

Senator Ron Wyden, Chairman
Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20501

Senator Lisa Murkowski, Ranking Member
Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20501

April 22, 2013

Dear Chairman Wyden and Ranking Member Murkowski:

We are writing you in regards to S.340, the Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act. If advanced, this legislation would transfer public lands from the Tongass National Forest, in southeast Alaska, to the Sealaska Corporation. The undersigned organizations, representing hunters, anglers, scientists, and conservationists write to provide the following analysis and recommendations on this bill.

Few places in the United States have the wildlife populations, the public land values, and the hunting opportunities that are found today in Alaska. We are fully committed to conserving this richness of wildlife, and the hunting opportunities it affords, for the benefit of future generations of Americans.

Revisiting previously settled Alaska land claims risks problems

We believe that S. 340 will have impacts on wildlife and hunting that are far out of proportion to the number of acres involved in this particular legislation. Of particular concern is the precedent that this bill could set in terms of effectively re-writing key provisions of the Alaska Native Claims Settlement Act (ANCSA). That important law authorized the transfer of 44 million acres and about 1 billion dollars to 13 regional corporations and 206 village corporations to resolve all aboriginal land claims. Passage of S. 340 as proposed invites a cascade of other claims to amend ANCSA with potentially severe implications for public lands, and public access and use, in virtually all parts of Alaska.

In hindsight, after many decades, any number of native corporations can identify further changes to ANCSA and suggest alternate land selections that would provide greater economic benefit to their shareholders. While the largest percentage of ANCSA acres have been conveyed, there still remain hundreds of thousands of acres in outstanding entitlements, as well as many millions of acres in interim conveyance status not yet patented. If S. 340 is allowed to provide a precedent for revisiting land selections in Alaska, with a new opportunity for countless new high-value parcel selections (as with the “future sites” in S. 340), it may open a proverbial Pandora’s Box of controversy and conflict.

Already, there are proposals to create new native corporations with brand new land selections in Southeast Alaska totaling more than 100,000 acres in addition to the Sealaska Corporation legislation now under consideration. Legislation has been filed in previous sessions that would transfer even more public land to native corporations outside the framework of ANCSA¹. If

¹ H.R. 5617, 109th Cong. (2006), and H.R. 5403, 110th Cong. (2008)

Congress renegotiates ANCSA with one corporation, it may be doing so eventually with all. We want to ensure that the legislation does not set a precedent for other native corporations to open settlement agreements that were made under ANSCA.

Legislation is not required

Sealaska is presently entitled to receive its full land entitlement under law within areas that the Corporation helped identify and actively supported in testimony before Congress at the time of deliberation. These areas were submitted to the Bureau of Land Management (BLM) in 2008 under the strong legal language of the Alaska Land Transfer Acceleration Act as "final and irrevocable priorities". With the prospect of gaining increased value via this legislation, Sealaska has subsequently asked BLM to halt conveyance. At this point, the Sealaska Corporation itself is the party solely responsible for not having received its full land entitlement under ANCSA.

Wildlife and sportsmen's activities depend on old-growth areas threatened in S.340

While the amount of acreage requested in S. 340 appears small relative to the overall size of the Tongass National Forest, the public lands that Sealaska seeks to obtain for timber harvest include some of the region's richest and most biologically productive sites. One measure of this is the tree size on any given acre. These large-tree stands are not only disproportionately valuable economically for wood volume, these same areas provide vital and increasingly scarce habitat for a variety of Tongass wildlife.

Large tree stands on the Tongass (i.e., identified as class 6 and 7) comprise just 3% of the National Forest land base. Yet they make up 30% of Sealaska's requested acreage under S. 340. The selections sought by Sealaska for timber harvest will eliminate 10% of all remaining class 7 (biggest tree) stands on the Tongass. This will create disproportionate negative impacts on wildlife populations that depend on these stands for cover from deep winter snow (like deer) or for security cover along salmon stream (black and brown bears). Small parcel selections (future sites and cultural sites) at the heads of pristine bays, or at the mouths of salmon streams, also constitute a deceptively small percentage of the Tongass National Forest land base. However, if these parcels are developed for their economic potential, they inevitably will displace public use, and affect wildlife resources, over a much larger surrounding area.

The proposed legislation risks listings under ESA

Conveying the most productive lands from the Tongass National Forest to Sealaska will risk listing decisions for a number of species under the Endangered Species Act (ESA). Petitions have previously been filed with US Fish and Wildlife Service for listing the Queen Charlotte Goshawk, the Alexander Archipelago Wolf, and the Prince of Wales Flying Squirrel. Loss of old-growth forest from logging is the primary basis for these petitions. Transfer of these important old-growth areas for logging without prior agency assessment of the effect on a potential listing under ESA poses a significant and unwarranted risk.

