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Date: April 13, 1999

*Ms. Susan Walsh
1252 Upper Millar
Ketchikan, Alaska 99901-6160*

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0110)

Dear Ms. Walsh:

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 Forest 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 was timely as it was postmarked September 25, 1997. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 10, 1997. 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.

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

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).*

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 ASQ, opportunities for small timber operators, lands on the Tongass National Forest unavailable for timber harvesting, cumulative effects, designation of wild, scenic, or recreational rivers, and exporting timber from the Tongass. As relief you request that the Forest Plan be amended and further analysis be conducted.

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.

With regard to all of the above concerns, 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.

Allowable Sale Quantity

The appellant contends that, "[t]he stated ASQ of 267 mbf per year, this I realize is the ceiling not a target as stated in the FEIS appendix Vol. 4. However, this number is nearly two and a half times the average timber demand of 110 mbf" (NOA, p. 1).

Discussion

To respond to your concern, the following discussion provides background information on ASQ and market demand.

ASQ Background

In the National Forest Management Act (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 219.3)."² 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

²NFMA regulations, 36 CFR 219.3, allow ASQ to be expressed on an annual basis as the "average annual allowable sale quantity." Within the planning period, the volume of timber to be sold in any 1 year may exceed the average annual ASQ so long as the total amount sold for the planning period does not exceed the ASQ (36 CFR 219.27 (c) (2)). Although average annual ASQ is a convenient guide, it is not an absolute yield that must be achieved.

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)).³

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)).⁴

These two court decisions clearly describe ASQ as merely an upper limit, or ceiling, and support the Forest Plan as being a permissive document. That is, the Forest Plan does not mandate or direct harvesting of timber and does not commit the Forest to harvest at any level. It simply allows for harvest up to the ASQ level. Actual annual harvest amount will depend on many factors, such as budget and demand.

As mentioned above, ASQ is subject to constraints. The "ASQ represents a planning 'snapshot' that can quickly become outdated as new forest management issues emerge and priorities change. As the value placed on timber production shifts toward other forest uses, ASQs established under earlier, somewhat different priorities may no longer reflect estimated sale quantities" (Record RS-G-12-a, TLMP 928). The ASQ estimates in the FEIS are more accurate than "such estimates included in the previous drafts"; however, the ASQ process is "open-ended in that the ASQ as well as other elements of the forest plan can be changed at any time during the 10-year period if the forest supervisor determines that a change is necessary. Changes are made through amendments or revisions to the forest plan to accommodate such things as shifts in land management policy or other significant changes" (Record RS-G-12-a, TLMP 928 and 1997 ROD, pp. 24-25).

Market Demand

Determining market demand is no easy task. Market demand for timber is fraught with complexities and uncertainties tied to supply and demand of timber products.

"The demand for timber in Southeast Alaska is determined by the number, capacity, and efficiency of wood processors in the region, the type and value of products manufactured, the technology employed in manufacturing those products, and the cost of available wood

³*See also Intermountain Forest Industry Ass'n. v. Lynq, 683 F. Supp. 1330, 1340 (D. Wyo. 1988) "The [timber management plan] does not give Louisiana Pacific a right to harvest specific volumes of timber in specified locations. It merely set forth potential harvest levels."*

⁴*See also Gifford Pinchot Alliance, 752 F. Supp. 967, 972 (D. Or. 1993).*

supplies. Ultimately, the interaction of all these factors will result in the harvest (and import) of timber by processors and exporters in the region . . . the volume of timber purchased, harvested, consumed, and exported each year are all indicators of the demand for timber in Southeast Alaska" (Record RS-G-12-g, TLMP 1109). The many variables which affect demand for timber clearly demonstrate the level of uncertainty with which demand projections are made.

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.

