

Bristol Bay Native Association

**Federal Issues Packet
April 2015**



BBNA Federal Issues Packet

April, 2015

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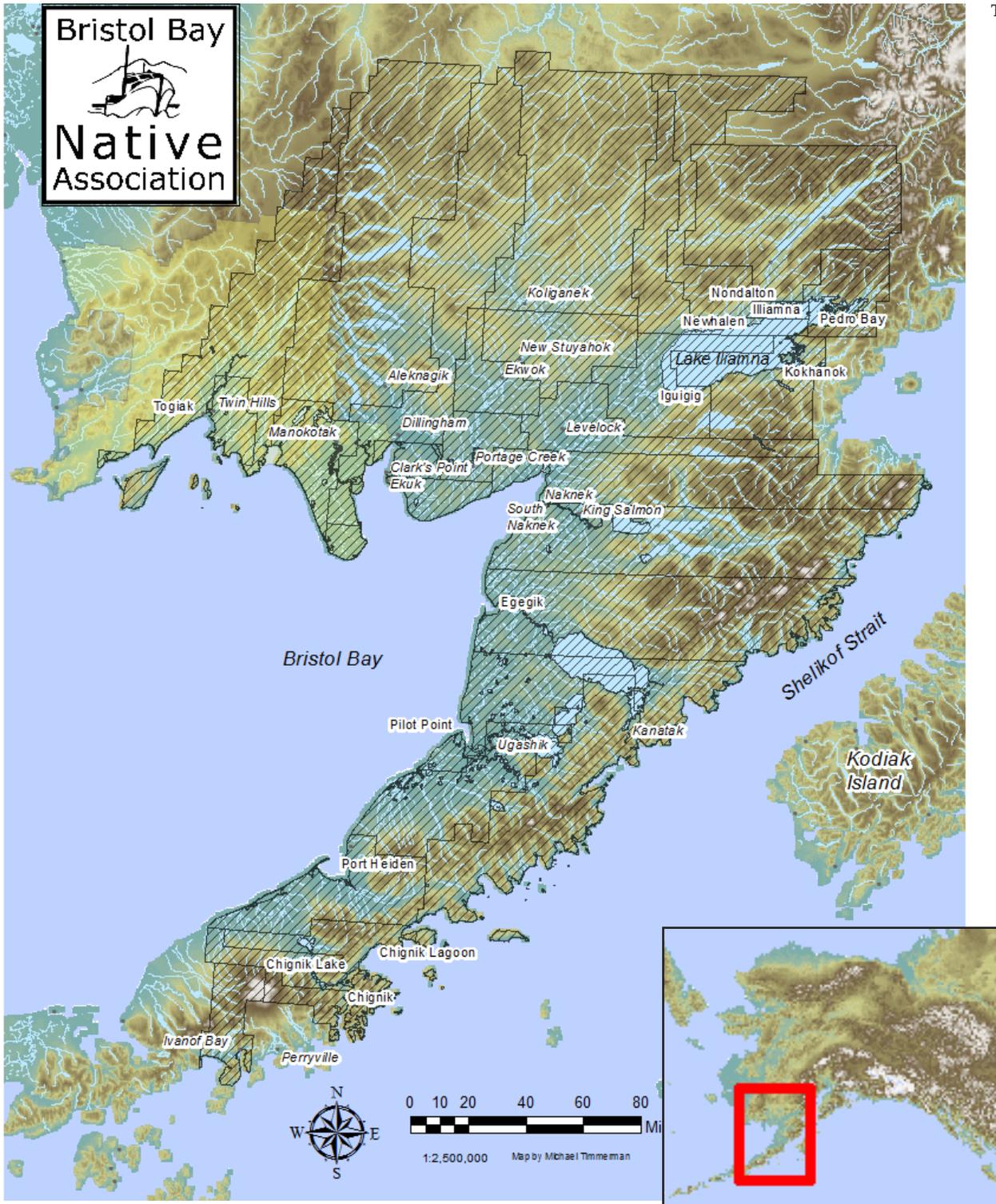
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Bristol Bay Native Association

The Bristol Bay Native Association (BBNA) is a Tribal Consortium, made up of 31 Tribes and is organized as a non-profit corporation to provide a variety of educational, social, economic and related services to the Native people of the Bristol Bay Region of Alaska.

BBNA Mission

The Mission of BBNA is to maintain and promote a strong regional organization supported by the Tribes of Bristol Bay to serve as a unified voice to provide social, economic, cultural, educational opportunities and initiatives to benefit the Tribes and the Native people of Bristol Bay.



