

Maniilaq Association

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**TESTIMONY SUBMITTED TO
THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
ON ADVANCING THE FEDERAL-TRIBAL RELATIONSHIP
THROUGH SELF-GOVERNANCE AND SELF-DETERMINATION.**

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Introduction and Brief History

My name is Ian Erlich and I am President and Chief Executive Officer of the Maniilaq Association, an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska. I am thankful for the opportunity to testify regarding ways to advance the Federal-Tribal Relationship through Self-Governance and Self-Determination. The Maniilaq Association has been involved with Self-Governance from its inception. As such, we understand the many important benefits of Self-Governance. We also understand the ways in which Self-Governance needs to be improved to provide tribes with the best tools possible to continue to advance the essential goals of Self-Governance.

Congress, in enacting the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975, sought to encourage Indian tribes to develop self-determination by authorizing them the right to negotiate agreements with federal agencies in which funds and responsibilities for operating federal programs, services, functions and activities (hereinafter PFSAs) were transferred to tribes. In effect, through the ISDEAA, tribes step into the shoes of the federal government by assuming the responsibility for providing PFSAs formerly provided by federal agencies. That, in turn, builds the tribe's ability to perform essential governmental functions and allows tribes to improve the PFSAs by making them more responsive to tribal needs.

Congress significantly amended the ISDEAA three times since its enactment in 1975 - in 1988, 1994, and 2000, in each instance to expand the successful law. The 1994 amendments revised a number of provisions in Title I and included a new Title IV, which implemented a permanent Tribal Self-Governance program within the Department of the Interior (DOI). The 2000 amendments included a new Title V, which repealed the Title III Self-Governance demonstration project and enacted a permanent Self-Governance program within the Department of Health and Human Services (DHHS).

As stated above, the Maniilaq Association has participated in Self-Governance from its inception, both under Title V (Self-Governance compacting with the IHS) and Title IV (Self-Governance compacting with the DOI). Below I briefly describe our history and successes under

Member Villages

Ivisaappaat, Nunatchiaq, Ipnatchiaq, Katyaak, Kivaliniq, Laugviik, Qikiqtagruk, Nautaaq, Nuurvik, Akuligaaq, Isinnaq, Tikigaq, Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, Shungnak, Pt. Hope

each program before discussing the ways in which Self-Governance can be improved and ways in which Self-Governance can be moved forward to advance the Federal-Tribal relationship.

**Maniilaq Association's Participation in Self-Governance:
A Success Story**

1. Self-Governance Under Title V of the ISDEAA (Compacting with the IHS).

The Maniilaq Association has for many years carried out a range of health and social services programs in the Northwest Arctic Borough on behalf of its member Alaska Native villages under the Self-Governance provisions of the ISDEAA, including primary health care services, emergency treatment, mental and behavioral health services and health education, promotion and healthy lifestyle practices. The Maniilaq Association carries out these programs in accordance with the Alaska Tribal Health Compact (ATHC) – a single agreement among the Indian Health Service and all tribes and tribal organizations in the State of Alaska, and its own, individual Funding Agreement with the Indian Health Service. The ATHC authorizes the co-signers to operate their own health care programs while maintaining their autonomy with respect to determining health priorities and what services to be provided and how health policies will be carried out within their respective service areas.

The Maniilaq Association's participation in Self-Governance is a true success story. The Maniilaq Association is proud to report that because of our involvement in Self-Governance there is now a functional (but, as noted below, severely underfunded by the Indian Health Service) clinic in each of its member villages. Most recently, the Maniilaq Association completed the construction of a long term care facility adjacent to its Health Center. Completion of this project had been a long term goal of the Maniilaq Association and was the product of many years of work. Final construction of the 18-bed facility was completed last year. The facility's first residents are moved in and the facility has enjoyed immense success.

2. Self-Governance Under Title IV of the ISDEAA (Compacting with the BIA and Non-BIA Agencies in the DOI).

The Maniilaq Association also participates in Self-Governance with the Department of the Interior (DOI) under Title IV of the ISDEAA. Currently, Maniilaq has a Title IV Self-Governance compact and Annual Funding Agreement for several PFSAs and associated funding with the Bureau of Indian Affairs (BIA). Under that agreement, Maniilaq provides a broad range of PFSAs to its member villages, including Public Safety and Justice, Job Placement and Training, Natural Resources, Agriculture (food preservation), Forestry, Wildlife and Parks, Real Estate Services, Environmental Quality and Wildland Fire Management/Pre-Suppression.

