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**TESTIMONY BEFORE THE COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON H.R. 3994, DEPARTMENT OF THE INTERIOR TRIBAL SELF-
GOVERNANCE ACT OF 2007**

November 8, 2007

Good morning. My name is Ben Stevens, and I am the Executive Director of the Council of Athabascan Tribal Governments (CATG). My organization and the ten tribal governments it represents strongly support H.R. 3994, which would greatly enhance the opportunities for the Alaska Native Villages in our region to exercise their self-governance rights.

My testimony focuses on Title IV agreements with Department of the Interior agencies other than the Bureau of Indian Affairs (BIA). Before addressing this critical issue, however, let me briefly describe who we are.

CATG and Its History of Self-Governance

CATG is an Alaska Native non-profit organization created in 1985 by a consortium of ten Tribes in the Yukon Flats region of the Interior of Alaska. The traditional homelands of CATG's tribes comprise a 55,000 square mile region extending from the White Mountains in the South to the Brooks Range in the north, and from Rampart, downriver of the Trans-Alaska Pipeline east to the Canadian border.

The purpose of CATG is to provide essential services to the member villages, such as natural resource management activities, health care and educational services, and pursuit of economic development opportunities. The region of CATG encompasses a large amount of federal public lands, including the entire Yukon Flats National Wildlife Refuge (YFNWR), and portions of the Arctic National Wildlife Refuge. Since time immemorial, the tribal governments of CATG have managed the lands and resources in the region.

CATG has been involved in self-governance since 1999, when it became a co-signer of the Alaska Tribal Health Compact and began carrying out Indian Health Service (IHS) programs in the region. That same year, CATG negotiated its first self-governance compact and funding agreement with the Bureau of Indian Affairs (BIA) under Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA). CATG has been cited as a model of what the ISDEAA was intended to accomplish—and what Alaska tribal organizations *have* accomplished in terms of effective self-governance and service delivery. Researchers from the Kennedy School of Government at Harvard University summarized CATG's accomplishments as follows:

CATG has been successful at running health, natural resources, and early childhood education programs, has helped to prevent service delivery jobs—badly needed in villages characterized by high unemployment—from migrating to Fairbanks, has expanded local management capacities, has served as a resource to local governments, and has engaged local citizens in generating their own solutions to problems.¹

Because carrying out governmental programs consistent with self-governance principles worked so well for IHS and BIA programs and activities, CATG sought to expand self-governance into an area of central importance to its member Villages: management of the land and resources that provide the subsistence base for members of all of the tribal governments in our region. We worked with two non-BIA federal Agencies in these efforts: the United States Fish & Wildlife Service (USFWS or Fish & Wildlife) and the Bureau of Land Management. Our experience with one was a success and with the other we faced unforeseen challenges that ultimately resulted in failure. I will talk about both of these experiences below because both hold lessons on the potential of self-governance to expand and flourish if the Title IV amendments are enacted into law.

Success Story: The Fish & Wildlife Service Compact For Yukon Flats National Wildlife Refuge

For many years, CATG has worked on behalf of its constituent tribes to ensure proper management of the region's natural resources that are vital to the continuation of Alaska Native cultures. Through a series of cooperative agreements CATG entered into with the USFWS, CATG implemented one of the primary purposes of the Alaska National Interest Lands Conservation Act: the continuation of subsistence traditions by Alaska Natives. For example, the 1997 USFWS-CATG cooperative agreement states:

Harvesting of subsistence resources is essential to residents of the area not only as sources of nutrition but also as the cornerstones of their cultures. The harvesting of subsistence resources is done within traditional territories and distribut[ion] is governed by social obligations and kinship. Subsistence foods are the primary sources of protein for the area's Native residents.²

CATG brought to the partnership with the USFWS a wealth of traditional and ecological knowledge. CATG has experience working with the local people to gather accurate data and has demonstrated its efficiency and effectiveness.

