WRITEN TESTIMONY

ON S. 730

SUBMITTED BY WAYNE REGELIN, PRESIDENT OF TERRITORY SPORTSMEN ON BEHALF OF THE BOARD OF DIRECTORS OF TERRITORIAL SPORTSMEN

SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION AND JOBS PROTECTION ACT

SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON

PUBLIC LANDS AND FORESTS

HEARING HELD ON MAY 25, 2011

Territorial Sportsmen Inc. is a Juneau based conservation organization that promotes the rights of all citizens to hunt, fish and trap. TSI was founded in 1950 and has 1800 members. Our organization has a long involvement with management of the Tongass National Forest because it provides the vast majority of fish and wildlife habitat in our area and is vital to the interest of our members. We have followed the all legislation related to Native land claims in Alaska and provided input to Congress all of the many times they have addressed this issue.

TSI strongly supports conveyance of lands to Sealaska Native Corporation to meet the requirements of the Alaska Native Claims Settle Act of 1971 (ANSCA). Finalization of the land selections is necessary to allow continued economic growth and stability through throughout Southeast Alaska. However, we strongly disagree with several provisions in S. 730 because:

- Provisions to provide public access across selected lands to use public lands are too weak.
- Several types of conveyances go far beyond what the other 11 Alaska Native Regional Corporations received in ANSCA.
- Selection and timber harvest of old-growth reserves established by the current Tongass Land Use Management Plan (TLUMP) will likely result in the listing of the Alexander Archipelago wolf as an endangered species.
- Land selections and resulting timber harvest will have severe deleterious impacts on nine small villages on Prince of Wales and Koscuisco Islands

We will elaborate on each of these concerns. It is our hope that S. 730 can be modified to address these serious issues. If not, TSI is prepared to oppose this legislation.

Public Access Issues

S. 730 would convey three Traditional and Customary Trade and Migration routes to Sealaska Native Corporation. These routes are strips of land 25 feet wide and up to 50 miles long. Such conveyances are not necessary to insure Native Alaskans can continue to use such routes. U.S. Forest Service regulations insure that all members of the public can use National Forest lands. The sole purpose of this conveyance is to prohibit public access to the public lands and resources used by hunters, anglers and other recreation users. Conveyance of such strips would be terrible public policy and is totally outside the intent of the 1971 Alaska Native Claims Settlement Act (ANCSA). The long, narrow strips of land would allow Sealaska Native Corporation to deny access or charge a fee for access to vast areas of public lands and the resources all Alaskans enjoy on these lands.

Sealaska continues to tell the public in Southeast Alaska and Congress that they will continue to be good neighbors, allowing public use on their newly selected lands and not using selected lands to block access to adjacent public lands. However their request to allow selection of long, narrow strips of land seems to tell a different story, especially since much of the access language in the bill does not apply to migration routes. TSI urges you in the strongest way possible to remove this onerous provision from S. 730.

Provisions for public access across lands conveyed to Sealaska Corp. via S. 730 are much weaker than the version of this legislation considered in 2010. They are inadequate to insure the public can continue to cross native lands to access public lands and resource and to use the newly selected lands. TSI suggests that S. 730 be modified to include similar access language that was included in federal legislation that conveyed lands to the Koniag Native Corporation on islands near Kodiak Alaska. That language is:

> (5) The lands on Afognak Island required to be conveyed pursuant Afognak Island to paragraph (1) of this subsection shall remain open and available to recreational and sport hunting and fishing and other recreational uses by the public commercial uses. under applicable law (but without liability on the part of Koniag Incorporated or any Koniag Village Corporation, except for willful acts, to any user by reason of such use), subject only to such reasonable restrictions which may be imposed by Koniag, Incorporated and the affected Koniag Village Corporations 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. Koniag, Incorporated and the affected Koniag Village Corporations shall permit access to the lands on Afognak Island conveyed to them by employees of the State for purposes of managing fish and wildlife and by other State officers and employees, and employees of political subdivisions of the State, for the purposes of carrying out this subsection.

