

DETERMINATION

Introduction - The Tongass National Forest (Tongass) has completed the 5 Year Review of the 1997 Land and Resource Management Plan (Forest Plan). This document summarizes the approach used to conduct the 5 Year Review, provides some key relevant information on current activities associated with the Tongass, and addresses key topics or considerations related to potential amendments or a revision of the Forest Plan. Finally, this document provides the Forest Supervisor's overall determination relative to the 5 Year Review of the Forest Plan.

Approach Used to Conduct 5 Year Review - Direction or guidance to conduct the 5 Year Review came from the Forest Plan Final Environmental Impact Statement (FEIS) and Record of Decision (ROD), and regulation found at 36 CFR 219.10 (g), which states, *"The Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have changed significantly."*

The revised Forest Plan was completed in 1997. However, a new Forest Plan ROD was issued in 1999, which was set aside in 2001 as a result of litigation. That same litigation decision indicated the Forest Plan FEIS needed to be supplemented to evaluate roadless areas on the Tongass for wilderness recommendations. This Forest Plan Supplemental Environmental Impact Statement (SEIS) was completed in 2003. The 2003 SEIS also updated many of the analyses conducted in the 1997 FEIS. The 5 Year Review addresses concerns that have accumulated since 1997 regarding the Forest Plan and its interpretations and applications.

The Tongass identified a number of potential issues or concerns related to the Forest Plan by assessing information provided by Forest Service employees, as well as information provided by the public, as part of past and ongoing Forest Plan and project-related public involvement efforts. The majority of the potential concerns were related to policy and procedures for implementing the Forest Plan. Other potential concerns could lead to a Forest Plan amendment or revision. The most relevant issues of this latter group are discussed in this document, including key factors related to the conditions on the land.

A worksheet was developed for each potential concern so that all pertinent information related to the concern would be located in one place. These worksheets also provide for strategic assignment and tracking of individual concerns through time. The Tongass has established a Forest Plan Maintenance Program to better facilitate ongoing Forest Plan efforts, including responding to the potential concerns identified in this 5 Year Review.

Potential Change Agents - This section briefly describes current activities or programs that potentially affect conditions on the land relevant to the Tongass and the Forest Plan.

Timber Harvest - The Forest Plan FEIS developed an allowable sale quantity (ASQ) of 267 million board feet (MMBF) as part of the purpose and need as required by the Forest and Rangeland Renewable Resources Planning Act. The ASQ is the maximum amount of timber that may be programmed, sold, and harvested per decade. The amount of programmed timber sold and harvested on the Forest will vary from year to year. The following table displays the amount of timber that was offered, sold, and harvested during fiscal years 1997 through 2003, and compares the total to the average annual amount of the ASQ.

Tongass National Forest Timber Offered, Sold and Harvested By Fiscal Year

Fiscal Year	Timber Volume Offered	Timber Volume Sold (Percent of ASQ)	Timber Volume Harvest (Percent of ASQ)	Average Annual ASQ (1997 and 1999 Forest Plan RODs)
1997	188 MMBF	214 MMBF (80% of ASQ)	107 MMBF (40% of ASQ)	267 MMBF
1998	187.1 MMBF	24 MMBF (9% of ASQ)	120 MMBF (45% of ASQ)	267 MMBF
1999	115.3 MMBF	61.4 MMBF* (23% of ASQ)	146 MMBF (55% of ASQ)	267 MMBF
2000	85.3 MMBF	170.3 MMBF** (91% of ASQ)	147 MMBF (79% of ASQ)	187 MMBF***
2001	67.9 MMBF	49.6 MMBF (19% of ASQ)	48 MMBF (18% of ASQ)	267 MMBF****
2002	56.9 MMBF	24.4 MMBF (9% of ASQ)	34 MMBF (13% of ASQ)	267 MMBF
2003	88.8 MMBF	36.5 MMBF	51.3 MMBF (19% of ASQ)	267 MMBF
7 Year Average (Since 1997 Forest Plan Revision)	112.7 MMBF (42% of ASQ)	82.8 MMBF (31% of ASQ)	93.3 MMBF (35% of ASQ)	

* This figure does not include timber sales that were advertised and had bid openings in FY 1999 but awarded in FY 2000.

** This figure includes sales advertised and had bid openings in FY 1999 but were awarded in FY 2000. This was due to financial review of a purchaser before timber sale award.

*** Note the change in ASQ due to transition and implementation of the ROD for the 1999 Modified Forest Plan.

**** Note the change back to the 1997 ASQ level as per the ruling in *Sierra Club et al. v. James Lyons et al.*, March 30, 2001.

*Shown for illustrative purposes only; the measure of the ASQ is based on timber harvest volume "sold" on a decadal average basis.

The timber table shows that the current levels of timber offered, sold, and harvested are not at or near the 1997 and/or the 1999 Forest Plan ASQ ceilings. The effects of timber harvest are below the amount analyzed in the 1997 Forest Plan FEIS and/or the 1999 ROD. Due to litigation and court orders, the Forest is offering a level of timber for sale that is substantially below that analyzed and permitted under the Forest Plan ASQ calculation and planned programmed harvest.

Biodiversity analyses within the Forest Plan FEIS assumed the maximum level of harvest each year for 100 years. An ASQ of 267 MMBF equates to an annual harvest of about 8,520 acres of productive old-growth for the first decade of the plan. About 16,472 acres have been harvested on the Tongass the five-year period from 1998 – 2002. This amount of harvest equates to about 3,294 acres annually, less than half the maximum rate

modeled in the Forest Plan (2002 Monitoring Report, pp. 2-164 to 2-165). The harvest level (51.3 MMBF) for 2003 was similar to the previous two years, and if factored in, would further reduce the average annual acreage. Therefore, the magnitude of timber harvest and the potential impacts on biodiversity have been less than those forecast in the Forest Plan.

