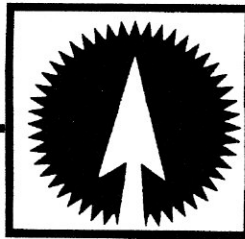


# Alaska Forest Association



432 Carlanna Lake Road  
Ketchikan, AK 99901  
Phone: 907-225-6114  
Email: [afa@akforest.org](mailto:afa@akforest.org)

Submitted Electronically

May 8, 2023

Mr. Ben Case  
Attn: Thomas Bay Young-Growth Timber Sale  
12 North Nordic Drive  
PO Box 1328  
Petersburg, AK 99833

Mr. Case,

The Alaska Forest Association (AFA) appreciates the opportunity to provide comments on the Environmental Assessment (EA) & Finding of No Significant Impact (FONSI) for the Thomas Bay Young-Growth Timber Sale.

AFA agrees with the determination that the implementation of the Thomas Bay Young-Growth Timber Sale "would not have a significant effect on the quality of the human environment."

**In regards to the EA, the AFA finds fault with the project EA as follows.**

**First**, the Forest Service violated the National Environmental Policy Act (NEPA) by having an unreasonably narrow purpose and need statement for the Thomas Bay project. NEPA requires an action agency to specify a purpose and need for a project and to then identify alternatives to the proposed action based on that purpose and need. Although the Forest Service has discretion when defining the purpose and need of a project, the law does not allow an agency to "define its objectives in unreasonably narrow terms." *City of Carmel-By-The-Sea v. U.S. DOT*, 123 F.3d 1142, 1155 (9th Cir. 1997). An agency cannot define its objectives in unreasonably narrow terms because doing so would unreasonably constrain the range of project alternatives and effectively preordain the outcome in contravention of NEPA.

Here, the agency defined its objectives in unreasonably narrow terms by focusing solely on young-growth timber harvest purportedly to "support the transition from predominantly harvesting old-growth timber to predominantly managing young-growth as directed by the [2016] Tongass Land and Resource Management Plan Record of Decision [ROD] and outlined in the 2016 Tongass National Forest Land and Resource Management Plan [2016 Forest Plan]." [EA pg. 1]. As designed, the project is incapable of supporting the transition to young-growth timber harvesting per the ROD and 2016 Forest Plan because those legally binding documents require the Forest Service to offer a mix of young-growth timber and old-growth "bridge timber" to facilitate the transition to primarily young-growth timber harvesting over a period of about 15 years. That time period has not yet run, and will not do so for about another decade, so the Forest Service unreasonably narrowed the project's purpose and need by arbitrarily deciding to contravene its obligations in the ROD and 2016 Forest Plan by excluding any old-growth timber harvest from the project based on the Southeast Alaska

Sustainability Strategy (SASS), even though the project area contains ample productive old-growth. [See, e.g., EA pg. 34].<sup>1</sup> And despite the Forest Service acting in direct contravention of its old-growth bridge timber transition obligations in the ROD and 2016 Forest Plan, it misrepresented to the public in the EA that the project was needed to “support the transition,” EA pg. 1, which the project is not doing and again is incapable of doing.

As a reminder of how the Forest Service’s transition obligations came to be in the ROD and 2016 Forest Plan, Agriculture Secretary Vilsack in 2013 issued Memorandum 1044-99 (Vilsack Memo) to hasten the Tongass National Forest’s “transition away from old-growth timber harvesting and towards a forest industry that utilizes second growth . . . forests.” He did so despite the fact that a rapid transition to young-growth timber harvest was premature given the age, size and growth (not to mention carbon sequestration) trajectory of second growth timber on the Tongass.

AFA had long acknowledged that at some point after young-growth reached its CMAI, the young-growth timber would be sufficiently mature to harvest. But by deciding to require the harvest of *immature* young-growth timber, the Forest Service chose to unduly curtail the Southeast Alaska timber industry’s access to the natural resources on which members had reasonably relied for their livelihoods. Still, the Vilsack Memo tried to soften the blow by assuring the public it recognized the need to “ensure a smooth transition” to young-growth harvesting by:

continu[ing] to offer a supply of old growth timber while increasing the supply of young growth to provide industry in Alaska the opportunity to develop new markets, learn new skills, and acquire new equipment. The continuation of limited sales of old growth timber is essential to maintain the existing industry until young growth can efficiently be processed.

