

Testimony of A-dae Romero-Briones (Cochiti/Kiowa)**Director of Programs - Native Agriculture and Food Systems Initiative
First Nations Development Institute****Before the
U.S. Senate Committee on Indian Affairs
Oversight Hearing on “Keep What You Catch: Promoting Traditional Subsistence
Activities in Native Communities.”****June 20, 2018****Introduction**

Chairman Hoeven, Vice-Chairman, and members of the Committee, my name is A-dae Romero-Briones. I am a member of the Cochiti Pueblo, one of 19 Pueblo communities in New Mexico. I am also Kiowa from the Kiowa Tribe in Oklahoma.

I serve as the Director of Programs for the Native Agriculture and Food Systems Initiative (NAFSI) at First Nations Development Institute (First Nations). First Nations’ mission is to strengthen American Indian economies to support healthy Native communities. We invest in and create innovative institutions and models that strengthen asset control and support economic development for American Indian people and their communities. We believe that when armed with appropriate resources, Native peoples hold the capacity and ingenuity to ensure the sustainable, economic, spiritual and cultural well-being of their communities. This belief largely stems from examples of long-standing food system management that includes subsistence practices in Indigenous communities.

NAFSI began in 2002 because of the need in Indian Country for financial support for community-based food system projects that include financial and policy support for traditional gathering, hunting, and management practices. Since 2002, First Nations has awarded 307 grants totaling more than \$7.58 million to Native organizations dedicated to increasing food access and improving the health and nutrition of Native children and families. This number, however, pales in comparison to the more than 1,450 requests received that total more than \$49.7 million over that time, illustrating that a huge unmet need for funding for these types of projects continues in Native communities.

These comments were generated with input from communities we support at First Nations Development Institute, our friends at the Indigenous Food and Agricultural Initiative at the University of Arkansas, and from personal experience coming from a community that relied heavily on subsistence agriculture. With increased pressures for energy, urban expansion, and ever-changing environmental conditions, Indigenous subsistence practices are becoming all the more important to the communities that practice them. It is my hope that we all recognize and acknowledge the ecological managing that subsistence practices (hunting, gathering, fishing,

etc.) offer to support Indigenous communities and people, ecosystems, regional environments, and our country. These comments are also made with the understanding that there is a government recognition of Tribal Sovereignty and Trust Responsibility that underlies any government approach, whether through legislation or regulation or otherwise, meant to protect Tribal Nationhood which includes the food system institutions that sustain those nations. Lastly, these comments focus largely on Indigenous communities located in the lower 48 because Alaska presents its unique historical and present-day circumstances.

Subsistence Practices Are Ecological Management Practices

Subsistence should be recognized as sustainable ecological management practices worthy of protection. Far too often, subsistence practices are seen as passive activities isolated to Indigenous communities and focused solely on “food gathering.” Yet, subsistence practices include hunting, gathering for food, medicine, tools, traditional arts like clothing, dyeing, basketmaking and building, fishing, and controlled burning. Subsistence is not a singular “food gathering” activity, but encompasses a multi-dimensional approach to environmental understanding and management that is embodied in the lifeways of a community.

In mainstream society, subsistence denotes production at a level sufficient only for one’s own use or consumption without any surplus for trade or the action of maintaining or supporting oneself at a minimum level.¹ However, Indigenous subsistence practices are much more than minimal levels of production, they are the practical manifestation of generations of Indigenous knowledge institutionalized in ecological management systems. In short, subsistence practices empower Indigenous communities, allowing them to manage their environments, and the human presence within that environment, and to adjust to environmental changes with the goal of ensuring environmental health for generations.

This long-standing approach to environmental management ensures that a community is “balanced” within their own environments and eco-systems. In communities where we see a disruption of subsistence lifeways, we also tend to see a greater dependence on retail markets and their support networks, and thus a greater likelihood of over-consumption and waste. Once lost, subsistence practices, that have been strengthened over generations, are much more difficult to re-create, re-teach, and re-learn.

As a Nation and at First Nations Development Institute, we have numerous examples of subsistence practices maintaining and improving local ecosystems from watershed improvement, species population balance, endemic plant and animal protection, and creating a blue print for climate change adaptation. More often than not, subsistence communities are often the first alarm when environmental changes occur as we see with climate change.

¹ “Subsistence.” Google Dictionary, Google, 19 June 2018, www.google.com/search?q=subsistence&rlz=1C1EJFA_enUS800US800&oq=subsisten&aqs=chrome.0.69i59j69i60j69i57j0l3.1924j1j9&sourceid=chrome&ie=UTF-8.