Under Title IV a tribe or tribal organization may also compact non-BIA PFSAs, or portions of such PFSAs, with agencies other than BIA, which are of special geographic, historical, or cultural significance to a tribe or tribal organization. Under this provision, the Maniilaq Association entered into a compact and funding agreement with the National Park Service in 2011 to perform Custodial Services, Maintenance Services, and Cultural Education Curriculum Development at the Northwest Arctic Heritage Center. Maniilaq is also currently pursuing Self-Governance agreements with other non-BIA agencies including the U.S. Fish and

Wildlife Service; Minerals Management Service; Bureau of Land Management; Office of Surface Mining, Reclamation and Enforcement; and the U.S. Geological Survey (hereinafter “non-BIA agencies”). The Maniilaq Association is still awaiting responses to requests made years ago for information regarding compactable PFSAAs from these non-BIA agencies, which appear reluctant to compact such programs.

Continued Financial Challenges Maniilaq Association Faces in Advancing Self-Governance

While the Maniilaq Association’s involvement in Self-Governance has resulted in significant positive developments for its Alaska Native Villages and Native people, we continue to face serious challenges that come from chronic underfunding of compacts and critical programs, as well as uncertain funding. The three most pressing of these funding issues are described below:

1. Chronic Contract Support Cost (CSC) Underfunding. Underfunding of contract support costs (CSC) continues to impose major hardships on tribal health care providers and patients around the nation, including Alaska. Last year the House proposed funding IHS for contract support costs at \$574,761,000, which would have reduced the CSC shortfall dramatically. Ultimately, however, Congress appropriated \$471,437,491, requiring tribes to divert over \$100 million from health care services to fixed administrative expenses. Just within the last several years, according to the IHS’s own CSC Shortfall Report, Maniilaq suffered a CSC shortfall for its Title V health care programs alone of \$5,152,747 for FY 2009 and \$2,612,499 for FY 2010. Figures for FY 2011 are not yet released. We urge the Committee to continue to press for full funding of contract support costs. Assuming a modest increase in program funding, we estimate that a CSC appropriation of \$595,000,000 would come close to eliminating the shortfall, allowing Maniilaq and other tribal providers to use all program funds for the purposes Congress intended.
2. Chronic Underfunding of Village Built Clinics (VBC). Village Built Clinics are essential for maintaining the IHS Community Health Aide Program (CHAP) in Alaska. The CHAP provides the only local source of health care for over 41,000 Alaska Native people. Since the CHAP program could not operate in most of rural Alaska without the use of clinic facilities in Alaska Native villages, IHS established the “village built clinic” leasing program in 1970. Yet, the IHS has consistently under-funded the leases of the VBCs despite having available appropriations to fully fund the leases. The amount of funds IHS transfers to the Maniilaq Association and other tribal organizations for VBC leases is not sufficient to cover the cost of repair and renovation of the VBCs as necessary to maintain them in a safe condition. Many clinics have been closed due to the hazards to the health service employees and patients, leaving villages without a clinic or access to CHAP services. Lease rental amounts for VBCs have failed to keep pace with costs—the majority of leases have not increased since 1989. By FY 2006, the lease rentals paid by IHS to the villages covered only 55% of operating costs. The Maniilaq Association and other tribal organizations in Alaska have discussed this issue with the IHS on many occasions, but the IHS continues to refuse to provide additional funding for the VBCs. For the FY 2013 appropriations, we request that an additional \$7.8

million¹ be appropriated to help fully fund VBC leases in 2013. Unfortunately, the chronic underfunding of VBCs and the IHS's lack of assistance aimed at solving this crisis has forced the Maniilaq Association into a litigation posture with the IHS as we seek to restructure the VBC lease arrangements in a way that recovers the full costs of operation and maintenance.

3. Change to Funding Cycle for Indian Health Service Appropriations. For more than a decade, federal appropriations bills have not been enacted prior to the beginning of the federal fiscal year and have included several continuing resolutions, causing funding under the ISDEAA to be uncertain and to trickle in over time. This has hampered the efforts of tribal and IHS health care providers to provide health care services, maintain and construct facilities, recruit professionals and staff, and carry out other health-related functions. These problems could be mitigated by an advance appropriation—funding that becomes available one year or more after the year of the appropriations act in which it is contained. For example, if FY 2014 advance appropriations for the IHS were included in the FY 2013 Interior, Environment and Related Agencies Appropriations Act, those advance appropriations would not be counted against the FY 2013 Interior Appropriations Subcommittee's funding allocation but rather would be counted against its FY 2014 allocation. It would also be counted against the ceiling in the FY 2014 Budget Resolution, not the FY 2013 Budget Resolution. Congress provides such advance appropriations to three Veterans Administration (VA) medical accounts to allow the VA to know its medical funding a year earlier and avoid continuing resolutions. The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for tribes and tribal organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of the VA to properly plan and manage its resources, tribes and tribal organizations have those concerns about the IHS health system. We thus request that legislation be introduced and enacted amending the Indian Health Care Improvement Act to authorize IHS advance appropriations and take such other steps as are necessary to provide such advance appropriations.

Two Key Efforts to Advance the Tribal-Federal Relationship Through Self-Governance and Self-Determination

Two major initiatives must be mentioned when discussing the future of the Tribal-Federal relationship as it relates to Self-Governance and Self-Determination: (1) the efforts to amend Title IV of the ISDEAA to create consistency between Title IV and Title V; and (2) the current work to expand Tribal Self-Governance to non-IHS agencies within the DHHS under Title VI.

