

# STATE OF ALASKA

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## DEPARTMENT OF NATURAL RESOURCES

### OFFICE OF THE COMMISSIONER

March 5, 2012

Harris Sherman, Under Secretary  
Natural Resources and Environment  
USDA Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0895

Dear Mr. Sherman:

The State of Alaska reviewed the USDA Forest Service's (Service) final Programmatic Environmental Impact Statement (PEIS) for the Forest Service Planning Rule. As mentioned in our May 16, 2011 comments on the draft rule, not only are Alaska's two forests, the Tongass and Chugach, the largest forests in the National Forest System, Alaskans depend heavily on these forests for their economic and social well-being. In addition, large amounts of state land are located within and adjacent to both national forests; therefore, the State has a strong interest in how these lands are managed. While recognizing that some changes were made to the preferred alternative, we are extremely disappointed that the vast majority of the significant issues raised in our comments were *not* addressed, including:

- Treat the three basic tenets of the rule – ecological, social and economic - equally, consistent with Congressional direction
- Recognize the Alaska National Interest Lands Conservation Act (ANILCA) and the Tongass Timber Reform Act (TTRA) as major federal legislation that affects land management planning in Alaska
- Require consultation with States, including state fish and wildlife agencies

#### **Three Tenets**

We reiterate our significant concern that the rule's primary focus on preserving forest ecological sustainability above social and economic sustainability considerations is inconsistent with existing Congressional mandates for managing forest lands, including the Multiple-Use Sustained-Yield Act of 1960, the National Forest Management Act, and in Alaska, ANILCA and the Tongass Timber Reform Act. The National Forest System was not established to simply preserve forest lands but to provide opportunities for "...*outdoor recreation, range, timber, watershed, and wildlife and fish purposes*" (MUSYA 16 U.S.C. 528). To fulfill these directives and to meet the social and economic needs of the public and local communities that rely on and benefit from national forests, all three tenets must be considered equally.

#### **ANILCA and TTRA**

We are aware the list of laws in the rule is not intended to be complete and recognize the Service cannot include all relevant laws; however, ANILCA and the TTRA are landmark pieces of legislation that greatly affect land management planning for the two largest national forests in the system. For example, Section 101 of the Tongass Timber Reform Act directs the Service to seek to meet the annual and planning cycle demand for timber from the Tongass National Forest when developing forest plans for the Tongass National Forest. The Wilderness Act, which is listed in the rule, is amended by ANILCA in Alaska and provides specific and unique direction for all designated wilderness on the Tongass NF as well as the Nellie Juan College Fiord Wilderness Study Area on the Chugach NF. In addition, the subsistence provisions in ANILCA apply to *all* federal public lands in Alaska, including national forest lands.

***"To responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest."***

From our recent experience with the Forest Service national access and travel management rule, which the State of Alaska was forced to appeal at the project level, not all Service employees are aware that ANILCA applies to Forest Service lands. Given that most federal land management agency employees typically have limited assignments in Alaska, awareness and understanding of this unique and complex law cannot be assumed. ANILCA must be explicitly recognized in the planning rule.

Congress also expressly limited further roadless area reviews in ANILCA Section 708(4)(b):

*Unless expressly authorized by Congress the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System Lands in the State of Alaska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.* [Emphasis added]

Forest Service regulations at 36 CFR § 219.27(b) include an exception for wilderness reviews “*Unless federal statute directs otherwise...*” It is therefore unclear why our request for similar language was not addressed in the PEIS.

### **State Consultation**

While we appreciate the added specific recognition of state fish and wildlife agencies, the preferred alternative still does not *require* consultation with state agencies, which was the main purpose of our comment on the draft rule. Toward that end, we requested the phrase “*to the extent practicable and appropriate*” be removed in the final rule. The final rule however, not only retains the phrase but further marginalizes the role of the State fish and wildlife agencies by merely encouraging “participation.”

*The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities for engagement, the responsible official shall encourage participation by.... (§219.4(a)(1))*

We request the Record of Decision modify the preferred alternative to include a requirement for consultation with state fish and wildlife agencies, similar to that which currently applies to recognized Indian Tribes and Alaska Native Corporations. State fish and wildlife agencies also retain “*certain trust responsibilities*” and share a “*unique legal relationship*”<sup>1</sup> with the Service and are not simply members of the public. In addition, the following previous comment was not addressed:

*. . . all plans must address desired conditions, which are descriptions of specific “. . . ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed.” (219.7(d)(1)(i)) . . . Since “resource” is not defined, it is unclear whether fish and wildlife resources are to be included in this context. (State of Alaska comments, May 16, 2011)*

Furthermore, the FPEIS states “. . . [i]he proposed rule would require plan components for the conservation of all native aquatic and terrestrial species...” (page 22) As a result, the State remains concerned the rule’s vagueness regarding desired conditions may extend beyond habitat management. State fish and wildlife agencies are responsible for setting population objectives (i.e. desired conditions of fish and wildlife) and determining harvestable surplus.

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<sup>1</sup> See generally the Policies and Guidelines for Fish and Wildlife Management on National Forest and Bureau of Land Management Wilderness. Also, while unique to the Department of the Interior, 43 CFR Part 24 is indicative of the unique relationships between all federal land management agencies and State fish and wildlife agencies.

States are responsible for the sustainability of all fish and wildlife within their borders, regardless of land ownership or designation, and have the authority, jurisdiction and responsibility to manage, control and regulate fish and wildlife populations – including for subsistence purposes – unless specifically preempted by federal law. As such, the Alaska Department of Fish and Game has primary management responsibilities with regard to fish and wildlife resources in Alaska, including but not limited to setting population objectives and determining harvestable surplus. The final rule must recognize the unique legal authorities that state fish and wildlife agencies possess on federal lands.

The rule must also similarly *require* consultation with the Governor, the State Forester, and other state agencies, as appropriate. Alaska is also unique in its structure of land ownership and a stronger consultation requirement will ensure a coordinated approach to planning and greater assurance that all interests are considered.

We urge the Service to reconsider *all* of the State's comments before issuing the Record of Decision. In addition to the above discussion, the State's May 16, 2011 comments are being resubmitted and are attached for reference. Please contact our office at 907-451-2666 if you have any questions or would like to discuss this further.

Sincerely,

A handwritten signature in blue ink that reads "John C. Maisch". The signature is fluid and cursive, with the first name "John" being the most prominent.

John C. Maisch C.F.  
State Forester and Director

Enclosure

cc: US Senator Lisa Murkowski  
US Senator Mark Begich  
Governor Sean Parnell  
Randy Ruaro, Office of the Governor  
Kip Knudson, Office of the Governor  
Ed Fogels, Deputy Commissioner Natural Resources  
Chris Maisch, Director, DNR Division of Forestry  
Andrew Levi, Department of Fish and Game  
Doug Vincent-Lang, Department of Fish and Game  
Susan Magee, ANILCA Program Coordinator  
Beth Pendleton, Alaska Regional Forester  
Ruth Monahan, Alaska Deputy Regional Forester