

**STATEMENT
HARRIS SHERMAN
UNDER SECRETARY
NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE
SUBCOMMITTEE INDIAN AND ALASKA NATIVE AFFAIRS
COMMITTEE ON NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

MAY 26, 2011

CONCERNING

**H.R. 1408 “SOUTHEAST ALASKA LAND ENTITLEMENT FINALIZATION
AND JOBS PROTECTION ACT”**

Mr. Chairman, Honorable Ranking Member and distinguished members of the Committee, thank you for the opportunity to speak with you today about Native land claims in Southeast Alaska. I will open my testimony by addressing the direction in which the Department of Agriculture (USDA) and the Forest Service are heading regarding economic sustainability in Southeast Alaska and how our vision for economic diversification ties into HR 1408, the Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act.

The USDA recognizes and supports the timely, equitable and final distribution of land entitlement to Alaska Native Corporations, including Sealaska, under the Alaska Native Claims Settlement Act (ANCSA). The USDA understands Sealaska’s interest in acquiring lands, which have economic and cultural value. The USDA has been working with Sealaska. Members of Congress and other community partners to find solutions to move forward the land entitlement and finalization, and recognizes the progress that is reflected in S. 730, the Senate version of the Act. I also wish to express our continued interest in working collaboratively with Sealaska, Congress and other community partners to find an equitable solution that is in the public interest.

While the USDA supports a number of the goals of this legislation, we continue to have a number of concerns we wish to work through with the involved parties. This will be the focus of my testimony. The testimony will also convey a Department of the Interior concern with HR 1408 regarding a cooperative management provision of the legislation.

Background

When enacting ANCSA in 1971, Congress balanced the need for a fair and just settlement of Alaska Native aboriginal land claims with the need for use of the public lands in Alaska. The approach to resolve Alaska Native claims in ANCSA is unique in its reliance on the creation of Alaska Native Village and Regional Corporations, which generally receive entitlement from lands located within the original Native village withdrawal areas. Congress defined the land

entitlements of both village and regional corporations, but provided for some differentiation among corporations to consider individual village or region circumstances.

One such consideration was the reduction of land entitlement to the village and regional corporations representing Alaska Natives in Southeast Alaska. The Tlingit and Haida Tribes of Southeast Alaska brought a “taking” lawsuit against the United States for land claims and the U.S. Court of Claims awarded damages to the tribes shortly before ANCSA was enacted. Recognizing this prior award, Congress reduced the entitlement of village and regional corporations in Southeast Alaska, with Sealaska receiving its entitlement only under Section 14(h) of ANCSA.

Sealaska has thus far received more than 290,000 acres of 14(h) entitlement, with approximately 63,605 acres of ANCSA entitlement yet to be conveyed, based on the Bureau of Land Management’s (BLM) estimates. Sealaska has prioritized its selections within the original withdrawal areas as required by the 2004 Acceleration Act, with approximately 138,000 acres of prioritized selections identified. The selections identified by Sealaska within the original withdrawal areas are more than sufficient to meet Sealaska’s remaining ANCSA entitlement, but were put on hold at Sealaska’s request to pursue a legislative alternative to select outside the ANCSA withdrawal area to settle their remaining entitlements.

Southeast Alaska Transition Strategy

Since testifying last before this committee, the USDA has made great strides in developing approaches to diversify and sustain the economy in Southeast Alaska. Through a coordinated interagency effort, USDA is focusing with local interests on ways to provide long-term, sustainable support for a wide array of economic opportunities for Southeast Alaska communities, including Alaska Natives around second-growth timber production, ecosystem restoration, bio-energy, ocean products and tourism and recreation. Tourism and recreation, as a whole, has been the fastest growing industry in Southeast Alaska, employing over 3,200 people and accounting for \$109 million in wages and benefits. Ocean products, including fisheries and mariculture, are providing in excess of \$234 million in wages and benefits. Furthermore, we see an ecosystem restoration job sector providing more than 100 jobs in Southeast Alaskan communities. Beyond traditional opportunities, the Forest Service and other partner USDA agencies are working to facilitate future opportunities and growth in job sectors beyond forestry and forest products.

To support the communities and people of Southeast Alaska, the Forest Service has developed a comprehensive 5-year plan focused on a suite of integrated projects including timber projects in the roaded base, pre-commercial thinning, integrated stewardship, road and watershed restoration and fish and wildlife habitat improvements, all designed to allow managers to mix and match and meet the local needs of Alaska Native villages and Southeast Alaskan communities.

