



Alaska Federation of Natives



# 2011 Federal Priorities





Photo taken by Sandi Echuck, Hagemester Island, Alaska.

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# 2011 Federal Priorities

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Senator Donny Olson pushing reindeer across the Teller Highway at Gold Run Creek toward the corral at Canyon Creek in the Imruk Basin. Photo by Kimberly Susan Carter.

# Introduction



Discussion of resolutions at the annual AFN Convention. The AFN Convention is the largest representative annual gathering in the United States of any Native peoples, as well as the largest event held in Alaska each year. The AFN Convention is an important example of the Native community's established record of successful self-governance.

## A POWERFUL VOICE IN ALASKA

AFN is the largest statewide Native organization in Alaska. Its membership includes 178 villages (both federally recognized tribes and village corporations), 13 regional Native corporations and 12 regional nonprofit and tribal consortia that contract and run federal and state programs. AFN is governed by a 37-member board of directors, which is elected by its membership at the annual convention held each October. The Alaska Federation of Natives was formed in October 1966, when more than 400 Alaska Natives representing 17 Native organizations, gathered for a three-day conference to address Alaska Native aboriginal land rights. From 1966 to 1971, AFN worked primarily to achieve passage of a just land settlement in the US Congress. On December 18, 1971, the Alaska Native Claims Settlement Act (ANCSA) was signed into law. When this goal was achieved, it was not the end of an era, but a new beginning.

After the passage of ANCSA, the regional for-profit corporations assumed responsibility for the management of the money and land received under the act. The corresponding regional Native associations for the 12 geographic regions listed in Section 7 of ANCSA, 43 USC 1601, turned their attention to the service delivery and community development concerns which plagued rural Alaska and which were not solved by the land claims settlement. These regional tribal consortia have been administratively determined to be tribal organizations eligible for grants and contracts under the Indian Self-Determination Act.

## OUR PEOPLE

### **Eskimo ~ Indian ~ Aleut**

Alaska has one of the largest Native populations in the United States. Alaska Natives make up about 22 percent of the total population in Alaska and are scattered across the entire breadth of the state – which is the largest in the U.S., at about 2.3 times the size of Texas. Our Native cultures are land-based, and our occupation and use of our land predates the construction of the Egyptian pyramids.

In more than half of the communities with fewer than 1,000 residents, Alaska Natives form the majority of the population. To a remarkable degree, thousands of Native people still live off the land, taking 90 percent or more of what they eat every year from the land or sea. Alaska Natives are among the last remaining Native Americans who are still living on their ancestral lands— having never been forcibly removed to reservations. Despite the large number of Alaska Natives living in “bush” or rural Alaska, more than 40 percent of Alaska Natives also live in the three major urban areas of Anchorage, Fairbanks and Juneau.

The most current report on the status of Alaska Natives indicated that Natives have more jobs, higher incomes, and better living conditions, health care, and education than ever. But they remain several times more likely than other Alaskans to be poor and out of work. Alcohol continues to fuel widespread social problems. Native students continue to do poorly on standardized tests, and they are dropping out at nearly twice the rate of other students. Rates of heart disease and diabetes are rising. In 2004, incomes of Natives remained just 50-60 percent of those of other Alaskans, despite gains. Alaska Natives living in rural communities struggle to persevere in some of the harshest conditions in the world, in many cases without adequate access to heat, electricity and sanitation services.

## OUR MISSION

Alaska Native people began as members of full sovereign nations and continue to enjoy a unique political relationship with the federal government. We will survive and prosper as distinct ethnic and cultural groups and will participate fully as members of the overall society. The mission of AFN is to enhance and promote the cultural, economic and political voice of the Alaska Native community. AFN's major goals are to:

- Advocate for Alaska Native people.
- Foster and encourage preservation of Alaska Native cultures.
- Promote understanding of the economic needs of Alaska Natives and encourage development consistent with these needs.
- Protect, retain and enhance all lands owned by Alaska Natives.
- Promote and advocate programs that instill pride and confidence.



