *id.* at 32. The federal government argued that the Nation River was "public land" because the United States held title to reserved water rights in the River, and because Section 102 of ANILCA defines "public land" to include "waters" and "interests therein" to which the United States holds title. See *id.* at 42-43; 16 U.S.C. 3102(1)-(3).

This Court in *Sturgeon* held that the Nation River was not "public land" for purposes of Section 103(c). 587 U.S. at 43-45. The Court assumed, without deciding, that it is "possible to hold 'title,' as ANILCA uses the term, to reserved water rights." *Id.* at 43 (quoting 16 U.S.C. 3102(2)). But the Court held that "[e]ven if the United States holds title to a reserved water right in the Nation

River, that right (as opposed to title in the river itself) cannot prevent Sturgeon from [using his hovercraft]." *Id.* at 45. The Court explained that the federal government's "'interest' in the river" (that is, its reserved water right) "merely enables the Government to take or maintain the specific 'amount of water' * * * required to 'fulfill the purpose of its land reservation.'" *Id.* at 44 (brackets and citation omitted). The Court concluded that, because the National Park Service's hovercraft rule was not a regulation of "that kind," "the Government's (purported) reserved right could not justify applying the hovercraft rule on the Nation River." *Id.* at 44-45.

This Court in *Sturgeon* recognized that the court of appeals had "held in three cases—the so-called *Katie John* trilogy—that the term 'public lands,' when used in ANILCA's subsistence-fishing provisions, encompasses navigable waters like the Nation River." 587 U.S. at 45 n.2. The Court emphasized that "[t]hose provisions [we]re not at issue" in *Sturgeon*, and that the Court's resolution of the dispute before it "d[id] not disturb the [court of appeals'] holdings that the Park Service may regulate subsistence fishing on navigable waters." *Ibid.* The Court noted that the State of Alaska had filed an amicus brief in *Sturgeon* arguing that *Sturgeon* "d[id] not implicate those decisions." *Ibid.*

4. Petitioners here are the State of Alaska, the Alaska Department of Fish and Game, and the Commissioner of that Department. Pet. App. 22a-23a. The present controversy arises out of petitioners' disagreement with the Board's management of subsistence fishing on the Kuskokwim River within the Yukon Delta National Wildlife Refuge. *Id.* at 20a-22a.

a. The Kuskokwim River runs more than 700 miles in southwest Alaska before entering the Bering Sea.

Pet. App. 43a. About 180 miles of the River run through the Yukon Delta National Wildlife Refuge. *Id.* at 20a. "Within the Refuge, the River is navigable." *Ibid.* "Pursuant to the 1999 [regulations] upheld in *Katie John III*, the Secretaries have implemented ANILCA's rural subsistence priority on the stretch of the River within the Refuge." *Ibid.* The United States holds reserved water rights in that stretch of the River. See *ibid.*

The River supports stocks of several species of salmon, and residents of villages along the River within the Refuge are highly dependent on salmon fishing as a source of food. Pet. App. 21a. Those rural Alaskans are "almost entirely federally qualified subsistence users" under Title VIII of ANILCA. *Ibid.* Subsistence fishing "is deeply engrained in their culture and identity." *Ibid.*

In recent years, federal and state officials have grown concerned about the health of the Chinook and chum salmon populations in the River. Pet. App. 21a. Ahead of the 2021 fishing season, the Board determined that closing the 180-mile segment of the River within the Refuge to non-subsistence uses was "necessary to conserve the fish population for continued subsistence uses of the Chinook salmon upon which rural residents of the area depend." *Id.* at 49a (citation omitted). The Board therefore issued an emergency special action under Title VIII to close the segment of the River within the Refuge to non-subsistence uses beginning in June 2021. *Id.* at 22a. Consistent with Title VIII's rural subsistence priority, the emergency special action allowed "limited subsistence uses by local rural residents under narrowly prescribed terms and means of harvest." *Id.* at 50a (citation omitted). Shortly after the federal closure order, petitioners issued their own emergency closure orders. *Id.* at 51a. But unlike the federal order,

petitioners allowed subsistence fishing "for *all* Alaskans," without limitation to rural subsistence users under Title VIII. *Ibid.*

