Testimony of Byron Mallott
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Subcommittee on Indian and Alaska Native Affairs
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Legislative Hearing on H.R. 1408

Mr. Chairman and Members of the Subcommittee:

My name is Byron Mallott, and I am a Board Member for Sealaska Corporation, as well as a former President and CEO of Sealaska. I am from Yakutat, an Alaska Native village, and I am *Shaa-dei-ha-ni* (Clan Leader) of the *Kwaashk'i Kwáan*. My Tlingit name is *K'oo deel taa.a*.

I want to thank you for the opportunity to testify on behalf of Sealaska, the regional Alaska Native Corporation for Southeast Alaska, regarding H.R. 1408, the "Southeast Alaska Native Land Entitlement Finalization Act," a bill that we refer to as *Haa Aaní* in Tlingit, which roughly translates into "Our Land" or "Our Place". "Haa Aaní" is the Tlingit way of referring to our ancestral and traditional homeland and the foundation of our history and culture.

Sealaska is one of 12 Regional Corporations established pursuant to the Alaska Native Claims Settlement Act ("ANCSA") of 1971. Our shareholders are descendants of the original Native inhabitants of Southeast Alaska – the Tlingit, Haida and Tsimshian people. Our ancestors once used and occupied every corner of Southeast Alaska and our cultural and burial sites can be found throughout the region. This legislation is a reflection of the significance of Our Land to our people and its importance in meeting our cultural, social and economic needs.

Forty years ago, as a young man, I traveled to Washington, DC as an advocate for the land claims of Alaska's Native people. Here I am again, forty years later, advocating for the equitable completion of Sealaska's land entitlement.

This legislation involves less than 85,000 acres from the Southeast Alaska region, a region with almost 23 million acres of land; 85% of that land is already in some form of conservation, wilderness or other protected status. Putting the Sealaska legislation in perspective, Sealaska's remaining land entitlement represents about one third of one percent of the total land mass in Southeast Alaska.

Yet this legislation also represents a significant opportunity for the public, Congress, the Administration, communities, environmental organizations and others to get it right for once in the Tongass. H.R. 1408 achieves environmental balance, sustains jobs, ensures that Native people are viable participants in our economy, and returns important cultural and economic lands to Southeast Alaska's Native people.

H.R. 1408 fulfills the promise of ANCSA because it:

- allows Sealaska to finalize its ANCSA land entitlement in a fair, meaningful way;
- redresses inequitable legal limitations on Sealaska's land selections by allowing it to select remaining entitlement lands from outside of withdrawal areas that, among the regional Alaska Native Corporations, uniquely constrained Sealaska;
- allows for Alaska Native ownership of sites with sacred, cultural, traditional and historic significance to the Alaska Natives of Southeast Alaska;
- creates the opportunity for Sealaska to support a sustainable rural economy and to support economic and job opportunities throughout Southeast Alaska; and
- results in environmental benefits to the public because high conservation value lands important for fisheries, old growth wildlife reserves, areas important for local subsistence use and municipal watersheds will remain in public ownership.

As discussed in detail in my testimony below, there is a compelling, equitable basis for supporting this legislation. There is no dispute that Sealaska has a remaining land entitlement, and this legislation does not give Sealaska one acre of land beyond that already promised by Congress. Sealaska has worked closely with the timber industry, conservation organizations, tribes and Native institutions, local communities, the State of Alaska, and federal land management agencies to craft legislation that provides the best possible result for the people, communities and environment of Southeast Alaska.

One thing has become extremely clear in our effort to resolve Sealaska's land entitlement – that every acre of Southeast Alaska is precious to someone. With the vast array of interests in Southeast Alaska, there is simply no way to achieve an absolute consensus on where and how Sealaska should select its remaining entitlement. However, we truly believe that this legislation offers a balanced solution as a result of our engagement with all regional stakeholders.

Our Dilemma

Alaska Native Corporations were tasked by Congress in 1971 with supporting the economic future of the Alaska Native community, in part by utilizing lands returned by the United States to Native people to develop resources that would advance the social, economic and cultural well-being of our tribal member shareholders.

We believe that Congress' core promise to Alaska Natives in ANCSA was that Alaska Natives would be able to develop sustainable economies so that we could work to achieve for ourselves economic parity with the rest of America. Socio-economic parity was a focal point of Alaska Natives and the Land, a congressionally-mandated study published in 1968, which was a foundational predicate for Congress to act on Alaska Native land claims.

Sealaska has utilized some of its land base to develop timber resources. Of the 290,000 acres Sealaska has received under ANCSA, Sealaska has harvested timber on 189,000 acres in accordance with modern forestry and forest engineering best management practices that protect water quality, anadromous fish habitat, wildlife habitat, forest soils, and the long term productivity of the forest. Selective harvesting and even-aged harvesting has been employed. Less than half (81,000 acres) of managed forest lands have been clear cut (even-aged harvest). Sealaska's timber business has been a powerful economic engine that has helped to support the regional economy for 30 years, and seventy percent of Sealaska's timber revenues have been shared with more than 200 Alaska Native Corporations, as required under sections 7(i) and 7(j) of ANCSA. Wherever it selects the land, Sealaska may choose to utilize some of its

remaining entitlement to support sustainable forestry with a timber rotation that could sustain hundreds of jobs in our region, in perpetuity, while protecting important forest resources.

Unlike the other eleven Regional Native Corporations, Sealaska was directed to select the entirety of its entitlement lands only from within boxes drawn around just ten of the Native villages in Southeast Alaska. Forty-four percent of the ten withdrawal areas is comprised of salt water, and multiple other factors limit the ability of Sealaska to select land within the boxes. This has made it difficult to make equitable selections. No other Regional Corporation was treated in this manner under ANCSA.

