

**ALASKA RAINFOREST DEFENDERS – ALASKA WILDERNESS LEAGUE
CASCADIA WILDLANDS – CENTER FOR BIOLOGICAL DIVERSITY
DEFENDERS OF WILDLIFE – EARTHJUSTICE
NATURAL RESOURCES DEFENSE COUNCIL – SIERRA CLUB
SOUTHEAST ALASKA CONSERVATION COUNCIL
WOMEN’S EARTH AND CLIMATE ACTION NETWORK**

August 28, 2017

VIA ELECTRONIC MAIL AND HAND DELIVERY

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Attn: Tongass Objections
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Re: Wrangell Island Project Objection

Dear Ms. Pendleton:

Earthjustice, on behalf of Alaska Rainforest Defenders, Alaska Wilderness League, Cascadia Wildlands, Center for Biological Diversity, Defenders of Wildlife, Natural Resources Defense Council, Sierra Club, Southeast Alaska Conservation Council, and Women’s Earth and Climate Action Network, hereby objects to the July 2017 Draft Record of Decision for the Wrangell Island Project (the Draft ROD) and the proposed Final Environmental Impact Statement (the FEIS). Earl Stewart, the Tongass Forest Supervisor, is the responsible official for the Draft ROD and the FEIS for the Wrangell Island Project.¹

The Wrangell Island Project is unlawful because the Forest Service failed to comply with the National Forest Management Act (NFMA), the Tongass Timber Reform Act (TTRA), the Multiple-Use Sustained-Yield Act, and the National Environmental Policy Act (NEPA). As explained below, without detailed analysis and despite undisputed expert opinion to the contrary, the Forest Service intends to continue the controversy of industrial-scale, old-growth logging at significant risk to Wrangell Island’s wildlife populations and ecosystems and the communities and people who depend upon those forest resources.

The Forest Service, moreover, fails to identify even one economically viable action alternative for the Wrangell Island Project. This is all the more remarkable given U.S. taxpayers spend tens

¹ See Draft ROD at 39.

of millions of dollars every year to subsidize the Tongass timber industry, only to have the Forest Service allow most of the logs to be shipped out of Alaska. It is a damning critique of the Tongass timber program that the Forest Service spent millions of dollars and almost a decade of planning only to propose a timber sale project that results in uniformly negative appraisals.

The Wrangell Island Project epitomizes a losing endeavor, reflecting the worst of Forest Service decision-making. As a policy matter, the project is neither environmentally nor economically sustainable. It accomplishes little more than perpetuating controversy regarding old-growth logging and encouraging continued subsidies in an industrial-scale, export-dependent industry that contributes virtually nothing to the region's economy. As a legal matter, the wildlife analysis underlying this project is substantially deficient, failing to meet basic obligations to assess impacts and ensure protection for wildlife. Indeed, NEPA's paramount purpose is to prevent agencies from making this type of predetermined decision.

For all of these reasons, the Forest Service should not proceed with the Wrangell Island Project. Instead the agency should redirect its efforts to fostering investment in sustainable economic enterprises and a rapid reduction in old-growth logging, consistent with the Department of Agriculture's transition goal.

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DESCRIPTION OF THE OBJECTING PARTIES

In 2016, the objecting parties submitted substantive comments on the Wrangell Island Project Draft Environmental Impact Statement (DEIS).² Several of them also commented on, appealed, and ultimately litigated the 2008 Tongass Land and Resource Management Plan Final Environmental Impact Statement (2008 FEIS) and the 2008 Amendment to the Tongass Land and Resource Management Plan (2008 Amended Forest Plan), which was the governing forest plan when the DEIS was published. Many of those same groups commented on, and objected to the 2016 Amendment to the Tongass Land and Resource Management Plan Final Environmental Impact Statement (2016 FEIS) and the 2016 Amendment to the Tongass Land and Resource Management Plan (2016 Amended Forest Plan), which now governs the Wrangell Island Project. The objecting parties incorporate the arguments and issues raised in the comments and objections regarding the 2016 Amended Forest Plan and the 2016 FEIS in their entirety.³

For purposes of 36 C.F.R. § 218.8(d)(1), the objecting parties may be reached via the Earthjustice contact information indicated in the signature block. For purposes of 36 C.F.R. § 218.8(d)(3), Earthjustice, which is submitting this objection on behalf of the other parties, is the “lead objector.”

STATEMENT OF ISSUES, INCONSISTENCY, AND ILLEGALITY

Pursuant to 36 C.F.R. Part 218, this objection addresses the FEIS and the Draft ROD for the Wrangell Island Project and incorporates all of the arguments regarding infirmities with the 2016 Amended Forest Plan and the 2016 FEIS. The specific issues of concern regarding the project are addressed below.⁴

² See Southeast Alaska Conservation Council, *et al.*, Letter to R. Dalrymple, District Ranger, Re: Wrangell Island Project (Jul. 18, 2016) (SEACC DEIS Comment Letter); Greater Southeast Alaska Conservation Community, *et al.*, Letter to R. Dalrymple, District Ranger, Re: Wrangell Island Project (Jul. 18, 2016) (GSACC DEIS Comment Letter). Greater Southeast Alaska Conservation Community (GSACC) recently changed its name to Alaska Rainforest Defenders. See <https://gsacc.net/>. Any documents cited in this objection will be hand-delivered to the Forest Service on August 28, 2017 (with the exception of statutes, regulations, Forest Service documents (forest plans, Forest Service Handbook, etc.), documents in the relevant planning records (*e.g.*, Wrangell Island Project planning record, 2008 Amended Forest Plan administrative record, and 2016 Amended Forest Plan planning record), and documents cited in the agency’s planning documents. See 36 C.F.R. § 218.8(b).

³ See Southeast Alaska Conservation Council, *et al.*, Letter to B. Pendleton, Regional Forester, Re: Objection 2016 Amended Tongass Land Management Plan (Aug. 30, 2016) (SEACC Forest Plan Objection); Alaska Wilderness League, *et al.*, Letter to E. Stewart, Tongass Forest Supervisor (Feb. 22, 2016) (SEACC Forest Plan Comment Letter); Greater Southeast Alaska Conservation Community, *et al.*, Letter to B. Pendleton, Regional Forester (Aug. 30, 2016) (GSACC Forest Plan Objection); Greater Southeast Alaska Conservation Community, *et al.*, Letter to E. Stewart, Tongass Forest Supervisor (Feb. 22, 2016) (GSACC Forest Plan Comment Letter).

⁴ See generally 36 C.F.R. § 218.8(d)(5).

The objection identifies: (1) the various ways in which the Wrangell Island Project, the FEIS, and the Draft ROD are inconsistent with law, regulation, and policy; and, (2) how the Forest Service's decision and supporting documents can be improved to correct the infirmities for purposes of 36 C.F.R. § 218.8(d)(5). As explained below, each substantive section also demonstrates the connection to specific sections of the DEIS Comment Letters, and any specifically incorporated material, and, where relevant, explains that a specific issue arose after the opportunity for formal comment.⁵

PURPOSE AND NEED

Like the DEIS,⁶ the FEIS continues to define the Wrangell Island Project purpose and need too narrowly, because it focuses solely on large-scale old-growth logging objectives.⁷ The FEIS simply updates the explanation to account for the adoption of the 2016 Amended Forest Plan, but is substantively unchanged from the DEIS. It explains “[t]he purpose of the Wrangell Island Project is to respond to the Plan Components . . . identified by the 2016 Tongass Land and Resource Management Plan . . . to guide timber management to support the local and regional economies of Southeast Alaska, while moving the Wrangell Island Project area towards the desired future condition for all resources.”⁸

The purpose and need statement identifies two goals and four objectives that relate solely to timber industry needs.⁹ The local and regional economy goal and objective purportedly relate to diverse resource uses and employment, but in reality the Forest Service treats them as solely timber-driven.¹⁰ As the planning record makes clear, the Forest Service appears to have predetermined its mission for the Wrangell Island Project as providing maximum old-growth volume.

As predicted in the comments and objection related to the 2016 Amended Forest Plan, the Forest Service is treating the plan objective of providing 46 million board feet (MMBF) per year as a minimum without consideration of actual market demand.¹¹ The 2016 Amended Forest Plan improperly includes an objective—O-TIM-01—to offer an average annual volume of 46 MMBF, regardless of actual market demand.¹² Despite comments to contrary, the offending objective

⁵ See 36 C.F.R. § 218.8(d)(6).

⁶ See SEACC DEIS Comment Letter at 1; GSACC DEIS Comment Letter at 8-16.

⁷ See *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2010) (“an agency cannot define its objectives in unreasonably narrow terms”) (quoting *City of Carmel-By-The-Sea v. United States Dep't. of Transp.*, 123 F.3d 1142, 1155 (9th Cir.1997)).

⁸ FEIS at 3.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ See, e.g., SEACC Forest Plan Objection at 22-24.

¹² See SEACC Forest Plan Comment Letter at 13.

remains in the plan and reflects no revision that avoids the identified problem. The objective still directs the agency to “offer an average of 46 MMBF annually. . . .”¹³ This objective is not tied in any way to market demand.¹⁴ If market demand falls short of this level, the objective will remain, spurring wasteful allocation of resources to unneeded timber sales. This is a significant misapplication of the market demand goal in the TTRA and fails to balance timber goals with other resource needs on the forest in violation of the multiple-use balancing directive of that act, NFMA, and the Multiple-Use Sustained-Yield Act.

The Wrangell Island Project perpetuates these problems and, therefore, is also unlawful. Indeed, as explained below, the agency rejected viable alternatives based simply on the assertion that standing alone they could not meet the 2016 Amended Forest Plan objective.¹⁵ The agency acted arbitrarily because no individual timber sale project has to provide the entire annual objective.

The purpose and need statement also does not reflect the reality of Southeast Alaska’s economy or the goal of transitioning away from the controversy and conflict of old-growth logging. As explained in the DEIS Comment Letters, the region long ago moved beyond massive old-growth logging as the primary economic driver. Today the economic drivers of the Southeast Alaska economy— fishing, tourism, and recreation—depend upon intact, old-growth forests. By applying the purpose and need statement for this project so narrowly, the agency actually works against the economic interests of Southeast Alaskans. The agency should be developing projects that support those industries and, in so doing, facilitate the transition away from environmentally and economically unsustainable industrial-scale old-growth logging. The Forest Service erred in failing to adjust the purpose and need to reflect appropriately the agency’s multiple use and market demand obligations.

RANGE OF ALTERNATIVES

Under NEPA, the Forest Service must develop alternatives that “inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”¹⁶ The FEIS, similar to the DEIS, does not comply with NEPA’s directive to “[r]igorously explore and objectively evaluate all reasonable alternatives.”¹⁷ As the courts have made clear: “The agency must look at every reasonable alternative within the range dictated by the nature and scope of the proposal. The existence of reasonable but unexamined alternatives renders an EIS inadequate.”¹⁸ For the reasons explained below, the FEIS violates NEPA because it fails to consider an adequate range of alternatives.

¹³ 2016 Amended Forest Plan at 5-13 (O-TIM-01).

¹⁴ *See id.*

¹⁵ *See* FEIS at 24 (rejecting the Small Mill and Wildlife Alternative).

¹⁶ 40 C.F.R. § 1502.1; *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 965 (9th Cir. 2005) (failing to provide “‘full and fair’ discussion of the potential effects of the project” violated NEPA).

¹⁷ 40 C.F.R. § 1502.14(a).

¹⁸ *Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1095 (9th Cir. 2006).

As an initial matter, the objecting parties raised several concerns regarding the 2016 FEIS and its consideration of alternatives at the forest plan stage.¹⁹ Those concerns are not repeated herein, rather they are incorporated in their entirety.

With regard to the Wrangell Island Project, the agency refused to consider any alternatives with old-growth logging volumes less than 39 MMBF,²⁰ which is roughly 85 percent of the annual 46 MMBF projected timber sale quantity objective established in the 2016 Amended Forest Plan.²¹ The FEIS all but ignores requests for the agency to consider smaller volume alternatives.²² This is despite the fact that between the DEIS and the FEIS, the agency's timber offering goal dropped from 142 MMBF²³ to 53 MMBF,²⁴ due to greatly reduced market demand projections. These reduced projections should have opened up the option of lower-volume alternatives, yet the FEIS, in violation of NEPA, retains the same alternatives reviewed in the DEIS.

The FEIS (unlike the DEIS) explains the agency considered but rejected the "Small Sales and Wildlife Alternative" that the Southeast Alaska Conservation Council (SEACC) proposed.²⁵ The FEIS, however, does not explain why the agency refused to consider any other smaller volume alternatives. The agency's failures in this regard are especially troubling given the Wrangell District Ranger specifically instructed agency staff to "develop a range of alternatives . . . [and] include an alternative(s) to address public comments from the public [and] SEACC."²⁶ Despite this explicit instruction, the agency refused to analyze any smaller volume alternatives, including SEACC's alternative.

The FEIS offers three reasons the agency rejected SEACC's alternative: (1) "an offer of only 2 MMBF of timber per year would not meet the purpose and need for the project; (2) "accessing the available timber would require road construction and helicopter yarding" and, "[s]uch costs could not be recovered by small operators in sales of only 2 MMBF in size;" and, (3) "[o]pportunities for small mill owners to obtain small sales are already included in all the action alternatives."²⁷ Each of these explanations is unsupported by the record before the agency, rendering the agency's decision arbitrary under NFMA and the FEIS unlawful.

¹⁹ See SEACC Forest Plan Objection at 12-19; GSACC Forest Plan Objection at 29-40.

²⁰ See FEIS at 18-21.

²¹ 2016 Amended Forest Plan at 5-13 (O-TIM-01).

²² See, e.g., GSACC DEIS Comment Letter at 16-20;

²³ DEIS at 282.

²⁴ FEIS at 295.

²⁵ See SEACC DEIS Comment Letter at 2-4; FEIS at 24.

²⁶ FEIS PR 634_0036 (R. Dalrymple, District Ranger, Memorandum to Wrangell Island EIS Project IDT, Re. Wrangell Island EIS Project Initiation Letter at 2 (Mar. 2, 2012)).

²⁷ FEIS at 24.

The FEIS makes clear that the “purpose of the Wrangell Island Project is to respond to the Plan Components (for example, goals and objectives) identified by the 2016 [Amended Forest] Plan.”²⁸ As an initial matter, the agency’s explanation for rejecting the “Small Mill and Wildlife Alternative,” never explains why the alternative would not respond to those plan components. In its response to comments, the agency claims the proposed alternative based on a series of 2 MMBF sales per year for 10 years targeted at small local mill operators “would not satisfactorily contribute to a supply of timber that meets the annual or planning cycle demand for the Forest.”²⁹ Yet according to the Forest Service’s Regional Economist and Dr. Jean M. Daniels, the volume used by small operators “is probably somewhere between 1.4 MMBF and 3.0 MMBF.”³⁰

The FEIS also explains that “[s]maller units that can be logged with ground-based equipment could be bid on by a small operator” and acknowledges there is suitable and available timber that does not require helicopter yarding or road building.³¹ Thus the arguments that small operators could not afford helicopter and new road construction costs do not justify rejection of this alternative (or a comparable small volume alternative).³² Additionally, the proposed alternative does not have to satisfy the entirety of the annual or planning cycle demand for the forest; this is merely one project that contributes to the overall goal.³³ As the FEIS explains, the timber volume goal of 53 MMBF for fiscal year 2017 “reflects the estimated volume of timber the Forest Service needs to offer to replace the volume expected to be harvested and help build a 3-year supply of timber under contract.”³⁴ The agency’s failure to conduct a detailed study of SEACC’s “Small Mill and Wildlife Alternative” or indeed any smaller volume alternative to determine how such a model would contribute to the timber objectives and benefit local jobs and small mill operators was unlawful and arbitrary.

Finally, the Forest Service also ignores SEACC’s comments that “[p]roposing large volume sales with small amounts of economical timber will not provide long-term support to small mill operators on Wrangell Island.”³⁵ As SEACC explained, “[o]ver the past decade, 50% of timber sales on the Tongass were not bid on at all, and of the timber that did sell, 40% was either

²⁸ *Id.* at 3.

²⁹ *Id.*, App. B at 125.

³⁰ 2016 Amended Forest Plan PR 769_02365 at 1 (N. Grewe, Regional Economist, Email to M. Lisowski et al., Re: Question from Forrest (Apr. 2, 2015)).

³¹ FEIS, App. A at 289.

³² *See, e.g., id.*, App. B at 125.

³³ *But see id.*, App. B at 125 (explaining the agency eliminated the “Small Mill and Wildlife” alternative “because this small amount of timber volume would not satisfactorily contribute to a supply of timber that meets the annual or planning cycle demand for the Forest”).

³⁴ *Id.* at 295.

³⁵ Southeast Alaska Conservation Council, Letter to SWCA Environmental Consulting, Re. Wrangell Island Project Draft EIS at 2 (July 25, 2011).

defaulted on by the operator or mutually cancelled.”³⁶ The agency’s FEIS fails to address these points.

The Wrangell Island Project provides an opportunity to refine old-growth reserve boundaries, and an appropriate range of alternatives should analyze how such a modification would impact a timber project. The range of alternatives, specifically, should have included an alternative that modifies the boundaries of the old-growth reserves to meet the criteria as recommended by the interagency team. The current reserve system does not meet 2016 Amended Forest Plan criteria, but rather than use this opportunity as a chance to consider an alternative that would fix this problem, the agency offered an erroneous and irrelevant explanation:

This alternative was eliminated from further study by the Responsible Official because the Forest Plan was undergoing an amendment process. The amendment process is now complete. The Tongass Conservation Strategy including [old-growth reserve] boundaries was considered in the 2016 Forest Plan Amendment. No changes to the [old-growth reserves] themselves on Wrangell Island were identified in the Forest Plan.³⁷

This explanation, however, fails to explain why the Forest Service eliminated a modified old-growth reserve alternative from consideration at the project level even after the Interagency Biologist Review of the Old-Growth Reserve for the project recommended modifying the boundaries to better serve the forest plan’s conservation strategy. The agency must consider a sufficiently broad range of alternatives, which should include an approach that has been recommended by the agency’s own experts and by multiple members of the public.

In short, the FEIS is unlawful, because it ignores important alternatives and instead only analyzes alternatives that are virtually identical in fundamental ways. As the Ninth Circuit Court of Appeals has explained, agencies cannot make an informed decision on a project’s environmental impacts when “[t]here is no meaningful difference between the four alternatives considered in detail.”³⁸ The agency’s refusal to even consider alternatives in the FEIS in the ways described above violates NEPA. In failing to consider those alternatives, the agency also acted arbitrarily and unlawfully under NFMA and the other statutes that govern timber sales, because the agency failed to consider relevant factors in reaching its decision and ignored an important aspect of the problem.

