Public Law 101-626
101st Congress

# An Act

Nov. 28, 1990
[H.R. 987]

To amend the Alaska National Interest Lands Conservation Act, to protect certain lands in the Tongass National Forest in perpetuity, to modify certain long-term timber contracts, to provide for protection of riparian habitat, and for other purposes.

Tongass Timber Reform Act.
16 USC 539d note.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND DEFINITION.**

(a) SHORT TITLE.—This Act may be cited as the "Tongass Timber Reform Act".

## TITLE I—FOREST MANAGEMENT PROVISIONS

**SEC. 101. TO REQUIRE ANNUAL APPROPRIATIONS FOR TIMBER MANAGEMENT ON THE TONGASS NATIONAL FOREST.**

The Alaska National Interest Lands Conservation Act (Public Law 96-487, hereinafter referred to as "ANILCA") is hereby amended by deleting section 705(a) (16 U.S.C. 539d(a)) in its entirety and inserting in lieu thereof the following:

"SEC. 705. (a) Subject to appropriations, other applicable law, and the requirements of the National Forest Management Act of 1976 (Public Law 94-588), except as provided in subsection (d) of this section, the Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle.".

**SEC. 102. IDENTIFICATION OF LANDS UNSUITABLE FOR TIMBER PRODUCTION.**

ANILCA is further amended by deleting section 705(d) (16 U.S.C. 539d(d)) in its entirety and inserting in lieu thereof:

"(d) All provisions of section 6(k) of the National Forest Management Act of 1976 (16 U.S.C. 1604(k)) shall apply to the Tongass National Forest except that the Secretary need not consider economic factors in the identification of lands not suited for timber production.".

**SEC. 103. FISHERIES PROTECTION.**

(a) Section 705 (16 U.S.C. 539d) of ANILCA is amended by adding at the end thereof the following new subsection:

"(e) In order to assure protection of riparian habitat, the Secretary shall maintain a buffer zone of no less than one hundred feet in width on each side of all Class I streams in the Tongass National Forest, and on those Class II streams which flow directly into a Class I stream, within which commercial timber harvesting shall be prohibited, except where independent national forest timber sales

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have already been sold prior to March 1, 1990, or where volume has been released prior to March 1, 1990, to either the Alaska Pulp Corporation or the Ketchikan Pulp Company pursuant to the long-term timber sale contracts numbered 12-11-010-1545 and A10fs-1042 respectively. If such an independent timber sale or released volume is within the buffer zone, the Secretary shall make every effort to relocate such independent sale or released volume to an area outside of the buffer zone. The Secretary shall use best management practices, as defined in the Region 10 Soil and Water Conservation handbook (FSH 2509.22), January 1990, to assure the protection of riparian habitat on streams or portions of streams not protected by such buffer zones. For the purposes of this subsection, the terms 'Class I streams' and 'Class II streams' mean the same as they do in the Region 10 Aquatic Habitat Management Handbook (FSH 2609.24), June 1986.".

(b) No later than one year after the date of enactment of this Act, the Secretary of Agriculture, in consultation with the State of Alaska, the National Marine Fisheries Service, and affected private land owners, shall prepare and transmit to the Congress a study containing recommendations on the need, if any, to standardize riparian management practices for Federal, State, and private lands within the Tongass National Forest.

16 USC 539d note.

**SEC. 104. FUTURE REPORTS ON THE TONGASS NATIONAL FOREST AND CONSULTATION.**

(a) REPORTS.—Section 706(a) of ANILCA (16 U.S.C. 539e(a)) is amended by striking the second sentence. Section 706(b) of ANILCA (16 U.S.C. 539e(b)) is amended as follows:

(1) Strike "and (4)" and insert in lieu thereof "(4)".

(2) Strike the period at the end of the subsection and insert ", and (5) the impact of timber management on subsistence resources, wildlife, and fisheries habitats.".