Too often, we think of subsistence as a practice that is limited to places like Alaska where the remote nature of villages and communities is common.² Yet, subsistence practices (ecological management) occurs in almost every Indigenous community through the lower 48, Alaska, and Hawai'i. Subsistence practices are not only important to some of the most food insecure Indigenous populations, subsistence practices are practiced intentionally and by choice by many Indigenous people across this nation to perpetuate a shared responsibility to our human and non-human community, and shape environmental conditions to ensure the continued environmental and human health for future generations.

Subsistence Practices Today

*Toni Stanger-McLaughlin, an attorney, wife, and mother from the Coleville Tribe in Washington spent several years working for USDA in Washington, DC. She now resides with her family on Coleville where she practices a subsistence lifestyle with her husband and three children. She says, "My family survives on either three deer or one elk or one moose and a small deer for dried meat. Last year, we got a cow elk and only needed one other deer. Most years we get 3-4 smaller deer, just enough to get our family through an entire year. We need 6-7 large wild salmon, and three gallons of berries and a couple gallon size bags of other assorted roots and medicine. We also get a few small birds. All harvested on my reservation or in traditional seeded areas. I grew up like this and so will my children. I didn't buy salmon in a store until I was in law school. During certain times of the year, areas of my reservation can experience upwards of 67% unemployment and still survive through subsistence hunting and fishing."*³

From the salmon fisherman and acorn gatherers on the California Coast to the maple syrup and clam shell gatherers on the coasts of New England, ecological management is tied directly to Indigenous food systems as a codification of the relationship between Indigenous people and their environment. When that environment changes, the effects of that change is directly tied to the people who depend on that environment. While modern science requires data collection over time, Indigenous people are perhaps the best examples of generational data keepers.

Subsistence is, in fact, a process by which a community maintains their relationship with the environment. Through this process, the community continues to gather data and information

² Subsistence use: The customary and traditional use by Native Americans of renewable resources. For Alaska, specific statutory definition of "subsistence uses" comes from section 803 of the Alaska National Interest Lands Conservation Act of 1980 and is paraphrased as "the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade."

³ Email Communication. June 15, 2018.

about changing environments, and assist in managing those changes through time-proven practices such as hunting and gathering.

Despite the presence and convenience of the American retail food system, many communities still continue to practice subsistence both by choice and necessity, as demonstrated earlier by Toni's story. Toni can live and work wherever she so chooses, yet chooses to live within her own community practicing subsistence. But also, there are many Tribal people who have no choice but to depend on subsistence.

Indian Country has some of the highest insecurity rates among any population, some of the highest food costs, and lowest incomes. One out of 12 Native individuals is so food insecure as to be classified as hungry.⁴ American Indians have the highest food insecurity in the U.S., with Native households with children having a food insecurity rate of 28% compared to 16% for non-Natives.⁵ An overlay of the USDA Food Deserts Locator map with Native communities shows an absence of retail supermarkets. Local convenience stores emphasize high-priced, nutritionally-deficient and preserved foods.

In a recent First Nations Development Institute study called [*The Indian Country Food Price Index: Exploring Variation in Food Pricing Across Native Communities — A Working Paper II*](#), we found that Tribal communities in the contiguous United States (or lower 48), over the 12-month study, paid on average \$8.41 more for a basket of food items than the national average. Similarly, in Alaska Native villages, shoppers on average paid \$35.84 more when compared to the national average for the same basket of food items. The national average for the basket of items was \$23.28.⁶ These price differences are significant when you consider that the median income of American Indian and Alaska Native households was averaged at \$35,062, compared with \$50,046 for the nation as a whole.⁷ In addition, 28.4% of American Indians and Alaska Natives that were in poverty in 2010, compared to 15.3 % for the general nation.⁸ Based on these statistics, many American Indian communities are more food insecure, have few retail food establishment options, and pay higher prices for small amounts of food. While this is seemingly a glum profile, many American Indian people thrive because of the Indigenous ecological management (subsistence) practices continue to provide purpose, continuity, and sustenance to

⁴ Henchy, G., Cheung, M., & Weill, J. (200). *WIC in Native American communities: Building a healthier America – Report summary*. Food Research and Action Center. Washington, DC.

⁵ Gunderson C. (2008). Measuring the extent, depth, and severity of food insecurity: an application to American Indians in the USA. *Journal of Population and Economics*. 21: 191-215

⁶ First Nations Development Institute. (2018) "Indian Country Food Price Index: Exploring Variation in Food Pricing Across Native Communities - A Working Paper II". Longmont, Colorado: First Nations Development Institute.

