

Data Submitted (UTC 11): 9/19/2024 4:00:00 AM

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Stevens County, Washington

September 19, 2024

Mr. Thomas J. Vilsack

Secretary of Agriculture

United States Department of Agriculture

1400 Independence Ave. SW

Washington, DC 20250

The National Old Growth Amendment (NOGA), as proposed, would lead to devastating on-the-ground consequences for our national forests and the people who steward them.

Stevens County, WA, appreciates the Forest Service's desire to balance the preservation of old-growth forests with the economic needs of our region. We believe that the Old Growth Amendment discussion presents opportunities to enhance the protection of these valuable ecosystems while maintaining a sustainable timber industry. We also believe that NOGA, as proposed, would lead to devastating on-the-ground consequences for our national forests and the people who steward them. NOGA, as proposed, will lead to years of litigation if implemented as is. NOGA puts at risk the very infrastructure with the proven ability to promote healthy forests while providing economic and social benefits of an industry that results in many critical products, including housing. We submit the following key concerns as examples of problems with NOGA and respectfully propose recommendations as potential solutions to avoid these and future problems. Also included with these concerns and recommendations are supportive input from experts in stewardship and industry.

Key Concerns and Recommendations

1. Active Management and Threat Mitigation:

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* We strongly support the continued use of active management practices, including timber harvest, to mitigate the risks posed by disease, wildfire and insect infestations. These threats pose significant dangers to old-growth forests and can outweigh the benefits of strict preservation.

- * The Forest Service should prioritize research and implementation of effective strategies to reduce wildfire risk and control insect populations.

- * We recommend the use of main Forest Service roads as fire breaks to create defensible spaces to reduce the spread of wildfires. These [lsquo]built in[rsquo] fire breaks would further protect old-growth forest areas.

- * 2. Carbon Sequestration and Economic Impacts:

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- * While old-growth forests store significant amounts of carbon, younger, more vigorous trees often have increased sequestration rates and capabilities. The Forest Service should consider the overall carbon balance of managed forests when making policy decisions.

- * If implemented, the Amendment should focus on minimizing negative economic impacts on local communities, particularly those reliant on timber-related industries. The timber industry is the ONLY tool that combines active management & positive economic outcomes while solving the housing crisis.

- * 3. Adaptive Management Strategy:

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- * The proposed Adaptive Management Strategy, while well-intentioned, could inadvertently lead to the creation of de facto reserves. We recommend that the Forest Service carefully consider the potential consequences of this approach and explore alternative strategies that balance conservation with economic viability.

- * How is the Adaptive Management Strategy consistent with laws, policy, regulation, and existing plans? This [lsquo]strategy[rsquo] is not sufficiently defined to clarify how goals can be achieved.

- * 4. Focus on Urgent Priorities:

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- * Given the pressing threat of wildfire, the Forest Service should prioritize the acceleration of active forest management efforts as outlined in the Wildfire Crisis Strategy. The Old Growth Amendment should not distract from these critical efforts and the Forest Service should not be content with allowing the natural resources under their care to be destroyed by fire, insects, and disease.

- * 5. Scale and Impact Assessment:

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- * The broad scope of the Amendment, encompassing 128 Land Management Plans, necessitates a thorough assessment of its social and environmental impacts. The Forest Service should ensure that the implementation of the Amendment is tailored to local conditions and avoids unintended consequences. The timber harvesting and wood processing infrastructure must remain vibrant in order to successfully manage the natural resources that are the responsibility of the USFS.

- * 6. Threat Assessment Findings:

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- * The Threat Assessment clearly indicates that wildfire and insect infestations are the primary threats to old-growth forests. The Forest Service should focus on addressing these threats through effective management practices.

- * The data from the Threat Assessment suggests that strictly reserving old-growth forests may not always be the most effective protection strategy. A balanced approach that includes active management can help maintain healthy old-growth ecosystems. This active management should not exclude selective commercial harvesting of timber.

* 7. Avoid Discouraging Timber Harvest:

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* While the Proposed Action does not explicitly prohibit timber harvest in old-growth forests, it could inadvertently discourage such activities. The Forest Service should strive to create a policy environment that supports sustainable timber harvesting while maintaining the integrity of old-growth ecosystems.

8. Revise the Adaptive Management Strategy:

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* The Adaptive Management Strategy should be revised to avoid unintended consequences and ensure that it aligns with the overall goals of the Amendment. The Forest Service should provide clearer guidelines for identifying areas suitable for future old-growth recruitment and avoid creating de facto reserves.

* 9. Consider Minimum Requirements for Old Growth Stands:

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* To prevent unnecessary restrictions on forest management, the Amendment should include minimum requirements for old-growth stands. This would help to clarify what constitutes an old-growth forest and avoid disputes over the classification of smaller areas.

By addressing these concerns and incorporating our recommendations, the Forest Service can develop an Old Growth Amendment that effectively protects old-growth forests and ecosystems while supporting sustainable economic development in Stevens County and northeastern WA.

Sincerely,

BOARD OF COUNTY COMMISSIONERS STEVENS COUNTY, WASHINGTON

Mark Burrows, Chairman

SUPPORTIVE MATERIALS

The following material is from AFRC. Stevens County signed on to AFRC's comments and we are providing a copy of AFRC's comments to support our concerns and recommendations.

The American Forest Resource Council (AFRC) is a trade association representing mills, wood product manufacturers, loggers, and purchasers of public timber in the Western United States. Put another way, AFRC represents the customers and partners of the Forest Service. We have member companies in

Montana, Idaho, Washington, Oregon, Nevada, and California. Our members' expertise, employees, and equipment — and the vast, complex product supply chain of the forest infrastructure they help create, maintain, and support — are essential to achieving the Forest Service's management goals and missions. The health and productivity of National Forest System (NFS) lands is paramount to the viability of our membership, and the family-wage jobs and communities they support.

We share many of the philosophical positions and perspectives outlined in the draft environmental impact statement (DEIS) for Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System (the proposed Amendment) regarding forest management on NFS lands. Like the Forest Service, we support maintaining and restoring the ecological integrity of terrestrial ecosystems across every successional stage of development, including old growth. We also recognize the importance of proactive stewardship to protect all forest types, including old growth, from the many threats that they face. However, we see a disconnect between these values and the substance of the proposed Amendment as outlined in the DEIS. More specifically, we believe that there is a disconnect between the challenges that Forest Service practitioners and their partners face when pursuing active forest management to mitigate threats and the standards and guidelines proposed in the Amendment that are ostensibly designed to respond to threats by promoting active forest management.

Forest Service practitioners are currently constrained by a complex, multilayered stack of restrictive Land Management Plan (LMP) standards, laws, regulations, and court precedents developed over many decades that hamper the Forest Service's ability to effectively implement meaningful forest management. In short, Forest Service practitioners need existing obstacles removed, not added, to attain the level of active management that the DEIS presumably strives to enable. While the DEIS professes to "foster" and "promote" such management, it misses the mark by burdening Forest Service practitioners with additional standards (i.e., obstacles) to navigate. Indeed, the DEIS clearly states that "the proposed action also sets forth standards and guidelines that provide constraints for decision making at the project-level." DEIS at S-7. It is unlikely that many agency decision-makers would identify a paucity of constraints as an impediment to effectively managing their NFS Units.

This disconnect partly stems from the unprecedented scale of the proposed Amendment. It seems impossible for policy makers at the national level to develop a single Amendment designed to address forest threats through active management across 155 National Forests when each unit faces unique challenges. For example, National Forests whose LMPs were amended by the Northwest Forest Plan (NWFP) manage over 7.5 million acres explicitly for the objective of old-growth and late-seral habitat recruitment and maintenance.¹ These are referred to as Late Successional Reserves (LSRs) and they consume over 30% of the NFS lands in the Pacific Northwest. If these LSR objectives sound familiar it is because they are nearly identical to the Adaptive Strategy for Old-Growth Forest Conservation described in the proposed Amendment. This type of redundancy is to be expected with a sweeping Amendment of this national scale.

