

## Calendar No. 599

107TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 107-280

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### CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2002

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SEPTEMBER 13, 2002.—Ordered to be printed

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Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

### R E P O R T

[To accompany S. 2222]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2222) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Cape Fox Land Entitlement Adjustment Act of 2002”.

#### SEC. 2. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

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

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

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection

of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

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

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

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

(a) SELECTION AND CONVEYANCE OF SURFACE ESTATE.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

T. 73 S., R. 90 E., C.R.M.

Section 33: SW portion of SE  $\frac{1}{4}$ : 38 acres.

Section 33: NW portion of SE  $\frac{1}{4}$ : 13 acres.

Section 33: SE  $\frac{1}{4}$  of SE  $\frac{1}{4}$ : 40 acres.

Section 33 SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ : 8 acres.

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

(c) TIMING.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

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

(a) GENERAL.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) LANDS TO BE EXCHANGED TO CAPE FOX.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled "Proposed Kensington Project Land Exchange," dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in land that Cape Fox proposes to exchange for the federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A-1 to A-3, B-1 to B-3, and C upon a map entitled "Cape Fox Corporation ANCSA Land Exchange Proposal," dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public

trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) VALUATION OF EXCHANGE LANDS.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox. Such lands shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) CONDITIONS.—The offer and conveyance of federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this Act, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

**SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.**

(a) GENERAL.—Upon conveyance of the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment of Sealaska in accordance with this Act of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the federal lands identified for exchange under subsection (b).

(b) LANDS TO BE EXCHANGED TO SEALASKA.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled “Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area,” dated April, 2002 and available for inspection in the Forest Service region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under Section 5(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the land described for exchange to Cape Fox in section 5(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to an additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the federal lands selected for exchange within 180 days after execution of the agreement by Sealaska and the Secretary of Agriculture.

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

**SEC. 7. MISCELLANEOUS PROVISIONS.**

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

(b) **TITLE.**—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this Act, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

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

(d) **EFFECT ON ANCSA SELECTIONS.**—Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this Act shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this Act and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyance to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

(e) **EFFECT ON STATEHOOD SELECTIONS.**—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85–508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

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

(g) **EASEMENTS.**—Notwithstanding section 17(b) of ANCSA, federal lands conveyed to Cape Fox or Sealaska pursuant to this Act shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this Act. The easements shall include easement necessary for access across the lands conveyed under this Act for use of national forest or other public lands.

(h) **OLD GROWTH RESERVES.**—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act.

**SEC. 8. AUTHORIZATION OF APPROPRIATION.**

(a) **DEPARTMENT OF AGRICULTURE.**—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this Act, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this Act.

(b) **DEPARTMENT OF THE INTERIOR.**—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this Act.

**PURPOSE**

S. 2222 directs the Secretary of Agriculture to complete land exchanges with Cape Fox Corporation and Sealaska Corporation in Southeast Alaska.

**BACKGROUND AND NEED**

The Alaska Native Claims Settlement Act (Public Law 92–203) granted more than 200 village corporations rights to select public

lands in Alaska. Each corporation was required to select all public land within a township in which the village is located. Any remaining lands need to complete a village's entitlement were to be selected from areas identified in ANCSA that were withdrawn from public land laws. Section 16(b) of ANCSA entitled each of ten village corporations in Southeast Alaska, including Cape Fox Corporation (Cape Fox), to select 23,040 acres of public land. Section 16(b) also required such selections to be contiguous and in reasonably compact tracts.

With the exception of Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city. Cape Fox was restricted from selecting lands within six miles from the home rule City of Ketchikan in order to protect the watersheds in the vicinity of Ketchikan.

The six mile restriction precluded the Cape Fox Corporation from selecting valuable timber lands, industrial sites, and other commercial property within that area, leaving only the remote mountainous northeast corner of Cape Fox's core township, which is non-productive and of no economic value, available for selection. Selection of this parcel was required by section 16(b) of ANCSA that requires village corporations to select lands within its core township.

Cape Fox's land selections were further limited because the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection.

S. 2222 directs the Secretary of Agriculture to complete a land exchange with Cape Fox in southeast Alaska. Sealaska Corporation is the Regional Corporation in the area. Regional Corporations received the subsurface estate to lands selected by village corporations. S. 2222 also directs the Secretary to complete a land exchange with Sealaska. The transfers and exchanges will resolve problems for both Cape Fox and Sealaska as well as allow the federal government to acquire several thousand acres of subsurface estate that presently encumbers management of Tongass National Forest Surface lands.

#### LEGISLATIVE HISTORY

S. 2222 was introduced by Senator Murkowski on April 23, 2002. The Subcommittee on Public Lands and Forests held a hearing on S. 2222 on June 8, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered S. 2222, as amended, favorably reported.

#### COMMITTEE RECOMMENDATIONS

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 2222, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 2222, the Committee adopted an amendment in the nature of a substitute. The amendment makes numerous technical and clarifying changes. The amendment also requires that the exchanges be of equal value, not net loss of old

growth reserves in the Tongass occur as a result of this act, and deletes the 500 buffer in section 5(b).

