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Conservation Council**

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**Official Statement of the Southeast Alaska Conservation Council, Juneau,
Alaska, on S.1889, “Unrecognized Southeast Alaska Native Communities
Recognition and Compensation Act”**

**Before the United States Senate Committee on Energy and Natural Resources,
Subcommittee on Public Lands, Forests and Mining**

Submitted for the Record, October 25, 2023

Thank you, Senator Cortez Masto, Subcommittee Chair, and Ranking Minority member Senator Lee, as well as other distinguished members of the Subcommittee. We are grateful for the opportunity to submit testimony on this important legislation.

The Southeast Alaska Conservation Council (SEACC) is the preeminent regional conservation organization in Southeast Alaska, with a 53-year history of effectively advocating for protection and sustainable use of the magnificent ecosystem upon which our members live, work, and rely for their ways of life. The lands that make up Southeast Alaska are the traditional homelands of the Tlingit, Haida, and Tsimshian peoples. Southeast Alaska and the Tongass National Forest are among the world’s great treasures and working together, we constantly strive to safeguard them for current and future generations.

SEACC submitted testimony on nearly identical legislation when it was heard last year by this committee. We append that testimony inline at the end of this comment, for inclusion in the record.

As we stated in our comment for the record on June 7, 2022, “Viewing the situation of the five landless communities in light of the overall inadequacy of ANCSA, especially regarding Southeast Alaska Natives, SEACC believes it is long past time to find a resolution to the landless community claims that is just, profitable, and environmentally responsible.”

We respectfully resubmit our full comment on the previous version of this legislation for your review, and offer the following three key considerations in support of this committee’s deliberations on the current bill text.

Any new ANCSA corporations must be fully capitalized

Logging of old-growth forests in Southeast Alaska poses a far greater risk with far less economic reward than it did in the 1970s, when the Alaska Native Claims Settlement Act (ANCSA) first became law. The National Forest Service has begun embracing this reality, turning its attention towards environmental protection and restoration. The Alaska Native Regional Corporation, Sealaska, has also moved decisively away from logging and substantially diversified its business model, taking steps to become more sustainable and environmentally responsible. Likewise, most urban and village corporations that formed as a result of ANCSA have moved away from logging

as a primary source of revenue and those few that have not are experiencing substantial economic hardships.

The world has changed drastically since ANCSA was promulgated in 1971. With these changes firmly in mind, Congress must avoid repeating its past mistakes, such as forcing new Native corporations to be capitalized largely through extensive clearcut logging due to an absence of adequate start-up capital being allocated in the legislation itself.

A fundamental failing of S.1889 as drafted, is that it again offers inadequate capitalization for the proposed new corporations, putting tremendous pressure on those new corporations to engage in additional logging operations in order to acquire the capital necessary to succeed and survive. SEACC respects the right of the landless communities to make business decisions as newly incorporated Native corporations, and so we urge Congress to afford these communities meaningful and adequate upfront financial support, to enable them to establish sustainable new Native corporations that will ultimately be of benefit to the Tribal citizens who were overlooked when ANCSA was first passed, without essentially forcing the new corporations to log. The level of start-up capital in the proposed legislation is not sufficient to accomplish that goal; as a result it risks inadvertently increasing the likelihood that extensive logging may occur. Congress must consult with representatives from the five proposed new Native corporations in order to ascertain an adequate level of start-up capital.

Additional Tongass National Forest protections must be broad, durable, and have Tribal support

To provide further safeguards for what remains of America's only temperate rainforest, we urge you to consider joining this legislation with S.1831, the Roadless Area Conservation Act of 2023. In any scenario where public lands which are currently part of the Tongass National Forest are to be removed from and subject to future decision-making by private entities outside the federal forest management system, additional, strong protections must be added to the Tongass National Forest to further protect those acres that remain in public hands and part of the National Forest.

