

**STATEMENT OF PAUL D. HOFFMAN,
DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS,
DEPARTMENT OF THE INTERIOR,
BEFORE THE HOUSE COMMITTEE ON RESOURCES,
CONCERNING
H.R. 4734, THE ALASKA FEDERAL LANDS MANAGEMENT
DEMONSTRATION PROJECT ACT.**

JUNE 5, 2002

Mr. Chairman, thank you for the opportunity to discuss H.R. 4734. This legislation includes four purposes with which the Department of the Interior generally agrees: the promotion of innovative management strategies and operating efficiencies; the expansion of Alaska Native contracting opportunities; the increase of local employment in Alaska; and the connection of conservation system unit resources, Alaska Native culture and subsistence practices.

While we generally support the purposes of H.R. 4734, we have significant concerns about the bill. The proposed provisions in many cases duplicate authorities already found in the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3101), specifically in the areas of local hire, Alaska Native contracting, cooperative agreements with tribal entities, subsistence management, and the preservation of Native culture and heritage. The Department of the Interior's agencies have been using these and other relevant authorities with positive results, as recently detailed in two reports to Congress pursuant to Public Law 106-488: the Department's Report on Hiring of, and Contracting with, Local Alaska Residents, Alaska Natives and Alaska Native Corporations, dated April, 2002 and transmitted to the Committee on Resources on May 17, 2002; and the National Park Service Pilot Program to Employ Residents of Local Communities in Northwest Alaska, dated November, 2001 and transmitted to the Committee on January 24, 2002.

We have a number of concerns about specific sections in the bill which I will outline at this time.

Section 3/Indian Self Determination and Education Assistance Act (ISDEAA; P.L. 93-638; 88 Stat.2203)

This bill applies Title I of the ISDEAA to the National Park Service (NPS) and Fish and Wildlife Service (FWS), as well as the Bureau of Land Management. Currently, Title I does not apply to units of the National Park System and the National Wildlife Refuge System as because they are not "programs for the benefit of Indians because of their status as Indians." Rather, they are programs -- conservation system units -- established for the American people as a whole. While ANILCA does provide for special consideration of Alaska Natives, it did not apply ISDEAA Title I to parks and refuges.

H.R. 4734 would treat non-Bureau of Indian Affairs programs as if they were "Indian" programs and not programs for the public. It would unduly limit the discretion of the Secretary with regard to the NPS and FWS and BLM by applying the terms of ISDEAA Title I to conservation system units and other public land units in Alaska.

Title I applies special rules for contracting to tribes and tribal organizations for programs that tribes are running for the benefit of themselves and their members. Title I makes good sense for these programs that benefit Indians because of their status as Indians, because the tribes should be given the latitude to "self determine" the functioning of programs for their benefit. These special rules for contracting do not make sense, however, for the operation of national parks and national wildlife refuges for the general public. With parks and refuges, as opposed to programs for Indians, there are no issues of self-determination, and there is no basis for excepting the parks and refuges from normal applicable contracting rules.

Both the NPS and FWS already participate in the Tribal Self-Governance Program under Section 403(c) of ISDEAA as amended by the Tribal Self-Governance Act (P.L. 103-413). That section requires that NPS and FWS negotiate at the request of a participating tribe, but the Secretary has the discretion to decide whether to enter into an annual funding agreement subject to its terms. This bill would limit discretion by requiring that the Secretary "shall negotiate and enter into a contract" with participating tribes.

Effects on Alaska Employees

Section 3(g)(3) attempts to limit the disruption to employees by the change to contract management of conservation system units. Nevertheless, we believe the legislation would cause significant disruption to the efficient management of conservation system units. In the Department's Alaska field operations, a large number of the Alaska Native permanent and seasonal employees have been hired under "local hire" provisions of Section 1308 of ANILCA, bringing tremendous local knowledge to the Department. Some employees may not desire to accept a contractor position under the Intergovernmental Personnel Act, or wish to move to other locations offered by the Department. We risk losing -- rather than gaining -- local expertise under the provisions of H.R. 4734.

Two examples of the Department's commitment to local and Native hire are instructive. As a result of the NPS pilot program directed in P.L. 106-488, four parks in northwest Alaska hired four local residents into career positions, promoted or upgraded four local hire employees, established three additional seasonal ranger/liaison positions in villages, and hired a new GS-11 Special Assistant for Native issues, who is a tribal member. Of 33 permanent NPS employees in Western Arctic National Parklands in 2001, 48% (16 people) were originally hired under local hire authority. Local hire Alaska Natives make up 26 % of the staff, including two of six division chiefs. Of 20 temporary employees, 8 (40%) were local hire.

