United States Department of Agriculture | *Forest Service* | *Washington Office* | *14th & Independence SW, P. O. Box 96090, Washington, DC 20090-6090*

File Code: 1570-1 (EMC)

Date: April 13, 1999

Mr. Bernie Miller
Southeast Conference
124 West 5th Street
Juneau, Alaska 99801

RE: Appeal of the Record of Decision and Final Environmental Impact Statement for the Tongass National Forest Revised Land and Resource Management Plan (#97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107)

Dear Mr. Miller:

Enclosed is the decision on the above referenced appeals.

Sincerely,

/s/ Steve T. Segovia
for

CHRISTOPHER RISBRUDT
Director, Ecosystem Management Coordination

Enclosures:

Decision for Appeals #97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107
Lists of Parties

United States Department of Agriculture | *Forest Service* | *Washington Office* | *14th & Independence SW, P. O. Box 96090, Washington, DC 20090-6090*

File Code: 1570-1 (EMC)

Date: April 13, 1999

Mr. Robert W. Loescher
Sealaska
One Sealaska Plaza, Suite 400
Juneau, Alaska 99801

RE: Appeal of the Record of Decision and Final Environmental Impact Statement for the Tongass National Forest Revised Land and Resource Management Plan (#97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107)

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File Code: 1570-1 (EMC)

Date: April 13, 1999

Mr. Will Woodell
Ziegler Law Firm
307 Baldwin Street
Ketchikan, Alaska 99901

RE: Appeal of the Record of Decision and Final Environmental Impact Statement for the Tongass National Forest Revised Land and Resource Management Plan (#97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107)

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File Code: 1570-1 (EMC)

Date: April 13, 1999

Mr. James Clark
Robertson, Monagle & Eastman
Alaska Forest Association
P. O. Box 21211
Juneau, Alaska 99802-1211

RE: Appeal of the Record of Decision and Final Environmental Impact Statement for the Tongass National Forest Revised Land and Resource Management Plan (#97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107)

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Sincerely,

/s/ Steve T. Segovia
for

CHRISTOPHER RISBRUDT
Director, Ecosystem Management Coordination

Enclosures:

Decision for Appeals #97-13-00-0097, #97-13-00-0098, #97-13-00-0103, #97-13-00-0107
Lists of Parties

DECISION FOR APPEALS

#97-13-00-0097 - SOUTHEAST CONFERENCE

#97-13-00-0098 - SEALASKA

#97-13-00-0103 - CITY OF WRANGELL,
KETCHIKAN GATEWAY BOROUGH,
CONCERNED ALASKANS FOR RESOURCES AND ENVIRONMENT,
JOHN CONLEY, AND
DOUG ROBERTS

#97-13-00-0107 - ALASKA FOREST ASSOCIATION INC.

OF THE

TONGASS NATIONAL FOREST

REVISED LAND AND RESOURCE MANAGEMENT PLAN

/s/ James R. Lyons — *April 13, 1999*
Date

JAMES R. LYONS
Under Secretary
Natural Resources and Environment

Contents

APPEAL DECISION

This is a decision on four appeals of the Record of Decision (1997 ROD) for the Tongass National Forest (Forest) Revised Land and Resource Management Plan (1997 Forest Plan) and its accompanying Final Environmental Impact Statement (FEIS). The appellants are: Southeast Conference, #97-13-00-0097 (0097), Sealaska, #97-13-00-0098 (0098), City of Wrangell, Ketchikan Gateway Borough, Concerned Alaskans for Resources and Environment, John Conley, and Doug Roberts, #97-13-00-0103 (0103), Alaska Forest Association, Inc., #97-13-00-0107 (0107). Many interested parties requested and were granted intervenor status (see enclosed lists of parties). Intervenors whose comments were received are also listed on the enclosed lists of parties.

The appellants' requested relief is a reversal of the 1997 ROD with additional analysis to amend or revise the 1997 Forest Plan.

This decision provides a consolidated response to the four appeals identified above. A letter dated March 25, 1998, notified appellants that the appeals would be consolidated into one decision document because they contain common issues (36 CFR 217.13(b)). The appellants should be assured that each appeal was reviewed and that all concerns were considered. This consolidation of appeals and concerns did not reduce the level of review provided each appeal.

Secretary Review and Evaluation

The 1997 Forest Plan is based on Alternative 11 in the Tongass Land and Resource Management Plan Revision Final Environmental Impact Statement (FEIS), with modifications as documented in the 1997 ROD. The decision to approve the 1997 Forest Plan was subject to appeal in accordance with Forest Service appeal regulations at 36 CFR 217. Thirty-three notices of appeal were filed on the May 23, 1997, decision. In addition, two lawsuits have been filed that involve the appeals of the 1997 ROD. Also, the 1997 Forest Plan is implicated in at least one other lawsuit unrelated to appeals.

As the Under Secretary for Natural Resources and Environment at USDA, I have elected to exercise discretionary review of the administrative appeals relating to the Regional Forester's approval of the 1997 Forest Plan. This is not a step I take lightly. It is my belief that the continuing controversy and exceptional circumstances surrounding the Tongass Land and Resource Management Plan warrant my direct and immediate participation in order to bring this controversy to closure as quickly as possible so that the Forest Service can move forward with the Modified 1997 Forest Plan implementation. The residents of Southeast Alaska, their communities and elected officials, as well as business and organizations from the region, have long sought certainty in the management of the Tongass National Forest. A key to this certainty is ensuring the sustainability of the goods and services produced by the Tongass National Forest, and all the resources on which they depend. The enclosed 1999 ROD seeks to provide that certainty built upon a foundation of sustainable natural resource stewardship. Therefore, I have reviewed these appeals and related records. My decisions in the appeals reflect modifications contained in the enclosed 1999 ROD.

The 1999 ROD documents my decision and rationale to modify the 1997 Forest Plan. I am modifying some aspects of the 1997 Forest Plan, not because I find that it fails to meet mandatory requirements, but because I have concluded that, for multiple use reasons and to reduce the level of environmental

risk, the Secretary's responsibilities and authorities should be exercised differently to improve the Forest Plan. The enclosed 1999 ROD changes development land use designations (LUD's) to mostly natural LUD's in 18 Areas of Special Interest totalling approximately 234,000 acres. The 1999 ROD also strengthens a standard and guideline (S&G) and adds another to address certain wildlife species, to improve subsistence opportunities and to reduce risk to old-growth ecosystem viability. Adjustments I made to management direction, together with unchanged portions of the 1997 Forest Plan, will hereinafter be referred to as the Modified 1997 Forest Plan. The Modified 1997 Forest Plan is the document titled "Land and Resource Management Plan - Tongass National Forest", dated 1997, and is based on Alternative 11 in the "Tongass Land Management Plan Revision Final Environmental Impact Statement" with modifications as noted in the enclosed 1999 ROD.

Regulatory Authorities

The regulations governing forest plan appeals are not based on statutes that require an appeal system, but instead are one way the Department meets its responsibilities under the Organic Act (16 U.S.C. 472, 551), the Multiple Use-Sustained Yield Act (16 U.S.C. 528-531) (MUSYA), and the National Forest Management Act (16 U.S.C. 1600, et seq.) (NFMA). As Under Secretary I am charged to provide leadership in resource management and assure the protection, management, and administration of the National Forests (7 U.S.C. 2.20). I also am charged under 7 U.S.C. 2.20(a)(2)(viii) to "exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR 215 and 217, and 36 CFR 251 Subpart C."

The regulations governing forest plan appeals (36 CFR 217.17) provide for discretionary review by the Under Secretary. Discretionary review is based on the appeal record presented to the Chief (36 CFR 217.17(e)). The appeal regulations grant broad latitude in deciding when to invoke discretionary review (36 CFR 217.17(a)). The 1997 Forest Plan falls within the scope of the identified factors that include, but are not limited to, the "controversy surrounding the decision, the potential for litigation, whether the decision is precedential in nature, or whether the decision modifies existing or establishes new policy." In fact, probably not since the Secretaries of Agriculture and the Interior jointly signed the 1994 "Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl" has there been as compelling a need for final resolution of such a long-standing land management controversy. An expedited review harms no appellant's interests as the Chief's decision would be subject to discretionary review in any event, and the review is based on the same record. In sum, expediting the discretionary review portion of the appeal process, although unconventional, is in the best interest of the residents of Southeast Alaska and the public at large, and within the spirit and letter of the appeal regulations.

I find that the Regional Forester complied with applicable Federal law and agency policy in his approval of the 1997 ROD for the 1997 Forest Plan. However, as previously discussed, I feel modifications are needed to reduce the level of risk and uncertainty for ensuring environmental protection regarding three key issues which I found could be improved upon from the 1997 Forest Plan: (1) subsistence use and associated deer winter range/deer habitat capability; (2) assurance of adequate amounts and distribution of old-growth forest for species viability; and (3) protection of Areas of Special Interest.

My decision on the appeals reflects those modifications contained in the enclosed 1999 ROD and is the final administrative action by the Department of Agriculture.

On February 12, 1999, Chief Dombeck issued an 18-month interim rule temporarily suspending decisionmaking regarding road construction and reconstruction in many unroaded areas of the National Forest System. The interim moratorium is needed to safeguard the significant ecological values of unroaded areas from the potentially adverse effects often associated with road construction until a new, permanent road policy is in place. The long-term policy will guide decisions of where, when, and if new roads should be constructed in unroaded portions of the National Forest System. As explained in the interim rule preamble, the Tongass National Forest was exempt from the moratorium as a newly revised plan that had the benefit of considerable science and public involvement. The preamble also noted that the 1997 Forest Plan was still undergoing evaluation as part of the administrative appeal process under 36 CFR 217. The interim rule allows for any issues related to the construction of roads in unroaded areas to be addressed in the appeal decision. As such, the transportation system analysis in general, and as it relates to unroaded areas specifically, is discussed below where appropriate.

The Modified 1997 Forest Plan

The Modified 1997 Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System.[1] The enclosed 1999 ROD explains what the Modified 1997 Forest Plan does. "This Plan provides the broad, programmatic direction necessary to manage the resources and uses of the Tongass National Forest in a coordinated and integrated manner" (Modified 1997 Forest Plan). It "will guide the management of the Tongass National Forest for the next 10 to 15 years" (1999 ROD). The components of Forest Plan direction, "along with the Land Use Designation map, establish a management framework that governs the location, design, and scheduling of all Forest management activities. Within the management framework, project-level planning is undertaken to achieve Forest Plan implementation" (Modified 1997 Forest Plan). The Modified 1997 Forest Plan sets forth goals and objectives for management and establishes programmatic standards to follow in pursuit of those goals. "Goals are achieved through the allocation of lands to the set of LUD's, through implementation of the Standards and Guidelines specified for the LUD's, and through other activities conducted on the Forest" (Modified 1997 Forest Plan). Pursuant to NFMA, the Modified 1997 Forest Plan identifies land that is suitable for timber production and determines the allowable sale quantity (ASQ), and other resource outputs, all of which are estimates.

Implementation of the Modified 1997 Forest Plan will take place through project-level decisions which must be within the bounds of the programmatic framework. As stated in the Modified 1997 Forest Plan, implementation is "accomplished through the recurrent identification of proposed actions . . . consistent with activities anticipated in the Plan; the analysis and evaluation of such actions . . . ; related documentation and decisionmaking; and project execution and administration, in a manner that is consistent with the management direction of the Plan" (Modified 1997 Forest Plan). Thus, the Modified 1997 Forest Plan standards operate as parameters within which projects must

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[1]The Modified 1997 Forest Plan and FEIS were prepared under the authority of the Multiple Use-Sustained Yield Act (MUSYA) (16 U.S.C. 528-531); the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the NFMA (16 U.S.C. 1601-1614); the implementing regulations of NFMA (36 CFR 219); and the NEPA (42 U.S.C. 4321-4335 and its implementing regulations (40 CFR 1500-1508).

take place. Approval of any project must be consistent with the management standards. If a project cannot be conducted within these parameters, these safeguard mechanisms in the Modified 1997 Forest Plan will prevent such development from going forward (see Swan View Coalition v. Turner, 824 F.Supp 923, 933 (D. Mont. 1992)).

The 1999 ROD (Section VIII, Appeal Rights) notes that decisions on site-specific projects are not made in the ROD and that such decisions will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act (NEPA). Thus, approval of the Modified 1997 Forest Plan does not mandate any project decisions. Each project or activity must be consistent with the programmatic environmental protection direction in the Modified 1997 Forest Plan (16 U.S.C. 1604 (i)).

Finally, the Modified 1997 Forest Plan establishes monitoring requirements to help determine how well the standards and management direction are working and whether the goals remain appropriate throughout the plan period. As stated in the Modified 1997 Forest Plan, ". . . monitoring and evaluation comprise an essential feedback mechanism within an adaptive management framework to keep the Plan dynamic and responsive to changing conditions."

In summary, the Modified 1997 Forest Plan establishes a framework for decisionmaking on the Tongass National Forest using programmatic direction as a gateway for compliance with environmental laws at the project level.

Response to Concerns

My response to your concerns provides a focused response to contentions involving complex resource management issues. Although every contention made by you may not be cited in this decision, all of your concerns have been considered. My review of the concerns has focused upon the Regional Forester's compliance with law, regulation, and policy.

Your appeal contains various concerns related to: Forest Supervisor's role, Habitat Conservation Areas, assessment panels, socioeconomic analysis, public involvement, range of alternatives, sale schedule, ASQ, supply and demand, new circumstances, changes to standards and guidelines, Federal Advisory Committees Act (FACA), violations of the Organic Act, MUSYA, NFMA, Tongass Timber Reform Act (TTRA), Wild and Scenic Rivers Act (WSRA), and Alaska Native Claims Settlement Act (ANCSA).

Forest Supervisor's Role

The appellants contend that the Forest Supervisors were denied their proper role in the forest plan revision process in violation of NFMA, resulting in violations of NEPA (NOA 0103, p. 17) and that the Forest Supervisors did not direct the 1997 Forest Plan planning effort as required by law (NOA 0107,
p. 13; NOA 0097, p. 43). Appellants also contend there is no authority for the creation of a "Policy Group" such as that established for the 1997 Forest Plan (NOA 0107, p. 16).

The appellants further contend that the Forest Service failed to properly evaluate the RSDEIS preferred alternative according to NFMA in violation of NEPA requirements and contrary to law (40 CFR 1502.14, and 40 CFR 1502.16(a-d) (NOA 0103, p. 25; NOA 0097, p. 60).

Discussion

In 1994 changes were made in the organizational structure of the Tongass land management planning effort. A policy group was formed to "provide direction to the planning team, make available necessary resources to complete the work, resolve issues, maintain quality control and recommend approval of the plan to the Regional Forester and Station Director. The Tongass Forest Supervisors as members of this group maintain NFMA responsibility for preparation and completion of the plan" (Draft Workplan for Completing the Revised Supplement for the Forest Plan, 9/13/94, Record RS-F-3, TLMP 235).

In a letter to the Chief dated October 18, 1995, the Regional Forester outlined the roles and responsibilities of those involved in the planning effort. Forest Supervisors are "responsible for preparing the Forest Plan and EIS for the Regional Forester (and Station Director)" and they "function as part of the Policy Group and deliberate on plan issues with Policy Group Leaders" (Record, RS-A, TLMP 681).

The appellants are primarily concerned about the Forest Supervisors' roles during the time period from mid 1994 to winter 1996 (NOA 0107, p. 20). A review of meeting notes during this period reveals consistent Forest Supervisor participation in Policy Group meetings. The following lists the Policy Group meetings attended by Forest Supervisors and the number of Forest Supervisors attending the meeting: 9/1/94 - 3, 9 /30/94 - 3, 10/12/94 - 2, 12/1/94 - 3, 12/22/94 - 3, 1/12/95 - 2, 4/18/95 - 2,
5/2/95 - 2, 7/27/95 - 1, 10/5/95 - 2, 2/8/96 - 1 (Record, RS-C-2, TLMP 237, TLMP 236, TLMP 241, TLMP 243, TLMP 244, TLMP 381, TLMP 1493, TLMP 247, TLMP 305, TLMP 424, TLMP 737, TLMP 1469).

The Regional Forester briefly explained the planning process to the United States Senate, Committee on Energy and Natural Resources on April 18, 1996. He stated "I made certain decisions about the planning process as the responsible official for the Tongass Revision" and went on to explain some of the unique qualities of the Tongass that logically support his decision making role in the Tongass Forest Plan revision process (e.g., the sheer size of the Tongass - 17 million acres, three Forest Supervisors were responsible for a single plan which further complicates the planning process). He also clarified the role of the Policy Group, which was "intended to serve as a forum for the discussion of policy issues, but not for making policy decisions" and further stated that "all decisions regarding the final plan are being made in accordance with the authorities specified in the NFMA regulations" (Statement of Phil Janik, Regional Forester, Alaska, Forest Service, United States Department of Agriculture, Before the Committee on Energy and Natural Resources, United States Senate, Concerning the Draft Supplement to the Tongass Land Management Plan Revision, April 18, 1996).

The Forest Supervisors were involved in the planning effort and met their responsibilities under NFMA. The NFMA implementing regulations do not prohibit formulation of a policy group. As the Forest Supervisors were members of the policy group and attended policy group meetings, they were

able to continue making policy decisions. The Regional Forester's letter noted above reinforced the Forest Supervisors' policy making responsibility and authority.

Regarding the alleged failure to properly evaluate the RSDEIS preferred alternative, the Forest Supervisors released the Revised Supplement to the DEIS for public comment on April 5, 1996. In their cover letter they identified the preferred alternative: "Using the nine key criteria listed above, we have chosen Alternative 3, with three minor modifications, as our preferred alternative." They explained their rationale for choosing this alternative and how they "expect the effects of our preferred alternative to be essentially the same as those for Alternative 3, except for any differences that result from the three changes in management direction." They described how these three changes will modify the effects analysis. They concluded that "our preferred alternative would not have significantly different environmental effects if implemented in the next 10-15 years than would Alternative 3."

The Revised Supplement Preferred alternative was a "variation of Alternative 3 from that document, and had very similar effects for most resources. The differences in the Preferred were discussed in the Forest Supervisor's letter, and all EIS tables were updated in a separate summary document circulated shortly after mailing of the RSDEIS to include the Preferred. In the FEIS this same alternative is analyzed in detail as Alternative 10" (Appendix L, p. 71).

The differences between the Preferred Alternative and Alternative 3 were minor and those differences were described so that the public could reasonably be expected to comment on all of the alternatives. The public did comment and those comments lead to modifications which "were made to the Forest Supervisors' Preferred Alternative in response to public comments and additional analysis. That alternative, the Preferred Alternative, in the FEIS, is displayed as Alternative 11 and discussed in detail. I am selecting Alternative 11, as modified in this Record of Decision, as the revised Forest Plan for the Tongass National Forest" (1997 ROD, p. 11).

The question of inadequate social economic effects analysis is responded to in the Socioeconomic Analysis discussion contained later in this decision.

