

Statement of
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Before the
Senate Committee on Energy and Natural Resources
Concerning
Wildlife Management Authority under the Alaska National Interest
Lands Conservation Act and the Alaska Native Claims Settlement Act

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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.