United States Department of Agriculture | Forest Service | Alaska Region | P.O. Box 21628 Juneau, AK 99802-1628

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Route To:

Subject: Central Kupreanof Timber Harvest Appeal Recommendation

To: Appeal Deciding Officer

This is my recommendation, as the designated Appeal Reviewing Officer, on the action you should take, as Appeal Deciding Officer, on the pending appeal of the Central Kupreanof Timber Harvest project on the Petersburg Ranger District. The following appeal was filed under 36 C.F.R § 215:

- Greenpeace, Inc., Juneau Group of the Sierra Club, David Beebe, David Randrup, and Eric Lee (Appeal #11-10-00-0002 A215)(herein referred to as Appellant)

DECISION BEING APPEALED

The decision being appealed is the Record of Decision (ROD) signed by the Tongass National Forest Supervisor, Forrest Cole, for the Central Kupreanof Timber Harvest project, which is located on Kupreanof Island, about 30 air miles northwest of Petersburg, Alaska. The Selected Alternative would allow the harvest of approximately 26 million board feet (MMBF) of timber, the construction of approximately 1.83 miles of new National Forest System (NFS) road and 2.3 miles of temporary road, and the reconstruction of about 2.8 miles of existing road. The proposed activities do not affect inventoried roadless areas.

APPEAL SUMMARY

The planning process for the Central Kupreanof project began with the official publication of the Notice of Intent to prepare an Environmental Impact Statement (EIS) in the Federal Register on December 27, 2006. The Notice of Availability for the Draft EIS was published in the Federal Register on December 18, 2008, which began a 45-day EIS comment period that ended on February 2, 2009. The Record of Decision (ROD) was signed February 4, 2011. The 45-day appeal period ended April 25, 2011. The appeal was filed electronically and was timely. Greenpeace, along with other conservation organizations, and the State of Alaska appealed the ROD. Both appellants have standing to appeal the decision as they submitted comments during the 45-day comment period on the Draft EIS, and both appeals were submitted within the appeal period.

This constitutes my review of the Greenpeace appeal, et al., (herein referred to as Appellant) and was conducted pursuant to 36 CFR § 215. I will respond to the appeal filed by the State of Alaska in a separate response. In considering this appeal, I have carefully reviewed the appeal and planning records and the objections raised by Greenpeace. The Petersburg Ranger District office prepared indices of the documentation supporting the decision, which are keyed to specific points raised by the Appellant. My recommendation hereby incorporates the entire appeal record.

Greenpeace (Appellant) lists many interrelated issued in the appeal of the Central Kupreanof project. Although I may not have listed each specific issue, I have considered all of the issues raised in the appeal and believe they are adequately addressed in the following discussions.

ISSUES AND RESPONSES

Issue 1: Whether the Final EIS (FEIS) and ROD adequately considered and disclosed the effects of the project on all wildlife habitat elements.

Issue 1A: Appellant asserts that the analyses relied too much on productive old growth metrics (using the size density model) and did not adequately consider TimTyp classes 5, 6 and 7 and coarse canopy forest.

Discussion:

Because the Central Kupreanof project will primarily alter productive old growth (POG), the effects analysis compared changes in POG using the Size Density Model (SDM) (FEIS, p. 3-85). The record provides ample discussion as to why POG is an appropriate measure to use in evaluating impacts to wildlife habitat (see e.g., FEIS pp. 3-76-77, 3-85-87, D-73-74; ROD, p. 3-27-29). For example, the amount of POG forest remaining as a percent of what existed prior to large-scale and human-caused habitat changes within the Tongass National Forest are good indicators not only of habitat loss, but how fragmented the habitat is likely to become (Project Record 802, Wildlife Resource Report, p. 7).

Further, the evaluation of potential effects of project alternatives on wildlife was not limited to the POG/SDM analysis: Deer quick cruise assessments and a road density analysis were also conducted (FEIS, pp. 3-77-78).

Weaknesses of the POG method were also disclosed in the FEIS at page D-74:

> It is recognized that the use of POG as the unit of measure for wildlife habitat is a broad tool and does not address specific seasonal habitat use of wildlife species.

> However, while there have been attempts to define the limiting winter habitat of various species, field studies are showing use occurring in all volume classes. Depending on winter severities, while volume class 6 and 7 provide snow cover, these stands offer little foraging opportunities. There may be many winters that volume class 5 stands, which provide some snow cover as well as large amounts of food, play a more important role in winter survival than the coarse canopy stands. There is still much to discover and understand about the relationship between wildlife species and their habitat use.