Expansion of ANCSA

Inclusion of Traditional, Recreational, and Renewable Energy Use Value Sites (formerly called Future Sites) and the migration routes will have dire unanticipated consequences. To date, no

other Regional or Village Native Corporation has been allowed to select long, narrow strips of land to block access or select small areas with high value for fishing lodges, hydroelectric projects and development of other energy producing projects. S. 730 will set a precedent that will likely result in the reopening of native claims throughout Alaska. It is not reasonable to provide one Regional Native Corporation such lucrative entitlements without expecting the other Native Corporations to demand similar benefits. Inclusion of language in federal legislation that has significant potential to result in the reopening of native land claims 40 years after ANSCA settled all native claims is not wise public policy. Reopening of native land claims will have severe deleterious impacts on the State of Alaska and stymie economic develop for many years. Please remove these provisions from S. 730.

ESA implications

Creation of numerous old-growth reserves in the current Tongass Land Management Plan was a critical factor in the court decision that listing of the Alexander Archipelago wolf was not necessary. The judge ruled the old-growth reserves provided the necessary protection to insure the long-term survival of the wolf in SE Alaska. The lands that Sealaska would be allowed to select in S. 730 include several of these old-growth reserves. The bill considered in 2010 was amended to require the U.S. Forest Service to replace old-growth forest reserves that are selected with different old-growth reserves of comparable quality. This was important language that would be very helpful in the inevitable court fight to list the Alexander Archepelago wolf as endangered if S 730 allows old-growth reserves to be selected. The language requiring the replacement of old-growth reserves should be included in S 730. In addition, we suggest that the bill add a requirement that that the U.S. Forest Service obtain concurrence of the U.S. Fish and Wildlife Service in any decisions regarding the designations of comparable old-growth reserves to replace old-growth reserves that are selected. The decision to list the wolf as an endangered species lies exclusively with the U.S. Fish and Wildlife Service, so they should be involved in this process.

It is critical that implications of an ESA listing be examined thoroughly before any major deviations from the existing TLMP management plans and Tongass land selections are altered. I am attaching a letter to Senator Murkowski dated May 24, 2010 by Matt Robus, Ron Somerville and Wayne Regelin concerning potential listings and the negative impacts such a listing would have on Alaska. To continue pursuing major land use revisions in the region without an adequate impact assessment is not a wise course of action.

Impacts on local communities

TSI continues to have concerns about the impacts of S. 730 on the local communities on Prince of Wales Island and Koscuisko Island. Although the current bill does make some attempt to move some development areas (particularly logging) away from some of the communities, it appears to raise new areas of concern for other communities. Most residents of the nine

communities that will be affected believe their communities will be destroyed if S. 730 is passed. They do not think their concerns have been heard.

This legislation has become very controversial throughout Alaska and especially in southeastern Alaska. We know of no organization or individual that opposes conveying all of the lands to Sealaska that they were provided by ANSCA. The opposition to the issue arises for two reasons

1. The bill allows Sealaska to select lands outside of the boundaries for selection that they requested from Congress by Sealaska and Congress authorized in 1975.
2. The bill allows Sealaska to select highly valuable recreational and energy producing sites of only a few acres anywhere on the Tongass. This will likely result in reopening of native land claims throughout Alaska. These sites will also create over 30 new "inholdings" within the Tongass National Forest. This is contrary to the federal policy over the past 50 years of purchasing inholdings within National Forest and National Parks throughout the United States.

Much misinformation has been widely distributed about why this legislation is necessary and why it is unfair to require Sealaska to select lands within 10 large blocks of land. A brief history of this issue may help everyone understand the issue.

A U.S. Supreme Court decision in 1959 found that land rights of aboriginal Tlingits' had not been formally extinguished at the time of purchase from Russia. The Court ruled that the Indian land rights had been extinguished when Congress created the Tongass National Forest in 1905, but that the Indians were entitled to compensation. Eventually, in 1968 Congress provided $7.5 million to the Central Council of the Tlingit/Haida to settle land claims on the Tongass National Forest. The amount was based upon the value of timber on these lands in 1905.