⁷ 2010 American Community Survey for the American Indian and Alaska Native alone population

⁸ 2010 American Community Survey for the American Indian and Alaska Native alone population

the communities who practice them. However, increased environmental pressures for both energy and housing, urban sprawl, climate change, ecological management (subsistence) practices are consistently challenged and undermined.

Barriers

Although ecological management (subsistence) practices could once be exercised freely, the increasing limitations on Indian land ownership has created barriers that limit a Tribal Nation's ability to practice long-standing ecological management (subsistence). First, Indian Country is now only a small fraction of what Indigenous people once occupied, but even within those lands still under Indigenous ownership/occupation ecological management (subsistence) practices may be inhibited depending on the type of land title designation. Second, important lands outside of Tribal occupation are likely within federal agency like the US Forest Service, Bureau of Land Management, Bureau of Reclamation, and the Department of Defense. These lands are accessible at the discretion of the federal managers. While some progress has been made to develop protocols to allow for Tribal nations to access some federal lands, more needs to be done to ensure an objective, less discretionary, process.

Land Holdings

Indian Country encompasses over 56 million acres. There are 302 forested Indian reservations which encompass 17.9 million acres of Indian forest lands – 7.7 million acres of timberlands and 10.2 million acres of woodlands. One hundred and ninety-nine reservations contain timberlands and 185 reservations contain woodlands.⁹ While this landholding is seemingly large, complications in land management looms larger. The differences in land title, Tribal trust lands, allotted trust lands, and fee lands often results in different management rules on designated parcels, so access to these lands for hunting, gathering, and management may be limited, or worse, inaccessible to Tribal people despite being within Tribal boundaries.

It is recognized that Tribal Nations are fully in control of treaty rights that often include ecological management (subsistence practices) within the boundaries of a reservation, yet, treaty rights over hunting, fishing, and gathering are heavily impacted by activities outside of reservation boundaries. It should be recognized that the exercise of Tribal treaty rights within reservation boundaries MUST be considered when making determinations about off-reservation activities that would affect treaty rights within the reservation, such as management of habitats and how those habitats relate to National forest timber harvest, recreation, water, grazing, and mineral exploration.

Federal Lands

Federal land holdings are of significant importance and impact to Indigenous ecological management (subsistence) practices. A few, but not all, of the federal agencies that have impact on ecological management (subsistence) practices are listed and discussed below:

⁹ National Congress of American Indians. "Demographics." Home | NCAI, 2018, www.ncai.org/about-tribes/demographics

1. National Forest Service

“The Forest Service shares nearly 3,000 miles of contiguous border with AI/AN-owned lands and acknowledges that many lands now within the NFS are the ancestral homelands and ceded territories of many Tribes. This makes the agency and Tribes more than just neighbors; they are partners with common goals for social, cultural, ecological, and economic sustainability. Many Tribes have historically managed their own forests well and in ways the Forest Service hopes to emulate. Tribal land management is a testament to the Tribal land ethic, an ethic rooted in traditions, stories, and cultures. Sacred sites, both on AI/AN land and within the national forests, are important facets of that land ethic and a common bond between us.” (p 14)¹⁰

There have been great strides in improving the relationship between the US Forest Service and Tribal Nations. Yet, more can still be done to ensure the shared goal of natural resource management. The US National Forest Service (NFS) is required to administer the NFS for outdoor recreation, range, timber, watershed, and wildlife and fish purposes; to analyze the environmental impacts of decisions it authorizes; to protect threatened and endangered species; to conduct research; and to carry out a host of other responsibilities on NFS lands. In the Report to the Secretary of Agriculture dated December of 2012 regarding *Policies and Procedures to Allow Tribal Access to Indian Sacred Sites*, there were several recommendations that should be implemented. These include: 1) improving relationships between Tribal Nations and the US Forest Service by creating a “meaningful” Tribal Consultation policy; (2) expanding the definitions used in E.O. 13007 of “Indian Sacred Sites;” and (3) utilizing legal tools to protect Indian sacred sites within US Forest Lands against 3rd party damage to sacred sites.

