

**SENATE COMMITTEE ON INDIAN AFFAIRS**

**OVERSIGHT HEARING ON "PROMISE FULFILLED: THE  
ROLE OF THE SBA 8(A) PROGRAM IN ENHANCING  
ECONOMIC DEVELOPMENT IN INDIAN COUNTRY"**

APRIL 7, 2011

Submitted by Julie E. Kitka, President  
Alaska Federation of Natives  
Anchorage, Alaska

Mr. Chairman, and distinguished Members of this Committee, I appreciate the opportunity to present testimony on behalf of the Alaska Federation of Natives (AFN) regarding SBA's 8(a) program, an important legal tool which is intended to help us escape poverty and marginalization, and empower our people to compete in the federal marketplace, deliver value to our federal partners and learn during the whole process.

On behalf of AFN Co-Chairs State Senator Albert Kookesh and Ralph Andersen, and our 37-Member Board of Directors -- we want to express our appreciation for these hearings, and your support of programs that provide economic opportunities to Native Americans. I offer this testimony to speak to the legal and equitable basis and importance of the Small Business Administration's 8(a) program to the Native people of Alaska and to offer several recommendations.

I submit this testimony in my capacity as President of the Alaska Federation of Natives (AFN). By way of background, AFN is the largest statewide Native organization in Alaska representing more than 125,000 Alaska Natives residing in Alaska, and more than 120,000 Alaska Natives scattered over the rest of the 49 states. Alaska Native leadership organized AFN in 1966 to facilitate bringing the various regional and village associations together, to advocate with one voice for a fair settlement of our aboriginal land claims. Congress approved the Alaska Native Claims Settlement Act (ANCSA) in 1971, and for the last 40 years we have been involved in implementation and adapting both the settlement and our relationships to meet the real needs of our people.

As President of AFN, I have seen where AFN is both an organization and a movement of Native people who are striving for self-determination. Our decision making process is shared with a 37 member Board and an annual convention of elected Native representatives of approximately one delegate for each 25 members of our villages, communities and Native institutions. It is a formalized process, which has served us well, and continues to adapt. The AFN convention is the largest annual gathering of Native people in the United States and generally numbers about 5,000 people. The AFN convention is a representative and inclusive Native gathering for Alaska Native people.

At our annual convention we work hard to maintain unity of purpose, recognizing we have a great diversity within the state, different ethnic and cultural experiences. We focus on statewide priorities, and debate and decide our positions on critical issues. The AFN convention has repeatedly voted to support the SBA 8(a) program as a viable economic tool for Native Americans and have urged us to do everything in our power to protect the opportunities for participation, and to ensure that Alaska Natives are at the table for any discussions that affect our people.

I would like to make clear that the AFN has zero tolerance for abuses of this program, or for media hype, which is not grounded in fact. AFN and I candidly recognize that there have been isolated instances of abuse or lapses in judgment by some involved in the 8(a) program. We do not condone such abuses or lapses and are committed to helping ensure that they are not repeated. We believe that the implementation of the new SBA regulations will go a long way toward making sure that they are not. We are committed to ensure the long-term benefits of this program are shared between the federal agencies for whom we do work, and for our young growing population, which is continually building their experience and expertise. By the same token, we urge this Committee and others in Congress to not let a few such instances be misused to destroy this highly meritorious and effective program for others in need of the opportunity it affords Native Americans.

I would like to note that we appreciate your leadership of this distinguished Committee in the administration of laws designed to benefit Alaska Natives and Native Americans. This Committee serves a very important role in the lives of our people, protecting commerce with, and among, Native American tribes, corporations and other organizations, while recognizing our unique role and relationship with the US government. We welcome and appreciate your leadership in reviewing the 8(a) programs. We also appreciate the efforts of our elected representatives, Senators Murkowski and Begich, and Congressman Young, who have stood with us to see that the truth is told about 8(a) contracting, and about its great importance to our people.

The work you and your Colleagues have done over the years have improved the lives of Native Americans – our people live longer, we have greater access to health care and educational opportunities, poverty is being reduced, and we are hopeful for the

future and our place in society as contributing members. Thank you for all you have done and the sacrifices you have made in your lives to take on public service. It really matters and we appreciate it more than you will ever realize.