Furthermore, the agency issued a contract for asset mapping to identify economic strengths, weaknesses, opportunities and threats to diversification focused on the different economic clusters identified in our contract with the Juneau Economic Development Council. The USDA agencies just completed several months of meetings with working groups comprised of key industry leaders, including participation by Sealaska representatives. The groups addressed the integration of forest restoration and broad economic development in the areas of forest, ocean, visitor and energy products. Additionally, USDA has announced and distributed more than \$55

million last year in funding to communities in Southeast Alaska for an array of projects and activities that demonstrates our commitment to Southeast Alaska. I am optimistic that the USDA can promote new economic opportunities for Southeast communities, including Alaska Natives, beyond the traditional focus of roadless old growth timber harvests.

In this broad context, the USDA has determined its stance on HR 1408 and evaluated whether it facilitates or hinders the Administration's goals for promoting job protection, creation, and economic diversification in Southeast Alaska.

Conflict on the Tongass National Forest pertaining to the harvesting of old growth in roadless areas has intensified over the last 10-15 years. The forest has faced 18 lawsuits during this period, many of which were resolved through settlements or adverse judgments, but all of which cost valuable time and taxpayer dollars. The Administration recognizes a balance must be struck between many diverse and competing needs and we need to chart a course of action that moves us away from old growth and roadless area harvests sooner rather than later. To move us away from this conflict, we must operate on three primary principles 1) provide timber for local value added products; 2) keep the conservation strategy in the Tongas Land Management Plan and environmental values intact and 3) stay clear of roadless areas.

We understand that Sealaska is interested in maintaining export of round logs, using a local workforce generally found in the rural communities of Southeast Alaska to do the harvesting and hauling. The Forest Service's primary interest is maintaining adequate supply of timber for local processing by existing mills and the jobs associated with those mills. This is a central aim of the transition strategy that the Forest Service has developed and one that is achievable if the Forest Service has access to a sufficient quantity of timber available on lands that have existing roads. The Forest Service and Sealaska have an interest in maintaining the loggers and other forestry infrastructure to support a local forest economy and both the Forest Service and Sealaska have an interest in moving away from the dependency on old growth and moving to harvesting young growth stands.

The lands identified in HR 1408 represent a significant part of the Forest Service's roaded land base for Southeast Alaska identified in the Tongass Land Management Plan as suitable for timber harvest. The majority of the lands identified in HR 1408 are close to the only remaining medium sized mill and several smaller, local mills in the Tongass National Forest.

The Forest Service has determined that approximately 64 percent of land withdrawn and available for selection in section 4(b)(1) of HR 1408 overlaps projects listed on the Tongass 5 Year Plan. Specifically, the selections would impact six projects, which represent potential profitable sales to the medium sized mill and smaller local mills in the next five years. Additionally, the Forest Service has made substantive investments in lands identified in HR 1408 through environmental analysis, stand management, roads, log transfer facilities, maintenance, trails, fish habitat restoration and others activities, totaling more than \$50 million.

Approximately 6,900 acres of land identified for selection in section 3(b)(1) support an older age class of second growth forests (50 years and older, on productive soils). These lands include more than 5,000 acres on Kozciusco Island and another 1,275 acres on Kuiu. These selections

cover areas that represent the Forest Service's best, first entry into commercial second growth, including projects currently listed on the Tongass' 5-year plan.

Ultimately, the transfer of these of these older second growth stands from the Forest Service to Sealaska will reduce the available timber supply for local mills and hamper the Forest Service transition to second growth in Southeast Alaska. Removing these stands also means that more old growth areas would be harvested longer, because it will take more time for the second growth stands to mature into legally harvestable ages. The Forest Service believes this will increase the potential for litigation around timber sales and thereby create significant uncertainty for the forest industry.

There are a number of ways this issue could be addressed, and USDA is willing to work with Sealaska to find a solution that meets the needs of all the affected parties and is in the public interest in Alaska.

Conservation Strategy and Old Growth Reserves (OGR)

The Tongass Land Management Plan's conservation strategy was formulated around Sealaska's selections within the original ANCSA withdrawal areas. Old growth reserves found within the land pool identified in HR 1408 are central to the Tongass National Forest's conservation strategy as outlined in its land management plan. The land management plan includes a comprehensive, science-based conservation strategy to address wildlife sustainability and viability. This strategy includes a network of variable sized old growth reserves across the forest designed to provide for connectivity and maintain the composition, structure and function of the old growth ecosystem.