In 2022, a similar pattern of conflicting orders emerged. The Board issued another emergency special action implementing closures along the River within the Refuge, beginning in June 2022. Pet. App. 52a. Consistent with Title VIII, that emergency action allowed limited subsistence fishing on several dates by qualified subsistence users. *Ibid.* Once again, petitioners "issued conflicting orders that purported to authorize fishing by all subsistence users." *Id.* at 22a.

b. In May 2022, the United States brought suit in federal district court, seeking declaratory and injunctive relief to prevent petitioners from continuing to issue orders that conflict with federal subsistence management under Title VIII. Pet. App. 22a-23a. The Kuskokwim River Inter-Tribal Fish Commission and various Alaska Native organizations intervened in support of the United States. *Id.* at 23a. Petitioners did not contest that their orders conflicted with federal orders. Instead, petitioners argued that their orders were "not preempted because the Kuskokwim River is not 'public land' under ANILCA." *Id.* at 55a (citation omitted). Petitioners contended that the *Katie John* trilogy was no longer controlling in light of this Court's intervening decision in *Sturgeon*. *Id.* at 59a.

The district court granted summary judgment to the United States. Pet. App. 41a-74a. The court concluded that it was "bound by the *Katie John* trilogy of cases to find that Title VIII's rural subsistence priority applies to 'navigable waters in which the United States has reserved water rights,'" and that "the Secretaries lawfully designated the Kuskokwim River in the Refuge as

a navigable water subject to Title VIII of ANILCA." *Id.* at 61a (citation omitted). The court therefore entered a permanent injunction that barred petitioners from reinstating their 2021 and 2022 orders and from "taking similar actions interfering with or in contravention of federal orders addressing Title VIII of ANILCA and applicable regulations" on the River within the Refuge. *Id.* at 76a; see *id.* at 72a-73a.

c. The court of appeals affirmed. Pet. App. 1a-40a. The court explained that, as a matter of circuit precedent, it was bound by the *Katie John* trilogy unless those decisions were "clearly irreconcilable" with this Court's intervening decision in *Sturgeon*. *Id.* at 4a (citation omitted). The court then held that the *Katie John* trilogy was not "clearly irreconcilable" with *Sturgeon*'s interpretation of Section 103(c). *Ibid.*

At the outset, the court of appeals acknowledged that ANILCA's "definition of 'public lands' applies to both [Section 103(c)] and to Title VIII." Pet. App. 25a (quoting 16 U.S.C. 3102). The court explained, however, that the presumption that a word "bear[s] the same meaning throughout a text" "readily yields to context." *Ibid.* (citations and internal quotation marks omitted). And the court noted that "Title VIII contains a number of contextual clues that 'public lands'—and, therefore, 'title to'—carries a broader meaning in Title VIII" than in Section 103(c). *Id.* at 28a. In particular, the court found that Title VIII's declaration of congressional findings, and references to subsistence uses in other titles of ANILCA, "make clear that Congress intended the rural subsistence priority to apply to the waters and to the fish populations that rural subsistence users have *traditionally* fished and depended upon within conservation system units." *Id.* at 30a; see *id.* at 28a-29a. The court concluded

that, because "'subsistence fishing has traditionally taken place in navigable waters,'" "Title VIII's provisions indicate that 'public lands' includes navigable waters within conservation system units, as *Katie John I* held." *Id.* at 30a (citation omitted).

The court of appeals also stated that, "immediately after *Katie John I*, Congress passed appropriations acts that signaled its approval of *Katie John I*'s interpretation of 'public lands' for purposes of Title VIII." Pet. App. 4a. The court observed that, "[i]n the 1998 Appropriations Act, Congress recognized *Katie John I*'s interpretation while amending Title VIII's subsistence fishing provisions and the definition of 'public lands,' but it left *Katie John I*'s interpretation in place." *Id.* at 35a. The court also noted that, "[i]n the 1999 Appropriations Act, Congress appropriated $11 million to implement the rural subsistence priority and set a deadline by which the temporary restriction on using appropriated funds to carry out *Katie John I*'s holding would be lifted." *Ibid.* Thus, in the court's view, the 1998 and 1999 Appropriations Acts "provide[d] 'convincing support for the conclusion that Congress accepted and ratified' *Katie John I*'s reserved water rights interpretation." *Ibid.* (citation omitted). The court therefore rejected petitioners' contention that "the *Katie John* Trilogy's reserved water rights interpretation is clearly irreconcilable with" *Sturgeon*'s reasoning. *Id.* at 33a.

