

Testimony

Jimmie Cannon Rosenbruch

**Before The
Indian Affairs Sub Committee
House Natural Resources Committee
US House of Representatives**

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My name is Jimmie Cannon Rosenbruch. I was born and raised in Utah. I was educated as an engineer and in 1966 moved to Alaska where I worked with the BIA. I was appointed by the Secretary of Interior as a Staff Civil Engineer for the Alaska Land Use Planning Commission in 1972-73.

For close to 50 years I have been a Big Game Guide in SE Alaska, mostly as a Master Guide, the highest license issued by the State of Alaska. I hold the Safari Club International Professional Hunter of the Year Award and the Wheelerby Conservation and Hunting Award, an Oscar in the hunting world.

My wife, who was the first woman Master Guide in Alaska, and I established Alaska Glacier Guides in 1974. Now a family business, AGG takes people from all over the world to islands in the Tongass National Forest where they hunt, kayak, fish, or photograph wildlife.

During my close to 50 years in Alaska, we have cruised all of the waters in the Tongass National Forest. I have had a chance to meet a cross section of the people in the Tongass and hear how they view the Sealaska Lands bills. These bills died in Congress in 2003, 2006-7, 2008-10, 2011-12.

Because of the few days notice for this hearing and the difficulty of contacting groups when they are hunting or in the bush, I represent only a few organizations that have had time to authorize me to represent them. Today I represent the Territorial Sportsmen and Edna Bay. It is unnecessary for the committee to pass this legislation.

HR 740 Unnecessary

A long list of national and regional hunting, sportsmen's, wildlife, conservation organizations, and scientists believe a new Sealaska bill is not necessary, because ANCSA (1971) should govern what Sealaska should get by requiring BLM to finalize the designations of land Sealaska sent it in 2008. In addition, there are nine

towns in Alaska who object to this bill in the strongest terms and have valid reasons why Sealaska should not take its land near their towns.

A long list of organizations have major problems with this bill. A partial list includes the 19 national wildlife groups who represent two million Sportsmen and Wildlife Managers as listed in the April 22, 2013 letter to Senator Wyden.

I endorse the reasons for opposition found in the Alaska Outdoor Council's recent letter to the Congressional Sportsman's Caucus. Their first two reasons are no action is required to give Sealaska its final entitlement and there is no need.

<http://tongasslowdown.org/TL/docs/Sen.%20John%20Thune%20Chairman%20CSC%20%20R%20SD.pdf>

The Wildlife Management Institute and the Dallas Safari Club, among many others, think this bill is unnecessary:

"Legislation is not required. Sealaska is presently entitled to receive its full land entitlement under law within areas that the Corporation helped identify and actively supported in testimony before Congress at the time of deliberation. These areas were submitted to the Bureau of Land Management (BLM) in 2008 under the strong legal language of the Alaska Land Transfer Acceleration Act as "final and irrevocable priorities". With the prospect of gaining increased value via this legislation, Sealaska has subsequently asked BLM to halt conveyance. At this point, the Sealaska Corporation itself is the party solely responsible for not having received its full land entitlement under ANCSA." April 22, 2013 letter to Senators Wyden and Murkowski, Pg. 2

<http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf>

The Alaska Guides Association also urges BLM to make the final selections under existing law. Feb. 1, 2013

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

And the Alaska Chapter of Safari Club International finds further delay in implementing existing law "will only cause disruption". Feb. 3, 2013

<http://tongasslowdown.org/TL/docs/SCI%20Sealaska%20Letter%202013.pdf>

There has been no independent appraisal completed by an independent party that indicates Sealaska cannot make a profit from the lands they wanted around their villages and agreed to take in 1975. **The status quo imposes no hardship on Sealaska.**

It is only Sealaska's desire to make a bigger profit that drives this bill. There is no reason others should pay the penalty.

Clarification of Basic Facts

How many acres Sealaska is entitled to under ANCSA?