History of BBNA



The Natives of Bristol Bay, like others throughout Alaska, were involved in the land claims struggle for years prior to passage of Alaska Native Claims Settlement Act (ANCSA). 40 years ago the ANCSA formally recognized the struggles of Native people for economic and social justice. Our elders worked aggressively for the passing of ANCSA's, which settled the Native Land Claims Act, created Native corporations and set the stage for participation by our people in the modern economy.

The land claims movement brought together leaders from 15 villages scattered throughout Bristol Bay who organized the region's first Native Association in 1966 to negotiate the land claims settlement. The association's membership would double before the Bristol Bay Native Association was formally incorporated in 1973. After ANCSA, BBNA turned its attention to addressing the social and economic problems facing Native people in the region. The change was partly in response to increasing requests for social and economic services directed to BBNC, the for-profit corporation formed pursuant to ANCSA, but largely in response to the need for increased social services traditionally delivered by distant state and federal agencies with no knowledge of the people, culture, or living conditions in the most politically and culturally diverse region in Alaska.

Although BBNA's roots predated ANCSA, the association we know today as BBNA was formally incorporated as a non-profit in 1973, the same year as the Bristol Bay Area Health Corporation. BBNA's early work focused on Head Start, jobs and training funded through the Comprehensive Employment Training Act (CETA). Later reforms allowing tribes to compact directly with the Department of Interior-rather than waiting for services to "trickle down" through the Bureau of Indian Affairs' bureaucracy-accelerated tribal self-determination. In 1975, the Indian Self-Determination and Education Assistance Act opened the door for tribal organizations to assume responsibility for delivering federally funded services to Native people.

BBNA and our member tribes have focused on expanding and improving their services. Job placement and training remains an important part of our work, and the Head Start program is expanded to four communities. Today we also offer Land Management Services, Indian Child Welfare, Natural Resources, Economic and Workforce Development, Vocational Rehabilitation, Higher Education, Temporary Assistance for Needy Families (TANF), Low Income Home Energy Assistance Program (LIHEAP) and Tribal Energy program. Our budget has grown 10-fold in the last 18 years, and collectively employment at BBNA and other tribal entities is the region's largest employer and fastest growing segment of the Bristol Bay economy, according to the Alaska Department of Labor statistics.

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I. Full Funding of Native Programs including Contract Support Costs

A. Program Funding. BBNA is very concerned that Native American programs will continue to be under budget pressure as “discretionary” spending so long as the structural issues related to revenues and the appropriate levels of spending on defense and entitlements are not addressed. Native programs are not ordinary “discretionary” programs. They are based on treaties and legislative treaty-equivalents and are part of the federal trust responsibility to Native Americans. They should be treated as a special case and not subjected to across-the-board cuts in future appropriations bills.

Funding for Native Programs over the last 20 years has not kept up with inflation. Within the Department of the Interior (DOI), the bundling of most tribally operated programs into the “Tribal Priority Allocation” (TPA) part of the budget has resulted in such programs being essentially flat-funded for two decades. BBNA operates many of our core services programs such as child welfare, scholarships, Native allotment services, and others at roughly the same funding level as when we first entered a self-governance compact in 1996. Overall, the BIA has received less of percentage increase in the past 10 years than any of the five other largest DOI agencies.

Request:

Congress should provide reasonable increases in Native programs including TPA programs in the FY 2016 appropriations.

B. Contract Support. Obtaining full funding for Contract Support Costs (CSC) has long been a top priority of Self-Governance Tribes. The U.S. Supreme Court, in *Salazar v. Ramah Navajo Chapter*, affirmed that Tribes contracting and compacting under the Indian Self-Determination and Education Assistance Act (ISDEAA) are entitled to full payment of CSC as a mandatory requirement of the ISDEAA. CSC are the administrative or overhead costs for running ISDEAA programs, and include some types of costs that tribes incur which government agencies would not have to pay if they were operating the programs. One of the greatest obstacles to successful tribal administration of these programs has been the failure on the part of the U.S. government to fully fund CSC. Historically this has been an appropriations issue, not an administrative policy issue. Tribal contracts have been an anomaly where the federal government has intentionally breached its own contracts.

Fully funding CSC has three elements:

- 1) Full funding going forward.
- 2) Appropriating sufficient judgment funds to pay the debt established by the *Ramah* decision. The exact amount is still under review and negotiation between the funding agencies and tribal attorneys, but should be known within the year.
- 3) Payment of known non-*Ramah* underpayments of CSC. BBNA for example was underpaid \$369,728 in FY 2009. This was not a *Ramah* claim; the Office of Self-Governance simply miscalculated the amount due under its own rules, and failed to catch the mistake before the end of the fiscal year. The amount is known and admitted by the Office of Self-Governance, yet the Interior Department has refused to pay and has held BBNA’s Contract Disputes Act claim for this money in abeyance as if it were a *Ramah* claim.