Now, I will focus on the 8(a) program. First and foremost, it is important to recognize that the 8(a) amendments, as they relate to Alaska Natives, are the result of congressional amendments to ANCSA, and to further understand that ANCSA is a fundamental federal law that was intended to establish a fair and equitable relationship between the federal government and Alaska Native people. ANCSA is the foundation of much of our economic and legal relationships with the federal government, but it is much more than that. ANCSA embodies most of our economic and relational agreements with the federal government, agreements approved by the United States Congress for which our people relinquished valid legal claims to lands and resources in Alaska, our homeland. Our leaders took a tough stand. We accepted a settlement that freed the State of Alaska<sup>1</sup> to receive its lands and the federal government to manage its lands.

And we should recognized that the citizens of the United States, and the federal government, received a bargain: by settling Alaska Native land claims, title to lands in northern Alaska was cleared, paving the way for the Trans-Alaska oil pipeline to be built, which this summer will deliver the 18th billion barrel of oil to domestic consumers, from U.S. fields. These 18 billion barrels of domestic oil are directly attributable to the agreements that were made possible by ANCSA. The fields of Prudhoe Bay alone have delivered several hundred billions of dollars of goods, services and taxes to the federal government. ANCSA made this possible by addressing the status and claims of Alaska Natives.

---

<sup>1</sup> In 1971 when the Alaska Native Claims Settlement Act (ANCSA) was enacted by the Congress, Alaska was a fledgling state, not even 15 years old.

ANCSA remains one of the largest and most complex land settlements in US history. In December 1971, after years of effort by Members of the U.S. Congress and Alaska Native leadership, the Alaska Native Claims Settlement Act (P.L. 92-203) was signed into law by President Richard Nixon. In return for extinguishing their aboriginal claims to Alaska's 360 million acres, Alaska Natives were allowed to retain fee simple title to 44 million acres of land and received \$962.5 million for lands transferred to the State, federal and private interests. The Act created 13 regional for-profit corporations and more than 200 village corporations to receive and oversee the land and monetary entitlements. It took decades to get the promises of ANCSA implemented.

The structure of ANCSA, and the creation of corporations to be owned and operated by Alaska Natives, was – and remains – of lesser importance to Alaska Native people than protecting our land and our traditional way of life, and surviving in the modern world.

The basis of the treatment of Alaska Native corporations under the Small Business Act stems from amendments to ANCSA and to the Small Business Act – it is, today, a critical component of the Alaska Native Claims Settlement Act. In 1986 and 1987, I was working on behalf of AFN in Washington D.C. on a package of amendments to ANCSA called the “1991 Amendments” when the 8(a) amendment was debated and enacted.

For those unfamiliar with ANCSA, the “1991 Amendments” were a result of five years of internal discussion and debate within the Alaska Native community, and with Members of Congress. This legislative effort modified ANCSA and addressed fundamental land protections, the ability to provide special benefits to our Elders and to our younger generations, and the legal structure of Alaska Native Corporations. For example, one major

provision would have allowed Native corporation stocks to be sold on the public market.

We knew at the time of the debates regarding the 1991 amendments that, if ANCSA was allowed to remain as it originally was enacted, the Alaska Native people were in danger of losing their corporations, those legal entities created by Congress to manage Alaska Native lands and resources.

Amendments to the SBA 8(a) program were included as part of the “1991 Amendments” because the program was viewed as necessary to the ability of Native Corporations – based in remote, rural areas of Alaska – to transition into the U.S. business world. And, as has been the experience of many minority peoples in our nation’s history, we saw that Natives corporations were sometimes excluded or ignored as potentially viable business entities.

The “1991 Amendments” were fully considered by Congress in 1987, passed without opposition, and were signed into law. The 8(a) amendments also were passed by Congress without opposition and signed by the President. As you well know, the 8(a) amendments provided contracting authority that applies equally to all Native American tribes as well as Alaska Native corporations. The contracting opportunity available under 8(a) is not unique to Alaska Native corporations.

Also, it is worth considering the basis for the distinction between laws differentiating between Native American relationships and others. In a great many cases, Native Americans entered into agreements with the federal government relinquishing ownership and use and occupancy of lands for treaties and statutes. In our case, Alaska Natives relinquished claims to approximately 320 million acres of land in Alaska with the passage of ANCSA. The agreements embedded in these treaties and statutes across the United States properly provide a basis for differential treatment

under the law. Congress can properly distinguish between Native American and non-Native American contracting opportunities. Congress' authority to do so comes from the unique status of Indian tribes under federal law and the plenary power of Congress to legislate on behalf of federally recognized tribes and Alaska Native corporations. This principle is well established in federal law and was recognized by the United State Supreme Court in a leading case, *Morton v. Mancari*, 417U.S. 535, 551-52 (U.S. 1974). The Supreme Court has upheld legislation that provides for unique application of laws to Native Americans due to the unique history and role of dealings with Indians and has stated that as long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislation regulating commerce with Indian tribes will not be disturbed. *Mancari*, 417 U.S. at 555. That is the correct and constitutional basis for the Indian and Alaska Native treatment under the 8(a) program.