Decision

While the Policy Group may be considered an innovative approach to providing a forum for coordination between and within agencies, I find no evidence that the Forest Supervisors did not uphold their responsibilities under NFMA and NEPA. The public had adequate knowledge of and opportunity to comment on the RSDEIS preferred alternative. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Habitat Conservation Areas

The appellants contend that the Habitat Conservation Area (HCA's) approach of the new 1997 Forest Plan is not based on credible science or adequate analysis and that the manner in which HCA's were applied to the Tongass and considered by risk assessment panels was arbitrary and capricious and in violation of 36 CFR 219.19 and Administrative Procedures Act (APA) because:

- ***The revised TLMP improperly relies on HCA's to provide for viable, well-distributed populations of wildlife;***

- ***HCA's have been imposed on the Tongass based on the unsupported unscientific assumptions of the VPOP report;***

- ***The PNW peer review of the VPOP report is inadequate and lacks credibility;***

- ***The Forest Service's Conservation Assessments do not provide support for HCAs on the Tongass for the goshawk, wolf or marbled murrelet;***

- ***The entire TLMP wildlife analysis process lacked the professional and scientific integrity required by 40 CFR 1502 (NOA 0103, pp. 26-29, 35, 38, 41, 58; NOA 0107, pp. 55, 71-75).***

Discussion

Pursuant to NFMA, 16 U.S.C. 1604 (f) (3), 1604 (g) (2) (B) (1985), the following rule was promulgated to provide direction concerning forest planning:

> ***"Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction. The Supervisor will assure that the interdisciplinary team has access to the best available data. This may require that special inventories or studies be prepared. The interdisciplinary team shall collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made. Data and information needs may vary as planning problems develop from identification of public issues, management concerns, and resource use and development opportunities. Data shall be stored for ready retrieval and comparison and periodically shall be evaluated for accuracy and effectiveness. The interdisciplinary team will use common data definitions and standards established by the Chief of the Forest Service to assure uniformity of information between all planning levels. As information is recorded, it shall be applied in any subsequent planning process" (36 CFR 219.12(d)).***

The planning regulation establishes a basis for inventory data collection. It is unrealistic to assume that implementing regulations could provide, in exacting detail, procedures necessary to conduct and analyze resource inventories such as wildlife and fish evaluations. Instead, direction for inventories is found in internal manuals and handbooks.

In Sierra Club v. Robertson, 810 F. Supp. 1021, 1028 (W.D. Ark. 1992), affirmed 28 F.3d 753 (Cir 1994), the court reviewed the NFMA requirements regarding forest plan inventories and upheld the inventory information in the Ouachita National Forest Plan. The court concluded that ". . . plaintiffs appear to disagree with how the agency carried out its inventory, but mere disagreement is not enough to state a claim . . . Plaintiffs' inventorying claims must fail because the Forest Service has considerable discretion in inventorying and plaintiffs have failed to persuade the court that the inventory has shortcomings that violate the arbitrary and capricious standard."

In addition, in the case of Krichbaum v. Kelley, 844 F. Supp. 1107, 1114 (W.D. Va. 1994) affirmed, 61 F.3d 900 (4th Cir. 1995) (table citation) the court considered arguments concerning the adequacy of forest plan inventory information. Although this case involved an inventory in a timber sale project and not a forest plan approval decision, the rationale of the court's opinion is applicable here. The court "declined to find the agency in violation of NFMA simply because it had not prepared inventories as the plaintiff would define them . . .." In addition, the court noted that although additional inventory information might be desirable, a less costly evaluation was not necessarily "infirm in the light of [NEPA] or the NEPA regulations."

As stated before, although the above citations address the adequacy of inventory methods, the rationale behind them are equally applicable to adequacy of analysis methods. While the appellants disagree with the science establishing HCA's, nothing concrete is provided to refute the method used.

In the case of fish and wildlife resources, the planning regulations (36 CFR 219.19) provide for the following:

> *Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.*

The Tongass Forest addressed these requirements in the "Final Committee Report, Steering Committee for Viable Population Review, October, 1991" (Record, G-10-d, 26312) where they "developed a Conservation Strategy patterned after the ISC [Interagency Spotted Owl Committee] Report to address population viability" and "the Conservation Strategy is the recommended approach to assure population viability in the Forest Plan revision." In developing the Conservation Strategy approach, they focused on three important concepts in the NFMA regulations, viable populations, well-distributed habitats, and interactions between individuals. In their document entitled "A strategy for maintaining well-distributed, viable populations of wildlife associated with old-growth forests in Southeast Alaska" (Record, G-10-d, 22078), the interagency committee compared the "likelihood of maintaining viability and distribution of wildlife associated with old-growth forests" on the Forest, and concluded that the two methods utilizing the habitat conservation area concept had "very high" or "high" likelihood of maintaining viability and distribution these species, as compared to the then current Forest Plan, Draft EIS, and Supplement to the Draft EIS which ranged from "very low" to "moderate." In addition, numerous other documents discuss the old-growth blocks and viability requirements (Record, G-10-o, 12454 and 7361 and 15817, G-10-D, 16834 and 24030 and 29724, RS-G-10-b, TLMP 1265 and TLMP 1412 and TLMP 1346 and TLMP 848 and TLMP 1364 and TLMP 856 and TLMP 863 and TLMP 855 and TLMP 862 and TLMP 1604 and TLMP 1605 and TLMP 1606 and TLMP 1607).

The Regional Forester's statements in the 1997 ROD are consistent with the findings of an evaluation that examined how scientific information was used in making management decisions for the Tongass National Forest and evaluated whether the decisions were consistent with the available information. The assessment found that major "[d]ecisions on development of an old-growth forest reserve strategy to provide habitat for well-distributed wildlife populations across the Tongass are consistent with available information" (Record RS-F, TLMP 1594). In general the evaluation noted that the final alternative, [not the "preferred alternative" in the RSDEIS] achieved a high degree of overall consistency with the available scientific information" (Record RS-F, TLMP 1594).

The Regional Forester requested a scientific peer review of the V-POP strategy. The scientists concluded "this represents a solid attempt to integrate species viability concerns with the Habitat Conservation approach. It demonstrates a good awareness of modern concept of wildlife management and conservation biology" (Record, RS-G-10-b, TLMP 1386).

The Forest also analyzed the HCA's ability to meet viability requirements for the Alexander Archipelago Wolf, Queen Charlotte Goshawk, Marbled Murrelet and other wildlife species. They

concluded that this strategy had a "high likelihood of sustaining viable and well distributed wolf populations" (Record, RS-G-10-b, TLMP 1346, p. 21), a "moderately high likelihood of sustaining well-distributed viable goshawk populations" (Record, RS-G-10-b, TLMP 1346, p. 27), and "the reserve system in additional to significant matrix protection should provide a reasonably high likelihood of sustaining well-distributed viable murrelet populations throughout southeast Alaska" (FEIS, p. 3-409).

Decision

My review of the record shows the Forest used adequate science and analysis in developing an HCA approach to assist in meeting NFMA viability and NEPA requirements, and as such, the HCA approach was not arbitrary and capricous.

However, based on this review, I have decided to modify the Regional Forester's 1997 ROD to reduce the level of risk and uncertainty for ensuring environmental protection for three key issues including old growth species viability, subsistence uses and protection of Areas of Special Interest.

I have decided to make changes to LUD's for a variety of reasons, including the protection of old growth and old growth dependent species (See enclosed 1999 ROD discussion on Rationale for Decision and Diversity and Viability Provisions for Fish and Wildlife sections).

Assessment Panels

The appellants contend that the 1997 Forest Plan assessment panels were not credible and did not provide an adequate analysis (NOA 0097, pp. 32-36; NOA 0103, pp. 42-55).

Discussion

After recognizing the need to assess risk to species, the Tongass Forest decided to use the risk assessment panels to "provide decision makers and the public with further information on the relative risk that implementation of various management alternatives would pose to the continued persistence of habitat across the landscape for the species in question" (Record, RS-F, TLMP 1603). The Forest recognized the need for scientific accuracy and objectivity as is evident in the following excerpt from letters to Senator Frank Murkowski (Record, RS-B, TLMP 489) and Representative Don Young (Record, RS-B, TLMP 488). The Forest noted in the letter:

> *We agree that objective science is necessary. That is why we expanded the [1997] Forest Plan team to include scientists from the Pacific Northwest Research Station, and why we are having important features of the revision reviewed by scientific panels. These methods are testament to our dedication to using the best available scientific information in all aspects of the plan.*

The Forest further stated that these panels were ". . . conducted with the highest levels of professionalism, integrity and scientific rigor" and because of their "concern with the possible effect on our process by outside parties, all panel evaluators were specifically asked during the 1997 panels if they had been contacted or lobbied by any individual or group; none had" (Record, RS-A, TLMP

1597). To further promote objectivity of the participants, the panels also each contained a silent observer whose role was to "provide a short, written evaluation to the scribe at the end of the panel deliberations on the merits of the process and its level of objectivity" (Record, RS-F, TLMP 1603).

The panel process relied on the professional judgement and integrity of the participants. The Forest selected panel evaluators who have "recognized expertise in the area under evaluation", and "individuals who can set interest-group values aside and focus on the biological assessment task" (Record, RS-F, TLMP 1603). They also chose evaluators who were not "involved in a major way in the development of the information specific to southeast Alaska that is relevant to the panel's evaluation" and they chose to promote panelist objectivity, as described above (Record, RS-F, TLMP 1603).

The 1997 ROD discussed the scientific adequacy of the information used in the 1997 Forest Plan process: "Although the scientific information on habitat needs of several Tongass wildlife species is incomplete, the analysis contained in the Final EIS incorporates the best scientific information available, including among other things the VPOP Committee's 1993 report, the independent peer review of that report (PNW Station, 1994), the VPOP Committee's 1994 response to the peer review, the conservation assessments for the wolf, goshawk, and marbled murrelet, and the results of panelists convened to assess the risk associated with the various alternatives to certain species" (1997 ROD, p. 27).

The appellants contend that all alternatives were not rated by the panels. The FEIS contained two alternatives that were not subjected to the risk assessment panels, due to their development after the panels disbanded. Instead, the interdisciplinary team gauged what the response would have been, based upon the panel meeting notes, their assumptions and their comments on the other alternatives. However, in response to public comments, a second set of risk assessment panels were reconvened in March and April 1997. These were done to examine if inferences made by the interdisciplinary team "were appropriate and presented in an accurate analysis of likely effects of implementing Alternatives 10 and 11" (FEIS, p. N-1). During this assessment, they did not evaluate all the Alternatives, since "from a science standpoint, it is not considered necessary to evaluate additional alternatives to aid with interpretation of results for alternatives 10 and 11. In addition, there is a considerable downside risk to the utility of the process if panelists gather in this format are asked to evaluate more alternatives than is absolutely necessary" (Record, RS-F, TLMP 1602). These further assessments "generally confirmed the outcomes for fish species" and "terrestrial vertebrates" described in the FEIS Chapter 3. However, some differences were noted for terrestrial vertebrates. Since this information was not significantly different from the FEIS, this was not sent out for public review prior to the Regional Forester making his decision. However, the Regional Forester fully considered the information in "Appendix N" before making his decision (1997 ROD, p. 27).

The courts have found repeatedly that an agency does not have to supplement their NEPA documents if no significantly different environmental effects are predicted (beyond that already analyzed). In State of Wisconsin v. Weinberger, 745 F.2d 412, 420 (7th Cir. 1984), the court found "we do not believe NEPA requires the courts to keep watch over an agency's shoulder as a supervisor and direct the agency as to if, when, and how it should preliminarily review any new information. Our responsibility is limited to determining whether or not the new informations was so significant that for the agency not to act on it was irresponsible, arbitrary, or capricious. It is not enough that the information may be worthy of further inquiry or may be considered important research. Our task is

the limited one of determining whether or not the new informations presents a seriously different picture of the likely environmental consequences of the proposed action not adequately envisioned by the original EIS." Similarly in Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 109 S.Ct. 1851, 1859 104 L.Ed.2d 377, 392-93 (1989), the court found "[a]n agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made. On the other hand . . . NEPA does require that agencies take a 'hard look' at the environmental effects of the their planned action, even after a proposal has received initial approval. Application of the 'rule of reason' thus turns on the value of the new information to the still pending decisionmaking process. In this respect the decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instances: If there remains 'major Federal action' to occur, and if the new information is sufficient to show that the remaining action will 'affect the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared." And, in Sierra Club v. Froehlke, 816 F.2d 205, 212 (5th Cir. 1987), the court found a supplemental report was unnecessary where "a supplemental report does not seriously alter the environmental picture, but only expands the picture previously examined."

Decision

After my review of the record, I find the Forest used accurate scientific information and methods to determine effects on wildlife resources. Alternative evaluations by the assessment panels and the Interdisciplinary Team provided high quality information sufficient for the Regional Forester to base his decision. Panel assessments and alternative evaluation were consistent with NEPA and APA. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Socioeconomic Analysis

The appellants contend that "the TLMP socioeconomic effects analysis is incomplete, biased, and misleading" and "fails to meet the requirements of NEPA, MUSYA, APA, and NFMA" (NOA 0097, p. 29; NOA 0103, pp. 59-79 and 121)

Specific violations of the Acts where cited include: 40 CFR 1502.24, Methodology and Scientific Integrity; 36 CFR 219.12 (g), Effects of Alternatives; 36 CFR 219.12(h), Evaluation of Alternatives; 36 CFR 219.12(d), Inventory Data and Information Collection; and APA, Arbitrary and Capricious.

Discussion

The appellants contend that the socioeconomic analyses are "incomplete, biased, and misleading." Nearly 250 pages of a comprehensive analysis of the social and economic issues related to the 1997 Forest Plan (FEIS, pp. 3-431 to 3-685). In addition, other analyses are presented in the FEIS that directly or indirectly relate to the appellants concerns; primarily the timber sale program (pp. 3-258 to 3-262, 3-279 to 3-282, 3-287 to 3-298) and subsistence harvests (pp. 3-215 to 3-219). Much of the economic and social section in Chapter 3 of the FEIS was added after the Revised Supplement to the Draft Environmental Impact Statement (RSDEIS) was completed in 1996. This information was

added because of "significant interest in depicting community-specific socioeconomic effects" (1997 ROD,
p. 19) and has been considered by the Regional Forester in his decision (1997 ROD, p. 2). Some of the specific changes that seem particularly pertinent to the appellants concerns are listed below (1997 ROD, pp. 20-21):

> *The description of the economy of Southeast Alaska has been substantially modified to include an analysis of the recent economic trends for groups of communities as defined by the Alaska Department of Labor. The description of current economic and social conditions within each of the 32 communities and a qualitative analysis of potential impacts has also been updated and improved.*
>
> *The projected economic timber volume of each alternative is compared to both the reported installed capacity and historic processing levels of existing mills, both open and closed. This analysis is depicted in both graphic and narrative form to display potential effects of each alternative on the region's timber-processing facilities. The potential impacts of mill closures have also been analyzed at the borough, census area, or community group level to indicate where employment and income change would most likely be concentrated at a scale of interest to individuals in those areas.*
>
> *The geographic areas where timber harvest activity is likely to occur are mapped. This analysis accounts for implementation of the land use allocations and the standards and guidelines, and it accounts for areas where timber harvest may be less economic due to operability considerations.*
>
> *Community-specific effects of each alternative on nine socioeconomic factors are also described in the Final EIS. Factors include timber jobs, fishing jobs, recreation and tourism jobs, mining jobs, economic diversity, community stability, quality of life, recreation opportunities, and access to traditional life-styles.*

The Regional Forester's statements in the 1997 ROD are consistent with the findings of an evaluation that examined how scientific information was used in making management decisions for the Tongass National Forest and evaluated whether the decisions were consistent with the available information. The assessment found that "[t]reatment of socioeconomic issues in the final alternative is consistent with available information" (Record RS-F, TLMP 1594). In general the evaluation noted that the final alternative, [not the "preferred alternative" in the RSDEIS] achieved a high degree of overall consistency with the available scientific information" (Record RS-F, TLMP 1594).

Additional information about community group employment data was provided in Appendix H of the FEIS (pp. H-96 to H-101).

Although this information expanded upon the information presented in the RSDEIS, it did not significantly change the environmental effects considered in the RSDEIS. Thus the Regional Forester was correct in concluding that "there is no need to prepare an additional Supplement . . . or provide for additional public comment" (1997 ROD, p. 31).

A expert panel process was used to "help estimate effects of the nine pre-RSDEIS alternatives on each of the 32 communities" (FEIS, p. 3-527). In response to the appellants challenge of the accuracy of this panel process, please refer to our response to this same issue for the wildlife and fisheries panels (see Assessment Panels issue above).

The social and economic effects to communities are generally predicted to be positive or negative effects or no change from the current situation. These effects are not more quantitative or specific for the following reasons:

1) Forest plans are programmatic documents, establishing directions and allowable activities for broad land areas, therefore "it is difficult to predict effects on individual communities" (FEIS, p. 3-525),

2) "People and businesses have proven themselves highly adaptable" and therefore hard to predict (FEIS, p. 3-525), and

3) Short-term effects may be much different than long-term effects, and both depend on the community's resiliency and leadership.

The FEIS sums these up by stating "it is more accurate and less potentially misleading to simply describe the communities, their relationships to forest management alternatives, and the resulting areas of socioeconomic risk that decision makers need to consider" (FEIS p. 3-527).

Another contention of the appellants is that the Forest Service fails to consider future socioeconomic impacts from corporations and others in the wood products industry and ignores historical timber harvest levels (NOA 0103, p. 71). "The FEIS sets forth the Forest Service estimates of future employment and income levels in the wood-products industry in Southeast Alaska (pp. 3-470 to 3-488). These estimates are based upon projected timber harvest levels under each alternative and projected product outputs from Southeast Alaska mills. Alternative 11 of the FEIS is projected to provide insufficient volume with a NIC I harvest for all sawmills to continue at current production levels, resulting in some sawmills closing and losses to logging employment (p. 3-486)." Further, historical harvest levels are displayed in the FEIS (pp. 3-259 to 3-261). The Forest recognized that there have been differences between the ASQ and the timber sold. "The forest-wide estimates used to develop the ASQ considered many of the factors contributing to the differences between ASQs and timber sales . . . For each alternative, areas were set aside (not scheduled for harvest) to allow for those factors most often encountered" (FEIS, pp. 3-277). This should improve predictability of the amount of timber that can be sold given ASQ figures.

The appellants contend the Forest failed to "adequately communicate and cooperate with local governments during the planning process" (NOA 0103, p. 81). The Forest invited communities, interest groups, organizations, agencies and individuals to participate throughout the planning process since forest plan-related public issues were identified in 1987. Many of these groups and individuals chose to participate in formal hearings, meetings, workshops, presentations to communities and groups, reviews of draft documents, or one-on-one contacts with Forest Service personnel. "The planning team in Juneau, and the planning staffs, District Rangers and Forest Supervisors of the Tongass have always been available for meetings and discussions; many presentations and meetings have been conducted at the request of local communities or groups"

(FEIS, p. L-68). All written comments from city/borough Mayors or city officials have been included in Appendix L of the FEIS, including the Forest Service response or action taken because of these comments. Impacts to local governments can be partially interpreted from the FEIS section on impacts to the 25 percent payments to the State of Alaska (pp. 3-507 to 3-509). The 1997 Forest Plan also includes forest-wide standards and guidelines for rural community assistance which provide for the consideration of development opportunities by resource managers, and for the sharing of information with local agencies, planners and managers (1997 Forest Plan, p. 4-74). The 1997 Forest Plan also includes standards and guidelines to consider impacts to subsistence resources, part of the social/economic factors in rural communities, and "seek to maintain abundance and distribution of subsistence resources necessary to meet subsistence user needs" (1997 Forest Plan).

Additional evidence of the Forests consideration of future impacts on communities and the wood products industries is found in the 1997 ROD (p. 19) where the Regional Forester explained:

> *The Revised Plan (pp. 3-126 to 3-150) provides opportunities for continuing or expanding resource-related industries in many other ways. Each of the "timber harvest" Land Use Designations (Scenic Viewshed, Modified Landscape, and Timber Production) includes the goal of supplying timber to small businesses, and small business opportunities were considered in projecting timber demand and setting the allowable sale quantity (ASQ). Areas important to the recreation and tourism industries have been identified and mapped, and were important in the selection of appropriate recreation-oriented land use designations for many portions of the Forest.*

Decision

After my review of the record, I find the socioeconomic analysis is adequate and meets all applicable MUSYA, NFMA and NEPA requirements cited by the appellants. Specifically, the Methodology and Scientific Integrity, as well as the analysis and evaluation of alternatives meet the cited regulations, and as such the analysis is not arbitrary and capricious. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Public Involvement

The appellants contend that the Forest Service failed to cooperate and communicate with local governments or follow NEPA required procedures (NOA 0103, p. 81) and that the planning process featured a closed scientific review (NOA 0098, p. 13) and a closed process (NOA 0098, p. 15).

