



April 22, 2013

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510-3703

Dear Senator Wyden,

The purpose of this letter is to provide comment on S. 340 (“Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act”). This legislation is the most recent version of the proposal introduced on behalf of the Sealaska Corporation as it seeks to obtain public lands within the Tongass National Forest, primarily for timber harvest and other commercial purposes.

Audubon opposes S. 340. Congress should not authorize the Sealaska Corporation to rewrite basic terms of the Alaska Native Claims Settlement Act (ANCSA) to obtain highly-valued public lands in the Tongass National Forest for the corporation’s private gain. This controversial legislation remains fundamentally flawed and should not be advanced for numerous reasons as discussed further below:

- 1) The Sealaska Corporation has already made its final land selections under ANCSA and could receive its full land entitlement right now without precedent-setting new legislation that rewrites basic settlement provisions;
- 2) Sealaska’s proposed timber selections include ecologically high-value old growth habitat areas that should not be logged;
- 3) S. 340 would enable the Sealaska Corporation to unreasonably “high-grade” rare, large-tree old growth in the Tongass even though Congress specifically identified high-grading as a problem in the Tongass Timber Reform Act (TTRA) in 1990 and enacted an explicit ban on the practice;
- 4) S. 340 does not adequately protect salmon streams which support a valuable public resource;
- 5) S. 340 would create a precedent by rewriting some fundamental provisions of ANCSA and invite other Alaska Native Corporations to seek changes in ANCSA selections.

➤ **Sealaska Corporation has already made its final ANCSA land selections**

Audubon fully respects Sealaska’s right to secure its remaining entitlement pursuant to ANCSA. In this case, it is essential to note that no further action is required by Congress for the Sealaska Corporation to receive its full and complete land entitlement since the Corporation *already* made its final land selections decades ago within areas that Sealaska itself helped to identify.

By far the largest land claims settlement in U.S. history, ANCSA provided for conveyance of 45 million acres of land plus \$966 million¹ and settled all aboriginal land claims when it was enacted with strong bipartisan support. In 1975, then-Sealaska President John Borbridge testified to the Senate specifically requesting that the corporation be able to make their selections inside village corporation withdrawal areas and Sealaska's request became law in 1976.² Sealaska Corporation has since made its final selections within these areas but has also directed the Bureau of Land Management (BLM) to *halt* transfer of those lands while the corporation lobbies Congress in its effort to obtain far more valuable public lands from the Tongass. It has been argued by Senator Murkowski that Sealaska's entitlement "promise has never been fulfilled"³ under ANCSA but this statement is greatly misleading. Sealaska alone is responsible for not having yet received its full land entitlement.

S. 340 would inappropriately by-pass the established administrative land exchange process that could and should be employed to ensure a fair-value land exchange on the basis of appraised values. Such appraisals would document the great disparity in values between the lands that Sealaska would obtain relative to the lands they are currently entitled to under ANCSA.

➤ **Sealaska's proposed selections include high-value old growth areas that should not be logged**

Several of the publically owned areas sought by the Sealaska Corporation involve lands that have exceptional ecological value that have been identified as Tongass conservation priorities through a comprehensive Tongass-wide habitat assessment process.⁴ While the amount of acreage proposed for transfer to Sealaska in S. 340 may appear small relative to the overall size of Tongass National Forest, the public lands the corporation seeks to obtain for timber harvest include some of the region's most biologically productive areas that should be conserved rather than clearcut. The proposed Sealaska timber selections include conservation priority watersheds that should be dropped from any legislation: Keete Inlet, North Kuiu (Security Bay), McKenzie Inlet and Calder Bay.

- **Keete Inlet:** The proposed Keete Inlet timber selection is a pristine area with no roads on the south end of Prince of Wales Island (POW). The proposed Sealaska selection in S. 340 is an inventoried roadless area that would otherwise be protected from logging if not transferred out of public ownership. Keete Inlet is bordered by the South POW Wilderness Area (to the south) and by a Congressionally-designated roadless area (to the north and east). This combined area represents one of the last remaining large blocks of relatively intact productive old growth on POW providing an important refugia for old-growth associated species on the island, an area that has generally

¹ This figure does not include hundreds of millions of dollars received by Alaska Native Corporations as a result of special legislation enacted in 1986 that made Native Corporations uniquely authorized to sell net operating losses (NOLs). According to the University of Alaska, Institute of Social and Economic Research: "NOL sale proceeds provided a cash infusion equal (in real dollars) to two-thirds of the original ANCSA payments." Institute of Social and Economic Research, *Financial Performance of Native Regional Corporations*, University of Alaska Anchorage (December 1991).