Vilsack Memo at 2. Subsequently, the Forest Service used the 2012 planning rule to amend the 2008 Tongass Land and Resource Management Plan through issuance of the ROD and adoption of the 2016 Forest Plan, thereby making the agency’s transition goal legally required agency action.

The ROD stated that to “maintain a viable timber industry, this Amendment includes plan components to provide for a sufficient amount of old-growth ‘bridge timber’ to allow industry to re-tool for processing young growth.” ROD at 30. See also *id.* (“The PTSQ consists of old-growth and young-growth harvest . . .”). It further stated that the Forest Service “expects to sell an average of about 12 MMBF of young growth and 34 MMBF of old growth per year during the first 10 years. From Year 11 through Year 15, it expects to sell an average of 28 MMBF of young growth and 18 MMBF of old growth per year.” ROD at 7. Full transition to young-growth harvest was anticipated by “about Year 16,” with about 5 MMBF of old growth timber offered for sale each year thereafter. *Id.* The 2016 Forest Plan thus included a timber objective (O-TIM-01) stating that the Forest Service would “offer an average of 46 MMBF annually in a combination of old growth and young growth. When young-growth offered is less than 41 MMBF, provide old growth to make up the difference and achieve the average annual projected timber sale quantify of 46 MMBF.” 2016 Forest Plan at 5-13. A second timber objective (O-TIM-02) stated that the “volume of young growth as part of the yearly offer will increase from an average of 9.2 MMBF annually in the first decade to an average of 25 MMBF

---

<sup>1</sup> The Thomas Bay timber previously was included in the NEPA analysis for the Central Tongass environmental impact statement, where it included both young-growth and old-growth timber volume components. Before the Forest Service inexplicably abandoned the Central Tongass project in connection with its abandonment of the agency’s old-growth bridge timber obligations in the ROD and 2016 Forest Plan, the old-growth timber component of the Thomas Bay lands was about 20 MMBF, which confirms that the Forest Service could have offered old-growth bridge timber as part of this project to comply with its transition obligations in the ROD and 2016 Forest Plan.

annually in years 11-15 . . . .” *Id.* at 5-14. AFA members, in reliance on the 2016 Forest Plan’s young-growth transition, began taking steps to retool for the anticipated transition to young-growth timber harvest over about 15 years, or late 2031.

The ROD acknowledged that the Forest Service could not suddenly and prematurely prohibit the harvest of old growth bridge timber during the transition period to primarily young growth harvest. In fact, the alternatives considered but not analyzed in detail in the environmental impact statement for the 2016 Forest Plan included: (1) an immediate end to old growth logging, which was eliminated from detailed consideration because it “would not meet the need for maintaining a viable timber industry that provides jobs and opportunities for Southeast Alaska residents,” and (2) a transition to limited old-growth logging in five years, which was rejected because it was inconsistent with the “10- to 15-year period for the transition” and “would not allow the Forest Service sufficient time to offer economic young-growth volume,” including because harvesting immature second growth trees in that timeframe was neither practical nor economic for a variety of reasons. ROD at 12. More recently, the Forest Service reaffirmed in an internal April 13, 2022 briefing paper that there is, and will be for about a decade, “limited commercial young-growth timber available for harvest, scattered geographically across the Tongass.” In other words, the old-growth bridge timber component of the ROD and 2016 Forest Plan is as vitally important today as it was when adopted in 2016. Absent compliance with the old-growth bridge timber component of the ROD and 2016 Forest Plan, the Forest Service also cannot comply with Congress’s “seek to meet” market demand directive for the Tongass in the Tongass Timber Reform Act (TTRA). 16 U.S.C. § 539d(a). Indeed, the TTRA overlay on the Tongass prohibits the Forest Service from sabotaging its ability to seek to meet market demand for Tongass timber when managing forest resources. *Natural Resources Defense Council v. U.S. Forest Serv.*, 421 F.3d 797, 808 n.22 (9th Cir. 2005) (*NRDC*).