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# Subsistence



Subsistence whaling along the Arctic Ocean. Subsistence hunting and gathering not only helps remote rural communities meet their nutritional needs, but is an integral part of Native culture that has been practiced and passed down from generation to generation for millennia. This photo and the cover image were taken by Bridget R. Edwardsen.

## FEDERAL PROTECTIONS FOR SUBSISTENCE HUNTING, FISHING AND GATHERING

### Key Recommendations

1. Congress is urged to enact legislation that will provide lasting protection for our way of life. Necessary changes to federal law include:

- a) Adding a “Native” priority to the current “rural” priority for subsistence. The current “rural” priority for subsistence hunting and fishing in Title VIII of ANILCA is inadequate in light of growing urban pressures on finite resources. Several federal laws now provide a “Native” or “Native-plus-rural” or “Native-plus-local” subsistence priority in Alaska (e.g. for the taking of halibut, marine mammals, and migratory birds). The same priority should be provided for the legitimate subsistence uses of fish and wildlife by Alaska Natives.
- b) Extending federal protection of Native subsistence rights to Native-owned lands and all navigable waters and marine waters in Alaska.
- c) Giving Alaska Natives an ongoing and meaningful co-management role in the federal subsistence management program.
- d) Exempting the Regional Advisory Councils (RACs) from the Federal Advisory Committee Act (FACA) so that membership can be limited to eligible subsistence users.

## Key Subsistence Recommendations Continued

2. Convene a high-level inter-agency meeting with key White House officials, including the Domestic Policy Council, and the Departments that have jurisdiction over subsistence uses. Subsistence management and legal rights of Alaska Natives cut across a number of Departments within the Administration, including Interior, Agriculture, Justice, State and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an on-going dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of Alaska Natives subsistence way of life. This is a critically important moment in history for Alaska Natives with respect to hunting and fishing, the foundation of our way of life and a mainstay of our nutrition and economy. Presidential involvement has been the hallmark of all major federal laws affecting Alaska, including the Alaska Statehood Act, ANCSA, ANILCA, and Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights to fulfill the promises of ANCSA. The same level of White House commitment and involvement is needed today.

3. Clarify that Title VIII of ANILCA is “Indian Legislation.” In addition to convening a high-level agency meeting on subsistence, the President should issue an Executive Order advising the Federal agencies and the Federal Subsistence Board that Title VIII of ANILCA is “Indian Legislation,” enacted under the plenary authority of Congress over Indian Affairs. The President should also direct the Office of Subsistence Management to implement a subsistence management program in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long-standing concern for, and obligation in, protecting subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Although the statute provides for a “rural” preference, it is important to remember that the subsistence title would never have been added to ANILCA had it not been for the efforts of Alaska Natives.

## Key Subsistence Recommendations Continued

4. Take interim administrative measures to increase protections for subsistence. In addition to expediting the implementation of the changes in the federal management program that were promised as a result of the recent Secretarial review of the Federal Subsistence Management Program, AFN urges the Secretaries of Agriculture and Interior to take the following additional actions:

- a) Amend the regulatory definition of “rural,” and the criteria for assessing rural characteristics, during the decennial review of rural status so that Native Villages such as Saxman do not arbitrarily lose their right to the federal subsistence priority.
- b) Require the Federal Subsistence Board to undertake a comprehensive review of all existing subsistence regulations to ensure they comply with federal law and policy.
- c) Mandate tribal compacting and contracting of significant aspects of the federal subsistence management program to tribal organizations and increased the use of ANILCA’s Section 809 cooperative agreements.
- d) Review the Department’s policy of limiting federally reserved waters to lands running through or abutting federal lands created by Title VIII of ANILCA, and initiate a new rule making that would apply the federally reserved waters rights doctrine to waters that run upstream and downstream from ANILCA’s conservation units and to Alaska Native allotments. Federal laws protecting Native American and Alaska Native hunting, fishing and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where hunting, fishing and gathering remain economic necessities. Subsistence resources constitute a substantial majority of the nutritional needs of Alaska’s Native people, especially in rural areas where the need for subsistence resources for daily nutritional, spiritual and cultural sustenance is the greatest. The indigenous peoples of Alaska have a basic human right to their subsistence way of life and to maintain their cultural beliefs and practices – rights acknowledged in the United Nations Declaration on the Rights of Indigenous Peoples.