To date, Sealaska has selected 290,000 acres of land under ANCSA from within the withdrawal boxes. Based on Bureau of Land Management ("BLM") projections for completion of the Section 14(h)(8) selections, and our own estimates, the remaining entitlement to be conveyed to Sealaska is between 65,000 and 85,000 acres of land. The only remaining issue is where this land will come from. Of the lands available to Sealaska today within the ANCSA withdrawal boxes:

- 270,000 are included in the current U.S. Forest Service inventory of roadless forestland;
- 112,000 acres are comprised of productive old growth;
- 60,000 acres are included in the Forest Service's inventory of Old Growth Habitat Land Use Designation (LUD) lands; and
- much of that land is comprised of important community watersheds, high conservation value lands important for sport and commercial fisheries and areas important for subsistence uses.

The Sealaska legislation allows Sealaska to move away from sensitive watersheds and roadless areas, to select a balanced inventory of second growth and old growth, and to select most of its remaining ANCSA lands on the existing road system, preserving on balance as much as 40,000 acres of old growth, much of which is inventoried "roadless old growth".

Why is Sealaska Corporation Different?

A common misperception of the Sealaska bill is that Sealaska is required to select its Native lands from within the 10 withdrawal areas in Southeast Alaska because Sealaska "asked for it". This perception is reflected in opinion pieces in Alaska newspapers and has been shared with Committee staff for the House and Senate Committees of jurisdiction. We therefore believe this misconception should be addressed here.

ANCSA authorized the distribution of approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives and provided for the establishment of 12 Regional Native Corporations and more than 200 Village Corporations to receive and manage the funds and land to meet the cultural, social, and economic needs of Native shareholders.

Under section 12 of ANCSA, each Regional Corporation, other than Sealaska, was authorized to receive a share of land based on the proportion that the number of Alaska Native shareholders residing in the region of the Regional Corporation bore to the total number of Alaska Native shareholders, or the relative size of the area to which the Regional Corporation had an aboriginal land claim bore to the size of the area to which all Regional Corporations had aboriginal land claims. While each other Regional Corporation received a significant quantity of land under section 12 of ANCSA, Sealaska received land only under section 14(h) of that Act.

Sealaska did not receive land in proportion to the number of Alaska Native shareholders, or in proportion to the size of the area to which Sealaska had an aboriginal land claim, in part because, in 1968,

some compensation was provided to the Tlingit and Haida Indian by the U.S. Court of Claims, which determined that the Tlingit and Haida Indians were entitled to recover $7.5 million for the taking of the 17 million acre Tongass National forest and 3.3 million acre Glacier Bay National Park.

The 1968 Court of Claims payment should be viewed in context with the universal settlement reached by Congress just three years later that allowed for the return of 44 million acres to Alaska's Native people. With a population that represented more than 20 percent of Alaska's Native population in 1971, Southeast Alaska Natives ultimately will receive title to only 1 percent of lands returned to Alaska Natives under ANCSA.

Moreover, the 1968 settlement provided by the Court of Claims did not compensate the Tlingit and Haida for 2,628,207 acres of land in Southeast Alaska also subject to aboriginal title. These lands became an important basis for the participation of the Southeast Alaska Natives in the settlement in 1971. The court also determined the value of the lost Indian fishing rights at $8,388,315, but did not provide compensation for those rights. These rights were pursued through a property claims action before the Indian Claims Commission, originally filed in 1954, but there was no decision on the merits when ANCSA passed in1971. The Commission subsequently ruled that ANCSA extinguished such claims and the proceeding became a moot.

Sealaska ultimately would be entitled to recover as much as 375,000 acres of land under ANCSA. However, under the terms of ANCSA, and because the homeland of the Tlingit, Haida and Tsimshian people had been reserved as a national forest, the Secretary of the Interior was not able to withdraw any land in the Tongass for selection by and conveyance to Sealaska. The only lands available for selection by Sealaska in 1971 were slated to become part of the Wrangell-St. Elias National Park or consisted essentially of mountain tops.

For this reason, in the early 1970s, Sealaska requested that Congress amend ANCSA to permit Sealaska to select lands from within 10 withdrawal boxes established under ANCSA for the 10 Southeast Native villages recognized under that Act. In 1976, Congress granted that right.

In short, in the 1970s Sealaska sought areas from which to make selections because, at that time, Southeast Alaska's Native people had no other place to go in the Tongass, their very homeland. The suggestion that Alaska's Native people invited their own exclusion from their Native homeland is an idea that any compassionate witness to our history should find repugnant. It was a choice between something limited or nothing at all. Hardly a choice.

H.R. 1408 addresses problems associated with the unique treatment of Sealaska and the unintended public policy consequences of forcing Sealaska to select its remaining entitlement from within the existing ANCSA withdrawals. The legislation presents to Congress and to this Administration a legislative package that will result in public policy benefits on many levels. H.R. 1408 allows Sealaska to select from alternative, well defined withdrawals areas in Southeast Alaska. The legislation enables the conveyance of the final acres to which Sealaska is entitled—and not one acre more.

Historic pressures resulted in the political marginalization and spatial confinement of Native people in Southeast Alaska, documented in "A New Frontier" (discussed directly below), including federal pressures to prevent Native claims from impacting the timber industry. These pressures no longer (we hope) restrict the decisions of either the Congress or the Forest Service in pursuing a legislative solution that will enable Sealaska to finalize its Native entitlement in a manner that is both equitable and results in minimal impacts to other interests in the Tongass.

