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Date: April 13, 1999

Mr. Erik Lie-Nielsen
Narrows Conservation Coalition
P.O. Box 2130
Petersburg, Alaska 99833

RE: Appeal of the Record of Decision for the Tongass National Forest Land and Resource Management Plan (#97-13-00-0111-A217)

Dear Mr. Lie-Nielsen:

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 on behalf of Narrows Conservation Coalition was timely as it was postmarked on September 25, 1997. The Regional Forester transmitted the relevant decision documentation and pertinent appeal records (AR) to this office on November 12, 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

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

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)).

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 timber/mineral production, long-term sustainability of timber and ASQ levels, value added processing, negative income timber sales, public involvement/comment, LUD's, the planning process, cumulative impacts, and wild, scenic, or recreational river designation. Your requested relief is for further analysis and that the 1997 Forest Plan be amended.

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.

Accurate Maps

The appellant contends, "[t]he colored maps used by the Forest Service are examples of "graphical subterfuge" and do not present a fair view of the plan to the American people" (NOA, p. 1).

Discussion

You state in your concerns that the colored maps used by the 1997 Forest Plan do not present a "fair view of the Plan to the American people." The intent of the maps is to graphically represent the distribution of LUD's by alternative, land and timber types on the forest, roadless areas, recreation places, and areas of community deer harvest. As merely a graphical representation and at the scale necessary to be usable, it would not be reasonable to expect exacting detail. The maps adequately represent the themes they are depicting.

You mention in your appeal that large areas "on the mainland shown in dark blue for 'Wilderness and National Monument' are not really forest lands" (NOA, p. 2).

The Wilderness Act of 1964 Sec.2. (C) states:

> ***"A wilderness in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value" (16 U.S.C. 1131).***

As defined by the provisions of the Wilderness Act, an area of wilderness does not necessarily imply forested lands are present. While forested lands occur throughout the Tongass National Forest, some forested lands are removed from the suitable timber base. Any forested land in wilderness areas, wilderness National Monuments, and nonwilderness National Monuments, is "classified as unsuitable for timber production and withdrawn from the timber base" (1997 Forest Plan, pp. 3-19, 3-36, and 3-48 respectively). The management prescription for the LUD, "Nonwilderness National Monument" prohibits commercial timber sales and harvesting in National Monuments (1997 Forest Plan, p. 3-48).

The map packet includes a "Land and Timber Type" map which clearly shows the distribution of other forested land and non-forested land. This map also provides a graphical representation of higher and lower volume old-growth forest, young-growth forest of natural origin, young-growth forest of timber harvest origin, and non-National Forest System Lands within the Tongass National Forest boundary. If you compare the 1997 Forest Plan map and the "Land and Timber Type" map, the distribution and location of non-forested land wilderness areas versus forested land wilderness areas is obvious.

Decision

After reviewing the record I find that the Regional Forester's use of maps was reasonable. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Timber and Mineral Production

The appellant contends, "[t]hroughout the plan there is a pervasive tendency to favor timber and mining 'extraction,' or 'harvest,' or 'production,' or 'development' over all other uses or interests" (NOA, p. 2).

Discussion

In his decision, the Regional Forester described what he believed were important desired future conditions and human uses for the Tongass National Forest. 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). The Regional Forester also believed the Forest should 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).

In his discussion of management prescriptions, the Regional Forester stated that some components of the management prescriptions received special consideration in his decisionmaking because he believed they were "essential to maintain sustainability of ecosystems and the supply of goods and services", these include timber and mineral resources (1997 ROD, p. 3). Resources discussed in the Regional Forester's decision included fish, minerals, recreation and tourism, scenic quality, subsistence, timber, transportation, wetlands, and wildlife (1997 ROD, pp. 4-7).

However, timber and mining were not favored over other resources. The record is replete with information and analysis of other resources. Management decisions for the Tongass National Forest were shaped by the findings of analyses such as the Viability Population Committee Conservation Strategy, Habitat Conservation Area Strategy, Anadromous Fish Habitat Assessment (AFHA) recommendations, and standards and guidelines. Clearly, other resources were fully considered.