## Federal Protections for Subsistence

The U.S. Government has a trust responsibility to Alaska Natives to honor the commitment it made to them in the Alaska Native Claims Settlement Act of 1971 (ANCSA) and in Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). That commitment was to establish and implement a comprehensive federal program that would protect their way of life. Fulfilling this commitment is central to the survival of this and future generations of Alaska Natives.

When Congress enacted Title VIII of ANILCA, it envisioned state implementation of a federal priority for subsistence uses on all lands and waters in Alaska through a state law implementing a “rural” priority. That cooperative federalism program operated for a mere seven years before the Alaska Supreme Court ruled in 1989 that the State Constitution precluded the State’s participation. Ironically, the State had insisted on a “rural” rather than “Native” subsistence preference in ANILCA. Since 1989, all efforts to amend the State Constitution to comply with ANILCA’s rural priority, and thus to have a unified subsistence management regime, have failed. Over the last decade, the State of Alaska, anti-subsistence groups and the previous Administration aggressively and successfully took actions to subvert federal law and polices. At the same time, state subsistence laws were virtually gutted, leaving those who once depended on Native-owned or state lands to fulfill their subsistence needs without meaningful protections. The erosion of federal protections led to the recently completed Secretarial Review of the federal subsistence management program.

Unfortunately, the results of the secretarial review are inadequate. The proposed changes to the federal management program do not address the fundamental problems with existing law. The checkerboard system of protection was not what Congress envisioned when it enacted Title VIII, and it is not working to protect the subsistence way of life of Alaska Natives. Congress recognized that “the continuation of the opportunity for subsistence uses...is essential to Native physical, economic, traditional and cultural existence.” Rather than defending and maintaining a system that no longer serves its intended purposes, AFN believes it is imperative that the federal government once again act to safeguard our villages’ essential food resources and traditional way of life. Without adequate subsistence resources, most villages will not be able to feed themselves and will slowly disappear through out-migration. The cost of the resulting economic collapse and social dislocation would fall on every Alaskan—Native and non-Native, urban and rural—and state and federal agencies. Government has a vested interest in ensuring that the villages remain able to sustain themselves, rather than becoming more dependent on welfare.

## FEDERAL MIGRATORY BIRD HUNTING AND CONSERVATION STAMPS

### Key Recommendation

Amend the Duck Stamp Act by adding an exemption for “eligible indigenous inhabitants of the State of Alaska engaged in the customary and traditional harvest of waterfowl and their eggs.” We urge the Department of the Interior to support this amendment.

### What are Duck Stamps and why are they problematic?

Requiring Alaska Natives to purchase federal licenses—known as Duck Stamps—in order to hunt migratory waterfowl is inconsistent with the 1996 protocol amending the migratory bird treaty between the United States and Canada, and the Migratory Bird Treaty Act, 16 USC 708, which implements the treaty. The protocol requires that any “regulations implementing the non-wasteful taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska shall be consistent with the customary and traditional uses of such indigenous inhabitants for their own nutritional and other essential needs.”

Alaska Native hunters have long viewed the subsistence harvest of migratory birds and their eggs as a community tradition, and not as an individual entitlement that can be reduced to a system of individual permits. Requiring the purchase of duck stamps is inconsistent with custom and tradition and therefore inconsistent with the Treaty protocol.

## MIGRATORY BIRD CO-MANAGEMENT

### Key Recommendation

The Secretaries of State and Interior should support the implementation of the Migratory Bird Treaty Act and its co-management councils by including a treaty-implementation line item in the appropriate agency budget. We also urge Congress to ensure adequate funding in the annual appropriations to the agencies to cover the costs of these co-management bodies.