ARGUMENT

Petitioners challenge the court of appeals' decision in this case to adhere to its longstanding interpretation of the term "public lands" as it is used in Title VIII of ANILCA. This Court has previously denied review of the same issue, see *Alaska* v. *Jewell*, 572 U.S. 1042 (2014) (No. 13-562); *Alaska* v. *Babbitt*, 517 U.S. 1187 (1996)

(No. 95-1084), and the Court should likewise deny review here. For 30 years, this Court and Congress have left undisturbed the court of appeals' interpretation of Title VIII, and that interpretation has furnished a workable resolution of the question presented in this case. The court of appeals correctly concluded that its longstanding interpretation is not clearly irreconcilable with *Sturgeon* v. *Frost*, 587 U.S. 28 (2019). And no conflict exists between the decision below and any holding of another appellate court. Because any future intervention should come from Congress, not from this Court, the petition for a writ of certiorari should be denied.

1. *Katie John I* has been the governing precedent for 30 years, and at this late date there is no need for this Court to review that decision's interpretation of Title VIII of ANILCA. Although some judges have "expressed reservations about *Katie John*'s interpretation of 'public lands'" in Title VIII, Pet. App. 40a n.18, the *Katie John* trilogy established a workable standard for implementing ANILCA's rural subsistence priority. That standard avoids the more sweeping implications of the competing arguments that Title VIII applies to either all or none of the navigable waters in Alaska. Given the length of time this interpretation has been in effect, and Congress's continuing authority to modify the current framework if it chooses to do so, there is no sound reason for the Court to revisit the status quo at this juncture.

a. This Court has previously declined to disturb the interpretation of Title VIII that the court of appeals adopted and maintained in the *Katie John* trilogy. After the court of appeals adopted that interpretation in *Katie John I*, the State of Alaska asked this Court to decide whether the term "public lands" as used in Title VIII "includes navigable waters in which the federal govern-

ment possesses reserved water rights." Pet. at i, *Babbitt*, *supra* (No. 95-1084), 1996 WL 33439285, at *1. This Court denied review. *Babbitt*, *supra* (No. 95-1084). After Alaska declined to seek further review of the Ninth Circuit's decision in *Katie John II*, the court of appeals in *Katie John III* rejected challenges to the 1999 federal regulations. Alaska then asked this Court to resolve the same issue that it had previously raised: whether Title VIII's priority for rural subsistence uses extends to waters in which the United States has an interest as a result of the reserved water rights doctrine. See Pet. at i, *Jewell*, *supra* (No. 13-562), 2013 WL 5936539, at *i. This Court again denied review. *Jewell*, *supra* (No. 13-562).

Alaska now raises the same question it has twice before asked this Court to resolve. The Court should once again deny review. The only relevant development since the two previous denials of certiorari is the Court's decision in *Sturgeon*. But in *Sturgeon* itself, this Court noted that ANILCA's "subsistence-fishing provisions" were "not at issue," and that its decision "d[id] not disturb the [court of appeals'] holdings that the Park Service may regulate subsistence fishing on navigable waters." 587 U.S. at 45 n.2.

In declining to disturb the court of appeals' decisions in the *Katie John* trilogy, the *Sturgeon* Court relied in part on Alaska's representation, made in an amicus brief in that case, that the disputed issue in *Sturgeon* "d[id] not implicate those decisions." 587 U.S. at 45 n.2. In that brief, Alaska asserted that, although the Court should adopt Sturgeon's interpretation of "public lands" for purposes of Section 103(c), 16 U.S.C. 3103(c), the Court "need not and should not disturb the *Katie John* circuit precedents" interpreting "public lands" for purposes of Title VIII. Alaska Amicus Br. at 29, *Sturgeon*,

supra (No. 17-949) (capitalization altered). Alaska further argued that the term "public lands" has a different meaning in Title VIII, *id.* at 34; that the *Katie John* trilogy had "properly interpreted" the term "public lands" in that context, *ibid.*; and that the Court "should preserve the *Katie John* precedents" for "prudential and policy reasons," including because "in the nearly twenty years since the federal government assumed management of subsistence activities on federal lands in Alaska, rural Alaskans have depended on this subsistence priority to effectuate [the values embodied by subsistence] and preserve their way of life," *id.* at 31-32.

