

**Written Public Testimony of Craig Fleener
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On Behalf of State of Alaska**

**Submitted to the Senate Committee on Energy and Natural Resources
September 19, 2013**

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 supplemental 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 opportunity. 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.