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March 13, 2013

Honorable Senator Ron Wyden
221 Dirksen Senate Office Building
Washington, D.C., 20510

Dear Senator Wyden:

This letter is in regards to Senate Bill 340 introduced this year by Senator Murkowski and Senator Begich from Alaska. This legislation would transfer federal lands within the Tongass National Forest in Alaska and lands previously selected by Sealaska Corporation. On behalf of the Territorial Sportsmen, Inc. in Juneau, Alaska, we wish to convey our opposition to this legislation and our reasons for that opposition.

The Territorial Sportsmen is a conservation/outdoor/sportsmen organization that has been in existence for over 60 years. We have a membership of over 1,600 members and a long history of supporting sound resource development and uses consistent with practical environmental and habitat protection measures. We have generally supported the logging and mining industries as long as sound and practical environmental measures were applied. For 64 years we have also sponsored a local salmon derby in cooperation with our local businesses and members of the Chamber of Commerce which has allocated over \$1.5 million to local high school scholarships. We are not an environmentally extreme organization.

We respectfully request that our following comments be entered into the record when SB 340 is heard in Committee and we request that our points presented below be seriously considered in your deliberations.

Section 1. This legislation is inappropriately titled to include "Southeast Alaska Native Land Entitlement Finalization ..." The Sealaska entitlement has already been legally finalized in accordance with the provisions of ANCSA and the amendments approved by Congress, at Sealaska's request. Sealaska has already submitted their final selections to BLM in accordance with the requirements of federal law. This law will in essence provide Sealaska with benefits not accorded to other Regional Native Corporations under ANCSA.

Section 4 (d)(1) Easements. We oppose the only public access provisions being limited to reservations of public easements under section 17(b) of ANCSA. The reservation of easements under the 17(b) provision has a horrible record of protecting public access. BLM has consistently vacated the easements throughout the state simply at the request of a native corporation. In addition, access eligible for 17(b) easements are rare in southeast Alaska. Relying on this provision will essentially mean that public access is poorly protected. It is recommended that a provision be inserted which says that ***“17(b) easements cannot be vacated unless comparable access is provided.”***

Section 4(d)(2)(A) Conservation Easements. This provision provides aquatic and riparian conservation easements on each side of the anadromous water bodies in three parcels. ***We request that this protection be provided to all “streams listed as anadromous water bodies” by the Alaska Department of Fish and Game under the State’s Anadromous Fish Act.*** In effect, these easements would then offer specified anadromous water the existing protections under the Tongass Timber Reform Act. Additionally, the legislation allows temporary road construction and log yarding through the easements themselves. These should not be allowable activities within an easement.

Section 4(e)(1) Hunting, Fishing, and Recreation. Land conveyed under this legislation will become private fee simple title property of Sealaska. The provision in this bill which applies the subsistence definition found in Title 8 of ANILCA (federal subsistence priority) over private land in Alaska is unprecedented. This provision is essentially a preemption of state management authority. Applying the federal definition of subsistence to these private lands will mean that there is a different definition for subsistence on all other private lands in Alaska. The state definition of subsistence is different from the federal definition. This has resulted in different interpretation by the state and federal regulatory agencies plus the state and federal courts over the implementation of the laws. For instance, there is significant difference between the state and federal application of “barter and customary trade” provisions found in each law. In the past, the state has vehemently opposed this preemption of state authority. ***We adamantly oppose this provision as well. No mention of a federal definition of subsistence should be applied to any state or private lands in Alaska.***

We agree that a section needs to be included which guarantees public access to traditional hunting, fishing and recreational areas. However, this section is too vague. The reasons for public closures are too vague and subject only to a determination by Sealaska Corporation. ***It is recommended that language be inserted which requires approval of the location and extent of any closure by the State of Alaska and the U.S. Forest Service.***

We again propose language be inserted similar to language included in the last Koniag transaction.

(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.

Section 5. Cemetery Sites and Historical Places.

We concur with the State of Alaska's position that restrictive covenants on sacred and cultural sites should **not** be terminated. As stated in the State's March 16, 2010 letter:

"The ability to select such sites was provided in ANCSA for specific cultural purposes, so changing the covenants contradicts the compromises that led to adoption of ANCSA. If the restrictions are lifted, the lands involved may be utilized for purposes inconsistent with their designation and could open the door to other ANCSA corporations seeking similar changes."

