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Date: April 13, 1999

*Mr. K.J. Metcalf
Defenders and Friends of Admiralty Island
and Tongass Wildlands Watch
P.O. Box 204
Angoon, Alaska 99820*

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0116)

Dear Mr. K.J. Metcalf:

Pursuant to 36 CFR 217, this letter is our decision on your appeal of Regional Forester Phil Janik's May 23, 1997, Record of Decision (1997 ROD) which approved a revised Land and Resource Management Plan (1997 Forest Plan) for the Tongass National Forest in Alaska.

Your Notice of Appeal (NOA) was received on September 19, 1997. Your appeal on behalf of the Defenders and Friends of Admiralty Island and Tongass Wildlands Watch was timely. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 24, 1997. The Ketchikan Gateway Borough, et al., and Alaska Forest Association requested and were granted intervenor status October 9, 1997. Intervenor comments were received from Ketchikan Gateway Borough, et al., and Alaska Forest Association dated November 7, 1997, and November 8, 1997, respectively.

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 discretionary 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.

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 take place. Approval of any project must be consistent with the management standards. If a project cannot be conducted

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).*

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

Your appeal contains concerns related to sustainability for commercial recreation, subsistence, the Mansfield Peninsula, and brown bears. As your request for relief, you ask that the 1997 Forest Plan be amended and a moratorium be placed on outfitter and guide permits.

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.

Sustainability of Forest Resources for Commercial Outfitters and Guides

The appellants contend that, "[t]he Forest Plan fails to provide specific standards, or prescribe a mid-level regional (Area or District size) planning level, that will guide managers and the public in setting limits of sustainability for commercial outfitters and guides" (NOA, p. 2)

Discussion

The overall management of the Tongass National Forest is guided by multiple use goals and objectives, as required by the NFMA and its implementing regulations at 36 CFR 219.

The MUSYA of 1960 Sec. 4(a) defines "multiple use" as,

"the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

As the Regional Forester explained in his decision, "[t]he attainment of these multiple use goals and objectives will ensure the sustainability of the Tongass National Forest. These goals and objectives describe the mosaic of land and resource conditions desired for the forest in the future. Full attainment of these goals and objectives can be influenced by congressional budget allocations, changed circumstances or new information" (1997 ROD, p. 2).

Forest goals are established during the planning process to guide Forest management. Forest Management Objectives include "narrative objectives for specific resources and the levels of goods and services (resource outputs) that are anticipated during the first decade of Forest Plan implementation" (1997 Forest Plan, p. 1-3).

Your concern that the 1997 Forest Plan fails to provide standards which ensure the sustainability of resources, is addressed foremost by the primary goal of the 1997 Forest Plan. In his decision, the Regional Forester clearly explained that a primary goal of the 1997 Forest Plan is to provide for sustainability of the resources of the Tongass National Forest, while directing the coordination of multiple uses, such as outdoor recreation, timber, wildlife, fish, watershed, and wilderness (1997 ROD, p. 1). The Regional Forester further stated that the Forest will be managed to produce desired resource values, products, services, and conditions in ways that also sustain the diversity, function, and productivity of ecosystems (1997 ROD, p. 2).

Forest-wide 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" (1997 Forest Plan, p. 2-2). Each LUD has a management prescription. Each management prescription gives general direction on what uses and activities may occur within the land area allocated to the corresponding LUD, the standards for accomplishing each activity, and the guidelines on how to go about accomplishing the standards. These are called the "Land Use Designation Standards and Guidelines." Standards and guidelines are designed so that all activities are integrated to meet land allocation objectives (1997 Forest Plan, p. 1-2).

Forest-wide standards and guidelines apply to all, or most, areas of the Forest (1997 Forest Plan, p. 1-3). Standards and guidelines govern resource management activities and are key to successful implementation of the 1997 Forest Plan. "These standards and guidelines take precedence over annual targets or project outputs; no project or program will be funded for which the applicable standards and guidelines cannot be carried out" (1997 ROD, p. 3).