The alternative development and analysis process used for the 1997 Forest Plan relied upon public issues, resource opportunities, and management concerns to "reassess the management situation and to identify what might need to change in the current plan" (FEIS Appendix B, p. B-6). "The need to reassess led to formulations of alternative themes to respond to the analysis of the management situation and public comment" (FEIS Appendix B, p. B-6). The FEIS contains ten alternatives. "Each alternative represents a particular theme; from an emphasis on activities associated with non-development (Alternative 1) to one of maximum commodity development (Alternative 7)" (FEIS Appendix B, p. B-6). The reassessment or

revision led to a decrease in the ASQ from one alternative to another. Clearly the decrease demonstrates that timber was not pervasive over all other resources.

"All of the analysis and accounting for activities unrelated to timber harvest are taken care of within the Tongass GIS database. Ninety-five percent of the analytical processing concerns timber harvest and the effect of timber harvest on other resources. Decision trees (in the planning record) were developed such that the GIS could identify what land use designations would be best suited for specific areas on the Tongass in a way that would be most responsive to the theme of each alternative. Themes were generated to respond to the identified public issues" (FEIS Appendix B, p. B-6).

Many comments received on the 1997 Forest Plan responded to the particular theme of an alternative. Several comments received on the 1997 Forest Plan shared your similar concern that mining development is favored over other resources on the Forest. The response to the comment states, "[t]he standards and guidelines of the minerals land use designation provide the framework for the site-specific environmental analysis of potential effects of mineral activity on other resources. These guidelines are designed to assure the long term productivity of the land. Short term effects associated with the minerals activity will be mitigated by measures consistent with the scale of the development and the potential resource impacts" (FEIS Appendix L,
p. L-47). The Forest Service goes on further to say that, "[t]he Minerals LUD is not 'single-use' management any more so than are the Research Natural Area or Old-growth Habitat LUD's. It is simply a LUD that is development-oriented for the known existence of a potential commodity. The Minerals land use designation does not apply Forest-wide. It only applies to areas with known mineral potential, and would only apply if and when a plan of operations to develop such potential is submitted" (FEIS Appendix L, p. L-47).

Development of both the minerals standards and guidelines and LUD's again show the Regional Forester's desire to maintain a balance of resource uses.

Decision

After reviewing the record, I find that timber and mineral production have been considered in the context of all multiple uses on the forest. However, based on my review I have also decided to modify the 1997 ROD. My decision reduces the level of risk and uncertainty for ensuring environmental protection (enclosed 1999 ROD).

Long-term Sustainability of Timber/ASQ Levels

The appellant contends, "[w]e recognize the need to provide a predictable and steady supply of timber but feel strongly that there is a finite number of board feet per year which may be cut on a sustained basis over a long period of time without damage to the forest. The ASQ in the present plan does not address that adequately and the protection for the forest is insufficient as a result" and that the " number in the current plan for ASQ is unsustainable, as stated above" (NOA,
pp. 2-3).

ASQ Background

In the 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 . . ..

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[2]NFMA 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.

The Timber Companies have no right to compel the Forest Service to sell any future timber to them." The court noted that NFMA requires the Forest Service to develop a "planned timber sale program" (16 U.S.C. 1604 (f) (2)), but "limits the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained yield basis" (16 U.S.C. 1611 (a)).[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.

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).

Discussion

Several Forest multiple-use goals and objectives were established for the 1997 Forest Plan (1997 ROD, p. 2-3). "These goals and objectives describe the mosaic of land and resource conditions desired for the forest in the future" (1997 ROD, p. 2). Providing a sustainable level

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[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).*

of timber is one of the desired future conditions for the Tongass (1997 ROD, p. 3). Consistent with the goals for the Timber Production LUD the Regional Forester stated in his decision:

> ***"The timber resource will be managed for production of sawtimber and other wood products from timber lands available for sustainable timber harvest, on an even-flow, sustained-yield basis and in an economically efficient manner. We will seek to provide a timber supply sufficient to meet the annual market demand for Tongass National Forest timber and the market demand for the planning cycle. (1997 ROD, p. 3)."***

The LUD's (see discussion on Land Use Designations for more explanation) describe how an area of land and its resources will be managed. The 1997 Forest Plan on page 3-144 describes the goals for the Timber Production LUD:

- ***To maintain and promote industrial wood production from suitable timber lands, providing a continuous supply of wood to meet society's needs.***
- ***To manage these lands for sustained long-term timber yields.***
- ***To seek to provide a supply of timber from the Tongass National Forest which meets the annual and planning-cycle market demand, consistent with the standards and guidelines of this Land Use Designation.***