ROADLESS AREAS

The FEIS and Draft ROD continue to reflect the Forest Service’s plan to log areas that the agency knows are in fact roadless areas. In 2003, the Forest Service updated the inventory of lands the agency deemed “roadless,” and, for more than 10 years, relied on that updated

³⁶ *Id.* at 2.

³⁷ FEIS at 24.

³⁸ *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1051 (9th Cir. 2013).

inventory to protect the unique characteristics of the Tongass's roadless areas.³⁹ In contrast, the agency is now relying exclusively on the older, flawed inventory, for the Wrangell Island Project (and the 2016 Amended Forest Plan), which would allow logging to proceed in places that are actually roadless. As explained in the SEACC DEIS Comment Letter, this is unlawful and arbitrary.⁴⁰

In the 2003 Final Supplemental Environmental Impact Statement (2003 FSEIS), the Forest Service updated its roadless inventory from the 1997 Forest Plan to make wilderness recommendations in response to *Sierra Club v. Lyons*, No. J00-0009 CV (JKS) (D. Alaska 2001).⁴¹ In the 2003 FSEIS, the agency explained “[s]everal areas of information were updated . . . to better reflect current conditions on the Tongass as a whole and within roadless areas in particular” and the “individual roadless area descriptions . . . [were] updated to reflect current conditions.”⁴² The agency updated its inventory of existing roads and designated as “developed” all areas within 1,200 feet of an existing road and within 600 feet of an existing harvest unit; “[a]ll National Forest System land outside of areas defined as developed were identified as roadless.”⁴³ “Approximately 9.1 million of the 9.6 million acres in the [2003 FSEIS] inventoried roadless areas [were] also [to be] included under the Roadless Rule.”⁴⁴ Thus, the Forest Service has long recognized that based on its best available information roughly 500,000 acres on the Tongass are in fact roadless, but are not protected by the Roadless Rule as “inventoried roadless areas.”

The area immediately south of the North Wrangell Inventoried Roadless Area (IRA) is one of those areas; the FEIS confirms the roadless character of units proposed in VCU 4750.⁴⁵ The roadless area inventory used in the 2008 Amended Forest Plan recognized that area as part of

³⁹ See 2008 FEIS at 3-445; see also USDA Press Release 2010 at 1 (declaring agency policy to transition “quickly away from timber harvesting in roadless areas”).

⁴⁰ See SEACC DEIS Comment Letter at 4-5.

⁴¹ See U.S. Forest Service, Final Supplemental Environmental Impact Statement, Roadless Area Evaluation for Wilderness Recommendations at 1-3 to 1-5 (Feb. 2003) (2003 FSEIS); U.S. Forest Service, Supplemental Environmental Impact Statement, Roadless Area Evaluation for Wilderness Recommendations Record of Decision at 2-3 (Feb. 2003) (2003 ROD).

⁴² 2003 FSEIS at 1-15.

⁴³ *Id.* at 2-5; see also 2003 ROD at 3 (“For this Supplemental EIS, all roadless Tongass National Forest lands were assessed in order to update Appendix C of the 1989 AMS to reflect current conditions.”).

⁴⁴ 2003 FSEIS at 3-185.

⁴⁵ FEIS at 57, Fig. 13.

IRA 227 (North Wrangell).⁴⁶ Three of the alternatives—2, 4, and 5—propose logging in that area.⁴⁷ The Draft ROD adopts Alternative 2.⁴⁸

The agency will act arbitrarily if it adopts the Draft ROD. The fact that the Roadless Rule does not prohibit logging in the area immediately south of the North Wrangell IRA, due to errors in the original maps, is a technicality that does not excuse the agency from assessing the impacts caused by logging areas the agency knows are in fact roadless. The FEIS contains no analysis of the impacts of the timber sale on roadless area attributes—such as the unique values of roadless areas for habitat, recreation, and solitude—despite the agency’s awareness that the area is actually roadless. To have considered all the factors and impacts of the proposed Wrangell Island Project, the agency must account for the impacts regardless of whether the Roadless Rule prohibits logging in this area. The agency’s own analysis in 2003 and 2008 confirmed the current roadless condition of the lands selected for cutting in VCU 4750. The agency’s decision regarding the Wrangell Island Project also violates NEPA because the FEIS fails to assess the unique impacts associated with logging roadless areas.

The DEIS contended the agency refused to consider such alternatives because, “[e]xcluding timber harvest from both types of roadless areas would not provide sufficient timber volume to meet the purpose and need of this project.”⁴⁹ As the SEACC DEIS Comment Letter explained, this statement was untrue given the DEIS greatly exaggerated the actual market demand, but also because it would be possible to meet the purpose and need of the project with much lower timber volumes.⁵⁰ Moreover, this reason is no longer valid, since the agency’s estimates of market demand for timber plummeted between the DEIS and the FEIS.

Perhaps in recognition of this fact, the Forest Service suddenly adopted a new explanation in the FEIS. The agency now contends that its rationale for failing to consider any alternative that prohibited logging in areas that are in fact roadless in the FEIS relates to the Ninth Circuit’s decision regarding the Tongass exemption:

The Ninth Circuit Court of Appeals issued a decision eliminating the Tongass exemption to the Roadless Rule, reestablishing the 2001 inventoried roadless areas on the Tongass. The 2003 Forest Plan inventoried roadless areas are no longer considered as inventoried roadless due to the 2001 Roadless Rule reinstatement,

⁴⁶ See 2008 Amended Forest Plan AR 603_1603 (2008 Forest Plan Map entitled “Roadless Area Inventory, Tongass National Forest, Land and Resource Management Plan, January 2008”); see also 2008 FEIS at 3-446, Tbl. 3.19-2 (IRA 227).

⁴⁷ See FEIS at 35, Fig. 4; *id.* at 39, Fig. 6; *id.* at 41, Fig. 7.

⁴⁸ Draft ROD at 1.

⁴⁹ DEIS at 23-24.

⁵⁰ See SEACC DEIS Comment Letter at 4-5.

which specifically identifies the inventoried roadless areas established by the Roadless Rule.⁵¹

The agency's explanation is nonsense. Nothing in the 2001 Roadless Rule prohibits the Forest Service from updating the maps with more accurate information. To the contrary, the Rule explicitly contemplates that the Forest Service *will* keep the maps up to date: it defines inventoried roadless areas by reference to specified maps "or any subsequent update or revision of those maps."⁵² Nor does the Rule in any way obviate the agency's NEPA obligations to evaluate impacts of logging roadless areas. The agency's stated rationale reflects a significant misreading of the Ninth Circuit's decision and of the Roadless Rule itself. It is therefore arbitrary and contrary to law. The agency also acted arbitrarily in failing to consider all the relevant factors in deciding to destroy roadless area values through the Wrangell Island Project and, for this reason, acted arbitrarily in reaching a decision under the statutes governing timber sale decisions.

Indeed, as demonstrated by the 2008 Forest Plan, nothing prevents the agency from protecting areas that are actually roadless but misrepresented in the Roadless Rule's "Inventoried Roadless Area" maps. The agency's abrupt policy reversal from the 2008 Amended Forest Plan to the 2016 Amended Forest Plan is unexplained and arbitrary. Additionally, the agency's refusal to consider alternatives that protect known roadless areas from logging in the 2016 FEIS also violates NEPA.⁵³

Finally, the 2012 Planning Rule requires the Forest Service to use the best available scientific information. Under 36 C.F.R. § 219.3, "[t]he responsible official shall use the best available scientific information to inform the planning process required by this subpart." Here there is no dispute that the agency's own analysis concluded that additional areas beyond those protected by the original 2001 maps have roadless areas characteristics that warrant protection. Based on this scientific information, the Forest Service updated and corrected errors in the 2001 inventory,⁵⁴ and has used the updated inventory until the agency adopted the 2016 Amended Forest Plan. Neither the 2016 Amended Forest Plan nor the Wrangell Island Project ever disavowed the scientific understanding for the 2003 updated inventory and the agency's identification of areas that are in fact roadless and contain the attributes unique to such areas. In failing to consider that scientific information in the manner required by 36 C.F.R. § 219.3, both the 2016 Amended Forest Plan and the Wrangell Island Project implemented pursuant to that plan are unlawful under NFMA.

⁵¹ FEIS at 25.

⁵² 66 Fed. Reg. 3,244, 3,272 (Jan. 12, 2001) (adopting 36 C.F.R. § 294.11).

⁵³ See SEACC Forest Plan Objection at 20-21.

⁵⁴ See 2008 FEIS at 3-445.

ROADS AND ACCESS MANAGEMENT

The Forest Service's assessment, disclosure, and consideration of road costs (including construction, maintenance, and decommissioning) is incomplete and misleading.⁵⁵ This renders the FEIS unlawful under NEPA and the Draft ROD arbitrary under NFMA.

Upon information and belief, the objecting parties also understand the Forest Service is either considering or has already engaged in efforts to pay for some or all of the road costs for the Wrangell Island Project. As of the time of the objection, a Freedom of Information Act request is pending that seeks information regarding the agency's actions in this regard. To the extent this understanding is correct, the information was not disclosed in the DEIS and never made public, making it impossible to address it in the DEIS Comment Letters.⁵⁶

As the FEIS's explanation of indicated advertised rates makes clear, the Forest Service will be unable to sell most of the timber from the Wrangell Island Project, because the timber is not worth enough to cover the logging costs. In an attempt to counteract the troubling economic realities of the Tongass timber program, the Forest Service appears poised to take an extraordinary and costly measure; the agency might contract to perform most, if not all, of the road construction and reconstruction required for the project at public expense, reducing the costs to the logger but shifting them to the taxpayer. This decision should have been disclosed in the FEIS and the implications of this decision explained in the agency's balancing of competing interests under NEPA.

Since 2006, Alcan Forest Products has been the only successful bidder for any large volume timber sales from Wrangell Island.⁵⁷ The FEIS should have disclosed that based on a consistent pattern over the last 10 years, only one company is likely to benefit from any decision to force taxpayers to cover some or all of the road costs for the Wrangell Island Project. Additionally, as Alcan still has timber under contract that it could log from Wrangell Island,⁵⁸ the agency has not justified the decision to move ahead with the Wrangell Island Project by paying for the roads in either the FEIS or the Draft ROD.

If the Forest Service decides to pursue a plan to pay for some or all of the road costs for the Wrangell Island Project, then the agency will have to prepare a supplemental EIS before moving ahead with the project. The information presented in the FEIS and Draft ROD will be misleading and inaccurate and the agency will be obligated to examine the impacts that approach will have on the Wrangell Island Project.

⁵⁵ See GSACC DEIS Comment Letter at 66-68.

⁵⁶ See 36 C.F.R. § 218.8(d)(6).

⁵⁷ See Tongass National Forest, Wrangell Ranger District, Timber Volume Under Contract; *see also* U.S. Forest Service, Alaska Region, Remaining Timber Sales Volumes and Values (Jan-July 2017, Fiscal Years 2006-07, 2009-16).

⁵⁸ *See id.*

In sum, the agency's decisions in this regard have direct bearing on the agency's analysis of the costs and benefits of the Wrangell Island Project. Even coupled with the Forest Service's decision to allow 50 percent export of the logs from the Wrangell Island Project, which is addressed below, the project will generate little revenue despite its large size, offering greatly reduced economic value with the same—or even higher—environmental, social, and economic costs. The agency violates NEPA in failing to explain this in the FEIS and reaches an arbitrary conclusion under NFMA.

MARKET DEMAND

The Forest Service's pre-determined mission of maximizing the amount of timber in the Wrangell Island Project is based on the agency's persistence in using outdated, inflated demand projections and violates the statutes that require the agency to balance timber objectives with other forest values. In the DEIS Comment Letters, the objecting parties described how the Wrangell Island Project was based on an inflated projection of market demand.⁵⁹ The objecting parties also explained in the objections to the 2016 Amended Forest Plan, that the agency's flawed market demand analysis led the agency to adopt an improperly rigid timber objective of 46 MMBF per year regardless of actual demand.⁶⁰ These errors unlawfully restrict the range of alternatives considered in the FEIS, they misrepresent the ostensible jobs and economic benefits from logging under the plan, and they will lead to wasteful expenditure of resources on timber sales. The FEIS and Draft ROD (as well as the 2016 Amended Forest Plan) fail to correct these errors, and the Forest Service should not sign a ROD for the Wrangell Island Project without a more realistic and flexible approach to timber market demand. For the reasons explained below, if the agency approves the Wrangell Island Project, it will act unlawfully under NEPA, misapply the market demand provision of the TTRA, and skew the multiple use balancing choices under NFMA and the Multiple-Use Sustained-Yield Act.⁶¹

I. THE AGENCY'S MARKET DEMAND ANALYSIS FOR THE 2016 AMENDED FOREST PLAN WAS FLAWED.

The objecting parties raised numerous objections to the Forest Service's analysis of market demand for the 2016 Amended Forest Plan.⁶² The undersigned will not repeat those arguments, as they are incorporated herein in their entirety, but highlight some of the concerns below and note that their concerns have proved valid with the agency's first timber sale decision implementing that flawed approach.

⁵⁹ See SEACC DEIS Comment Letter at 5-12; GSACC DEIS Comment Letter at 23-36

⁶⁰ See SEACC Objection to 2016 Amended Forest Plan at 22-24; GSACC Objection to 2016 Amended Forest Plan at 80-85.

⁶¹ See 16 U.S.C. § 1604(e) (NFMA); *id.* § 529 (Multiple-Use Sustained-Yield Act); *id.* § 539d(a) (TTRA); *id.* § 3120(a)(3)(A) (Alaska National Interest Lands Conservation Act); *see also* *Natural Res. Def. Council v. U.S. Forest Service*, 421 F.3d 797, 808-09 (9th Cir. 2005) (explaining balancing of timber and other goals in the Tongass).

⁶² See SEACC Forest Plan Objection at 22-25; GSACC Forest Plan Objection at 80-85; *see also* SEACC DEIS Comment Letter at 6-8, GSACC DEIS Comment Letter at 25-27.

The agency based the 2016 Amended Forest Plan's market demand analysis on the unlikely assumption in Dr. Daniels' market demand study that Southeast Alaska will retain the same share it currently has of rising global demand. This assumption of retained market share is contrary to powerful, and overwhelming long-term trends. At a minimum, the Forest Service should have acknowledged the fact that all of its past bullish projections have proved wrong and at least disclosed and analyzed the possibility that the long-term trend of declining demand for Tongass timber will continue.

Indeed, the Wrangell Island Project provides direct evidence of this reduced demand. As explained previously, even applying an export policy that allows 50% export, every alternative in the FEIS appraises overwhelmingly negative. Timber values are simply too low relative to the costs of logging on the Tongass. The agency's misguided response allows the agency to offer more timber for sale, but without the jobs and economic benefits of local processing. Southeast Alaska is paying a steep environmental cost for these timber sales without reaping the economic benefit. The fact that the agency must take such extreme steps is irrefutable evidence that market demand for timber is already less than Daniels projected.

The Wrangell Island Project also highlights the problems caused by the 2016 Amended Forest Plan's timber objective—O-TIM-01—which directs the agency to “offer an average of 46 MMBF annually”⁶³ regardless of actual market demand. If market demand falls short of this level, the objective will remain, spurring wasteful allocation of resources to unneeded timber sales. This is a significant misapplication of the market demand goal in the TTRA and fails to balance timber goals with other resource needs on the forest in violation of the multiple-use balancing directive of that Act, NFMA, and the Multiple-Use Sustained-Yield Act. These flaws are compounded at the project level, because the Forest Service relies on that forest plan objective to defend its decision to reject smaller volume alternatives.⁶⁴ The agency is using that plan objective exactly as the objecting parties predicted; it is driving the agency to advance large volume timber sales that are neither economically or environmentally sustainable. The agency's decisions both at the plan level and the project level are arbitrary and unlawful under NEPA, NFMA, and the other statutes that govern timber sale decisions.

Finally, the objecting parties noted that the 2012 planning regulations require the Forest Service to ensure that the 46 MMBF projected timber sale quantity (PTSQ) is economically sustainable.⁶⁵ There are many reasons to believe it is not: it is based on unreasonable assumptions of a cessation and reversal of historic trends depressing the demand for timber from the Tongass; it disregards the fact that past and present logging has consistently targeted the most valuable and accessible stands of timber in the Tongass, leaving a remaining pool of old-growth

⁶³ 2016 Amended Forest Plan at 5-13 (O-TIM-01).

⁶⁴ See FEIS at 3-4 (explaining that the purpose of the Wrangell Island Project is to respond to the objectives in the 2016 Amended Forest Plan, including the objective to “offer an average of 46 MMBF annually”); *id.* at 24 (rejecting “Small Sales Wildlife Alternative” because it “would not meet the purpose and need for the project”).

⁶⁵ See SEACC Forest Plan Objection at 24; 36 C.F.R. §§ 219.8(b), 219.19 (defining “sustainability”).

timber that is less valuable and more expensive to cut,⁶⁶ and it unrealistically assumes that Congress will continue to subsidize a timber sale program that results in enormous losses to taxpayers. The 2016 FEIS ignored this point and made no attempt to determine whether that level of cut is economically sustainable. Now at the implementation stage, the Wrangell Island Project provides even more compelling evidence that the 46 MMBF PTSQ is not economically sustainable, as the agency is unable to offer even one alternative that appraises positive. It is notable, moreover, that the predictions that it would prove impossible to offer a positively appraised alternative in the Wrangell Island Project have been consistent for almost a decade. The agency's failures to address and analyze this requirement violate NFMA and NEPA.

New volume summaries disclosed in the FEIS (but not the DEIS) illustrate the problem. Appendix A reveals that the Forest Service already has a huge timber backlog, with 153 MMBF currently available for offer, far in excess of the FY 2017 goal of 69 MMBF.⁶⁷ Despite this big buffer supply, there are only 67 MMBF currently under contract, well below the agency's FY 2017 goal of 159 MMBF.⁶⁸ The obvious solution would be to sell more timber from the backlog, which contains more than enough timber to achieve the volume under contract goal. The reason this is not happening is suggested in footnote 2: The backlog includes all available timber "whether it appraises deficit, slated for small sales [*sic*], or may have an interested purchaser."⁶⁹ In other words, the timber is available, but it lacks sufficient value to achieve a positive appraisal or attract interested purchasers.