Another example of this disconnect can be best understood by referring to a seminal research paper from 2010 by Drs. Norm Johnson and Jerry Franklin titled, "A Restoration Framework for Federal Forests in the Pacific Northwest." ² This document has had a profound influence over the current management paradigm on NFS land governed by the NWFP and largely served as the blueprint for the Bureau of Land Management's (BLM) Resource Management Plan revisions in 2016. At the scale of the NWFP area, the authors identified a need to discuss and define "old growth" in different contexts based on ecological processes largely driven by historical fire regime. In that document the authors deemed it necessary to "divide [Pacific Northwest] federal forestlands into moist forests and dry forests because these contrasting environments require fundamentally different policies and practices, including approaches to old growth conservation." (emphasis added). Franklin and Johnson at 430. Those "fundamental differences" manifested as profoundly different approaches to how old growth is characterized — namely, the difference between managing for "old trees" versus "old stands." The

authors summarize by asserting that [ldquo]management of old trees and stands would vary as a function of forest type.[rdquo] Such nuances (trees vs. stands, dry vs. wet forest types, etc.) are not addressed in the proposed Amendment due to its sweeping scale. Instead, the proposed Amendment[rsquo]s standards and guidelines simply refer to old growth [ldquo]forests.[rdquo] This language will burden Forest Service practitioners with uncertainty regarding old growth identification: is a mid-seral forest stand with five 300-year-old remnant trees per acre considered an old growth [ldquo]forest[rdquo] and subject to this Amendment? Is a [frac14]-acre patch of old growth forest subject to this Amendment? Or how about an old growth forest that covers only 1/20th of an acre?

Ultimately, we believe that the disconnect is primarily a function of a flawed need for change identified in the Notice of Intent (NOI) and DEIS. Had the threat assessment been completed ahead of the NOI, as Executive Order (EO) 14072 directed, the Forest Service may have identified a need to address obstacles in existing LMPs that obstruct Forest Service practitioners from mitigating wildfire and insect and disease threats on millions of acres of NFS lands, instead of adding additional layers to what is already a complex management environment. It is puzzling that Forest Service leadership apparently sees a need to accelerate and increase active forest management and puts forward a solution that creates more restrictions!

Indeed, the Threat Assessment, which was published one week prior to publication of the DEIS, confirmed that wildfire and insects and disease have caused the highest loss of old-growth forests over the past twenty years and continue to pose the most significant future threat to those forests. The Threat Assessment also concluded that old growth loss was greater in areas reserved from timber harvest (wilderness, inventoried roadless areas, national monuments) than in areas where timber harvest is allowed and encouraged. In fact, while the amount of old growth decreased in reserved areas, it increased by 7.8% in areas where timber harvest is permitted and encouraged.

We believe that Forest Service leadership and practitioners know these truths and believe that active forest management, including timber harvest, is integral to not only sustaining old-growth forest conditions but also to attaining the agency[rsquo]s overall mission. AFRC and its members routinely interact with local Forest Service employees through the project development process. We routinely see well- crafted projects designed to improve ecological integrity, provide timber products, and support rural communities derailed by cumbersome processes, restrictive LMP standards, and misdirected regulations. Unfortunately, this proposed Amendment does not ameliorate those issues, but instead compounds them.

On February 2, 2024, AFRC submitted substantive comments in response to the December 20, 2023, NOI to prepare an EIS on Land Management Plan Direction for Old-Growth Forest Conditions across the NFS. In that letter, we raised numerous concerns with the proposal[rsquo]s alignment with components of certain statutes and regulations, namely, the National Environmental Policy Act (NEPA) and the 2012 Planning Rule. We also highlighted inconsistencies between the directives in EO 14072 and the course of actions taken by the Forest Service in response. In particular, we emphasized the flawed approach of issuing a NOI to create policies that address threats to old growth prior to completion of an assessment of those threats. After reviewing the DEIS, those concerns, as outlined in our comments, remain largely unchanged. In fact, our review of the DEIS has raised additional concerns with the adequacy of the analysis as it pertains to NEPA[rsquo]s [ldquo]hard look[rdquo] standard. Moreover, we have identified issues with the Forest Service[rsquo]s failure to comply with the Endangered Species Act (ESA) and EO 12866, which requires Office of Management Budget (OMB) to review significant regulatory actions. We appreciate the opportunity to reiterate our initial concerns and expand on takeaways from our review of the DEIS.

From a technical perspective, we have organized our comments based on how the Amendment and DEIS comports or conflicts with certain statutes and regulations.

2012 Planning Rule & Levels of Planning

We continue to disagree with the scope and scale of the proposed Amendment and believe that the course proposed by the Forest Service represents a violation of Section 219.2 of the Planning Rule. See 36 C.F.R. [sect] 219.2. That section outlines the different organizational levels of the agency where planning occurs as well as the types of planning appropriate for each level.

Section 219.2 states that [ldquo]Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels[mdash]national strategic planning, NFS unit planning, and project or activity planning.[rdquo] Id. Development and preparation of this Amendment is clearly occurring at the [ldquo]national strategic planning[rdquo] level. Section 219.2(a) provides some direction on the type of actions appropriate for national-level planning including the [ldquo]preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 [hellip] that establishes goals, objectives, performance measures, and strategies for management of the NFS.[rdquo] 36 C.F.R. [sect] 219.2(a).

On the other hand, Section 219.2(b) provides direction for [ldquo]unit planning[rdquo] that [ldquo]results in the development, amendment, or revision of a land management plan.[rdquo] 36 C.F.R. [sect] 219.2(b) (emphasis added). This language provides clear and simple direction that, we believe, should have compelled the Forest Service to conduct its plan amendments at the [ldquo]NFS unit[rdquo] level, not the national scale.

The Forest Service does not address this departure from the Planning Rule[rsquo]s direction regarding levels of planning, other than to assert the need for a [ldquo]consistent framework[rdquo] across the entire NFS.

PUBLIC PARTICIPATION

Section 219.4(a) of the Planning Rule requires the Forest Service to consider [ldquo]the accessibility of the process, opportunities, and information[rdquo] [emphasis added] to allow meaningful public participation. 36 C.F.R. [sect] 219.4(a). The December NOI that solicited public feedback on developing policies to address threats to old growth preceding the identification of threats through the completion and publication of the Threat Assessment was a failure to provide public access to information. Ultimately, that Threat Assessment was made available to the public one week before publication of the DEIS.

EO 14072 directs the Forest Service to:

1. Define mature and old-growth forests on federal lands,
2. Complete an inventory and make it publicly available,
3. Identify threats to mature and old-growth forests, and
4. Develop policies to address threats.

There is a deliberate chronology to these above-mentioned action items, as the execution of each item is dependent on the completion of the item prior. For example, the Forest Service could not conduct an inventory of old growth forests (#2) unless the parameters of those forests are defined (#1). Subsequently, the Forest Service could not conduct a threat analysis (#3) until an inventory was completed (#2). And finally, the Forest Service cannot develop policies to address threats (#4) until those threats are identified (#3).

Since the April 22, 2022, issuance of EO 14072, the Forest Service has progressed through this list of action items chronologically. The Forest Service published its mature and old-growth forest definition and subsequent inventory in April 2023. Following this publication, the Forest Service indicated its intention to complete a threat analysis.

However, this chronological progression came to a sudden halt on December 20, 2023, when the NOI was published, proposing [ldquo]policies to address threats[rdquo] prior to completion of an assessment that identified those threats. Figure 1, copied below, from the DEIS illustrates this flawed chronology as the Forest Service progressed from the inventory immediately into a [ldquo]decision[rdquo] on [ldquo]how to amend land management plans.[rdquo]

It was difficult for AFRC to develop and submit well-informed comments to the NOI in the absence of a substantive threat assessment based on current science and empirical evidence. How could we, or any other stakeholder, be expected to assist the Forest Service in creating policies to address threats without knowing how the Forest Service perceives those threats? We do not believe that the public had been provided the [ldquo]accessibility of . . . information[rdquo] noted in section 219.4(a) of the Planning Rule to adequately provide input on this proposed amendment due to the failure to adhere to the chronology of EO 14072, namely the failure to develop and publish a threat assessment.

Ultimately, our concerns outlined in the introduction of this letter regarding the substance of the proposed Amendment are partly a function of the failure of the Forest Service to provide the public with accessibility to information as required by the Planning Rule. We imagine that Forest Service staff tasked with developing this Amendment were also hindered by a lack of information pertaining to the actual threats to old growth. Had they known what was finally detailed in the threat assessment (published in June 2024) at the proper juncture in the timeline outlined in EO 14072, perhaps the substance of the proposed Amendment would look different than what was ultimately developed.

