

108TH CONGRESS
1ST SESSION

S. 1354

To resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2003

Ms. MURKOWSKI (for herself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cape Fox Land Enti-
5 tlement Adjustment Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that:

1 (1) Cape Fox Corporation (Cape Fox) is an
2 Alaska Native Village Corporation organized pursu-
3 ant to the Alaska Native Claims Settlement Act
4 (ANCSA) (43 U.S.C. 1601 et seq.) for the Native
5 Village of Saxman.

6 (2) As with other ANCSA village corporations
7 in Southeast Alaska, Cape Fox was limited to select-
8 ing 23,040 acres under section 16 of ANCSA.

9 (3) Except for Cape Fox, all other Southeast
10 Alaska ANCSA village corporations were restricted
11 from selecting within two miles of a home rule city.

12 (4) To protect the watersheds in the vicinity of
13 Ketchikan, Cape Fox was restricted from selecting
14 lands within six miles from the boundary of the
15 home rule City of Ketchikan under section 22(1) of
16 ANCSA (43 U.S.C. 1621(1)).

17 (5) The six mile restriction damaged Cape Fox
18 by precluding the corporation from selecting valuable
19 timber lands, industrial sites, and other commercial
20 property, not only in its core township but in sur-
21 rounding lands far removed from Ketchikan and its
22 watershed.

23 (6) As a result of the 6 mile restriction, only
24 the remote mountainous northeast corner of Cape
25 Fox's core township, which is nonproductive and of

1 no known economic value, was available for selection
2 by the corporation. Selection of this parcel was, how-
3 ever, mandated by section 16(b) of ANCSA (43
4 U.S.C. 1615(b)).

5 (7) Cape Fox's land selections were further lim-
6 ited by the fact that the Annette Island Indian Res-
7 ervation is within its selection area, and those lands
8 were unavailable for ANCSA selection. Cape Fox is
9 the only ANCSA village corporation affected by this
10 restriction.

11 (8) Adjustment of Cape Fox's selections and
12 conveyances of land under ANCSA requires adjust-
13 ment of Sealaska Corporation's (Sealaska) selections
14 and conveyances to avoid creation of additional split
15 estate between National Forest System surface lands
16 and Sealaska subsurface lands.

17 (9) Sealaska is the Alaska native regional cor-
18 poration for Southeast Alaska, organized under the
19 Alaska Native Claims Settlement Act (43 U.S.C.
20 1601 et seq.).

21 (10) There is an additional need to resolve ex-
22 isting areas of Sealaska/Tongass split estate, in
23 which Sealaska holds title or conveyance rights to
24 several thousand acres of subsurface lands that en-

1 cumber management of Tongass National Forest
2 surface lands.

3 (11) The Tongass National Forest lands identi-
4 fied in this Act for selection by and conveyance to
5 Cape Fox and Sealaska, subject to valid existing
6 rights, provide a means to resolve some of the Cape
7 Fox and Sealaska ANCSA land entitlement issues
8 without significantly affecting Tongass National
9 Forest resources, uses or values.

10 (12) Adjustment of Cape Fox's selections and
11 conveyances of land under ANCSA through the pro-
12 visions of this Act, and the related adjustment of
13 Sealaska's selections and conveyances hereunder, are
14 in accordance with the purposes of ANCSA and oth-
15 erwise in the public interest.

16 **SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR**
17 **CERTAIN LANDS.**

18 Notwithstanding the provisions of section 16(b) of
19 ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be re-
20 quired to select or receive conveyance of approximately
21 160 acres of Federal unconveyed lands within Section 1,
22 T. 75 S., R. 91 E., C.R.M.

1 **SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION**
2 **BOUNDARY.**

3 (a) SELECTION AND CONVEYANCE OF SURFACE ES-
4 TATE.—In addition to lands made available for selection
5 under ANCSA, within 24 months after the date of enact-
6 ment of this Act, Cape Fox may select, and, upon receiv-
7 ing written notice of such selection, the Secretary of the
8 Interior shall convey approximately 99 acres of the surface
9 estate of Tongass National Forest lands outside Cape
10 Fox's current exterior selection boundary, specifically that
11 parcel described as follows:

- 12 (1) T. 73 S., R. 90 E., C.R.M.
13 (2) Section 33: SW portion of SE¹/₄: 38 acres.
14 (3) Section 33: NW portion of SE¹/₄: 13 acres.
15 (4) Section 33: SE¹/₄ of SE¹/₄: 40 acres.
16 (5) Section 33: SE¹/₄ of SW¹/₄: 8 acres.