This situation confirms that the Forest Service has greatly overestimated actual demand and that the timber sale program envisioned in the 2016 Amended Forest Plan is neither achievable nor sustainable, in violation of the agency's responsibilities under NFMA, Multiple-Use Sustained-Yield Act, and TTRA. The failure to disclose and discuss the problem in a candid way violates NEPA. Approving yet another large deficit-appraising timber sale does not solve the problem—it adds to the problem. The Forest Supervisor should refuse to sign the Draft ROD and should send the project back to the staff to rethink it completely.

II. THE FOREST SERVICE ARBITRARILY INFLATED THE MARKET DEMAND ESTIMATE BY SUBSTITUTING A KEY VARIABLE WITHOUT ADEQUATE EXPLANATION.

New documents in the record subsequent to the DEIS reveal a new reason for the inflated demand estimates: The Forest Service arbitrarily inflated a key variable ("industry rate of capacity utilization") in the Morse methodology. Ever since the Forest Service formally adopted

⁶⁶ See, e.g., 2016 Amended Forest Plan FEIS at 3-195 ("Low elevation, larger-tree stands have been disproportionately harvested on the Tongass National Forest. These highly productive and economical sites (i.e., those easiest to access) were targeted in the early years of commercial timber harvest because they tended to be adjacent to the beach and within floodplain riparian areas where large Sitka spruce were available and abundant.").

⁶⁷ FEIS, App. A at 300, Tbl. 92.

⁶⁸ *Id.*

⁶⁹ *Id.*

the Morse methodology in 2000,⁷⁰ the agency has utilized a consistent, periodically updated methodology for determining the industry rate of capacity utilization for mills in Southeast Alaska.⁷¹ In the most recent survey (“Southeast survey”), the agency explained, “To allow comparative longitudinal analysis, the survey instrument and population frame remained consistent from 2000 to 2015 and includes a variety of business profile, sawmill activity, and products and markets questionnaire items (Table 1).”⁷² In 2015, that survey showed a capacity utilization rate of 16 percent for the mills in Southeast Alaska.⁷³

Despite the consistent use of this methodology for the 17 years since the Morse methodology was adopted, the Forest Service abruptly dropped it and adopted the findings of a study from the University of Montana (“Montana statewide survey”) showing a 24 percent utilization rate during the same time frame for the state of Alaska as a whole, including mills from the Interior and Southcentral portions of the state.⁷⁴

The change in methodologies makes a big difference in the demand estimate, because the Montana statewide survey found a utilization rate 50 percent higher than that of the Southeast survey (24% utilization rather than 16%). Under the Morse methodology, that means substantially more timber is needed to supply the mills. Using the 24 percent utilization rate of the Montana statewide survey, the Forest Service determined that the volume it needed to offer in 2017 was 53 MMBF, which was then tripled to establish a volume under contract goal of 159 MMBF.⁷⁵ Had the agency used the 16 percent utilization rate from the longstanding Southeast survey, the 2017 volume for offer goal would have been only 37 MMBF, which when tripled would lead to a goal of 111 MMBF under contract. The difference is 48 MMBF, nearly the size of the proposed Wrangell Island Project itself.

Because the selection of this variable makes such a big difference in determining the agency’s goals, and because the agency chose to depart from a longstanding methodology adopted in conjunction with the Morse methodology, the agency must supply a reasoned explanation for its new position. The explanation given, however, is terse and ignores important factors. The entire

⁷⁰ 65 Fed. Reg. 18,962 (April 10, 2000).

⁷¹ See D. Parrent & N. Grewe, *Tongass National Forest: 2015 Sawmill Capacity and Production Report* at 1 (Dec. 2016).

⁷² *Id.*

⁷³ *Id.* at 3.

⁷⁴ See FEIS PR 634_1422 (N. Grewe, *Tongass National Forest: Updated Timber Sale Procedures* at 7 (May 8, 2017)); FEIS PR 634_1394 (K. Marcille & E. Berg, *Alaska’s Forest Products Industry and Timber Harvest, 2015* at 11 (Tbl. 8), 13 (Tbl. 11) (April 18, 2017)).

⁷⁵ FEIS, App. A at 300, Tbl. 92 & note 3; see FEIS PR 634_1422 (N. Grewe, *Tongass National Forest: Updated Timber Sale Procedures* at 4 (Table 1) (displaying calculation) (May 8, 2017)).

explanation for adopting the Montana statewide study is that “it accounts for sawmills of all sizes with Southeast representing the majority of statewide processing.”⁷⁶

There are several flaws with this explanation. First, the effect of small mills on the utilization rate would be miniscule, because small mills account for such a small portion of the timber logged in Southeast Alaska. The 11 medium and large sawmills surveyed in the Southeast Survey study had a combined capacity of 114 MMBF, with 80 MMBF attributable to one mill.⁷⁷ It included mills as small as 1 MMBF.⁷⁸ The Forest Service has identified 12 additional mills with business licenses,⁷⁹ all of which are smaller than 1 MMBF and typically do not operate full time.⁸⁰ Thus, the small mills excluded from the Southeast survey are truly tiny, constituting at most a few million board-feet combined, a trivial fraction of the 114 MMBF installed capacity of the medium and large mills tracked in the Southeast survey. It is not mathematically possible that these tiny mills could have any substantial impact on the regional capacity utilization, never mind the 50 percent boost reported in the Montana statewide survey. The Forest Service completely neglects this discrepancy in its decision. Since the rationale for using the Montana statewide survey is based on its inclusion of all mills, the failure to address this discrepancy renders the decision arbitrary.

Because the small mills cannot explain the substantially higher calculation of capacity utilization in the Montana statewide survey, the higher result must be attributable either to mills outside of Southeast Alaska or to other methodological differences. The record addresses neither, and the decision is therefore arbitrary.

Further, the use of the Montana statewide survey for this single purpose mixes apples and oranges. Although the Forest Service uses the Montana statewide survey for the capacity utilization rate, it continues to use the Southeast survey for the “installed and operable sawmill capacity” factor in the Morse methodology.⁸¹ These two factors are integrally related: one is the capacity of the mills, while the other is the percent of that capacity being utilized. Therefore, it is critical that they are calculated using compatible methods. It is clear they were not, given the otherwise inexplicable discrepancy in the results of the two surveys. One discrepancy is plain on

⁷⁶ FEIS PR 634_1422 (N. Grewe, *Tongass National Forest: Updated Timber Sale Procedures* at 7) (May 8, 2017).

⁷⁷ D. Parrent & N. Grewe, *Tongass National Forest: 2015 Sawmill Capacity and Production Report* at 5, Table 5 (Dec. 2016).

⁷⁸ *Id.*

⁷⁹ 2016 Forest Plan FEIS at 3-489.

⁸⁰ 2016 Forest Plan FEIS at 3-487 (“No new sawmills of equal size classification have been established since 2000.”)

⁸¹ FEIS PR 634_1422 (N. Grewe, *Tongass National Forest: Updated Timber Sale Procedures* at 4, Tbl. 1 (May 8, 2017)) (using 114 MMBF the capacity in all scenarios); D. Parrent & N. Grewe, *Tongass National Forest: 2015 Sawmill Capacity and Production Report* at 5, Tbl. 5 (Dec. 2016) (calculating 114 MMBF (rounded) as total estimated sawmill capacity).

the face: the Southeast survey includes two idle mills,⁸² while the Montana statewide survey includes only “facilities active during 2015.”⁸³ Applying the percent utilization of active mills to an installed capacity including inactive mills obviously overstates the amount of timber needed. There are other methodological differences as well, but on the face of the studies it is not possible to determine how they affect the outcome or which is the most reliable and useful for purposes of the Morse methodology. The Forest Service’s failure to address these differences renders the decision arbitrary.

The Forest Service’s complete failure to offer a reasoned explanation for substituting the Montana statewide survey for a survey methodology that has been employed for 17 years, and the agency’s failure to address critical factors in making that choice, render the market demand calculation arbitrary. The absence of a considered rationale creates the appearance that Forest Service staff simply chose the bigger number from the Montana statewide survey to justify a larger project. Given the FEIS’s central goal of meeting market demand, it is essential to prepare a new EIS that realistically evaluates market demand and considers a correspondingly appropriate range of alternatives.

TIMBER ECONOMICS

I. THE FOREST SERVICE FAILS TO PROVIDE A CLEAR ASSESSMENT OF THE COSTS AND BENEFITS OF THE WRANGELL ISLAND PROJECT.

In response to criticism regarding the DEIS⁸⁴, the FEIS provides some of the information relating to the Forest Service Financial Efficiency Analysis as required by FSH 2409.18, which compares Forest Service direct expenditures with estimated financial revenues.⁸⁵ The FEIS, however, continues to provide an incomplete and misleading characterization of the project’s cost to taxpayers. Failing to disclose this analysis in the FEIS is misleading and impermissible. The Forest Service justifies the Wrangell Island Project (and the entire Tongass timber sale program) exclusively on the grounds of purported economic benefits, but the Forest Service fails to disclose to the public and the decision-maker the true cost of its timber sale program.

The required Financial Efficiency Analysis should have compared the revenue from the project with Forest Service expenditures (i.e., costs to the taxpayer) expected to result.⁸⁶ In this analysis, FSH 2409.18_32.22 directs the Forest Service to “[i]nclude *all costs* that are anticipated as a result of the project,” such as but not limited to “direct costs associated with . . . [h]arvest

⁸² D. Parrent & N. Grewe, *Tongass National Forest: 2015 Sawmill Capacity and Production Report* at 2 (Dec. 2016).

⁸³ FEIS PR 634_1394 (K. Marcille & E. Berg, *Alaska’s Forest Products Industry and Timber Harvest, 2015* at 13 (Tbl. 11, note a) (April 18, 2017)).

⁸⁴ See SEACC DEIS Comment Letter at 12-17; GSACC DEIS Comment Letter at 34.

⁸⁵ Compare DEIS at 62-66 to FEIS at 65-73.

⁸⁶ U.S. Forest Service, Forest Service Handbook, FSH 2409.18 – Timber Sale Preparation Handbook, Chp. 30 at 2409.18_32.11 (Jan. 31, 2002) (FSH 2409.18).

administration . . . [s]ale preparation . . . [and] [r]oad design and engineering.”⁸⁷ In the FEIS, however, the agency failed to conduct the required analysis.

The FEIS explains that the “Total project costs” for Alternative 2 are approximately \$4.1 million,⁸⁸ but this does not include the NEPA costs of \$3.2 million for the Gate 2 analysis.⁸⁹ Thus, making calculations from the numbers reported in the FEIS, it appears that the total estimated cost of the Wrangell Island Project to taxpayers would be \$7.3 million (in addition to all of the costs associated with the Gate 1 work, roughly \$2.7 million (56,000 MBF multiplied by \$48/MBF), which the agency characterizes as “sunk costs” in the FEIS).⁹⁰

It is notable that unlike other Forest Service analyses,⁹¹ the FEIS fails to compare these costs to anticipated revenues or explain to the public and the decision-maker the net value of Wrangell Island Project. The FEIS should have explained that the results show that by the Forest Service’s own estimate Alternative 2’s cost to taxpayers, net of revenues, is \$10.3 million⁹² (indicated advertised value of –\$3.0 million minus (\$4.1 million total project costs plus \$3.2 million in Gate 2 NEPA costs)).⁹³

The fact that the Wrangell Island Project costs taxpayers more than 10 million dollars should have been disclosed in the FEIS. Yet, none of those estimates of net value are disclosed in the FEIS; not even to the extent they were disclosed in the Big Thorne FEIS.⁹⁴ Notably, the agency entirely ignores these concerns.⁹⁵ As a result, the FEIS presents a highly one-sided, misleading picture of the alternatives’ economic efficiency.

The agency’s refusal to conduct this analysis for the Wrangell Island Project violates NFMA and the failure to disclose the analysis in the FEIS violates NEPA. As the FEIS explains, “financial efficiency . . . is one tool decision-makers use when making comparisons between alternatives.”⁹⁶ The economic analysis associated with the Wrangell Island Project is fundamental to the Forest Supervisor’s decision and public costs are critical to the agency’s analysis. The underlying policy question is whether the jobs created by the project are worth

⁸⁷ FSH 2409.18_32.22 (emphasis added).

⁸⁸ FEIS at 68, Tbl. 6.

⁸⁹ *Id.* at 68.

⁹⁰ *Id.* at 67-68.

⁹¹ *See* Big Thorne FEIS at 3-37, Tbl. TSE-14.

⁹² FEIS PR 634_1428 at 15, Tbl. 5 (N. Stearns, Wrangell Island Project Resource Report: Timber Economics (Jun. 2107)).

⁹³ FEIS at 68, Tbl. 6.

⁹⁴ *Compare* FEIS at 67-70 with Big Thorne FEIS at 3-37, Tbl. TSE-14.

⁹⁵ *See* FEIS, App. B at 132-136.

⁹⁶ FEIS at 67; *see also* Big Thorne FEIS at 3-37.

both the high cost to taxpayers and the extreme ecosystem risks the project poses. Failing to provide accurate information on costs and benefits skews this analysis.⁹⁷ Additionally, the Forest Service's NFMA obligations require the agency to consider these costs and benefits in deciding whether and how to proceed with this project given the adverse impacts to old-growth ecosystems, wildlife, fisheries, subsistence, and forest-dependent industries, such as fishing, tourism, and recreation.⁹⁸ The agency must correct its analysis and provide an accurate picture of the enormous negative cost-benefit analysis of the Wrangell Island Project to the public and the decision-maker.

II. THE FOREST SERVICE FAILS TO ACCOUNT FOR ITS OWN MISMANAGEMENT OF THE TONGASS TIMBER PROGRAM, INCLUDING HIGHGRADING OF THE MOST VALUABLE HABITAT.

As the DEIS Comment Letters explained, one possible, if not likely, outcome of the dire economic reality of the Wrangell Island Project is that the Forest Service will continue to offer timber sales that highgrade the available volume to meet requirements for positive economic appraisals.⁹⁹ As explained below, the FEIS and the Draft ROD fail to address this damaging practice despite the fact the every alternative appraises negatively and the agency's own internal review confirms it is part of the agency's larger pattern of mismanagement of the Tongass timber program. In so doing, the agency acted unlawfully under NEPA and NFMA.

The FEIS effectively admits the agency will have to highgrade the Wrangell Island Project given the overwhelming negative financial assessment: "[I]t is anticipated that positive contracts can be created from the alternatives analyzed even though the preliminary financial efficiency analysis results from FASTR is negative as a whole."¹⁰⁰ Thus before the agency even approves the Wrangell Island Project, it knows it will have to allow a timber operator to log only the very best trees from the proposed project.

Yet in response to comments, Appendix B states simply: "The Wrangell Island Project does not include 'highgrading'."¹⁰¹ This, of course, does not address the concern. The agency can propose any sivilicultural approach it chooses for the Wrangell Island Project, but the economics

⁹⁷ *Nat. Res. Defense Council*, 421 F.3d at 811 ("Inaccurate economic information may defeat the purpose of an EIS by 'impairing the agency's consideration of the adverse environmental effects' and by 'skewing the public's evaluation' of the proposed agency action." (quoting *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446 (4th Cir.1996))); see also *id.* at 811-12 ("An EIS that relies upon misleading economic information may violate NEPA if the errors subvert NEPA's purpose of providing decisionmakers and the public an accurate assessment upon which to evaluate the proposed project." (quoting *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 235 F.Supp.2d 1143, 1157 (W.D. Wash. 2002))).

⁹⁸ See *Nat. Resources Defense Council*, 421 F.3d at 811.

⁹⁹ See SEACC DEIS Comment Letter at 17-18.

¹⁰⁰ FEIS, App. A at 288.

¹⁰¹ FEIS, App. B at 136.

will ultimately drive the logging practices. The FEIS fails to explain this reality to the public or the resulting environmental consequences. The agency knows that it cannot offer commercial timber sales for less than appraised rates.¹⁰² Given the overwhelming negative nature of the indicated advertised rates, the agency knows already that this project cannot be offered as the FEIS portrays. Thus it is inevitable that the sale will have be carved up to select only the most marketable stands and/or the operator will simply leave lower quality stands behind, both of which result in highgrading. The agency acted unlawfully in failing to disclose the consequences of this practice in the FEIS and arbitrarily under NFMA in failing to address these concerns.

After the close of the DEIS comment period, confirmation of this practice in recent Tongass timber sales came to public light through the work of Public Employees for Environmental Responsibility (PEER).¹⁰³ Agency reports released by PEER confirm that the Big Thorne and Tonka sales “have been financial as well as ecological debacles.”¹⁰⁴ As PEER explained: “In violation of its own policies, the U.S. Forest Service let timber operators benefit by cherry-picking more valuable trees and leaving intended salvage trees standing.”¹⁰⁵ The June 20, 2016 Forest Service “Washington Office Activity Review” examined these timber sales and found “[s]taggering monetary losses in each,” close to \$2 million in Tonka, an amount more than double the original stumpage, and in Big Thorne a reduction in sale value exceeding \$1,700,000.¹⁰⁶ As the agency review concluded, “[o]verall it would appear that there is a tendency for the purchaser to remove less than the prescribed BA by species, favoring removal in the larger diameter, more valuable species groups such as western red cedar and spruce.”¹⁰⁷ Thus, the agency’s internal review concluded that (1) the Forest Service allowed Viking Lumber Company to highgrade the most ecologically valuable trees rather than the trees intended for removal to achieve the desired forest ecosystem health effects; (2) the agency failed to conduct timber-theft prevention inspections; and, (3) the only monitoring and reports of timber removals, etc. were self-reported by Viking Lumber Company.

¹⁰² FEIS at 67.

¹⁰³ See 36 C.F.R. § 218.8(d)(6) (explaining that an objection can address a specific issue that arose after the opportunity for formal comment).

¹⁰⁴ Forest Service Scalped on Tongass Timber Sales: Bad Sales Cost Taxpayers & Alaska Schools Big Money and Hurt the Forest, Public Employees for Environmental Responsibility (Apr. 3, 2017), *available at* <https://www.peer.org/news/news-releases/forest-service-scalped-on-tongass-timber-sales.html>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*; see also Tonka Timber Sale DXPRE Post Harvest Monitoring Results, *available at* https://www.peer.org/assets/docs/fs/4_3_17_Post_Harvest_Monitoring.pdf; Washington Office Activity Review of Timber Sale Administration, Sale Preparation, Stewardship Contracting, NEPA and Timber Theft Prevention Region 10 (Jun. 12-20, 2016) (Washington Office Activity Review), *available at* https://www.peer.org/assets/docs/fs/4_3_17_Timber_Sale_Review.pdf.

¹⁰⁷ Washington Office Activity Review at 10 (Finding 2 - Discussion).