In your NOA, page 2, you stated your concern that the wilderness values of Admiralty Island and to a larger extent, the forest resources of the Tongass National Forest, will not be able to sustain increasing levels of commercial recreation. As previously stated, the attainment of the multiple use goals and objectives of the Tongass National Forest "will ensure the sustainability of the Forest." The 1997 Forest Plan lists on page 3-23, several goals and objectives for the National Monuments Misty Fiords and Admiralty Island. The goals include: to manage the Wilderness portions of Admiralty Island and Misty Fiords National Monuments to maintain an enduring wilderness resource while providing for public access and uses consistent with the Wilderness Act of 1964, the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) and their respective Presidential Proclamations of 1978 which designated these units as National Monuments because of their superlative combination of significant scientific and historical features; to protect and perpetuate natural biophysical and ecological conditions and processes; to provide a high degree of remoteness from the sights and sounds of humans, and opportunities for solitude and primitive recreation activities consistent with wilderness preservation (1997 Forest Plan, p. 3-23).

Several objectives for the National Monuments include: make resource and research information about the National Monuments available to other forest units where it may be beneficial for management of multiple use lands; manage recreation activities to meet the appropriate levels of social encounters, on-site developments, methods of access, and visitor impacts indicated for the adopted or existing Recreation Opportunity Spectrum (ROS), as appropriate; provide for public use of the wilderness in accordance with ANILCA provisions for motorized and non-motorized access and travel, including reasonable traditional subsistence use by rural residents; and provide trails and primitive facilities that are in harmony with the natural environment and that promote primitive and semi-primitive recreation experiences (1997 Forest Plan, p. 3-23).

In addition, the Wilderness National Monument LUD standards and guidelines for Recreation and Tourism and Outfitter and Guide Operations, and Forest-wide standards and guidelines for commercial recreation, direct the management of these specific resource activities on the Forest (1997 Forest Plan, pp. 3-33 through 3-35). The 1997 Forest Plan (pp. 4-40 through 4-41) lists the Forest-wide standards and guidelines for Recreation Special Uses, which includes management standards for outfitter/guide services. Your concern that commercial recreation activities are not sustainable is addressed in the standards and guidelines for outfitter and guide operations. Outfitter/Guide operations will be authorized based on the following criteria:

- " (a) The affected ecosystem(s) have the capability to accommodate the expected kinds of activities and amounts of use without degradation of ecosystem composition and structure.*
- (b) Existing or proposed operations and activities are appropriate for the specific ROS settings within the Land Use Designation.*
- (c) Adverse impacts to popular or highly-valued local areas with outfitter/guide operations are minimized.*
- (d) There is a demonstrated public need for the services to be offered and/or the services will enhance the objectives of the Land Use Designation.*
- (e) The operations can be carried out in a manner that is compatible with existing or expected use by the non-guided public.*
- (f) Adverse impacts to subsistence users are minimized" (1997 Forest Plan,*

p. 4-41).

The 1997 ROD and 1997 Forest Plan explain the role of the Tongass Forest Plan:

"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" (1997 Forest Plan, p. 5-2). It "will guide the management of the Tongass National Forest for the next 10 to 15 years" (1997 ROD, p. 1).

*With regard to your concern of mid-level planning, it should be noted that forest planning is only one aspect of a multiple-level decisionmaking framework. Implementation of the 1997 Forest Plan takes place through project-level decisions which must be within the bounds of the programmatic framework (1997 ROD, p. 40). Project decisions, which include allowance of outfitting and guiding, are made by district rangers and forest supervisors. As stated in the 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" (1997 Forest Plan, p. 5-1). Thus, the 1997 Forest Plan standards operate as parameters within which projects must 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 1997 Forest Plan will prevent such development from going forward (see *Swan View Coalition v. Turner*, 824 F.Supp 923, 933 (D. Mont. 1992)). At the project level, additional standards and guidelines could be developed if necessary.*

Decision

After reviewing the record, I find that the issue of the impacts of commercial recreation activities, as it relates to the sustainability of forest resources, was adequately discussed and considered. The 1997 Forest Plan analysis is consistent with NFMA, as well as other law, regulation, and policy. The NFMA doesn't prohibit a third tier of planning, but also does not require it. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Effects on Subsistence Uses and Needs

The appellants contend that, "[s]ubsistence assessments fail to recognize impacts other than [sic] commercial logging" (NOA, p. 3).

