



File Code: 1570-1 (EMC)

Date: April 13, 1999

*Kevin Allred, Director
Tongass Cave Project
P.O. Box 376
Haines, Alaska 99827*

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0109)

Dear Mr. Allred:

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 October 1, 1997. Your appeal on behalf of the Tongass Cave Project was postmarked September 24, 1998, and therefore was timely. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 11, 1997. Many interested parties requested and were granted intervenor status (see enclosed list of parties). Intervenors whose comments were received are also listed on the enclosed list of parties.

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 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)).*

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).*

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 standards and guidelines, as well as definitions, for karst and caves.

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.

Karst and Cave Guidelines

The appellant contends "[t]he present guidelines do not have specific enough definition of how a given karst topography is rated, or how big the categorized areas are" (NOA, p. 2).

Discussion

Response to the Supplemental Draft Environmental Impact Statement (SDEIS) and the Draft Forest Plan state that the karst and cave resources are valuable and should be protected. Other respondents on the SDEIS and Draft Forest Plan comment that not enough information is known about these resources to judge whether they should be protected or not (FEIS Appendix L, p. L-45).

New information has become available since release of the 1991 SDEIS about the extent of world class karst and cave resources on the Tongass National Forest. "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 of the Forest Plan" (1997 ROD, p. 18).

The multiple-use goals for karst and cave resources are "to maintain and protect significant caves and karst ecosystems Forest-wide." Forest-wide objectives for karst and cave resources allow for the continuation of natural karst processes; maintain the productivity of the karst landscape while providing for other land uses where appropriate; and manage lands in a manner which protects significant caves and their associated resources (1997 Forest Plan, p. 2-3).

Appendix L of the FEIS, documents other public comments were received that shared your concern regarding the lack of specificity in karst and cave guidelines in terms of defining karst topography. The comment stated the "karst issue needs to be clarified. The document [1997 Forest Plan] should describe exactly what a karst and cave are and what would make one significant or important enough to take special precautions in order to protect it" (FEIS Appendix L, p. L-45). The response to such public comments explains that karst and cave resource issues are clearly examined in Chapter 3, "Environment and Effects" of the FEIS. This chapter includes a definition of what a cave and associated karst terrain are and a description of the controlling natural variables. Chapter 3 also discusses effects of implementing Forest Plan alternatives and past resource management activities on karst systems. Furthermore, Appendix I of the Proposed Revised Forest Plan provides a detailed protocol for determining the significance and importance of these resources (FEIS Appendix L, p. L-45).

The Federal Cave Resources Protection Act is the primary law recognizing caves. It requires protection of caves designated as significant on Federal land. A cave must possess one or more of the criteria outlined in 36 CFR 290.3(c) or (d) and be designated as significant as outlined in

36 CFR 290.3(e) (1997 Forest Plan Appendix I, p. I-2). "Although the intent of the Act is to protect caves specifically, caves and their associated resources are an integral part of the karst landscape, therefore to fully protect the cave resource, caves and their karst landscapes need to be managed as an ecological unit" (FEIS, p. 3-82). The karst ecosystem is characterized by mature, high-productivity sites for spruce and hemlock forests along valley floors and lower slopes; productive plant, animal, and aquatic communities; well-developed subsurface drainage; and underlying cave resources (FEIS, p. 3-82).

The 1997 Forest Plan provides management direction and protective measures for karst ecosystems by use of Forest-wide standards and guidelines (1997 Forest Plan, pp. 4-18 through 4-20) and LUD standards and guidelines included in Chapter 3, "Management Prescriptions" of the 1997 Forest Plan. The Forest-wide standards and guidelines for karst and caves "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" (1997 ROD, p. 18).