The Forest Plan anticipated an annual amount of 106 miles of new road to support the annual timber harvest of 267 MMBF (2003 SEIS, Table 3.3-15, p. 3-109). To support the average 93.3 MMBF of timber harvested, there were an average of about 26 miles of new road constructed between 1997 and 2003. Miles of road construction varies from year to year. For example, new road construction ranged from about 79 miles in 1997, 2 miles in 1999, 72 miles in 2000, and none in 2002. Overall, the average mile per year is well below what was forecast or modeled in the Forest Plan.

The total amount of National Forest roads constructed on the Tongass is about 5000 miles (SEIS, page 3-107) of which approximately 29% (approx. 1,450 miles) were constructed as temporary roads or have been determined they are no longer needed for the long term permanent Tongass road system. Most of these roads have been decommissioned. The remaining 71% (approx. 3,560 miles) of the roads are considered classified or permanent roads, of these about 1,260 miles (35%) are maintenance level 1 roads that are in storage and closed to normal passenger vehicle use. The roads open to public use include about 820 miles for passenger vehicles and about 1,480 miles open to high clearance vehicles. Much effort has been used to improve the overall management of the Tongass road system in recent years. There has been a significant trend in decommissioning roads no longer needed for long term management of the Forest. There has also been a significant reduction of miles of road open to normal vehicular traffic and this trend is expected to continue. This trend also reflects significant reductions in the deferred maintenance costs associated with the Tongass road system. Somewhat related to the efforts to reduce deferred maintenance on the Tongass include high levels of effort to correct fish passage concerns on existing roads. At this time there remains less than 100 miles of potential anadromous fish habitat that could be blocked to fish passage. Much of these concerns are related to passage of juvenile resident fish through culverts. No major fish producing streams are included in the streams with inventoried fish passage concerns. There are more than 16,000 miles of anadromous fish streams on the Tongass.

There is no indication the Forest Plan, including the allowable sale quantity, needs to be revised at this time because of lower levels of timber harvest and road construction, even with the fluctuations of timber volume sold or harvested from year to year.

Recreation and Tourism – Recreation and tourism in the region and state is seasonal, with over 80 percent of Alaska’s visitors arriving during the summer season from May through September. The number of visitors to Southeast Alaska has increased over the past decade and those trends are expected to continue. The number of summer visitors to Southeast Alaska increased by 101 percent from 1993 to 2001, increasing from 502,800 in 1993 to 1,010,352 in 2001 (SEIS, p. 3-129). Increases in cruise ship passengers account for the majority of the growth. The Forest serves these visitors by providing

visitor centers and excursion opportunities through outfitter/guides. The number of visitors to the Mendenhall Glacier has increased since 1997. The number of Juneau Icefield helicopter landings for cruise ship passengers and other outfitter/guide opportunities has also increased since 1997. Outfitter/guides require special use permits to operate on the Tongass, and are required to report annual use as part of their permit. To accommodate the special use permit authorization, the Forest Service determines the appropriate use level through site-specific carrying capacity considerations. For example, the Shoreline Outfitter/Guide EIS is being prepared for the north portion of the Tongass to refine management direction for almost 5,300 miles of shoreline along the coast of islands. The analysis area includes approximately seven million acres of the Admiralty Island National Monument, and the Hoonah, Sitka, and Juneau ranger districts.

The Forest Plan assumed that recreation use and demand will continue to increase on an annual basis for Tongass-related recreation (Forest Plan FEIS, Part 2, Figure 3-24, p. 3-460, with updated information in the 2003 Forest Plan SEIS, pp. 3-256 to 3-265). Each management prescription contains direction to manage the recreation settings to the standards established for their respective ROS classifications and the purposes called for within the prescription. The management prescriptions and standards and guidelines should assist in maintaining and facilitating future growth (Forest Plan FEIS, p. 3-147). Overall, forest-wide monitoring indicates that recreation visits to day use areas, campgrounds and cabins are either stable or decreasing on the Forest (2002 Monitoring Report, page 2-77). Depending on location, some cabins do receive continued levels of high use.

The Forest Plan adequately accounted for the growth in recreation and tourism on the Tongass. Since the increase in tourism use results in site-specific carrying capacity studies, there is no indication the Forest Plan needs to be revised at this time because of the growth in recreation and tourism in Southeast Alaska.

Land Adjustments - The Tongass has had 49,463 acres conveyed to other entities since 1997. Most of these land adjustments include conveyances of lands to State of Alaska and Native Corporation selections, and to the holders of Alaska Native Allotments. Also included in this figure are land exchanges, a Small Tracts Act sale, and the disposal of two lighthouse reserves. During this same time period, the Tongass acquired 5,663 acres from land exchanges, purchases, and donations.

Generally, the acquired lands are in small, isolated parcels and most are in congressionally designated wilderness. There are two notable exceptions to this: the Mt. Verstovia purchase in 2003 (1,043 acres), and the Petersburg Creek purchase in 2004 (2,939 acres). Congress mandated the purchase of these parcels from the Alaska State Mental Health Land Trust.

The Mt. Verstovia parcel, located near Sitka, is now federal land, but is outside the proclaimed national forest boundary; therefore, it is not officially part of the Tongass National Forest. The Alaska Region lands program has recommended to the Forest

Service Washington Office that legislation be requested to modify the Tongass boundary to include this parcel.

The Petersburg Creek parcel is within the Tongass National Forest boundary, and is adjacent both to the Petersburg Creek – Duncan Salt Chuck Wilderness and to lands with a Semi-remote Recreation land use designation (LUD). The Petersburg Ranger District staff is analyzing the acquired lands and will be recommending a LUD designation with a future non-significant Forest Plan amendment to address this parcel.

The lands transferred in and out of the Forest are a relatively small portion of the Forest or even any particular land use designation. Most of the analyses of each individual adjustments concluded that they involved a net gain to the goals of the Forest Plans. The land transfers that did not conclude a net gain usually involved mitigation that minimized conflict with Forest Plan goals. All together, the land adjustments since the adoption of the 1997 Forest Plan have a net effect of enhancing the achievement of Forest Plan goals and do not require any significant revision of the Forest Plan.