Discussion

In 1988, ten public issues were originally identified for the 1997 Forest Plan. One of the issue topics included was subsistence (1997 Forest Plan Summary, pp. i, ii). Subsistence issues were carried through to and updated for the 1991 DEIS. Subsistence is discussed in the FEIS on pages 1-4 through 1-5. The issue appears in the form of a question, "What should the Forest Service do to continue providing subsistence opportunities?" The response to the issue states that for many rural Alaskans, subsistence means hunting, fishing, trapping, and gathering natural resources to provide needed food and supplement rural incomes. For

Southeast Alaska's Native Americans, "subsistence is that and more: a lifestyle that preserves customs and traditions reflecting deeply-held attitudes, values and beliefs. The subsistence issue revolves around ensuring subsistence opportunities and protecting traditional subsistence areas while managing for multiple resource uses. The potential effects of continued logging on resources and places important to subsistence users is the main concern. Another concern is roads, which can provide new access opportunities, but can also result in competition among sport and subsistence users" (FEIS, pp. 1-4 through 1-5).

The Forest-wide multiple use goal and objective for subsistence is to provide for the continuation of subsistence uses and resources by all rural Alaskan residents, and evaluate and consider the needs of subsistence users in making project land management decisions (1997 Forest Plan, p. 2-4).

The FEIS, page 3-227, states an ANILCA Section 810 evaluation and determination is not required for approval of the 1997 Forest Plan, a programmatic level decision that is not a determination whether to "withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition" of National Forest lands. However, a Forest-wide evaluation and determination was included for the 1997 Forest Plan to facilitate project level planning and decision making in compliance with ANILCA Section 810.

The forest-wide evaluation, coupled with statements above of the need to evaluate and consider subsistence in project decisions, demonstrates the Regional Forester's recognition that more than logging affects subsistence.

Section 810 of the ANILCA states in part:

"(a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency-

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such uses, occupancy, or other disposition, and (C) reasonable steps will

be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

In his decision, the Regional Forester found that consistent with the Forest-wide multiple use goal and objective and Section 810 of ANILCA, all of the alternatives in the 1997 Forest Plan were evaluated for potential effects on subsistence uses and need (1997 ROD, p. 36). "Based on this evaluation it was determined that, in combination with other past, present and reasonably foreseeable future actions, one or more of the RSDEIS alternatives, if implemented through project-level decisions and actions, may result in a significant restriction of subsistence uses of deer, and possibly other land mammals, due to potential effects on abundance and distribution, and on competition" (FEIS, p. 3-227).

Consistent with Section 810 (a) of ANILCA, the "USDA Forest Service notified the appropriate State agencies, local communities, the Southeast Alaska Federal Subsistence Regional Advisory Council, and State Fish and Game Advisory Committees, and held hearings in affected communities throughout Southeast Alaska after publication and dissemination of the RSDEIS" (FEIS, p. 3-228).

Using analyses of subsistence uses and needs and the comments from the ANILCA 810 Subsistence Hearings, the alternatives considered in the FEIS were evaluated for potential effects on subsistence uses and needs, as described above. "Based on this evaluation it was again determined that, in combination with other past, present and reasonably foreseeable future actions, one or more of the FEIS alternatives, if implemented through project-level decisions and actions, may result in a significant restriction of subsistence uses of deer, and possibly other land mammals, due to potential effects on abundance and distribution, and on competition" (FEIS, p. 3-228).

As outlined above in Section 810 of ANILCA, the Forest Service must make a determination that: (a) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (b) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (c) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions. The Regional Forester applied these three criterion and reported his findings in the 1997 ROD (p. 36).

The 1997 Forest Plan was examined to determine whether its potential for a significant restriction of subsistence uses was necessary, consistent with the sound management of public lands (MUSYA, the NFMA, the ANILCA, and the Alaska Regional Guide). The Regional Forester reviewed the requirements of the Tongass Timber Reform Act (TTRA), and relevant State laws, and discussed them in the 1997 ROD (p. 36).

