

DECLINING FOOD SECURITY FOR INUIT

One Inuit hunter says to the others as they prepare for a hunting trip – “Who Remembered to Pack the Lawyer”

The overwhelming regulation of traditional Inuit food harvesting by numerous federal and state agencies are prohibitively expensive and time consuming and have legal mandates that conflict fundamental Inuit needs

The hodgepodge of laws governing Inuit hunting, fishing and gathering rights pose significant obstacles to their food security. Using knowledge passed down through countless generations, Inuit hunters intimately understand their land, water and resources. Inuit families know where and how to harvest the foods that are essential to their nutritional, economic and cultural way of life. Hunting in the shifting leads of the arctic ice flow can seem easy, and less threatening, than understanding how to navigate the morass of regulations and agencies governing Inuit hunting, fishing and gathering practices. Taking the time needed to fully participate in the dozens of regulatory bodies involved in managing food gathering practices would foreclose any possibility of actually harvesting necessary resources. The regulations only grow more complex and numerous as the fish and wildlife resources in the arctic regions experience the stress of global warming and increased development activity.

Inuit who depend on marine, fresh water and land resources – nearly all of the Inuit Circumpolar Council - Alaska’s members, are regulated by over a dozen distinct international, federal and state laws. Many of these laws fail to fully protect the rights of the Inuit to harvest traditional foods in their traditional territory. Most of these laws fail to protect, or even acknowledge, the right of the Inuit to self-determination in matters of food security. Some of these laws perpetuate mistakes in policy made in a different era; others have their beginning in unfulfilled promises made by the United States to the Inuit.

Fundamental Failures Running Throughout Laws Governing Inuit Food Security.

Food security for the Inuit is much more than merely enough food, whatever the kind or source, to survive. It is the right to harvest their traditional foods in their customary ways on the lands they have hunted and fished since time immemorial. Congress acknowledged this at one point finding that the continued opportunity by Alaska Natives to hunt and fish for customary and traditional uses is “essential” to their “physical, economic, traditional and cultural existence.” 16 U.S.C. 3111. However, many laws governing food security fail to meaningfully address the fundamental elements of the hunting, fishing and gathering way of life that sustains ICC’s members. Laws written, interpreted, implemented and enforced by others who have no direct experience with, or understanding of, the Inuit way of life simply cannot provide the long-term security that is necessary. The policy of self-determination for Indigenous Peoples, widely accepted and implemented both nationally and internationally, is largely missing when it comes to Inuit food security issues.

For example, important state and federal laws applied to the Inuit and other Alaska Natives merely protect “subsistence uses.” The term “subsistence” was not selected or endorsed by the Inuit, and many strongly object to its use to characterize what needs to be protected to ensure their food security. Many view “subsistence”, including some of those charged with regulating subsistence uses, as a form of welfare. The State of Alaska’s regulatory agency adopted a provision a few years ago associating the right to hunt caribou to income; those close to the federal poverty line were allowed to hunt and those above that line were denied that opportunity. Consequently, the traditional chief of the area, an elder who had hunted all his life, and who had a pension and social security, was denied the right to hunt. His tribe had to litigate that issue at great cost, winning a partial and perhaps temporary reprieve. The State regulatory boards failed to comprehend that those with the greatest resources in a village are often the most successful and important providers for the entire community.

Some of the laws governing Inuit hunting and fishing use the term “customary and traditional” subsistence uses, attempting perhaps to build some protection for the Alaska Native way of life into the law without explicitly protecting that right. It has not worked. What is explicitly protected is subsistence rights for “rural residents” or some variation of that theme. Mixing a “rural residency” requirement with a “customary and traditional” theme has proven nearly impossible. A schoolteacher, for example, who has lived in a village for a year, qualifies, as a rural resident but generally has no relationship to the customary and traditional aspect of harvesting and using the resources. The conflict in these legal mandates is made worse because Inuit institutions, such as tribal governments, are almost wholly excluded from the regulatory bodies implementing these mandates. Institutions other than those of the Inuit are defining and determining how to implement “customary and traditional” uses and practices.