In 1997, the US Fish and Wildlife Service (USFWS) decided not to list Queen Charlotte goshawk and Alexander Archipelago wolf under the Endangered Species Act, based on the protective measures incorporated in the conservation strategy of the 1997 Tongass Forest Plan, primarily the network of old growth reserves and the positioning of the reserves across the landscape, and the existence of forested corridors between the reserves. The USFWS reaffirmed this finding regarding the goshawk in 2007, and the Department of the Interior asked the Forest Service to retain the Conservation Strategy in the 2008 Tongass Forest Plan Amendment (TLMP). These were among the main reasons why the 2008 TLMP Amendment kept all the major components of the conservation strategy.

Conveyance of land selections as proposed in HR 1408 will decrease the effectiveness of the Tongass' conservation strategy and could hamper the plan's ability to maintain viable populations of plant and wildlife species. This could lead to the need for USFWS to reconsider its previous determinations regarding the goshawk and gray wolf. Replacing the old growth reserve areas with an equal number of acres from somewhere else within the forest does not resolve the effects on the land management plan's conservation strategy; the location and design of the old growth reserve network is critical to the success of the conservation strategy. Distribution of the reserves across the landscape and composition of the habitat within each reserve, were carefully considered. Because of the potential Endangered Species Act issues, the Forest Service is concerned that HR 1408 could increase the chances for litigation, which would

increase uncertainty for all parties, including Sealaska and local mills. The USDA is willing to discuss mechanisms for maintaining these old growth reserves to ensure they remain whole.

Although HR 1408 provides that implementation of this legislation will not require an amendment or revision to the Tongass Land Management Plan (TLMP), this language would not prevent issues from arising during TLMP implementation. If the significant management assumptions and strategies that formed the basis of the plan are modified through enactment of HR 1408, the TLMP cannot be implemented as currently intended.

Finalizing Sealaska Entitlement

As the title of this legislation suggests, any legislated solution finalizing Sealaska's entitlement must actually resolve all of Sealaska entitlement issues upon enactment, such as remaining entitlement acres, resolve outstanding split estate issues, relinquish existing Sealaska ANCSA selections and removal of the original ANCSA withdrawal areas. This issue is significant to the Forest Service because without closure the agency cannot identify a stable land base and ensure that investments made today can be capitalized in the future. The Department of the Interior notes that HR 1408, if enacted, may set a precedent for other corporations to seek similar legislation

In that context, we also have concerns about in-holdings. Selection from the land categories in section 4(b)(2) ("Sites with Traditional and Recreational Use Value"), in section 4(b)(3) ("Traditional and Customary Trade and Migration Routes") and in section 4(c) ("Sites with Sacred, Cultural, Traditional, or Historic Significance,") will result in a significant number of sites and routes scattered throughout the forest, creating in-holdings that cause significant management issues including access and boundary management problems. It is agency policy to avoid the creation of in-holdings. Likewise, the elimination of such in-holdings is, and has historically been, one of the agency's foremost land acquisition priorities. The Forest Service has extended considerable public resources to acquire the types of in-holdings that HR 1408 would create. We have concern over the 33 in-holdings created by the new land categories in HR 1408. The Forest Service estimates that surveying and boundary management for new Sealaska land selections under HR 1408.

Additionally, the escrow provision included in the legislation does not address the relinquishment of any rights Sealaska may have to escrow funds from lands within the original withdrawal area. In addition, HR 1408 is also not clear on what right Sealaska may have to claim escrow on the new parcels identified, which have previously been harvested. The USDA advocates clearly articulating the escrow account provisions to relinquish Sealaska's right to escrow within the original ANCSA identified withdrawal areas.

Alaska Land Transfer Acceleration Act

In line with the Alaska Land Transfer Acceleration Act of 2004, the USDA supports a reduced conveyance timeline. HR 1408, however, only provides for selections under section 4(b)(1) and would penalize Sealaska only if it had not made its selection under section 4(c)(2) within 15 years. Sealaska has previously provided copies of maps, which identify their sites of preference.

Settling on those land selections prior to passage of HR 1408, could resolve one of USDA's primary concerns with HR 1408.

Public access

We continue to believe HR 1408 will affect the Forest Service's ability to provide for continuous public access for subsistence uses and recreation on the Tongass National Forest. The legislation provides Sealaska the right to regulate access on certain lands where the public use is incompatible with Sealaska's natural resource development, as determined by Sealaska. The ability of the Forest Service to provide for access, subsistence activities and public and commercial recreation and tourism and will be limited by enactment of the legislation.