(b) CONSULTATION.—Section 706(c) of ANILCA (16 U.S.C. 539e(c)) is amended by striking "and the Alaska Land Use Council" and inserting in lieu thereof "the southeast Alaska commercial fishing industry, and the Alaska Land Use Council.".

**SEC. 105. SMALL BUSINESS SET-ASIDE PROGRAMS.**

(a) Section 14(i)(1) of the National Forest Management Act of 1976 (16 U.S.C. 472a(i)(1)), is amended by striking the following: "road: *Provided*, That the provisions of this subsection shall not apply to sales of timber on National Forest System lands in the State of Alaska." and inserting in lieu thereof "road.".

(b) Section 705 (16 U.S.C. 539d) of ANILCA is amended by adding at the end thereof the following new subsection:

"(f) Subject to appropriations, the provisions of this Act and other applicable law (including but not limited to the requirements of the National Forest Management Act of 1976 (Public Law 94-588)) and in order to assure the continuation of the Small Business Administration timber sale program, the Secretary shall, in consultation with the Administrator of the Small Business Administration and to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest to those purchasers qualifying as 'small business concerns' under the Small Business Act as amended (15 U.S.C. 631 et seq.).".

16 USC 539d note.

(c) The provisions of subsections (a) and (b) of this section shall not apply to the purchase of timber within the Tongass National Forest pursuant to the long-term timber sale contracts numbered 12-11-010-1545 and A10fs-1042 between the United States and the Alaska Pulp Corporation, and between the United States and the Ketchikan Pulp Company, respectively.

**SEC. 106. TENAKEE SPRINGS ROAD.**

The Secretary of Agriculture shall not construct a vehicular access road connecting the Indian River and Game Creek roads, and shall not engage in any further efforts to connect the city of Tenakee Springs with the logging road system on Chichagof Island, unless the city councils of Tenakee Springs and Hoonah both determine that the road should be constructed and so inform the Secretary.

## TITLE II—TONGASS NATIONAL FOREST LANDS PROTECTION

**SEC. 201. LUD II MANAGEMENT AREAS.**

Title V of ANILCA is amended by adding at the end thereof the following new section:

**"SEC. 508. LUD II MANAGEMENT AREAS.**

"The following lands are hereby allocated to Land Use Designation II ('LUD II') as described in the Tongass National Forest Land Management Plan, completed March, 1979, and amended Winter 1985-1986, and shall be managed by the Secretary of Agriculture in perpetuity in accordance with such designation:

"(1) YAKUTAT FORELANDS.—Certain lands which comprise approximately 137,947 acres, as generally depicted on a map entitled 'Yakutat Forelands LUD II Management Area—Proposed' and dated March, 1990.

"(2) BERNERS BAY.—Certain lands which comprise approximately 46,000 acres, as generally depicted on a map entitled 'Berners Bay LUD II Management Area—Proposed' and dated May, 1989.

"(3) ANAN CREEK.—Certain lands which comprise approximately 38,415 acres, as generally depicted on a map entitled 'Anan Creek LUD II Management Area—Proposed' and dated October, 1990.

"(4) KADASHAN.—Certain lands which comprise approximately 33,641 acres, as generally depicted on a map entitled 'Kadashan LUD II Management Area—Proposed' and dated May, 1989.

"(5) LISIANSKI RIVER/UPPER HOONAH SOUND.—Certain lands which comprise approximately 137,538 acres as generally depicted on a map entitled 'Lisianski River/Upper Hoonah Sound LUD II Management Area—Proposed' and dated October, 1990.

"(6) MT. CALDER/MT. HOLBROOK.—Certain lands which comprise approximately 64,040 acres as generally depicted on a map entitled 'Mt. Calder/Mt. Holbrook LUD II Management Area—Proposed' and dated May, 1989 and 'Mt. Calder/Mt. Holbrook LUD II Addition', dated October, 1990.

