



KAWERAK. INC.

REPRESENTING

Brevig Mission

Sitaisaq

Council

Diomede

Iᅇaliq

Elim

Niviarcaurluq

Gambell

Sivuqaq

Golovin

Chinik

King Island

Ugiuvak

Koyuk

Kuuyuk

Mary's Igloo

Qawiaraq

Nome Eskimo

Sitnasuak Inuit

Savoonga

Sivungaq

Shaktoolik

Saktuliq

Shishmaref

Qikiqtaq

Solomon

Anuutaq

St. Michael

Taciq

Stebbins

Tapraq

Teller

Tala

Unalakleet

Uᅇalaqᅇiq

Wales

Kinigin

White Mountain

Iᅇaᅇuik /

Nutchirviq

Submitted Electronically

February 13, 2024

Deb Haaland
Secretary of Interior
U.S. Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Steven Cohn, State Director
Alaska Office, Bureau of Land Management
222 West Seventh Avenue
Anchorage, AK 99513

Re: Kawerak, Incorporated's, Comments on the Bureau of Land Management's Draft ANCSA 17(d)(1) Withdrawals Environmental Impact Statement

Dear Secretary Haaland and State Director Cohn,

As a Tribal consortium representing 20 Federally Recognized Tribes in the Kawerak and Bering Strait region of Alaska¹, Kawerak, Inc. (Kawerak) submits this letter of comment in response to the Bureau of Land Management's (Bureau) Notice of Availability of the Draft ANCSA 17(d)(1) Withdrawals Environmental Impact Statement (DEIS).² Kawerak strongly urges the Secretary to retain all ANCSA 17(d)(1) withdrawals under Alternative A, to ensure that the lands, our ways of life, our cultures, and access to subsistence foods are protected for current and future generations.

¹ *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 86 Fed. Reg. 7554, 7557-58 (Jan. 29, 2021). A Tribal Consortium is an organization formally designated by two or more Tribes that have chosen to join together to address specific priorities across communities. Tribal consortia often serve as a unified voice for their member Tribes and a mechanism through which Tribes effectuate self-governance without incurring the heavy financial and administrative burden of each doing it by themselves. These consortia are generally formed along cultural, historical, regional, and ecological bonds, and allow Tribes to pool their resources and take advantage of efficiencies of scale when providing social services, healthcare services, and advocacy services for their members. Federal self-determination policy is flexible and allows Tribes to design and deliver services "appropriate to their diverse demographic, geographic, economic[,] and institutional needs." S. Rep. No. 100-274 (Dec. 21, 1987) *as reprinted in* 1988 U.S.C.C.A.N. 2620, **2625 (Select Committee on Indian Affairs Report).

² 88 Fed. Reg. 86,925 (Dec. 15, 2023).

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Kawerak Inc. is a nonprofit consortium of 20 Tribes that provides services to the Inupiaq, St. Lawrence Island Yupik and Yup'ik people who reside the Bering Strait region of Alaska. Since 1973, Kawerak has provided social services to the Tribes of the region, such as educational, social, infrastructure development, natural and cultural resource preservation, and employment services. The Kawerak Board of Directors consists of the Presidents or Chiefs of each of the 20 Kawerak area Tribes and includes two Elder seats, and one seat for a representative of the regional Tribal health corporation. Kawerak's vision statement is: "Our people and Tribes are Thriving." The Kawerak service area includes communities that are located in both the Bering Sea-Western Interior Planning Area, and the Kobuk-Seward Peninsula Planning Area. The ANCSA 17 (d)(1) lands being considered make up a very large portion of lands in the Kawerak service area, with (d)(1) lands substantially surrounding the majority of communities in the region.

I. Subsistence

For thousands of years, Kawerak region Tribes have maintained stewardship over, and a reciprocal relationship with, the lands and waters that they are a part of. There are approximately 10,000 people in the Kawerak region that depend on foods which come from surrounding lands and waters. For most communities in the region, 80% or more of the local diet is subsistence foods.³ Protecting the ability to harvest food from the lands and waters is critical to our very existence.

The Bureau's DEIS indicates that lands subject to (d)(1) withdrawals in the Bering Sea-Western Interior planning area and the Kobuk-Seward Peninsula planning area contain important subsistence resources and use areas. Both areas together, contain over 9 million acres of high-value bird habitat,⁴ countless rivers, streams, lakes, and ponds, which are Essential Fish Habitat⁵⁶ and caribou range for the Western Arctic Caribou Herd and moose populations.⁷ Kawerak agrees with the Bureau's DEIS that lifting (d)(1) withdrawals could fragment habitat and decrease access to subsistence resources. There is currently multi-decadal, multi-species ongoing salmon collapse in the Norton Sound/Seward Peninsula region, and an

³ Building Food Security in Alaska, State Commissioned Report. Ken Meter and Megan Phillips Goldenberg, 2014.

https://static1.squarespace.com/static/584221c6725e25d0d2a19363/t/58b0e030ebbd1abb37f85817/1487986738928/14-09-17_building-food-security-in-ak_exec-summary-recommendations.pdf

Ahmasuk, et al., Bering Strait Region Local and Traditional Knowledge Pilot Project – A Comprehensive Subsistence Use Study of the Bering Strait Region, North Pacific Research Board (January 2008).