Of particular importance is the expansion of the definition of sacred sites in E.O. 13007. This definition should include a recognition of ecological management (subsistence) practices. It currently reads as so:

“. . . any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.”¹¹

It should read as so:

Any specific, discrete, ~~narrowly~~ delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious or ecological management significance to, or ceremonial use by, an Indian religion;

¹⁰ USDA Office of Tribal Relations and USDA Forest Service. “Report to the Secretary of Agriculture: USDA Policies and Procedures Review and Recommendations Indian Sacred Sites.” (Dec 2012)

¹¹ Sacred Sites, E.O. 13007, Public Notice; Request for Comment. 76 Fed. Reg. 47,538 (Aug. 5, 2011).

provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

2. Bureau of Land Management

The Bureau of Land Management (BLM) is a significant federal agency in protecting and supporting ecological management (subsistence) practices as it manages federal lands in states where Tribes are the most numerous such as Alaska, Arizona, California, Colorado, Montana, North Dakota, South Dakota, Idaho, Nevada, Oregon, Washington, New Mexico, Utah, and Wyoming. BLM is given authority and guided by the Federal Land Policy and Management Act (FLPMA). The FLPMA does give some consideration to Tribal Nations such as in Title II, section 202 (43 USC Section 1712(b)).¹² However, this provision is limited to lands within the National Forest System. Management Plans for federal land bases that have significant ecological management (subsistence) practice value should include Tribal input, not just those within the National Forest System.

Management plans for lands considered Outstanding Natural Areas, even if they are recognized as culturally significant lands to local Tribes, are not required to include Tribal consultation or considerations.¹³ For example, the Pierdas Blancas Historic Lighthouse Station is designated as an Outstanding Natural Area.¹⁴ Within the same act, it is acknowledged that the Chumash and Salian Tribes used the area traditionally [for fishing and gathering].¹⁵ Yet, they are not required to be consulted in the management plans surrounding that area. FLMPA states:

“The management plan shall be developed in consultation with appropriate Federal, State, and local government agencies, with full public participation, and the contents shall include—

(E) cultural resources management strategies for the Outstanding Natural Area, prepared in consultation with appropriate departments of the State of California, with emphasis on the preservation of the resources of the Outstanding Natural Area and the interpretive, education, and long-term scientific uses of the resources, giving priority to the enforcement of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.)”¹⁶

This intentional exclusion of Tribal input from significant areas that retain or are of importance to ecological management (subsistence practices) should, at the very least, include Tribal input into how these areas are managed. There is a recognition of Tribal significance by giving the

¹² b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

¹³ <https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf>

¹⁴ 43 USC 1786 (a)(2)

¹⁵ 43 USC 1786 (b)(4)

¹⁶ 43 USC 1786 (3)(A-E)

land managers the ability to close the park for religious or ceremonial purposes, but does NOT give input into management plans of these lands, much less, give recognition of or ability to practice ecological management (subsistence) practices on these lands.¹⁷

Additionally, BLM has broad authority to enter into contracting agreements with Tribal Nations.¹⁸ In some instances, the agreements entered into with Tribal Nations for management of culturally significant land bases resulted in agreements that failed to compensate Tribal Nations for beneficial land management practices because some subsistence practices like hunting and gathering are not recognized as ecological management. The end result was that Tribal Nations were burdened with executing a contract that did not adequately cover the cost of the contract. BLM contracts with Tribal Nations should include recognition as subsistence practices as beneficial ecological management with costs covered to execute those activities within the Tribal/BLM contract.

Lastly, BLM has a robust Tribal Consultation policy that still can be improved to recognize ecological management (subsistence) practices. Native American Cultural and Religious significant places are mentioned throughout the internal BLM consultation policy.¹⁹ It should be recognized that this term includes traditional ecological management (subsistence) practices.²⁰

3. National Park Service

Like other agencies, the National Park Service has a robust tribal consultation policy. Although, much like other agencies the ability to respond and work with Tribal communities with significant ties to lands with the National Park service charge is left to the discretion on the National Park service director/manager of a particular park. This discretion can be frustrating to Tribes if the relationship with the National Park Service director/manager is not cordial. The National Park Service director/manager is NOT required to allow for ecological management (subsistence) practices. They are only directed to follow National Park Service Policy which reads as such:

¹⁷ 43 USC 1786 (10) states: (10) Native American uses and interests In recognition of the past use of the Outstanding Natural Area by Indians and Indian tribes for traditional cultural and religious purposes, the Secretary shall ensure access to the Outstanding Natural Area by Indians and Indian tribes for such traditional cultural and religious purposes. In implementing this subsection, the Secretary, upon the request of an Indian tribe or Indian religious community, shall temporarily close to the general public use of one or more specific portions of the Outstanding Natural Area in order to protect the privacy of traditional cultural and religious activities in such areas by the Indian tribe or Indian religious community. Any such closure shall be made to affect the smallest practicable area for the minimum period necessary for such purposes. Such access shall be consistent with the purpose and intent of Public Law 95-341 (42 U.S.C. 1996 et seq.; commonly referred to as the "American Indian Religious Freedom Act").

