



File Code: 1570

Date: November 4, 2005

Mr. Larry Edwards
Forest Campaigner
Greenpeace
P.O. Box 6484
Sitka, AK 99835

Dear Mr. Edwards:

Pursuant to 36 CFR 215.17, I have reviewed the administrative appeal record for the Couverden Timber Sales Final Environmental Impact Statement (EIS) and Record of Decision (ROD). The Tongass Forest Supervisor signed the ROD. I have also considered the Appeal Reviewing Officer's (ARO) recommendation (enclosed) regarding the disposition of your appeal (Appeal No. 05-10-00-0013). The ARO recommended that the Forest Supervisor's decision be affirmed.

DECISION

I concur with the ARO's recommendation and affirm the Forest Supervisor's decision. Your requested relief is denied.

My decision incorporates, by reference, the entire administrative record, which includes the appeal and project planning records, and constitutes the final administrative decision of the Department of Agriculture [36 CFR 215.18(c)]. The ROD may be implemented 15 days following the date of this decision [36 CFR 215.10(b)].

Sincerely,

/s/ Dennis E. Bschor
DENNIS E. BSCHOR
Appeal Deciding Officer

Enclosure

cc:
Tongass Forest Supervisor
Juneau Ranger District
Tongass Appeal Coordinator





File Code: 1570

Date: November 2, 2005

Subject: Couverden Timber Sales Project Record of Decision and Final Environmental Impact Statement

To: Appeal Deciding Officer

This is my recommendation, as Appeal Reviewing Officer, on the action you should take, as Appeal Deciding Officer, on the pending appeal of the Couverden Timber Sales project. The appeal, #05-10-00-0013, was filed by Greenpeace under appeal regulations at 36 CFR 215.

The decision being appealed is the decision by the Tongass Forest Supervisor to authorize the sale of timber and the construction of roads on the Chilkat Peninsula within the Juneau Ranger District, Tongass National Forest. The project area is approximately 30 air miles west of Juneau, 20 air miles southeast of Gustavus, and 13 miles northeast of Hoonah, Alaska.

The decision includes the harvest of approximately 861 acres (approximately 23 million board feet (MMBF) of saw log and utility volume) and the construction of about 3.8 miles of new classified road and 3.6 miles of temporary road. The decision also includes a non-significant Forest Plan amendment to enlarge the small Old Growth Reserve (OGR) in Value Comparison Unit (VCU) 1180.

Background

A Notice of Intent (NOI) to prepare an EIS for the Couverden project was published in the Federal Register on July 23, 2002. The Draft EIS was released for public comment in December 2003. On July 15, 2005, the Tongass Forest Supervisor signed the Record of Decision (ROD) for the project. Greenpeace appealed the ROD.

My review of the appeal was conducted pursuant to 36 CFR 215.19. The appeal and project record have been carefully reviewed in my consideration of the objections raised by the appellants and the requested relief. The Juneau Ranger District prepared the enclosed indices of the documentation supporting the decision, which are keyed to specific issues raised by the appellants. My recommendation hereby incorporates by reference the entire administrative record for the project.

The appellants list several interrelated issues in their appeal of the Couverden project. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe that they are adequately addressed in the following discussions.



Issue 1. Whether the decision adequately protects biodiversity and whether the treatment of biodiversity in the FEIS complies with NEPA.

Appellants assert that biodiversity was not adequately addressed in planning the Couverden project because the planners relied on the biodiversity conservation strategy provided in the Tongass Land Management Plan of 1997 (TLMP). Relying on the 9th Circuit Court of Appeals opinion in *Natural Resources Defense Council v. U.S. Forest Service*, CV-03-00029-J-JKS, finding that the TLMP market demand analysis was flawed, appellants argue that this invalidated the agency's attempt to balance the competing goals that were central to the forest planning effort, particularly those related to the plan's conservation strategy. This argument, along with the contention that there are those in the scientific community who challenge the adequacy of the Forest Plan's conservation strategy, lead the appellants to believe that the Forest Service erred in not revisiting the biodiversity issue in the Couverden FEIS, in violation of NEPA.

Discussion

In my opinion, appellants are arguing forest planning issues that are outside the scope of a project level EIS. The 1997 TLMP was developed in accordance with the National Forest Management Act (NFMA) and the corresponding Forest Service regulations at 36 CFR 219.19 (1982), which require that fish and wildlife habitat be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. These regulations apply to the development, adoption, and revision of forest land and resource management plans as requires by NFMA. They do not apply to project level decisions.

The Tongass Land Management Plan is the applicable Forest Plan, and the TLMP administrative record demonstrates that the Forest Plan old-growth habitat conservation strategy provides for viable populations of all old-growth associated species. The Under Secretary of Agriculture's decisions on the appeals of the TLMP ROD and FEIS determined that the Regional Forester's decision was consistent with NFMA.