The Forest Service's misadministration of these timber sales not only cost taxpayers, but it demonstrates that the agency's balancing of interests under NFMA is heavily skewed in favor of the timber operator. In Tonka, the logging and haul costs under the Tonka contract were much lower than estimated by the Forest Service and the appraisal methods resulted in artificially low appraisal rates for higher value species such as Alaska Yellow Cedar and Sitka Spruce, resulting in additional windfalls to Viking Lumber.¹⁰⁸ In Big Thorne, the agency apparently over-estimated tow and haul costs¹⁰⁹ and Viking Lumber Company demanded that the Forest Service reimburse the costs and the loss of revenue resulting from the reduction in appraised rate.

In May 2017, Acting Regional Forester Becky Nourse provided a response to the Washington Office's review of the timber sale program and specifically addressed the Big Thorne integrated resource timber sale contract (Nourse Memo). The Nourse Memo concluded that the agency's "independent review shows unexplained departures from policy, which puts the Forest Service (FS) at risk of significant damages should [Viking Lumber Company] pursue a claim."¹¹⁰ The Nourse Memo recommended that the agency modify the Big Thorne contract to reflect the validated volumes and value that should have been offered and enter into settlement negotiations with Viking Lumber Company.¹¹¹ Notably, the Nourse Memo concluded: "Correcting the situation on Big Thorne IRTC is high priority. Equally important is correcting the underlying causes for the errors locally. Corrective actions are planned and will be implemented."¹¹² The Nourse Memo sought permission to "modify the contract and make the revised rates retroactive to the beginning of harvest activities."¹¹³

¹⁰⁸ See generally Tonka Timber Sale DXPRE Post Harvest Monitoring Results, *available at* https://www.peer.org/assets/docs/fs/4_3_17_Post_Harvest_Monitoring.pdf

¹⁰⁹ B. Pendleton, Regional Forester, Forest Service Memorandum, Correction of Material Error in the Big Thorne Stewardship Contract Haul Cost Appraisal (Aug. 22, 2016), *available at* https://www.peer.org/assets/docs/ak/7_10_17_Pendleton_U-turn.pdf.

¹¹⁰ R. Nourse, Acting Regional Forester, Forest Service Memorandum, Results of the Big Thorne IRTC Supplemental Review at 1-2 (May 31, 2017), *available at* [https://www.peer.org/assets/docs/ak/7_10_17_Nourse_memo%20\(1\).pdf](https://www.peer.org/assets/docs/ak/7_10_17_Nourse_memo%20(1).pdf); see also Forest Service Wants to Pay More in Money-Losing Timber Sale: Alaska Region Urges Off-the-Books Cash to Logger to Sweeten Tongass Contract (Jul. 10, 2017), *available at* <https://www.peer.org/news/news-releases/forest-service-wants-to-pay-more-in-money-losing-timber-sale.html>.

¹¹¹ R. Nourse, Acting Regional Forester, Forest Service Memorandum, Results of the Big Thorne IRTC Supplemental Review at 2 (May 31, 2017), *available at* [https://www.peer.org/assets/docs/ak/7_10_17_Nourse_memo%20\(1\).pdf](https://www.peer.org/assets/docs/ak/7_10_17_Nourse_memo%20(1).pdf).

¹¹² *Id.*

¹¹³ *Id.*

In response to PEER's investigation, the Forest Service reportedly released a statement to media outlets, claiming the agency had addressed these concerns.¹¹⁴ After the agency apparently "refused to answer questions or grant interview requests," however, PEER submitted a Freedom of Information Act "request for documents detailing these claimed reforms, as well as for a copy of its press statement which was not posted on its website."¹¹⁵ In June 2017, PEER sued the Forest Service for its failure to produce the requested records.¹¹⁶

The Forest Service's own documented mismanagement of the Tongass timber program (e.g., appraisal process, volume calculations, sale administration activities, theft prevention, and monitoring etc.) has direct bearing on the agency's obligations under NFMA and the other statutes governing timber sales to balance the competing interests. Simply put, the public is losing the best habitat and biggest, most valuable trees on the Tongass, but not obtaining the full value of the timber sales, making the agency's assessment and disclosure of impacts, costs and benefits, and the balancing of competing interests arbitrary and misleading.

Yet the neither the FEIS nor the Draft ROD even mention the Washington Office Activity Review or attempt to account for the Forest Service's ongoing misadministration of timber sales. As of the date of this objection, it remains unclear what improvements, if any, the Forest Service actually adopted to prevent these practices in the future. Additionally, the agency fails to disclose the problems caused by these practices and presents incomplete and misleading information in the FEIS, rendering it unlawful under NEPA. The Forest Service must account for this practice and the resulting impacts before it reaches any final decision regarding the Wrangell Island Project. In short, the Forest Service acted arbitrarily and unlawfully in failing to account for the fact that the agency's own investigation confirms misadministration of the Tongass timber program, including the fact that highgrading is a repeated and ongoing practice in Tongass timber sales. The agency's Draft ROD ignores its own internal review altogether. In reaching its decision regarding the Wrangell Island Project, the agency fails to explain how it accounts for, and whether and how it is correcting, this pattern of misadministration, which renders the decision arbitrary under NFMA and the other statutes that govern its timber sale decisions. Additionally the FEIS is unlawful because the agency fails to disclose these findings, explain the resulting impacts of those practices, and offer measures to mitigate the adverse impacts in the FEIS.

Finally, the 2016 Amended Forest Plan and the Wrangell Island Project run contrary to the Forest Service's obligation to manage the Tongass logging program in an economically sustainable fashion. Portions of the 2016 Amended Forest Plan were developed under the 2012 Planning Rule,¹¹⁷ and as such "must include plan components . . . to guide the plan area's

¹¹⁴ Lawsuit Filed to Force USFS to Disclose the Fate of Promised Timber Reforms, SitNews, Stories in the News (July 1, 2017), *available at* http://www.sitnews.us/0717News/070117/070117_timber_sales.html.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See generally* 2016 Amended Forest Plan, Chapter 5; 36 C.F.R. 219.8.

contribution to social and economic sustainability.”¹¹⁸ The term “sustainability” means the “capability to meet the needs of the present generation without compromising the ability of future generations to meet their needs.”¹¹⁹

The Forest Service’s documented pattern of mismanagement of the Tongass timber program, including allowing its largest timber operator to consistently highgrade the biggest and best trees from timber sales violates this obligation. The agency fails to even address its internal findings or the consequences for allowing the best habitat to be selectively logged. The agency, for example, reaches no conclusions about whether this practice can continue and still allow the next generation to meet its needs for the best habitat. The agency’s decision runs contrary to the regulatory requirements and is also arbitrary given it ignores important factors, namely the agency’s own conclusions regarding the mismanagement of the Tongass timber program.

III. THE FOREST SERVICE FAILS TO ADDRESS THE IMPLICATIONS OF, AND ALTERNATIVES TO, ITS DECISIONS TO ADOPT AND IMPLEMENT THE EXPORT POLICIES.

As explained previously,¹²⁰ the Forest Service’s decisions to adopt various versions of the Export Policy have had direct environmental effects because the agency admits it increases the volume of logging on the Tongass, thereby increasing adverse environmental impacts, while decreasing the number of jobs created per unit of timber cut. The Export Policy has, however, never been subject to NEPA review or public notice, review and comment pursuant to the Administrative Procedure Act (APA). With the publication of the FEIS, the public now understands that the Forest Service’s position is that comments regarding that policy are beyond the scope both as to its consequences for the 2016 Amended Forest Plan, and as to projects implemented pursuant to that plan. As explained below, the agency’s desperate attempt to evade public review of the adoption and implementation of these policy decisions is unlawful under NEPA and the timber sale statutes governing timber sale decisions.

As explained in the objections to the 2016 Amended Forest Plan,¹²¹ the Forest Service violated NEPA because the Forest Plan FEIS fails to disclose and analyze the significant environmental and economic impacts of the agency’s decisions to adopt export policies. The agency compounds that failing because the agency now fails to address the project-specific impacts of its decisions to support a timber program of up to 50 percent export in the FEIS for the Wrangell

¹¹⁸ 36 C.F.R. 219.8(b).

¹¹⁹ *Id.* at § 219.19; *see id.* (defining “economic sustainability” as capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits”).

¹²⁰ *See* SEACC DEIS Comment Letter at 18-23, GSACC DEIS Comment Letter at 30.

¹²¹ *See* SEACC Forest Plan Objection at 25-35; GSACC Forest Plan Objection at 85-90.

Island Project.¹²² The agency's decisions to adopt various export policies also raises infirmities under NFMA and the other statutes under which the Forest Service operates, as the decision directly influences the agency's ability to balance multiple competing interests when managing the national forests, including the agency's decision to select an alternative that maximizes the amount of large-scale old-growth logging approved.¹²³

A. The Forest Service Fails to Address the Impacts of, and the Reasonable Alternatives to the "Current Region 10 Export Policy" With Regard to the Wrangell Island Project.

The FEIS acknowledges the "Current Region 10 Export Policy" has a significant, if not the most important, impact on the likelihood that various alternatives could be sold and, therefore, on the environmental impacts of the Wrangell Island Project. The FEIS provides the differences between the "Current Region 10 Export Policy" and "Domestic Processing" for the "Indicated Advertised Rate."¹²⁴ Although all of the action alternatives appraise negatively, the "Current Region 10 Export Policy" results in anticipated bids that are significantly less negative than their domestic counterparts, thereby increasing the likelihood that they would be pursued. Thus, it has a direct effect on the environmental impacts and economic impacts for Southeast Alaska and, as a result, the FEIS is unlawful because it fails to evaluate and disclose those impacts.

The FEIS also continues to ignore alternatives in which the agency's Export Policy is not adopted and/or applied to the Wrangell Island Project.¹²⁵ Variations on the Limited Export Policy are not even included among the "Alternatives Considered But Eliminated From Detailed Review."¹²⁶ The FEIS offers no explanation why the agency did not consider these variations and the resulting differential environmental impacts. The failure to consider such alternatives violates NEPA.

¹²² Again, should the Forest Service decide to allow more than 50 percent to be exported, then the agency will have to prepare a supplemental EIS to examine the impacts and alternatives because the impacts associated with more than 50 percent export are not disclosed in the FEIS or explained in the Draft ROD.

¹²³ See 16 U.S.C. § 1604(e) (NFMA); *id.* § 529 (Multiple-Use Sustained-Yield Act); *id.* § 539d(a) (Tongass Timber Reform Act); *id.* § 3120(a)(3)(A) (Alaska National Interest Lands Conservation Act); *see also* *Natural Res. Def. Council*, 421 F.3d at 808-09 (explaining balancing of timber and other goals in the Tongass).

¹²⁴ FEIS at 26-27, Tbl. 2; *id.* at 72-73, Tbl. 10.

¹²⁵ *Id.* at 17-21; 23-25.

¹²⁶ *Id.* at 23-24.

By excluding variations on the “Current Region 10 Export Policy,” the DEIS excludes reasonable alternatives that fall within the project’s “purpose and need,” in violation of NEPA.¹²⁷ The FEIS describes the Wrangell Island Project as having five purposes: to provide for the continuation of timber resources by the timber industry and Alaska residents; to manage timber resources for saw timber “in an economically efficient manner[;]” to seek to provide an economic timber supply to meet annual market demand, and the market demand for the planning cycle; to provide about a 3 year supply of volume under contract to local mills; and to implement changes that keep an “economic timber” perspective throughout the process.¹²⁸ Yet, the FEIS fails to explain why domestic alternatives with smaller volumes could not fulfill these purposes.

Comparing alternatives that do and do not apply the “Current Region 10 Export Policy” to Wrangell Island Project would highlight important tradeoffs in impacts that are currently obscured by the agency’s analysis in the FEIS. Allowing more export increases the likelihood that timber is sold from the Wrangell Island Project and the volume of timber sold, which both have corresponding adverse environmental effects and high financial costs to the public of a timber sale program that results in a loss to the treasury. Reasonable alternatives would address a range of possibilities. At one end, with no export, there would be less logging but more jobs per unit of timber logged¹²⁹ and greater protection of wildlife, biological diversity, carbon stores, carbon sequestration, the public fisc, subsistence uses, and the recreation, tourism, and fishing sectors of the economy. At the other end is the “Current Region 10 Export Policy,” which emphasizes timber production with fewer jobs and higher adverse impacts and costs on all other values. Intermediate options could also be considered. The agency should have analyzed these alternatives in the FEIS; the failure to do so violates NEPA. It also violates NFMA and the other statutes under which the Forest Service operates when it approves a timber sale given the inherent tradeoffs and balancing the agency must make in deciding how to pursue competing objectives.

B. The Forest Service’s Decisions to Adopt Export Policies Are Major Federal Actions Requiring NEPA Review and APA Public Notice and Comment.

As the FEIS makes clear, there is no single “Export Policy” because the Regional Forester has the authority to make independent decisions to “modify the policy” “[a]t any time.”¹³⁰ The FEIS also explains that because the export policies change over time, “[a]ny timber sales from the Wrangell Island Project would comply with the export policy in place at the time of the sale

¹²⁷ See *City of Carmel-By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (“Project alternatives derive from an Environmental Impact Statement’s ‘Purpose and Need’ section, which briefly defines the underlying purpose and need to which the agency is responding in proposing the alternatives . . . [and which] necessarily dictates the range of reasonable alternatives.” (quotation marks omitted)); *Natural Res. Def. Council*, 421 F.3d at 814.

¹²⁸ FEIS at 4.

¹²⁹ See FEIS at 27, Tbl. 2 (FEIS acknowledging domestic processing supports more jobs than exporting).

¹³⁰ FEIS, App. B at 140-41.

advertisement.”¹³¹ The FEIS explains that the “current export policy is described in a letter from the Regional Forester, dated 4/21/2015.”¹³²

The Regional Forester’s decisions to adopt and implement these export policies are major federal actions,¹³³ because those decisions entailed the “[a]doption of formal plans . . . upon which future agency actions will be based.”¹³⁴ By the agency’s own description, the adoption of those policies and their continued application via annual reviews are a “major development.”¹³⁵

The Forest Service expects these export decisions “to boost appraised timber values,”¹³⁶ and according to the FEIS “[t]he export policy results in more positive appraisals. . . .”¹³⁷ A major increase in the number of sales appraising as positive—leading ultimately to more logging—is the Policy’s *raison d’être*.¹³⁸ As decisions to adopt, and then implement, formal policies according to which agency action will occur, the Forest Service’s export policies constitute major federal actions that must be subject to informed decision-making under NEPA.

* * *

The Forest Service’s decision to apply any export policy, including the “Current Region 10 Export Policy,” to the Wrangell Island Project requires analysis of the resulting adverse impacts in the FEIS. The agency should have provided a “full and fair discussion of significant environmental impacts” of the decision to allow exports in the FEIS, including but not limited to resultant increases in logging and the impacts on ecosystems that will follow from the resultant

¹³¹ *Id.* at 141.

¹³² *Id.*

¹³³ See SEACC Forest Plan Objection at 29-35.

¹³⁴ 40 C.F.R. §§ 1508.18(b)(2); see also Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,033 (Mar. 23, 1981) (“[T]he adoption of official policy in the form of rules, regulations and interpretations . . . establishing governmental or agency policy which will substantially alter agency programs [may be major federal actions].”).

¹³⁵ J. Daniels, et al., Tongass National Forest Timber Demand: Projections for 2015 to 2030 (April 2016) at 10.

¹³⁶ Forest Plan Amendment DEIS at 3-453.

¹³⁷ FEIS, App. B at 139; see also Big Thorne FEIS at 3-32 (explaining that without the Export Policy, far fewer timber sales “would appraise as positive”).

¹³⁸ See 2008 Amended Forest Plan AR 603_1777 at 2-3 (R. Coleman & D. Castillo, *Tongass Timber Appraisal Issues* (Feb. 1, 2007)) (Coleman & Castillo) (“[L]imited interstate shipments would significantly increase the likelihood that timber sales in parts of the Tongass would have a positive appraisal under current market conditions. . . . [A]llowing some [international] exports of spruce and hemlock logs would have an even more powerful positive effect on appraisals.”).

logging.¹³⁹ The FEIS should have included alternatives that do not involve continuation of the “Current Region 10 Export Policy” to reflect the requisite NEPA analysis. Additionally, as major federal actions, the Regional Forester’s decisions to adopt and implement the export policies require NEPA analysis.¹⁴⁰ Finally, the agency’s decisions both to adopt the “Current Region 10 Export Policy” and to apply it (or some future policy) to the Wrangell Island Project raises significant concerns under NFMA and the other statutes under which the Forest Service operates,¹⁴¹ because allowing exports dramatically affects the size and likelihood of any logging effort and, as a result, the agency’s balancing of timber objectives with other forest values such as wildlife, recreation, and subsistence.

SUBSISTENCE

As previously explained, subsistence is essential to communities in Southeast Alaska, especially residents of Wrangell and Thom’s Place.¹⁴² Deer are one of the primary sources for subsistence, making up 21 percent of subsistence resource harvests in Southeast,¹⁴³ yet deer harvest in Game Management Unit 3 has been in significant decline since 1997.

The following table provides harvest data for 1997-2014. It shows that during this period, the deer harvests in Game Management Unit 3 averaged 685 deer. During the same time period, the

¹³⁹ See *Conservation Cong. v. Finley*, 774 F.3d 611, 616 (9th Cir. 2014) (quoting 40 C.F.R. § 1502.1).