The range of alternatives in the FEIS presents a wide range of ASQ's that range from 0 to over 600 MMBF. Chapter 3 of the FEIS on pages 3-263 through 3-307, analyzes the effects of implementation of each alternative on timber resources. Appendix B of the FEIS on pages B-31 through B-38 discusses analysis processes and modelling used to evaluate ASQ by alternative. After reviewing the effects analysis for all resources in the 1997 Forest Plan, the Regional Forester explained in the rationale for his decision to select Alternative 11, that he believed Alternative 11 "best responds to multiple needs, including ensuring a healthy forest habitat and providing a sustainable supply of goods and services including timber" (1997 ROD, p. 15). He went on further to note that Alternative 11 has a "timber program potential (Allowable Sale Quantity) that allows flexibility to respond to changing needs within the timber industry, as reflected in the most recent demand study, and are responsive to communities dependent upon timber harvesting" (1997 ROD, p. 16).

As mentioned previously, ASQ is merely a ceiling. There is no commitment in the 1997 Forest Plan to offer any specific volume. The Regional Forester also explained in his decision that while the "maximum amount of timber that could be harvested during the first decade of 1997 Forest Plan implementation is an average of 267 MMBF per year, a level of 200 MMBF or less is more likely to be offered over the next few years, given current market conditions and the transition that both the timber industry and the Forest Service is experiencing. Therefore the public can expect the amount of timber to be offered annually to vary between 200 MMBF or less and 267 MMBF" (1997 ROD, p. 8). As demonstrated by the background on the ASQ and the Regional Forester's remarks, 267 MMBF or less than 267 MMBF may be offered per year. Furthermore, the Regional Forester explained that amount of volume offered in the selected alternative should provide a sustainable supply of timber. If new information shows otherwise, the plan can be amended.

Decision

After reviewing the record and the analysis conducted on ASQ, I find the discussion on sustainable levels of timber scheduled to be harvested on the Tongass National Forest has been discussed and analyzed sufficiently to satisfy NEPA. However, based on 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 have

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 MMBF. This is a reduction from the annual average of 267 MMBF in the 1997 ROD.

Value Added Processing

The appellant contends, "[t]he plan should address this issue of value added processing emphatically, and establish a mechanism for the active encouragement and support of value added processors, through education, workshops, field expertise and a program of financial assistance" (NOA, p. 3).

Discussion

In response to your concern that the plan should address the issue of "value added" processing, the function of a land and resource management plan (forest plan) must first be understood. The 1997 Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System. The 1997 ROD explains what the 1997 Forest Plan is (p. 1), as does the 1997 Forest Plan itself. "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). The components of 1997 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" (1997 Forest Plan, p. 1-3).

Several comments received on the 1997 Forest Plan revision shared your concern that the 1997 Forest Plan should place more emphasis and support on value added industries (FEIS Appendix L, pp. L-129 to L-130, L-139 through L-141). In response to your concern and the concerns of other respondents, the Forest Service explains that this is "a policy issue outside the scope of the Forest Plan" (FEIS Appendix L, p. L-130).

While value added industries are not established in the 1997 Forest Plan, Forest-wide standards and guidelines in the 1997 Forest Plan under Rural Community Assistance allude to promoting value added industries. The standards and guidelines state that resources should be considered "where resources could be redirected to respond to local needs and opportunities for rural development" (1997 Forest Plan, p. 4-74).

Provisions of the 1990 Farm Bill (Subtitle G of Chapter 2 known as National Forest-Dependent Rural Communities Diversification) provide rural communities with the opportunity to "request assistance from the Forest Service to form action teams which will develop and implement economic revitalization action plans. The first step in implementing the rural development program at the local level will be to meet with local leaders and individuals to establish action teams which will review (develop where none exists) the local economic development plan and recommend priority action items in which the Forest Service

can participate. Projects identified through this process will be incorporated into the budget process for funding consideration" (FEIS Appendix L, p. L-139).

The 1990 Farm Bill (Subtitle G of Chapter 2) provides a window of opportunity to communities in Southeast Alaska through which value added industries could be identified at the project level in economic revitalization action plans.

"In addition, the State and Private Forestry Branch of the Forest Service offers assistance under various programs. PL 95-313 Cooperative Assistance Programs includes a Marketing and Utilization Program which provides technical assistance to harvesters and processors to improve the efficiency of operations and extend the wood supply" (FEIS Appendix L, p. L-139).