The Couverden project is appropriately tiered to the comprehensive landscape old-growth habitat reserve strategy designed for TLMP. The Couverden FEIS addresses biodiversity and old-growth forest as it relates to the TLMP strategy in Chapter 3 [FEIS at 3-22 through 3-32]. This strategy was developed to provide a system of reserves that provide for the viability of species, even with the maximum timber harvest allowed under TLMP for a full 100 years. The potential cumulative effects of projects consistent with TLMP, such as the Couverden project, were evaluated in the TLMP EIS, and the potential effects of these projects on the viability of all species were considered in the design of the comprehensive landscape old-growth habitat reserve strategy.

Appellants assert that the 9th Circuit Court of Appeals' opinion that the TLMP market demand analysis was flawed (*Natural Resources Defense Council v. U.S. Forest Service*, CV-03-00029-J-JKS) invalidates the biodiversity assessment completed for the Couverden FEIS. I disagree. In its decision on that case, the District Court concluded that the Forest Service had "acknowledged th[e] uncertainty [regarding the conservation strategy], considered the available scientific evidence, marshaled the evidence in applying it to the Tongass Plan, and proceeded to

choose an alternative that would, in the Forest Service's opinion, best provide for the multiple-use goals mandated by Congress" [September 24, 2004 Order at p. 6]. The 9th Circuit Court of Appeals did not address this conclusion of the District Court [421 F3d.797, 810 n. 25 (2005)].

Issue 2. Whether the FEIS adequately discloses and considers pertinent science concerning the effects on wolves and their primary prey.

Appellants make several claims related to the analysis of the potential effects of the project on wolves and their primary prey base (deer), and whether the deer model used in this analysis is scientifically valid. They contend that the FEIS did not consider or disclose the current state of the science concerning deer and wolf population dynamics. Appellants claim that the FEIS failed to disclose the model's sensitivity to snow depths and whether the snow zone map used was verified; and that the model is designed to indicate habitat capability in average winters, not periodic severe winters. Appellants also assert that the Forest Service unilaterally changed the range of Habitat Suitability Index (HSI) scores from a range of zero to 1.0 to a range of zero to 1.3, thereby skewing the model toward overestimating habitat and underestimating impacts. They also question the use of the Quick-Cruise method to verify the model's results, and whether the model considers juxtaposition of habitats or habitat fragmentation. Appellants also contend that the use of the model is not appropriate in areas where there is wolf predation.

Discussion

Several of appellants' assertions regarding the accuracy of the model's predictions, debate within the scientific community, and disclosure of coefficients used in the project analysis are related to the NEPA requirements for: 1) use of best available information [40 CFR § 1502.22]; and 2) disclosure of methodology and scientific accuracy [40 CFR § 1502.24]. In my opinion, the FEIS complies with these requirements.

The Wildlife Resources Report's analysis for deer used the most recent (2002) approved version of the deer winter habitat model when analyzing the potential effects of the project's alternatives on deer. The FEIS explains that the deer model is a useful comparison tool for evaluating the potential effects of proposed activities on deer and the species that rely on them as a prey base [FEIS at 3-47]. It should be emphasized that the model was evaluated by field surveys, represents just one tool in project level analysis, and is best used to make relative comparisons between alternatives rather than actual population predictions. Any changes in the model will be the result of field observations, thorough analysis, and peer review. As noted in the Tongass National Forest Annual Monitoring and Evaluation Report for FY 2002, the Tongass and the Alaska Department of Fish and Game (ADF&G) continue to work on a deer-predator-habitat interaction study, which will enhance understanding of the effects of forest management on deer populations.

Contrary to appellants' assertion, the FEIS clearly discloses that the model predicts long-term carrying capacity for average winter conditions. The FEIS states that the deer model output "[i]s not an actual population number, but it is a theoretical long-term carrying capacity for the habitat in the area given normal winter conditions" [FEIS at 3-47]. The Wildlife Resources Report provides further discussion of the effects of severe winters on deer, stating that "[d]eep snow

winters, combined with large amounts of cleared winter range, adversely affect deer populations. Even where no past harvest has occurred, a deep-snow winter can result in relatively high deer mortality” [Project Record Document 6.5 at p. 78]. The analysis for the Couverden timber sale used snow conditions data as currently incorporated in the approved model.

Appellants assert that the Forest Service unilaterally changed the range of HSI scores from a range of zero to 1.0 to a range of zero to 1.3, resulting in overestimating habitat and underestimating impacts. Both the Wildlife Resources Report [Project Record Document 6.5 at pp. 81-82] and the FEIS [pp. 3-44 and 3-45] indicate that the Habitat Suitability Index (HSI) score in the model ranged from 0.0 to 1.0. As clearly stated in the FEIS, “[t]he model adopted a density of 100 deer per square mile for determining a long-term carrying capacity and corresponded to habitat scores of 1.0” [FEIS at 3-44]. Contrary to appellants’ assertion, there is no evidence that any HSI scores were unilaterally adjusted either up or down.

Appellants contend that the use of the “Quick-Cruise Method for Assessing Deer Winter Range” to verify the model’s results was inconclusive. The FEIS states that results from the Quick-Cruise Method were compared to HSI values from the deer model. Results between the two analyses were similar, verifying that the HSI model was correctly predicting that the “[p]roposed unit pool does not provide large amounts of good quality back-tailed deer habitat” [FEIS at 3-47]. In my opinion, this statement is clear in that it compares habitat capability (as predicted by the model) with on-the-ground conditions. This exercise did not attempt to predict or verify actual deer numbers.