² Testimony of John Borbridge, President, Sealaska Corporation: Hearing on S. 131 et al. before the Senate Committee on Interior and Insular Affairs, 94th Cong. 184-85 (1975). "We would greatly prefer to satisfy our 14(h)(8) rights out of lands in the areas that were withdrawn by section 16(a) for the 10 villages in the southeastern region. Basically we are desirous of selecting lands for timber values... areas could be combined with lands conveyed to the Village corporations to form better management and economic units." As reported by Alaska Congressman Don Young, the selection proposal endorsed by Sealaska "embodies a compromise negotiated and supported by Sealaska, the State of Alaska, Native villages in the region and various environmental groups." (Congressional Record, Dec. 16, 1975) Sealaska Corporation has received more than 290,000 acres of land from the selection areas, with approximately 63,605 acres remaining, based on BLM estimates.

³ Senator Lisa Murkowski, letter to D. Squibb, Point Baker Community Association, dated March 7, 2013.

⁴ Schoen and Dovichin, eds., *A Conservation Assessment and Resource Synthesis for The Coastal Forests & Mountain Ecoregion in Southeast Alaska and the Tongass National Forest*, The Nature Conservancy and Audubon Alaska (March 2007).

experienced the most extensive logging in the Tongass. The Keete Inlet watershed has been identified by Trout Unlimited as one of the most valuable salmon watersheds in the Tongass.

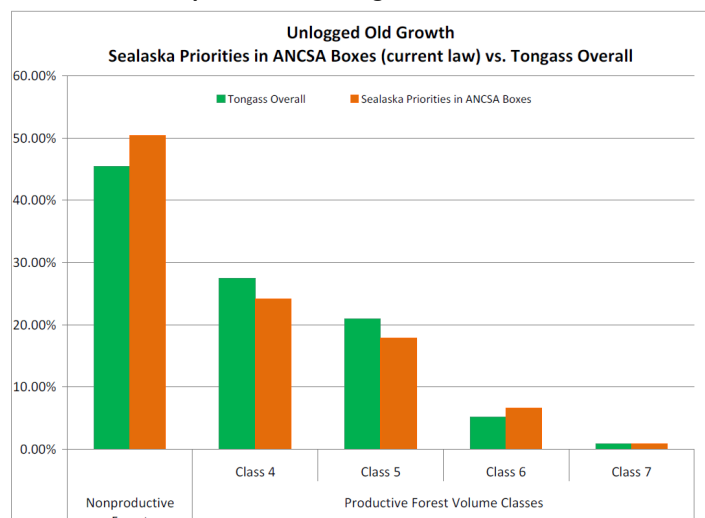
- **North Kuiu (Security Bay):** Sealaska’s proposed North Kuiu Island timber selection includes lands in both the Security Bay and Saginaw Bay watersheds. The Security Bay watershed has been identified by Trout Unlimited as among the most valuable salmon watersheds in the Tongass. Security Bay has exceptional value for steelhead, coho, pink, and chum salmon. This area also is also especially valuable for marbled murrelet nesting; big-tree old growth; and a very high density of black bears. Security Bay is ranked in the top 10% of all watersheds throughout the entire Tongass.
- **McKenzie Inlet:** The proposed Polk/McKenzie timber selection includes lands in both the Polk Bay and McKenzie Inlet watersheds. The McKenzie Inlet watershed selection is almost entirely within an inventoried roadless area that would otherwise be protected from logging under current law if not transferred to the Sealaska Corporation. The McKenzie Inlet big-tree old growth habitat is ranked in the top 5% among 117 watersheds within the biogeographic province and ranked in the top 3% for marbled murrelet nesting habitat. In terms of ecological values, the McKenzie Inlet watershed is ranked in the top 10% of all watersheds throughout the entire Tongass.
- **Calder Bay:** The proposed Calder Bay timber selection area includes significant large-tree old growth habitat. The area is ranked in the top 3% of its biogeographic province for marbled murrelet nesting and the watershed is ranked in the top 10% of all watersheds throughout the entire Tongass.