Observers unfamiliar with ANCSA sometimes suggest that the Sealaska legislation might somehow create a negative precedent with respect to Alaska Native land claims. This seems odd in the context of the history of the Tongass and its impact on the Southeast settlement. Moreover, ANCSA has been amended more than 30 times. ANCSA was and remains a congressional undertaking, and as a statute, it is organic. As observed by Senator Mark Begich at a hearing on this bill before the Senate Subcommittee on Public Lands and Forests in October 2009, Congress has, on multiple occasions, deemed it appropriate to amend ANCSA to address in an equitable manner issues that were not anticipated by Congress when ANCSA passed.

Additional Observations: Why Native Land Claims Are Unique in the Tongass

Two documents present an important historical perspective on the long struggle to return lands in the Tongass to Native people: (1) the draft document funded by the Forest Service and authored by Dr. Charles W. Smythe, "A New Frontier: Managing the National Forests in Alaska, 1970-1995" (1995) ("A New Frontier"); and (2) a paper by Walter R. Echo-Hawk, "A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska ("Indian Policy in Southeast Alaska"). A four page summary of the paper by Mr. Echo-Hawk is attached to this testimony; due to Committee limitations on the length of attachments to written testimony, we were not able to attach the full documents to this testimony.

The findings and observations summarized below are to be attributed to the work of Dr. Smythe and Mr. Echo-Hawk. For the sake of brevity, we have summarized or paraphrased these findings and observations. We encourage people with an interest in the history of the Tongass generally, or in this legislation specifically, to take the time to read these documents in full.

Dr. Smythe's research, compiled in "A New Frontier", found, among other things:

- By the time the Tongass National Forest was created in 1908, the Tlingit and Haida Indians had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.
- The Act of 1884, which created civil government in the Alaska territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.
- For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska.
- On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida Indians had established their claims of aboriginal Indian title to the land in Southeast Alaska and were entitled to recover compensation for the taking of their lands, and for the failure to protect their hunting and fishing rights.
- The efforts by the Interior Department in the 1930s and 1940s to establish reservations in Southeast Alaska alarmed the Forest Service – which at the time opposed the principle of aboriginal rights and its serious conflict with plans for a pulpwood industry in Alaska.
- The policy of the Roosevelt Administration, with Harold Ickes as Interior Secretary, was to recognize aboriginal rights to land and fisheries in Alaska and to support efforts to provide a land and resource base to Native communities for their economic benefit. Following hearings on the aboriginal claims related to the protection of fisheries, Secretary Ickes established an

amount of land to be set aside for three village reservations: Hydaburg -101,000 acres; Klawock -95,000; acres Kake -77,000 acres.
- The judgments of the Department of the Interior were troubling to the Forest Service. If realized, the whole timber industry in southeast Alaska would be jeopardized.
- The Department of Agriculture later expressed its agreement with the efforts of the U.S. Senate to substantially repeal the Interior Secretary's authority to establish the proposed reservations in Southeast Alaska.

Walter Echo Hawk's paper, "Indian Policy in Southeast Alaska", observes, in part:

- The Tongass National Forest was actually established subject to existing property rights, as it stated that nothing shall be construed "to deprive any persons of any valid rights" secured by the Treaty with Russia or by any federal law pertaining to Alaska. This was ignored.
- A Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which ruled that lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation.
- To combat this decision, federal lawmakers passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass National Forest, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. The Congress, in its sole discretion, would decide if there was to be any compensation whatsoever for lands stolen.

H.R. 1408: A Legislative Solution with Significant Public Policy Benefits

Alaska's congressional delegation has worked hard to ensure that the fair settlement of Sealaska's Native land claim is accomplished in a manner that may have the greatest benefit to all of Southeast Alaska with the least possible impact on individuals, communities, federal and state land management agencies, and other interested stakeholders.

This legislation is also largely in symmetry with the goals of the Obama Administration for the Tongass, which has worked to protect roadless areas and accelerate the transition away from forest management that relied on old growth harvesting. The Administration has been clear that it wants to help struggling communities in rural Alaska. The Administration also has dedicated unprecedented resources to working with American Indian and Alaska Native communities nationwide. This legislation helps to finalize Sealaska's Native entitlement in an equitable way, while supporting a transition by Sealaska to second growth harvesting and maintaining rural Southeast Alaska jobs.

Without legislation to amend ANCSA, Sealaska will be forced either to select and develop roadless old growth areas within the existing withdrawals or shut down all Native timber operations, with significant negative impacts to rural communities, the economy of Southeast Alaska, and our tribal member shareholders. This legislation proposes an alternative: H.R. 1408 would permit Sealaska to select its remaining entitlement lands from outside of the ANCSA withdrawal boxes. The alternative land pool from which Sealaska could select under H.R. 1408 includes forestland suitable for timber development, but commits Sealaska to also select second growth in lieu of the old growth available to

Sealaska today. In fact, the legislation ultimately would preserve as much as 40,000 acres of old growth, and even more inventoried roadless acres, to be managed as part of the Tongass National Forest.

H.R. 1408 would permit Sealaska to select 3,600 acres of land as sacred and cultural sites, and 5,000 acres of small parcels of land often referred to as "Native futures sites". Under the terms of the legislation, no timber or mineral development would be permitted on sacred sites or Native futures sites. Because Sealaska would be permitted to select these sites in lieu of timberlands, these provisions reduce overall timber acres available to Sealaska by 8,600 acres.

Although Sealaska would thus give up "economic" assets under the proposed legislation, we believe the Southeast Alaska Native community will benefit because 3,600 acres of sacred sites will be returned to Native ownership. The community will also benefit from the 30 smaller selections (Native futures sites) that would be made available for development as green energy (tidal, geothermal, or run-of-river hydro) sites, bases for ecotourism or cultural tourism, or simply to exist as sites in Native ownership. By permitting Sealaska to select a handful of small parcels for such uses, H.R. 1408 helps to preserve Native culture in perpetuity, ensures that the Tongass remains a Native place, and provides the catalyst for creating sustainable economies within the Tongass.

