Cascadia
cross-border law

1305 11th Street, Suite 301
Bellingham, WA 98225
T: 360.671.5945
F: 360.676.5459
www.cascadia.com

Reply To:
Heather Fathali, Attorney at Law
hfathali@cascadia.com

March 9, 2017

Mr. Herb Pollard, Chair
And Members of the Pacific Fishery Management Council
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Dear Mr. Pollard and Members of the Pacific Fishery Management Council,

RE: Future Council Meeting Agenda and Workload Planning/
Regulatory Amendment to HMS Permit Regulations

I write to request that the Council set aside time at a future meeting to consider amending the Pacific Highly Migratory Species (HMS) regulations to extend permit eligibility to American Indians Born in Canada (ABCs).

Current HMS permit regulations include the general eligibility requirement that a vessel owner be a citizen of the United States.[1] We request that HMS permit regulations be amended such that ABC status[2] is accepted as an alternative to the citizenship requirement; thus extending permit eligibility to this special population which, for many state and federal purposes, is already treated as analogous to U.S. citizenship.

Congress recognizes and commits to maintaining the Federal Government's unique and continuing relationship with, and responsibility to, the Indian people.[3] The federal courts have emphasized this "historically unique relationship of Indians to this country" as a basis to uphold the constitutionality of statutes treating ABCs differently than other types of non-citizens; qualifying ABCs for federal public benefits and placing them on equal footing with U.S. citizens, while treating other legal non-citizens as ineligible.[4]

---

[1] 50 CFR 660.707, 46 USC § 12103(b), and replicated at Page 2 of the Pacific HMS Vessel Permit Application.
[2] Defined by Section 289 of the Immigration and Nationality Act to include Canadians with a 50% or greater native bloodline. The status is rooted in the Jay Treaty of 1794, which is still treated as in force by the U.S. Department of State. Its relevant rights and benefits are today codified at § 289 of the Immigration and Nationality Act.
[3] 25 U.S.C. § 5302. Congressional declaration of policy (formerly cited as 25 USC §450a).
[4] *Rodriguez ex rel. Rodriguez v. United States*, 169 F.3d 1342, 1352 (11th Cir. 1999).

Notably, with regard to the federal public benefits open to ABCs, Congress defines "federal public benefit" to include "any grant, contract, loan, professional license, or **commercial license provided by an agency of the United States** or by appropriated funds of the United States."[5] It follows that HMS permits are a type of commercial license provided by an agency of the United States —NOAA—for which ABCs should not be ineligible.

As your reading of the attached materials underlying this request will reveal; extending HMS permit eligibility to ABCs not only satisfies the spirit behind the Vessel documentation laws requiring U.S. citizenship, but is also consistent with "the Federal Government's unique and continuing relationship with and responsibility to the Indian people" including ABCs.[6] We urge you to consider the attached materials underlying this request, and set aside time to discuss the matter in full at an upcoming meeting.

For your reference, please find attached the following materials:

- Original request to NMFS requesting an amendment to HMS permitting regulations that would extend qualification to ABCs, dated Nov. 5, 2014
- Response from NMFS, dated Sept. 14, 2016
- Letter from Dr. Freese on behalf of NMFS, to PFMC, dated Oct. 31. 2016
- Copies of cited statutes regarding ABCs and federal public benefits

I thank you for your consideration of this matter. Please do not hesitate to contact me for further information, documentation, or with any questions or concerns.

Sincerely,

Heather Fathali
Attorney at Law

---

[5] 8 USC § 1611(c)(1)(a).

[6] *Rodriguez ex rel. Rodriguez v. United States*, 169 F.3d 1342, 1352 (11th Cir. 1999) (recognizing "the Federal Government's unique and continuing relationship with and responsibility to the Indian people"). *See also Akins v. Saxbe*, 380 F.Supp. 1210, 1219–20 (D.Me.1974) (recognizing Congressional interest in preserving aboriginal rights of American Indians to move freely across territories originally occupied by them)."

