

Senate Committee on Indian Affairs
“Keep What You Catch: Promoting Traditional Subsistence Activities in Native Communities”

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My name is Mary Peltola. I am the Executive Director of the Kuskokwim Inter-Tribal Fish Commission (KRITFC). I come from Kwethluk, Alaska, a small Yupik Alaska Native village located on the Kuskokwim River. I have been fishing with my family in the Kuskokwim in our traditional ways my whole life. Despite agreements with the U.S. Department of Interior (DOI) for a tribal role in management of traditional subsistence fisheries, the burdensome federal administrative structure and misplaced policy priorities of the FWS have undermined the unified effort of the tribes to protect their salmon stocks and way of life. Tribal self-determination is minimized in this most vital aspect of tribal health and well-being. We are in a constant, ineffective struggle, and our tribes and salmon are suffering the consequences. After describing the KRITFC and our issues, I have some recommendations for Congress to address these issues.

In May 2015, the KRITFC was formed as a consortium of all of the 33 federally-recognized Alaska Native tribes that are located along the Kuskokwim River. This historical unity of the tribes was driven by their understanding, and insistence, that they must have at least a co-management role if their Chinook salmon and way of life are to survive. Each tribe appoints a Commissioner to the KRITFC who is authorized to make decisions on behalf of the Tribe. The Commissioners select seven of their own members to serve on an Executive Council. The KRITFC strives to achieve consensus in all decisions.

For about a decade, the Chinook salmon stocks in the Kuskokwim River have been crashing. This has had disastrous consequences for Alaska Natives who depend on Chinook salmon for their nutritional, spiritual, and cultural well-being. In light of these conservation issues, the KRITFC has consistently and unanimously agreed to voluntary fishing restrictions to protect these stocks. The Commission uses its collective traditional knowledge and expertise concerning the Kuskokwim River to develop culturally appropriate conservation management plans. And, together with the Bering Sea Fishermen’s Association, the KRITFC also designs and implements harvest data collection programs. The Commission’s goal is to jointly implement those plans with U.S. Fish and Wildlife Service (FWS) and, when possible, with the State of Alaska. A central aspect of the tribal management plans is the unfulfilled goal that once a management plan is agreed to, and consistent with conservation, the tribes are authorized to implement and enforce that plan for their rural tribal members.

While each KRITFC member tribe has a unique relationship with the Kuskokwim River, all of our tribal members are unified by the vitally important role salmon – in particular, Chinook salmon – plays in our nutritional, cultural, and spiritual well-being. Since before contact with

Russian traders and missionaries, and certainly before statehood, Alaska Natives were stewards of this resource. We successfully managed the harvest and conservation of all Kuskokwim River salmon stocks according to our traditional Yupik and Athabascan rules and values: Providing for children, the sick, and the elderly first. Only catching what you can eat. Sharing what you cannot. Treating our resources with respect.

However, since the advent of Federal and State management of Kuskokwim River Chinook salmon stocks, tribal management has been sidelined, our Chinook salmon stocks are crashing, and both our tribes and our salmon are suffering. Despite our proven expertise and interest in sustainably managing our river's resources, the current interpretation and administration of federal subsistence laws makes it very difficult for the KRITFC to fully engage in traditional subsistence ways of life and to exercise self-determination in this most essential right.

Two unique circumstances complicate the KRITFC's efforts to manage Kuskokwim River Chinook salmon stocks under the existing federal and state subsistence management programs. The first is that unlike the Lower 48, neither the Federal nor the State government recognizes our right as a matter of policy or law to manage our fish and wildlife resources, despite having successfully done just that for thousands of years. As you know, with the exception of the Metlakatla Reserve in Southeast Alaska, there are no reservations in Alaska. This is, however, simply one excuse used to minimize tribal co-management. We are federally recognized tribes, we have a government to government relationship with the DOI, and DOI has ample discretion to implement and administer the subsistence rights provided under federal law for rural tribal members through co-management with their rural tribal governments.

Empowering tribal management or co-management is the only way to overcome the ineffective and inefficient State/Federal dual management system currently in place. The Kuskokwim River salmon fisheries are subject to both Federal and State management. These management regimes are inescapably tangled by conflicting laws and policies. Roughly half of the Kuskokwim River, from its mouth on the Bering Sea to the village of Aniak, flows through the Yukon Delta National Wildlife Refuge, and is subject to federal jurisdiction. But, after the river passes through Aniak, it is subject to State jurisdiction. Some of our tribes must subsistence fish under State regulations, others under federal regulations, and at times it appears the purpose of the different regulatory schemes is to undermine tribal unity. Currently, there is no recognized place for all tribes to fish under a united tribal management plan that has been negotiated with all management partners, which would thereby bring an effective, unified management plan throughout the entire drainage.