The public benefits of this legislation extend far beyond Sealaska Corporation and its shareholders. Pursuant to a revenue sharing provision in ANCSA, Sealaska distributes 70 percent of all revenues derived from the development of its timber resources – more than $315 million since 1971 – among all of the more than 200 Alaska Native Corporations.

As discussed throughout this legislation, Sealaska's land legislation strategy was also driven in large part by conservation organizations' stated public goals of "protecting roadless areas", "protecting old growth reserves", "accelerating the transition to second growth" and creating alternate economies.

Finally, movement toward completion of Sealaska's ANCSA land entitlement conveyances will benefit the federal government. This legislation allows Sealaska to move forward with its selections, which ultimately will give the BLM and the Forest Service some finality and closure with respect to ANCSA selections in the region.

The Forest Service's Plans for the Tongass: Impact of H.R. 1408 on Tongass Management

The U.S. Forest Service has, in the past, expressed concern that H.R. 1408 could impact its ability to harvest second growth to support Southeast Alaska mills, and could impact other goals laid out in the 2008 Amendment to the Tongass Land Use Management Plan.

We believe Sealaska's offer to leave behind roadless old growth timber in the Tongass is significant; it is a proposal we believe this Administration should support based on its goals to protect these types of forest lands. We also believe that lands proposed for conveyance under H.R. 1408 conflict minimally with and may ultimately benefit the Forest Service's Transition Framework for the Tongass.

The Forest Service uses various classifications to define the condition of its second growth. The term "suitable" means that forestland is available for harvest. The term "unsuitable" refers to lands that are not available for harvest under normal harvest prescriptions. For purposes of our calculations, unsuitable lands exclude second growth in conservation designations, but include second growth available for restoration and stewardship contracting.

- There are 428,972 acres of second growth on the Tongass National Forest.
    - 57% is available for harvest – suitable acres

    - 43% is not available for harvest, except through restoration and stewardship contracts – unsuitable acres
- Of the oldest second growth (over 40+ years):
    - 44% is suitable for harvest
    - 56% is unsuitable
- Sealaska selection of second growth would include approximately (an approximation is made due to differences between the bills introduced in the Senate and the House):
    - 7% of the total second growth
    - 9% of the suitable second growth
    - 4% of the unsuitable second growth
- Sealaska selections of age 40+ second growth include:
    - 12% of the total 40+ second growth
    - 9% of the 40+ second growth is from suitable acres
    - 4% of the 40+ second growth is from unsuitable acres

For the Forest Service, the most significant limitation to an accelerated transition to second growth is the large number of acres of older second growth that is in restricted timber use status. If these restrictions were modified, there could be an acceleration to exclusive second growth harvesting.

If H.R. 1408 were to pass today, under current standards and guidelines, the Forest Service would retain at least 223,000 acres of suitable second growth and 177,000 acres of unsuitable second growth that is available for stewardship and restoration. We believe the total pool of lands available to the Forest Service is more than sufficient to support log demand for its Transition Framework.

We also believe that to achieve a successful transition to second growth, the Forest Service needs Sealaska to remain active in the timber industry in the Tongass, because Sealaska's operations support regional infrastructure (including roads and key contractors), development of markets (including second growth markets), and development of efficient and sustainable second growth harvesting techniques. In short, the likely success of the Forest Service's transition to second growth is significantly improved if Sealaska second growth operations are in close proximity to Forest Service second growth operations.

Sealaska has 30 years of experience developing and distributing Southeast Alaska wood to new and existing markets around the world. Sealaska recently has pioneered second growth harvesting techniques in Southeast Alaska and is active in this market.

This legislation, which moves Sealaska into some older second growth, ensures that Sealaska will engage as an early partner with the Forest Service in second growth market development, while continuing to provide local jobs and supporting the local economy.

It is also important to note that regardless of whether Sealaska selects within the existing ANCSA withdrawal boxes or outside of those boxes, Sealaska must select its remaining entitlement lands from within the Tongass. In other words, by selecting Native entitlement lands, whether under existing law or the proposed legislation (H.R. 1408), Sealaska's land selections will incorporate lands suitable for timber development and may require the Forest Service to adjust land management plans. However, the ability to make minor management adjustments is built into the revised Tongass Land Management Plan.

Local Impact of H.R. 1408: Saving Jobs in Rural Southeast Alaska

The Southeast Alaska region lost about 750 jobs in 2009, the largest drop in at least 35 years. In January 2011, the Alaska Department of Labor and Workforce Development reported the unemployment rate for the Prince of Wales—Outer Ketchikan census area at approximately 16.2 percent. In October

2007, the Alaska Department of Labor and Workforce Development projected population losses between 1996 and 2030 for the Prince of Wales—Outer Ketchikan census area at 56.6 percent.

While jobs in Southeast Alaska are up over the last 30 years, many of those jobs can be attributed to industrial tourism, which creates seasonal jobs in urban centers and does not translate to population growth. In fact, the post-timber economy has not supported populations in traditional Native villages, where unemployment ranges above Great Depression levels and populations are shrinking rapidly.

We consider this legislation to be the most important and immediate "economic stimulus package" that Congress can implement for Southeast Alaska. Sealaska provides significant economic opportunities for our tribal member shareholders and for residents of all of Southeast Alaska through the development of our primary natural resource – timber. Sealaska and its subsidiaries and affiliates expended over $45 million in 2008 in Southeast Alaska. Over 350 businesses and organizations in 16 Southeast communities benefit from spending resulting from Sealaska activities. We provide over 363 full and part-time jobs with a payroll of over $15 million. Including direct and indirect employment and payroll, Sealaska in 2008 supported 490 jobs and approximately $21 million in payroll.