Cascadia
cross-border law

1305 11th Street, Suite 301
Bellingham, WA 98225
T: 360.671.5945
F: 360.676.5459
www.cascadia.com

Reply To:
Heather Fathali, Attorney at Law
hfathali@cascadia.com

November 5, 2014

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802

Dear Craig D'Angelo:

RE: Regulatory Amendment to Qualify American Indians Born in Canada to Hold Pacific Highly Migratory Species Vessel Permit

I write on behalf of my client, Mr. Tom Hearty, who was denied a Pacific Highly Migratory Species (HMS) Vessel Permit on June 15, 2014. His denial letter states that vessels with ownership by individuals who are not U.S. citizens may not be issued a Pacific HMS Permit.

Mr. Hearty is a Canadian citizen and a Legal Permanent Resident (LPR) of the United States; however, his LPR status is unique because it is derived from his special American Indian born in Canada (ABC) status. An ABC is treated by the United States as essentially equivalent to a U.S. citizen with regard to all immigration rights and benefits. As such, I seek a regulatory amendment giving ABCs the qualification to hold an HMS permit. Alternatively, I seek an informal amendment through a policy memorandum.

To provide a context, ABC status is rooted in the Jay Treaty, which was negotiated by the United States and Great Britain in 1794 in part to mitigate the bisection of tribal lands by the newly established U.S./Canada border; it provided that American Indians could travel freely across the international boundary. The Jay Treaty is still treated as in force by the U.S. Department of State, and its relevant rights and benefits are today codified at § 289 of the Immigration and Nationality Act (INA).

Section 289 of the INA grants Canadians with a 50% or greater American Indian bloodline (defined by the statute as "American Indians born in Canada") privileges unparalleled by all but United States citizens, virtually unrestricted by U.S. immigration laws— as described by the U.S. Embassy in Canada (Ottawa), they may enter and remain in the U.S. for purposes including "employment, study, retirement, investing, and/or immigration"; ABCs are not deportable on any ground, and are not required to obtain immigrant visas.

The unique status held by ABCs, and Mr. Hearty's status as such, is significant because the regulations for Pacific HMS Vessel Permits include the general eligibility requirement that a vessel owner be a citizen of the United States; set forth at 50 CFR 660.707, 46 USC § 12103(b), and replicated at Page 2 of the Pacific HMS Vessel Permit Application.

Title 46 defines the term "citizen of the United States" by simply adopting the definition of a U.S. national set forth by the Immigration and Nationality Act (INA). *46 USC § 104*. The INA defines a national of the United States as either (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. *INA § 101(a)(22)*. However, it must be noted that the INA is a pervasively cross-referenced statute, and its sections cannot be read in isolation. This is especially important with regard to § 289, governing ABCs, which states that

> "*Nothing in this title* [all of Title 8, including the definition of a U.S. national] shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

This extraordinary provision essentially exempts ABCs from the substantive immigration laws otherwise set forth by the INA. As such, it is inappropriate to gauge ABCs against the INA definition for citizenship adopted by Title 46; rather, they should be treated as equivalent to U.S. citizens for permitting purposes, which would be more consistent with the underlying policies behind the citizenship requirement for vessel permitting.

Vessel documentation laws requiring U.S. citizenship date back to the very first Congress. The modern Merchant Marine Act was passed in 1920, with Congress making its intent clear in the Preamble—to foster an American Merchant Marine "that would be readily available to the nation in times of emergency and one that would channel the benefits of carrying domestic trade to U.S. citizens." *See 41 Stat. 988 (1920) (preamble).* These objectives continue to be echoed in the most current iteration of the Merchant Marine Act. *46 U.S.C. § 50101*.

These concerns remain fully addressed by permitting vessels owned by ABCs to hold Pacific HMS permits. ABCs are free to live in the United States, to work in the United States, and to serve in the United States military. ABCs are on equal footing with U.S. citizens for the purposes of most federal public benefit programs, including the Supplemental Nutrition Assistance Program (SNAP; commonly known as Food Stamps), Social Security Insurance, and Medicaid.

The same is true for state benefits; in Washington State for example, for the purposes of determining an individual's citizenship status for public assistance, "U.S. citizens" are defined to include American Indians Born in Canada. *WAC 388-424-0001*.