⁴ Draft EIS at 3-20, Table 3.2-1 Acres of High-Value Bird Habitat by Planning Area

⁵ Draft EIS at 3-85, Table 3.7-2. Summary of Lakes, Ponds, and Riparian Wetlands on 17(d)(1) Withdrawals in the Analysis Area”

⁶ Draft EIS at 3-86, “EFH, as designated by the Magnuson-Stevens Fishery Conservation and Management Act, is ‘waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.’”

⁷ Draft EIS at 3-193, Terrestrial Mammals

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unprecedented salmon collapse on the Yukon and Kuskokwim Rivers. Both salmon collapses make clear how critically important it is to maintain an intact ecosystem and the need for protective measures to provide subsistence opportunities.⁸ Under Alternatives B, C, and D, revocation of ANCSA 17(d)(1) withdrawals will result in the loss of Federal subsistence priority on some or all (d)(1) lands. The DEIS further states that:

If these lands changed from Federal to State management, priorities [subsistence] such as the one mentioned above would no longer be available for rural residents, and local residents would likely see an increase in outside subsistence users in these areas, thus increasing pressure on caribou, moose, and salmon populations and decreasing the portion of takes that would provide food for the local community. Increased competition and decreased resource abundance could also result in reduced bag limits, limited seasons, permitted hunts, or hunting closures.⁹

Through the EIS process, the Bureau has concluded that all three action alternatives and the cumulative case may result in a significant restriction to subsistence uses.¹⁰ The Bureau's significant restriction findings require that the Bureau must determine whether "the proposed restriction of subsistence uses is necessary, that the minimal amount of 'public lands' are involved, and that reasonable steps have been taken to minimize the adverse impact on subsistence uses."¹¹ These findings limit the Bureau's decision-making and create an affirmative duty for the Bureau to minimize impacts to subsistence uses. Maintaining all d-1 withdrawals under Alternative A, fulfills the Bureau's ANILCA Section 810 obligations, and is most consistent with ANILCA Title VIII's underlying

⁸ See e.g., Yereth Rosen, Western Alaska salmon crisis affects physical and mental health, residents say, ALASKA PUBLIC MEDIA (Nov. 14, 2023), <https://alaskapublic.org/2023/11/14/western-alaska-salmon-crisis-affects-physical-and-mentalhealth-residents-say/>; Liz Ruskin, Salmon are disappearing on the Yukon and Kuskokwim. Here's what to know about the crisis this summer, ALASKA PUBLIC MEDIA (June 8, 2023), <https://alaskapublic.org/2023/06/08/salmon-are-disappearing-on-the-yukon-and-kuskokwimheres-what-to-know-about-the-crisis-this-summer/>; Anna Rose MacArthur, Fishery disasters declared for Kuskokwim and Yukon salmon fisheries, KYUK (Jan. 21, 2022), <https://www.kyuk.org/hunting-fishing/2022-01-21/fishery-disaster-declarations-for-kuskokwimand-yukon-salmon-fisheries>; Raymond-Yakoubian, B. and J. Raymond-Yakoubian, "Always taught not to waste": Traditional Knowledge and Norton Sound/Bering Strait Salmon Populations, 2015 Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative Project 1333 Final Product. Prepared by Kawerak, Incorporated. Nome, Alaska (2015), <https://kawerak.org/wpcontent/uploads/2018/04/TK-of-Salmon-Final-Report.pdf>

⁹ Draft EIS at 3-186.

¹⁰ Draft EIS, App. C at 28 (Alternative B); *id.* at 43 (Alternative C); *id.* at 58 (Alternative D); *id.* at 66 (cumulative case).

¹¹ *People of Vill. of Gambell v. Clark*, 746 F.2d 572, 579 (9th Cir. 1984).

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purpose to “provide the opportunity for rural residents engaged in a subsistence way of life to do so.”¹²

If the Secretary chooses an action alternative, revocation of withdrawals will likely result in increased development in revoked areas where residents of those areas rely heavily on largely undeveloped lands to maintain healthy ecosystems that support their harvest of terrestrial mammals, birds, fish, and plants as food. The Bureau’s DEIS is consistent with Kawerak’s position on the fundamental importance of subsistence for both food security and the “cultural, economic, and social wellbeing” of communities.¹³ As Alaska Native people, the practice of harvesting foods from our homelands sustains us and makes it possible for us to practice our cultures, maintain our languages, customs, traditions, and relationships to our lands and waters. For these reasons, Kawerak strongly urges the Secretary of Interior to retain ANCSA 17(d)(1) withdrawals, and select Alternative A, the ‘No Action’ Alternative.