Discussion

The record indicates that a comprehensive public involvement strategy was in place which utilized a wide variety of techniques to engage the public, including local governments, in a dialogue on the forest planning process (Record, RS-L-1, TLMP 201, Communication Plan). These techniques included newsletters, open houses, media releases, hearings, newspaper inserts and formal and informal meetings.

"Communities, interest groups, agencies, organizations and individuals have been involved, and invited to participate, in the planning process since the identification of public issues began in 1987. The involvement has included formal hearings, meetings, workshops, presentations to communities and groups (including many Native communities and organizations), review of draft documents, and numerous one-on-one contacts and discussions by Forest Service personnel throughout Southeast Alaska. The planning team in Juneau, and the planning staffs, District Rangers and Forest Supervisors of the Tongass have always been available for meetings and discussions, many presentations and meetings have been conducted at the request of local communities and groups. As one example, numerous informational meetings with Southeast Alaska Conservation Coalition (SEACC) have been held during this period, both to share information and to receive comments and suggestions. Newsletters and other publications have been used throughout the process to summarize planning actions and keep interested persons informed. Besides the formal periods of public review (for issue identification and for the Draft, Supplemental, and Revised Supplemental Environmental Impact Statements), comments were invited on drafts of the Forest-wide Standards and Guidelines. The full three-volume Analysis of the Management Situation was made available to interested parties" (Appendix L, pp. 67-68).

The Regional Forester noted that the Forest Service is participating in the Southeast Alaska Community Economic Revitalization Team (SEA CERT), a large effort by a variety of Federal, State, and local agencies and the private sector to promote economic stabilization and community development in timber-dependent communities in Southeast Alaska (1997 ROD, p. 19).

The 1997 Forest Plan process included numerous opportunities for public participation including publication of a DEIS, and a RSDEIS. In addition, numerous public meetings and correspondence occurred throughout the planning period. Documentation of a variety of state and local meetings may be found in the following Record documents: Record RS-D, TLMP 307, Summary of Public Meeting and Contacts; Record RS-D, TLMP 146, Meeting with KPC; Record RS-G-23, TLMP 638, Hearing Summaries; Record RS-D, TLMP 169, AFA Meeting; Record RS-D, TLMP 487, Rural Development Council Memorandum; and Record RS-L-3, TLMP 467, Open House Documentation.

The Regional Forester directed that: "the Forest Supervisors and District Rangers will increase their efforts in collaborative stewardship with the communities of Southeast Alaska" (1997 ROD, p. 42).

Regarding the appellants contentions that the planning process was closed to scientific review and was a closed process, "other agency involvement and participation has been and integral part of the planning and analysis process for several resources. However, the development of a forest plan, and the analysis of alternatives and effects, are Forest Service responsibilities under both NFMA and NEPA, the use of a interdisciplinary team is an integral part of fulfilling those responsibilities. There are laws and regulations limiting the use of non-federal personnel on such teams. There is also the problem of fairly representing all the different public interests if non-agency persons were to be included" (Appendix L,
p. 70).

Decision

After my review of the record, I conclude that the Forest did communicate and cooperate with local governments and met its NEPA responsibilities with regard to public involvement. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Prior to the release of the enclosed 1999 ROD, the Forest Service opened a fourth extension office in southeast Alaska in January of 1999. This new office, located in Sitka, will begin to work on expanding business development opportunities in value added wood products. This will continue the Lab's ten year history in southeast Alaska researching and proposing new initiatives to expand and diversify economic and employment opportunities for timber-based communities. In addition, USDA's Rural Development mission area had already spent several million dollars in the southeast Alaska region, and in Fiscal Year 1998 the Forest Service awarded local communities more than $245,000 in grants. As a result of the new SEA CERT agreement, both Rural Development and the Forest Service plan a more aggressive role in working with rural residents and the communities in which they live.

Range of Alternatives

The appellants contend that the RSDEIS and RSFEIS fails to provide a reasonable range of alternatives because:

> ***They failed to seriously consider any alternative that did not include a substantially similar network of old growth habitat reserves HCA's (NOA 0103, p. 87; NOA 0107, pp. 56-59).***
>
> ***They did not consider an alternative which would have protected wildlife population viability by prohibiting hunting and trapping within the planning area, implementing predator control measures for certain species, and accelerating road closures in the planning area and using silvicultural techniques to improve habitat conditions in the second growth stands, instead of reducing the CFL base through HCA's, which thereby unnecessarily reduced the ASQ, all of which is in violation of 36 CFR 219.12(f)(5) (NOA 0107,***
> ***pp. 59-63).***
>
> ***They did not include an adaptive management alternative which recognized the decided lack of data and scientific information regarding wildlife species and their interactions throughout the planning area (NOA 0107, p. 63; NOA 0097, p. 67). They failed to include a reasonable range of socioeconomic alternatives (NOA 0107, pp. 66-70).***

Discussion

Alternatives prepared for consideration in a forest plan are to provide for a broad range of reasonable management scenarios for the various uses of the forest (36 CFR 219.12 (f)). A primary goal in formulating alternatives is to provide an adequate basis for identifying the alternative that comes closest to maximizing net public benefits in an environmentally sound manner (id.). Thus, the evaluation of the range of alternatives does not turn upon consideration of a single factor, such as ASQ, but rather must consider the alternatives as a whole.

The Ninth Circuit Court of Appeals has ruled that the range of alternatives required to be analyzed is determined by the scope of the proposed action (California v. Block, 690 F. 2d 753, 767 (9th Cir. 1983); NCAP v. Lyng, 844 F. 2d 588, 593 (9th Cir. 1988)). An EIS need only set forth alternatives sufficient to permit a reasoned choice (Sierra Club v. Robertson, 810 F. Supp. 1021, 1029 (W.D. Ark 1992) affirmed 28 F. 3d 753 (8th Cir. 1994) , citing Minnesota Public Interest Research Group v. Butz, 541 F. 2d 1292, 1300 (8th Cir. 1975)).

The NEPA does not require full discussion of land-use alternatives whose implementation is remote or speculative (Jantzen, 760 F.2d at 988). Moreover, "an agency's consideration of alternatives is adequate if it considers an appropriate range of alternatives, even if it does not consider every available alternative" (Resources Limited v. Robertson, 8 F.3d 1394, 1401 (9th Cir. 1993), citing, Headwaters, Inc. v. Bureau of Land Management, 914 F.2d 1174, 1180-1181 (9th Cir. 1990)).

Arguments raised by the appellant here are similar to those addressed by several Federal courts in their review of Forest Service land and resource management plans. In Resources Limited, Inc. v.

Robertson, 789 F. Supp. 1529 (D. Mont. 1991), affirmed, 8 F.3d at 1401-1402, plaintiffs argued that the Flathead Forest Plan EIS was inadequate because it allegedly was developed using "unrealistic timber prices and harvest costs." The district court reviewed the Flathead Forest Plan's range of alternatives using a "rule of reason: "the agency is required to set forth only those alternatives necessary to permit a reasonable choice. The 'touchstone' for the court's inquiry is whether the EIS's selection and discussion of alternatives fosters informed decisionmaking and informed public participation" (Id. at 1537). The court concluded that assumptions underlying the EIS were reasonable (Id. at 1539).

In Sierra Club v. Robertson, 810 F. Supp. at 1021 (W.D. Ark. 1992), affirmed, 28 F. 3d 753 (8th Cir., 1994), plaintiffs argued that the Ouachita Forest Plan EIS was inadequate because it did not contain a "herbicide-free, selection cutting" alternative. The court noted that the Forest Plan EIS considered 13 alternatives and their environmental consequences and concluded that the Forest Service "considered sufficient alternatives to permit a reasoned choice."

Equally important, the Ninth Circuit Court of Appeals held in Idaho Conservation League v. Mumma, 956 F.2d 1508, 1520, 1522 (9th Cir. 1992) that "the inclusion of alternatives similar to that put forward by plaintiffs' was held sufficient by the court in Headwaters, Inc. v. Bureau of Land Management,
914 F.2d 1174 (9th Cir. 1990), and Northern Plains Resource Council v. Lujan, 874 F.2d 661, 666 (9th Cir. 1989)."

Arguments similar to those raised in this administrative appeal were likewise addressed in another Federal district decision. In Krichbaum v. Kelley, 844 F. Supp. 1107, 1119 (W.D. Va. 1994), the court found that:

> *So long as congress requires this [National] Forest to be managed with multiple-use principles, portions of the Forest must embody a compromise between "natural" Forest conditions and the need for Forest resources -- consistent, of course, with NFMA's substantive commands. Unless it acts irrationally, this compromise is the agency's to strike, and it need not consider alternatives which are not consistent with that compromise.*

For a forest plan, the choice is among management scenarios affecting all the multiple-use resources of the forest. Alternatives cannot be completely specified by a single output. Displays of estimated output levels for the various resources under the alternatives are presented to assist the public to better understand the possible consequences of implementing a particular alternative. Output levels themselves are not subject to the NEPA requirements for a broad range of reasonable alternatives. In developing a forest plan, it is reasonable to expect that alternatives designed to meet established goals and objectives may produce similar results. The 1997 Forest Plan does demonstrate variation in management emphasis between alternatives.

In the development of a forest plan for a 10-15 year period, there is an infinite number of alternatives that could be evaluated in detail. Consideration of all these is obviously an impossible task. The process of narrowing the possible alternatives to be considered to a manageable and reasonable range is appropriate under NEPA. Detailing the infeasibility of every possible alternative would risk

making trivial the environmental inquiry NEPA intends (Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council, 435 U.S. 519 (1978)).

The planning regulations (36 CFR 219.1 (a)) state that "plans shall provide for multiple use and sustained yield of goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner." Net public benefits include all outputs and effects, both positive and negative values that cannot be quantitatively valued, and, therefore, require the decisionmaker to subjectively balance such benefits with costs with each other and with those that can be quantified. The planning regulations (36 CFR 219.12 (f)) state that "the primary goal in formulating alternatives, besides complying with NEPA procedures, is to provide an adequate basis for identifying the alternative that comes nearest to maximizing net public benefits, consistent with the resource integration and management requirements of sections 219.13 through 219.27."

For purposes of NEPA compliance, the courts have established that an agency need only set forth those alternatives necessary to permit a "reasoned choice" (Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 988 (9th Cir. 1985)). The NEPA does not require full discussion of land use alternatives whose implementation is remote or speculative. id.

In the 1997 ROD, the Regional Forester stated, "[s]ome components of the management prescriptions received special consideration in my decision-making because I believe they are essential to maintain sustainability of ecosystems and the supply of goods and services" (p. 4). The Regional Forester listed those components that weighted heavily in his selection of Alternative 11 in the 1997 Forest Plan: fish habitat; minerals; recreation and tourism; scenic quality; subsistence; timber; transportation; wetlands and wildlife (1997 ROD, pp. 4-7).

In the "Alternatives Considered" section of the 1997 ROD the Regional Forester stated, "[a] total of 34 alternatives has been discussed in the environmental impact statements associated with the Forest Plan. Some of these alternatives have been carried from one EIS to another and refined in response to public comments, new information, or changing circumstances" (1997 ROD, p. 11). A summarization of those "Action Alternatives Considered in Detail" (10 in all) can be found in the 1997 ROD, pages 11-14. The FEIS (pp. 2-8 to 2-24) describes the evolution of the ten alternatives considered in detail. The various components of the wide range of alternatives are detailed at pages 2-11 through 2-62 of the FEIS (1997 ROD, p. 11).

In his "Rationale for Decision" the Regional Forester stated:

> *"My decision to select Alternative 11 was reached after a comprehensive review of the relevant environmental, economic, and social consequences of the Final EIS alternatives and is based on a number of factors . . . Next, the discussion of public issues and comments further explains why I believe Alternative 11 best responds to multiple needs, including ensuring a healthy forest habitat and providing a sustainable supply of goods and services including timber. My consideration of national policy issues, as explained, further shaped my decision. Forest Plan compliance with applicable laws, regulations, and executive orders, which is discussed in a separate section of the 1997 ROD, also was a key factor" (1997 ROD, p. 15).*

A "Comparison of Alternatives" can be found in the 1997 ROD (pp. 15-16). Here, the Regional Forester discussed his rationale for selection of Alternative 11 in the 1997 Forest Plan. In addition, the Regional Forester stated, "[t]here are a number of factors that the selected alternative responds to and for which the public has expressed concerns. These areas deserve a more thorough discussion to fully describe the selection I have made and the implications of the selected alternative to public issues" (1997 ROD,
p. 17). These other factors include: Alternatives to Clearcutting; Deer Winter Range; Fish Habitat; Karst and Caves; Local Economy/Socioeconomic Considerations; Popular and Community Use Areas; Recreation and Tourism; Roadless Areas; Scenic Quality; Subsistence; Timber (ASQ, Demand, Non-Interchangeable Components, Sustainability of the Timber Industry); and Wildlife Habitat (1997 ROD, pp. 17-27).

As part of the 1997 ROD's "Findings Related to Other Requirements" (NEPA, NFMA, Alaska National Interest Lands Conservation Act (ANILCA), Section 810, TTRA, Coastal Zone Management Act, Endangered Species Act (ESA), Clean Water Act, Clean Air Act, Flood Plains and Wetlands (Executive Orders 11988 and 11990), Environmental Justice (Executive Order 12898) and Civil Rights) (1997 ROD, pp. 30-40) the Regional Forester stated:

> *"First, the Final EIS considered a broad range of reasonable alternatives. The 10 alternatives considered in detail in the Final EIS represent only part of the total number of alternatives considered over the course of the DEIS, SDEIS, and RSDEIS. Additionally, numerous options within alternatives were considered as discussed in the Final EIS, pages 2-1 to 2-23. Alternatives presented in the Final EIS encompass a broad range of response to issues, including a timber suitable land base ranging from 1 to 1.6 million acres, a retention VQO ranging from 1 to 5.9 million acres, and various options of even-aged to uneven-aged silvicultural systems" (1997 ROD, p. 30).*

Regarding species viability, "[t]he system of reserves included in the Forest Plan is based on the old-growth strategy initially developed by the Interagency Viable Population committee (VPOP) in 1993 . . . " (1997 ROD, p. 6). The 1997 ROD also stated that:

> *"The analysis contained in the Final EIS (pages 3-362 to 3-429) and Appendix N supports the need for additional protection of wildlife habitat from the current situation. Although the scientific information on habitat needs of several Tongass wildlife species is incomplete, the analysis contained in the Final EIS incorporates the best scientific information available, including among other things the VPOP Committee's 1993 report, the independent peer review of that report (PNW Station, 1994) the VPOP Committee's 1994 response to the peer review, the conservation assessments for the wolf, goshawk, and marbled murrelet, and the results of panelists convened to assess the risk associated with the various alternatives to certain species."*
>
> *"We have crafted an old-growth habitat strategy as part of the Forest Plan that is fully responsive to our obligations to manage habitat to maintain well-distributed viable populations within a multiple-use context. This strategy is designed to reduce fragmentation of old-growth habitat on the Forest, and has been developed through careful analysis and integration of the best scientific information available on this*

subject. A further explanation of this strategy can be found in Appendix N of the Final EIS" (1997 ROD, p. 27).

Table 2-3, on page 2-24 of the FEIS, shows how the alternatives differ in regard to an old-growth habitat reserve strategy. Alternatives 3, 5, 6, 10, and 11 include old-growth reserve systems. The other 5 alternatives include no old-growth habitat reserves.

> *"This concept/strategy has been thoroughly reviewed by conservation biologists (e.g., peer review of the Interagency Viable Population Committee report). They agree that we have used the best available information and appropriately used HCA's. The various alternatives considered no reserves, an extended rotation, and both together. A reserve-based alternative was judged to provide the necessary balance to appropriately address all major issues" (Appendix L, p. 184).*
>
> *"The FEIS looks out at what could happen with 100-150 years of land disturbance under full implementation of the Forest Plan. What may be a healthy ecosystem now may not be healthy under continued levels of development for the next century. The opinions of the scientists that evaluated the alternatives did not agree that HCA's are not needed over the long-term. Furthermore, the range of alternatives examined other strategies such as extended rotations to address viability of old-growth associated species and in many cases these strategies were considered lower risk by scientific experts. However, we believe the FEIS preferred alternative balances this risk with the need to provide for other multiple uses of the land" (Appendix L, p. 185).*

It appears that the strategy employed by the Regional Forester was less restrictive to multiple use goals than other strategies which also had support in the scientific community.

Regarding other alternatives such as hunting and trapping, the 1997 Forest Plan does incorporate these strategies where needed. "The Forest Plan contains a Forest-wide Standard and Guideline that outlines a cooperating interagency analysis to identify regions where wolf mortality is apparently excessive. In such areas we would attempt to determine if the mortality is unsustainable and identify the probable causal factors of the excessive mortality. If road access and specific roads are identified as contributing to the excessive mortality, then road closures or access management considerations can be made and actions taken. In addition, seasons, harvest methods and bag limits need to be considered as population management tools by the ADF&G and Federal Subsistence Board as a cooperative approach to managing wolf mortality at the subsistence level" (Appendix N, p. 37). See 1997 Forest Plan Standards and Guidelines (pp. 4-116 to 4-117).

Regarding an adaptive management alternative, the selected alternative in the 1997 Forest Plan represents an adaptive management alternative. The monitoring plan in Chapter 6 of the 1997 Forest Plan plays a key role in providing for an adaptive management strategy.

> *"The Forest Plan includes a monitoring and evaluation plan which will provide an ongoing assessment of the effectiveness of the Forest Plan standards and guidelines. The results of monitoring will be used to evaluate the assumptions used in developing the Forest Plan, and may be the basis for amendments or revisions. The Forest Plan may be amended at any time if changes to the standards and guidelines are needed.*

Monitoring will also ensure that both forest-wide and land use designation standards and guidelines are being correctly applied.

We will work with the U.S. Fish and Wildlife Service [FWS] and other Federal and State agencies to further review whether the Forest Plan s old-growth strategy is adequate and to develop Conservation Agreements with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game [ADF&G] to further address the conservation needs of the Alexander Archipelago wolf and the Queen Charlotte goshawk. If further analysis shows that adjustments are needed, the direction in the Plan will be changed in accordance with NFMA, NEPA, and other applicable law" (1997 ROD, p. 29).

Regarding social/economic alternatives, in section III "Alternatives Considered", of the 1997 ROD the Regional Forester stated, "[a] total of 34 alternatives has been discussed in the environmental impact statements associated with the Forest Plan. Some of these alternatives have been carried from one EIS to another and refined in response to public comments, new information, or changing circumstances" (1997 ROD, p. 11). The Regional Forester also noted "[n]early 250 pages of socioeconomic analysis are contained in the Final EIS (pages 3-431 to 3-685). It is a comprehensive analysis of these issues. Additionally, due to the significant interest in depicting community-specific socioeconomic effects, the Final EIS includes several analyses that were not included in previous drafts . . ." (1997 ROD, p. 19). The Regional Forester also noted that:

"First, the Final EIS considered a broad range of reasonable alternatives. The 10 alternatives considered in detail in the Final EIS represent only part of the total number of alternatives considered over the course of the DEIS, SDEIS, and RSDEIS. Additionally, numerous options within alternatives were considered as discussed in the Final EIS, pages 2-1 to 2-23. Alternatives presented in the Final EIS encompass a broad range of response to issues, including a timber suitable land base ranging from 1 to 1.6 million acres, a retention VQO ranging from 1 to 5.9 million acres, and various options of even-aged to uneven-aged silvicultural systems" (1997 ROD, p. 30).

Chapter 2 of the FEIS describes the alternatives evaluated and demonstrates the range of alternatives considered. The considerations used for the original alternatives are discussed on pages 2-7 to 2-10 of the FEIS. Alternatives eliminated from detailed study are discussed on pages 2-11 to 2-18. Chapter 3 of the FEIS documents the effects of these alternatives including the wide variation in social/economic effects.