The Federal Regulations which govern Highly Migratory Species are found at *50 CFR § 660 subpart K–Highly Migratory Fisheries*. Pacific HMS Vessel permitting regulations are specifically set forth at *50 CFR § 660.707–Permits*, which is the section through which the U.S. citizenship requirement is derived. However, it is significant to note that directly preceding the section on permitting is *50 CFR § 660.706–Pacific Coast Treaty Indian Rights*, which provides

an exemption from the HMS regulations for certain treaty Indians to harvest HMS in their usual and accustomed fishing areas in U.S. waters.

Given the Federal Regulations' explicit recognition of Indian treaty fishing rights at *§ 660.706*, a regulatory amendment (or informal amendment through a policy memorandum) giving ABCs the qualification to hold an HMS permit would not only complement the Indian treaty recognition and other exemptions already in place; but it would be consistent with the federal government's longstanding treatment of ABCs as essentially equal to U.S. citizens, and would continue to satisfy the policies underlying the U.S. citizenship requirement for vessel permitting.

Attached to this letter I enclose the most recent edition of an article I have co-authored about American Indians Born in Canada; which details the history of the Jay Treaty, the rights and benefits held by American Indians Born in Canada, and the cross-border issues faced by American Indians Born in Canada today.

Please do not hesitate to contact me if you have any questions. I look forward to working with you to facilitate the implementation of this important amendment.

Sincerely,

Heather Fathali
Attorney at Law

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115

September 14, 2016

Heather Fathali
Attorney At Law
Cascadia Cross-Border Law
1305 11th Street, Suite 301
Bellingham, WA 98225

Dear Ms. Fathali:

This letter is in response to your request for reconsideration of our denial of issuance of a Pacific Highly Migratory Species Vessel Permit (HMS Permit) to your client, Tom Hearty. Mr. Hearty is a Canadian citizen, a Legal Permanent Resident (LPR) of the United States, and an American Indian born in Canada. We previously denied the request on the grounds that, subject to the applicable regulations, vessels owned by individuals who are not United States citizens may not be issued a permit. You requested a "regulatory amendment" making American Indians born in Canada eligible for HMS permits or in the alternative, an informal amendment through a policy memorandum. You offered in support of your request a law review article by Greg Boos et. al., *Canadian Indians, Inuit, Métis, and Métis: An Exploration of the Unparalleled Rights Enjoyed by American Indians Born in Canada to Freely Access the United States*, 4 SEATTLE J. ENVTL. L. 343 (2014).

As reflected in the HMS Permit application, applicable regulation requires that in order for an individual to be an eligible vessel owner he or she must be "a citizen of the United States."[1] This requirement is set forth in 50 CFR § 660.707 which states that only "a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued … an HMS permit."[2] 46 U.S.C. § 12103, formerly cited as 46 U.S.C. § 12102, lays out the eligibility requirements for documented vessels including that any eligible individual owner of a documented vessel must be "a citizen of the United States."[3] Title 46 of the U.S. Code defines the term "citizen of the United States" as someone "who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act."[4] INA § 101(a)(22) defines the term "national of the United States" to mean either "a citizen of the United States" or "a person who, though not a citizen of the United States, owes permanent allegiance to the United States."[5]

---

[1] National Oceanic and Atmospheric Administration National Marine Fisheries Service, Pacific Highly Migratory Species Vessel Permit Application, available at http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/pacific_hms_pemits.html
[2] 50 C.R.F. § 660.707 (a) (4).
[3] 46 U.S.C. § 12103 (b) (1).
[4] 46 U.S.C. § 104.
[5] 8 U.S.C. § 1101 (a) (22).

It is undisputed that Mr. Hearty is not a U.S. citizen; it is our assumption also that Mr. Hearty was not born to non-citizen nationals of the United States. Mr. Hearty has not sought to show that he is a U.S. national through his owing permanent allegiance to the United States. Our review of your request, in light of the eligibility criteria for holding an HMS permit under applicable regulations, leads us to conclude that Mr. Hearty is not eligible for an HMS permit. This is the National Marine Fisheries Service's second review of this request, and per the regulations at 50 CFR §660.707(b), it constitutes final agency action.

