

# SUBSISTENCE

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## HEARING

BEFORE THE

### COMMITTEE ON

## ENERGY AND NATURAL RESOURCES

### UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

TO

EXAMINE WILDLIFE MANAGEMENT AUTHORITY WITHIN THE STATE OF  
ALASKA UNDER THE ALASKA NATIONAL INTEREST LANDS ACT AND  
THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

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## **SUBSISTENCE**

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**THURSDAY, SEPTEMBER 19, 2013**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:36 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden, chairman, presiding.

### **OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON**

The CHAIRMAN. The purpose of this morning's hearing is to review the management of fish and wildlife in the State of Alaska under the Alaska National Interest Lands Conservation Act, commonly known as ANILCA, and the Alaska Native Claims Settlement Act.

I'm particularly pleased that Senator Murkowski asked that we hold this hearing. This topic is of great importance to her constituents. We heard a lot about it during our visit in Alaska, and I'm very pleased that Senator Murkowski has made this a priority for the committee.

While the role of the Federal and State management of fish and wildlife resources may be an issue that the rest of the country has little knowledge about, in a State like Alaska, with over 60 percent of its lands under the jurisdiction of the Federal Government, it is clear this is a matter of great importance and it has certainly generated strong feelings, especially among Native Alaskans and rural residents who depend on hunting and fishing for their food.

I also understand there are unique management and legal issues involved as a result of the subsistence language in ANILCA and a long line of Federal and State court decisions and any changes to the existing management authorities would be quite challenging.

In my home State of Oregon, we have a number of issues regarding the salmon runs on the Columbia and the Klamath Rivers. I understand that the issues in Oregon are different than those facing the people of Alaska, but the importance of having a healthy and sustainable fishery is something that we Westerners certainly understand and I have supported in my home State of Oregon.

Now, we look forward to learning more about this issue this morning, to work with both of the Alaska Senators to explore in greater detail some of the ideas that I hope will come out of the hearing.

The CHAIRMAN. With that, I'd like to recognize my friend and colleague, Senator Murkowski, for her opening remarks.

**STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR  
FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. We've known one another for a long while. I think you know me as Lisa or Senator Murkowski or colleague, but for some here in the room, they know me by my adopted name when I was adopted as a member of the Deisheetaan Clan several years back, Aan Shaawatk'I, and the Tlingit translation of Aan Shaawatk'I is Lady of the Land.

It is probably a title or an honor that exceeds all others of which I have been really honored with. It is a reminder to me that the responsibilities that I have to the people of the State of Alaska, so many of them, come back to our lands, very special to each and every one of us.

So the opportunity today to have a discussion, to begin a dialog about what happens with the management of our lands, the management of our lands that sustain our people, is really quite significant.

So I thank you, Mr. Chairman. I know that this is a very State-specific issue, and the fact that we are holding this as part of a full committee I think is indicative of your willingness to recognize the high priorities that are assigned in specific states, the high priority that we see as it relates to the issue of subsistence in Alaska. So thank you for accommodating my request.

To those, many of you Alaskans who are gathered here in the room today, thank you for being here this morning, thank you for coming all the way to Washington, DC.

I know that for some of you this is the end of moose-hunting season. I had a group of whalers in my office yesterday who were itching to get back because there was still time to go out and get yet another whale for the community of, I think, Barrow had not yet gotten all of theirs.

Our reality is this is the time of gathering for so many of our people, and to take the time to come to Washington, DC, while your families, your friends, your neighbors are engaged in a time of subsistence activity preparing for winter is greatly appreciated.

Now, some have asked about why we are having a subsistence hearing in the energy committee, and I think it's important to remind folks that it is this committee that has jurisdiction over ANILCA, the Alaska National Interest Lands Act, and over ANCSA, the Alaska Native Claims Settlement Act.

Mr. Chairman, I think it's important to point out that, to my knowledge, a hearing of this nature has never occurred in this committee. Even though this is the committee of jurisdiction, it hasn't occurred in this committee since the enactment of these statutes decades ago.

So with the passage of the statutes nearly 40 years ago now, and the history that has unfolded since then, I would suggest that it's long overdue that we examine whether or not these statutes reflect our priorities as Alaskans today.

Now, prior to this full committee hearing in Washington, DC, I have held two public meetings in the State this past year on the issue of subsistence. I was out in the Bethel area and I was out in the Ahtna Region.

The goal of these meetings was for me to listen firsthand, to gather testimony directly from residents of rural Alaska on these issues, understanding that not everyone can make it to Washington, DC.

Even the many of you who made it here to Washington, DC, will not be invited to testify at the table. Given the relative format and the formal format that we have here for Senate hearings, it just simply doesn't afford everyone who wishes to to be on the record to do that. So the purpose of those very public roundtables and listening sessions was to gather as much as we possibly can.

In both of those public meetings that we held, there was much discussion about what subsistence really means. Do we use the word subsistence or do we refer to customary and traditional use?

One of my strong takeaways was that, at the core of the discussion, subsistence is about a way of life, pretty basic, pretty elemental. People, our Native people around the State identify with a food source, and perhaps, unlike any others in the country, when you think about the Gwich'in people who identify themselves as the caribou people or the Inupiat up north who identify so closely and wholly with the whale. So many identify themselves with salmon, with moose, as they do in the Ahtna Region, Athabaskans.

So to identify your, not only your cultures, but, really, your spirituality with your food source, I think, is something that is important when we talk about subsistence because it is more than just putting food on the table.

When we were in Bethel, I heard from many folks who were very troubled, very upset by the low Chinook salmon runs and the subsistence fishing closures that came along with those.

The meeting that was in Glenallen up in the Ahtna Region, the issues of priority were different than in the Y-K Delta, but the passion that people spoke to was much the same, and, Mr. Chairman, you note that. The people in your State, your region, care about what is happening with management of our salmon resources.

So as we deal with these issues, I think it's important to recognize it doesn't make any difference what part of the State you are from, the passion really is very similar. Alaska Natives, who continue to hunt and fish in their traditional and customary manners, face regulatory and management challenges under the current structure.

In the Ahtna Region, we heard so many residents speak about the issue of trespass that's occurring on their lands. Ahtna community members on the road system experience what they referred to as combat hunting—one elder put it that way—as outsiders compete for the limited hunting opportunities in the region.

Mr. Chairman, I do think it is appropriate for me to acknowledge on the record my thanks to all those who did speak at our public meetings and enter into the record all of those statements that we collected, make them part of this official energy committee.

The CHAIRMAN. Without objection, that's ordered.

Senator MURKOWSKI. Thank you, Mr. Chairman.

The dual management and differing management regimes on State and Federal land causes both confusion and frustration for so many rural Alaska residents.

The Federal Subsistence Board was created through regulation and continues to be a point of contention among Alaskans.

We recognize in Alaska that the Federal Government fails to prioritize land-management decisions for subsistence to ensure healthy and abundant populations for consumption. A very direct example of this—and I think we'll hear from Mr. Fleener on it—is the situation out on Unimak Island with the caribou population. Unimak is located out in the Alaska Maritime National Wildlife Refuge.

When the State attempted to act to ensure that the caribou populations were not going to be wiped out for subsistence purposes, the Fish and Wildlife Service blocked access to the State and stated publicly that natural selection is the best course. This, it's not an acceptable outcome here.

I mentioned before the issues of trespass. How can we work together to find ways to address these? How do we find a way to ensure that residents will be able to continue to hunt in their customary and traditional manner?

Mr. Chairman, I think it's fair to say that, over the years, there has been heated debate. That's probably a polite way to put it, but subsistence and wildlife management has generated a great deal of contention and frustration and really turmoil at times, and it has been evident back home. It's been evident here in Washington, DC.

I don't have any illusions that by holding this hearing today we're going to solve, with one fell swoop, the issues as they relate to management of our wildlife in this State, but my goals, really, in advancing this hearing, are to get this discussion started again, bring the stakeholders together from the government, from the Native community to educate my colleagues here on the Energy Committee and within the Senate to find specific areas of agreement where we can move forward and address some targeted fixes.

We've done a few very, very small things. We've got the Glacier Bay gull-egg harvest. We're moving forward on the Tonga subsistence use cabin act. We've got the duck-stamp provision, really quite small in scope, very small in scope.

There's so much that I think we recognize needs to be done, but it can't be done unless we're willing to sit together, listen to one another, engage in a respectful manner, identify the flaws in the laws and figure out how we can move together truly as one people with a common goal in mind.

So with that, Mr. Chairman, I look forward to the testimony from those who have joined us here today, not only our government officials, but the many friends who will step forward and provide their words.

Again, my thanks to you for being a good partner in this and listening.

The CHAIRMAN. Senator Murkowski, you make a number of important points, and I'm struck by some parallels that we all share when we're from the West.

What we know is to do this job properly, as it relates to Western resource issues, as you touched on, you go home, you spend a lot of time listening to people, and then we have these official hearings—and I see many from your home State here—and you listen

some more. That's really the only way you can do Western resource issues responsibly.

I'm struck, again, by the parallels, because, in a few hours, like you, I'm going to sprint to the airport, and I'm going to go to the Klamath Basin and Klamath Falls where we're right on the cusp, after all those citizens have worked and worked and worked trying to cut through some of the old battles with respect to resources and have water and healthy fish runs and help for our farmers, all the issues that we deal with in the West.

Because of their good work at home in the Klamath Basin, we're on the cusp of what I think could be a historic agreement as relates to water and healthy fish runs and eggs and the like.

Listening to your statement, I think we know that the formula is listen at home, listen here, try to bring everybody together. People always walk away.

Senator Murkowski and I say this on resource issues, you usually can't get everything you want. You usually can't get everything you deserve, but with Western resource issues, where people work together, the way I saw folks in Alaska do, in the way I'm going to see once again in the Klamath Basin, people can get what they need and—

Senator MURKOWSKI. Isn't there a song about that?

The CHAIRMAN. I guess. Senator Murkowski is also my cultural advisor on things like music.

But part of what we need to do in the West is we need to have sustainable fish runs. What works in Alaska may not necessarily be the strategy for Oregon. That may not be the strategy for another part of the country.

But we're here because Senator Murkowski thought it was important for us to listen and learn, and I do think it's part of the strategy we have in the West to do resource issues well. So I'm really glad your constituents are here and great to be teaming up again.

So let's go right to our first panel. Mr. Gene Peltola, Assistant Regional Director, Office of Subsistence Management at the Fish and Wildlife Service in Alaska.

Ms. Beth Pendleton, Regional Forester, Alaska, Department of Agriculture, the Forest Service.

Craig Fleener, Deputy Commissioner, Alaska Department of Fish and Game in Juneau. I believe, Mr. Fleener, yes, you are accompanied by Mr. Douglas Vincent-Lang, who's also with Fish and Game in Juneau.

So we'll welcome all of you. We'll make your prepared remarks a part of the record. It has become part of the lore around here that we do everything we possibly can to get you to summarize your remarks. We'll make your prepared remarks a part of the record, every single word.

I know Senator Murkowski has a number of questions, and I'm going to support her in the effort to build this record. So let's begin with you, Mr. Peltola.

**STATEMENT OF GENE PELTOLA, ASSISTANT REGIONAL DIRECTOR, OFFICE OF SUBSISTENCE MANAGEMENT, FISH AND WILDLIFE SERVICE, ALASKA REGION, DEPARTMENT OF THE INTERIOR**

Mr. PELTOLA. Chairman Wyden and Senator Murkowski, I am Gene Peltola, Jr., the Assistant Regional Director for the Office of Subsistence Management with the United States Fish and Wildlife Service in Alaska Region.

I'd like to tell you a little bit about myself before I get into a few program specifics. I am a Tlingit Indian and Yup'ik Eskimo born and raised in Bethel, Alaska. I have lived a subsistence lifestyle the majority of my life.

Until about 6 weeks ago, I was the Refuge Manager at the Yukon Delta National Wildlife Refuge also in Bethel, Alaska, and also the Federal In-Season Fisheries Manager for the Kuskokwim Region. I'm a nearly 30-year service employee and a former federally qualified user.

I've served on Alaska Native Corporation Board of Directors. I've been an Alaska Native Corporation officer, and I've served in the capacity as a vice mayor in a municipality in Western Alaska.

I thank you for the opportunity to come before this committee and present a perspective on the Federal Subsistence Program.

Alaska Native peoples have relied on subsistence harvest for thousands of years. They have relied on natural resources for food, shelter, to make clothing and handicrafts, but, more importantly, as a means of cultural identity and a mechanism by which a livelihood is maintained. More recently, the non-Native rural user has been added to the equation.

Management of subsistence harvests and natural resources is very complicated. It is governed by many laws that are not always in agreement, at times have conflicting mandates and may have differing eligibility criteria.

For example, marine mammal harvests are governed by the Marine Mammal Protection Act. Under the act, the coastal-dwelling Native may harvest marine mammals for the creation of authentic Native handicrafts or as a food source.

Another law, the Migratory Bird Treaty Act, governs the harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska.

Subsistence management of land mammals, fisheries and upland birds is governed by the Alaska National Interest Lands Conservation Act, which allows for a subsistence preference for rural residents of Alaska.

I should also note that State of Alaska law governs the management of subsistence harvests on Alaska Native Corporation and other private lands, including Native allotments and State lands.

The Federal Subsistence Management Program began in 1990, after the Alaska Supreme Court ruled that rural subsistence priority required under ANILCA violated the State constitution.

Federal management of fisheries was initiated after the Ninth Circuit Court of Appeals ruled in a case commonly referred to as the Katie John Case.

The program coordinates management of subsistence resources and promulgates the regulation of subsistence use by rural Alaskans on millions of acres of public lands.

As I previously mentioned, subsistence management in Alaska is very complex. I'd like to highlight an example of this complexity for my time as the Refuge Manager, Yukon Delta National Wildlife Refuge.

I was the Federal In-Season Manager for Fisheries along the Kuskokwim drainage. The Kuskokwim Chinook run is one of approximately 12 populations in the State of Alaska which has been experiencing reduced returns over the last several years. This salmon run, like numerous others throughout the State, is managed in conjunction with the Alaska Department of Fish and Game.

As in-season management occurs, the option, we, as managers, are presented with are to assimilate a State action, act concurrently or take independent action.

Both the State and Federal Governments have the same hierarchy with regard to restricted access to a resource. The first restrictions are to commercial users, then sport and finally the subsistence user.

Despite the similar hierarchy, differing mandates between the parties involved may yield a different management action. Fortunately, this has only occurred 8 times since the inception of the Federal Fisheries Program in Alaska, 4 independent management actions occurring along the Yukon and an additional 4 along the Kuskokwim River.

There are many hundreds of management actions taken with regard to the Federal Subsistence—Federal Fisheries Management Program have had a concurrent or similar State action.

In closing, subsistence management in Alaska is not an exact science. It's not perfect, and it is very complex. We must balance the differing mandates and policies of the parties involved, yet remain true to our charge of providing for the continued subsistence use by local rural residents.

Throughout my nearly three-decade natural-resource career, I have been exposed to numerous individuals who are very passionate about subsistence management. I am confident that through their passion and capabilities we will ensure a sustainable future for subsistence in Alaska.

I'd like to thank the committee for allowing me this opportunity to testify and be willing to address any questions I may be able to.

[The prepared statement of Mr. Peltola follows:]

PREPARED STATEMENT OF GENE PELTOLA, ASSISTANT REGIONAL DIRECTOR, OFFICE OF SUBSISTENCE MANAGEMENT, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Good morning Chairman Wyden, Ranking Member Murkowski, and Members of the Committee. I am Gene Peltola, Assistant Regional Director for the Office of Subsistence Management, with the U.S. Fish and Wildlife Service in Alaska. Thank you for the opportunity to testify before the Committee regarding harvest of subsistence resources on federal public lands in Alaska under the Alaska National Interest Lands Conservation Act (ANILCA).

The mission of the U.S. Fish and Wildlife Service is to work with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We take management actions to ensure that these natural resources are available now, and for future generations of Americans.

In Alaska, we have a special responsibility is to ensure these resources are available now and in the future for rural Alaskans who rely on subsistence harvest.

#### ALASKA SUBSISTENCE OVERVIEW

The customary and traditional harvest and use of natural resources for food, shelter, clothing, transportation, handicrafts, and trade, commonly called “subsistence,” has a long history in Alaska. Alaska Native peoples have depended on subsistence for thousands of years. In more recent history, non-Native peoples living in rural Alaska have come to rely on natural resources for their livelihoods as well.

The management of subsistence harvests of natural resources is complicated. It is governed by many laws and statutes that are not seamless in their mandates, and have differing provisions for who is eligible to harvest. For example, management of subsistence harvest of marine mammals is governed by the Marine Mammal Protection Act (MMPA). Under the MMPA, coastal dwelling Alaska Natives may harvest marine mammals for subsistence purposes or for the creation and sale of authentic native handicrafts or articles of clothing. Management of subsistence harvest of migratory birds is governed by the Migratory Bird Treaty Act (MBTA). The MBTA was amended to allow for spring/summer subsistence harvest of migratory birds by Alaska Natives and permanent resident non-natives with legitimate subsistence hunting needs living in designated subsistence hunting areas in Alaska.

Within the MBTA Protocol Amendment of 1996, Congress charged the Secretary of the Interior to promulgate annual regulations for migratory bird subsistence hunting in Alaska for the purposes of conserving migratory birds and perpetuating subsistence hunting customs and cultures. Congress also provided Alaska Natives a meaningful role in management decisions affecting the customary subsistence hunting opportunities. The MBTA Protocol Amendment also invited the State of Alaska to participate in a management body that included Alaska Natives and the Secretary of the Interior, represented by the U.S. Fish and Wildlife Service. This led to the creation of the Alaska Migratory Bird Co-Management Council (AMBCC).

Subsistence management of land mammals, fisheries and upland birds is governed by Title VIII of ANILCA, which allows for a subsistence preference for rural Alaskans. In addition, Alaska State laws govern management of subsistence on State lands and on private lands, including Alaska Native Corporation lands.

#### HISTORICAL BACKGROUND

ANILCA is a wide-ranging law that established 106 million acres of federal lands as conservation units, including national wildlife refuges, national parks, preserves, national monuments in the national forest system and wild and scenic rivers, thereby enlarging federal holdings dedicated to conservation in Alaska to more than 131 million acres. Eighty percent of the lands in the National Wildlife Refuge System are in Alaska and sixty-five percent of all National Park Service lands are in Alaska. Fifty-six percent of all National Wilderness Preservation System lands (within national parks, national wildlife refuges, and national forests) are in Alaska.

Recognizing the unique characteristics of Alaska, and the unique history of subsistence users in Alaska, Congress also provided in Title VIII of ANILCA, a priority for rural subsistence uses on federal public lands in Alaska—well over 230 million acres comprising over 60 percent of the State. It is important to note that even though subsistence is a priority use identified in ANILCA, maintaining healthy populations of fish and wildlife is the top priority. ANILCA fulfilled the intent of Congress after passage of the Alaska Native Claims Settlement Act to provide for a subsistence priority on federal public lands. That priority was provided to rural residents, rather than to Alaska Natives, an issue repeatedly raised by the Alaska Native community since the law passed.

The State of Alaska managed subsistence on federal lands until 1989, when the Alaska Supreme Court ruled that the rural residency preference required by ANILCA violated the equal access clause of the Alaska Constitution. As a consequence, from 1992 to the present, the federal government has engaged in subsistence management on federal public lands, and assumed additional subsistence responsibilities for management of subsistence fisheries in 1998.

In 2009, the Secretary of the Interior conducted a review of the federal subsistence management program. The intent of the review was to “ensure that the program is best serving rural Alaskans and that the letter and spirit of Title VIII are being met.” As a result of the review, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, made recommendations for changes which were adopted by federal regulators and administrators, or are in the process of being adopted.

## THE FEDERAL SUBSISTENCE MANAGEMENT PROGRAM

The Secretaries of the Interior and Agriculture delegated authority to manage the subsistence priority use on federal public lands to the Federal Subsistence Board (FSB). The FSB is comprised of eight members, including: the Regional Directors of the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Indian Affairs; the State Director of the Bureau of Land Management; and the Regional Forester of the U.S. Forest Service. Three public members who represent rural subsistence users are also members of the board, and one serves as the FSB's chair. These board members are appointed by the Secretary of the Interior, with the concurrence of the Secretary of Agriculture.

The Federal Subsistence Management Program is multi-faceted. It involves five federal agencies, a federal and public-member decision-making board, 10 Subsistence Regional Advisory Councils, and partnerships with Alaska Native and rural organizations as well as with the State of Alaska.

The Office of Subsistence Management, administratively housed in the U.S. Fish and Wildlife Service, is responsible for facilitating and providing administrative and technical support to implement the program. In addition, the U.S. Fish and Wildlife Service provides fisheries expertise that focuses on in-season management and conducting biological assessments and monitoring to ensure that subsistence harvests are consistent with conservation goals. The U.S. Fish and Wildlife Service is also responsible for extensive outreach and tribal consultation responsibilities. Other agencies within DOI and the US Forest Service, represented on the Federal Subsistence Board, have similar conservation, enforcement, outreach, and consultation responsibilities.

The Subsistence Regional Advisory Councils are a unique feature of federal subsistence management. Each of these councils represents a region of the state. The councils have the authority to develop proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife. The councils hold two or more public meetings every year to gather local information, and make recommendations to the Federal Subsistence Board on subsistence issues. The board seriously considers council recommendations, and routinely defers to the local wisdom of these councils in making decisions about subsistence regulations affecting the councils' regions.

In addition to promulgating subsistence regulations, the Federal Subsistence Board contributes substantially to fisheries knowledge by funding research on the status of fish stocks, subsistence harvest and use patterns, and the collection and analysis of traditional knowledge.

## CURRENT ISSUES

The Secretaries of the Interior and Agriculture recommended that the Federal Subsistence Board revisit the process for determining rural status in Alaska. The current process for determining rural status may not accommodate demographic, economic and infrastructural changes in Alaska. The Federal Subsistence Management Program is currently involved in a review of the rural determination process, starting with public input, and will provide the Secretaries with a report and recommendations in 2014.

The federal program is also involved in a number of pressing natural resource issues. Prominent among these are declining Chinook salmon stocks within the Yukon and Kuskokwim River Drainages.

The 2013 Chinook salmon returns on both the Yukon and Kuskokwim Rivers are among the worst on record. Reasons for the unprecedented low returns are not known, although ocean conditions, by-catch in high seas fisheries, and in-river harvests are likely contributing factors. Rural Alaskans are highly dependent on salmon runs, and Chinook salmon are an especially valued and important resource. Subsistence harvests have declined in recent years, consistent with reduced runs and commensurate restrictions on harvests. In preparation for the 2013 season, the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game worked throughout the year to ensure local people have a meaningful voice in management. The agencies held numerous public meetings, tribal consultations, and teleconferences. Nonetheless, the 2013 Chinook returns were very poor, escapement (the number of fish reaching the spawning grounds to provide for future returns) goals have not been met, and subsistence and other users have been adversely affected. Preliminary indications are that the Kuskokwim River Chinook salmon escapement may be the lowest on record and none of the tributary escapement goals will be achieved. On the Yukon River, despite the season-long restrictions on the U.S. portion of the river, the Canadian border passage and escapement goal for Chinook

salmon will again not be met this year. This has consequences for the future of the run, as 50 percent of U.S. harvests are of Canadian origin.

#### SUCSESSES AND CHALLENGES

Since 1990, the Federal Subsistence Program has ensured that rural residents in Alaska have the opportunity to pursue a subsistence way of life, as envisioned by Congress and enacted in ANILCA. Our success has been demonstrated by our ability to hear concerns of the user groups and craft regulations that meet subsistence needs while ensuring sustainable resources. We are balancing the demands of the subsistence user with multiple legal mandates, and other public interests. Decisions are carefully weighed, with public involvement, to consider harvest limits that comply with federal and state laws and international treaties while providing subsistence use whenever possible.

Challenges regarding sustainable resource management are compounded by multiple jurisdictions (state, federal, international) governing the same resources. Management challenges shift with Alaska's changing economy, demographics, and infrastructure. Alaska is experiencing decreased runs of Chinook salmon, changes in the migration patterns of caribou, and changes in the arrival date of migrating birds to their breeding grounds. There are also changes to habitat such as the salinity of water and the successional stages of vegetation. The uncertainty of current and future effects of climate change also add to the complexity of resource management. Although future challenges are unknown, we do know they will occur and we must be responsive to them if we are to be successful in conserving fish, wildlife and their habitat for current and future generations.

#### CONCLUSION

The Department of the Interior thanks the Committee for its interest in this important issue and for its leadership in protecting our nation's natural resources. Achieving ANILCA's intent to conserve natural resources in Alaska for the long term, and to ensure that robust subsistence opportunities are also preserved, is a key component of the broader goal of maintaining America's wildlife heritage for future generations. We welcome the opportunity to work with the Committee on subsistence management issues and are happy to provide additional information at the request of the Committee. This concludes my testimony and I am happy to answer any questions the Committee may have.

The CHAIRMAN. Very good. Ms. Pendleton.