¹⁸ Bureau of Land Management Manual. Rel. NO. 1-1780 (7)

¹⁹ Bureau of Land Management Manual. Rel. NO. 1-1780 (7)

²⁰ Bureau of Land Management Manual. Rel. NO. 1-1780 defines as, "Traditional cultural property (TCP): A phrase often used in reference to a "property of traditional religious and cultural importance" as defined in the NHPA, which are identified by Indian tribes. The property derives significance from traditional values associated with it by a social and/or cultural group such as an Indian tribe or local community. It commonly refers to a culturally sensitive area that may qualify for the NRHP if it meets the criteria and criteria of exceptions at 36 CFR 60.4. See National Register Bulletin 38." (p 36).

“With regard to consumptive use of park resources, current NPS policy is reflected in regulations published at 36 CFR 2.1 and 36 CFR Part 13. These regulations allow superintendents to designate certain fruits, berries, nuts, or unoccupied seashells that may be gathered by hand for personal use or consumption if it will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources. The regulations do not authorize the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes, except where specifically authorized by federal statute or treaty rights or where hunting, trapping, or fishing are otherwise allowed.”²¹

Because many ecological management (subsistence) practices are not specifically recognized by federal statute or treaty rights, many ecological management (subsistence) practices are disallowed and not practiced. It would be wise for federal legislatures to recognize ecological management (subsistence) practices as necessary environmental management tools even within Federal lands.

4. Bureau of Ocean and Energy Management

The Bureau of Ocean and Energy Management (BOEM) has an incredible impact on ecological management (subsistence) practices on ocean resources. Historically, Tribal communities not only in coastal regions, but even in mid-continent of North America, depended on ocean resources for ceremonial, diet, and cultural patrimony. In more recent times, the rapid change in ocean and sea conditions and ocean resources is extremely concerning. Tribal people see important subsistence resources like clams, oysters, abalone, and seaweed, to name a few, depleting at unconscionable rates. Because these resources play an important role in ecological balance, Tribal Nations have been struggling to be recognized as stewards of these resources, participate in the management of these resources, and practice ecological management to ensure the continuation of these resources for future generations.

BOEM’s Tribal Consultation policy is not as robust or articulated as other federal agencies. While it is subject to federal law, and recognized as a government-to-government relationship with Tribes, BOEM does not spell out how federal law and the government-to-government relationship is reflected in agency action, policy, and practice. Articulating a Tribal Consultation policy would help Tribal stakeholders understand where and how to influence BOEM agency decision making in order to advocate for the practice ecological management (subsistence) practices.

Additionally, many of the ocean resources that are of importance to Tribal communities are within BOEM management scope. A full understanding of what ocean resources are of concern should be explored through a Tribal/BOEM relationship exploration process much like the US Forest Service did with sacred sites.²² Many Tribal Nation concerns over ocean resources could

²¹ National Park Service. *Management Policies: The Guide to Managing the Park Service System*. 2006

²² See USDA Office of Tribal Relations and USDA Forest Service. “Report to the Secretary of Agriculture: USDA Policies and Procedures Review and Recommendations Indian Sacred Sites.” (Dec 2012)

be documented and explored, but this process may also provide valuable information and data about ocean resources to BOEM that have yet to be considered or documented.

5. US Fish and Wildlife Service

The US Fish and Wildlife Service (USFWS) has an important mechanism for including Tribal participation in ecological management (subsistence) practices through the State and Tribal Wildlife Grants Program. This program should continue to be supported, but should also be considered for expansion to include more Tribes. USFWS should also consider providing technical assistance webinars to increase Tribal participation by Tribes who do not normally participate.

Recognition of Indigenous Ecological Management (Subsistence) Practices

1. Fishing

Fishing is an important practice that is vital to many Tribal communities, particularly those along the coastal areas. However, I am honored to be sitting on the panel with communities who represent these communities and can articulate the issues around subsistence fishing more adequately than I can. I will defer my comments to them.

2. Hunting and Gathering

It has long been recognized that Tribal communities have treaty rights that extend beyond reservation borders. The phrase "usual and accustomed places" has been interpreted to include off-reservations, which is critical to Tribal Nations actively practicing Tribal ecological management (subsistence). The ability to exercise Treaty rights off-reservation interpretation should continue to be upheld. In *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S. Ct. 1187, 143 L. Ed. 2d 270 (1999), the US Supreme Court ruled in favor of the Chippewa Indians' right to fish and hunt in northern Minnesota without state regulation. The ruling marked a final victory for the Tribe in its long fight to assert its treaty rights and to defend its cultural traditions.²³ Presently, the US Supreme Court has a similar case listed on its docket, *Herrera v. Wyoming*.²⁴ Tribal Nations throughout the country are watching anxiously for this court case to be adjudicated with the hopes that continued recognition of ecological management (subsistence) practices will be honored even in "usual and accustomed" places off reservation. The recognition of these ecological management (subsistence) practices will support the continuation of ecological tools that will keep our environments healthy.

