

**TESTIMONY OF CHIEF AND CHAIRMAN VICTOR JOSEPH, TANANA CHIEFS
CONFERENCE TO THE HOUSE SUBCOMMITTEE ON ENERGY AND MINERAL
RESOURCES REGARDING “THE NEED TO PROTECT THE ARCTIC NATIONAL
WILDLIFE REFUGE COASTAL PLAIN”**

March 26, 2019

Chairman Lowenthal, Ranking Member Gosar, members of the Subcommittee, on behalf of the Tanana Chiefs Conference (TCC), I appreciate the opportunity to testify before the Subcommittee regarding “The Need to Protect the Arctic National Wildlife Refuge Coastal Plan” on H.R. 1146. TCC is a non-profit intertribal consortium of 37 federally-recognized Indian tribes and 41 communities located across Alaska’s interior including the tribes of the Gwich’in Nation of Arctic Village, Venetie, Fort Yukon, Beaver, Chalkyitsik, Birch Creek, Circle and Eagle Village. TCC serves approximately 18,000 tribal members in Fairbanks where TCC headquarters is located, and in the rural villages in Alaska’s vast interior, located along the 1,400 mile Yukon River and its tributaries. Over 100 years ago, TCC was formed when tribal leaders of the interior met with federal officials and strategically created a unified tribal voice to ensure the tribes received adequate health care, employment, education, and protection of our traditional territories in order to continue hunting and fishing practices.

Today, TCC aims to meet the health and social service needs of tribes and tribal members throughout the region, which covers 235,000 square miles here in the Interior of Alaska, with our Health Services covering 185,000 square miles. Our region covers 37% of the state, an area that is just slightly smaller than Texas. TCC is governed by the Full Board, Executive Board, Health Board and Traditional Chiefs who provide oversight and guidance in the management of TCC. In addition, at TCC’s Annual Convention, TCC member tribes deliberate and pass resolutions that guide TCC through the coming years. I serve as Chief/Chairman of TCC, elected by our tribal delegates, I am a Tanana tribal member. As the Chief/Chairman, I have the honor to serve our region, represent the tribes, and to carry out the intent and legacy of the founding TCC chiefs.

We stand united with the Gwich’in Tribes in opposition to all oil and gas activities on the Coastal Plain of the Arctic National Wildlife Refuge. Each year, the Coastal Plain acts as the birthing grounds for the Porcupine Caribou Herd. Our people live in remote villages on the migratory route of the caribou. Tribal citizens across our Region rely on these animals for their physical, cultural, and spiritual health. The proposed oil and gas leasing and subsequent exploration and development will undoubtedly directly and significantly impact the quality, health, and availability of those traditional subsistence resources, such as caribou, fish, and birds, and therefore the Gwich’in way of life.

We join the comments provided by my fellow panelists. The purpose of my testimony is to provide the subcommittee with an overview of how the complex legal history of Alaskan tribes have impacted our ability to continue a subsistence lifestyle and reinforce why protecting the Coastal Plain is so important.

Alaska is often misunderstood even by those who live in the state. Alaska Native tribes have always existed and continue to exist despite our lands being stripped from tribal sovereign authority when Congress passed the Alaska Native Claims Settlement Act (ANCSA) in 1971. Tribes' inherent powers of self-governance over tribal citizens have long been recognized, and there is no evidence that Congress intended to extinguish Alaska Tribes' powers in enacting ANCSA.¹ Federal courts have likewise concluded that tribes in Alaska retain inherent sovereign authority.² There are 229 federally-recognized tribes in Alaska. As a general matter, sovereign governments have authority, or jurisdiction, over citizens, over land, and over people who enter their land. This "dual nature of Indian sovereignty" derives from two intertwined sources: tribal citizenship and tribal land. These two aspects of jurisdiction, or authority, while intertwined, have been "teased apart" in Alaska.³

ANCSA created 12 regional profit-making Alaska Native corporations and over 200 village, group, and urban corporations to receive what would end up being around 45.5 million acres of land along with about a billion dollars cash payment. Tribes were not mentioned in the Act. To be clear, the ANCSA corporations are not tribes or tribal governments. While some hail ANCSA as a success because of the financial success of the for-profit corporations it established, ANCSA's purported elimination of aboriginal hunting and fishing rights has had devastating effects on Alaska Native way of life, and has made it extremely difficult for tribes to have a meaningful role in resource management by virtue of our reserved tribal rights.⁴ The lack of co-management often creates hunting and fishing regulations that criminalize our people for doing what we have been doing since time immemorial — subsisting off the land and practicing our religious and spiritual beliefs. In Alaska, Native communities harvest approximately 22,000 tons of wild foods each year, an average of 375 pounds per person.⁵ Our spirituality and our culture is deeply rooted in harvesting these wild foods, and sharing them within our communities.

While tribes relentlessly advocate for protection of tribal hunting and fishing practices and the ceremonies that accompany those practices, achieving this without a land base is extremely challenging. Much of the land is owned by the ANCSA corporations, and while ANCSA corporations are Native owned and operated, their main mission is to make profits which is sometimes at odds with tribal cultural and spiritual pursuits.