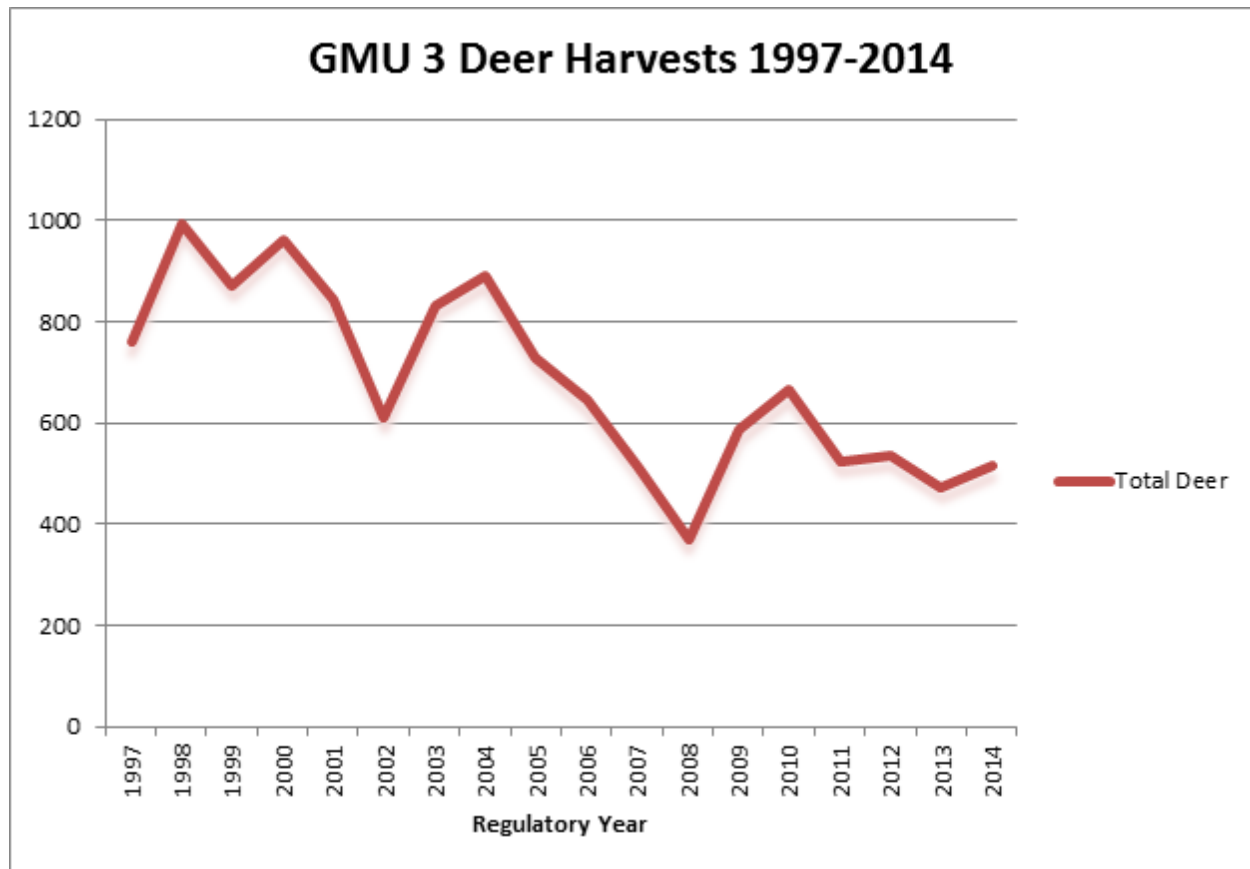
¹⁴⁰ 42 U.S.C. § 4332(2)(C) (stating that when a federal agency undertakes “major Federal actions significantly affecting the quality of the human environment,” it is required to provide a “detailed statement” analyzing the “environmental impact of the proposed action” and “alternatives to the proposed action”).

¹⁴¹ See 16 U.S.C. § 1604(e) (NFMA); *id.* § 529 (Multiple-Use Sustained-Yield Act); *id.* § 539d(a) (Tongass Timber Reform Act); *id.* § 3120(a)(3)(A) (Alaska National Interest Lands Conservation Act); see also *Natural Res. Def. Council*, 421 F.3d at 808-09 (explaining balancing of timber and other goals in the Tongass).

¹⁴² See SEACC DEIS Comment Letter at 23-24; GSACC DEIS Comment Letter at 46-47.

¹⁴³ FEIS at 243.

number of hunters averaged 897, fluctuating between the high of 1,186 (1999 & 2000) and low of 617 (2008 & 2009).¹⁴⁴



The FEIS fails to address the consequences of the demonstrable decline in deer harvest, including the impacts on subsistence users.

¹⁴⁴ ADF&G, Sitka Black-tailed Deer Hunting in Alaska, Harvest Statistics, <http://www.adfg.alaska.gov/index.cfm?adfg=deerhunting.deerharvest>. It is not clear from ADF&G's website whether these total deer harvest numbers include estimated illegal harvests. The Deer Management Report provides estimated illegal harvest numbers, which, between 1997 and 2011, averaged around 19 deer, with high of 114 deer in 1998. *See* R. E. Lowell, Unit 3 Deer Management Report, in Deer Management Report of Survey and Inventory Activities at 59, Tbl. 2 (P. Harper ed., 2013) https://www.adfg.alaska.gov/static/home/library/pdfs/wildlife/mgt_rpts/deer_2013.pdf. It is also important to note that the harvest estimate method used by ADF&G changed in 2011. *See* ADF&G, Operational Plan at 1 ("Prior to 2011, the department estimated the Unit 3 deer harvest based on a regional questionnaire mailed randomly to 33% of deer harvest ticket holders."); Lowell at 59, Tbl. 2 fn. c. (data source changed in 2011).

The FEIS fails to adequately analyze the project's impact on deer populations and consequently subsistence practices, contrary to ANILCA¹⁴⁵ and the 2016 Amended Forest Plan.¹⁴⁶ Using deer as the indicator species for potential subsistence resource consequences, the FEIS assumes that less deer habitat means fewer deer which means fewer available subsistence resources.¹⁴⁷ The analysis reports a great inadequacy in deer habitat and no accurate deer population numbers, both of which would support a finding of already limited available subsistence resources.¹⁴⁸ And, using habitat type, the agency determined that under its preferred alternative there will be a cumulative reduction of deer habitat by 5 to 34 percent.¹⁴⁹ Yet the FEIS concludes that subsistence is one of the "resources likely to be unaffected" by the Wrangell Island Project.¹⁵⁰

Under its selected Alternative 2, the Forest Service also concludes there will be adequate "habitat capability . . . to sustain the current levels of deer harvest."¹⁵¹ This prediction is unexplained and runs contrary to the facts in the record that demonstrate an ongoing decline in deer harvest across Game Management Unit 3, even before the Wrangell Island Project destroys yet more deer habitat.

The Forest Service must correct these failings because communities in Southeast Alaska depend on Tongass old-growth for not only subsistence, but also for recreation and employment through fishing, the arts, and tourism. Appropriate management of the Tongass's resources is critically important to local communities and the overall regional economy, but its importance depends on the preservation of these forests for subsistence and sustainable jobs, not logging additional old-growth. To comply with NEPA, the FEIS must address the anticipated impacts of the Wrangell Island Project, including an even greater decline in available deer hunting. The agency cannot simply accept the decline of such a vital species and resource because it has too narrowly limited alternatives considered.¹⁵² ANILCA demands more of the Forest Service.¹⁵³ And under NFMA, the agency must explain its rationale for concluding that the Wrangell Island Project reflects the proper balance of the agency's multiple use obligations given the precipitous decline in deer hunting on Wrangell Island.

¹⁴⁵ 16 U.S.C. § 3120.

¹⁴⁶ 2016 Tongass Forest Plan at 4-65 to 4-66.

¹⁴⁷ FEIS at 244-45

¹⁴⁸ *Id.* at 85.

¹⁴⁹ *Id.* at 249.

¹⁵⁰ *Id.* at 65.

¹⁵¹ *Id.* at 250; *see also id.* at 251, 253, 254, 256 (making similar habitat conclusion for all action alternatives).

¹⁵² *See id.* at 256.

¹⁵³ 16 U.S.C. § 3111(4) ("[I]t is necessary for the Congress to . . . protect and provide the opportunity for continued subsistence uses on the public lands.").

FISH AND WILDLIFE IMPACTS

I. THE FOREST SERVICE FAILS TO EXPLAIN THE IMPACTS ON BIRD AND WILDLIFE POPULATIONS IN THE MANNER REQUIRED BY NFMA, THE FOREST PLAN, AND NEPA.

In their comments on the DEIS, the objecting parties faulted the Forest Service for its overall approach to the bird and wildlife impacts analysis for the Wrangell Island Project, including the agency's conclusions that populations will simply persist after the logging.¹⁵⁴ In the FEIS, the agency eliminates even that paltry characterization and now concludes in most instances nothing more than "habitat would remain."¹⁵⁵ As explained below, the agency's bird and wildlife analysis remains arbitrary under NMFA and the other statutes governing timber sales, contrary to the 2016 Amended Forest Plan, and unlawful under NEPA.

In the DEIS the agency consistently concluded that bird and wildlife populations would merely "persist" after the Wrangell Island Project.¹⁵⁶ The agency also repeatedly explained a population will persist "at current levels," but then admitted it does not know the current population level and failed to describe its basis for its predictions, making it impossible to know whether the population will persist at that level. For example, the DEIS admitted that the agency lacks a current population estimate for the Queen Charlotte goshawk either on the Tongass as a whole or on Wrangell Island.¹⁵⁷ The DEIS, however, concluded "the Queen Charlotte goshawk would continue to persist at current levels."¹⁵⁸ With regard to wolves, the DEIS simply stated "wolves would continue to persist on Wrangell Island."¹⁵⁹ The agency employed this approach almost uniformly across the species.¹⁶⁰

Faced with these pervasive concerns, the agency simply deleted those sentences in the FEIS. In most instances, the FEIS fails to provide any conclusions regarding the impacts on future bird and wildlife populations. The following table compares some of the changes between the DEIS and FEIS.

¹⁵⁴ See, e.g., SEACC DEIS Comment Letter at 39-41; GSACC DEIS Comment Letter at 42-44 (deer), 47-48 (wolves), 60-62 (marten), 62-63 (Wrangell Island southern red-backed vole "should continue to exist").

¹⁵⁵ See, e.g., FEIS at 100.

¹⁵⁶ See, e.g., DEIS at 91 (Queen Charlotte goshawk), 94 (wolves), 96 (marten), 100 (bears), 103 (red squirrels), 106 (deer), 109 (marbled murrelets), and 110 (southern red-backed voles).

¹⁵⁷ See DEIS at 75 (citing a 2007 estimate of "261 to 336 breeding pairs on the Tongass National Forest").

¹⁵⁸ *Id.* at 91.

¹⁵⁹ *Id.* at 94.

¹⁶⁰ See, e.g., *id.* 79, 106 (deer).

	DEIS	FEIS
Sitka Black-tailed Deer	“Therefore, implementation of the proposed project would increase habitat fragmentation, human disturbance, and cause a loss of habitat when combined with past, present, and reasonably foreseeable future harvest. Although there would be effects on Wrangell Island, deer would continue to persist at current levels. ” DEIS at 106.	“Therefore, implementation of the proposed project would moderately increase habitat fragmentation, human disturbance, and cause a loss of habitat when combined with past, present, and reasonably foreseeable harvest. Despite cumulative effects, Wrangell Island would continue to provide available habitat for deer. ” FEIS at 115.
Alexander Archipelago Wolf	“There could be cumulative effects on wolves or their prey when past, present and reasonable foreseeable future projects are combined with the implementation of the Wrangell Island Project; however, wolves would continue to persist on Wrangell Island. ” DEIS at 94.	“There could be minor cumulative effects on wolves and their prey when past, present and reasonably foreseeable projects are combined with the implementation of the Wrangell Island Project. “Although there is the possibility of increased mortality, road density and decreased deer density across Wrangell Island, habitat would remain for both wolves and their prey. ” FEIS at 100.
Queen Charlotte Goshawk	“However, given that goshawks are highly mobile and that breeding density is currently low on the Tongass National Forest, the effects of the Wrangell Island Project in combination with past, present, and foreseeable activities would result in effects to goshawks on Wrangell Island. Wrangell Island would continue to provide suitable habitat and the Queen Charlotte goshawk would continue to persist at current levels. ” DEIS at 91.	“However, given goshawks are highly mobile and breeding density is currently low on the Tongass National Forest, the effects of the Wrangell Island Project in combination with past, present, and foreseeable activities would result in minor effects to goshawks on Wrangell Island. Despite cumulative impacts from the proposed action alternatives, Wrangell Island would continue to provide suitable nesting and foraging habitat for the Queen Charlotte goshawks. ” FEIS at 97.
American Marten	“Therefore, implementation of all action alternatives would have cumulative effects to martins [<i>sic</i>] or their habitat when combined with past, present and reasonable foreseeable future projects with the implementation of the Wrangell Island Project. Although there are effects to martins [<i>sic</i>], they would still continue to persist on Wrangell Island. ” DEIS at 96.	“Therefore, implementation of all action alternatives would have minor cumulative effects to martens or their habitat when combined with past, present and reasonable foreseeable future projects with the implementation of the Wrangell Island Project. Despite cumulative effects, Wrangell Island would continue to provide available habitat for martens. ” FEIS at 104-05.

Black and Brown Bear	<p>“Therefore, implementation of all action alternatives would have cumulative effects to both brown and black bears or their habitat when combined with past, present and reasonable foreseeable future projects with the implementation of the Wrangell Island Project. Although there are effects to bears they would still continue to persist on Wrangell Island.” DEIS at 99-100.</p>	<p>“Therefore, implementation of all action alternatives would have cumulative effects to both brown and black bears or their habitat when combined with past, present and reasonably foreseeable projects with the implementation of the Wrangell Island Project. Despite cumulative effects, Wrangell Island would continue to provide available denning and foraging habitat for both bear species.” FEIS at 108.</p>
Red Squirrel	<p>“Although there are cumulative effects to red squirrels they would still continue to persist on Wrangell Island.” DEIS at 103.</p>	<p>“Therefore, implementation of all action alternatives would have cumulative effects on red squirrels or their habitat when combined with past, present, and reasonably foreseeable projects with the implementation of the Wrangell Island Project. Despite cumulative effects, Wrangell Island would continue to provide available denning and foraging habitat for red squirrels.” FEIS at 112.</p>
Marbled Murrelet	<p>“Therefore, all action alternatives may result in local declines of marbled murrelet population due to the reduced availability of potential nesting habitat. Implementation of the proposed project will increase habitat fragmentation, human disturbance, and cause a loss of habitat, but when combined with past present and reasonably foreseeable would allow for the continued persistence of marbled murrelets on Wrangell Island.” DEIS at 109.</p>	<p>“Therefore, all action alternatives may result in local declines of marbled murrelet population due to the reduced availability of potential nesting habitat. Implementation of the proposed project will increase habitat fragmentation, human disturbance, and cause a loss of habitat, but despite these cumulative effects, Wrangell Island would continue to provide available habitat for marbled murrelets.” FEIS at 119.</p>
Southern Red-backed Vole	<p>“Therefore, implementation of the proposed action alternatives will increase habitat fragmentation, human disturbance, and cause a loss of habitat, when combined with past, present, and reasonably foreseeable future projects. Although there would be effects on Southern red-backed vole habitat, they should continue to exist on Wrangell Island at current levels.” DEIS at 110.</p>	<p>“Therefore, all action alternatives may result in local declines in red-backed vole population due to the reduced availability of optimum POG habitat. Implementation of the proposed action alternatives would increase habitat fragmentation, human disturbance, and cause a loss of habitat, when combined with past, present, and reasonably foreseeable projects. There are still questions as to whether habitat features required to sustain breeding vole populations occur only in late seral forest. On nearby Etolin Island, southern red-backed voles were discovered in</p>

		alpine habitat, opening up previously overlooked habitat type for these voles on Wrangell Island. Furthermore, southern red-backed voles (<i>Myodes gapperi</i>) are globally secure (NatureServe 2015) and occur across much of northern North America.” FEIS at 120.
Migratory Birds	“Therefore, implementation of the proposed project will increase habitat fragmentation, human disturbance, and cause a loss of habitat, but when combined with past present and reasonably foreseeable future projects. Although there would be impacts to migratory bird habitat, they should continue to exist on Wrangell Island at current levels. ” DEIS at 111.	“Therefore, implementation of the proposed project will increase habitat fragmentation, human disturbance, and cause a loss of habitat when combined with past, present, and reasonably foreseeable projects. Despite cumulative impacts under all alternatives, the Forest Plan conservation strategy would maintain habitats for all POG associated migratory bird species. ” FEIS at 121.

Indeed, the words “persist” and “persistence” no longer appear in this portion of the FEIS. More troubling, however, the agency never corrected or proffered new conclusions regarding the impacts on wildlife populations; now the agency reaches no conclusions regarding impacts on wildlife populations and instead, concludes little more than habitat will remain. In so doing, the agency acts arbitrarily and unlawfully.

NFMA and the other statutes under which the Forest Service operates require the agency to protect viable well-distributed wildlife populations and, then, balance timber objectives with other forest values such as wildlife, recreation, and subsistence.¹⁶¹ Additionally, the agency must demonstrate that a site-specific project is consistent with the governing forest plan.¹⁶² This requires the agency to explain why it believes the Wrangell Island Project is consistent with the 2016 Amended Forest Plan, including the standards and guidelines governing wildlife.¹⁶³ Ultimately, of course, for any balancing the agency strikes, it must demonstrate why it can

¹⁶¹ See 16 U.S.C. § 1604(e) (NFMA); *id.* § 529 (Multiple-Use Sustained-Yield Act); *id.* § 539d(a) (Tongass Timber Reform Act); *id.* § 3120(a)(3)(A) (Alaska National Interest Lands Conservation Act); *see also* *Natural Res. Def. Council*, 421 F.3d at 808-09 (explaining balancing of timber and other goals in the Tongass).

¹⁶² 16 U.S.C. § 1604(i); *The Lands Council v. McNair*, 537 F.3d 981, 989 (9th Cir. 2008) *overruled on other grounds by* *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

¹⁶³ See, e.g., 2016 Amended Forest Plan at 4-93 (“to maintain habitat to support viable populations . . . of endemic terrestrial mammals that may represent unique populations with restricted ranges”); *id.* at 4-92 (“maintaining long-term sustainable marten populations”); *id.* at 4-91 (“maintaining long-term sustainable wolf populations”).

pursue the Wrangell Island Project and still ensure the continued viability of wildlife species.¹⁶⁴ The agency fails to provide a clear, consistent assessment of the impacts of implementing the selected alternative on the ability of Wrangell Island to support wildlife populations after this timber sale, including the agency's duty to demonstrate the project is consistent with the 2016 Amended Forest Plan and to ensure wildlife viability on the Tongass. Here, the agency fails to even reach those conclusions in most cases, and never explains its rationale regarding the balancing of interests for forest resources. In so doing the agency acted arbitrarily under NFMA and the other statutes governing timber sales.

For similar reasons, the FEIS is unlawful under NEPA. In the FEIS's discussion of cumulative impacts, for example, the objecting parties faulted the agency for its conclusions that populations would persist and/or persist at current levels, especially because the agency in most instances does not even know the size of current populations, making it completely arbitrary to conclude that populations will remain at some unknown and unexamined level. As the table above highlights, rather than confront and correct those failings, the FEIS simply deletes the language, and then fails to explain the impacts of the Wrangell Island Project on wildlife populations in almost every instance. The FEIS, for example, fails to explain the agency conclusions regarding whether populations are not sustainable, not likely to persist, or not able to contribute to overall viability. Instead, the FEIS now simply states that habitat will remain, but that tells the decision-maker nothing about the impacts and consequences on bird and wildlife populations. The agency had to explain the impacts of the Wrangell Island Project and the resulting biological consequences on wildlife populations. The FEIS is unlawful because the agency fails to conduct that analysis and explain its conclusions in almost every instance.