While Sealaska has obtained title to at least 456.25 square miles (292,000 acres) of timber land in the Tongass National Forest, *how many more acres does Sealaska get?*

The exact acreage was not specified in ANCSA. Instead an ANCSA 14 (h) percentage was provided mandating BLM to make final acreage calculations.

HR 740 discards this formula Congress devised in 1971, which all sides thought was fair and equitable at the time.

Numbers keep changing.

Chairman Young has stated Sealaska should get:

- 60,000 (2007), <http://www.youtube.com/watch?v=nOqHITx-uvY> @ 1:24 min and 4:32 min
- 85,000 (2009-10), <http://www.youtube.com/watch?v=Q9Zr0-r17p8> @ 7:18 min
- 77,000 (2012) floor speech House. <http://www.youtube.com/watch?v=t3rB8IYoKKo> @ :22 min. asking for "77 million acres of land that's already been cut, there's no old growth timber involved in this." 1:01
- 70,075 (2013) HR 740

Assistant Secretary of Agriculture, Harris Sherman told Congress Sealaska should get:

- 63,000 acres (Senate Testimony - May 25, 2011)
<http://tongasslowdown.org/TL/docs/ShermanTestimonyonS730052511.pdf>

Senator Murkowski said BLM told her Sealaska should get:

- 70,000 acres (Lands Subcommittee Hearing - April 25, 2013).

But just saying so does not make it so absent hard data in black and white.

BLM has no memo in the Congressional Record analyzing what Sealaska should get in 2013 even though ANCSA makes it the final calculator of the final amount.

If BLM has a memo it has shown Congress behind closed doors, the public deserves to see the final calculations. Before this bill moves any further along, this memo should be revealed.

How much timberland is old growth or second growth?

Mr. Young stated on the floor of the House (June, 2012) that ALL of the timberland Sealaska will get is SECOND GROWTH. His words were "77 million acres of land that's already been cut, there's no old growth timber involved in this." @ 22 seconds

<http://www.youtube.com/watch?v=t3rB8IYoKKo>

Only **eight percent** of the acres in the 2012 bill were second growth in fact; 85,900 timbered acres and 6,900 of second growth timber. The latter fact from the Under Secretary of Agriculture.

<http://tongasslowdown.org/TL/testimony.html>

While there is a larger percentage of second growth in HR 740, than in last year's HR 1408, a majority of the land is still old growth in 2013.

Old Growth Significance for Wildlife

The majority of lands Sealaska seeks are the very rarest of the biggest old growth trees in the Tongass forest. These large trees are vital for healthy wildlife populations supporting deer, bear, wolf, and goshawk. The latter two at risk of being listed as endangered.

This legislation would take a significant chunk of old growth stands in places where previous cutting makes the remaining stands vital for these species. This issue has been studied by the biologists at Alaska Audubon who found that the big tree stands in this legislation high grade the big trees far out of proportion to their distribution in the Tongass as a whole. See their April 22, 2013 letter

<http://tongasslowdown.org/TL/docs/Senator%20Wyden%20-%20Sealaska%20S%20340%204-19-13%20final.pdf>

I keep a ship's log of the bears observed over the years including Kuiu Island. Before the heavy cutting on the north end of the island occurred, I observed a significantly higher number of bears. This bill targets the remaining big tree stands and I am certain the wildlife will continue to decline. I've already observed the results. Today the Kuiu the black bears are less than half their historical numbers according to our ship's log and the deer are virtually gone.

In September 1988 on a single creek I counted 86 bear. In recent years the most we have seen there is six.

About 19 wildlife groups, representing millions of outdoor enthusiasts, signed onto a letter which states that 30% of the acreage in this legislation will be the largest trees, whereas these trees are now less than 3% of the forest.

<http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf>

The members of the House must weigh the consequences of liquidating these stands of giant old growth trees. In the past, Sealaska has taken all the trees on their land and there is little doubt they will do so again in their proposed selections in this legislation.