#### **STATEMENT OF BETH PENDLETON, REGIONAL FORESTER, ALASKA REGION, FOREST SERVICE, DEPARTMENT OF AGRICULTURE**

Ms. PENDLETON. Good morning, Chairman Wyden and Senator Murkowski, and thank you for inviting me here today to testify about the Federal Subsistence Management Program in Alaska.

I'm Beth Pendleton, and, as the Regional Forester, I have a delegated authority by the Secretary and through the Chief of the Forest Service to act on the Secretary's behalf as it relates to the state-wide implementation of Title VIII of ANILCA.

Subsistence or customary traditional hunting, fishing and gathering is both the livelihood and a way of life for many rural residents.

In ANILCA, Congress found that subsistence way of life by rural Alaskans is essential to their physical, economic, traditional, cultural and social existence.

Although many Alaska Native people object to the use of the term subsistence, as do I—because, to many, it suggests just getting by—I'll use the term, since that is what is used in ANILCA.

My statement will emphasize the Forest Service role and discuss the program review conducted by the Secretaries of the Interior and Agriculture in 2009 and 2010.

My detailed testimony has been submitted to the committee.

For Alaska, the Forest Service has a substantial role in determining population levels and in developing appropriate harvest regulations for wildlife and fish on the national forests.

Sustainable management requires accurate and timely information about the abundance, health and distribution of fish stocks and wildlife populations that contribute to the subsistence use by rural residents. Much of this information is developed through Forest Service-issued competitive contracts with tribes and other Native and local organizations.

In addition to providing essential biological data, these contracts create local jobs, build capacity within communities, incorporate traditional ecological knowledge and involve subsistence users in meaningful stewardship roles.

For example, in Hydaburg in Southeast Alaska, there are 5 fisheries monitoring jobs that employ community members through the subsistence program.

In my experience, the 10 Regional Advisory Councils are why this program works so well. The councils are made up of citizen representatives appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

The councils represent a bottom-up management where local people have a real and substantial role in guiding this program. For example, the Southeast Alaska Regional Advisory Council Subsistence Harvest Recommendations for Sitka Black-Tailed Deer on Prince of Wales Island ensures a rural priority, yet continues to allow for use by and through others for sport hunting.

Next, I'd like to talk a little bit about the Forest Service delivery of the program. Since fiscal year 2000, Congress has had an appropriation line item for the Forest Service Subsistence Program. Funding has ranged from a high of \$5.9 million in 2005 to the current lowest level of approximately \$2½ million.

With those funds, the Forest Service establishes a regulatory program, supports operations of the Regional Advisory Councils, monitors populations, and, when possible, undertakes education and enforcement activities. It has become increasingly difficult to deliver the subsistence program on National Forest System lands as those funds have decreased.

Finally, I'd like to speak just briefly on the Secretary's review. I want you to know that, among other things, the Secretary has directed increasing the size and representation on the Federal Subsistence Board to include two subsistence users and expand deference provided to the Regional Advisory Councils.

In the year since we've added the two board members, Tony Christianson from the community of Hydaburg and Charlie Brower from the community of Barrow, and given that expanded deference to the RACs, in my view, we have substantially increased accountability to our rural communities.

Another area that the Federal program has vastly improved is in our tribal consultation. We have developed a tribal consultation policy in collaboration with Federal managers and tribal representatives.

This concludes my statement, and I would be happy to answer any questions that you might have. Thank you.

[The prepared statement of Ms. Pendleton follows:]

PREPARED STATEMENT OF BETH PENDLETON, REGIONAL FORESTER FOR THE ALASKA REGION, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman, Ranking Member Murkowski and Members of the Committee, thank you for inviting me here today to testify about the Federal program in Alaska that provides a rural priority for the customary and traditional harvesting of fish and wildlife on federal public lands, otherwise known as subsistence. As the Regional Forester, I am delegated authority by the Secretary of Agriculture, through the Chief of the Forest Service, to act as the Secretary for all aspects associated with the implementation of Title VIII of the Alaska National Interest Lands Conservation Act, also known as ANILCA.

The Mission of the Forest Service is to sustain the health, diversity and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. Wildlife and fisheries management under ANILCA contribute to the Forest Service fulfilling its mission in Southeast and South Central Alaska.

SUBSISTENCE

Subsistence, or customary and traditional hunting, fishing and gathering, is both the livelihood and a way of life for many rural residents of Alaska. It is protected by ANILCA, as signed into law in 1980. Although many Alaska native people object to the use of the term 'subsistence,' as do I, because to many it suggests 'just getting by,' I will use the term since it is used in ANILCA. The Federal jurisdiction over subsistence hunting and fishing extends to approximately 60 percent of the State's land base, including the Tongass National Forest in Southeast Alaska and the Chugach National Forest in South-central Alaska.

In ANILCA, Congress found that continuation of the subsistence way of life by rural Alaskans is essential to their physical, economic, traditional, cultural and social existence. This applies not only to Alaska Native people, but to non-Native rural residents as well. Hunting and fishing reflect vital relationships of people and land that are woven into the history, cultural identity, and community life of rural Alaskans. As well, the lack of roads in Alaska means that many rural people have little or no access to grocery stores, and even if they did, those foods are likely to be unaffordable and lacking in variety.

THE ESTABLISHMENT OF THE FEDERAL ROLE FOR SUBSISTENCE MANAGEMENT

Prior to late 1989, the State of Alaska had management authority over subsistence, sport, and commercial uses of Alaska's wildlife and fish resources across all lands. Eligibility for subsistence use under State of Alaska management, based on the concept of rural preference, was consistent with the Federal requirement in Title VIII of ANILCA. In 1989, the Alaska State Supreme Court ruled in *McDowell v. Alaska* that the rural priority for subsistence use violated the Alaska State Constitution. Mr. McDowell had challenged whether the state could give a subsistence priority only to rural people when the Alaska Constitution calls for common use of fish and wildlife resources by all Alaskans. The court found in Mr. McDowell's favor, which placed the State out of compliance with ANILCA. Pending the State's resolution of its constitutional conflict, the Federal government, since 1990, has administered the rural subsistence priority for wildlife resources on nearly all Federal lands in Alaska.

Federal responsibility to manage subsistence fisheries was subsequently added following the Ninth Circuit Court of Appeals decision in *Alaska v. Babbitt*, commonly referred to as the *Katie John* case, in 1995. That decision resulted in Federal management of subsistence fisheries in waters associated with most federal lands and added significant responsibility and cost to Federal subsistence management. Federal subsistence fisheries regulations became effective October 1, 1999.

No legislative or judicial solution is expected in the foreseeable future that would enable the State of Alaska to comply with ANILCA provisions and to thereby resume management of subsistence hunting and fishing on federal public lands and waters.

FEDERAL SUBSISTENCE MANAGEMENT

The Secretaries of the Interior and Agriculture are legally bound to manage fish and wildlife for the rural subsistence priority on Federal land and water because the State of Alaska is not able to do so in accordance with the provisions of ANILCA. To that end, the Secretaries created the Federal Subsistence Board, made up of the Alaska agency heads of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Indian Affairs, Bureau of Land Management, and the U.S. Forest Service, and an appointed chair and two members representing rural subsistence

users. The Board establishes all federal subsistence hunting and fishing regulations. The Board is generally required to follow the recommendations of 10 regional advisory councils in decisions concerning the taking of fish and wildlife (ANILCA § 805). The councils are made up of citizen representatives appointed by the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, under the terms of the Federal Advisory Committee Act.

The Alaska Region Subsistence Program represents a unique Forest Service role in wildlife and fisheries management. Normally, the Forest Service role is confined to habitat management, with the state conducting population management. In Alaska, the Forest Service and other Federal agencies have a substantial role and workload in determining population levels and developing appropriate subsistence harvest regulations for wildlife and fish on almost all federal lands and waters within the State of Alaska, and enforcing those regulations. The USDA and Forest Service fully accept our responsibilities toward subsistence users and resources and have made significant progress toward meeting the ANILCA commitments over the past 23 years.

Among the Federal agencies implementing the program, my Agency, the U.S. Forest Service, has a unique role. For all the Federal agencies, the Office of Subsistence Management, housed in the U.S. Fish and Wildlife Service's Regional Office in Anchorage, manages technical and administrative aspects of the program. Four agencies of the Department of the Interior participate in the program (Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, and National Park Service); however there is only one U.S. Department of Agriculture agency; the Forest Service. The Forest Service supports all regulatory action on Federal public lands in Southeast Alaska including: 1) providing funds for the Southeast Alaska Subsistence Regional Advisory Council; 2) through the Regional Forester providing support to the Secretary of Agriculture, paralleling the role of the Secretary of the Interior; and, 3) funding all fish and wildlife population assessment and monitoring on National Forest System lands.

Since the year 2000, Congress has appropriated funds by line item to the Forest Service for the Subsistence Program. Funding has ranged from a high of \$5.9 million in 2005 to the current level of approximately \$2.5 million. With those funds, the Forest Service implements a comprehensive regulatory program, monitors fish and wildlife populations, and when possible undertakes education and law enforcement activities.

Wildlife and fisheries monitoring is accomplished in part through R&D efforts in Sustainability and Resource assessments, which provide a national context for local decision-making as well as key indicators of resource conditions over time. For example, the 2010 USFS National Report on Sustainable Forests provides a comprehensive picture of forest conditions in the United States as they relate to the ecological, social and economic dimensions of sustainability. At the local level, sustainable management of subsistence hunting and fishing requires accurate and timely information about the abundance, health, and distribution of fish stocks and wildlife populations. Much of this critical information is developed through competitive contracts with Tribes and other Native and local organizations that undertake harvest monitoring, possess traditional ecological knowledge, and perform stock assessment field projects. In addition to providing essential biological data, these contracts create local jobs, build capacity within communities, and involve subsistence users in meaningful stewardship roles. For example, the Hydaburg Cooperative Association, Sitka Tribe of Alaska and Organized Village of Kasaan (among others) each have functioned as principle investigators, hired local residents, and have been able to merge modern science of fisheries management with traditional ecological knowledge, thereby sharing in the stewardship of salmon runs with federal managers.

A key aspect of the Federal Subsistence Program is the role of the Regional Advisory Councils. The councils were formed, as required by Title VIII of the ANILCA, to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues. Councils represent bottom-up management, where local people have a substantial role in guiding the program. Each of the State's ten regions has an advisory council consisting of local residents who are knowledgeable about subsistence and other uses of fish and wildlife in their area. The councils meet at least twice each year. A representative of each council attends each Federal Subsistence Board regulatory meeting providing council recommendations. Council recommendations concerning the take of fish and wildlife must be followed unless the Board determines that the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

## THE COMPREHENSIVE REVIEW OF THE FEDERAL SUBSISTENCE PROGRAM

In 2009, the Secretary of the Interior undertook a comprehensive review of the Federal Subsistence Program. With the concurrence of the Secretary of Agriculture, the Secretary of the Interior directed a number of actions in 2010. Key direction from the Secretaries included: expand the Federal Subsistence Board with addition of members representing subsistence users, expand deference to the Regional Advisory Councils, and review with Council input the Memorandum of Understanding with the State of Alaska, the customary and traditional use determination process, and the rural/non-rural determination process. Selection of additional Board members and expansion of the Board's deference are complete, with the other items underway.

Of considerable interest to many Alaskans is the Board's review of the rural determination process. In 2007 the Board determined that a number of currently rural areas should become non-rural and therefore ineligible for the Title VIII subsistence priority. That highly controversial decision has been put on hold pending the outcome of this rural review. Following public comment and tribal consultation in a pre-rule-making process, the Board will make a recommendation to the Secretaries on the rural process in the spring of 2014, after which the Secretaries may commence rule-making which would include additional public comment and Tribal consultation.

The Federal Subsistence Board has spent considerable time over the last few years developing tribal consultation policy and implementation guidelines. All policy and guideline development has been developed by an equal team of Federal managers and Tribal representatives from around the State. The tribal consultation policy is complete, and implementation guidelines are anticipated to be finalized by the Federal Subsistence Board in January. Recognizing that the Board must generally defer to the recommendations of the Regional Advisory Councils, the program is doing its best to balance Council recommendations and the results of Tribal consultation. The Program is also working on Alaska Native Claim Settlement Act (ANCSA) corporation consultation policy and implementation guidelines. That policy is in draft form while guideline development has not yet started. Consistent with Public Law 108-199, as amended by Public Law 108-447, consultation with ANCSA corporations is required on the same basis as with tribes.

## SUMMARY AND CONCLUSION

Federal subsistence management achievements include developing the staff infrastructure and expertise needed to carry out critical subsistence management functions and the establishment of regional advisory councils to facilitate the meaningful participation of subsistence users. We have built strong relationships with Alaska Tribes, with other subsistence user organizations, and with communities in Alaska. The Forest Service is well integrated with the other federal agencies with which we share responsibility for subsistence management, while we maintain a lead role on National Forest System lands and waters. We work closely with State of Alaska natural resource managers and support cooperative State-Federal projects.

Sustainable management of subsistence hunting and fishing requires accurate and timely information about the abundance, health, and distribution of fish stocks and wildlife populations. Much of this critical information is developed through service contracts with Tribes and other Native and local organizations. In addition to providing essential biological data, these contracts create local jobs, build capacity within communities, and involve subsistence users in meaningful stewardship roles.

In summary, the USDA and Forest Service fully accept our responsibilities toward subsistence users and resources and have made significant progress toward meeting this commitment over the past 23 years. Subsistence management, a Forest Service program unique to the Alaska Region, is a key program for fulfilling the Agency's mission.

This concludes my statement and I would be happy to answer any questions that you may have.

The CHAIRMAN. Ms. Pendleton, thank you. Let's welcome now Mr. Fleener. Mr. Vincent-Lang, do you desire to make any comments, too?

Mr. VINCENT-LANG. Mr. Fleener will be making our comments. I'm available for questions.

The CHAIRMAN. Very good. Mr. Fleener.

**STATEMENT OF CRAIG FLEENER, DEPUTY COMMISSIONER,  
ALASKA DEPARTMENT OF FISH AND GAME, ON BEHALF OF  
THE STATE OF ALASKA; ACCOMPANIED BY DOUGLAS VIN-  
CENT-LANG, DEPUTY COMMISSIONER, ALASKA DEPART-  
MENT OF FISH AND GAME, JUNEAU, AK**

Mr. FLEENER. Good morning, Chair Wyden, Senator Murkowski. I am Craig Fleener, the Deputy Commissioner for the Alaska Department of Fish and Game, and with me today is Doug Vincent-Lang, Director for the Division of Wildlife Conservation.

Thank you for this opportunity to testify.

[Speaking in the Gwich'in language]

Mr. FLEENER. I am from Fort Yukon, Alaska, located in the Yukon Flats National Wildlife Refuge about 8 miles north of the Arctic Circle, and I've hunted and fished my entire life, and subsistence is a critical component of my life.

I've served on the Eastern Interior Federal Regional Subsistence Advisory Council. I've served on the Board of Game and a wide number of other panels and committees that have basically led to the position I'm in today.

Alaska, the last frontier, is unique in that fish and wildlife are important not only to our economy, but to our quality of life. Alaska's wild resources provide us critical sources of food, clothing and materials.

Imagine living life in the coldest, darkest, furthest north, most remote locations in America where nearly no roads or industry exist and where development, jobs and grocery stores are far removed from communities. Imagine your income, the survival of your family, your very existence tied to your ability to obtain fish and wildlife.

These images lay the foundation of a very unique aspect of the Alaskan constitution that requires the department to actively manage wildlife to provide ample populations for the sustenance and benefit of our people.

To fulfill our mandate, we employ active management tools, for example, predator control and habitat manipulation, to sustainably increase the abundance of species that provide important hunting opportunities for Alaskans. We cannot take a passive, hands-off approach, which would risk the future viability of essential populations that feed our families.

The State program is highly responsive to the needs of Alaskans. When a community identifies an inability to meet their needs or opportunity for improvement that should be considered, our boards, the Alaska public and the Department of Fish and Game work collaboratively to identify the concern through scientific analysis, community-based anthropological subsistence surveys and public discourse to reach a solution. If the proposed solutions are lawful, the department and regulatory boards almost always support allowing additional opportunity.

Our objective is to maximize harvest opportunity within the limits of biological sustainability. The Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act, ANCSA and ANILCA, require the Federal agencies to manage wild resources in Alaska to meet the substance needs of rural Alaskans.

Federal agencies have the authority to implement active management on their lands, although they have not done so, to meet subsistence needs.

Interestingly, there are Federal active management programs throughout the rest of the country to kill predators to enhance threatened bird populations. They employ hatchery programs that enhance fishing opportunities, and they even use supplemental feeding of non-native species like horses and burros, but no such program exists in Alaska to meet subsistence users' needs.

Furthermore, the authority and responsibility for Federal active management was strengthened under both ANILCA and ANCSA. We believe Congress definitively spoke in these acts on the importance and priority of ensuring that subsistence needs are met.

It is our view that the Federal agencies should be viewing the National Park Organic Act and Refuge Improvement Act through the lens of ANILCA and ANCSA instead of vice-versa as is currently being done. Congress needs to ensure this direction is implemented by Federal land-management agencies.

In most cases, when it comes to meeting the necessities of life, the Federal agencies have forgotten or neglected the promises made under these laws. ANCSA and ANILCA were written to ensure subsistence holds a special place requiring special dispensation and that wild resources in Alaska must be actively managed in order to meet the basic food requirements of Alaskans.

You can't provide a season without providing the wildlife necessary to meet people's needs and think you were being successful.

The Federal subsistence framework in Alaska has been a source of great consternation amongst federally qualified subsistence users since its inception. They've pleaded for active management on Federal lands and for Federal land managers to work with the State to improve important populations like moose, caribou and deer.

Perhaps the greatest complication for a subsistence community is dual regulation of fish and game resources. Conflicting regulations, divergent agency mandates and different management strategies create confusion for the hunting and fishing community in Alaska, and every year new or duplicative regulations are created to address situations where Federal managers have disagreed with the Alaskan Board of Game. This is not improving subsistence in Alaska.

With over 60 percent of the land in Alaska under Federal ownership, it is nearly impossible to provide adequate subsistence foods to Alaskans, people that live near national parks, refuges or forests. Thus, State managers have been hobbled in their attempts to achieve management goals.

In conclusion, the State has 4 recommendations to ensure subsistence needs are being met in Alaska. One is to clarify the importance of subsistence and allow State managers to conduct active management programs on Federal lands.

No. 2, maintaining adequate funding necessary for research to support subsistence users, rather than maintaining unnecessarily duplicative regulations.

No. 3, Federal agencies must fund the incorporation of State data, research and expertise into the Federal regulatory process.

Finally, avoiding expensive and duplicative programs, especially during this time of Federal austerity.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Fleener follows:]

PREPARED STATEMENT OF CRAIG FLEENER, DEPUTY COMMISSIONER, ALASKA  
DEPARTMENT OF FISH AND GAME, ON BEHALF OF THE STATE OF ALASKA

Good morning, Chairman Wyden, Ranking Member Senator Murkowski, and members of the Senate Energy and Natural Resources Committee. My name is Craig Fleener. I am a Deputy Commissioner for the Alaska Department of Fish and Game, hereinafter referred to as the Department. With me today is Doug Vincent-Lang, Director for the Division of Wildlife Conservation. Thank you for the opportunity to testify regarding wildlife management authority within the State of Alaska under the Alaska National Interest Lands Conservation Act and the Alaska Native Claims Settlement Act.

Alaska—the “Last Frontier”—is unique among all the states in that our fish and wildlife are essential to our quality of life, providing critical sources of food, clothing, and materials to our people. Alaskans inhabit the coldest, darkest, and most remote locations in the United States. In many communities there are no roads, industry, development, jobs, or grocery stores.

Imagine your existence and the survival of your family being tied to your ability to obtain sustenance from nature. Also imagine your income being tied to hunting and fishing. Unlike in much of the lower 48, wildlife conservation in Alaska is a matter crucial to our quality of life.

So crucial in fact that subsistence hunting and fishing are a vital food source for Alaskans. They provide about 44 million pounds of wild foods taken annually by residents of rural Alaska, or about 375 pounds per person per year. Ninety-five percent of rural households consume subsistence-caught fish.

STATE SUBSISTENCE FRAMEWORK

The unique realities of Alaskan life are reflected in Alaska’s Constitution, which requires the Department to actively manage fish and wildlife to provide ample populations for the sustenance and benefit of our people (Article VIII, Sections 1, 2, 3, and 4). To fulfill our mandate, we employ active management tools (e.g. predator control or habitat manipulation) to sustainably increase the abundance of species that provide important hunting and fishing opportunities. We cannot take a passive, hands-off approach, which would risk the future viability of essential populations that feed our families.

The State of Alaska relies on a strong statutory, regulatory, and management framework, designed to meet the needs of Alaskans. Because fish and wildlife are critical for so many Alaskans, our system provides extensive opportunity for user input. It allows for each Alaskan to identify a management issue and submit a proposal to address the issue. The proposal will then receive the attention of one of more than 80 Fish and Game Advisory Committees throughout the state, where the author of the proposal can garner support or improve the proposal. Finally, Alaskans can argue the merits of proposals before the Alaska Board of Game or Fisheries for approval and codification into regulation.

The State program is highly responsive to the needs of Alaskans. When a community identifies an inability to meet their needs or an opportunity for improvement that should be considered, the Alaska Boards of Game and Fisheries, the Alaskan public, and the Department work collaboratively to identify the concern through scientific analysis, community based anthropological subsistence surveys, and public discourse, to reach a solution. If the proposed solutions are lawful and will not harm wildlife or fish populations, the Department, and Game and Fisheries Boards almost always support allowing additional opportunity.

The State’s objective is to maximize harvest opportunity within the limits of biological sustainability. Whenever fish or wildlife populations are not sufficient to meet all uses, subsistence takes priority. Further, if deemed necessary, the Board of Game will authorize the Department to actively manage wildlife populations important for subsistence.

Alaska has an excellent record for managing its fish and game resources. Our system relies on the best available information based upon data, research, and local and traditional knowledge, along with science-based adaptive decision making and a transparent public process. We are recognized as worldwide leaders in the field of wildlife research and management.

## EXAMPLES OF SUCCESSFUL STATE MANAGEMENT

The State's subsistence management framework produces positive results for subsistence users. The Southern Alaska Peninsula caribou herd serves as a clear example. This herd, once numbering in excess of 10,000 animals in 1983, fell to 1,500 in the 1990s. Further decline resulted in hunting closures, including subsistence hunting, and in unmet subsistence needs. When the herd bottomed out at some 600 animals in 2007, a tipping point was reached. Without active management intervention, extirpation became the likely outcome.

Department research determined that sufficient forage was available and was not a limiting factor for the herd. Disease also was ruled out. A 2007 survey indicated the caribou were reproducing normally and that pregnancy rates were moderately strong, yet young animals were all but absent. Something was stifling herd growth and accelerating its decline by killing caribou calves at an alarming rate. Biologists identified wolves, the region's most efficient wild predators, as the likely culprit. Opportunists by nature and necessity, wolves had set up denning operations in the midst of the Southern Alaska caribou calving grounds.

In 2008, the Department launched a scientifically designed, targeted, active management program to reduce wolf numbers on the calving grounds. At the time, some 60 to 80 wolves in nine to 13 packs were estimated to occupy the region of concern. Twenty-eight wolves were removed from the area during the caribou calving season in 2008, eight in 2009, and two more in 2010. The combined take represented an average of 19 to 25 percent of the area's original wolf population.

By the time the active management work was completed, caribou calf survival had rebounded and the perilous decline in the Southern Alaska Peninsula caribou had been reversed. As a result, the Department was able to reestablish regional hunting opportunities, benefitting Alaskans in communities such as Nelson Lagoon, Sand Point, King Cove, and Cold Bay. Meanwhile, wolf numbers in the region remain at healthy, biologically sound levels. Notably, our federal partners declined to join this effort by denying State managers access to federal lands.

Many similar examples exist across Alaska, from Nelchina and Fortymile caribou, to North Slope muskoxen, to Yukon River moose. In total, the State's active management programs comprise less than 10 percent of the State's land area, but the benefit to subsistence users has been immense. In each case, the Department has taken proactive steps to ensure populations can meet the needs of our people. Overall, our programs have shown success and are providing additional hunting opportunities for Alaskans, including rural Alaskans dependent upon these resources for subsistence. Given this success, we are committed to our active management program.

## FEDERAL SUBSISTENCE FRAMEWORK

The Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA) require the federal agencies to manage wild resources in Alaska to meet the basic food requirements of rural Alaskans.

According to Section 801(4) of ANILCA:

"[I]n order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents . . ."

The federal government has attempted to create a parallel subsistence program to the State's with ten advisory councils and a decision making board. The Federal Subsistence Board, however, does not have the authority to compel federal land managers to employ active management on federal land. It only possesses the authority to set seasons, bag limits, and methods and means of harvest for federally qualified users hunting and fishing on federal lands in Alaska.