As Mr. Hearty cannot meet the prerequisites for issuance of an HMS Permit for his vessel, we understand your communication to be a request that NMFS change applicable regulations to create an exemption for American Indians born in Canada. For such a change to regulations, it is necessary to engage the Pacific Fishery Management Council. Thus, NMFS will transmit your letter as a rulemaking request to that body.

Please contact Melissa Hooper, at 206-526-4357 or melissa.hooper@noaa.gov, if we may be of any further service in this matter.

Sincerely,

Barry A. Thom
Regional Administrator

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115
October 31, 2016

Mr. Herb Pollard, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Mr. Pollard:

I am writing to request that the Pacific Fishery Management Council (Council) consider the attached request for a regulatory amendment to the Pacific Highly Migratory Species (HMS) regulations to address a permit eligibility issue for American Indians who are born in Canada.

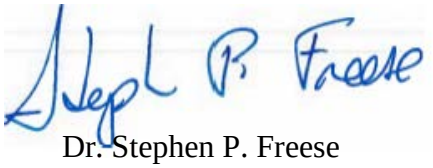
Mr. Tom Hearty requested that the National Marine Fisheries Service (NMFS) issue a Pacific HMS Permit to him on the basis that he is an American Indian born in Canada (he is also a Canadian citizen and Legal Permanent Resident of the United States). As described in the attached letter that we sent to Mr. Hearty, we determined that he is not eligible for an HMS Permit under the existing regulation at 50 CFR § 660.707, which requires that permit holders be citizens of the United States. We therefore denied Mr. Hearty's request for an HMS Permit and subsequently reconsidered and upheld our denial of that request.

After discussion with, and at the request of, Mr. Hearty's counsel, we are transmitting to you his request that the Council consider proposing a change to the relevant regulations to allow Mr. Hearty and others in his situation to be eligible for a permit, perhaps by creating an exemption for American Indians born in Canada.

We request that the Council give this request consideration as it plans its workload for upcoming meetings. Mr. Hearty's counsel has indicated also that engagement of representatives of the indigenous people's community will be crucial to consideration of this issue. Mr. Hearty's counsel are located in Washington state, so it would be most convenient for them to attend the March 2017 Council meeting for in-person discussions; but they have indicated that they are willing to speak with Council staff at the earliest convenience of staff members.

For your reference, also attached is correspondence from Mr. Hearty's counsel requesting a rehearing and our subsequent affirmation of the denial. If you have any questions on this matter, please contact Melissa Hooper, Acting Chief of the Permits and Monitoring Branch, at 206-526-4357 or melissa.hooper@noaa.gov.

Sincerely,



Dr. Stephen P. Freese
Acting Assistant Regional Administrator
for Sustainable Fisheries

CC: Ms. Heather Fathali, Attorney At Law
Mr. Chuck Tracy, Executive Director, Pacific Fishery Management Council

Attachments:
- HMS Permit denial letter (2014)
- Email from Ms. Fathali to Craig D'Angelo
- Response from NMFS

§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits

Effective: October 28, 1998

8 U.S.C.A. § 1611

§ 1611. Aliens who are not qualified aliens ineligible for Federal public benefits

Currentness

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, an alien who is not a qualified alien (as defined in section 1641 of this title) is not eligible for any Federal public benefit (as defined in subsection (c) of this section).

(b) Exceptions

(1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C.A § 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C.A. § 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C.A § 601 et seq.], supplemental security income benefits under title XVI of such Act [42 U.S.C.A. § 1381 et seq.], or a State supplementary payment).

(B) Short-term, non-cash, in-kind emergency disaster relief.

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (iii) are necessary for the protection of life or safety.

(E) Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under Title V of the Housing Act of 1949 [42 U.S.C.A. § 1471 et seq.], or any assistance under section 1926c of Title 7, to the extent that the alien is receiving such a benefit on August 22, 1996.

(2) Subsection (a) of this section shall not apply to any benefit payable under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General, to any benefit if nonpayment of such benefit would contravene an international agreement described in section 233 of the Social Security Act [42 U.S.C.A. § 433], to any benefit if nonpayment would be contrary to section 202(t) of the Social Security Act [42 U.S.C.A. § 402(t)], or to any benefit payable under title II of the Social Security Act to which entitlement is based on an application filed in or before August 1996.