We are proud of our collaborative efforts to build and support sustainable and viable communities and cultures in our region. We face continuing economic challenges with commercial electricity rates reaching $0.61/kwh and heating fuel costs sometimes ranging above $6.00 per gallon. To help offset these extraordinary costs, we work with our logging contractors and seven of our local communities to run a community firewood program. We contribute cedar logs for the carving of totems and cedar carving planks to schools and tribal organizations. We are collaborating with our village corporations and villages to develop hydroelectric projects. We do all of these collaborative activities because we are not a typical American corporation. We are a Native institution with a vested interest in our communities.

Our shareholders are Alaska Natives. The profits we make from timber support causes that strengthen Native pride and awareness of who we are as Native people and where we came from, and further our contribution in a positive way to the cultural richness of American society. The proceeds from timber operations allow us to make substantial investments in cultural preservation, educational scholarships, and internships for our shareholders and shareholder descendants. Through these efforts we have seen a resurgence of Native pride, most noticeably in our youth. Our scholarships, internships and mentoring efforts have resulted in Native shareholder employment above 80% in our corporate headquarters, and significant Native employment in our logging operations. .

ANCSA authorized the establishment of Native Corporations to receive and manage that land so that Native people would be empowered to meet their own cultural, social, and economic needs. H.R. 1408 is critically important to Sealaska, which is charged with meeting these goals in Southeast Alaska.

Glacier Bay National Park

In 1971, Congress tasked Native Corporations with selecting and managing sacred sites on behalf of the Native community. Legislation introduced on Sealaska's behalf during the 110th Congress proposed the conveyance to Sealaska of a handful of sacred, cultural, traditional and historic sites in Glacier Bay National Park, based on precedent for such transfers to Indian Tribes in National Parks in the lower 48 states. As a result of concerns expressed regarding these potential conveyances, Sealaska sought an adjustment to the legislation to provide merely for "cooperative management" of the sites.

With the National Park Service continuing to express concern regarding the "cooperative management" language in the bill, Congressman Young agreed to help resolve the concerns, and further revised the Glacier Bay language to clarify that the cooperative management requirement applies only to

Glacier Bay sacred sites identified in the bill, to avoid any misperception that such language could apply to the entire Park.

Cooperative management agreements would ensure Native use and management of the handful of very significant sacred and cultural sites identified within Glacier Bay, regardless of future changes in Park management. This language does not propose to negate the existing Memorandum of Understanding between the Park and the Huna Indian Association (HIA), and there have been discussions about revising the language to address a few additional concerns of HIA. As with all elements of this legislation, Sealaska remains open to a continued dialogue on this matter.

Conservation Considerations

We were disheartened last year when a handful of environmental groups disseminated blatant misinformation about this legislation. We think these groups must view this legislation as a part of a larger compromise between development and conservation, and by publishing statements like "Stop the Corporate takeover of the Tongass", these groups chose to ignore the Native equitable and other public benefits of this legislation. This only hurts our communities and the people who live there, including those who survive on jobs created by Sealaska.

This legislation is fundamentally about the ancestral and traditional homeland of a people who have lived for 10,000 years in Southeast Alaska. For 145 years, people from across the western world have traveled to Southeast Alaska with an interest in the rich natural resources of the region – an area the size of Indiana. In the mid-1800s, Americans came to hunt for whales. In the late-1800s, gold miners arrived. In the first half of the Twentieth century, the fishing industry built traps at the river entrances, depleting salmon populations. In the 1950s and 1960s, two pulp mills signed contracts with the United States that gave the mills virtually unlimited access to Tongass timber. In the meantime, Natives from the late-1800's through the 1930's often were being moved from their traditional villages.

Some conservation groups represent the latest influx of people with an idea about what best serves the public interest in the Tongass. In fairness, the conservation community writ large has long fought to preserve the Tongass for its wilderness and ecological values, and often I have appreciated the balance that the conservation community seeks for the forest.

What I do not appreciate is environmentalism that does not recognize the human element – that people have to live in this forest. I do not accept environmentalism that does not recognize that the Tongass is a Native place. We welcome people to our homeland – but we do not appreciate the assault by some on our right to exist and subsist in the Tongass.

There are groups that consistently agree with us that we should have our land, but wish to decide – to the smallest detail – where that land should be. We have been asked to place as much as two million acres of conservation on the back of our legislation as the price for selecting lands that make cultural and economic sense to our people. Native people have always been asked to go second. Let's not forget that H.R. 1408 addresses the existing land entitlement of the Native people of Southeast Alaska.

In attempting to resolve Sealaska's unfortunate dilemma in an equitable manner, the Alaska Congressional delegation has been careful to draft legislation to be in alignment with the current Administration's stated objectives for the Tongass and other national forests.

Moreover, while original withdrawal limitations make it difficult for Sealaska to meet its traditional, cultural, historic and – certainly – economic needs, these original withdrawn lands are not without significant and important public interest value. For example, approximately 85 percent of those

lands now withdrawn for Sealaska are classified by the Forest Service as inventoried roadless areas. A significant portion is Productive Old-Growth forest (some 112,000 acres), with over half of that being Old Growth Habitat LUD as classified under the 2008 Amendment to the Tongass Land Use Management Plan. H.R. 1408 allows these roadless old growth lands to return to public ownership, to be managed as the federal government and general public sees fit.

Some groups claim that "the lands that Sealaska proposes to select . . . are located within watersheds that have extremely important public interest fishery and wildlife habitat values." They are correct in a general sense. We agree that all lands in our region are valuable; our federal lands and our Native lands should be managed responsibly. We acknowledge the need for conservation areas and conservation practices in the Tongass. This bill meets those goals.