The SDM is a vegetation mapping model first used in the 2008 Forest Plan Amendment (Forest Plan) (Forest Plan FEIS, Vol. I, pp. 3-139-142). Limitations of using previous vegetation classifications, such as TIMTYP and the coarse canopy classification that appellants reference, are discussed in the project record and in the Forest Plan record (e.g., FEIS, pp. 3-85-86, D-73, D-78-79, and Project Record 539, Tongass National Forest Size-Density Model: Forest and Project Planning Applications, pp. 5, 9). The Forest Service responded to comments on the DEIS on this issue (FEIS, pp. D-73, D-78-79). In one response (FEIS, p. D-73), coarse canopy was specifically addressed:

> Coarse canopy was evaluated during the initial stage of wildlife inventory and analysis. It was clear that the amount of coarse canopy depicted within the harvest units was limited and that the majority of coarse canopy in the project area was protected by the old-growth reserve system. High volume strata when depicted within the project area looked a lot like coarse canopy. Because of the limited amount of this habitat type, the effects on coarse canopy and/or high volume strata would not provide a measurable difference between alternatives nor provide the decision maker with a meaningful comparison of alternatives/effects on wildlife…

In response to a request from the State of Alaska, maps of coarse canopy and high, medium, and low volume strata were added to the project record for the FEIS. The Forest Supervisor added: "[t]his additional review of coarse canopy and high volume strata again supports our decision to analyze productive old-growth (POG) as a tool to evaluate action alternatives (FEIS, p. D-79).

Issue 1B: Appellants assert that the analysis of fragmentation and connectivity was inadequate.

Pursuant to the Forest Plan, forest project design must maintain landscape connectivity for wildlife (Forest Plan, pp. 4-91-92). In the FEIS, there is direct discussion of the contribution of non-development LUDs, old-growth reserve (OGR), and beach buffers or fringe areas, which, according to the Forest Plan Conservation Strategy, provide landscape connectivity for a variety

of species (Forest Plan FEIS, App. D[1]). This issue was addressed in response to comments on the DEIS (FEIS, p. D-73). Specific to this project, Figure 3 on page 34 of the Wildlife Specialist Report clearly reflects the contribution of non-developmental LUDs, beach buffers, and OGR to landscape level connectivity within and adjacent to the project area (Project Record 802, p. 15; see also Project Record #481, Maps illustrating volume class, coarse canopy and high volume strata for Central Kupreanof). Further, small OGRs on Kupreanof and within the project area were adjusted during the 2008 Forest Plan amendment process to provide connectivity across the middle of the island (FEIS, p. 3-81). Deer quick cruise plots were used to evaluate deer connectivity. Although they are not intended to imply anything about general wildlife habitat, deer quick cruise plots do provide habitat information that could be used to inform analyses for other species.

Project units were also modified to increase wildlife connectivity. The Forest Supervisor noted in the ROD at page 7:

> Many of the larger blocks of old-growth habitat are to the west of the project area within non-development LUDs and will remain indefinitely. Also, by maintaining 30 percent retention in Unit 314 and not including 272 and 273, I have incorporated several features from the proposed action to ensure connectivity.

(see also ROD, Figure R-2, Map of Central Kupreanof Timber Harvest Selected Alternative showing units with retention levels).

As stated above, connectivity is improved by the Selected Alternative maintaining 30 percent retention in Unit 314, which is adjacent to unit 315. The map of Unit 315 in the ROD at p. 1-57 (unit card for Unit 315) clearly displays riparian management areas excluded from treatment bisecting the unit and providing additional connectivity around and through the unit. The Wildlife Specialist Report also provides a "Map of Central Kupreanof Project Area Connectivity," which displays multiple alternate routes of connectivity, two of which are in close proximity to Unit 315 (Project Record 802, p. 34).

Conclusion:

Based on my review, I find that the ROD, FEIS, and supporting documentation consider and disclose potential effects of the project using an acceptable method that, along with other methods, adequately evaluated impacts of the Central Kupreanof project action alternatives on wildlife habitat, including wildlife connectivity. These actions are consistent with Forest Plan and NEPA requirements.

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[1] Any disagreement with the functionality of these components is a Forest Plan issue.

Issue 2: Whether the FEIS and ROD analyses relied too much on the productive old growth analysis for impacts to deer and deer habitat, and failed to adequately consider other analysis methods, such as the deer model.

Issue 2A: Appellants assert that the deer model analysis conducted for the project was perfunctory, and believe that it should have been run earlier in the planning process and that the results of that modeling should have been incorporated into a Supplement to the DEIS and made available for public comment.