(3) Subsection (a) of this section shall not apply to any benefit payable under title XVIII of the Social Security Act (relating to the medicare program) [42 U.S.C.A. § 1395 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title [42 U.S.C.A. § 1395c et seq.], who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.

(4) Subsection (a) of this section shall not apply to any benefit payable under the Railroad Retirement Act of 1974 [45 U.S.C.A. § 231 et seq.] or the Railroad Unemployment Insurance Act [45 U.S.C.A. § 351 et seq.] to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.

(5) Subsection (a) of this section shall not apply to eligibility for benefits for the program defined in section 1612(a)(3)(A) of this title (relating to the supplemental security income program), or to eligibility for benefits under any other program that is based on eligibility for benefits under the program so defined, for an alien who was receiving such benefits on August 22, 1996.

(c) “Federal public benefit” defined

(1) Except as provided in paragraph (2), for purposes of this chapter the term “Federal public benefit” means--

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

(2) Such term shall not apply--

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

CREDIT(S)

(Pub.L. 104-193, Title IV, § 401, Aug. 22, 1996, 110 Stat. 2261; Pub.L. 105-33, Title V, §§ 5561, 5565, Aug. 5, 1997, 111 Stat. 638, 639; Pub.L. 105-306, §§ 2, 5(a), Oct. 28, 1998, 112 Stat. 2926, 2927.)

Notes of Decisions (2)

8 U.S.C.A. § 1611, 8 USCA § 1611
Current through P.L. 114-316. Also includes P.L. 114-318 to 114-327, and 115-1 to 115-3. Title 26 current through 115-3.

§ 1612. Limited eligibility of qualified aliens for certain Federal programs

Effective: October 1, 2008

8 U.S.C.A. § 1612

§ 1612. Limited eligibility of qualified aliens for certain Federal programs

Currentness

(a) Limited eligibility for specified Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 1641 of this title) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions

(A) Time-limited exception for refugees and asylees

With respect to the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien until 7 years after the date--

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C.A. § 1157];

(ii) an alien is granted asylum under section 208 of such Act [8 U.S.C.A. § 1158];

(iii) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C.A. § 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208 or section 241(b)(3) of such Act [8 U.S.C.A. § 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(iv) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(v) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

(B) Certain permanent resident aliens

Paragraph (1) shall not apply to an alien who--

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.]; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December

31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is--

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of Title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of Title 38,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of Title 38.

(D) Transition for aliens currently receiving benefits

(i) SSI

(I) In general

With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on August 22, 1996, and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of August 22, 1996, and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria

With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice

Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps

(I) In general

With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on August 22, 1996, unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977 [7 U.S.C.A. § 2011 et seq.]. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) Recertification criteria

With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision

The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on August 22, 1996, the alien

is lawfully residing in any State and is receiving benefits under such program on August 22, 1996.

(E) Aliens receiving SSI on August 22, 1996

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996

With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien who--

(i) in the case of the specified Federal program described in paragraph (3)(A)--

(I) was lawfully residing in the United States on August 22, 1996; and

(II) is blind or disabled (as defined in paragraph (2) or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(ii) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 3(j) of the Food Stamp Act of 1977 (7 U.S.C.A. § 2012(j))) [1].

(G) Exception for certain Indians

With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), section 1611(a) of this title and paragraph (1) shall not apply to any individual--

(i) who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C.A. § 1359) apply; or

(ii) who is a member of an Indian tribe (as defined in section 5304(e) of Title 25).

(H) SSI exception for certain recipients on the basis of very old applications

With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual--

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

(I) Food stamp exception for certain elderly individuals

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who on August 22, 1996--

(i) was lawfully residing in the United States; and

(ii) was 65 years of age or older.

(J) Food stamp exception for certain children

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who is under 18 years of age.

(K) Food stamp exception for certain Hmong and Highland Laotians

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to--

(i) any individual who--

(I) is lawfully residing in the United States; and

(II) was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in section 101 of Title 38);

(ii) the spouse, or an unmarried dependent child, of such an individual; or

(iii) the unremarried surviving spouse of such an individual who is deceased.