The Threat Assessment confirmed that wildfire and insects and disease infestations have caused the highest loss of old-growth forest over the past twenty years and continue to pose the most significant future threat to those forests. The Threat Assessment also concluded that old growth loss was greater in areas reserved from timber harvest (wilderness, inventoried roadless areas (IRAs), national monuments) than in areas where timber harvest is allowed and encouraged. In fact, while old growth decreased in reserved areas it increased by 7.8% in areas where timber harvest is permitted and encouraged. The Threat Assessment noted that these results suggest that strictly reserving old-growth forests may not always ensure that they are protected from future losses.

Had the public, and the Forest Service, been privy to this information, the policies to address them may have looked quite different from what is currently proposed in the Amendment.

Perhaps the Forest Service would have focused on changing current regulations that restrict timber harvest in IRAs had they known that old-growth conditions are improving in areas where timber harvest is allowed and encouraged (Table 7 in the DEIS indicates that there are 9.6 million acres of old growth in IRAs). Or maybe an Amendment would have focused on removing existing standards and guidelines that discourage timber harvest in LSRs in Regions 5 and 6 or on those LMPs that include direction that discourages timber harvest in or around oldgrowth forests. Table 7 in the DEIS indicates that there are 4.2 million acres of old growth in [ldquo]reserved[rdquo] lands. The Threat Assessment states that [ldquo]LMPs generally include components limiting the threat of tree cutting to old-growth forest.[rdquo] However, according to that same assessment, tree cutting seems to improve old-growth forests rather than act as a threat. Or perhaps additional NEPA tools could have been developed to enable Forest Service practitioners to accelerate timber harvest to improve old-growth conditions.

Ultimately, none of these options were considered by the Forest Service or the public because neither were provided with access to pertinent information as required by the Planning Rule

Public Notifications

Section 219.16(c)(5) of the Planning Rule states that [ldquo][i]f a plan, plan amendment, or plan revision applies to two or more units, notices must be published in the Federal Register and the newspaper(s) of record for the applicable units.[rdquo] 36 C.F.R. [sect] 219.16(c)(5). Because section 219.16(a)(1) requires notices [ldquo]to initiate the development of a proposed plan, plan amendment, or plan revision[rdquo] and subsection (a)(2) requires notices for draft EISs, both should have been The Forest Service periodically identifies and updates the newspapers of record for each National Forest unit in the Federal Register. We identified several such newspapers in Regions 1, 4, 5, and 6 and conducted a search for notifications during the comment period for both the NOI and DEIS. Each state[rsquo]s newspaper association offers a free search engine for public notices. Links to those search engines are copied below published in the newspapers, according to subsection (c)(5).

<https://www.idahopublicnotices.com/><https://www.capublicnotice.com/>

<https://www.montanapublicnotices.com/><https://www.wapublicnotices.com/>

<https://www.publicnoticeoregon.com/>

We were unable to locate any notifications in any newspaper of record for either the NOI or DEIS through our searches.

We believe that this requirement was inserted in the Planning Rule for a reason[mdash]the Planning Rule envisioned that forest plan amendments would be conducted at the local unit level (see our section on Levels of Planning above). Publication of notifications in local newspapers, as opposed to the Federal Register, is an important and effective way to properly notify as much of the interested and affected public as possible. Most citizens are not familiar with the Federal Register. On the other hand, many citizens are familiar with their local newspaper and publication of relevant notifications related to the management of their local National Forest published in those newspapers has a higher likelihood of reaching those citizens than similar notifications in the Federal Register.

The fact the Forest Service failed to post notifications accordingly for this Amendment is a further indication that the level of planning chosen was inconsistent with the Planning Rule.

Need For Change

Section 219.13(b)(1) of the Planning Rule directs the Forest Service to [ldquo]base an amendment on a preliminary identification of the need to change the plan.[rdquo] 36 C.F.R. [sect] 219.13(b)(1). The preliminary need for change identified in the NOI was to [ldquo]create a consistent set of national plan components and direction for the development of geographically informed adaptive implementation strategies for the long-term persistence, distribution, and recruitment of old growth forest conditions across the National Forest System.[rdquo] We noted in our comments in response to the NOI that this statement did not amount to a [ldquo]need for change.[rdquo] Instead, this statement was simply a declaration of what the Forest Service intended to do.

That need for change was modified in the DEIS as follows:

- * Demonstrate compliance with Executive Order 14072 to institutionalize climate-smart management and conservation strategies that address threats to mature and old-growth forests on Federal lands.
- * Respond to the clear congressional intent outlined in section 23001(a)(4) of the Inflation Reduction Act; and
- * Create a consistent framework to manage for the long-term persistence, distribution, and recruitment of old-growth forests across the National Forest System (NFS) in light of the interacting biophysical and social factors that threaten the persistence of older forests on NFS lands across the Nation.

Section 219.13(b)(1) of the Planning Rule also states that [ldquo]the preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances.[rdquo] 36 C.F.R. [sect] 219.13(b)(1). Although this is not a requirement, it is noteworthy that the Planning Rule identifies items that may trigger and inform a need for change. Among those items is a [ldquo]new assessment.[rdquo] The Forest Service did indeed publish a new assessment. However, that assessment did not inform the need for change.

As outlined above, a threat assessment was completed that included valuable information that could have informed the need for change. However, that assessment was not completed in time to inform not only the public, but also the Forest Service. The flawed need for change is at least partly a function of the failure of the Forest Service to complete the assessment prior to development of the NOI and DEIS. Had the substance of the assessment been known, the need for change would likely appear quite different than its current form.

Furthermore, the Forest Service did not articulate the need for [ldquo]consistency[rdquo] across the entire NFS regarding the management of old growth. In fact, based on the NOI, threat assessment, and DEIS, it seems that the Forest Service fully understands the complications of [ldquo]consistent[rdquo] direction on an ecologically inconsistent landscape.

The DEIS states that [ldquo]there are differences in threats and conditions in different regions and ecosystems across the NFS.[rdquo] The Definition, Identification, and Initial Inventory report described old growth definitions for more than 200 unique forest vegetation types across the NFS. The DEIS also notes that each region [ldquo]recognizes important ecological variation by defining unique old-growth criteria for different vegetation types.[rdquo] This information does not substantiate a need for consistency in old growth management policy across the NFS.

Finally, section 23001(a)(4) of the Inflation Reduction Act (IRA) does not demonstrate a need for change. The section of the IRA cited in the need for change simply provided the Forest Service with \$50 Million [ldquo]for the protection of old-growth forests and to complete an inventory of old-growth[rdquo] on the NFS. This allocation of funding does not represent [ldquo]clear[rdquo] congressional intent. The Forest Service could have utilized these funds for a number of actions that would have [ldquo]protected[rdquo] old growth forests in a more tangible manner.

For example, that funding could have been directed to support marginally economical vegetation management projects in high fire-prone landscapes. Or it could have been directed to accelerate the implementation of fuel breaks authorized under Section 40806 of the Bipartisan Infrastructure Law to protect old-growth stands at risk of high severity wildfire. Either of which would have likely moved the needle on old growth projection more effectively than embarking on a nationwide plan Amendment while more old growth is lost to fire, insects and disease.

Ultimately, the Forest Service did not establish a need for change consistent with the Planning Rule. The inappropriate timing of the threat analysis, misguided interpretation of congressional funding, and a general disconnect with existing barriers to [ldquo]protecting[rdquo] old-growth all contributed to this failure.

Timber Suitability

The DEIS asserts that the proposed Amendment does not change lands suitable for timber production. We believe that the standards proposed in the Amendment and the language and direction in both the Planning Rule and the National Forest Management Act (NFMA) indicate otherwise.

The Planning Rule defines [ldquo]timber production[rdquo] as the purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Standard 3 (NOGA-FW-STD-03) in the Amendment states that Proactive stewardship in oldgrowth forests shall not be for the purpose of timber production as defined in 36 CFR 219.19.

Standard 2.a (NOGA-FW-STD-02a) in the Amendment states that vegetation management may only be for the purpose of proactive stewardship.

Section 6(k) of the NFMA requires that the Secretary identify lands not suitable for timber production. Section 219.11 of the Planning Rule states that [ldquo]the responsible official shall identify lands within the plan area as not suited for timber production if any one of the following factors applies: (i) Statute, Executive order, or regulation prohibits timber production on the land; iii) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands.[rdquo]

Clearly, the proposed Amendment prohibits timber production across an unknown number of NFS acres. Clearly, the proposed Amendment indicates that timber production, as defined in the Planning Rule to include the [ldquo]regeneration of regulated crops of trees[rdquo] would be [ldquo]incompatible[rdquo] with the Amendment[rsquo]s desired conditions for old growth.