The FEIS discusses three options for managing cave and karst areas in the alternatives (FEIS, p. 3-85). Previous forest plan direction for the Tongass National Forest (Alternative 9) extends only to the protection of designated significant caves under the Federal Cave Resource Protection Act. The second management approach, as applied in Alternatives 2 and 7 of the 1997 Forest Plan, uses standards and guidelines from the unpublished 1992 FEIS for

caves. These standards and guidelines include "a process for compiling an inventory of significant caves, measures to include and protect all known significant caves, and some recognition of the connection between karst geology and caves" (FEIS, p. 3-85).

The third approach to cave and karst management, which is the management strategy applied in the selected alternative, assesses the vulnerability or sensitivity of karst areas to planned resource activities. This strategy "strives to maintain the natural karst processes and the productivity of the karst landscape while providing for other resource uses, such as timber production, where appropriate. Under this approach, project planning will identify all potentially affected karst lands and features, and the extent of their hydrologic systems. Karst areas would then be rated in terms of their vulnerability to the proposed management activities" (FEIS, p. 3-85). The karst vulnerability strategy is outlined in detail in the Karst and Cave Resources Forest-wide Standards and Guidelines (1997 Forest Plan, Chapter 4).

Decision

After reviewing the record, I find that the standards and guidelines for karst and cave resources, as well as definitions, were adequately displayed and discussed. The 1997 Forest Plan is consistent with the Federal Cave Resource Protection Act, as well as other law, regulation, and policy with regard to karst and cave resources. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Timber Harvest Activities on Karst lands

The appellant contends, "that all karstlands within the Tongass National Forest be removed from any timber harvest base, and that no further road building activities occur on the karst" (NOA, p. 5).

Discussion

You stated in your NOA, that no timber harvest activities and road building should occur on any karst lands in the Tongass National Forest. The FEIS discusses karst and cave resources, timber harvest activities and road construction at the programmatic level. At the project planning level additional analysis would be done in which karst areas would be rated in terms of their vulnerability to the proposed management activities.

For alternatives using 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" (FEIS, pp. 3-277 through 3-279).

The cave and karst management strategy, applied in the selected Alternative, "assesses the vulnerability or sensitivity of karst areas to planned resource activities" (FEIS, p. 3-85). This management strategy focuses on concerns similar to the issue you raised. As mentioned in the response to the previous issue, the vulnerability strategy "strives to maintain the natural karst processes and the productivity of the karst landscape while providing for other resource

uses, such as timber production, where appropriate" (FEIS, p. 3-85). Recognizing that while timber harvest opportunities may exist, a karst area's sensitivity and vulnerability rating may preclude the area from being harvested.

In his decision, the Regional Forester stated high vulnerability areas would be removed from the suitable timber base (if the project is to harvest timber), or otherwise be avoided. The Regional Forester clearly recognized the important resource considerations of karst and cave management. In areas of high vulnerability, the Regional Forester explained that, "limited road construction for access to other areas will be allowed if no alternatives are available and karst resource values would not be compromised" (1997 ROD, p. 18). In moderate vulnerability areas, activities such as timber harvest and road construction would be allowed, but with some restrictions on practices or project design. Low vulnerability areas would not require any special management (FEIS, p. 3-85).

All alternatives in the 1997 Forest Plan include, at a minimum, "direction for protecting significant caves under the Federal Cave Resources Protection Act" (FEIS, p. 3-85). In his consideration of the range of alternatives presented in the 1997 Forest Plan, and the potential effects of the alternatives on karst and caves, the Regional Forester found that no significant adverse effects on karst and cave resources will result from implementation of the 1997 Forest Plan under any alternative (1997 ROD, p. 19).

Decision

After reviewing the record, I find the analysis of karst and cave resources in the 1997 Forest Plan and FEIS adequately displayed and discussed the way in which karst areas would be managed with regard to timber production activities. The 1997 Forest Plan is consistent with the Federal Cave Resource Protection Act, as well as other law, regulation, and policy with regard to karst and cave resources. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Sincerely,

/s/ James R. Lyons

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

*Enclosures:
List of Parties
1999 ROD*