Request:

Congress should fully fund Contract Support Costs in future appropriations, both the past-due amounts and ongoing costs in future fiscal years.

II. MAP-21 Reauthorization (Tribal Transportation).

The current surface transportation act, “MAP-21,” is due to expire at the end of May, 2015. The reauthorization of this act involves several key tribal issues, most notably funding for the Tribal Transportation Program (TTP) (formerly the “IRR” Program). BBNA remains very concerned that the funding distribution method in MAP-21 is arbitrary and irrational, and that it replaced a funding distribution system that had been reached by negotiated rule-making. However, the worst problem for Alaska tribes is that the facility inventory data, which is still used in calculating part of the funding distribution, is frozen at the 2012 numbers. This means that a majority of Alaskan tribes are locked in at low funding levels, even though they may have inventory to add and may have been in the process of adding inventory when MAP-21 was passed.

MAP-21 also eliminated factors that tended to benefit smaller and poorly funded tribes, such as Highway Trust Funding of Tribal High Priority Projects, which had primarily benefited small tribes in Alaska.

For the past year, BBNA has been engaged in discussions with the “National Tribal Unity Caucus” on the MAP-21 reauthorization, and is pleased that a national consensus has been reached on many tribal issues. Although the Unity Caucus proposals do not address and would not change the MAP-21 methodology for distributing TTP funds among tribes, there are significant features that would greatly benefit Alaskan tribes. For example, the Unity Caucus proposal restores funding for the Tribal High Priority Projects program out of Highway Trust Fund dollars, and it would establish a \$75,000 minimum base funding per tribe.

We are concerned that side efforts to get a perfect solution for a given tribe or group of tribes might derail the national unity among tribes that the National Tribal Unity Caucus represents. MAP-21, while harmful, has not been as damaging to Alaska as feared. We believe that overall funding increases and some of specific improvements proposed by the Unity Caucus represent the best chance for positive improvements for all tribes in Alaska.



Road in New Stuyahok, Alaska.

Recommendations for MAP-21 Reauthorization:

1. Support National Tribal Unity Caucus proposals, which would:

- Increase funding for TTP to at least \$600 million, with \$50 million annual step increases.
- Extend PL 93-638 contracting and self-governance compacting directly to the Department of Transportation.
- Establish TTP base funding of \$75,000 per tribe.
- High Priority Projects Program – Restore Highway Trust Fund funding and increase to \$50 million, with step increases of \$5 million each successive year.

- Tribal Transit (Public Transportation on Indian Reservations) - increase funding to \$60 million per year with step increase of \$5 million each successive year.
- 2% Tribal Safety Funding (NHTSA) - increase funding to 5%.
- Create New Tribal Asset Management Program - fund at \$50 million with \$5 million step increases each successive year.
- Increase Funding for other existing Tribal Programs:
 - 2% transportation planning increase to 8%*
 - 2% Tribal Bridge Program increase to 8%*
 - 2% Transportation Safety Program increase to 4%*
 - 6% Program Management by BIA and FHWA - cap at \$36 million.*
- Tribal Bridge Program - Change allowable uses to include new bridge construction including project design.



Road in Clark's Point, Alaska.

- Expand BIA Road Maintenance Program eligibility and funding.
 - Increase funding to \$150 million per year.
 - Make available to tribally owned roads and trails.

2. Other Issues. BBNA urges Congress to obtain broad prior input from tribes nationally and to be very cautious before making any additional changes to the funding distribution in MAP-21. Since the funding distribution comes from a fixed funding pool, changes that help some tribes necessarily harm others, and the impact is determined by the situation of the individual tribe not by state or BIA Region. Even within Alaska there are widely varied situations and interests among tribes.

However, the single improvement to MAP-21 beyond the Tribal Unity Caucus proposals that would help most Alaskan tribes would be to simply open up the facilities inventory for additions and corrections.

While BBNA has in the past supported a new negotiated rule-making for TTP and Tribal Transit funding, proposed legislative language we have seen thus far has been rigged to force a particular outcome, e.g. reverting to the 2012 funding allocation percentages. (This outcome would freeze most Alaska tribes at a very low funding level.) We do not believe making rational and fair changes is even feasible without Congress first getting neutral information on the existing facilities inventory and BIA's management of the inventory system, such as might be obtained through a GAO audit.

If there is negotiated rule-making language in the reauthorization, it should be designed to address the full range of funding formula, inventory and supporting data topics. It should not stack the deck in favor of select tribes or a predetermined outcome, such as reverting the funding distribution to a particular year if negotiations fail. That approach would guarantee that negotiations will fail, as the tribes with the highest funding shares in the default year would likely block any change. Any negotiated rule-making language should provide a set period of time, perhaps two years, for negotiations on the full range of funding issues, and allow the government – preferably the FHWA - to determine the funding formula if negotiations fail.