The rural communities in Southeast Alaska affected by limitations on timber supply could, in conjunction with the Forest Service, focus economic efforts on alternative or "value added" industries in an attempt to revitalize their economies. For example, "[c]edars, both western red cedar and Alaska yellow-cedar, are not generally used by the industry in Southeast Alaska, but are sold in other markets. The creation of Southeast Alaska industries that could utilize this species would in effect increase the wood supply" (FEIS, p. 3-307). "There are a number of possibilities and potentials for additional timber-based industries (so called 'value added' industries) to create jobs and compensate for any job loss caused by limitations on timber supply. These include:

> ***1. Special forest products such as musical instruments, greenery, mushrooms & berries, and totem pole carving.***
> ***2. Value-added products such as air dried finished lumber to be shipped to Puget Sound for kiln drying for use in finger-jointed wood products, wood pellets for stoves, log homes, pre-fab cedar gazebos, door moulding, and cedar shakes.***
> ***3. Harvest of sphagnum moss from the muskegs.***
> ***4. Electrical generation using modified diesel-fired systems or new wood-gasification systems, including pellet plants, and wood chip cogeneration systems. These systems would use logging slash, wood chips and sawmill waste" (FEIS, p. 3-307).***

While the 1997 Forest Plan does not make project-level decisions related to value added industries, the Regional Forester recognized in the analysis and in his 1997 decision, that value added industries allow for additional resource uses. The Regional Forester stated, "[t]he Forest Plan provides opportunities for continuing or expanding resource-related industries in many other ways. Each of the 'timber harvest' (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. Areas important to the recreation and tourism industries have been identified and mapped, and were important in the selection of appropriate recreation-oriented land use designations for many portions of the Forest" (1997 ROD, p. 19).

The Regional Forester also noted in his decision that the Forest Service is participating in a large effort by a variety of Federal, State, and local agencies and the private sector to form the Southeast Alaska Community Economic Revitalization Team (SEA CERT), patterned after a

similar effort in the Pacific Northwest. SEA CERT includes 13 Federal agencies, including the Forest Service, USDA Rural Development, Natural Resource Conservation Service, Economic Development Administration, Small Business Administration, Department of Labor, Environmental Protection Agency, Public Health Service, U.S. Army Corps of Engineers, Housing and Urban Development, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. State members are expected to include the Departments of Community and Regional Affairs, Commerce and Economic Development, Labor, and Fish and Game, with the participation of numerous other State agencies. Local members, to date, include most communities in Southeast Alaska. The goal of SEA CERT is to promote economic stabilization and community development in timber-dependent communities in Southeast Alaska (1997 ROD, p. 19).

The interest in and support for developing alternative timber processing industries was reiterated by the Regional Forester. He stated, "[a]t the present time, timber markets in Southeast Alaska have been disrupted by the economic changes associated with the ending of the two long-term sale contracts held by the Alaska Pulp Corporation and the Ketchikan Pulp Company. The Governor of Alaska has chartered a task force to address the problems and opportunities created by this economic transition. Both industry and community leaders on the task force are struggling to identify and encourage alternative timber processing industries for Southeast Alaska. We are supporting this effort in an invited advisory capacity and recognize that such efforts take time" (1997 ROD, p. 26). The economic and community development efforts the Tongass National Forest have made clearly demonstrate that the issue of value added processing, as it relates to your concerns, has been addressed.

Decision

After review of the record, I find the issue of the Tongass National Forest emphasizing value added industries or processing was adequately considered. The Tongass National Forest has made efforts to promote rural community development and alternative timber industries as addressed in the discussion. The 1997 Forest Plan analysis is consistent with all relevant law and regulations related to value added industries. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

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

Negative Income Timber Sales

The appellant contends, "[n]o where does the plan address this phenomenon [negative income timber sales], apparently universal on the Tongass" (NOA, p. 3).

Discussion

You state in your concern that all [timber] sales on the Tongass National Forest "should make economic sense" (NOA, p. 3). As required by the Tongass Timber Reform Act (TTRA) of 1990, the Tongass National Forest must "assure that the price of timber offered under the contracts shall be adjusted to be comparable with that of independent national forest timber sales, with stumpage rates and profitability criteria comparable to those of independent purchasers in competitive sales; and assure that timber offered under the contracts meets economic criteria consistent with that of independent national forest timber sales" (TTRA Section 301 (c)(8)(9)).