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provide the short title.

*Section 2* sets forth a series of findings.

*Section 3* states that notwithstanding the provisions of section 16(b) of ANCSA, Cape Fox Corporation shall not be required to select or receive conveyance of 160 acres of federal unconveyed lands.

*Section 4(a)* states that within 24 months after the date of enactment of this act, if Cape Fox selects the identified 99 acres outside their selection area within the Tongass National Forest, the Secretary shall convey the land to Cape Fox.

Subsection (b) states that, upon the conveyance described in subsection (a), the Secretary shall convey to Sealaska Corporation the subsurface estate to the same lands.

Subsection (c) states that the Secretary shall complete the conveyances described in subsections (a) and (b) within 180 days after Cape Fox's selection.

*Section 5* requires the Secretary to offer approximately 2,664 identified acres of Tongass National Forest land to Cape Fox. If Cape Fox accepts the offered lands, Cape Fox shall, within 60 days after the date of enactment of this Act, identify for exchange lands totaling 2,900 areas that the Forest service agrees are equal in value to the Federal exchange lands.

Subsection (d) states that the Secretary and Cape Fox shall mutually identify, if necessary additional Cape Fox lands to equalize the values of the lands involved in the exchange.

Subsection (e) states that, notwithstanding section 14(f) of ANCSA, the exchange described in this section shall be of the surface and subsurface estate subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

Subsection (f) states that the Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange. This subsection also states that the lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Finally, this subsection states that, subject only to said agreement, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the Federal lands included in the exchange within 180 days after the date of the execution of the exchange agreement.

*Section 6(a)* states that, upon Cape Fox's conveyance pursuant to section 5 and Sealaska's conveyance pursuant to subsection (c), the Secretary of the Interior shall convey to Sealaska the Federal lands identified for exchange under subsection (b).

Subsection (b) states that the lands to be conveyed to Sealaska are the approximately 9,329 identified acres of Tongass National Forest land. This subsection also states that Sealaska shall be entitled, within 60 days after receiving notice of the identification of Cape Fox exchange lands pursuant to subsection 5(c), to identify lands it wants as part of an exchange and that the Secretary of Agriculture agrees are equal in value to the Sealaska exchange lands described in subsection (c). Finally, this subsection states that the exchange conveyance to Sealaska shall be the surface and sub-

surface of the identified lands subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

Subsection (c) states that the lands to be transferred from Sealaska to the Federal Government are (1) the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), 2 an additional 2,506 acres of subsurface underlying the Tongass National Forest described in Interim Conveyance No. 1673, and (3) 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska in an identified agreement between Sealaska and the Forest Service.

Subsection (d) states that the Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska, to enter into an agreement to consummate the exchange. It further provides that the Secretary of the Interior shall complete the interim conveyance to Sealaska within 180 days after the execution of the exchange agreement between Sealaska and the Secretary of Agriculture.

Subsection (e) states that the exchange pursuant to this section shall be considered a further modification of the Sealaska Corporation/Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102-415.

*Section 8(a)* states that the exchanges described in this Act shall be of equal value.

Subsection (b) requires Cape Fox and Sealaska to provide title acceptable to the Secretary for their respective lands to be exchanged to the United States pursuant to this Act.

Subsection (c) provides that Cape Fox, Sealaska, and the United States shall not incur any liability for any hazardous substance solely as a result of the conveyances.

Subsection (d) provides that any conveyance of Federal lands to Cape Fox or Sealaska pursuant to this Act shall be considered land conveyed pursuant to ANCSA and that Cape Fox and Sealaska shall remain charged with lands they exchange but shall not be charged for lands they receive under this Act with respect to their entitlements. This subsection also states that lands conveyed to the United States pursuant to this Act shall become part of the Tongass National Forest.

Subsection (e) states that lands conveyed to or selected by the State of Alaska under the Statehood Act (Public Law 85-508) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

Subsection (f) states that if there is any discrepancy between cited acreage and the land depicted on the specified maps in this Act the maps shall control.

Subsection (g) requires that, notwithstanding section 17(b) of ANCSA, Federal lands conveyed to Cape Fox or Sealaska pursuant to this Act shall be subject only to the reservation of public easements mutually agreed to and set forward in the exchange agreements executed under this Act.

Subsection (h) requires the Secretary of Agriculture to add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act.

*Section 8* authorizes to be appropriated such sums as may be necessary for any required surveys, value estimation and related

costs of exchanging lands specified in this Act, and for road rehabilitation habitat and timber stand improvement, including thinning and pruning, on lands acquired by the Forest Service pursuant to this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 4, 2002.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2222, the Cape Fox Land Entitlement Adjustment Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*S. 2222—Cape Fox Land Entitlement Adjustment Act of 2002*

CBO estimates that enacting S. 2222 would have no significant impact on the federal budget. The bill could affect direct spending (including offsetting receipts); therefore, pay-as-you-go procedures would apply, but we estimate that any such impacts would not exceed \$10,000 a year.