The federal agencies that can authorize active management, like the U.S. National Park Service (NPS) and U.S. Fish and Wildlife Service (FWS) have typically rejected active management measures in Alaska. They have based their decisions on agency interpretations of the National Wildlife Refuge System Improvement Act of 1997 and the National Park Service Organic Act of 1916, and their emphasis on "natural diversity" and "park values," respectively. As a result, the federal agencies have not actively managed wildlife populations to meet subsistence needs.

Interestingly, there are federal active management programs throughout the rest of the country that kill predators to enhance threatened bird populations, employ hatchery programs that enhance fishing opportunities, and even used the supple-

mental feeding of non-native species like horses and burros. However, no such programs exist in Alaska to ensure that federally qualified subsistence users have adequate moose, caribou, and deer to feed their families.

The federal subsistence framework in Alaska has been a source of great consternation amongst federally qualified subsistence users since the inception of the program in 1990. Qualified users have pleaded for active management on federal lands and for federal land managers such as the FWS and the NPS to coordinate with the State to increase important subsistence wildlife populations like moose, caribou, and deer.

Federal agencies have the necessary authority to implement active management on their lands. The authority and responsibility for active management was strengthened under both ANILCA and ANCSA. We believe Congress definitively spoke in these acts on the importance and priority of ensuring that subsistence needs are met. It is our view that the federal agencies should be viewing the National Park Organic Act of 1916 through the lens of ANILCA and ANCSA, instead of vice versa, as is currently being done. Congress needs to ensure this direction is implemented by federal land management agencies.

With over 60 percent of land in Alaska under federal ownership, it is nearly impossible for the State managers to provide adequate subsistence foods to Alaska's people that live in or near National Parks, Refuges, or Forests without the assistance of federal managers. Thus, State managers have been hobbled in their attempts to achieve their management goal.

#### FAILURES IN FEDERAL MANAGEMENT

The failure of the federal agencies to employ active management practices on federal land has produced negative consequences. This is best exemplified on Unimak Island. Like caribou on the South Alaska Peninsula, the caribou population on Unimak Island plummeted with the likely cause being wolf predation. Hunting, including subsistence hunting, was closed, affecting the residents of the island's community of False Pass who have a demonstrated history of subsistence use of this herd. In response, the State attempted to work with the FWS, the principle land manager, to reduce predation and improve calf recruitment through an active management, wolf reduction program, in hopes of reopening caribou subsistence hunting. The FWS declined and instead warned the State in a letter that if we took action, we would be arrested and charged in federal court.

In July 2010, the FWS and the State entered into a cooperative agreement to develop an Environmental Assessment related to management actions needed to provide for the sustainability of the Unimak Island caribou herd. In March 2011, the FWS selected the "No Action" alternative, which prevented any State sanctioned program to ensure the native caribou would not be extirpated from the island. The FWS determined that provisions of the Wilderness Act of 1964 and the agency's Biological Diversity Policy trumped refuge purposes, including the conservation of caribou and the provision of subsistence opportunities to sustain a remote population of indigenous peoples. Quite disturbingly, State managers were informed that allowing the caribou to become extirpated from the island, or "blink out" as the FWS leadership described it, was not considered inconsistent with the refuge management plan.

In May 2011, the State requested the FWS to reconsider its decision and allow the effort to proceed based on new information suggesting extirpation of the herd was likely without intervention. The FWS said it would not do so. The State and FWS remain deadlocked, while the herd continues its decline towards likely extirpation.

In the meantime, the residents of False Pass continue to have their caribou hunting opportunities unnecessarily restricted.

Unfortunately, similar examples exist across Alaska on federal lands. The NPS recently preempted State subsistence harvest regulations for the documented customary and traditional harvest of bears in two Alaska National Park units. The NPS also preempted State wolf seasons in two other National Park units, despite a lack of conservation concerns and acknowledgment that the practice would not affect other park visitors. The NPS also closed a State wolf trapping season in another park unit, even though the Department documented such a closure was not necessary due to an absence of any conservation concern for the sustainability of wolves in the area. The State continues to assert that these restrictions are an unnecessary infringement on State sovereignty and unnecessarily impact subsistence users.

## COMPLICATIONS RESULTING FROM DUAL MANAGEMENT

Perhaps the greatest complication for our subsistence community and State managers is the dual regulation of fish and game resources where state and federal jurisdictions intersect. Conflicting regulations, divergent agency mandates, and different management strategies create confusion for the hunting and fishing community in Alaska. Every year, new or duplicative regulations are created to address situations where federal managers disagree with the Alaska Board of Game. This is not improving subsistence in Alaska.

State regulations stand on federal land unless a contrary action is taken and a federal regulation is developed. Many federal regulations have been developed to provide a mere perception of preference for rural users despite the federal program recognition that there was no shortage of the resource or inability to meet rural users' needs at the time the regulation was developed. These slight variations only burden Alaskans without any clear benefit.

For example, subsistence users must determine which patchwork of land they are standing on along an access route to know whether they can take 15 or 20 birds. In some instances the possession limits for small game or trapping or fishing may be only a difference of one or two animals. In other areas, season dates may vary by a day depending on your zip code. In an area with abundant populations, this unnecessarily restricts subsistence.

## STATE RECOMMENDATIONS

The following are the State's recommendations to ensure subsistence needs are met in Alaska. These include federal agencies allowing State managers to conduct active management programs on federal lands, addressing duplicative programs, ensuring adequate support for necessary research, and the incorporation of State data into federal regulatory processes.

*1. Active Management on Federal Lands*

As described above, active management on federal lands is essential to ensure adequate subsistence foods are available to Alaska's people to meet federal obligations under ANCSA and ANILCA. While the Federal Subsistence Board has managed hunting seasons, seasons do not fill freezers. Fish, moose, caribou, and deer, made available through active management, fill freezers and feed families.

State managers are also eager to cooperate on habitat enhancement with a goal of increasing wildlife populations. The State has success stories of working with ANCSA corporations. This past spring we teamed with Kenai Natives Association to improve their lands for moose production. This involved physically manipulate lands by cutting mature trees and scarifying the land to grow more willows that serve as food for moose. We are reaching out to the FWS in the hopes of extending this effort onto federal lands. However, initial efforts with federal managers have not been successful.

Given the importance of fishing and hunting to the Alaska's people, we will continue to pursue these efforts. We need congressional guidance to the federal land management agencies to allow predator management and habitat enhancement on federal lands.

*2. Duplicative Programs*

In this time of tight federal fiscal constraints, we must avoid expensive and duplicative programs. Since the inception of the Federal Subsistence Board in Alaska, federal agencies have unnecessarily duplicated State programs, suggesting they must have duplicative programs and regulations in place to meet federal mandates. This has resulted in increased cost with little direct benefit to the subsistence users in Alaska. Instead it has needlessly increased regulatory complexity without putting additional meat into Alaskans' freezers.

*3. Funding Necessary Research*

Rather than unnecessarily duplicating regulations, the federal government should be assisting Alaskan subsistence users by maintaining adequate funding for important research and data collection. In recent years, federal support for subsistence research has diminished, especially funding to support needed research.

While species research programs are cut, funds have been diverted towards "landscape and surrogate species" programs. These landscape and surrogate species programs do not feed people. We need research on species of import to subsistence in Alaska, not just on a few select surrogates. The State as the principle manager of fish and wildlife is best positioned to collect this information. Federal support for subsistence use surveys across Alaska has also been cut. This information is needed to determine population levels necessary to support reasonable subsistence oppor-

tunity. The Department has long been recognized as the expert at assessing subsistence data needs. Federal Subsistence Board decisions are often based on State data. Yet, federal support for state data collection programs has decreased in recent years. We believe a better use of federal funds is to support State work on species important to subsistence.

#### *4. Incorporating State Data into Federal Processes*

Financial support for incorporating State data into federal decision processes at the Federal Subsistence Board has also been reduced. The State, as the primary management entity, has significant information to inform federal decision processes. And as stated before, the State is recognized as a worldwide leader in wildlife research. Though instead of supporting a proven, successful program, this year, the Federal Office of Subsistence Management cut the grant to the State from \$480,000 to \$50,000 while expecting the State to continue to provide the data to inform Federal Subsistence Board decisions. This has limited the State's ability to ensure the best available data is considered.

#### CONCLUSION

Alaska's commitment to subsistence is rooted in the life sustaining needs of our people and our Constitution. We have an excellent record of providing for subsistence opportunities and taking proactive measures to increase harvestable surpluses to ensure needs are met, despite being foreclosed from managing on over 60 percent of the land mass of the state.

Rather than duplicating State efforts, the federal government should support State active management programs. Failure to follow this path will result in diminished subsistence hunting and fishing opportunities for all Alaskans over time. Federal land managers must realize that designating subsistence seasons is meaningless unless it comes with a reasonable opportunity to harvest resources.

Despite increasingly differing subsistence goals, Alaska continues to seek common ground with our federal partners.

The CHAIRMAN. Thank you very much, Mr. Fleener. Let's go to Senator Murkowski for her questions.

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank each of you for your testimony here this morning, what you have delivered and what you have provided in writing.

We may have a lot of issues as it relates to subsistence in areas of disagreement, but it seems that the one area where we agree is things aren't working as promised, and there are some proposals that are out there we're going to be hearing in the next panel about some suggestions that AFN has proposed in terms of demonstration projects.

I guess I would ask both you, Mr. Peltola, and you, Mr. Fleener, your comments, your thoughts on the two proposed demonstration projects that AFN is putting forward.

One is an intertribal fisheries commission for the Yukon and the Kuskokwim. The second is this co-management proposal on Ahtna lands that would allow Ahtna to work jointly to manage those lands.

Why don't we go first to you, Mr. Peltola, for your comments on it, and then I'd like to hear the State's position on these two demonstration projects.

Mr. PELTOLA. OK. Thank you, Senator Murkowski. I think we, as an agency and as a program, seek to increase cooperative management relationships with subsistence users. We would look toward the Regional Advisory Councils to facilitate the engagement on the ground or—which we're giving more deference to those Regional Advisory Council recommendations.

I personally cannot make specific comments on a particular plan. I have not reviewed or seen any of these copies, but the service and

the Federal subsistence program would be more than ready—readily available to review such plans on a case-by-case basis.

Senator MURKOWSKI. Do you think that it would be helpful, obviously, I mean, you live and work and breathed the fisheries incidents not only this past summer out there in the Bethel region, but in years prior.

Do you think that it would be helpful, given what you know, to have greater inclusion of Native peoples through a proposal like AFN has suggested?

Mr. PELTOLA. Yes, Senator, and, generally speaking, anytime we can incorporate a local knowledge base or a local user base, it could only lead to a better product and better management in the long run.

Senator MURKOWSKI. Let me ask you, Mr. Fleener, in terms of the State's position on these two proposals.

Mr. FLEENER. Thank you, Senator Murkowski. I think that there is a complicating factor with the proposal from the State perspective, and that is that the State has a responsibility to manage fish and wildlife resources for all Alaskans, and because of that complication, it makes it difficult to focus benefits for one group of people, so, for example, Alaska Natives, and—

Having said that, though, I think that our ultimate objective is to work as much as possible with any group of Alaskans.

Alaska Natives being tremendous landowners in the State and being so closely tied to subsistence, our ultimate goal is to work as closely with Alaska Natives as possible. We try to engage, as much as possible, on improving the situation.

So we are always open to the idea of improving the situation, trying to work toward any kind of a cooperative relationship, and we're looking now at working with tribes throughout the State, corporations, on corporation land to improve subsistence opportunities.

We're looking at habitat improvement, and, if possible, we are doing some—or when possible, I should say—we are doing some predator-management programs and are looking for other opportunities.

Those get to the end result that I think we're all looking for and that is to be able to sustain subsistence opportunities in those Native communities.

Senator MURKOWSKI. I'll find different ways to ask probably the same question, maybe, in a little bit here, but I think we recognize that when it comes to the active management, we're dealing with enormous spaces and almost always limited resources. So where we can collaborate and cooperate, seems to me, we're money ahead.

You used the words complex management. I think we recognize that it is complicated. Quite honestly, our land disposition in the State of Alaska is very complicated, and so how we manage that is very challenging.

But I guess I'm trying to find ways that, working together, we not only get more value for the dollars that we put into it, but we get the desired outcome, which is greater resource for all.

Let me ask a question here a different way. You have suggested, Mr. Fleener, that one of State's recommendations is greater active

management on Federal lands. We tried to do that with Unimak. We got sued.

What's our path forward here? Because litigation is not going to deliver more caribou, more fish or more moose. How can we be working better with our Federal partners on the management of even the habitat side?

It seems to me that even in that area we're not seeing much participation from our Federal partners. Would you disagree with me on that or do you concur that this also is an issue?

It's not only the management of, for instance, the caribou out in Unimak, but it's working with the feds to even enhance habitat so that we can see more resource.

Mr. FLEENER. Thank you, Senator Murkowski. Actually, I can give some opening comments, but I'd like to allow our Wildlife Division Director to comment.

We have a lot of, I would call them opportunities to partner with our Federal counterparts. We typically approach the agencies with projects that we're working on, and the answer is usually no, because of either the natural diversity mandate or other mandates that push the possibility of working together out of the way.

We have examples like habitat improvement on the Kenai Refuge. We have examples like the Yukon Flats National Wildlife Refuge, where I'm from, where the moose population is about one moose every 10 square miles. There are quite a few people that live in the Yukon Flats that depend on that moose population, and it's been in a downward trend for more than 20 years, and nothing is being done about it.

The State hasn't been able to go in and work there, because it's been very difficult to get into the door with the Fish and Wildlife Service.

Unimak Island is another great example, and because Director Vincent-Lang is so much more familiar with that subject, I'd like to ask him to provide some comments.

Mr. VINCENT-LANG. Thank you, Senator. The State of Alaska recognizes that providing subsistence is more than just providing a season. It has to come along with the reasonable opportunity to harvest an animal, and, as such, we just don't sit back and passively manage our wildlife populations.

We actively manage them to provide for, to assure that there's actually animals out on the landscape. Then, when there's a season open, somebody has a reasonable expectation to get them.

A prime example of an action we took was on the South Alaska Peninsula. In that case, we had a herd of caribou that once numbered 10,000. That herd crashed, and, as a result, subsistence opportunities had to be closed under both the State and Federal system.

The State identified the primary cause of that to be wolf predation and went in with a very strategically, scientifically designed program, actually requested the Fish and Wildlife Service's participation as the primary land manager in that area to cooperate with us to actually, you know, do our predator control program and to increase the abundance of caribou.

They chose not to participate in that effort. We went it alone in a very limited patchwork of State land and actually turned that

herd around to a point right now where we have, now, a season and people in local communities are taking caribou to meet their subsistence needs.

Compare and contrast that with Unimak Island, which you mentioned in your talk. We had the very similar circumstance. We have a declining caribou population, and that caribou population could likely become extirpated from that island, and, right now, it's not providing any subsistence opportunity, because subsistence hunting for caribou is closed.

Again, we requested to go meet with our Federal land management partners to go out and actually conduct a predator-control program to, hopefully, turn that herd around and increase the abundance so we can have the subsistence-hunting opportunity again.

Instead of cooperating, we were denied access into the area and told that that caribou population could blink out of existence and that would be OK under their natural-diversity guidance.

The short of it is we believe we have to actively manage to provide for subsistence-hunting opportunities, regardless of which pool of people that is.

We think that under ANILCA and under ANCSA Congress spoke clearly about the importance to actively manage, and we think that the Federal Land Management Agencies have the necessary tools at their disposals. They are just choosing not to use them. We plead with Congress to give them further direction to use those tools to increase the abundance of animals on the landscape.

Senator MURKOWSKI. I appreciate those comments and your observations.

Let me ask you, Mr. Peltola, because when Secretary Salazar took over as Secretary of Department of Interior, he had some, I think, good conversations with Native leaders around the State on the issue of subsistence.

He directed the Federal Subsistence Board to undertake a number of administrative actions as a result of his review of the Federal Subsistence Management System. This was, now, well over 3 years ago.

My sense is that there was a review. There was a request to do something about it, but, in fairness, we really haven't seen much, if anything, from that request coming out of the Secretary for something that goes beyond just the review of the Federal Subsistence Management System. Where are we with regards to any of those recommendations?

Mr. PELTOLA. Thank you, Senator. If you look at the recommendations coming out of the Secretary of Interior with Secretary of Agriculture's concurrence, there are numerous actions which were recommended, and it's a lot for me to memorize and go through here, so I have a list of what the recommendations were and I'll follow up with those.

There was a recommendation to add new public board members on the Federal Subsistence Board. That action has occurred with the addition of Anthony Christianson from Hydaburg and Charlie Brower from Barrow.

We expanded the deference from the Federal Subsistence Board to the Regional Advisory Councils. That is in the process and has been occurring.

Historically speaking, the Federal Subsistence Boards looked to the Regional Advisory Council to guard the fish and game or fish and wildlife proposals. We're doing more than that, currently, in initiating more deference to those by looking toward direction from the Regional Advisory Councils on the rural determination process.

We're also looking to the recommendation from the Regional Advisory Council with regard to the customary and traditional determination process.

The Federal Subsistence Board was given some direction to minimize the use of executive session to allow for a feeling of a more transparent process. This is in the process of occurring. A policy has been written to minimize these sessions and report to the public the subject matter of those executive sessions when they do occur.

We're directed to review the MOU with the State of Alaska. That is in process. We have held two rounds of review with Regional Advisory Councils and the MOU was revised via a State-Federal working group, and that was forwarded to the State of Alaska, who, I understand, is working on their own draft of it at this time.

As I mentioned, the Rural Determination Comprehensive Review, starting this fall with our fall rounds of Regional Advisory Council meetings in the different regions of Alaska, we are holding public hearings on what to utilize in that process.

Also, I can mention the customary and traditional use determination process also in review.

Some of those that we have not proceeded forth is where the Federal Subsistence Board submits recommendations for funding for the annual budget for the Federal Subsistence Program.

There's a couple of others. One is to utilize an 809 cooperative agreement authority to expand using tribes and other local entities for fulfilling subsistence-program elements. That is considered somewhat in progress. This authority is used for the Fisheries Resource Monitoring Program, and there may be other opportunities within 809 authority we could expand upon.

Those are a few of the direct secretarial review items that we have proceeded forth with.

Senator MURKOWSKI. Let me ask you about the RACs. Ms. Pendleton, you can join in as well, because it seems that that is cited as this is an indication in terms of how we bring in the local people and solicit their input.

Currently, the Regional Advisory Councils provide recommendations and information to the Federal Subsistence Board, but, beyond that, there is not that much authority, if you will. I don't think that our RACs actually have any power or authority beyond just providing recommendations and information, and it may or may not be regarded or taken into account.

What can we do to empower the RACs to be more than just somebody that presents some ideas? How do you actually make sure that it's the local people that are providing not only more than just information, but helping to advance some of the decisions based on that local input?

We see back here it's pretty top heavy. The system is pretty top heavy. I'm fearful that, oftentimes, what we get is we're able to check the box with a level of consultation.

We're able to check the box because we have in place these entities that, if you look at the name and the hometown, you say, OK. We've got Native participation and representation. It really ends up being very little, at the end of the day. This is what I'm hearing from folks. So how do you make the Regional Advisory Councils more meaningful?

Ms. PENDLETON. Thank you, Senator. As Gene, Mr. Peltola mentioned, the Regional Advisory Councils, the makeup of those councils are individuals from local communities.

Many of those individuals are active subsistence users. They have a good understanding of the importance from a cultural, traditional, spiritual importance of the use of the resource. So they bring that perspective, I think, to the councils.

Council meetings are held close to communities within those regions. There's opportunities for residents to come together to share their perspectives, to bring proposals, of course, to the Regional Advisory Councils and for those councilmembers to consider and then provide input, recommendations on up to the board.

As Mr. Peltola mentioned, those recommendations from the councils, the Federal Subsistence Board gives deference to those, so they are weighed and considered very importantly and that deference is provided. So I think—

Senator MURKOWSKI. I think that's where—

Ms. PENDLETON [continuing]. That that provides some strength—

Senator MURKOWSKI [continuing]. That's where it appears to me that folks aren't believing that we're getting that level of input, because they don't see the deference being shown to what is coming from the local people, the local input.

They've got an opportunity to participate, and that's absolutely important, but when you say, then, deference is afforded, I think you would have most folks saying, OK. Show me how that actually translates into a recognition that those local concerns had actually been addressed. I think that's where we're seeing some breakdown.

Mr. Peltola, you want to comment?

Mr. PELTOLA. Yes, Senator Murkowski. One thing I would add is that outside of the secretarial program, out of the review, we have a couple of other steps, so to speak, that have taken place in the last year-and-a-half or so that may contribute significantly to the way we interact with the local individual.

One of those is being the recent Department of the Interior tribal consultation policy and also the—I guess it preceded that—is the Fish and Wildlife Service where my experience and career has been placed is the Fish and Wildlife Service tribal consultation policy.

In my capacity as Refuge Manager of the Yukon Delta over the last five, 5½ years, I served on two different functions within the Fish and Wildlife Service regarding tribal consultation. One being is I helped draft the step-down plan from Interior for the Fish and Wildlife Service, and I also served on the Native American Policy Review Team for the Fish and Wildlife Service nationwide and provided input there.

If you look at the way we have historically done business, the Yukon Delta Refuge is one of the largest refuges in the system, and because of that we have one of the largest village—tribal-entity bases. We have 56 villages on and adjacent to. The refuge there has always spoke with tribes, even before it was actually dictated to be a policy.

Under my tenure as Refuge Manager there, we were doing 70 to 90 consultations a year with regard to different fisheries or wildlife proposals or different management actions.

Now, with implementation of, you know, the secretarial review within the Office of Subsistence Management, there also is an OSM or Office of Subsistence Management tribal consultation policy.

That could be overwhelming in the sense that we deal with hundreds and hundreds of fisheries and wildlife proposals every year. In order to reach out to every potentially affected tribe, it could be overwhelming.

One thing I'd like to say is that looking upon my role as a refuge manager, now within Assistant Regional Director with the program, we're going to take very seriously those responsibilities to communicate with individual tribes in the affected regions via our proposals, and that is a means that the service and myself as an individual have utilized in order to try to provide more local input into the process.

Senator MURKOWSKI. Just for the information of those here testifying and those that will be part of the second panel, Senator Wyden and I are actually trying to manage an energy bill on the floor as we speak. So he is actually on the floor and is hoping to be able to come back as soon as he is able.

So he wanted me to make sure that you knew it was not for lack of interest, but we're trying to juggle multiple balls in the air at the same time.

I note that my colleague and friend from West Virginia has joined the committee, and I appreciate that. Senator Manchin is a man who I think understands hunting and fishing as well as anybody here in the Senate and has an appreciation for so many of the issues.

Senator Manchin, I'm just going through a series of questions, so if you would like to make a statement or ask questions now, I'd certainly defer to you, because I've had the mic for a while.

Senator MANCHIN. Thank you, Senator. I appreciate it. First of all, I appreciate both Chairman Wyden and particularly Ranking Member Murkowski, who are both dear friends of mine, for holding this hearing.

Last year, I had the great pleasure of hosting both of them in my home State of West Virginia. They took time out, and it's very precious time that they have, to come to West Virginia to look at an all-of-the-above energy policy and showing them the aspects of my State.

I look forward to visiting both their states, Oregon and Alaska. Maybe next year, then, I can make it up to Alaska for the moose-hunting season, too. I've heard about that. Of course, the salmon fishing is always good. So I'm looking forward to all of those things.

I can say this, as a former Governor, I know some of the frustrations that come from the differing and sometimes competing man-

agement of State and Federal lands. I know in Alaska the issue is even more complex, when you consider the role and needs of Native Corporations.

I had the opportunity yesterday to meet with representatives from the Alaska Native Village CEOs Association in my office, to hear directly about some of their concerns.

While Alaskans face a number of issues that are not faced elsewhere, West Virginians certainly understand what it means to rely on our land for food, for energy and for many of our basic needs.

I'm happy that today I have the opportunity to discuss the unique management issues facing Alaskans. It is terrific how much effort—and it really is, and I mean that. You should be so proud that you have a Senator that works so hard in both Senator Murkowski and what she puts into reaching out to all Alaskans to ensure that they have a voice in Washington.

I look forward to learning more about this issue and to learning about how, as members of our committee that we have here, that we can help the people of Alaska find a commonsense solution to the concerns that we hear today.

Let me just say, the commonsense solution, there's a balance to be found. There's a balance in everything, and up here you're seeing the extremes play out on television and policy, truly. We're having a hard time. You don't live your life this way.

You know, I tell people, and back home, in West Virginia, every morning you get up, you try to find that balance immediately, and, boy, if you can go to bed and you've found a little bit of balance it was a pretty good day. Up here, we haven't found many good days, and there are so many good people, it's a shame.

So I can assure you my mind is open to help you find the balance, and I'm sure the government should be your partner and not your adversary.

I believe very strongly in the Tenth Amendment to the Constitution. Being a former Governor, I will protect that position until my last breath is taken.

So, with that, I really do, I look forward to working with you, learning more and seeing how I can be of help and knowing that reasonable people can make reasonable decisions. So, Madam Chairman, thank you.