National Forest land management plans are required by NFMA, and must provide for the multiple-use and sustained yield of renewable forest resources in accordance with the MUSYA. Multiple-use is defined as "the management of all the various renewable surface resources of the National Forest System so that they are utilized in the combination that will best meet the needs of the American people" (36 CFR 219.3). Again, the Regional Forester demonstrated his understanding of the need to evaluate subsistence in a multiple use context, not only as it relates to logging:

"[t]he Forest Plan must be designed to provide a mix of resources and uses to best meet the needs of the American people. It must be designed to maximize net public benefits. Some of the resource uses necessary to achieve these benefits have the potential to adversely affect subsistence uses within the Tongass National Forest. However, given the multiple-use mandate and the other requirements of law, these effects to subsistence uses are necessary, consistent with the sound management of public lands" (1997 ROD, p. 37).

To address the criteria of whether the proposed management activity will involve the minimal amount of public lands necessary, the Regional Forester correctly considered the sound multiple-use management of public lands and the goals and objectives of the 1997 Forest Plan, and determined that the amount of land necessary to implement the 1997 Forest Plan is the minimum necessary (1997 ROD, p. 37). He explained that "[a] forest plan must involve, by law, the entire forest. The plan does not authorize by itself any land-disturbing activities. Most of the Tongass National Forest, except the icefields, is used by one or more rural communities for subsistence deer harvesting. Many of the land use designations protect high-value subsistence areas" (1997 ROD, p. 37).

Many important subsistence areas were "assigned land use designations that exclude timber harvesting" (1997 ROD, p. 37). Adverse impacts to subsistence uses and resources are minimized by assigning non-timber LUD's. "The potential site-specific effects on subsistence uses, and reasonable ways to minimize these effects, will be analyzed and considered during project-level planning" (1997 ROD, p. 37).

The Ninth Circuit Court of Appeals ruled (March 24, 1999) that the Forest Service complied with statutory requirements concerning subsistence deer hunting in the Tongass National Forest. The ruling came in cases that two Southeast Alaska tribes filed over the Eight Fathom and Northwest Baranof timber sales, located on Chichagof Island and Baranof Island respectively. The appeals court held that the Forest Service decisions about the impacts of timber sales on subsistence hunting complied with section 810 of the ANILCA. In doing so, the court rejected the claims of the Hoonah Indian Association and the Sitka Tribe of Alaska that additional protections were needed. The court found that the Forest Service correctly determined, in accord with the terms of ANILCA, that the sales were "necessary, consistent with sound management principles" and "involve the minimal amount of public lands necessary to accomplish the purposes" of the sales.

Decision

After my review of the record, I find that issues related to subsistence were discussed and considered. Impacts to subsistence were evaluated in a multiple use context, not solely as they relate to timber. Although the 1997 Forest Plan is not a determination whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands, the Forest Service has satisfied all the requirements of ANILCA 810 (a) as if it applied to the decision to adopt the Forest Plan. The 1997 Forest Plan was consistent with the policies of NEPA, as well as other law, regulation, and policy with regard to the evaluation of the impacts on subsistence uses and needs.

However, based upon my review of the record, I have strengthened provisions of the 1997 Forest Plan to better address subsistence uses. I have converted from development LUD's to non-development LUD's in a number of areas of special interest (see enclosed 1999 ROD, Wildlife section) to further protect subsistence needs and other special values associated with these lands. Thirteen out of fourteen areas of special interest have been identified as significant for meeting subsistence needs (see enclosed 1999 ROD, Areas of Special Interest section).

In addition, I have added a standard which extends timber rotation from 100 to 200 years in 42 Wildlife Analysis Areas (WAA) where deer habitat capability concerns exist (see enclosed 1999 ROD, Deer Winter Range section). Reducing the rate at which timber is harvested diminishes the risk to deer habitat capability and thus subsistence use of deer. Because there is a strong relationship between those WAA's and the areas identified as important "heavy use" areas for native communities across the forest (FEIS, Chapter 3, Wildlife Analysis Tables), the extended timber rotation focuses on all areas where deer habitat capability is a concern. The rotation strategy addresses the concern of increased competition for deer that might result from shifts in hunting pressure that could occur if only a few areas of concern were addressed.

I feel that these actions will increase the Forest's ability to meet subsistence needs over the long term.

Mansfield Peninsula

The appellants contend that, "[t]he Tongass plan does not consider the alternative of placing the Mansfield Peninsula under the management of the Monument or of recommending that the Mansfield receive Monument status" (NOA, p. 4).