It is our strong belief that meaningful additional protections for the acres that remain part of the Tongass National Forest must be added and applied across the full extent of the Tongass National Forest system, so that all Southeast Alaskans may benefit, and that these protections must be made durable and lasting, not subject to the whims of individual administrations nor vulnerable to political horse-trading.

In the case of S. 1889 in particular, a bill that seeks to provide redress to an injustice suffered by Alaska Native communities in Southeast Alaska, we believe that meaningful additional protections for Tongass National Forest lands must have the endorsement and support of the Alaska Native Tribes and Tribal communities in Southeast Alaska.

Senate Bill 1831, the Roadless Area Conservation Act of 2023, is such a bill, and its provisions should be added to S. 1889 in order to ensure that the Roadless lands that remain in the Tongass National Forest will continue to be protected over the long term.

With leadership from and at the request of Southeast Alaska Tribal leaders, in 2019 the National Congress of American Indians (NCAI) passed a resolution¹ supporting the Roadless Rule and advocating for its reinstatement on the Tongass, and in 2021 the Affiliated Tribes of Northwest Indians (ATNI) passed their own resolution² explicitly calling on Congress to 1) reinstate the National Roadless Rule on the Tongass National Forest, 2) pass the Roadless Area Conservation Act into law, and 3) create a traditional homelands conservation rule process. Combining S. 1889 and S. 1831 would respond to both resolutions and accomplish this universally desirable goal.

S. 1831, the Roadless Area Conservation Act of 2023, removes no additional federal lands from development, nor limits needed access for utilities and other widely documented permissible exceptions, of which over 50 have been approved to-date.

Instead, it makes permanent current, existing, long-standing Roadless Area protections that have repeatedly withstood legal challenges and the test of time. The Roadless Rule itself is an overwhelmingly popular federal regulation with sustained, extensive, enthusiastic support both inside and outside Alaska.

Should S.1889 be enacted, we can think of no better additional protection for public lands that will remain as part of the Tongass National Forest than making permanent existing Roadless Rule protections that meet the twin goals of both beneficially impacting all parts of our region and also have precedent for endorsement³ from ten Alaska Native Tribes in Southeast Alaska. As above, meaningful additional protections must have the endorsement and support of the Alaska Native Tribes and Tribal communities in Southeast Alaska.

Congress must continue to expand support for Native Alaskan land and resources stewardship

Finally, since ANCSA focused primarily on monetary compensation for Alaska Natives' land claims, it largely ignored millennia of Native stewardship of their homelands and sustenance of their cultures. Prior to colonization, Southeast Alaska's environment was incredibly well protected by Tlingit, Haida and Tsimshian traditions and laws. Damage to the environment came only after Alaska Natives were robbed of control of their lands and resources.

Because the creation of the Tongass National Forest and the corporate structure of ANCSA ignored and supplanted traditional Native ownership and rights, Southeast Alaska Natives have largely been denied the opportunity to fully protect and care for their homelands.

In addressing the claims of the five landless communities, Congress should further begin to rectify that glaring omission by taking proactive steps to support environmental management and

¹ <https://www.ncai.org/resources/resolutions/oppose-rulemaking-that-weakens-or-eliminates-protections-of-the-roadless-rule-within-tribal-traditional-territories-and-support-the-no-action-alternative-in-the-alaska-specific-roadless-rulemaking>

² <https://atnitrines.org/wp-content/uploads/2021/06/Res-2021-22.pdf>

³ <https://www.federalregister.gov/d/2021-25467/p-55>

traditional Native land and water stewardship (ecosystem conservation) by Tribal entities, including ANCSA corporations, beginning with these five new entrants into the ANCSA structure, and expanding to support a proposed Traditional Homelands Conservation rulemaking,⁴ the Indigenous Guardians movement, and other Alaska-Native-led land management and stewardship initiatives in Southeast Alaska.