To address your concern that timber management activities on Tongass National Forest, as outlined in the selected alternative, are not economically practical, a brief discussion of the economic efficiency analysis conducted for timber is necessary. The economic efficiency analysis "seeks to measure all of the costs and benefits associated with a given planning alternative and summarize them in the form of a 'Present Net Value' (PNV). In deriving PNV figures, costs are subtracted from benefits to yield a net value. 'Future values' (i.e. benefits received in the future) are discounted using an appropriate discount rate to obtain a 'present value.' The PNV of a given alternative is the discounted sum of all benefits minus the sum of all costs associated with that alternative" (FEIS, p. 3-501).

The Regional Forester had the difficult task of selecting an alternative that balanced the many competing values and uses of the Tongass National Forest. After his careful review of the PNV's for the various alternatives, the Regional Forester found that Alternative 11 provided the "best strategy for maximizing net public benefits" (1997 ROD, p. 16).

The selected alternative, Alternative 11, has a positive PNV of $508 millions (1995 dollars) as shown in Table 3-151, in the FEIS. When comparing all alternatives, Alternative 1 which harvests virtually no timber, has a PNV of zero. At the other extreme, Alternative 7 shows a $1.3 billion PNV. The range of present net values for other alternatives falls between the values for Alternative 1 and 7.

The Regional Forester stated, "[d]ecisions on site-specific projects are not made in this document" (1997 ROD, p. 43). He further noted, "[d]ecisions on proposed projects will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act" (1997 ROD, p. 43). Thus approval of the 1997 Forest Plan does not mandate any project decisions. Each project or activity, such as individual timber sales, must be consistent with the programmatic environmental protection direction in the 1997 Forest Plan (16 U.S.C. 1604 (i)). Included in the site-specific analysis of a timber sale would be an economic analysis which as mentioned above, attempts to measure the costs and benefits associated with a given planning alternative and summarize them in the form of a PNV. At the project level the economic efficiency of the timber sale would be determined.

Decision

After reviewing the record, I find that the analysis of the economic efficiency of the timber program shows a positive PNV and is consistent with TTRA, NEPA, and other laws or regulations related to timber sales on the Tongass National Forest. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Collaborative Stewardship vs Public Comment

The appellant contends, ". . . an overwhelming number of the record number of commentors to the new Tongass Land Management Plan were in favor of increased protections for the forest." "The Tongass National Forest must have more than lip service and catch phrases for protection. The wishes of the American people, the real owners of the forest, must be heard and considered completely" (NOA, p. 4).

Discussion

Public involvement is a required element of the NFMA and NEPA process which is used in preparing land and resource management plans (forest plans). As required by the Council on Environmental Quality (CEQ) for implementing NEPA, 40 CFR Part 1506.6(a) states, agencies shall "make diligent efforts to involve the public in preparing and implementing their NEPA procedures." The 1997 Forest Plan revision process as required by law, considered seriously, the interests and concerns of individuals with regard to the management of the Tongass National Forest. Not only because those considerations are required by law, but also because the human dimension is a vital element to ecosystem management.

As you also mentioned in your appeal, many individuals desire increased protection of forest resources. While this is true, some individuals favor increased use of specific forest resources. These areas of interest or concern often become issues that are identified during the public involvement process.

As explained in the 1997 Forest Plan, "[t]en public issues were originally identified in 1988 for the Forest Plan Revision. These were used for the 1990 DEIS, and remained the same, with some updating for the 1991 DEIS" (FEIS, p. 1-3). The original list of issues are described on page 1-4 through 1-6 of the FEIS and include: scenic quality, recreation, fish habitat, wildlife habitat, subsistence, timber harvest, roads, minerals, roadless areas, and local economy.

"Addressing the ten issues further defined the purpose and need for the 1990 DEIS and 1991 SDEIS. Part of the purpose and need of the 1996 Revised Supplement and this FEIS is to further address several issues that have continued to be of concern for the Tongass and are relevant to National Forest planning" (FEIS, p. 1-6). Clearly the desire to maintain continuity of issues through the planning process is demonstrated.