Senator MURKOWSKI. Senator Manchin, thank you for your statement. Thank you for your good work and your commitment to learn.

As I mentioned in my opening statement, I greatly appreciate the Chairman of the Committee agreeing to have a hearing, a full committee hearing on an issue that is so local to one State, but so integral to who it is that we are as people.

So your statement that you're willing to listen and work to find reasonable solutions is very, very meaningful. Know that you will always have an open invitation to come to Alaska, and if I'm not there to act as your host, I'm sure you would have any number of the folks that are assembled here to escort you around the State. So we look forward to that.

Senator MANCHIN. Would it be possible to ask a question?

Senator MURKOWSKI. Absolutely.

Senator MANCHIN. I'll just start—we'll start with—Is it Peltola?

Mr. Peltola, in your testimony, you mention that the Secretaries of Interior and Agriculture recommend that the process for determining rural status in Alaska be revisited, and you're currently involved in a review of the process.

Maybe you can explain the rural status in Alaska and how it is currently determined and what your position would be to change things or how your input would be.

Mr. PELTOLA. With regard to the rural determination—

Senator MANCHIN. It can be improved upon. I'm sorry.

Mr. PELTOLA. Improved upon. OK. With regard to rural determination, a few years back the Federal Subsistence Board made the recommendation to set a hard—more or less a hard figure with regard to population size with regard to what determines a rural or a non-rural area.

Some of our communities in rural Alaska are approaching that population threshold. There have been some concerns expressed and through the secretarial direction about that process starting this fall, which I mentioned earlier to Senator Murkowski.

During our fall round of Regional Advisory Council meetings, we're also having a Rural Determination Process Public Hearing where we are initiating public comment about what to utilize as a determining factor in the rural determination process, because there is a lot of significance involved in what constitutes a rural and a non-rural area with regard to subsistence-management Alaska.

In the meantime, those recommendations made a few years back by the Federal Subsistence Board have been put on hold until this next round of public hearings have been initiated and completed.

Senator MANCHIN. Mr. Fleener, if I may just skip around if I can, in your testimony, you suggest that duplicative Federal programs should be eliminated to save money and better serve Alaskans. Can you identify the duplicative programs that you would recommend?

Mr. FLEENER. Thank you, Senator Manchin. I think probably the one that is at hand today, what we're talking about right now, would be the Federal Subsistence Management Program.

Really, some of the management programs that are either being implemented now or being talked about to be implemented in the future on Federal lands, there really isn't a good reason to have two separate systems managing the same moose or the same caribou or the same subsistence user. It would be a much better, much more cost-effective method if we had one system.

So that's probably the most relevant to this discussion right now is the actual Office of Subsistence Management Federal Subsistence Board Program.

We have advisory committees, more than 80 advisory committees around the State, that I'd probably have to say the majority of them are comprised of subsistence users. Throughout the State, we have a very functional board structure that takes into account all of the remarks.

Folks can submit proposals. They can argue the merits of their proposal before the advisory committees and before the boards. They can work together with the department, the boards and other members of the public to improve a proposal that they submit, and then we can turn that into an actual regulation.

We have a very good and open system in the State of Alaska that you don't necessarily always get what you want. I submitted quite a few proposals to the Board of Game or the Board of Fish before I was a State of Alaska employee. Some of them were adopted and some weren't, and so you don't always get what you want, but we have a really good and open system.

So the idea that we have duplicated that with the Federal Subsistence Program really is a tremendous expenditure of money. It creates a lot of conflict and probably the worst thing, as I testified earlier, is the confusion and the complications for the hunters or the fishers.

So you have people that live out in the country and they have to be aware of whether or not they're hunting on Federal land. Often the Federal land and State authority areas are interspersed. It's like a patchwork quilt, and in 1 hour you can be under State regulations, the next hour you can be under Federal regulations, and then you have to understand the special situations within each of those regulations, not just the standard regulations themselves. So that's a very complicated set of situations.

One example that makes it even more complicated is with the National Park Service and the compendium process. So you not only have to understand the Federal regulations from the Federal Subsistence Board, you also have to understand the regulations through the Alaska Board of Game or Board of Fish, Department of Fish and Game, now, you also have to read the National Park compendium to understand if they've decided to pull something out and no longer have it legal for you to participate in.

So I think those are plenty of examples. I can give many more, but I don't want to hog the microphone.

Senator MANCHIN. Thank you.

Senator MURKOWSKI. Thank you, Senator Manchin.

Let me ask a question following on Senator Manchin's comment and your comments, Mr. Fleener, about the Federal Subsistence Management Program and your suggestion that we've got some overlap and duplication.

Mr. Peltola, how many funding requests from Native organizations does the Federal Subsistence Management Program receive on an annual basis? If you can give me the number, are we able to fund all of them?

Mr. PELTOLA. Senator Murkowski, I apologize, but I don't recall the exact number of proposals coming from Alaska Native organizations throughout the State.

But what I can tell you is that of those funding requests we receive in the Office of Subsistence Management about 42 percent of those go to the Alaska Department of Fish and Game, their Wildlife Conservation Program or the Commercial Fisheries Program, and then a lesser percentage of those—I believe, it's 12 to 18 percent—go to the Alaska Native organizations.

Senator MURKOWSKI. Are you able then to provide funding for all of the requests? You meet the requests?

Mr. PELTOLA. The majority of the funding requests that come to the Office of Subsistence Management fall under the Fisheries Research Monitoring Program. Of that, the way the process works—and I think it's very beneficial to some Alaska Native organiza-

tions. The way the process works is we have a call-for-proposal period, and then the whole packet of all the proposals are put together in a group and they're reviewed by what we call the Technical Review Committee.

That committee is comprised of a representative from Alaska Department of Fish and Game Commercial Fisheries Division, Alaska Department of Fish and Game Sport Fishers Division, Alaska Department of Fish and Game Subsistence Division, a Forest Service, a Park Service and a Fish Service member. Those proposals are then ranked out—

Senator MURKOWSKI. What's the ranking criteria?

Mr. PELTOLA. I shouldn't say ranked. They're reviewed and a recommendation is given to fund or not fund a particular proposal.

Senator MURKOWSKI. How do you determine the priority for allocation of funding between State and the tribes?

Mr. PELTOLA. One would hope, and what I've gleaned of the system by reviewing it here, since my arriving in the position, is that we look at priority subsistence data management needs and necessities and those are then forwarded.

We have a recommendation from the TRC, Technical Review Committee. The way the process is designed, and as far as I can tell, has not been implemented to date, is that once that recommendation goes from the TRC to the Regional Advisory Council, the Regional Advisory Council can recommend altering the order that they're presented by the TRC or, the majority of the time, the Regional Advisory Councils just concur what has been recommended at the time.

Then those are forwarded on to the Federal Subsistence Board to—the board themselves decide whether to fund or not fund the proposal.

Senator MURKOWSKI. I'm going to finish up with one last question here, and it was prompted by a comment that you made, Mr. Fleener, about the fact that in other parts of the country our Federal agencies actually use active management either through some form of predator control, habitat enhancements.

So I guess the question for our Federal representatives is why the Federal agencies have been reluctant to employ active management, whether it's predator control or whether it's habitat management, to meet the statutory mandates?

Because I would agree with Mr. Fleener, I don't think we see that here in the State. So it's required in ANILCA and ANCSA, why have we seen reluctance within the State of Alaska by our Federal agencies to engage in active management?

Mr. PELTOLA. Yes, Senator Murkowski. We're looking at, generally speaking, actions allowing for the control of predators on Federal public lands fall under the jurisdiction of each land-management agency.

Each agency has different missions and mandates, and, then, through the Federal Subsistence Program, the Secretaries have chosen to leave predator management to the individual agencies.

As for specifics to Unimak, which you mentioned before, I have somewhat of an understanding about the situation there. I was not directly involved in the decisions that were made with regard to Unimak, but I understand that the service, through the Division of

Refuges in Alaska, determined that predator control there was inconsistent with ANILCA and the Wilderness Act.

It was also contrary to ANILCA's purposes for establishing the refuge. That purpose states that wildlife population on Unimak could be managed with their natural diversity and that subsistence be carried out in a manner that is consistent with the natural diversity purposes of the refuge.

So I can speak to generalities of and I can't get in—I am unable to address the specifics that each individual bill or decision that has been made.

Senator MURKOWSKI. I guess that I would take it back to the comment that Mr. Fleener made that we need to be viewing this through the lens of ANILCA and ANCSA, rather than whether it's the Wilderness Act or whether it's the other organic acts that you have cited to.

It seems to me we have Federal statutes, Federal laws and you've got an administration, and I won't necessarily just blame this particular administration, but you have an administration that is choosing to interpret or give priority again to some Federal statutes at the expense of others, and we see conflict there, and I think the Unimak example is a pretty stark example of just that.

Ms. Pendleton, do you want to add anything to that before I give up my time here?

Ms. PENDLETON. I really don't have any further comment, other than to say that, on the National Forest System, we haven't had any request or need or proposal for predator management to date that I'm aware of.

Senator MURKOWSKI. But what about the wildlife habitat? Because that's clearly in your domain.

Ms. PENDLETON. Thank you. It is. We have worked extensively with the State, under a memorandum of understanding and through the Federal Subsistence Program, to coordinate substantially as it relates to monitoring information, population information and that is all brought forward into the proposals and considerations, not only of the Regional Advisory Councils, but of the Federal Subsistence Board as well.

Senator MURKOWSKI. Mr. Chairman, I've had a lot of time here to ask questions, and I'd like to get to our second panel, but, certainly, would turn to you, turn the gavel back to you.

The CHAIRMAN. Thank you, Senator Murkowski.

Just on that point, because, for the two Federal agencies, that was something I was going to ask about as well.

Ms. Pendleton, you said that you all at the Department of Agriculture, at the Forest Service, are working with the states in terms of a more active approach in managing for increased wildlife populations and controlling predators.

But, obviously, the states aren't getting it right, so if we come here and we say, Gee, there are a variety of different reasons why this has taken place, which is what I understood Mr. Peltola to say, and Ms. Pendleton says we are working with the states, but the states don't seem to think we're getting it done, we've got some work to do to get this right. So I want to make sure you understand that I share Senator Murkowski's concern.

Here's, of course, another big issue throughout the West. We're going to be following up at the staff level, so that we can ensure that more active approach in managing for increased wildlife populations and make sure that it's consistent with what I'm sure are other Federal directives and strike that kind of balance, but this is an area where we've got to get it right.

Senator Manchin, any questions?

Senator MANCHIN. I already had—

The CHAIRMAN. OK. Very good. Let's go to our next panel, which is Ms. Ana Hoffman, President/CEO, Bethel Native Corporation; Mr. Robert T. Anderson, professor of law, Director, Native American Law Center; Dr. Rosita Worl with Sealaksa; Mr. Jerry Isaac with, if I'm pronouncing it right. Senator Murkowski, is this Tanana, Tanana—

Senator MURKOWSKI. Tanana.

The CHAIRMAN. Tanana Chiefs Conference in Fairbanks, Alaska.

All right. We will make your prepared remarks a part of the record. Why don't we begin with you, Ms. Hoffman?

**STATEMENT OF ANA HOFFMAN, PRESIDENT/CEO, BETHEL  
NATIVE CORPORATION, BETHEL, ALASKA**

Ms. HOFFMAN. Quyana keleglua mana arrcaralria qalaruteksartusqelluka. The closest word in Yup'ik for subsistence is nerangnaqsaraput, our method of gathering food.

On September 7 of this year, my son shot a bull moose. Once we got all of the meat into the boat, including the heart, liver, tongue and nose, we waited while he tossed the moose beard into the tall trees to ensure continued success of future hunts.

We were able to spend a week upriver because the school district, recognizing attendance drops dramatically during moose-hunting season, has established a fall break to accommodate subsistence.

The length of the Kuskokwim River that we traveled from Bethel to McGrath required one General Harvest Tag 13 years ago. Today, it requires four: A General Harvest Ticket, Registration RM 615 Tier II, Registration RM 650 and one section is closed.

The subsistence hunter in rural Alaska works hard to stay informed about governing laws and regulatory changes. Without monuments or landmarks, hunters and fishermen learn the unit boundaries and the applicable harvest restrictions in order to be in compliance. By and large, we are a regulation-following people.

Last summer, there was an act of civil disobedience near Bethel. After having observed a 7-day closure, a number of Yup'ik fishermen decided to fish for Chinook salmon. This was the first significant incidence in Alaska in over 60 years.

During the State court trials, the judge found that subsistence activities related to hunting and fishing are deeply rooted in the religious beliefs of the Yup'ik culture and that subsistence fishing for Chinook salmon and the attendant activities are religiously based conduct.

Despite these findings, the district court affirmed the State's authority to restrict subsistence fishing and the case is now on appeal.

The State's subsistence law requires the Board of Fisheries and Game to establish an amount necessary for subsistence of fish and game resources. In essence, this should be the baseline.

What we see happening oftentimes is achieving the amount needed for subsistence is not known until we are subsisting. As a result, the subsistence user, whose cultural, social, economic and physical livelihood is at stake, is bearing the brunt of conservation.

Bethel is the hub community of villages along the Yukon, Kuskokwim and Johnson Rivers. Each of these villages is strategically located in direct relationship to specific food sources.

Forty years ago, Senator Edward Kennedy visited my mother's village of Nunapitchuk. He had dry fish and tea with my grandparents. The village is known for its proximity to white fish, black fish and pike. It is because of the continued access to subsistence hunting and fishing that the villages remain in existence today.

If you walk into any classroom in rural Alaska and ask the students what they ate for dinner, they will likely answer soup. But it is not French onion or vegetable beef. It is fish soup, moose soup, caribou soup, seal soup, swan soup, walrus soup, goose soup, beaver soup and crane soup, all accompanied with dry fish. This is our sustenance.

In 2010, the State of Alaska gathered statistics about subsistence harvesting. Subsistence food harvests represent just over 1 percent of the fish and game harvested annually in Alaska. The commercial fisheries harvests over 98 percent.

Of the non-commercial harvests of food, the studies showed the average urban resident harvests 23 pounds per person per year, the rural resident harvests 316 pounds per person per year. In Western Alaska, where I am from, we harvest 490 pounds per person per year. There is no Costco or Walmart in our area of Alaska. It is the rivers, the lakes, the oceans and the wilderness that feed us.

Last week, I walked out to my mom's native allotment just outside of Bethel to pick berries. Along the way, I came across Fritz Jimmie, Neal Japhet and Ray Landlord. They were bird hunting. They noticed my bucket and pointed out which way I should go to find the biggest blackberries.

As I walked across the tundra, I looked back at them and saw them, 3 boys, ages 10, 11, and 12, sitting at the edge of a lake in the middle of Southwestern Alaska waiting for the migratory birds to land. It is their rights we aim to protect.

If I may, I'd like to enter into the record the photo of Ray, Fritz and Neal that I took last Friday evening. Thank you.

[The prepared statement of Ms. Hoffman follows:]

PREPARED STATEMENT OF ANA HOFFMAN, PRESIDENT/CEO, BETHEL NATIVE CORPORATION, BETHEL, AK

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Senator MURKOWSKI. Thank you, Ana. The photograph will be entered into the record. I think it is a beautiful example of what we see in Western Alaska, where our children are taught and trained to provide for the family, even at a very early age. Thank you for your comments.

Mr. Anderson, welcome.

**STATEMENT OF ROBERT T. ANDERSON, PROFESSOR OF LAW,  
DIRECTOR, NATIVE AMERICAN LAW CENTER, UNIVERSITY  
OF WASHINGTON SCHOOL OF LAW, SEATTLE, WA**

Mr. ANDERSON. Thank you, Senator Murkowski, Senator Manchin. I appreciate the opportunity to talk with you this morning about the legal issues implicated by any amendments to ANILA, Title VIII, and to ANCSA, and the fact that this committee has jurisdiction over both statutes is very telling.

The history of Federal law regarding hunting and fishing in Alaska is an important personal history to people, first and foremost, but it also has a rich legal history, in the sense that it's part of our tradition in American Indian law, in Federal law of recognizing and protecting Native Aboriginal rights to hunt, fish, gather and occupy their traditional lands.

When Alaska was purchased from Russia in 1867, the treaty provided that aboriginal peoples in Alaska would be subject to and protected by the same laws that governed Indian tribes throughout the rest of the United States.

Really, without exception, up until 1971, nearly every Federal statute made applicable to Alaska either had an exception for Native subsistence uses of fish, game, migratory birds or had some sort of an affirmative protection for those rights, recognizing the importance, even in the early territorial days, of Native aboriginal rights to hunt, fish and gather.

The Solicitor and Secretary of the Interior in 1942 recognized that aboriginal occupancy establishes possessory rights in Alaskan waters and submerged lands and that such rights have not been extinguished by any treaty, statute or administrative action.

As we know, the Statehood Act, 1958, provided that the State would disclaim any jurisdiction over aboriginal rights in Alaska. It wasn't until the discovery of oil at Prudhoe Bay in the late 1960s that things really got moving with the adoption of ANCSA in 1971.

ANCSA was really an aberration in the history of the dealings between the United States and Indian tribes in a couple of senses. One, we have the corporate scheme, which is different, but, most importantly, there was no substitute provision for the aboriginal hunting and fishing rights that were extinguished.

Every other treaty or statute or agreement that was made with an Indian tribe provided for protection on a continuing basis for those important hunting, fishing and gathering rights. That was not included.

Rather, the conference committee indicated an expectation that the Secretaries of the Interior in the State would provide for subsistence uses by Alaska.

That didn't happen and we ended up with Title VIII of ANILCA as a substitute for those aboriginal rights that were extinguished, the expectation being that the State would have a rural preference in place and would manage fish and game with a rural priority throughout Alaska on Federal and State lands, and that happened for a brief period. It was 7 years that the State was managing fish and game.

It was during that time that Katie John, who we all have heard a great deal about, and I was honored to be able to represent her, went to the State Board of Fisheries to get her fishery opened that had been closed shortly after statehood.

The Board of Fish refused. She went to Federal court, as contemplated under ANILCA, and the Federal court ordered the fishery opened. That was 24 years ago, and that litigation still rages on with the State attempting to displace Federal management on the limited basis that the Federal Government manages now.

The failure to adopt the rural preference because of the State constitution has really broken ANILCA. I know Governor Knowles

and Senator Stevens worked tirelessly to try to get a constitutional amendment on the ballot to provide a rural preference, so that we could have a unified management regime again in Alaska, but that failed.

The State's program since that McDowell decision in 1990 has, you know, developed this non-subsistence component, so that there'll be large non-subsistence-use areas in the State, and has moved further and further away from providing a true priority.

So, in sum, I would say that Title VIII was intended to protect these aboriginal rights through a rural preference that would be fulfilled with the State's cooperation.

The State is disabled from cooperating because of its own constitution and hasn't been able to amend it. ANCSA's corporate scheme was experimental. This committee and Congress have revisited that scheme many times and made substantial changes in how ANCSA operates.

AFN's resolutions and the two experimental programs indicate that now is the time for Congress to consider a possible Native subsistence preference in all of Alaska. The Federal Government has power in this area, has exercised it in the past, and it would be constitutional to do so as set out in my full testimony. Thank you.

[The prepared statement of Mr. Anderson follows:]

PREPARED STATEMENT OF ROBERT T. ANDERSON, PROFESSOR OF LAW, UNIVERSITY OF WASHINGTON SCHOOL OF LAW, DIRECTOR, NATIVE AMERICAN LAW CENTER, SEATTLE, WA

Good afternoon, my name is Robert Anderson and I am a Professor of Law at the University of Washington School of Law, Director of its Native American Law Center. I also have a long-term appointment as the Oneida Indian Nation Visiting Professor of Law at Harvard Law School. I have worked on Alaska Native hunting and fishing issues since 1984 when I was one of two attorneys who opened the Anchorage office of the Native American Rights Fund. I spent six years in the Clinton Administration working on many Native rights issues, among other matters. I have been a law professor for the past thirteen years. I am a co-author and member of the Board of Editors of COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (Lexis/Nexis 2005 and 2012 Editions). I am also a co-author of a casebook used in many law schools, Anderson, Berger, Frickey & Krakoff, AMERICAN INDIAN LAW (2008 & 2010 Editions). My CV is attached to this testimony.

My testimony addresses the history of federal law regarding hunting, fishing and gathering rights in Alaska, the subsistence management regime under Title VIII of ANILCA, and the power of Congress to adopt a Native tribal preference for access to fish and game. For the reasons explained below, I believe a Native tribal preference would easily withstand any federal constitutional challenge.

#### I. LEGAL HISTORY OF NATIVE HUNTING AND FISHING RIGHTS IN ALASKA

Since Alaska was purchased by the United States in 1867, the hunting and fishing rights of Alaska Natives have been affirmatively recognized and protected in various forms by Congress, the Executive Branch, and the federal courts. See generally D. CASE & D. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 270-290 (3rd Ed. 2012). The leading scholarly treatise on Native American law and contains the following summary of the legal treatment of Alaska Native rights to fish and game.

From the time of Alaska's purchase in 1867 until the present day, all branches of the federal government have protected to some degree the fish and wildlife uses of Alaska natives through exemptions from conservation laws, land reservations, and withdrawals.<sup>1189</sup> In its first action to protect

<sup>1189</sup> Before Alaska's purchase, Native subsistence rights were protected by the "laws of an antecedent government [Russia]." *United States v. Berrigan*, 2 Alaska 442, 446 (D. Alaska 1905);

wildlife resources in the new territory from over-exploitation, Congress restricted the taking of fur seals, but exempted native hunting for food, clothing, and boat-manufacture.<sup>1190</sup> Alaska's first game law<sup>1191</sup> restricted the taking of game animals, but exempted hunting for food or clothing by "native Indians or Eskimos or by miners, explorers, or travelers on a journey when in need of food." The 1916 Migratory Bird Convention with Great Britain exempted natives from the closed seasons for certain species.<sup>1192</sup> The 1925 Act creating the Alaska Game Commission authorized "any Indian or Eskimo, prospector, or traveler to take animals and birds during the closed seasons when he is in absolute need of food and other food is not available,"<sup>1193</sup>

The 1925 Act also imposed a one-year territorial residency requirement,<sup>1194</sup> amended in 1938 to authorize a three-year requirement, for trapping licenses whenever "the economic welfare and interests of native Indians or Eskimos, or the fur resources of Alaska, are threatened by the influx of trappers from without the Territory."<sup>1195</sup> The Reindeer Industry Act of 1937<sup>1196</sup> was intended to provide for native subsistence needs and establish a native monopoly over the reindeer industry.<sup>1197</sup>

As to fisheries, the 1924 White Act exempted from methods and closed-season restrictions "the taking of fish for local food requirements or for use as dog food."<sup>1198</sup> The 1934 amending act<sup>1199</sup> further excepted the "Karluk, Ugashik, Yukon, and Kuskokwim Rivers" from the restrictions on devices such as fish fences, traps, and fish-wheels, as well as other methods-and-means restrictions. The amendment stated that the exception for the Kuskokwim and Yukon Rivers, "shall be solely for the purpose of enabling native Indians and bona fide permanent white inhabitants along the said rivers" to take king salmon "for commercial purposes and for export," but "no person shall be deemed to be a bona fide permanent inhabitant of the said rivers who has not resided thereon, or within fifty miles thereof for a period of over one year."<sup>1200</sup> In 1943, the Secretary established the Karluk Indian reservation on Kodiak Island, designating adjacent tidelands and coastal waters under the Indian Reorganization Act's authority to reserve "public lands which are actually occupied by Indians or Eskimos" in Alaska.<sup>1201</sup> The Supreme Court rejected a challenge to the Secretary's inclusion of navigable waters in the reservation, noting that for natives "the adjacent fisheries are as important, perhaps more important than the forests, the furbearing animals or the minerals."<sup>1202</sup>

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 4.07[3](c)(i) (Lexis/Nexis 2012) (footnotes as in original text).

see also Russian Administration of Alaska and the Status of the Alaska Natives, S. Doc. No. 81-152 at 45, 50-51 (1950) (reprinting Second (1821) & Third (1844) Charters of the Russian American Company). See generally, David S. Case, *Subsistence and Self-Determination: Can Alaska Natives Have a More "Effective Voice"?* 60 U. Colo. L. Rev. 1009 (1989).

<sup>1190</sup> Act of July 1, 1870, 16 Stat. 180.

<sup>1191</sup> Act of June 7, 1902, 32 Stat. 327, amended, Act of May 11, 1908, 35 Stat. 102.

<sup>1192</sup> Migratory Bird Convention, U.S.-Gr. Brit., 39 Stat. 1702, 1703, T.S. No. 628. Migratory Bird Treaties with Canada and Mexico were amended by protocols in 1997, which exempt the taking of migratory birds and their eggs by Alaska natives. Treaty Doc. No. 104-28 and Treaty Doc. No. 105-26. 143 Cong. Rec. S11,167 (Oct. 23, 1997).

<sup>1193</sup> Alaska Game Commission Act, 43 Stat. 739, 744 (1925), amended by Act of Oct. 10, 1940, 54 Stat. 1103, <sup>1104</sup> and Act of July 1, 1943, 57 Stat. 301, 306.