Decision

After reviewing the record and analysis, I find the discussion of ASQ and market demand for timber has been addressed and considered. The findings of the 1997 Forest Plan are consistent with NFMA, and other law or regulations related to ASQ and market demand. However, based upon my review of the record, I have determined there was a need to modify the provisions of the 1997 Forest Plan to better address LUD's and to provide for resource sustainability. The changes I made in the enclosed 1999 ROD continue to provide LUD's for timber harvest: Timber Production, Modified Landscape and Scenic Viewshed. I am establishing an ASQ for timber at an annual average of 187 million board feet. This is a reduction from the annual average of 267 million board feet in the 1997 ROD.

In addition, the annual timber sale offering 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 noted above, the Forest Service is developing a methodology for determining demand to insure compliance with the "seek to meet market demand" standard established in the TTRA.

Timber sale opportunities for small [timber] operators

The appellant contends that, "[i]n offering timber sales under normal logging conditions, i.e. road building and clear cutting methods it precludes small timber operators an opportunity to bid on such, thus maintaining a business as usual approach to the Tongass" (NOA, p. 2).

Discussion

To facilitate the development of competitive enterprises and markets for timber resources, the Forest Service and Small Business Administration (SBA), in 1995, agreed to an annual set aside goal of approximately 100 million board feet (MMBF) for the Tongass National Forest (Record

R-G-12-e, TLMP Doc #1107 and FEIS Appendix L, p. L-129). Section 105 of the Tongass Timber Reform Act, Small Business Set-Aside Programs, states that the Secretary shall, in consultation with the SBA and 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 to those purchasers qualifying as 'small business concerns' under the Small Business Act as amended (15 U.S.C 631 et seq.)."

The Small Business Timber Sale Program was established to address issues similar to the concern you raised in your NOA. The proposed agreement between the SBA and the USDA Forest Service, Alaska Region regarding the small business timber sale program, states:

"To assist Small Business purchasers of National Forest System timber from the Tongass National Forest in planning and financing timber harvesting and product marketing, and to assist the Forest Service in seeking to provide a supply of timber from the Tongass National Forest to Small Business Purchasers and which meets market demand, the United States Department of Agriculture, Forest Service, Alaska Region (Forest Service), and the Small Business Administration (SBA) agree that:

1. The independent timber sale program goal for the Tongass National Forest will be 100 MMBF per Fiscal Year [October 1, 1995 to September 30, 2000]. Except as otherwise agreed by the Small Business Administration and the Forest Service, all timber sales offered as 'independent' sales each fiscal year shall be offered as a SBA sale. Timber sales that are designated as Small Salvage Timber Sales, resales of uncompleted contracts (defaulted sales), and previously advertised but unsold timber sales will be exempt from this requirement.

2. If market or other conditions in Southeast Alaska change that affect small business demand for timber, the small business offerings for that year may be adjusted through joint agreement between the SBA and the Forest Service.

3. The agreement will be reviewed for possible modification upon completion Tongass Land Management Plan revision" (Record RS-G-12-e, TLMP 1107 and 1167).

The Tongass National Forest's commitment to promoting timber related opportunities to small operators is also evident in the goals established for timber LUD's. As the Regional Forester explained, "[e]ach of the 'timber harvest' LUD's (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 ASQ" (1997 ROD, p. 19).

Decision

After reviewing the record, I find that the issue of small operator's access to commercial timber sales on the Tongass National Forest has been adequately analyzed. The findings of the 1997 Forest Plan are consistent with the TTRA, NEPA, the provisions of the Small Business Timber Sale Program, and other law or regulations related to timber sale opportunities for small businesses. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Lands Unavailable for Timber Harvesting

The appellant contends that "over 75% of the Tongass National Forest will be retained and unavailable for timber harvesting and that it will remain essentially unaltered from its present condition" (NOA, p. 2). The appellant questions whether this will "protect ecosystems" and "restore deteriorated ecosystems" (NOA, p. 2).

Discussion

You state in your concerns that lands "retained and unavailable for timber production" will not protect ecosystems or maintain scenic quality of the Tongass National Forest (NOA, p. 2). In his consideration of the how the Tongass National Forest would be managed in the long-term to provide for the sustainability of resources, the Regional Forester stated, "[t]he 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. The forest will be managed to maintain a mix of habitats at different spatial scales capable of supporting the full range of naturally occurring flora, fauna, and ecological processes native to Southeast Alaska" (1997 ROD, p. 2). The Regional Forester clearly recognized that to manage for multiple use of resources, it was necessary to set aside a portion of the forest for purposes other than timber production to help achieve the goals of the 1997 Forest Plan.