S. 2222 would direct the Secretary of the Interior to convey to Cape Fox Corporation, an Alaska Native village corporation, the surface estate to 99 acres of federal lands located within the Tongass National Forest in Alaska. The bill also would direct the Secretary to convey to Sealaska Corporation, an Alaska Native regional corporation, the subsurface estate to those lands. According to the Forest Service, those lands are not expected to generate significant receipts over the next 10 years; hence, CBO estimates that conveying them would have a negligible impact on the federal budget.

In addition, S. 2222 would authorize the Secretary of Agriculture to convey to Cape Fox Corporation the surface and subsurface estates to about 2,664 acres of national forest lands in exchange for other lands currently owned by that corporation. Following that exchange, the bill also would authorize the Secretary of Agriculture to convey to Sealaska Corporation the surface and subsurface estates to federal lands to be identified by that corporation in exchange for its interests in the subsurface estate of roughly 5,204 acres of other lands. Under the bill, any lands or interests exchanged must be equal in value.

According to the Forest Service, completing the land exchanges authorized by the bill could affect offsetting receipts from timber harvests on the affected lands. S. 2222 does not specify all of the lands to be exchanged under the bill, but does identify areas from

which such lands would be selected. The bill also specifies that, if the Secretary of Agriculture conveys interests in national forest lands that are currently designated as old growth preserve, she must set aside other lands that, under current law, might be harvested in the future in order to keep constant the number of acres in such preserves. However, based on information from the Forest Service about the level of timber harvesting expected to occur on lands that could be affected by S. 2222, CBO estimates that any forgone offsetting receipts from timber harvests probably would not exceed \$10,000 a year.

S. 2222 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The conveyances and exchanges authorized by this bill would be voluntary on the part of Cape Fox Corporation and Sealaska Corporation.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2222. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2222, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the Forest Service at the Subcommittee hearing follows:

##### STATEMENT OF TOM THOMPSON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, USDA FOREST SERVICE

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Tom Thompson, Deputy Chief for the National Forest System, USDA Forest Service. I am here today to provide the Department's views on S. 2222, 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.

##### S. 2222—CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2002

This bill, as introduced, provides for an additional 99 acres of Alaska Native Claims Settlement Act (ANCSA) selection area for Cape Fox and Sealaska Corporations at Clover Passage, on Revillagigedo Island. It also requires the Forest Service to offer a land exchange, and if accepted

by Cape Fox, complete a land exchange with Cape Fox and Sealaska Corporations. The Department of Agriculture could support the enactment of S. 2222 with the changes described below.

Through this land exchange:

- Cape Fox Corporation would receive the surface and subsurface of 2,663.9 acres of national forest system (NFS) lands at the Jualin Mine site near Berners Bay, north of Juneau.
- Sealaska Corporation would receive the surface and subsurface of NFS lands to equalize values of Sealaska subsurface lands and land interests they convey to the U.S. Sealaska Corporation will select NFS lands of equal value from within a 9,329-acre pool of NFS lands at the Kensington Mine, also near Berners Bay.
- The Forest Service would receive lands and land interests of equal value from within: (1) a pool of approximately 3,000 acres and a public trail easement offered by Cape Fox (surface) and Sealaska (subsurface) on Revillagigedo Island; (2) 2,506 acres of Sealaska split estate subsurface, located at Upper Harris River and Kitkun Bay, on Prince of Wales Island; and (3) 2,698 acres of Sealaska subsurface land interests remaining as entitlement from the Haida Land Exchange Acts and the Sealaska/Forest Service Split Estate Exchange Agreement of 1991. Cape Fox will choose the lands to be conveyed to the United States from the 3,000-acre pool in (1) above.

Recently, the Forest Service has been working with the Committee as well as the Cape Fox and Sealaska Corporations to clarify and improve S. 2222 language. Some areas we have agreed to in concept include:

- There is no intent to add to the total land entitlement acreage available to Cape Fox or Sealaska Corporations under the Alaska Native Claims Settlement Act (ANCSA).
- Lands to be exchanged will be equal in value.
- Federal lands conveyed to Cape Fox or Sealaska shall be subject to the reservation of rights-of-ways for public access for the Alaska Department of Transportation and Public Facilities Juneau Access Project.
- Addition of a funding mechanism for the Secretary of Interior to conduct required surveys, value estimates, and related costs of exchanging lands specified in the Act, etc.

The Forest Service will continue to clarify and seek agreement with both Cape Fox and Sealaska Corporation in five general areas related to S. 2222 language as outlined below:

- Land valuation standards and acceptance process.
- Time frames for completing land exchanges.
- Applicability of federal standards for title and hazardous substances certification for exchanged lands.
- The advisability of having the Forest service maintain a five hundred foot buffer inland of the marine shoreline in and adjacent to the waters of Berners Bay.

- Reservation of rights-of-way necessary for public access or other national forest purposes for Federal lands conveyed to Cape Fox or Sealaska.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2222, as ordered reported.