<sup>1194</sup> Alaska Game Commission Act, 43 Stat. 739, 740.

<sup>1195</sup> Act of June 25, 1938, § 2, 52 Stat. 1169, 1170. The foregoing territorial statutes were omitted from the United States Code on Alaska's admission as a state. 48 U.S.C. §§ 192-211 (note).

<sup>1196</sup> 25 U.S.C. § 500 et seq.

<sup>1197</sup> See Gigi Berardi, *Natural Resource Policy, Unforgiving Geographies, and Persistent Poverty in Alaska Native Villages*, 38 Nat. Resources J. 85, 98-99 (1998); cf. *Williams v. Babbitt*, 115 F.3d 657 (9th Cir. 1997) (interpreting statute narrowly to permit non-native ownership of imported reindeer).

<sup>1198</sup> Act of June 6, 1924, §§ 4, 5, 43 Stat. 464, 466 (codified in part as amended at 48 U.S.C. §§ 232-234).

<sup>1199</sup> Act of Apr. 16, 1934, §§ 3, 4, 48 Stat. 594, 595.

<sup>1200</sup> Act of Apr. 16, 1934, § 3, 48 Stat. 594, 595.

<sup>1201</sup> Act of May 1, 1936, § 2, 49 Stat. 1250 (extending portions of the IRA to Alaska).

<sup>1202</sup> *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 114 (1949). The Court held, however, that the White Act could not serve as the basis for regulations prohibiting non-Indian fishing within the reservation.

This summary of congressional actions demonstrates consistent early recognition by the United States of Alaska Native rights and the importance of access to fish and wildlife resources.

## II. THE ABORIGINAL RIGHTS QUESTION

Native aboriginal rights, which include the right to hunt, fish and gather natural resources, are recognized as belonging to all indigenous Indian tribes, including Alaska Native tribes. See, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW at 10-22, 326-329 (Lexis/Nexis 2012); D. CASE & D. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 62, 79-80 (3rd Ed. 2012). These legal principles are premised on international law recognizing indigenous rights to use and occupy their traditional territories, but subject to negotiations with the colonizing nations. No modern land title is secure unless it can be demonstrated that Native aboriginal title to that area was somehow extinguished, or accommodated by treaty, agreement, or statute. Most of those treaties, agreements and statutes reserved rights to the affected tribe to a land base, as well as hunting, fishing and gathering rights both on and sometime off of the reserved lands.

For Alaska, application of these legal principles began with the Treaty of Cession in 1867, 15 Stat. 539, by which the United States acquired Russia's rights to Alaska. The Treaty provided that federal law pertaining to Indian tribes in the United States would likewise apply to Alaska Natives. This naturally included the law governing Native aboriginal rights. The Secretary of the Interior and his Solicitor addressed the question of aboriginal hunting and fishing rights in Alaska in a 1942 decision. The question presented was "Whether Indians of Alaska have any fishing rights which are violated by control of particular trap sites by non-Indians under departmental regulations. . ." Secretary Harold Ickes concurred in the Solicitor's "opinion that this question must be answered in the affirmative." He reasoned as follows.

Although the Natives of Alaska did not enter into formal treaties with the United States, such treaties are not essential to the maintenance of rights based upon aboriginal occupancy. As the Supreme Court said in *United States v. Winans*, 198 U.S. 371 (1905), "the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted." (at p. 381.) Thus, unless the rights which Natives enjoyed from time immemorial in waters and submerged lands of Alaska have been modified under Russian or American sovereignty, it must be held that the aboriginal rights of the Indians continue in effect.

Aboriginal Fishing Rights in Alaska, 57 Interior Dec. 461, 462-63, 1942 WL 4531 (1942).

Finally, it must be noted that the allowance of non-Indian fishing in areas subject to Indian possessory rights is a continuing wrong, rather than a wrong which, once committed, creates supervening and inalienable rights in third parties. It is well settled that by allowing and licensing the use of particular areas for fish traps the Federal Government does not recognize any permanent or proprietary interest therein. Thus while preexisting Indian proprietary interests have been violated they have not thereby been permanently extinguished. The Indian who has been forbidden from fishing in his back yard has not thereby lost his aboriginal title thereto.

I conclude that aboriginal occupancy establishes possessory rights in Alaskan waters and submerged lands, and that such rights have not been extinguished by any treaty, statute, or administrative action.

*Id.* at 476.

The 1958 Statehood Act further acknowledged the existence of Native rights. It provided that "all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts . . . or is held by the United States in trust for said Natives . . . shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe." Pub. L. No. 85-508, § 4, 72 Stat. 339 (1958). Corresponding language appears in the Alaska Constitution. Alaska Const., art. XII, § 12; see *Organized Village of Kake v. Egan*, 369 U.S. 60, 65-67 (1962) (Statehood Act preserved status quo respecting Native aboriginal title).

Section 6(b) of the Statehood Act, however, granted the State of Alaska the right to select 102.5 million acres for its own use from "vacant, unappropriated, and unreserved" public lands. As the new State began to select lands, Native tribes protested

to the Secretary of the Interior, and on January 12, 1969, Secretary Stewart Udall imposed a freeze on further patenting or approval of applications for public lands in Alaska pending the settlement of Native claims. Pub. Land Order No. 4582, 34 Fed. Reg. 1025 (1969); see *Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969). Pressure to resolve Native claims in Alaska also came from the State and from oil companies wishing to exploit the state's newly discovered petroleum resources. See Mary Clay Berry, *THE ALASKA PIPELINE: THE POLITICS OF OIL AND NATIVE LAND CLAIMS* 123, 163-214 (Ind. U. Press 1975). Oil development could not progress as long as Native claims clouded state authority to lease lands or transfer rights to the companies and hindered federal capacity to authorize construction of the Trans-Alaska Pipeline, to transport the oil. See R. Arnold, *ALASKA NATIVE LAND CLAIMS* 137-147 (2d ed. Cambridge Univ. Press 1978); *Native Village of Allakaket v. Hickel*, No. 706-70 (D. D.C. April 6, 1970) (enjoining construction of trans-Alaska pipeline over Native-claimed lands).

Finally, in 1971, Congress confronted the issues it had postponed for a century and enacted the Alaska Native Claims Settlement Act ("ANCSA"). Section 4(b) explicitly extinguished hunting and fishing rights based on aboriginal title: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy. . . including any aboriginal hunting and fishing rights that may exist, are hereby extinguished." 43 U.S.C. § 1603(b). The ANCSA Conference Report, however, expressly provided that the Secretary of the Interior (presumably by virtue of his on-going trust obligations) could "exercise his existing withdrawal authority" to "protect Native subsistence needs and requirements," from "nonresidents when subsistence resources for [the public lands] are in short supply or otherwise threatened." H. Conf. Rep. No. 92-746, 92d Cong., 1st Sess. 37 (1971), reprinted in 1971 U.S. Code Cong. & Ad. News 2247, 2250. "The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives." *Id.*

ANCSA's extinguishment clause as it relates to fish and wildlife is arguably inconsistent with current international law, which the United States supports. The United Nations Declaration on the Rights of Indigenous Peoples, includes the following:

#### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

See, Announcement of U.S. Statement of Support for the United Nations Declaration on the Rights of Indigenous Peoples (Dec. 16, 2010). <http://www.state.gov/s/tribalconsultation/declaration/>

#### III. POST-ANCSA TREATMENT OF HUNTING AND FISHING RIGHTS OFTEN INCLUDED NATIVE PREFERENCES

After ANCSA, Congress and the executive branch continued to afford federal protection to specific subsistence rights, largely through exemptions from federal laws, or international treaties governing migratory birds or marine mammals. The Marine Mammal Protection Act of 1972 (MMPA) exempted from the moratorium on taking marine mammals any Alaska Native "who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean," if the taking is for "subsistence purposes" or for "creating and selling" handicrafts and clothing. 16 U.S.C. § 1371(b); see *Beck v. U.S. Dep't of Commerce*, 982 F.2d 1332 (9th Cir. 1992) (interpreting Native handicrafts exception favorably to Alaska Natives); *United States v. Clark*, 912 F.2d 1087 (9th Cir. 1990); *People of Togiak v. United States*, 470 F. Supp. 423 (D.D.C. 1979). See generally *Marine Mammal Protection Act of 1972*, 16 U.S.C. §§ 1361 et seq. Congress thus preempted state authority over marine mammal hunting throughout Alaska's territorial sea and coastal inland waters. Cf. *Alaska v. Arnariak*, 941 P.2d 154 (Alaska 1997) (narrowly construing the Marine Mammal Protection Act's preemptive scope to allow state prohibition of firearms to take marine mammals on state wildlife refuge). Under a 1981 amendment to the MMPA, the Secretary of the Interior was prohibited from transferring marine mammal management authority to Alaska unless the State adopted a subsistence priority law. 16 U.S.C. § 1379(f); see also 50 C.F.R. § 18.23 (2013) (implementing regulations). The MMPA was amended in 1996 to provide for comanagement with Alaska Natives. See 16 U.S.C. § 1388. The Alaska Eskimo Whaling Commission annually ob-

tains subsistence bowhead whaling quotas pursuant to the International Whaling Convention. See David A. Case & David A. Voluck, *Alaska Natives & American Laws 276-78* (3d ed. 2012). Polar bear management agreements and treaties also contain special provisions dealing with Native harvest. 16 U.S.C. § 1423c. See Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, U.S.-Russ. Fed. (Oct. 16, 2000). See also 50 CFR § 300.65 (“A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table.”); <http://alaskafisheries.noaa.gov/ram/subsistence/halibut.htm>

In 1973, the Trans-Alaska Oil Pipeline Act imposed strict liability for any harm to the subsistence resources of Natives or others, 43 U.S.C. § 1653(a)(1), and the Endangered Species Act (ESA) presumptively exempted subsistence uses by Natives and “any non-Native permanent resident of an Alaskan Native village” from its coverage. 16 U.S.C. § 1539(e)(1); the Secretaries of the Interior and Commerce issued an order requiring early and substantial consultation between federal agencies implementing the ESA and affected Alaska Native tribes. Secretarial Order No. 3225 (Jan. 19, 2001).

The 1978 Fish and Wildlife Improvement Act authorized the Secretary “to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs.” 16 U.S.C. § 712(1). Finally, executive land withdrawals in the decade following passage of ANCSA contained expansive subsistence-protection mandates: 14 of the 17 national monument proclamations signed by President Carter on December 1, 1978, noted the presence of “the unique subsistence culture” and directed the Secretary to protect it. 43 Fed. Reg. 57,019 (Dec. 5, 1978), reprinted in 1978 U.S. Code Cong. & Ad. News 9589-9628; see 43 Fed. Reg. 60,252-60,258 (Dec. 26, 1978) (interim implementing subsistence regulations, providing for “subsistence fishing” in “monument area waters”). These efforts to protect Native subsistence access to marine mammals, migratory birds and halibut in offshore waters were beneficial, but too limited in scope. Fish and game, which are critical for Native subsistence uses, were not generally protected and the need for congressional action was apparent.

By the late 1970’s, it was obvious that in order for the federal government to be faithful to its policy of dealing honorably with Alaska’s indigenous peoples, Congress would have to devise a new means of protecting Native customary and traditional hunting, fishing and gathering in Alaska. Resurrecting language earlier deleted from drafts of the Claims Settlement Act, Alaska Natives returned to Congress asking that explicit comprehensive protections for Native customary and traditional hunting and fishing be included in the Alaska National Interest Lands Conservation Act (ANILCA). The original Committee drafts of Title VIII of ANILCA proposed a Native-only subsistence preference on all federal public lands in Alaska and allowed the State to manage the priority on those lands if it passed a law of general applicability that provided the same preference on state lands. Before the bill was passed, Congress recast the priority as one for “rural” residents in order to appease the State of Alaska, which argued that a Native priority would violate the State’s Constitution. The State’s argument was incorrect as a matter of law, for states may implement federal laws regarding Native American tribes if authorized to do so. See *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658 (1979) (rejecting Washington’s argument that it could not implement federally protected Indian treaty rights).

#### IV. CURRENT STATE OF AFFAIRS UNDER TITLE VIII OF ANILCA

The State came into compliance with Title VIII of ANILCA in 1981 and thus obtained authority to manage subsistence uses on federal public lands in Alaska. Even then, however, the State program did not provide a meaningful priority for subsistence uses by rural residents. The Alaska Board of Game applied sport regulations to moose and caribou hunting in the Lime Village area and Federal District Judge Holland declared that the state rules were invalid because they did not adequately accommodate customary and traditional subsistence use patterns. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989). The situation with fisheries management was even worse. Under state management many traditional upriver subsistence fisheries had been shut down shortly after Statehood in favor of downriver commercial fisheries highlighting the need for comprehensive legislation to protect subsistence uses of fish and game. These upriver closures were the genesis for the Katie John litigation, which was commenced in 1985 after the Alaska Board of Fisheries refused the request from Katie John and Doris Charles that the fishery at the site of Batzulnetas be opened. In 1987 the fishery was opened as a result of the litigation,

and Judge Holland ordered the State to promulgate regulations that complied with Title VIII's rural priority. *Katie John, et al. v. Alaska*, No. A85-698 Civil, Order on Cross Motions for Summary Judgment (D. Alaska Jan. 19, 1990) (striking down state regulations that restricted subsistence fishing at an historic Native fish camp). See, *United States v. Alexander*, 938 F.2d 942 (9th Cir. 1991) (setting aside a federal Lacey Act prosecution on the ground that state law prohibiting cash sales from being considered subsistence uses was in conflict with ANILCA's protection of customary trade as a subsistence use); *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990) (striking down state regulations governing subsistence hunting of caribou in western Alaska as inconsistent with the customary and traditional harvest patterns of Yupik Natives).

In 1989 the State Supreme Court set aside the State's ability to provide a rural subsistence preference when it declared that the rural priority violated the Alaska Constitution. Consequently, the State lost regulatory authority over subsistence uses on federal lands pursuant to federal regulations adopted in 1992. Because the federal government refused to assert jurisdiction over most navigable waters, Katie John and others filed a successful lawsuit to obtain federal management over many navigable waters in the state. That decision was handed down in 1995, and federal agencies were charged with developing rules to implement the court decision.

Governor Knowles made several attempts to convince the state legislature to place a rural preference constitutional amendment on the ballot, but was unsuccessful. Senator Stevens secured a series of appropriations riders that held proposed final federal rules in abeyance to secure time for the state legislature to act, but no action was taken. See Pub.L. 105-277, Div. A, § 101(e) [Title III, § 339], 112 Stat. 2681 (1998); and Historical Note, 16 U.S.C.A. § 3102.

Federal regulations to implement the Katie John court decision thus became final in 1999, and all was relatively quiet until the State brought a new lawsuit in 2005 challenging the new rules on several grounds. Since then, much time and expense has been spent in litigation by both the United States and the Native community in defending the federal priority from attack by the State of Alaska. These attacks focus on the scope and mechanics of the federal management regime on federal public lands. The Katie John case is now in its third generation of litigation. In the latest decision, the Ninth Circuit Court of Appeals rejected the State's challenge to the federal subsistence rules promulgated to implement that court's 1995 and 2001 decisions. *Katie John v. Alaska*, 720 F.3d 1214 (9th Cir. 2013) (*Katie John III*). Set out at the end of this document is a summary of the decision. The State has until early October to ask the United States Supreme Court to review the case.

Secretary of the Interior Ken Salazar initiated a review of the federal subsistence program in 2009, and AFN urged that the Administration recommend congressional action toward a Native priority, or "Native plus" priority for subsistence uses. Instead, the Administration made a few changes in Board structure, which are best characterized as window dressing.

As of now the federal-state subsistence divide is as follows.

1. The federal priority (Title VIII) applies on all federally-owned uplands. It also applies to all non-navigable waters within such federally-owned lands.
2. The federal priority also applies to navigable waters that are located above submerged lands that were retained by the United States at Statehood in 1959 (most submerged lands passed automatically to the State of Alaska at the moment of statehood).
3. The federal priority also applies to navigable waters that are covered by the federal reserved rights doctrine. This includes all waters within and adjacent to federal conservation system units, such as National Forests, Parks, Preserves, Monuments, Recreation Areas, and so on. Litigation continues over whether the federal government has included too few, or too many waters within its interpretation of the federal reserved rights doctrine. That litigation, *Katie John v. United States*, 720 F.3d 1214 (9th Cir. 2013), was decided in July and the court rejected all of the State's challenges to the federal rules governing the scope of the subsistence priority. Any appeals to the U.S. Supreme Court must be taken by early October.
4. All other non-federal lands (including Alaska Native corporation lands and tribally-owned lands) are subject only to the state's subsistence law.
5. The State's own subsistence program, on the other hand, has lost meaningful protection for subsistence by rural Alaska Natives. See *Alaska v. Kluti Kaah*, 831 P.2d 1270 (Alaska 1992) (upholding state "subsistence season" of seven days duration in order to accommodate the requirement that all Alaskans were eligible to hunt moose in the road-accessible Unite 13 management area); *State v. Morry*, 836 P.2d 358 (Alaska 1992) (state not mandated to take into

consideration traditional and customary methods of subsistence takings in their formulation of subsistence regulations). Aside from the fact that the state “priority” is available to all Alaskans, state regulatory boards have exercised their authority to declare large areas as “non-subsistence use areas” to preclude application of even the state’s watered-down subsistence preference. Most of the areas around Anchorage (including the Kenai Peninsula and Mat-Su Valley), Fairbanks, and Juneau have been designated non-subsistence areas by the Joint Boards of Fisheries and Game. In addition, areas around Ketchikan and Valdez have been designated as non-subsistence areas. The State would have considerable work to do in order to come back into compliance with Title VIII.

#### V. CONSTITUTIONALITY OF NATIVE PREFERENCE LAWS

A tribal preference for Alaska Native hunting, fishing and gathering rights would be consistent with a long line of Supreme Court cases upholding federal legislation providing separate treatment for indigenous tribes and their members in the United States. The Supreme Court summarized the law in this area:

The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government’s relations with Indians.

“Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, *Worcester v. Georgia*, 31 U.S. 515, 6 Pet. 515, 557, 8 L.Ed. 483 (1832); they are ‘a separate people’ possessing ‘the power of regulating their internal and social relations . . .’” *United States v. Mazurie*, 419 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706 (1975).

Legislation with respect to these “unique aggregations” has repeatedly been sustained by this Court against claims of unlawful racial discrimination. In upholding a limited employment preference for Indians in the Bureau of Indian Affairs, we said in *Morton v. Mancari*, 417 U.S. 535, 552, 94 S.Ct. 2474, 2483, 41 L.Ed.2d 290 (1974):

“Literally every piece of legislation dealing with Indian tribes and reservations . . . single(s) out for special treatment a constituency of tribal Indians living on or near reservations. If these laws . . . were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased . . .”

In light of that result, the Court unanimously concluded in *Mancari*:

“The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities . . .” *Id.*, at 554, 94 S.Ct., at 2484.

*U. S. v. Antelope*, 430 U.S. 641, 645 (1977).

These rules were applied to reject Washington State’s attack on the treaty fishing rights of Indian tribes in off-reservation areas. The Supreme Court stated that it “has repeatedly held that the peculiar semisovereign and constitutionally recognized status of Indians justifies special treatment on their behalf when rationally related to the Government’s ‘unique obligation toward the Indians.’” *Washington v. Washington State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 673, (1979). In a recent case challenging Congress’s power to restore tribal criminal jurisdiction, the Supreme Court noted that it has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of federal power and that “at least during the first century of America’s national existence . . . Indian affairs were more an aspect of military and foreign policy than a subject of domestic or municipal law.” *United States v. Lara*, 541 U.S. 193, 200-202 (2004). Those sources of power are also sufficient to restore or reform the federal regime governing Alaska Native hunting, fishing and gathering rights.

#### VI. CONCLUSION

Until ANCSA passed in 1971, Native aboriginal rights were protected under federal law. In addition, many statutes, treaties and executive actions provided protections for Native hunting and fishing rights. The Congress that passed ANCSA intended that subsistence uses be protected, and when that aim was not fulfilled Title VIII of ANILCA was passed. Title VIII was intended to protect those rights through a “rural” preference that would be fulfilled with the State of Alaska’s cooperation. The State has refused to cooperate and the intended federal subsistence protections

have not been fulfilled. ANCSA's corporate scheme was experimental and Congress has revisited it with substantial amendments on many occasions. Now is the time for Congress to act to fulfill the promise that Native subsistence rights be protected.

The undeniable federal power in this area, coupled with the federal action since acquisition of Alaska to the present time, demonstrates that the proposed Native preference is consistent with federal law. The question here is whether Congress has the authority, consistent with equal protection values embodied in the Due Process clause of the 5th Amendment, to establish a Native priority for access to fish, game and other natural resources. The answer, based on over two hundred years of congressional, judicial and executive branch precedent, is yes.

ADDENDUM.—THE KATIE JOHN III DECISION

Katie John v. United States, 720 F.3d 1214 (9th Cir. 2013).

Senior Judge William C. Canby, Jr. and Judge Consuelo Callahan joined Senior Judge Kleinfeld's opinion. Senior Judge Betty Fletcher was on the panel when the case was argued in Anchorage in July of 2011, but passed away in 2012 and was replaced by Judge Canby.

The lengthy opinion begins with a discussion of the history of the State's unsuccessful efforts to obtain management over federal public lands under Title VIII of ANILCA, and the current litigation over the geographic scope of federal management authority. The opinion then recounts the basic parameters of the federal reserved water rights doctrine, which is the primary issue in the litigation. Judge Kleinfeld correctly notes that the reserved rights doctrine has previously been applied to protect or quantify actual federal or Indian water use. Here, instead, it is being utilized to determine the geographic boundaries of federal public lands. Judge Kleinfeld observed that:

"We, and perhaps the Secretaries, failed to recognize the difficulties in applying the federal reserved water rights doctrine in this novel way, and in retrospect the doctrine may provide a particularly poor mechanism for identifying the geographic scope of ANILCA's rural subsistence priority management when it comes to water. \*\*\* Of course, we had the opportunity to revisit Katie John I in Katie John II, and while a majority of the en banc court agreed for diverging reasons that Katie John I was incorrectly decided, we could not come to a controlling agreement about why that was true. We accordingly concluded that the decision 'should not be disturbed or altered.' Katie John I therefore remains controlling law, and we must attempt to apply it in this case."

[Katie John I was decided by a three-judge panel of the Ninth Circuit in 1995 and determined that the federal reserved rights doctrine should be utilized to delineate federal jurisdiction over navigable waters under ANILCA].

Despite the difficulties in applying the federal reserved rights doctrine, the court moved on to the merits of the challenges to the 1999 federal subsistence rule. Set out below are short descriptions of the issues and language from the court's opinion resolving each matter presented in the case.

1. What Process: The State argued that the federal determination of waters subject to the federal reserved rights doctrine should have been decided in a judicial proceeding instead of through an administrative rule-making. Judge Kleinfeld rejected the State's argument.

We hold that the Secretaries appropriately used notice-and-comment rulemaking, rather than adjudication, to identify those waters that are "public lands" for the purpose of determining the scope of ANILCA's rural subsistence priority. The use of rule making is consistent with ANILCA, which requires the federal government to "prescribe such regulations as are necessary," and with our decision in Katie John I, where we expressed our "hope that the federal agencies will determine promptly which navigable waters are public lands subject to federal subsistence management. \* \* \* Logically, we intended the agencies to act through rulemaking, where doing so was feasible.

2. Which waters: Federal District Court Judge H. Russel Holland presided over the lower court proceedings and directed the parties to frame any challenges to the federal rules through particular test cases when appropriate. Judge Holland and the court of appeals addressed the following issues.

a) Adjacent waters: The State argued that the rules should not apply to waters that are adjacent to the boundaries of federal CSUs. These boundary streams include long river segments, such as the portions of the Copper River technically outside the Park and Preserve boundaries. The court agreed with AFN, the United

States and Katie John that such waters were subject to the reserved rights doctrine and thus subject to the subsistence priority. The court stated:

Accordingly, the Secretaries reasonably concluded that the United States has an “interest” in these adjacent waters by virtue of the federal reserved water rights doctrine sufficient to qualify as “public lands” for purposes of Title VIII.

b) Sixmile Lake: This lake is adjacent to the Lake Clark National Park and Preserve. The State argued that because the Lake’s shoreline is non-federal, non-public land owned by the Native Village Corporation for Nondalton, the lake could not be considered as adjacent to the Park. The court deferred to the federal determination that the boundary of the Park was adjacent to the shore of Sixmile Lake and thus the lake is covered by the subsistence priority.