Under the Alaska National Interest Lands Conservation Act (ANILCA),¹ Federal managers are required to prioritize non-wasteful subsistence uses of fish and wildlife resources, such as Kuskokwim River Chinook salmon, by Alaska's rural residents,² many of which include the KRITFC's tribal members. If conservation concerns require Federal managers to restrict people

¹ 16 U.S.C. § 3101 et seq.

² 16 U.S.C. § 3114.

from hunting or fishing from a certain stock, they must consider a user's customary and direct dependence upon the resource as the mainstay of livelihood, the user's local residency, and the availability of alternative resources before any restrictions are put in place.³ ANILCA helps to ensure that the people who depend on a resource the most have the best opportunity to harvest that resource.

Absent FWS agreeing about the existence of a specific conservation concern or threat to subsistence uses, the State manages the Federal portion of the Kuskokwim River through State regulations. However, State law prohibits prioritizing subsistence uses of fish and game resources for Alaska's rural residents.⁴ Instead, State managers must provide all Alaskans, regardless of whether they live in a rural village where food is costly and scarce or in an urban city where food is plentiful and relatively affordable, with equal access and opportunity to take fish and wildlife resources. This means that a lawyer who lives in Anchorage is provided the same opportunity to come to Bethel and fish for Kuskokwim River Chinook salmon as an elder subsistence user who is unemployed and depends on the nutrition provided by Chinook salmon to make it through the winter without going hungry.

Despite the obvious conflict between these two management regimes, it is Federal policy to defer to State management of the federal portion of the Kuskokwim River whenever possible.⁵ These conflicting management regimes create serious problems that restrict our subsistence opportunities and impede our ability to fully engage in our traditional subsistence ways of life and to be fully self-determined in that engagement. One problem is that despite the fact that Federal management is required to prioritize subsistence opportunities for rural residents, Federal managers currently apply and enforce State regulations in Federal waters even though those regulations do not meet ANILCA's mandate to prioritize subsistence uses,⁶ and defer to State management decisions. This is done over the KRITFC's objection, to the detriment of Alaska Native subsistence opportunity and self-determination.

Alaska's tribes do not have a direct role in either the Federal or the State management systems. This means that the people who depend on the resource the most have little to no say in how that resource is managed. The extent to which the KRITFC is able to fully engage in Federal management of the Kuskokwim River is controlled by an ineffective and inefficient federal administrative process that is stacked against tribal interests and designed to disenfranchise our tribal voices.

The Federal Subsistence Board (FSB or the Board) is an administrative body created by the Secretaries of Interior and Agriculture created to administer the subsistence taking and uses of

³ 16 U.S.C. § 3114(1)-(3).

⁴ See *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

⁵ 50 C.F.R. § 100.14(a)(State Fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part).

⁶ 50 C.F.R. § 100.14(a).

fish and wildlife under ANILCA.⁷ The FSB has eight members – a Chair, two public members appointed by the Secretaries of Interior and Agriculture, and the Regional Directors of FWS, the Bureau of Indian Affairs, the Bureau of Land Management, National Park Service, and U.S. Forest Service.⁸ The Public Members are required to be familiar with subsistence users and uses; there is no such requirement for the agency Regional Directors. The FSB votes on all regulatory proposals and actions concerning subsistence uses of fish and wildlife on Federal public lands. The Regional Directors frequently band together and at times their loyalty to support each other undermines their protection of subsistence interests.

The FSB receives administrative support from another federal agency, the Office of Subsistence Management (OSM). It is staffed by anthropologists, biologists, technical and administrative employees, as well as liaisons to the ADFG and Alaska Native communities. OSM communicates with tribal members and other subsistence users to clarify regulatory proposals. OSM also conducts tribal consultations when deemed necessary by agency policy. And, OSM administers each FSB meeting, providing procedural guidance in an effort to ensure a consistent process. However, OSM is housed within FWS. While OSM purports to represent the interests of Alaska's subsistence users, those interests are oftentimes in conflict with FWS's political and bureaucratic interests, limiting OSM's effectiveness.