Summary of Forest Plan Amendments – Between approval of the 1997 Forest Plan and September 30, 2003, 20 Plan amendments have been completed. Two of these amendments include changes to electronic or communication sites, which do not change LUDs. The majority of the amendments (18) made adjustments to LUDs. These amendments included correction of the Wild River LUD associated with Niblack Lakes and Streams system, and adjustments of small old-growth reserves (OGRs) as anticipated by the 1997 Forest Plan (Appendix K and ROD at page 33). Small OGRs are systematically reviewed as part of individual timber sale projects to determine their adequacy and capability in relation to Forest Plan guidelines. As of September 2003, seventeen amendments modified small OGRs. The table below identifies changes in old-growth LUDs as a result of project level decisions from 1998 – 2003. None of these changes significantly affected the spacing of the reserves, and they usually have resulted in increases to the overall size and amount of productive old-growth in the reserves.

Summary of Acreage Changes in the Old-growth LUDs Documented in Project-level NEPA RODs from FY 1998- 2003².

Project FY ROD Signed	VCU	OGR Acres (POG) on 5/97	Guideline OGR Acres (POG) ¹	Modified OGR Acres (POG)	Net Change OGR Acres (POG)	Net Change Suitable Acres ^{4&6}	Comments
Canal Hoya 1998	5200	2,090 (1,630)	2,901 (1,450)	9,210 (2,740)	7,120 (1,110)	-151	1) Expanded to meet required size
Chasina 1998	6800	1,525 (537) ²	637 (318)	2,202 (842)	677 (305)	-78	1) Too small due to private lands. 2) Expanded to meet size requirement
Cholmondeley 2003	615, 616,	14,396 (5,079)	7,411 (3,841)	12,889 (5,416)	1507 (-337)	-5,979	1) Expanded to increase POG

Project FY ROD Signed	VCU	OGR Acres (POG) on 5/97	Guideline OGR Acres (POG) ¹	Modified OGR Acres (POG)	Net Change OGR Acres (POG)	Net Change Suitable Acres ^{4&6}	Comments
	617, 675, 676						2) Improve locations
Control Lake 1998	5972, 5971	5,073 (2,418) ²	3,404 (1,702)	4,596 (2,359) ²	-477 (-59)	304	1) Remove 2nd growth 2) Improve connectivity 3) Includes small part of 5980
Crystal Cr. (Delta Cr.) 1998	487	2,800 (1,680)	3,195 (1,598)	4,100 (2,340)	1,300 (660)	6	1) Include goat range 2) Maintain Paterson R. corridor 3) Reduce 2nd growth
Crystal Cr. (Brown Cove) 1998	489 ⁵	4,650 (2,550)	6,444 (3,222)	4,840 (2,640)	190 (90)	-372	1) Add goat range 2) Improve connectivity 3) Brown Cove in same VCU
Crystal Cr. (Pt Agassiz) 1998	489	2,350 (1,260)	Part of Brown Cove	2,270 (1,400)	-80 (140)	-306	1) Reduce beach and riparian buffers 2) Add high volume POG
Finger Mountain 2003	231 232	4,305 (2,301)	4,829 (2,415)	4,898 (2,726)	593 (425)	-593	1) Meet POG requirements
Fire Cove Salvage 2002	739	3,650 (2,194)	4,688 (2,344)	3,853 (2,692)	203 (498)	-447	1) Meet POG requirements
Todahl Backline 1998	443	1,557 (687)	2,106 (1,598)	2,159 (1,090)	602 (403)	-361	1) Meet POG requirements
Niblack EA 1998	6830	583 (344)	1,414 (707)	1,499 (828)	916 (484)	252	1) Correct LUD error
Nemo Loop Thoms Lake 1998	479	12,203 (7,157)	10,000 (5,000)	12,430 (7,917)	227 (760)	-755	1) Fixed mapping error to allow road corridor 2) Improve connectivity
Sea Level 1999	756	1,160 (800)	1,308 (654)	1,395 (716)	235 (-84)	-315	1) Meet size requirement 2) Improve connectivity
Kuakan T.S. 2000	525	1,141 (931)	1,526 (763)	1,564 (999)	423 (68)	-126	1) Meet size requirement 2) Improve location
Doughnut T.S. 2000	476 477	2,001 (1,560)	3,090 (1,540)	3,090 (1,620)	1,089 (60)	-19	1) Meet size requirement
Polk Small Sales 2000	620	3,788 (1,963)	3,759 (1,879)	3,808 (2,057)	20 (94)	-153	1) Better placement
Luck Lake 2000	581 582 583	5,984 (2,884)	5,874 (3,015)	6,156 (3,841)	172 (957)	-537	1) Meet size requirement 2) Improve location
Salty EA 2000	747	2,576 (1,821)	2,546 (1,273)	2,603 (1,871)	27 (50)	-27	1) Meet size requirement 2) Improve connectivity

Project FY ROD Signed	VCU	OGR Acres (POG) on 5/97	Guideline OGR Acres (POG) ¹	Modified OGR Acres (POG)	Net Change OGR Acres (POG)	Net Change Suitable Acres ^{4&6}	Comments
Madan 2003	502 504	1,791 (1,443)	2,685 (1,343)	2,696 (2,090)	-905 (-647)	-1,124	1) Improve location
Woodpecker 2003	448 452	4,920 (3,880)	9,064 (4,532)	4,530 (3,850)	-390 (-30)	50	1) Meet size requirement 2) Improve location
Total	N/A	78,543 (43,119)	76,881 (39,194)	90,788 (50,034)	13,449 (4,947)	-10,731	

1) Required acreage (Appendix K, Forest Plan 1997).

