

ALASKA TRIBAL STATUS AND FUNDING: A TIMELINE OF RECENT YEARS

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What follows is a timeline of some of the key events of recent years, as they have related to tribal status and funding concerns here in Alaska. Any errors, omissions, or excesses in this timeline are strictly my own, and should not be taken as a reflection of AVCP position or policy on these issues, or as a reflection of AVCP's views on any positions taken by any public officials during these past few years.

- Time immemorial: Tribal societies in Alaska govern themselves since time immemorial. The Russians show up in Alaska during the 1700s, and then the United States raises its flag during the 1860s, but Alaska Tribes continue to exercise a wide-range of self-governance functions – including the administration of various federal programs that benefit their members – right up to the present day.
- 1993: The Department of the Interior lists 200-plus Alaska Native villages as federally-recognized tribal governments, formally recognizing the government-to-government relationship that exists between the United States and these Alaska Tribes.
- 1994: Congress confirms that the Alaska Native villages that appear on Interior's list are indeed federally-recognized Tribes, in the Federally Recognized Indian Tribe List Act of 1994.
- 1996: Congress passes comprehensive welfare reform legislation, which establishes today's Temporary Assistance to Needy Families (TANF) program. This TANF legislation, however, creates a "special rule" – now codified at 42 U.S.C. § 619(4)(B) – that defines "Indian tribe" differently in Alaska than elsewhere for the limited purposes of this TANF program. While this legislation defines "Indian tribe" to mean federally recognized Indian tribes elsewhere in the United States, in Alaska the term "Indian tribe" is defined to mean only the Metlakatla Indian Community and the twelve regional Native nonprofits. Alaska Tribes are thereby cut off from eligibility to administer the TANF program on the same terms that Tribes elsewhere in the United States are able to do so.

- 1997: Congress passes section 326 of P.L. 105-83, which prohibits the disbursement of Indian Health Services (IHS) funding to individual villages that are located within the service areas of Native regional health care providers. A savings clause allows those Tribes that had entered into health compacts or contracts prior to August of 1997 to continue receiving their funding, and to have the option of renewing these prior agreements. Section 326 also requires that the federal General Accounting Office (GAO) study the impact of IHS compacting and contracting with Native villages.
- 1998: Congress passes section 351 of P.L. 105-277, which extends the ban on IHS funding to villages (as well as the exception to the ban for villages that had their own IHS contracts or compacts prior to August of 1997) through September of 2001. The GAO completes the study of IHS contracting and compacting that Congress had directed it do in 1997. This study demonstrates that while costs may be somewhat higher when Tribes directly contract or compact with IHS, these increased costs are not substantial or outlandish.
- 1998: Congress passes the Denali Commission Act, P.L. 105-277, Div. C, Title III, §§ 301-310. Over the years that follow, the Denali Commission will become an increasingly important vehicle for funding projects in rural Alaska, even though it is not subject to tribal control and direction in the way tribal organizations are.
- 2000: Senator Ted Stevens succeeds in passing a legislative rider ("Section 122") that strips Alaska Tribes with fewer than 25 members residing in their village sites of Tribal Priority Allocation funding, sending this funding to regional nonprofits instead.
- 2001: Congress again extends its 1997 and 1998 prohibitions on new IHS contracts and compacts with Native villages, as well as the savings clause for preexisting contracts and compacts, in P.L. 107-63.
- December 2001: On the floor of the House of Representatives, Congressman Don Young states that "*Congress has not recognized any group of Alaska Natives as a 'federally recognized tribe' that is a distinct political entity*" and suggests that Congress' Alaska Native policy is different from the tribally-focused Lower 48 policy. (In 1994, however, Congressman Young had worked hard to ensure that the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA) would be added to the Secretary's list of Tribes, alongside the village Tribes in Southeast Alaska, the names of which were already on the list. Congressional legislation was passed that year that added CCTHITA to the Secretary's list.)