"(7) NUTKWA.—Certain lands which comprise approximately 28,118 acres as generally depicted on a map entitled 'Nutkwa LUD II Management Area—Proposed' and dated May, 1989.

"(8) OUTSIDE ISLANDS.—Certain lands which comprise approximately 75,017 acres as generally depicted on a map entitled 'Outside Islands LUD II Management Area—Proposed' and dated May, 1989.

"(9) TRAP BAY.—Certain lands which comprise approximately 6,646 acres as generally depicted on a map entitled 'Trap Bay LUD II Management Area—Proposed' and dated May, 1989.

"(10) POINT ADOLPHUS/MUD BAY.—Certain lands which comprise approximately 113,326 acres as generally depicted on a map entitled 'Point Adolphus/Mud Bay LUD II Management Area—Proposed' and dated October, 1990.

"(11) NAHA.—Certain lands which comprise approximately 31,794 acres as generally depicted on a map entitled 'Naha LUD II Management Area—Proposed' and dated October, 1990.

"(12) SALMON BAY.—Certain lands which comprise approximately 10,000 acres as generally depicted on a map entitled 'Salmon Bay LUD II Management Area—Proposed' and dated October, 1990.".

SEC. 202. WILDERNESS DESIGNATION.

Section 703 of ANILCA is amended by adding at the end thereof the following:

"(c) DESIGNATION OF ADDITIONAL WILDERNESS ON THE TONGASS NATIONAL FOREST.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), the following lands within the Tongass National Forest in the State of Alaska are hereby designated as wilderness, subject to valid existing rights, and therefore as components of the National Wilderness Preservation System: 16 USC 1132 note.

"(1) PLEASANT/LEMUSURIER/INIAN ISLANDS.—Certain lands which comprise approximately 23,140 acres as generally depicted on a map entitled 'Tongass Timber Moratorium Area Pleasant/Lemusurier/Inian Islands' and dated February, 1989, which shall be known as the Pleasant/Lemusurier/Inian Islands Wilderness.

"(2) YOUNG LAKE ADDITION.—Certain lands which comprise approximately 18,173 acres as generally depicted on a map entitled 'Tongass Timber Moratorium Area Young Lake' and dated February, 1989, which shall be incorporated into and managed as a part of the Admiralty Island National Monument and as a part of the Kootznoowoo Wilderness. The Secretary of Agriculture shall make adjustments to the boundaries of the Admiralty Island National Monument and to the Kootznoowoo Wilderness as necessary to incorporate such lands.

"(3) SOUTH ETOLIN ISLAND.—Certain lands which comprise approximately 83,642 acres as generally depicted on a map entitled 'Tongass Timber Moratorium Area South Etolin Island' dated February, 1989, which shall be known as the South Etolin Wilderness.

"(4) CHUCK RIVER.—Certain lands which comprise approximately 72,503 acres, as generally depicted on a map entitled 'Chuck River Wilderness—Proposed' and dated October, 1990, which shall be known as the Chuck River Wilderness.

"(5) KARTA RIVER.—Certain lands which comprise approximately 38,046 acres, as generally depicted on a map entitled 'Tongass Timber Moratorium Area Karta River' and dated February, 1989, which shall be known as the Karta River Wilderness.

"(6) KUIU.—Certain lands which comprise approximately 60,576 acres, as generally depicted on a map entitled 'Kuiu Wilderness—Proposed' and dated October, 1990, which shall be known as the Kuiu Wilderness.".

**SEC. 203. KADASHAN STUDY.**

The Secretary shall complete, as part of the Tongass Land Management Plan revision process, in consultation with the State of Alaska, the City of Tenakee Springs, and other interested parties, a comprehensive study of the Kadashan LUD II Management Area as described in section 201(4). The Secretary shall submit a separate report of such study to the Committee on Energy and Natural Resources in the Senate and the Committee on Interior and Insular Affairs in the House of Representatives, which shall include, but not be limited to:

(a) an assessment of the natural, cultural, environmental, fish and wildlife (including habitat) resources and values of such area; and

(b) an assessment of the need for, potential uses, alternatives to and environmental impacts of providing a transportation corridor route through the Kadashan river valley.