Sealaska remains fully committed to responsible management of the forestlands for their value as part of the larger forest ecosystem. At the core of Sealaska's land management ethic is the perpetuation of a sustainable, well-managed forest to produce timber and to maintain forest ecological functions. We have attached a 2-page summary of Sealaska's land and stewardship practices to this testimony.

Time is of the Essence

Timing is critical to the success of the legislative proposal before you today. Without a legislative solution, we are faced with choosing between two scenarios that ultimately will result in dire public policy consequences for our region. If H.R. 1408 is stalled during the 112th Congress, either Sealaska will be forced to terminate all of its timber operations within approximately one year for lack of timber availability on existing land holdings, resulting in job losses in a region experiencing severe economic depression, or Sealaska must select lands that are currently available to it in existing withdrawal areas. If forced to select within the existing boxes, development will inevitably occur in the inventoried roadless areas available today to Sealaska.

Sealaska Recognizes the Importance of the Public Process

The alternative selection pool identified in the Sealaska bill is a product of an exceptional public process, including three previous Congressional hearings, more than a dozen meetings held by Senator Murkowski's staff in Southeast communities, and hundreds of community meetings held by Sealaska.

The Sealaska bill has the support of the full Alaska delegation and many residents, communities and tribes throughout Southeast Alaska and statewide:

- The legislation is supported by the National Congress of American Indians, the Intertribal Timber Council, the Alaska Federation of Natives, the ANCSA Regional Presidents & CEOs, the Central Council of Tlingit and Haida Indian Tribes, and numerous tribes throughout Southeast Alaska.
- The Alaska Forest Association – which works with and represents Southeast Alaska's remaining timber mills – fully supports the Sealaska legislation.
- The Sealaska bill represents a net gain to the U.S. Forest Service of roadless and old growth timber in the Tongass National Forest. The legislation is fundamentally aligned with the goals of the Obama Administration.

Some critics of this bill want to shut down this legislation because it might mean that Sealaska selects lands in "their" backyard, near "their" favorite spots. This is understandable. But every acre of the Tongass is precious to someone and we need somewhere to go to fulfill our entitlement. Sealaska has been careful to select lands that are part of the Forest Service's timber base. Sealaska has compromised and adjusted its legislation several times on the basis of community and even individual concerns.

Congressman Don Young has worked to Resolve Federal, State, and Local Concerns

To address federal, state and local community concerns, Congressman Young committed to reintroducing legislation that:

- drops lands proposed for conveyance to Sealaska on northeastern Prince of Wales Island near Red Bay, and incorporates new lands into the pool of lands that would be available to Sealaska for Native selections – all new lands identified in the legislation are to be added solely on the basis of meetings with communities and other stakeholders in Southeast Alaska;
- revises language that allows Native Corporations to work with the Secretary of Agriculture under the Tribal Forest Protection Act to address fire hazards and spruce bark beetle infestations, and language that allows Native Corporations, as owners of Indian cemetery sites and historical places in Alaska, to work with the Secretary of the Interior to secure support under the National Historic Preservation Act – our revised bill language clarifies that these amendments do not create Indian country in Alaska;
- clarifies that the conveyance of Native sacred sites is subject to the criteria and procedures applicable to the selection of sacred sites under ANCSA;
- amends the bill to protect local guide permits on lands that would be conveyed to Sealaska;
- provides that the conveyances of smaller parcels (also called Native future sites), which are subject to significant development restrictions, are further subject to an easement for public access across such lands in addition to public access easements that would be granted under Section 17(b) of ANCSA;
- provides that Native sacred sites could be conveyed subject to an easement for public access across such lands where there is "no reasonable alternative" access, a provision that also provides public access rights in addition to the public easements that would be available under Section 17(b) of ANCSA;
- clarifies that any "site improvement" on any sacred site selected by Sealaska (for example, construction of a traditional longhouse or an access trail) must not be inconsistent with management plans for adjacent public lands; and
- provides that the BLM shall have additional time to convey ANCSA lands to Sealaska.

Our Future in Southeast Alaska

Our people have lived in the area that is now the Tongass National Forest since time immemorial. The Tongass is the heart and soul of our history and culture. We agree that areas of the region should be preserved in perpetuity, but we also believe that our people have a right to reasonably pursue economic opportunity so that we can continue to live here. H.R. 1408 represents a sincere and open effort to meet the interests of the Alaska Native community, regional communities, and the public at large.

It is important for all of us who live in the Tongass, as well as those who value the Tongass from afar, to recognize that the Tlingit, Haida and Tsimshian are committed to maintaining both the natural ecology of the Tongass and the Tongass as our home. We therefore ask for a reasoned, open, and respectful process as we attempt to finalize the land entitlement promised to our community 40 years ago. We ask for your support for H.R. 1408.

Gunalchéesh. Thank you.

DRAFT

RECOVERING *HAA AANÍ*: A century of federal Indian policy, and the Tlingit, Haida and Tsimshian struggle to regain their subsistence rights

BY WALTER ECHO-HAWK

The Tlingit, Haida and Tsimshian, collectively known as the aboriginal peoples of the Tongass National Forest, are seeking congressional action to restore their right to some of their homeland in Southeast Alaska.

Tlingit women from Wrangell village

The Tongass tribes inhabit America's largest rainforest, which they call ***Haa Aaní***. Tribal villages dot shorelines along the islands, bays, rivers and fjords of Southeast Alaska. This homeland forms one of the richest environments on Earth. It is a remarkable place inhabited by whales, salmon, moose, deer, bears, eagles and many other creatures. Berries of all kinds grow along the streams, and the beaches provide a breadbasket of seafood. This amazing habitat produced an astounding aboriginal culture, and a cosmology of Raven and Eagle clans that is distinct from any other.