III. Reauthorize and Make Permanent PL 102-477 (Supports H.R. 329).

The 477 Program allows tribes/tribal organizations to adopt “477 Plans” which consolidate Department of Labor, Department of Health and Human Services, and Bureau of Indian Affairs programs dealing with workforce development, adult education, BIA welfare assistance, TANF, and related services into one consolidated program. All the funding from the various agencies is transferred to the BIA and provided to the tribe/tribal organization by the BIA via PL 93-638 agreements. The program was authorized in 1992 by the Indian Employment Training and Related Services Demonstration Act, Pub. L. 102-477, as amended (25 U.S.C. §§ 3401-3417), and was considered a tremendous success in Indian Country and within most of the federal agencies for more than 15 years.

Unfortunately, beginning in 2008 the Department of Health and Human Services (DHHS) unilaterally attempted to impose changes to its programs within 477 Plans which would have had the effect of reconverting them into ordinary grant programs and negating the purpose of the 477 Plans. DHHS attempted to eliminate the PL 93-638 contractual mechanism and impose a requirement that tribes report their 477 Program expenditures separately by funding source number for audit purposes. The latter change was incorporated into the OMB audit requirements at the behest of DHHS.

The Tribes strenuously objected to these changes and requested a legislative fix to reinforce PL 102-477, and Congress responded by inserting conference language in the 2012 appropriations act that directed the agencies to consult with the Tribes on “the precise content of



Photo from BBNA's annual Tribal President's and Administrator's Meeting.

all guidance documents and similar issuances prior to their finalization,” and committed Congress to address the issue in following years if it is not “permanently resolved administratively.”

This directive from Congress led to the formation of the “P.L. 102-477 Administrative Flexibility Work Group” which included representatives from all the affected funding agencies, OMB, and from a variety of tribes and tribal organizations. This workgroup reached consensus on some issues, but not all, and the agreement itself is not reflected in any form enforceable by the tribes. It could be changed by the next administration. DHHS has still not allowed BBNA to include the TANF program within its 477 plan, although other tribes have done so and it is statutory right. Given that the PL 102-477 is still a demonstration project and has not been made permanent, BBNA and other 477 tribes strongly believe that Congress should enact legislation to make 477 permanent and ensure the agencies do not backtrack.

Request: BBNA urges Congress to enact legislation updating and making permanent PL 102-477 and reinforcing tribal authority to consolidate and redesign programs under 477 plans. Senator Murkowski has introduced such legislation in the past, and Congressman Young has done so in the current Congress in H.R. 329.

IV. Alaska Native Trust Issues

One of the Bristol Bay Native Association's largest programs is Land Management Services, which serves restricted Native allotment and Native townsite lot owners. There are several pressing trust-related issues that need Congressional action:

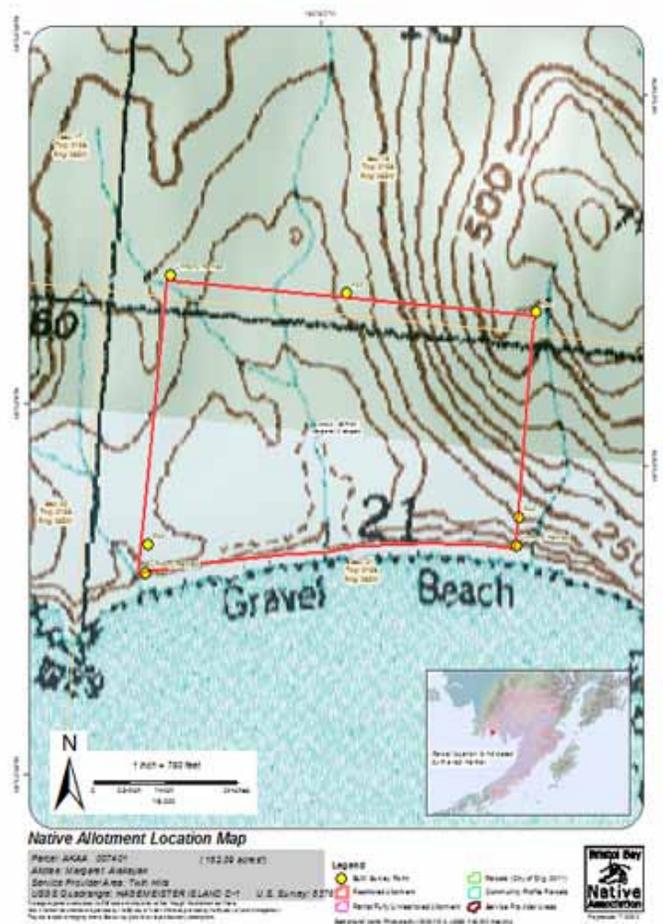
A. *Carcieri* and *Patchak* Fix. BBNA strongly supports legislation to over-rule the bizarre Supreme Court decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), which concluded only tribes that can prove they were “under federal jurisdiction” as of the date of the Indian Reorganization Act of 1934 (IRA) can have land taken into trust by the Secretary of the Interior. This decision overturned 70 years of federal policy. Although not applicable to Alaska because Alaska tribes were added to the IRA by later amendments in 1936, in the Lower 48 states *Carcieri* created two classes of tribes, it hinders land-into-trust decision making, creates uncertainty and retards economic development in Indian Country.