Discussion

Many comments were received regarding the desire for non-logging management prescriptions or LUD's for Mansfield Peninsula. Some respondents also felt that the subsistence and recreation values "far outweighed the timber value" (FEIS Appendix L, p. L-269). Other comments made stated that unroaded lands "should be put into productive timber use, while others expressed the need to preserve these lands in an unroaded state" (1997 ROD, p. 22).

In his 1997 ROD, the Regional Forester provided background relating to the designation of new Wilderness or LUD II areas. He stated in his decision that, "during the congressional deliberations leading to the passage of the Tongass Timber Reform Act, 23 unroaded areas of importance to conservation groups and members of the public were included as Wilderness in a bill passed by the House of Representatives. These areas totaled over 1.8 million acres. All or a substantial portion of 16 of these areas, about 900,000 acres, were ultimately designated (along with another 100,000 acres not in the House bill) by the TTRA either as Wilderness or Congressionally designated LUD II areas. The remainder of these areas, many of which have been frequently cited in public comments since TTRA, are allocated to Forest Plan LUD's" (1997 ROD, p. 22).

The Regional Forester noted further that "while no new Wilderness is proposed under any alternative, 90 percent of all currently unroaded lands on the Forest will still be roadless at the time of the next Forest Plan revision, assuming that roadless acres become roaded in the same proportion as in the past. Potential Wilderness may be considered again at the time of the next revision" (1997 ROD, p. 22).

Appendix L "Public Comments and Forest Service Responses" of the FEIS, pages 269 through 270, shows that those concerns regarding non-logging prescriptions for Mansfield Peninsula were considered and resulted in the Peninsula being allocated to the Semi-Remote Recreation LUD. In areas of special concern, as with Mansfield Peninsula, the assignment of specific land allocations, "in some cases, allow unroaded lands to be included in the suitable timber base. In other cases, they preserve the roadless and wilderness character of the land" (1997 ROD, p. 23).

The preceding discussions demonstrates the Regional Forester's consideration and analysis of the Mansfield Peninsula for other LUD designations.

Your concern, that the 1997 Forest Plan did not consider the alternative of adding Mansfield Peninsula under management of Admiralty Island National Monument or recommending the Peninsula for Monument status, is related to the broader issue of the range of reasonable alternatives to be analyzed by a forest plan. Several rulings issued by the Ninth Circuit Court of Appeals address the issue of range of alternatives to be analyzed by a forest plan.

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. Lynq, 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)).

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); see also Olmstead Citizens for a Better Community v. United States, 793 F.2d 201, 208-209 (8th Cir. 1986); Life of the Land v. Brinegar, 485 F.2d 460, 472 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974)). 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 you 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, 1114 (W.D. Va. 1994) aff'd, 61 F.3d 900 (4th Cir. 1995) (table citation), 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 consistent with that compromise.

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."

The Regional Forester evaluated 11 alternatives with a varying mix of LUD's and desired future conditions (1997 ROD, pp. 11-12). The alternatives varied LUD's assigned to the Mansfield Peninsula consistent with the alternative theme, thus providing a reasoned choice to the Regional Forester.

Decision

After reviewing the record, I find that the Mansfield Peninsula issue, as it relates to the range of reasonable alternatives analyzed in the 1997 Forest Plan, was adequately discussed and considered. The 1997 Forest Plan analysis is consistent with NEPA, as well as other law,

regulation, and policy. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Brown Bears

The appellants contend that, "Admiralty brown bear populations are not given the consideration and protection necessary to fulfill the mandate of ANILCA" (NOA, p. 4).

Discussion

The Forest-wide standards and guidelines for wildlife, which includes specific standards and guidelines for bear habitat management, establish a framework that provides for the long-term viability of the brown bear.

The NFMA requires that the Forest Service provide for the diversity of plants and animals, based upon the suitability and capability of the specific land area in order to meet overall multiple-use objectives (16 U.S.C. 1604(g)(3)(B)). The NFMA implementing regulations define diversity as "the distribution and abundance of different plant and animal communities and species within the area covered by a [forest plan]" (219.3). In addition to providing diversity direction (at 219.26), the NFMA regulations include the following provisions for managing habitat to maintain viable populations of wildlife species:

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 ensure 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 (36 CFR 219.19) (FEIS, p. 3-379).