After release of the 1991 SDEIS, new information bearing on the 1997 Tongass Forest Plan Revision was available (FEIS, p. 1-6). "Out of this new information emerged five issues

determined by the Regional Forester to need more study and evaluation before a final Revised Forest Plan could be adopted" (FEIS, p. 1-6). Some of these issues are aspects or expansions of the ten public issues previously considered while others are new issues. The five issues needing more study include wildlife viability, fish habitat, karst and caves, alternatives to clearcutting, and socioeconomic considerations (FEIS, pp. 1-6 through 1-8). These five expanded issues became the focus of the alternatives in the Revised Supplement. "Information about these issues, including the results of recent science assessments, resource reports, and public comments, was combined with the information used to develop the DEIS and SDEIS alternatives to create the alternatives considered in detail in the Revised Supplement and in this FEIS" (FEIS, p. 2-8). Thus, the Regional Forester's careful consideration of public comments helped identify these five focus issues which in turn, are addressed through the alternatives.

In addition to addressing the five focus issues through analysis of the alternatives, the Forest plan multiple-use goals respond to "identified public issues and resource use opportunities, and collectively describe the desired conditions sought to be attained in the long run" (1997 Forest Plan, p. 2-2).

The preceding discussion clearly shows that, the "wishes of the American people," as stated in the appeal were heard and considered when the Forest goals were developed, in part, to respond to identified public issues.

Decision

After reviewing the record, I find that the issue of collaborative stewardship, as it relates to the Forest Service taking a proactive stance to respond to the concerns of the American public, has been adequately addressed and analyzed. The 1997 Forest Plan and analysis are consistent with the public involvement requirements of NEPA and NFMA. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue.

Land Use Designations

The appellant contends, "[t]he LUD's proposed in the new plan afford diminished or inadequate protections in many areas, contrary to the intent of the Tongass Timber Reform Act, and the wishes of the US House of Representatives" (NOA, p. 4).

Discussion

In your appeal you mention several areas that you feel have been assigned LUD's that are "contrary to the intent of the Tongass Timber Reform Act (TTRA)" (NOA, p. 4). Specifically you are interested in East Kuiu Island, Port Houghton and Sanborn Canal, and West Duncan Canal.

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."

"Land Use Designations (LUD's) specify ways of managing an area of land and the resources it contains. 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 Land Use Designation has a detailed management prescription which includes practices and standards and guidelines" (FEIS, p. 2-1).

The 1997 Forest Plan classifies lands suitable for timber production and determines where on those lands timber harvesting should be allowed, in accordance with NFMA regulations (36 CFR 219.14(a)), and Section 102 of the TTRA. These lands are capable of producing commercial volumes of timber on a sustained-yield basis, and are not in areas legislatively withdrawn from timber harvest (1997 ROD, p. 7). "They are the only lands where regularly scheduled timber harvesting may occur" (1997 ROD, p. 7).

"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, but these lands will be managed for resource uses other than timber production" (1997 ROD, p. 7).

The TTRA legislated areas to LUD II and wilderness. The Forest Service is required by law to uphold these designations. The 1997 Forest Plan does not diminish the integrity of those LUD's designated by TTRA. Instead, the 1997 Forest Plan standards and guidelines ensure that LUD II and wilderness areas legislated by TTRA are upheld and protected.

The Regional Forester recognized that certain areas of the Tongass National Forest were of special interest or concern and required land use allocations that provided additional resource protection. As he explained in the 1997 ROD, some of the land allocations in the 1997 Forest Plan "[r]eflect concerns raised in public comments, and most provide additional protection to Areas of Special Interest or with specific resource values" (1997 ROD, p. 10).

In the decision, the Regional Forester specifically mentioned several of the areas you are interested in:

> ***"The south end of Kuiu Island is allocated to Semi-remote Recreation. In the eastern portion of Kuiu Island, the allocations to the Old-growth Habitat and Modified Landscape LUD's have been expanded" and "Additional Old-growth Habitat LUD allocations enhancing the forest-wide reserve system have been***

> *made in other areas, including northeast Chichagof Island and Port Houghton" (1997 ROD, pp. 10-11).*

The Regional Forester also stated, "[i]n the meanwhile, special areas of concern have been fully considered and have been designated under specific LUD's. These designations, 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). Each area s attributes and resource potentials were carefully considered. In his decision the Regional Forester set "forth the land allocations of particular concern", which include land allocations for Port Houghton, Sanborn Canal, West Duncan Canal, and East Kuiu (1997 ROD, p. 23). The allocations for these areas are listed in the 1997 ROD (p. 23). The LUD standard and guidelines (Chapter 3 of the 1997 Forest Plan) provide management direction and protection for East Kuiu, Port Houghton and Sanborn Canal, and West Duncan Canal, as well as other areas on the Tongass National Forest.

