PACIFIC COAST FEDERATION of FISHERMEN'S ASSOCIATIONS

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TO: Nicholas Douglas, Director, Minerals and Geology Management
United States Forest Service
1617 Cole Boulevard, Bldg. 17
Lakewood, CO 80401

Dear Director Douglas,

The Pacific Coast Federation of Fishermen's Associations (PCFFA) is the largest organization of commercial fishermen and women on the West Coast. For forty years, we have been leading the industry in assuring the rights of individual fishermen and fighting for the long- term survival of commercial fishing as a productive livelihood and way of life.

Our interests extend beyond the concerns expressed by government agencies and environmental groups to protect, restore and maintain self-sustaining populations of native salmon stocks. In order for our members to fish for these stocks, many of which are now listed as threatened or endangered by Federal and State ESA criteria, there has to be a dependable, harvestable surplus above self-sustaining levels, just to be allowed to fish, and to make it worthwhile investing the time and money to buy the permit, hire a crew, gear up, and go fishing.

The success of the anadromous salmon fisheries relies directly on the supply of clean, abundant water for spawning and rearing habitat in inland river systems, many of which run through our National Forests. Any "streamlining" of regulations that causes increased harm to salmon habitat in order to increase the profits of the mining industry or to augment energy supplies, would cause irreparable economic harm to our fishing industry, to our suppliers, to our markets: the retailers, wholesalers and restaurants and other consumers who buy and enjoy our healthful, high quality food product. Salmon have been and can be the basis of a thriving coastal economy for public benefit, public health, providing a multitude of jobs, and sustaining a local and state tax base to provide a variety of public services.

Unfortunately, the TMDL carrying capacity under the Federal Clean Water Act of many West Coast rivers has already been exceeded for sediment and other pollutants, and many of these once-abundant salmon runs of these rivers are now listed as threatened or endangered under the State and Federal Endangered Species Acts. The BLM and the USFS cannot violate state water quality

protections for these beneficial uses without in the process violating the Federal Clean Water Act or its state equivalents.

Therefore, we strongly oppose "streamlining internal processes related to environmental review and permitting" that would decrease regulatory oversight, limit environmental review and public comment by limiting the timeline for project approval, or that undermine the autonomy of the Forest Service to protect, enhance and maintain fishing and other beneficial uses for current and future generations -- which is the essence of the Public Trust Doctrine, which under federal law is embodied in the ESA, Clean Water Act (CWA) and multiple other statutes that govern federal-lands forestry and land use practices

We are concerned that an expedited NEPA process will result in a limited scope of environmental reviews and will limit the ability of the public to comment on important leasing proposals. In some cases, aligning Forest Service leasing procedures with those of the Bureau of Land Management (BLM) will result in less autonomy of the Forest Service to oppose mining operations, which in turn would encourage dangerous operations and increase environmental destruction. We are concerned about the implications of directing the Forest Service to ask the Bureau of Land Management to start their processes.

In our comments we will state our concerns with certain mis-statements in the Background Section as well as the Requested Comment Areas.

Background

We object to the statement: "The Forest Service may not prohibit locatable mineral operations on lands subject to the Mining Law that otherwise comply with applicable law, nor regulate those operations in a manner which amounts to a prohibition." This statement minimizes the power of the Forest Service. While it is difficult for the agency to block establishment of mining claims, the statement ignores their ability to deny operations that would affect vulnerable surface resources, or use the Mining Claims Rights Restoration Act of 1955 to block operations that substantially interfere with other public uses.

We disagree with adopting an expedited review process for exploration operations affecting 5 acres or less. Many very damaging "point sources" of water pollution can and do occur from areas of 5 acres or less. We also disagree with the phrasing here suggesting this change is an "expedited review" when the intention clearly is to change the classification to a "notice level operation," which would allow significant disturbance and damage to mining operations on 5-acres or less without the need for an approved plan. An expedited process would also limit the ability for public comment and environmental review. This change would restrict the autonomy of the Forest Service and undercut its authority and obligation to both identify and to mitigate or prevent significant environmental damage. Under multiple statues (e.g., the ESA and Clean Water Act) the Forest Service is obligated to protect public resources, and this change threatens multiple public resources.