Decision

My review of the record, finds that the Regional Forester looked at a broad range of alternatives, took into account public comments and concerns, and looked at numerous factors that he felt should receive additional consideration in making his decision.

However, based on this review, I have decided to modify the Regional Forester's 1997 ROD to reduce the level of risk and uncertainty for ensuring environmental protection for three key issues including old growth species viability, subsistence uses and protection of Areas of Special Interest (see enclosed 1999 ROD, Rationale for Decision section).

Sale Schedule

The appellants contend that the Forest Service failed to provide a sale schedule in violation of NFMA (36 CFR 219.16) and must list the planned sales and their associated volume (NOA 0103, p. 88; NOA 0107, p. 91; NOA 0097, p. 51).

Discussion

Forest plans include a "timber base sale schedule which provides the allowable sale quantity" in accordance with 36 CFR 219.16. The regulations define "sale schedule" as "the quantity of timber planned for sale by time period from an area covered by a forest plan. The first period, usually a decade, of the sale schedule provides the allowable sale quantity" (36 CFR 219.3). The ASQ is "the quantity of timber that may be sold from the area of suitable timber covered by the forest plan for a time period specified by the plan" (36 CFR 219.3). In the 1997 Forest Plan, the requirement to identify a "planned timber sale program" in NFMA Section 1604(f)(2) is accomplished by the information in Appendix L (pp. 7-8) and in the FEIS (p. 3-278) (Timber Harvest Resource Schedule).

Neither NFMA or the NFMA implementing regulations require that the timber base sale schedule list all the timber sales for the decade that the 1997 Forest Plan will be in effect. Given the need for site-specific decisionmaking on timber sales, if a list of proposed timber sales had been included in the 1997 Forest Plan, it would continuously change.

Decision

After my review of the record I find Appendix L meets the requirements of NFMA and the implementing regulation. I also find there is no requirement in NFMA or the NFMA regulations that the timber base sale schedule list every proposed timber sale intended over the decade that the 1997 Forest Plan will be in effect. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Allowable Sale Quantity

The appellants contend that the Forest Service violated NFMA with regard to - culmination of mean annual increment calculation and - sustained yield calculations (NOA 0103, p. 90; NOA 0097, pp. 15 and 38).

The appellants also contend that the RSFEIS and 1997 ROD fail to include required growth and yield tables or scientifically sound second growth rotation age for stands where 10-20 percent of the overstory is retained (NOA 0107, p. 86).

The appellants further contend that the 1997 Forest Plan, FEIS and 1997 ROD are not based on statistically reliable growth and yield tables for silvicultural systems other than for even-aged management so the ASQ for those alternatives fails to meet NEPA requirements for determining sustainability (36 CFR 219.16) (NOA 0097, p. 39).

Discussion

The Forest determined sustained yield capacities (per 36 CFR 219.16 (a)) and displayed them over a 150 year time horizon (FEIS, p. 3-284). Since growth and yield tables have not been developed for stands regenerated under two-aged and uneven-aged methods, they based their projected yields upon professional judgment (Record, RS-G-12-b, TLMP 849). This professional judgment included using the team's combined knowledge and experience of working in the silviculture and vegetation ecology arenas, in Southeast Alaska and elsewhere, and applying this knowledge to research results to interpolate information appropriate for Southeast Alaska.

The FEIS states "yields for regenerated second growth timber stands were derived from permanent study plots and the SEAPROG yield table generation program" (p. B-8). These tables are included in the planning record (RS-G-12-a, TLMP 1131). Assumptions and research used are found in "Assessment of Reliability and Suitability of Young Growth and Yield Projections (Timber Task #3)" (Record, RS-G-12-b, TLMP 849).

The Regional Forester (1997 ROD, p. 17) acknowledged the controversy surrounding clearcutting and the need for additional information regarding use of alternative silvicultural methods. He stated:

> ***"The Alaska Region and the Pacific Northwest Research Station are studying alternative harvest systems. Monitoring and evaluation will be important in determining what alternative harvest systems may be appropriate for the Tongass, and where and when they will be used. We will also monitor the growth and development of young stands, particularly at high elevations and lower-quality sites, to check our estimates of volume from these stands."***

In addition, the effects of young growth yield tables are discussed in the response to comments (FEIS Appendix L, p. L-143) where it states:

> ***"The young-growth yield tables are no longer in Appendix H but are in the planning record. An assessment of the reliability and suitability of young-growth yield tables on the calculations of ASQ was completed as part of this assessment. The conclusion is that young-growth yields (for a given rotation age) have little influence on the ASQ calculations because the ASQ is dictated by the current standing old-growth volume. The rotation age of young-growth is more important than the yield per acre."***

The FORPLAN model was also verified, recalculated, and constrained to refine timber volume and produce accurate ASQ figures:

> ***"Recalculation of Culmination of Mean Annual Increment (CMAI) - Due to enhancements made to SEAPROG (the Tongass Growth and Yield Simulator), changes in second yield tables resulted in increases to some of the minimum rotation ages" (FEIS, p. B-1).***

Timber policy constraints are included in the FORPLAN models to represent legal or policy requirements of National Forest timber management. The primary requirements regarding timber management incorporated into Tongass FORPLAN models are:

> *"Sustained Yield/Non-declining Flow. The Tongass models have a constraint that ensures harvest flow (in cubic feet) will not decline in any decade over the 160-year planning horizon per national policy. Harvest volumes may increase but all subsequent harvests must be at least as much as the previous decade s harvest" (FEIS, p. B-13).*
>
> *"Culmination of Mean Annual Increment. The age at which a managed stand is harvested is called the rotation age. Agency policy is that rotation age can be no earlier than the age at which 95 percent of culmination of mean annual increment (CMAI) occurs. CMAI is the age at which the stand achieves its highest average volume. The FORPLAN models have constraints that allow timber harvest only when a stand has reached 95 percent of this CMAI age. On the Tongass, this translates to a range of rotation ages of about 60 to 170 years. CMAI varies by stand productivity, management prescription, and administrative area and is calculated using merchantible [sic] cubic foot volume" (FEIS, p. B-13).*
>
> *"Timber Policy constraints. These are required to ensure that all timber harvest meets sustained yield, culmination of mean annual increment, and dispersion requirements. These constraints are in all benchmarks and alternatives" (FEIS, p. B-30).*

As allowed in NEPA, 40 CFR 1502.24, the Forest put this discussion of methodology used in an appendix (FEIS Appendix B), and summarized "credible scientific evidence" and their conclusions and assumptions.

Decision

After my review of the record, I find the Forest met NFMA and NEPA requirements in determining an ASQ for the 1997 Forest Plan. The FORPLAN and SEAPROG are accepted models for analysis and effects determinations. Effects were properly discussed, displayed, and evaluated for the Regional Forester to make an informed and reasoned choice. However, after my review, I have decided to make modifications to the 1997 Regional Forester's decision on ASQ (see discussion on ASQ in the enclosed 1999 ROD).

New Circumstances

The appellants contend that significant new circumstances arose after the FEIS was issued, as a result, the Forest Service was required to prepare a supplemental EIS (SEIS) evaluating those circumstances and their potential impacts on the proposed agency action (NOA 0107, p. 24; NOA 0103, p. 97)

The appellant is specifically concerned about the following issues which are discussed in this section:

1) new standards and guidelines; 2) wolf standards and guidelines; 3) new circumstances (Veneer Plant, KPC settlement); 4) Brooks Haynes Report; and 5) Wild and Scenic Rivers.

Discussion

The regulations at 40 CFR 1502.9(c) identify the requirements for preparation of draft, final and supplemental statements and states: Agencies: (1) Shall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

The Regional Forester considered the potential need for a supplemental EIS during the analysis process. In the 1997 ROD (pp. 30-31) he explained that the changes in the FEIS were based on comments made on the 1990 DEIS, the 1991 SDEIS, and the 1996 RSDEIS and that the new information was analyzed in the FEIS (Appendix M) which determined that a supplemental EIS was not needed. The Regional Forester (1997 ROD, pp. 31) further explained that as new information becomes available, it will be evaluated through the monitoring program and used to amend or revise the 1997 Forest Plan as needed. Thus, he acknowledged that new information and comments were received and that information was considered in the analysis and his decision.

It should be further noted that forest planning is a dynamic process. There is a continuing need to evaluate original assumptions as new information becomes available. It is not uncommon for new information either from public comments or further studies to result in updated draft documents or be incorporated into the final as the Regional Forester did in this case.

New Standards and Guidelines

In discussion of new circumstances, the appellants contend that new S&G's were added to the 1997 ROD which had not been considered or analyzed in the Draft Alternatives or in the FEIS and were not modeled in FORPLAN which overstates the ASQ (NOA 0107, p. 25; NOA 0097, p. 9; NOA 0103, p. 90).

The Regional Forester (1997 ROD, p. 24) addressed the public concern regarding the analysis of standards and guidelines as they relate to ASQ. He stated:

> *The projection tools used in this analysis include a number of Model Implementation Reduction Factors, or MIRF's. MIRF's account for factors encountered during project planning and field review that suggest less timber should be harvested on a particular site than was anticipated in the Forest Plan. Extensive comparisons were made of model projections to actual on-the-ground timber harvest practices to develop estimates of how much land might be identified during project planning as area where timber harvest was not possible under the standards and guidelines of the Forest Plan.*

The MIRF's were incorporated into all estimates of timber production. The Regional Forester (1997 ROD, p. 25) further clarified that:

> ***Although adjustments have been made in the ASQs for the alternatives carried forward from the RSDEIS to the Final EIS, the changes are relatively minor and are based on routine modeling revisions and data updates. The effect of the measures added to Alternative 11 have not been explicitly modeled, but are judged to be relatively small (Final EIS, Appendix N). Ultimately, the ASQ estimates contained in the Final EIS area substantially more accurate than such estimates included in the previous drafts, including the RSDEIS.***

Factors affecting the ASQ are also discussed in the FEIS (pp. 3-277 to 3-284) and the 1997 Forest Plan (pp. 2-18 to 2-20). A detailed description of factors affecting ASQ and FORPLAN modeling constraints is found in the FEIS (pp. B-11 to B-38).

Regarding the allocation of the ASQ within the two Non-Interchangeable Components (NIC) components, the Regional Forester (1997 ROD, p. 26) explained that:

> ***The NIC I and NIC II estimates are based on best forest-wide data available. This data will be updated during the implementation of timber sale projects, and it is reasonable to expect that project level analysis will produce more accurate results. The volume offered from NIC I and NIC II components will be tracked carefully during project implementation. The Forest Supervisors will also review the accuracy of the planning information used to allocate the ASQ between the two NIC's during the first year of plan implementation. If the data from these analyses indicate a need to make adjustments, we will do so.***

A complete discussion and analysis of the additional protection measures is contained in the FEIS (Appendix N, pp. 10 to 16). The effects on timber availability are specifically discussed in the FEIS (Appendix N, p. 16) where it states that net effect of the additional habitat management measures are expected to be sufficiently small that recalculation of the ASQ for Alternative 11 is not necessary.

Effects on ASQ for the additional measures are specifically addressed in the FEIS (Appendix N, p. 16). Discussions such as these further demonstrate the Regional Forester considered all factors when determining the ASQ level.

In addition, the Monitoring and Evaluation Plan (1997 Forest Plan, p. 6-11) specifies that a review and analysis of the assumptions in the 1997 Forest Plan will be reviewed at least every five years.

Wolf Standards and Guidelines

The appellants contend that the 1997 Forest Plan scheduling violates the Forest-wide wildlife S&G's for wolves which require that deer habitat capability of 13 deer per square mile be maintained in biogeographic provinces in which deer are the primary prey of wolves (NOA 0107, p. 30; NOA 0103, pp. 93, 99; NOA 0097, p. 63). The appellants further contend that inadequate analysis of deer densities at the biogeographic scale fails to disclose effects (NOA 0107, p. 32; NOA 0097, p. 65). The contention is that suitability and therefore ASQ was improperly calculated.

Areas currently not meeting a particular Forest-wide standard and guideline are not as such considered to be unsuitable. They may have fewer or different opportunities for management, but are otherwise part of the suitable land base. Analysis conducted during site specific project implementation will identify management options which may be carried out while still maintaining deer habitat capability levels. As such, it is not correct to state that 85,870 acres of land will be or should be removed from the suitable land base as suggested by the appellants (NOA 0107, p. 30; NOA 0097, p. 63).

The planning regulations (36 CFR 219.14 (c)) describe suitability and state:

> *Lands shall be tentatively identified as not appropriate for timber production to meet objectives of the alternative being considered if--*
>
> *(2) Other management objectives for the alternative limit timber production activities to the point where management requirements set forth in 219.27 cannot be met.*

This regulation applies to the minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System and not standards and guidelines established by the 1997 Forest Plan. Suitability is determined by applying the planning regulations and making a programmatic determination which contribute to development of a forest plan, part of which includes S&G's. Thus, S&G's do not determine suitability.

The 1997 Forest Plan (appendix A, p. A-11) described tentatively suitable lands not appropriate for timber production based on 36 CFR 219.14(c) using the following criteria:

> *Management Requirements. These lands are identified as not appropriate for timber production activities because it is anticipated that the management requirements of 36 CFR 219.27 cannot be met. 36 CFR 219.27 includes direction for resource protection, vegetative manipulation, silvicultural practices, even-aged management, riparian areas, soil and water, and diversity. Most lands that would have met these criteria, such as:*
> *1) the 100 feet on either side of class I streams and 100 feet on either side of those class II streams that flow directly into class I streams (as a result of the Tongass Timber Reform Act), and 2) lands with extreme mass movement hazard soils, were removed from timber harvest consideration in the analysis of tentatively suitable timber lands (36 CFR 219.14(a)).*

In addition, it is further stated in the 1997 Forest Plan (Appendix A, p. A-11) that "the classification of unsuitable lands will be reviewed at least every 10 years." This 10 year review provides an adequate process for updating suitability based on changing conditions or new information.

In addition, the FEIS (p. 3-405) clarifies the deer model outputs and states:

> *Because deer model outputs have not been validated and the threshold equilibrium level of 13 deer/square mile is a working hypothesis, this analysis indicates areas of potential concerns relative to the current situation rather than an absolute management threshold.*

The Regional Forester (1997 ROD, p. 34) identified the need for adaptive management with respect to the Archipelago wolf and asserts that changes in conservation measures will be made if needed. Also, the Regional Forester (1997 ROD, p. 8) specified that a monitoring strategy will be developed for the Queen Charlotte goshawk and the Alexander Archipelago wolf.

The standard and guideline cited by the appellant applies to the biogeographic area as stated in the 1997 Forest Plan (p. 4-114) and not at the WAA. While the analysis was displayed at the WAA level, it adequately discloses the effects sufficient for the Regional Forester to make a reasoned decision.

The question of scale is addressed in Record Document (RS-G-10-E TLMP 1434) which is a review of 1997 Forest Plan analysis of deer population responses to habitat change. It stated:

> *The model's output, therefore, is unaffected by scale of application -- total deer numbers for the entire Tongass National Forest would be the same whether the data were input for the entire Tongass as a whole or by VCU, WAA, etc. and summed.*

Thus, scale of application did not affect the model for analysis purposes and the Regional Forester had the information necessary for making a decision.

In addition, the 1997 Forest Plan (p. 4-114) clarified that the process for implementing this standard will include additional analysis. It states: "Use the most recent version of the interagency deer habitat capability model and field validation of local deer populations to estimate deer habitat capability."

This additional analysis will provide the site-specific verification of deer habitat capability needed to implement a site-specific project. This analysis will also be contrasted with the specific scope of the proposal and the actual on the ground habitat conditions. The importance of field validation is emphasized in the FEIS (Appendix N, p. N-32) where it states:

> *Wolf populations appear to be more resilient in GMU 3 than GMU 2 and may possibly persist under relatively low deer densities. Deer model results for three of the WAA's on Kupreanof Island show that these WAA's do not currently support the estimated minimum level of 13 deer/square mile and yet they apparently support a viable wolf population.*

Appendix N of the FEIS contains a thorough explanation of how this will affect wolf viability and how the 1997 Forest Plan will ensure adequate protection. Because this analysis is not affected by scale, it represents an adequate analysis.

New Circumstances (Veneer Plant, KPC Settlement, Four Visions Report and AWRTA)

The appellants contend that failure to include new circumstances and information (possible veneer plant and Ketchikan Pulp Company (KPC) settlement, four vision paper) in the FEIS and 1997 ROD violates NEPA (40 CFR 1502.9(c)) for the reasons described by the Ninth Circuit in the Alaska Wilderness Recreation and Tourism Association (AWRTA) case (NOA 0107, p. 33) (NOA 0103, pp. 97, 99). The appellant cites a proposed new veneer plant, modification of the KPC Long-Term

Timber Sale Contract, and the Governor's Southeast Regional Timber Task Force Adoption of Forest Industry's "Four Vision Report."

The AWRTA case was a decision related to site-specific project timber sales and not a forest plan. The decision in AWRTA was based on the existence of a viable, but unexamined alternative which resulted from the termination of a timber sale contract. The original analysis was based only on alternatives within the parameters of the APC contract. When the contract was terminated, other alternatives became viable requiring additional analysis in a supplemental EIS. The situation is not the same with regard to the 1997 Tongass Plan revision.

The Regional Forester recognized the new circumstances and in the 1997 ROD discussed how they were addressed (1997 ROD, p. 31) and stated:

> *I have recognized new information as it has come to light since release of the RSDEIS in 1996. The Final EIS has included discussion of the recent closure of the Ketchikan Pulp Company (KPC) pulp mill in March 1997, and responded to the most recent estimates of changing timber demand in Southeastern Alaska. We have concluded that there is no need to prepare an additional Supplement (Final EIS, Appendix M) or provide for additional public comment. As new information becomes available, it will be evaluated through our monitoring program and used to amend or revise this Plan as needed.*

The Regional Forester (1997 ROD, p. 25) identified the new demand projections as being considerably lower than those done in 1990 and 1994. The differences are attributed to, among other things, expectations of reduced consumption in the principal markets for Alaska wood products and increased competition in those markets from other suppliers. They also considered the effects of the recent closures of the pulp mills operated by the Alaska Pulp Corporation and the Ketchikan Pulp Company. The FEIS (Appendix M, pp. M-1 to M-8) describes in detail the effects of the KPC pulp mill shutdown and the 1997 Timber Demand Projections.

The effects of short-term changes in economic conditions were discussed in the FEIS (pp. M-6 to M-7) which states:

> *In the context of a broad-scale, long-term land and resource management plan revision, at a time when the timber demand is in a great deal of flux and uncertainty, the short-term demand information is not significant to the choice of alternatives. A forest plan is a long-term plan of sustainable management and is not significantly influenced by short-term market conditions.*

Consideration of a potential veneer plant was not required because it was speculative in nature. In describing cumulative impact, CEQ regulations (40 CFR 1508.7) uses the term "reasonably foreseeable future actions." The proposed veneer plant did not meet this criterion at the time of the FEIS.

The Four Visions report was not specifically referenced because the Forest Service utilized the Brooks/Haynes report for determining market demand. See the discussion in the following section.

Brooks/Haynes Report

The appellants contend the Regional Forester unlawfully considered the Brooks/Haynes report in the 1997 ROD which suggested a significant reduction in timber demand but which had not been included or analyzed in the RSFEIS, all of which requires a new SEIS under the AWRTA and 40 CFR 1502.9(c)) (NOA 0107, p. 36; NOA 0103, p. 99).