To achieve the desired forest conditions, as stated in the 1997 ROD, areas on the Tongass National Forest will be managed in different ways, providing for the multiple-use of resources. Management prescriptions which describe how and where activities can be conducted on the Forest, include LUD's "with a range of management objectives and specific standards and guidelines designed to ensure attainment of those objectives" (1997 ROD, p. 2) and provide protection for resources. The LUD's "specify ways of managing an area of land and the resources it contains. The LUD's may emphasize certain resources (such as wilderness, or old-growth wildlife habitat), or combinations of resources (such as providing for scenic quality in combination with timber harvesting). Each LUD has a detailed management prescription which includes practices and standards and guidelines" (FEIS, p. 2-1).

The LUD's further define where timber management may occur. Many areas in LUD's that do not allow commercial timber harvest contain tentatively suitable forest lands. These lands will be managed for resource uses other than timber production (1997 ROD, p. 7). Tentatively

suitable lands have "the biological capability, and availability, to produce commercial wood products" (FEIS, pp. 3-249 through 3-250).

"LUD's which allow timber management, Timber Production, Modified Landscape, Scenic Viewshed, Scenic River, and Recreational River, total approximately 3.7 million acres, or 22 percent of the Tongass National Forest, and contain 1.3 million acres of tentatively suitable forest lands. Three of these LUD's, Timber Production, Modified Landscape, and Scenic Viewshed, account for nearly all of the 676,000 acres suitable for timber management under the Forest Plan" (1997 ROD, p. 7).

Those lands on the Forest that are not tentatively suitable are called "other forested land." Other forested land is "not capable of producing industrial forest products, but of major importance for watershed protection, wildlife habitat, recreation, and other uses. Other forested land is land incapable of yielding crops of industrial wood usually because of adverse site conditions. These conditions may include sterile or poorly drained soil, subalpine conditions, and steep rocky areas where topographic conditions are likely to prevent management for timber production" (FEIS, pp. 3-248 through 3-249). The LUD's standards and guidelines coupled with the Forest-wide standards and guidelines will protect and ensure the sustainability of tentatively suitable forest lands and other forested lands.

Through the designation of various land use allocations, the 1997 Forest Plan identifies that both productive and non-productive forest land will be set aside to sustain the diversity, function, and productivity of ecosystems. In addition to the Forest withdrawing a portion of the land from timber production, a portion of available timberlands on the Tongass National Forest have been withdrawn by National legislation. "National legislation has significantly reduced the available timberlands of the Tongass National Forest. About 7.89 million acres have either been selected or legislatively withdrawn. These lands contain about 2.75 million acres of timberland that are no longer available for timber harvest considerations" (FEIS, p. 3-249).

The Regional Forester's selection of Alternative 11 demonstrates his understanding of the need to maintain sustainability of the different resources on the Tongass National Forest. Consistent with NFMA and implementing regulations at 36 CFR 219.1(a), the Regional Forester selected the alternative which he felt best provided for multiple use and sustained yield of resources from the Tongass National Forest in a way that "maximizes long-term net public benefits in an environmentally sound manner." He recognized that components of management prescriptions for individual resources needed special consideration in his decision-making. The Regional Forester believed those components "are essential to maintain sustainability of ecosystems and the supply of goods and services" (1997 ROD, p. 4).

Ultimately, to achieve the desired forest conditions and human uses for the Tongass National Forest, the mix of LUD's and the associated standards and guidelines, in conjunction with monitoring and evaluation of the 1997 Forest Plan, are critical to maintaining the sustainability and long-term productivity of ecosystems on the Tongass National Forest.