[T]he agency map of the Lake Clark National Park and Preserve places the Park’s boundary at the shoreline of Sixmile Lake. ANILCA provides that, “[i]n the event of discrepancies between the acreages specified in this Act and those depicted on such maps, the maps shall be controlling.” The Secretaries therefore properly concluded that Sixmile Lake was in fact adjacent to the Lake Clark National Park and Preserve. Moreover, under the federal reserved water rights doctrine, the Secretaries must show only that the waters are positioned such that the United States may need to exercise its rights upon them. For that reason, the formal ownership of the land immediately along the shoreline of Sixmile Lake is not dispositive, so long as the lake contains water that is or might be necessary to fulfill the primary purposes of the Lake Clark National Park and Preserve.

c) Seven Juneau-area streams: The State argued that several streams near Juneau were either outside of the Tongass National Forest, or were surrounded by private and state inholdings and thus could not be considered subject to federal reserved water rights. The court concluded the U.S properly considered the rivers to be within the Tongass.

d) Water flowing through inholdings: The court rejected the State’s general arguments that waters that ran between State and private inholdings within the 34 CSUs could not be subject to federal reserved water rights.

[W]ater rights that the United States impliedly acquires are not forfeited or conveyed to third parties when the government conveys to another party land within a federal reservation. Furthermore, federal reserved water rights can reach waters that lie on inholdings as long as those waters, based on their location and proximity to federal lands, are or may become necessary for the primary purposes of the federally reserved land. Because these water bodies are actually situated within the boundaries of federal reservations, it is reasonable to conclude that the United States has an interest in such waters for the primary purposes of the reservations. We therefore uphold the Secretaries’ inclusion of these waters within “public lands.”

e) Coastal waters and the “headland-to headland method”: The State argued that the federal government’s subsistence rules unlawfully included marine waters at the mouths of rivers. A prime example was the Yukon Delta National Wildlife Refuge where the river meets the sea. The federal government determined the outer limit of public lands by drawing a boundary across the water from the bank of one side of the river to the opposite bank where the river meets the sea. The court agreed that this was a reasonable way to determine where the federal subsistence priority applies and rejected the State’s arguments.

As discussed above, a federal interest by virtue of the federal reserved water rights doctrine may exist in waters adjacent to, but outside the boundary of, a federal reservation, as long as these waters are appurtenant to the reservation. Because the headland-to-headland method includes tidally influenced waters that are physically connected to, and indeed practically inseparable from, waters inland of the high tide line (or waters on the federal reservations themselves), drawing of the boundary line in this manner is consistent with the federal reserved water rights doctrine. Finally, as the Secretaries explain in the 2005 amendments, “the regulations use the methodology found in the Convention on the Territorial Sea and Contiguous Zone from the United Nations Law of the Sea for closing the mouths of rivers.” For these reasons, using the headland-to-headland ap-

proach for purposes of determining the boundaries of rural subsistence priority management is a reasonable way to administer ANILCA.

f) Upstream and downstream waters: Katie John argued that because some adjacent waters were included, the federal priority should also apply to waters farther upstream and downstream of the various conservation system units. The court agreed that this was a reasonable way to apply the reserved water rights doctrine, but that it was up to the federal agencies to make that determination in the first instance. Importantly, the court recognized that the expansion advanced by Katie John might be appropriate in a particular situation. However, because the argument was made in general terms, the courts deferred to the federal agency decision. The court stated:

In short, we agree with the district court that the Secretaries reasonably determined that, as a general matter, federally reserved water rights may be enforced to implement ANILCA's rural subsistence priority as to waters within and "immediately adjacent to" federal reservations, but not as to waters upstream and downstream from those reservations. We also agree with the district court that the federal reserved water rights doctrine might apply upstream and downstream from reservations in some circumstances, where there a particularized enforcement action for that quantity of water needed to preserve subsistence use in a given reservation, where such use is a primary purpose for which the reservation was established. But the abstract claim that all upstream and downstream waters are necessary for all the federal reservations in the 1999 Rules cannot withstand ANILCA's text or history, the joint decision of the two cabinet secretaries to whom administration of the complex statute has been delegated, our decisions in Katie John I and Katie John II, or the facts established in this litigation.

g) Allotments: In the lower 48, allotments are generally recognized as including reserved water rights to allow full use of the land. In Alaska there is a strong argument that Native allotments include reserved waters to allow for full use of the allotment. The United States agrees, but has deferred determination of which waters are reserved to a case-by-case process. The court agreed with the federal position.

Determining which waters within or appurtenant to each allotment may be necessary to fulfill the allotment's needs is a complicated and fact-intensive endeavor that is best left in the first instance to the Secretaries, not the courts. We are mindful that Katie John I expresses the hope that the federal agencies will "determine promptly which navigable waters are public lands subject to federal subsistence management," and that the parties to this litigation have an interest in a final determination of how the Secretaries will manage ANILCA's rural subsistence priority. Accordingly, while we defer to the Secretaries' determination in the 1999 Rules regarding how best to identify federal reserved water rights for Alaska Native settlement allotments, we encourage them to undertake that process in a reasonably efficient manner.

3. Selected-but-not-yet-conveyed lands: The court rejected the State's argument that land selected by the state or a Native Corporation, but not yet conveyed from the United States, was not federal land for purposes of the subsistence priority.

[B]ecause the title to the selected-but-not-yet-conveyed land remains with the United States, there is no practical reason to exclude these lands from federal rural subsistence priority management before they are formally conveyed to the State or a Native corporation.

Senator MURKOWSKI. Thank you, Mr. Anderson. Dr. Rosita Worl, welcome.

**STATEMENT OF ROSITA WORL, PRESIDENT, SEALAKSA CORPORATION, JUNEAU, AK**

Ms. WORL. Aanshaawat' I, Deisheetaan, Senator Murkowski, Senator Manchin.

Gunulcheesh Aan Yatgu Saani. Thank you, Noble Leaders, for this opportunity to testify in my capacity as the chair of the Alaska Federation of Natives Subsistence Committee.

I have also submitted written testimony for the record.

I would first like to share my identity with you, to demonstrate our spiritual relationship to the land and wildlife and to demonstrate our ancient ties to the land.

Ch'aak' naa xat sitee, I am an eagle.

Shangukeidi aya xat. I am a thunderbird.

Kawdliyaayi Hit aya xat. I am from the house lowered from the sun.

Lukaaz.adi aya xat. I am a child of the sockeye clan.

My spirits are the white bear and the shark.

Subsistence is not an easy concept to define. Subsistence has been defined under Federal law to include traditional and customary hunting and fishing.

Alaska Natives have simply defined subsistence as our way of life. Subsistence activities, in fact, are integrated into the economic, cultural, religious and social systems of Alaska Native societies.

The definition of subsistence aside, it is critical that we acknowledge that subsistence is the foundation of Alaska Native cultures. Subsistence is the mainstay of food security in Native villages. Subsistence contributes to the cultural and physical survival of Native peoples on a daily basis.

Protection of subsistence is part of Federal law throughout the United States. Nowhere are these protections more critical than in the State of Alaska.

You have heard my colleague, Ana Hoffman, report on the significance and the importance of Alaska Native consumption of foods, subsistence food.

We are here to ask this committee to fulfill the Federal Government's trust responsibility to protect Alaska Native subsistence, to protect our communities and our cultures, our food and our way of life.

You have also heard my colleague, Mr. Anderson, review for you the history of ANCSA and ANILCA. ANILCA did not explicitly protect Alaska Native subsistence users, and ANILCA's rural priority did not extend to the State—to State or private lands or lands conveyed to our Native Corporations pursuant to ANCSA.

Today, Federal laws protecting subsistence have been efficiently gutted and the State has further enacted measures adverse to subsistence. The State has declared all Alaskans to be subsistence users, and the State has declared large areas of land adjacent to communities as non-subsistence-use areas.

As just one example, Alaska's Board of Game, which regulates hunting on State lands and on Ahtna's land, has limited the subsistence moose hunts to only a few days in the traditional territory of the Ahtna Tribe.

Yet, as I understand, the Board of Game allowed as many as 20,000 recreational hunters to sign up for the hunt during the 2013 season. The Ahtna people, who have depended on moose for their livelihood since time immemorial, were only able to take 18 moose for their 1,700 tribal members.

The Federal Government has also failed to take meaningful steps to protect Alaska Native subsistence users. The United States and this government have a trust responsibility to Alaska Natives. Congress can act to protect Alaska Natives subsistence rights.

In fact, Congress has, in the past, enacted or amended laws like the Marine Mammal Protection Act that explicitly protects Alaska Native subsistence users.

We understand that achieving a meaningful reform of the legal framework for the subsistence management in Alaska may take some time, and we ask this committee to take a series of steps toward reform during the Congress.

First, we ask that Alaska Native leaders work with us to draft legislation that would protect the Alaska Native's customary and traditional hunting and fishing way of life.

Second, we ask that you work with Alaska Native leaders to develop and quickly pass legislation to implement two innovative subsistence demonstration projects that my colleague will be talking about.

Third, we ask that a report from the Secretary of Interior on the status of the department's efforts to implement actions outlined following a 2009 secretarial review for the Federal Subsistence Management Program.

Fourth, we urge the Secretaries of Interior and Agriculture to review and, to the extent possible, implement AFN's recommendations on administrative action that would significantly improve the ability of Alaska Native tribes to pursue their customary and traditional subsistence activity.

On behalf of our Alaska Native people and communities, which depend on subsistence hunting and fishing to maintain our health, wellbeing and way of life, I thank you for holding this important hearing.

I would be pleased to answer any questions you may have. Gunulcheesh.

[The prepared statement of Ms. Worl follows:]

PREPARED STATEMENT OF ROSITA WORL, CHAIR, SUBSISTENCE COMMITTEE, ALASKA  
FEDERATION OF NATIVES

Chairman Wyden, Aanshaawatki, Deisheetaan, Senator Murkowski, and Members of the Committee:

Gunulchéesh Aan Yatgu Sáani. Thank you Noble Leaders for inviting me to testify today. Today I testify in my capacity as Chair of the Alaska Federation of Natives Subsistence Committee.

I would like to first share my identity with you to demonstrate our spiritual relationship to the land and wildlife and to demonstrate our ties to the land:

Ch'álak' naa xat sitee—I am Eagle  
Shangukeidi áyá xát—I am a Thunderbird  
Kawdliyaayi Hít áyá xát—I am from the House Lowered from the Sun  
Lukaax.ádi áyá xát—I am a Child of the Sockeye Salmon  
My Spirits are the White Bear and the Shark

The concept of "subsistence" is not an easy concept to define. No one definition of subsistence fully captures the meaning of the term.

Alaska Natives have simply defined subsistence as their "way of life." Social scientists affirm this definition through their analyses that demonstrate that indeed subsistence activities are integrated into the economic, cultural and social systems of Native societies.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), uses the following definition, which is important from a legal standpoint:

The term "subsistence uses" means 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.

Aside from the definition of subsistence, it is critical that we acknowledge that

Subsistence is the foundation of Alaska Native cultures.

Subsistence is the mainstay of food security in Native villages.

Subsistence contributes to the cultural and physical survival of Native communities on a daily basis.

Protection of subsistence, including traditional and customary hunting and fishing rights, is a part of federal law throughout the United States. Nowhere are these protections more critical than in the State of Alaska.

A vast majority of Alaska's 120,000 Native people (nearly 20% of the population of Alaska) still participate in hunting, fishing and gathering for food during much of the year. The average harvest of subsistence resources in pounds per person in rural Alaska is estimated at 544 pounds annually, equivalent to 50% of the average daily caloric requirement.

Today, we are finding, more so than ever, that subsistence is threatened on multiple fronts:

- Global warming is altering our environment and diminishing the availability of subsistence resources. For example, the St. Lawrence Islanders are requesting that an economic disaster be declared since they were unable to harvest their normal number of walrus, which provide both food and a source of income.
- The management of high sea fisheries fails to consider the subsistence priority, and thousands of Natives along our major riverine systems face decreasing availability of salmon that is so vital to our food security.
- High energy costs hinder the ability of Natives to harvest subsistence foods, again diminishing a major source of food security in our communities.
- The Federal Subsistence Board<sup>1</sup> declared the Village of Saxman to be non-rural in 2007 by aggregating it with the larger community of Ketchikan and declaring the whole area non-rural. Saxman should have been evaluated on its own characteristics and population. Unless the Board revises its method of making rural/nonrural determinations, Saxman will lose its rural status, a loss that will ripple through rural Alaska as more and more of our villages face the loss of the rural preference under federal law.

These are just a few examples of the challenges we face to our way of life. Unfortunately, the Federal Government's legal framework for subsistence management in Alaska further undermines the ability of Alaska Natives to access their traditional foods.

In the 1960s, the Alaska Federation of Natives and Alaska Native leaders sought federal protections for hunting and fishing rights as part of a settlement of Alaska Native aboriginal land claims. Instead, Section 4(b) of the Alaska Native Claims Settlement Act (ANCSA) of 1971 extinguished those rights:

All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

Rather than define explicit protections for Native hunting and fishing rights in Alaska at that time, Congress in 1971 expected the State of Alaska and the Secretary of the Interior "to take any action necessary to protect the subsistence needs of Alaska Natives." S. REP. NO. 92-581, at 37 (1971) (Conf. Rep.). Neither the Secretary of the Interior nor the State of Alaska fulfilled that expectation. As a result, Congress enacted Title VIII of ANILCA in 1980. ANILCA's Title VIII envisioned State implementation of the federal priority on all lands and waters in Alaska through State law. Again, the Alaska Federation of Natives and Alaska Native leaders sought explicit protections for "Native" hunting and fishing rights, but the State objected.

<sup>1</sup>The Federal Subsistence Board is the decision-making body that oversees the Federal Subsistence Management Program. It is made up of the regional directors of the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs and U.S. Forest Service. Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture. The Regional Advisory Councils provide recommendations and information to the Board; review proposed regulations, policies and management plans; and provide a public forum for subsistence issues. U.S. Department of the Interior, Federal Subsistence Management Program, About the Program, available at <http://www.doi.gov/subsistence/about/index.cfm>.

Ultimately, ANILCA was crafted to provide a subsistence priority for “rural residents”. Again, Congress expected that the State of Alaska would enact State laws that conformed to federal requirements and manage subsistence on state and federal lands in Alaska.

Alaska did enact laws that allowed the State to manage subsistence on state and federal lands in Alaska, but that system operated for less than a decade before the Alaska Supreme Court ruled that the State Constitution precluded State participation in the program. In 1989, the Alaska Supreme Court held, in *McDowell v. State*, 785 P.2d 1 (Alaska 1989), that the Alaska Constitution’s equal access clauses, which guarantee that all Alaskans have equal access to fish and wildlife, preclude the State from implementing a rural subsistence priority consistent with ANILCA.

After the 1989 *McDowell* decision, Alaska Native leaders and leaders in the Alaska Legislature attempted to bring Alaska law into compliance with ANILCA, which would have enabled the State to reassume responsibility for managing subsistence hunting and fishing on federal lands. The Alaska Legislature (through 20 regular sessions and six special sessions) was not able to accomplish this goal, falling just short of required number of votes. Today, State law generally prioritizes subsistence uses of fish and game but provides no preference for rural or Alaska Native residents.

Forty-two years after ANCSA passed, and 33 years after ANILCA passed, neither the Department of the Interior nor the State of Alaska has lived up to Congress’s expectation that Alaska Native subsistence needs would be protected. Today, the Federal Government manages subsistence on federal lands in Alaska. The State of Alaska generally manages subsistence on state and private lands in Alaska, including private lands owned by Alaska Native Corporations formed pursuant to ANCSA.

After more than 20 years of “dual” federal and state management, it has become clear that the State will not do what is required to regain management authority over subsistence uses on federal lands and waters. The State subsistence laws have effectively been gutted—large areas of the state have been classified as “non-subsistence use areas,” where subsistence users receive no priority and “all Alaskans” have been declared eligible for the subsistence priority on all remaining state and private lands. This change is completely inconsistent with ANILCA’s rural preference. This inconsistency is getting worse rather than better and the purpose, intent, and “letter of the law” in both ANCSA and ANILCA are not being met.

We hope this Committee will recognize that ANCSA and ANILCA failed to provide the long-term protections for Native subsistence needs that Congress intended, and take the actions necessary to provide those protections. Subsistence harvests have been marginalized, both by competing users of fish and game and by ineffective and irreconcilable federal and state management regimes. In some cases, Alaska Natives have been made criminals for feeding their families and communities, and penalized for practicing ancient traditions. Alaska Natives were given only a very limited role in the management of their hunting and fishing rights under ANILCA—even on their own lands—undermining all efforts to protect customary and traditional uses, practices and needs. Only Congress can make the changes necessary to protect subsistence in Alaska.

#### THE ADMINISTRATION’S ROLE IN SUBSISTENCE REFORM

In 2009, in light of the erosion of federal protections, and after more than twenty years of dual (state and federal) management of subsistence, former Secretary of the Interior Ken Salazar initiated a review of the Federal Subsistence Management Program. In doing so, he called for a “new approach”—one that would recognize and respect the voice of subsistence users in subsistence management. The Native community participated in the review, and submitted extensive comments and recommendations.

The Secretary completed his review on October 5, 2010, and subsequently outlined a number of actions which could be accomplished by Secretarial directive or policy or through regulatory changes requiring formal rule making. To date, very few of those actions have actually been implemented. AFN believes the administrative actions taken to date, as a result of the review, are inadequate. Very little has changed since the review.

AFN recommended, and continues to recommend, that the Secretary of the Interior pursue a number of administrative actions that would improve the current federal management system and better protect our way of life. We ask this Committee to join us in urging the President and his Administration to take whatever policy and administrative measures they can to better protect our subsistence way of life. Attached to my testimony is a list of the actions we believe the Administration can take right now that would require little or no funding. We shared this list with the

new Secretary of the Interior, Sally Jewell, in our meeting with her in late August. Our recommendations include the following:

- **Effective Implementation of Section 809 of ANILCA:** Title VIII of ANILCA mandates that the Federal Government provide rural residents a meaningful role in the management of subsistence fisheries. To increase the quality and quantity of information available to subsistence fisheries managers, Secretary Babbitt established the Fisheries Resource Monitoring Program within the Office of Subsistence Management in 2000. While the Monitoring Program offers tremendous opportunities for partnerships and participation by Alaska's tribes and their organizations, very little of the budget goes to Alaska Native organizations. In FY 2012, the total budget for the Monitoring Program was \$4,538,150. Only 19% of that funding (\$861,526) went to Native organizations while 42% went to the State of Alaska and another 11% to private organizations. Alaska's tribes have historically received very little of the funding under the Monitoring Program.
- **Regional Advisory Councils<sup>2</sup>:** Section 805 of ANILCA mandates that the Federal Subsistence Board follow the recommendations of the RACs unless a recommendation is "not supported by substantial evidence, violates recognized principles of fish and wildlife conservation or would be detrimental to the satisfaction of subsistence needs." The Federal Subsistence Board takes the position that it need only give deference to recommendations that involve the "taking" of fish or wildlife; the Board does not defer to RACs on other critical decisions, for example, whether a community should qualify as "rural", or whether a specific practice qualifies as a "customary and traditional" use of fish or wildlife within the RAC's region. The Federal Subsistence Board should be directed to give deference to RAC recommendations on all matters related to subsistence uses, including, among other things (1) rural determinations; (2) customary and traditional use determinations; (3) issues that arise out-of the normal regulatory cycle; and (4) special actions and emergency regulations.
- **Composition of the Federal Subsistence Board:** During the Secretarial review, AFN recommended that the Federal Subsistence Board be replaced with a federally-chartered or federally-authorized body composed of twelve subsistence users from the twelve ANCSA regions, or the chairs of each of the RACs. There is nothing in Title VIII of ANILCA that prohibits the Administration from creating a Board structure composed of non-federal members. While the Secretary recently added two public members to the Board, the majority of the members are still federal employees.

THE COMMITTEE ON ENERGY AND NATURAL RESOURCES SHOULD ADVANCE LEGISLATION TO PROTECT ALASKA NATIVE SUBSISTENCE RIGHTS

We ask that this Committee commit to work with the Alaska Native community to formulate legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that we rely upon for our economic and cultural existence. Rather than simply defending and repairing a broken system that no longer serves its intended purpose, we believe it is time to consider options that reach back to Congress's original expectation that Alaska Native hunting, fishing and gathering rights be protected. Congress has the authority to enact legislation that ensures a "Native" or "tribal" subsistence preference on all lands and waters in Alaska, and to provide a co-management role for Alaska Natives.

We are not asking this Committee to undertake unprecedented action. Congress has amended federal law to provide explicit protections for Alaska Native subsistence rights in the not-so-distant past. In 1972, Congress passed the Marine Mammal Protection Act (MMPA), imposing a general ban on the taking and importation of marine mammals or their parts, and conferred jurisdiction on the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for the management of marine mammals in U.S. waters. However, recognizing that Alaska Natives have relied on marine mammals for food, clothing and culture for centuries, Congress ex-

<sup>2</sup>The Regional Advisory Councils were formed, as required by Title VIII of ANILCA, to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues. For purposes of Federal Subsistence Management, Alaska is divided into 10 geographic regions. Each region has an advisory council consisting of local residents who are knowledgeable about subsistence and other uses of fish and wildlife in their area. U.S. Department of the Interior, Federal Subsistence Management Program, Regional Advisory Councils, available at <http://www.doi.gov/subsistence/councils/index.cfm>.

empted from the ban those takings by Alaska Natives who dwell on Alaska's coast, provided that such takings are for "subsistence purposes" or to create "authentic Native handicrafts and clothing" and provided that such takings are not wasteful.

When the MMPA was reauthorized in 1994, Congress amended the statute to authorize the Secretaries of the Interior and of Commerce to enter into Marine Mammal Cooperative Agreements in Alaska with Alaska Native Organizations "to conserve marine mammals and provide co-management of subsistence uses by Alaska Natives." 16 U.S.C. § 1388 (Section 119 of the MMPA). Implicit in Section 119 is the belief that a cooperative effort to manage subsistence harvests that incorporate the knowledge, skills and perspectives of Alaska Natives is more likely to achieve the goals of the MMPA than is management by the federal agencies alone. And that has proved to be the case.

We are here to ask Congress to fulfill the Federal Government's trust responsibility to protect the Alaska Native subsistence culture and economy. The Committee on Energy and Natural Resources should work with the Alaska Native community to design federal legislation that will protect Alaska Native subsistence rights. By embracing co-management with Alaska Natives, the Federal Government could administer a much more responsive and cost-efficient management program. It would reduce the litigation that has plagued the implementation of Title VIII of ANILCA since its passage more than 30 years ago.

We commend Senators Lisa Murkowski and Mark Begich, and this Committee, for introducing and considering legislation targeted to resolve unique problems and to address region-specific challenges. For example

- Senators Begich and Murkowski have previously introduced legislation that would allow Alaska subsistence hunters to receive a waiver from the general requirement that hunters purchase duck stamps from the Federal Government. This legislation would enable many of our people to maintain their subsistence way of life without facing burdensome fees that many cannot afford.
- The Huna Tlingit Traditional Gull Egg Use Act, recently reported out of this Committee, would authorize the Secretary of the Interior to allow members of the Hoonah Indian Association to collect the eggs of glaucous-winged gulls up to two times a year within Glacier Bay National Park. This legislation was developed after working closely with the National Park Service, and will enable the community to continue a traditional and customary practice on the basis of sound science.

As you work with the Alaska Native community to design a comprehensive and holistic approach to federal subsistence reform, we hope the Committee will also continue to pursue smaller bills that address specific problems or region-specific challenges.

SUBSISTENCE DEMONSTRATION PROJECTS: TWO FOCUSED PROJECTS THAT REQUIRE  
CONGRESSIONAL ACTION

Two focused demonstration projects, described below, represent important and worthwhile efforts to improve subsistence management. Both would require federal legislation to implement. We urge this Committee to support these projects.

*A Demonstration Project Establishing Authority in Ahtna to Manage Wildlife on Ahtna Lands and a Creating a Federal-State-Tribal Co-Management Structure*

This demonstration project would authorize the tribes in the Ahtna region of Alaska to manage wildlife on lands conveyed to Ahtna under ANCSA ("Ahtna lands") as well as on Native allotments held in trust by Ahtna tribal members. The legislation would create a Federal/State/Tribal co-management structure that would apply to Ahtna's traditional territory.

Over the years, in order to accommodate the growing number of non-rural hunters, the State Board of Game has repeatedly taken away the Ahtna peoples' opportunity to continue their customary and traditional (C&T) hunting way of life.

For example, under the current dual management the Alaska Board of Game, which regulates hunting on state lands and Ahtna lands, adopted a regulation limiting the hunting season in the tribes' traditional territory to a single 7-day season, and through imposition of antler restrictions limited their take to only those moose with very large antlers or very young moose—neither of which were traditionally taken by the Ahtna people.

Less than five years ago the State Board took up a proposal to classify vital parts of Ahtna's hunting territory as a non-subsistence use area. Under State law, in a non-subsistence use area it is illegal to provide a priority for subsistence hunting or to provide greater hunting opportunity to subsistence users to meet essential nutritional and cultural needs. While section 804 of ANILCA requires a subsistence

priority on all federal lands, federal lands comprise only a small part of Ahtna's traditional territory. Thus, Ahtna relies significantly on State lands and Ahtna lands to meet C&T hunting needs. The proposal to deny Ahtna's basic subsistence hunting rights, even on their own lands, failed by a single vote. Each time this State Board meets the opponents of meaningful C&T hunting opportunities petition for a non-subsistence use area. Ahtna faces a continual battle to hang on to essential hunting rights.