In addition, 36 CFR 219.27 (a) (6) directs Forests to "provide for adequate fish and wildlife habitat . . . maintained and improved to the degree consistent with multiple use objectives established in the plan." The Ninth Circuit Court recognized that NFMA does not create a concrete standard for diversity within multiple use objectives. Diversity is to be addressed in light of "overall multiple-use objectives" (Seattle Audubon Society v. Lyons, 80 F.3d 1401 (9th Cir. 1996)).

Forest wide standards and guidelines for bear habitat management are listed in Chapter 4 of the 1997 Forest Plan on pages 4-113 through 4-114. Your concern of brown bear population viability is also addressed in the Chapter 3, "Environment and Effects on Wildlife" in the FEIS. This section of the FEIS focuses its discussion on the expert species panel assessments of 1997 Forest Plan alternatives and their potential effects on brown bears on pages 3-415 through 3-420.

Individual wildlife species have different habitat considerations. The brown bear requires large unroaded areas, with availability of summer alpine habitat (FEIS Table 3-109, p. 3-360). The FEIS identifies 13 management indicator species (MIS), one of which is the brown bear (FEIS, p. 3-351). The MIS are "vertebrate or invertebrate species whose response to land management activities can be used to predict the likely response of other species with similar habitat requirements" (FEIS, p. 3-351). Some of the 13 MIS are associated with several habitat types however, "all are associated with the spruce and hemlock forests of Southeast Alaska" (FEIS, p. 3-351). "It is these forests which represent 98 percent of the productive old-growth forests of the Tongass" (FEIS, p. 3-351).

The most important element associated with brown bear ecology is riparian habitat (Record RS-G-10-b, TLMP 855). During the late summer season, which is a critical period for brown bear, the bears concentrate along low-elevation valley bottoms and salmon streams. "These are often the same areas of highest human use and most intense resource development activities. Brown bears use a variety of habitats during the late summer, with estuaries and riparian areas having the highest habitat value. Streams and rivers that produce anadromous fish have a higher value for brown bears than resident fish streams" (FEIS, p. 3-354).

The selected alternative, Alternative 11 (1997 Forest Plan), provides strong protection of riparian habitat needed by brown bears (FEIS, p. 3-418). In their findings, panelists agreed that "any factor that diminished net fish production and long-term habitat capability related to variations in riparian habitat management standards was directly related to the assessment of long-term brown bear persistence, and thus favored features that reduced management risk to the fishery resource" (Record RS-G-10-b, TLMP 855 and FEIS, p. 3-415).

Brown bears can be potentially over hunted if roaded access is improved. However, roads "can be designed (or closed) at the project level to avoid key habitats" (FEIS, p. 3-365). Transportation Forest-wide Standards & Guidelines (1997 Forest Plan, pp. 4-104 through 4-110) and Bear Habitat Management Forest-wide Standards and Guidelines (1997 Forest Plan, pp. 4-113 through 4-114) describe management planning tools which may minimize the effects of roads on wildlife habitat. In general, the bear habitat management Forest-wide standards and guidelines provide for "site specific analysis to assess and minimize disturbance and access to meet management objectives" (FEIS, p. 3-365).

The road issue is discussed in the bear habitat management Forest-wide standards and guidelines. The standard and guidelines call for managing "road use where concentrations of brown bear occur to minimize human/bear interactions and to help ensure the long-term productivity of brown bears" (1997 Forest Plan, p. 4-114). To meet this direction, road management objectives will be developed and implemented "through an interdisciplinary process" (1997 Forest Plan, p. 4-114). With regard to Forest Service approved projects and Special Use Authorizations, such as outfitter and guide permits, the standards and guidelines call for "minimizing adverse impacts to the habitat and seeking to reduce bear-human conflicts" and using "specific plans that have seasonal restrictions on activities and other measures determined on a case-by-case basis" (1997 Forest Plan, p. 4-113).

In species panel evaluations, roads and human access and the effect on brown bear populations were considered equally important. "The panel specifically clarified that the issue

was the human access and use of roads and not necessarily the physical nature of the road itself" (FEIS, p. 3-416). Increases in human activity in an area, including activity related to recreation opportunities, "may result in increased direct human-induced deaths of bears" (FEIS, p. 3-354). "This can result from increased legal hunting, illegal kills, wounding losses, and from the defense of life or property" (FEIS, p. 3-354).