## TITLE III—MODIFICATION OF LONG-TERM TIMBER SALE CONTRACTS IN SOUTHEAST ALASKA

**SEC. 301. CONTRACT MODIFICATIONS.**

(a) DEFINITIONS.—As used in this section, the term "Secretary" means the Secretary of Agriculture. The term "TLMP" means the Tongass National Forest Land Management Plan, completed March, 1979, and amended Winter 1985-1986. The term "contracts" means the long-term timber sale contracts numbered 12-11-010-1545 and A10fs-1042 between the United States and the Alaska Pulp Corporation, and between the United States and the Ketchikan Pulp Company, respectively.

(b) FINDING.—The Congress hereby finds and declares that it is in the national interest to modify the contracts in order to assure that valuable public resources in the Tongass National Forest are protected and wisely managed. Modification of the long-term timber sale contracts will enhance the balanced use of resources on the forest and promote fair competition within the southeast Alaska timber industry.

(c) UNILATERAL CHANGES.—The contracts are hereby modified to:

(1) assure that all timber sale planning, management requirements and environmental assessment procedures regarding the contracts are consistent with procedures for independent national forest timber sales, pursuant to the National Forest Management Act of 1976 (Public Law 94-588), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws;

(2) eliminate the practice of harvesting a disproportionate amount of old-growth timber by limiting the volume harvested over the rotation in volume classes 6 and 7, as defined in TLMP and supporting documents, so that the proportion of volume harvested in these classes within a contiguous management area does not exceed the proportion of volume currently represented by these classes within the management area;

(3) assure that all timber offered under each contract be substantially harvested within three years or the Secretary shall withhold further offerings pursuant to such contract, unless harvesting has been delayed by third-party litigation;

(4) assure that the Secretary determines the location and size of sale units and the timing of timber harvests;

(5) allow rejection of timber offered under the contracts. Upon rejection of any timber offered, the Secretary may re-offer such timber to any qualified bidder under independent national forest timber sales. If the rejected timber is subsequently sold within 12 months, that amount of timber shall be subtracted from the volume remaining under the appropriate contract;

(6) assure that utility logs offered under the contracts shall be counted against contract volume requirements. As used in this paragraph, the term "utility log" means the same as it does in the official Log Scaling and Grading Rules, Northwest Log Rules Advisory Group, January 1, 1982;

(7) assure that purchaser road credits are provided under the contracts in a manner consistent with independent national forest timber sale procedures;

(8) assure that the price of timber offered under the contracts shall be adjusted to be comparable with that of independent national forest timber sales, with stumpage rates and profitability criteria comparable to those of independent purchasers in competitive sales; and

(9) assure that timber offered under the contracts meets economic criteria consistent with that of independent national forest timber sales.

(d) CERTIFICATION TO CONGRESS.—Notwithstanding any other provision of law, the Secretary is directed to make the necessary revisions to the text of the contracts to reflect the modifications to such contracts made by subsection (c) of this section. The Secretary shall promptly, and in no event later than ninety days after the date of enactment of this Act, transmit the text of the modified contracts to the Congress together with a certification that these revisions are in compliance with the modifications made by subsection (c). Until such time as the Secretary transmits the text of the modified contracts to the Congress, but no later than ninety days after the date of enactment of this Act, the Secretary is authorized to conduct timber sale operations on the Tongass National Forest in accordance with the provisions of the contracts as they existed on the day before the date of enactment of this Act. At such time as the Secretary transmits the modified contracts to Congress, or ninety days after the date of enactment of this Act, whichever is sooner, the Secretary shall conduct timber sale operations on the Tongass National Forest only in accordance with the provisions of the modified contracts.