During public hearings held approximately every four months, the FSB considers regulatory proposals concerning subsistence uses of fish and game, recommends subsistence regulations for Federal public lands in Alaska for approval to the Secretary of Interior, and makes management decisions concerning eligibility to take, allocation, and restriction of subsistence resources.⁹ The FSB also decides whether to delegate certain aspects of its authority to agency officials to make in-season subsistence management decisions consistent with frameworks established by the Board.¹⁰

These jurisdictional and administrative issues motivated the KRITFC to enter into a Memorandum of Understanding (MOU) with the FWS in February 2016.¹¹ The MOU was designed to enable the KRITFC, together with the FWS, to cooperatively manage Kuskokwim River Chinook salmon fisheries, to ensure a stronger, more self-determined management structure, and to avoid the burdensome administrative process. However, the KRITFC continues to face the same administrative delays and bureaucratic obstacles which exclude tribal participation and fail to prioritize subsistence opportunities for the rural users who need them the most.

It is difficult to maintain our traditional Alaska Native subsistence ways of life when a federal agency dictates every aspect of the administration of the Federal subsistence management

⁷ 50 C.F.R. § 100.10(a).

⁸ 50 C.F.R. § 100.10(b)(1).

⁹ 50 C.F.R. 100.10(d).

¹⁰ 50 C.F.R. § 100.10(d)(6).

¹¹ A copy of the MOU is appended to this testimony.

program in ways that are often contrary to our self-determination and traditional subsistence way of life. While on paper, the MOU places the KRITFC as a management partner with FWS that equity of relationship has not been borne out in real life. The KRITFC has attempted to work in good faith to cooperatively develop and implement management plans and decisions for Kuskokwim River Chinook salmon stocks and subsistence fishing. But, the KRITFC continues to find its positions and suggestions diminished or wholly sidelined. FWS's number one priority often appears to be getting along with the State rather than ensuring that the subsistence needs of the Kuskokwim tribes and other rural users are fulfilled, and that the Chinook stocks are rebuilt. It appears that the FWS does not want to be in the position of protecting subsistence rights and managing the fishery. The solution is to take the FWS and FSB out of the process, and implement ANILCA's subsistence priority on the Kuskokwim River directly through these rural tribes pursuant to a management plan developed in consultation with the State.

The KRITFC needs clear and enhanced authority to develop and implement management plans without having to go through the burdensome administrative process required by ANILCA in order to address continued threats to stock conservation. This is vital given the growing impact of climate change on the natural resources Alaska Native subsistence users depend upon. The KRITFC offers these specific recommendations to ensure Tribes have central role in implementing and administering ANILCA.

Congress should consider federal legislation authorizing a pilot project for the KRITFC that provides authority for the Commission to bypass the existing administration structure and process of ANILCA, and directly implement the federal subsistence fishery for rural tribal members. The Commission suggests that upon adoption of a unified conservation and subsistence fishery management plan, the tribes would implement that plan for their rural tribal members, as well as non-tribal members residing in the villages so long as they agree to abide by the management plan. The Secretary of DOI would be authorized to review the plan to ensure conservation of fish stocks. If the Tribes and State could not agree on a management plan, the default would be federal management. Our Tribes have managed and depended upon Kuskokwim River Chinook salmon for thousands of years. Our Tribes understand salmon. They want to sustain it. They want to ensure its continued viability. Congress should recognize our conservation management experience and expertise and authorize this tribal co-management pilot project.

Congress should also encourage the Secretary of Interior to engage in rulemaking to create a direct management structure between Secretary and Alaska Tribal co-management commissions such that the Secretary can simply delegate authority to our Tribes to implement subsistence fishery management, relieving us of the burden of having to constantly engage in an ineffective, inefficient federal subsistence administrative structure.

It has been the KRITFC's experience that having only two public members on the FSB is woefully insufficient representation for Alaska's subsistence users. The agency Regional Directors on the FSB often have not lived and don't really understand the subsistence way of life. An immediate fix that Congress could implement would be to require the appointment of

additional tribal representatives to the FSB resulting in an equal number of public and agency members on the Board.

Finally, we recommend that it is essential to move OSM out from under FWS so that it operates independently of an agency whose policy and administrative actions are at times not consistent with providing fully for subsistence uses and needs. Ensuring that OSM is independently funded and managed would allow that agency to do its job free of potential ideological and political conflicts.