Congress enacted ANCSA in 1971. This Act established 12 regional native corporations and many village native corporations. Eleven Regional Native corporations were be able to select a total of 22 million acres of federal land and village native corporations another 22 million acres were provided for selection by village Native corporations.. The Sealaska Native Corporation was not allowed to select any of these 22 million acres because they had settled their land claims in 1968. Southeast Alaska village corporations were allowed to select lands from the 22 million acres set aside for village corporations, but the amount each of the 10 Southeastern native villages could select was limited to 23,040 acres for each village because of the 1968 settlement.

In another section of ANCSA (section 14) Congress set aside 2 million acres that could be selected for cemetery sites, historical places, for small native groups of less than 25 people, natives living in non-native communities of Sitka, Juneau, Kenai, and Kodiak, and individual Native allotments. The Act required that all land conveyances for this purpose be approved within four years. No one knew how many acres would be needed to fulfill these additional conveyances, so Congress set aside 2 million acres for this purpose. These acres became known as the "hardship acres". Section 14 (h)(8) of ANILCA stated that any portion of the 2 million

acres not conveyed within four years by this subsection shall be allocated and conveyed to the regional corporations on the basis of population. Only 300,000 acres of the "hardship" lands were conveyed and the remaining 1.7 million acres were made available for selection by the Regional Corporations. Sealaska Regional Corporation had the largest population in 1971. The 290,000 acres of currently owned by Sealaska Regional Corporation and the approximately 65,000 yet to be conveyed came from the "hardship acres."

ANSCA did not restrict selection of "hardship" lands by Sealaska to any particular areas or blocks of land. They were allowed to selected anywhere within the Tongass Forest. ANSCA was amended in 1975 to create 10 blocks (each block was 9 townships or xx square miles) near village corporation lands from which Sealaska would make all selections of "hardship lands". This amendment was proposed by Sealaska Corporation President John Borbridge and Congress accommodated his request. This action benefited both the U.S. Forest Service and Sealaska Corporation. Sealaska wanted their selections to be adjacent to lands already selected by village native corporation to make their logging sales and the logging operations more efficient. The U.S. Forest Service benefited because they could move forward with timber sales outside the 10 blocks of lands.

To now claim that the requirement for Sealaska to select lands within these 10 blocks was unfairly imposed on Sealaska by Congress is simply not true. It was done at the specific request of Sealaska in 1976. The lands within the 10 blocks have excellent stands of timber, but they do not have the extensive road system that the Forest Service built on the lands they now wish to select. Tens of millions of dollars of public funds were used to build these roads. TSI does believe is would be good public policy to simply give these roads to Sealaska.

In 2008, Sealaska made their final selections within the 10 blocks and asked the BLM to convey the lands. Subsequently, Sealaska asked the BLM to place a hold on the conveyances as they tried to get a more lucrative deal from Congress. No Congressional action is necessary for Sealaska to receive the lands they are entitled to under ANSCA.

Recent articles and news releases in Alaska have focused emphasis on this legislation as an attempt to protect jobs in the region. The only jobs protected by this legislation are the loggers and support personnel preparing logs for shipment to Japan in the round. Peripheral benefits are questionable – especially associated with the small communities that will be negatively impacted by the type of logging activities exhibited by Sealaska in the past. There will be no on-site primary manufacturing. Very few if any local residents will be hired. Unfortunately, jobs lost due to major changes in local flora and fauna are somehow ignored.

Finally, we have to concur with the position taken by the USFS regarding this legislation. In addition, any rational and professional resource assessment would have to conclude that a total revision of TLMP will again be necessary if S. 730 were to pass. Although some within the federal agencies arbitrarily determined no revision would be necessary, we are convinced that in

light of past court actions regarding planning within the Tongass and its relationship to NEPA, it is inevitable. It is hard for us to understand how this scenario provides any benefits to anyone within the region, including Sealaska.