To look back now and seek to separate the economic treatment of Alaska Natives, or any other Native American tribe or group, from the settlement of aboriginal claims would not be just or fair. As you meet here today, in this hearing, not all the lands that were promised to Alaska Natives have been conveyed to our people and our corporations 40 years after ANCSA was enacted. What is the net present value of the lost use of our lands, delayed in some cases by decades?

To Alaska Native people, ANCSA is as important as the fundamental human rights statutes of the Civil Rights Act and Voting Rights Act. ANCSA is based on recognition of the validity of the claims of Alaska Natives to lands and waters in Alaska, where our people resided for thousands of years. To pull out pieces of the Act now and examine them out of context would be wrong. ANCSA corporations are not merely for-profit corporations; they are stewards of the Native homeland, sponsors of education and training opportunities, employers of "first resort"

for our aboriginal people. There is so much more tied into these corporations than some people understand. Most of our entire land base---our land is key to our heritage, culture and future---is held by the corporations, just as Congress intended in passing ANCSA. The corporations have broader responsibilities than many other corporations, for in their hands are our settlement lands, lands which we can not afford to lose. Alaska Native corporations were not started as ordinary corporations, and were not intended to function as ordinary corporations.

These corporations were required to be formed by federal law, ANCSA, a requirement not applied elsewhere in other aboriginal land settlements, or to many, if any, other corporations in America. The corporations were a foreign-type entity to our people, but we worked hard, and did what the law instructed us to do with the corporations. Our people struggled in many cases to overcome social and economic disadvantages of operating new corporations in what to the business world is remote Alaska, and to run the corporations as intended. Our people persevered to seek the success Congress intended. Contracting under section 8(a) is, and has been an important aspect of the success of some of our ANCSA corporations, and through them, we have seen important socioeconomic benefits to thousands of our people, as intended. Again, our corporations hold the keys to our heritage, our lands, and economic base, which are essential to our well-being.

As these corporations began to succeed, many of the indicators of a healthy society began to improve. For example: Alaska Native life expectancy for both men and women has increased, infant mortality has decreased, poverty has been reduced from over 60% to 20% -- a major accomplishment. Key findings in a report commissioned by AFN shows dramatic improvements in positive indicators; dramatic decreases in negative indicators; and a **continuing thread of disparity** between the Alaska Native population and non-Alaska Native population, both in Alaska and

in the U.S. in all indicators.<sup>2</sup> Overcoming this disparity must be a targeted focus of all our efforts.

Of course, AFN does not assert that ANCSA and our Native corporations are the source of all the improvements in the last thirty years. Other significant impacts on well-being have been federal and state appropriations in health, education and social services; and the Alaska Permanent Fund dividend. However the impacts of ANCSA are very substantial.

I believe that it may be tempting to look at some of the greatest success of Alaska Native Corporations and see only success. From where we started, with small, new start-up corporations, beginning with a people that had not operated corporations before, our corporations have come a long way. We have asked other members of Congress and other committees not to skip over what we started with, living and working in what is to most businesspeople the most remote corner of America, in one of the harshest climates in the world: A history of extreme prejudice toward, and lack of understanding of, our people. A history of wariness toward a people who, in a great many cases, literally spoke a different language than most businesspeople in America. A history of exclusion from genuine business opportunity. And a history of no business history with “mainstream” large economies in America. This is clearly a case study of an economically disadvantaged minority business. That is why ANCSA and the Small Business Act were amended to provide for economic opportunity for our corporations. These amendments are the basis of the 8(a) program as it applies to Alaska Native Corporations.

---

<sup>2</sup> In 2004, AFN commissioned a 30-year trend analysis on all major socio-economic and health indicators of the Alaska Native population. The University of Alaska, Institute of Social and Economic Research prepared the report. Key findings show that Alaska Natives have more jobs, higher incomes, and better living conditions, health care and education than ever. But they remain several times more likely than other Alaskans to be poor and out of work. All the economic problems Alaska Natives face are worst in remote areas, where living costs are highest. AFN has made the request available to Members of the Committee.