2) Numbers not found in environmental document. It was determined by subsequent GIS analysis for this report.

3) All numbers are in acres; POG = volume strata High, Medium, and Low; OGR = old-growth reserve.

4) Suitable acres are those that are suitable for timber harvest.

5) VCU 489 has two small OGRs (Pt Agassiz and Brown Cove), when combined they exceed guideline acres for VCU 489.

6) Required to be reported here as part of the resolution of an appeal on the Crystal Creek FEIS (#99-10-00-0006-A15).

Note: Emerald Bay timber sale project decision is still pending after appeals of the ROD.

As shown in the table above, amendments to the Forest Plan have resulted in an increase of 13,449 acres, including 4,947 acres of productive old-growth (POG), within the Old-Growth Habitat LUD. The net change to acres suitable for timber harvest is a decrease of 10,731 acres. Since May 1997, project level decisions have generally increased the size and improved the composition of old-growth reserves. Note that the Cholmondeley amendment was much larger than the other amendments. This is because the amendment made OGR adjustments designed, in part, to add old-growth acreage to a medium OGR that did not meet the minimum guidelines (Forest Plan, Appendix K, p. K-1).

The cumulative adjustments to Land Use Designations, in particular those made to adjust small OGRs, were anticipated by the Forest Plan and are relatively small in comparison to the overall land base. The net effect of all the modifications to the old growth reserves has been to enhance the achievement of the Forest Plan's goals for the old growth reserves system.

Implementation of the Forest Plan – Three intervening events between 1997 and 2004 prominently affected the implementation of the Forest Plan:

1. The 1999 Forest Plan ROD. In resolving the administrative appeals on the 1997 Forest Plan, the Under Secretary of Agriculture issued a ROD on April 13, 1999, implementing a new Forest Plan (1999 Forest Plan). The 1999 Forest Plan changed standards and guidelines relating to protections for the wolf, changed the timber rotation for 42 wildlife analysis areas from 100-year to 200-year rotations, and moved 18 “areas of special interest,” totaling 233,800 acres, from land use designations that allow for commercial timber harvesting to designations that did not allow for commercial timber harvesting. The estimated effect of the 1999 Forest Plan was to reduce the Forest Plan allowable sale quantity from 267 MMBF to 187 MMBF per year. The 1999 Forest Plan also directed that the date of the Five Year review would be based upon the effective date of the 1999 Forest Plan. However, the 1999 Forest Plan was voided by the District Court

on March 30, 2001 (*Alaska Forest Association v. U.S. Department of Agriculture*, No. J99-0013 CV (D. Alaska)).

2. Wilderness Recommendation and SEIS. On March 30, 2001, the District Court enjoined most activities that would affect inventoried roadless areas until a SEIS and a recommendation for new wilderness areas was adopted (*Sierra Club v. Lyons*, No. J00-0009 CV (D. Alaska)). The 2003 SEIS was completed February 24, 2003. The 2003 SEIS ROD re-adopted the 1997 Forest Plan, and recommended no additional wilderness areas be designated. Administrative appeal and judicial review of the 2003 SEIS Record of Decision was prohibited by legislation (Section 335 of the 2003 Interior Appropriations Act).

3. Roadless Area Conservation Rule. The Department of Agriculture adopted a nationwide Roadless Area Conservation Rule on January 12, 2001, which prohibited most commercial timber harvesting in inventoried roadless areas on all national forests. The rule affected the Tongass by requiring additional process requirements on timber sale projects in inventoried roadless areas for which decisions or notices of intent had been published prior to the rule. The rule also prohibited new timber sale plans and decisions made or scheduled after issuance of the rule. The rule had the potential to reduce the Forest Plan ASQ to about 50 MMBF per year, especially over the next few decades. Several states and other parties challenged the rule in various courts across the country. The roadless rule's application to national forests in Alaska was challenged in *State of Alaska v. U.S. Department of Agriculture*, No. A01-039 CV (D. Alaska). A settlement resolving the litigation called for the Department of Agriculture to publish a proposed rule that would not apply the roadless rule to the Tongass and an advanced notice of proposed rulemaking that would take public comment on whether the roadless rule should apply to national forests in Alaska. Both notices were published July 15, 2003. On December 30, 2003, the Department of Agriculture adopted an interim final rule that amended the national roadless rule to temporarily exclude the Tongass from the prohibitions against timber harvest and road construction in the roadless rule until a subsequent final rule was issued on the roadless rule's applicability in Alaska.

Chronology of Notable Events in Tongass Forest Plan Implementation

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| May 23, 1997 | The Regional Forester signed the 1997 Forest Plan ROD. |
| September 25, 1997 | The deadline for appealing the 1997 Forest Plan to the Chief of the Forest Service drew 33 administrative appeals. |
| August 7, 1998 | The Tongass Plan Implementation Team (TPIT), a collaboration of the Forest Service and other Federal and State agencies, issues a series of papers clarifying the management direction in the Forest Plan. |
| April 13, 1999 | The Under Secretary of Agriculture issued decisions on the 33 administrative appeals and issued a 1999 Forest Plan ROD. The 1999 Forest Plan changed standards and guidelines relating to protections for the wolf; changed the timber rotation for some |

areas to 200-year rotations; and moved 18 “areas of special interest,” totaling 233,800 acres, from land use designations that allow for commercial timber harvesting to designations that did not allow for commercial timber harvesting. The estimated effect of the 1999 Forest Plan was to reduce the Forest Plan allowable sale quantity from an annual average of 267 MMBF to 187 MMBF.