1. Current Efforts to Amend Title IV. The first major issue for the ISDEAA moving forward is the ongoing effort to update Title IV and make it consistent with Title V. Discussions continue surrounding several different proposals to amend H.R. 2444 (i.e., the Department of the Interior Tribal Self-Governance Act of 2011 to create a new draft bill, and the Department of the Interior Tribal Self-Governance Act of 2012 for introduction in either the House of Representatives or the Senate during the current congressional session). The

¹ In previous testimony Maniilaq Association requested an additional \$6.8 million, but it now believes an additional \$7.8 million is needed because rural fuel costs are inflating faster than anticipated.

amendments to Title IV of the ISDEAA are important to the evolution of Self-Governance. Most significantly, these amendments would create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS and create administrative efficiency for tribes. H.R. 2444, the Department of the Interior Tribal Self-Governance Act of 2011, was introduced in the House of Representatives in July of 2011. H.R. 2444 has yet to pass in the House and no similar bill has yet been introduced in the Senate. H.R. 2444 was a re-introduction of a similar bill, H.R. 4347, the Department of the Interior Tribal Self-Governance Act of 2010, which passed the House but failed to pass the Senate due to DOI opposition to several provisions of the bill. Most recently tribes face opposition to H.R. 2444 from those interests that wish to limit the scope of non-BIA programs available for Self-Governance compacting, including an effort to specifically exclude all water settlements as non-compactable under Title IV. Tribes are currently working with staff of the Senate Committee on Indian Affairs to develop language that is mutually agreeable to both sides. We strongly support the revisions to Title IV, in order to create consistency between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS, while leaving the existing provisions on non-BIA programs as they are currently in the ISDEAA. The proposed amendments to Title IV will strengthen tribal Self-Governance, allowing tribes to prioritize their needs and plan for the future in a way that is consistent with each tribe's culture, traditions and institutions. The time has come to pass this legislation amending Title IV, which would significantly advance Congress's policy of promoting Tribal Self-Governance.

2. Efforts to Extend Title V Self-Governance to Other Agencies within the DHHS. The second major issue relating to the future of the ISDEAA is the continuing effort to extend Tribal Self-Governance to DHHS agencies other than only the Indian Health Service. Title VI of the ISDEAA mandated a feasibility study for including non-IHS agencies within the DHHS in a Self-Governance demonstration project and directed the DHHS Secretary to examine the feasibility of applying Title V to other agencies in the DHHS. As a result, the Department's 2003 Feasibility Study concluded that a Title VI demonstration project was feasible, identified eleven programs that could be included in the project, and set forth recommendations and parameters for the legal framework of the project. Since that time, however, no further progress has been made. To assist DHHS in implementing Title VI and other Self-Governance initiatives, DHHS convened a Self-Governance Tribal Federal Workgroup (SGTFW) consisting of ten tribal delegates and ten alternates from around the country, which began meetings in January of this year. The charge of the Workgroup is to develop detailed recommendations on how to overcome the legal and logistical barriers to implementing Self-Governance in non-IHS agencies. However, from the beginning the gulf between the federal and tribal visions of Title VI implementation was apparent. Federal representatives do not appear willing to base current discussions on the Department's 2003 Feasibility Study. By contrast, Tribal representatives felt strongly that the 2003 Feasibility Study should provide the foundation and starting point of the SGTFW's work so as to not be duplicative. Importantly, tribal representatives envision a program that uses funding agreements with the key substantive and procedural protections of Title V, adapted to fit the distinctiveness of the non-IHS agencies. Federal representatives, however, have urged tribal representatives to scale back their vision and consider non-ISDEAA models such as the 477

program² or inclusion of Self-Governance language in the legislative reauthorization of some single program. Thus, where tribal representatives see a fundamental transformation of the grantor-grantee relationship into a government-to-government relationship, federal representatives cling to the former model. At this point it is not clear where the Title VI initiative will go, but legislation will be necessary to bring Self-Governance to non-IHS programs within DHHS.

Conclusion

The Indian Self-Determination Act has for 35 years provided a mechanism for many tribes to successfully develop capacity for government-building activities. I thank the Committee for holding this important hearing on advancing the Federal-Tribal relationship through Self-Governance and Self-Determination. On behalf of the Maniilaq Association, including our twelve constituent villages and their members, I sincerely hope that this Congress will address the chronic underfunding of contract support costs and village built clinics, address the timing of IHS appropriations, and move forward with efforts to amend Title IV of the ISDEAA and to extend Title V Self-Governance to non-IHS programs within the DHHS. I am ready to respond to any questions from the Committee.

Thank you.

² PL 102-477, Indian Employment, Training and Related Services Act, which allows tribes to consolidate federal employment and training formula-funded grants.