Ahtna's problems arise from the two central facts. First, Alaska's major population centers, and the roads that connect these centers, surround Ahtna's traditional hunting area. The moose and caribou populations upon which Ahtna depends are highly desirable and accessible to these large urban populations. The competition is fierce and the hunting grounds are crowded. Urban hunting groups apply constant pressure on State institutions to optimize their sport use and minimize protection for Ahtna's C&T hunting practices. Federal law and regulations provide minimal protection due to the small amount of accessible federal lands within Ahtna's traditional hunting territory.

Second, Ahtna has no meaningful role in regulating hunting, even on Ahtna lands. Their traditional and local knowledge is given no weight in decision-making. Elders and tribal leaders are reduced to a mere three minute period of public testimony to try to influence the regulation of their C&T hunting practices. Ahtna has no influence over how the State manages wildlife populations for conservation, and federal agencies are passive and reluctant to take on the State over its management practices.

The proposed demonstration project would authorize Ahtna to manage hunting on Ahtna lands and Native allotments held in trust by Ahtna tribal members. Ahtna has created a tribal conservation district made up of the eight federally recognized Ahtna tribes that would manage hunting on Ahtna lands. All lands within Ahtna's traditional territory (State, federal and Native lands), would be managed through a co-management structure through which the mandates of State law, federal law, and the traditional knowledge of the Ahtna would be unified and coordinated to achieve the mutual goal of ensuring the conservation of wildlife populations, and to ensure that Ahtna tribal members have the hunting opportunities necessary to continue their tribal hunting way of life. The practical impact of Ahtna's proposed solution on other Alaskan hunters would be minimal since the amount of moose, caribou and other wildlife resources necessary to meet Ahtna's needs is only a small percentage of the total take of wildlife within Ahtna's traditional territory.

Ahtna's proposal would replace the ineffective dual federal-state subsistence management system with a unified Federal-State-Tribal co-management structure. Such co-management has proven highly successful for conservation and management in many parts of the U.S., for example the Northwest Indian Fisheries Commission, in western Washington State. Co-management would be more efficient than the current dual federal-state system, thereby saving federal dollars. Co-management would advance tribal self-determination, build tribal capacity and create opportunities for tribal youth to work for their tribal communities.

*Demonstration Project Creating an Inter-Tribal Fish Commission for the Yukon River and Establishing Federal-State-Tribal Co-Management for the River*

The second demonstration project would create an Inter-Tribal Fish Commission for the Yukon River, modeled after the Northwest Indian Fish Commission and the Columbia River Inter-Tribal Fish Commission. The Commission would provide a tribal voice within a Tribal-State-Federal co-management regime for salmon management on the Yukon River. Federal legislation would be needed to establish the co-management regime and replace the current dual federal-state management system.

The Chinook salmon stocks on the Yukon River are in a steep, steady decline. If a new, more effective direction for management is not taken soon, these stocks, some of the last left in the United States, may become endangered. This would be a huge loss for many across the country, not just the tribes who depend on this resource for their way of life. There are likely several causes for the decline, global warming, for example. However, the current, ineffective and controversial system of dual federal-state management, with its checkerboard pattern of jurisdiction, is certainly a major problem, and one that should be fixed.

The Tribes located in the Yukon River drainage have depended on the Yukon salmon stocks since time immemorial to sustain their nutritional, cultural and spiritual way of life. This year's run looks like it will be the lowest on record. There has not been a commercial Chinook fishery for years, and Tribal harvests are far below the minimum required to meet their subsistence needs. Fish camps that a few years ago were alive with children, elders and extended family now sit empty. Tribal

members are bearing the loss and sacrifice of this fishery. They have knowledge gained over countless generations about the river and salmon. The Lower Yukon Chinook directed commercial fishery was valued in 1992 at over \$10 million dollars. That fishery is virtually non-existent today. Given the energy crisis in rural Alaska, where Yukon villages are paying extremely high transportation costs, the absence of such a valuable fishery has far reaching effects. Tribal members are facing choices between paying for food and fuel. Despite these impacts, and despite the availability of such a valuable knowledge base that could inform sustainable management, Tribes are completely excluded from the dual federal-state salmon management system in place today for the Yukon.

The Federal Subsistence Board manages salmon on the parts of the Yukon that flow through or adjacent to federal lands such as fish and wildlife refuges. The Board receives recommendations for management from three regional advisory councils—downriver, middle river and upriver—thus splitting the river and pitting users on one end against users on the other end. The State of Alaska manages all other parts of the river. This disjointed system of dual management is failing to conserve and rebuild the Chinook run, and has failed to provide for management of the Chinook harvest in a way that fully considers tribal needs.

The Association of Village Council Presidents, joined by the Tanana Chiefs Conference, represents the federally recognized tribes in the Yukon River Drainage. AVCP and TCC have begun the process of creating the Yukon River Inter-Tribal Fish Commission (YRITFC), which would provide the Tribal voice for a Federal-State-Tribal co-management regime for salmon management on the Yukon. Modeled after the Northwest Indian Fish Commission and the Columbia River Inter-Tribal Fish Commission, YRITFC would include a strong science arm that incorporates traditional knowledge. The Yukon tribes are already a leading partner for a Tribal-State-Federal salmon research organization, the Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative, and would bring this scientific expertise to the co-management table. Billy Frank, Chairman of the Northwest Indian Fish Commission, has participated in discussions with the Yukon Tribes about forming the YRITFC and has offered his full support. The Tribes' goal is to incorporate the Canadian First Nations into the YRITFC, since they also depend upon these fish for their way of life, and because there is a treaty between the United States and Canada that informs salmon management for the Yukon.

Creating the YRITFC and authorizing a Tribal-State-Federal co-management regime for salmon management for the Yukon River will result in greater cooperation and better management, which is critical for the future of the Yukon Chinook salmon stocks. YRITFC would advance self-determination for the Yukon Tribes over a resource that is vital to their way of life. YRITFC would help build Tribal capacity and create jobs and opportunity for young people, enabling them to stay in their villages and work for their Tribes on issues of great significance. Co-management would unify management throughout the river, thereby discarding ineffective, controversial and artificial jurisdictional boundaries that have nothing to do with the best salmon management practices.

Co-management also would allow the Tribes and First Nations throughout the drainage to come together and decide among themselves how best to share the scarce available harvest of Chinook, or to stop fishing altogether if necessary. Conservation and rebuilding of the Chinook stocks would be the controlling goal for the co-management structure, and would be the common goal for all parties, Federal, State and the Tribes. Tribal involvement and

#### CONCLUSION

The right to food security for oneself and one's family is a human right enumerated in the Universal Declaration of Human Rights of the United Nations Charter. Article 20(1) of the United Nations Declaration on the Rights of Indigenous Peoples also provides that "Indigenous peoples have the right . . . to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in their traditional and other economic activities."

In the United States, Native hunting, fishing, and gathering rights are protected by federal law. Nowhere are those federal protections more critical than in the State of Alaska, where subsistence hunting and fishing keeps food on the table and customary and traditional hunting and fishing serves as the foundation of Alaska Native society and culture.

Unfortunately, the current dual management of subsistence uses in Alaska significantly hampers our ability to access our traditional foods. Congress did not intend this result when it passed ANCSA in 1971 or when it passed ANILCA in 1980.

Congress can fix the problem. As I have noted in this testimony, Congress has acted proactively to protect Alaska Native subsistence rights, even after ANILCA passed in 1980.

Federal legislation that provides express protections for Alaska Native hunting and fishing and gives us a co-equal role in the management of those resources would do much to fulfill the Federal Government's trust responsibility to the Alaska Native community. By embracing co-management with Alaska Natives, the Federal Government would administer a much more responsive and cost-efficient management program. It would reduce the litigation that has plagued the implementation of Title VIII of ANILCA since its passage.

We ask you to commit to work with the Alaska Native community to formulate legislation that will restore and protect Native hunting and fishing rights in Alaska, and provide a co-equal role for Alaska Natives in the management of fish, wildlife and other renewable resources that we rely upon for our economic and cultural existence.

Achieving meaningful reform of legal framework for subsistence management in Alaska may take some time. We recommend that the Committee take the following interim steps towards reform, which can be achieved during the 113th Congress:

1. Work with Alaska Native leaders to develop legislative language that will provide lasting protection for the Alaska Native customary and traditional hunting and fishing way of life and that will provide a co-management role for Alaska's tribes and organizations. By embracing co-management with Alaska Natives, the Federal Government would administer a much more responsive and cost-efficient management program. It would reduce the litigation that has plagued the implementation of Title VIII of ANILCA since its passage.

2. Work with Alaska Native leaders to develop and quickly pass legislation to implement the two subsistence demonstration projects detailed above. We commend Senators Lisa Murkowski and Mark Begich, and this Committee, for recent efforts to pass federal legislation targeted to resolve specific problems and to address region-specific challenges.

3. Require a report from the Secretary of the Interior on the status of the implementation of proposed actions outlined as a result of the 2009 Secretarial Review of the Federal Management System. Former Secretary Ken Salazar completed a review of the Federal Subsistence Management Program in 2010 and subsequently outlined a number of reforms which could be accomplished by Secretarial directive or policy or through regulatory changes requiring formal rule making. To date, very few of those actions have actually been implemented. The Alaska Federation of Natives believes the administrative actions taken to date, as a result of the review, are inadequate. Very little has changed since the review.

4. Urge the Secretaries of the Interior and of Agriculture to carefully review and, to the extent possible, implement AFN's recommendations on administrative actions that can be taken to improve the ability of Alaska's tribes to pursue their customary and traditional subsistence activities. Attached to my testimony is a list of the actions that we believe the Administration can take right now that do not require legislation and would require little or no funding. We shared this list with the Secretary of the Interior, Sally Jewell, in our meeting with her in late August.

On behalf of our Alaska Native people and communities, which depend on subsistence hunting and fishing to maintain our health, well-being and way of life, I thank you for holding this important hearing today. It represents an important step in the journey to build a better subsistence management system in Alaska, and to protect the nutritional and cultural needs of Alaska Native people, from our elders to generations to come. We stand ready to work with you, and this distinguished Committee, to accomplish these critical objectives.

Senator MURKOWSKI. Gunulcheesh, Dr. Worl.  
Mr. Jerry Isaac, nice to have you here.

**STATEMENT OF JERRY ISAAC, PRESIDENT, TANANA CHIEFS  
CONFERENCE, FAIRBANKS, AK**

Mr. ISAAC. Senator Murkowski.  
[Speaking an Athabaskan language].  
Mr. ISAAC. Thank you, Senator Manchin.

I have come across a wide piece of land, if you want to call it that, to come here to appeal to you to listen to what we have to say.

My name is Jerry Isaac. I'm Athabaskan from Tanacross, and I'm currently the President of the Tanana Chiefs Conference, a tribal consortium representing 37 federally recognized tribes of Interior Alaska.

Earlier, you heard testimony that during the passage of ANCSA, the State of Alaska and the Secretary of Interior promised to protect Alaska Native hunting and fishing.

You also heard that during the passage of ANILCA the State of Alaska urged Congress to provide for a rural priority, rather than a Native priority.

Today, it is necessary to hold this hearing because the promise of ANCSA has gone unfilled, and the promise of ANILCA has failed.

Finally, you heard it's well within your congressional authority to act to protect Alaska Native hunting and fishing by passing into law preemptive legislation providing for a Native subsistence priority on all lands and waters in Alaska and allowing for Alaska Native co-management of hunting and fishing resources.

In the current system, a subsistence priority is only triggered when the resource is so low in numbers that there is not enough for commercial and sport take. If the resources were better managed, there would be fewer incidences in which subsistence priority is necessary.

Under the current checkerboard management in Alaska in which Alaska Native tribes have little to no influence, sustainable yield for Alaska's hunting and fishing resources will continue to be unattainable for many species.

I have been directed by the tribes I represent to ask you to allow the Alaska Native tribes to fix the failed management by ending the checkerboard system and allowing Alaska Native co-management.

Today, we proposed two possible solutions. First, I will speak about the demonstration projects of the Yukon and Kuskokwim Rivers. Second, I will speak about the co-management proposal for Ahtna's lands.

A good example of the broken checkerboard system is the Chinook management of the Yukon River. The State of Alaska is the primary in-river manager, and so the State Board of Fish implements most regulations applying to Yukon River Chinook.

Tens of thousands of acres of Federal lands and waters are also within the Yukon River drainage, and so the subsistence board and the Office of Subsistence Management, which receives advice from two separate advisory councils, also implement regulations. Two separate systems manage the same fish swimming up the Yukon. This does not make sense.

The most disturbing fact, there is no official role for tribal governments in the salmon management on the Yukon, but tribal members are, by far, the most dependent and knowledgeable of the resource. It is no wonder the Yukon River Chinook runs have been on the decline for over a decade.

We propose a demonstration project to authorize intertribal fish commissions for both the Yukon and Kuskokwim Rivers and establish a State-Federal tribal co-management structure that would focus on rebuilding the Chinook stocks and traditional fishing way of life.

The fish commissions would be composed of users most dependent and knowledgeable of the Chinook representing 93 federally recognized tribes, which clearly are the people to manage this precious resource.

Next, it is my honor to speak to you about our next proposal concerning co-management of Ahtna's lands, lands which are traditionally owned by my clan cousins.

Like all village corporations, the Ahtna villages selected their corporation lands based on the value for subsistence hunting, fishing and gathering. But decades later, the Ahtna people struggle to provide for their families' hunting and fishing needs because Ahtna lands are poorly managed.

The lack of authority to manage hunting and fishing on our own ANSCA lands is one of the greatest existing injustices for Alaska Natives. Imagine, for my own corporation, the animals living on the 12-million acres of toyon lands owned by Alaska Natives are managed by outsiders with little knowledge of the needs of the Athabaskan people.

This demonstration project would remedy this injustice, greatly advance effective wildlife management and help resolve the growing divide over subsistence management in Alaska. It would authorize Ahtna tribes to manage wildlife on lands Ahtna was conveyed through ANCSA.

I have been asked by the tribes I represent to tell you it is your duty to address the broken promise of ANCSA and the failure of ANILCA and pass legislation establishing an Alaska Native priority on all Alaska lands and waters, an Alaska Native co-management authority.

The demonstration projects I have testified to today are projects that can be passed into legislation this year.

Protection of Alaska Native hunting and fishing will continue to be the Alaska Native people's No. 1 priority until we see implementation on the ground of legislation establishing an Alaska Native priority and Alaska Native co-management.

The strength of our resilience to pursue this priority is given to us by the spirits of the animals themselves and shall not waiver until the divine relationships between the Alaska Native people and our cousin animals are reconciled.

I thank you for this time.

[The prepared statement of Mr. Isaac follows:]

PREPARED STATEMENT OF JERRY ISAAC, PRESIDENT, TANANA CHIEFS CONFERENCE,  
FAIRBANKS, AK

Good Morning, my name is Jerry Isaac. I am Athabaskan from Tanacross and I am currently the President of Tanana Chiefs Conference, a tribal consortium representing 37 federally recognized tribes of Interior Alaska.

Earlier you heard testimony that during the passage of ANCSA the State of Alaska and the Secretary of Interior promised to protect Alaska Native hunting and fishing. Today it is necessary to hold this hearing because that promise has gone unfulfilled.

You also heard during the passage of ANILCA, the State of Alaska urged Congress to provide for a rural priority rather than a Native priority. Today it is necessary to hold this hearing because the compromise of ANILCA has failed and there is currently not a rural priority on state lands and waters to the detriment of the rural Native people-those most dependent on subsistence resources.

Finally you heard that it is well within your Congressional authority to act to protect Alaska Native hunting and fishing, by passing into law preemptive legislation providing for a Native subsistence priority on all lands and waters in Alaska and allowing for Alaska Native co-management of hunting and fishing resources.

In the current system, a subsistence priority is only triggered when the resource is so low in numbers, that there is not enough for commercial and sport take. If the resources were better managed there would be fewer instances in which a subsistence priority is necessary. Under the current checkerboard management, in which Alaska Native tribes have little to no influence, sustainable yield for Alaska's hunting and fishing resources will continue to be unattainable for many species. I have been directed by the tribes I represent to ask you to allow the Alaska Native tribes to fix the failed management system. Fixing the management issues will include ending the checkerboard system and allowing Alaska Native co-management.

You have the opportunity under two proposed demonstration projects to provide a small scale solution to the problem established by ANCSA's broken promise and ANILCA's failure. First I will speak about the Demonstration Project for Establishment of Inter-tribal Fish Commission and Tribal-State-Federal Fisher Co-Management for the Yukon and Kuskokwim Rivers and Second I will speak about the co-management proposal for AHTNA's lands. Both demonstration projects should be passed into legislation this year.

DEMONSTRATION PROJECT FOR ESTABLISHMENT OF INTER-TRIBAL FISH COMMISSION AND TRIBAL-STATE-FEDERAL FISHER CO-MANAGEMENT FOR THE YUKON AND KUSKOKWIM RIVERS

A good example of the broken checkerboard system is the Chinook management of the Yukon River. The State of Alaska is the primary in-river manager and so the State Board of Fish implements most regulations applying to Yukon River Chinook. Tens of thousands of acres of federal lands and waters are also within the Yukon River drainage and so the Federal Subsistence Board and the Office of Subsistence management which receives advice from two separate advisory councils also implement salmon regulations. Two separate regulation systems manage the same fish swimming up the Yukon-it does not make sense. The most disturbing fact-there is no official role for tribal governments in the salmon management on the Yukon, but tribal members are by far the most dependent and knowledgeable of the resource. It is no wonder the Yukon River Chinook runs have been on the decline for over a decade.

We propose a demonstration project to authorize inter-tribal fish commissions for both the Yukon and Kuskokwim Rivers and establish a state/federal/tribal co-management structure that would focus on rebuilding the Chinook stocks and would ensure fishery management consistent with the tribe's customary and traditional fishing way of life. Co-management will unify management throughout each river, thereby discarding ineffective, controversial and artificial jurisdictional boundaries that have nothing to do with the best salmon management practices.

The demonstration project would unify the current dysfunctional split of the federal Office of Subsistence Management regional advisory council (RAC) system for the Yukon and Kuskokwim, providing for one RAC for each river. The project would give preference to the Fish Commissions when awarding ANILCA section 809 agreements and include funding for research pursuant to ANILCA section 812. In addition the project allows for the commissioners to influence the impacts of both the Yukon River Salmon treaty with Canada and the Magnuson-Stevens Act by mandating commissioners participate in both the implementing bodies.

We have draft legislation prepared to implement the Fish Commissions. These Commissions are supported by Tanana Chiefs Conference and the Association of Village Council President, representing a total of 93 federally recognized tribes.

AHTNA'S DEMONSTRATION PROJECT

Next it is my honor to speak to you about our next proposal concerning co-management of Ahtna's lands. While I do not officially represent the Ahtna, Ahtna lands are located not far from my home of Tanacross and I am clan cousins with many tribal members from the Ahtna region. Because Tanacross is on the road system, I understand the struggle experienced by the Ahtna Athabascans when outside hunters take away from the subsistence and cultural needs of the Native people.

Ahtna's traditional hunting area is surrounded by Alaska's major population centers, Anchorage, Fairbanks, and the Mat-Su and the roads that connect these centers.

The Ahtna villages selected village corporation lands based on their value for subsistence hunting, fishing and gathering, but decades later the Ahtna people struggle to provide for their families hunting and fishing needs because their traditional lands are poorly managed by the State of Alaska. The federal rural subsistence priority does not help the Ahtna because there are little federal lands in their traditional lands. The lack of authority to manage hunting and fishing on our own ANSCA lands is one of the greatest existing injustices for Alaska Natives.

This demonstration project would remedy this injustice, greatly advance effective wildlife management, and help resolve the growing divide over subsistence management in Alaska. It would authorize Ahtna tribes to manage wildlife on lands Ahtna was conveyed through ANCSA.

The proposed Ahtna demonstration project would only include Ahtna lands and it would not apply to other regions. The legislation would also authorize Ahtna, the State and the Department of the Interior to develop a co-management agreement for the coordination of wildlife management on ALL lands traditionally used by the Ahtna.

I have been asked by the tribes I represent to tell you it is your duty to address the broken promise of ANCSA and the failure of ANILCA and your sacred trust responsibly to the Alaska Native people AND wait no longer and pass legislation establishing an Alaska Native priority on all Alaskan lands and waters and Alaska Native co-management authority.

The demonstration projects I have testified to today are projects that can be passed into legislation this year.

Protection of Alaska Native hunting and fishing will continue to be the Alaska Native people's number one priority until we see implementation on the ground of legislation establishing an Alaska Native priority and Alaska Native co-management.

Senator MURKOWSKI. Thank you, Jerry. Thank each of you for your comments here this morning and, additionally, for making the long haul across country to come before the committee and enter your recommendations, your stories and your concerns.

I'm going to start with you, Ana. I thought that your very personal story helps to kind of frame what we're talking about here. When it's a discussion of management of subsistence, I think we can get into some pretty technical terms and talk about RACs and boards and differing management systems, but, at the end of the day, it pretty much comes down to how one feeds one's family.

I had the opportunity to visit you and your family at your family's fish camp there just outside of Bethel, and it is more than just kind of hanging out together in the summertime. It is about providing for your family.

Your comment that your family harvests 490 pounds of subsistence foods per year, I haven't checked the price of hamburger in Bethel. I can't imagine what it is, but when we take into account that so many in our rural villages simply don't have the ability to afford to buy their food—as you point out, there's no Costco near Bethel and Bethel's a pretty large town. So when we talk about the significance of the food, it is so much of what we do.

When I was in Galena inspecting the community after the floods, people were going into the winter season and the concern was moose season is next week. I might be able to get a moose, but if I don't have a freezer to put my moose in, then what am I going to do? How am I going to make it through the winter?

So I think it is important that we understand what we're talking about here when we're talking about a subsistence lifestyle, and how Alaska Natives, rural Alaskans are feeding their families when you don't have access to a store.

I wanted to ask you, and you can comment about that if you will, but I wanted to ask you about the Regional Advisory Councils, because I was trying to understand from those on the Federal and State representatives just really how well these are working. How much deference is given to those with local knowledge?

So if you can just give me your perspective on this. To what extent does the Office of Subsistence Management work with the local people out in your region and in the RACs to integrate that traditional knowledge that we've been speaking about? How much deference, then, is actually given to the locals?

Ms. HOFFMAN. Thank you, Senator Murkowski. First, about the food harvest, the figure of 490 pounds per person represents the Western Alaska Region, so that's in our area where I live.

You're right, the food source that we gather from the land, there is really no functional way to replace it otherwise.

My family owned a family store in Nunapitchuk for many, many years, and the freezer that we had at the store for meat, it was one chest freezer, and this is a community of 350 people. Each one of them has, you know, numerous chest freezers in their home, and if they weren't able to fill those freezers from hunting and fishing off of the land, that one chest freezer at the village store is not going to feed the community. There's no other way to replace the food source, and, really, it is the essence of subsistence and the rural preference is food security.

So we have so many challenges out there with the infrastructure, with our distance, with the cost of living. Western Alaska is one of the highest cost-of-living in the Nation, and we have, you know, water and sewer is still an issue. There are so many basic challenges we have, and, yet, we still have to plead for food security. So I appreciate you having the hearing to help us express that need.

As far as your question about community involvement and input in the process, I heard the panelists before and it is good to have those opportunities for input.

I'll speak to the Chinook salmon incident, and that happened out in Bethel last year. You know, we had been working, the working group had been working in collaboration with the fish managers for about 10 years, had been building this understanding, this buy-in, this teaming relationship, and the working groups were actively involved.

Last year, when the 7-day closure was extended an additional 5 days without having the working groups buy into that, I feel like there was really an erosion of the relationship that had been built.

So there is potential to continue to building that co-management aspect that I think is hoped to be achieved through RACs and through the working groups, but there are many instances where the input of the local community and the local users is not weighed into the final decisions, and that was felt out in our region last year.

Senator MURKOWSKI. Thank you. Senator Manchin, why don't I turn to you here? I've used up 5 minutes already.

Senator MANCHIN. Just hearing all of you speak makes me want to visit sooner than later.

Senator MURKOWSKI. That's a good thing.

Senator MANCHIN. A good thing.

I come from West Virginia, so hunting and fishing is prominent in our lives, too. A lot of people do it for subsistence the same as you, but not at that scale, not where it's the dependent and no other alternatives or options.

I'm trying to understand because I would be probably more in tune with the environment of hunting and fishing and outdoors than maybe a lot of other Senators.

But coming from the place I come from, you know, we have different seasons, and we have different people that come from other States that come to our—and buy their license for recreational.

We have people that own land, and, basically, they're allowed to harvest a little differently, and I'm trying to get it in the grander scheme of things and understanding, so that maybe I can help Senator Murkowski and to be more of a proponent of where I think you're coming from.

