

Testimony of
Lee Wallace

President of the Saxman I.R.A. Council, of the Organized Village of Saxman
Before the House Subcommittee on Indian, Insular and Alaska Native Affairs
On **H.R. 2388** “*Subsistence Access Management Act of 2015*”
July 22, 2015, Washington, D.C.

Good afternoon Chairman Young and Ranking Member Ruiz. Thank you for the opportunity to provide comments on H.R. 2388, a bill to reverse the designation by the Secretary of the Interior and the Secretary of Agriculture of certain communities in the State of Alaska as nonrural. I am President Lee Wallace, here on behalf of the Saxman I.R.A. Council, the governing body of the Organized Village of Saxman.

Every year, tens of thousands of Alaska Natives harvest, process, distribute and consume millions of pounds of wildlife, fish, and plants through an economy and way of life that has come to be known as “subsistence.” Collectively, these activities constitute millennia -old survival and customary lifeways for Alaska Natives and are an essential component of our identities and cultures as Native peoples; without these activities, we are left with a struggle to survive. These activities are essential to our collective survival in Alaska’s vast and mostly rural terrain. Saxman village is no different.

Saxman’s Identity as a Rural Subsistence Committee

Saxman is an Alaska Native village located on the southern end of Revillagigedo Island in Southeast Alaska. The Organized Village of Saxman is a federally recognized Indian Tribe structured under the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et seq.* OVS’s members are the descendants of the Tlingit clans and kwaans of the Cape Fox and Tongass Tribes, who have resided in Southeast Alaska since time immemorial. The Cape Fox and Tongass Tribes moved to the area now known as Saxman from Cape Fox Village and Tongass Island Village beginning in the 1890s.

Since its settlement, Saxman has maintained a distinct cultural and political identity from other communities in Southeast Alaska. In 1907, President Theodore Roosevelt conveyed by executive order forty-acres of land to Saxman for a school. Since 1912, Saxman has maintained its own Alaska Native Brotherhood and Sisterhood camps separate from neighboring Ketchikan. Saxman incorporated its own municipality in 1929. Since its settlement, Saxman’s residents have continually engaged in the customary and traditional harvests of wild, renewable resources for their own use as food, shelter, fuel, clothing, tools, and transportation.

Brief Overview of the Federal Subsistence Management Program in Alaska

Congress specifically acknowledged the importance of subsistence hunting and fishing for the economic, cultural, and biological needs of Alaska Native peoples during the passage of the

Alaska Native Claims Settlement Act (ANCSA). However, it failed to enact specific provisions to adequately protect Alaska Native subsistence uses, relying instead on the State of Alaska (State) and the Secretary of the Interior to protect Native hunting and fishing needs. This protection, however, never materialized.

Consequently, Congress developed federal protections for “subsistence uses” of natural resources for “rural” residents in Title VIII of the Alaska National Interest Land Conservation Act (ANILCA). Alaska is the only state where the subsistence use of fish and game is given the highest priority for consumptive use in times of shortage. However, the Alaska Native subsistence way of life will not endure without stronger legal protections. This is because Title VIII only provides the subsistence harvest priority for residents of “rural” Alaska areas or communities. Determining which communities are “rural” for subsistence purposes has since become one of the most difficult aspects of ANILCA’s subsistence management program.

For a period of years, the State accepted the primary responsibility for administering the subsistence management program. But in December 1989, the Alaska Supreme Court held that the Alaska Constitution prohibited the Alaska Legislature from enacting legislation creating a subsistence priority limited to rural residents, rendering the State noncompliant with ANILCA’s rural preference requirement. Thereafter, the federal government became responsible for implementing ANILCA on public lands, and it assumed regulatory authority effective July 1, 1990. The Secretaries of Agriculture and Interior thereafter created the Federal Subsistence Board (FSB) to oversee day-to-day management of subsistence hunting and fishing on these federal public lands.

The current regulations require that the rural or non-rural status of communities and areas be reviewed every 10 years. The regulations also list several factors to consider when making these determinations; these factors are confusing and not necessarily indicative of the rural or non-rural status of an area or community. Further, the 10-year review cycle is unnecessary and burdensome to areas and communities that have to argue their status even though it has experience little change in the preceding decade.

In addition, the regulations fail to provide a platform for the Regional Advisory Committees (RACs)—the only representatives of actual subsistence users under the federal subsistence management program—to directly advise the FSB on the potential rural status of a community within their region.

Saxman’s Experience with the Current System

During the initial rural review process in 1990, the FSB determined that Saxman was a rural community for subsistence purposes. Saxman was a rural community because of its “overriding socioeconomic and cultural characteristics.”