17 (b) CONVEYANCE OF SUBSURFACE ESTATE.—Upon
18 conveyance to Cape Fox of the surface estate to the lands
19 identified in subsection (a), the Secretary of the Interior
20 shall convey to Sealaska the subsurface estate to the
21 lands.

22 (c) TIMING.—The Secretary of the Interior shall com-
23 plete the interim conveyances to Cape Fox and Sealaska
24 under this section within 180 days after the Secretary of
25 the Interior receives notice of the Cape Fox selection
26 under subsection (a).

1 **SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND**
2 **THE TONGASS NATIONAL FOREST.**

3 (a) GENERAL.—The Secretary of Agriculture shall
4 offer, and if accepted by Cape Fox, shall exchange the
5 Federal lands described in subsection (b) for lands and
6 interests therein identified by Cape Fox under subsection
7 (c) and, to the extent necessary, lands and interests there-
8 in identified under subsection (d).

9 (b) LANDS TO BE EXCHANGED TO CAPE FOX.—The
10 lands to be offered for exchange by the Secretary of Agri-
11 culture are Tongass National Forest lands comprising ap-
12 proximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M.
13 and T. 35 S., R. 62 E., C.R.M., as designated upon a
14 map entitled “Proposed Kensington Project Land Ex-
15 change”, dated March 18, 2002, and available for inspec-
16 tion in the Forest Service Region 10 regional office in Ju-
17 neau, Alaska.

18 (c) LANDS TO BE EXCHANGED TO THE UNITED
19 STATES.—Cape Fox shall be entitled, within 60 days after
20 the date of enactment of this Act, to identify in writing
21 to the Secretaries of Agriculture and the Interior the lands
22 and interests in lands that Cape Fox proposes to exchange
23 for the Federal lands described in subsection (b). The
24 lands and interests in lands shall be identified from lands
25 previously conveyed to Cape Fox comprising approxi-
26 mately 2,900 acres and designated as parcels A-1 to A-

1 3, B-1 to B-3, and C upon a map entitled “Cape Fox
2 Corporation ANCSA Land Exchange Proposal”, dated
3 March 15, 2002, and available for inspection in the Forest
4 Service Region 10 regional office in Juneau, Alaska.
5 Lands identified for exchange within each parcel shall be
6 contiguous to adjacent National Forest System lands and
7 in reasonably compact tracts. The lands identified for ex-
8 change shall include a public trail easement designated as
9 D on said map, unless the Secretary of Agriculture agrees
10 otherwise. The value of the easement shall be included in
11 determining the total value of lands exchanged to the
12 United States.

13 (d) VALUATION OF EXCHANGE LANDS.—The Sec-
14 retary of Agriculture shall determine whether the lands
15 identified by Cape Fox under subsection (c) are equal in
16 value to the lands described in subsection (b). If the lands
17 identified under subsection (c) are determined to have in-
18 sufficient value to equal the value of the lands described
19 in subsection (b), Cape Fox and the Secretary shall mutu-
20 ally identify additional Cape Fox lands for exchange suffi-
21 cient to equalize the value of lands conveyed to Cape Fox.
22 Such land shall be contiguous to adjacent National Forest
23 System lands and in reasonably compact tracts.

24 (e) CONDITIONS.—The offer and conveyance of Fed-
25 eral lands to Cape Fox in the exchange shall, notwith-

1 standing section 14(f) of ANCSA, be of the surface and
2 subsurface estate, but subject to valid existing rights and
3 all other provisions of section 14(g) of ANCSA.