But in the 21st century, the Tongass tribes might as well inhabit a desert for the lack of access they have to ***Haa Aaní***, now the Tongass National Forest, as determined by U.S. Indian policy that dates back to the largely repudiated colonial and termination eras.

This brief, and the related 43-page paper, are educational tools to raise awareness among policy makers about how federal law and policy continue to violate the civil rights of the Tlingit, Haida and Tsimshian.

In 1900, the Tlingit, Haida and Tsimshian peoples, according to their time-honored laws and traditions, owned, occupied and enjoyed the rainforest's bounty, as they had for millennia.

President Theodore Roosevelt

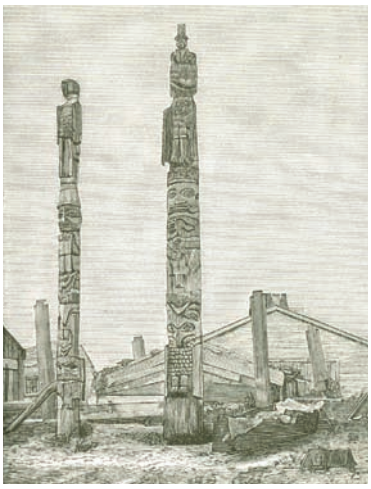
But far away in the continental United States, Indian policy was being adjudicated in the U.S. Supreme Court ruling in *Lone Wolf v. Hitchcock* (1902), which treated Indian reservations like colonies subject to the plenary power of Congress; that is, absolute power over Indian tribes as wards of the government without a right of judicial review.

With no notice to the Tlingit clans, and their Haida and Tsimshian neighbors who owned ***Haa Aaní***, President Theodore Roosevelt issued an executive order to create the Tongass National Forest in 1908. The edict established the vast national forest in *the middle of the Indians' aboriginal homeland.*

In the 1930s, the U.S. Forest Service policy aimed to drive the Tongass tribes from the rainforest, and to burn or destroy Native subsistence camps, treating the Indians as trespassers on their own land. This practice continued for 20 years.

Two years later, the U.S. Court of Appeals for the Ninth Circuit handed down *Miller v. U.S.*, which affirmed the existence of congressionally recognized aboriginal lands in the rainforest, lands that cannot be seized by the government without just compensation.

Congress responded in a joint resolution authorizing the secretary of agriculture to sell timber and land within the Tongass National Forest "notwithstanding any claim of possessory rights" based on "aboriginal occupancy or title." The law amounted to theft of the entire rainforest.



Wrangell village

In 1955, A Tlingit attorney, William Paul of the Tee-Hit-Ton clan, brought a suit to the U.S. Supreme Court. The court's decision in *Tee-Hit-Ton Indians v. United States* would become one of the worst ever handed down. The court held that the aboriginal land of the Tongass tribes could be confiscated by the U.S. government without compensating the owners. This novel doctrine of confiscation was justified by Justice Stanley F. Reed by raw conquest. He tersely explained:

William Paul

"Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conqueror's will that deprived them of their land."

The *Tee-Hit-Ton* decision had grave impacts upon the Tongass tribes. It encouraged the dispossession of Native land rights as the indigenous way of life was brushed aside, and tribal efforts to protect indigenous habitat in their ancestral territory were

ignored. As used here, the phrase "indigenous habitat" refers to the land, waters, animals and plants in ancestral homelands traditionally occupied by indigenous tribes, and used by them to support their aboriginal cultures and ways of life — that is, vital habitat in the natural world without which aboriginal cultures and ways of life cannot survive.

In 1962, the U.S. Supreme Court decision in *Kake v. U.S.* further diminished subsistence rights by putting them under the control of the state of Alaska. With this decision, the colonization of the Tongass tribes and their ***Haa Aaní*** was complete.

But by the late 1960s, congressional and court actions turned to paying the Tlingit, Haida and Tsimshian for the land takings. The 1968 ruling from *Tlingit and Haida Indians v. U.S.* resulted in the payment of more than $7 million in compensation for lands taken by the U.S.

Alaskans testify before a panel conducting hearings on land claims

In 1971, the Alaska Native Claims Settlement Act extinguished all aboriginal land claims, and hunting and fishing rights, in Alaska. But in it, the Tongass tribes received their share of assets, including more than a half million acres of their ***Haa Aaní***.

In the next two decades, congressional acts would turn to conservation. The Alaska National Interest Lands Conservation Act of 1980 was a statutory scheme for protecting traditional Native subsistence practices on public lands, which helped the Tongass tribes to exercise some subsistence rights. And the Tongass Timber Reform Act of 1990 designated new wilderness and roadless areas. In 1997, the last pulp mill closed in the Tongass National Forest.

The significant successes since the Tee-Hit-Ton and Kake decisions would not have been possible without the intervention of Congress. To their credit, lawmakers filled the void of the Tongass tribes' rights with statutory protections, such as the Endangered Species Act (ESA). But as significant as these laws can be, they are not rooted in the time-honored values of the Tlingit, Haida and Tsimshian.

The ESA, for example, waits until the brink of extinction before putting animals on life-support systems, whereas the hunting, fishing and gathering way of life depends upon healthy habitats that produce viable plants and animals. These beings have intrinsic value. It is a short step for our society to recognize the intrinsic value of habitat protection that saves the resource before it is endangered. It will require congressional action to save the endangered tribal cosmologies, world views that will be critical to our nation in forming a real American land ethic essential to protect the blessings of Mother Earth.