Decision

After reviewing the record I find that the issue of lands unavailable for timber harvesting has been thoroughly considered and discussed. The 1997 Forest Plan was consistent with all law and regulations related to lands not suited for timber production. However, based upon my review of the record, I have determined there was a need to modify the provisions of the 1997 Forest Plan to address timber harvesting. My 1999 ROD removes about 100,000 acres from the suitable land base, leaving about 79 percent of the Tongass in LUD's which do not allow for timber management. This, and the establishment of 18 Areas of Special Interest, will help protect ecosystems and restore deteriorated ecosystems.

Cumulative Impacts

The appellant contends that, "[t]he [1997] ROD has failed to consider and compensate for the cumulative impacts resulting from clearcutting on private and public lands" (NOA, p. 2).

Cumulative Impacts Background

The NEPA regulations at 40 CFR 1508.25 require that environmental impact statements address the direct, indirect, and cumulative impacts of proposed actions. "Cumulative impact" is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions . . ." (40 CFR 1508.7). The scope and duty to discuss cumulative impacts "requires the weighing of a number of relevant factors, including the extent of the interrelationship among proposed actions and practical considerations of feasibility" (Kleppe v. Sierra Club, 427 U.S. 390, 410 (1976)). Thus, the nature of the obligation to address cumulative impacts depends upon the nature and character of the federal action at issue (Fritiofson v. Alexander, 772 F.2d 1225, 1246 (5th cir. 1985)).

As discussed earlier, the Forest Plan and FEIS merely provide the programmatic framework for future decisionmaking; they do not contain site-specific decisions (Idaho Conservation League v. Mumma, 956 F.2d at 1512). Thus, the scope of the action being considered in approval of Forest plans does not involve an irretrievable commitment of resources, and cumulative impacts of site-specific decisions need not be discussed in the programmatic EIS.⁵ The EIS prepared for the Forest Plan is, by its very nature, a cumulative impact analysis document.⁶

⁵*See e.g., Sierra Club v. United States Forest Service, 92-5101 Slip Opinion at 20 (D.S.D. October 28, 1993), affirmed, 94-1005 (8th Cir. February 1, 1995) (the court upheld the site-specific disclosure of cumulative effects in a project-level environmental analysis).*

⁶*Resources Ltd., Inc. v. Robertson, 8 F.3d 1394, 1400-1401 (9th cir. 1993) (programmatic EIS need not consider cumulative effects where such effects will be disclosed in site-specific environmental analysis); see Salmon River Concerned Citizens v. Robertson, 798 F.Supp. 1434, 1439-1441 (E.D. Cal. 1992) (programmatic EIS need not consider site-specific cumulative effects); Montana Ecosystems Defense Council v. Espy, 93-35676 Slip Opinion at 4-5 (9th Cir. January 24, 1994) (programmatic EIS need not consider cumulative impacts of future projects when such projects have not been proposed and are not "sufficiently definite").*

Discussion

While you express the concern that the 1997 "ROD has failed to consider and compensate for the cumulative impacts resulting from clearcutting on private and public lands," we interpret your comment to mean that the FEIS did not adequately address cumulative impacts. The 1997 ROD merely documents the Regional Forester's decision to approve the Forest Plan and provides the rationale for his decision (1997 ROD, p. 1).

Your statement indicates you are concerned with the cumulative impacts of timber harvests, which use the clearcutting method, at the project level. As discussed in the cumulative impacts background, the scope of the action being considered in approval of Forest plans does not involve an irretrievable commitment of resources, and cumulative impacts of site-specific decisions are analyzed at the project level, not the programmatic level of a forest plan.

The Regional Forester correctly noted that his decision in the 1997 ROD, "does not authorize timber sales or any other specific activity on the Tongass National Forest. Site-specific decisions will be made on projects in compliance with NEPA, Endangered Species Act (ESA), and other environmental laws following applicable public involvement and appeal procedures" (1997 ROD, p. 31).