I can't figure out, and Ana, you were just talking, and Dr. Worl, I wanted to hear from all of you all, anybody that wants input on this, how can we make it better? How can we find that balance?

I would assume the Department of Fish and Wildlife in Alaska would want to make the revenue. People coming in, that's revenue to your State. I would assume that's a big part of your tourism and revenue base.

But at the expense of someone's subsistence of livelihood, there's got to be a balance. We can't put that in front of what you all and the heritage you have and basically the need.

How do we help? How can we find out—you're telling me is it the Federal Government's encroaching more? Is it the State government that's encroaching more, taking away your opportunities?

It sounds to me like there should be a way to work this out, but—and I don't know where—Are we putting out too much recreational hunting licenses and people are coming in for the sport of it taking away from the necessity of the people that live there? Doctor, you might want to start on that.

Ms. WORL. Thank you, Senator. First of all, I think it's important to go back to I think what Ana said, that subsistence hunting and fisheries takes just a small portion of all of the take.

Subsistence fisheries, what is it? One percent, 1 percent of the fisheries, that's all we take for subsistence. I just don't think that that's, you know, that's even balance, you know. If we want to talk about equity or want to talk about equality, you know, it seems—

Senator MANCHIN. Is this in competition with the commercial?

Ms. WORL. Yes. In competition with commercial and—

Senator MANCHIN. So the commercial—

Ms. WORL. Commercial and—

Senator MANCHIN [continuing]. Is maybe taking more than what they can sustain itself.

Ms. WORL. Right. Commercial fisheries takes more than 90 percent of all the fisheries.

Senator MANCHIN. Is that regulated by the State or by the Federal?

Ms. WORL. That's by the State, by the State and Federals.

Senator MANCHIN. We don't think the State is doing the job it should be doing to make sure that there's a coexistence.

Ms. WORL. The subsistence priority is not being recognized in the management of fisheries.

Senator MANCHIN. It's all about the commercial.

Ms. WORL. Right. Right.

Senator MANCHIN. Got you.

Ms. WORL. But if I could go back to—

Senator MANCHIN. Sure, whatever. You go everywhere you want to go.

Ms. WORL [continuing]. Senator Murkowski's question about— There's a lot more we could do about that. I really do think that if we, if Native people were able to sit down at the table and have an equal voice in the management, I think we could work things out. But, as it is, right now, we're not at the table.

Senator MANCHIN. What's the percentage of Native Alaskans that are serving in government, in State government? Are there any Native Alaskans on Fish and Wildlife that understand?

Ms. WORL. There are about 16,000 Alaska Native people. I don't think that we're equitably represented in the Fish Board, on the Federal Subsistence Board, and even on the Federal Subsistence Board. Even with the addition of the two rural Native people who are appointed, the Federal Subsistence Board is still largely managed by Federal representatives.

Senator MANCHIN. But the 1-percent of the fish subsistence that takes care of the Native Alaskans is encroached upon by the expansion of commercial fishing.

Ms. WORL. Right. We're just—

Senator MANCHIN. Is that the same of hunting, too?

Ms. WORL. Yes. Right.

Senator MANCHIN. Hunting, is it commercial hunting or is it basically recreational hunting?

Ms. WORL. It's recreational.

Senator MANCHIN. So the recreational people like myself who would buy a license and come up, because I want to see beautiful Alaska and be part of it, that's gotten to the point where it's encroached on the people who depend on their livelihood.

Ms. WORL. That's correct. I really do believe that if we were at the table, I mean, we're reasonable people, I think that if we could develop a formula that would take care, you know, take care of all interests, our interests are—

Senator MANCHIN. Is moose hunting a lottery? Is there a lottery for moose hunting?

Ms. WORL. Yes.

Senator MANCHIN. Ana.

Ms. HOFFMAN. It varies across the State, and some regions deal with the commercial take more readily, like in Ahtna Region that we spoke about earlier. They're on the road system.

Where I live, in Bethel, you have to pay \$500 to fly out to Bethel and return, so we don't have the same kind of intrusion of non-regional users as they would in the Ahtna Region.

As I explained, when we went moose hunting, different sections are under different authority. There's Tier II Registration Permits where you have to be in person to get your ticket. That often reduces the number of people that will be out hunting.

But the Ahtna Region is really the forefront of what we're talking about when it comes to game harvests and the lack of subsistence harvests being available for the users.

Senator MANCHIN. Mr. Isaac, you all are on the same page on this? You all are in agreement of the commercial overreach, if you will, and the pressure on the subsistence? The same in hunting and fishing for recreation and commercial?

Mr. ISAAC. Thank you, Senator. My feelings is the fact that, No. 1, the systems employed to manage fish and game has not worked.

Senator MANCHIN. Lack of personnel? Lack of budget?

Mr. ISAAC. Just the system. Just the system—

Senator MANCHIN. The system itself.

Mr. ISAAC [continuing]. As a method to manage fish and game in terms of increasing the population of the moose, the caribou—

Senator MANCHIN. We have, and, again, just my lack of knowledge from the moose arena, but I do understand the whitetail deer. We have buck season, buck only. We have open doe season sometime, depending on what our count is.

Our DNR people go out and survey and basically take a wildlife count and they say, OK. We're not going to open up doe season or we're going to limit buck—you follow me? We manage that way, so we have a healthy deer population.

Then sometimes we underestimate and we have a very healthy deer population where the farmers get so mad because they're eating all their crops, so then we've got to kind of weed that down. So it's a kind of chess game back and forth. You're saying your Fish and Wildlife don't do the same?

Mr. ISAAC. I'm saying that there's a lot of opportunities that can be taken to help improve the current condition. I'm saying that there are too many rules and regulations that are not working.

One is the element of cooperation is such a feared idea that nobody wants to try it. For example, the RACs, for example, there is no meaningful input by the Native groups to participate in the RACs in such a way that there is meaningful participation in this for one purpose and one purpose only, to increase and maximize animal and fish populations at a healthy level that it would be adequate for the use of all.

What I'm saying is the fact that, with the two proposals, we're saying let's try it this way. I know it will work.

Senator MANCHIN. Somebody's got to be responsible for overharvesting. Somebody has got to be responsible, and if you're overharvesting, that means you're not controlling and monitoring the crop, whether it be the moose or whatever, and that's what I'm saying. I'm looking for an answer that—

Mr. ISAAC. Senator, you know, if I may—

Senator MANCHIN. I'm sorry. I'm—

Senator MURKOWSKI. No, no, no.

Senator MANCHIN. You sure?

Senator MURKOWSKI. Yes.

Mr. ISAAC. If I may, the subsistence takers of the Chinook salmon—

Senator MANCHIN. OK.

Mr. ISAAC [continuing]. Have been regulated to the point where we cannot get nothing. This summer, we have seen very dev-

astating situation with the Chinook salmon, the harvests along the Yukon River. We have taken steps to contribute toward the saving of future salmon population.

There are other elements that affect the Chinook salmon. One of the elements is the high-seas fisheries. For example, the Pollack fishing industry, nobody says nothing about those things. Nobody addresses these things in a collective way, so that we can all agree to one thing, something is affecting the return of the Chinook salmon.

Senator MANCHIN. Got you.

Mr. ISAAC. Thank you.

Senator MANCHIN. That helps me. I understand that.

Ms. WORL. The subsistence priority is not recognized there. In the management of the high-sea fisheries, subsistence is not recognized.

Senator MANCHIN. I understand.

Ms. WORL. We do have a law that says subsistence priority should be recognized, and it doesn't come into play until the fish are going up the river, and there's not that many—

Senator MANCHIN. I see. The whole cycle. You're saying the whole cycle is not taken into consideration—

Ms. WORL. Right.

Senator MANCHIN [continuing]. Under the regulatory system we have not.

Ms. WORL. Right.

Senator MANCHIN. That makes sense to me. I'm learning.

Senator MURKOWSKI. Good.

Senator MANCHIN. I'm learning.

Ms. WORL. Senator, if I could just finish on the—

Senator MANCHIN. Oh, I'm sorry. I am so sorry.

Senator MURKOWSKI. Go ahead.

Senator MANCHIN. I cut—

Ms. WORL. I really wanted to finish this on the Federal Subsistence Board. You had asked the question, you know, is the system working and is the RAC working? The major issue is that the Federal Subsistence Board itself has taken the position that it needs to give deference to RAC recommendations only in the taking of fish and wildlife. It does not take deference in other areas.

For example, should a community qualify as rural, the RAC's recommendations aren't considered or given deference in those points.

I did note, you know, that the Federal Subsistence Board is made up primarily of Federal representatives. I know, from the State of Alaska, I don't think the State of Alaska would allow, you know, have State officials, you know, serving on that management board. There should be, you know, the balance between the users and the managers.

So I think that's one of the areas that we'd like to see is that we'd like to see that the Federal Subsistence Board members be 12 rural subsistence users. That's one recommendation that we might offer.

Senator MURKOWSKI. So that's the AFN recommendation, that the subsistence board should be restructured to include the chairs

of each of the RACs, so that we make sure that we've got that local input throughout.

Senator MANCHIN.

Senator MANCHIN. We have some, our first panel, right?

Senator MURKOWSKI. Um-hum. Um-hum.

Senator MANCHIN. I'd love to hear—do they object to what the sensible requests are?

Senator MURKOWSKI. I tried to get an answer—

Senator MANCHIN. Now that we've heard both sides, but—

Senator MURKOWSKI [continuing]. From the feds and the State on these two demonstration projects, and I think it's probably fair to say that the response was unresponsive.

Senator MANCHIN. Yes, you shouldn't be afraid to talk, I mean, because I'm trying to—I have a great interest, and this is my dear friend, so I even have more of an interest of understanding.

But this is fascinating, but I'm saying you're putting a very logical request out. I haven't heard anything that I would consider that's irrational. On that, I'm sure they have a job to do and they're doing the job the best that they think is described for them to do their job.

Somehow, we've got to break that logjam and say, OK. There's got to be a compromise. How do we do that? You've got to speak up from the other side, from the Federal side or State side. You've got to let us know, because, if not, we might intervene. You might not like anything we do, and we don't want to do that. We want to find that balance, but so that was interesting.

Senator MURKOWSKI. Senator Manchin, I think it was said here earlier that part of the complication here is you have two very distinct management systems. You've got a Federal management system and you have a State management system, and they're both managing the same fish that's going up the Yukon River, and—

Senator MANCHIN. I understand, and they're managing it in different places.

Senator MURKOWSKI. Different places.

Senator MANCHIN. One out in the ocean where it originates. One when it comes back, and then when it gets into the water.

Senator MURKOWSKI. But depending on where you are, upriver—you know, quite honestly, the fish could care less whether it's State management—

Senator MANCHIN. Yes.

Senator MURKOWSKI [continuing]. Or Federal management, but what it puts in place for the user, for the consumer is a complexity that makes management almost ridiculous.

So when we talk about the concept of co-management, as long as everybody's talking and working with one another, I think that we can make some good headway there, but it's really how this is translated.

This is why I've asked so much about, you know, how we are incorporating the input from the local people, the local knowledge, and the significance of a RAC, and, again, making sure that these actually function as intended, and it's not just having the right folks be there, but not, then, giving any weight, any credence to their input.

So much of this is how it's actually translated, and so some of the suggestions about how we give greater empowerment, I think, is key to our discussion here.

Mr. Anderson, I appreciate what you've given us in terms of the legal perspective and some of the, just the historical analysis here with ANILCA and ANCSA.

If the State of Alaska today were to pass a constitutional amendment that allows for a rural priority, would that, in and of itself, bring the State into compliance with Title VIII under ANILCA?

Mr. ANDERSON. I don't think it would. They'd have to—

Senator MURKOWSKI. Why would it not?

Mr. ANDERSON. They would have to amend their statute that allows them to designate rural areas as non-subsistence zones. They've got a statute that provides for a reasonable opportunity, which has been interpreted by the State Supreme Court as to allow restrictions that are greater than are allowed under the Federal subsistence statute, so that might have to be taken care of.

So there are probably about 5 or 6 other statutory fixes that would have to be made in order to get back in compliance, so then ANILCA would allow the Secretary to certify the State.

But I would say that if they had the political will to put a constitutional amendment on the ballot, they could certainly do these other fixes as well.

Senator MURKOWSKI. Understood.

Mr. ANDERSON. I would say, just on the RAC issue, you know, just fixing the RACs would be helpful for the Federal lands now, but, you know, the big problem is that we have differing priorities on different lands and waters in the State, and that's why we have this multiplicity of regulation.

So if you had a single standard applicable in all rural areas under, say, the Federal standard, as was originally intended, then everyone would manage to that goal and we had the Federal courts overseeing that implementation, and we just have lost that with the McDowell case and the divide between State and Federal lands now.

Senator MURKOWSKI. Dr. Worl raised the issue that when it came to deference to the locals through the RAC process that it doesn't include issues like determination of rural versus non-rural. So recognizing that the Federal Subsistence Board is in the process of reviewing how it determines these, if there were a more inclusive regulatory definition of rural adopted would that eliminate the need for statutory changes to ANILCA?

Mr. ANDERSON. I think so, if the agencies were willing to do that. I think that's the problem is that the agencies, you know, interpret the grant of authority to the RACs in such a way that minimizes the role of the RACs, and that just results in the agencies having or retaining more power over all these other ancillary matters that are important to subsistence users, but don't bear on the actual seas that are bag limit that might be before the board where they do say they allow deference.

Senator MURKOWSKI. OK. So, Dr. Worl, you, in your, I think, 4 recommendations, and, Jerry, also, in your comments, you've identified a few areas where you think that we could make a difference.

Legislative changes, I think we all recognize, are tough to achieve anymore. We've been working to try to get an energy-efficiency bill through the floor now for almost 2 weeks, and I think the reason that the Chairman is not here today is because it's probably going to be announced that we can't even move a simple energy-efficiency bill.

I don't mean to be discouraging, but I'm being very practical about or pragmatic about what's happening with legislation in this body and on the other side.

So let's just set off the table right now discussion about legislative amendments. I put this out to each of you, are there specific ideas that we can—or specific suggestions that we can advance, move administratively through the regulatory process, just all stakeholders sitting together?

I want our comments that you might bring up on this right now to extend to the work session that we're going to have this afternoon, because I want to try to explore some areas where we can improve the issue of management at all levels.

I understand that that requires just greater discussion, greater dialog, greater commitment to be working with one another, rather than our very siloed world, which I think is where we are. But just setting off the table right now the issue of specific legislation, what suggestions might any of you have about some things that we could specifically look to now? Ana.

Ms. HOFFMAN. In my comments I made reference to the amount needed for subsistence, and I think that that really should be the baseline, as I said, for the management efficient game.

If we start with that figure and get a real, you know, comprehensive figure of what the amount needed for subsistence is and involve—you know, we've heard about the Intertribal Fish Commission—utilize the local knowledge to come up with the amount needed for subsistence for all the fish and game resources, and then begin management from there.

Senator MURKOWSKI. OK. Rosita.

Ms. WORL. ANILCA does mandate the Federal Government to provide for a meaningful role in management. That's what ANILCA says.

It was Secretary Babbitt that actually created that Fisheries Resource Monitoring Program, and, as I understand, there's not a lot of money in there. I think last year there was about \$5 million, but only 19 percent of that money went to Native organizations, and the State got near half of it, and then the private sector got—I can't figure out where the private went, but I only came up with 73 percent. I don't know where the rest of the money went.

But if we were able to implement, you know, that mandate in ANILCA to provide for a meaningful role in the management of subsistence, I think that could bring us to the table. That's one recommendation.

The second recommendation I had already made was make that Federal Subsistence Board a real management board of subsistence users. Two recommendations I would offer.

Senator MURKOWSKI. Thank you. Jerry or—

Mr. ISAAC. Thank you. If I could be so bold to mention some real observations that I have had in my participation in terms of the fish and game management.

In my view, there's never been any meaningful cooperation. The meeting halls and the conference tables have always been gathered about with an attitude of withholding and not being so foregoing, and not being so forthcoming, rather.

RACs, you know, the Rural Advisory Councils, could be composed in such a way that it is more fairly comprised.

You know, dialog, simple things like dialog, let's sit down and talk about the differences. That has never been had. If it has been, the dialog has been approached with a very biased opinion, unyielding opinion.

Now, we're going to have to quit that. If we're going to solve the issue of fish-and-game management on the basis of sustained yield, we all have to give and we all have to take.

The other thing is divisiveness. You're very aware of it. I'm aware of it. I mean, there is such divisiveness about the very subject matter about fish-and-game management in Alaska, and yet we all claim that we're concerned about the stocks of the fish-and-game populations. Now, if we are so moved about the concern, why not we go step forward and meaningfully engage?

The other thing that I see as lacking is respect. People would rather dislike or hate each other rather than to sit down and try to understand each other.

Like I have never met Senator Manchin. I am impressed with the character of the man because he stepped forward to say that he's interested in hearing more about this discussion here. Now, I really respect a man for having stepped forward to listen to the differences I may have. Thank you.

Mr. ANDERSON. I have two quick ones. One would be to increase the cooperation with the Native community through non-profits and tribes by funding more contracts and cooperative agreements.

That was a big part of the original implementation plan when Secretary Babbitt set up this structure was to do as much contracting as possible and that has contracted under both of these last two administrations.

It simply has become more of a Federal program in cooperation with the State. So I would say that they should revisit that, if they could do it on their own in conjunction with the Native community.

Then, second, the fact that this program is housed within the Fish and Wildlife Service, rather than the Secretary's office, makes it, you know, it's got the Culture of the Fish and Wildlife Service, which tends to be more top down than this should be.

In addition, with reforming the board composition, I would think that, you know, moving that box outside of the line control of the Fish and Wildlife Service Director in that budgetary process would be a positive aspect.

Both of those are contained, I think, in the attachments to Rosita's testimony from AFN, and there were a number of others that I'm sure we'll talk about this afternoon. Those are two I can think of right now.

Senator MURKOWSKI. Good. I look forward to that. I'm going to let Senator Manchin ask a couple of more questions. We're going to have to wrap it up because I've got to be—

Senator MANCHIN. No. I think the doctor wanted to say something.

Senator MURKOWSKI. Go ahead.

Senator MANCHIN. I think she wanted to say something.

Ms. WORL. Senators, I would be remiss in my duty if I did not say that we really need to deal with the Saxman rural determination, and that's something that we can do administratively.

Then the next one was that Secretary Salazar did outline a number of reforms. None of them, except for the appointment of the two people to the Federal Subsistence Board, none of them have been implemented. So that's something where we could start with that.

Senator MANCHIN. If I could, I saw Mr. Fleener out in the hallway and I just asked him, just trying to learn as much as I can as quick as I can, and he was telling me about 60 percent of the land is owned by the Federal, 40 percent by the State.

With that being said, then there's primacy, you know, because I'm thinking, and my State has a lot of regulations, too, but, then, as a former Governor, I'm very much protective of the Tenth Amendment, States' rights.

With that being said, I believe that the Federal Government should be my partner. In saying that, the Federal Government and the State, since they both have vested interests, should come up with a set of guidelines that we think are reasonable.

The Federal Government could have a contract with the State for the State agencies to basically have one regulatory agency that's responsible. The feds could have oversight. If the State doesn't do its job, then the fed moves in and takes basically primacy away because they haven't earned the right to keep it. I don't think we're that balanced right now. That's what I'm understanding. Those are things that maybe we can help you work out. That's what we're hoping for.

But it makes sense to me that if we come to an agreement—and somebody might want to chime in here, and feel free to do so—if we can get an agreement to where, first of all, the State should take the enforcement primacy, responsible for the enforcement, once the feds and the states come to an agreement. Does that sound reasonable? Mr.—

Ms. WORL. Senator, Alaska is our State also. It is our State, and we want to have a State that works for all Alaskans.

Senator MANCHIN. Sure.

Ms. WORL. We, as Alaska Native people, had lobbied strenuously, lobbied the legislature to try to get it to resume management of Federal lands by recognizing the Federal subsistence priorities.

Senator MANCHIN. Yes.

Ms. WORL. We tried, without any success. We were saying, Why are we doing this? You know, we shouldn't be doing this, except we cared for our State. We thought a dual-management system is really not in the best interests of its citizens, but we were unable to convince the State to recognize—

Senator MANCHIN. In all fairness to the Federal Government, the Federal Government has had situations where they've had over-

sight or review process and saw that the states weren't doing the job they were supposed to do, either they didn't want to or they weren't capable of it or weren't financed well enough to do it, and then the feds had to feel like they moved back in, so I've seen that.

Mr. Anderson, you wanted to say something, I'm sure.

Mr. ANDERSON. I just wanted to say that, Senator, that that deal was made in 1980 in Title VIII of ANILCA for the State to be the manager on all Federal lands and waters in Alaska, if they would adopt a rural priority, and they did, and the State Supreme Court said that was unconstitutional as a matter of State law.

As Rosita said, the Native community expended thousands of hours of effort and probably millions of dollars trying to get that amendment passed.

Senator MANCHIN. Everybody was in agreement on that in the 1980s.

Mr. ANDERSON. That there should be a rural priority, and then the—

Senator MANCHIN. In the State. Did you go to the Federal, the U.S. Supreme Court?

Mr. ANDERSON. State Supreme Court said the State constitution meant the State could not have a rural priority. They would have to amend our constitution to do that.

Senator MANCHIN. You can't get it amended.

Mr. ANDERSON. They would never put it on the—came within one vote once, I believe, of getting it on the ballot.

Senator MANCHIN. You mean from your State legislature?

Mr. ANDERSON. From the State legislature. So that's why—

Senator MANCHIN. I got you.

Mr. ANDERSON [continuing]. You know, they can't—

Senator MANCHIN. Now, it's getting clear. By God, I knew politics would enter into it sooner or later.

[Laughter.]

Ms. WORL. But all the surveys we did of the public it showed that the public did support us. It was, unfortunately—

Senator MANCHIN. You'd like to see a referendum, wouldn't you?

Ms. WORL. Yes.

Senator MANCHIN. I got you. I understand. I'm getting it now. I'm getting it.

Thank you so—I can't tell you how much this—how enjoyable this has been, and how much I've learned, and I really appreciate this so much.

All of you, from both panels, have been so professional, so sincere about where you're coming—I just think that, you know, if they'd let you all sit down and work it out, we'd be in good shape. Right? Thank you so much.

Senator MURKOWSKI. Senator Manchin—go ahead, Jerry.

Mr. ISAAC. Just a quick one. Senator Manchin, I would invite you to come to Tanacross.

Senator MANCHIN. Oh, I'm coming—

[Laughter.]

Mr. ISAAC. You don't have to pay me to take you out into the land. We can share the food that we can get. We can buy the gas together. There'd be no charging you nothing. Just come down in September and we'll go out on the river, and whether we see moose

or not, doesn't matter. It's just we'll go out there and have a good time and enjoy life.

Senator MANCHIN. The ethics is very clear here.

[Laughter.]

Senator MANCHIN. We don't want to violate them right now, but I would be more than happy to pay my fair share just to see that beautiful, beautiful place of the world. Thank you.

Senator MURKOWSKI. Senator Manchin, I think we're going to work very hard to make sure that you get to that place of the world. I want to thank everybody for your participation here today, and, again, I've mentioned that we'll have an opportunity to continue the discussion and the ideas. I appreciate the suggestions that you've provided the committee here as follow-on.

I really do hope this is the beginning of good, respectful engagement and dialog on this issue. For decades now, we've fought about this. I was advised by a lot of smart folks that I have good respect for, Don't raise the ghosts of subsistence past. It will just get the issue boiling again and Alaskans will be fighting again.

But the fact of the matter is that when we have in place Federal statutes that are not doing that which we intended, if they're not working, it's incumbent upon us, as lawmakers, to review them, to address them and to deal with them, and sometimes it's hard.

In fact, if it was easy, we would have done it a long time ago.

So I do appreciate my colleague from West Virginia, the Chairman of the Energy Committee, Senator Wyden, for their interest in making sure that we are able to have a dialog at this level, because, as local and personal as this issue is, we have Federal laws in place that are complicating your access to a resource, Alaskans' access to a resource, how we manage our resources, and so we've got to start working on it.

It's not going to help if we move off to our respective corners and say, I don't want to deal with it because it's too big.

I think we need to go back to the picture that you have shared of these 3 young boys out on the tundra waiting for birds, finding berries—thank you, Joe—and, really, this is about their future as well.

So what we've begun today I hope will be good and constructive and purposeful, keeping in mind who we are, who we're working for.

So I thank you for what you've given us today in your testimony. I thank you for those that have participated prior to this time through either oral testimony in Bethel or Glenallen, those who have submitted their comments in writing over the internet.

Our record is going to be held open, I think, for further comments.

The working group is going to be taking place this afternoon at 2:30 p.m. in this room. So, hopefully, we'll have a good number of you back with good, constructive ideas and a desire to do right by Alaska's people and all those of us that are working for her.

So, with that, gunulcheesh. Thank you.

[Whereupon, at 11:58 a.m., the hearing was adjourned.]

*Due to the volume of additional materials submitted for the record, all other statements and documents have been retained in committee files.*

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