- December 2001: Alaska Senate President Rick Halford and House Speaker Brian Porter write Secretary of the Interior Gale Norton, requesting that she review the 1993 listing decision. They write that Congress never meant “*to designate Alaska Native residents of Native villages as ‘tribes’ for the purpose of recognizing such residents as distinct political entities,*” and that the 1993 Interior decision was a wrongful “*attempt to ‘tribalize’ federal Alaska Native policy.*”
- January 2002: Senator Ted Stevens tells the *Anchorage Daily News* there was no “*historical basis*” for the 1993 recognition of village tribal status.
- March 2002: Senator Stevens writes AVCP regarding the 1993 listing decision, telling AVCP “*this decision must be reviewed.*”
- October 2002: Senator Stevens suggests that Alaska Tribes may have no choice but to consolidate if they want to continue receiving federal funding. This raises concerns that Stevens might try to pass legislation recognizing 12 regional tribal governments, and terminating the tribal governmental status of the villages.
- October 2002: In the face of unified resistance from AFN, regional nonprofits and other Native organizations, Stevens disclaims any desire to revisit the tribal recognition issue. He tells AFN he is “*not suggesting a consolidation of tribes,*” but merely has funding concerns instead.
- December 2002: Senator Stevens’ Chief of Staff, Lisa Sutherland, tells Native organizations they have six months to suggest solutions to various funding concerns identified by the Senator (on indirect costs, contract and grant eligibility, accountability, and so-called “phantom villages”), at which point Stevens will be introducing legislation. She suggests that “*a more regionally focused effort*” might be one model, but that there may be other models as well.
- January – May 2003: Several working groups, made up of representatives of various Native organizations from across the State, spend five months gathering information in response to Stevens’ stated concerns about indirect costs, contract and grant eligibility, accountability, and the status of “phantom villages.” The information that is gathered is then presented as issue papers, at the Conference on Improving Delivery of Federal Funding for Alaska Tribal Programs, which is held in May.
- March 2003: The war in Iraq begins. Over the months that lie ahead, the costs of the occupation will far outstrip initial projections, putting the

continuation of current levels of funding for all sorts of domestic programs (including Indian programs) increasingly at risk.

- May 2003: A statewide Conference on Improving Delivery of Federal Funding for Alaska Tribal Programs is held in Anchorage. 300 delegates attend, representing a wide range of Alaska Tribes, Native non-profits, consortia, and other Native entities. What emerges from this conference is a "Working Draft Statement of the Conference of the Sovereign Tribes of Alaska, AI-TC, AFN, Rural CAP, ANTHC on Improving Delivery of Federal Funding for Alaska Tribal Programs," which takes a strong position in favor of continued tribal control over where funding for tribal programs should go: "*Proposals to mandate the consolidation of all federal funding for Alaska Native tribal governments and their tribal members through regional tribal organizations are inconsistent with the fundamental tenets of federal self-determination legislation, which provide that tribes choose for themselves the preferred means for delivering services.*"
- July 2003: In a hearing before the Senate Oceans and Fisheries Subcommittee, concerning possible reauthorization and amendments to the Marine Mammal Protection Act, Senator Stevens says that "*the Alaska marine mammal commissions currently authorized in the Act are the best organizations*" to enter into harvest management agreements, and "*not the 227 tribes now recognized in Alaska.*"
- August 2003: At the May Conference on Improving Delivery of Federal Funding, it had been understood that "*tribes and tribal organizations [would] consider this Statement and the information shared at this historic meeting at the local level and reconvene in August 2003 to prepare final recommendations.*" This August meeting referred to in the Working Draft Statement that emerged from that Conference apparently never takes place, however.
- Sometime in 2003: According to sources within the Department of the Interior, Senator Stevens asks Interior Secretary Gale Norton to take a close look at the 1993 listing of Alaska Tribes, and to de-list Alaska Tribes if possible. Interior is given an October deadline, but does not attempt to de-list any Tribes – perhaps recognizing that it lacks the legal authority to de-list Tribes on its own, without actual termination legislation by Congress.
- September 2003: Senator Stevens introduces budget "riders" that would: (1) deny Alaska Tribes access to Department of Justice COPS grants, and give this money to the State of Alaska for its VPSO program instead; (2) deny Alaska Tribes access to DOJ tribal courts grants,

and give this funding to the state court system for the magistrate program instead; and (3) deny Alaska Tribes the ability to directly administer their own housing programs, requiring that NAHASDA funds go to statewide or regional housing authorities and entities.

- October 2003: In an October 2nd interview with the press, Senator Stevens says, of tribal sovereignty: *"It's a very difficult thing. The road they are on now is the road of destruction of statehood because the Native population is increasing at a much greater rate than the non-Native population. I don't know if you realize that. And, they want to have total jurisdiction over anything that happens in a village without regard to state law and without regard to federal law."*
- October 2003: The nation's leading Indian law professors write a letter to Secretary Norton, expressing their concerns about Senator Stevens' September riders: *"These proposals appear to be part of an effort to denigrate (and perhaps to eliminate) the status of Indian tribes in Alaska. We believe the proposed riders could have grave consequences for the tribal governments in rural Alaska and also for the continued treatment of all Alaska natives and Native corporations[.]"*
- October 2003: At the AFN Convention, Senator Stevens addresses the Convention by video, telling the Convention that: *"Only last week, Julie Kitka, Chris McNeil, Representative Al Kookesh, and I discussed many options: such as the establishment of different levels of Alaska Native villages with different levels of governing powers derived from the state and recognized by the federal government. This new form of government would be eligible for services and funding as a political subdivision of Alaska."* At the same Convention, AFN leadership tells the delegates that 90% of Stevens' concerns appear to be merely fiscal in nature, while only 10% of his concerns would appear to relate to ideological conflicts such as tribal sovereignty and state powers. The Convention responds to Stevens' concerns by endorsing the creation of a congressional "Commission on Fiscal and Governmental Relations" to consider various governance issues and options in rural Alaska. The state and federal governments are invited to participate on this commission, alongside the Native participants.
- November 2003: The National Congress of American Indians issues a resolution in support of Alaska tribal sovereignty, condemning Senator Stevens' October statements on tribal sovereignty. The NCAI resolution says that Stevens' statements make it *"clear that his opposition to Alaskan tribes is not about funding or efficiency concerns, but about terminating altogether the sovereignty of Alaska tribes[.]"*