Discussion:

See response to Issue 1 for a description of why the POG analysis was used to evaluate wildlife habitat in general. For these same reasons, the POG analysis is appropriate for measuring effects on deer habitat, especially since other analysis methods were also used in conjunction with the POG analysis, such as the deer quick cruise method and field surveys (FEIS, pp. 3-76-77).

Despite the fact that the Forest Service believes the POG analysis is sufficient for analyzing impacts to deer habitat, the deer model was run for each project alternative to accommodate requests from Greenpeace and the Alaska Department of Fish and Game (ADFG) The Forest Supervisor noted that "[r]unning the deer model would help the public understand the relationship between the model analysis and the newer alternative analysis as presented in the DEIS and the FEIS" (ROD, p. 3-21). Deer model results were consistent with conclusions based on SDM-derived POG assessments and deer quick cruise plot data taken from field treatment units (FEIS, p. 3-77; Project Record #588, IRI Quick Cruise Plot Data; Project Record #262, Deer Winter Range Quick Cruise Plot Field Cards Settings 200-288, data and location maps; and Project Record #263, Deer Winter Range Stand Exams from 2007 field season). A thorough analysis of the deer model results is included in the ROD at pages 3-20 to 3-25, and describes how the results closely aligned with the POG analysis:

> The Deer Model Results indicate there is less than a 0.4 percent difference for all action alternatives including Modified Alt. 3. The relative results of this model are consistent with the POG analysis used for deer in the DEIS in that they show a fraction of a percent of difference in the effects of the action alternatives on deer habitat. The results presented in the model are consistent with the Wildlife Productive Old Growth Analysis (Central Kupreanof FEIS, page 3-88 Table 3-20). The model results and the Productive Old Growth Analysis both show a small difference between alternatives. The Productive Old Growth Analysis shows a small reduction in habitat between the alternatives and the model results show no statistical difference in habitat capability expressed as an output of

> the model. The results of the model do not change the effects analyzed in the Productive Old Growth Analysis and are still within the range of what the public reviewed and commented on in the DEIS (ROD, p. 3-23).

Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) (40 CFR § 1502.9(c) provide, in part:

> A supplemental EIS (either draft or final) must be prepared if: 1) the agency makes substantial changes to the proposed action or 2) there are significant new circumstances or information relevant to environmental concerns.

Forest Service Handbook (FSH) 1909.15, Sec. 18 (c) provides, in part, that agencies shall prepare supplements to either draft or final environmental impact statements if:

> (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

The deer model runs did support the POG/SDM analysis results already discussed in the EIS. Thus, there were no new circumstances or information relating to wildlife habitat or the potential effects of the projects on that habitat.

Issue 2B: Appellants assert that the FS considered the deer model analysis only for a relative ranking of the effects of the action alternatives and that the FS failed to consider the deer model in terms of compliance with the Forest Plan's wolf standard (18 deer per square mile).

See response to Issue 2A.

The Forest Plan wolf standard and guideline is to generally provide, *where possible,* sufficient habitat capability to support at least 18 deer/square mile. (Forest Plan, page 4-95). The use of "generally" and "where possible" makes it clear that this is a guideline rather than a standard. The Forest Service specifically considered the results of the deer model runs in relation to the 18 deer/square mile guideline (ROD, pp. 3-25-26).

The Wildlife Specialist acknowledged in the report prepared for the DEIS:

> The Forest Plan estimates an average of 17 deer per square mile (in the biogeographic province) were available in 1995 in the analysis area. The Forest Plan predicts 15 deer per square mile (in the biogeographic province) will be

> available in 2095 with full implementation of the Forest Plan selected alternative (USDA 1997). The habitat in the project area is not capable of supporting large numbers of deer. With implementation of any action alternative, deer would still average between 17 and 15 deer per square mile (Project Record 410, p. 15).

Thus, due to the conditions in and around the Central Kupreanof project area, it is not possible to meet the 18 deer per square mile guideline. The Forest Supervisor considered and disclosed the results of the deer model and concluded: "The results displayed from the model show there is not an appreciable difference in model output numbers as compared to the No Action Alternative (Alt. 1)" (ROD, p. 23).

Conclusion:

In my opinion, although there was no requirement to run the deer model, it was run and the results were considered in a meaningful way to support results from the POG/SDM analysis and in relation to the Forest Plan wolf guideline. Since the deer model did not result in new information relevant to wildlife habitat, there was no requirement to issue a supplemental EIS.

Issue 3: Whether the POG analysis is a legitimate substitute for the use of the deer model in terms of compliance with the Forest Plan wolf standard and guideline.