Special use permits: Liability and responsibility

The USDA supports Sealaska's willingness to continue to allow outfitting and guiding permits on lands identified in section 4(b)(2) ("Sites with Traditional and Recreational Use Value") for the remaining term of the existing authorizations and for a subsequent 10 year renewal. However, the legislation should clearly specify that the existing Forest Service permits authorizing these uses would be revoked upon conveyance of the land, that Sealaska would allow continued use under the same terms and conditions as provided in the Forest Service permits, and that the United States would not be liable for the actions of these permittees. As it currently stands, the legislation specifically exempts Sealaska from liability, but provides for Sealaska to negotiate terms of the permit.

Amendments to the Tribal Forest Protection Act and the National Historic Preservation Act

This legislation includes amendments to the Tribal Forest Protection Act (TFPA) and the National Historic Preservation Act (NHPA) to consider lands owned by any Alaska Native Corporation as tribal-owned lands for the purposes of these Acts, the implications of which are described below. The USDA is willing to discuss amendments to ANCSA; however, we view the amendments to the TFPA and NHPA as unrelated to fulfilling remaining ANSCA entitlement.

The TFPA is intended to strengthen Forest Service relationships with federally recognized Tribes and to restore forested lands by authorizing the Secretary of Agriculture to enter into contracts and agreements with Tribes to carry out certain projects on the National Forests to reduce threats to adjacent or bordering lands owned by Tribes. The bill would extend the benefits of TFPA beyond those Tribes currently listed on the official list of federally acknowledged tribes in the contiguous 48 states and in Alaska. The Alaska Native Corporations are not Tribal Governments as recognized by the Bureau of Indian Affairs and they do not have the capability of having the Federal government hold their lands in trust.

HR 1408 would amend the NHPA to include Alaska Native Corporations. Tribal lands as now defined in the NHPA include those within the boundaries of American Indian Reservations, which are governed by a Tribal Council duly elected by the Tribal members. These lands are managed for the benefit of Tribal members. Alaska Native Corporation lands, however, are managed by a corporate board of directors to provide a for-profit benefit to its shareholders.

The inclusion of Alaska Native Corporations as parties entitled to the benefits prescribed under both the TFFPA and NHPA is at odds with the intent to provide tribes with certain benefits prescribed by these Acts. Granting tribal status to lands owned by for-profit corporations for any purpose could have wider implications than what may be intended. The Department would like to have more time to assess this potential impact of this provision before the committee takes any action on it.

Cooperative Management of National Parks

Although USDA defers to the Department of the Interior, USDA notes that DOI has expressed concerns with the cooperative management agreement provisions in sections 3(a)(2) and 3(c)(2) of HR 1408 would require the National Park Service (NPS) to offer to enter into cooperative management agreements with Sealaska and other corporations for activities in Glacier Bay National Park. This could confuse the execution of existing memoranda of understanding and concession contracts which are currently working well in the park. The NPS maintains a Memorandum of Understanding with the Hoonah Indian Association, a federally recognized tribe, as well as a cooperative agreement with the non-profit Huna Heritage Foundation to provide cultural learning activities in the park. Both entities are also partners in monitoring the condition of Tlingit historic sites in the park.

In addition, requiring cooperative management agreements for such activities such as guided tours and establishment of visitor sites with profit-making corporations would be inconsistent with the open, competitive process currently provided under concession management law and regulation. Existing practices are already resulting in engaging Native Alaskans in the visitor experience: a subsidiary of Huna Totem Corporation has the Glacier Bay lodge and tour 2 3 contracts with Aramark Leisure Services through 2013, and Goldbelt Inc., a Juneau-based Native corporation, had the contracts between 1996 and 2004.

Environmental mitigation, incentives and credits

Section 6(b) of HR 1408 would expressly authorize environmental mitigation and incentives for land conveyed to Sealaska. The USDA supports these provisions, which would allow any land conveyed to be eligible for participation in carbon markets or other similar programs, incentives or markets established by the federal government.

Conclusion

In conclusion, while USDA supports the goals of this legislation, we remain concerned about the consequences of the legislation, including its ability to actually finalize the entitlement and current outstanding split estate issues and the potential for the legislation to bring to closure the question of Sealaska's entitlement under ANCSA. More broadly, USDA is concerned about the impact of HR 1408 on the supply of timber for local mills; the transition to a sustainable timber harvest regime focused on second-growth forests; and the overarching conservation strategy outlined in the Tongass Land Management Plan. However, the Department will continue to work with Sealaska and all the parties involved resolving these concerns and finding solutions that work for everyone.

This concludes my testimony and I am happy to answer any questions you may have.