4 (f) TIMING.—The Secretary of Agriculture shall at-
5 tempt, within 90 days after the date of enactment of this
6 Act, to enter into an agreement with Cape Fox to consum-
7 mate the exchange consistent with this Act. The lands
8 identified in the exchange agreement shall be exchanged
9 by conveyance at the earliest possible date after the ex-
10 change agreement is signed. Subject only to conveyance
11 from Cape Fox to the United States of all its rights, title
12 and interests in the Cape Fox lands included in the ex-
13 change consistent with this title, the Secretary of the Inte-
14 rior shall complete the interim conveyance to Cape Fox
15 of the Federal lands included in the exchange within 180
16 days after the execution of the exchange agreement by
17 Cape Fox and the Secretary of Agriculture.

18 **SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND**

19 **THE TONGASS NATIONAL FOREST.**

20 (a) GENERAL.—Upon conveyance of the Cape Fox
21 lands included in the exchange under section 5 and con-
22 veyance and relinquishment by Sealaska in accordance
23 with this title of the lands and interests in lands described
24 in subsection (c), the Secretary of the Interior shall convey

1 to Sealaska the Federal lands identified for exchange
2 under subsection (b).

3 (b) LANDS TO BE EXCHANGED TO SEALASKA.—The
4 lands to be exchanged to Sealaska are to be selected by
5 Sealaska from Tongass National Forest lands comprising
6 approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M.,
7 T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E.,
8 C.R.M., as designated upon a map entitled “Proposed
9 Sealaska Corporation Land Exchange Kensington Lands
10 Selection Area”, dated April 2002 and available for in-
11 spection in the Forest Service Region 10 Regional Office
12 in Juneau, Alaska. Within 60 days after receiving notice
13 of the identification by Cape Fox of the exchange lands
14 under section 5(c), Sealaska shall be entitled to identify
15 in writing to the Secretaries of Agriculture and the Inte-
16 rior the lands that Sealaska selects to receive in exchange
17 for the Sealaska lands described in subsection (c). Lands
18 selected by Sealaska shall be in no more than two contig-
19 uous and reasonably compact tracts that adjoin the lands
20 described for exchange to Cape Fox in section 5(b). The
21 Secretary of Agriculture shall determine whether these se-
22 lected lands are equal in value to the lands described in
23 subsection (c) and may adjust the amount of selected
24 lands in order to reach agreement with Sealaska regarding
25 equal value. The exchange conveyance to Sealaska shall

1 be of the surface and subsurface estate in the lands se-
2 lected and agreed to by the Secretary but subject to valid
3 existing rights and all other provisions of section 14(g)
4 of ANCSA.

5 (c) LANDS TO BE EXCHANGED TO THE UNITED
6 STATES.—The lands and interests therein to be exchanged
7 by Sealaska are the subsurface estate underlying the Cape
8 Fox exchange lands described in section 5(c), an addi-
9 tional approximately 2,506 acres of the subsurface estate
10 underlying Tongass National Forest surface estate, de-
11 scribed in Interim Conveyance No. 1673, and rights to be
12 additional approximately 2,698 acres of subsurface estate
13 of Tongass National Forest lands remaining to be con-
14 veyed to Sealaska from Group 1, 2 and 3 lands as set
15 forth in the Sealaska Corporation/United States Forest
16 Service Split Estate Exchange Agreement of November
17 26, 1991, at Schedule B, as modified on January 20,
18 1995.

19 (d) TIMING.—The Secretary of Agriculture shall at-
20 tempt, within 90 days after receipt of the selection of
21 lands by Sealaska under subsection (b), to enter into an
22 agreement with Sealaska to consummate the exchange
23 consistent with this Act. The lands identified in the ex-
24 change agreement shall be exchanged by conveyance at the
25 earliest possible date after the exchange agreement is

1 signed. Subject only to the Cape Fox and Sealaska convey-
2 ances and relinquishments described in subsection (a), the
3 Secretary of the Interior shall complete the interim con-
4 veyance to Sealaska of the Federal lands selected for ex-
5 change within 180 days after execution of the agreement
6 by Sealaska and the Secretary of Agriculture.