- October 1, 1999 Forest Service and other federal agencies began management of subsistence resources on inland waters within federal public land in Alaska.
- April 10, 2000 Forest Service adopted handbook direction on Responding to Market Demand on the Tongass (65 *Federal Register* 18962). The direction links the timber market demand estimates displayed in the Forest Plan and the annual timber sale offered from the Tongass.
- January 12, 2001 Department of Agriculture issues Roadless Area Conservation Rule (66 *Federal Register* 3644). The rule affects the Tongass by generally prohibiting timber harvest and road construction on 9.3 million acres of inventoried roadless areas, including approximately 2.3 million acres that were in land use designations allowing for commercial timber harvest.
- March 30, 2001 District Court for Alaska upholds various challenges by the timber industry to the 1997 Forest Plan, but vacates the 1999 Forest Plan ROD unless a supplemental EIS is prepared to evaluate the changes made to the 1997 Forest Plan (*Alaska Forest Association v. Department of Agriculture*).
- March 30, 2001 District Court for Alaska enjoins timber harvest in inventoried roadless areas pending an evaluation of alternatives for recommending wilderness designations to Congress (*Sierra Club v. Lyons*).
- September 7, 2001 Tongass NF issues a permit to construct the Swan-Tyee electrical intertie, which runs 57 miles over land connecting Ketchikan’s Swan Lake hydroelectric facility with the Tyee Lake facility serving Wrangell and Petersburg. The intertie will reduce the dependence on diesel fuel, reducing air emissions and the risk of fuel spills.
- February 24, 2003 The Tongass issued the 2003 SEIS and ROD re-adopting the 1997 Forest Plan, and recommending to the Secretary of Agriculture that no additional wilderness areas be designated by Congress. The 2003 SEIS also lifted the injunction issued in *Sierra Club v. Lyons*.
- June 10, 2003 Department of Agriculture entered into a settlement agreement with the State of Alaska and other plaintiffs committing to publish a proposed rule that would temporarily exempt the Tongass from application of the roadless rule until completion of a rulemaking

process to make permanent amendments to the roadless rule, and to publish an advance notice of proposed rulemaking to exempt both the Tongass and Chugach National Forests from the application of the roadless rule (*State Alaska v. U.S. Department of Agriculture*).

- December 30, 2003 Department of Agriculture adopted an interim final rule that amended the national roadless rule to temporarily exclude the Tongass from the prohibitions against timber harvest and road construction in the roadless rule until a subsequent final rule is issued on the roadless rule's applicability in the state of Alaska (68 *Federal Register* 75136).
- September 14, 2004 District Court for the Western District of Washington upholds the Tongass Forest Plan and other forest plans and timber sales against challenges that the forest plans and timber sales must provide economic assessments that monetize non-market values and demonstrate that the selected alternative provides the maximum net public benefit (*Forest Conservation Council v. U.S. Forest Service*).
- September 24, 2004 District Court for Alaska upheld the 1997 Forest Plan against challenges by environmental organizations (*Natural Resources Defense Council v. U.S. Forest Service*).

Summary of Forest Plan Related Litigation – The following is a summary of Forest Plan litigation and how it relates to implementation of the Forest Plan:

Sierra Club v. Lyons, No. J00-0009 CV (D. Alaska) challenged the 1997 Forest Plan consideration of recommending new wilderness areas. On March 30, 2001, the District Court held that the Forest Plan EIS should have considered whether new areas should be recommended for designation as wilderness areas. The Court enjoined timber harvest and other activities that occur in inventoried roadless areas until the Tongass prepared the SEIS. The Tongass issued the SEIS on February 24, 2003, which ended the injunction.

Alaska Forest Ass'n v. U.S. Department of Agriculture, No. J99-0013 CV (D. Alaska) challenged the 1997 and 1999 Tongass Forest Plans. On March 30, 2001, the Alaska District Court upheld the 1997 Forest Plan, but enjoined the 1999 Forest Plan ROD unless a SEIS was issued to analyze the changes. The case is currently on appeal to the U.S. Court of Appeals for the Ninth Circuit.

Alaska Pulp Corporation v. U.S., No. 95-153 (Fed. Cl.) sought over \$1.6 billion in damages and interest stemming from the termination of the APC's long term timber contract on April 14, 1994. On February 14, 2001 the U.S. Court of Federal Claims held the United States was liable for breach of the contract. On January 28, 2004, the U.S. Court of Federal Claims held that there were no damages for the breach. The decisions were not appealed.

Forest Conservation Council v. U.S. Forest Service, No. C02-1293 (W.D. Wash.) is a challenge to the Forest Plan and four timber sale EISs (Canal Hoya, Rowan, Northwest Baranof, and Sea Level) on the Tongass, as well as a challenge to seven other forest plans and 21 timber sales in the Pacific Northwest Region. Plaintiffs argued that the forest plans and timber sales must provide economic assessments that monetize non-market values and demonstrate that the selected alternative provides the maximum net public benefit. On September 14, 2004, the District Court issued a decision upholding the Forest Plan and all other decisions challenged, and dismissed the claims.

Southwest Center for Biological Diversity v. Norton, No. 98-0934 (D.D.C.) is the latest in a series of cases challenging the U.S. Fish and Wildlife Service's decision that the Queen Charlotte goshawk did not warrant listing as a threatened or endangered species, based in part on the 1997 Tongass Forest Plan. On May 24, 2004 the District Court upheld the FWS decision as applied to the Tongass NF, but remanded the decision to FWS to determine the goshawk's status on Vancouver Island in British Columbia.

State of Alaska v. U.S. Department of Agriculture, No. A01-039 CV (D. Alaska). On June 10, 2003, the parties entered into a settlement agreement committing to publish a proposed rule that would temporarily exempt the Tongass from application of the roadless rule until completion of a rulemaking process to make permanent amendments to the roadless rule, and to publish an advance notice of proposed rulemaking to exempt both the Tongass and Chugach national forests from application of the roadless rule.

State of Alaska v. United States, No. 28 (S. Ct., lodged 11/26/99) is litigation before the U.S. Supreme Court in which the State of Alaska seeks quiet title to various lands beneath marine waters within the proclaimed boundaries of the Tongass and Glacier Bay National Park and Preserve.