In *Mash-E-Be-Nash-She-Wish v. Patchak*, 567 U.S. ___ (2012), based on *Carcieri*, the Supreme Court found that the Quiet Title Act did not bar an individual's challenge to a land-into-trust decision even though the trust acquisition was already complete. It had been previously believed by the Department of the Interior that the Quiet Title Act and its Indian lands exception prevented retroactive challenges to Indian land that is already held in trust. The Supreme Court, however, held that the Quiet Title Act does not apply to challenges to a trust land acquisition if the plaintiff is not asserting an ownership interest in the land. The decision thus subjects trust land acquisitions to challenges brought under the Administrative Procedures Act for up to six years after the land has been taken into trust and substantially broadens the number of persons with standing to sue. This case will spur endless litigation, reopening settled land issues and further burdening Tribes' efforts toward tribal land restoration and economic development.

The *Carcieri* and *Patchak* decisions have resulted in an enormous drain of energy and resources nationally and hamper efforts to improve allotment services in Alaska. Further, BBNA opposes any federal decision-making, whether by the Courts or by Congress, that creates different classes of tribes in the United States with different status and rights. BBNA strongly supports the extension of land-into trust to Alaska.

Congress should adopt a “clean” fix to *Carcieri*, without qualification and without singling out Alaska or any particular set of tribes for special treatment. Although *Patchak* might be resolved administratively by changes to regulations, if it isn't fixed administratively Congress should do so.

Request: Enact a “clean” fix to *Carcieri* and, if necessary, to *Patchak*.



Map showing a parcel of Native Allotment land near Bristol Bay in Southwest Alaska.

B. Land into Trust in Alaska

The Bureau of Indian Affairs recently amended the “land-into-trust” regulations at 25 CFR Part 151 to remove language which had previously prevented the BIA from taking land into trust in Alaska. While this may have been prompted in part by litigation, the BIA has publically stated it has re-evaluated the policy and intends to take land into trust in Alaska under its ordinary procedures for doing so, regardless of the litigation.

BBNA strongly supports the extension of the land-into-trust regulations to Alaska and urges Congress to take no action to interfere with the BIA’s new policy.

C. Alaska Native Veterans Land Allotment Act Amendments.

BBNA strongly supports amending the Alaska Native Vietnam Veterans Allotment Act (43 USC 1629g), which was enacted in 1998 to give Vietnam-era veterans a chance to apply for allotments, but which largely failed to achieve its purpose. The Alaska Allotment Act of 1906 was repealed by the Alaska Native Claims Settlement Act (ANCSA) in 1971, at a time when the Vietnam war was still underway. Although there was a big push within Alaska for Alaska Natives to file allotment claims before the repeal, many Vietnam-era veterans were precluded from filing claims because they were in service at the time or for other reasons such as post-traumatic stress or misinformation about the requirements. Congress attempted to fix this in 1998, but that act had so many restrictions – including restrictions not in the original allotment act – that few veterans could take advantage of it. The Alaska Congressional delegation has expressed interest in passing amendments to reopen the allotment act for veterans, and a tribal workgroup has developed amendment language.

Request: Amend the Alaska Native Veterans Land Allotment Act to reopen the filing period and reduce the restrictions so as to provide a fair opportunity for Vietnam-era veterans to acquire allotments.

D. Inadequate BIA Resources.

The system for protecting and servicing Native allotments in Alaska has become overwhelmed. Alaska Native allotments are “restricted” and enjoy various advantages including exemption from local taxes. However, restricted status means the Bureau of Indian Affairs has to approve almost anything having to do with title or land use by anyone other than the allotment owner. The procedural layers necessary to get anything done under this system – subdivisions, conveyances, probates – have become an obstacle to economic development and the enjoyment of the land by the owner. Horror stories of probates taking decades to complete and of routine business such a subdivision approvals taking years are common in the Bristol Bay region. The system is simply overloaded.