The agency must correct these pervasive problems and conduct the required wildlife analyses, because to do otherwise the agency would act contrary to its statutory obligations under NFMA, the 2016 Amended Forest Plan, the other statutes governing timber sales, and NEPA.

II. THE WRANGELL ISLAND PROJECT'S RELIANCE ON THE 2016 AMENDED FOREST PLAN'S CONSERVATION STRATEGY IS BASED ON OUTDATED SCIENCE.

As the objecting parties explained in their objections to the 2016 Amended Forest Plan, the Forest Service wrongfully ignored contemporary science, expert opinion, and missing information regarding the efficacy of the conservation strategy.¹⁶⁵ These arguments are incorporated in their entirety with regard to the Wrangell Island Project, but the objecting parties highlight key considerations to demonstrate the arbitrary and unlawful nature of the Forest Service's conduct in this regard.

¹⁶⁴ See *id.* at 4-85 ("Provide the abundance and distribution of habitat necessary to maintain viable populations of existing native and desirable non-native species well-distributed in the planning area (i.e., the Tongass National Forest). (Consult 36 CFR 219.19 and 36 CFR 219.27.)").

¹⁶⁵ See SEACC Forest Plan Objection at 95-103.

In 2008, the last time the Forest Service amended the forest plan, the agency employed a wide variety of means (Conservation Strategy Review, expert opinions, literature review, etc.)¹⁶⁶ to address important questions regarding the efficacy of the conservation strategy in light of new information that had developed since 1997, as well as new scientific information regarding the needs of specific wildlife species. The agency relied on the expertise of dozens of scientists, experts across diverse fields of study, as well as public processes aimed at ensuring the 2008 Amended Forest Plan was founded on the best available science.

The Forest Service refused to conduct anything even approaching the same scientific inquiry with regard to the 2016 Amended Forest Plan, opting instead for opinions of three people and the combined analysis of less than 14 pages.¹⁶⁷

As a general matter, the agency takes the position that it concluded species would remain viable in 2008 and it is under no obligation to revisit those determinations with regard to 2016 plan amendment. The agency's position violates NFMA's diversity obligations, including the agency's duty to ensure wildlife viability. It is arbitrary given the Forest Service received numerous comments from experts and the public alike questioning the agency's decision to disregard contemporary science, including science aimed at the efficacy of the Conservation Strategy. It also violates the obligation to base the planning effort on the "best available scientific information."¹⁶⁸

And because this information is presented in an FEIS, the Forest Service violates NEPA. Simply put, the agency cannot refuse to examine science that questions whether the Forest Service is maintaining the proper amount, type, and distribution of habitat on the Tongass to maintain viable, well-distributed wildlife populations.

Across the board the Forest Service refused to examine scientific information regarding new understanding of species needs that has developed since 2008, including scientific understanding that calls the efficacy of the Conservation Strategy into question. The agency's failure affects a wide variety of species including, but is not limited to, endemics, goshawks, wolves, bears, deer, and marten. Even the Forest Service itself acknowledged these research publications "may

¹⁶⁶ See, e.g., 2016 Amended Forest Plan PR 769_02469 (Tongass National Forest Land and Resource Management Plan, Workshop Summary Report, Intragency Conservation Strategy Review: An Assessment of New Information Since 1997 (January 2008); 2008 TLMP AR 603_0981 (DeGayner, G. & C. Iverson, Conservation Strategy Review: An Assessment of New Information Since 1997, Conservation Strategy Overview – "Setting the Stage").

¹⁶⁷ See 2016 Amended Forest Plan PR 769_000982 (Roloff, Dr. G. J., Michigan State University, Letter to Dr. G. Hayward, U.S. Forest Service (June 23, 2015) (Roloff Letter)); 2016 Amended Forest Plan PR 769_000983 (Suring, L. H., Northern Ecologic L.L.C., Letter to G. Hayward, U.S. Forest Service (June 23, 2015) (Suring 2015 Letter)); 2016 Amended Forest Plan PR 769_000984 (Schmiegelow, F., Professional Review of the Proposed Draft: Evaluating Integrity of the Tongass Old-Growth Habitat Conservation Strategy) (Schmiegelow 2015 Review)).

¹⁶⁸ See 36 C.F.R. § 219.3.

warrant an assessment of the efficacy of the original conservation strategy design criteria.”¹⁶⁹ The Forest Service cannot ignore more than a decade of scientific understanding, saying it is beyond the scope of the agency’s planning effort.

In sum, the Forest Service cannot ignore contemporary scientific information and dissenting expert opinion. In doing so the agency’s decision-making is arbitrary under NFMA and the other statutes governing Tongass forest plans. The agency also violates NEPA, because the FEIS fails to disclose and address conflicting expert opinion and contains misleading and incomplete information regarding the efficacy of the conservation strategy generally, and the resulting consequences on wildlife species on the Tongass.

III. ENDEMICS AND SMALL MAMMALS

A. The Agency’s Overall Approach to Endemic Species Viability is Arbitrary and Unlawful.

NFMA requires that forest plans “provide for diversity of plant and animal communities,”¹⁷⁰ creating a substantive statutory constraint on the agency’s discretion. “In keeping with the statute’s mandate, the Forest Service is required to promulgate regulations that will define how the management plans are to provide for a diversity of plant and animal communities.”¹⁷¹ One of those forest plan regulations requires that “[f]ish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.”¹⁷² Like its predecessors, the 2016 Amended Forest Plan explicitly incorporates these substantive viability obligations.¹⁷³ The objecting parties previously explained the problems with the Forest Service’s analysis and conclusions regarding the viability of endemic mammals with respect to the 2016 Amended Forest Plan; those concerns are incorporated in their entirety.¹⁷⁴

Also like its predecessors, the 2016 Amended Forest Plan establishes as one of its objectives “to maintain habitat to support viable populations and improve knowledge of habitat relationships of rare or endemic terrestrial mammals that may represent unique populations with restricted ranges.”¹⁷⁵ With respect to the project-level decisions, the 2016 Amended Forest Plan directs the agency to:

¹⁶⁹ 2016 Amended Forest Plan DEIS, App. D at D-4.

¹⁷⁰ 16 U.S.C. § 1604(g)(3)(B).

¹⁷¹ *Seattle Audubon Society v. Evans*, 952 F.2d 297, 299 (9th Cir. 1991) (citing 16 U.S.C. § 1604(g)(3)(B)).

¹⁷² 36 C.F.R. § 219.19 (2000); *see also* 36 C.F.R. § 219.27 (2000).

¹⁷³ *See* 2016 Amended Forest Plan at 4-85 (WILD1.II.B).

¹⁷⁴ *See* SEACC Forest Plan Objection at 122-28; GSACC Forest Plan Objection at 70-74, 122-25, 129-36, 144-53.

¹⁷⁵ 2016 Amended Forest Plan at 4-93 (WILD1.XIX.A).

Use existing information on the distribution of endemic mammals to assess project level effects. If existing information is lacking, surveys for endemic mammals may be necessary prior to any project that proposes to substantially alter vegetative cover (e.g., road construction, timber harvest, etc.). Surveys are necessary only where information is not adequate to assess project-level effects.¹⁷⁶

Notably, the 2016 Forest Plan specifically cautions the Forest Service that those “[s]urveys should emphasize small (voles, mice, and shrews) and medium sized (ermine and squirrels) endemic mammals with limited dispersal capabilities that may exist within the project area.”¹⁷⁷

The DEIS explained that the Forest Service had “increasing” viability concerns for endemic populations, but failed to explain those concerns:

There are roughly 24 mammal species or subspecies considered endemic to Southeast Alaska (Smith et al. 2005). Mammal surveys on the Tongass have resulted in the documentation of new distributions, new species. However, there continue to be gaps in knowledge about the natural history and ecology of wildlife subspecies indigenous to Southeast Alaska (Hanley et al. 2005). Within Southeast Alaska, roughly 20 percent of known mammal species and subspecies have been described as endemic to the region. The long-term viability of these endemic populations is unknown, but of increasing concern since island endemics are extremely susceptible to extinction because of restricted ranges, specific habitat requirements, and sensitivity to human activities such as species introductions (<http://msb.unm.edu/isles/>).¹⁷⁸

Remarkably, in response to criticism,¹⁷⁹ the FEIS deletes this alarming paragraph altogether.¹⁸⁰ In the response to comments, the agency does not repudiate the DEIS’s earlier conclusions: “The Wildlife section of chapter 3 of the FEIS and the Wildlife Resource Report have been updated to clarify the effects to endemic mammals. Habitat, rather than population estimates, was used to estimate effects to the endemic mammals. Additional population surveys are not necessary to estimate effects.”¹⁸¹ Simply deleting the paragraph does not address the underlying concern.

¹⁷⁶ *Id.* (WILD1.XIX.A.1).

¹⁷⁷ *Id.* (WILD1.XIX.A.1.c).

¹⁷⁸ DEIS at 83 (emphasis added).

¹⁷⁹ See SEACC DEIS Comment Letter at 50-51; see also SEACC Forest Plan Objection at 122-23.

¹⁸⁰ See FEIS at 91.

¹⁸¹ See FEIS, App. B at 163-65, 98-100 (only addressing specific concerns regarding the Wrangell Island southern red-backed vole).

The Forest Service has to grapple with its conclusion that the “long-term viability of . . . endemic populations [in the Tongass] is unknown, but of increasing concern.”¹⁸²

The DEIS acknowledged that the Forest Service does not know whether endemic populations will remain viable on the Tongass and is growing increasingly concerned that they will not. Yet, the agency fails to address that concern both at the level of the 2016 Amended Forest Plan and the Wrangell Island Project. Given the breadth and depth of those concerns, it is all the more important that the Forest Service use contemporary information regarding those endemic populations to understand the potential effects of the 2016 Amended Forest Plan and the Wrangell Island Project. The agency must explain, for example, whether and why it concluded it did not need additional information regarding these populations and whether those populations would remain viable and well distributed as NFMA requires. The lack of analysis makes it impossible for the agency to conclude that the Wrangell Island Project and the 2016 Amended Forest Plan comply with the agency’s substantive obligations under NFMA to ensure the continued viability of these endemic populations in the Tongass.

Under NFMA, the Forest Service has a mandatory and substantive obligation to ensure the viability of these populations. Thus, the agency cannot blithely state that it doubts that it can provide for the long-term viability of endemic populations on the Tongass, and delete the paragraph explaining those viability concerns in the FEIS; it must do the analysis required to show how this timber sale may affect the viability of endemic species. Without the necessary analysis and findings, the agency violates NFMA. Additionally, because this incomplete and misleading information and the agency’s resulting conclusions regarding endemic species viability are presented in EISs (both for the 2016 Amended Forest Plan and the Wrangell Island Project), the agency’s failure to take a hard look at these viability concerns violates NEPA.

B. The Forest Service Acted Arbitrarily and Unlawfully With Regard to the Wrangell Island Southern Red-Backed Vole.

As the objecting parties explained in their comments on the DEIS,¹⁸³ the Forest Service’s analysis and conclusions regarding the Wrangell Island southern red-backed vole are unlawful under NEPA. The agency’s Draft ROD is also arbitrary and contrary to the 2016 Amended Forest Plan, NFMA, and the other statutes governing timber sales.

The Forest Service violates NEPA because the FEIS fails to disclose and analyze the potential adverse consequences of the Wrangell Island Project on the Wrangell Island southern red-backed vole. In particular, the FEIS all but ignores Dr. Winston Smith’s dissenting scientific opinion regarding the impacts of the Wrangell Island Project on this endemic vole.¹⁸⁴ Briefly, Dr. Smith expressed the following concerns, among others, regarding the DEIS’s assessment:

¹⁸² DEIS at 83.

¹⁸³ See SEACC DEIS Comment Letter at 51-54; GSACC DEIS Comment Letter at 62.

¹⁸⁴ See Smith, W., Comments on Wrangell Island Timber Sale Project DEIS (July 2016) (Smith DEIS Comments).

- The Forest Service “fails to explain why it concluded the vole population will continue to exist at current levels after the Wrangell Island timber sale despite the fact that the agency does not know the current population level.” Dr. Smith explained that the only study of vole population dynamics showed the overall population on Wrangell Island can fluctuate widely among years with the population in 2000 only 20 percent of the 1998 population.¹⁸⁵
- “Given the significant threats facing this endemic species and the lack of a habitat model or proxy, it is impossible to assess whether this project adversely (or even irretrievably) affects these voles if one does not have a benchmark population estimate before the project is implemented.”¹⁸⁶
- “To the best of my knowledge, the agency has never conducted a viability analysis for the Southern Red-backed vole and, as a result, has not identified a habitat threshold (amount and distribution) that explains how much of Wrangell’s old-growth forest must remain to ensure its viability.”¹⁸⁷ He also noted that the only viability analysis conducted for the 2008 Amended Forest “simply collapsed 14 endemic species and subspecies into one category when characterizing its viability conclusions.”¹⁸⁸
- “[G]iven the extremely small geographic footprint that these voles inhabit, the lack of any population information, the substantial amount of old-growth habitat on Wrangell that has already been logged, and the additional loss of old-growth from the proposed Wrangell Island timber sale, I conclude the Wrangell Island Project raises significant viability concerns regarding the future of this endemic vole on the Tongass.”¹⁸⁹
- “I strongly encourage the agency to conduct [a viability] analysis before it proceeds with the Wrangell Island timber sale because to do otherwise jeopardizes the vole’s future viability on the Tongass.”¹⁹⁰

The body of the FEIS not only fails to respond to these concerns, it fails to substantiate its contrary assumptions by disclosing and considering scientific evidence on the significant threats to the vole, including the threat to viability that will result from additional logging in the area. The agency’s only effort to even recognize Dr. Smith’s concerns is found in a handful of sentences in the response to comments. The agency’s failures are significant given the agency’s manifest NEPA duty to fully disclose and analyze the direct, indirect, and cumulative effects of the Wrangell Island Project. In discharging this duty the agency should (1) disclose the scientific

¹⁸⁵ *Id.* at 2.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 3.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

controversy, (2) explain its conclusions in light of the controversy to demonstrate the scientific integrity of its analysis, and (3) analyze the impacts of the Wrangell Island Project on this vole. By not doing so, the Forest Service fails to take the required hard look.

In response to the agency's pervasive failures to address his comments on the DEIS, Dr. Smith prepared a second statement that details his conclusions regarding the FEIS and the adverse impacts of the Wrangell Island Project on this vole.¹⁹¹ As explained above, Dr. Smith faulted the agency for the DEIS's conclusions that the Wrangell Island vole "should continue to exist on Wrangell Island at current levels,"¹⁹² given the agency failed to explain why it reached that conclusion and "despite the fact that the agency does not know the current population level."¹⁹³ In response to this criticism, the FEIS simply deletes the assertions that the population would continue to persist at current levels after the Wrangell Island logging and now offers no assessment of the population's future levels or the vole's continued persistence on Wrangell Island.¹⁹⁴ As Dr. Smith explains, "the FEIS does not explain the agency's conclusions regarding the vole's long-term persistence on Wrangell Island after the Wrangell Island Project and instead deletes the conclusions altogether."¹⁹⁵ This alone renders the FEIS unlawful.

Dr. Smith reiterates that recent scientific evidence demonstrates the vole is a habitat specialist that is dependent on old-growth habitat, unlike its principal competitor on Wrangell Island, Keen's mouse, and this has significant consequences for the impacts of logging on the vole.¹⁹⁶ He cautions the Forest Service's "expectations that clearcuts, young growth or second growth forests will provide habitat to sustain widely distributed breeding populations of Wrangell Island southern red-backed voles is untenable because it is not supported by the best available science."¹⁹⁷ He also faults the FEIS for reporting incomplete and irrelevant information, highlighting, by way of example, the agency's assertion that southern red-backed voles "are globally secure."¹⁹⁸ As Dr. Smith explains:

This statement is irrelevant and misleading regarding the issue of maintaining biological diversity and maintaining sufficient habitat to sustain viable and well-distributed populations across the Tongass, including Wrangell Island. That is, the essential question of the FEIS was not whether further logging on Wrangell Island would risk the extinction of the entire species (*Myodes gapperi*).

¹⁹¹ See Smith, W., Comments on Wrangell Island Project FEIS (Aug. 28, 2017) (Smith FEIS Comments).

¹⁹² DEIS at 110

¹⁹³ Smith DEIS Comments at 2.

¹⁹⁴ See FEIS at 120.

¹⁹⁵ Smith FEIS Comments at 2.

¹⁹⁶ *Id.* at 1-2, 4-5.

¹⁹⁷ *Id.* at 3.

¹⁹⁸ *Id.* at 2.

Rather, the question is whether further logging would reduce the population of the island endemic Wrangell Island southern red-backed vole and increase its risk to local extirpation or future extinction, thereby reducing the biological and evolutionary diversity that endemic small mammals of southeastern Alaska contribute regionally and globally (Smith 2005).¹⁹⁹

Dr. Smith also faults the agency for misinterpreting or misrepresenting the scientific understanding of these voles,²⁰⁰ and given that Dr. Smith is the principal author of virtually every publication the agency cites regarding the vole in the FEIS, his concerns carry substantial weight. For example, Dr. Smith notes that the FEIS erroneously states that the southern red-backed vole also inhabits Etolin Island and that “ADF&G documented southern red-backed voles in the alpine”²⁰¹ Dr. Smith contacted Dr. Joe Cook and his research team and they confirmed that, contrary to the assertions in the FEIS, “the taxonomy of southern red-backed voles on Etolin Island is undetermined”²⁰² and the captures occurred in “*subalpine* forests” – not alpine as the FEIS reports.²⁰³ As Dr. Smith explains:

Furthermore, southern red-backed voles have not been documented in alpine habitat anywhere in southeastern Alaska; a search of the literature and the mammal collection database at the University of Alaska – Fairbanks and UAF Museum revealed no publications or voucher specimens, respectively, documenting the presence of red-backed voles in alpine habitat on Etolin Island or at any other location.²⁰⁴

It is impossible to know whether the agency’s extensive errors are due to misunderstanding, sloppiness, or intentional omissions and misdirection, but the fact is the FEIS is plagued with inaccuracies. Again, this is unlawful under NEPA.