- December 2003: Senator Stevens withdraws his riders that would have denied Alaska Tribes eligibility for COPS grants, tribal court grants, and NAHASDA funding. However, he substitutes in its place a new "section 112" as a rider to a consolidated spending bill. This rider eliminates this funding for smaller Tribes and Tribes located in certain organized boroughs. It also calls for the creation of an "Alaska Rural Justice and Law Enforcement Commission" (with its members to be appointed by the Attorney General of the United States) which will, among other things, consider options including the creation of "*a unified law enforcement system, court system, and system of local laws or ordinances for Alaska Native villages and communities of varying sizes including the possibility of first, second, and third class villages with differing powers.*" Alaska Tribes write letters to various Senators, expressing their concerns that that this task is essentially one of researching how tribal sovereignty should be brought under state control in a "unified" system of this sort. However, political pressure to pass this extremely important consolidated budget bill is considerable, and the bill passes with this revised language of section 112 intact.
- January 2004: Alaska Governor Frank Murkowski writes EPA Administrator Michael Leavitt, to tell him that Alaska Tribes should not be eligible to receive tribal (IEGAP) environmental funding, as Lower 48 Tribes do. Administrator Leavitt receives numerous responses from Alaska Tribes and Native organizations, and apparently takes no action in furtherance of Governor Murkowski's request.
- April 2004: President Bush issues Executive Order 13336, on "American Indian and Alaska Native Education." Section 1 of this EO states that the "*United States has a unique legal relationship with Indian tribes and a special relationship with Alaska Native entities,*" essentially implying that the "legal relationship" the United States has with Lower 48 "tribes" is separate and distinct from the merely "special relationship" the United States has with Native "entities" here in Alaska.
- Spring 2004: S.J. Res. 37, a bill to apologize to America's Native peoples for the history of "official depredations and ill-conceived policies" by the United States government, is slowed down after Senator Lisa Murkowski expresses concerns about whether the resolution's description of what Native Americans have gone through accurately reflects what Alaska Natives have gone through as well. She suggests that it might be more appropriate to issue a separate bill relating to Alaska Natives, or modify the existing bill so as to discuss Alaska Natives separately.

- July 2004: Senator Stevens' Chief of Staff, Lisa Sutherland, tells AVCP President Myron P. Naneng, Sr., that the solutions to the various problems the Senator has identified are ultimately something that the Native community itself will need to decide.
- Summer 2004: Despite the language of section 112 of the consolidated appropriations bill, the Alaska Rural Justice and Law Enforcement Commission has still not been established. Senator Stevens apparently considers introducing a new "fider" to redirect tribal funding for COPS and tribal court programs to the VPSO program.
- Summer 2004: The Senate Indian Affairs Committee strips Alaska Tribes of their eligibility for tribal fish and wildlife grants and other benefits to their members, in a committee mark-up of S. 2301, the Native American Fish and Wildlife Resources Management Act of 2004. Calls from another tribal attorney here in Alaska to congressional staffers reveal that this decision to strip Alaska Tribes of their eligibility seems to have been made after the Alaska Delegation had apparently written the Committee, telling the Committee that Alaskans know what is best for Alaska, and that Alaskans could not agree on whether we want or need this funding up here. In July, the Committee orders that the bill be reported with an amendment to delete Alaska Tribes from the bill's definition of "Indian tribe." The bill remains to be passed by Congress.
- Summer 2004: The 1997, 1998 and 2001 provisions that prohibited new Native village contracting or compacting for IHS services are set to expire, if Congress does not act soon. This gives Alaska Tribes a chance to comment on whether the prohibition on new contracts and compacts with the villages should be continued. However, Congress may apparently be considering not only extending the prohibition again, as in 1998 and 2001, but making it permanent this time instead, so that this prohibition would remain in effect without needing to be renewed again at some future date.
- Summer 2004: The GAO is conducting audits on the provision of various federal Indian services in Alaska. Results of these audits are still being compiled. Senator Stevens had previously requested that the GAO audit tribal programs in Alaska. AFN, in consultation with the Alaska Municipal League, will also be provided an opportunity to *"review the delivery of Federal programs in Alaska and make recommendations to the Congress to reduce duplication, improve and consolidate delivery of services, streamline application and administrative procedures, improve accountability, mandate*