Conclusion

In sum, to finally address the claims of the five Landless communities, SEACC believes Congress must:

- Provide adequate startup capital to avoid forcing logging as a funding source for new Native corporations;
- Safeguard our most important fish and wildlife habitat strongholds throughout the Tongass National Forest by pairing this legislation with S. 1831, making permanent existing protections on all inventoried roadless areas under National Forest management,
- Better support Alaska Native conservation and cultural leadership, in addition to advancing Native corporation prosperity through an expansion of ANCSA, including by responding to the petition by Southeast Alaska Tribes for a Traditional Homelands Conservation Rule.⁵

Should these three considerations be meaningfully and adequately addressed, SEACC believes that Congress will address a longstanding historical error and injustice, assure the success and sustainability of newly formed Native corporations, and advance the protection of the magnificent environment of Southeast Alaska by both increasing existing protections to the Tongass National Forest, and continuing to support stewardship initiatives led by the Alaska Native peoples who protected this forest so well for millennia, and who continue to do so today. In the case that these three additional requirements are included, we will support the bill.

Thank you for the opportunity to submit this testimony.

⁴ <https://www.federalregister.gov/d/2021-25467/p-54>

⁵ <https://www.alaskawild.org/wp-content/uploads/2020/07/FINAL-Southeast-Tribes-APA-Petition-7-17-2020-Nine-Tribe-Signatures.pdf>

Appendix

Official Statement of the Southeast Alaska Conservation Council, Juneau, Alaska, on Senate Bill 3269, “Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act”

Before the United States Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, Forests, and Mining

As submitted for the Record, June 7, 2022

Thank you, Senator Cortez Masto, Subcommittee Chair, and Ranking Minority member Senator Lee, as well as other distinguished members of the Subcommittee. We are grateful for the opportunity to submit this testimony on this important legislation.

The Southeast Alaska Conservation Council (SEACC) is the preeminent regional conservation organization in Southeast Alaska, with a 52-year history of effectively advocating for the protection and sustainable use of the magnificent ecosystem on which our members live, work, and rely for their way of life. Southeast Alaska is one of the world’s great treasures and we constantly strive to safeguard it for current and future generations.

The Tongass National Forest occupies the vast majority of Southeast Alaska. It is our nation’s largest public forest, one of the world’s last largely intact reserves of old-growth temperate rainforest. The Tongass is an exceptionally rich and productive landscape, providing critical habitat for, among other things, tens of millions of Pacific salmon, tens of thousands of bald eagles, and thousands of grizzly bears. Moreover, the unparalleled physical beauty of the Tongass inspires everyone who has the great fortune of calling it home and draws millions of tourists every year. And as the impacts of climate change become more and more severe, the value of the natural carbon storage provided by Southeast Alaska’s temperate rainforest becomes ever more important. Consequently, SEACC and our allies have been diligently working for five decades to assure prudent and conservative management of the Tongass National Forest.

Southeast Alaska is also the homeland of Alaska Natives, including the Tlingit, Haida, and Tsimshian Peoples. It is no coincidence that during millennia of Native stewardship of the air, lands, and sea the Southeast Alaskan environment thrived. Yet over the last century, serious harm has befallen that environment, and it is a direct result of the colonial expropriation of Native ownership and control.

Alaska Natives have long been active leaders in SEACC, and SEACC has long supported recognition and restoration of the rights of Alaska Natives to their lands, waters, and natural resources. This has been particularly true of SEACC’s work with Alaska Native tribes, but we have also collaborated with Alaska Native corporations on forest practices and other important issues. However, an unusual exception to that long history of support for Alaska Native interests has been our concern about the impact of previous versions of this proposed legislation, S.3269, on the Southeast Alaska ecosystem.

There have been some questions raised over the years about whether the Alaska Native Claims Settlement Act (ANCSA) is the appropriate vehicle for addressing the issues raised by this legislation. However, our starting premise in evaluating S.3269 is that after five decades ANCSA is now a fact of life, with deep and generational commitments to its success, and that it is unlikely to be fundamentally revised or renegotiated. It is our view that addressing the claims represented in S.3269 is most likely to be accomplished within the general framework of ANCSA.