Dr. Smith also reiterates his concerns regarding the impacts of the Wrangell Island Project and the viability of the southern red-backed vole and the subspecies on Wrangell Island. As Dr. Smith explains, the Forest Service never determined what population size constitutes a viable population of the southern red-backed vole species across the Tongass as a whole or a viable population of the Wrangell Island southern red-backed vole on Wrangell and Sergief islands.²⁰⁵ Similarly, he notes that the agency never determined the quality and quantity of habitat that must

¹⁹⁹ *Id.* at 4-7.

²⁰⁰ *Id.* at 3.

²⁰¹ *See* FEIS at 91; Smith FEIS Comments at 5.

²⁰² Smith FEIS Comments at 6.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 1.

remain to ensure the viability of the vole on the Tongass, including on Wrangell Island.²⁰⁶ He states:

The Forest Service has not determined the contributions the Wrangell Island southern red-backed vole make toward ensuring viable and well-distributed populations of southern red-backed voles across the Tongass, ensuring evolutionary diversity of southern red-backed voles (and small mammal endemics as a management group) through contributions of genomic diversity, or ensuring ecosystem function and integrity through unique roles the Wrangell Island southern red-backed voles play in unique island communities, such as the distribution of fungal spores required to sustain obligate symbiotic relationships with spruce and hemlock seedlings and other key plant species.²⁰⁷

The FEIS simply fails to address Dr. Smith's concerns regarding the viability of the vole, stating: "The remaining habitat would be sufficient to maintain populations on Wrangell Island."²⁰⁸ The agency offers three points in support of this conclusion: (1) the agency's 1997 viability analysis for the general category of "endemic mammals" arrived at a moderate level of concern; (2) the 2016 Amended Forest Plan might transition out of old-growth logging faster than its predecessors; and (3) the 2001 Roadless Rule protects additional habitat for the vole. Each proves unconvincing.

The FEIS points to the endemic population surveys the viability panelists recommended as apparent evidence of the agency's commitment to its viability obligations, explaining that "[t]hese occurred on Wrangell by live trapping from 1998 through 2000 with a subsequent survey in 2009."²⁰⁹ First, the 2000 survey showed an 80 percent decline from the 1998 population,²¹⁰ so it is impossible to reconcile that survey work with the agency's conclusions that the vole viability is not a concern. Second, as Dr. Smith explains, the work completed in 2009 was not even a population study or survey (or even a published and peer reviewed study), contrary to the assertion in the FEIS, so it provides no scientific support whatsoever.²¹¹ The adoption of the 2016 Amended Forest Plan also does not support the agency's conclusions regarding the viability of the vole after the Wrangell Island Project. Dr. Smith has significant concerns regarding undeterminable conclusions related to the viability of the vole today, especially in light of the Wrangell Island Project. Whether the Forest Service ever transitions to

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 2.

²⁰⁸ FEIS, App. B at 100.

²⁰⁹ *See id.* at 99.

²¹⁰ *See* Smith DEIS Comments at 2; FEIS at 91.

²¹¹ *See* FEIS at 91; Smith FEIS Comments at 4.

a second-growth industry in 20 or 30 years is of little benefit to a vole confronting an immediate threat of local extirpation within significant portions of its range.

Finally, the areas protected by the Roadless Rule on Wrangell Island also do not justify the agency's conclusion that the vole's viability is not a concern. The FEIS offers no analysis or explanation regarding the impact of those additional areas. For more than 20 years, the Forest Service has failed to determine what constitutes a viable population of the species on the Tongass or the subspecies on Wrangell Island. The agency also has never determined how much and in what locations old-growth habitat must remain for the vole to remain well-distributed and viable on the Tongass. Adding habitat does not hurt, but it does not solve the agency's problem. As Dr. Smith explains:

Because the Forest Service has not undertaken a spatially explicit analysis of contributions of roadless areas, the agency's reliance on roadless areas to sustain viable populations of southern red-backed voles on Wrangell Island (either through sustaining minimum habitat reserves to sustain isolated populations or through establishing a functioning meta-population) is untenable and consequently does little to ensure voles remain viable.²¹²

In sum, the Forest Service's conclusions regarding the Wrangell Island Project's impacts on the viability of the vole are arbitrary under NFMA. Additionally, the FEIS's failure to take a hard look at the impacts of the Wrangell Island Project on the viability of the vole, including its failure to respond to contrary expert opinion, renders the FEIS unlawful under NEPA.

With regard to project-specific impacts, Dr. Smith also concluded that the agency needed to conduct further study and analysis of the vole on Wrangell Island to understand the project-level effects before moving ahead.²¹³ To support his conclusion, he pointed to the factors in the forest plan that the agency must consider when deciding whether to conduct surveys prior to logging: "impacts of the proposed project relative to the distinctiveness of the taxa, population status, degree of isolation, island size, and habitat associations relative to the proposed management activity."²¹⁴ Dr. Smith explained that:

The lack of existing information in combination with these factors leads me to conclude the agency should conduct a rigorous multi-year population survey to assess the project-level effects before it moves ahead with the Wrangell Island Project. Given the significant threats facing this endemic species and the lack of a habitat model or proxy, it is impossible to assess whether this project adversely (or even irretrievably) affects these voles if one

²¹² Smith FEIS Comments at 7.

²¹³ Smith DEIS Comments at 2.

²¹⁴ *Id.* (quoting 2008 Amended Forest Plan at 4-97); *see also* 2016 Amended Forest Plan at 4-93 (containing identical language).

does not have a benchmark population estimate before the project is implemented.²¹⁵

Again, the body of the FEIS ignores these concerns altogether.²¹⁶ The FEIS's Response to Comments states:

Based on the analysis, we determine that the threat to this endemic species was not significant, therefore the cited Forest Plan standards and guidelines do not apply in this case. Surveys had been conducted previously, and the information from those surveys was used in the analysis.²¹⁷

The FEIS's failure to confront dissenting scientific opinions and explain the agency's contrary conclusions in a meaningful way runs contrary to NEPA's obligations.

In sum, the agency violated NEPA because the FEIS's evaluation of environmental impacts must be based on "accurate scientific analysis" of "high quality"²¹⁸ and it "must respond explicitly and directly to conflicting views in order to satisfy NEPA's procedural requirements."²¹⁹ The Ninth Circuit, moreover, has instructed the "disclosure requirement obligates the agency to make available to the public high quality information . . . before decisions are made and actions taken."²²⁰ Additionally, Dr. Smith (an expert the Forest Service has relied on for decades) expressed grave concerns regarding the 2016 Amended Forest Plan and the Wrangell Island Project's impacts on the vole, but the FEIS fails to disclose those concerns. NEPA requires the agency to respond to all comments and discuss at appropriate points "any responsible opposing view which was not adequately discussed in the draft [EIS] and . . . indicate the agency's response to the issues raised."²²¹ Dr. Smith's comments are not disclosed or reconciled in a meaningful, non-arbitrary manner, and this failure is fatal to the agency's analysis and decision. The FEIS fails to comply with these obligations in numerous ways and, as a result, the Forest Service violates NEPA.

With regard to NFMA, for all of the reasons just outlined, including the Forest Service's decision to ignore expert opinion, its failure to explain its conclusions in light of the evidence in the record, and its failure to comply with the 2016 Amended Forest Plan, the Draft ROD is arbitrary,

²¹⁵ Smith DEIS Comments at 2.

²¹⁶ FEIS at 119-20.

²¹⁷ *Id.*, App. B at 100.

²¹⁸ 40 C.F.R. § 1500.1(b).

²¹⁹ *Earth Island Inst. v. US Forest Serv.*, 442 F.3d 1147, 1172 (9th Cir. 2006), abrogated in part on other grounds, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008).

²²⁰ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003) (citing 40 C.F.R. § 1500.1(b)).

²²¹ 40 C.F.R. § 1502.9(b); *id.* § 1503.4(a) (requiring agencies to respond to comments in FEISs).

capricious, and unlawful under NFMA and the other statutes governing timber sales. First, at the level of the 2016 Amended Forest Plan and the Wrangell Island Project, the agency's conclusions regarding the viability threat to the Wrangell Island southern red-backed vole and the viability of the species as whole across the Tongass are arbitrary and unlawful.²²² Second, the Forest Service's decision is arbitrary because it ignores relevant factors, is unsupported by the record before the agency, and NFMA's implementing regulations require the agency to base its decision on the best available scientific information and the agency failed to do so with regard to the vole. Third, the Forest Service acted arbitrarily and contrary to the 2016 Amended Forest Plan, when it concluded it could approve the Wrangell Island Project without conducting a survey of the Wrangell Island southern red-backed vole to assess the project level effects.²²³ Fourth, the agency failed to comply with the 2016 Amended Forest Plan's requirements governing distinct taxa.

First, to "insure that viable [wildlife] populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area."²²⁴ The Ninth Circuit has allowed the Forest Service to use habitat as a proxy for actual population monitoring, but "only where both the Forest Service's knowledge of what quality and quantity of habitat is necessary to support the species and the Forest Service's method for measuring the existing amount of that habitat are reasonably reliable and accurate."²²⁵

Here, the Forest Service has never determined a viable population size of the southern red-backed vole for the Tongass as whole, or a viable population for the Wrangell Island southern red-backed vole.²²⁶ Indeed, the agency does not know the population for the vole (at the forest level or Wrangell Island).²²⁷ The agency also has never determined the quantity and quality of habitat that is required to ensure the viability of the vole.²²⁸ The agency has never determined a means of measuring how much habitat must remain to fulfill the viability obligations.²²⁹ The

²²² 2016 Amended Forest Plan at 4-85 (WILD1.II.B) ("Provide the abundance and distribution of habitat necessary to maintain viable populations of existing native and desirable non-native species well-distributed in the planning area (i.e., the Tongass National Forest) (Consult 36 CFR 219.19 and 36 CFR 219.27 (1982).)"), *id.* at 4-93 (WILD1. XIX.A) ("The objective is to maintain habitat to support viable populations and improve knowledge of habitat relationships of rare or endemic terrestrial mammals that may represent unique populations with restricted ranges.").

²²³ See 2016 Amended Forest Plan at 4-93 (WILD1. XIX.A.1).

²²⁴ 36 C.F.R. § 219.19 (2000).

²²⁵ *McNair*, 537 F.3d at 998–99 (quoting *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1250 (9th Cir. 2005)).

²²⁶ See Smith FEIS Comments at 1.

²²⁷ See *id.* at 2.

²²⁸ See *id.* at 1.

²²⁹ See *id.* at 2.

Forest Service also never analyzed what contribution the Wrangell Island southern red-backed vole makes to ensuring the southern red-backed vole is viable and well-distributed across the Tongass.²³⁰ In sum, the Forest Service has not complied with NFMA and the 2016 Amended Forest Plan's obligations to ensure the vole remains viable after the Wrangell Island Project. Additionally, the agency's conclusion to the contrary (to the extent the agency made such a conclusion) is arbitrary based on the record before the agency. For these reasons, the agency's Draft ROD is arbitrary and unlawful under NFMA.

Second, the Forest Service acted arbitrarily because its conclusion ignores relevant factors, is unsupported by the record before the agency, and is contrary to law. Here the Forest Service acknowledges that it has increasing concerns regarding the viability of endemic species generally across the Tongass. The agency's own expert regarding this species for more than 20 years expressed significant concerns regarding the project-specific impacts of the Wrangell Island Project on this vole. Yet, the agency failed to address those concerns, or in most cases even acknowledge those concerns. It also ignored relevant science regarding the impacts of the Wrangell Island Project on the Wrangell Island southern red-backed vole and the species as a whole across the Tongass.²³¹ Moreover, as explained in the objections to the 2016 Amended Forest Plan, the agency has intentionally ignored concerns that endemics as whole are facing perilous futures.²³² Additionally, NFMA and its implementing regulations require the agency to base its planning on the best available scientific information and the agency failed to do so with regard to the vole. Under 36 C.F.R. § 219.3, "[t]he responsible official shall use the best available scientific information to inform the planning process required by this subpart." The 2016 Amended Forest Plan, and the Forest Service's implementation of that unlawful plan, violates this requirement. For all of these reasons, the decision is unlawful.

Third, the Forest Service reached an arbitrary conclusion under the 2016 Amended Forest Plan, when it concluded it could approve the Wrangell Island Project without conducting a survey of the Wrangell Island southern red-backed vole to assess the project-level effects.²³³ The agency's rationale for refusing to conduct a survey does not address the factors established in the forest plan.²³⁴ It fails to account for Dr. Smith's assessment of those factors. It ignores the agency's own conclusions that the viability of endemics on the Tongass is of increasing concern. It ignores the fact the agency's only population estimate, which is now 17 years old, demonstrated short-term population fluctuations of 80 percent can occur even without habitat disturbance. For all of these reasons, the agency reached an arbitrary conclusion that it could proceed with the Wrangell Island Project without having completing a survey of the vole as the 2016 Amended Forest Plan contemplates.

²³⁰ See *id.* at 2.

²³¹ See generally Smith DEIS Comments; Smith FEIS Comments.

²³² See SEACC Forest Plan Objection at 122-28.

²³³ See 2016 Amended Forest Plan at 4-93 (WILD1. XIX.A.1).

²³⁴ See 2016 Amended Forest Plan at 4-93 (WILD1. XIX.A.1-3).

Fourth, the Forest Service violates NFMA because the agency's Draft ROD fails to comply with the 2016 Amended Forest Plan's obligations regarding the viability and persistence of distinct taxa. To fulfill the plan's objective to provide for the viability endemic species, the 2016 Amended Forest Plan requires that the agency, "[w]here distinct taxa are located, design projects to provide for their long-term persistence on the island."²³⁵ The Wrangell Island southern red-backed vole is a distinct taxon.²³⁶ In the DEIS, the agency concluded that the vole population on Wrangell Island "should continue to exist on Wrangell Island at current levels" after the Wrangell Island Project.²³⁷ Dr. Smith faulted the Forest Service for this arbitrary conclusion, noting that the agency does not know the current population level and never explained how it reached its conclusions regarding the vole's persistence on Wrangell Island.²³⁸ In response, the FEIS does not explain the agency's conclusions regarding the vole's long-term persistence on Wrangell Island after the Wrangell Island Project and instead deletes the conclusions altogether.²³⁹ As the Wrangell Island southern red-backed vole is a distinct taxon, the 2016 Amended Forest Plan requires the Forest Service to "design projects to provide for their long-term persistence on the island."²⁴⁰ Additionally, neither the Draft ROD nor the FEIS demonstrates that the agency designed the Wrangell Island Project in such a way as to comply with this obligation and for that additional reason the decision is contrary to NFMA and NEPA.

* * *

The Forest Service must correct these pervasive problems, conduct the required analyses, and disclose the impacts and conclusions in an EIS. To do otherwise the agency would act contrary to its statutory obligations under NEPA, NFMA, the 2016 Amended Forest Plan, and the other statutes governing timber sales.

C. The Forest Service Acted Unlawfully and Arbitrarily with Regard to Marten.

The Forest Service's pattern of simply deleting from the FEIS harmful information that the DEIS contained—information that suggested the existence of wildlife problems—continues with the agency's assessment of the impacts on marten. The agency also continues to disclose only that information which is supportive of its logging decision and either remains silent about or mischaracterizes evidence that runs contrary to that pre-ordained outcome. As explained below, the agency's troubling pattern renders the FEIS unlawful and the agency's decision-making arbitrary and capricious under NFMA and the other statutes governing timber sales.

²³⁵ 2016 Amended Forest Plan at 4-93 (WILD1.XIX.A.3).

²³⁶ Smith FEIS Comments at 2.

²³⁷ DEIS at 110.

²³⁸ See Smith DEIS Comments at 2; see also Smith FEIS Comments at 2.

²³⁹ Smith FEIS Comments at 2; see also FEIS at 119-20.

²⁴⁰ 2016 Amended Forest Plan at 4-93 (WILD1.XIX.A.3).

The DEIS explained that “[t]he Wrangell Island Project is within the Wrangell/Etolin Island Biogeographic Province, which is considered a high-risk province for marten habitat.”²⁴¹ The agency also acknowledged “the past nine decades of population decline in [Game Management Unit] 3.”²⁴² In response to concerns regarding marten,²⁴³ the FEIS simply deletes those statements.²⁴⁴ The FEIS also deletes the sentence explaining that the 2016 Amended Forest Plan’s legacy standards and guidelines do not apply on Wrangell Island, meaning the marten does not receive protection under those provisions.²⁴⁵

The objecting parties faulted the Forest Service for the DEIS’s failure to disclose that Richard Lowell (ADF&G area wildlife management biologist for Game Management Unit 3), expressed specific concerns regarding the status of marten on Wrangell.²⁴⁶ Among others, he expressed “concerns about the potential for excessive marten mortality” and the “potential for [Wrangell] [I]sland’s marten population to become severely depressed.”²⁴⁷ He based his concerns in “large part on relatively high road densities and limited amounts of roadless refugia for martens, [and] reductions in carrying capacity associated with the loss of old growth habitat also represent a contributing factor.”²⁴⁸ In response to criticism, however, the FEIS fails to mention any of these concerns.²⁴⁹

Alaska Department of Fish & Game explained in its comments on the DEIS that it recommended the Forest Service conduct population surveys to better understand the impacts on marten:

Wrangell Island populations of martens and other less vagile species cannot be augmented by immigration. Since the marten habitat resource surveys recommended during scoping were not carried out, we recommend limiting the clearcut harvest of POG until the status of the marten population is better understood.²⁵⁰

²⁴¹ DEIS at 76.

²⁴² *Id.*

²⁴³ SEACC DEIS Comment Letter at 54-56; *see also* GSACC DEIS Comment Letter at 60-62.

²⁴⁴ FEIS at 82.

²⁴⁵ *See* DEIS at 76; FEIS at 82.

²⁴⁶ *See* SEACC DEIS Comment Letter at 54-56; GSACC DEIS Comment Letter at 61-62.

²⁴⁷ FEIS PR 634_0153 at 00895 to 00896 (R. Lowell, ADF&G, Letter to Q. Smith, Wrangell Ranger District).

²⁴⁸ *Id.* at 00895.

²⁴⁹ FEIS at 100-05, App. B at 168-71.

²⁵⁰ FEIS, App. B at 57 (036-ADFG-04).