> **Issue 3A: Appellants acknowledge that the Forest Plan allows substituting an alternative analysis tool for the deer model and that the SDM "appears to be" the best dataset for assessing forest structure elements that are important for deer, but assert that the use of the POG analysis for analyzing the effect of the project on deer is contrary to the body of available science.**

Discussion:

See response to Issues 1 and 2.

Given current understanding of deer habitat relationships on the Tongass and the tools available to examine the condition of the habitat, the best available array of approaches were applied to examine the potential effects of the project on deer.

The Forest Service ran the deer model for the project and addressed the 18 deer per square mile guideline in the context of those results (ROD, pp. 3-20-26;). Even if the Forest Service had not run the deer model, the analysis as discussed in the DEIS and FEIS was sufficient for meeting the requirements of the Forest Plan standard and guideline. The Forest Plan directs the Forest

Service to "[u]se the most recent version of the interagency deer habitat capability model and field validation of local deer habitat conditions to assess deer habitat, *unless alternate analysis tools are developed*" (Forest Plan, p. 4-95; emphasis added). The record shows the Forest Service considered and disclosed why the POG analysis provides a scientifically-sound method for analyzing impacts to deer habitat and was properly used as an alternate analysis tool as allowed by the Forest Plan (see e.g., FEIS pp. 3-76-77, 3-91; ROD, pp. 6-7, 20-21; Project Record 802, Wildlife Specialist Report, p. 12).

Issue 3B: Appellants assert that reliance on the SDM fails to consider other habitat factors that are important in determining the carrying capacity for deer, and that the outputs of the SDM are not comparable to the Forest Plan threshold of 18 deer per square mile; thus, the SDM is not a reliable analysis tool for fulfilling the function of the wolf standard and guideline.

The POG analysis was properly used as an alternate analysis tool under the Forest Plan standard and guideline (see response to Issue 3A above). While the Forest Plan guideline explicitly allows an alternate tool to be used in place of the deer habitat capability model, it does not state that such tool must consider certain factors or result in an estimate of carrying capacity comparable to the deer model.

As explained in the record, the SDM incorporates several factors, including tree size, density, soils, and slopes (see e.g., FEIS, pp. 3-85-86; Forest Plan FEIS, Vol. I, pp. 3-139-142). Thus, it takes into account a number of habitat factors. The Forest Service also considered the fact that most of the habitat within the project area is low in elevation (FEIS, p. 3-77). The deer model as used in the Forest Plan FEIS, relies on four factors: vegetation classification, aspect (i.e., direction that the slope faces), snow depth, and elevation. Of those, the POG analysis for this project specifically considered two of those four factors: SDM vegetation classifications for POG and elevation. Because of this fact in addition to all the reasons described above in Issues 1, 2, and 3A, the POG analysis using SDM is a scientifically-sound alternative analysis tool as allowed by the wolf guideline.

Issue 3C: Appellants assert that the use of the SDM has not been peer reviewed and has been criticized by the Alaska Department of Fish and Game and others, and that there is no evidence in the FEIS, ROD or planning record that these concerns have been resolved.

While peer review may provide a stronger scientific foundation, there is no legal requirement that scientific methodology be peer reviewed under NEPA or NFMA (See, e.g., *Lands Council v. Martin,* 529 F.3d 1219, 1226 (9th Cir. 2008)). Further, the public, including scientists and state

agencies, are provided opportunities for comment and review of agency decisions and supporting analyses, including this one.

The Forest Service responded to comments from the Appellant and ADFG regarding concerns about the POG/SDM method (FEIS, pp. D-61, D-73).

The regulations implementing NEPA at 40 CFR § 1503.4 govern agency responses to comments, and provide, in relevant part:

> (a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response: in the final statement. Possible responses are to:
> (1) Modify alternatives including the proposed action;
> (2) Develop and evaluate alternatives not previously given serious consideration by the agency;
> (3) Supplement, improve, or modify its analyses;
> (4) Make factual corrections;
> (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, individuate those circumstances which would trigger agency reappraisal or further response.

"An agency is under no obligation to conduct new studies in response to issues raised in the comments, nor is it duty-bound to resolve conflicts raised by opposing viewpoints" (*California v. Block*, 690 F.2d 753, 773 (9th Cir. 1982)).

While ADF&G may not support the POG/SDM method, Project Records 568 and 762 document communication between the FS and ADF&G regarding the State's concerns with the use of POG for wildlife analysis, and includes concurrence in an email dated 12/6/2010, confirming they "don't have any further recommendations at this time related to the wildlife analysis for Central Kupreanof. We greatly appreciate the work by you and your staff in meeting our request to run the model."