Since adopting the 2016 Forest Plan, the Forest Service has failed to comply with its obligation to offer a mix of young-growth and old-growth timber volume as specified in the ROD and 2016 Forest Plan, including in contravention of timber objectives O-TIM-01 and O-TIM-02. And in 2021, the Forest Service arbitrarily and capriciously reversed course without explanation by announcing its decision to *immediately* end the harvest of old growth bridge timber as part of the SASS. In announcing the new SASS, Secretary Vilsack thus confirmed the Forest Service’s decision to disregard its legal obligations with respect to timber harvest on the Tongass, obligations rooted in the Secretary’s own Tongass young-growth transition plan as now embodied in the 2016 Forest Plan. The Thomas Bay EA’s unreasonably narrow purpose and need statement is the unlawful result of the Forest Service’s abandonment of its transition obligations in the ROD and 2016 Forest Plan, obligations that the Southeast Alaska timber industry relied on for their transition to a primarily young-growth timber program on the Tongass.

**Second**, the EA makes erroneous statements such as “at this critical time during the Tongass’ transition to a predominantly young-growth management program,” (EA pg. 24), implying that the Forest Service is complying with its young-growth transition obligations. Such statements are false. Contrary to the ROD and 2016 Forest Plan, the Forest Service’s track record since adopting the ROD and 2016 Forest Plan, and more recently since Agriculture Secretary Vilsack promulgated the SASS, confirms that the Forest Service abruptly and illegally abandoned the “transition” to a predominantly young growth management program by halting old-growth bridge timber harvest prematurely. The Forest Service’s abrupt transition to young-growth timber harvest is inconsistent with the agency’s obligations under the ROD and 2016 Forest Plan.

The *NRDC* case discussed above is informative here because it confirms that the Forest Service cannot rely on erroneous information, as the Forest Service did by misrepresenting in the Thomas Bay EA that the project furthers, and is consistent with, the ROD and 2016 Forest Plan’s requirements for transitioning to a primarily

young-growth timber program. In *NRDC*, the Forest Service was held to have acted arbitrarily and capriciously in violation of the Administrative Procedure Act when it based a revision to the Tongass Forest Plan on an overstated projection of market demand for timber. 421 F.3d at 802. Given that the Forest Service in *NRDC* had rightly sought to comply with the TTRA by actually seeking to meet the annual and decadal (i.e., planning cycle) market demand for timber, the agency's misrepresented estimate of timber demand fatally infected its forest management decisions for the Tongass. *Id.* at 808. Likewise here, the agency's misrepresentations that the Thomas Bay project is needed to further the agency's transition to a primarily young-growth timber program on the Tongass are untrue. Under NEPA, the public is entitled to be accurately informed of the purpose and need for a project and the project's compliance with (or in this case contravention of) the Forest Service's legal obligations. *WildEarth Guardians v. Provencio*, 923 F.3d 655, 668 (9th Cir. 2019) (stating that an agency must ensure that accurate "environmental information is available to public officials and citizens before decisions are made and before actions are taken") (citation omitted).

**Third**, prioritizing the application of management components of the SASS over the directions listed in the Priority of Direction portion of Chapter One of the 2016 Forest Plan violates the 2016 Forest Plan.

**Fourth**, there was no need to develop additional alternatives for the project beyond the Action Alternative scoped in August 2021. There particularly was no need to incorporate wildlife objectives into an alternative or alternatives when **the purpose of the project** is to provide "an economic supply of young-growth timber." (EA pg. 1). In addition, wildlife on the Tongass are old-growth dependent, so it makes no sense to include wildlife objectives in a project that does not include any harvest of old-growth timber. The FONSI states that "Neither adverse nor beneficial effects rise to the level of a significant impact." (EA pg. 55). Despite the lack of significant impacts, the arbitrary inclusion of wildlife objectives into what is now the preferred alternative (Alternative 3) would unduly truncate the project's harvest volume from 19.3 MMBF of timber to 12.6 MMBF of timber.

**Fifth**, the EA's Projected Employment and Income analysis is flawed. In 2005, Sealaska Corporation hired the McDowell Group to conduct a study on employment and income differences between export and domestic processing. The report, "Southeast Timber Harvest Employment Impact Analysis," stated that timber harvest and domestic processing created 4.5 jobs/MMBF while timber harvest and round log export created 4.3 jobs/MMBF. The difference thus amounted to 1 job per 5 MMBF. The report also indicated that although domestic processing of timber created more jobs per MMBF, the average rate of pay per job was higher when logs were exported in the round. Based on the McDowell report, the difference in project-associated jobs depending on whether the logs are exported versus processed domestically is between 2-4 jobs across the project alternatives. The EA's assertions (EA pg.33) regarding a much higher difference between jobs associated with domestic processing versus export thus is misleading.

