March 10, 2013

Honorable Ron Wyden and Lisa Murkowski
Chair and Ranking Member
Energy & Natural Resources Committee
221 Dirksen Senate Office Building
Washington DC 20510

Re: S. 14 and S. 340 – Sealaska Lands Bill

Dear Senators Wyden and Murkowski,

For the Committee Record on S.14 & S. 340, we respond to points Senator Murkowski raised in her March 1st letter to us about our position on the Sealaska Bill; and, we also comment on S.14 introduced last week.

We were happy to learn she shares our concerns about fairness, equity, and justice.

She sees the Alaska Native Claims Settlement Act (1971) and the 1976 Amendment requiring Sealaska to select land around Native towns as unfair.

Her relocating that land around our towns -- 50-100 miles away from the Native towns -- we see as being grossly unfair, morally repugnant, unjust, and inequitable.

Taking land around Native towns, Sealaska became one of the richest Native Corporations in the state. To do so, they mowed down the trees for tens of square miles in a row. Their own shareholders in Hoonah screamed, and still scream, about the legacy of devastation they saw. See the video made by Hoonah Natives which is the third down here: http://tongasslowdown.org/TL/videos.html

Now Senator Murkowski's land relocation bill subjects us to the same awful logging Sealaska's shareholders protested. Here's why that is unfair and unjust to us:

Our Investments Relied on US Ownership and Management

Hundreds of people relied on the Sealaska land being located far from us.

Our community began 30 years after Petersburg was incorporated in 1910. Point Baker is older. Long before 2003, when Senator Murkowski decided to amend ANCSA, many commercial hunting and fishing businesses, sport hunting and fishing lodges, homes, docks, sawmills, roads, schools, and timber jobs were created in our communities. One bear guide has operated on Kuiu for over 40 years. Prior to making our investments, we carefully considered that our only neighbor would be the United States, which would own the surrounding land and the USFS, who would manage it.

Change of Land Location Unforeseeable

In our wildest dreams Senator, we couldn't have foreseen Congress ever handing this one company 100 sq. miles around our towns or businesses. There was common knowledge after the 1976 Amendment that land ownership around us would never change, because the Native claims were settled once and for all.

Another factor in why your bill was not foreseeable was the long legal history behind the Amendment. Compensation requiring land to be taken from around Native villages was not only Sealaska's 1975 recommendation; this lynch pin that compensation around Native villages be for land "actually occupied" is grounded in history going back to the New Deal and Federal Court holdings. The lead cases were from our region of Alaska. *(See 02/21/13 letter to the Committee by nine towns).*

Aboriginal title was held to be established for six designated areas on the Alexander Archipelago by their exclusive use and occupancy of that territory. The award was based on the fair market value as of the date of the taking which was 1909.

A court of competent jurisdiction followed well established law in making an award. Unsatisfied with this result, Sealaska pursued lands claims ending with ANCSA. They divided a one billion dollar cash settlement with the 12 other regional corporations and obtained about 370,000 acres of land, or 578 square miles.

In the meantime, the US provided for the establishment of canneries in Kake and Hydaburg and had low interest loans for large boat purchases under the IRA. Thus the totality of compensation over a 70 year period was many times higher than the 1968 Court of Claims award.

This history made it reasonable for us to believe that land title would never be given to Sealaska around the smallest, most vulnerable non Native towns in SE Alaska; ours being but one of nine.

So Senator Murkowski, you are correct. We have "strong feelings" that the 1976 Amendment to ANCSA should be the final Congressional action to resolve Sealaska's claims, because we relied on it when we made our investments. Your bill puts our decades of labor at risk.

Inequities of S. 14 and S. 340

The depth of our feelings against S. 14 and S. 340 also arise from our perception that the bills shift onto our backs the entire burden of redressing Senator Murkowski's claims that ANCSA was unfair.

We never harmed the Natives, yet the harm from this legislation falls entirely upon us.

On the other hand, when 87 percent of Sealaska's entitlement was deeded to them, they got tremendous benefits.

They reaped large profits when the markets were high by liquidating their best high volume timber first, at unsustainable rates.

