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DELIVERY BY COURIER AND BY EMAIL

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NOTICE OF APPEAL

Record of Decision and Final Environment Impact Statement Tongass Land and Resource Management Plan

Dear Chief Kimbell:

By this document the; Southeast Conference, Ketchikan Gateway Borough, City and Borough of Juneau and the cities of Ketchikan, Wrangell, Craig, Coffman Cove, the Prince of Wales Community Advisory Council; the Juneau Chamber of Commerce and Ketchikan Chamber of Commerce file this appeal under United States Forest Service regulations, 43 CFR Part 19. The Alaska Forest Association joins in support of this appeal but is filing its own direct appeal. This appeal is filed timely and provides the basis for changes in the Record of Decision for the Tongass Land and Resource Management Plan Amendment published February 15, 2008.

Appeal Parties:

The Parties to this appeal include:

1. The Southeast Conference (SEC)—SEC is a regional, nonprofit corporation that advances the collective interests of the people, communities and businesses in Southeast Alaska. Members include municipalities, native corporations and village councils, regional and local businesses, civic organizations and individuals from throughout the region. SEC has a major interest in the outcome of this appeal as it will have a major effect on the socio-economic fabric of the Southeast Alaska Region.
2. Ketchikan Gateway Borough (KGB)—located in Southeast Alaska, KGB is one of the largest geographical and populated governmental units located within the Tongass National Forest. A borough in Alaska is the equivalent of a county form of government. In addition to its other governmental responsibilities, the KGB is responsible for the maintenance of one of the largest school districts in the Tongass National Forest which traditionally has depended on funding receipts from the USFS timber sale program. Additionally, KGB is the mortgage holder for the Ketchikan veneer plant. The plan desperately needs changes in the ROD to provide sufficient timber to allow that plant to operate.
3. City and Borough of Juneau (CBJ)—located in Southeast Alaska, CBJ is the most populated government until located within the Tongass National Forest. CBJ is vitally interested in this appeal and plan amendment. Within CBJ is the Regional office of the USFS as well as the headquarters of the Southeast Conference. CBJ is also the capital of Alaska and the economy of CBJ is interrelated with the economies of the other towns and cities in the Region. The CBJ supports a diverse and revitalized regional economy. This outcome of this appeal is critical to that goal.
4. The City of Ketchikan (KTN)—located in Southeast Alaska, KTN is vitally interested in this appeal and plan amendment. Within KTN are the headquarters of the Alaska Forest Association (AFA). KTN serves as a key headquarters and supply center for the timber industry and will be heavily affected by the outcome of this appeal.
5. The City of Wrangell (WRG)—located in Southeast Alaska, WRG is vitally interested in this appeal and plan amendment. One of the major employers in WRG has been and hopefully will continue to be the Wrangell Sawmill. Only a plan amendment which will provide adequate economic timber can successfully revitalize the saw mill and provide full time employment for up to 200 workers. The economy of WRG has suffered while the sawmill has been denied adequate economically marketable timber on which the sawmill can operate. The outcome of this appeal is critical to the well being of WRG and its residents.
5. The City of Craig (Craig)—Located on Prince of Wales Island, Craig is the largest community on the island and located within just a few miles of the Viking Lumber sawmill, the largest employer on the island. Craig is also a major supplier of goods and

services to the Alaska Timber Industry. The outcome of this appeal will determine if the Viking Lumber Mill can stay in business and supply jobs and economic benefits to Craig, its residents, and businesses. The City has a great interest in the outcome of this appeal.

6. The City of Coffman Cove (Coffman)—Located on Prince of Wales Island, Coffman was founded as a logging camp and log transfer facility for the Alaska Timber Industry. Now that the timber industry has been downsized by federal timber policy, Coffman has taken over most of the land originally used by the timber industry as a logging camp. It is a proponent of HR. 831 and S. 202, bills pending in Congress which will transfer an 11 acre parcel that was formerly part of a USFS administrative site to the City of Coffman. The City is vitally interested in the economic and potential employment which will be affected by the decision under this appeal.
7. Prince of Wales Community Advisory Council (POWCAC)—The POWCAC is a membership organization made up of the communities located on Prince of Wales Island. Members include the Cities of Craig, Thorne Bay, Coffman Cove, Klawock, Hydaburg, Hollis, Kasaan, Nakuti, Whale Pass, Point Baker, Port Protection, Edna Bay Community Advisory Council, and the Prince of Wales Chamber of Commerce. The purpose of POWCAC is to promote the resolution of issues important to the residents of Prince of Wales Island. The outcome of this appeal is critical to the economic well being of the residents of POWC which is dependent for jobs and service support of the timber industry. The Viking Lumber Mill is one of the largest private employers on the island and its future is critically affected by the outcome of this appeal.
8. The Juneau Chamber of Commerce (JCC)--The Juneau Chamber of Commerce supports economic diversity, encourages entrepreneurship, and endorses responsible, sustainable development for Juneau, Southeast Alaska, and the entire State. The future of Southeast Alaska's economy is very important Juneau and the JCC.
9. The Greater Ketchikan Chamber of Commerce (KCC) -- The Greater Ketchikan Chamber of Commerce is organized to encourage leadership by business and professional individuals to improve business relations, economic well-being and the quality of living in Ketchikan for the benefit of the entire community. To accomplish this, our Chamber is dedicated to promoting and improving the economy by increasing the tax base, encouraging business prospects and investments, and providing a constant level of employment by supporting the local job market as the center of local timber industry support, the outcome of this appeal is critical to the KCC.

Also joining this appeal is The Alaska Forest Association (AFA)—The AFA is the trade association representing virtually all aspects of the Alaska timber industry including timber processing companies, logging companies, timber support companies, timber suppliers, and marine tug and barge companies. The AFA's mission is the restoration, promotion, and maintenance of a healthy, viable forest products industry contributing to the economic and ecological health in Alaska's forests and communities. Since the change in federal timber policy, the AFA's membership has suffered economic hardship and the future of the timber industry and AFA is literally dependent upon the outcome of this appeal.

The Alaska Forest Association (AFA) is also filing its own direct appeal.

Summary of Appeal Points

This appeal is filed because the USFS has failed to meet its major stated goals as defined by its Environmental Statement and Record of Decision:

Failing to Seek to Meet Market Demand

The ROD fails to meet Key Issue #2 in the ROD—“The Tongass National Forest needs to provide a sufficient economic timber supply to meet the market demand and help maintain a vibrant economy in Southeast Alaska.”—TLMP ROD Summary, p. 7.

The ROD fails to meet the market demand in three ways:

- The USFS will not be able to prepare sufficient economic timber sales.
- The ramp-up plan will not work as outlined.
- There are not enough acres for which economic timber sales can be harvested to support the volume needed to restore a fully integrated industry.

By failing to do so it has over weighted its decision in the other 2 Key Issues—

Overemphasizing Conservation

Key Issue #1—“Protection of high value roadless areas from road development and timber harvest activity, on the Tongass is of local and national importance, particularly for wildlife and biodiversity, recreation and tourism.”—TLMP ROD Summary, p. 6.

However, the timber supply for the industry can be grown and sustained on about one million acres of average quality timberland (6% of the Tongass). That acreage can be provided in intensively managed blocks or dispersed across the Tongass, but either way the majority of roadless areas need not be impacted. Overly restricting timber harvest to only 773,000 acres of which only 663,000 acres could actually be harvested (if offered in an economic manner) to avoid a small percentage increase in roadless area development will prevent meeting statutory requirements under TTRA and the ROD’s achievement of supplying sufficient economic timber under Key Issue #1.

Key Issue # 3—“Protection of wildlife and biodiversity on the Tongass is of local and national significance and is affected by road development and timber harvest activities.”—TLMP ROD Summary, p. 8.

By not properly evaluating what is necessary to protect wildlife and biodiversity, the ROD fails to meet statutory requirements under TTRA and the ROD’s Key Issue #2 goal of supplying economic timber. In fact, there is more than ample protection of wildlife and biodiversity on the Tongass in the statutory set asides, including 5.3 million acres of Congressionally dedicated wilderness and over 1 million acres of statutory LUD II areas as well as all other areas which

will not be subject to timber harvest under any of the alternatives which would leave 75% (page 2-45 of the EIS) of the 15.3 million acres of roadless areas and its attendant wildlife completely intact. The Forest Service could further reduce the impact on roadless areas by adopting a more intensive timber harvest schedule for some areas in order to leave other areas undeveloped. The proposed plan results in an unnecessarily large dispersal of timber harvest which in turn causes both economic problems and maximum impact on roadless areas.

Plan is in Violation of Federal Law

This failure to properly evaluate Key Issue #2 and overweighting Key Issue #1 and #3 is a violation of federal law and a decision which is arbitrary and capricious. Specifically:

- i. **Tongass Timber Reform Act of 1990(P.L. 101-626)**--Specifically, the ROD violates Section 101 the Tongass Timber Reform Act which requires that the USFS must:

"...to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle."

By incorrectly evaluating the market demand for the Tongass as required by the TTRA, the ROD fails to meet the requirements of this section of federal law and is invalid as being arbitrary and capricious and not in accordance with law. Point # 4 below.

In addition, the SEC analysis and the agency's own analysis indicates that the 2008 Plan cannot be fully implemented, thus it fails the seek-to-meet test in that regard as well.

- ii. **Alaska National Interest Lands Conservation Act of 1980** (P. L. 96-487)—
Section 1326 of this act states:

"(a) No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress."