Further, in addition to conflicting with the conclusions of the McDowell study, the Daniels 2019 statement (EA pg. 33) regarding additional cost and increased employment because of a "longer haul to an export site" conflicts with an earlier statement in the EA that during the FASTR analysis, Klawock was used as the destination for both export and milling. (EA pg. 32).

Based on the results of the FASTR analysis, it appears that domestic processing of the timber from the project will most likely result in a negative value timber sale, which the Tongass would not be able to offer due to the requirement that only positive value timber sales can be sold on the Tongass. The EA fails to disclose this fact.

**Sixth**, the Forest Service cannot "seek to meet" the demand for Tongass timber as required by the TTRA by selecting Alternative 3. The 2022 demand analysis conducted by the Forest Service per the requirements of the TTRA shows an expected timber purchase amount for FY22 as 40 MMBF. The same report states that to meet the volume under contract objective the FS needs to offer 54.1 MMBF during FY22. These numbers vary



significantly from the statement within the EA that the demand for young-growth timber is between 9-10 MMBF and will remain that amount until 2026. [EA pg. 16]. If the Forest Service chooses to shirk its legal obligations under the ROD and 2016 Forest Plan by restricting old-growth timber offerings to no more than 5 MMBF annually, then the Forest Service needs to offer 35 MMBF of young-growth timber to seek to meet the estimated demand, particularly since the demand for young-growth timber has increased to cover the supply gap created by the Forest Service's abandonment of its transition obligations in the ROD and 2016 Forest Plan. Under these circumstances, and keeping in mind that this project is one of only a handful of NEPA-cleared timber volume offerings needed to supply a starving Southeast Alaska timber industry since issuance of the ROD and 2016 Forest Plan, the Forest Service should select Alternative 2, not Alternative 3, if it declines to address the project's legal infirmities, particularly since all of the action alternatives were rightly found to create no significant impacts to the human environment. Doing so is especially important given that the Southeast Alaska timber industry is and hopes to remain a valuable partner to the Forest Service and the Southeast Alaska community going forward through the implementation of important Forest Service projects on the Tongass. The ROD acknowledged the importance of "maintain[ing] a viable timber industry." ROD at 30. To do so, the Forest Service should select Alternative 2, not Alternative 3.

**Seventh**, and finally, AFA notes that under the National Forest Management Act (NFMA), forest plan amendments that result in a "significant change" require the Forest Service to prepare an environmental impact statement. 16 U.S.C. § 1604(f). The Forest Service's abrupt and unexplained abandonment of its transition and old-growth timber obligations in the ROD and 2016 Forest Plan are significant changes, yet the Forest Service has abandoned those legal obligations without amending the 2016 Forest Plan. The Thomas Bay project therefore fails to comply with the ROD and 2016 Forest Plan as written, in violation of the NFMA.

In conclusion, AFA members understand that the Forest Service is transitioning to primarily young-growth timber harvest on the Tongass. Again, in reliance on the ROD and 2016 Forest Plan's young-growth transition, AFA members began the process of retooling for the anticipated transition to young-growth timber harvest over about a 15-year period. What AFA members did not anticipate was for the Forest Service to employ a "bait-and-switch" tactic where, after AFA members had begun the process of transitioning to young-growth timber harvest over a 15 or so year period, the Forest Service would abruptly halt the transition process and replace it with a primarily (or entirely) young-growth timber harvest program despite knowing that there currently is (and will be for about a decade) insufficient young-growth timber to maintain a viable Southeast Alaska timber industry. The Southeast Alaska timber industry seeks to be a partner to the Forest Service on the Tongass. The Forest Service, respectfully, seems to instead want to drive the Southeast Alaska timber industry out of business, to the detriment of forest health projects going forward.

Thank you for considering the AFA's comments. If you have any questions regarding the above comments, please do not hesitate to contact us at 907-225-6114 or [tessa@akforest.org](mailto:tessa@akforest.org).

Sincerely,



Tessa Axelson  
Executive Director