Those same considerations should persuade this Court to deny review here. Rural subsistence communities in Alaska have long depended on subsistence fishing in navigable waters as part of their traditional way of life. Pet. App. 31a-32a; see *Katie John II*, 247 F.3d at 1036 (Tallman, J., concurring in the judgment). And in the years since *Sturgeon*, reliance on the *Katie John* trilogy has only deepened. If there was no sound reason to disturb the status quo when this Court decided *Sturgeon*, there is likewise no sound reason to do so now, 30 years removed from the court of appeals' decision in *Katie John I*.

b. This Court's intervention is especially unwarranted given Congress's responses to *Katie John I* in the 1998 and 1999 Appropriations Acts, and given the continuing possibility of legislative action to modify the current regulatory regime. The court of appeals observed in *Katie John I* that, "[i]f the Alaska Legislature were to amend the state constitution or otherwise comply with ANILCA's rural subsistence priority, the state could resume management of subsistence uses on public lands including navigable waters." 72 F.3d at 704. The court

also emphasized that, "[i]f Congress were to amend ANILCA, it could clarify both the definition of public lands and its intent." *Ibid.* The court concluded that "[o]nly legislative action by Alaska or Congress will truly resolve the problem." *Ibid.*

Consistent with the court of appeals' suggestion in *Katie John I*, Congress first gave Alaska the opportunity to implement its own Title VIII program by pausing federal regulation for several years. See p. 8, *supra*. But Congress also decided that the Secretaries' regulations should take effect if Alaska did not assume responsibility for Title VIII. See p. 9, *supra*. The 1998 Appropriations Act provision implementing the moratorium on federal regulation referenced the decision in *Katie John I* by name and summarized its core holding, making clear that Congress understood what federal regulation would mean: application of the rural subsistence priority to "navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior." 1998 Appropriations Act § 316(b)(3)(B), 111 Stat. 1592. After Alaska did not enact its own Title VIII program, Congress let the moratorium expire, and it provided $11 million to implement the Secretaries' regulations on navigable waters. See p. 9, *supra*.

Those appropriations acts show that Congress was aware of *Katie John I*'s interpretation of "public lands" as that term is used in Title VIII, and Congress has taken no action to disapprove that interpretation during the 30 years since that decision. Not only can the appropriations acts be read to "signal[] [Congress's] approval of *Katie John I*'s interpretation of 'public lands' for purposes of Title VIII," Pet. App. 4a, but they also reinforce *Katie John I*'s observation that any future efforts to address the issue should be "legislative," not

"judicial." 72 F.3d at 704. And even now, Congress of course retains the authority to modify the current regulatory regime if it believes that intervening developments warrant that result.

2. Contrary to petitioners' contention (Pet. 25-34), the court of appeals correctly concluded that the *Katie John* trilogy is not clearly inconsistent with this Court's decision in *Sturgeon*. A court of appeals panel is bound by prior circuit precedent unless that precedent "is 'clearly irreconcilable' with intervening higher authority." Pet. App. 4a (citation omitted). The question before the court of appeals in this case therefore was whether *Katie John I*'s interpretation of the term "public lands" for purposes of Title VIII is clearly irreconcilable with *Sturgeon*, in which the Court construed the term "public lands" in Section 103(c).