By withdrawing land under the guise of "standards and guidelines," particularly the old growth reserves, the legacy standards and guidelines, and buffer strips on beach fringes, Class III streams, and other streams which are not Class I or II streams, the USFS has

violated Section 1326 of ANILCA which is also referred to as the “no more withdrawal” clause of that Act.

iii. **The National Forest Management Act of 1976** (P.L. 94-588)—The planning requirements of this act require that:

“In developing, maintaining, and revising plans for units of the National Forest System, ... the Secretary [of Agriculture] shall assure that such plans ... provide for multiple use and sustained yield of the products and services obtained therefrom ... and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.” (16 USC 1604(e))

While following the timber sale preparation requirements of the 1997 TLMP, the USFS has failed to provide economic timber sales at even the reduced timber sale offering level that they deemed adequate. The 2008 TLMP has basically the same timber sale preparation requirements as the 1997 plan and both the SEC and the USFS’s own analysis indicate the economic problems are still severe. Even if the USFS utilizes all phase 1, 2 and 3 areas, the specific acres selected along with the proposed standards and guidelines, will not support economic timber sales even at the plan’s stated ASQ of 267 million board feet per year.

iv. **Administrative Procedure Act of 1946**, Section 708 (5 USC 708)—

“...the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...”

By failing to comply with the laws cited above, the ROD is a decision that is arbitrary and capricious and in violation of federal law. Specifically:

- Failing to properly seek to meet market demand.
- Establishing withdrawals in excess of 5,000 acres in the aggregate.
- Failing to properly allocate resources as required by the planning requirements of USFS’ own enabling laws and regulations.

The Record of Decision is arbitrary and capricious which is an “absence of a rational connection between the facts found and the choice made. *Natural Resources. vs. U.S.*, 966 F.2d 1292, 97, (9th Cir.'92). A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of discretion or

otherwise not in accordance with law or if it was taken without observance of procedure required by law. 5 USC. 706(2)(A) (1988).

Appeal Details

Failing to Seek to Meet Market Demand

The ROD fails to meet Key Issue #2—“The Tongass National Forest needs to provide a sufficient economic timber supply to meet the market demand and help maintain a vibrant economy in Southeast Alaska.” By failing to do so it has over weighted its decision in the other 2 Key Issues-

Failure to Properly Assess Demand and to Supply Timber to meet True Market Demand—

The USFS incorrectly states that demand is low and its implementation procedures ramp-up the timber sale volume much too slowly. Although this slow ramp-up allows USFS to avoid timber harvest in roadless areas (Timber Adaptive Management Strategy phase 2 and 3 areas) throughout the anticipated 15-year term of this plan, the slow ramp-up will prevent any restoration of a viable, integrated manufacturing industry until long after this plan has come to a conclusion. The USFS decision on timber demand is completely wrong. In fact, demand is effectively unlimited and only the failure of the USFS to provide an adequate timber supply prevents a greater timber harvest that would support a viable timber industry.

The USFS has known for many years that underestimating demand will lead to disastrous results in violation of TTRA. One of its earliest reports following the passage of TTRA made this very clear. See Timber Demand Scenarios for Tongass National Forest 1991-2010 conducted by the Irland Group for the USFS, dated June 23, 1992.

Excerpt from page 1 of the Irland 6-23-92 Report:

“8. A TNF ASQ based on assumed low demand will become a self-fulfilling prophecy.”
Attachment #1.

This statement is just as true today as it was 16 years ago, but the USFS continues to ignore this sage advice. The USFS must revise its Timber Adaptive Management System (TAMS) which effectively limits future annual timber offerings by the USFS to that which was previously harvested. It must substitute TAMS with a concerted program to quickly restore a real supply of economic timber which will allow the existing mills to fully utilize their installed capacity so that market demand can be met. The Irland study in 1992 showed that timber demand was far greater than simply replacing volume harvested from the prior year or two. This remains the case today.

As part of its comments, SEC submitted a demand study by the McDowell Group: *“Timber Markets Update and Analysis of an Integrated Southeast Alaska Forest Products Industry,*

October 2004” This study made clear that there is very high demand for economic timber from the Tongass National Forest.

This study was further supplemented by the McDowell Group by letter on December 30, 2006. That letter stated:

“...90 percent of Tongass ASQ of 267 mmbf would actually be harvested each year. Thus our characterization that 200 mmbf is the minimum Tongass harvest needed, but that a harvest of ‘twice that much timber’ or a harvest of ‘350 mmbf or more’ will be required to produce a healthy, competitive and sustainable integrated industry in Southeast Alaska. Given the decline in the state and private harvests, coupled with an increasingly costly operating environment, the case for a Tongass harvest of 350 mmbf is even stronger today than it was two years ago.”

Both the study and the supplemental letter were provided by SEC to the USFS as comments on the draft EIS and are attached again to this appeal. Attachment #2 Cover Page/Executive Summary. And Attachment #3—SEC letter 12/30/2006.

The ROD ignores this information and provides instead a convoluted process entitled “Timber Adaptive Management” which relies not on an annual demand analysis¹ but primarily upon past timber harvest levels to establish future demand.

The AFA has asserted for years to the USFS that neither timber harvest nor “supply” can be an accurate measure of demand since both harvest and supply can and will be artificially reduced by appeal and litigation from opponents of timber harvest and the up to now consistent failure of the USFS to provide a steady supply of economic timber to meet the demand.

The current ROD has the same problems and infirmities. Using the USFS’s own data, It is clear that about 82% of the timberlands selected for timber harvest will not support economic timber sales in most markets²

Specifically, the USFS claims in the ROD that 663,000 acres are suitable and available for timber harvest. But after the USFS has removed that timber which it sets off limits to harvest by management under standards and guidelines and other purposes, that amount is reduced to 289,951 acres. That acreage is not realistic because it is reduced further to 121,898 acres once the young growth which will not be economic for at least 30-50 years is removed.

That means the entire USFS timber program must be supported by only 18% of the timber, which the ROD purports to make available. This will not support timber demand and to do so is arbitrary and capricious and a violation of TTRA.

¹ The incorrect concepts and assumptions utilized in the USFS annual demand analysis are summarized in the attached Critique of the 2000 annual demand report. Attachment #4

² The attached TETRA TECH VCU analysis indicates that only about 18% of the selected timber harvest acres will support economic timber sales. Attachment #5

See Attachment #5 Tetra Tech VCU with Positive LSTA (Logging Systems Transportation Analysis). This document is divided into two charts. The labeled "**Positive Value Analysis Areas Only**" on the left side shows the USFS own analysis of the VCUs which wrongly assumed that 289,951 acres will be economic. The columns labeled "**Positive Value Analysis Areas Only - OG only (OG is old-growth)**" on the right side shows the actual amount after removing young growth which will not even be economic within the plan time period of 10-15 years. **The corrected number is 121,898 acres. This estimated acreage is too small to support the industry for even the next 10-15 years and this economic acreage estimate is likely overstated.**

See also discussion on pages 24-25 which discusses the analysis by Cascade Appraisal; which shows how the standards and guidelines reduce timber sale areas to be uneconomic. The detailed appraisals for 9 VCUs that Cascade Appraisals performed in late 2007 using USFS data (see pages 25 and 26 of this document) indicate that two of the VCUs (4570 and 5730) listed as positive by the TETRA TECH analysis are not economic. VCU 4570 appraises positive in the TETRA TECH analysis, but negative in the Cascade analysis and VCU 5730 appraises positive in the TETRA TECH analysis but in the more detailed Cascade analysis the profit margin is well below the allowance that is required by law under the Red Cedar amendment Section 411 Consolidated Appropriations Act, Public Law 110-161; and quoted at p.25.

The ramp-up procedures, the phasing strategy, the poor economics that result from selecting high-cost, low-value timber harvest acres and applying overly constraining standards and guidelines to those acres, along with the misconceptions the agency has concerning the timber industry will result in a continued, severe shortfall in timber supply. These are outlined in memorandum on timber supply on the 2000 Annual Demand Report. The mistakes, even though nearly a decade old remain in place today and as the basis for the mistakes in the ROD. These include:

- Incorrectly understating installed capacity.
- Understating ability of mills to utilize capacity.
- Lack of a mill to process utility logs and sawmill chips.
- Mistakes in timber sale data analysis.
- Failing to provide a three year timber supply to mills and operators.
- Vastly understating timber supply shortfall.

See Attachment #4, p. 3-5

Ramp-up procedures must be based on actual demand rather than after the fact sales data. The USFS fails to calculate demand on the 2 key items for demand:

- Installed Mill Capacity—see Table 2“*Estimated Mill Capacity and Actual Mill Production, CY2006*” Table below.

- Actual Market Needs - The past harvest levels are not an indicator of either demand for timber or the market for timber. The past harvest levels have been severely constrained by the inadequate supply of economic timber. The market for the products produced on the Tongass greatly exceed the installed capacity of 354 million board feet and all of the mills must be able to operate at a much higher level in order to be cost efficient and to insure there is an adequate economy of scale.

Table 2. Estimated Mill Capacity and Actual Mill Production, CY 2006

Mill Name	Estimated Mill Capacity (log scale, MBF) ¹	Actual Mill Production (log scale, MBF) ²	Percent Utilization of Installed Capacity
Icy Straits Lumber & Milling Co.	22,500	700	3.11
Viking Lumber Co.	80,000	19,000	23.75
D&L Woodworks	1,750	100	5.71
Gateway Forest Products (lumber)			
Gateway Forest Products (vener)	30,000	0	0
Northern Star Cedar	6,500	0	0
Herring Bay Lumber			
Alaska Fibre			
Southeast Alaska Wood Products	4,500	200	4.44
Thorne Bay Wood Products	5,000	600	12.0
Annette Island Sawmill (KPC)	70,000	0	0
Metlakatla Forest Products			
Thuja Plicata Lumber	7,500	130	1.73
Porter Lumber Co.	12,500	500	4.0
Silver Bay, Inc.	65,000	6031.7	9.28
W.R. Jones & Son Lumber Co.	1,000	600	60
Kasaan Mountain Lumber & Log			
The Mill	8,500	45	0.53
Pacific Log & Lumber	39,600	4,234	10.69
Chilkoot Lumber Co.			
Total	354,350	32,140.7	9.07

Footnotes for Table 2:

1 Estimated Mill Capacity: an estimate of the processing capability of the mill based on the amount of net sawlog volume (Scribner log scale) that could be utilized by the mill, as currently configured, during a standard 250-day per year, two shifts per day, annual operating schedule, not limited by availability of employment, raw materials or market.

