

House Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memo

July 20, 2015

To: Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular, and Alaska Native Affairs

Subject: Legislative hearing on H.R. 2388 (Rep. Don Young), to reverse the designation by the Secretary of the Interior and the Secretary of Agriculture of certain communities in the State of Alaska as non-rural, “*Subsistence Access Management Act of 2015*”.

The Subcommittee will hold a Legislative Hearing on H.R. 2388, the “*Subsistence Access Management Act of 2015*.” on **Wednesday, July 22, 2015, at 2:00 p.m. in 1334 Longworth HOB.**

Summary of the bill

H.R. 2388 was introduced by Rep. Don Young on May 15, 2015. The bill would rescind the authority of the Secretaries of the Interior and of Agriculture to designate an area or community as non-rural with respect to administering the Federal Subsistence Management Program on Public lands within the State of Alaska pursuant to the Alaska National Interest Lands Conservation Act¹. The bill would not alter the Secretarial authority to re-designate a non-rural area or community as rural.

The bill also provides that seven areas re-designated as non-rural pursuant to the Secretaries’ revised regulation in 2007 be reinstated as rural. Finally, the bill would set forth that only an Act of Congress may re-designate an area as non-rural for subsistence purposes on public lands in Alaska.

Witnesses

Mr. Mike Black, Director
Bureau of Indian Affairs
U.S. Department of the Interior

The Honorable Lee Wallace, President
Organized Village of Saxman

¹ 16 U.S.C. 3101 et seq.

Ketchikan, AK

Background

The aboriginal land claims of Alaska Natives were settled in the Alaska Native Claims Settlement Act of 1971² (ANCSA). Under the unique settlement, approximately 44 million acres of public land and nearly \$1 billion were transferred to private corporations owned and organized by Alaska Natives. In addition, section 17 of ANCSA further provided for the withdrawal of 80 million acres in Alaska from development for conservation purposes in the expectation that Congress would enact law to provide for their permanent disposition.

One issue considered but not included in the enactment of ANCSA was that of subsistence hunting, fishing, and gathering on public lands in Alaska upon which villages, mostly (but not exclusively) populated by Natives, depend for their food and cultural needs. Subsequently, the Alaska National Interest Lands Conservation Act (ANILCA) was enacted in 1980. ANILCA laid the ground work for the creation or expansion of new national parklands, scenic rivers, and additional public land for the National Wildlife Refuge System.

Though ANILCA primarily focused on the protection of lands in the State of Alaska, Title VIII³ required a preference for subsistence uses of fish and wildlife on public lands in Alaska by rural residents. The Title VIII preference or priority for subsistence uses on public lands is usually triggered when there is a need to conserve fish and wildlife populations for future users, and the preference is often met by limiting take by non-rural or non-subsistence users of a particular fish or game population in a given area. It is important to note the preference for subsistence uses in Title VIII is based on an individual's rural residence, not one's Native status.

Because fish and game management on public lands is generally administered by states, Title VIII offered the State of Alaska the option of maintaining its regulatory jurisdiction over hunting and fishing on the state's public lands, but only if the Legislature enacted and implemented regulations to provide for the rural preference required by Title VIII within one year.

The subsequent decade bore witness to the state falling in and out of compliance with Title VIII of ANILCA, culminating in an Alaska Supreme Court judgment finding that a 1986 state statute on subsistence violated the state's constitution, which contains common use and equal protection provisions with respect to hunting and fishing in Alaska.⁴

² 43 U.S.C. 1617 et seq.

³ 16 USC 3111-3126.

⁴ <http://law.justia.com/cases/alaska/supreme-court/1989/s-2732-1.html>

Since 2000, the federal government has assumed the responsibility for regulating ANILCA's Title VIII subsistence preference on public lands in Alaska. In May 2002, the Secretary of the Interior and Agriculture promulgated regulations that established the Federal Subsistence Management Program and Board⁵. The Program provides for public participation through the Subsistence Board and the 10 Regional Advisory Councils. Whether an individual may enjoy a preference for subsistence uses of fish and wildlife pursuant to Title VIII depends on one's residency in a village designated as a "rural," a designation that may be a source of sharp debate in Alaska for certain communities near the outskirts of an urban center.

In 2006, the Board released a proposed rule which revised designations of certain communities as non-rural, depriving residents of such places of a subsistence preference.

Major Provisions/Analysis of H.R. 2388

Section 1. Short Title. Provides that the short title of the bill is the Subsistence Access Management Act of 2015.

Section 2. Definitions. Term "Secretary" means the Secretary of Interior and Agriculture.

Section 3(a). Redesignation Not Authorized. Subsection (a) mandates that, for the purpose of administering the Federal Subsistence Management Program on public land in Alaska, the Secretaries may not: re-designate as non-rural any community or area designated as rural by the Secretaries through regulation on or before May 6, 2007; or adjust the boundaries of a community or area designated as rural by the Secretaries through regulation on or before May 6, 2007 to render some or all of the community or area non-rural.

Section 3 (b). This subsection reinstates the list of communities and areas designated rural (including the boundaries of those communities and areas) that was in effect on May 6, 2007 as if the final rule "Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Non-rural Determinations" (published May 7, 2007) had not been issued.

Section 4. Effect. This section provides that the bill does not prohibit the Secretaries from promulgating regulations that either re-designate a non-rural area or community as rural or adjust the boundaries of a non-rural area or community to render some or all of that area or community as rural.

Section 5. Publication of Interim Final Rule, List. This section requires that the Secretaries publish an interim final rule amending any regulations that are inconsistent with the bill within

⁵ 36 CFR Part 242.

30 days of its enactment. The Secretaries are also required to annually publish a list of rural and non-rural areas and communities in the Federal Register.