¹ *John v. Baker*, 982 P.2d 738, 753 (Alaska 1999) ("Congress intended ANCSA to free Alaska Natives from the dictates of 'lengthy wardship or trusteeship,' not to handicap tribes by divesting them of their sovereign powers.").

² *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 556–59 (9th Cir. 1991); *Native Vill. of Venetie I.R.A. Council v. Alaska*, 1994 WL 730893, at *12–21 (D. Alaska, Dec. 23, 1994); *Kaltag Tribal Council v. Jackson*, 344 F. App'x 324 (9th Cir. 2011).

³ *John*, 982 P.2d at 754; *Kaltag Tribal Council v. Jackson*, 344 F. App'x at 325 (9th Cir. 2011) ("Reservation status is not a requirement of jurisdiction because '[a] Tribe's authority over its reservation or Indian country is incidental to its authority over its members.'" (quoting *Venetie*, 944 F.2d at 559 n.12)).

⁴ Robert T. Anderson, *Sovereignty and Subsistence: Native Self-Governance and Rights to Hunt, Fish, and Gather After ANCSA*, 33 *Alaska L. Rev.* 187 (2016), <http://digitalcommons.law.uw.edu/faculty-articles/49>.

⁵ *Hearing to Examine Wildlife Management Authority Within the State of Alaska Under the Alaska National Interest Lands Act and the Alaska Native Claims Settlement Act: Hearing Before the S. Comm. On Energy and Nat. Res.*, 113th Cong. 1 (2013).

In the drafting of ANCSA, Alaska Natives communicated that protection of our hunting and fishing rights were one of the highest priorities.⁶ However, nothing was stated in the Act that clearly defined what protections the Alaska Native people would continue to have. Congress nevertheless made its promise clear in the Joint Senate and House Conference Committee Report accompanying the Act:

The Conference committee after careful consideration believes that all Native interests in subsistence resource land can and will be protected by the Secretary through the exercise of his existing withdrawal authority...The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.⁷

After a decade of failure by the Secretary of the Interior and the State of Alaska to protect subsistence needs of Native peoples, Congress sought to protect Alaska Native hunting and fishing rights by enacting the Alaska National Interest Lands Conservation Act (ANILCA).⁸ ANILCA has two purposes: first, “to set aside land in order to preserve the natural features and resources of those lands and waters for present and future generations,” and second “to protect the resources related to subsistence need and provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.”⁹ The Act professed to protect Native lifestyles and did so under “its constitutional authority over Native affairs and its constitutional authority under the property and commerce clause.”¹⁰ Decades after ANCSA and ANILCA passed, neither the Department of Interior nor the State of Alaska have lived up to Congress’s expectations to protect Alaska Native hunting and fishing practices.

This complex legal landscape is the backdrop in the fight to protect the calving grounds of the Porcupine Caribou herd and, therefore, the ability of the Gwich’in Nation to exist. In October 27, 2017, the TCC Tribal leadership reaffirmed its 2015 Board resolution (2015-71), passed by the Full Board, which called on Congress and the President to permanently protect the biologically rich calving grounds of the Porcupine (River) Caribou Herd within the “1002 Area” Coastal Plain of the Arctic National Wildlife Refuge (ANWR). We stand in unity with the Gwich’in People who rely on the Porcupine Caribou for the physical, cultural, and spiritual wellbeing, and who, since 1988, and every two years thereafter, have unanimously called on the United States to protect the 1002 Area “Coastal Plain” and respect their traditional way of life. The Porcupine Caribou represent food security and a way of life to the Gwich’in people who have hunted the caribou for thousands of years. Oil and gas development on the Coastal Plain will cause disruptions to land and subsistence activities and uses, which will have severe social, cultural, and health impacts on the Gwich’in people.

Until recently, the protection of the Arctic National Wildlife Refuge enjoyed bipartisan support, dating back to 1960 when President Dwight David Eisenhower established the area as

⁶ The first Alaska Federation of Natives draft bill emphasized subsistence protection and the final Senate version of the land claims bill included elaborate provisions protecting Native subsistence. Case, *supra*, at 284.

⁷ H.R. Conf. Rep. No. 92-746, 92nd Cong.; 1st Sess., December 14, 1971, at 37 *reprinted in* 1971 U.S.C.C.A.N. 2247, 2250.

⁸ Alaska National Interest Lands Conservation Act, 16 U.S.C.A. §§ 3111 *et seq.* (1980).

⁹ 16 U.S.C.A § 3101 (b), (c).

¹⁰ 16 U.S.C.A § 3111 (4).

the Arctic National Wildlife Range, which was expanded in 1980 by President Jimmy Carter and renamed a Refuge. TCC urges Congress to return to the strong support for protecting the Refuge, including the ecologically sensitive Coastal Plain, and the Gwich'in people. In 2017, when TCC opposed, the "Alaska Oil and Gas Production Act," and inclusion of Arctic Refuge drilling in the Tax Act, we warned that the National Environmental Policy Act (NEPA) process would be truncated and Native tribal voices silenced in any mitigation plan and regulations for the Coastal Plain. Unfortunately, we were right; this is exactly what is happening.