2 Actual Mill Production: the net sawlog volume (Scribner log scale) that received primary manufacture during the calendar year. This is the actual net sawlog volume used during the year to manufacture sawn products.

(Source: "Sawmill Capacity and Production Report for CY 2006"—USFS October 11, 2007) Attachment #6.

At no time in the last 5 years has the USFS offered or sold even 100 mmbf of economic timber³ by failing to do so, it has forced itself into the doomed to fail "Timber Adaptive Management Strategy" (TAMS) which will be defeated by opponents of timber harvest.

All these opponents need to do to prevent the TAMS strategy from succeeding is to appeal and litigate sales in the USFS FY 2009 and future annual timber programs to prevent the USFS from completing timber sales. Such litigation and appeals take a minimum of 3 years to resolve and will delay any TAMS movement from Phase 1 areas to Phase 2 areas. Without access to sufficient timber harvest areas, the USFS cannot prepare sufficient economic timber sales. This is exactly what these opponents did in the last 5-10 years. At the beginning of the plan's 10-15 year life, there is very little shelf volume to support timber sales; therefore the only inventory is that which the USFS produces

³ See Chart on Timber Sold Attachment #7

See attachment #8 labeled “Excerpts From the 5-9-07 Estimated Cost by Completed NEPA” which indicates that the agency has only 47.9 mmbf of economic volume and 18.6 mmbf has already been sold, hence only $47.9-18.6=29.3$ mmbf of “shelf volume”.

To ignore the agency’s own economic analysis and to continue to plan future timber harvest levels based upon past harvest levels is arbitrary and capricious and a clear violation of TTRA.

The appellants fear that the USFS will not even offer their current low level of economic timber in any of the early years thereby preventing any ability under TAMS to move from Phase 1 areas to Phase 2 and 3 areas. Removing the ability to access timber in the Phase 2 and 3 areas will further reduce the already inadequate volume of economic timber to the industry.

As can be seen from a summary of the attached January 30, 2007 five year plan, while the USFS planned to sell 131 mmbf in 2007, the agency sold only 30 mmbf-only 23% of the 2007 schedule. The agency planned to sell 111 mmbf in 2008, but as of this date, half way through the year, the USFS has sold only 1 mmbf so far.

The 5-year plan projects sales of 134 mmbf in 2009, 148 mmbf in 2010 and 134 mmbf in 2011; but once the plan is revised to remove most of the roadless volume (most of which is allowed to be sold only during TAMS phases 2 and 3) the volumes drop to only 55 mmbf in 2008, 18 mmbf in 2009, 60 mmbf in 2010 and 42 mmbf in 2011. These adjusted volumes will likely be even further reduced because of expected economic problems, appeals and litigation from opponents of any timber sales in the Tongass.

	MMBF Scheduled for sale	MMBF Actual volume sold in 2007 and with most roadless volume removed in 2008-2011
2007	131	30
2008	111	26
2009	134	18
2010	148	60
2011	164	42
Total	688	176

The USFS 5-year plan dated January 30, 2007 listed a number of timber sales that are at least partly in roadless areas. Many of these roadless areas and many of the roaded areas are in Phase 2 and 3 areas; e.g. Emerald Bay, Kosciusko, Madan, Moria, etc. Other roadless sales are in VCUs that the USFS TETRA TECH analysis indicates are not economic; e.g. VCU 635 and 636 on Suemez (12 mmbf), VCU 461 and Woronkofski (10 mmbf), VCU 487 and 489 at Thomas Bay (50 mmbf), VCU 674 and 676 at Cholmondeley (10 mmbf), VCU 299 at Moria (10 mmbf). VCU 732 and 733 at Klu Bay can support only 6 mmbf of economic timber according to the TETRA

TECH analysis and that is too small a volume to support a mobilization into such a remote location.

After dropping 22 of the sales that are planned in these roadless areas, the plan is left with just 176 mmbf of viable timber sales that the timber industry can rely upon - an average of just 35 mmbf per year.

.	2008	2009	2010	2011
Volume under contract at start of year	108	98	83	116
Volume sold (after most roadless removed)	26	18	60	42
Volume harvested (1/3 of volume under contract)	36	33	28	39
Volume under contract at end of year	98	83	116	119

For the industry to have a realistic chance to harvest 100 mmbf in any year, the USFS must offer sufficient economic timber to provide a volume of timber under contract of at least 300 mmbf which the above chart shows will not happen. Since TAMS requires 100 mmbf harvested in two successive years to move from Phase 1 to Phase 2, it is clear that the USFS cannot realistically intend to move from Phase 1 to Phase 2 much less Phase 3.

This TAMS strategy when combined with the proposed sale program is either misguided or a purposeful sham. Either way, it is doomed to failure and must be changed if the USFS is to comply with its Key Issue #1 goal of economic timber supply and Section 101 of TTRA.

Market demand is not measured by providing minimal timber supply (even if caused by appeals and litigation) rather than enough supply to test the market. Failure to do so is arbitrary and capricious. *This failure to design and implement a program which can truly measure whether market demand can be met also violates Sec. 101 of TTRA.*

USFS Must Provide Timber Program Which Truly Seeks to Meet Market Demand

The record clearly shows that the capacity of the existing industry has declined from 502 mmbf to 354 mmbf – see chart below from Attachment # 6.

This steady decline is because of the failure of the USFS to provide economic timber.

This decline will continue under the TAMS process unless it is changed to focus on harvest of economic timber.

Total installed capacity (354,350 MBF) declined by 5,500 MBF board feet from CY 2005 reflecting:

- 1) sale of some equipment at Northern Star Cedar in Thorne Bay (-8,000 MBF)
- 2) addition of linebar resaw at Icy Straits Lumber in Hoonah (+2,500 MBF)

Production in CY 2006 amounted to approximately 32 MMBF. Five mills reported slightly higher production in CY 2006 totaling approximately 1.3 MMBF. One mill reported the same production as CY 2005, and 5 mills posted decreased production totaling approximately 4 MMBF. Percent mill utilization, based on total installed capacity amounted to 9.07%. Employment continued to decline to the lowest point yet reported, 122.75.

Comparison of Survey Results

	CY 2000	CY 2002	CY 2003	CY 2004	CY 2005	CY 2006
Installed Mill Capacity (MBF)	501,850	453,850	369,850	370,350	359,850	354,350
Actual Production (MBF)	87,117	39,701.6	32,005.2	31,027.4	34,694.8	32,140.7
Percent Mill Utilization	17.36	8.75	8.65	8.38	9.64	9.07
Employees	321	159.5	155	148	136	122.75

The McDowell Report along with the supplemental letter assert that a fully-integrated, viable and sustainable timber industry will require a harvest level of around 350 million board feet annually. Unless the USFS prepares a plan that has a fully-integrated, viable, sustainable industry, it will continue to fail the seek-to-meet requirement.

The TAMS process violates all of these aspects by setting up a timber program destined to fail by handing the decision on how much timber will be offered, to the opponents of timber sales and proponents of appeals and litigation. While USFS cannot control how many appeals are filed and what the timing of success of these appeals will be, it can plan for the effect of these appeals by preparing enough timber to include a “fall down” of timber because of these appeals.

Solution

The Forest Service must commit to an immediate ramp-up strategy designed to restore a volume of timber under contract that will allow the industry to harvest at the level needed to restore and sustain a fully integrated industry by no later than 2012; which is only 3 fiscal years from when the appeal process of this ROD will be completed. It will not take 15 years for this ramp-up to occur unless the USFS will not let it occur. The basis for this timber adaptive strategy is not demand, but politics. This is clearly stated in the ROD:

“...the Timber Sale Program Adaptive Management Strategy is an additional step being taken in response to concerns that an overestimate of timber demand will lead to timber harvest in areas perceived by many as more environmentally sensitive--such as higher value roadless areas--that would not have to be developed if the Plan were based on a lower estimate of timber demand. It is very difficult to estimate long-term timber demand with a high degree of precision and confidence when local, regional, and global market conditions are constantly changing.” –ROD-p. 9

This is stated even though the ROD acknowledges:

“The Forest Service has a statutory obligation to seek to meet market demand for timber Tongass National Forest, both the annual demand and demand for each planning cycle of 10-15 years, subject to other applicable law and to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources. I am also concerned that the current timber industry in Southeast Alaska is not sustainable at the current harvest levels, or with uncertain future timber harvest levels.” -- ROD—p. 9.

If as the USFS asserts, there is no demand for additional timber, then the additional timber would not be sold or harvested and there would be no environmental impact. If the USFS offers timber along the lines described above, one of two things will happen:

1. The timber will be sold and harvested, after inevitable appeals and litigation, showing that appellants are correct that the market demand far exceeds the level assumed by the agency or,
2. The timber will not be sold, but the market will have been fully tested and Section 101 of TTRA will clearly have been met.

THE BEST MEASURE OF MARKET DEMAND IS THE PERFORMANCE OF THE MARKET NOT ECONOMIC PREDICTIONS WHICH CANNOT HONESTLY EVALUATE THE MARKET AND WHICH ARE DESIGNED TO DEPRESS THE MARKET BY ALLOWING OPPONENTS OF TIMBER HARVEST AND “TAMS DEMAND” TO CONTROL HARVEST VIA APPEALS AND LITIGATION.

There is no impact to the environment by timber sale preparation. While roads are “laid out” and timber harvest areas are marked on the ground, these timber sale preparations involve neither road building nor actual felling of trees. All of these activities are conducted without any discernible or substantive effect on the ground.

The fundamental flaw with TAMS is that it assumes a pure, unfettered market unaffected by appeals and litigation. Further, TAMS assumes that even without appeals and litigation that there is more than sufficient timber inventory being made available by the USFS timber sale program to rely upon harvest data as an accurate measure of that market for timber from the Tongass. If this were so, then the harvest level might be an indication of the market, but because opponents of timber harvest purposely delay and frustrate the timber program and because the volume under contract is constrained to very low levels, neither past nor future harvest data is not a reliable measure of market demand.