As appellants state, the current deer model is relatively simple and does not incorporate juxtaposition of habitat components. However, the FEIS displays and discusses forest fragmentation, including a comparison of patch sizes between alternatives; describes adjustments to OGRs; and discusses the effects of the alternatives on wildlife corridors and habitat connectivity [FEIS at 3-26 through 3-32]. Specifically, an interagency review by biologists from the Forest Service, ADF&G, and the U.S. Fish and Wildlife Service (USFWS) determined that the mapped OGR in VCU 1180 did not meet the requirements for size and did not optimize deer winter habitat. The decision documented in the ROD includes a non-significant Forest Plan amendment to enlarge the small OGR in VCU 1180 as recommended by the interagency team to include high volume old-growth stands that provide high-value deer habitat [ROD at 4]. In my opinion, the FEIS adequately addresses and discloses the potential effects of the project on habitat fragmentation.

Finally, appellants contend that the FEIS analysis of the effects on deer and wolves is flawed because it relies on the deer model to determine whether an adequate deer prey base will remain to support wolves. I disagree. The analysis presented in the FEIS indicates that wolf viability does not rely solely on the deer model results. The FEIS discloses that the primary effects of the Couverden project on the wolf population are not only dependent on the effects on the deer population, as appellants suggest, but also on the level of roading [FEIS at 3-55].

While the FEIS discusses the effects of the project on the deer population in detail and states that “[d]eer habitat capability is believed to be a significant factor affecting the viability of wolf populations” [FEIS 3-54], it also points out that “[i]n the vicinity of the project area, other prey

species such as moose, mountain goat, and beaver are important prey items” [FEIS at 3-55]. In addition, the ROD discloses that under the selected alternative, deer density in the project area would decrease from 21.5 deer per square mile to 21.3 deer per square mile. This density is well above the 18 deer per square mile guideline for the minimum carrying capacity to support wolves [ROD at 11 and 12].

With respect to road densities, the FEIS discloses that the density of open roads in the project area following completion of the project will be 0.55 mile per square mile [FEIS at p. 3-55]. This far exceeds the Forest Plan’s guidance (which only applies where wolf mortality concerns have been identified, and where road access has been determined to significantly contribute to wolf mortality—neither of which apply to the Couverden project area) that “[o]pen road densities of 0.7 to 1.0 mile per square mile may be necessary to reduce mortality to sustainable levels” [TLMP at p. 4-116]. The FEIS also discusses the potential effects that roaded access would have on the already small deer population, and concludes that “[a]lthough the project is not expected to have significant effects on prey species, in particular Sitka black-tailed deer, wolves may be affected by the increase in access by hunters” [FEIS at 3-56]. These effects would be mitigated by the closure of all new roads to motorized vehicles after the completion of harvest activities [ROD at 5].

In my opinion, the FEIS does not rely entirely on the deer model to determine whether an adequate deer prey base will remain to support wolves. The FEIS not only appropriately applies the current deer model results to compare the estimated effects of alternatives on deer and wolf populations, but it also considers other factors such as old growth reserves and road densities.

Issue 3. Whether the FEIS adequately discloses and analyzes impacts on deer and wolves with respect to the effects on subsistence.

Appellants assert that the deer model does not provide an adequate assessment of the project’s effects on subsistence because hunters and wolves rely on the same supply of deer.

Discussion

The FEIS discloses that “[t]he Couverden project area receives relatively little use for subsistence activities when measured in terms of harvest and compared to the total land use pattern...” [FEIS at 3-169]. Table 3-65 indicates that habitat capability for deer would be reduced to 11.4 deer per square mile when the 36 percent reduction for wolf predation is applied to the model. The FEIS discusses the effects of this reduction, and concludes that “[b]ased on the current level of deer high value habitat, and subsistence and non-subsistence hunting documented within the project area, even the reduced long-term carrying capacity should not have a significant restriction on the current pattern of subsistence uses in the project area, because deer abundance and distribution is not the primary reason why current users of the project area choose to go there” [FEIS at 3-172].

As discussed above, the model represents just one tool in project level analysis and is best used to make relative comparisons between alternatives rather than actual population predictions. In my opinion, the model was appropriately used in the analysis of the potential effects of the Couverden project on deer and wolf populations, and the FEIS adequately discloses these effects and their relationship to subsistence uses.

Conclusion and Recommendation

In my opinion, the analysis in the Couverden FEIS and project record is sufficient to support the Forest Supervisor's decision with respect to all the issues raised in this appeal. Based on my review of the FEIS, the ROD, and the project record, and my discussions of each specific appeal issue above, I believe the FEIS and ROD meet all applicable requirements of law, regulation, and policy. Therefore, I recommend that you affirm the Forest Supervisor's decision.

/s/ Beth Giron Pendleton
BETH GIRON PENDLETON
Appeal Reviewing Officer

Enclosures

cc:
Margaret E VanGilder