In light of these facts, and in a good faith effort to support justice and equity while also fulfilling our mission to safeguard the Tongass National Forest, SEACC has for some time been working diligently with the Southeast Alaska Landless Coalition (SALC) to help them resolve their longstanding claims in a way that honors their rights, meets their objectives, and restores their traditional role as stewards and guardians of the environment. We pledge to continue these efforts over the coming months and are optimistic about the ultimate prospects.

The testimony we offer to the committee today addresses the context in which Congress should view this proposed legislation, raises what we believe are important unresolved issues, and makes recommendations for Congress to consider in addressing them.

S. 3269 Should Be Evaluated Within the Context of Historical and Ongoing Injustice

In the past, much of the debate about the merits of the issues raised by S.3269 has been focused on the specific terms of the Alaska Native Claims Settlement Act (ANCSA), which by omission excluded the five Southeast Alaska landless communities from forming urban or village corporations. However, we assert that this previous focus was too narrow and that Congress should view the merits of the SALC claims in the broader context of extensive historical and ongoing injustice. In that light, the dilemma presented rises above the parsing of legal language and legislative history, as it should.

It is indisputable that Alaska Natives have long been the victims of colonial exploitation, from the time of the Treaty with Russia for the Purchase of Alaska through ANCSA and continuing even today. From 1867 onwards, Indigenous Alaskans' lands, waters, and resources were seized, sold, or simply given away to settlers by the United States government. The cumulative value of land, gold, fish, furs, and timber plundered is astounding and would today be worth many billions of dollars. The unpaid debt has never been formally tallied or even acknowledged. It should constitute a dominant consideration in this and many other remedial, reconciliation-focused initiatives involving the taking of Indigenous homelands.

As part of this statewide colonization, Southeast Alaskan lands, waters, and resources were also taken from Native owners without any cognizable compensation until the passage of ANCSA in 1971 (with the exception of an absurdly low, token payment of \$7.5 million under the Tlingit-Haida Settlement a few years earlier). Even under ANCSA, Southeast Alaska Natives were as a whole unfairly disadvantaged, receiving *far less land or money* than Natives in the rest of the state. The ostensible reason for this disadvantageous treatment, the existence of the tiny Tlingit-Haida Settlement, was then and remains today simply untenable.

Furthermore, under the terms of ANCSA, the five landless communities were entirely denied the right to form urban or village corporations, even though other similarly situated communities in Southeast Alaska were granted that same right. As SALC has repeatedly pointed out for more than five decades, no clear reason for the distinction between their communities and others has ever been provided. However, we believe there is an obvious and very likely explanation for why Southeast Alaska Natives, especially the five landless communities, were treated even less favorably in ANCSA than other Alaska Natives.

The conflict between ANCSA and national forest logging plans

Starting in the 1920s, shortly after the Tongass National Forest was created by the federal government in the Territory of Alaska, the U.S. Forest Service began an aggressive effort to create a pulp mill-based economy in the remote, at that point undeveloped, region. The fundamental bargain offered by the Forest Service to spur the creation of an industry so far from markets and infrastructure was the proffer of 50-year, exclusive use timber contracts in exchange for the construction and operation of a pulp mill.

An unanticipated impediment to this potential bargain was the existence of outstanding, unresolved Native land and resource rights. At the urging of the Forest Service, Congress stepped in and essentially legislated those claims out of existence in the Tongass Timber Act of 1947 (though the Tlingit-Haida Settlement did emerge from the ensuing dispute). Once the way was finally cleared, the Forest Service began signing 50-year logging contracts and construction of mills began.

But this is most likely the key point in trying to understand why ANCSA treated Southeast Alaska Natives so unfavorably: at the time ANCSA passed in 1971, there were already *four* 50-year logging contracts signed or in negotiation, covering almost all the commercial timber available in the Tongass. (Two contractors later failed to build pulp mills and their allotments were reallocated to the existing mills.)