The Forest Service cannot have it both ways. An Amendment that prohibits the regeneration of regulated crops of trees on NFS lands cannot also assert that those lands will continue to be identified as suitable for timber production based on that term[rsquo]s clear definition. Such an assertion is contrary to the Planning Rule and the NFMA. In support of the decision to not modify timber suitability, the DEIS states that [ldquo][o]ld- growth forests will remain forested lands as a part of this amendment process.[rdquo] DEIS at 121, S-14. Any given acre of NFS land being suitable for timber is not simply a function of whether that acre is technically [ldquo]forested.[rdquo] There are millions of acres of [ldquo]forested[rdquo] land in the Pacific Northwest and beyond that have been deemed unsuitable for timber due to the LMPs standards and guidelines that prohibit timber production.

Furthermore, Section 219.11(b) of the Planning Rule states that [ldquo][a] plan that identifies lands as suitable for timber production must include plan components, including standards or guidelines, to guide timber harvest for timber production or for other multiple use purposes on such lands.[rdquo] 36 C.F.R. [sect] 219.11(b) (emphasis added). Therefore, if the Forest Service insists that NFS lands containing old-growth forests are indeed [ldquo]suitable for timber production[rdquo] they must also develop standards or guidelines to guide timber production on those lands. And since the Planning Rule[rsquo]s definition of timber production includes [ldquo]the regeneration of regulated crops of trees,[rdquo] the Forest Service must develop standards and guidelines that address the regeneration harvest of old growth forests. Otherwise, the Forest Service must identify these lands as not suitable for timber production.

NEPA

Hard Look [ndash] Timber Production/Socioeconomic NEPA establishes procedures by which federal agencies must consider the environmental impacts of their actions but does not dictate substantive results. *Robertson v.*

Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). Regulations promulgated by the Council on Environmental Quality, 40 C.F.R. [sect][sect] 1500-1508, provide guidance for implementing NEPA. Under NEPA, federal agencies must prepare an EIS for [ldquo]major Federal actions significantly affecting the quality of the human environment..... [rdquo] 42 U.S.C. [sect] 4332(2)(C). An EIS [ldquo]shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.[rdquo] 40 C.F.R. [sect] 1502.1. NEPA and its implementing regulations set forth procedures designed to ensure that federal agencies take a [ldquo]hard look[rdquo] at the environmental consequences of their proposed actions. Robertson, 490 U.S. at 350-51. The Ninth Circuit has interpreted a [ldquo]hard look[rdquo] to mean [ldquo]a reasonably thorough discussion of the significant aspects of the probable environmental consequences.[rdquo] Ctr. for Biological Diversity v. Nat[rsquo]l Highway Traffic Safety Admin., 538 F.3d 1172, 1194 (9th Cir. 2008). To take the required [ldquo]hard look,[rdquo] the agency may not rely on incorrect or incomplete assumptions or data. Native Ecosystems Council v. U.S. Forest Serv., an agency of U.S. Dep't of Agric., 418 F.3d 953, 964 (9th Cir. 2005); see 40 C.F.R. [sect] 1500.1(b) ([ldquo]The information shall be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.[rdquo]). The geographic scale of this proposed amendment[mdash]128 Forest Plans covering 193 million acres[mdash] makes satisfying this required hard look impossible.

The challenge of taking the requisite hard look may be most evident in the DEIS[rsquo]s analysis of Social, Cultural and Economic Conditions.

The DEIS indicates that only Alternative 3 would have measurable impacts to the timber industry, restoration-based economy, and rural communities. Specifically, the DEIS argues that [ldquo]no economic effects to the timber industry outside of Alaska are anticipated because there will be no change in forest Allowable Sale Quantity (ASQ), Projected Timber Sale Quantity (PTSQ) or land suitability.[rdquo] DEIS at 121. It goes on to say that [ldquo]the amendment also does not change ASQ or PTSQ because the projected timber sale quantity includes volume from timber harvest for any purpose from all lands in the plan area.[rdquo] Id. (emphasis added). This underlined portion is inaccurate for LMPs amended by the NWFP.

Several documents, including the NWFP Final Supplemental EIS³, NWFP monitoring reports⁴, and the Forest Ecosystem Management Assessment Team (FEMAT) Report⁵ are clear that the Probable Sale Quantities (PSQ), analogous to PTSQ, are calculated and derived only from lands designated as Matrix or Adaptive Management Area (AMA)[mdash]reserved lands (LSRs and Riparian Reserves) do not contribute to the PSQ:

The PSQ is based only on lands that are considered suitable for the production of programmed, sustainable timber yields. Timber suitable lands are those lands physically and economically suited to timber production that are outside of lands designated for forest uses considered incompatible with programmed, sustained timber harvests. Timber suitable lands are located only in the matrix or in Adaptive Management Areas. Lands designated as Congressionally Reserved Areas, Administratively Withdrawn Areas, Late Successional Reserves, and Riparian Reserves are considered unsuitable for sustained timber yields. These lands are therefore not included in calculations of PSQ. (FEIS, p. 3&4- 263) Probable sale level - The annual amount of sawtimber likely to be sold outside of Reserves on a sustainable basis under an option. (FEMAT Report, p. IX-27)

The calculation of PSQs under the NWFP relied on active management of all forest stands, including old growth, through a combination of intermediate thinning and regeneration harvest. The proposed Amendment would prohibit regeneration harvest of old growth stands and generally discourage intermediate harvests in certain other old growth stands. This change would drastically alter the PSQs.

A supplemental report⁶ by the FEMAT that accompanied the NWFP and outlined the modeling and processes for calculating the PSQs made this statement regarding old growth forests:

Most of the harvest in Option 9 (and many other options) over the next decade will come from late- successional forest (over 80 years old). Close to 50 percent will come from forests over 200 years old. (Supplemental FEMAT Report, p. 22)

Finally, for comparison, the 2000 Final EIS for Amendments to Survey & Manage⁷ described the situation quite well:

There are approximately 3 million acres of forest land within the Matrix and Adaptive Management Areas that contribute to PSQ. Approximately one-third of this, or 1.1 million acres, are late-successional forest. On most administrative units, the PSQ is heavily dependent on harvesting late-successional forest for 3 to 5 more decades until early successional stands begin to mature and become available for harvest. Because of this dependence, harvest schedules indicate about 90 percent of PSQ over the next decade is dependent on harvest of late-successional forest. (Final EIS, p. 431)

Finally, for comparison, the 2000 Final EIS for Amendments to Survey & Manage⁷ described the situation quite well: There are approximately 3 million acres of forest land within the Matrix and Adaptive Management Areas that contribute to PSQ. Approximately one-third of this, or 1.1 million acres, are late-successional forest. On most administrative units, the PSQ is heavily dependent on harvesting late-successional forest for 3 to 5 more decades until early successional stands begin to mature and become available for harvest. Because of this dependence, harvest schedules indicate about 90 percent of PSQ over the next decade is dependent on harvest of late-successional forest. (Final EIS, p.431)

As such, the 2000 Final EIS included a robust effects analysis on how the survey & manage amendments would affect the PSQ. A similar effects analysis was warranted for this proposed Amendment. If such an analysis was pursued, we believe that the DEIS would have identified a different set of impacts to timber industry jobs in logging, wood product manufacturing, and pulp production, along with the socioeconomic factors that are closely related to these industries.

Standard 3 (NOGA-FW-STD-03) of the proposed Amendment prohibits timber harvest in old growth for the purpose of timber production. Section 219.19 of the Planning Rule defines timber production as [ldquo]The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.[rdquo] 36 C.F.R. [sect] 219.19. Old growth in areas designated as Matrix and AMA by the NWFP were assumed to be harvested for the purpose of timber production in that plan and, accordingly, were factored into the calculation of the PSQs[mdash]this proposed Amendment significantly alters those PSQs. The Forest Service violated NEPA by failing to take a hard look at the proposed Amendments effects on PSQs.

Additionally, the Adaptive Strategy for Old-Growth Forest Conservation has the potential to significantly alter the management objectives across an unknown number of NFS acres. This alteration, if occurring on lands designated for timber production, would also change the PSQs. As outlined above, the PSQs were calculated on certain lands based on the principles of sustained-yield timber management. These principles include a cycle consisting of intermediate harvests followed by final regeneration harvest that would establish a new forest cohort. Application of the Adaptive Strategy on this land base would derail this cycle and render the PSQs irrelevant and unattainable. Lands that were previously designated for long-term sustained yield timber production would be relegated as quasi-reserves where permanent old- growth recruitment replaces timber production objectives. Such an alteration will have significant effects on timber supply, and the Forest Service[rsquo]s DEIS violated NEPA by failing to take a hard look at those effects.