Factors which will prevent Timber Adaptive Management from working:

- The volume of timber that the agency prepares and offers is constrained by a faulty annual demand analysis—explained earlier in this appeal and also explained in the attached critique of the 2000 annual demand report.

- The total acreage of timberlands available for timber operations is not adequate to support a viable, fully integrated timber industry. Even without taking into account the economic deficiencies of the TAMS process, the USFS asserts on page 6 of the ROD that the 663,000 acres in the 2008 TLMP Amendment will support a maximum harvest level of 267 million board feet annually. This volume is significantly less than the 360 million board feet needed to supply a fully integrated industry and,

The agency is assuming that all of the timber harvest acres will support economic timber sales. However, the agency's own analysis indicates that at best, only about 121,898 acres of old growth (including Phase 2 and 3 areas) or 18% of the 663 thousand acres will support economic timber sales. See the previously attached TETRA TECH analysis. (Attachment #5).

Further, the economic analysis that TETRA TECH used to create their spreadsheet likely did not account for the higher cost of the partial cutting required in the 49 VCUs where it applies. Accounting for that higher cost using the USFS appraisal data listed on page 25 of this document, results in making roughly twenty thousand more acres uneconomic. Thus, it is likely that no more than 15% of the 663,000 acres can support economic timber sales.

Since the 1997 TLMP decision, the USFS has offered for sale only 32% of the Allowable Sale Quantity (ASQ) and has sold only 24% of the ASQ⁴. The primary reason for the poor performance is poor timber sale economics⁵.

Ramp-up In the ROD must be accelerated to meet Market Demand

The Forest Service annual budget for timber sales and timber sale preparation work is based upon its faulty and legally insufficient TAMS strategy and annual demand calculation. That calculation process is badly flawed because it relies upon prior years harvest levels without considering the impacts of the constrained timber supply and because it contains several bad assumptions. A critique of the annual demand process previously attached⁶. In summary the critique concludes:

⁴ Attachment #7 is a summary of the Tongass timber sales that were offered, sold and harvested, plus the volume under contract, from 1998 through 2007. The information all came from the USFS Region 10 website. http://www.fs.fed.us/r10/ro/policy-reports/for_mgmt/index.shtml

⁵ Attachment #8 is an excerpt from a spreadsheet that the USFS prepared for the AFA in 2005. The spreadsheet summarized the cost and volume for a number of timber sale NEPA documents. Attachment 10 is an excerpt from the November 2007 Navy timber sale draft EIS. The economic analysis in the DEIS indicates that every alternative is grossly uneconomic.

If the Forest Service continues using this 2000 report procedure as it has in the past, then our timber supply will not be restored. The real demand for products produced from the Tongass is virtually unlimited and the demand for timber sales from the purchasers is the amount needed to operate their mills on a two-shift basis. The minimum volume needed to have a viable, integrated manufacturing industry is 360 mmbf annually. A three year supply at the 360 level equals 1,080 mmbf. We have proposed that the Forest Service ramp up quickly to a three-year supply for the existing industry plus simultaneously prepare a series of large 10-year timber sales that can be used to either upgrade and stabilize existing mills or to foster new manufacturing facilities.

See final paragraph of Attachment. #4.

By this appeal SEC submits a timber supply ramp-up worksheet to explain why the USFS annual demand process under TAMS prevents any significant ramping up of the timber industry⁷. The industry currently has only about 108 mmbf under contract and only 1 mmbf has been sold in FY 2008.⁸ A typical timber sale requires a three year completion process: in year 1, a sale operator must prepare the timber sale including building roads and other harvest preparation before commencing harvest in years 2 and 3; during which harvest occurs while additional road building and other harvest preparation continues. Consequently, the industry as a whole can only physically harvest about 1/3 of the volume under contract each year. This will effectively contain the harvest level in FY 2008 to about 35-37 mmbf (1/3 of the 108 mmbf now under contract).

Despite the 111 mmbf planned in January of 2007, the agency now states that it plans to sell only 92 mmbf in FY 2008. (See USFS website <http://www.fs.fed.us/r10/ro/policy-reports/documents/ptsa.pdf>)

If the timber industry does harvest 36 mmbf in 2008 and is offered 92 mmbf of new, economic timber sale, the volume of timber under contract at year end will be 164 mmbf (108 minus 36, plus 92 of new timber sales). The harvest level in 2009 will then be constrained to only 1/3 of 164, or 55 mmbf. This process will continue to repeat itself acting to constrain timber harvest below what the actual demand is.

No matter what the harvest level is over the next three years, the agency will not be able to offer more timber than is cleared through the NEPA process and apparently the agency is budgeting to complete only 100 mmbf of timber sale Environmental Statements each year through 2012.

The attached Timber Harvest Ramp-Up Scenarios worksheet demonstrates that the TAMS utilizing the USFS's current Annual Demand Analysis procedures will prevent a rapid increase in the growth of the volume of timber under contract. As a consequence, it will take about 14 years for the industry to accumulate sufficient timber under contract to harvest even 100 mmbf annually. Attachment #11.

By implementing this slow ramp-up into the future, it will be 2021 before the harvest level could

⁷ Attachment #11– Ramp-up scenarios

⁸ Attachment #12-Timber Under Contract – Feb 2008 from the USFS website http://www.fs.fed.us/r10/ro/policy-reports/for_mgmt/index.shtml

reach even 100 mmbf, let alone the 267 mmbf ASQ or the industry goal of 360 mmbf. The volume necessary to sustain a competitive, fully integrated manufacturing industry currently cannot be achieved because the agency has our timber supply trapped in a catch-22; the USFS will not prepare and sell more timber than their estimated annual demand, but its annual demand is predicated upon how much was harvested in the prior years. This “self-fulfilling prophecy” will never allow the USFS to offer the integrated industry the supply necessary to support an integrated industry nor will the agency be in compliance with the requirement to “seek to meet the demand for timber”.

The agency must restore the volume under contract to a level that will support a viable industry.

Excerpt from page 49 of the 12-18-91 Irland Report:

In order to properly meet this mandate, the volume offered must be high in the next few years in order to bring the Current Timber Supply under the contracts closer to the contractual three year level. If this can be done, then the offer level can be managed each year to replace what has been drawn down by cutting. This seems to us to be in the spirit of the Congressional intent and is clearly workable. This approach would also allow for harvesting to meet the up and down cycles that will continue to characterize Alaska's markets for both pulp and lumber. Clearly, given the cyclical nature of demand, maintaining an adequate level of uncut volume under contract is in fact the only way that market demand can be met over the cycle.

Attachment #13

Solution: Develop and offer 10-year timber sales:

These sales accomplish several objectives:

- The 10-year sales can be designed to provide adequate volume for one-shift at a typical mill. This assures the mill it will be able to survive in the short term even when it cannot purchase sufficient timber to operate a normal 2-shift operation.
- The 10-year timber sales will provide an assured volume of timber that the purchaser can use to persuade a bank to loan money.
- The 10-year timber sales can be cleared through the NEPA process within three years and the larger NEPA volume will provide a larger economy of scale for each NEPA project, thus reducing the budget needs of the agency.

On page 20 of the ROD the USFS states in part:

“Since adoption of the 1997 Forest Plan, total volume harvested has averaged only 84 mmbf annually, only 32% of the annual average ASQ of 267 mmbf. I do not expect timber to be harvested at a continuous rate of 267 mmbf over the next planning cycle of 15 years...”

Once again the USFS incorrectly and illegally equates harvest with demand. As previously explained, since the USFS sold only an average of 84 mmbf since 1997 it is not possible for the timber industry to harvest significantly more than that amount. According to the volumes stated on the Forest Service website, between 1998 and 2007 the industry actually harvested about 10%

more than the agency sold. The additional volume came from reducing the volume of timber under contract.

On page 64, the ROD states that 30 mmbf of timber sales will supply the veneer mill. This is incorrect; the veneer mill needs 34-44 mmbf of small diameter veneer logs, not just the normal mix of logs that happens to be in a typical timber sale. This includes small, large and utility logs in each sale.

In a July 13, 2006 letter to the Forest Supervisor, the Ketchikan Veneer mill operator explained:

“Ketchikan Veneer..., will add value to the forest by providing a steady market for the small diameter Hemlock and Spruce logs that are not efficiently manufactured in most sawmills operation in Southeast today. During periods of low lumber market values, veneer values may justify the purchase of logs up to 24” in diameter that are normally sawn. You may not see us on the active bidder’s list of timber sales as the majority of the trees harvested are best suited for the manufacture of lumber to generate the highest return. As an integrated industry member, we must purchase logs from Federal timber purchases such as, Pacific Log and Lumber and the demand calculation must include our fiber needs. We require 2.1 mmbf to meet our monthly single shift needs during the start up period and 3.65 mmbf per month there after”. Attachment #14

Since the logs that the veneer mill was designed to process make up only about 20% of the mix of logs on a typical timber sale, a Tongass harvest level of 170-220 mmbf (34-44 mmbf x 5 years) would be needed to generate sufficient logs to operate the veneer mill as intended. The sawmill at Klawock also has a small log facility that utilizes about 20 mmbf of these small logs annually. This means another 100 mmbf would have to be harvested in order to supply that facility. The agency’s attempt to add volumes of dissimilar log type requirements to arrive at a “lower end” total supply requirement doesn’t work in the real world of timber supply. This incorrect timber supply assumption by the agency is further evidence that the USFS planners do not really understand the needs of an integrated manufacturing industry.