Decision

After reviewing the record I find the issue of inadequate protection provided by the LUD allocations was addressed and considered. The 1997 Forest Plan and analysis conducted for these areas of interest were consistent with TTRA, and other law or regulations. Based on my review, I have decided to change development LUD's to mostly natural LUD's for East Kuiu Island, Port Houghton, and Sanborn Canal, as described in the enclosed 1999 ROD.

"Mid-level" Planning

The appellant contends, "[t]he new plan does away with the mid-level planning process which makes it impossible for the public to understand the cumulative impacts of implementation of the plan" (NOA, p. 4).

Discussion

Your concern regarding cumulative impacts is addressed in the issue that follows this discussion. The 1979 Forest Plan, as amended in 1987, required a third/mid-level planning. The 1997 ROD on pages 41 through 42 discusses why this mid-level analysis in the old Forest Plan was dropped.

As discussed above the 1997 Forest Plan is a programmatic framework for management of an administrative unit of the National Forest System. The 1997 Forest Plan sets forth goals and objectives (1997 Forest Plan, pp. 2-1 through 2-5) for management and establishes programmatic standards (1997 Forest Plan, pp. 4-1 through 4-122) to follow in pursuit of those goals. "Goals are achieved through the allocation of lands to the set of Land Use Designations (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). Pursuant to NFMA, the 1997 Forest Plan identifies land that is suitable for timber production and determines the ASQ, and other resource outputs; all of which are estimates.

Implementation of the 1997 Forest Plan will take place through project-level decisions which must be within the bounds of the programmatic framework (1997 ROD, p. 40). 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 forest plan will prevent such development from going forward (see Swan View Coalition v. Turner, 824 F.Supp 923, 933 (D. Mont. 1992)), or the 1997 Forest Plan must be amended.

As discussed before, the Regional Forester stated, "[d]ecisions on site-specific projects are not made in this document" (1997 ROD, p. 43).

To comply with statutory obligations arising from the NEPA, the Endangered Species Act, the Clean Water Act, and other environmental laws, it is necessary to perform site-specific environmental analysis of projects and activities prior to making a site-specific commitment of resources. It is virtually impossible to prepare the 1997 Forest Plan and FEIS of sufficient specificity to identify and adequately analyze all projects or activities which may occur in the 10-15 year planning period. As described in the Ninth Circuit Court of Appeals:

> ***"Direct implementation of the LRMP [Forest Plan] occurs at a second stage, when individual site-specific projects are proposed and assessed. The Forest Supervisor must ensure that all projects are consistent with the plan. Further NEPA analysis is conducted to evaluate the effects of the specific project and contemplate a range of alternative actions, including a "no action" alternative" (Idaho Conservation League v. Mumma, 956 F.2d 1508, 1512 (9th Cir. 1992)).***

Similarly, the Eighth Circuit Court of Appeals in Sierra Club v. Robertson, 28 F.3d 753 (8th Cir. 1994)[5] described the nature of forest plans:

> ***[A forest plan, such as the Tongass] is, in essence, a programmatic statement of intent that establishes basic guidelines and sets forth the planning elements that will be employed by the Forest Service in future site-specific decisions.***

The Forest also responded to previous comments on the two-step planning process and cumulative effects, and explained that a separate site-specific environmental analysis is done for each project (the second step in the two-step planning process). The cumulative effects of each project and any past, present or reasonably foreseeable future projects (in the same area) are also analyzed for the project. The 1997 Forest Plan does not authorize specific projects, and therefore, does not provide or need to provide the site-specific information for such projects; thus the cumulative effects analysis focuses on the estimated effects of the alternatives as a whole (FEIS Appendix L, p. L-193). The 1997 ROD explains why the mid-

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[5] ***See also Wilderness Society v. Alcock, 867 F.Supp. 1026 (N.D. GA. 1994) (on appeal to 11th Circuit).***

level or "area analysis" in the old Forest Plan (1989) was dropped (1997 ROD, pp. 41-42). The two-step process explained by the Regional Forester has been in use for years in other parts of the Forest Service and has posed no impediment to satisfaction of the NEPA requirement to adequately analyze cumulative impacts.

