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March 11, 2009

Financial Assistance Programs Division
Attn: Mr. Greg Johnson, Director
U.S Department of Agriculture
Natural Resource Conservation Service
1400 Independence Ave., SW Room 5237S
Washington, D. C. 20250

Re: FR Doc. E9-827; RIN 0578-AA49; January 16, 2009
NRCS-IFR-2009-0001
Sealaska Comments on 7 CFR Part 636 (Interim Final Rules; Wildlife Habitat
Incentive Program)

Dear Mr. Johnson:

Sealaska Corporation is the Alaska Native Regional Corporation created by the Alaska Native Claims Settlement Act ("ANCSA") for the Southeast region of Alaska. Sealaska is owned by nearly 20,000 shareholders of Tlingit, Haida and Tsimshian descent, and has more Alaska Native members than any other ANCSA Corporation. Sealaska appreciates the opportunity to comment on the interim final rules implementing the Food, Conservation and Energy Act of 2008 (the "2008 Act"), as that Act pertains to the Wildlife Habitat Incentive Program ("WHIP").

One of the most prominent features of the WHIP-related sections of the 2008 Act was Congress' reiteration that enhancement of wildlife habitat on private forest lands remains one of the principal functions of the WHIP program. Utilization of WHIP funding to promote forest management in Alaska has validated the wisdom of that policy. Since 2006, Sealaska has successfully entered into WHIP and Environmental Quality Incentives Program ("EQIP") agreements with the Natural Resource Conservation Service ("NRCS"). As a result of Sealaska's receipt of funding under those agreements:

- Sealaska has or will commercially pre-thin some 5,800 acres of forest land, creating both short- and long-term benefits to wildlife habitat and forest land productivity. This management measure prevents emergent second growth from blocking sunlight, and, in so doing, allows understory vegetation to continue to provide an important wildlife food source (particularly deer browse) at least 20

years longer than would be the case in an untreated forest. In the long run, pre-commercial thinning results in a more robust and diverse forest that is ecologically healthier, considerably more productive, and capable of sequestering more carbon than a comparable untreated forest; and

- This active forest management has employed four shareholder-owned contractors and created 32 seasonal (9 month/year) jobs in our economically-challenged region.

The 2008 Act, and the final interim rules, promote ecologically-beneficial forest management programs in Alaska in each of the following ways:

1. Tribal Exemption from Payment and Adjusted Gross Income Limits

Both the 2008 Act and the regulations continue the policies of: (i) exempting Indian tribes from the WHIP payment ceiling and the adjusted gross income limitation; and (ii) including Alaska Native Corporations as “Indian tribes.” Any contrary rule would badly truncate the WHIP program in Alaska, frustrating Congress’ conservation goals for our state. At the present time, the vast majority of private commercial forestry activity in Alaska is occurring on two ANCSA corporations’ lands—Sealaska and Afognak Native Corporation. If Alaska Native Corporations were subject to the annual \$50,000 funding limit, or the gross income limitation, this could mean that as little as \$100,000 in WHIP funds would be spent in Alaska on private forest management annually—a sum hardly sufficient to help maintain a comprehensive and cohesive wildlife habitat management regime on such large tracts of land.

The payment ceiling and gross income limitation work to ensure that wealthy individuals do not, in essence, make a living off of WHIP payments. Conversely, the Indian tribal exemptions, including the ANCSA corporation exemptions, reflect Congress’ understanding that: (i) Indian tribes are comprised of often thousands of members or shareholders, none of whom are recipients of WHIP funds¹; and (ii) Indian tribes, including ANCSA corporations, often own extensive tracts of forest land—in Sealaska’s case, some 300,000 acres. Application of the payment and gross income limitations to major Native American landowners would effectively eliminate existing incentives to engage in cohesive and comprehensive forest management and conservation initiatives on these lands.