Table 2. Estimated Mill Capacity and Actual Mill Production, CY 2006

Mill Name	Estimated Mill Capacity (log scale, MBF) ¹	Actual Mill Production (log scale, MBF) ²	Percent Utilization of Installed Capacity
Icy Straits Lumber & Milling Co.	22,500	700	3.11
Viking Lumber Co.	80,000	19,000	23.75
D&L Woodworks	1,750	100	5.71
Gateway Forest Products (lumber)			
Gateway Forest Products (veneer)	30,000	0	0
Northern Star Cedar	6,500	0	0
Herring Bay Lumber			
Alaska Fibre			
Southeast Alaska Wood Products	4,500	200	4.44
Thorne Bay Wood Products	5,000	600	12.0
Annette Island Sawmill (KPC)	70,000	0	0
Metlakatla Forest Products			
Thuja Plicata Lumber	7,500	130	1.73
Porter Lumber Co.	12,500	500	4.0
Silver Bay, Inc.	65,000	6031.7	9.28
W.R. Jones & Son Lumber Co.	1,000	600	60
Kasaan Mountain Lumber & Log			
The Mill	8,500	45	0.53
Pacific Log & Lumber	39,600	4,234	10.69
Chilkoot Lumber Co.			
Total	354,350	32,140.7	9.07

Footnotes for Table 2:

1 Estimated Mill Capacity: an estimate of the processing capability of the mill based on the amount of net sawlog volume (Scribner log scale) that could be utilized by the mill, as currently configured, during a standard 250-day per year, two shifts per day, annual operating schedule, not limited by availability of employment, raw materials or market.

2 Actual Mill Production: the net sawlog volume (Scribner log scale) that received primary manufacture during the calendar year. This is the actual net sawlog volume used during the year to manufacture sawn products.

The 354 mmbf installed capacity is sawlog volume and the sawlog component of the Tongass timberlands is about 85%. The remaining 15% is utility log volume not suitable for the sawmills. Consequently, a harvest of 416 mmbf would be required to supply adequate timber to all of these mills and a volume of timber under contract of three times that amount would be needed in order to permit a harvest level of 416 mmbf. The veneer plant and the small-log mill component for the Viking Lumber Mill are designed to process small, rough sawlogs, which comprise about 20 percent of the Tongass timberlands. The stated capacity of those two mills is about 50 mmbf. A harvest level of about 250 mmbf would be needed to produce 50 mmbf of small, rough sawlogs. Similarly, a harvest level of about 360 mmbf would be needed to provide adequate utility logs and sawmill chips to supply a single fiberboard plant. Until a fiberboard plant or some similar facility is operating in Southeast Alaska, the industry will not be fully integrated and will not be competitive.

In an effort to address the disputed demand issues, the USFS convened a Demand Meeting in Juneau on August 6, 2007. The meeting included USFS economists, industry economists along with USFS people, a State of Alaska representative, the Executive Director of the SEC (a region-wide organization representing governments and businesses across Southeast Alaska). In that meeting a number of issues were clarified⁹:

1. The PNW uses a derived demand model, in PNW words:

⁹ Attached is a memorandum from AFA to the Forest Service and others summarizing the 8/6/07 meeting plus a letter from the Southeast Conference to the State of Alaska asking for their help in persuading the Forest Service to revise their Demand assumptions. Attachments #15 and 16.

“...in Southeast Alaska demand is a result of desire by producers to purchase timber that can be manufactured into products that can be sold locally and in the global marketplace.”

Since the demand for the products that can be produced in our sawmills and veneer plant enormously exceeds the capacity of the Tongass, the demand for timber is limited only by the supply of economic timber. Irland¹⁰ also noted that the market place for wood products that Alaska could produce is huge:

demand: 48

6 LIKELY DEMAND SCENARIOS FOR TONGASS TIMBER

6.1 SUMMARY OF ECONOMIC SETTING

As we emphasize above, there is no market demand for Alaska timber or end products. There is a regional and world market for softwood logs of varying levels of quality, for chips, for lumber, and for dissolving pulp. Alaska's share of these markets, even when viewed only in terms of hemlock and spruce, is small. So Alaska is a price-taker on a huge market. It could sell a range of amounts of end products with no effect on price. There is no number out there that represents "the demand for Alaska lumber or pulp".

Excerpt from page 52 of the 12-18-91 Irland Report:

Third, meeting market demand has to include making available timber at delivered costs that allow for profitable processing over the market cycle. This means that volume must be available to meet peak demands at strong market periods. It also means that pricing of stumpage and other cost factors must recognize the need for profitable operation of the mills. If profits are not in prospect, then financing for modernization cannot be obtained, even normal operation is threatened, and the survival of mills is in doubt.

2. PNW agrees that there are realistically no alternative timber supplies available to the mills in Southeast Alaska.
3. PNW agrees that the volume requirement for a Medium Density Fiberboard (MDF) facility is 80-100 million board feet (mmbf) annually. PNW also suggests that 2 MDF facilities should be planned in order to stabilize that segment of the industry.
 - a. In the draft TLMP EIS (page 3-421) PNW projects a scenario where the first MDF facility begins operating in 2008 and a second facility in 2012, but the harvest level indicated on that chart for 2008 and 2012 is too small to supply even one MDF facility – see point #4.

¹⁰ Excerpts from page 48, 49, and 52 of the 6-23-92 Irland report Attachment #13.

4. PNW and the industry have a different fiber supply assumption for the manufacturing facilities;
 - a. PNW assumes that as the timber supply increases, the existing, currently operating sawmills will begin operating at a two-shift capacity and all other growth in the industry will be in MDF, not additional sawmills. This presumption leads them to assume that about 75% of the #3 sawlogs will be chipped for an MDF facility.
 - b. The industry believes that the sawmills and veneer facilities will produce a higher return to almost all of the #3 sawlogs than a MDF facility. Consequently, the MDF facilities will rely primarily upon residual sawmill chips and utility logs. (In the Pacific Northwest, MDF facilities typically rely exclusively on residual chips, sawdust and planer shavings; they normally do not chip sawlogs or even utility logs)¹¹. In addition, industry recognizes that the veneer plants will produce only about one-tenth of the chips that are produced by the sawmills.
 - c. The industry assumptions indicate that the harvest level needed for a fully integrated industry is 20-30% above the PNW depicted in the TLMP EIS and ROD.

5. PNW and the TLMP DEIS (page 3-422) both agree that the harvest levels since at least 1997 have been artificially constrained and cannot be used as an indicator of demand. In addition, the Irland Report warned that attempts to base demand upon harvest levels would fail:

Excerpt from page 49 of the 12-18-91 Irland Report

8.2 TOWARD A DEFINITION OF "MEETING MARKET DEMAND": A COMPLEX MANDATE

In order to determine how the TNF should meet market demand, the concept must first be clearly defined. We cannot simply equate market demand with past or present consumption. For example, there are indications that consumption of logs has been constrained by supply for at least a few mills. If current consumption were taken as a measure of demand, it would be an underestimate.

6. PNW and the industry agree that a logic error is presented on page 3-423 of the TLMP DEIS;
 - a. The DEIS improperly adds the following short-term, assumptions:
 - i. 138 mmbf for the largest existing mills,
 - ii. 30 mmbf for the veneer plant and,
 - iii. 80 to 100 mmbf for an MDF facility,
 - iv. In the DEIS these are summed to 248-268 mmbf.
 - b. The error is that the veneer plant utilizes veneer logs, not any logs. Similarly, the MDF facility will utilize residual chips, perhaps some shavings and sawdust and utility logs. The TLMP authors' technical error indicates a serious misunderstanding of the fiber supply and demand issues.

¹¹ See memo from Ray Granvall – Cascade Appraisals regarding MDF furnish Attachment #17.

If PNW and the USFS were to correct these erroneous assumptions, they would not sum the individual log needs, but would acknowledge that a 30 mmbf supply of veneer logs requires a harvest level of 150 mmbf and likewise, an 80 mmbf chip equivalent supply of utility logs for an MDF facility would require 533 mmbf of harvest. The industry assumes that an MDF facility would also utilize residual chips which are produced by the sawmills, consequently they estimate that the harvest level could be as low as 360 mmbf and still supply adequate fiber for an MDF facility.

If the agency immediately began the process for preparing 360 mmbf of timber sales, it could begin offering 360 mmbf annually as early as 2011 and could, within 15-20 years, ramp-up to a supply of timber under contract that would support a 360 mmbf harvest level.¹² Even better, if the agency immediately began preparing a series of 10-year timber sales, the ramp-up to a 360 mmbf harvest level would take only about five years.

Despite these apparent agreements, the agency's TLMP team made no adjustments as a result of that meeting.

Overemphasizing Conservation

Since 2002, the AFA has met repeatedly with the timber sale planners and the field layout personnel to change timber sale preparation. The USFS identified four specific guidelines that increased the timber harvest costs and thus constrained their ability to design economic timber sales. We have repeatedly requested that the agency modify their conservation strategy in a way that would adequately protect habitat without causing unnecessarily high timber harvest costs:

1. **Eliminate excessive imposition of buffer strips and RAW (Reasonable Assurance of Windfirmness) buffers on non-fish streams (Class III).** In addition to reducing the volume of timber available to harvest and thus increasing the road amortization rates, the excessive imposition of these buffers often results in the need to construct additional roads to facilitate logging, in other cases the buffers reduce the cable harvest setting size and thus lowers yarding productivity, and in still other cases the buffers result in simply dropping timber that cannot be cable logged across these non-fish streams.

By contrast, the Alaska Forest Practices Act requires 100-foot buffers on each side of all anadromous fish streams, but only on high-value resident fish streams whereas the 1997 USFS and land management plan and this ROD require the buffers on all anadromous and all resident fish streams and all Class-3 *non-fish streams*. Similarly, Section 103 of the Tongass Timber Reform Act (PL 101-626) requires 100 foot buffers only on Class 1 Streams and all Class II streams which flow into Class I streams.

Appendix D of the 2008 Plan states on pages 7, 8, 10, 11, 13 and 15:

II (non-direct), III/Timber Harvest

“No commercial timber harvest that counts toward the allowable sale quantity is allowed in the RMA (greatest of flood plain, riparian vegetation or soils, riparian

¹² See Attachment #11--Timber Harvest Ramp up scenarios worksheet.