The timber values as well as habitat values of these areas are both disproportionately great. Sealaska’s proposed timber selections in these watersheds should be eliminated from any proposal that advances.

➤ **S. 340 would enable Sealaska to unreasonably “high-grade” rare, large-tree old growth**

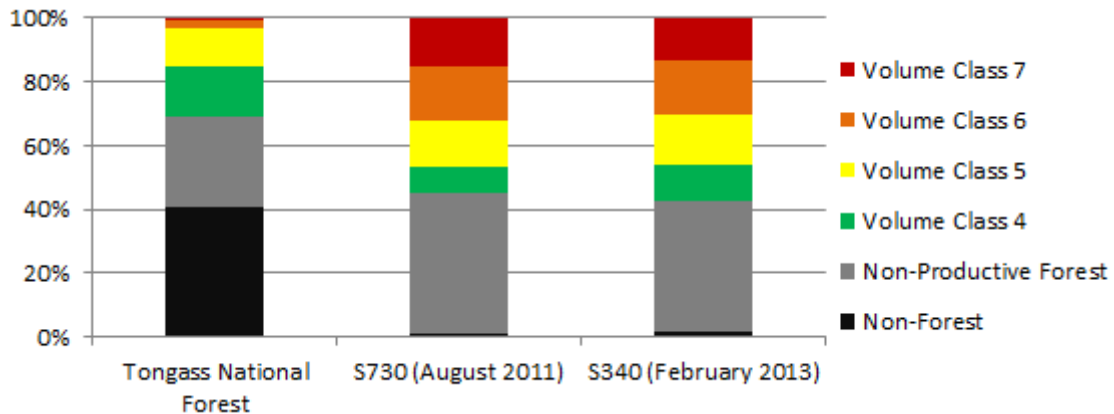
Sealaska’s existing land selections, on file with the BLM, reflect a forest (timber value) distribution that is comparable to the Tongass as a whole and would not constitute “high-grading” — i.e., the practice of disproportionately targeting and logging old growth stands with the largest trees (Figure 1).

Figure 1. Distribution of large-tree old growth (class 6/7) in existing Sealaska Corporation selections under current law compared to the Tongass National Forest as a whole



By contrast, the Sealaska timber selections proposed under S. 340 would constitute extreme high-grading (Figure 2). By conservative estimates over half of the very large-tree stands on the Tongass have already been eliminated as a result of high-grading. While large-tree stands (combined class 6/7) constitute just 3.5 percent of the Tongass National Forest overall, large-tree old growth is nearly 10 times greater (30%) in Sealaska’s proposed timber selections under S. 340.

Figure 2. Distribution of large-tree old growth (class 6/7) in the Tongass National Forest compared to the distribution of large-tree old growth under Sealaska Corporation proposals (S. 340 and S. 730)



The proposed timber selections in S. 340 are skewed radically (Table 1) and would enable the corporation to high-grade increasingly rare, large-tree old growth and further compound a problem that Congress has long-recognized and previously taken action to terminate. Congress explicitly identified high-grading as a problem in 1990 as part of the Tongass Timber Reform Act (TTRA) and enacted an explicit ban on the practice.⁵

Table 1. Quality of forest distribution in the Tongass National Forest compared to the distribution under Sealaska Corporation proposals to amend ANCSA to obtain more valuable lands (S. 340 and S. 730)

	Tongass National Forest	S730	S340	Sealaska ANCSA "Box" Selections
Non-Forest	40.68%	1.21%	1.67%	9.05%
Non-Prod. Forest/Young Growth	28.25%	43.70%	40.96%	47.31%
Volume Class 4	15.69%	8.18%	11.02%	21.27%
Volume Class 5	11.88%	14.36%	16.17%	15.74%
Volume Class 6	2.97%	17.55%	16.67%	5.83%
Volume Class 7	0.52%	15.00%	13.42%	0.81%