Furthermore, the Regional Forester clearly explained the extent to which the FEIS analyzed cumulative effects, when he stated, "the Final EIS reflects consideration of cumulative effects of the alternatives by evaluating past, present, and reasonably foreseeable future actions in the planning area. The environmental effects analysis estimates timber activities and timber associated activities, such as road building, in excess of 100 years. The analysis of effects to wildlife was based on implementation of the Forest Plan for 100 years and considers changes to vegetation both temporally and spatially (Final EIS, pages 3-351 to 3-430). Moreover, although non-federal lands are outside the scope of this decision, effects from their management have been considered in the Final EIS to a degree appropriate for a programmatic NEPA document at this scale" (1997 ROD, p. 30). Clearly, the Regional Forester appropriately considered activities in private land in the programmatic analysis and ensures that private lands are considered in project level analyses.

The potential cumulative environmental impacts to federal and non-federal lands from resource activities on the Tongass National Forest must be considered and analyzed as required by the NEPA. Forest-wide standards and guidelines are in place for this very reason. "Forest-wide standards and guidelines are included in the Forest Plan to direct that cumulative effects of logging and other activities on private or State lands in conjunction with individual projects are evaluated if applicable during site-specific environmental analysis for those projects" (FEIS Appendix L, p. L-61).

A review of 1997 Forest Plan and associated analysis shows the cumulative effects of alternatives at the programmatic level were fully disclosed. In addition, as required by NEPA,

at the project level, the cumulative effects of individual projects or activities on federal and non-federal lands will be disclosed.

Decision

After reviewing the record I find that cumulative impacts associated with clearcutting on private and public lands was adequately discussed in the background material, as well as in the analysis of the 1997 Forest Plan. The 1997 Forest Plan, to the degree appropriate for a programmatic NEPA document, analyzed the impacts of timber harvesting. The 1997 Forest Plan is consistent with NEPA, and other law or regulations related to cumulative impacts. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Rivers Unsuitable For Designation as Wild, Scenic, or Recreational

The appellant contends, "[t]hese 5 aforementioned rivers [Spring Creek/Shelokum Lake, Orchard Creek, Blossom River, and Salmon River] were part of a list submitted in 1994 requesting wild and scenic designation. I would again ask that their status be reviewed" (NOA, p. 3).

Discussion

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 Wild and Scenic Rivers Act (WSRA) and the procedures established in the Forest Service Handbook (FSH 1909.12, 8.21). In summary, the Forest Service determination of eligibility for wild and scenic river designation, as part of the forest planning process, includes specialists' evaluations (based on criteria in section 1(b) of the WSRA of identified rivers, consideration of public comments, and a determination of eligibility by the deciding officer.

The next step results in the classification of the study river as "wild," "scenic," or "recreational." For those rivers which the study teams finds eligible, the third and final step is a determination of whether the river is suitable for inclusion in the national system. This step can be done during the forest planning process or at a later date. Criteria of primary importance in determining suitability are the qualities that a river segment possesses, as identified through the eligibility evaluation (and as directed under sections 1(b) and 2(b) of the Wild and Scenic Rivers Act and FSH 1909.12, 8.21). However, there are several other important criteria that should be considered in determining suitability, as directed under FSH 1909.12, 8.23 and the Interagency Guidelines for Eligibility, Classification, and Management of River Areas (47 Federal Register 173, September 7, 1982). The factors to consider include:

- 1. The characteristics which do or do not make the area a worthy addition to the National System (e.g., "outstandingly remarkable" values identified during the eligibility analysis and the river segment's free-flowing condition).*

- 2. The current status of land ownership and use in the area, including the amount of private land involved and the uses on such land.*
- 3. The reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the Wild and Scenic River System, and the values which could be foreclosed or diminished if the area is not protected as part of the System.*
- 4. Public, State, and local governmental interest in designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State and local agencies.*
- 5. The estimated cost of acquiring necessary lands and interest in land and of administering the area if it is added to the System.*
- 6. Other issues and concerns identified during the planning process.*

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.