Issue 3D: Appellants refer to Hanley and Friberg (2009), Schoen and Kirchhoff (1990), Doerr et al. (2005), Farmer et al. (2006) and Schoen and Kirchhoff (2007) and assert that none of these papers (or anything else in the planning record) explain or support the FS claim that the SDM's medium tree class provides "good deer winter habitat, that "grouping the POG together creates a conservative approach to deer habitat during winter," or that the SDM is a suitable alternate tool to the deer model.

The Wildlife Specialist referenced these sources in his report (Project Record 802, page 13):

> According to Hanley and Friberg (2009), all Stand Density Model (SDM) categories are not equal. (See "Stand Density Model" discussion under Environmental Consequences) They found that grouping the seven SD classes into three supra-classes made sense statistically for the winter seasons. They placed SD4H in the small tree category because it produces the highest amount of deer forage during winter months (if it is available). The second category they called medium tree, which is composed of SD4S, SD4N, SD5H, SD5S and SD5N. Finally the large tree group, which comprised SD67, produced the lowest amount of winter forage for deer. These three supra-classes make up POG. Hanley's analysis shows that the best deer winter habitat is comprised of small and medium tree categories and therefore lumping all POG into suitable habitat is consistent with the best science available to predict alternative effects on deer winter habitat. While looking at the currently available studies on deer in Southeast Alaska, one thing becomes evident; the categories that make the up medium tree class provides good deer winter habitat and grouping the POG together creates a conservative approach to deer habitat during the winter (Schoen and Kirchhoff 1990, Doerr et al. 2005, Farmer et al. 2006, and Schoen and Kirchhoff 2007 found in the Nature Conservancy Publication 2007).

Appellants may not agree with the conclusions that the Wildlife Specialist drew from these articles, but the record shows these papers/studies were considered (see also FEIS, pp. 3-76-77, 3-80, 3-86, 3-91, D-62; ROD, p. 3-20).

Conclusion:

Based on my review, I find that the POG analysis using SDM is an appropriate tool to consider the Forest Plan 18 deer per square mile guideline.

Issue 4: Whether the FEIS or ROD adequately considered and disclosed the lack of high quality deer habitat and the effects of the project on that habitat.

Discussion:

Forest Plan Standards and Guidelines require that Sitka black tail deer habitat needs be considered before or as part of project analysis (Forest Plan, p. 4-92). This consideration necessarily requires an assessment of the *quality* of deer habitat, which is disclosed throughout the project record.

The lack of high quality deer habitat was properly described in the existing baseline conditions in the FEIS at page 3-80:

> The habitat in the project area is not capable of supporting large number of deer because this area on Kupreanof Island lacks large contiguous stands of higher volume timber with high quality browse that deer rely on to provide cover and forage.

Potential effects on deer habitat as a result of the project, including any reduction from the existing conditions, is fully analyzed in the record (ROD, p. 3-22-26; FEIS, pp. 3-91-92, 96-97. Also, this issue was addressed in a response to DEIS comments (FEIS, pp. D-60-61).

Conclusion:

In my opinion, the FEIS and project record adequately considered and disclosed the lack of existing high quality deer habitat.

Issue 5: Whether the scope of the deer model analysis is adequate.

Issue 5A: Appellants assert that the deer model analysis for the ROD and the 2011 wildlife report considered only the project area and multiple WAA scales, and that this analysis should have been completed for Kupreanof Island and the biogeographic province as well.

Issue 5B: Appellants assert that it is unclear whether the FS considered carrying capacity on just Federal lands or on all lands, and which WAAs were relied upon in that consideration.

The discussion of the deer model results in the ROD explain whether the deer model was run on NFS lands only or both NFS and non-NFS lands. The ROD also lists the WAAs that were

included in the analysis. *Direct* effects to deer habitat capability were assessed using the deer model on NFS lands only; non-NFS lands are not included in the deer model analysis. The output is intended to represent effects to habitat capability on NFS lands only within each WAA. Included in this approach are those WAAs within the project area (WAAs 5133, 5130, and 5131) (ROD, p. 3-21).

The deer model was run two ways to evaluate *cumulative* effects on deer habitat capability: 1) including acres on all land ownerships (NFS and non-NFS) (See Table A3-14 with WAAs listed); and 2) NFS lands only as in the Forest Plan (See Table A3-13 with WAAs listed). (ROD pages 3-22 to 24). An analysis of multiple WAAs provides a reference of impacts at a smaller scale than the biogeographic province but larger than the project scale (Project Record #802, Wildlife Specialist Report, p. 20).

There is no requirement that the deer model be run at multiple scales as suggested in the appeal. The appropriate scale is based on site-specific conditions and varies by project.