The need to end Tongass high-grading has been recognized for decades, as reflected in an independent scientific review of Tongass forest management practices in 1997 that highlighted the interconnected problems of high-grading, forest fragmentation, and loss of habitat connectivity.⁶ This independent

⁵ H.R. 987: Tongass Timber Reform Act, Section 301(c)(2)

⁶ Powell, et al., "Joint Statement of Members of the Peer Review Committee Concerning the Inadequacy of Conservation Measures for Vertebrate Species in the Tongass National Forest Land Management Plan of Record," (September 1997).

scientific peer review recommended that there be *no further logging on remaining large blocks of Tongass old growth forest* and that the USFS compensate for past, disproportionate large-tree logging by designing sales that would “low grade” in future management.

Temperate boreal rainforests of the world are rare and represent less than 5% of all forest cover on earth. The Tongass National Forest contains a significant portion of the earth’s last remaining significantly-sized intact tracts of this forest type. Large-tree old growth stands have always been scarce as well as long-targeted by loggers since the first days of commercial logging. Sealaska’s proposed high-grading is especially pronounced in relation to the very large-tree old growth stands (class 7) which are exceedingly rare, accounting for less than 0.5% of the Tongass. Sealaska’s proposed S. 340 selections would eliminate about one-tenth of all remaining class 7 stands in the Tongass forest-wide.

Although Sealaska’s proposed timber selections under S. 340 have been altered relative to the immediately prior proposal (S. 730), the current proposal would still enable the corporation to high-grade large-tree old growth in a manner that is fundamentally inconsistent with the Congressional ban on high-grading enacted as part of the TTRA.

➤ **S. 340 does not adequately protect salmon streams which support a valuable public resource**

Existing protections for salmon streams would be compromised under the special legislation being sought by the Sealaska Corporation. While S. 340 includes provisions to protect a few specific, named salmon streams, the bill does not provide these same protections for other salmon streams. Any proposal that would transfer salmon streams to the Sealaska Corporation should retain the protective federal standards and guidelines (e.g., minimum riparian setbacks and buffers) for *all* anadromous fish streams that would otherwise exist on the Tongass National Forest to safeguard and ensure salmon productivity on these public lands.

➤ **S. 340 would create a precedent for other Native Corporations to modify land claims in Alaska**

As recognized in BLM testimony to Congress, the proposal to allow the Sealaska Corporation to reopen ANCSA to make alternative land selections could “set a precedent for other corporations to seek similar legislation for the substitution of new lands.”⁷ While the vast majority of ANCSA lands have already been conveyed (i.e., approximately 96% of the 45-million acre entitlement program), the sheer size of the program means that there remain hundreds of thousands of acres yet to be conveyed.

Conclusion

S. 340 inappropriately proposes to transfer to the Sealaska Corporation public lands in the Tongass that are far more valuable, both economically and ecologically, than the lands Sealaska was originally awarded under ANCSA. The latest version of the Sealaska legislation would result in the loss of highly-valued national interest lands on the Tongass National Forest.

No further action is needed by Congress for Sealaska to receive its full remaining land entitlement consistent with the provisions of ANCSA that settled all aboriginal land claims. The Sealaska Corporation legislation—seeking to reopen and rewrite basic provisions in ANCSA for the benefit of a

⁷ Statement of Marcilyn A. Burke, Deputy Director, Bureau of Land Management testimony to the Senate Energy and Natural Resources Committee, Subcommittee on Public Lands and Forests regarding S. 730 (May 25, 2011).

single private corporation—remains fundamentally an authorization to high-grade scarce, large-tree old growth within valuable habitat areas that should be conserved rather than clear cut. Sealaska’s proposed new timber selections under S. 340 include some of the most productive large-tree old growth habitat remaining on the Tongass. Historically, such areas have been greatly over-exploited and today are rare regionally, nationally, and globally.

The proposal to provide Sealaska with unprecedented authority to obtain far more valuable public lands (economically as well as ecologically), should not be approved. BLM should proceed with conveyance of Sealaska’s already-selected lands.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Myers', with a stylized flourish at the end.

Eric F. Myers
Policy Director
Audubon Alaska
441 West 5th Avenue
Anchorage, Alaska 99501

cc: Senator Lisa Murkowski
Senator Mark Begich