An evaluation was conducted for the purpose of determining the eligibility of rivers and streams on the Tongass National Forest. An inventory of all areas of the Forest by Forest Service personnel and others was done (Record, RS-G-6-a, TLMP, #443). Using this information, streams and rivers with possible outstandingly remarkable values were identified and evaluated (Record, RS-G-6-a, TLMP #443 and FEIS, p. 3-331), as directed under sections 1(b) and 2(b) of the WSRA. Rivers that did not possess outstandingly remarkable values or free-flowing conditions were determined to be ineligible (Record RS-G-6 and RS-G-6a).

The FEIS states that all rivers on the Tongass were initially reviewed for outstandingly remarkable values (FEIS, p. 3-331). This evaluation resulted in the determination that 112 rivers are eligible for consideration as components of the National Wild and Scenic River System.

The Regional Forester reviewed the wild and scenic river eligibility process. He recommended 32 of the 112 eligible rivers as suitable for inclusion in the National Wild and Scenic Rivers System (1997 ROD, p. 9). He explained in the 1997 ROD:

These 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. With regard to the remaining 80 eligible rivers not recommended for designation as part of the National Wild and Scenic Rivers System, 37 of them have a majority of their eligible corridors within Wilderness areas or Legislated LUD II areas, and are therefore statutorily protected from development. In addition, 25 rivers have a majority of their eligible corridors within other non-development LUD's. There will be no scheduled timber harvest, and very little of other kinds of development, in these areas over the next 10 to 15 years. These rivers could be recommended for designation in future Forest Plan revisions.

If a river is not designated, it is not precluded from future consideration as an addition to the Wild and Scenic Rivers System. "Management prescriptions for the Land Use Designations, along with the Forest-wide Standards and Guidelines, will ensure that many of the outstanding qualities remain" (FEIS, p. 3-344).

Each of the rivers you recommended for protective status was reviewed in a suitability analysis (1997 ROD Appendix A and FEIS Appendix E). Four of the five rivers you listed in your appeal were, as explained in the Regional Forester's decision, determined unsuitable for designation. However, Orchard Creek and Lake were included in the list of suitable rivers. This area was recommended for 10 miles wild and 16 miles recreational designation (1997 ROD Appendix A, p. A-4). All of the rivers you list for re-evaluation as suitable for designation are listed in Appendix A of the 1997 ROD, and are also discussed in Appendix E of the FEIS. It must be noted again, that the 32 rivers recommended for designation are only "preliminary administrative" recommendations that may be further reviewed or modified.

The Regional Forester specifically discussed the rationale for rivers deemed unsuitable for designation. He stated in his decision, "[e]ighty rivers have been determined as non-suitable for wild, scenic or recreational designation. The values of these rivers are adequately represented by others being recommended for designation. Moreover, the Forest Plan's riparian standards and guidelines and other direction will adequately protect most of the values of these rivers while allowing competing resource management objectives to be met. In addition, the public comment on these rivers is mixed" (1997 ROD Appendix A, p. A-7). Explanations for rivers and segments of rivers determined to be unsuitable for designation can be found in Appendix A of the 1997 ROD.

Decision

After reviewing the record, I find that your concern related to reevaluating the eligibility and suitability of Spring Creek/Shelokum Lake, Blossom River, and Salmon River has been adequately discussed and considered. As explained in the 1997 ROD, Orchard Creek has been recommended for inclusion in the Wild and Scenic Rivers System. The 1997 Forest Plan is consistent with the WSRA, NFMA, NEPA, and other law and regulations related to the

designation of rivers as wild, scenic, or recreational. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue for the specific areas of your concern.

Exporting Timber

The appellant contends, "[i]f indeed sustainability of the timber industry in Southeast is one of the goals, logically then why are we exporting our resources? Or is the timber "harvest" primarily for the benefit of Southeast Asia?" (NOA, p. 3).

Discussion

You state in your concerns that you oppose the Regional Forester having the "sole authority" to export timber. As the 1997 ROD clearly documented, "[t]he Regional Forester has the authority to allow the export of logs on areas being logged primarily for local manufacture" (1997 ROD, p. 26), if local use will not be endangered thereby, pursuant to applicable law, regulations, and policy.