7 (e) MODIFICATION OF AGREEMENT.—The executed
8 exchange agreement under this section shall be considered
9 a further modification of the Sealaska Corporation/United
10 States Forest Service Split Estate Exchange Agreement,
11 as ratified in section 17 of Public Law 102–415 (October
12 14, 1992).

13 **SEC. 7. MISCELLANEOUS PROVISIONS.**

14 (a) EQUAL VALUE REQUIREMENT.—The exchanges
15 described in this Act shall be of equal value. Cape Fox
16 and Sealaska shall have the opportunity to present to the
17 Secretary of Agriculture estimates of value of exchange
18 lands with supporting information.

19 (b) TITLE.—Cape Fox and Sealaska shall convey and
20 provide evidence of title satisfactory to the Secretary of
21 Agriculture for their respective lands to be exchanged to
22 the United States under this Act, subject only to excep-
23 tions, reservations and encumbrances in the interim con-
24 veyance or patent from the United States or otherwise ac-
25 ceptable to the Secretary of Agriculture.

1 (c) HAZARDOUS SUBSTANCES.—Cape Fox, Sealaska,
2 and the United States each shall not be subject to liability
3 for the presence of any hazardous substance in land or
4 interests in land solely as a result of any conveyance or
5 transfer of the land or interests under this Act.

6 (d) EFFECT ON ANCSA SELECTIONS.—Any convey-
7 ance of Federal surface or subsurface lands to Cape Fox
8 or Sealaska under this Act shall be considered, for all pur-
9 poses, land conveyed pursuant to ANCSA. Nothing in this
10 Act shall be construed to change the total acreage of land
11 entitlement of Cape Fox or Sealaska under ANCSA. Cape
12 Fox and Sealaska shall remain charged for any lands they
13 exchange under this Act and any lands conveyed pursuant
14 to section 4, but shall not be charged for any lands re-
15 ceived under section 5 or section 6. The exchanges de-
16 scribed in this Act shall be considered, for all purposes,
17 actions which lead to the issuance of conveyances to Na-
18 tive Corporations pursuant to ANCSA. Lands or interests
19 therein transferred to the United States under this Act
20 shall become and be administered as part of the Tongass
21 National Forest.

22 (e) EFFECT ON STATEHOOD SELECTIONS.—Lands
23 conveyed to or selected by the State of Alaska under the
24 Alaska Statehood Act (Public Law 85–508; 72 Stat. 339;
25 48 U.S.C. note prec. 21) shall not be eligible for selection

1 or conveyance under this Act without the consent of the
2 State of Alaska.

3 (f) MAPS.—The maps referred to in this Act shall
4 be maintained on file in the Forest Service Region 10 Re-
5 gional Office in Juneau, Alaska. The acreages cited in this
6 Act are approximate, and if there is any discrepancy be-
7 tween cited acreage and the land depicted on the specified
8 maps, the maps shall control. The maps do not constitute
9 an attempt by the United States to convey State or private
10 land.

11 (g) EASEMENTS.—Notwithstanding section 17(b) of
12 ANCSA, Federal lands conveyed to Cape Fox or Sealaska
13 pursuant to this Act shall be subject only to the reserva-
14 tion of public easements mutually agreed to and set forth
15 in the exchange agreements executed under this Act. The
16 easements shall include easements necessary for access
17 across the lands conveyed under this Act for use of na-
18 tional forest or other public lands.

19 (h) OLD GROWTH RESERVES.—The Secretary of Ag-
20 riculture shall add an equal number of acres to old growth
21 reserves on the Tongass National Forest as are trans-
22 ferred out of Federal ownership as a result of this Act.

23 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) DEPARTMENT OF AGRICULTURE.—There are au-
25 thorized to be appropriated to the Secretary of Agriculture

1 such sums as may be necessary for value estimation and
2 related costs of exchanging lands specified in this Act, and
3 for road rehabilitation, habitat and timber stand improve-
4 ment, including thinning and pruning, on lands acquired
5 by the United States under this Act.

6 (b) DEPARTMENT OF THE INTERIOR.—There are au-
7 thorized to be appropriated to the Secretary of the Interior
8 such sums as may be necessary for land surveys and con-
9 veyances pursuant to this Act.

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