Conclusion:

Based on my review, carrying capacity on both Forest Service and non-Forest Service lands, with WAAs specified, was adequately disclosed and considered.

Issue 6: Whether WAA 5132 was adequately considered in the deer model and SDM-POG analysis.

Issue 6A: Appellants assert that the FEIS characterization of WAA 5132 as always having low deer carrying capacity is inaccurate and misleading, and the extensive past harvest on private lands within this WAA should have been considered in the analysis, particularly in the cumulative effects analysis.

Discussion:

NEPA regulations require a discussion of direct and indirect effects of proposed actions affecting the environment, which includes a discussion of cumulative effects (40 CFR §§ 1502.16, 1508.8).

Although WAA 5132 will not be affected by the Central Kupreanof project, cumulative impacts were evaluated, including past harvest history (Project Record 405, Biogeographic Province 10 - Current SDM by Province 10, 2008, SDM acres for Central Kupreanof EIS and Volstrata acres for WAAs for 2008 Cumulative Effects; Project Record 286, Biogeographic Province 10 (Mitkof

and Kupreanof Islands)). Results of this analysis are discussed in the Wildlife Specialist Report (Project Record 802, p. 28):

> The cumulative effects analysis area for POG habitat is the Biogeographic Province. The province was selected as the analysis landscape scale since it is the same scale used for analysis of POG in the Forest Plan. In 1954, approximately 51 percent of the province was POG forest. Historic harvest has reduced POG by approximately 28 percent in the biogeographic province since 1954. The Biogeographic Province includes Native Corporation lands near Kake as well as other private lands. Due to lack of information about these Corporation lands, it is assumed all lands that are available were clearcut harvested. It was also assumed that all lands harvested were POG.

WAA 5132 was included in the cumulative effects analysis using the deer model. Also, deer harvest data collected and discussed on page 2 of the Subsistence Specialist Report (Project Record 132) addresses the deer hunting value of WAA 5132:

> Five WAAs accounted for the majority (76 percent) of deer harvested by Kake residents. Three of the five WAAs of greatest importance to Kake hunters (WAAs 3939, 3940 and 4041) occur at the south end of Admiralty Island and are outside the affected area of the project (Project Record #608, page 3). The other two WAAs of importance to Kake hunters (WAAs 5131 and 5132) are located surrounding or adjacent to the community on Kupreanof Island and are of lesser importance.

Issue 6B: Appellants request that the "unpublished appendices to the 1997 FEIS Appendix N" be included in the Central Kupreanof appeal record, along with any other documents that explain their derivation.

The "unpublished appendices to the 1997 FEIS Appendix N" are part of the Forest Plan record at 11_JLM507, beginning with page 1896. As these documents are already part of the Forest Plan record, they are incorporated by reference in the Central Kupreanof project record as it tiers to and implements the Forest Plan.

Conclusion:

Based on my review, I find that the carrying capacity and past harvest for WAA 5132 was adequately disclosed and considered in the effects analysis for the Central Kupreanof, which is in compliance with NEPA. The above-referenced document is already part of the Forest Plan record and is incorporated by reference into the Central Kupreanof project record.

Issue 7: Whether the ROD's statement that "[a]ll information contained in Appendix 3 (of the ROD) is within the scope of effects presented to the public for comment in the DEIS" is accurate.

See response to Issues 4 and 2A.

Conclusion:

The fact that the deer model results show deer numbers less than 18 is still within the scope of the effects considered. The analysis in the ROD, EIS and project record is sufficient to support the Forest Supervisor's finding that all information in Appendix 3 of the ROD is within the scope of effects presented to the public for comment in the DEIS.

Issue 8: Whether the FEIS and ROD adequately consider the effects of the project on wolves and deer hunters.

> **Issue 8A: Appellants assert that the ROD fails to discuss the implications of continuing to take a substantial amount of timber from an area that is already below the 18 deer per square mile threshold, and that any the effects of any incremental timber harvest should be considered and disclosed.**

Discussion:

See response to Issues 2B, 5A, and 7.

In the Forest Plan FEIS, actions proposed and modeled assumed development at the maximum potential allowed by each alternative. The impacts to wildlife and wildlife habitats were also based on these projected levels. Development has not occurred at the levels authorized in the Forest Plan ROD. The Forest Plan FEIS acknowledged that some WAAs currently, and with implementation of the Forest Plan, will fall below the 18 deer per square mile guideline (Forest Plan FEIS, p. 3-283). The effects anticipated from the Central Kupreanof project, including any effects on deer, wolves, or subsistence, is within the projected effects anticipated by the Forest Plan.