In explaining the decision to utilize the Brooks/Haynes report, and the factors it considered, the Forest Service (FEIS, p. 3-262) states:

> ***Several economic consultants have projected the demand for Tongass timber in recent years, with varying results. The Alaska Region continues to use the projections of the Pacific Northwest Research Station (PNW Station) of the Forest Service as the most reliable and defensible estimates. The PNW Station projections take into account international markets for wood products, recent developments affecting demand in the Pacific Northwest and Canada, and local industry conditions and mill capacities.***
>
> ***The PNW Station projections are revised periodically. This year's revised estimates include consideration of recent changes in world pulp markets and closure of the Sitka pulp mill. The closure of this mill significantly affects the pulp wood component of demand. Sawlog demand is not similarly affected, and the Wrangell mill closure (the Wrangell mill is currently owned by Alaska Pulp Corporation) is not considered to be permanent (the sawlog market can support its reopening or replacement). It is too early to tell how the recently announced closure of the Ketchikan Pulp Mill will affect Tongass timber demand.***

The change in demand estimates in the latest Brooks/Haynes report were still within the range of alternatives analyzed in the RSDEIS. The new information was adequately analyzed and addressed in Appendix M of the FEIS.

Wild and Scenic Rivers

The appellants contend that the recommendation of four rivers for inclusion in the wild and scenic river system was included in the errata to the RSFEIS and in the 1997 ROD without an opportunity for proper analysis through the Planning Process and without adequate consideration of the effect on the ASQ in violation of 36 CFR 219(k), 219.10(b), 219.12(e) and 219.12(f) and NEPA (NOA 0107, p. 37; NOA 0103, p. 99; NOA, 0097, p. 53).

The FEIS (p. 3-338) explains that assigning a river to a given alternative was a reflection of the alternative theme, recognizing other possible combinations for a particular river might exist. It is also stated that additional rivers were recommended in Alternative 11 based on public comment to the RSDEIS.

Analysis on the effects of the rivers on the suitable base is found in the FEIS (p. 3-343) where it explains that the 32 rivers recommended for designation in Alternative 11 contain approximately 45,600 acres of tentatively suitable forest lands within their corridors.

Part of the suitability analysis in the FEIS (Appendix E) is the analysis of foreseeable potential uses of the land and water that would be enhanced, foreclosed or curtailed by designation; and values which would be foreclosed or diminished if the area is not protected as part of the System. One of the components considered for each river was the timber resource which included analysis of the acres of tentatively suitable forest lands within the river corridor. The total acres of tentatively suitable lands that would be removed for the four rivers totals 3,900 acres as follows:

Essowah Lakes (FEIS Appendix E, p. E-370) 1,480 acres
Gokachin, Mirror, Fish, and Low Creeks (FEIS Appendix E, p. E-381) 720 acres
Kegan Lake and Streams (FEIS Appendix E, p. E-414) 860 acres
Niblack Lakes and Streams (FEIS Appendix E, p. E-440) 840 acres
Total = 3,900 acres

From a Forest-wide perspective, this area does not represent a significant effect on ASQ.

The FEIS (p. 3-344) also clarifies that:

> *This will be a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States. The Congress has reserved the authority to make final decisions on designation of rivers as part of the Notional Wild and Scenic Rivers System.*

Additional information regarding the analysis process for recommending rivers is found in Record Document (RS-G-6, TLMP 1048).

Decision

The record indicates that new circumstances and information were adequately analyzed, do not represent a significant change, and thus there was no need to publish a supplemental FEIS. I find

that the Forest is in compliance with NEPA. However, as noted above, to reduce the level of risk and uncertainty for ensuring environmental protection, I have decided to modify the 1997 Regional Forester's decision by adding or strengthening S&G's for a variety of species, including wolf (see enclosed 1999 ROD, sections on Management Indicator Species and Other Species of Management Concern).

Standards and Guidelines

The appellants contend that changes in S&G's are unwarranted and not supported by science (NOA 0103, p. 100).

Discussion

Beach Fringe Standards and Guidelines

The appellants contend beach fringe and estuarine S&G changes from the 1992 DEIS are unwarranted and not supported by science (NOA 0103, p. 100).

The Regional Forester (1997 ROD, p. 17) explained that the 1997 Forest Plan's 1,000 foot beach and estuary fringe, wider riparian buffers, and large, medium, and small old-growth habitat reserves maintain needed deer winter range habitat. The FEIS (Appendix I, p. I-2) further describes the objectives of the Beach & Estuarine Standard and Guideline.

The Regional Forester recognized the need for science in developing the 1997 Forest Plan revision and utilized that science for making his decision. He stated (1997 ROD, pp. 26 and 27):

> ***The analysis contained in the Final EIS (pages 3-362 to 3-429) and Appendix N supports the need for additional protection of wildlife habitat from the current situation. Although the scientific information on habitat needs of several Tongass wildlife species is incomplete, the analysis contained in the Final EIS incorporates the best scientific information available, including among other things the VPOP Committee's 1993 report, the independent peer review of that report (PNW Station, 1994), the VPOP Committee's 1994 response to the peer review, the conservation assessments for the wolf, goshawk, and marbled murrelet, and the results of panelists convened to assess the risk associated with the various alternatives to certain species.***

The Regional Forester's statements in the 1997 ROD were consistent with the findings of an evaluation that examined how scientific information was used in making management decisions for the Tongass National Forest and evaluated whether the decisions were consistent with the available information. The assessment found that the major "[d]ecisions related to management of riparian habitat, beach fringe habitat, and estuarine areas are consistent with the information base" (Record RS-F, TLMP 1594). In general the evaluation noted that the final alternative, [not the "preferred alternative" in the RSDEIS] achieved a high degree of overall consistency with the available scientific information" (Record RS-F, TLMP 1594).

In the FEIS (pp. 3-21 to 3-22), the Forest describes the importance of beach fringe as a wildlife travel corridor, as a transition zone between interior forest and salt water influences, and as a unique habitat. The beach fringe provides important horizontal or low-elevation connectivity between watersheds, many of which otherwise have very steep sides and/or non-forested ridge tops.

The FEIS (p. 3-22) further states:

> *There are indications that the value of the beach zone habitat may extend beyond the original 500 feet. Geende, et al. (1996) reported reduced bald eagle nesting densities and success in landscapes adjacent to clearcuts and recommended a beach buffer zone of at least 1,000 feet. The 1,000 foot beach fringe is also used very frequently by radio-marked goshawks (Iverson et al., 1996). The importance of a wider beach fringe zone has long been recognized and is a component of the Retention Factor Method specifically, 1,000' beach fringe for brown/black bear, 600' for furbearers, and 1/4 mile inland from the beach for deer winter range. Lande (1994) specifically recommended 2,000' wide no-harvest corridors with an additional 1,000' buffer of light intensity management.*
>
> *The 1,000' beach fringe serves many functions: providing more effective landscape linkages between habitat reserves, protecting long-term bald eagle habitat capability, buffering the primary beach fringe zone from windthrow (Hodges 1982, Harris 1989), maintaining a functional interior forest condition within the entire primary beach fringe (Concannon 1995), sustaining habitat for goshawks, and indirectly contributing to overall landscape management of lands between habitat reserves.*

Karst & Caves Standards and Guidelines

The appellants contend Karst and Cave Resources S&G changes from the 1992 plan are unnecessary (NOA 0103, p. 102) and the effects are not adequately accounted for (NOA 0103, p. 104).

The Regional Forester (1997 ROD, p. 18) stated his reasons for incorporating new karst and cave standards and guidelines for additional protection. He explained:

> *New information has become available since release of the 1991 SDEIS about the extent to which much of the Tongass has world-class karst and cave resources. Given a high correlation between occurrences of karst and high-quality timber, questions have arisen regarding how best to protect karst and cave resources while meeting other management objectives.*
>
> *The plan includes forest-wide standards and guidelines for management of karst and cave resources that incorporate: a) the results of a 1995 karst vulnerability assessment conducted through a partnership between the Forest Service and national cave experts; b) the results of a 1996 analysis of karst landscapes and associated resources by the interdisciplinary planning team; and c) requirements of the Federal Cave Resources Protection Act of 1988.*

In addition the FEIS (p. 2-10) explains that the Karst and Cave Resources Assessment (1995) has used considerable new information, much of it from field studies, than was available in 1992, and has proposed in-depth, detailed Forest-wide standards and guidelines for Karst and Cave Resources.

The Regional Forester's statements in the 1997 ROD were consistent with the findings of an evaluation that examined how scientific information was used in making management decisions for the Tongass National Forest and evaluated whether the decisions were consistent with the available information. The assessment found that "[d]ecisions on management of steep slopes and karst and cave resources also are consistent with available information" (Record RS-F, TLMP 1594). In general the evaluation noted that the final alternative, [not the "preferred alternative" in the RSDEIS] achieved a high degree of overall consistency with the available scientific information" (Record RS-F, TLMP 1594).

Appendix I of the 1997 Forest Plan includes a detailed description of karst and cave resources and additional information on protection measures not part of the Forest-wide standards and guidelines.

An example of why karst and cave standards and guidelines are needed is disclosed in the FEIS (p. 3-85) where it describes the effects of timber harvesting in moderate and high vulnerability karst areas:

> *In these areas, over time, karst ecosystems and processes could be significantly adversely affected, with the potential reduction or loss of fish, wildlife and plant habitats, and the destruction of unknown but possibly significant archaeological and paleontological resources.*

With regard to effects of the Karst and Caves standards and guidelines, they are described in the FEIS (p. 3-279). It states in part:

> *For alternatives using the Karst and caves standards and guidelines, the high vulnerability landscapes have been mapped and taken out of the suitable base; however, low to moderate rated landscapes have not been. These landscapes often contain areas with significant karst and cave features that are often identified during project planning and implementation.*

The Regional Forester realized there may be unforeseen circumstances affecting timber volume projections. Therefore, modelling unmapped standards and guidelines for calculating the ASQ was addressed using MIRF's. These factors were discussed by the Regional Forester (1997 ROD, p. 24). He stated:

> *I recognize that ensuring an accurate projection of timber volume is a difficult task and believe the Forest Plan is based on the most thorough and accurate analysis ever conducted for forest planning purposes in Alaska. The projection tools used in this analysis include a number of Model Implementation Reduction Factors, or MIRF's. MIRF's account for factors encountered during project planning and field review that suggest less timber should be harvested on a particular site than was anticipated in the Forest Plan. Extensive comparisons were made of model projections to actual on-the-ground timber harvest practices to develop estimates of how much land might be identified during project planning as area where timber harvest was not possible under*

the standards and guidelines of the Forest Plan. These estimates became the MIRF's, which were incorporated into all estimates of timber production. In this way, the effects of unmapped streams that will require no-harvest buffers, unmapped karst and cave resources, new bald eagle, osprey, or goshawk nests, and a host of other site-specific constraints not identifiable until project field verifications are accounted for in the calculation of the ASQ of the Final EIS."

Soil & Water Standards and Guidelines

The appellants contend the Soil and Water S&G has no counterpart in the 1992 DFEIS (NOA 0103, p. 105). The appellants cite the change in harvest on slopes from 75 percent to 72 percent, the additional wetland standard for forested wetland soils, a new standard on Mcgilvery soils, and a new requirement for watershed analysis.

Forest-wide standards and guidelines are followed to mitigate the effects of management activities (FEIS, p. 3-201). They are designed to minimize accelerated soil erosion and maintain long-term soil productivity.

The reason for change in slope gradient from 75 percent to 72 percent is documented in the Record at RS-F-4, TLMP 1490 which is the Documentation of Planning Direction. This document clarifies that there is little scientific basis for support of the 75 percent level and that published data and engineering analyses of stability characteristics of major soil types in coastal Alaska demonstrate that this gradient should be set at 72 percent.

This change is also documented in the FEIS (p. 3-263) where it states:

> ***On July 5, 1995, the Forest Service published an overview of the characteristics controlling hillside stability in Southeast Alaska (Record, RS-G-14-C, TLMP 529). The paper concluded, based on the findings, that Mass Movement Index 3 and 4 (MMI 3 and MMI 4, respectively) should be adjusted for the Forest Plan Revision. MMI 3 should be from 51 to 72 percent slope and MMI 4 should be slopes greater than 72 percent.***

The rationale for the additional wetland standard is described by the Regional Forester (1997 ROD, p. 6) where he stated:

> ***Because the scientific information related to the effects of timber harvesting on forested wetlands on certain soil types (i.e., Kaikli, Karheen, Kitkun, and Maybeso soil series) is incomplete, the information needs section of the Forest Plan describes an ongoing research study of these issues. Therefore, because such effects are unknown, and specific concerns for these four soil types exist, I direct the Forest Supervisors to avoid harvesting on these four forested wetland soils . . . This direction is to be given the full force and effect of a standard and guideline. The monitoring plan requires the Forest Supervisors to monitor the amount of any such harvest. When the scientific study is finished, or earlier if monitoring information warrants, the decision may be re-evaluated to include these soil series in the tentatively suitable or suitable timber land base.***

The Regional Forester's statements in the 1997 ROD were consistent with the findings of an evaluation that examined how scientific information was used in making management decisions for the Tongass National Forest and evaluated whether the decisions were consistent with the available information. The assessment found that "[d]ecisions on steep slopes . . . are consistent with available information" (Record RS-F, TLMP 1594). In general the evaluation noted that the final alternative,

[not the "preferred alternative" in the RSDEIS] achieved a high degree of overall consistency with the available scientific information" (Record RS-F, TLMP 1594).

The appellant is incorrect in stating that there is a new standard for McGilvery soils which allows harvest, but requires full suspension. Soil and Water Standard number I(A)(8) was in the RSDEIS (p. 4-90) and in the FEIS (p. 4-82). This standard requires partial suspension not full suspension.

The appellant's contention that the effects of changes to Standards and Guidelines will make some areas uneconomic to harvest (NOA 0103, p. 106) is discussed in the FEIS (p. 3-279) which states:

> *Economics is an important consideration in determining whether lands should be harvested; however, experience has proven that it is not feasible to effectively factor in economics as part of the 10-year timber suitability determination. There are various reasons why:*
>
> *1. Economic conditions fluctuate greatly during the course of a plan period. One year a certain area of land or species may be uneconomic to harvest, and another year market conditions may have changed to where the same area or species would be in demand. This makes it difficult to meaningfully assess the economics of harvesting a particular site over a 10-year period.*
> *2. The value of the timber sale program must be considered as a whole rather than by only evaluating individual timber sales or harvest units in isolation, since some sales or units of low value are offset by other higher-value sales or units.*
> *3. The timber program also must be viewed with consideration of non-market contributions, such as enhanced hunting use, fuelwood gathering, and motorized recreation, and not strictly timber sale costs and receipts.*
> *4. Economic considerations can be adequately addressed through other means. For example, forest plan standards or non-interchangeable components can be established to limit harvesting due to economic reasons. In addition, economic considerations can be considered as part of the program development and budget process.*
> *5. Economics of harvesting any particular site can be considered as part of the project decision to approve harvest of the area.*

The appellant's contention that the watershed analysis requirement will increase project planning costs and time (NOA 0103, p. 106) is addressed in Appendix J (pp. J-1 to J-2) of the FEIS. It states:

> *Watershed analysis is a procedure for assessing important riparian and aquatic habitat values and geomorphic processes within a watershed. It is to be considered within the overall context of ecosystem analysis. It describes key aquatic and riparian resources along with their habitat conditions and trends. Watershed analysis is not a decision process and does not propose any actions. NEPA compliance is not required for watershed analysis.*

Thus the appellant is mistaken in assuming that watershed analysis will be conducted in lieu of the current NEPA process.

Threatened Endangered and Sensitive Species Standards and Guidelines

The appellants contend the Threatened, Endangered and Sensitive Species S&G changes are unnecessary (NOA 0103, p. 106), that the 1997 Forest Plan does not define "tending toward listing", did not analyze the effect of the goshawk standard and guideline on ASQ, and removes the public from the ESA process (NOA 0103, p. 107).

With respect to the appellants' contention that tending toward listing is not defined, the National Memorandum of Understanding (RS-G-10-b, TLMP 1413) referenced in standard and guideline (I)(A)(4) on page 4-88 of the 1997 Forest Plan, explains that species designated as sensitive, candidate species, or proposed species for listing, are considered to be tending towards listing.

While addressing a change in the process for identifying sensitive species is beyond the scope of the 1997 Forest Plan, the FEIS (p. 3-232) does explain that the Alaska Region Sensitive species list remains under review and revision under a regional process. The FEIS (p. 3-231) specifically describes the process for identifying sensitive species. It states:

> *Sensitive species are those plant and animal species identified by the Regional Forester for which population viability is a concern on National Forest System lands within the Region. A viability concern is evidenced by either a significant current or predicted downward trend in population numbers or density, or a significant current or predicted downward trend in habitat capability that would reduce a species' existing distribution. It is USDA Forest Service policy to identify and manage Sensitive species and their habitats to prevent the species from becoming threatened or endangered because of Forest Service management actions. The goal of the Forest Service Sensitive species program (FSM 2670) is to ensure that species numbers and population distribution are adequate so that no Federal listing will be required and no extirpation will occur on National Forest System lands.*
>
> *The Forest Service has also entered into an interagency Memorandum of Understanding with the FWS and other federal agencies at the national level, and with the FWS and Alaska Department of Fish and Game at the regional level, to cooperate in the conservation of species tending toward federal listing so that listing is unnecessary.*

In addition, the FEIS (p. 3-238) explains that formal and informal consultation procedures (as directed by the ESA, as amended in 50 CFR 17.7, and Forest Service Manual 2670) are used with the National Marine Fisheries Service (NMFS) and FWS on all projects that implement the forest plan. Forest-wide standards and guidelines for Threatened, Endangered, and Sensitive species direct that all projects will comply with requirements of the ESA, as amended and Forest Service Policy (FSM 2670).

The Regional Forester (1997 ROD, p. 36) stated that in cooperation with the FWS and ADF&G, the Regional Forester will initiate a schedule for review and revision of the Regional Sensitive Species list, especially for the marten and other species evaluated by the endemic and wide-ranging mammals panels.

The 1997 Forest Plan also included provisions for updating sensitive species based on new information. Guidelines identified in the 1997 Forest Plan (p. 4-88) include:

> *II. Sensitive species*
> *C. Identify research and information needs for known or suspected sensitive plants and animals.*
> *E. Support monitoring, research, and inventory work for sensitive species. Coordinate with appropriate Federal and state agencies. Use "challenge cost share," Sikes Act agreements, "Section 6 Grants" (under authority of the Endangered Species Act), and other partnerships.*
> *F. Sensitive species lists shall be reviewed periodically to consider new information to reflect the best available information regarding viability concerns.*

The appellants contend there is no scientific basis for listing the goshawk as a sensitive species (NOA 0103, p. 108). The basis for identifying the goshawk as sensitive is addressed in numerous locations in the Record.

Evidence of site-specific information on the goshawk is found in the FEIS (p. 3-389) which describes background information on the status of the Northern Goshawk and states:

> *Panelists noted (Record, RS-G-10-b, 1606) the apparent low relative density of nesting goshawks in Southeast Alaska. Less than 40 total nest sites have been identified after nearly 5 years of inventory effort across the Forest. Low prey diversity compared to other goshawk populations across North America was considered a principle factor, resulting in a higher sensitivity to habitat modifications which may reduce prey diversity and abundance.*

Additional evidence is found in the FEIS (p. 3-389) which describes habitat preferences and states:

> *Locally-obtained biological information indicates a significant preference for productive old growth forest, the general avoidance of all other habitat types (especially early and mid-seral conifer forests), and a predominant use of lower elevations (less than 1,200') and relatively gentle slopes (less than 35 percent).*

While emphasizing that in this planning context, "absolute certainty is not possible", the Regional Forester (1997 ROD, pp. 31-32) explained that:

> *Consideration was given to the standards and guidelines that were developed specifically for Alternative 11 after consideration of the results of the risk assessment panels for selected species, conducted in March and April of 1997. These additional standards and guidelines, which are discussed in Appendix N of the Final EIS, are designed to contribute to the viability of these species.*

The Regional Forester (1997 ROD, p. 33) also clarified that:

> *The Forest Plan direction for maintaining habitat to sustain viable northern goshawk populations relies primarily on the findings of the interagency northern goshawk*

> ***conservation assessment. This assessment, prepared as part of the forest planning process, synthesized the best available scientific information related to goshawk conservation and provided management considerations for sustaining goshawk populations.***

The appellants contend that the goshawk standard was added at the last minute of the process and not analyzed for effect on ASQ or otherwise (NOA 0103, p. 107).