The staff of the Koyukuk/Nowitna National Wildlife Refuge Complex has 11 permanent full-time employees and another three to four seasonal employees. Five of the 11 permanent full-time employees, ranging in grade from GS-6 to GS-12, are Koyukuk Athabascan Alaska Natives hired from the local area, as are two of the seasonal employees. The Kanuti Refuge employs permanently a Koyukuk Athabascan Alaska Native hired from the local area as its seasonal park ranger at Bettles.

Unlike employees working for a contractor, Alaskans who work for our bureaus are an integral part of our statewide operations. As they gain experience and fill positions with greater responsibility within the government, they will be an increasing part of our management teams and will have a voice in the future management of conservation system units across the nation. The Department benefits by having employees with diverse backgrounds, and employees benefit by having wider employment opportunities than can be offered by a tribal contractor.

Also, the Office of Government Ethics notes that section 3(g) may further cause disruption because of the vagaries of its terms. For example, the legislation is ambiguous with respect to the matter of supervision of affected employees, specifically, whether the affected employees will be transferred under the Intergovernmental Personnel Act (IPA) so that they may be supervised by a non-federal individuals, or supervisors will be transferred under the IPA to avoid having federal employees supervised by non-federal individuals. In addition, privatization of programs or transfer of federal employees to non-federal employers can raise significant issues with federal conflict of interest statutes. These issues are also not addressed by this section or elsewhere.

Subsistence Management/Technical Research

The language of Section 3(f)(2) focuses on biological research, harvest monitoring or other data gathering activities undertaken by the Federal Subsistence Program. If the intent is to provide for contracting by tribes for these functions, this section is unnecessary, particularly as a demonstration project, because programs in place already provide for this purpose.

The Federal Subsistence Program, administered by the Fish and Wildlife Service's Office of Subsistence Management, provides funds to tribal and other rural organizations, academia, the State of Alaska, and Federal agencies, and others to conduct fisheries and fisheries harvest monitoring projects. These projects are selected based on a lengthy public and technical review process where monitoring priorities are identified and projects identified to meet those priorities.

A high priority in project selection is capacity building in tribal organizations. Tribal and other rural organizations are provided the opportunity to participate on multiple levels, either as principal investigators, direct and equal partners with State and Federal agencies, or as project staff to be trained by principal investigators from State and Federal agencies. Over one-third of the funding (about \$2 million annually) is provided to tribal or other rural organizations.

The Office of Subsistence Management also provides funding to tribal organizations to hire professional technical staff (fisheries biologists and anthropologists) to build capacity in these organizations to more fully participate in the monitoring projects mentioned above. In FY 2002, over \$900,000 is being provided to six tribal organizations to hire

seven of these positions. Funding for these positions is provided for a minimum of five years and can be renewed. Provisions of H.R. 4734 would disrupt this program which has been well-received by our constituents (including tribes).

Section 4/Koyukuk and Kanuti NWR Demonstration Project

This section contracts the management of two national wildlife refuges to tribes and transfers the refuge employees to those tribes. Refuges are managed as part of a national, connected network of lands and waters managed to help conserve this nation's fish and wildlife habitats for the benefit of present and future generations of Americans. H.R. 4734 significantly conflicts with provisions of the National Wildlife Refuge System Administration Act, as amended, P.L. 105-57.

There are refuge management decisions and functions that cannot be made outside of the National Wildlife Refuge System, and others that would be difficult to translate into a contracting arrangement. Many functions performed on a National Wildlife Refuge are directed at meeting our public trust. While we will continue to contract certain functions, and consult and collaborate with our local refuge neighbors, Federal employees who have spent years training and working in the National Wildlife Refuge System are in the best position to meet the public's expectation of management with a national view.

For instance, our managers must determine whether an activity is compatible with all of the establishing purposes of the refuge and the mission of the National Wildlife Refuge System -- a decision made more difficult if not impossible when a contractor has experience in only one location. Even within Alaska, our refuge managers must coordinate management of resource monitoring and other activities with the State of Alaska and other federal land managers. Again, we believe this would be difficult for a contractor to accomplish in a way that meets our national mission and our responsibilities to the public for operating an efficient organization.

In addition to the above concerns, if this legislation is to move forward, there are a number of other issues that will need to be addressed, and amendments that will need to be made.

Mr. Chairman, this concludes my prepared remarks, and I would be pleased to answer any questions that you and other members of the committee may have.