Hard Look [ndash] Carbon/Climate

Implementation of the Adaptive Strategy requires each National Forest to identify an unknown number of acres

where existing management objectives would be altered. The provisions pertinent to the Adaptive Strategy appear in the DEIS as follows:

Management Approach 1.a (NOGA-FW-MA-01a); Adaptive Strategy for Old-Growth Forest Conservation of the proposed Amendment directs each National Forest to [ldquo]develop and adhere to an Adaptive Strategy for Old-Growth Forest Conservation.[rdquo] The Management Approach lists eight elements that this strategy would accomplish, including the identification and prioritization of areas for the [ldquo]recruitment, retention and promotion of old-growth forests.[rdquo]

Management Approach 1.b (NOGA-FW-MA-01b) directs each National Forest to locate these [ldquo]areas[rdquo] where forests [ldquo]have the inherent capability to sustain future old-growth forest.[rdquo]

Objective 1 (NOGA-FW-OBJ-01) directs each National Forest to [ldquo]create or adopt an Adaptive Strategy for Old-Growth Forest Conservation within 2 years of the old-growth amendment record of decision.[rdquo]

Objective 2 (NOGA-FW-OBJ-02) directs each National Forest to [ldquo]integrate priorities identified in the Strategy into the unit[rsquo]s outyear program of work and initiate at least three proactive stewardship projects/activities in the planning area to contribute to the achievement of oldgrowth forest desired conditions within one year of completing the Adaptive Strategy for Old Growth Forest Conservation Strategy.[rdquo]

Objective 4 (NOGA-FW-OBJ-04) directs each National Forest to ensure that [ldquo]forest ecosystems within the plan area will exhibit a measurable, increasing trend towards appropriate amounts, representativeness, redundancy, and connectivity of old-growth forest that are resilient and adaptable to stressors and likely future environments within ten years of the Adaptive Strategy for Old-Growth Forest Conservation being completed.[rdquo]

Guideline 1 (NOGA-FW-GDL-01) states that [ldquo]in areas that have been identified in the Adaptive Strategy for Old-Growth Forest Conservation as compatible with and prioritized for the development of future old- growth forest, vegetation management projects should be for the purpose of developing those conditions.[rdquo]

The Adaptive Strategy clearly directs each National Forest to drastically alter the management objectives on a so far unquantified amount of NFS land that is not identified as old growth. Indeed, the DEIS clearly states that [ldquo]the amendment does place an emphasis on identifying and prioritizing areas of mature forest to be managed for future old-growth forest.[rdquo] The management approaches, objectives, and guidelines outlined above provide no indication of the scale at which this [ldquo]strategy[rdquo] would and should be implemented. The only guidance provided to local units is that this [ldquo]strategy[rdquo] should be applied to [ldquo]areas where forests have the inherent capability to sustain future old-growth forest.[rdquo]

This ambiguity on scope and scale of the application of this strategy makes the requisite hard look analysis impossible, a reflection of the flawed basis for such a sweeping set of objectives and guidelines. Regardless, the Forest Service violated NEPA because the DEIS failed to take the requisite hard look at the effects of implementing the preferred alternative. Those effects are not limited for example, the new management objectives and guidelines focused on old growth recruitment associated with the Adaptive Strategy would have significant impacts on carbon and climate change. Many standards and guidelines in existing LMPs allow and encourage regeneration harvest of mature forests. In fact, the NFMA requires that the Secretary establish standards to ensure that timber harvest occurs after stands of trees have reached the culmination of mean annual increment (CMAI). The age that corresponds to CMAI varies by National Forest but generally occurs during the mature phase of stand development. Coincidentally, this phase also generally coincides with the point where trees become less effective at sequestering carbon. Ited to timber resources, as we outlined above, but also to an array of other key resources.

There is a growing body of science that supports the notion that timber harvest at or near CMAI maximizes the carbon sequestration potential of any given acre of forestland.

A 2016 study published in *Ecosphere* by Gray et al. concluded that although large trees accumulated carbon at a faster rate than small trees on an individual basis, their contribution to carbon accumulation rates was smaller on an area basis, and their importance relative to small trees declined in older stands compared to younger stands. That study also concluded that old growth and large trees are important carbon stocks, but they play a minor role in additional carbon accumulation.⁸

Similar to the concepts validated by Gray et al., the USDA recently published a Technical Report on the future of America's forests and rangelands.⁹

Key points of the Report include:

- * The projected decrease in young forests and increase in older forests will result in overall decreases in growth rates and carbon sequestration.
- * The amount of carbon sequestered by forests is projected to decline between 2020 and 2070 under all scenarios, with the forest ecosystem projected to be a net source of carbon in 2070.
- * Without active management, significant disturbance, and land use change, forests approach a steady state in terms of C stock change over time.
- * Annual carbon sequestration is projected to decrease, indicating carbon saturation of U.S. forests, due in part to forest aging and senescence.

A recently published report by the Environmental Protection Agency echoed these conclusions regarding the adverse impacts to carbon sequestration due to forest "aging." That report concluded that due to an aging forest land base, increases in the frequency and severity of disturbances in forests in some regions, among other drivers of change, forest carbon density is increasing at a slower rate resulting in an overall decline in the sink strength of forest land remaining forest land in the USA.¹⁰

Based on these technical reports and assessments it is clear that "aging forests" are hampering forest's ability to maximize carbon sequestration and mitigate climate change. The management implications of the Adaptive Strategy will restrict the Forest Service's ability to conduct timber harvest at CMAI thereby inhibiting the capability of NFS lands to mitigate climate change by maximizing carbon sequestration. The Strategy will invariably expand the number of "aging forests" on the NFS and have a profound adverse impact on climate change. These, and other, research papers and assessments were identified and discussed in our comments to the December NOI where we urged the Forest Service to consider them in their carbon/climate change analysis.

The DEIS provided only a cursory analysis of the proposed action's effects on carbon and omitted entirely any effects analysis of climate change in general. The DEIS acknowledged the importance of carbon uptake but provided no analysis of the impact to this uptake resulting from the proposed action. Had the Forest Service conducted such an analysis that included the research we outlined above, the extensive harm to carbon uptake/sequestration would have been revealed. Once again, this the Forest Service cursory review fails to meet NEPA's hard-look standard.

ESA

Failure to Consult under Section 7 of the ESA

The Forest Service is required to undergo Section 7 consultation under the ESA for the proposed Amendment but failed to do so. To comply with the ESA, the Forest Service was required to prepare, at the very minimum, a

biological assessment, given that listed species or critical habitat may be present over the 193 million acres of national forest lands that are impacted by the proposed Amendment.

ESA's Section 7 provides that: Each Federal agency shall, in consultation with and with the assistance of the Secretary [of Interior], insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

16 U.S.C. [sect] 1536(a)(2) (emphases added). To facilitate compliance with the requirements under subsection (a)(2), the action agency (i.e., the Forest Service) shall "request of the Secretary [of Interior] information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. 16 U.S.C. [sect] 1536(c)(1) (emphases added). Therefore, a biological assessment is required if a listed species or critical habitat "may be present" in the action area.

Following the completion of a biological assessment, ESA requires that an action agency consult with Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) (collectively, Services), or both for any agency action that "may affect" a listed species or its critical habitat. See, e.g., *Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv.*, 340 F.3d 969, 974 (9th Cir. 2003) (citing 50 C.F.R. [sect] 402.14(a)); see also 16 U.S.C. [sect] 1536(a)(2)-(c). If the Services concur in writing during informal consultation that the proposed agency action is "not likely to adversely affect any listed species or critical habitat," formal consultation is not required, and the process ends. 50 C.F.R. [sect] 402.14(b)(1). Consultation is also not required if the agency action requests written concurrence from the Services that the proposed action will have "no effect" on a listed species or critical habitat, with the Services providing a concurrence letter. See, e.g., *Sw. Ctr. for Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1447 (9th Cir. 1996). However, if the agency determines that the proposed action is likely to adversely affect the listed species or critical habitat, the Services must issue a Biological Opinion that summarizes "the information on which the opinion is based" and determines whether the action would likely jeopardize a listed species or critical habitat. 16 U.S.C. [sect] 1536(b)(3)(A); 50 C.F.R. [sect] 402.14(h)(1). If the Services determine the action would do so, it issues a "jeopardy" opinion and must suggest any "reasonable and prudent alternatives" that the action agency can implement to avoid jeopardizing a listed species or adversely modifying a critical habitat. 16 U.S.C. [sect] 1536(b)(3)(A); 50 C.F.R. [sect] 402.14(h)(1)(iv)(A), (h)(2).