SBA 8(a) contracting has created the benefits that it was intended to create. Our corporations have built up a capacity that did not exist before. Methodically, efficiently and responsibly, these corporations have built up a capacity to provide employment to Native shareholders, provide training to young people, and develop and offer scholarship opportunities. Our corporations have built up a capacity to provide jobs and help young people see what it takes to succeed in modern America. They have built, as intended, a managerial and business expertise that can carry forward. They have helped create an economic stability where none existed before. Our people take pride in this work, and feel strongly that this is our work, not the work of others. It is an accomplishment to behold, one which is worth understanding in full for its roots, path and basis in law, including Native American law.

We believe that the laws governing the 8(a) program provide the correct balance of interests and provide for an effective small business program. Native American participation in the 8(a) program represents less than 2% of the total contracting undertaken by the US government. When the regulations need updating, the SBA and federal agencies have shown that they have the authority and ability to modify the program where needed. New regulations for the 8(a) program were published in a Final Rule in February of this year and took effect last month. These regulations provide for changes in the joint venture requirements, require more assistance from mentors in the mentor-protégé relationship, and require greater reporting on the benefits to Native members and communities resulting from 8(a) contracts, including the reporting of dividends, funding of cultural programs, employment and other programs. We should give the changes of this new regulation a chance to work and then assess what else needs to be done.

As I testified last year to the Subcommittee on Contracting chaired by Senator McCaskill, what happens with Alaska Natives has an impact everywhere: our homeland, our traditional way of life, our economic future – so much depends upon our relationship with the U.S. Government, and the development of our Native people and our corporations. If they fail, we could lose everything.

I look at our Native corporations' participation in government contracting as a repudiation of federal termination and assimilation policies of previous decades. With our participation in the SBA 8(a) program, our Native corporations become **integrated in the economy**. At the same time, we retain our culture and identity; we create jobs; and control the amount of involvement or non-involvement. I view the greatest benefit of our participation in the SBA 8(a) program is the **capacity building**, which is occurring and continues. We are both contributing to the U.S. economic recovery and building our capacity to help more. We are involved in **nation-building work**, which benefits all Americans. We work hard, we do quality work within budget and on time, or we do not receive contracts. We build tight financial and accounting systems because we want to work responsibly and according to the law. We are developing our people to be responsible US citizens capable of solving any problems or crisis and working to build our country.

I believe strongly that the success of the program is so good that it could be considered a national model for integrating ethnic minorities into the modern global economy. Several areas around the world, which I am sure you monitor, could greatly benefit from the experiences we are gaining in building a better base in our economy for our indigenous people. The upheavals in places like Tibet, while very complex and historical in root causes, reveal the long-standing ethnic tensions and weakness in China's social and economic structure. Unlike the Soviets, who dealt with potentially problematic ethnic minorities in part by moving them *en masse*

from their homelands, China left its ethnic minorities largely within their traditional lands. Ethnic tensions arise and are exacerbated by disparities in social status and economic situations in these two provinces, as well as elsewhere in the world. The experience of Alaska Natives, our separation of economic and political organization, our working relationships with the state and federal governments, are all models, which could have application in other parts of the world.

In my view, together we have done many things right in the United States and Alaska. The ultimate benefit of the SBA 8(a) government contracts is the capacity building and the nation building work. It is the integration into the larger economy and the opportunity to contribute which is the genius of the U.S. approach. It hasn't been easy, and it is a lot of continuous work by our people, with continual adjustment, but we are on the right path.

As we look at 2011 with a slow recovery and serious federal budget issues, we know we are looking at a new reality. The federal fiscal environment has changed. We are in the midst of a global economic realignment and recovery. There is a critical need for the U.S. Congress and Administration's recovery act investment and further action taken and planned. The SBA 8(a) program is a proven way to move resources quickly and to get things done and employ people. With national unemployment figures remaining stubbornly high – we all must be concerned.

As we look towards a post-crisis recovery and how Native Americans, including Alaska Natives are helping and can help in the recovery, we request an opportunity for a dialogue with the appropriate Congressional committees on strategic, opportunity expanding ideas. We want to keep developing economic tools, infrastructure, expanding education and training for our people, and developing our institutions and organizations to be effective in

the post-crisis economy and world. It will be a changed world, and we want to be ready for it.

We want to maintain our Native identity, our cultures and homelands. We want life opportunities and choices. We want to continue to build capacity within all our Native corporations, and tribes and to be known for our good governance and leadership.

The continuation of the SBA 8(a) program helps us accomplish our aspirations and goals, and helps our country. We would be pleased to continue a dialogue on this and other matters of concern to this Committee. Mr. Chairman, and Members of the Indian Committee, we sincerely request and invite you to see what a difference contracting has made for our people in Alaska. Please come to Alaska and witness for yourselves and for the United States Senate what a difference the success of these corporations has made.

Thank you.