The panelists state that Alternative 11 (1997 Forest Plan) "likely presents the highest likelihood of maintaining viable long-term brown bear populations due to the extensive reserve system that should significantly address the road issue that is adverse to bears (FEIS, p. 3-418). As mentioned above, Alternative 11 (1997 Forest Plan) has strong riparian protection, which is critical to long-term brown bear protection (FEIS, p. 3-418). The reserve component of Alternative 11 benefits brown bears because it proposes to harvest "nearly the least amount of productive old growth" (FEIS, p. 3-314).

While upland old growth forest contributes elements important to bear ecology, the "panelists estimated that nearly 80% of their overall concerns about long-term brown bear persistence and distribution was included in the riparian habitat and access/human management issues (Record RS-G-10-b, TLMP 855). "Panelists favored the reserve concept in alternative design, not necessarily as a large block of unfragmented old growth, but rather as landscapes providing roadless refugia from human disturbance" (Record RS-G-10-b, TLMP 855 and FEIS, p. 3-416).

The panel assessment considered current population trends and concluded that there is no evidence of short or long-term brown bear population declines anywhere in Southeast Alaska (Record RS-G-10-b, TLMP 855). The species assessment found that "the population is apparently reproducing at a rate matching current mortality and thus maintaining current populations" (Record RS-G-10-b, TLMP 855 and FEIS, p. 3-416). The panelists further stated that the "anticipated cumulative effects of planned management may result in reduced brown bear habitat capability, reductions in population size with the resulting creation of more gaps in distribution, or some populations existing in isolated refugia" (Record RS-G-10-b, TLMP 855 and FEIS, p. 3-416).

However, the "[p]anelists unanimously agreed that brown bears are not likely to be extirpated in 100 years from the Tongass National Forest under any alternative" in the 1997 Forest Plan (Record RS-G-10-b, TLMP 855 and FEIS, p. 3-417). The panelists also specifically addressed the persistence of brown bear populations on Admiralty Island. They believe that "brown bears had a very high likelihood of maintaining persistent and well distributed populations on Admiralty Island due to its Wilderness designation that would preclude development considered adverse to brown bears" (Record RS-G-10-b, TLMP 855). In general, "Wilderness and LUD II (legislated) areas essentially assure brown bear persistence somewhere in Southeast Alaska in 100 years" (FEIS, p. 3-417).

To further address the issue of species viability, the Forest-wide standards and guidelines applied to all alternatives of the 1997 Forest Plan, direct the development of a management program in cooperation with the Alaska Department of Fish and Game (ADF&G) to address brown bear mortality. Management tools will include both access (road) management as well as harvest regulations (FEIS, p. 3-419). Provisions under ANILCA provide for working with

local and regional committees and entering cooperative agreements to review regulations, policies, or management plans related to subsistence uses of fish and wildlife.

The Regional Forester's 1997 ROD clearly demonstrated that he considered the findings and recommendations of the expert panels. He stated in his decision that, "[i]f interagency monitoring efforts suggest that excessive bear mortality occurs as a consequence of road access, then road access management will be implemented and hunting regulations will also be examined, in cooperation with other agencies" (1997 ROD, p. 35). The Regional Forester went on further to note that "the Plan includes a standard and guideline that requires evaluation of the need for additional protection of important bear foraging sites during project planning. Where needed, forested buffers to provide protection during feeding are to be established, where available. Identification and management of important brown bear feeding sites is to be done in consultation with the Alaska Department of Fish and Game" (1997 ROD, p. 35).

Decision

After reviewing the record, I find that the 1997 Forest Plan is consistent with ANILCA, NFMA, as well as other law, regulation, and policy. However, I determined that there was a need to modify the provisions of the 1997 Forest Plan to better address brown bear concerns. While the 1997 ROD discussed and considered impacts to brown bear, I believe that additional measures are required. I have added new protection measures in the 1999 ROD which will reduce the risk to old growth dependent species, including brown bear. The changes I have made to LUD's will provide additional protection for brown bears.

Sincerely,

/s/ James R. Lyons

JAMES R. LYONS
*Under Secretary,
Natural Resources and
Environment*

*Enclosures
List of Parties
1999 ROD*