(e) STUDY.—Within one year after the date of enactment of this Act, the Secretary shall transmit a study to the Committee on Energy and Natural Resources in the Senate and to the Committee on Interior and Insular Affairs in the House of Representatives which includes the following:

(1) an assessment of whether the Secretary can meet the provisions of the National Forest Management Act of 1976 (Public Law 94-588), the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) and other laws applicable to the management of the national forests while providing the volume of timber required by the modified contracts. In conjunction

with such assessment, the Secretary shall also provide such recommendations as the Secretary deems appropriate regarding reductions in the volume of timber required by the modified contracts, and

(2) an analysis of the potential impacts of eliminating the two contract areas provided for in the modified contracts, including, but not limited to, an assessment of the following factors:

(A) the effect on supply and demand, and price of timber within Southeast Alaska;

(B) effects on the availability of timber to purchasers of independent timber sales;

(C) effects on the availability of timber to be owners of the modified contracts; and

(D) effects on fish and wildlife and other non-commodity resources within the Tongass National Forest.

(f) The Secretary shall take such other actions in management of the Tongass National Forest as may be necessary to meet the provisions of subsection (c).

(g) GAO AUDIT.—The Comptroller General of the United States shall, on a continuing basis, audit the actions taken by the Secretary to revise the text of the contracts pursuant to the modifications made pursuant to subsection (c). Within thirty days after the Secretary's transmittal of the contracts and certification to the Energy and Natural Resources in the Senate and to the Committee on Interior and Insular Affairs in the House of Representatives, and in no event later than one hundred and twenty days after the date of enactment of this Act, the Comptroller General shall submit a report to such Committees describing the revisions made by the Secretary to the contracts and stating whether, in the opinion of the Comptroller General, the revised contracts are in compliance with the requirements of this section.

Reports.

## TITLE IV—HAIDA LAND SELECTIONS

### SEC. 401. HAIDA LAND EXCHANGE ACT AMENDMENT.

100 Stat. 4303.

The Haida Land Exchange Act of 1986 (Public Law 99-664) is hereby amended by adding the following new section at the end thereof:

### "SEC. 12. SULZER PORTAGE LANDS SELECTION.

"(a) WITHDRAWAL.—The following lands are withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act (Public Law 85-508) as amended:

"COPPER RIVER MERIDIAN

"Township 76 South, Range 85 East

"Section 16: South half south half, northwest quarter southwest quarter.

"Section 17: West half, southeast quarter, south half northeast quarter.

"Section 18: Fractional.

"Section 19: North half northeast quarter, southeast quarter northeast quarter, northeast quarter northwest quarter.

"Section 20: North half, north half southeast quarter, southeast quarter southeast quarter.

"Section 21: All.

"Section 22: South half, south half north half, fractional.

"Section 23: South half, fractional.

"Section 24: South half, fractional.

"Section 25: All, excluding islets.

"Section 26: North half, north half southeast quarter, fractional.

"Section 27: East half, east half west half, northwest quarter, northwest quarter, southwest quarter southwest quarter.

"Section 28: Northeast quarter northeast quarter, southeast quarter southeast quarter.

"Section 31: Southwest quarter, west half southeast quarter.

"Township 76 South, Range 86 East

"Section 30: Southwest quarter, including all fractional lands on west shore of Big Creek Bay.

"Section 31: East half west half, southwest quarter southeast quarter, northwest quarter southeast quarter.

"Township 77 South, Range 86 East

"Section 2: North half, southeast quarter, north half southwest quarter.

"(b) SELECTION.—(1) For a period of one year after the date of enactment of this section, Haida Corporation shall be entitled to select lands from among those lands withdrawn pursuant to subsection (a). Haida Corporation shall notify the Secretary of the Interior which lands so withdrawn Haida Corporation wishes to select and shall designate which Haida Exchange Lands and/or outstanding selection rights under section 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1615) Haida Corporation intends to exchange or relinquish in return for its selections hereunder.

