



A Few Differences between Alaska and Lower 48 Tribes

Lisa Jaeger

Tribal Government Specialist

Tanana Chiefs Conference, Fairbanks

lisa.jaeger@tananachiefs.org

March 25, 2004

Each tribe throughout the country is unique. However, there are collective differences between Alaska tribes and those in the Lower 48. The differences highlighted in this list are mainly due to Alaska's physical distance from the Lower 48, settlement by foreigners at a much later time, and the settlement of aboriginal land claims in a distinctive way. This list is a general overview of some of the differences between tribes in Alaska and the Lower 48:

- **Terminology:** There is a great deal of terminology unique to Alaska. Alaska is home to several distinct cultures of indigenous peoples including Indians, coastal Inuit, and Aleut people. The term 'Alaska Native' or 'Native' are used in place of the word 'Indian' to include all indigenous people in Alaska. However, legal terms such as 'Indian country' and 'Indian tribes' are commonly used in Alaska as applying to all Alaska tribes. Sometimes the term 'village' is exchanged for the word 'tribe' because tribes in Alaska were generally recognized by village under the Alaska Native Claims Settlement Act of 1971 (ANCSA). The governing bodies of the Alaska tribes may be called 'traditional councils,' 'Native councils,' 'village councils,' 'tribal councils,' or 'IRA councils.'
- **Tribal Constitutions:** Alaska has 229 federally recognized tribes, or 231 depending on how they are counted due to a couple of anomalies. About one fourth of the tribes in Alaska have constitutions under the Indian

Reorganization Act (IRA). Most of the rest have what are commonly referred to in Alaska as 'traditional' constitutions. The 'traditional' constitutions are written, and the word 'traditional' when used in this context simply refers to the fact that they do not have IRA constitutions. In the villages, both IRA and traditional tribal governments appear and operate the same. The use of the word 'traditional' simply refers to fact that the tribe is not an IRA tribe, and has no relation to the traditional culture of the tribe. It would be clearer to call the tribes IRA or non-IRA tribes, but the terms IRA and traditional tribes became common vernacular.

Most of the IRA tribes operate under their original IRA constitutions adopted in the late 1930s and early 1940s. Only a few have been amended. Most all of the original constitutions are identical with only the name of the village varying, however there are a small number of them with significant differences. The 'boiler plate' IRA constitution in Alaska is not the same one used by the Bureau of Indian Affairs in the Lower 48. Alaska's IRA boiler plate is very short. Rather than describing the tribal government, the constitution simply states that the tribe will be forming a government after the adoption of the constitution. This simplicity allows the tribes to describe their governments by tribal ordinance or constitutional acts, giving the tribes more local control over the design of their governments. The Alaska IRA boiler plate does not require tribes to go through the Secretary of Interior for ordinance approval.

- **Treaties:** There are no treaties with tribes in Alaska. Treaty making ended in 1871, long before many non-Natives from the Lower 48 (or however many states there were at the time) arrived in Alaska.
- **Aboriginal Land Claims:** In 1971, one hundred years after treaty making ended, aboriginal land, fishing and hunting rights in Alaska were 'settled.'

Land claims in Alaska were forced by the discovery of oil in the north, and the subsequent desire to build an oil pipeline across the state. The settlement of aboriginal land claims was done very differently than in the Lower 48. Rather than land going into trust for tribes themselves, the land went to specially constructed Alaska Native corporations. The corporations are guided by both the Alaska Native Claims Settlement Act and by Alaska state corporate law.

There are two main types of Alaska Native corporations, village corporations which own and manage lands surrounding the villages, and regional corporations which own and manage lands outside and surrounding village corporation lands, as well as other large tracts of land throughout the state. The regional corporations own the subsurface estate, such as mineral rights, of the village corporation lands. Aboriginal hunting and fishing rights were not adequately settled by ANCSA, and an attempt to rectify the situation occurred 9 years later through the Alaska National Interest Land Conservation Act (ANILCA). This part of the aboriginal claims settlement is still in great dispute. ANILCA basically gives rural residents of Alaska preference for subsistence hunting and fishing when resources are low. Subsistence hunting and fishing is integral to the cultural well-being of the Alaska tribes and a significant part of village economies.

- **Alaska Native Townsites:** About a third of the tribes in Alaska are located on special townsite lands, authorized by an act of Congress in 1926 (Alaska Native Townsite Act). There are 106 Alaska Native townsites, but some tribes have moved to new locations outside of the original townsites due to flooding and other circumstances. These special townsites permit Alaska Natives to own their lots in a restricted status which carries protection for the land along with much federal oversight.