CATG sought to expand this partnership by taking responsibility for certain work related to the Yukon Flats National Wildlife Refuge (YFNWR or Refuge) under the

¹ STEPHEN CORNELL & JOSEPH P. KALT, ALASKA NATIVE SELF-GOVERNMENT: WHAT WORKS? at 7 (Harvard Project on American Indian Economic Development, 2003).

² 1997 Cooperative Agreement

authorities set out in the ISDEAA. Initially CATG sought to negotiate an agreement with the USFWS under Title I of the ISDEAA, but USFWS rejected the proposal on the basis that the refuge programs could not be contracted under Title I because they do not exclusively benefit Indians. In 2002, CATG proposed to enter into an Annual Funding Agreement (AFA) with Fish & Wildlife under the Title IV Self-Governance Program. Like its Title I proposal, CATG could not include Refuge programs under the mandatory provisions of Section 403(b)(2) of the ISDEAA, because the Refuge does not benefit Alaska Natives exclusively. Under the discretionary provisions of section 403(c), however, a Title IV AFA can include programs, services, functions and activities that are of "special geographic, historical or cultural significance to the participating Indian tribe requesting a compact."³ After initially rejecting CATG's proposal, Fish & Wildlife eventually agreed that the Refuge's programs are of such significance to the CATG member Villages.

Negotiations were sometimes difficult, particularly because Section 403(c) is discretionary and the USFWS could walk away at any time. Through hard work, though, CATG and Fish & Wildlife eventually entered an AFA for FY 2004. This was the first Title IV agreement the USFWS entered with a tribe or tribal organization anywhere in the United States. Under the AFA, CATG performed the following activities related to the Refuge:

- Locate and Survey Public Access Easements
- Environmental Education and Outreach
- Subsistence Wildlife Harvest Data Collection
- Eastern Yukon Flats Moose Population Estimation Survey
- Logistics (Ft. Yukon Equipment and Facility Maintenance)

CATG brought to the partnership a wealth of traditional and ecological knowledge. It has experience working with local people to gather accurate data and has demonstrated its efficiency and effectiveness in fisheries and wildlife research projects, habitat management activities, harvest data collection, aerial surveys, subsistence use surveys, and traditional knowledge interviews.

The partnership embodied in the Title IV agreement with Fish & Wildlife is now over three years old, and by all accounts it has been a success. In 2006, the USFWS Manager in charge of the Refuge submitted a letter of support of CATG as a semifinalist in Harvard's "Honoring Nations 2006" program, endorsing CATG as an outstanding example of tribal governance. In this letter, attached as an exhibit to my testimony, the Refuge Manager concluded that "our two annual funding agreements with CATG have helped improve our communications with local residents of the Yukon Flats and have helped us both (the Refuge and CATG) improve our management and stewardship of the wonderful natural resources within the Yukon Flats ecosystem."

³ 25 U.S.C. § 458cc(c).

Recently, officials from Fish & Wildlife headquarters in Washington, D.C. traveled to the Refuge to see for themselves the successes reported by the Alaska region. These officials were so impressed that they hoped to develop similar types of collaboration with tribes and tribal organizations in other regions of the country.

Unfortunately, there have been few success stories like CATG's Fish & Wildlife agreement nationally or even in Alaska. As the next story shows, part of the problem is that Title IV, as currently configured, does not give tribes and tribal organizations enough leverage in negotiations with non-BIA agencies, so the benefits illustrated by CATG's Refuge agreement are too often lost.

Lessons from the BLM Fire Management Negotiations

Having successfully negotiated a Title IV agreement with Fish & Wildlife, and having seen the tangible benefits to the Refuge and to the people in the region that resulted, CATG sought to expand its self-governance responsibilities to fire management functions carried out in the region by BLM's Alaska Fire Service. In 2005, CATG sent BLM a letter of interest requesting to negotiate a funding agreement to perform fire-related activities in the Upper Yukon region. CATG proposed to assume these activities under section 403(c). Like Fish & Wildlife before it, the BLM initially resisted on the grounds that fire-fighting activities have no particular significance to CATG and its member tribes. CATG eventually was able to convince the agency that fires are part of the natural resource system in which subsistence and other cultural patterns are embedded.