*associated wetland fens, or **130 feet** (the height of one site-potential tree). Manage an appropriate distance beyond the no-harvest zone to provide for a reasonable assurance of windfirmness of the RMA (pay special attention to the area within one site-potential tree height of the RMA)."*

Does this mean that Class III streams have even greater buffer strips than Class I and Class II? This is yet another indication of the ROD's arbitrary and capricious standards which are in violation of TTRA by failing to provide adequate timber to seek to meet market demand. The Class III buffers are completely unwarranted and must be eliminated.

This requirement to maintain these buffers on the many and abundant *non-fish streams* is terribly costly and cripples the ability to provide economic timber. These non-fish stream buffers should be required on a case by case basis and only when absolutely necessary.

2. **Modify 1,000-foot no-cut buffers on all beach fringes.** The State Forest Practices Act does not require these buffers and prior to the 1997 plan, the buffers were not required. This appellant advocates much smaller beach fringe buffers such as provided in alternative #7. Also, since the beach fringe buffers are designed to protect old-growth habitat, much smaller buffer in existing 2nd-growth areas should also be provided. Managing as much of the existing 2nd-growth as possible for timber production will lessen the need to harvest old-growth timber in other areas.
3. **Eliminate Old Growth Reserves--**The old-growth reserve (OGR) strategy sets aside about a million acres of large, medium and small tracts of the highest volume, lowest harvest cost timber stands. Too often the remaining timber stands in each area have such low volumes and high harvest cost that they are not operable once the old-growth parcels are removed. The old-growth reserve strategy is unnecessary because only 1.5 million acres of commercial timberland are needed to sustain the 360 million board foot harvest level. That leaves about 4.2 million acres of old-growth timber on commercial timberland well distributed across the Tongass. Surely leaving $\frac{3}{4}$ of the old-growth timber untouched in perpetuity is adequate without the imposition of the old-growth reserve strategy.

As will be explained below in this appeal, the USFS is prohibited from establishing these OGR's by the "no more" clause of the Alaska National Interest Lands Conservation Act (ANILCA).

4. **Eliminate marten and goshawk partial cuts. --** Requiring partial cutting on cable harvesting units is both dangerous and extremely costly. It is also unnecessary for a region that has more than $\frac{3}{4}$ of its commercial timberland preserved in an old-growth timber status. Furthermore, the guidelines for protection of these wildlife species are not well founded in science.

Excerpt from page 12 and 13 of the Rochelle TLMP Science review:

"It is important to note that the peer review of the wildlife conservation strategy (Kiester and Eckhardt 1994) suggested not proposing connectivity leave-stands in harvest units until additional research is done and they are found to be needed. The Legacy Forest Structure S&G were developed in the absence of the recommended

research, thus the need for them and their value in providing connectivity has not been demonstrated. Based on existing research information the expert panel assessments in 1997 concluded that while alternative 2 in the Forest Plan (comparable to 7 in the 2007 plan) had a low to moderate likelihood of maintaining viable, well-distributed populations, there was a very low possibility of extirpation of goshawk from the Tongass, and a low likelihood that the goshawk would exist only in isolated refuges.”
“Available information on Goshawk habitat selection patterns and habitat associations of principal prey species support the conclusion that extirpation is unlikely under the range of timber harvests proposed, since there is little evidence that unbroken old-growth forest is needed to meet habitat needs.”

Excerpt from page 14 of the Rochelle Review:

“Available data suggest old forest is important habitat for marten, but that they will also utilize other habitats, including younger forests provided preferred structural features like large downed logs are present. Plan alternatives with the highest level of timber harvest retain up to 76% of productive old growth suggesting suitable marten habitat will continue to exist across the Tongass. Of more apparent importance to population levels is fur trapping which confounds interpretations of habitat need and which should be amenable to regulatory controls” Attachment #17.

Note: The entire report was submitted by SEC with its comments on the TLMP Draft EIS.

Effect on TTRA obligation--The cost impacts of these four guidelines are extreme. The combination is the principle cause for the failure of the USFS to seek to provide economic timber which is required by Section 101 of TTRA. Because these standards and guidelines are required by this ROD, the USFS lacks any discretion to eliminate these guidelines where they are unnecessary.

The class-3 buffer, the additional beach fringe buffers and the old-growth reserve buffers are all located in the timberland areas that have typically the lowest harvesting cost, the highest timber values and the fastest growing sites for the young-growth timber. These three types of buffers are most often located in the timberlands that have the greater timber density (volume per acre). Consequently, the timberlands outside of the buffers usually have lower than average volumes per acre. This requires the construction of more roads in order to access the same volume of timber. Further, the cost of harvesting is greater in lower volume per acre stands.

The partial cutting requirement is both dangerous to timber industry employees and raises the cable harvesting cost by about 40%. For instance, the USFS appraisal cost estimator below indicates that normal cable yarding cost is \$159, but increases to \$223 per MBF in partial cut stands.

Base Year 2006 USFS R10 Logging Cost Calculator

NOTE: Logging cost formulas are updated annually with data from annual cost collection and periodic production studies

2/22/2008

Contact: Inga Petriso 907-596-7882
ipetriso@fs.fed.us

	Data Input
	Calculated
	Not needed in formula

Cost Center	Avg Gross MBF (removed) per Acre	Avg Soiling Defect % (for logs delivered to Mill)	Avg Gross MBF (removed) per 32 ft. log	Avg Yarding Distance (feet)	TCGV Total Conventional Gross MBF	Stump-to-truck Cost \$ per Net MBF removed NOTE: does not include fell & buck costs (calculated separately below)
Short span Cable/ CC	24.4	17.4	0.251		6930	\$159
Short span Cable/ PC	14.6	17.4	0.251		6930	\$223
Long span Cable/ CC (EYD >1300 ft)	24.4	17.4	0.251	900	6930	\$177
Shovel/ CC	24.4	17.4	0.251		6930	\$102
Shovel/ PC	14.6	17.4	0.251		6930	\$180
Fell&Buck Cable&Shovel		17.4				\$41
Helicopter (Includes F&B Heli), \$/MBF net	The Heli Cost Calculator (Excel spreadsheet) is located in Heli Input Pg 2 of RV appraisal program					
	# logging camp days (including heli)	Avg Soiling Defect % (for logs delivered to Mill)	Avg round-trip time (hours)	Round-trip distance (low statute miles)	Total Gross MBF (for logs delivered to Mill)	Cost \$ per Net MBF (removed)
Truck Haul		17.4	2.00			\$26
Barging		17.4		150		\$66
Logging Camp (Include heli)	255	17.4			13430	\$24

The partial cutting requirement also means that, since 30% of the timber must be left in the harvest units, then 30% more roads must be constructed in order to access more timberland in order to compensate for the volume left behind in the partial cut units.

All of this raises the cost of timber harvest, affecting timber economics and causing the USFS to fail to meet its requirement under Section 101 of TTRA. The elimination of these requirements will not violate any federal law. The USFS has the authority to decide on the conservation strategy. It has chosen to overcompensate for “roadless areas” and “wildlife habitat”.

This decision on standards and guidelines is arbitrary and capricious and violates Section 101 of TTRA because this causes the USFS to fail to adequately “seek to meet” annual market demand.

Updated Timber Appraisals Demonstrate Timber Sale Economic Problems in ROD

In late 2007, the timber appraisal firm Cascade was engaged by AFA to appraise some of the timber selected for harvest in the draft EIS. Cascade chose nine Value Comparison Units (watersheds) from the Draft EIS and appraised the timber using USFS appraisal data and attempted to emulate the agencies Spectrum Analysis tool. The task was onerous because the USFS has not actually selected the specific timberlands that will be harvested; instead the agency performed a black-box analysis (Spectrum) to calculate the number of acres of timber that may be harvested in each Value Comparison Unit (VCU). It should be noted that the USFS Spectrum program cannot spatially define where the timber is within a VCU and therefore cannot produce a timber map. Cascade used geographic information provided by the USFS in Geographic Informational System (GIS) format and the USFS Logging System Transportation Analysis to more precisely map where the harvesting might take place and to appraise the timber using USFS appraisal data. The USFS TLMP planning team reviewed Cascade’s analysis and agreed it

was done correctly. The analysis indicated that the selected timber in six of the nine VCUs analyzed would not support economic timber sales.¹³ See Attachment # 18.

This analysis attached as Exhibit 3 to this appeal demonstrates that the ROD must be changed if USFS is to offer any semblance of economic timber and meet its obligation under TTRA and its own enabling laws and regulation.

Of the 9 VCUs appraised, only 3 were above deficit—meaning that using the USFS appraisal system and the ROD standards and guidelines—and could be sold without being in violation of the annual provision in the Department of Interior and Related Agencies Appropriations bill which prohibits sales in Region 10 which do not appraise above deficit:

“No timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised using a residual value approach that assigns domestic Alaska values for western red cedar.”—Section 411 Consolidated Appropriations Act, Public Law 110-161.

Solution: Adequate Alternative Conservation Strategies Exist

Other less costly conservation strategies can be devised.

For instance, in the proposed but unimplemented 1993 TLMP ROD the Forest Service noted:¹⁴

“The diversity of plant and animal species within the Tongass National Forest is addressed and provided for in a number of different ways. Previous discussions under the wildlife issue focused on two essential elements of diversity: the old-growth forests of Southeast Alaska, and the viability of animal species inhabiting the Forest. After five decades of management under the Forest Plan, 91 percent of all old-growth Forest-wide, and 78 percent of the productive component of old growth, compared to that existing in 1954, will still remain. Viable populations of all wildlife species are ensured for at least the coming 10-15 years.

Under the Forest Plan over 70 percent of the Tongass will remain unaltered by management activities, including most of two important and distinct habitat areas: riparian areas, and the beach and estuary fringe. In these areas, the natural diversity of plant and animal species will continue to be influenced primarily by ecological processes. Habitats will remain largely un-fragmented, and the size and distribution of old growth patches will be maintained. In the rest of the Forest, within those areas being managed for timber production, many existing areas of old-growth forest will be replaced by second-growth forests of varying ages, usually in patches of even-aged stands. After five decades, about 1.2 million acres will be second growth. These will be interspersed with patches of old growth, and riparian areas, in a mosaic of stands of different sizes and ages. Forest-wide Standards and Guidelines provide for project-level analysis to maintain large old-growth patches with connecting corridors to minimize fragmentation to the extent practicable.”