(L) Food stamp exception for certain qualified aliens

With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any qualified alien who has resided in the United States with a status within the meaning of the term “qualified alien” for a period of 5 years or more beginning on the date of the alien's entry into the United States.

(M) SSI extensions through fiscal year 2011

(i) Two-year extension for certain aliens and victims of trafficking

(I) In general

Subject to clause (ii), with respect to eligibility for benefits under subparagraph (A) for the specified Federal program described in paragraph (3)(A) of qualified aliens (as defined in section 1641(b) of this title) and victims of trafficking in persons (as defined in section 7105(b)(1)(C) of Title 22) or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act), the 7-year period described in subparagraph (A) shall be deemed to be a 9-year period during fiscal years 2009 through 2011 in the case of such a qualified alien or victim of trafficking who furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable) and is described in subclause (III).

(II) Aliens and victims whose benefits ceased in prior fiscal years

Subject to clause (ii), beginning on September 30, 2008, any qualified alien (as defined in section 1641(b) of this title) or victim of trafficking in persons (as defined in section 7105(b)(1)(C) of Title 22 or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act) rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A) shall be eligible for such program for an additional 2-year period in accordance with this clause, if such qualified alien or victim of trafficking meets all other eligibility factors under title XVI of the Social Security Act, furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable), and is described in subclause (III).

(III) Aliens and victims described

For purposes of subclauses (I) and (II), a qualified alien or victim of trafficking described in this subclause is an alien or victim who--

(aa) has been a lawful permanent resident for less than 6 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act, or terminated through removal proceedings under section 240 of the Immigration and Nationality Act, and the Commissioner of Social Security has verified such status, through procedures established in consultation with the Secretary of Homeland Security;

(bb) has filed an application, within 4 years from the date the alien or victim began receiving supplemental security income benefits, to become a lawful permanent resident with the Secretary of Homeland Security, and the Commissioner of Social Security has verified, through procedures established in consultation with such Secretary, that such application is pending;

(cc) has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law

96-422), for purposes of the specified Federal program described in paragraph (3)(A);

(dd) has had his or her deportation withheld by the Secretary of Homeland Security under section 243(h) of the Immigration and Nationality Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208), or whose removal is withheld under section 241(b)(3) of such Act;

(ee) has not attained age 18; or

(ff) has attained age 70.

(IV) Declaration required

(aa) In general

For purposes of subclauses (I) and (II), the declaration required under this subclause of a qualified alien or victim of trafficking described in either such subclause is a declaration under penalty of perjury stating that the alien or victim has made a good faith effort to pursue United States citizenship, as determined by the Secretary of Homeland Security. The Commissioner of Social Security shall develop criteria as needed, in consultation with the Secretary of Homeland Security, for consideration of such declarations.

(bb) Exception for children

A qualified alien or victim of trafficking described in subclause (I) or (II) who has not attained age 18 shall not be required to furnish to the Commissioner of Social Security a declaration described in item (aa) as a condition of being eligible for the specified Federal program described in paragraph (3)(A) for an additional 2-year period in accordance with this clause.

(V) Payment of benefits to aliens whose benefits ceased in prior fiscal years

Benefits paid to a qualified alien or victim described in subclause (II) shall be paid prospectively over the duration of the qualified alien's or victim's renewed eligibility.

(ii) Special rule in case of pending or approved naturalization application

With respect to eligibility for benefits for the specified program described in paragraph (3)(A), paragraph (1) shall not apply during fiscal years 2009 through 2011 to an alien described in one of clauses (i) through (v) of subparagraph (A) or a victim of trafficking in persons (as defined in section 7105(b)(1)(C) of Title 22) or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act), if such alien or victim (including any such alien or victim rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A)) has filed an application for naturalization that is pending before the Secretary of Homeland Security or a United States district court based on section 336(b) of the Immigration and Nationality Act, or has been approved for naturalization but not yet sworn in as a United States citizen, and the Commissioner of Social Security has verified, through procedures established in consultation with the Secretary of Homeland Security, that such application is pending or has been approved.