### What is co-management in this context?

The protocol in the amended treaties between the United States, Canada and Mexico recognizes the traditional subsistence harvest of migratory birds by indigenous inhabitants of Alaska and provides that they “shall be afforded an effective and meaningful role” in “the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of eggs” through their participation in co-management bodies. In 2000, the Fish and Wildlife Service established the Alaska Migratory Bird Co-Management Council and 12 regional management bodies. But neither the Council nor the regional bodies have been adequately funded.

## REAUTHORIZATION OF THE MARINE MAMMAL PROTECTION ACT

### Key Recommendation

In the 110th Congress, Congressman Don Young introduced H.R. 5429, a stand-alone bill that incorporates a package of amendments to the MMPA that strengthen the co-management role of Alaska Native organizations engaged in co-management of marine mammals, and that enable the federal agencies and Alaska Native organizations to develop marine mammal conservation regimes collaboratively in order to avert management crises that can arise under the current system. AFN urges passage of similar legislation during the current Congress.

### How are the MMPA and co-management related?

The Indigenous Peoples' Council on Marine Mammals (IPCoMM), an AFN subcommittee, has negotiated amendments to section 119 of the MMPA with the federal agencies. Section 119 currently authorizes agreements between Alaska Native organizations and federal agencies in order to conserve marine mammals and to provide for co-management of their subsistence uses by Alaska Natives. It also authorizes funding for the Secretaries of Commerce and Interior each year to carry out these purposes.

### How will co-management work?

The proposed amendments would allow the agencies to develop harvest management plans within existing or newly developed cooperative agreements in coordination with Alaska Native organizations. These plans would implement measures taken by Alaska Native organizations and their member tribes to regulate the subsistence take of marine mammals prior to a finding of depletion. The proposed legislation also provides for an increase in the annual amount authorized for implementation of Section 119 to cover the funding needs of IPCoMM and Alaska Native organizations engaged in co-management of marine mammals.

## AMEND THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

### Key Recommendation

AFN recommends that the Magnuson-Stevens be amended to establish at least one voting seat for a tribal representative on NPFMC. Tribes are represented on another Magnuson Management Council. The Pacific Fisheries Management Council has jurisdiction over all marine waters along the U.S. Pacific Coast south of Alaska. It has 14 voting members from the states of Washington, Oregon, California and Idaho. One voting member is appointed from an Indian tribe with federally recognized fishing rights in one of the member states. Tribes submit nominations for the voting seat to the Secretary of Commerce. A similar process should be mandated and implemented for the NPFMC.

The North Pacific Fisheries Management Council (NPFMC) is one of the regional management bodies established under the Magnuson-Stevens Act. The Council has jurisdiction over federal fisheries, and many of its decisions directly impact the subsistence resources that Alaska Natives depend upon for their subsistence way of life. The Council is composed of 11 voting members, and many of these seats are occupied by the fishing industry. Alaska Tribes and subsistence users are not represented on the Council. This overwhelming imbalance of power has resulted in decisions that greatly favor industry and fail to protect subsistence resources and opportunity. For example, the Council recently voted to allow the Bering Sea pollock trawl fishery to waste as bycatch as many as 60,000 chinook salmon per year. Chinook salmon is the most essential subsistence resource for villages throughout Western Alaska. These villages are among the most remote and cash poor in Alaska. The trawl fishery is owned by 100 boats that split a harvest worth a billion dollars per year. The NPFMC decided that the extremely lucrative pollock fishery should be allowed to throw away 60,000 chinook salmon as waste while subsistence fishermen on the Yukon River are under harvest restrictions and cannot meet their basic nutritional, economic and cultural needs. The imbalance of power must be corrected.

# Economic Development



Photo taken by Misty Dawn Nelson in Chevak, Alaska.

## NATIVE 8(a) PROGRAM

### Key Recommendations

- AFN supports targeted reform in the 8(a) program to increase Alaska Native benefits from the program.
- AFN supports additional technical assistance resources necessary to those presently available to support new Alaska Native 8(a) start-up companies.
- AFN urges the U.S. Senate Committee on Indian Affairs to consider oversight hearings on 8(a).
- Congress should support the Small Business Administration's development and implementation of new 8(a) regulations rather than enacting hostile and punitive legislation to curb Alaska Native participation in the program.
- Congress should fully fund the Small Business Administration Office of Native American Affairs.
- Congress should move forward on legislation clarifying the equal status of all small business contracting programs following a recent decision by the U.S. Court of Federal Claims holding HUBZone businesses have priority over all other small businesses.