Southeast Alaska Conservation Council v. Rey, No. J03-0025 CV (D. Alaska) challenged the Fusion timber sale ten-year contract, which involved timber harvest units analyzed in the Chasina, Control Lake and Polk Inlet timber sale EISs. The case ended with a July 13, 2004 settlement between the parties.

Natural Resources Defense Council v. U.S. Forest Service, No. J03-029 CV (D. Alaska) ("*NRDC I*") challenged the Forest Plan and six timber sale EISs (Finger Mountain, Cholmondeley, Sea Level, Canal Hoya, Crane and Rowan Mountain, and Chasina) alleging the 1997 Forest Plan improperly displayed or used timber demand forecasts and contrary views of scientists. On September 24, 2004, the District Court upheld the Forest Plan on all claims. The decision has been appealed to the Ninth Circuit.

Natural Resources Defense Council v. U.S. Forest Service, No. J04-0002 CV (D. Alaska) ("*NRDC II*") challenged the Tongass Forest Plan and the Madan timber sale. The complaint raised the same claims as the NRDC I case and was joined in that litigation including appeal to the Ninth Circuit.

Natural Resources Defense Council v. U.S. Forest Service, No. J04-0010 CV (D. Alaska) (“*NRDC IIP*”) challenged the Forest Plan and the Woodpecker timber sale. The complaint had many of the same claims as the NRDC I and NRDC II litigation plus one other claim, an alleged violation of the National Environmental Policy Act (NEPA) that the Woodpecker EIS failed to adequately present the public investment and costs involved with preparing and administering the timber sale, is being briefed separately. This case currently resides in the District Court.

Tongass Conservancy v. Glickman, No. J97-029 (D. Alaska) challenged the policy of special use fee calculations. The District Court held the gross revenue method of calculating fees was not proper on October 6, 1998. The Alaska Region subsequently adopted a flat fee system for special use fees.

Summary of Related Legislation – Legislation that directly affects the Tongass is not uncommon. The following are two pieces of legislation which directly relate to the Forest Plan or implementation of the Forest Plan:

1. *FY 2000 Interior Appropriations Act*, section 333, and almost identical provisions in section 328 of the *FY 2001 Interior Appropriations Act*, and section of 323 of the *FY 2002 Interior Appropriations Act*:

SEC. 333. No timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised under the transaction evidence appraisal system using domestic Alaska values for western red cedar: Provided, That sales which are deficit when appraised under the transaction evidence appraisal system using domestic Alaska values for western red cedar may be advertised upon receipt of a written request by a prospective, informed bidder, who has the opportunity to review the Forest Service's cruise and harvest cost estimate for that timber. Program accomplishments shall be based on volume sold. Should Region 10 sell, in fiscal year 2000, the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan in sales which are not deficit when appraised under the transaction evidence appraisal system using domestic Alaska values for western red cedar, all of the western red cedar timber from those sales which is surplus to the needs of domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. Should Region 10 sell, in fiscal year 2000, less than the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan in sales which are not deficit when appraised under the transaction evidence appraisal system using domestic Alaska values for western red cedar, the volume of western red cedar timber available to domestic processors at prevailing domestic prices in the contiguous 48 United States shall be that volume: (i) which is surplus to the needs of domestic processors in Alaska; and (ii) is that percent of the surplus western red cedar volume determined by calculating the ratio of the total timber volume which has been sold on the Tongass to the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan. The percentage shall be calculated by Region 10 on a rolling basis as each sale is sold (for purposes of this amendment, a "rolling basis" shall mean that the determination of how much western red cedar is eligible for sale to various markets shall be made at the time each sale is awarded). Western red cedar shall be deemed "surplus to the needs of domestic processors in Alaska" when the timber sale holder has presented to the Forest Service documentation of the inability to sell western red cedar logs from a given sale to domestic Alaska processors at price equal to or greater than the log selling value stated in the contract. All additional western red cedar volume

not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

2. FY 2003 Interior Appropriations Act, section 318, and almost identical provisions in section 318 of the FY 2004 Interior Appropriations Act:

SEC. 318. No timber sale in Region 10 shall be advertised if the indicated rate is deficit when appraised using a residual value approach that assigns domestic Alaska values for western red cedar. Program accomplishments shall be based on volume sold. Should Region 10 sell, in fiscal year 2003, the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western red cedar, all of the western red cedar timber from those sales which is surplus to the needs of domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. Should Region 10 sell, in fiscal year 2003, less than the annual average portion of the decadal allowable sale quantity called for in the Tongass Land Management Plan in sales which are not deficit when appraised using a residual value approach that assigns domestic Alaska values for western red cedar, the volume of western red cedar timber available to domestic processors at prevailing domestic prices in the contiguous 48 United States shall be that volume: (i) which is surplus to the needs of domestic processors in Alaska, and (ii) is that percent of the surplus western red cedar volume determined by calculating the ratio of the total timber volume which has been sold on the Tongass to the annual average portion of the decadal allowable sale quantity called for in the current Tongass Land Management Plan. The percentage shall be calculated by Region 10 on a rolling basis as each sale is sold (for purposes of this amendment, a 'rolling basis' shall mean that the determination of how much western red cedar is eligible for sale to various markets shall be made at the time each sale is awarded). Western red cedar shall be deemed 'surplus to the needs of domestic processors in Alaska' when the timber sale holder has presented to the Forest Service documentation of the inability to sell western red cedar logs from a given sale to domestic Alaska processors at a price equal to or greater than the log selling value stated in the contract. All additional western red cedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may be sold at prevailing export prices at the election of the timber sale holder.

3. FY 2003 Interior and Related Agencies Appropriations Act, Public Law No.108-7, enacted on February 20, 2003, section 335 provides:

Sec. 335. The Record of Decision for the 2003 Supplemental Environmental Impact Statement for the 1997 Tongass Land Management Plan shall not be reviewed under any Forest Service administrative appeal process, and its adequacy shall not be subject to judicial review by any court of the United States.