(3) “Specified Federal program” defined

For purposes of this chapter, the term “specified Federal program” means any of the following:

(A) SSI

The supplemental security income program under title XVI of the Social Security Act [42 U.S.C.A. § 1381 et seq.], including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [42 U.S.C.A. § 1382e(a)] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66.

(B) Food stamps

The food stamp program as defined in section 3(l) of the Food Stamp Act of 1977.

(b) Limited eligibility for designated Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in section 1613 of this title and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 1641 of this title) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions

Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees

(i) Medicaid

With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date--

(I) an alien is admitted to the United States as a refugee under section 207 of of the Immigration and Nationality Act [8 U.S.C. 1157];

(II) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];

(III) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien[2] admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) of this section until 5 years after the date of such alien's entry into the United States.

(ii) Other designated Federal programs

With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date--

(I) an alien is admitted to the United States as a refugee under section 1157 of this title;

(II) an alien is granted asylum under section 1158 of this title;

(III) an alien's deportation is withheld under section 1253(h) of this title (as in effect immediately before April 1, 1997) or section 1251(b)(3) of this title (as amended by section 305(a) of division C of Public Law 104-208);

(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) of this section until 5 years after the date of such alien's entry into the United States.

(B) Certain permanent resident aliens

An alien who--

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.]; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or can be credited with such

qualifying quarters as provided under section 1645 of this title, and (II) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(C) Veteran and active duty exception

An alien who is lawfully residing in any State and is--

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of Title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of Title 38,

(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of Title 38.

(D) Transition for those currently receiving benefits

An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits under such program on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians

With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), section 1611(a) of this title and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G) of this section.

(F) Medicaid exception for aliens receiving SSI

An alien who is receiving benefits under the program defined in subsection (a)(3)(A) of this section (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(3) “Designated Federal program” defined

For purposes of this chapter, the term “designated Federal program” means any of the following:

(A) Temporary assistance for needy families

The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.].

(B) Social services block grant

The program of block grants to States for social services under title XX of the Social Security Act [42 U.S.C.A. § 1397 et seq.].

(C) Medicaid

A State plan approved under title XIX of the Social Security Act [42 U.S.C.A. § 1396 et seq.], other than medical assistance described in section 1611(b)(1)(A) of this title.

CREDIT(S)

(Pub.L. 104-193, Title IV, § 402, Aug. 22, 1996, 110 Stat. 2262; Pub.L. 104-208, Div. C, Title V, § 510, Sept. 30, 1996, 110 Stat. 3009-673; Pub.L. 105-18, Title II, § 6005, June 12, 1997, 111 Stat. 191; Pub.L. 105-33, Title V, §§ 5301, 5302(a), (b), 5303(a), (b), 5304, 5305(b), 5306(a), (b), 5562, 5563, Aug. 5, 1997, 111 Stat. 597, 598, 600, 601, 602, 638, 639; Pub.L. 105-185, Title V, §§ 503 to 508, June 23, 1998, 112 Stat. 578, 579; Pub.L. 107-171, Title IV, § 4401(a), (b)(1), (c)(1), May 13, 2002, 116 Stat. 333; Pub.L. 110-328, § 2, Sept. 30, 2008, 122 Stat. 3567; Pub.L. 110-234, Title IV, § 4115(c)(2)(D), May 22,

2008, 122 Stat. 1110; Pub.L. 110-246, § 4(a), Title IV, § 4115(c)(2)(D), June 18, 2008, 122 Stat. 1664, 1871.)

Notes of Decisions (17)

Footnotes

1 So in original. Probably should be "2012(j))).".

2 So in original. Probably should be “alien is”.

8 U.S.C.A. § 1612, 8 USCA § 1612
Current through P.L. 114-316. Also includes P.L. 114-318 to 114-327, and 115-1 to 115-3. Title 26 current through 115-3.

End of Document

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 14. Restricting Welfare and Public Benefits for Aliens

§ 1641. Definitions

Effective: December 23, 2008

8 U.S.C.A. § 1641

§ 1641. Definitions

Currentness

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)].