These bills increase their benefits by giving them timber better than the economical timber left on the 13 percent of their remaining allotment. It is morally reprehensible to increase a 42 year old final settlement, when doing so hurts us innocent bystanders at all.

If the remaining 13 percent is not as economical to log, it is only because they chose as a business decision to high grade the vast amount of their total settlement first. Just as taxpayers should not have to guarantee high profits for Sealaska, we should not be harmed so they can reap higher profits.

Other government subsidies and special tax treatment make them whole for any shortfall in the quality of the timber left around their villages. When the markets dropped, Senator Stevens gave them net operating loss credits. They made money even when they lost money; lots of money. The Carlyle Group made its first fortune trading them. They have government subsidies to thin trees, and noncompetitive sole source 8a contracting with the Federal Government worth hundreds of millions of dollars.

These bills allocate way over and above compensation Sealaska has coming. When considering the totality of these government benefits, the land around their towns remaining under the 1976 Amendment is an equitable and fair compensation for Sealaska. And the opposite is true; taking land from around us is inequitable and unfair.

Even if there were inequities in ANCSA, in fairness it should not be our handful of hundreds who pay the price, but all American taxpayers who should bear the burden.

Therefore, Senator, it is not how much or to what extent the impacts from S. 14 and S. 340 are on us, it is that you propose putting the burden of righting wrongs on us at all, especially when the wrongs you describe are inaccurate or distorted. We hope Senator Murkowski that you can appreciate these points, and please drop your sponsorship of these bills.

One more troubling equity issue; these bills benefit the Waterfall Resort by moving the logging 50 to 100 miles north from that area to our towns, so that nearby destinations on Dall Island, Sukkwan Island, Eek Lake and the Uullo Channel area will remain pristine.

Considering that the Waterfall Resort is where Senator Murkowski's mother raised 4.5 million for a noble charity and is within view of Sealaska land that would be moved away under S. 340 and S. 14, the Waterfall Benefit cannot be ignored by this Committee when weighing the equities of these bills; especially since many Congressmen, CEO's, and lobbyists have rubbed elbows at the resort while attending charitable events.

It is our request S. 340 and S.14 die in Committee. If Senator Murkowski can convince Congress that an inequality really occurred, then all taxpayers should pay, not just us.

The Simple Solution of BLM Deeding Now Is Preferable to Complexities of S. 14 & S. 340

BLM should finalize the 2008 designations that Sealaska submitted under the 2004 Alaska Land Transfer Acceleration Act. Doing so deeds Sealaska their 13 percent remaining entitlement, making S. 14 and S. 340 unnecessary.

We, the Alaska Guides Association, the Alaska Chapter of Safari Club International, and the Alaska Outdoor Council, commercial fishermen, and many other individuals endorse this approach. *(See links below.)*

http://tongasslowdown.org/TL/docs/AGA%20Letter%20to%20BLM%20Sealaska%202013.pdf
http://tongasslowdown.org/TL/press.html

I. *Sealaska has plenty of timber to cut for at least four more years*.

S.14's rationale is to grant Sealaska timber for an extra year until a more "comprehensive" solution can be devised, creating a false impression of a crisis where none exists.

We calculate that Sealaska has around 90,000 acres yet to be cut. If only half is commercial timber, 45,000 acres is more than enough to sustain them until BLM finalizes. *(See attached calculation)*

In past years, Sealaska argued they could not survive another year without a bill; however the next year commenced cutting again.

II. *Precedents are a major complexity in S. 14 & S. 340.*

A. Senator Murkowski argues Native CEOs have assured her "they would not seek to use the bill as a precedent to gain more land" outside of designated areas. But the record and the law makes it clear that these bills could be precedent.