## **What are Alaska Native Corporations?**

Congress created the Alaska Native Corporations (ANCs) through the enactment of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), that settled the aboriginal land claims of Alaska Natives. The 13 regional ANCs and 230 village ANCs were organized as a vehicle to advance the social and economic welfare of Alaska Natives. Congress has consistently defined ANCs as federally-recognized tribes for special statutory purposes in over 100 federal legislative acts. Congress authorized ANCs to participate in Section 8(a) of SBA as a means to provide economic benefits that might not otherwise be available to Alaska Native communities, which are economically distressed and more often lack the infrastructure to support economic development.

## **What is the 8(a) Program?**

Under federal laws enacted by Congress in the 1980s as amendments to the Small Business Act of 1958, tribal corporations certified under Section 8(a) of the Act may contract with the federal government without a cap on the amount of a sole-source contract. Other individual small businesses certified by Section 8(a) of the Act may also be awarded a sole-source contract, but are limited by the dollar amount of the contract. Additionally, while tribal corporations can obtain 8(a) certification for affiliate enterprises, individual small businesses cannot own more than 20 percent of one additional Section 8(a)-certified affiliate in their lifetime. These provisions were created to acknowledge the benefit Native American 8(a) enterprises are able to provide to entire communities, not just to individual business owners.

The current 8(a) treatment of Alaska Natives derives from amendments to the Alaska Native Claims Settlement Act (ANCSA) and a second, separately-enacted set of amendments to the Small Business Act. The 1991 Amendments built upon the SBA's existing program designed to remedy extreme discrimination in business opportunities and sought to extend those remedies more fully to Alaska Natives. The amendments were fully considered by Congress in 1987, passed without opposition, and signed into law. Congress also considered amendments to 8(a) again in 1992, which provided contracting authority to apply equally to all Native American tribes as well as Alaska Native Corporations. The 8(a) amendments passed without opposition and were signed by the President.

## **How does the Native 8(a) Program Benefit Native Communities?**

ANCSA corporations, which have successfully performed contractual duties under the 8(a) program on time and within budget, continue to serve as stewards of the Native homeland as provided for under federal laws, including ANCSA, as well as serve as sponsors of education and training opportunities, and employers of “first resort” for our aboriginal people. ANCSA Corporations share revenues from certain resource production through a mechanism required by section 7(i) of ANCSA a requirement not found in regulation applicable to individual 8(a) businesses.

The Native 8(a) Program allows non-appropriated contracting profits to be allocated for the betterment of tribal, Alaska Native or Native Hawaiian communities. Collectively, Native enterprises receive less than 1.3 percent of the total U.S. procurement. Yet this small market share helps Native Corporations provide funds for employment and educational opportunities to shareholders and other members, housing for elders and other tribal members, the preservation of tribal culture and language. This program has had remarkable success, and in fact, supplements underfunded federal programs as tribes exercise self-sufficiency and self-determination. Other beneficial impacts of ANCs’ 8(a) participation include, but are not limited to:

- Continued capacity building in professional skills of the Alaska Natives, Native Hawaiians, and tribal businesses throughout the U.S. The building of capacity is the precise reason that the 8(a) program was created.
- Integration into the U.S. economy while allowing us to retain our culture, identity and level of involvement.
- Continued development and training of business and managerial expertise.
- Continued contribution to U.S. economic recovery and nation-building work, which benefits all Americans.
- Continued development and awarding of scholarship opportunities.
- Creation of critically needed economic stability in Native American, Alaska Native and Native Hawaiian communities.

## NATIVE AMERICAN CHALLENGE DEMONSTRATION ACT

### Key Recommendation

Congress should enact the proposed Native American Challenge Demonstration Project Act as part of its efforts to stimulate the economy and revitalize rural areas. This legislation was introduced as H.R. 2507 in the last Congress, and in an identical form as S. 980 in the United States Senate. S. 980 was reported out of the U.S. Senate Committee on Indian Affairs during the final days of 111th Congress.