The Bureau of Land Management's (BLM) Draft Environmental Impact Statement (draft EIS) fails to acknowledge the significant impact oil and gas activities on the Coastal Plain will have on the Tribal communities that rely on the Coastal Plain for subsistence. The draft EIS is wholly inadequate in researching, identifying, analyzing, and planning for mitigation of potential impacts as a result of the proposed three action alternatives for BLM's implementation of an oil and gas program in the Coastal Plain of the Refuge as mandated by the Tax Cuts and Jobs Act of 2017, Public Law 115-97. The draft EIS does not meet basic legal requirements of a sufficient EIS, and is clearly deficient in the Alaska National Interest Lands Conservation Act Section 810 preliminary analysis. Each section lacks adequate research and analysis of scientific data and traditional knowledge currently readily available. Furthermore, it lacks necessary required research and analysis to fill existing data gaps.

The draft EIS is a futile exercise, lacking integrity, and concluding potential and cumulative impacts as a result of the proposed three action alternatives for the BLM implementation of an oil and gas program in the Coastal Plain of the Refuge would be minimal or inconsequential to habitat, fish, wildlife, and indigenous people. The scoping and draft EIS process have selectively acknowledged science, data, technical reports, and public comments that support and validate the administration's position, while selectively not including years of science, data, technical reports, and indigenous knowledge that clearly demonstrate the high likelihood of severe and significant direct and cumulative impacts to habitat, fish, wildlife, indigenous peoples, and the global environment. This silences Alaska Native voices.

ANILCA Section 810, subtitled *Subsistence and Land Use Decisions*, outlines the requirements for addressing impacts to subsistence uses of resources in the federal land use decision-making process in Alaska. The draft EIS contains an analysis under Section 810 of the ANILCA that egregiously fails to recognize the significant impacts to the Gwich'in subsistence way of life that are likely to result from oil and gas activities on the Coastal Plain. All of BLM's proposed action alternatives would result in: displacement impacts on calving and post-calving PCH caribou; increased calf mortality, and impacts to migration patterns, and therefore may substantially restrict and/or reduce the abundance and availability of PCH for subsistence uses. Oil and gas exploration and development in the heart of the calving and post-calving grounds of the Porcupine Caribou Herd is a direct threat to indigenous culture and the ability to continue the subsistence way of life — and yet BLM has wholly ignored these concerns. As a result of this finding, BLM does not intend to hold ANILCA 810 hearings in any Gwich'in communities, further inhibiting their ability to participate meaningfully in this process. This is unacceptable.

We heard promises when Congress was considering opening the Coastal Plain in the Tax Act that BLM would ensure that the federal process meets all legal and moral obligations, allowing Tribal voices to be heard and address known impacts to our ways of life. These

promises were not kept. But no process will change the fact that the proposed oil and gas leasing and subsequent exploration and development on the Coastal Plain will have significant, serious, and harmful impacts on Alaska Native ways of life. As a result, the Tanana Chiefs Conference concludes that protecting the Coastal Plain and setting it aside as Wilderness is the best and highest use of this fragile ecosystem. It preserves an intact ecosystem, critical to both the Porcupine Caribou herd and the Gwich'in people, whose way of life is dependent upon the herd. The health of the herd and the health of the Tribal communities are inextricably dependent.

H.R. 1146, which repeals the provisions of the Tax Act that opened the Coastal Plain to destructive oil and gas activities is an important step. We hope you agree and will advocate for protection of the Arctic National Wildlife Refuge's Coastal Plain — its wildlife and the indigenous people who are so closely linked to it.

Thank you for the opportunity to address the Subcommittee on this important legislation.

**PROTECT THE PORCUPINE CARIBOU BIRTHPLACE IN THE
ARCTIC NATIONAL WILDLIFE REFUGE COASTAL PLAIN
RESOLUTION NO. 2015-71**

WHEREAS, the Arctic National Wildlife Refuge is the birthplace and nursery grounds of the Porcupine (River) Caribou Herd; and

WHEREAS, for countless generations the Gwich'in People relied upon the porcupine caribou to meet their cultural, spiritual and subsistence needs, and continue to rely on the caribou to meet the needs of their people; and

WHEREAS, the Gwich'in and all Native people have the right to continue to live their traditional way of life, and this right is recognized in the International Covenants on Human Rights which reads in part: "In no case may a people be deprived of their own means of subsistence..."; and

WHEREAS, oil development in the birthplace of the Porcupine Caribou Herd would hurt the caribou and threaten the future of the Gwich'in People.

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Full Board of Directors direct the TCC staff to call on Congress and the President to take action to permanently protect the birthplace of the Porcupine Caribou Herd in the Arctic National Wildlife Refuge, known as the 1002 lands; and

NOW THEREFORE BE IT FURTHER RESOLVED that this is the standing policy of TCC until amended or rescinded.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference Full Board of Directors on March 19, 2015 at Fairbanks, Alaska and a quorum was duly established.

Pat McCarty
Secretary/Treasurer

Submitted by: Yukon Flats Subregion