4. FY 2004 Interior and Related Agencies Appropriations Act, Public Law No. 108-108, enacted November 10, 2003, section 338 provides:

SEC. 338. Any application for judicial review of a Record of Decision for any timber sale in Region 10 of the Forest Service that had a Notice of Intent prepared on or before January 1, 2003 shall--

(1) be filed in the Alaska District of the Federal District Court within 30 days after exhaustion of the Forest Service administrative appeals process (36 CFR 215) or within 30 days of enactment of this Act if the administrative appeals process has been exhausted prior to enactment of this Act, and the Forest Service shall strictly comply with the schedule for completion of administrative action; and

(2) be completed and a decision rendered by the court not later than 180 days from the date such request for review is filed; if a decision is not rendered by the court within 180 days as required by this subsection, the Secretary of Agriculture shall petition the court to proceed with the action.

Subjects Potentially Related to Forest Plan Amendment or Revision– The following sections describe subjects that are most often discussed in terms of potential reasons to amend or revise the Forest Plan.

Old-Growth Conservation Strategy - A centerpiece of the Forest Plan is the old-growth conservation strategy designed to assure sustainability for wildlife and other resources and values while allowing sustainable development on a relatively small portion of the Tongass to support communities in Southeast Alaska. The Forest Plan EIS evaluated the conservation strategy and related species viability assessments against the premise of full implementation of the Forest Plan, including the average annual harvest of 267 MMBF for 100 years. The Forest Plan EIS, including Appendix N, the 1997 Record of Decision (ROD at p. 35) concluded that the old-growth conservation strategy provided a high level of confidence that even with the maximum allowable timber harvest, the Forest Plan would provide for viable populations of species. The implementation of the Forest Plan has not come close to testing this conclusion as the timber harvesting has been less than half of what was anticipated in designing the old growth conservation strategy. Therefore, it is reasonable to conclude that the Forest Plan does not need to be revised at this time in relation to species viability or the conservation strategy.

The 1997 Forest Plan FEIS and ROD include provisions to review the conservation strategy five years into the Forest Plan to see if it was having the intended effect. The need for the review of the old growth strategy has been substantially reduced by the reduced timber harvest that has actually occurred since the 1997 Forest Plan was adopted.

Nonetheless, preliminary work in support of the conservation strategy review has begun, and the Tongass will be conducting this review with interagency partners and the research branch of the Forest Service in 2005. For example, Appendix B of the Forest Plan outlined a comprehensive list of information needs relative to all multiple uses and values associated with the Tongass and Southeast Alaska. Appropriate consideration of the results of these efforts relative to the conservation strategy and other new scientific information will be a key part of the review of the strategy. Recommendations for Forest Plan amendments may result from these efforts; however, a revision of the Forest Plan is not anticipated.

Threatened and Endangered Species – None of the land-based species on the Tongass NF are listed as threatened or endangered species. The Forest Plan conservation strategy was specifically designed to maintain a high likelihood that no species would be

considered threatened or endangered, even with the maximum timber harvest over the long run, largely because the Forest Plan's design is to leave the Tongass overwhelmingly wild and undeveloped. Even with maximum timber harvesting (i.e., 267 MMBF timber harvest annually for 100 years) of the Forest Plan, nearly 90 percent of the Tongass would remain undeveloped after the next 100 years. The U.S. Fish and Wildlife Service and National Marine Fisheries Service have issued no jeopardy opinions on the full implementation of the 1997 Forest Plan. No threatened or endangered species have been listed since 1997, nor are any species anticipated to be listed in the foreseeable future due to forest management activities.

Some recent concerns have been raised regarding the Kittlitz's murrelet, a species of murrelet that nests and feeds near the face of tidewater glaciers. Some data indicate the population of this species is in significant decline, perhaps as a result of the retreat of many glaciers throughout the region. There is no indication that any Forest Service management activity is affecting the Kittlitz's murrelet.

One organization has been seeking to have the Queen Charlotte goshawk listed as a threatened or endangered species. The U.S. Fish and Wildlife Service (FWS) has reviewed the biological information, including the 1997 Forest Plan, and has concluded that listing is not warranted on the Tongass. The FWS decision was litigated and the District Court upheld the FWS decision regarding the Tongass NF (*Southwest Center for Biodiversity v. Norton*, No. 98-0934 (D.D.C., decided May 24, 2004).

Appendix J of the 1997 Forest Plan Final EIS includes a Biological Assessment for the humpback whale and Stellar sea lion that are found in waters of Southeast Alaska. The Forest Plan includes appropriate standards and guidelines for management operations within the waters of Southeast Alaska when these species could be affected, such as in the vicinity of sea lion haul outs.

Management Indicator Species - The Forest Plan identified 13 wildlife management indicator species (MIS) to represent other wildlife species in a variety of habitats across the Forest. These MIS species are red squirrel, black bear, brown bear, marten, river otter, Sitka black-tailed deer, mountain goat, gray wolf, Vancouver Canada geese, bald eagle, red breasted sapsucker, hairy woodpecker, and brown creeper. The Forest Plan identified monitoring strategies for each of these species and the result of those monitoring strategies are being compiled in an assessment that is currently being considered by the Interagency Monitoring and Evaluation Group. If the assessment indicates the list should be changed, the forest supervisor may initiate a proposed action and appropriate NEPA analysis to change the wildlife MIS list and amend the Forest Plan. Such an amendment is not expected to be significant, nor require a revision of the Forest Plan.

Wildlife Models – The analyses conducted in support of the Forest Plan EIS efforts, including the effects of various standards and guidelines, relied in part on a suite of wildlife habitat capability models. The major emphasis of most of the models was old-growth forest-related habitats, generally specific to the key habitat components for each

species. Late in the planning process, the statistical validity of the old growth information was called into question, which also led to questions related to the models themselves. New vegetative mapping efforts are underway on the Tongass that should be beneficial for improving the performance of wildlife habitat capability models.