The result is a regulatory system that in many cases has little to do with Inuit customs, traditions, practices and values. The current system instead reflects the view of state and federal agency personnel who are largely trained and vested in the management philosophy and policy taught in universities and other Western institutions. Hunting and fishing is seen as primarily a “sport” use, wildlife is “game”, seasons are short and inflexible and molded around what works best for the majority of hunters – sport hunters. Bag limits are set to meet individual or family needs, and do not generally take into consideration the communal nature of the Inuit in which one may hunt for many, and sharing the harvest widely is a fundamental aspect of the culture. Notions of managing for sustained yield, healthy populations and conservation are taken from the latest textbook, often relying on harvest surveys and monitoring that are ineffective and inconsistent with Inuit practices, and which do not meaningfully incorporate the traditional knowledge of the Inuit.

Management is typically species by species, frequently without the recognition that for Inuit users the harvest is an adaptive, continuous cycle, taking what is available and offered in the amount necessary; that sometimes more caribou will be needed, available and taken and other times salmon, marine mammals, moose or migratory birds may compose more of the harvest. The breaking apart and segregating of fish and wildlife

species into separate legal mandates, different management agencies, and distinct regulatory and management plans is nearly the opposite of how the Inuit view their use of and relationship to the natural world. The result is a management system that is often unresponsive to the nutritional and other needs of the Inuit and is gradually undermining their traditional practices, values and ways of knowing. The saying goes among many Inuit leaders that cooperative management in Alaska means “they manage – we cooperate.”

This system has led to ever-decreasing seasons and bag limits, declining fish stocks and wildlife populations, citations, decreasing opportunity for the passing of skills and knowledge from elders to youth, and has contributed to stress on the Inuit culture and the resulting health and social disease. Often, however, outside officials fail to make the connection with food security issues for Inuit Peoples when looking at the serious issues facing them in Alaska. Rather than attempting the overwhelming, and often unsuccessful task of trying to change restrictive regulations through interaction with the numerous agencies managing each species, some Inuit hunters at times simply do their best to harvest in their traditional ways, taking only what they need when it is available while trying to avoid getting caught. What should be a fully nutritionally and culturally enriching experience is reduced to something that must be undercover.

The following section demonstrates some of the complexity Inuit hunters face when simply going hunting.

Caribou Hunting – a dual management system that is ineffective, inefficient, fails to protect Inuit food security and fails to provide any meaningful role for Inuit Institutions in resource management,

Any discussion of Inuit hunting issues must start with the Alaska Native Claims Settlement Act of 1971. This was the act that settled land Native aboriginal title claims in Alaska. In exchange for a settlement of land and money, Congress extinguished all aboriginal hunting and fishing rights on all lands in Alaska, and failed to adopt any measures protecting the rights of Alaska Natives to continue to hunt, fish and gather on their traditional lands. In fact, contrary to the well-established practice in settling aboriginal title claims in the United States, Congress even failed to protect food-gathering rights on the lands given to Alaska Native corporations as part of the settlement. The irony is that many village corporations, as was intended by the settlement act, selected their settlement lands based on the land’s value for hunting and fishing. Congress included a promise in the legislative history of the settlement act that the Secretary of Interior was to take actions necessary to protect the subsistence needs of Alaska Natives. This proved to be an empty promise.

Title VIII of the Alaska National Interest Lands Conservation Act, enacted in 1980, was passed in part to fulfill the promises made to Native Alaskans at the passage of ANCSA. The Act was initially drafted to provide a priority for customary and traditional subsistence uses by Alaska Natives. The State of Alaska, however, promised that if Congress changed the Native priority to a priority for rural residents, the State would

manage all lands in Alaska, including those under state jurisdiction, for a subsistence priority. Congress agreed. Less than a decade after ANILCA's passage the Alaska Supreme Court struck down the rural priority as in violation of Alaska's Constitution. The intent of ANILCA completely unraveled. State lands, including all lands conveyed to Alaska Natives through the settlement act, were left under state jurisdiction without the protection of a federal law establishing traditional hunting fishing and gathering rights. A new federal bureaucracy headed by the Federal Subsistence Board (FSB) was established in Alaska to manage what was left of Title VIII.

The result is a dual management system for Inuit customary and traditional hunting and fishing practices in Alaska. The State Boards of Fisheries and Game regulate subsistence harvests on state lands and waters, and Native lands, pursuant to state laws. The FSB, pursuant to Title VIII, regulates subsistence uses by rural Alaska residents on all federal public lands – those lands and waters within or adjacent to National Wildlife Refuges, National Parks, National Forests and Bureau of Land Management lands.