These restricted townsite lots are likely Indian country, but the matter has yet to be litigated for clarification.

- **Alaska Native Allotments:** A system to get land from federal ownership to individual Alaska Native owners was established in 1906 by the Alaska Native Allotment Act. This allotment act did not subdivide Native owned land (land claims had not been settled yet so no land was in tribal 'ownership' at that time). Native allotments are generally located in hunting and fishing areas rather than in residential areas. Like restricted townsite lots, Native allotments are also likely Indian country but there is no case law yet confirming it.
- **Formal Recognition of Tribes:** Although a special relationship began between the federal government and Alaska tribes as early as the 1867 Treaty of Purchase from Russia, formal recognition of tribes in Alaska did not occur until 1993 with their inclusion on the Department of Interior's List of Federally Recognized Tribes. The list was confirmed by Congress in 1994 by the Tribe List Act.
- **Tribal Jurisdiction:** The Alaska Native Claims Settlement Act 'settled' aboriginal land, hunting, and fishing rights but was silent on self-government. This left the jurisdiction for Alaska tribes less clear than it is for reservation tribes in the Lower 48. Over time, state and federal court decisions have begun to paint a picture of tribal jurisdiction in Alaska. Most simply put, the outcome of cases to date makes jurisdiction for Alaska tribes primarily based on tribal membership and largely concurrent with state jurisdiction. In 1989, the Alaska Supreme Court essentially decided that there were no tribes in Alaska outside of Metlakatla and possibly a couple of others.

The Alaska Supreme Court reversed that decision and recognized tribes in Alaska beginning with the *John v Baker* case in 1999. That decision basically recognizes tribal jurisdiction in the area of domestic relations over tribal members even in the absence of Indian country. This case also refers to the *Montana* case (U.S. Supreme Court 1981), implying that tribal jurisdiction may be broader than domestic relations subjects. Rather than negatively affecting Alaska tribes, the *Montana* case may actually be beneficial.

- **Indian Country:** Although there were once over 150 reservations in Alaska, the Alaska Native Claims Settlement Act extinguished all but the Metlakatla reservation in southeast Alaska. Through the *Venetie* decision in 1998, the U.S. Supreme Court decided that village and regional corporation land is not Indian country, even if it is transferred from a Native corporation to a tribe. However, the Court mentioned that Alaska Native townsite lands and allotments may be Indian country. If so, this pattern of Indian country in Alaska is potentially significant, although very sporadic. It is hard to say how a confirmation of restricted townsite lots and Native allotments as Indian country will play out in terms of the practicality of exercising tribal jurisdiction over it.
- **Public Law 280 (P.L. 280):** Because of the scarcity of Indian country, Public Law 280 is not as significant for Alaska tribes as it is for P.L. 280 states in the Lower 48. However, for many years the State of Alaska incorrectly held that there were no tribes in Alaska outside of Metlakatla, and even if there were, P.L. 280 terminated any jurisdiction they had. The tribes insisted that Public Law 280 did not terminate tribal jurisdiction, but only created some shared jurisdiction with the State. However, tribal confidence suffered in the wake of the State's long-standing rhetoric concerning jurisdiction under Public Law 280. Metlakatla, the only

remaining reservation in Alaska, is specifically excluded from the application of Public Law 280.

- **Tribal Law:** Tribes in Alaska have well developed unwritten traditional values and practices. However, the vast majority of tribes in Alaska are just beginning the development of written tribal law in terms of tribal codes/ordinances. Most tribes have written constitutions, but few ordinances.
- **Demographics and Geography:** Most of the tribes in Alaska are relatively small compared to Lower 48 tribes. The majority of tribes in Alaska are located away from the road system and are only accessible by plane or boat. Access is generally expensive and dependant on weather conditions.
- **Language and Culture:** In some areas, the Native language is the primary language used, and interpreters are necessary for extensive communication. The speech pattern among many Alaska Natives incorporates long pauses which are used for gathering thoughts, much longer than is generally comfortable in the non-Native way of speaking. People unaccustomed to this speech pattern often 'break in' to the conversation before the speaker is actually finished. Just as in the Lower 48, there is a wide diversity of cultural practices between tribes. And just as in the Lower 48, tribal Elders are concerned about protecting cultural integrity in terms of the introduction of foreign practices. For example, most Alaska tribes are concerned about the introduction of smudging which is widespread among Lower 48 tribes but foreign to Alaska Native culture.