"(2) The exchange of lands selected by Haida Corporation pursuant to this subsection for Haida Exchange Lands or selection rights under section 16 of the Alaska Native Claims Settlement Act shall be on an acre-for-acre basis. The conveyance of lands to Haida Corporation and Sealaska pursuant to this subsection shall be deemed a conveyance of lands pursuant to the Alaska Native Claims Settlement Act.

"(3) After the selection is made pursuant to paragraph (1), the surface estate in lands selected by Haida Corporation shall be conveyed to Haida Corporation subject to valid existing rights and the subsurface estate in such lands shall be conveyed to Sealaska Corporation subject to valid existing rights in partial fulfillment of such corporations' entitlement under the Alaska Native Claims Settlement Act and pursuant to the provisions of that Act: *Provided,* That the United States shall reserve the recorded existing easement, three hundred feet in total width on the Sulzer Portage trail between Cholmondley Sound and Hetta Inlet: *Provided however,* That timber occurring within those portions of the easement boundaries that traverse lands owned by Haida Corporation shall remain the property of Haida Corporation. The Secretary of Agriculture shall allow the State of Alaska use of such easement for a transportation corridor.

Transportation.
Highways and roads.

"(c) DURATION.—The withdrawal made pursuant to subsection (a) shall terminate ninety days after the United States has conveyed the surface and subsurface estates of all lands selected by Haida Corporation pursuant to subsection (b) to Haida Corporation and Sealaska Corporation respectively, or one year after the date of enactment of this section, whichever is later.

"(d) PROHIBITION.—Haida Corporation shall not be entitled to select lands pursuant to this Act or section 16 of the Alaska Native Claims Settlement Act in the area referred to in section 508(7) of the Alaska National Interest Lands Conservation Act.".

## TITLE V—MISCELLANEOUS PROVISIONS

16 USC 539e note.

### SEC. 501. POTENTIAL ACQUISITION OF PREVIOUSLY HARVESTED LANDS.

(a) No later than one year after the date of enactment of this Act, the Secretary shall complete a study regarding the feasibility of acquiring private lands located within the boundary of the Tongass National Forest, which have been significantly harvested. Such study shall include, but not be limited to:

(1) a description of such lands;

(2) a status report regarding the ownership of such lands;

(3) an assessment of the suitability of such lands for future timber management, including potential timber production;

(4) an assessment of other present and future resource values associated with such lands; and

(5) an estimate of the cost of acquiring such lands.

(b) Upon completion of the study, the Secretary shall transmit it to the Committee on Energy and Natural Resources of the Senate and Committee on Interior and Insular Affairs of the House of Representatives.

### SEC. 502. LAKE FLORENCE NEGOTIATIONS.

During the sixty-day period beginning on the date of enactment of this Act, the Secretary is directed to engage in expedited negotiations with Shee Atika, Inc., Atikon, Inc., and Sealaska for independent voluntary exchange agreements through which the United States would acquire all of the surface estate or all of the surface and subsurface estates held by these private parties in the Lake Florence, Lake Kathleen, and Wards Creek drainages of Admiralty

**Island. The first priority of such negotiations shall be acquisition of the Lake Florence drainage.**

Approved November 28, 1990.

LEGISLATIVE HISTORY—H.R. 987:

HOUSE REPORTS: No. 101-84, Pt. 1 (Comm. on Interior and Insular Affairs) and Pt. 2 (Comm. on Agriculture); and No. 101-931 (Comm. of Conference).
SENATE REPORTS: No. 101-261 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD:
Vol. 135 (1989): July 13, considered and passed House.
Vol. 136 (1990): June 12, 13, considered and passed Senate, amended.
Oct. 24, Senate agreed to conference report.
Oct. 26, House agreed to conference report.

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