This dual management system means twice the amount of regulations and double the amount of work and time. There is twice the amount of agencies involved, meaning far more time spent attending and participating in regulatory meetings. The State Boards meet several times a year. The Federal Board meets separately several times a year. Both Boards have a process and deadlines for submitting proposals and making comments on proposals submitted by others that impact traditional food resources. Both Boards have an advisory committee system that requires participation and time.

Dual management means a checkerboard of jurisdiction with lines delineating state and federal jurisdiction that makes no difference to fish or wildlife, no sense to hunters, and have nothing to do with traditional practices or hunting territory. Both the state and federal boards deal with the same fish and wildlife populations. The same caribou herd is regulated by a different board depending on whether it is crossing federal or state lands. A hunter taking a caribou that is standing below the mean high water mark for a riverbank could be under state regulations while his hunting partner taking another caribou standing only a few feet away on top of the bank could be under federal regulations. Scores of Alaska Natives are issued citations each year for mistaking federal lands for state lands or operating under one set of regulations when another applies, even though the hunter is hunting in his tribe's traditional hunting territory.

Inuit and other Alaska Native institutions are conspicuously left out of dual management despite the fact that over forty million acres of land in Alaska was conveyed to Alaska Natives through the land claims settlement. Native lands are, to the continuing bewilderment and dismay of many Inuit, under state management. Under state law, the boards may, and have, declared large sections of Alaska as non-subsistence use areas where no priority for subsistence uses may be permitted. Native lands conveyed to ANCSA corporations located in proximity to urban centers in Alaska have been included in non-subsistence use areas. Thus, not only are Alaska Natives left out of the management of their lands and resources, they are at risk of having no protection for the right to continue to gather necessary food resources even on their own lands. There is

nowhere within the dual management system that Inuit can exercise their right of self-determination, or employ their vast body of traditional knowledge and wisdom, to ensure management that is good for the resources and environment, and fully protects their gathering needs and practices.

Marine Mammal Hunting

The laws governing marine mammal hunting are the most protective of Inuit uses. There are, however, many different laws and many different agencies involved in marine mammal management. The result is that much time and scarce personal and financial resources are spent by Inuit institutions dealing with regulatory agencies and issues. These institutions are already overburdened with managing and administering numerous State, Federal and Tribal programs. Moreover, many talented and educated Inuit youth and leaders are engaged in the important work of the village and regional Native Corporations created under ANCSA. The demand created by having to engage with so many regulatory regimes with jurisdiction over Inuit hunting is nearly impossible to fill, especially given the lack of sufficient funding provided for such. Even regional tribal consortiums such as the Association of Village Council Presidents, representing 56 native villages, only have a handful of employees dedicated to natural resource management issues. Merely going to all the meeting of federal and state management agencies is a full time job leaving no time to engage in trying to enact fundamental change, especially since many of those working in this area are also hunters who also need time to harvest resources for their families and communities.

Laws that govern marine mammal hunting include the Marine Mammal Protection Act of 1972 authorizing the taking of marine mammals by “any Indian, Aleut or Eskimo residing in Alaska who dwells on the coast.” The Act includes a provision for cooperative agreements for the co-management of subsistence uses. Two federal agencies regulate marine mammals, the USF&WS regulates polar bears, sea otters and walrus, and the NMFS regulates seals, whales and sea lions. These agencies have entered into co-management agreements on a species by species basis with Alaska Native Organizations (ANOs) generally composed of tribal governments. Funding for such agreements is far short of what the ANOs believe is necessary to fully engage in the process.

Several marine mammal populations are listed under the Endangered Species Act. The ESA includes a provision allowing the taking of listed species by Alaska Natives provided that the take does not “materially and negatively” affect the listed species. The ESA exemption also applies to non-native residents of Alaska native villages. Once a population is listed under the ESA, the administrative workload greatly increases for the agencies and ANOs involved in co-management of that species. Most ANOs are small with few staff, and the additional regulatory burden is a significant challenge.

Other laws governing marine mammals include the 1966 Fur Seal Act, the Polar bear Convention of 1976 and the International Whaling Convention (IWC). The Inuit whalers of Alaska formed the Alaska Eskimo Whaling Commission to counter an effort in the 1970s by the IWC to ban aboriginal hunting of bowhead whales. The AEWC

successfully worked through the US Department of Commerce to establish a quota of whales for the villages in the Arctic Slope region. The AEWEC has also been successful in obtaining funding from local state government (the North Slope Borough) and from oil companies, for studies of the whale population. Whaling captains, working through the AEWEC, self regulate the harvest consistent with traditional laws and the quota established through the EWC. This is probably the most successful management regime in Alaska for the Inuit, and although there are still concerns it could be looked to as an example for reforming other hunting and fishing laws and agencies.