The FEIS (Appendix N, p. N-16) includes a discussion of the effects of the all additional standards and guidelines on the calculated ASQ. It states:

> ***Overall, the net effect of the additional habitat management measures discussed in this appendix are expected to be sufficiently small that recalculation of the ASQ for Alternative 11 as presented in the FEIS is not necessary.***
>
> ***Habitat management measures for the goshawk and marten will limit the use of clearcutting and require the use of alternative silvicultural techniques on a portion of the suitable timber land base, primarily on northern and central Prince of Wales Island and in certain other biogeographic provinces. Where applied and found necessary, the effect will be to approximately double the rotation age, and reduce the volume available for harvest in any time period by about half. Moreover, some of the alternative silvicultural techniques required in the marten and goshawk standards and guidelines have already been accounted for in ASQ calculations; these habitat management measures simply serve as additional guidance where such techniques may be necessary to address risk to marten and goshawks. Overall, the net reduction in available timber is expected to be small relative to the total ASQ for the Tongass.***

The Regional Forester had available and used this analysis information when making his decision.

Decision

My review of the record shows that all of the changes made to the S&G's in the 1997 Forest Plan are warranted and supported by current research and inventory information.

Furthermore, I have modified the 1997 Regional Forester's decision by making changes and additions to the S&G's for certain wildlife species, as noted in the enclosed 1999 ROD (Appendix B).

Federal Advisory Committee Act

The appellants contend that an agency may not rely on the work of an illegal advisory committee to support its administrative decisions (NOA 0103, p. 115; NOA 0107, pp. 51-53).

The appellants contend that the 1997 Forest Plan Risk Assessment Panels were established and utilized to give advice or recommendations to federal agencies and officers and are therefore subject to FACA (NOA 0103, p. 116; NOA 0107, pp. 39-43).

The appellants contend that Section 204 of the Unfunded Mandates Reform Act does not exempt the 1997 Forest Plan risk assessment panels from FACA (NOA 0103, p. 117; NOA 0107, pp. 48-51).

Discussion

Section 204 of the Unfunded Mandates Reform Act describes the process for receiving information from State, local, and Tribal governments. This section states:

Sec. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT

(A) In general, -Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, Local, and Tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(B) Meetings between State, Local, Tribal and Federal officers. The Federal Advisory Committee Act (5 U.S.C. APP.) Shall not apply to actions in support of intergovernmental communications where:

(1) Meetings are held exclusively between Federal officials and elected officers of State, Local, and Tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) Such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(C) Implementing guidelines. No later than 6 months after the data of enactment of this act, the president shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (A) and (B) consistent with applicable laws and regulations.

In a memorandum for the heads of departments and agencies dated September 21, 1995, the Office of Management and Budget issued guidelines and instructions for Implementing Section 204. In describing the level of consultation the guidelines and instructions state:

The scope of intergovernmental consultation should be based on common sense and be commensurate with the significance of the action being taken. The more costly, the more potentially disruptive, the more broadly applicable, the more controversial the proposed Federal intergovernmental mandate -- the more consultation there should be. An agency should decide the extent of its consultation on a case-by-case basis; a one-size-fits-all prescription is neither appropriate nor desirable.

In clarifying the exemption of Section 204(b), the guidelines and instructions state: "In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration."

With regard to the type of meetings covered by the exemption, the guidelines and instructions state:

The scope of meetings covered by the exemption should be construed broadly to include any meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus; exchanging views, information,

advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration.

In testimony given during the Oversight Hearing on the Tongass Land Management Plan on July 9, 1997, the Forest Service explained that the panel members were restricted to Federal employees and those that the Governor identified in order to meet the requirements of FACA.

In accordance with the regulations set forth in Section 204 (b)(1), the Governor of Alaska signed letters designating employees to act on his behalf. The letters are referenced in the record (Records, RS-D, TLMP 734; RS-D TLMP 366; and RS-D, TLMP 929). These designated individuals made up the risk panel assessment teams. The authority delegated by the Governor includes the following:

** Provide information to the Forest Service TLMP team.*
** Participate in Forest Service TLMP meetings.*
** Convey and discuss areas of state concern with the Forest Service TLMP team.*

The panel assessments were used to provide independent analyses related to the effects of the alternatives on particular resources or environmentally components (FEIS, p. 3-3). Panel assessments were used in the sections on Biodiversity, Fish, Wildlife, and Communities. The panels were designed to provide information on the relative risk that implementation of each alternative would pose to the continued persistence across the landscape of the species or resource in question.

Results of the Panel Assessments are part of the Project Record and were available for public review on request. They include:

Record Number	Description
RS-G-10-b, 1604	Bear Assessment
RS-G-10-b, 1605	Wolf Assessment
RS-G-10-b, 1606	Goshawk Assessment
RS-G-10-b, 1607	Mammal Assessment
RS-G-10-b, 1608	Marten Assessment
RS-G-23-b, 854	Social Economic Assessment
RS-G-8 1609	Fisheries and Riparian Assessment
RS-G-21-b 857	Old Growth

Additional documentation used in the panel process and included in the project record and available for public review on request includes:

Record Number	Description
RS-A, 1597	Summary of panel process and how to use results
RS-F, 1594	Evaluation of scientific information
RS-F, 1602	Selection of Alternatives for panels
RS-F, 1603	Summary of process for panels
RS-G, 540	Summary list of information provided to panels
RS-G, 541	Panel process description
RS-G, 543	Tongass information outline
RS-G, 553	Science assessments

RS-G, 556 HCA recommendations
RS-G-1--b, 1625 Materials sent to panel members

The FEIS (p. 3-3) describes the panel process:

> *Each panel included several scientists specializing in the species or resource being evaluated, a facilitator, a scribe, a local resource expert, and a silent observer. After presentations of local resource and planning information, panel members individually rated each alternative based on several possible outcomes prior to any discussion. Following these initial evaluations, the panel engaged in facilitated discussions of their ratings. These were intended to clarify the assignment of particular likelihood points, identify differing interpretations of available information, and point out knowledge gaps and how lack of information was handled by the evaluators. There was no attempt to force consensus; however, panelists were free to reassign likelihood points based on what they learned from the discussions.*

Decision

After my review of the record I find the Assessment Panels were convened in conformance with FACA and the Unfunded Mandates Reform Act. In addition, the panels did not attempt to arrive at consensus advice, but rather sought to gather information and views from individuals. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Market Demand (TTRA)

The appellants contend that the RSFEIS and 1997 ROD fail to "seek" to meet market demand, as required by TTRA section 101 (NOA 0107, p. 80; NOA 0098, p. 2; NOA 0103, p. 96) and that the social economic analysis failed to comply with TTRA (NOA 0103, p. 60).

Discussion

TTRA Requirements

The TTRA was created to amend the ANILCA, 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 (TTRA, Public Law 101-626).

Title I, Section 101 of the TTRA amends the ANILCA to state:

> *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.*

Section 101 clearly states that this provision is "subject to appropriations, other applicable law, and the requirements of the National Forest Management Act of 1976." In addition, it also clearly states that meeting demand is subject to being "consistent with providing for multiple use and sustained yield of all renewable forest resources."

In Alaska Forest Association Inc v. United States of America Case No. J94-007 CV (JKS), the plaintifs contended that Section 101 of TTRA imposes a duty on the Forest Service to make a determination of the market demand for timber products and attempt to meet that demand by making economically marketable old growth timber available for logging and ultimately for sale. The Ninth Circuit has made it clear that the Forest Service has no such duty. Market demand is simply one of many factors which the Forest Service is to consider within its discretion in determining whether to make timber in the Tongass available for sale.

Allowable Sale Quantity Requirements

In regard to the appellants contention on the determination of ASQ (NOA #107, p. 83); it should be noted in NFMA, 16 U.S.C. 1611(a), Congress required the Secretary to establish an ASQ or maximum amount of timber which could be commercially harvested over a decade:

> *The Secretary of Agriculture shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield bases: Provided, That in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: Provided further, That any such planned departure must be consistent with the multiple-use management objectives of the lands management plan . . .. In those cases where a forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or more forests for purposes of determining the sustained yield.*

The NFMA regulations define ASQ as the "quantity of timber that may be sold from the area of suitable timber covered by the forest plan for a time period specified by the plan (36 CFR 219.13)." Thus, ASQ is the maximum level of timber that may be sold during the first decade after plan approval. The 1997 Forest Plan ASQ is simply a ceiling on the level of timber that could be sold over a 10-year period taking into account other multiple-use values and compliance with the mandatory environmental protection standards and guidelines. This relationship between estimates of commodity productions such as ASQ and mandatory forest plan standards and guidelines was set forth in the Chief's letter of February 23, 1990:

> *There will continue to be professional challenges to produce timber and other outputs while meeting standards and guidelines. Monitoring and evaluations are essential activities to ensure both that the standards and guidelines have been properly set and that they are being met. There should be no doubt in anyone's mind about which takes precedence if there is a conflict between standards and guidelines and program outputs; we expect every project to be in full compliance with standards and guidelines set forth in Forest plans.*

The role of ASQ in national forest land and resource management plans was considered by the Eleventh Circuit court of Appeals in Region 8 Forest Service Timber Purchasers Council v. Alcock, 993 F.2d 800, 808 (11th Cir. 1993). The court ruled that "no right is conferred on [plaintiff] Timber Companies [under NFMA] to harvest a set amount of timber each year . . .. The Timber Companies have no right to compel the Forest Service to sell any future timber to them." The court noted that NFMA requires the Forest Service to develop a "planned timber sale program" (16 U.S.C. 1604 (f) (2)), but "limits the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained yield basis" (16 U.S.C. 1611 (a)).

Similarly, the Federal District Court for the Eastern District of California reviewed the method used to calculate the ASQ for the Sequoia National Forest Plan and noted that the "ASQ level set under a plan by no means commits the Forest to achieve the ASQ harvesting level in any given year . . .. The setting of management framework which assumes that many adjustments will be made over the term of the Plan, particularly when site-specific decisions are made. Periodic evaluations to assess the management direction proposed by the Plans are mandatory . . . [thus] there is an opportunity for amendment [of forest plans] where the monitoring discloses that current Plan standards are creating environmental concerns or reducing the productivity of the Forest" (Tulare County Audubon Society v. Espy, F-93-5374 Slip Opinion, pp. 13-14 (E.D. Cal. Sept. 10, 1993)).

Failure to Determine Market Demand

The appellant (NOA 0107, p. 81) contends the Forest Service has "failed to even determine what the annual and planning cycle market demand is for Tongass timber" and "rather than determining actual market demand during this process, the Planning Team relies on market projections and analyses without making any final determination of what the market demand is."

The Regional Forester (1997 ROD, p. 25) described some of the problems associated with demand estimates with the following statement:

> *Market demand is volatile; the projections done by the PNW Station scientists have changed considerably each time they have been updated. Different economists will often make different projections of future demand because they often make different assumptions about the future (see Brooks and Haynes, June 1994, Timber Products Output and Timber Harvests in Alaska: Projections for 1992- 1010, General Technical Report, PNW- GTR- 334). Demand also will be influenced by whether or not businesses choose to invest in new wood- processing industries in Southeast Alaska over the next decade. Such decisions will be determined in part by investors subjective evaluations of the certainty with which they can rely upon the Tongass as a reliable source of timber. We will continue to track market demand and to report on it in the Supply and Demand report we prepare annually pursuant to Section 706(a) of ANILCA.*

In the declaration by Frederick L. Norbury (Record RS-G-12-g, TLMP 1057, p. 16) his statements further clarify the Forest Service policy on the TTRA. He states:

> ***At no time during the Forest Plan process does the Regional Forester establish a single number or set of numbers representing an "official" demand level for the Tongass National Forest. In my judgement it would be pointless to do so. Future demand cannot be summarized so neatly.***

The appellant also contends (NOA 0107, p. 83) "in discussing determination of the ASQ and demand for Tongass timber, the Regional Forester makes no reference whatsoever to determining the ASQ and demand in accordance with TTRA Section 101."

Section 101 of the TTRA has no requirement for determining the ASQ. The NFMA regulations define the ASQ as the "quantity of timber that may be sold from the area of suitable timber covered by the forest plan for a time period specified by the plan" (36 CFR 219.13).

Demand Calculations

The appellants contend that the Forest Service has underestimated timber demand (NOA 0103, p. 96). The appellant cites the failure of the Forest Service to consider international markets, potential for new mill capacities which could occur, historic sale quantities, other demand studies, and miscellaneous factors which can affect ASQ.

The TTRA does not specify how demand shall be determined. In explaining the decision to utilize the Brooks/Haynes report, and the factors it considered, the FEIS (p. 3-262) states:

> ***Several economic consultants have projected the demand for Tongass timber in recent years, with varying results. The Alaska Region continues to use the projections of the Pacific Northwest Research Station (PNW Station) of the Forest Service as the most reliable and defensible estimates. The PNW Station projections take into account international markets for wood products, recent developments affecting demand in the Pacific Northwest and Canada, and local industry conditions and mill capacities.***
>
> ***The PNW Station projections are revised periodically. This year's revised estimates include consideration of recent changes in world pulp markets and closure of the Sitka pulp mill. The closure of this mill significantly affects the pulp wood component of demand. Sawlog demand is not similarly affected, and the Wrangell mill closure (the Wrangell mill is currently owned by Alaska Pulp Corporation) is not considered to be permanent (the sawlog market can support its reopening or replacement). It is too early to tell how the recently announced closure of the Ketchikan Pulp Mill will affect Tongass timber demand.***

Regarding the appellants' concern for the findings of other demand analyses, the FEIS (p. L-136) states:

> ***Research has been undertaken through the Pacific Northwest Experiment Station (Richard Haynes and David Brooks) and through an independent contract (Lloyd Irland). The Alaska Forest Association also independently undertook a study which was completed by Gruenfeld and Associates. The Forest Service believes the***

> ***Predictions made by Brooks and Haynes, 1997 are the most plausible for the coming 10 to 15 years.***

The FEIS (p. 3-262) describes in detail the results of the 1997 demand projections. This description includes projections for the next decade and a half (1997 to 2010) as well as yearly averages. The latest Brooks and Haynes report (Record, RS-G-23, TLMP 1650) was included in the project record and available for detailed review by the public.

Regarding the appellants' contention that the Forest Service has failed to take into account the effects of appeals, litigation and insufficient appropriations, the FEIS (p. 3-277) states:

> ***These factors, often termed 'falldown,' have been recognized at the Forest level, and the anticipated timber output adjusted appropriately . . . Other factors also contribute to differences between ASQ's and timber sales, such as budgets and legal challenges.***

Failure to "Seek to Meet" demand

The appellants contend that the Forest Service "failed to seek to meet that demand" and "did not promulgate any objective criteria in the RSDEIS or FEIS to describe what had to be done to "seek to provide" timber to meet the relevant market demands (NOA 0107, p. 81).

In the 1997 ROD, the Regional Forester directed the Region to develop a methodology to insure compliance with the "seek to meet market demand" standard established in the TTRA. On November 27, 1998, the Forest Service published in the Federal Register an announcement that a draft methodology, prepared by the Forest Service's Pacific Northwest Research Station, for evaluating market demand in order to meet the agency's obligation under the TTRA was available for review. As stated in the enclosed 1999 ROD, I have reviewed that methodology and conclude that it is an appropriate methodology for determining market demand for the purposes of implementing the "seek to meet market demand" language of TTRA. I recognize that the methodology is not the only possible methodology for compliance with the congressional directive. Pending receipt and analysis of the public comments on the draft methodology, the 1999 ROD does not make a final decision on which methodology will ultimately be chosen to meet the requirements of the TTRA.

TTRA Section 301(c)

The appellants contend that the constraints of section 301(c)(2) are not resolved or even adequately addressed in the FEIS (NOA 0107, p. 84).

The implementation of Section 301(c) of the TTRA is clarified in the response to comments FEIS (p. L-147) where it states:

> ***Unlike the 1991 Draft Supplement, this Supplement does not provide for specific constraints to directly calculate TTRA Proportionality. TTRA Proportionality is an implementation requirement for the KPC long-term contract and is beyond the scope of the Forest Plan. To insure that implementation can take place, the yield calculations for each alternative were based on scheduling the high, medium, and low old-growth volume classes evenly over the planning horizon. While this does not meet a strict***

interpretation of scheduling the volume harvested from volume classes 6 and 7 proportional to the high volume within each contiguous TLMP management area, it does provide enough flexibility in the amount of high and low volume scheduled to implement the TTRA proportional harvest requirement in any management area where KPC long-term contract harvest may occur.

Changes in Demand Projections

The appellants contend that "[i]n the Forest Plan process, and ultimately the Forest Plan, the Forest Service has seriously underestimated demand and, in turn, incorrectly determined supply, violating TTRA's requirement of seek-to-meet" (NOA 0103, p. 96).

The FEIS (p. 3-262) explains the factors considered in determining market demand and states:

> ***The market demand for Tongass timber is derived from a complex set of factors including Southeast Alaska's timber industry (mill) capacity, international timber markets, and available and projected supplies locally, nationally, and world-wide.***

The Regional Forester (1997 ROD, p. 25) identified the new demand projections as being considerably lower than those done in 1990 and 1994. He states:

> ***The differences are attributed to, among other things, expectations of reduced consumption in the principal markets for Alaska wood products and increased competition in those markets from other suppliers. They also consider the effects of the recent closures of the pulp mills operated by the Alaska Pulp Corporation and the Ketchikan Pulp Company.***

In the supplemental EIS evaluation, Appendix M (pp. M-1 to M-8), the effects of the KPC pulp mill shutdown and the 1997 Timber Demand Projections. It also reinforces the fact that decisions about how much timber to be offered each year are not made in the forest plan, but rather are the result of other decisions such as budget allocations, NEPA processes, and the response to timber offerings. Appendix M (p. M-6) further clarifies that:

> ***In the context of a broad-scale, long-term land and resource management plan revision, at a time when the timber demand is in a great deal of flux and uncertainty, the short-term demand information is not significant to the choice of alternatives. A forest plan is a long-term plan of sustainable management and is not significantly influenced by short-term market conditions.***

Decision

I find that the Regional Forester complied with the provisions of the NFMA and TTRA. The Record shows that the 1997 Forest Plan made a reasonable estimate of the timber demand for the Tongass National Forest and demonstrated a clear effort to "seek to meet demand" in accordance with TTRA. The annual timber sale offerings from the Tongass National Forest will be consistent with and not exceed the amount of timber for which there is demand as referred to in TTRA. Furthermore, in the 1999 ROD I directed that the Forest Service should not seek to offer timber in excess of actual market demand. As noted above, the Forest Service is developing a methodology for determining demand to ensure compliance with the "seek to meet market demand" standard established in the TTRA.

Wild and Scenic Rivers

The appellants contend that the Revised TLMP recommended designation of the Kegan River, Gokachin Creek River and Niblack Lake Systems (NOA 0103, pp. 142-151) is in violation of NEPA, the WSRA, and Forest Service regulations (NOA 0103, p. 123; NOA 0098, p. 12).

Background

Eligibility and Identification of Outstandingly Remarkable Values

The WSRA of 1968, describes the requirements used to determine a river's eligibility for designation in the National Wild and Scenic Rivers System. As stated by the WSRA Section 1 (b) as amended, "[i]t is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in their free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

These "outstandingly remarkable" values should be a unique or exceptional representation for the area studied or within a geographic province when compared to other rivers (Record RS-G-6-a, TLMP 443). "For study purposes, the Act requires that the evaluation of a river's eligibility consider, as a minimum, the area within one-fourth mile of either side of the high water mark of the river. However, features outside this corridor may be considered if their inclusion is essential for protection of the outstandingly remarkable values of the river" (FEIS Appendix E, p. E-4).