II. Cultural Resources

Indigenous Peoples of Alaska have been a part of their lands for millennia, and the lands contain countless sacred sites, burial grounds, ancient communities, camps, Traditional Cultural Places, and Cultural Landscapes. In development of the DEIS, the Bureau relied on the Alaska Heritage Resources Survey (AHRs) while considering Cultural Resources, however it must be noted that the AHRs does not take intangible and landscape cultural resources into account and does not adequately consider the multitude of cultural resources known to Alaska Native communities.¹⁴ Kawerak strongly urges the Bureau to expand on AHRs data through entering into meaningful consultation with Tribes which would allow those Traditional Knowledges and expertise to become incorporated into the final EIS.¹⁵

Kawerak is very concerned that all action alternatives presented in the DEIS could have devastating impacts on cultural resources. If withdrawals are lifted, so too

¹² 16 U.S.C. § 3112(1); see also *Alaska Wilderness Recreation & Tourism Ass’n v. Morrison*, 67 F.3d 723, 725 (9th Cir. 1995) (“According to ANILCA’s policy statement, public lands in Alaska are to be used so as to ‘cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.’” (quoting 16 U.S.C. § 3112(1))).

¹³ Draft EIS at 3-165.

¹⁴ Draft EIS at 3-43.

¹⁵ OSTP and CEQ Guidance on Indigenous Knowledge at 2 (directing that “consultation and collaboration with Tribal Nations and Indigenous Peoples is critical to ensuring that Indigenous Knowledge is considered and applied in a manner that respects Tribal sovereignty and achieves mutually beneficial outcomes for Tribal and Indigenous communities”); *id.* at 16 (stating that “documents should describe how Indigenous Knowledge was applied to reach the final product or decision”).

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are the federal regulatory protections.¹⁶ The State of Alaska’s Historic Preservation Act does not provide formal means for Tribes to enter into consultation regarding protection of cultural resources. When considering the potential impacts of lifting ANCSA 17(d)(1) withdrawals, the Bureau must take a “hard look” regarding whether lifting withdrawals will place cultural resources at risk.¹⁷ A thorough analysis of cultural resources located within 17(d)(1) withdrawal lands and any potential impacts to those cultural resources are qualifying factors that necessitate federal withdrawals be retained. We expect the Bureau to take the strongest action possible to protect our irreplaceable cultural resources and cultural heritage, and that is adopting the ‘No Action’ alternative.

III. Conclusion

Kawerak urges the Secretary to retain all withdrawals. Retaining all withdrawals under Alternative A, would ensure that Alaska Native people do not experience the devastation of losing Federal subsistence priority or losing Federal protections in the stewardship of cultural resources. The Bureau’s own DEIS document indicates that each Alternative, except Alternative A, is likely to have significant restriction on access to food and threaten cultural resources for thousands of residents that live in the planning areas under consideration.¹⁸ In light of the significant negative impacts of all action alternatives within the Bureau’s DEIS, the interests of federally recognized Tribes, and the public interest, is best served through adoption of Alternative A, the ‘No Action’ Alternative, and Kawerak urges the Secretary to retain all withdrawals.

Kawerak, does not stand alone in urging the Secretary to retain withdrawals. In a joint letter, to Secretary Haaland, 118 federally recognized Tribes of the Kawerak region, Association of Village Council Presidents region, and the Tanana Chiefs Conference region, joined together urging the Secretary to retain all withdrawals. Kawerak is also a member of the Bering Sea-Interior Tribal Commission (BSITC), a consortium of thirty-eight Alaskan federally recognized Tribes formed in a joint effort to ensure Tribal voices and values are considered in land and natural resource management decisions. BSITC recently submitted a comment letter to the Secretary of Interior urging the Secretary to retain all withdrawals, and Kawerak unequivocally supports BSITC’s letter.

There has been overwhelming support from nearly 100% of testifiers at each public hearing thus far in favor of the Bureau retaining all withdrawals via Alternative A, the ‘No-Action Alternative.’ Citizens, business owners,

¹⁶ Draft EIS at 3-51 to 3-53.

¹⁷ *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 486 (9th Cir. 2011).

¹⁸ Draft EIS, App. C at 28 (Alternative B); *id.* at 43 (Alternative C); *id.* at 58 (Alternative D); *id.* at 66 (cumulative case).

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conservation groups, and Tribes have all testified regarding the importance of subsistence priority, and cultural resource protections, and have urged the Bureau to retain ANCSA 17(d)(1) withdrawals under Alternative A. Kawerak urges the Secretary of Interior to retain all withdrawals.

Sincerely,
KAWERAK, INC.

Melanie Bahnke

Melanie Bahnke, President

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