It is not clear whether or not the newest version of this exchange includes adequate language to assure that present covenants are not diminished. Severe and unwarranted public access issues could develop if unfavorable developmental activities occurred at these sites. In addition, the villages and tribes deserve some assurances that the cultural values of their cemetery and historical places are not subjugated to the profit motives of the for-profit regional corporation.

Miscellaneous.

The maps associated with this legislation lack definition for meaningful interpretation. They lack representation of timber volume, topography, anadromous and resident fish streams, existing roadless area boundaries, old growth reserves, and locations of existing special use permit sites.

Although some of the boundaries have changed, the percentage of old growth forest proposed for harvest remains unacceptably high. A cursory evaluation of the selection modifications made by Sealaska in the last mapping of their proposed selections indicates that Sealaska still has identified most of their acreage in forest classes 6 and 7 (class 6 is 30-50,000 board feet per

acre and class 7 is 50,000 to 100,000 board feet per acre) disproportionately to the occurrence of these "Old Growth" classes in the forest. Audubon had concluded in their evaluation of the entitlement selections in the initial legislation over the selection that Sealaska is giving up in the exchange to be clearly and significantly disadvantageous to the regions wildlife and the public. Clearly the acreages given up do not have near the public and resource benefits of the new acreage being selected. In our opinion, recent modifications in the new legislation do not appear to have modified that conclusion.

Original exchange legislation included numerous "future sites" which would have significantly modified the provisions of ANCSA and would have created unreasonable public access problems. We are pleased to see the number of these sites significantly reduced. It is our understanding that some of these sites are still included in this proposal. We are unable to locate those sites at this time. If they have the potential to block public access, we are opposed to including those sites. In addition, we have maintained that this provision is a major change in ANCSA and would open up the Native settlement to further entitlements.

Since 1976 the USFS has managed the Tongass based upon Sealaska's selections being made within the original 10 blocks identified in ANCSA. This includes the latest Tongass Land Management Plan (TLMP) completed in 2008. This set in motion the establishment of a myriad of small businesses, including small mills, dependent on a new forest management plan and the remaining lands being retained and managed as public lands. This legislation will result in a complete revamping of the Tongass Land Management Plan severely affecting the small communities in the area. Nine small communities on Prince of Wales and Kosciusko Islands most affected by this legislation have opposed this legislation because of the negative impacts on their communities. It seems incomprehensible that the short term financial benefits to a for-profit corporation would take a priority over the long term financial stability of the small communities that have relied on the long term planning processes put in place by the federal government over the last 37 years.

The U.S. Forest Service has recently completed a revision of the Tongass Land Management Plan. Sealaska claims that most of the acreage being exchanged is roadless, there is virtually no chance any or most of it will contribute to the timber base available in southeast Alaska. Now Sealaska has selected disproportionate high volume acreage in their new selections and Sealaska has selected the most valuable high volume old growth and mature second growth acreage. It is obvious that TLMP will have to be significantly revised again at great expense to the federal government and the local communities.

Many organizations, including Territorial Sportsmen and the Alaska Department of Fish and Game, have expressed concern that the proposed exchange would negatively affect the tenuous balance between development and conservation interests built into the Tongass Land Management Plan. The present plan has protected adequate "old growth" forest parcels (reserves) to avoid listing of controversial species under the Endangered Species Act. Recent modifications to the proposal have not negated that concern. ***This exchange should not be allowed to proceed until the U.S. Fish and Wildlife Service has concluded that the loss of critical habitat proposed in the exchange will not lead to a listing of any species.***

We have mentioned this before but the enactment of this legislation is a precedent that will eventually be requested for the other Native corporations. Thus, reopening the Alaska Native Claims Settlement Act again. We request that Congress not reopen these negotiations but adhere to the provisions of ANCSA and the amended version specifically requested by Sealaska and approved by Congress in 1976. Sealaska has submitted their required final selections to BLM. We recommend that BLM proceed to process those selections as required in the Land Transfer Acceleration Act.

Thank you Senator Wyden for considering this presentation. Although our funding is not unlimited, we respectfully request that our organization be allowed to testify when this legislation is formally presented and debated in the Committee. As an organization that supported the Alaska Native Claim Settlement Act when it was passed and has participated ever since in the discussions concerning the expansion and amendment of the Act since then, we feel we are a sound and rational assessor of the environmental and human impacts of this type of legislation.

Sincerely,



Jerry Burnett, President

Cc: Honorable Senator Murkowski
Honorable Senator Begich
Honorable Governor Parnell