The process for adding rivers to the National System includes three steps. Eligibility is the first step in the assessment of a river segment for potential inclusion in the National Wild and Scenic River System. As part of the forest planning process, river study teams determine eligibility for wild and scenic river designation by applying the criteria in sections 1(b) and 2(b) of the WSRA and the procedures established in the FSH (1909.12, 8.21). The FSH states that "[t]he determination that a river area contains 'outstandingly remarkable' values is a professional judgment on the part of the study team" (FSH 1909.12, 8.21c)

The second step, results in the classification of the study river as "wild," "scenic," or "recreational." "Wild river areas are defined as "those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive in character and waters unpolluted. These represent vestiges of primitive America." "Scenic" river areas are defined as "those rivers or sections of rivers that are free of impoundments with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads." "Recreational" river areas are defined as those rivers or sections of rivers that are readily accessible by road or railroad, that may have undergone some development along their shorelines and that may have undergone some impoundment or diversion in the past" (WSRA Section 2 (b)(1) as

amended). If a study river is determined to be not eligible for inclusion in the System, no further evaluations are necessary or appropriate.

Suitability Determinations

For those rivers which the study team finds eligible the third and final step is a determination of whether the river is suitable for inclusion in the national system. Suitability refers to "how designation of a river fits the overall management for the area, and considers the trade-offs with other resource values" (FEIS, p. 3-326). "The land manager s estimate of the worthiness of the river to be recommended as a component of the national system, as well as mixed land ownership, state and local government interests and the value of other resources and potential uses, may affect the decision to recommend a river as suitable" (FEIS, p. 3-326).

Once these factors have been fully evaluated, a determination is made on whether the river segment should or should not be recommended for designation as part of the System. As provided at FSH 1909.12, 8.41(2), wild and scenic river suitability determinations conducted as part of the forest planning process are:

> *. . . a preliminary administrative recommendation for the wild and scenic designation . . . that will receive further review and possible modification by the Chief of the Forest Service, Secretary of Agriculture, and the President of the United States. The Congress has reserved the authority to make final decisions on designation of rivers as part of the National Wild and Scenic Rivers System.*

Discussion

Arbitrary and Capricious

The appellants contend that the Forest Service's wild scenic river recommendations of the Kegan, Niblack and Gokachin rivers were arbitrary and capricious (NOA 0103, pp. 126 and 143).

All rivers and streams on the Tongass National Forest were examined and evaluated to determine their eligibility, classification, and suitability (by alternative). Chapter 3 of the 1997 Forest Plan, clearly shows the river systems "will be recommended to Congress for inclusion in the National Wild and Scenic Rivers System" (1997 Forest Plan, p. 3-3). The Regional Forester's decision to recommend 32 rivers for designation and findings of Appendix A of the 1997 ROD supported the initial statement in the 1997 Forest Plan which includes Kegan River, Gokachin Creek, and Niblack Systems under Alternative 11 of the 1997 Forest Plan. Rivers were also recommended for inclusion in the selected alternative based on public comment to the RSDEIS (Record RS-G-6, TLMP 1048 and FEIS, p. 3-338). The Draft and Final Environmental Impact Statements, and related opportunities for public input, were carried out in full compliance with NEPA procedures.

Hundreds of rivers were considered, and several screening processes were used to identify those with truly outstandingly remarkable values (FEIS Appendix E, p. E-4). This examination was thorough and rigorous, and in compliance with the WSRA requirements noted above. The results of the evaluation determined 112 rivers were eligible for consideration for inclusion in the

National Wild and Scenic Rivers System. The Tongass National Forest correctly followed and adhered to the process to determine eligibility of the rivers.

A suitability analysis was conducted on all 112 eligible rivers, including Kegan River, Gokachin Creek and Niblack Lakes and Streams, for designation to the National Wild and Scenic Rivers System. The results of the suitability analysis for the rivers in question appear in the FEIS (Appendix E, pp. E-412 to E-415, E-438 to E-441, and E-378 to E-384). Analysis clearly was done, which led to conclusions which were not arbitrary and capricious. After his careful review of the suitability analysis for all eligible rivers, the Regional Forester agreed that the 112 rivers in "whole or in part are eligible for designation as part of the National Wild and Scenic Rivers System" (1997 ROD, p. 9). The Regional forester's final recommendation included 32 rivers for designation to the National Wild and Scenic Rivers System (1997 ROD, p. 9).

Modification to Alternative 11

The appellants contend the Forest Service recommended wild and scenic designation of four additional river systems by way of the May 1997 Errata and these changes were not in response to public comments (NOA 0103, p. 127).

Modification of a preferred alternative in the 1997 ROD is a common practice. The regulations at 40 CFR 1503.4 state:

> *(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:*
> *(1) Modify alternatives including the proposed action.*

The appellants contend that the designations were not based on public comment. While public interest in individual rivers, either for or against designation, was a factor in the final selections, the Forest Supervisors were also concerned with "how rare, superior, or unique the identified values were for individual rivers, and what effects long-term management would have on those values if a river were not designated" (1997 ROD Appendix A, p. A-1). "The Forest Supervisors were equally concerned with resource trade-offs, and potential conflicts with other Forest uses" (1997 ROD Appendix A, p. A-1).

As noted above, the Regional Forester's decided to recommend 32 rivers for designation. Findings of Appendix A of the 1997 ROD supported the initial statement in the 1997 Forest Plan, which included Kegan River, Gokachin Creek, and Niblack Systems. Rivers were also recommended for inclusion in the selected alternative based on public comment to the RSDEIS (Record RS-G-6, TLMP 1048 and FEIS, p. 3-338).

The Tongass National Forest used the correct process to determine the eligibility of the 112 rivers. The Regional Forester also concurred with the process used to determine the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System and he agreed that 112 rivers, in "whole or in part, are eligible for designation as part of the National Wild and Scenic Rivers System" (1997

ROD, p. 9). The Regional Forester's final recommendation included 32 rivers for designation to the National Wild and Scenic Rivers System (1997 ROD, p. 9).

If a river is considered eligible and suitable it may be recommended for designation as a wild, scenic, or recreation river (FEIS, p. 3-326). It is important to note that the rivers identified in the selected alternative of the 1997 Forest Plan and in the Regional Forester's decision, will not necessarily be included in the Wild and Scenic Rivers System. The Regional Forester clearly explained that, "[t]hese recommendations are preliminary administrative recommendations that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. Congressional action is necessary to designate rivers as part of the National Wild and Scenic Rivers System" (1997 ROD, p. 9).

Minerals LUD

The appellants contend that the Forest Service arbitrarily and capriciously abandoned the Minerals LUD for the Kegan River, Gokachin Creek and Niblack Areas (NOA 0103, p. 129). The appellants also contend that the Forest Service did not explain anywhere in the FEIS or the Errata, the basis for its apparent decision to modify the LUD classifications applicable to the Kegan River, Gokachin Creek and Niblack areas. They further contend that the effects of WSRA designation on existing Activities in the proposed river corridors were not disclosed (NOA 0103, p. 129).

The designation of a river as a component of the National Wild and Scenic Rivers System can affect the management of various resources (FEIS, p. 3-336). On the Tongass National Forest, rivers that have been recommended for wild river designation, are managed according to the goals, objectives, and desired condition of the Wild River LUD. "The Wild and Scenic Rivers Act provides that the study boundary includes, at a minimum, the area within 1/4 mile either side of the ordinary high water mark of the river. Final boundaries can and do vary from this minimum, but generally follow the 1/4 mile guideline. Congressional designation as a Wild, Scenic or Recreational River in Alaska might result in the establishment of a Conservation System Unit as defined by ANILCA" (FEIS, p. 3-336).

The Regional Forester correctly interpreted the WSRA in his analysis of Forest lands open to minerals exploration and development. In his decision he explained, "[s]hould Congress designate portions of rivers as 'Wild,' they will be withdrawn from mineral entry at that time. All withdrawals are subject to valid existing rights" (1997 ROD, p. 4).

The appellant's contention that the effects of WSRA designation on existing activities were not disclosed in the FEIS is incorrect. This matter was addressed in numerous locations in the FEIS and has been addressed by the revised FEIS. The revised FEIS discusses some of the potential effects of designation of a wild river as they relate to concerns that designation of wild and scenic rivers would limit the future development of mineral resources important to Alaska's economy. If mining rights exist, "operating costs for existing mining activities in Wild river areas could increase due to requirements to minimize impact on the river values" (FEIS, p. 3-330). "In Scenic and Recreational River areas which remain open to mineral entry, operating costs could also increase as operating plans would be designed to reduce effects on the outstanding values identified" (FEIS, p. 3-330).

Additional evidence is found on page 3-336 of the FEIS where it states:

> ***[s]cheduled commercial timber harvest is not allowed, and outputs of timber from tentatively suitable forest lands are foregone. Construction of major recreation facilities, roads, powerlines and other features are not allowed. However, if designated as a Conservation System Unit under ANILCA, Title XI defines a process whereby transportation and utility corridors may be allowed. The potential for hydroelectric power generation is also foregone.***

The FEIS also explained that "[s]ome opportunities for fish and wildlife habitat enhancement would also likely be foregone," and the rights of landowners within a wild river area would not be affected by designation, "except perhaps access constraints" (FEIS, p. 3-336).

Range of Alternatives

The appellants contend that the WSRA recommendations of the Kegan River, Niblack and Gokachin systems were not encompassed within the range of alternatives that the public could have reasonably believed were under Forest Service consideration for selection in the 1997 ROD (NOA 0103, pp. 130, 148).

The FEIS states that one of the factors in the suitability reports was consideration of a range of alternatives for managing the river, whether recommended for designation or not. The 112 rivers, with numerous segments, and three possible classifications (wild, scenic, or recreational), presented hundreds of possibilities for structuring alternatives at the forest plan level. By considering the range of alternatives for managing a river, the river could be depicted in its current, most undeveloped condition in one alternative, and resource opportunities and state and local infrastructure needs could be recognized in other alternatives. Thus the "alternatives were simply a starting point for comparing rivers, values, resource trade-offs, and opportunities" (FEIS, pp. 3-337 through 3-338).

Assigning a river to a given alternative was a reflection of the alternative theme, recognizing other possible combinations for a particular river might exist (FEIS, p. 3-338). As with all of the eligible streams and rivers, a full analysis was conducted on Kegan River, Gokachin Creek and Niblack Systems. Kegan River, Gokachin Creek and Niblack systems were included in Alternative 1 in Appendix E of the FEIS (Appendix E, p. E-412 through E-415, E-438 through E-441, and E-378 through E-382). Alternative 1 reflects a non-commodity, natural condition emphasis. All 112 eligible rivers totaling 1,394 miles were included in this alternative at their highest level of eligibility (FEIS, p. 3-338).

Chapter 3 of the 1997 Forest Plan, page 3-3, clearly shows that Kegan River, and Niblack and Gokachin Systems "will be recommended to Congress for inclusion in the National Wild and Scenic Rivers System." The Regional Forester's decision to recommend 32 rivers for designation and findings of Appendix A of the 1997 ROD also supported the initial statement in the 1997 Forest Plan which includes Kegan River, Gokachin Creek and Niblack Systems under Alternative 11 of the 1997 Revised Forest Plan. Rivers were also recommended for inclusion in the selected alternative based on public comment to the RSDEIS (Record RS-G-6, TLMP 1048 and FEIS, p. 3-338).

Since these rivers were included in Alternative 1 of the 1997 Forest Plan, they were within the range of alternatives considered and disclosed. The Regional Forester was in compliance with NEPA.

Outdated Information

The appellants contend the Forest Service arbitrarily and capriciously relied on outdated and incorrect data in determining the eligibility and suitability of the Kegan River, and Niblack Systems for inclusion under WSRA (NOA 0103, p. 132).

The evaluation process used by the Forest Service to determine the eligibility and suitability of rivers and streams on the Tongass National Forest, employed the results from an inventory of the Forest conducted by Forest Service personnel, field personnel of the ADF&G and other individuals with knowledge of river resources. The inventory also included information sources, such as the Catalogue of Waters Important to Anadromous Fish (maintained by the ADF&G, Habitat Division), the 1979 Forest Plan Value Comparison Unit (watershed) ratings for fish, wildlife and recreation, the ADF&G 1983 Sport Fish Habitat Improvement Program ratings of streams, inventoried potential Research Natural Areas, and other Special Management Area inventories (FEIS, p. 3-331).

Due to the remoteness of many of the rivers, data on some aspects of a river, such as recreation use, was extremely limited. As stated on page 3-326 of the FEIS, "to the extent such information was available to the Forest Service, it was considered in the suitability studies." If streams and rivers appeared to have potential outstandingly remarkable values, the Forest followed the processes outlined in Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Federal Register 39454 (September 7, 1982) and in Chapter 8 of Forest Service Handbook (FSH) 1909.12, before eligibility was determined (FEIS, p. 3-331).

In addition, before a river was determined to be eligible, the general criteria used for identifying 'outstandingly remarkable' values were reviewed by professionals of several Federal and State Agencies including the National Park Service, FWS, Bureau of Land Management, ADF&G, Alaska Department of Natural Resources and its Division of Parks and Outdoor Recreation (FEIS, p. 3-334). As discussed, the Forest Service used not only its own data to determine a river's eligibility, but also consulted expertise outside the agency before a river was recommended for wild or scenic river designation.

Failure to consult with landowners

The appellants contend that the 1997 Forest Plan Planning Team failed to consult with Abacus which resulted in a failure to disclose and assess the consequences that WSRA designation will have on existing activities in the proposed river corridors (NOA 0103, p. 137) and failure to consult with Ketchikan Pulp Company about the Gokachin River (NOA 0103, p. 150).

The Forest Service clearly identified the minerals potential as well as patented and unpatented mining claims within these proposed areas (FEIS Appendix E, pp. E-414, E-439, E-440, E-380 and E-381). The tracts of land owned by the Ketchikan Pulp Company within the Gokachin area are specifically identified in the suitability analysis in the FEIS (p. E-380).

In addition, interested and affected groups, agencies and individuals were given numerous opportunities to raise concerns and otherwise participate in the revision process, including the DEIS comment period and the RSDEIS comment period. Neither NEPA nor NFMA requires more.

Inconsistent interpretation of Wild and Scenic River Statute

The appellants contend that the Forest Service's interpretation of WSRA was generally inconsistent with the statute thereby resulting in overbroad and impermissible recommendations (NOA 0103, p. 137). The appellant's concern is associated with WSRA eligibility ". . . premised on there being a (1) river,
(2) that is free flowing, and (3) the river and its immediate environment must possess one or more 'outstandingly remarkable' values" (NOA 0103, p. 137). Related to this, the appellant contends that the Forest Service misinterpreted the meaning of "river" in its analysis of the Gokachin river which the appellants contend have no outstanding features (NOA 0103, pp. 144-148).

The Forest Service conducted a suitability analysis on all 112 eligible rivers, including Kegan River, Gokachin Creek and Niblack Lakes and Streams, for designation to the National Wild and Scenic Rivers System. The results of the suitability analysis for the rivers in question appear in the FEIS Appendix E (pp. E-412 to E-415, E-438 to E-441, and E-378 to E-384). The analysis was conducted in accordance with FSH 1909.12. The process, criteria, and data utilized are detailed in the Record (RS-G-6-a, TLMP 443).

The term "outstandingly remarkable" has not been defined with absolute criteria. "The determination of what features area outstandingly remarkable is largely a matter of professional judgement by the federal agency planners conducting the Wild and Scenic River study, although they may consult with recognized resource experts outside the agency. Any river, however, that has unique biological or geological characteristics, critical wildlife habitat, outstanding recreation, important historic or prehistoric sites, or is highly representative of a geographic area, may be a good candidate for the system" (Record RS-G-6-a, TLMP 443). As mentioned earlier, the FSH 1909.12, section 8.21c makes the statement: "[t]he determination that a river area contains 'outstandingly remarkable' values is a professional judgment on the part of the study team."

The analysis conducted on the Gokachin and documented in the FEIS Appendix E (pp. E-378 to E-382) describes the unique features of the Gokachin. In addition to the 19 high quality watersheds identified by the ADF&G, the FEIS (p. E-379) states: "Cultural/historical values in the river system are significant. Several prehistoric use sites are located along Fish Creek and a fish weir and campsite are nearby."

It is also stated in the FEIS (p. E-379) that "[a]ll 30 miles of the Gokachin--Mirrow--Low--Fish Creek system meet guidelines for the Wild River classification."

Restriction of Access

The appellants contend that the recommendation to designate three rivers as components of the wild and scenic river system restricts access to private lands (NOA 0098, p. 12).

Transportation and land ownership were two of the many factors analyzed for all proposed wild and scenic river nominations and is included in the FEIS Appendix E. The Region clearly identified conflicts and resource potentials which would be forgone or limited should the proposed river be designated. Transportation and access for the Gokachin is discussed in Appendix E of the FEIS on

page E-380. Transportation and access for the Niblack is discussed in Appendix E of the FEIS (p. E-440). Transportation and access for the Kegan is discussed in Appendix E of the FEIS on page E-414.

These are only recommended and thus cannot limit or constrain access.

If, however, a river eventually is designated as wild, Congressional designation results in the area being withdrawn from mineral entry. In addition, "[s]cheduled commercial timber harvest is not allowed, and outputs of timber from tentatively suitable forest lands are foregone. Construction of major recreation facilities, roads, powerlines and other features are not allowed. However, if designated as a Conservation System Unit under ANILCA, Title XI defines a process whereby transporation and utility corridores may be allowed. The potential for hydroelectric power generation is also foregone" (FEIS,
p. 3-336). The FEIS also explained that "[s]ome opportunities for fish and wildlife habitat enhancement would also likely be foregone," and that "Congressional designation would not affect the rights of landowners within a Wild River area except perhaps access constraints" (FEIS, p. 3-336).

On November 16, 1998, a Decision Notice (DN) and Finding of No Significant Impact (FONSI) was issued by the Acting Tongass National Forest Supervisor, entitled "Niblack Lakes and Streams Forest Plan Amendment." The decision was to ". . . use a non-significant Forest Plan amendment to change the Wild River Land Use Designation to the same land use designations that are adjacent to the river corridor. This includes Timber Production, Old Growth Habitat, and Minerals Land Use designations." Also, the DN indicated that "[t]he Niblack Lakes and Streams system will not be recommended to Congress for addition to the National Wild and Scenic Rivers System."

The rationale for the DN was that "[t]he Niblack Lakes and Streams Wild River Land Use Designation and future recommendation to Congress as a Wild River addition to the National Wild and Scenic Rivers System was based on incorrect information. This decision and Forest Plan amendment will change the LUD's and rescind the recommendation to Congress, thus correcting the error and adding credibility to the overall Wild and Scenic River strategy included in the Forest Plan. The decision takes into account the 70+ foot barrier to anadromous fish less than 100 yards from saltwater which negates the reputed high anadromous fisheries values of the Niblack system; recognizes that other representative stream and lake systems are available in the area to fully represent anadromous fisheries and other values; and, the perceived restrictions to mineral exploration and development are eased. The fisheries values which are present will be protected through application of the Old Growth Habitat LUD on the lower segment and Forest Plan Riparian Standards and Guidelines in the headwaters" (Tongass National Forest DN and FONSI on Niblack Lakes and Streams Forest Plan Amendment of 11/16/98).

Decision

After my review of the record, I find the evaluation process used by the Tongass National Forest to determine eligibility and suitability of rivers recommended for designation to the Wild and Scenic Rivers System is consistent with law, regulation, and policy, including: the WSRA, the Final Revised Guidelines for Eligibility, Classification and Management of Rivers Areas, 47 Federal Register 39454

(Sept. 7, 1982), Chapter 8 of the FSH, and the findings of Federal and State agency professionals. As such, the evaluation process was not arbitrary and capricious.