Thus, when ANCSA was being considered by Congress, every acre relinquished back to Native Alaskan ownership would also diminish the timber available to the Forest Service's pulp mill plans. This was such a significant concern that ANCSA even contained a unique provision, Section 15, allowing the pulp mill contract holders to select replacement timber for anything "lost" to Native ownership. As one member of the SALC board has stated, the biggest concern at that time was that Southeast Alaska Natives might not allow enough of their land to be logged to meet the demands of the growing timber industry. Later of course the opposite concern arose.

Landless Community Claims Should Be Addressed in Consideration of Today's Realities

It is well understood that ANCSA's lack of initial capitalization incentivized the rapid liquidation of old-growth timber. ANCSA corporations, both regional and village-based, were given an almost singular focus on the creation of wealth through economic development that would then flow down to the benefit of the shareholders. Other considerations central to Native life and traditional rights, such as subsistence, stewardship, and culture, received far less emphasis in ANCSA, though in recent years some profits earned by regional corporations have been used to support these goals.

Unfortunately, the newly created corporations were, for the most part, inadequately capitalized to be able to establish a balanced portfolio and consider a broad array of investment choices. In

Southeast Alaska, ANCSA corporations' most economically viable option was to liquidate their standing timber to build the capital necessary to operate and diversify. This reality put even further strain on traditional and customary practices of subsistence living, stewardship, and cultural preservation.

As a result, to date, about half the lands allotted to ANCSA corporations have already been logged, with most of the best timber already cut and sold. At the same time, the Forest Service's pulp industry plans resulted in the logging of about an equal amount of Southeast Alaska's best timber. And in the wake of that logging, many Southeast Alaskan timberlands require silvicultural management, infrastructure maintenance, environmental restoration, and stream remediation, for which there is not adequate funding available.

The extensive clearcut logging of the region that took place primarily between the 1960s and the 1990s raised major local and national environmental concerns and resulted in the establishment of various forms of protected areas placing off-limits much of the remaining Tongass National Forest timber, as well as the imposition of other limitations and restrictions on logging that reduced the economic viability of future operations. SEACC was instrumental in securing many of those limits and restrictions and we believe that they are the bare minimum necessary to protect the remaining old-growth forest and its resources.

Nevertheless, over the last 50 years, the landless communities represented by SALC have been fighting for their right to share fully in the benefits of ANCSA. However, having been excluded from the initial selections of valuable timber and other resources, and not being provided other means of capitalization, they would now come into existence at a significant disadvantage. Not only would it be unfortunate if they were afforded no options but logging for the raising of capital, but it is also unlikely that they would realize nearly the level of profits earned by operations commenced and concluded decades ago. Failing to compensate for those factors could make the ultimate resolution of landless community claims a hollow victory.

The Issue Requires a Just, Profitable, and Environmentally Responsible Solution

Viewing the situation of the five landless communities, in light of the overall inadequacy of ANCSA, especially regarding Southeast Alaska Natives, SEACC believes it is long past time to find a resolution to the landless community claims that is just, profitable, and environmentally responsible. The current legislation should be improved to better meet those goals.

As explained above, circumstances are very different now than they were in 1971. Since that time, actions by other actors and forces have depleted Southeast Alaska of at least half of its most important old-growth timber and significantly harmed the environment. Moreover, the impacts of climate change are already being observed in Southeast Alaska, and are expected to accelerate, further burdening the ecosystem and especially threatening sensitive resources like salmon streams. The carbon storage and sequestration capacity of the Tongass, exceeding even that of tropical rainforests, cannot be overestimated. The last thing needed now is substantial additional environmental degradation.