¹³ Attachment # 18 Cascade VCU Appraisal appraisals summary

¹⁴ 1993 ROD review draft

The unimplemented 1993 plan insured that viable populations of wildlife were maintained in each of 21 biological provinces across the Tongass National Forest and the plan included standards and guidelines for insuring old-growth habitat at the project level. This 1993 strategy provided these biodiversity and viability protections and still maintained a timberland base that was adequate to provide an ASQ of about 420 mmbf annually.

The 1993 biodiversity strategy was not implemented. Instead, in 1997 the agency adopted most of the recommendations of a technical review of wildlife management and conservation biology that included old-growth reserves, and expanded beach fringe buffer, and new standards and guidelines. The imposition of this alternative strategy resulted in reducing the timberland base from about 1.7 million acres to 0.7 million acres and the ASQ was similarly reduced from 420 mmbf to 267 mmbf. In addition to reducing the total amount of timber available to the dependent industry, the new strategy prevented the agency from designing economically viable timber sales, as described above.

The 1997 biodiversity strategy was unnecessarily biased towards old-growth timber.¹⁵ More recently, James Rochelle, PhD – Wildlife Biologist, reviewed the conservation strategy proposed in the 2007 draft TLMP EIS and noted:

“Further, without assuming additional risk, or a minimal level of risk to wildlife, the opportunity exists to more equitably balance conservation of wildlife with forest harvest at levels consistent with the timber needs of the forest industry and dependent communities.”¹⁶

The USFS contractor, TETRA TECH performed an analysis of all of the VCUs that allow timber harvest. Cascade reviewed the analysis and has determined that most of the positive value acres came from anticipated young-growth stands that will not be mature and available for harvest for many decades. Cascade’s review indicates that at most, less than 120,000 acres of old growth in the 663,000 acres selected for harvest is mature timber that may support economic timber sales. Some of the young-growth areas will support economic timber sales once the timber is mature but, since most of the past harvest has been since 1954, most of the young-growth will not be mature for another 50-100 years. Also, many of the harvested acres prior to about 1960 are in the 1,000 foot beach fringe buffer and won’t be available unless the USFS reduces the size of this buffer. A very small volume may become available from young-growth thinning projects, but the agency estimates that this volume will be insignificant (less than 10 mmbf annually) during the next 10-years. 120,000 acres is inadequate to support timber sales at the 267 ASQ level for more than about 11 years (120,000 acres times 25 mbf per acre, divided by 267,000 mbf per year).¹⁷

¹⁵ Attachment #19 _ University of Alaska Independent Review of Wildlife Management and Conservation Biology...

¹⁶ James Rochelle Biological Review submitted as part of SEC comments to Draft TLMP EIS

¹⁷ Attachment #5 TETRA TECH VCU Positive Value analysis with second-growth acres removed

Plan is in Violation of Federal Law

The ROD Standards and Guidelines Violate Federal Law

As shown above, the ROD Standards and Guidelines prevent the USFS from meeting its statutory requirement to meet the provision of the Tongass Timber Reform Act and the National Forest Management Act. This alone is enough to justify this appeal and cause the USFS to change the ROD to meet this statutory requirement.

The Standards and Guidelines also violate Section 1326 of the Alaska National Interest Lands Conservation Act of 1980 which states:

“(a) No future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands (emphasis added) within the State of Alaska shall be effective except by compliance with this subsection. To the extent authorized by existing law, the President or the Secretary may withdraw public lands in the State of Alaska exceeding five thousand acres in the aggregate, which withdrawal shall not become effective until notice is provided in the Federal Register and to both Houses of Congress. Such withdrawal shall terminate unless Congress passes a joint resolution of approval within one year after the notice of such withdrawal has been submitted to Congress.”

A simple analysis of the language above and the standards and guidelines make clear that this section of federal law has been violated.

1. ***“No future executive branch action”***—The ROD is clearly an executive branch action.
2. ***“...which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska”***—The Standards and Guidelines aggregate well over 5000 acres throughout the Tongass National Forest which meets the definitions of public lands.
3. ***“...shall be effective except by compliance with this subsection.”***—The USFS is making these withdrawals without notice in the Federal Register and both Houses of Congress.

Even if it were to comply by the notice provisions of the “no more” withdrawal clause, these could not be in effect for more than 2 years even though the planning cycle of 10-15 years. However, the ROD makes no statement that these standards and guidelines are subject to Section 1326.

The question will be asked: are Standards and Guidelines withdrawals or just regulations?

These are clearly withdrawals. They are essentially roadless areas or LUD II withdrawals by another name. No use of the areas will be permitted including timber harvest or road building. The only other use of the areas will be for undeveloped recreation and possibly as access to in holdings for private land if such private holdings exist. Such access is no different than any other

withdrawal by which such access is guaranteed in USFS land by Federal Law particularly in Alaska.

Further under Section 103(j) of the Federal Land Policy and Management Act (FLPMA) (P.L. 94-579) these are withdrawals. Specifically FLMPA defines a withdrawal:

“(j) the term ‘withdrawal’ means withholding an area of federal lands from settlement, location, or entry under some or all of the general laws, for the purpose of limiting activities under those laws to maintain other public values in the area or reserving the area for a public purpose or program.”

This is exactly what the standards and guidelines do:

1. Specifically limit timber harvest activity under the National Forest Management Act to maintain roadless areas, Key Issue #1, and wildlife habitat and values, Key Issue #3.

Logically, if these are not withdrawals, the standards and guidelines could be used to withdraw virtually the entire forest under the guise of protection of any other value.

Example--See Description of Beach Fringe Standards and Guidelines, p. 4-4 of ROD:

“To maintain an approximate 1,000-foot-wide beach fringe of mostly unmodified forest to provide important habitats, corridors, and connectivity of habitat for eagles, goshawks, deer, marten, otter, bear, and other wildlife species associated with the maritime-influenced habitat. Old-growth forests are managed for near-natural habitat conditions (including natural disturbances) with little evidence of human-induced influence on the ecosystem. To maintain an approximate 1,000-foot-wide estuary fringe of mostly undisturbed forest that contributes to maintenance of the ecological integrity of the biologically rich tidal and intertidal estuary zone. Habitats for shorebirds, waterfowl, bald eagles, goshawks, and other marine-associated species are emphasized. Old-growth conifer stands, grasslands, wetlands, and other natural habitats associated with estuary areas above the mean high tide line are managed for near-natural habitat conditions with little evidence of human-induced disturbance.”

These are withdrawals by any other name and because they aggregate more than 5,000 acres these must be withdrawn under the terms of the “no more” withdrawals clause or not at all.

These old growth reserves and the mandatory beach fringes and streams buffers on non-Class I and II streams must be removed. Utilizing site-specific beach fringe buffers and non-fish stream buffers is the proper way to manage for multiple uses.

The fact these are withdrawals is made clear by case law in the 9th Circuit.

See:

[Shiny Rock Mining Corporation, v. United States of America](#), (825 F. 2d 216,9th 1987)

In which the court stated about public lands:

“The United States owned the lands and could constitutionally manage them in any way that it saw fit. ⁸ As a part of that freedom to manage, Congress could grant and withdraw rights to locate mining claims upon the public lands. ⁹ The withdrawal could be accomplished in any way that Congress saw fit, with or without notice, at least prior to the time that private rights had vested. ¹⁰ In those cases where the congressional power to withdraw lands from mineral entry are delegated to the executive branch. Congress could prescribe the method by which the delegated authority should be exercised, and if Congress, either directly or through an executive agency exercising delegated power, should require notice, then the lack of notice would be fatal to a withdrawal order.”

See also *Lutzhiser v. Udall*, 432 F.2d 328 (9th Circuit) which found a withdrawal was effected by the Bureau of Land Management by removing public land otherwise open to mineral entry for disposition under the Small Tract Act.

Quoting virtually identical to language which appeared subsequently in *Shiny Rock. vs. USA*, the Court stated:

“The United States owned the lands and could constitutionally manage them in any way that it saw fit. ⁸ As a part of that freedom to manage, Congress could grant and withdraw rights to locate mining claims upon the public lands. ⁹ The withdrawal could be accomplished in any way that Congress saw fit, with or without notice, at least prior to the time that private rights had vested. ¹⁰ In those cases where the congressional power to withdraw lands from mineral entry are delegated to the executive branch. Congress could prescribe the method by which the delegated authority should be exercised, and if Congress, either directly or through an executive agency exercising delegated power, should require notice, then the lack of notice would be fatal to a withdrawal order.”

See also two companion cases from the Federal District of Wyoming:

Mountain States Legal Foundation vs. Hodel 668 F. Supp 1466, (US Dist. Ct., Wyoming, 1987) and **Mountain States Legal Foundation v. Andrus** 499 F. Supp. 383 (US Dist.Ct. Wyoming, 1980)

These two cases found that a failure by the Bureau of Land Management and USFS to act on pending oil and gas leases were effectively withdrawals and in violation of the Federal Land Policy and Management Act:

“...the combined actions of the Department of the Interior and the Department of Agriculture fit squarely within the foregoing definition of withdrawal found in 43 U.S.C. § 1702(j). The combined actions of the Secretaries have (1) effectively removed large areas of federal land from oil and gas leasing and the operation of the Mineral Leasing Act of 1920, (2) in order to maintain other public values in

the area, namely those of wilderness preservation. That's the plain meaning of Congress' definition of "withdrawal".

That the decision to withhold all oil and gas leasing in large areas of federal land falls within the terms of the statute is also supported by various sections of the Federal Land Policy and Management Act. Congress, in 43 U.S.C. § 1701 stating the policy of the Federal Land Policy and Management Act, declared that it is the policy behind the Act that, among other things, Congress should exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action. Congress further declared that it was a purpose of the United States that the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals from the public lands including the implementation of the Mining and Mineral Policy Act of 1970, 30 U.S.C. § 21a.”