*In the 21st century, the Tongass tribes might as well inhabit a desert for the lack of access they have to their ancestral lands (**Haa Aaní**), now the Tongass National Forest, as determined by U.S. Indian policy that dates back to the largely repudiated colonial and termination eras.*

Today

Given the hardships imposed by these decisions, we are fortunate that the rainforest tribes of the ***Haa Aaní*** persisted, and didn't blink out of existence like so many tribal cultures worldwide during the 20th century. Now, the conquest of Alaska has run its course. Most Americans are joined with indigenous peoples to protect the natural rainforest habitat of the Tongass National Forest.

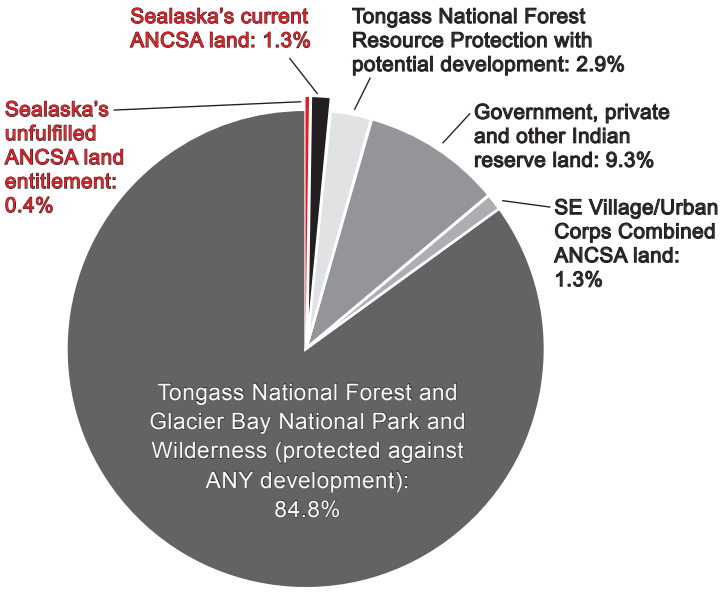
It is time for Congress to uplift federal Indian law to comport with contemporary U.S. values and minimum international standards. Let us arise, take stock of the federal laws and social policies that impact Native Southeast Alaska, and chart our course for a better future.

Walter R. Echo-Hawk is an attorney with the Crowe & Dunlevy law firm of Oklahoma and a justice on the Supreme Court of the Pawnee Nation. Previously, he served for 35 years as a staff attorney for the National American Rights Fund. He has a range of federal Indian law experience.

OVERVIEW OF SEALASKA LAND AND STEWARDSHIP

23 MILLION ACRES OF SOUTHEAST ALASKA LAND OWNERSHIP

Traditional Tlingit, Haida and Tsimshian lands

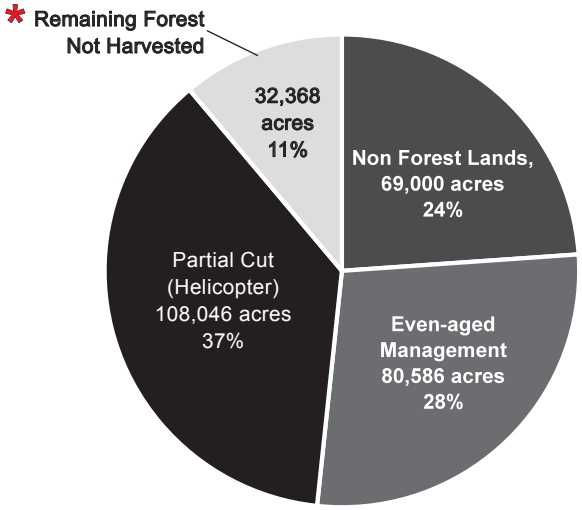


SEALASKA LAND STATISTICS

- 290,000 acres in current Sealaska ownership
- 220,225 acres are forest lands
- 188,632 acres have been harvested from 1980 to 2009
- Of the remaining 32,368 acres of forest we've not harvested: *
  - Wide buffers to protect salmon and resident fish streams
  - Bald eagle nest trees
  - Municipal watersheds
  - Subsistence areas

SEALASKA LAND AND HARVEST STATISTICS

Current Conveyance (290,000 acres)
1980 – 2009 Harvest (188,632 acres)



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SEALASKA STEWARDSHIP FACTS

- Six miles of stream bank riparian habitat have been restored. These lands were previously harvested down to stream banks before conveyance to Sealaska.
- Monitoring of effectiveness of efforts to protect riparian buffer zones on private timberlands to protect fish habitat and water purity
  - Largest and longest running fish habitat and water purity monitoring program on private timberlands in the Pacific Northwest
- Twelve-year wildlife habitat and young growth tree study to provide strategies for optimization of wildlife habitat and tree growth
  - All studies done in cooperation with state and federal agencies, other private landowners and industry associations
- Numerous peer review reports published in professional journals based on research and studies
- Peer reviewed article by Oregon State University on Sealaska wildlife habitat and silviculture research to be published this year in professional journal

Managed versus Unmanaged

Sealaska managed 30-year-old stand near Kake
PCT age 20; basal prune age 29
Notice how sunlight can reach the forest floor to benefit understory plants important for deer browse and other wildlife benefit.

25-year-old, unmanaged stand not on Sealaska land. Foreground has been cleared for Hollis to Klawock highway and creates a cross section view to look into the unmanaged condition. Notice that sunlight cannot reach the forest floor.

SEALASKA STEWARDSHIP AND SILVICULTURE*

Current on all treatments

- Hand planting of 1,600,000 seedlings on 8,230 acres
- 38,500 acres pre-commercial tree thinning
- 1,230 acres basal pruning
- $16.2 million invested
- All young stand management treatments are current

* Silviculture: forest management, the practice of growing trees