However, as discussed previously, the "Niblack Lakes and Streams Forest Plan Amendment" of November 16, 1998 indicates that the Niblack Lakes and Streams system will not be recommended to Congress for addition to the National Wild and Scenic Rivers System.

Bradfield Canal

The appellants contend the Forest Service has arbitrarily excluded the Bradfield Canal Road Corridor from the 1997 Forest Plan Transportation and Utility System LUD in violation of NEPA and the APA (NOA 0103, p. 151).

The appellants contend that the Bradfield Canal Road Corridor was included in the Transportation and Utility Systems LUD in all action alternatives until being removed in the FEIS and 1997 ROD and as such the public could not meaningfully participate in the NEPA process and that the justification for exclusion is inadequate (NOA 0103, p. 152).

Discussion

In response to public comments (FEIS Appendix L, p. L-161) the Region clarified the rationale for excluding the Bradfield Canal. It states:

> *Alternatives 2-7 & 10 allocate lands to the Transportation and Utility Systems Land Use Designation for the Bradfield Canal/Eagle River areas and the Tyee/Swan Lake intertie project. The revised Forest Plan (alternative 11) allocates the Tyee/Swan Lake intertie, but not the Bradfield Canal road corridor. The Bradfield Canal was not allocated because of the low probability of construction and the potential environmental consequences of the road corridor. However, if at some point in the future the Bradfield proposed corridor became feasible and desirable, the Forest Plan and ANILCA would allow the construction of the route.*

In response to a comment urging the Forest Service to "[r]ecognize and don't restrict future development of the Bradfield Canal Resource Road and the Tyee Lake/Swan Lake Power Intertie and Transportation Project" (FEIS Appendix L, p. L-263) the Region explains:

> *Some of the potential road and utility systems mentioned in the comments have been assigned the Transportation and Utility Systems LUD to recognize this potential. All of the land use designations in the revised Forest Plan allow, at a minimum, access through them for these types of developments, even Wilderness (which in Alaska has some special exceptions under the Alaska National Interest Lands Conservation Act). Some LUD's (such as Wilderness or Remote Recreation) encourage the use of alternative routes and require that these be evaluated first. In several areas (VCU's 511- 513 and 518, for instance) the Semi- remote Recreation LUD was selected for all or part of the area, rather than the Remote Recreation LUD, to be more compatible with possible future road or utility development, while at the same time maintaining a natural, undisturbed recreation setting. The Minerals LUD is not applied to this area. Roadless Area 207 covers a large area on both sides of the Canal: it has Modified Landscape along the Canal, with Remote and Semi- remote Recreation in the north, Timber Production in the south. Wildlife Analysis Area 1813 contains a mixture of Timber Production and Semi- remote Recreation; Area 1814 contains Remote and Semi- remote Recreation, Timber Production and Modified Landscape. In addition, whenever the LUD selected for an area allows development activities, the Riparian standards and guidelines apply to all streams, and the Beach and Estuary Fringe standards and guidelines apply to all beach and estuary shoreline areas.*

The FEIS (p. 3-170) includes clarification of the possibility for future development of the Bradfield Canal. It states:

> *Should any major road or power transmission corridor study be undertaken, appropriate site-specific environmental analysis would occur. At this time, the Juneau-Skagway corridor, Swan-Tyee Power Intertie, and the East Bradfield Canal corridor are the most likely corridors to be developed.*

In response to your concern that the public could not meaningfully participate in the NEPA process because there was no expectation that Alternative 1 would be selected (NOA 0103, p. 151), it should be noted that all alternatives considered in detail during the revision process are considered to be reasonable alternatives. The Regional Forester (1997 ROD, p. 11) explained:

> *A total of 34 alternatives have been discussed in the environmental impact statements associated with the Forest Plan. Some of these alternatives have been carried from one EIS to another and refined in response to public comments, new information, or changing circumstances.*

Alternatives 1 and 9 did not apply the Transportation and Utility Systems LUD to the Bradfield Canal Corridor (FEIS, p. 3-310) and thus provided an effects analysis of no Transportation and Utility Systems LUD for the Regional Forester to consider.

Decision

After my review of the record I find the rationale for changing the LUD for this area, and the provisions for future modification should the need arise, are adequate. Exclusion of the corridor in alternatives 1 and 9 of the 1997 Revised Forest Plan provided opportunity for public comment and analysis consistent with NEPA. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Alternative Analysis

The appellants contend the draft preferred Alternative was not included, analyzed and compared to other alternatives in the RSDEIS as required by 36 CFR 219.12(i) and (h), 40 CFR 1502.6, 1502.14, and 1502.16 (NOA 0107, p. 21; NOA 0097, p. 60).

Discussion

The planning regulations summarize the evaluation of alternatives (36 CFR 219.12 (h)). It states:

> *Using planning criteria, the interdisciplinary team shall evaluate the significant physical, biological, economic, and social effects of each management alternative that is considered in detail. The evaluation shall include a comparative analysis of the aggregate effects of the management alternatives and shall compare present net value, social and economic impacts, outputs of goods and services, and overall protection and enhancement of environmental resources.*

The planning regulations describe the process for recommending a preferred alternative (36 CFR 219.12(i)) and states: "The Forest Supervisor shall review the interdisciplinary team's evaluation and shall recommend to the Regional Forester a preferred alternative to be identified in the draft environmental impact statement and displayed as the proposed plan."

The NEPA regulations describe the identification of the preferred alternative (40 CFR 1502.14). It states: "Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft

statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference."

The NEPA regulations describe the evaluation of environmental consequences (40 CFR 1502.16). It states in part: "The discussion will include the environmental impacts of the alternatives including the proposed action."

The regulations cited by the appellants and listed above describe the format for recommending a preferred alternative. While one interpretation of these regulations indicates that the preferred alternative should be identified as such within the pages of the document, the regulations simply state that the preferred alternative shall be identified. The Regional Forester did just that in his cover letter. The letter accompanying the RSDEIS (Record RS-O TLMP 1510, p. 3) clearly describes the selection of the preferred alternative and states: "Using the nine key criteria listed above, we have chosen Alternative 3, with three minor modifications, as our preferred alternative."

The same letter (p. 11) summarized the effects with the following statement: "We expect the effects of our preferred alternative to be essentially the same as those for Alternative 3, except for any differences that result from the three changes in management direction."

A full summary of the changes to Alternative 3 and their effects are described in the letter accompanying the RSDEIS (Record RS-O TLMP 1510, pp. 11-12).

The record provides substantial analysis of the preferred alternative (Record RS-B TLMP 822). This document presented updated tables and figures from the RSDEIS to include the modified preferred alternative data for comparison purposes. Review of this document substantiates the Forest Supervisor's statement that the effects of the preferred alternative are essentially the same as those for Alternative 3.

A response to comment in the FEIS (FEIS Appendix L, p. L-71) clarified the analysis of the preferred alternative with the following response:

> *The Revised Supplement Preferred Alternative was a variation of Alternative 3 from that document, and had very similar effects for most resources. The differences in the Preferred were discussed in the Forest Supervisor's letter, and all EIS tables were updated in a separate summary document circulated shortly after mailing of the RSDEIS to include the Preferred. In the FEIS this same alternative is analyzed in detail as Alternative 10.*

The Regional Forester clearly described the alternatives considered during the revision process including the Preferred Alternative in the 1997 ROD (p. 11):

> *Over the course of planning for the Forest Plan, four EIS's or supplements to EIS's have been prepared and distributed: a Draft EIS in 1991, a Supplement to the Draft EIS (SDEIS) in 1991, a Revised Supplement to the Draft (RSDEIS) in 1996, and a Final EIS in 1997. In the Draft EIS, seven alternatives and three additional variations (based on three alternatives from among the seven) were considered in detail. An eighth alternative, the Preferred Alternative was a combination of some of these and*

was described separately. For the SDEIS, five alternatives, including one preferred by the Forest Supervisors, were considered in detail. The body of the RSDEIS analyzed nine alternatives in detail, and the Forest Supervisors identified a modified version of one of these as the Preferred Alternative in the cover letter for the RSDEIS. Of these ten alternatives, nine were considered in detail in the Final EIS. In addition, modifications were made to the Forest Supervisors' Preferred Alternative in response to public comments and additional analysis. That alternative, the Preferred Alternative in the Final EIS, is displayed as Alternative 11 and discussed in detail. I am selecting Alternative 11, as modified in this Record of Decision, as the revised Forest Plan for the Tongass National Forest.

A total of 34 alternatives have been discussed in the environmental impact statements associated with the Forest Plan. Some of these alternatives have been carried from one EIS to another and refined in response to public comments, new information, or changing circumstances. The Final EIS (pages 2- 8 to 2- 24) describes the evolution of the ten alternatives considered in detail in the Final EIS. The various components of the wide range of alternatives are detailed at pages 2-11 through 2-62 of the Final EIS.

This contention is further clarified in the FEIS response to comments (Appendix L, p. L-70) where it states:

It is the Forest Supervisors' responsibility to select a Preferred Alternative for a draft EIS, and to recommend a final alternative to the Regional Forester. The Forest Supervisors were closely involved in the development of the alternatives by the IDT and subsequent analysis of those alternatives. The Forest Supervisors based their preferred on this analysis, modifying one of the original alternatives somewhat.

Modification of a preferred alternative as in the 1997 ROD is a common practice. The regulations at 40 CFR 1503.4 state: "(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to: (1) Modify alternatives including the proposed action."

Decision

After my review of the record, I find the Regional Forester's identification and display of the preferred alternative was consistent with the NFMA implementing regulations (36 CFR 219) and NEPA.

As discussed in other sections, I have modified Alternative 11 to reduce the level of risk and uncertainty for ensuring environmental protection (see enclosed 1999 ROD Rationale for Decision section).

ANCSA Encroachment

The appellants contend the plan ignores the rights reserved under ANCSA to Natives by ignoring "ANCSA reservations, and incorporats Native lands into wild and scenic river nominations and other land classifications" (NOA 0098, p. 15). The appellant specifically contends the area proposed for Wild River Status known as Essowah Lakes, includes a portion of Sealaska surface and subsurface ownership and should not be considered part of the Tongass Forest land base until all native selections under ANCSA are complete (NOA 0098, p. 12).

Discussion

A summary of the status of the ANCSA is found in the FEIS (p. 3-87). It states:

> *The Alaska Native Claims Settlement Act of 1971 (ANCSA) provided for conveyance of 23,040 acres of land to each of the ten Native village corporations and two urban corporations located in Southeast Alaska, additional acres to the Regional corporation (Sealaska), and up to 160 acres to Native individuals who had occupied that land as a primary place of residence on August 31, 1971. As of October 1995 approximately 544,400 of a total of approximately 560,700 acres had been conveyed.*

The Regional Forester recognized the need to address native selections with suitability analyses and standards and guidelines. The 1997 Forest Plan (p. 4-28) established standards and guidelines for managing land use designations encumbered by Native selections until these lands are either conveyed into private ownership, or they revert back to unencumbered National Forest System land.

43 U.S.C. 1621 (l) provides that until lands are actually conveyed, the lands shall be subject to administration by the Secretary under applicable laws and regulations.

With respect to wild and scenic rivers designation, the process for adding rivers to the National system is described in the FEIS (pp. 3-325 to 3-326) and is summarized as follows:

> *First, there is a determination of eligibility; to be eligible the river must be free-flowing and must have at least one outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or ecological value. Second, the river or its segments are classified according to the criteria in the Wild and Scenic Rivers Act. The third step is the determination that a river is suitable for inclusion in the national system. Suitability refers to how designation of a river fits the overall management for the area, and considers the trade-offs with other resource values including mixed land ownership, state and local government interests and the value of other resources and potential uses. Finally, if a river is considered eligible and suitable it may be recommended by the land-managing agency for designation as a Wild, Scenic or Recreational River. The preliminary administrative recommendation is forwarded to the Chief of the Forest Service by the Regional Forester as part of the approved Forest Plan. Congress then makes a Wild and Scenic River designation.*

The Regional Forester further clarified this process in the 1997 ROD (p. 9) where he states:

> *The 32 eligible rivers recommended for inclusion in the National Wild and Scenic Rivers System is a preliminary administrative recommendation that will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States.*

Additional clarification of the wild and scenic river designation process is found in the response to comments in the FEIS Appendix L (pp. L-165 to L-172).

The Essowah Lakes and Streams system includes five major lakes, several smaller lakes, and five streams. It is the only eligible stream and lake system on the outer islands of the Southern Islands Geographic Province. It offers excellent fishing for trout and four species of salmon, provides wintering habitat for trumpeter swans, serves as a stopover for migratory birds, and has outstanding scenic values (1997 ROD, p. A-7).

A complete suitability analysis of the Essowah Lakes and Streams is found in the FEIS (pp. E-368 to E-372). This analysis (FEIS, p. E-370) notes that the northern 1-1/2 mile of river corridor is included in a Native land selection, and that the area and adjacent forest land is encumbered by a Klukwan and Sealaska Corporation selection. The FEIS acknowledged the likelihood of timber harvest if the land is conveyed.

Decision

My review of the record shows that native selections were considered and provided for during the suitability analysis and S&G's development. I find the wild and scenic river analysis was consistent with ANCSA and the WSRA. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Site-Specific Modifications

The appellants contend that the plan did not make provision for efficient and site specific modifications of the plan to address their issues (NOA 0098, p. 15).

Discussion

The 1997 Forest Plan (pp. 5-1 to 5-4) describes the role of the forest plan and the implementation process. In summary, planning for units of the National Forest System includes two levels of decision making. The first level is the forest plan which provides the broad, programmatic direction to manage the resources and uses of the National Forest. The second level are the project level decisions which implement the plan. Project level decisions often identify needed changes to a forest plan as a result of detailed site specific analysis.

The 1997 Forest Plan (pp. 5-2 to 5-4) also describes the process and procedures for amending the 1997 Forest Plan. During plan implementation, the need to amend the 1997 Forest Plan may result from the findings of monitoring and evaluation, administrative appeal decisions, planning errors, or changes in physical, biological, social or economic conditions.

The primary method for modifying the 1997 Forest Plan is the Monitoring and Evaluation Plan in Chapter 6 of the 1997 Forest Plan. The purpose of the Monitoring Plan is described at (1997 Forest Plan, p. 6-1) and stated:

> *Monitoring and evaluation comprise an essential feedback mechanism within an adaptive management framework to keep the Plan dynamic and responsive to changing conditions. The evaluation process also provides the feedback that triggers corrective*

action and the adjustment of plans and budgets, or both, so that they are realistic and being adhered to.

Decision

After my review of the record, I find that the 1997 Forest Plan contains adequate provisions for modifying the 1997 Forest Plan consistent with NFMA and NEPA regulations. Modifications may be made during site-specific project analyses or on a Forest-wide basis as a result of a forest plan amendment. The Regional Forester provided adequate measures for identifying needed changes in the Forest Monitoring Plan. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Cooperative Management

The appellants contend the plan fails to recognize that the Forest has significant non-Federal neighbors and does not include provisions to cooperate with adjacent owners (NOA 0098, p. 10).

The appellants contend that the 1997 Forest Plan should include procedures for forest plan variances to promote cooperative land and resource management with adjacent landowners, to facilitate land exchanges and allow for settlement of outstanding Native claim issues (NOA 0098, p. 11).

Discussion

The Regional Forester recognized the need for cooperative land and resource management. In the 1997 ROD (p. 42) he identified collaborative stewardship as part of forest plan implementation. He stated: "The Forest Plan land use allocations and direction have some flexibility. Interaction among interested people within communities can lead to mutually acceptable resolution of resource use issues."

The Regional Forester (1997 ROD, p. 42) also made a clear statement expressing his intent to promote cooperative land and resource management: "We will do our best to provide the opportunities for collaborative stewardship throughout Southeast Alaska and welcome everyone's participation in this cooperative program."

The appellant cites the risk of the spread of insects from Federal Land west of Dall Island as an example where cooperation between Sealaska and the Forest Service is critical (NOA 0098, p. 11). In describing cooperative measures to be taken to ensure effective monitoring, the Regional Forester specifically stated in the 1997 ROD (p. 8):

> ***I am directing the Forest Supervisors to convene an interagency group within 60 days of this 1997 ROD to develop and recommend specific monitoring protocols to respond to monitoring questions specified in Chapter 6 of the Forest Plan. I have requested the participation of the Pacific Northwest Research Station to assist in these efforts. I also would like private organizations, recognized Tribal governments, and interested individuals to have an opportunity to participate in monitoring activities.***

Standards and Guidelines for forest health management include conducting aerial surveys of a variety of forest cover types and LUD's concentrating on those areas identified as having the highest management priority (1997 Forest Plan, p. 4-13)

In the Information Needs section of the 1997 Forest Plan (Appendix B), the Regional Forester (1997 ROD, p. 10) stated: "As part of our adaptive management program, we will involve other appropriate Federal and State agencies in planning and conducting these research studies."

The process and procedures for amending the 1997 Forest Plan are described on pages 5-2 to 5-4. The need to amend the 1997 Forest Plan may result from the results of monitoring and evaluation, administrative appeal decisions, planning errors, or changes in physical, biological, social or economic conditions. This process also provides flexibility for making 1997 Forest Plan variances to promote cooperative land and resource management with adjacent landowners.

The 1997 Forest Plan (p. 4-21) identified specific standards and guidelines for performing land ownership reviews during project planning to ensure protection of state, private, and other Federal agency rights and interests. Additional standards and guidelines for coordinating with State and private landowners are also identified. These standards and guidelines provide for soliciting and considering input, ensuring consistency, cooperating with the State of Alaska and local communities and coordinating activities. The standards and guidelines are as follows:

I. Land Status

A. Perform a land ownership review during early project planning stages, prior to management activities, to ensure protection of state, private, and other Federal agency rights and interests.

1. Consult sources, such as BLM Master Title Plats (MTP's), in addition to the land status atlas, to identify land encumbrances which do not appear in the land status atlas.

II. Coordinating with Others

A. Coordinate activities, including environmental analysis on National Forest System land, with adjacent state and private landowners. Solicit and consider their input when analyzing proposals which might affect them.

B. Coordinate activities which affect the Coastal Zone with the State of Alaska Office of Management and Budget, Division of Governmental Coordination, to ensure consistency, to the maximum extent practicable, with the enforceable policies of the Alaska Coastal Management Program.

C. Cooperate with the State of Alaska and local communities in their land and resource planning efforts.

D. Coordinate activities on encumbered lands with interest holders, as appropriate.

The 1997 Forest Plan provided specific direction (1997 Forest Plan, p. 4-28) for working cooperatively with the State of Alaska and Native Corporations to improve land ownership patterns and management opportunities resulting from State and Native land conveyance. It stated:

A. When making land management decisions, appropriately consider valid State selections (pursuant to the Alaska Statehood Act), Native selections (pursuant to the Alaska Native Claims Settlement Act, as amended), and Native Allotment claims (pursuant to the Alaska Native Allotment Act of 1906). Protect legal rights of the State of Alaska, Native Corporations, and Native individuals when managing selected or withdrawn lands, or lands under Native claim. Apply the following standards and guidelines to Land Use Designations encumbered by State selections, Native selections or withdrawals, and Native allotment applications, until these lands unencumbered National Forest System land.

1. Cooperate with the State of Alaska, Native Corporations, Native allotment applicants, the Bureau of Land Management, the Bureau of Indian Affairs (or their designee), and other Federal agencies, to assist in processing legitimate claims or applications. Encourage other parties involved to assist in finalizing conveyance of full legal entitlement in a timely manner.
2. Avoid Forest Service investment on lands encumbered by State selections, Native withdrawals or selections, or Native Allotment applications.
3. Carefully review each selection, prior to conveyance, to identify third party interests and needed Right-of-Way reservations which are allowed under applicable legislation.

Decision

After my review of the record I find that the 1997 Forest Plan adequately addressed the issue of non-Federal landowners in numerous locations. Consideration was given to collaborative management, land adjustments, research needs and allowing for settlement of outstanding Native claims. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.