Congress specifically stated in Section 1326 how any further withdrawals were to be accomplished. This section applies to all public land. In so doing, Congress stated in its Purposes for ANILCA.

“This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people.” Section 101(d) ANILCA.

It then provided for the withdrawal requirements of Section 1326 of ANILCA.

These are clearly withdrawals; and withdrawals not made under the terms of Section 1326.

That these “standards and guidelines” for withdrawals can be clearly seen by their descriptions in the ROD—Appendix K:

“Basic Criteria for Old Growth Reserves”

“The 237 small OGRs are comprised of old growth habitat. The primary objective of small OGRs is to provide habitat that maintains connectivity between the other reserves.”

“Very large reserves include a contiguous landscape of 180,000 acres. OGRs include a contiguous landscape of approximately 40,000 acres, of which at least 20,000 acres must be productive old growth forest. At least 10,000 acres of the productive old growth forest (over 8,000 board feet per acre) component should be in the high volume class strata (greater than 25,000 board feet per acre). Large reserves shall not be spaced greater than 20 miles apart, edge to edge, across the entire forest. Landscapes within the range of brown bears should include at least 1 Class I anadromous fish stream.”

Class I anadromous fish stream.

Medium OGRs include a contiguous landscape of approximately 10,000 acres of which at least 5,000 acres must be productive old-growth forest. At least 2,500 acres of the productive old growth forest component should be in the high volume class strata. Medium reserves shall not be spaced greater than 8 miles from the nearest Large or Medium reserve across the entire forest.

“Sixteen percent of the National Forest System lands in a VCU shall be designated as a Small OGR. At least 50% of that acreage shall be productive old growth forest. Productive old growth will be defined using the size and density model GIS database.”

See also in Appendix K:

VI. Criteria for Designing All OGRs:

“...reviews will consider the total acres of old growth habitat and other non-development LUDs that maintain the integrity of the old-growth forest ecosystem and contribute to a forest-wide system of reserves within National Forest System lands. Islands less than 1000 acres that are designated as non-development LUD may be excluded from acre calculations.”

Design Criteria Include:

B. Reserves should be more circular rather than linear in shape to maximize the amount of interior (secure from the effects of forest edge) forest habitat.

Old-growth Habitat Reserve Criteria

K-5

- E. Riparian, beach and estuary habitats may be included as contributing elements to OGRs.***
- F. Consider site-specific factors in placing reserves to help meet multiple biodiversity or wildlife habitat objectives. Factors include, but are not limited to:***
- 1. The largest remaining blocks of contiguous old growth within a watershed. Old growth forest that constitutes scattered fragments of unsuitable timberland generally does not contribute to meeting small reserve design.***
 - 2. Rare features such as underrepresented forest plant associations or stands with some of the Forest’s highest volume timber stands.***
 - 3. Known or suspected goshawk nesting habitat (see TES Forest-wide Standard and Guidelines).***
 - 4. Known or suspected marbled murrelet nesting habitat (see TES Forest-wide Standard and Guidelines).***
 - 5. Important deer winter range to maintain important deer habitat capability to meet public demand for use of the deer resource (see Wildlife Forest-wide Standards and Guidelines).***

OGRs should also be designed to provide connectivity between other old-growth habitat LUDs and other non-development LUDs.

Productive Old growth habitat and components of the matrix (e.g. beach and estuary buffers, stream buffers, other lands unsuitable for development) contribute to overall landscape connectivity. The following parameters should be used to assess OGRs maintain connectivity (TPIT page 14):

- *Only one connection in one direction is needed.*
- *The beach fringe serves as a connector.*
- *The connection does not have to be the shortest distance. Additional analysis is required for OGRs in the Staney Creek area on Prince of Wales Island. This OGR was identified as not maintaining connectivity to the beach fringe. Additional connectivity must be examined for this area during project level planning (TPIT page 14).*

OGRs that meet the minimum criteria for connectivity but where the old-growth strategy may not be fully functional due to past harvest activities, private lands, or other factors within the area expected to function as corridors include: Neck Lake (past harvest), Rodman Bay (past harvest), NE Chichagof (isolated small reserves), Lab Bay (past harvest), Sealevel (past harvest), South Zarembo (past harvest), and False Island (past harvest). Additional connectivity should be examined for these areas during project level planning (TPIT page 14).

VII. Criteria for Designing Small OGRs

A. Small OGRs are not required under the following circumstances:

1. *In VCUs where the total acres and acres of productive old growth within a non-development LUD meets or exceeds the minimum acre criteria.*
2. *In VCUs with a computational allocation of less than 800 acres of productive old growth forest. An OGR may be designed contiguous with old growth acres in a non-development LUD in an adjacent VCU.*

Old-growth Habitat Reserve Criteria
K-6

3. *In VCUs that are partially designated as very large, large or medium OGRs even if these do not meet the minimum acre criteria for a small OGR. In some cases, small OGRs have been designated in these VCUs for specific purposes and should be maintained.*

B. Small OGRs may not be required under the following circumstance:

1. *VCUs that have been separated may be combined for computation purposes. These VCUs are denoted by an integer other than zero as the fourth digit of the VCU number (e.g. 5971, 5972, and 5973). An OGR must be located in at least one of these VCUs. In some cases, small OGRs have been designated in more than one of these VCUs for specific purposes and should be maintained.*

C. The size and location of small OGRs will consider the following:

- 1. The preferred biological objective is for each reserve to contain at least 800 acres of productive old-growth forest.*
- 2. OGRs may contain a minimum of 400 acres of productive old-growth forest. Do not map isolated reserves with less than 400 acres of productive old growth, unless B.1 above applies.*
- 3. In VCUs that are partially allocated to a non-development LUD, compare the computed acreage required to the acres of productive old growth in the non-development LUD. If the non-development LUD acres are less than the area necessary for a small reserve, first use the productive old growth acres in the existing non-development LUD to establish a small reserve and then add additional acres of productive old growth to achieve the required small reserve size and composition.*
- 4. In VCUs that are separated by saltwater channels, reserves may be separated but attempt to retain 800 acres of productive old growth in each.*
- 5. In very large VCUs, the allocated old growth may be mapped in separate reserves as long as each reserve has a minimum of 800 acres of productive old growth. However, larger contiguous reserves are preferred to fragmented smaller reserves.*
- 6. In very large VCUs that contain relatively little old growth and the computational rule requires an amount of old growth that exceeds 50% of the existing old growth in the VCU, map a reserve of at least 800 acres of productive old growth.*
- 7. Where VCU boundaries do not match watershed or ecological boundaries, up to 30% of the allocated old growth acres in a VCU may be mapped in an adjacent VCU if the resulting reserve achieves old growth reserve objectives. The resulting small reserve in both VCUs must be contiguous.*

As described, these are essentially LUD II withdrawals by another name. Designated as non-development, no use of the use “reserves” for development will be permitted including timber harvest. The only other use of the areas will be for undeveloped recreation and possibly as access to inholdings for private land if such private holdings exist. Such access is no different than any other withdrawal by which such access is guaranteed in USFS land by Federal Law particularly in Alaska. To pretend otherwise flies in the face of logic.

Logically, if these are not withdrawals, the standards and guidelines could be used to withdraw virtually the entire forest under the guise of protection:

These are withdrawals and because they aggregate more than 5,000 acres these must be withdrawn under the terms of the “no more” withdrawals clause (ANILCA Section 1326) or not at all.

The FEIS, Alternative 6, page 2-32, Table 2-11 states there are 1,182,424 acres set aside in the OGRs alone and these are typically located in the lowest cost and highest value stands of timber.

These old growth reserves and the mandatory beach fringes and streams buffers on non-Class I and II streams must be removed from the Forest Plan. Utilizing site-specific regulations in individual timber sales is the approach which complies with Section 1326 of ANILCA.

Summary

The USFS has overreached and illegally promulgated a Forest Plan which violated federal law and is arbitrary and capricious. Specifically:

1. *The Plan fails to comply with Section 101 of the Tongass Timber Reform Act and its requirement that the USFS seek to meet market demand. The USFS has instead adopted a demand analysis and harvest strategy purposely designed to define demand so that it does not need to produce economic timber to support the industry.* Further, the agency is making no effort to restore the pipeline of timber under contract even though it has been specifically funded to do so by Congressional earmark.
2. *The Plan illegally withdraws hundreds of thousands of acres as Old Growth Reserves and buffer strips in violation of Section 1326 of the Alaska National Interest Lands Conservation Act.*
3. *The Plan arbitrarily and capriciously fails to properly evaluate Key Issue #2 and overweighs Key Issues #1 and 2. This violates federal law including but not limited to the Administrative Procedure Act, the National Forest Management Act, and the Tongass Timber Reform Act.*

Solution

To remedy these violations of federal law, the USFS must do the following:

1. Revise TLMP to eliminate the TAMS process and begin properly to evaluate timber demand based on the needs of the timber industry including the preparation of ten year timber sales to permit the industry to provide the investment necessary to support its activities under Section 101 of TTRA.
2. Revise TLMP to respond to the timber demand by providing that the ramp-up scenario be based on realistic demand which target ramp up by 2012 rather than 2022.
3. Revise the TAMS process by eliminating Phases 1, 2, and 3 restrictions at least for areas in which economic timber sales have been prepared or are in. The TLMP must be revised to recognize that timber demand should be based not on harvest but on sales that that the USFS must immediately being preparing sales with a target to provide a 3 year inventory to each mill.-Revise the timber harvest land selection to insure that there is adequate acres of timberland to support the reevaluated demand and to insure that the lands selected will support economic timber sales.
4. At least to the extent necessary to allow the preparation of economic timber sales, eliminate the TLMP standards and guidelines including the Old Growth Reserves,

Class-3 buffer strips and legacy standards and guideline, all of which violate Section 1326 of the Alaska National Interest Lands Conservation Act.

Respectfully Submitted

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