- BLM's Ms. Burke raised the issue of precedent:
  - "The Department notes that S. 730, if enacted, may set a precedent for other corporations to seek similar legislation for the substitution of new lands." (testimony S. 730, Senate Lands Sub Committee, May 2011) http://tongasslowdown.org/TL/docs/Burke_BLM_2011.pdf
- Ms. Araujo, Sealaska's attorney, testified that nothing would preclude other corporations from using the precedent of this bill, if it was their choice.
  - "I also would submit that if other regions have similar inequities or problems in their region, then they should present those to Congress and have a similar public process that we are going through - to have their issues, I guess, judged and identified and to determine if they have a right to have some congressional action as well." *Senate Hearing on S. 730, May 25, 2011*
- A headline for her speech last year in Wrangell read:
  - "Sealaska Representative Says Bill Could Serve as Precedent." "A lot of land issues in Alaska have lost some traction, and we're hoping with our bill to lay the foundation to get some things done on Alaska native land issues."

Therefore, this bill, if enacted, could set an undesirable precedent. It could lead other Alaska Native corporations to request Congressional approval to take land outside the existing selection areas authorized by Congress in ANCSA (approximately 1.979 million acres remain to be conveyed to the corporations according to the State of Alaska).

"Alaska Native corporations are still owed final patent to 13,318,073.47 acres and tentative approval for 1,979,315.61 acres"; *HJR NO. 3 Alaska Legislature 2013*

Such bills would likely upset expectations among other residents, the State, and Federal land management agencies that current public land uses are pretty much settled and will continue to remain so. Controversy would likely erupt in the rest of the State of the kind that now surrounds the Sealaska bill.

And this prospect is completely avoidable. In the Alaska National Interest Lands Conservation Act, Congress authorized land exchanges between the Federal government, the State, Native corporations, and private citizens. Over the course of years, many land trades/swaps have been made once the Natives had title to those lands. In the case of Native corporations, land they own that they selected within the existing selection areas can be traded for Federal land, including within BLM land or ANILCA national conservation system units.

Instead of first taking title to the remaining selections within the boxes as required by ALTAA, and then trying to swap that land outside of the boxes through the agency process, Sealaska is attempting an end run in these bills.

Since Sealaska does not own the land they are seeking outside of existing selection areas, they are making an end run.

Only if the exchange involves designated wilderness would Congressional approval be required.

Before they went to Congress around 2003, Sealaska asked the USFS for a land swap for land to which they did not yet have title and then rejected the Forest Service offer. The Sealaska bills over the next nine years were an attempted end run around the USFS.

Rather than taking title to their remaining 63,000 acres from within their selection areas, Sealaska now in S. 340 seeks to take not only the 63,000 acres from distant areas of the Tongass outside of their selection areas, but also to add another 7,000 acres above and beyond their ANCSA entitlement.

Certainly Congress has amended ANCSA numerous times so that it is never the final settlement promised in 1971, but a series of unending requests like this bill for further modification.

Approval of S. 14 and S. 340 could encourage other regional corporations to propose similar adjustments by going outside of their selection areas to new areas of Alaska. This is the precedent we feel Congress should not establish.

B. The historical/cultural gravesites provision in S. 340 is also a precedent that can be used by other Native Corporations. ANCSA imposed a deadline for applying for these sites 37 years ago, on December 31, 1976.

   By granting Sealaska the right to choose 76 new sites in undisclosed locations, S. 340 breaks that deadline. Nothing will prevent the other Native Corporations from using this precedent to also ask for an opening of the deadline. Thus a second huge can of worms is opened.

III. ***For the jobs impact of S. 14***, we checked with the Alaska Department of Labor and found that in the entire region there were on average for 2011 only 88 full time logging jobs. None of these logging jobs would be jeopardized if S. 14 dies, because there is a four year supply of timber on Sealaska deeded land.

Contrary to the official job total, Sealaska VP Rick Harris stated that their logging operations create 400 jobs. www.alaskajournal.com/Alaska-Journal-of-Commerce/March-Issue-1-2013/Alaskas-senators-try-again-on-Sealaska-land-legislation/

Sealaska itself accounts for perhaps 44 full time logging jobs, in our informed estimation; though they have never opened their books to establish the truth.