Organic Food Production Act- Wild Gathering Provision

The Organic Foods Production Act (OFPA) and subsequent USDA regulations has a provision for gathering of wild crops.²⁵ Unfortunately, within this act there is NO recognition of Tribal

²³ Read more: Native American Rights - Hunting And Fishing Rights - Court, Tribes, Tribe, and Treaties - JRank Articles <http://law.jrank.org/pages/8750/Native-American-Rights-Hunting-Fishing-Rights.html#ixzz5IhIKR38Z>

²⁴ US Supreme Court Docket No. 17-532

²⁵ (7 U.S.C. ch. 94, 7 U.S.C. § 6501 et seq.) and Section 5022 of the USDA-AMS Organic Handbook (can be found at: <https://www.ams.usda.gov/rules-regulations/organic/handbook/5022>)

Nations, communities, or people. Authorizing legislation, OFPA, and the subsequent USDA-AMS regulations specify that wild crop harvesting must “support the long-term viability of the habitat.” However, organic crops like wild crops are certified organic by third-party certifiers. There is inconsistent enforcement of what it means to “support the long-term viability of habitat.” Furthermore, without the recognition of Tribal Nations, communities, and people and their relationship to some of these wild crops, some Tribal Nations are being purged of important traditional resources.

While many Tribes harvest and gather wild crops consistent with traditional ecological management practice that may include techniques, timing, and processes that ensure its propagation, non-tribal harvesting of the same crop for commercial purposes may not follow the same techniques, timing, and processes leaving the crops vulnerable for over-harvesting, and much worse, extinction. Abalone and seaweed are only two examples of over-harvesting. Had there been some recognition of the importance of these wild crops to Tribal Nations and Tribal Nations participated in the management of these crops, perhaps over-harvesting could have been slowed or even prevented. Commercialization of wild foods, especially those important to Tribal Nations, should be fully explored by USDA-AMS and the USDA Organic Program before permissive harvesting of wild crops is allowed for sale under the USDA Organic label.

We see a commercialization of culturally important foods typically gathered by Indigenous people. These foods, once relegated as a “commodity,” become over-harvested significantly with no regional management systems in place. Indigenous people should be the managers of their culturally important foods like leeks, wild onions, seaweed, and maple sugar, among others. At the very least, Tribal Nations should be a stakeholder that develops management plans for these resources.

1. Seaweed in California

Of immediate concern is the over-harvesting of seaweed along the coasts of California. Seaweed has been an important product in ecological management (subsistence) lifestyles for thousands of years for California communities along the coast and as far in-land to Tribes in Nevada. Recently, seaweed has been deemed a “super food” by American food culture. As a result, seaweed has been harvested by non-Tribal commercial harvesters that is resulting in shortages for Tribal Nations who follow traditionally timed seaweed gathering. Not only is there a concern for future seaweed harvests, but there is a concern for diet shortages of California Tribal people who rely on this source of food during winter months. BOEM should create a Tribal Resource Management Plan specifically for seaweed along the coast of California to ensure that this resource is not over harvested, Tribal communities have first priority, and that this resource is healthy for future generations.

Because of the lack of clarity between federal authority and Tribal recognition around ocean resource management, states have taken a large role in making determinations about ocean resources. There are times when practicing ecological management (subsistence) may be adverse to economic interests within a state, which can create a polarized environment for Tribes to advocate for ecological management (subsistence) practice. Federal recognition of

the importance of ecological management (subsistence) practice would give a new perspective in environmental management that is greatly needed, particularly in seaweed commercialization.

Supportive Legislation that should continue to be protected

There are current pieces of legislation that serve as a solid beginning for the protection of ecological management (subsistence) practices. These pieces of legislation should continue to be supported. These are:

- The Agricultural Act of 2014 (Farm Bill) Section 4033 the Service of Traditional Foods in Public facilities²⁶

²⁶ SEC. 4033. SERVICE OF TRADITIONAL FOODS IN PUBLIC FACILITIES.

(a) PURPOSES.—The purposes of this section are—

- (1) to provide access to traditional foods in food service programs;
- (2) to encourage increased consumption of traditional foods to decrease health disparities among Indians, particularly Alaska Natives; and
- (3) to provide alternative food options for food service programs....