The court of appeals correctly held that no such clear inconsistency exists. Pet. App. 4a. Although ANILCA's "definition of 'public lands' applies to both [Section 103(c)] and to Title VIII," *id.* at 25a (quoting 16 U.S.C. 3102), the presumption that a word "bear[s] the same meaning throughout a text" "readily yields to context," *ibid.* (citations and internal quotation marks omitted). Here, "the decisions [in *Katie John I* and *Sturgeon*] can be reasonably harmonized on the ground that the distinct context and statutory objective of Title VIII call for an interpretation of 'public lands' that includes navigable waters, where subsistence fishing 'has traditionally taken place.'" *Id.* at 4a (citation omitted). The court below also observed that the 1998 and 1999 Appropriations Acts can be seen as evidence that "'Congress accepted and ratified' *Katie John I*'s reserved water rights interpretation." *Id.* at 35a (citation omitted).

Nothing in *Sturgeon*'s reasoning precludes the court of appeals' approach. The Court in *Sturgeon* questioned whether "it is even possible to hold 'title,' as ANILCA uses the term, to reserved water rights." 587 U.S. at 43 (quoting 16 U.S.C. 3102(2)). But the Court did not decide the issue. *Id.* at 43-44. Instead, the Court held that even if the United States could hold "title" to reserved water rights in navigable waters, those rights would not justify applying the National Park Service's hovercraft rule, which is not the kind of rule that implicates such rights. See *id.* at 44-45. Title VIII's rural subsistence priority, however, presents a different question. When it established the Yukon Delta National Wildlife Refuge in Title III of ANILCA, Congress directed that the Refuge "shall" be managed to provide "the opportunity for continued subsistence uses by local residents." ANILCA § 303(b)(7)(B)(iii), 94 Stat. 2393. Accordingly, Title VIII's rural subsistence priority can be understood as implicating the purpose of a reservation (and its accompanying water rights) in a way that the hovercraft rule did not.

The Court's interpretation of the term "public lands" in Section 103(c) therefore does not necessarily control the interpretation of that term in Title VIII. Indeed, Alaska itself told this Court in *Sturgeon* that the two interpretive questions are distinct. See pp. 18-19, *supra*. And the Court declined to "disturb" the *Katie John* trilogy's interpretation of Title VIII. *Sturgeon*, 587 U.S. at 45 n.2.

3. Petitioners are likewise wrong in asserting (Pet. 34-35) that the decision below conflicts with the Alaska Supreme Court's decision in *Totemoff* v. *State*, 905 P.2d 954 (1995), cert. denied, 517 U.S. 1244 (1996). In *Totemoff*, Alaska prosecuted a rural hunter for locating and shooting a deer at night through the use of a spotlight

—a practice that state law prohibits. The defendant shined his spotlight and fired his gun from a boat in the marine waters of Prince William Sound while the deer stood on a federally owned island. *Id.* at 957. The defendant contended that he was engaged in "customary and traditional" subsistence hunting practices, *ibid.*, and that ANILCA therefore preempted the state regulation at issue. The state supreme court rejected that contention, explaining that Alaska retains its authority to enforce state hunting regulations on federal lands except to the extent those regulations actually conflict with federal law. *Id.* at 958-960. The court concluded that the State's anti-spotlighting rule was not preempted because there was no conflict between that rule and ANILCA's federal subsistence program. See *id.* at 960-961.

The Alaska Supreme Court went on to opine that "[e]ven if" ANILCA had generally preempted the State's anti-spotlighting regulation, the prosecution still would have been proper because, in the court's view, and contrary to the *Katie John* trilogy, a boat in navigable waters was outside ANILCA's geographic reach. *Totemoff*, 905 P.2d at 961; see *id.* at 961-968. That subsequent discussion of ANILCA, however, was not necessary to the disposition in *Totemoff*. And in the 30 years since *Totemoff*, the Alaska Supreme Court has not invoked that discussion as a ground for deciding a case.

In any event, the Alaska Supreme Court's 1995 decision in *Totemoff* predated both (a) the 1999 federal regulations that defined the geographic scope of the subsistence-use priority to include certain navigable waters, and (b) the federal appropriations acts that expressly allowed those regulations to go into effect if Alaska did not adopt its own program to regulate subsistence hunting and fishing. Because the *Totemoff* court had no op-

portunity to consider those developments, the inconsistency between the *Totemoff* dicta and the Ninth Circuit's decision here does not warrant this Court's review. Indeed, Alaska previously raised *Totemoff* in its petitions for writs of certiorari seeking review of *Katie John I* and *Katie John III*, and those petitions were denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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