It is likely an ESA listing for the wolf and goshawk will lift the approval of TLMP by a Federal Judge, thus putting all logging jobs on the Tongass National Forest at risk. *(See link below.)*

http://tongasslowdown.org/TL/docs/S%20730%20TESTIMONY.pdf

These bills take the very biggest trees necessary to maintain wildlife habitat, and a disproportionate amount of the rare big tree stands known as Class 6 &7. We know the USFS prepared maps which were submitted for the negotiations between Senator Murkowksi's office and Sherman Harris - 50 maps in all – that had the volume classes laid out. The USFS claims these are privileged information for administrative purposes.

We need this information on volume class in the selection areas and within the box to be made public. Senator Murkowski and Sealaska can access this information. The hearings should not proceed until this volume class information, roadless acres, etc. are made public. The only source now is the party who is advocating for Sealaska.

We request the committee obtain a comparison from the USFS that establishes the number of acres in the box and outside the box for all categories of land in S 340/14 regarding the old class 7,6,5,4 and 3 volume classes. We are unable to obtain this information from the USFS, but the committee can.

IV. ***On Kuiu Island***, we have heard there has been a decline in bear populations of 20 percent due to intensive clear cutting elsewhere on the island which has resulted in a loss of deer and the consequent wolf predation on bears. The North Kuiu selection would intensify impacts there.

V. ***More land than ANCSA entitlement in S. 14 and S. 340.***

These bills grant 7000 acres more than the 62,707 acres BLM now claims Sealaska is owed from its remaining entitlement. Under ANCSA, BLM determines the final figure using a complex formula to award a percentage out of the approximately two million acres allocated to all Native Corporations.

Because of all these complexities, and a few others we touch in passing, this Committee should not approve S. 14 or S. 340, and allow the simple solution of BLM finalizing to emerge.

We offer brief comment on other issues Senator Murkowski raised.

- Sealaska is unwilling to put 100 foot buffer strips on all the salmon/fish streams as required by the Tongass Timber Reform Act (1990). All Class I and II streams should be covered by that mandate.
- Sealaska was fined over 30,000 dollars for violation of buffer strips on creeks. The buffers offered are with three exceptions for 66 feet. By logging such large areas, wide buffers are needed that will not blow down in frequent winter hurricanes. All creeks should have buffers. Many commercial fishermen in our towns oppose the 66 foot buffer as being inadequate.
- There are large areas in Yakutat which could be logged without harming the Situk by leaving a ¾ mile wide buffer. Senator Murkowski's analysis does not take this into account.
- Sealaska can take land in Eek Lake and still protect the creeks by leaving 100 foot buffers which they reject in this bill as a universal prescription. The same for Essowah Lake.
- The North Fork Lake in Craig's domestic watershed contains good timber very far away from the lake whose water filters and settles natural sediment. Craig treats its domestic water. There is no reason that watershed cannot be logged without damage to the water supply.
- The enumerated exceptions to access in the bill such as safety are large enough to stop access, and challenges would require expensive litigation.

- Subsidies for road maintenance will be paid by taxpayers in an unspecified amount when these roads are on islands with little USFS logging or access need. Sealaska should bear the entire cost of maintenance or have their share specified in the bill.
- Cultural sites are almost all near salmon stream mouths, which can block access when there are hills next to the streams.

For all of these reasons, S.14 and S. 340 should die in Committee, so the BLM can be free to finalize the 2008 designations, the simple and swift solution to this issue.

Sincerely,

Heather Richter

Myra R. Poelstra

Cc:

All Senators on the Energy Committee

Citizens Advisory Commission on Federal Areas

Territorial Sportsmen

Alaska Outdoor Council

Safari Club International

Alaska Guides Association

Attachment:

Calculations for - "**I. *Sealaska has plenty of timber to cut <u>for at least four more years</u>.*"**

More than 290,000 acres conveyed as of 2011*
189,000 acres cut as of May 2011 #
10, 500 acres cut after May 2011 -

199,500 cut to date
290,000
- 199,500
90,500 acres yet to be harvested

** Testimony of Sherman Harris May 25, 2011 before the Senate Sub Committee on Lands of the Energy Committee*
 # Testimony of Byron Mallott (same hearing)
- Average acreage cut for one year between 2005-2001