(5) TRADITIONAL FOOD.—

(A) IN GENERAL.—The term “traditional food” means food that has traditionally been prepared and consumed by an Indian tribe.

(B) INCLUSIONS.—The term “traditional food” includes—

- (i) wild game meat;
- (ii) fish;
- (iii) seafood;
- (iv) marine mammals;
- (v) plants; and
- (vi) berries.

(c) PROGRAM.—The Secretary and the Commissioner shall allow the donation to and serving of traditional food through food service programs at public facilities and nonprofit facilities, including facilities operated by Indian tribes and facilities operated by tribal organizations, that primarily serve Indians if the operator of the food service program—

- (1) ensures that the food is received whole, gutted, gilled, as quarters, or as a roast, without further processing;
- (2) makes a reasonable determination that—
 - (A) the animal was not diseased;
 - (B) the food was butchered, dressed, transported, and stored to prevent contamination, undesirable microbial growth, or deterioration; and
 - (C) the food will not cause a significant health hazard or potential for human illness;
- (3) carries out any further preparation or processing of the food at a different time or in a different space from the preparation or processing of other food for the applicable program to prevent cross-contamination;
- (4) cleans and sanitizes food-contact surfaces of equipment and utensils after processing the traditional food;

However, there should be a change in the language under Section 4033(c)(7)

It currently reads:

(7) follows Federal, State, local, county, tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities; and

But this should read:

(7) follows Federal, ~~State, local, county,~~ and tribal law regarding the safe preparation and service of food in public or nonprofit facilities; and

- (Proposed provision in current Farm Bill Discussions)
Title VIII – Forestry Sec. 8624 – Good Neighbor Authority

Includes Tribes as eligible under the Good Neighbor Authority; and Adds trust land, restricted fee, land held for a Tribe's benefit, fee land, Section 17 corporation owned land, and an Alaska Native Village Corporation.

- **The Food, Conservation, and Energy Act of 2008** ([Pub.L. 110–234](#)) (*2008 FARM BILL PROVISIONS*)-

Previous Farm Bill Provisions, included a section that allowed for ecological management (subsistence) practices. It said:

SEC. 8105. FOREST PRODUCTS FOR TRADITIONAL AND CULTURAL PURPOSES. (a) In General- Notwithstanding section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), the Secretary may provide free of charge to Indian Tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

(b) Prohibition- Trees, portions of trees, or forest products provided under subsection (a) may not be used for commercial purposes.

This should be included and supported in future versions of the farm bill.

(5) labels donated traditional food with the name of the food;

(6) stores the traditional food separately from other food for the applicable program, including through storage in a separate freezer or refrigerator or in a separate compartment or shelf in the freezer or refrigerator;

(7) follows Federal, State, local, county, tribal, or other non-Federal law regarding the safe preparation and service of food in public or nonprofit facilities; and

(8) follows other such criteria as established by the Secretary and Commissioner.

Recommendations

1) Include Tribal Nations in Land Management Planning on Federally held lands

While we do have laws and policies that protect sacred sites and protect historic places significant to the US Nation such Executive order 13007 and the National Historic Preservation Act (NHPA),²⁷ these laws are often used to designate protections to specific land sites. Protections should and need to extend to the ecological management (subsistence) activities that take place on these lands. Protecting a parcel or historic land base without the ecological management (subsistence) activities historically used to maintain its health is analogous to watching a house deteriorate from non-use.

Additionally, the FLMPA gives authority to land managers to allow closure of federal lands for cultural and ceremonial purposes, yet there is NO inclusion of Tribal Nations in the creation of the land management plans of these same areas. Tribal Nations should be included in the creation of land management plans of the places that have been and continue to be closed for the cultural and ceremonial purposes. In the alternative, ecological management (subsistence) practices should be included in the definition of cultural and ceremonial purposes stated in Executive Order 13007.²⁸

2) Provide a budget within USDA to create Tribal Land Resource Management Plans

There are several federal agencies, the US Forest Service and Bureau of Land Management that include Tribal Resource Management Plans for consideration and implementation within Federal lands. Typically, these Tribal Resource Management Plans are developed within the Department Interior Bureau of Indian Affairs. However, too few resources are allocated to developing these plans and are a limited to certain land designations. Congress should consider allocating more funding to developing Tribal Resource Management Plans and expanding the reach of these plans to include all Tribal lands, regardless of designation if the Tribe so chooses.