Sealaska does recommend one clarification in this regard. NRCS notes that the intent of the 2008 Act and the regulations is to assure that “payments made to Tribal groups may exceed the payment limitations...” 74 Fed. Reg. at 2790. The interim final rules, however,

¹ / For this reason, we support the language of 7 CFR sec. 636.4(a)(9) that requires that ANCSA corporations must provide their Federal Employer Identification Number, but does not require Indian tribal recipients (including ANCSA corporation recipients) to provide the social security numbers of every tribal member or shareholder. Under 7 CFR sec. 636.4(a)(9), there will be no “payments made” of WHIP funds to tribal members or shareholders by virtue of their status as a member or shareholder. That, in our view, is the only reading of the applicable provisions of Section 2503 of the 2008 Act that is consistent with the letter and intent of that Section’s provisions on Indian tribal contracts.

ambiguously refers to cost-share agreements with “individual Indians or Indians represented by the BIA.” 7 C.F.R. sec. 636.4(a)(9). Sealaska recommends that this language mirror the counterpart language in the EQIP regulations, which clearly exempts “Indian tribes or Indians represented by BIA” from the payment ceiling. This would be consistent both with the expressed goal of the regulations (*see above*) as well as NRCS’ desire, as expressed in the WHIP regulations, to “align WHIP policies with other NRCS conservation programs....” 74 *Fed. Reg.* at 2789.

2. Provisions for Socially Disadvantaged Program Recipients and Indian Tribes

Sealaska supports the interim rules’ express recognition, at 7 C.F.R. sec. 636.7(a)(2), of Indian tribes (including ANCSA corporations) as eligible for the same additional cost share incentives as “historically underserved producers.” As pointed out in the regulations’ preamble, Congress, in Section 1244 of the Food Security Act of 1985, as amended by the 2008 Act, required that similar incentives be provided to Indian tribes as well as other historically underserved producers. This regulation implements that Congressional mandate.

Sealaska recommends one clarification with respect to the definition of “socially disadvantaged farmer or rancher.” Apart from Indian tribes’ independent ability to seek increased cost-sharing under the statutory provisions above-cited, Sealaska also believes that both Congress, in the 2008 Act, and NRCS in its rules, intended to include socially disadvantaged silvicultural landowners (whether Indian or not) in that definition. As noted above, perhaps the most conspicuous purpose of the 2008 Act, as it pertained to WHIP, was to keep “non-industrial forest land” on equal footing with food-crop and grazing land in terms of conservation management funding. Congress expressed this doctrine of equal treatment in a number of ways:

- In Section 8001 of the 2008 Act, Congress stressed that “conserving and managing working forest landscapes” and “enhancing public benefits from private forests” were national conservation priorities; and
- In 16 USC 2101(a)(13), Congress found that “stewardship of privately held forest resources requires a long-term commitment that can be fostered through local, State, and Federal governmental actions.”

Given Congress’ directive to utilize WHIP to conserve forest as well as other agricultural lands, it would be inconsistent with the purpose of the 2008 Act to arbitrarily exclude socially disadvantaged forest owners from the provisions applicable to the “socially disadvantaged farmer and rancher.” Indeed, throughout the 2008 Act and the interim final rules, terms like “farm” and “agriculture” often appear to be used broadly to include forest owners and silviculture practices.^{2/} Sealaska believes that: (i) the interim final rule is intended broadly to benefit agricultural lands, including land managed using forest silviculture practices; and

^{2/} *See, for example*, the interim final rules’ definition of “agricultural land,” which includes land which produces “forest-related” products.

(ii) there is no legal or equitable basis to exclude private forest land owners from WHIP's "socially disadvantaged farmer or rancher" program.

If NRCS believes that there is material ambiguity in this regard, Sealaska respectfully requests that NRCS amend the pertinent definition to read:

Socially disadvantaged farmer or rancher means a farmer, rancher or private forest land owner who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities.

* * *

Sealaska appreciates the recognition by Congress and the NRCS of the vital role that active forest management can play in leaving future generations a more ecologically productive environment. Consistent with Executive Order 13175, Sealaska looks forward to continuing to consult with NRCS on these interim final rules as well as program implementation.

Sincerely,



Richard P. Harris
Executive Vice President
Sealaska Corporation

Distribution:

Senator Lisa Murkowski
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