Congress must take to heart these words of the biologists who collaborated on the drafting of the letter 19 national and regional wildlife organizations wrote about this legislation a month ago:

“Conveying the most productive lands from the Tongass National Forest to Sealaska will risk listing decisions for a number of species under the Endangered Species Act (ESA). Petitions have previously been filed with US Fish and Wildlife Service for listing the Queen Charlotte Goshawk, the Alexander Archipelago Wolf, and the Prince of Wales Flying Squirrel. Loss of old-growth forest from logging is the primary basis for these petitions. Transfer of these important old-growth areas for logging without prior agency assessment of the effect on a potential listing under ESA poses a significant and unwarranted risk.” Page 2

<http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf>

Given that former Directors of the Alaska Department of Fish and Game originally raised an alarm about this ESA issue, Congress should disregard any back peddling on the issue by the USFS this year after sharing the same concerns last year. With 75 years of collectively managing wildlife on the Tongass, they wrote:

“If these reserves are conveyed to Sealaska by Congress it will almost certainly lead to a new petition to list the goshawk and wolf as endangered species and the distinct possibility that they will be so designated.” Page 1

These former ADFG Directors of Wildlife Management called for a **careful** assessment of the impact of the Sealaska selections on the wolf and goshawk. I do not believe the USFS has conducted such a rigorous assessment. Certainly, the USFS has not released a assessment into the record to ally the concerns of these wildlife officials. Page 3

<http://tongasslowdown.org/TL/docs/sealaska%20leg%20MURKOWSKI.pdf>

Two years ago the Undersecretary of Agriculture for Natural Resources, Harris Sherman, shared the very same concerns as the former officials of the ADFG when he testified:

“...land selections as proposed in S. 730 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 (not to list).” Page 4

<http://tongasslowdown.org/TL/docs/ShermanTestimonyonS730052511.pdf>

During the Senate hearing last month, an Associate Director of the USFS asserted that the ESA listing is not a problem. Let the record show that there are no studies the USFS has submitted for the record to back up his assertion.

Were this ESA issue not a problem, organizations representing up to five million Americans, as diverse as the Wildlife Management Institute to Audubon to the Dallas Safari Club would not be all telling Congress, take notice. They are stating that the ESA listing for the wolf and goshawk is a problem and don't pass the Sealaska Lands Bill.

Job Losses Would Follow an ESA Listing

With ESA listings, logging on the Tongass will be drastically reduced. Job loss to loggers, saw mill workers, and support persons would result.

This Bill is supposed to protect jobs but it has the clear possibility of destroying them for the year round Alaska residents in the towns around Prince of Wales who depend on a steady supply of logs out of the National Forest.

<http://tongasslowdown.org/TL/docs/Senator%20Wyden%20-%20S%20340-Signed.pdf>

If the ESA listing goes through after this legislation passes, all those Alaskan residents in the towns who passionately oppose this legislation may see reductions in fish and wildlife numbers which they harvest commercially or as sport.

Sealaska says all places are precious to someone, so they are ok with the non native nine towns and many other businesses and others who use the Tongass to bear the lion's share of pain. Equity and fairness favors the status quo requiring Sealaska to take the land they they designated in 2008 BLM letter. Equity and fairness will not occur from passage of these bills.

Bad Precedents in this Bill

Senator Murkowski claimed at the hearing last month that this bill is "unique" and all the other corporations told her they would not ask Congress to use this bill as precedent when asking for further modification of ANCSA -- the final, last, complete settlement for all claims for their lands.

The statement of a Senator is not legally binding on future Congresses. In fact, year after year for over forty years, there have been many of the twelve regional corporations coming back to Congress for modifications.

Congress can and does do anything it chooses .

There are several kinds of precedents which arise out of this legislation. As Harris Sherman noted in his testimony May 25, 2011, these are:

- establishing cultural sites outside of the townships around Native towns
- establishing economic sites which do not exist in ANCSA

- and, moving the logging from the original townships around Native towns.

Territorial Sportsman describe another preemption precedent exists in this bill that they believe will remove State of Alaska legal authority to manage wildlife on private land.