The issue of whaling raises another set of concerns for Inuit food security related to the environmental and development issues that pose a threat to the continued health and abundance of bowheads and other resources, and access to traditional whaling and hunting areas in the outer continental shelf. Global warming, offshore oil development and the opening of shipping lanes in the arctic raise significant food security concerns. In order to address these concerns, the Inuit are faced with an even more complex web of federal and state agencies such as the Environmental Protection Agency, the Mineral Management Service and the Alaska Department of Natural Resources. ICC is engaged in international forums like the Arctic Council to address these concerns. Some Inuit institutions are engaging with the national and international environmental organizations and NGOs. Litigation to limit offshore development by some of the Inupiat Community of the Arctic Slope Tribes is ongoing. The Arctic Slope region tribes are also concerned that the aboriginal hunting rights they may have in the OSC are being violated. The amount of work required to meaningfully participate in all these forums is overwhelming. The potential impacts on food security are increasing. There is no efficient and effective mechanism in place to comprehensively address these concerns.

Migratory Bird Hunting

Four different international treaties govern aboriginal migratory bird hunting rights in Alaska including separate conventions with Japan, Russia, Canada and Mexico. These conventions are implemented through the Migratory Bird Treaty Act which is administered through the USF&WS. Although the treaties provide hunting rights to the indigenous inhabitants of Alaska, the MBTA includes non-native permanent residents of native villages within the definition of “indigenous inhabitants.” This counter-intuitive definition, which is inconsistent with what was negotiated and intended by the treaties, has caused significant obstacles in implementing the treaty provisions to provide for Inuit customary and traditional uses of migratory birds. For example, under well-accepted legal precedent, if a provision in law is ambiguous, the interpretation favoring Native uses is given effect. Legal issue arose in the context of one of the treaties, and the Department of Interior Solicitor’s office refused to apply the Indian cannons of construction to that law because it includes non-native users.

This compromising of Inuit hunting rights is also a factor when Inuit institutions try and compact or contract for programs under laws that confuse Inuit hunting rights with those of rural or village residents. Federal agencies simply claim that such laws are not for the benefit of Alaska Natives and decline to contract the program. The inability to contract

for federal programs associated with implementing hunting rights further erodes Inuit self-determination for these essential food security rights. It should also be noted that the “rural” hunting right Congress set in place instead of a Native or tribal hunting right eventually results in the forced termination of hunting rights for any tribe unfortunate enough to have its traditional lands located in a place where many non-native people choose to reside. This has already happened, for example, on the Kenai Peninsula where the tribes no longer have subsistence rights protected under ANILCA because the influx of population around their traditional village sites has grown to the extent that the village is no longer in an area classified as rural.

Migratory bird hunting is supposed to be regulated through a co-management organization, the Alaska Migratory Bird Co-Management Council (AMBCC) composed of state, federal and Native village representatives acting as equals. Although there are some aspects of the AMBCC that work, many do not. Funding and staffing is controlled by the USW&FS thereby preventing the tribes from developing the capacity necessary to fully participate as equals. Federal and State representatives often side together against Inuit interests. These agencies at times narrowly interpret the treaty hunting rights in order to protect their jurisdiction or other hunting interests. Federal solicitors are brought into the process, often to the disadvantage of tribal positions. Frustration is growing on the part of some tribal representatives, and their participation is waning. The AMBCC is perhaps an example of how mistakes in implementing a co-management regime can spoil the result even if the legal authority is sufficient to allow success.

Conclusion

There is growing concern and frustration among ICC’s Alaskan members about their right to food security. The legal and regulatory structure is often ineffective, unresponsive and overwhelming. There are fundamental differences between what the laws seems to require and what the Inuit need to ensure abundant resources and the hunting opportunity necessary to sustain their nutritional, economic and cultural well-being. There is no current mechanism for addressing these essential food security concerns, including the overwhelming number of federal agencies involved in regulating Inuit hunting, yet the pressures and stress on the Inuit and their environment and resources is escalating. A discussion needs to occur between Inuit leaders, political leaders and policy level federal agency personnel to address these issue. The discussion needs to be sustained over time, and solutions need to be indentified for increased food security, including greater Inuit self-determination.