Here, the Forest Service failed to follow the procedural requirements under the ESA. The Forest Service determined that Section 7 consultation "was not warranted for the old-growth amendment at this time" in violation of the ESA. DEIS at S-11 (emphasis). The Forest Service inappropriately concluded that "reasonable certainty of effects to species does not exist because of the national scale and programmatic nature of the old-growth amendment." Id. However, the Forest Service never made its ESA-mandated threshold request to the Secretary of the Interior of whether listed species or critical habitat "may be present" in the proposed action area, which the answer is an unquestionably a resounding "Yes" given that the proposed amendment encompasses 128 LMPs. The Forest Service simply ignored its obligations to prepare a biological assessment to determine whether formal consultation is necessary. Nor did the Forest Service attempt to request a concurrence letter from the Services.

The Forest Service's contention that the national scope of the amendment relieves the agency of its ESA

obligations has no legal support. There is no authority under the ESA or relevant caselaw to support the Forest Service's desire to circumvent its ESA obligations simply because the proposed action has a broad geographic scope. In fact, FWS and NFMS's Consultation Handbook acknowledges that consultation is required for forest plan amendments, like the proposed Amendment. See Consultation Handbook at 5-7; *id.* at xxii (acknowledging that certain types of national or regional agency actions can have a streamlined consultation process but they are not exempted).¹¹ Unless the Forest Service has been granted an exemption by the Endangered Species Committee—which the agency was not—the Forest Service is not relieved of its ESA obligations. The Forest Service claims that it [qu]commits[rdquo] to Section 7 consultation for any future old-growth conservation actions [qu]where impacts to listed species would occur.[rdquo] Under section 7(d) of the ESA, however, the Forest Service must maintain the status quo by not making [qu]any irreversible or irretrievable commitment of resources[rdquo] under consultation is completed. 16 U.S.C. [sect] 1536(d). Congress enacted section 7(d) [qu]to prevent Federal agencies from [qu]steamrolling[rdquo] activity in order to secure completion of the [proposed action] regardless of their impact on endangered species.[rdquo] *N. Slope Borough v. Andrus*, 486 F. Supp. 332, 356 (D.D.C.), order vacated in part sub nom. *Nat'l Wildlife Fed'n v. Andrus* (D.C. Cir. July 8, 1980), and *aff'd in part, rev'd in part*, 642 F.2d 589 (D.C. Cir. 1980). Therefore, section 7(d) forecloses the implementation of any action that would violate section 7(a)(2) of the ESA.

In sum, the Forest Service has failed to comply with the ESA by either requesting a concurrence letter or preparing a biological assessment to determine whether formal consultation with the Services is necessary. See, e.g., *Friends of Clearwater v. Petrick*, No. 2:20-CV-00243-BLW, 588 F.Supp.3d 1071, 1085 (D. Idaho Mar. 2, 2022) ([qu]The plain language of the statute and regulation thus set out a simple two- step process for an action agency to comply with section 7(c)(1): receive an adequate list and prepare biological assessments for any species on that list.[rdquo]).

Significant Regulatory Action Subject to OMB Review

EO 12866, as amended by EO 14094,¹² requires federal agencies to assess the potential costs and benefits of [qu]significant[rdquo] rules and submit this assessment, along with each rule, to OMB's Office of Information and Regulatory Affairs for review.¹³ EO 14094 defines [qu]significant regulatory action[rdquo] as any regulatory action that is likely to result in a rule that may, among other things, [qu]have an annual effect on the economy of \$200 million or more[rdquo]; or may [qu]adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.[rdquo] 88 Fed. Reg. 21,879, 21,879 (Apr. 6, 2023) (emphasis added).¹⁴ The Forest Service is required to consider the costs and benefits of the proposed Amendment, which is significant regulatory action that is expected to have large economic effects, and to design the proposed Amendment in a cost-effective manner to ensure that the benefits of its action justify the costs.

The Forest Service has not completed any meaningful analysis of the significant economic impacts the proposed Amendment would have on the local and national economies dependent on timber harvest. The proposed Amendment expressly revises Standard 3 (NOGA-FW-STD-03), which has been [qu]completely reworded[rdquo] so that active forest management in old-growth forests

¹² EO 12866, Regulatory Planning and Review, 58 Fed. Reg. 51,735 (Oct. 4, 1993), as amended by EO 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011), and EO 14094, Modernizing Regulatory Review, 88 Fed. Reg. 21,879 (Apr. 6, 2023). ¹³ See Congressional Research Service, Cost-Benefit Analysis in Federal Agency Rulemaking (March 8, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF12058> (last visited Aug. 29, 2024). ¹⁴ Section 1(b) of EO 14094, which amends Section 3(f) of EO 12866.

[qu]shall not be for the purpose of timber production as defined in 36 CFR 219.19.[rdquo] DEIS at 49. Though the DEIS cites and incorporates the agency's [qu]SocioEcon and Cultural Impacts Analysis Report[rdquo] (Report, DEIS at 1), the DEIS and the Report couches the proposed Amendment's

economic impacts primarily in terms of recreation and sustainability, not in terms of the real economic losses—direct and indirect, immediate and long-term—from the loss of timber harvest and wood products production.

The Forest Service expressly states that the proposed Amendment, [ldquo]as currently proposed, would prohibit vegetation management within old-growth forest conditions when the purpose is to grow, tend, harvest, or regenerate trees for economic reasons.[rdquo]15 But the DEIS concludes, without support, that [ldquo]the timber industry is unlikely to be impacted by the amendment, although regional impacts may occur[rdquo] and [ldquo]no effects are expected on traditional timber industry jobs in logging, wood product manufacturing, and pulp production.[rdquo] DEIS at S-14.

The Forest Service[rsquo]s conclusions are patently false, given that the forest products industry will be affected by the proposed Amendment. As outlined above and contrary to the Forest Service[rsquo]s assertions, the proposed Amendment will effectively modify timber suitability and alter PSQs on an unknown amount of NFS acres. The direct effects to the forest products industry as a result of these changes can be assessed by considering the impacts to the industry following past amendments with similar components. The NWFP, which amended 19 LMPs, also drastically modified timber suitability and PSQs and serves as a reasonable comparison for effects on the timber industry.

A 2010 report16 by Paul F. Ehinger & Associates summarized mill closures and job losses in five states from 1990-2010. Closures in three of those states, Washington, Oregon, and California, were located in the footprint of the NWFP. A total of 327 mills in those states closed during this time period, resulting in the loss of 29,131 jobs. These closures and job losses were at least partially a function of the NWFP Amendment. Comparable outcomes resulting from the proposed Amendment are likely, given the similar restrictive nature of both amendments. The Forest Service is required to give substantive consideration of the social and economic sustainability of the proposed Amendment, including analytical requirements, which the agency has not done here. 36 C.F.R. [sect] 219.8(b). Most glaringly, the Forest Service has not submitted the proposed Amendment for analysis by the Office of Management Budget (OMB).

EO 12866 requires agencies to conduct a regulatory analysis for regulatory actions that are significant, and a benefit-cost analysis is the primary analytical tool used for that analysis.17 EO 12866 requires that agencies [ldquo]shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.[rdquo] 58 Fed. Reg. 51,735, 51,735 (Oct. 4, 1993) (Section 1(b)(6)) (emphasis added). Further, EO 14094 directs that [ldquo][r]egulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.[rdquo] 88 Fed. Reg. 21,879, 21,879 (Apr. 6, 2023) (emphasis added). Not only is the DEIS devoid of any discussion of the real economic impacts the proposed Amendment will have to the timber industry and the local and national economics it supports, it makes no mention of satisfying the requirements of EO 12866 or OMB review. Further, the SocioEcon and Cultural Impacts Analysis Report makes only one mention of EO 12866, Report at 77, completely omitting that EO[rsquo]s requirements, makes no mention of EO 14094, and provides no responses to the requirements of either EOs, the significance monetary threshold, or meaningful analysis of the potential economic impacts of the proposed Amendment. Had the Forest Service properly accounted for those impacts, the results would meet that threshold and require OMB review.