Recommendation

We support the full and immediate conveyance of Sealaska's current entitlement under the provisions of ANCSA, as reflected in their request to BLM filed in 2008. We do not support advancement or passage of S. 340. It gives selective advantage to a single corporation, and will create requests by others for comparable benefits. The short and long-range implications of this bill pose too great a risk to important fish and wildlife habitat in Southeast Alaska to merit our support.

We believe this bill is fundamentally flawed. However, we also realize that bills are often advanced despite a constituency's concerns. Should this bill be scheduled for mark-up in your committee, we respectfully request the following changes be made:

- 1) Exclude from the requested selection two special areas with extraordinarily high wildlife values. These places are: North Kuiu Island (4,728 acres) and Keete Inlet (11,863 acres), on S. Prince of Wales. Both areas have been ranked extremely high for wildlife values in a Tongass-wide conservation assessment.²
 - North Kuiu is famous for its large black bears, big trees and rich estuarine habitat. The island produces over half the black bears harvested in Southeast Alaska. Populations have declined significantly as early clearcuts close in, reducing numbers of deer, wolves, and bears. This area is a high priority for restoration of logged areas (thinning) and protection of the vital large tree old-growth habitat that remains.
 - Keete Inlet is a nearly pristine watershed located between a designated Wilderness area and a legislated roadless area. It provides a highly productive and important large tree old-growth refuge for wildlife on Prince of Wales Island where past logging has been especially intensive. Logging in the Keete Inlet drainage would compromise the integrity of the larger area. This watershed has also been identified by Trout Unlimited as a priority for protection as one of the premier salmon watersheds in the Tongass.

Protecting these vital watersheds from further logging would reduce the acres in Sealaska's request. We would encourage selection of alternative second-growth acres on the existing road system instead.

- 2) Sealaska's selections should be weighted towards existing second-growth forest. In general, these areas are already compromised in terms of their wildlife and habitat values and these are the lands best suited for long-term timber production. As inducement, such lands include infrastructure already in place, including roads, culverts, bridges, and log-transfer facilities, representing millions of dollars of public investment.
- 3) Selections should not occur within 100 ft of class 1 and 2 salmon streams, or on sensitive soils (e.g., karst and wetlands). Logging on these selections should conform to best management practices on National Forest lands. Moreover, location of selections should

² Schoen and Dovichin, eds. *A Conservation Assessment and Resource Synthesis for the Coastal Forests and Mountains Ecoregion in Southeastern Alaska and the Tongass National Forest*, The Nature Conservancy and Audubon Alaska (March 2007).

be responsive to the desires of nearby communities that depend on these lands for hunting and other subsistence activities.

- 4) Public access to the proposed land selections should be granted in certain terms. The current provisions appear based on the public easement provisions in section 17(b) of ANILCA, which are rare in Southeast Alaska. Because of BLM's past record of vacating easements we request that language be inserted which states: "17(b) easements may not be vacated unless comparable access is provided." In addition, Congress should include language that assures free public access for hunting, fishing and recreation. S. 340 should incorporate the access language in the Koniag agreement. See example.³
- 5) The management of fish and wildlife populations on these lands should be the responsibility of the State of Alaska. The provision in this bill which applies Title 8 of ANILCA (federal subsistence priority) over private land in Alaska is unprecedented, and should be changed. Authority for fish and game management on these lands should be consistent with that on all other state and private land in Alaska.
- 6) The legislation should specify that its passage does not set a precedent for other Native Corporations to re-open settlement agreements that were made under ANCSA.

Thank you, Senator Wyden and Senator Murkowski, for considering our views. We appreciate the opportunity to weigh in on this legislation which will shape the future of Southeast Alaska in profound ways. While there are many diverse and legitimate interests affected by this legislation, we trust there is wide agreement on the need to protect the basic integrity and productivity of this ecosystem for all, far into the future.

We would greatly appreciate your help to that end, and happy to meet with you or your staff for further discussion of our concerns and recommendations.

Sincerely,

Archery Trade Association

Bear Trust International

Bowhunting Preservation Alliance

Campfire Club

Conservation Force

Dallas Safari Club

Delta Waterfowl Foundation

National Trappers Association

North American Bear Foundation

North American Grouse Partnership

Mule Deer Foundation

Pope and Young Club

Orion, The Hunter's Institute

Safari Club International

Texas Wildlife Association

The Wildlife Society

Theodore Roosevelt Conservation Partnership

Wildlife Management Institute

Wildlife Forever

³ Example: The lands on Afognak Island required to be conveyed shall remain open and available to recreational and sport hunting and fishing and other recreational uses by the public commercial uses under applicable law, subject only to such reasonable restrictions which may be imposed by Koniag, Incorporated for the purposes of limiting or prohibiting such public uses in the immediate vicinity of logging or other commercial operations which may be undertaken by the corporations upon the affected lands. Such restrictions shall comprise only those restrictions necessary to insure public safety and to minimize conflicts between recreational and commercial uses.