Furthermore, the Regional Forester clarified that "[t]imber sale program export policy administration can be adjusted in relation to market and facilities, without the need to further amend the Forest Plan or supplement the Plan EIS. The Plan does not govern export policy, which is defined by 36 CFR 223 regulations and related Forest Service manual [FSM], handbook, and timber-sale contract provisions" (1997 ROD, p. 26). Additionally, for fiscal year 1998, export policy also was governed by section 347 of Public Law 105-83 (Appropriations for the Department of Interior and related agencies).

"The cedar species, both western red and Alaska yellow-cedar, are minor species that historically have not provided enough volume of sufficient quality to support a sizable local domestic industry. Much of the cedar volume is poor grade and is of little value as lumber or shingles. In addition, cedar is generally not used to produce pulp. However, high-grade logs (especially Alaska yellow-cedar) usually command high prices in the export market. These species can be exported and are usually sold in the export market" (FEIS, p. 3-285). For fiscal year 1998, all Alaska yellow-cedar may be sold at export rates at the election of the timber sale holder (Sec. 347 of Public Law No. 105-83).

While there are opportunities for timber from Southeast Alaska to be exported, the Forest Service has recognized the potential conflicts associated with the export of timber. The Forest Service issued for comment a revised draft export policy (63 Federal Register 15378, March 31, 1998, Notice of Availability). The final policy may result in further restrictions on the export of round logs.

Decision

After reviewing the record, I find that the issue of exporting timber from Southeast Alaska was adequately discussed and considered. Also, the Alaska Region published (August 1998) an interim directive to the FSM to reflect the Alaska Region export policy and adhere to the Fiscal Year 1998 Appropriation language. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Cleveland Peninsula

The appellant expresses the concern that the Cleveland should "be left intact and its status as an intensive development area be re-examined" (NOA, p. 3).

Discussion

The area of your concern, the Cleveland Peninsula, is discussed thoroughly in several places in the FEIS and 1997 Forest Plan. The FEIS is fairly specific in its discussion of the Cleveland Peninsula due to the inclusion of several roadless areas on the Peninsula and directly adjacent to the Peninsula. The Cleveland roadless area (#528 - Cleveland) is located on the mainland on the southern end of Cleveland Peninsula which is a major land mass between Revillagigedo Island and Prince of Wales Island. There are also two other adjacent roadless areas (#529 - North Cleveland and #210 - Frosty) that are thoroughly discussed in Appendix C of the FEIS. The Cleveland roadless area (#528) appears to be the most pertinent roadless area to your concerns.

The FEIS addressed public comment in Appendix L. It clearly states that the Cleveland Peninsula's value as a special place for recreation, wildlife, and fish habitat has been recognized by both the public and the Forest Service. It also recognized the desire by some to allow other resource objectives, including logging, on the Peninsula.

Maintaining options for a variety of social and economic uses of the Tongass, from continuing a timber harvest program that provides a sustainable supply of timber and other timber products to providing for subsistence opportunities and unspoiled settings for recreation and tourism, was a key factor in the Regional Forester's decision (1997 ROD, p. 15). The 1997 Forest Plan was designed to provide a mix of resources and uses to best meet the needs of the American people, as well as to maximize net public benefits (1997 ROD, p. 37).

Decision

After reviewing the record, I find that your concern about the Cleveland Peninsula was discussed and considered by the Regional Forester. The FEIS and 1997 ROD specifically recognized the Cleveland Peninsula as a special place, but also recognized that there were multiple resource desires, both from the public and the Forest Service. However, based upon my review, I have determined there was a need to modify the provisions of the 1997 Forest Plan to better address the special circumstances of the Cleveland Peninsula. I have decided to change all development LUD's to semi-remote recreation and remote recreation, on the northeastern and central portions of the Cleveland Peninsula (enclosed 1999 ROD, Appendix B and Section on Areas of Special Interest).

Sincerely,

/s/ James R. Lyons

JAMES R. LYONS
Under Secretary,
Natural Resources and Environment

Enclosures
List of Parties
1999 ROD