Decision

After my review of the record, I find that the Regional Forester followed the requirements of NFMA. The Regional Forester was clear in his discussion regarding the role of the 1997 Forest Plan. As outlined in the above discussion, the two-step planning process will allow the Forest to conduct credible cumulative impact analysis, prepare annual monitoring and evaluation reports, and will reveal any changes necessary to the 1997 Forest Plan. I affirm the Regional Forester's decision. Nothing in the enclosed 1999 ROD affects the 1997 ROD on this issue. The NFMA does not prohibit a third tier of planning but also does not require it.

Cumulative Impacts

The appellant contends, "[t]he new plan does not adequately address cumulative impacts of; (1) proposed harvests on the Tongass National Forests with earlier cuttings, and; (2) proposed harvests on the forest with those of adjacent non national forest lands" (NOA, p. 4).

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 1997 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.[6]

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[6] 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).

Discussion

You express the concern that the 1997 Forest Plan does not adequately address cumulative impacts, as they relate to past and proposed timber harvests on the forest. Your statement indicates you are concerned with the cumulative impacts of timber harvests at the project level. As is clearly discussed above, 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.

The Regional Forester correctly noted that the 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, 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 Revised 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).

The potential environmental impacts to federal and non-federal lands from resource activities on the Tongass National Forest must be considered. 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). As the Regional Forester correctly explained, "[d]ecisions on proposed projects will not be made until completion of environmental analysis and documentation for the specific project, in compliance with the National Environmental Policy Act" (1997 ROD, p. 43). Thus approval of the 1997 Forest Plan does not mandate any project decisions. Each project or activity must be consistent with the programmatic environmental protection direction in the 1997 Forest Plan (16 U.S.C. 1604 (i)). Therefore, any project that would occur is required to have environmental analysis, including analysis of direct, indirect and cumulative effects and documentation in compliance with the NEPA.

Decision

A review of the record shows the cumulative effects of alternatives at the programmatic level were fully disclosed in accordance with NEPA. In addition, at the project level, the cumulative effects of individual projects or activities on federal and non-federal lands will be disclosed in site specific NEPA.

Project level cumulative effects need not be addressed in a forest plan, and in fact are impossible to determine at the programmatic stage. 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.

Wild, Scenic, or Recreational River Designation

The appellant contends, "[a]ll the rivers and lakes qualifying for this designation [wild, scenic, or recreational] should be so designated for their entire length" (NOA, p. 5).

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 WSRA 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 Final Revised Guidelines for Eligibility, Classification and Management of River Areas, 47 Federal Register 39454 (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).

The FEIS states that all rivers on the Tongass were initially reviewed for outstandingly remarkable values (FEIS, p. 3-331). These exemplary rivers were an important factor in forming the basis for recommending rivers as additions to the National Wild and Scenic Rivers System (Record, RS-G-6, TLMP #1048 and FEIS, Appendix E, p. E-4). This evaluation resulted in the determination that 112 rivers and segments of 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 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" (1997 ROD, p. 9).***

The rivers and segments of rivers you recommended for protective status were, as explained in the Regional Forester's decision and in Appendix E of the FEIS determined not to be not suited for designation. Several of the rivers you list for consideration as suitable for designation are not listed in Appendix A of the 1997 ROD, but are discussed in Appendix E of the FEIS (pp. E-139 through E-336). Decision criteria were used to determine if a river was "unique" in the regional context, or if other resource opportunities would be foregone by including a river in the National Wild and Scenic Rivers System. Often a river or segments of

a river was recommended for scenic or recreational status rather than wild, depending on existing or potential future uses that would preclude classification as a wild river (1997 ROD Appendix A).

The Regional Forester specifically discussed the rationale for rivers unsuited 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 Revised 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 the issue related to designating eligible rivers for their entire lengths was adequately discussed. The methods and findings of the analysis are consistent with the WSRA, NEPA, the FSH, and other law or regulations related to the recommendation of rivers as wild, scenic, or recreational. I affirm the Regional Forester's decision with two exceptions; I have determined two other streams to be suitable and am changing the LUD's for the Kushneahin Creek and Castle River corridors in order to protect their outstandingly remarkable values (see ROD, Appendix A). This is the only element in the enclosed 1999 ROD which 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