CONCLUSION

The forest products sector, including AFRC and its members, are partners of the Forest Service who can help advance its mission to improve the health and productivity of NFS lands. We are also integral to mitigating the most immediate threats to our national forests: wildfire and insects and disease infestations. We spend an incredible amount of time and energy each year to advocating on behalf of the Forest Service to provide the

agency with adequate funding and the necessary tools to help it navigate a complex labyrinth of regulations and standards that stand in the way of meeting its mission and addressing these threats. We make every effort to remove barriers that inhibit the Forest Service's ability to effectively manage NFS lands. We work in close contact with local units to assist and support them in their efforts to implement treatments that align with these goals. Unfortunately, this proposed Amendment runs counter to each of these efforts by creating new barriers and additional layers of complexity to an already overly complex system. As such we are unable to find a path forward through the proposed action alternatives that we could wholly support.

Ultimately, we urge the Forest Service to select Alternative 1, the no-action alternative. However, we suspect that such a decision is unlikely at this point. If the Forest Service does select one of the action alternatives, we strongly urge the Forest Service consider the immediate impacts to projects currently in the NEPA planning process. It would be prudent for the Forest Service to include language in the final decision that allows those projects to proceed unaffected by the impending Amendment. A widespread [ldquo]reset[rdquo] of hundreds of projects, most of which are designed to reduce the risk of high severity wildfire, would be disastrous to our membership, the Forest Service's other partners, and the health of the NFS.

Travis Joseph

AFRC President & CEO

The following material is from the Wyoming County Commissioner's Association & compiled by Micah Christensen. Stevens County views Micah's perspective on NOGA issues to be clear and concise.

Forest Planning and NOGA Required Plan Components and Optional Content Background: On December 20th, 2023, the United States Forest Service (USFS) published a Notice of Intent to amend 128 Land Management Plans (forest plans), through a National Old Growth Amendment (NOGA). On June 21, 2024, the Forest Service published a draft NOGA and Environmental Impact Statement for a 90-day comment period. According to the draft NOGA, the USFS is seeking to develop a [ldquo]consistent management framework for conserving, stewarding, recruiting and monitoring old growth forests.[rdquo] (S-1)

To accomplish this goal, the USFS has identified Alternative 2 as its preferred alternative which it believes [ldquo]would create consistency by ensuring the majority of land management plans for units that contain old-growth forests have management direction for stewardship of existing and recruitment of future old-growth forests that (sic) are resilient over time.[rdquo] (Id.). The proposed NOGA contains new direction that would be added to all forest plans. Understanding the variety of forest types across the National Forest System, differing characteristics of ecosystems and species, and that the threats to old-growth forests differ in regions and geographies, the USFS is also proposing to require that each national forest unit develop an [ldquo]Adaptive Strategy for Old-Growth Forest Conservation[rdquo] within 2 years.

Significant time has been spent in cooperating agency meetings attempting to get clarification on how the [ldquo]Adaptive Strategy[rdquo] concept as written in NOGA aligns with the 2012 Planning Rule, the Forest Service's Land Management Planning Handbook (Planning Handbook), and recent forest plan revisions. Just as all roads lead to Rome, all of NOGA leads to the Adaptive Strategy. While this white paper is not intended to be persuasive per-se, it should help clarify Wyoming's concerns so that a more productive conversation with the USFS can result. What is a Forest Plan: In 1976, Congress passed the National Forest Management Act (NFMA), which mandates forest planning for all forest units. A forest plan serves as the guiding document for all actions and projects within a forest unit boundary giving overarching program level direction for management of

USFS lands and resources. To comply with NFMA, the USFS promulgated forest planning rules, the latest of which is the 2012 Planning Rule. The 2012 Planning Rule describes the host of resources and uses that must be addressed by forest plans, including outdoor recreation, range, timber, watershed, wildlife, and fish. Further, all revised forest plans must address sustainable recreation, protection of cultural and historic resources, management of areas of tribal importance, protection of wilderness areas, protection Page 2 of 7 of wild and scenic rivers, research natural areas, and other plan components for integrated resource management to provide for multiple use as necessary. The USFS is tasked with managing national forest lands for multiple uses, some of which may compete with each other, and the 2012 Planning Rule requires that forest plans are integrated. Integration means that the various pieces of a plan should work together to achieve the individual forest unit's goals. These goals are unique based upon the unit's resources and the people that live, work, and recreate in and around the forest. Forest plans are created, amended, or revised with the help of cooperating agencies (federal agencies, states, local governments, tribes) and the public, through the National Environmental Policy Act (NEPA) process as set forth in the Council of Environmental Quality's regulations for implementing NEPA. The 2012 Planning Rule describes continuous plan amendments as the foundation for "Adaptive Management Strategy" of USFS lands. "A plan may be amended at any time and may be broad or narrow, depending on the need for change." Significantly, it is "amendments" that are specified as the tool "to keep plans current and help units adapt to new information or changing conditions." 36 CFR [sect] 219.13(a). The 2012 Planning Rule has 6 additional requirements for plan amendments including: 1. Base an amendment on a need to change the plan. 2. Provide opportunities for public participation and notification. 3. Comply with NEPA. 4. Follow the applicable format for plan components. 5. Determine which specific substantive requirements within [sect][sect]219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply those requirements within the scope and scale of the amendment. 6. Evaluate effects on species of conservation concern or potential species of conservation concern. What is required content in a forest plan: Under the 2012 Planning Rule all forest plans have required content, often referred to as "plan components." Plan component categories are terms of art with specific definitions and detailed content requirements. Plan components are used to address the resources within the forest unit and require analysis under NEPA. The following is an excerpt prepared by the Tonto National Forest in 2017 that succinctly explains plan components. Plan components are the core elements and content of a forest plan, and all projects and activities should be consistent with Plan Components. They include Desired Conditions: Desired Conditions describe the specific social, economic, and/or ecological characteristics that are desired for the plan Page 3 of 7 area, or a part of the plan area. These are described in enough detail to measure progress toward their achievement, and all management activities should be aimed at achieving the Desired Condition. Desired Conditions can be thought of as the set of goals that help define a collective vision for the National Forest in the future. Objectives: An Objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a Desired Condition or Conditions and should be based on reasonably foreseeable budgets. Objectives outline the tools for how we will reach the Desired Conditions and are mileposts along the road toward the Desired Conditions.

Standards: Standards are the rules we will operate within as we develop projects to accomplish Objectives and move closer to realizing Desired Conditions. These are mandatory constraints on projects and activities that are implemented with the Forest Plan. Guidelines: Like Standards, Guidelines are mandatory constraints on projects and activities that are implemented with the Forest Plan, but unlike Standards, deviations may occur as long as the intent of the Guidelines is met. Suitability: Lands are identified as suitable or not suitable for various types of multiple uses or activities based on the Desired Conditions. The only suitability required under the 2012 planning rule is Timber Suitability. Monitoring: Monitoring helps the responsible official determine if a change in plan content is needed. NOGA provides a similar description of some of these plan components in 2.3.1. on pages 14-15. What is optional content in a forest plan: Under the 2012 Planning Rule, the USFS may also include optional content in its forest plans. "A plan may include additional content, such as potential management approaches or strategies and partnership opportunities or coordination activities." 36 CFR [sect] 219.7(f)(2). The Forest Service's Planning Handbook clarifies and admonishes that optional content should never be worded to suggest they are plan components. Further, the Planning Handbook provides that any