Lowell also recommended that the Forest Service conduct “[s]ystematic surveys . . . [to] better evaluat[e] population status and monitor[] mortality rates of marten on Wrangell Island.”²⁵¹ Despite these expert recommendations, the agency refuses to conduct the recommended population surveys, explaining simply: “We did analyze all marten habitat on Wrangell Island, but surveys were not completed. Please refer to the Wildlife Resource Report.”²⁵² The Wildlife Resource Report, however, never even mentions let alone explains the agency’s refusal to conduct population surveys.²⁵³

The FEIS all but ignores the fact that multiple experts recommended a population survey to determine the marten population and mortality rates. Here, both ADF&G and the area wildlife management biologist for Game Management Unit 3 called for such a survey, but the Forest Service ignores that recommendation without explanation. The agency must respond to these concerns and either conduct the necessary survey work to understand the adverse impacts on marten and whether the population will be sustainable or explain its contrary conclusion. To do otherwise, the agency would act contrary to NFMA and NEPA.

The Wrangell Island Project raises additional NFMA and NEPA infirmities. First, it fails to comply with the 2016 Amended Forest Plan, which directs the agency to “assist in maintaining long-term sustainable marten populations.”²⁵⁴ The agency fails to explain whether the marten population is, and will be, sustainable after the Wrangell Island Project. The DEIS offered the following unsupported conclusion: “Although there are effects to martins [*sic*], they would still continue to persist on Wrangell Island.”²⁵⁵ In response to criticism, the FEIS deletes that sentence and now simply states “Wrangell Island would continue to provide available habitat for martens.”²⁵⁶ The agency fails to explain the Wrangell Island Project’s effects on the ability to maintain “long-term sustainable marten populations” as the 2016 Amended Forest Plan provides.

The FEIS ignores or fails to account for contemporary scientific publications and evidence regarding marten (and other endemic species). For example, the objecting parties pointed to publications by Cheveau et al. 2013, Hargis et al. 1999, Cushman et al. 2011, Harper 2010,²⁵⁷ Moriarty et al. 2016 and Aubry & Raphael 2014, as scientific literature that addresses impacts on marten.²⁵⁸ In response, the agency acknowledges several of those publications are relevant and added them to the project record, but the FEIS fails to examine the Wrangell Island Project’s

²⁵¹ DEIS PR 634_0153 at 00896 (R. Lowell, ADF&G, Letter to Q. Smith, Wrangell Ranger District).

²⁵² FEIS, App. B at 57.

²⁵³ FEIS PR 634_1420 at 59-70 (Wrangell Island Project Wildlife Report (Apr. 13, 2017)).

²⁵⁴ 2016 Amended Forest Plan at 4-92 (WILD1.XVIII.A.1).

²⁵⁵ DEIS at 96.

²⁵⁶ FEIS at 105.

²⁵⁷ See GSACC DEIS Comment Letter at 61

²⁵⁸ See *id.* at 62.

impacts in light of this new scientific understanding.²⁵⁹ Simply adding scientific information to the planning record, only to fail to update the analysis and conclusions is arbitrary under NFMA and unlawful under NEPA.

More importantly, the Forest Service fails to explain how it is ensuring the viability of the marten at the level of the 2016 Amended Forest Plan and the Wrangell Island Project in light of contemporary science, the various subspecies, and the differential distribution of marten across the Tongass.²⁶⁰ In response to comments highlighting contemporary scientific publications demonstrating that marten are especially vulnerable to local extinctions and cannot remain viable given the levels of habitat loss, the FEIS simply ignores the concerns and the science.²⁶¹ In the response to comments, the agency rejects recommendations to develop a habitat model for marten.²⁶² Again, the agency never determined what constitutes a viable population of marten nor has it evaluated how much habitat must remain to ensure the marten remains viable and well distributed on the Tongass. These failures render the 2016 Amended Forest Plan and the Wrangell Island Project unlawful and arbitrary under NFMA and the case law governing the Forest Service's viability obligations. Additionally, given the agency presents incomplete and misleading information regarding the impacts on marten in the FEIS, the Forest Service also violates NEPA.

For all of these reasons, the Wrangell Island Project raises serious NEPA and NFMA concerns regarding the project's adverse impacts on marten.

IV. DEER

The objecting parties faulted the Forest Service for failing to examine the impacts of the Wrangell Island Project on the carrying capacity of the deer population.²⁶³ The agency ignores those concerns altogether.

The FEIS fails to address a host of concerns regarding the impacts of the Wrangell Island Project on deer. It fails to explain how far below carrying capacity the deer population has fallen or whether the population is stable. It fails to describe what must change to provide for a population of deer at carrying capacity. It fails to describe the habitat level that must remain to keep the deer population at its current population.²⁶⁴ Stated more directly, the agency fails to explain the relationship between the carrying capacity, the habitat capability, and the deer population (both current and future).

²⁵⁹ FEIS, App. B at 263.

²⁶⁰ See SEACC DEIS Comment Letter at 56; GSACC DEIS Comment Letter at 61.

²⁶¹ See FEIS at 100-05.

²⁶² FEIS, App. B at 262-63.

²⁶³ See SEACC DEIS Comment Letter at 43-45; GSACC DEIS Comment Letter at 42-46.

²⁶⁴ See FEIS at 85.

Instead of conducting the required cumulative effects analysis, the DEIS blandly asserted that the reduction in habitat capability “could lead to a decline in the deer population.”²⁶⁵ Similarly, it explained “[d]eclines in the deer population resulting from reduced habitat capability may decrease the availability of deer to wolves and hunters.”²⁶⁶ The objecting parties faulted the agency for misleading the public by suggesting that a deer population decline is nothing more than a possibility.²⁶⁷ To the contrary, the DEIS asserted the deer populations “would continue to persist at current levels.”²⁶⁸ The objecting parties pointed out that this assertion is unsupported by any explanation or analysis, making it arbitrary and misleading.²⁶⁹

The FEIS fails to correct these deficiencies and, as a result, fails to provide the public a clear and accurate assessment of the impacts of the Wrangell Island Project. Like the DEIS, it admits that the deer population on Game Management Unit 3 is “well below carrying capacity.”²⁷⁰ In response to criticism, however, the FEIS no longer states that the agency expects the deer population will continue to persist at current levels.²⁷¹ Consistent with the pattern outlined above, the Forest Service simply deletes the harmful language from the FEIS, which now concludes nothing more than “[a]lthough there would be effects to deer density and capability on Wrangell Island, deer habitat would be expected to remain. . . .”²⁷² The Forest Service cannot simply ignore the questions and concerns regarding the impacts on the deer population and the carrying capacity, and claim habitat will remain. In so doing, the FEIS violates NEPA.

With regard to NFMA, the agency acts arbitrarily because it fails to conduct the analysis necessary to demonstrate that it is properly balancing the competing interests of deer, wolves, deer hunting, and logging, and justify its proposal to further reduce habitat to levels well below that required to support sustainable deer populations.

V. WOLVES

As with the species described above, the Forest Service simply deletes harmful information from the FEIS that the DEIS contained regarding the Wrangell Island Project’s impacts on wolves. The agency discloses only that information that supports its logging decision. As explained below, the FEIS is unlawful and the agency’s decision-making is arbitrary and capricious under NFMA and the other statutes governing timber sales.

²⁶⁵ DEIS at 104.

²⁶⁶ *Id.*

²⁶⁷ SEACC DEIS Comment Letter at 45; GSACC DEIS Comment Letter at 43.

²⁶⁸ DEIS at 106.

²⁶⁹ SEACC DEIS Comment Letter at 45; GSACC DEIS Comment Letter at 42-43.

²⁷⁰ FEIS at 85.

²⁷¹ *See id.*

²⁷² *Id.* at 114.

The 2016 Amended Forest Plan directs the Forest Service to “assist in maintaining long-term sustainable wolf populations.”²⁷³ It explains that the agency should try to provide “sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.”²⁷⁴ In the DEIS, the Forest Service explained it was unable to conclude that a sustainable wolf population would remain after the Wrangell Island Project. Instead, the agency reached a direr conclusion, explaining that “wolves would continue to persist on Wrangell Island.”²⁷⁵ The objecting parties faulted the agency for this approach.²⁷⁶

In response to that criticism, the agency simply deletes that sentence from the FEIS and offers instead “habitat would remain for both wolves and their prey.”²⁷⁷ The FEIS reaches no conclusion regarding the ability to support a sustainable wolf population after the Wrangell Island Project, despite the 2016 Amended Forest Plan’s direction to the contrary. At a minimum, the agency must admit that it will not meet the “sustainable” guideline and the FEIS must disclose this conclusion and the resulting consequences in a clear and forthright fashion, and the agency must then justify its decision to proceed with the Wrangell Island Project. To do otherwise, the agency will violate NEPA and NFMA.

The 2016 Amended Forest Plan and the Wrangell Island Project suffer from the same infirmities addressed in *In Re: Big Thorne Project and 2008 Tongass Forest Plan*, No. 15-35244 (9th Circuit), which is still pending before the Ninth Circuit. Like the 2008 Amended Forest Plan, the 2016 Amended Forest Plan’s critical mechanism for meeting the Forest Service’s obligation to ensure the wolf remains viable in the Tongass is, the agency concedes, discretionary and non-binding and, as a result, the plan does not require the agency to maintain the necessary old-growth habitat to “insure [the wolf’s] continued existence.”²⁷⁸

In short, the Wrangell Island Project demonstrates the infirmity of the 2016 Amended Forest Plan’s governance of wolf habitat and wolf viability because the plan does not require the Forest Service to manage habitat in such a way as to ensure the viability of the wolf, which allows damaging projects like this one to proceed. This violates NEPA because the FEIS and the 2016 Amended Forest Plan FEIS are misleading and incomplete as to the loss of old-growth habitat from logging and the resulting impacts on the wolf. The agency’s decisions are also unlawful given NFMA’s mandatory and substantive viability obligations.

²⁷³ 2016 Amended Forest Plan at 4-91 (WILD1.XIV.A).

²⁷⁴ *Id.* (WILD1.XIV.A).

²⁷⁵ DEIS at 94.

²⁷⁶ See SEACC DEIS Comment Letter at 47-50.

²⁷⁷ FEIS at 100.

²⁷⁸ 36 C.F.R. § 219.19 (2000).

VI. QUEEN CHARLOTTE GOSHAWKS

A. The Forest Service Acted Unlawfully and Arbitrarily With Regard to the Queen Charlotte Goshawks.

As previously explained,²⁷⁹ the Forest Service fails to evaluate the consequences of the Wrangell Island Project on the population of goshawks on Wrangell Island in any credible way. In the FEIS, the agency deletes harmful information that the DEIS contained regarding the Wrangell Island Project's impacts on goshawks. The agency ignores harmful information, including changes caused by the 2016 Amended Forest Plan and instead only discloses information that is supportive of its logging decision. As explained below, the FEIS is unlawful and the agency's decision-making is arbitrary and capricious under NFMA and the other statutes governing timber sales.

The DEIS asserted:

Cumulative reductions in nesting and foraging habitat on Wrangell Island could result in the local expansion of individual goshawk home ranges, potentially leading to a reduction in breeding density. Effects would be greatest under Alternative 2. However, given that goshawks are highly mobile and that breeding density is currently low on the Tongass National Forest, the effects of the Wrangell Island Project in combination with past, present, and foreseeable activities would result in effects to goshawks on Wrangell Island. Wrangell Island would continue to provide suitable habitat and the Queen Charlotte goshawk would continue to persist at current levels.²⁸⁰

The Forest Service's explanation that "the effects of the Wrangell Island Project in combination with past, present, and foreseeable activities would result in effects to goshawks on Wrangell Island" is remarkable for its failure to provide any useful information or conclusion.²⁸¹ The objecting parties explained that the Forest Service offered a completely unsubstantiated assertion that goshawks would continue to persist at current levels given the agency does not even know the current population of goshawks on Wrangell Island.

The FEIS fails to correct these fundamental failings and consistent with its overall wildlife analysis simply deletes the harmful information from the FEIS. The agency states: "Despite cumulative impacts from the proposed action alternatives, Wrangell Island would continue to provide suitable nesting and foraging habitat for the Queen Charlotte Goshawks."²⁸² The agency fails to explain to the public or decision-maker what impacts the Wrangell Island Project will

²⁷⁹ See SEACC DEIS Comment Letter at 59-65; GSACC DEIS Comment Letter at 51-53.

²⁸⁰ DEIS at 91.

²⁸¹ *Id.*

²⁸² FEIS at 97.

have on the goshawk population. The agency's decision to delete the harmful language from the DEIS and then fail to replace it with a non-arbitrary explanation in the FEIS violates NEPA and renders the decision arbitrary under NFMA.

B. The Forest Service Does Not Evaluate the Cumulative Impacts on Goshawks Given the Changes Adopted in the 2016 Amended Forest Plan.

In assessing cumulative impacts, the FEIS fails to consider the impacts caused by the significant changes in the 2016 Amended Forest Plan.²⁸³ For reasons described below, the Forest Service violates NEPA and reaches an arbitrary conclusion under NFMA to proceed with the Wrangell Island Project despite its impacts on goshawks.

The 2008 Amended Forest Plan classified areas within the beach²⁸⁴ and estuary fringe²⁸⁵ “as unsuitable for timber harvest.”²⁸⁶ It established several important objectives regarding these areas, including:

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.²⁸⁷

²⁸³ See SEACC DEIS Comment Letter at 65-68; GSACC DEIS Comment Letter at 53-57.

²⁸⁴ “The beach fringe is an area of approximately 1,000 feet slope distance inland from mean high tide around all marine coastline.” 2008 Amended Forest Plan at 4-4 (BEACH1.I.B.1).

²⁸⁵ “The estuary fringe is an area of approximately 1,000 feet slope distance around all identified estuaries.” *Id.* at 4-4 (BEACH1.I.C.1).

²⁸⁶ *Id.* at 4-5 (BEACH2.II.A.6.).

²⁸⁷ *Id.* at 4-4 (BEACH1.I.A.4-5).

The Forest Service concluded that the “beach fringe was a very key feature of the overall Tongass conservation strategy,” particularly with regard to goshawks.²⁸⁸ As Chris Iverson, the author of Appendix N to the 1997 FEIS, explained:

The most compelling argument for this extended beach fringe is that this zone of 1000 feet from the shoreline is a landscape region significantly selected by goshawks, for foraging we presumed, during our habitat selection analysis (see Goshawk [Conservation] Assessment, Figure 9, pages 52-53). When the leadership (Forest Supervisors, RF, IDT Leader) were presented with this graph and statistic—the decision was made to extend the beach fringe to 1000’ to provide additional risk reduction and confidence in goshawk conservation to contribute to a not warranted decision by the FWS for the listing petition that they were considering at the time.²⁸⁹

The 2016 Amended Forest Plan deletes the provisions that prevented logging in the beach (and estuary) fringe.²⁹⁰ It now prevents most old-growth logging in these areas (with several exceptions that do not count towards the projected timber sale quantity),²⁹¹ but allows second-growth logging.²⁹² The FEIS, however, fails to examine the impacts of this change on the underlying conclusions regarding cumulative effects on goshawks.²⁹³

Also like the DEIS, the FEIS fails to examine the cumulative impacts on the “three critical spatial components of the nesting home range:”²⁹⁴ nest area, post-fledging family area, and foraging area. As Dr. Smith made clear:

Alaska. A similar conclusion was obtained for the broader landscape (21 km²) that surrounded each nest. This is because much of the habitat across the landscape has been clear-cut-logged and half the remaining choice habitat is in the Development land-use designation available for timber harvest.

...

²⁸⁸ 2008 Amended Forest Plan AR 603_1127 at 2 (C. Iverson).

²⁸⁹ *Id.*

²⁹⁰ 2016 Plan Amendment PR 769_01_000088 at 4-5 (Redlined Version of Draft Forest Plan).

²⁹¹ 2016 Amended Tongass Forest Plan at 5-13 (June 2016).

²⁹² *See id.* at 5-4 to 5-5.

²⁹³ FEIS at 96-97.

²⁹⁴ W. P. Smith, Proposed Forest Plan Amendment Further Compromises Established Conservation Measures to Sustain Viable Northern Goshawk Populations at 3.

Secondly, guidelines developed for northern goshawk populations in the southwestern United States may underestimate habitat needed by breeding pairs in Southeast Alaska. . . . In Southeast Alaska, the predominant (frequency and biomass) prey items during the breeding season (Lewis et al. 2006) are bird and mammal species that are most abundant, or occur exclusively, in productive old-growth forests (Iverson et al. 1996, Smith et al. 2001, 2004, 2005). Consider further that the mammal fauna of Southeast Alaska is depauperate (Smith 2005); few mammal species exclusively occur in low-volume or managed forests of Southeast Alaska (Smith et al. 2001, Smith and Nichols 2004); and the structure of dense second-growth stands effectively renders prey unavailable to foraging goshawks (Reynolds et al 1992, 2006). Avian communities in managed forests include few, if any, additional prey for northern goshawks (Smith et al. 2001). Thus, breeding pairs in managed landscapes of Southeast Alaska likely rely almost entirely on productive old-growth forests as foraging and nesting habitat. That breeding pairs in managed landscapes of Southeast Alaska depend on productive old-growth forests to meet life-history needs was reflected in the findings of compositional analyses and radio-telemetry studies, both of which determined that northern goshawks strongly selected medium- and high-volume old-growth forests, and avoided recently managed or non-forested habitats [Goshawk Conservation Assessment].²⁹⁵

These challenges are exacerbated by the Forest Service's choices for second-growth management that are reflected in the 2016 Amended Tongass Land Management Plan. "The potential for second-growth stands to become useable habitat over the Tongass planning horizon is limited because unmanaged second-growth typically requires at least 300 years following disturbance to develop old-forest features (Nowacki and Kramer 1998)."²⁹⁶ Rather than manage second-growth in a way that returns it to old-growth characteristics, the Forest Service is targeting second-growth for commercial purposes in critical old-growth reserves, Beach-Estuary Fringe, and Riparian Management Areas. As explained above, these areas were set aside as reserves, in part, because they represented important habitat and they were considered critical to the long-term viability of goshawks.

The FEIS cannot ignore the fact that the 2016 Amended Forest Plan compromised fundamental elements of the goshawk conservation strategy. The agency must analyze those changes and the resulting adverse impacts. Under NFMA, the agency must account for these changes in management in reaching its conclusion to proceed with the Wrangell Island Project. To do otherwise would make the agency's decision arbitrary and capricious.

²⁹⁵ *Id.* at 9-10 (emphasis omitted).

²⁹⁶ *Id.* (emphasis omitted).

* * *

For the reasons stated above, the Wrangell Island Project accomplishes nothing more than mirroring Southeast Alaska in the destructive and controversial practices of industrial-scale old-growth logging. As this project demonstrates with vivid clarity, the Tongass timber program is economically and environmentally unsustainable and, as a result, the Forest Service should not move ahead with the project. If the Forest Service decides to move ahead with any portion of this project, then the law requires that it correct the deficiencies described above.

Respectfully,

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