There are several reasons for the overload. One is simply increased demand on the system. For many years the main focus of the BIA and tribal programs was to get allotments approved. That process is largely completed, but now more and more ordinary business transactions are occurring as allottees – particularly in relatively rich resource areas such as Bristol Bay – attempt to derive economic benefit from their land. Increased probate activity is also a natural as allotments are passed down to multiple heirs. It would greatly help the probate backlog if an Administrative Law Judge for probate was actually stationed in Alaska and assigned specifically to Alaska probates. Alaska had such a position for a time and the backlog was greatly reduced, but the position became empty and was not filled. Another shortage is resources to do estate planning for allotment holders, to avoid creating fractionated heirship problems.

Another factor is that “trust reform” prompted by the *Cobell* litigation and other changes such as the Alaska Native Subdivision Act have imposed a higher burden on the BIA, without a comparable increase in resources.

Recommendations:

- Congress should make inquiry into staff levels at the Alaska BIA and ensure it has adequate resources to handle the increases allotment-related workload, including estate planning.
- An Administrative Law Judge for allotment probates should be stationed in Alaska, preferably in Anchorage.

E. Department of Justice Services to Native Allotment Owners.

The Department of Justice is a key player in the enforcement of Alaska Native land rights, particular in the context of restricted lands, yet it rarely takes cases. Many Alaska Native allotment holders or pending applicants are elderly, low income, or both, and relatively few can afford private attorneys. A case of long-term trespass or encroachment illustrates the problem. The system is that once the trespass is reported, the tribal BIA contractor (i.e., BBNA) will conduct a field investigation, write a report and make recommendations to the BIA. The BIA Realty Office will review the report and forward it to the Interior Solicitor’s Office. While the Solicitor’s Office might take some action such as writing letters, if litigation is warranted all it can do is make a recommendation and forward it to the DOJ for legal action. There, most likely, nothing will happen because a minor civil matter such a trespass on a Native allotment is unlikely to be a priority.

A particular problem affecting about a dozen pending allotment applications in Bristol Bay has to do with allotment claims on land that was previously and erroneously conveyed to the state. The state had the right to challenge these allotments and did so, but in general it has allowed allotments to proceed. It will give the land back if the allotment applicant agrees to restrictions such as setback requirements. However, some applicants with fully adjudicated allotments and the absolute right to the land do not wish to accept state conditions, and these allotments have simply languished for years. The state won’t convey the land back to BLM so the allotment patent can be issued. The allotment applicants could compel the re-conveyance



in court, but do not have funds to litigate. The federal government has a moral and trust obligation to protect their rights, but to date the Justice Department has declined to take such cases.

Request: Congress should investigate the availability of legal services to allottees and ensure that sufficient resources are available to protect Native allottees. If the Department of Justice is unwilling or unable to take allotment related cases, Congress should fund another program to do so.

V. Voting Rights Act

BBNA urges Congress to enact changes to the Voting Rights Act to restore preclearance requirements struck down by *Shelby County vs Holder*, in which the Supreme Court ruled that Congress had not adequately justified the section of the Voting Rights Act requiring pre-clearance of election law changes. Bills have been introduced, H.R. 3899 and S. 1945 in the last Congress, to amend the Voting Rights Act to do this. BBNA supports this effort, but the bills do not go far enough since the “rolling trigger” they use for pre-clearance would not include Alaska.

The Voting Rights Act preclearance requirements have been instrumental in holding the State of Alaska and local jurisdictions accountable in Alaska, and there are still many examples of instances where state election practices are discriminatory against Alaska Natives, by neglect if not always by design. If anything, the concentration of political power in urban Alaska in the past two decades has resulted in a state administration and legislative majority that is non-responsive to and sometimes outright hostile to Alaska Native interests.

BBNA believes the bills would be strengthened if they added a “known practices” trigger where any jurisdiction with a 20% minority population would need to obtain preclearance for changes to certain voting practices including redistricting, voting locations and multilingual voting materials. Other changes should also be made, as follows:

Request: Congress should enact Voting Rights Act amendments, which would:

- Restore the pre-clearance requirement.
- Add a “known practices” trigger.
- Remove exemption of voter ID laws from preclearance.
- Lower the number of violations that trigger preclearance.
- Change the definition of “violation” to include cases that end in settlement or consent decrees.
- Add amendments advanced by the National Congress of American Indians specific to Native Americans to improve voter access and language assistance and involve tribal governments in election oversight.