In 2000, the FSB initiated the first Rural Determinations Decennial Review. The purpose of the FSB’s decennial review was to consider the original 1990 rural determinations “with an emphasis on what has changed since 1990.” In 2005, Office of Subsistence Management (OSM) staff conducted an initial review of the rural status of Alaska communities using 2000

census data “with an emphasis on what had changed since 1990.” From this review, staff compiled a report that included a proposed list of communities and areas for which further analysis appeared to be necessary. This list included Saxman. The public and RACs were invited to comment on this initial review from August to October 2005.

In December 2005, the FSB took public testimony and determined that additional information and staff analysis was needed for ten communities, including Saxman. From January to May 2006, OSM staff conducted analyses of each of the ten communities. In June 2006, OSM published the analysis, which laid out social and economic characteristics that indicated that Saxman *should not* be grouped with Ketchikan.

On June 22, 2006, the FSB met in executive session to develop the list of communities and areas they believed to be nonrural. Based on a review of community information, input from the OSM staff, and the affected public, the FSB published a proposed rule on August 14, 2006 finding that Saxman should not be grouped with Ketchikan and that Saxman retain its rural status. The proposed rule reasoned that even though the grouping criteria would indicate Saxman should be included in the Ketchikan area, “the unique socioeconomic characteristics of Saxman suggest that it should remain separate from the Ketchikan Area.” The proposed rule noted that Saxman is “socially and politically separate from Ketchikan” and that a number of socioeconomic indicators suggested distinctions between the communities, including Saxman’s “higher unemployment rate, lower per capita income, higher percentage of residents below the poverty level, and a 70 percent [Alaska] Native population.” The proposed rule also described that residents of Saxman “depend much more heavily on the harvest of subsistence resources” than do residents of Ketchikan.

After the publication of the proposed rule, the FSB held public hearings in Ketchikan and Saxman in September 2006. The public testimony overwhelmingly supported the FSB’s proposed rule of maintaining Saxman’s rural status. Written comments submitted to the FSB were also overwhelmingly in favor of Saxman’s continued rural status. In addition, the Southeastern Alaska Federal Subsistence Regional Advisory Council (SERAC) concurred with the FSB’s proposed rule to maintain the rural status of Saxman. Thus, neither the record of the public hearings nor comments received on the proposed rule, nor the decision of the SERAC, nor the technical analysis prepared by OSM staff pointed to a conclusion that differed from the FSB’s proposed rule published on August 14, 2006.

Despite the overwhelming weight of written comments, public testimony at multiple FSB meetings, and SERAC’s recommendation in favor of retaining Saxman’s rural status, the FSB ignored its proposed rule of August 16, 2006 and voted to group Saxman with Ketchikan at its public meeting on December 13, 2006. The FSB relied solely on the three grouping criteria to administratively link Saxman to Ketchikan. The FSB did not evaluate the unique characteristics that demonstrate that Saxman is a separate, distinct rural community where the majority of residents continue to live a subsistence way of life.

The FSB’s classification Saxman as nonrural has already had negative effects on our community. At a recent public hearing, Saxman’s municipal mayor noted an increase in civic apathy since the FSB published its 2007 rule. The FSB’s decision to limit our ability to practice our way of life

and gather our traditional foods has all but eliminated our ability to pass on our traditional knowledge to our youth. Every house in the village used to have a smoke house, but now—just in the span of seven years—few remain. The FSB’s 2007 ruling severed our access to healthy foods and a part of our way of life, and thus had deeply impacted our individual and collective identities as well as our physical, emotional, and spiritual health.

Recent Developments, however, have inspired hope in our community.

Proposed Rule Change

Last April, the FSB gathered in Anchorage for a two-day work session. Its primary objective was developing a new approach to rural determinations. The FSB voted 5 to 1 to amend the current rural determination process outlined in 50 C.F.R. § 100.15. Specifically, the FSB proposed to: (1) eliminate the ten year review process; (2) end “rural” determination and instead evaluate which communities are non-rural for subsistence purposes; (3) rely on the RACs for future rural/ non-rural determinations; and (4) retain current community aggregations, with the caveat that the aggregations be reviewed by the local RAC’s who will recommend whether to retain or remove the aggregation.

The FSB published its proposed rule on January 28, 2015. The FSB received 90 public comments on the proposed rule, the overwhelming majority of which supported adoption of the rule. The FSB plans to meet next week in Anchorage to announce its next steps now that the public comment period is closed.

We are confident that should the proposed rule become final, Saxman will return to the rural community list. However, because the administrative process has failed Saxman in the past even the prospect of the new rule does not offer the certainty afforded by this legislation.

Conclusion

We strongly support H.R. 2388 because it definitively answers the question about the status of the areas and communities declared non-rural in the FSB’s 2007 rule, and because it would require a higher level of review to designate areas and communities as non-rural in the future.

Therefore, I ask you to pass this legislation before the 116th Congress adjourns sine die. I also ask you to consider working with the U.S. Senators from your respective states in passing their version of this bill, S.1154, during the 116th Congress.

Thank you.