### What would the Native American Challenge Demonstration Project Act do?

The Demonstration Project would re-invigorate Native economies by building on the concepts and principles of the Millennium Challenge Corporation, and using a compacting model to channel development funds to locally designed economic development strategies. The Project's objectives are to:

- Enhance long-term job creation and revenue generation potential of Native economies by creating investment-favorable climates.
- Increase Native productivity.
- Improve the effectiveness of existing federal economic development assistance by encouraging the integration and coordination of such assistance for the benefit of Native economies.

# Justice and Public Safety



Photo taken by Vernajean Kolyaha in Pedro Bay, Alaska.

## ALASKA SAFE FAMILIES AND VILLAGES ACT

### Key Recommendation

Congress should enact the Alaska Safe Families and Villages Act.

### What makes this legislation crucial to Alaska Native and rural safety?

Effective local control of alcohol and drugs and of domestic violence and related problems has long been a top priority of AFN. Some Alaska Native villages have the highest rates of alcohol abuse and family violence in the country. The missing link in efforts by local communities, and the state and federal governments, to address social problems in the villages has been the absence of clear authority, and resources, at the local level to address the problems. Indeed, the actual or perceived stripping of authority of traditional Native institutions – the tribal governments – that has occurred since statehood has left a gap that is unlikely ever to be filled by state law enforcement and courts operating out of regional centers.

For more than a decade AFN has sought legislation to confirm tribal authority to enact and enforce laws dealing with serious social problems at the village level, whether as a pilot project or on some other basis. Late in the last Congress, Senator Mark Begich introduced the Alaska Safe Families and Villages Act, S. 3740. This bill would create a demonstration project by which participating tribes would be able to enforce tribal laws regarding alcohol and substance abuse and domestic violence within their villages. It would also establish a grant program to support the demonstration project, and a separate grant program within the Department of the Interior to provide tribal police officers. Although this is just a demonstration project, it is a start which AFN strongly supports.

# Commerce and Transportation



Here children watch a barge carrying essential supplies dock in Igiugig, Alaska. Photo by Alex Anna Salmon.

## TRANSPORTATION ACT REAUTHORIZATION

### Key Recommendations

- AFN supports prompt reauthorization of SAFETEA-LU with no reduction in IRR funding.
- AFN supports the package of “Indian Country” amendments developed by the NCAI-ITA joint task force.
- AFN urges Congress to review the administrative outcomes on the IRR Q.10 and proposed road issues to ensure they treat Alaska fairly. An amendment may be necessary to the “grandfather-in” language in the IRR inventory section at 23 USC Section 202 (d)(2)G(ii)(I), to ensure that the BIA and FHWA have authority to correct mistakes in the inventory. The grandfather-in language was intended to protect historic IRR routes, but it has created uncertainty over whether the BIA can unilaterally correct factual mistakes in the data or to remove routes that were added since 2000 but which did not comply with applicable legal standards.

## **Tribal Transportation**

The current version of the federal transportation act, the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) was due to expire at the end of FY 2009, but has been extended piecemeal by Congress since then and is now due to expire in March 2011. SAFETEA-LU is the authorizing legislation for the Indian Reservation Roads (IRR) Program, which at \$450 million per year has become the single largest program within the Bureau of Indian Affairs (BIA). It is a key program for meeting ground transportation infrastructure needs in Alaska Native villages.

A Tribal Joint Task Force of the National Congress of American Indians (NCAI) and the Intertribal Transportation Association (ITA) has developments to the sections of SAFETEA-LU dealing with Native Americans. This task force operates by consensus and only proposes amendments with broad support in Indian Country. The tribal amendments would: Increase funding to the IRR program, the IRR Bridge program and the Tribal Transit program; establish a minimum \$50,000 IRR share per tribe; create a new Tribal Traffic Safety program; expand flexible financing opportunities for tribes; create tribal set-asides for some programs that now go only through the states, and make technical amendments to the language authorizing tribal contracts from the BIA and the Federal Highways Administration (FHWA).