BLM's written statement last month in the Senate stated:

"We note that if S. 340 is enacted other corporations might seek similar legislation for the substitution of new lands." Page 2

<http://tongasslowdown.org/TL/docs/BLM%20ConnellFINALS.340SealaskaDOI.pdf>

Nor did Senator Murkowski's leading questions to BLM dislodge BLM's statement that no one can say absolutely that Congress will not use this legislation as a precedent.

As the Alaska Outdoor Council noted:

"With hundreds of thousands of acres in ANCSA outstanding claims, and many millions of acres in a status of interim conveyance not yet patented, S.340 is a nightmare for active sportsmen and guides; a virtual Pandora's Box of new no trespassing signs in cherry picked areas across the state. This is a very real threat to sportsmen."

<http://tongasslowdown.org/TL/docs/Sen.%20John%20Thune%20Chairman%20CSC%20%20R%20SD.pdf>

In effect, the small parcel or economic development sites as well as the cultural sites (which gives Sealaska a chance to reopen the 1976 deadline for filing cultural sites) select outstanding fishing and hunting sites. The legislation does not tell us the location of the cultural sites. This legislation cannot bind future Congresses from giving Sealaska many more of the 2000 potential cultural sites affecting all other users.

Today it will be nine selections. Ten years from now ...?

Because these sites will be at the mouths of salmon streams, sportsmen will be blocked from access. Because the locations are not listed in the bill, the public cannot scrutinize the impact of their locations. Numerous fishing and hunting operations will be severely impacted by this precedent and no one I have spoken to believes this is the final request for more. The history of ANCSA has seen claims of "this is the final unique request" yield to another request years later.

Pandora's Box must remain closed. The framers of ANCSA were wise and just to preclude such an outcome.

Preemption Precedent

I have known Mr. Young a long time and know he bristles at the idea that the Federal Government can preempt State of Alaska Management of wildlife. As the Territorial Sportsmen noted after consulting with many lawyers in Juneau:

"The provision in this bill [in section 4 (e)(1)] which applies the subsistence definition found in Title 8 of ANILCA over private land in Alaska is unprecedented." March 2, 2013 letter, Page 2

http://tongasslowdown.org/TL/docs/TS_BLM_Letter_03-21-13.pdf

For the first time, this legislation would apply ANILCA to the private property of Sealaska in Alaska. While HR 740 applies only to Sealaska's selections, precedent is set for all private land to have Federal management of wildlife resources. This conclusion is based I am told on consultation with leading lawyers in Alaska.

Has Mr. Young read this section of HR 740 or the Territorial's letter or has he failed to see the far reaching and divisive consequences of this grand-daddy of all precedents?

The preemption provision alone is grounds for Mr. Young to withdraw his sponsorship of this bill. Certainly the 1,600 members of the Territorial Sportsman are ringing the alarm bells on this provision.

Territorial Sportsmen is opposed to the easement provisions as outlined on page 2 of their letter to Senator Wyden this year.

Edna Bay

I received a notice on the eve of my flying back here that Edna Bay held a town meeting and voted to have me represent them before you. This is a town of loggers, lodge owners, fishermen, and retirees who were loggers. I know the postmistress is from a third generation logging family. I am humbled they held a meeting to give me this honor.

The logging on their island was quite intense in the 40's and 50's. Giant spruce went out to the world. There are still a few large stands of giant trees there, one of the best growing locations on the Tongass. Sealaska wants to take those remaining large stands and it will all be gone in a few years at the pace of cutting that has gone on in the past.

Under the Forest Service plan, trees would be cut at a sustainable rate. Under a Sealaska ownership, many in the town expect a boom and bust cycle that lasts a few years and illustrates most perfectly how this bill will kill the jobs of hard working woodsmen, saw mill operators, and most likely the nascent tourism operations based on sports fishing and whale watching.

I'd like all of you to ask yourself this question. Do the deeply held grievances about lands claims we hear from Sealaska justify uprooting businesses and jobs in the nine towns? What happens in a small town when you lose the school or post office?

This impact on the hard working people in Edna Bay is and the other eight towns and all of the sportsmen and business who rely on healthy wildlife and access to these areas is unfair and unjust.