Adjustments or redesign of the wildlife models appear to be desirable for future forest planning efforts, and work on the models is ongoing with interagency partners and the research branch of the Forest Service. This ongoing work is important and consistent with work expected by the Forest Plan. However, this work does not have significant bearing on whether or not the Forest Plan needs to be amended or revised at this time.

Roadless Values – As noted above, the nationwide Roadless Rule does not apply to the Tongass National Forest. However, the Southeast Alaska Conservation Council, Sierra Club, Sitka Conservation Society, National Audubon Society, the Wilderness Society, Center for Biological Diversity, and others continue to believe that existing roadless areas on the Tongass National Forest have higher values for wildlife, biological diversity, recreation and other related natural resource uses rather than for timber management and harvest. The Tongass Forest Plan attempted to find a balance among the various resource uses and values. Even in the relatively small areas that can allow timber management activities, the Forest continues to assess relative values of whether or not to enter specific roadless areas through a site-specific public process, as projects are proposed. As has previously been shown in other areas of this document, the rate of development associated with timber management activities has been substantially less than the amount allowed by the 1997 Forest Plan, particularly within inventoried roadless areas.

Allowable Sale Quantity – The Allowable Sale Quantity (ASQ) is the calculated amount of timber that can be sold from the available land base over the next decade at a rate that is sustainable over the long term. The purpose of the ASQ calculation is to look at the timber harvest rate from the available land base and ensure that the amount of timber being harvested will not have to decline over the very long term, such as a century or more, due to a disproportionate harvest in the first decade. Thus, the quantity of timber that can be harvested from the Tongass NF from the available land base in the 1997 Forest Plan is 2,670 million board feet (MMBF) in the first decade, and that volume of timber could also be harvested each decade over the next century or more without running out of timber from the Forest Plan’s available land base. The ASQ is officially calculated on a ten-year basis, but it is most often presented as an annual average. Thus the ASQ for the Tongass Plan is officially 2,670 MMBF for the first decade but is usually referred to as 267 MMBF per year.

The Tongass Forest Plan also breaks down the ASQ into two parts based on how much of the timber would be economical to harvest in normal timber market periods. These two parts are called “non-interchangeable components” or “NIC 1” and “NIC 2.” NIC 1 is the portion of the ASQ that is economically operable in normal timber markets; it was calculated to be about 220 MMBF. NIC 2 is the portion of the ASQ that is economically operable only under higher market conditions and was calculated to be about 47 MMBF.

The 5 Year Review identified several questions or potential concerns regarding the Forest Plan ASQ of 267 MMBF per year. These questions include whether a more accurate ASQ calculation could be generated, whether or not various standards and guidelines resulting in non-clearcut timber harvest prescriptions were adequately factored into the Forest Plan ASQ calculations, and questions related to the economic feasibility of portions of the lands that allow commercial timber management. The 5 Year Review identified several areas that could be analyzed related to timber harvest prescriptions used since 1997 to better quantify the effect of non-clearcut harvest prescriptions. Additionally, a logging systems and transportation analysis will be conducted on the lands mapped as suitable and available for scheduling timber harvest through time. These types of information can then be tested in conjunction with the Forest Plan ASQ modeling efforts. This information can also be used, in part, to perform basic economic feasibility analyses of the programmed suitable lands.

Demand for Tongass NF Timber - The State of Alaska, Southeast Conference, and the timber industry have stated that Southeast Alaska needs an ASQ sufficiently high to ensure the ability to have an 'integrated' industry; and they conclude, as a result of a September 2004 report by the McDowell Group, that such a level needs to be about 360 MMBF annually, with about 237 of this coming from the Tongass. The McDowell Group report raises questions about the Forest Plan ASQ being adequate, mostly because of the 220 MMBF NIC I component being below their 237 MMBF projection.

The Tongass National Forest responds to market demand on an annual basis and by having a goal of 3 years of economic timber volume under contract, thus allowing the market place to operate and provide a true reflection of demand. As noted above, the industry has been harvesting about 93 MMBF of National Forest timber annually since 1997. The Forest currently projects annual demand at about 150 MMBF annually in the next few years. Both figures are much smaller than the annual ASQ of 267 million board feet (and 220 million board feet of NIC I), and the total decadal sale and harvest since 1997 is still about 2 billion board feet less than the 2.67 billion board feet ceiling. Overall, there is more than sufficient ASQ volume available to meet projected market demand from the Tongass National Forest in the next several years and therefore there is no indication of any need to amend or revise the Forest Plan to increase the ASQ at this time.

FORPLAN Model - The 1997 Forest Plan used the best model available at the time. The FORPLAN model may not be adequate for the integrated modeling most likely needed to address the complexities associated with forest planning into the future. The Forest Service Inventory and Monitoring Institute located in Fort Collins, Colorado, is currently assessing the FORPLAN model and related computer data used in the Forest Plan. This evaluation will determine the potential utility of the current model, or help determine what other models are available for forest plan modeling on the Tongass. A model called SPECTRUM appears to be favored for forest planning on other national forests and will be evaluated for future use on the Tongass. The use of FORPLAN or another model in and of itself is not likely to require an amendment or revision of the Forest Plan.

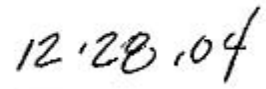
DETERMINATION

Based on the 5 Year Review and implementation of the Forest Plan to date, and as summarized above, I have determined that conditions on the land and demands of the public have not changed significantly since 1997. Accordingly, the Forest Plan does not need to be revised at this time. However, the 5 Year Review identified potential items of work that could lead to minor adjustments or amendments to the Plan. These work items will be addressed as we continue to implement and monitor the Forest Plan, and evaluate the results to determine whether adjustments need to be made to keep the Plan current.



FORREST COLE

Forest Supervisor



Date