We also reject treating mining operations as infrastructure projects, as suggested in the statement: "Ensure the policy objectives of Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, issued on August 15, 2017." This would place a limit on how long environmental reviews can take, which would put multiple public resources in jeopardy and potentially lead to violations of regulations under multiple statutes such as the Clean Water Act and the Endangered Species Act, should environmental impacts not be sufficiently considered due to artificially created time constraints. Additionally, where state law, such as California's Porter-Cologne Water Quality control Act (California Water Code, Section 7) protects water quality and the "beneficial uses," including cold-water fisheries such as salmon, additional time could be wasted in the long run by shortening USFS environmental review if the result conflicts with state protections. Please recall that all of the environmental and public resource uses of the National Forests have economic benefits that go along with them, including not only fisheries but recreation, and clean water for swimming and drinking.

Requested Comment Areas

We strongly object to the change referenced in comment Section 1, which would in effect change the definition of "notice level operations" to be consistent with that of the BLM. This would reduce the jurisdiction of the Forest Service and limit their ability to reject damaging claims. The change would lead to environmental degradation caused by mining operations on 5-acres or less. This could in turn lead to multiple violations of the Clean Water Act and Endangered Species Act and California's Porter-Cologne Act, as it in effect limits the Forest Service's ability to address environmental concerns before operations began. This could also incentivize mining operators to pursue multiple claims smaller than 5 acres (i.e., artificially breaking what would otherwise logically be larger claims into multiple smaller units) simply in order to decrease the regulatory oversight they would be collectively subjected to. Any such incentivization would jeopardize multiple public resources. Given that it is the duty of the Forest Service to manage lands for the best, long-term benefit of the people, allowing these often highly polluting mining operations to receive only "notice level" scrutiny might lead to irreparable damage and ultimately work against this agency mission.

We believe that the changes addressed in Section 2 would ultimately waste the time of the Forest Service and unnecessarily ease the burden on operators to protect the public land natural resources they must use responsibly. It is not the duty of the Forest Service to make it easier for operators to submit a claim, it is its duty to make sure any such operations are pursued responsibly and any damages to public resources and other beneficial uses such operations may cause are mitigated or avoided.

We also believe encouraging operators to meet with the Forest Service is unnecessary – it seems that the goal here could be easily reached by having well written instructions and having operators read them. We are concerned about what operators may be told by lower-level staff about what environmental measures they do, or do not, ultimately need to take in order to get their plan approved, essentially pre-judgmentally biasing a later regulatory decision before all the facts are known. We are concerned that this might ultimately lead to less comprehensive environmental mitigation plans.

However, we agree with:

(2a) making plan requirements more clear, and requiring more detail from operators to satisfy 228.8 environmental protections;

(2b) encouraging operators to meet with FS officials in ways that could lead to better plans of operations;

(2c) requiring an appropriate FS official to review plans for completeness before beginning the NEPA review, as a means that could save time, and;

(2d) providing an opportunity for operators to meet with FS officials before submitting their plan of operations, and checking to determine that plans are complete before beginning NEPA, as an intermediate step that will likely expedite the process.

We disagree with the changes discussed in Section 3. Expressly permitting an operator to request approval for a modification of an existing plan would allow operators to arbitrarily change the plan as they go – potentially submitting environmentally sound plans initially, but then retracting protective steps later.

We do not think that allowing the Forest Service to require modification without needing to first find that all reasonable measures were taken to predict the environmental impacts is necessary. If the Forest Service is doing its duty to protect public trust resources and conducting appropriate environmental assessments, it should be simple to find that all reasonable measures were taken.

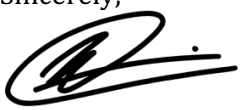
Altering the Forest Service's regulations on non-significant noncompliance as discussed in Section 4 could allow operators to ultimately gain approval for the activities that put them in non-compliance, as the operator can simply gain approval of the new plan.

The adjustments made in Section 6 appear appropriate for assuring long-term reclamation as long as it is assured that the operator is financially responsible for the Financial Guarantees, and not the public.

We are additionally concerned with the updates suggested in Section 7 and Section 8, which would direct the Forest Service to ask the BLM to begin, and then manage, NEPA proceedings. This change would diminish the autonomy of the Forest Service and place the decisional power almost entirely in the hands of the BLM. We should be focused on ensuring that National Forests are protected at the level of National Forests, and not as though they were all BLM lands. National Forests and BLM lands (and O & C lands within BLM holdings) all have different histories and different legal purposes and mandates driving their management, and should continue to be managed by their respective agencies, not all subsumed under BLM management.

Thank you for considering the comments of the commercial fishing industry. We look forward to participating fully in the Scoping and NEPA processes.

Sincerely,



Noah Oppenheim
Executive Director