(b) Qualified alien

For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C.A. § 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C.A. § 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980;[1] or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term "qualified alien" includes--

(1) an alien who--

(A) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

NOTES OF DECISIONS (1)

Qualified aliens

(B) has been approved or has a petition pending which sets forth a prima facie case for--

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C.A. § 1154(a)(1)(A)(ii), (iii) or (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C.A. § 1154(a)(1)(B)(ii) or (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C.A. § 1254(a)(3)] (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C.A. § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C.A. § 1154(a)(1)(B)(i)]; [2]

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

(2) an alien--

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1);

(3) an alien child who--

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(4) an alien who has been granted nonimmigrant status under section 1101(a)(15)(T) of this title or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms “battery” and “extreme cruelty”, and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

CREDIT(S)

(Pub.L. 104-193, Title IV, § 431, Aug. 22, 1996, 110 Stat. 2274; Pub.L. 104-208, Div. C, Title III, § 308(g)(8)(E), Title V, § 501, Sept. 30, 1996, 110 Stat. 3009-624, 3009-670; Pub.L. 105-33, Title V, §§ 5302(c)(3), 5562, 5571(a) to (c), 5581(b)(6), (7), Aug. 5, 1997,

111 Stat. 599, 638, 640, 643; Pub.L. 106-386, Div. B, Title V, § 1508, Oct. 28, 2000, 114 Stat. 1530; Pub.L. 110-457, Title II, § 211(a), Dec. 23, 2008, 122 Stat. 5063.)

Notes of Decisions (1)

Footnotes

1 So in original. The semicolon probably should be a comma.

2 So in original. The semicolon probably should be “, or”.

8 U.S.C.A. § 1641, 8 USCA § 1641
Current through P.L. 114-316. Also includes P.L. 114-318 to 114-327, and 115-1 to 115-3. Title 26 current through 115-3.

End of Document

The Jay Treaty's Promise & Potential
May 21 & 22, 2017
www.jaytreaty.com

Northwest Indian College
2522 Kwina Rd, Bellingham, WA 98226

Questions? Please contact:
kbuchanan@cascadia.com

Scope of the Conference

The conference will be discussing the preservation and expansion of cross-border rights of the indigenous peoples of Canada and the U.S. Important for broad economic and cultural reasons, these rights are essential for preserving ties between indigenous peoples whose communities span the U.S./Canada border.

Borders are political constructs. As it occurs directly after the Vine Deloria, Jr. Symposium, this conference is uniquely suited to capture and expand on the dialogue focused on the legal framework that surrounds interacting with the natural world. The conference will include sessions on the following:

- Restorative Justice & Treaties
- The Jay Treaty & Cultural Cohesion
- The Jay Treaty & Post-Secondary Education in the U.S.
- The Jay Treaty as an Economic Development Tool
- The Jay Treaty's Potential for the Future
- The Jay Treaty & Endangered Species Laws & Other Environmental Protections

History of the Jay Treaty

In 1794, the United States and Great Britain negotiated the Jay Treaty, established in part to mitigate the effects of the recently established boundary line between Canada and the United States on the indigenous peoples who suddenly found their lands bisected.

The rights and benefits originally set out by the Jay Treaty—now reflected by U.S. law in § 289 Immigration and Nationality Act—bestow upon Canadians with a 50% or better native bloodline theoretical privileges unparalleled by all but United States citizens to enter the U.S. and remain and work or engage in other lawful activity, virtually unrestricted by U.S. immigration laws. Qualifying Canadians, defined in statute as "American Indians born in Canada" may be of Indian, Inuit, or Métis background if bloodline can be documented.

Meanwhile, upon becoming an independent nation, Canada failed to ratify the Jay Treaty. While its constitutional framework provides for protection of aboriginal rights; it is unclear whether, and to what extent, such protections extend to a right of free passage for U.S. born indigenous peoples seeking entry to Canada.

Current Impacts and Issues

In the wake of post-9/11 security enhancements, it has become increasingly difficult for indigenous peoples to exercise their border crossing rights to the extent they are entitled. Moreover, inconsistent and inaccurate information disseminated by government agencies on both sides of the border complicates an already sensitive and misunderstood issue.