The project record shows that the Forest Service analyzed all direct and cumulative effects related to the project. This includes effects on deer, wolves, and subsistence. The analysis recognized that the existing baseline conditions in some areas did not support large numbers of deer (e.g., FEIS, p. 3-80). Changes to those conditions that may result from the project are the

focus of the analysis contained in the FEIS and related project documents. As described in Issues 2 and 3 above, the Forest Service properly used an alternative analysis tool in the FEIS and wildlife report – the POG analysis - rather than the deer model. Using this tool, the analysis considered effects on deer, wolves, and subsistence.

The Central Kupreanof project analysis considered direct impacts that might affect individual deer and wolves that occupy treated stands. Recognizing wildlife are transient and move between habitats as needed, consideration of areas outside treated units is appropriate.

Less than two tenths of one percent of Central Kupreanof Island will be affected by this project. Potential impacts to wolves and deer hunters were considered relative to a direct loss of deer habitat (Project Record 802, Wildlife Specialist Report, pp. 25-26). The FEIS concluded that in all project alternatives, the reduction in POG (and therefore habitat capability) may affect individuals but not populations, and that the effect will be minor due to the high percentage of remaining POG (FEIS, pp. 3-88-89).

The Subsistence Specialist Report addresses potential impacts to deer and wolf habitat relative to road densities during and post treatment and how these would affect hunter densities, and harvest success of both deer and wolves, and the relative hunt success by game management unit (GMU) (Project Record 608, pp. 3, 6). It also directly discusses the potential changes in hunter access and associated community use areas associated with this project area (Id., p. 6; ROD, p. 15; see also Project Record 802, Wildlife Specialist Report, p. 26). The Wildlife Specialist Report addresses direct impacts to wolves and includes data on known den sites and past harvest of wolves from the project area (Id., pp. 17-18).

Issue 8B: Appellants further assert that the ROD and FEIS fail to consider other factors, including the finding in Person (2001) that the carrying capacity to timber removal relationship is non-linear, particularly as habitat becomes more fragmented.

See response to Issues 1B, C, and D.

The Forest Service is not required to consider every possible factor in evaluating potential effects of project alternatives to wildlife. Rather, pursuant to NEPA, the Forest Service is required to take a hard look at *significant relevant* factors.

Conclusion:

Based on my review, I find that the Forest Supervisor has adequately considered and disclosed the effects of project alternatives on wolves and deer hunters, including the 18 deer per square mile Forest Plan guideline.

Issue 9: Whether the analysis in the Central Kupreanof FEIS supports the Alaska National Interest Lands Conservation Act (ANILCA) finding that the Selected Alternative is necessary, consistent with the sound management of public lands.

Issue 9A: Appellants assert that the analysis of the effects of the project on subsistence wildlife species based simply on POG is inadequate and therefore there is no basis for the ROD's determination regarding sound management.

Response:

ANILCA requires that no use or occupancy of lands under Federal jurisdiction can significantly restrict subsistence uses until the Federal agency determines that:

> (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

As stated in the Central Kupreanof FEIS, there is not expected to be a significant effect or possibility of a significant restriction of subsistence uses for black bear, wolf, moose, furbearers, or upland birds or waterfowl within the Central Kupreanof project area (FEIS, p. 3-101; Project Record 608, Subsistence Specialist Report, p. 4). The FEIS addresses the potential effects of the project alternatives on subsistence use of deer (p. 3-103):

> In terms of cumulative effects, this project is not expected to affect subsistence use of deer in the reasonable foreseeable future to the point that some restriction hunting might be necessary. However, the Forest Plan does determine that with full implementation of the plan over the long term, a significant possibility of a significant restriction on the subsistence use of deer exists on the Forest.

The Forest Supervisor found that "the actions involved in the implementation of the Selected Alternative are necessary, consistent with sound management of public lands, and strike the best balance between meeting the needs of the public and protecting forest resources" (ROD, p. 16; FEIS, p. 3-106; Project Record 608, Subsistence Specialist Report, pp. 8-9).

Appellants challenge this determination, pointing to their assertions relating to the inadequacy of using POG an indicator of deer habitat condition and quality.

See response to Issues 1 and 2 above for a full discussion of this issue.

The Subsistence Specialist Report demonstrates that the FEIS wildlife analysis included analyses of subsistence use patterns for residents of Kake and Petersburg, including access and use of multiple subsistence resources (Project Record 608, Subsistence Specialist Report, pp. 3-4).

Further, past litigation in *Hoonah Indian Association v. Morrison*, 170 F.3d 1223 (9th Cir. 1999) is relevant to this case. In *Morrison*, the 9th Circuit held that the word "necessary" does not have the affect of prohibiting timber sales that affect subsistence uses and are not required by law. A significant restriction of subsistence use might not be necessary to achieve compliance with law, yet necessary to conform to "sound management principles" for the "utilization" of public lands. The "utilization" to which "sound management principles" refers to is multiple, and includes outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness.