VI. Support S. 286 - Amendments to Title IV of PL 93-638

We greatly appreciate the support the Alaska Congressional delegation has given to the Title IV amendments, which were reintroduced in January, 2015 by Senators Barasso, Tester, and Murkowski. “Title IV” is the part of PL 93-638, the Indian Self-Determination and Education Assistance Act, that authorizes tribes to compact Bureau of Indian Affairs programs. It is thus the authorizing legislation for much of what BBNA does. It has not been updated since 1994. In contrast, Title V of PL 93-638, which governs Indian Health Service compacts, was updated in 2000 and contains many procedural improvements on the way compacts are administered. Amendments to update Title IV to make it consistent with Title V have been introduced in every Congress since 2000, but did not pass. Legislation in the 113th Congress (S. 919) had hearings in the Senate Indian Affairs Committee. Versions in earlier Congresses were opposed by some Interior Department agencies because they would have expanded mandatory compacting to non-BIA DOI programs. These non-BIA provisions have been taken out. This is in the nature of a house-keeping bill to a very significant program for Alaska tribes, and would not involve funding increases.

Request: That the Title IV amendments – S. 286 - be enacted.

VII. Head Start & Early Childhood Education.

A. Funding. Head Start is a critically important program in rural Alaska, but it is continually squeezed by increased costs. The continuing education requirements for Head Start staff drives up costs, and like all of our other programs Head Start is impacted by higher energy costs and increased health insurance premiums for employees. There is an unrealistic 15% cap in indirect cost recovery. BBNA substantially subsidizes this program from other sources. Although the FY 2014 Consolidated Appropriations Act included much-needed increases for Early Childhood Education and restored the FY 2013 sequestration cuts, the Head Start Program itself has not been increased.

Request: Head Start deserves a higher appropriation level from Congress.

B. Head Start Reauthorization Act Amendments.

The Head Start Reauthorization Act of 2007 was very urban-centric; it made reforms that may have



made sense in urban areas but which are simply impossible to comply with in remote rural areas.

1. Staff education mandate. The Head Start Reauthorization Act increased the education requirements for Head Start teachers. It required that all Head Start teachers have an AA degree by the Fall of 2011 and a BA degree by the Fall of 2013. This was just not possible for Alaska Native programs given the small local workforce and the length of time it takes for someone to get a degree while holding down a job in rural Alaska. Although our staff continually takes classes, in reality this just prepares them to take higher paying jobs elsewhere. Our Head Start grant does not provide enough funding to cover competitive salaries for degreed teachers. This education requirement is an unfunded, counter-productive mandate. It also means that our program and similar ones will be perpetually out of compliance with one of the formal Head Start grant requirements.

Request: Amend the law to make an exception for rural areas.

2. “Re-competition” requirement. Under the 2007 law, Head Start programs are reviewed every five years. The Head Start agency is required to technically de-fund at least 25% of the reviewed grantees in a given year, and have them “re-compete” for the program; the 25% will be selected based on performance standards. Since the Head Start Act also imposes requirements that remote rural programs cannot meet, this process is structurally biased against rural programs. Alaska programs will probably always be in the bottom 25% since they cannot meet all of the performance standards, such as teacher education. Our programs will have to use the more complex competitive grant process – even though, realistically, there is typically no other entity to run the program in remote rural areas and the Head Start agency has no actual interest in discontinuing our programs.

Request: Amend the law to remove re-competition requirement in remote areas, at least where the agency knows there are no competitors for the program.

3. Overly Restrictive Administrative, Indirect, and Non-Federal Share Policies.

The Head Start agency applies a 15% administrative cap and a 15% indirect cap. Additionally it requires a 20% Non-Federal Share match of the full federal grant. This is unlike most federal grants, which honor the indirect cost rate that grantees negotiate with their primary federal funding agency. Negotiated indirect cost rates are typically considerably higher than 15%.

To complicate matters, Head Start uses a default administrative cost rate on some funding lines (such as 100% for office supplies) which in some instances would not normally be considered “indirect” or administrative costs by the grantee because they relate to a single program. Since all indirect costs are considered administrative, the default administrative cost rate on other budget lines has the effect of pushing the grantee’s actual indirect cost recovery below the 15%, sometimes considerably below.

Further, the Head Start agency also applies the 15% administrative cost cap to the 20% Non-Federal Share requirement. This means that many commonly used “matches” cannot be used in Head Start because they would push the grantee over the 15% limit. For example, donated office supplies or a donated administrative position would be considered administrative, would bump into the cap, and would reduce the grant award. As a consequence many Head Start grantees are forced to make significant contributions to the program without even getting credit for the match.

Request: Amend the law and increase funding so that Head Start pays negotiated indirect cost rates. At a minimum the Non-Federal Share match funding should be exempt from the administrative cap.

4. Federal Poverty Guideline. Head Start uses “100% of the federal poverty guideline” to determine eligibility for services; however, the federal guidelines uses Anchorage rates for the whole state despite a much higher cost of living in rural Alaska. The cost of living in Dillingham is about 150% of Anchorage. Yet in general our wages are no higher. A family of 4 in Dillingham would need to earn about \$40,000 per year to have the same buying power as an identical family earning \$25,000 per year in Anchorage. The Anchorage family would be eligible for Head Start, and the Dillingham family earning \$40,000 per year would not be.