### ADMINISTRATIVE PROBLEMS WITH IRR INVENTORY AND FUNDING ALLOCATION

#### Key Recommendations

- **Tribal Consultation.** AFN supports the BIA and FHWA holding a one-time, intensive national tribal leaders consultation meeting in the spring of 2011. This was recommended by the IRRPCC at its January 2011 meeting as a means of resolving disagreements about the IRR program and giving the BIA and FHWA the best policy direction on divisive inventory issues.
- **Clear and consistent inventory standards; quality control.** AFN urges that the IRR inventory be developed and maintained uniformly in all BIA regions, with consistent and clear standards, reasonable constraints, verifiable information, and with actual quality control by the BIA and, if necessary, the FHWA.
- **Policy and Management Oversight.** The management of the staff responsible for the inventory data at the BIA “Central Office West” in Albuquerque must be improved. For the last five years, in the absence of clear policy guidance the staff has had to make ad hoc decisions regarding inventory submittals, often with far-reaching policy implications. In some instances it appears that the software system drove policy decisions, even when the result conflicted with the IRR regulations. The BIA and if necessary FHWA must assert control on the inventory management system at Central Office West such that routine additions or changes to the inventory are quickly processed, but that submittals that raise policy questions are flagged and decided at the appropriate level of the BIA with the input of the FHWA and the advice of legal counsel to the agencies.

## Indian Reservation Roads

Despite significant funding increases to the IRR program during SAFETEA-LU, many tribes including some Alaska tribes have seen decreased funding in the last few years. There is widespread dissatisfaction with the funding allocation and with how the BIA has implemented changes that were mandated by new program regulations in 2004, and by SAFETEA-LU itself in 2005. In some instances SAFETEA-LU superseded parts of the 2004 regulations, but the BIA has not changed the regulations to conform to the law.

The most significant problems have to do with the expansion of the IRR inventory, which determines how most IRR funding is allocated among the tribes. The inventory is supposed to be a comprehensive database of eligible transportation facilities and “proposed” facilities which meet the applicable statutory definitions and regulatory standards. Nearly all of the facilities are roads or proposed roads, but some other facilities such as parking lots are road terminus docks are eligible. The IRR funding is distributed to tribes based 80 percent on the inventory, of which 50 percent is based on the costs of improving IRR facilities / roads to adequate standards. It is thus supposed to measure the actual need of tribes nationally for road construction funding.

The two principle areas of disagreement have to do with the expansion of the inventory that occurred after 2004. Although the 2004 regulations changed the prior system and allowed for county, state, municipal, and other non-BIA/tribal roads to be added for the first time, most of these were only to count for funding formula purposes at the applicable local match rate, between 9 percent and 20 percent depending on the state. Instead the BIA counted all of these routes except for some state roads at 100 percent. This resulted in a massive unintended reallocation of funds. In general this error benefited tribes in more populous, developed areas - giving them a windfall - while hurting remote rural reservation tribes and most rural Alaska tribes as well. This has become known as the “Question 10” issue, from the location where the issue is addressed in the IRR regulations.

Another significant “issue” is that some Alaska tribes and tribal organizations began adding hundreds and even thousands of miles of “proposed” roads to the inventory. The BIA had difficulty determining what standards to apply to these submittals, and the results have been erratic. While some proposed roads are clearly allowed, there is widespread disagreement nationally and within Alaska on what the applicable standards are, or should be, for including proposed roads.

Under the Obama administration the BIA and FHWA begun taking steps to address these inventory/formula problems. They issued a joint decisional document on the Q.10 issue after the IRR Program Coordinating Committee (IRRPCC) failed to reach consensus on it. Recently the agencies have charged the IRRPCC to make recommendations on proposed roads and the closely related issues of the appropriate boundaries of Alaska Native villages and the length of access roads. The IRRPCC has been working on these issues since October 2010, and if it cannot reach consensus the BIA and FHWA will promulgate their own definitions and standards sometime later in 2011.