After that initial stumbling block, the first meetings were encouraging: The BLM agreed that collaboration could result in significant improvements for fire management in the region. When it came time to actually identify the funding to be transferred, however, the BLM rejected CATG's proposed administrative budget. CATG had no negotiating leverage under the current Title IV: BLM staff kept reminding CATG during the negotiations process that the law *allowed* but did not *require* them to enter an agreement, and the agency was free to simply walk away at any time.

Rather than accept the full scope of work that it had initially proposed with no funds for administrative support—a recipe for failure—CATG ultimately agreed to a much narrower scope limited to fire crew training and certification for the 2006 fire season. The funding agreement was signed by the parties on December 15, 2005. Giving Congress 90 days for review, as required by the current Title IV, the agreement should have been final and funds ready to distribute by March 15, 2006. But the BLM did not submit the agreement to Congress until March, or close to three months after the agreement was signed by the parties, resulting in additional delays. By the time the AFA was approved, it was too late in the season for CATG to train crews effectively, and the work actually carried out was limited to observing BLM pack tests and refresher courses.

When CATG proposed to restore the original scope of work for the following year, 2007, the BLM did not even come to the table to negotiate a Title IV agreement, but proposed a take-it-or-leave-it \$4,000 contract. This year, CATG once again has written the BLM proposing negotiations on a full range of fire management activities for 2008,

but BLM has yet to even respond to CATG's correspondence. Under existing Title IV authorities CATG has no real option to place pressure on BLM to even meaningfully sit down and negotiate over these programs.

Conclusion

These two stories illustrate the potential benefits of the self-governance program as well as some of the problems inherent in the existing statute.

CATG's experience with USFWS illustrates how the program can effectively address the interests of the United States and the tribal governments in the YFNWR. On the other hand, CATG's experience with BLM illustrates some real problems with the current Title IV statute: The discretionary provisions for assuming non-BIA functions place unlimited discretion in the hands of federal agency officials who may not have any interest in implementing Congress' policy of self-governance to decide for themselves if they want to collaborate with a tribal organization like CATG. The simple fact is that CATG's experience with the BLM makes clear that the discretionary provisions in the existing Title IV statute need to be amended to fulfill Congress' and tribes' visions of how the self-governance program should be implemented by non-BIA Agencies.

The non-BIA provisions in H.R. 3994 would have significantly changed the entire dynamic in the CATG-USFWS and BLM negotiations in several key ways:

- Proposed 405(b)(2)(A) provides that non-BIA Interior agencies "shall" enter funding agreements for "those programs with respect to which Indian tribes or Indians are primary or significant beneficiaries." While there will always be funding and other issues to hash through, the agency could not simply walk away, as both the USFWS and BLM threatened to do.
- H.R. 3994 would also amend Title IV to add crucial timing provisions to prevent agencies from dragging out negotiations indefinitely, as BLM has done in the past three years. In the event the parties cannot reach agreement, the new section 407(c)(1) would allow tribes to submit a "final offer" to which the agency must respond within 45 days, or the offer is deemed approved. The same section clearly states the reasons for which a final offer can be rejected, and sets forth the appeal process. These provisions, substantially identical to those in Title V, the IHS self-governance statute, are lacking in the current Title IV, giving Interior agencies no incentive to continue negotiating and no consequences for failing to do so.
- Finally, H.R. 3994 eliminates the 90-day congressional review requirement. This requirement has not served a meaningful oversight function, but it did result in delays and is an additional means non-BIA Interior agencies can use to stall implementation of an agreement.

In sum, CATG's experience provides a good example of what tribal self-governance can accomplish with both BIA programs and with non-BIA programs within the Department of Interior. Unfortunately, the current Title IV makes our experience with the BLM fire management project the norm, and our successful collaboration with Fish & Wildlife the exception. We respectfully request the Committee's support for H.R.

3994, so that more Tribes—and more agencies within Interior—can benefit from the Self-Governance Program

Thank you.