As a result, logging of old-growth forests in Southeast Alaska poses a far greater concern to the nation today than it did in the 1970s. The Forest Service is recognizing this reality, turning its

focus more towards environmental protection and restoration. Sealaska Corporation has also moved away from logging and substantially diversified its business model. Most urban and village corporations have moved away from logging as a primary endeavor, which although it can provide short-term benefits does not provide an even j flow of profits and may also create long-term liabilities.

For these reasons, in addressing the claims of the Landless communities, Congress should avoid past mistakes such as forcing new Native corporations to be capitalized primarily through more extensive, clearcut logging. While SEACC respects the right of the landless communities represented by SALC to make their own business decisions and choices, we urge Congress to afford them realistic and meaningful options, and adequate financial support, especially in light of the business disadvantages they now face. The level of start-up capital in the proposed legislation does not appear to be sufficient to accomplish that goal.

Tenakee Inlet warrants special protection

While all the lands and resources of the Tongass are valuable and every acre of the forest is important to some community or constituency, SEACC further wishes to emphasize the importance of protecting highly important and environmentally sensitive watersheds in Tenakee Inlet. As one of the least impacted parts of Chichagof Island, with high productivity and environmental integrity, Tenakee Inlet has long been a priority for careful management. And as climate change impacts continue to accelerate, the cold, north-facing watersheds of Tenakee Inlet are also proving to be an irreplaceable salmon and wildlife refuge.

Any settlement Congress provides should minimize to the greatest extent possible any further environmental disturbances in Tenakee Inlet, especially in critical watersheds such as Saltry Bay, Seal Bay, Long Bay, Goose Flats, and Tenakee Head (and of course continuing existing Congressional protection for Kadashan River and Trap Bay). We additionally ask Congress to assure that all salmon streams selected in Tenakee Inlet be provided enhanced riparian protections, at least as strong as those that they currently enjoy. We note that the City of Tenakee Springs has submitted testimony to this committee which we support, and we encourage the members to seriously consider it as this legislation progresses.

Honoring and advancing environmental stewardship by ANCSA corporations

In addition, since ANCSA focused primarily on Alaska Natives' need for monetary compensation, it largely ignored millennia of Native stewardship of their homelands and sustenance of their cultures. Before colonization, Southeast Alaska's environment was incredibly well protected by Tlingit, Haida, and Tsimshian traditions and laws. Damage to the environment came after Alaska Natives lost control of their lands and resources.

This history is hardly unique to Alaska. Today, in a growing number of countries, colonial governments have begun to recognize their mistakes and are turning to Indigenous Peoples as critical partners in addressing environmental challenges. In Australia and Canada, for example, governments have established Indigenous-led conservation systems, featuring Indigenous Protected and Conserved Areas managed by their traditional owners. In both nations, the vast majority of new environmental protection efforts have been undertaken through these better approaches.

Because of the creation of the Tongass National Forest, ignoring and supplanting of Native ownership and rights, and the corporate structure of ANCSA (as discussed previously) Southeast Alaska Natives have generally been denied the opportunity to fully protect and care for their homelands. When ANCSA become law 50 years ago, it was designed to address different needs and expectations. In addressing the claims of the five landless communities, Congress should further begin to rectify that glaring oversight by supporting environmental stewardship by ANCSA corporations, starting with these five new entrants into the ANCSA structure.

Conclusion

In sum, as it finally addresses the claims of the five Landless communities, SEACC believes Congress should:

- Provide adequate startup capital to avoid forcing logging as the primary basis for funding new Native corporations;
- Safeguard the most important fish and wildlife habitat, particularly in Tenakee Inlet; and
- Better support Alaska Native conservation and cultural responsibilities, along with advancing their prosperity.

With these improvements, SEACC believes that Congress can successfully correct a longstanding historical error and injustice, assure that newly formed corporations are successful, and advance the protection of the magnificent environment of Southeast Alaska by returning additional control to the Alaska Native peoples who protected it so well for so long before American settlers arrived.

Thank you for the opportunity to submit this testimony.