Request: Head Start should adopt more accurate poverty guidelines, perhaps using state data, taking into account the higher cost of living in rural areas.



VIII. Funding for Alaska Native Subsistence Research and Management

BBNA is increasingly frustrated by the lack of resources available to tribes and Alaska Native organizations to effectively participate in subsistence related resource management. The lack of targeted funds for Alaska Natives, the splintering of funding among various agencies, and the tendency of all the federal agencies to absorb available resources for their own bureaucracy and research efforts has made it extremely difficult for tribal organizations to effectively engage with the federal and state management agencies on subsistence issues, even though we are the primary stakeholder.

There are at least four programs within the federal government related to subsistence in Alaska. The federal Office of Subsistence Management (“OSM”) administers the Federal Subsistence Board, the Federal Regional Advisory Councils, a research grant program called the Federal Resources Monitoring Program, and another “partners” grant program that funds fisheries biologists or researchers at tribal organizations.

Marine Mammals are divided into two subsistence programs: the National Marine Fisheries Service is responsible for seals, sea lions and whales, while the U.S. Fish & Wildlife Service manages sea otters, polar bears and walrus. There are Alaska Native “commissions” for each species, and some funding has been consolidated and tracked through the Indigenous Peoples Council for Marine Mammals (IPCoMM), which has about 14 member organizations.

The U.S. Fish & Wildlife Service has a subsistence program for migratory birds, which funds the Alaska Native Migratory Bird Co-Management Council. The Bureau of Indian Affairs has small PL 93-638 eligible programs related to subsistence or other fish and wildlife management linked to



A subsistence gillnet at low tide near Dillingham, Alaska.

Native allotments. Other agencies have subsistence related programs including local advisory councils for the major land conservation units, and liaisons for tribal consultation.

Not one of these efforts is funded sufficiently to give Alaska Natives a meaningful, independent voice in interacting with the federal agencies, much less the state government, regarding the fish and game resources Alaska Natives rely on for their very existence as Native people. BBNA’s observation has been that subsistence management is not core to the mission of the various agencies, that excessive resources are absorbed by the agencies in managing grant programs, that there is little transparency, and

that agency personnel exhibit a bias against scientific research conducted by Native organizations.

Two examples in Bristol Bay illustrate the problem. For about 10 years BBNA had a single fisheries biologist funded through the OSM partnership program. We have had various projects funded through OSM’s Fisheries Resource Monitoring Program, but not with BBNA as the lead agency. The lead agency was always a state or federal agency. For the 2013 call for proposals, BBNA submitted a project with itself as the lead agency but using the same partners and team members we had used in the past. The proposal was rejected based on recommendations from the federal Technical Review Committee based in part on perceived lack of qualifications, even though it was the same people. The rejection of this proposal, which had the support of both the Bristol Bay and Kodiak Regional Advisory Councils, meant not just that BBNA did not do this particular research, but that BBNA may no longer be qualified for the OSM partnership program. We lost our only fisheries scientist. Obviously, fisheries are very important to Bristol Bay. We have no doubt this project would have been funded with the identical researchers and no other changes but to name a state or federal agency as the lead.

BBNA has also operated a marine mammal program for many years, and supports the Bristol Bay Marine Mammal Council (BBMC) and the Qayassiq Walrus Commission (QWC), which manages the subsistence walrus hunt at Round Island. The QWC is probably the only Native marine mammal council in Alaska other than the Eskimo Whaling Commission that does true co-management. BBNA receives a small amount of funding through IPCoMM for the BBMC and a small pass-through from the Eskimo Walrus Commission for the QWC. Combined these aren't enough to fully fund a staff person and hold face-to-face commission meetings. BBNA subsidizes the program the best it can from other sources.

Congress is failing its obligations under ANILCA and its general trust responsibility toward Alaska Natives to protect subsistence, which is the core of Alaska Native identity. While we understand the proliferation of marine mammal councils in Alaska has been problematic and that it would be unreasonable to expect funding for every species in every Alaska region, the current system is broken. BBNA urges that Congress regularize funding for Alaska Native subsistence management and create a program, preferably within DOI, to fund Native subsistence advisory bodies within each of the 12 ANCSA regions. This should include a strong research component, which could be competitive, and roll up funding currently available to Alaska Natives for subsistence but which is splintered among federal agencies. The program should be fully subject to PL 93-638.

Request: Congress should establish and fund an Alaska Native subsistence management program, with funding to be allocated on a regional basis.

- Provide both operational funds for a Native subsistence management commission in each region, administration, and research funding.
- Place within the Department of the Interior.
- Make subject to PL 93-638.



Group photo of the Qayassiq Walrus Commission at their September 2014 meeting.