3) Provide guidance to National Forest managers to support subsistence practices

²⁷ E.O. 13007, 61 Fed. Reg. 26771 (May 24, 1996). E.O. 13007 refers to "Indian Sacred Sites." In this report we generally use the term "American Indian/Alaska Native" as a broadly inclusive term to refer to American Indians, Alaska Natives, First Nations, First Peoples, Native Americans, and other indigenous people. E.O. 13007 references Executive Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," which requires federal executive agencies to consult with Tribes on a Government-to-Government basis to the greatest extent practicable and to the extent permitted by law on actions that affect Federally Recognized Tribal Governments. National Historic Preservation Act, 16 U.S.C. § 470 et seq. (1966), Section 101(d)(6)(B).

²⁸ As used in Executive Order 13007, ". . . any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."

The Multiple Use - Sustained Yield Act of 1960 (or MUSYA) (Public Law 86-517) is a federal law passed by the United States Congress on June 12, 1960. This law authorizes and directs the Secretary of Agriculture to develop and administer the renewable resources of timber, range, water, recreation and wildlife on the national forests for multiple use and sustained yield of the products and services. This is the first law to have the five major uses of national forests contained in one law equally, with no use greater than any other.²⁹ The Multiple-Use Sustained-Yield Act of 1960 (MUSYA), does not currently include consideration of sacred sites and traditional subsistence practices, and states “It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C.§§528 (1960). This law makes it harder for forest land managers to give weight to Indigenous subsistence practices within those federal lands. Tribal Traditional subsistence practices should be included as a sixth major use in determining multiple use and sustained yield of the products and services.

4) *Ensure Co-management agreements duly compensate Tribal communities for their participation*

Federal agencies have broad power to contract with Tribal communities, whether through grants, co-management agreements, memorandums of understanding, cost-share agreements, Wyden agreements, participating agreements and stewardship agreements. These agreements should include a recognition of the important of ecological management through subsistence practices. Tribes should be adequately compensated for management of ecological management through subsistence practices. Far too often, we have seen agreements between federal agencies and Tribal Nations inadequately compensate Tribes for participation and management which creates a hardship on Tribal Nations to fully manage these contracts. Not only will compensation for ecological management through subsistence recognize subsistence practices as a vital practice, it will ensure that more funding is directed toward Tribal execution of any agreement between Tribal Nations and federal agencies.

5) *Increase Indigenous Representation on Advisory Boards*

Many agencies have advisory boards authorized under the Federal Committee Advisory Act.³⁰ These advisory boards are important bodies that allow non-federal stakeholder participation. Few of these boards ever include Tribal Nation citizenship. Agencies should increase outreach to Tribal Nations to include Tribal citizenship. Tribal citizenship participation should be included (but not limited to) the following advisory boards:

- *Rural Schools Resource Act Advisory Committee*
- *Regional Recreational Advisory Committees (BLM)*
- *Regional Advisory Boards for the Bureau of Land Management*
- *National Organic Standards Board*
- *Hunting and Shooting Sports Conservation Council(FWS)*
- *Sport Fishing and Boating Council (FWS)*

²⁹ “Multiple-Use Sustained-Yield Act of 1960.” Wikipedia, Wikimedia Foundation, 19 June 2018, en.wikipedia.org/wiki/Multiple-Use_Sustained-Yield_Act_of_1960.

³⁰ The Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463)

- *Alaska Regional Subsistence Councils (These same councils should be created for the lower 48 and Hawaii)*
 - *National Academies on Committee on Off-Science and Assessment*
 - *The National Park Service Advisory Board (because it's site specific, Tribal Nations surrounding the sites should be included)*
- 6) *Change the definition of "sacred sites" Executive Order 13007 to include lands significant to ecological management (subsistence) practices.*

The current definition of sacred sites in E.O. 13007 reads, "Any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

E.O. 13007 should be changed to read as follows:

Any specific, discrete, ~~narrowly~~ delineated location on Federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious or ecological management significance to, or ceremonial use by, an Indian religion; provided that the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Conclusion

Thank you for allowing me time to address the committee and to advocate for the recognition of Indigenous ecological management (subsistence) practices. There are increasing pressures on Tribal Nations economically and socially, yet subsistence practice is one of the few tools we have in monitoring environmental changes like climate change and resource depletion. Rather than viewing these practices as simplistic activities such as "just food gathering," we need to recognize these practices for the ecological management practices that have created and ensured the health of some of our country's greatest environmental treasures. The continued health our country's lands and Tribal Nations is inextricably tied. To ensure their continued existence, it's time to listen, recognize, acknowledge, and protect the traditional food systems of Tribal Nations and the long-standing practices that support those systems.

Na'cha,

A-dae Romero-Briones