The Central Kupreanof project is a timber sale project. The Forest Supervisor was required to consider the potential effects of the project on subsistence, but is not precluded from selecting an alternative even if it may cause a restriction of subsistence use if he determines that the actions involved are "necessary, consistent with sound management principles for the utilization of the public lands."

The Central Kupreanof project is a necessary component of the Tongass timber management program designed to implement the Forest Plan and to meet direction provided by the Tongass Timber Reform Act (TTRA) (16 USC § 539d(a)). The Forest Supervisor considered direction from the Forest Plan and TTRA, and well as other laws and direction relating to management activities on National Forest System lands, and concluded that the Selected Alternative provides the best mix of resource uses and opportunities to meet these needs (ROD, pp. 15-16).

Issue 9B: Appellants assert that the FEIS and ROD do not recognize the Alaska Department of Fish and Game rating of "highest sensitivity to disturbance" for the project area, and that the FS failed to include "more detailed information" and a "[careful analysis] of the potential effects of the project on Sitka black tailed deer habitat," as requested in OHMP comments.

Even though the comments to which Appellant refers were not submitted as part of the State of Alaska's official comments to the DEIS, (see State's comments FEIS, pp. D-162-172 and Project Record 771) and was in fact an internal memo of the Office of Habitat Management and Permitting (OHMP), the memo did become part of the project record (Project Record 284).

The ADF&G "highest sensitivity to disturbance" rating is from a 1998 document entitled, "Tongass Fish and Wildlife Resource Assessment," a compilation of fish and wildlife harvest,

catch, and productivity data for selected fish and wildlife species applied to VCUs in Southeast Alaska. This document is part of the Forest Plan record (Record ID #12-00701) and is hereby incorporated by reference. The report states: "[t]hese rankings, and the community and regional maps based on them, provide forest-wide depictions of the extent of subsistence uses and serve to identify those value comparison units (VCUs) where subsistence uses may be most sensitive to disturbance (Id., pp. 22, 25-26, 30). The subsistence uses of deer and other species on Kupreanof Island were ranked in the report as "most sensitive to disturbance" (Id., pp. 22, 30).

The POG analysis using SDM provided a detailed and careful analysis of the potential effects on deer and other wildlife species, which is exactly the type of information requested by OHMP. As stated in my response to Issue 1, the depiction of amounts of POG forest remaining as a percent of what exists prior to large-scale and human-caused habitat changes within the Tongass National Forest are good indicators not only of habitat loss, but how fragmented the habitat is likely to become.

See response to Issues 1 and 2 above for a full discussion of this issue.

Issue 9C: Appellants assert that the FS erred in only identifying "access to deer" as a significant issue, and that the effects of the project on deer habitat should also have been considered as a significant issue and analyzed as such in the EIS.

NEPA regulations direct agencies to discuss only briefly issues other than significant ones (40 C.F.R. § 1500.4(c)), and to use the scoping process not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope (40 C.F.R. § 1500.4(g)).

The FEIS addresses consideration of deer habitat alternatives in the issue development stage. Ultimately, because the proposed action incorporated additional considerations of habitat and landscape connectivity, deer habitat was eliminated from further consideration as a significant issue (FEIS, p. 2-10; Project Record 403, CK Timber Sale Issue Development and Alternative Review). The fact that deer habitat was not a significant issue in issue development only means that it was not an issue that drove alternative development. But, the extensive discussion of potential effects on deer habitat was clear and well documented (e.g., FEIS, pp. 3-80-81, 91-92, 96-98; Wildlife Specialist Report, Project 802).

Conclusion:

Based on my review, I find the following:

- The Forest Supervisor's conclusion that the Central Kupreanof project is necessary and reasonable, and consistent with applicable law and policy, is justified and in compliance with ANILCA.
- Subsistence uses of deer were adequately considered according to Forest Plan direction.
- Effects of the project on deer habitat were adequately discussed in the Central Kupreanof project record in compliance with NEPA.

RECOMMENDATION:

In my opinion, the analysis in the Central Kupreanof ROD, EIS and project record is sufficient to support the Forest Supervisor's decision with respect to the issues raised in the Appellant's appeal, and the decision is consistent with all applicable law and the direction in the Forest Plan. Therefore, I recommend that you affirm the Forest Supervisor's decision.

Ruth M. Monahan

RUTH MONAHAN
Appeal Reviewing Officer