optional content may be changed administratively, without NEPA. Specifically, the Planning Handbook states: This optional content must not be labeled or worded in a way that suggests it is a plan component. In addition, optional content must not Page 4 of 7 include, or appear to include, a [ldquo]to do[rdquo] list of tasks or actions[hellip] If used, management approaches would describe the principal strategies and program priorities the Responsible Official intends to employ to carry out projects and activities developed under the plan. The management approaches can convey a sense of priority and focus among objectives and the likely management emphasis[hellip] Optional plan content can be changed through administrative changes. Planning Handbook, 1909.12.22.4 (emphasis added). An administrative change is defined in the 2012 Planning Rule as [ldquo]any change to a plan that is not a plan amendment or plan revision. Administrative changes include corrections of clerical errors to any part of the plan, conformance of the plan to new statutory or regulatory requirements, or changes to other content in the plan ([sect] 219.7(f)).[rdquo] 36 CFR [sect] 219.13(c) (emphasis added). Pulling again from the public information put together by the Tonto National Forest, they describe management approaches (one of the expressed categories of [ldquo]optional content[rdquo]). Management Approaches: Management Approaches do not offer plan direction and are not required components but describe a strategy to achieve a Desired Condition. Management Approaches often convey how plan components work together to achieve the Desired Condition. Changes to Management Approaches do not require plan amendments. Therefore, looking at the 2012 Planning Rule and the Planning Handbook we know that optional content differs in several significant ways from required plan components. First, and the most obvious, forest plans are not required to contain any optional content (e.g. management approaches, strategies, partnership opportunities, etc.). Second, optional content does not offer plan direction. Third, optional content must be consistent with a forest unit[rsquo]s existing plan components and cannot amend plan components. Fourth, optional content cannot be used to force the USFS to take a particular action. Fifth, optional content can be created, amended, or erased administratively. Finally, optional content does not require NEPA or any public engagement because it does not make any decisions for USFS lands or resources. How does NOGA Propose to Utilize Optional Plan Content: The NOGA includes two layers of optional content. In other words, NOGA utilizes optional content (a management approach) to create optional content (a strategy) within the next two years. NOGA makes it clear in proposed Management Approach 1.a that it is mandatory for forests to [ldquo]develop and adhere to an Adaptive Strategy for Old- Growth Forest Conservation to accomplish[rdquo] a list of eight different pieces of information. (emphasis added). Beyond making the creation of a strategy a requirement, Management Approach 1.a provides a to-do list of things that the Adaptive Strategy must accomplish. This directly conflicts with the FSH1909.12, Page 5 of 7 Section 22.4, [ldquo]This optional content must not be labeled or worded in a way that suggests it is a plan component. In addition, optional content must not include, or appear to include, a [ldquo]to do[rdquo] list of tasks or actions.[rdquo] Additionally, the Management Approach forces the USFS to create a strategy that will change plan components. Specifically, Management Approach 1.a (v) requires the USFS to identify and prioritize areas for recruitment, retention, and promotion of old growth forests. Tiering to this Management Approach 1.a., proposed Guideline 1 then requires that [ldquo]In areas that have been identified in the Adaptive Strategy for Old-Growth Forest Conservation as compatible with and prioritized for the development of future old growth forest, vegetation management projects should be for the purpose of developing those conditions.[rdquo] In other words, the strategy is designed to change how and where projects will be prioritized and implemented. On page 117, NOGA provides further confirmation that the Adaptive Strategies are intended to dictate which areas are managed for old growth forests. [ldquo]The purpose of amendment is to establish a baseline for OG management, not dictate which areas are managed. These are determined through local definitions and Adaptive Strategies.[rdquo] Not only does this Adaptive Strategy fall outside of the 2012 Planning Rule and the Planning Handbook, but this optional content (which should not require NEPA) would necessarily require additional NEPA. The planning rule clearly states that [ldquo]...a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).[rdquo] 36 C.F.R. [sect] 219.13(a). Because the Adaptive Management Strategies are designed to change [ldquo]where plan components will apply[rdquo] by identifying and prioritizing areas for old growth forests, the USFS would be required to complete an additional amendment process and comply with NEPA. Other plan components are also inappropriately tiered to the Adaptive Strategy, including standards and monitoring. Specifically, Standard 3 states [ldquo]Proactive

stewardship in old-growth forests shall not be for the purpose of timber production as defined in 36 CFR 219.19. Since the identification of old-growth forests will occur as the Adaptive Strategy, the Adaptive Strategy will again amend existing forest plans and change management areas without going through NEPA. The Forest Service has pointed to the National Cohesive Wildland Fire Management Strategy as an example of another strategy the USFS has prepared. However, the Cohesive Fire Management Strategy is very broad and addresses broad issues such as (a) Vegetation and Fuels, (b) Homes, Communities, and Value at Risk, (c) Managing Human-caused Ignitions, and (d) Effective and Efficient Wildfire Response. It does not identify specific areas, nor does it prioritize those specific areas for management, nor does it require a changed purpose for future management projects. Page 6 of 7

How is optional content utilized in other forest plans: There are numerous examples of the USFS utilizing Optional Content (i.e. Management Approaches and Strategies) in recent forest plans. However, the USFS has been unable to provide cooperators any examples of optional content that resembles what is being proposed in the NOGA. In the 2024 Grand Mesa, Uncompahgre, and Gunnison National Forest (GMUG) revised forest plan, the USFS uses Management Approaches and Strategies interchangeably and identified both as Management Approaches (MA). For example, the GMUG NFs 2024 Revised Forest Plan included two management approaches for Old Forest, as follows: FW-MA-ECO-08.a: Use available data (remotely sensed products and existing forest inventory) to improve spatial inventory of old forest and potential old forest in the GMUG. FW-MA-ECO-08.b: On a landscape scale, prioritize retention of old forest characteristics that provide habitat for at-risk species, that has limited access, or is considered to be climate refugia (Resistance). (Final Revised Plan for GMUG p 34) The GMUG placed established plan components and optional content for individual resources next to each other. For example, Aquatic Species and Habitat has its own desired conditions, standards, guidelines, objectives, and management approaches. By placing the required plan components and optional content together, the GMUG forest plan explains that they want to illustrate the connections between integrated plan direction. However, the GMUG makes clear that Management Approaches are not plan components; they are not requirements to be met during the course of the plan implementation. (GMUG revised forest plan ROD, page 88). Further the GMUG plan states, Where cross-references are used between standards and guidelines and management approaches, this does not mean a management approach must be implemented to comply with a particular standard or guideline. They are used to identify supporting strategies for implementation facilitate transparency and give the public and governmental entities a clear understanding of the plan and how outcomes would likely be delivered (Planning Handbook 1909.12.22.4). (2024 Revised GMUG forest plan, page 7) (emphasis added). Finally, the GMUG revised forest plan Record of Decision clearly states that Management approaches in the revised plan are not applicable to a determination of project and activity consistency management approaches are not plan components; they are not requirements to be met during the course of plan implementation. (GMUG ROD at 88). In other words, since optional content is not a plan component, it does not need to be evaluated to determine project and activity consistency. In the recently revised Ashley National Forest Plan, the USFS describes optional content in a similar manner in Appendix 3, page 3-1: Page 7 of 7 The potential approaches and strategies are not intended to be all inclusive, nor are they commitments to perform particular actions. The types of actions that are exemplified in this appendix do not commit the Ashley National Forest to perform or permit these actions but are provided as actions that would likely be consistent with plan components and that might be undertaken to maintain or move towards the desired conditions and objectives. Conclusion: NOGA is utilizing optional content (e.g. a management approach that requires the creation of a strategy) as plan components (identifying areas and changing management in those areas). This approach bypasses the required forest plan amendment process including plan integration, NEPA analysis, cocreation of alternatives with cooperating agencies, and public input.

Additionally, since optional content can be changed administratively, any forest supervisor can by themselves (or the influence of a higher-ranking bureaucrat) completely change the strategy with the stroke of a pen. This approach can only exacerbate the politization of forest management at the expense of integrated and comprehensive management decisions being made during the plan amendment/revision process with the help of governmental partners (federal, state, tribal, local governments) inside of a defined NEPA process. NEPA strengthens the voices of those who are most intimately connected to individual forests, possess regulatory

oversight, and regularly serve as partners with the USFS (wildfire, Good Neighbor Authority, infrastructure, etc.). Additionally, the optional content strategy opens a substantial threat to litigation for current and proposed projects. Since strategies are not plan components under the 2012 Planning Rule, they should not require project or activity consistency. However, since the NOGA strategies are clearly designed to change the location and purpose of projects then project and activity consistency would be required. Every national forest has a host of ongoing projects, projects in the works, and projects in the early developmental stages. Beyond initial uncertainty, this could immediately halt projects, create a chilling effect on new project development (waiting 2 years to create and comply with a strategy), and open up every existing project to litigation. This is especially worrisome considering the substantial investment being made and the important work being done with Good Neighbor Authority (GNA) in Wyoming and other states. Beyond the importance of these projects to our communities, Wyoming and other western States have been hiring staff to accomplish important work on national forests through the GNA that the USFS does not have the capacity to accomplish on their own. Stopping that work [ldquo]midstream[rdquo] would be devastating, in terms of accomplishing on-the-groundwork as well as the relationship between the USFS and the states.

ATTACHMENT: NOGA Comments Sep. 2024.pdf - this is the same content that is coded in text box; it was originally only included as an attachment