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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA

SOUTHEAST ALASKA CONSERVATION)
 COUNCIL; THE BOAT COMPANY; ALASKA)
 RAINFOREST DEFENDERS; ALASKA)
 WILDERNESS LEAGUE; CENTER FOR)
 BIOLOGICAL DIVERSITY; DEFENDERS OF)
 WILDLIFE; and NATURAL RESOURCES)
 DEFENSE COUNCIL,)

Plaintiffs,

Case No. _____

v.

EARL STEWART, in his official capacity as Forest)
 Supervisor for the Tongass National Forest; DAVID)
 ZIMMERMAN, in his official capacity as District)
 Ranger for the Petersburg Ranger District of the)
 Tongass National Forest; UNITED STATES)
 FOREST SERVICE; and UNITED STATES)
 DEPARTMENT OF AGRICULTURE,)

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
 (5 U.S.C. §§ 702, 706(1), 706(2)(A); 42 U.S.C. § 4332)

INTRODUCTION

1. This action challenges the Kuiu Timber Sale in the Tongass National Forest. The U.S. Forest Service published the Kuiu Timber Sale Area Final Environmental Impact Statement (FEIS) in July 2007. The Forest Supervisor signed a Record of Decision (ROD) authorizing the sale of timber from Kuiu Island on May 13, 2008. In the eleven years since publication of the FEIS, there have been significant changes relevant to the timber sale, including: the sale's dramatically increased public costs; a significant decline in employment opportunities due to export allowances; the growth of an ecotourism industry that relies on the project area for peaceful, remote scenery; and recent reports and studies indicating perilous declines in wildlife populations on Kuiu Island. Notwithstanding these significant changes, the Forest Service has refused to supplement the FEIS. The decision to proceed with the timber sale without supplementing the FEIS is arbitrary and violates the National Environmental Policy Act (NEPA). 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.9(c).

JURISDICTION, RIGHT OF ACTION, AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02. Judicial review is available under the Administrative Procedure Act. 5 U.S.C. §§ 701-06.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PLAINTIFFS

4. Southeast Alaska Conservation Council (SEACC) is a non-profit, member-based organization with over 2,000 individual members, a majority of whom are Alaskans from all walks of life, including commercial fishermen, Alaska Natives, tourism and recreation business owners, small timber operators and high-value-added manufacturers, hunters, and guides.

COMPLAINT

Southeast Alaska Conservation Council et al. v. Stewart et al.

Case No.

SEACC reaches out to its members and the general public through various means, including its website, Facebook and Twitter accounts, its newsletter “The Ravencall,” other publications, action alerts, and public meetings. SEACC’s mission is to protect the special places of the world’s largest temperate rainforest, promote conservation, and advocate for sustainability in human use of natural resources. Inspired by the land, wildlife, cultures, and communities of Southeast Alaska, SEACC strives to ensure this interconnected whole exists for future generations. To achieve its mission, SEACC and its members have worked to protect the Tongass National Forest and have advocated for balanced, sustainable use of the Tongass National Forest’s renewable forest resources, including fish and wildlife and the commercial, recreational, and subsistence use of such resources, under the Tongass Timber Reform Act, the Alaska National Interest Lands Conservation Act, the National Forest Management Act, and the Multiple-Use Sustained-Yield Act. SEACC led the nearly decade-long grassroots push for passage of the Tongass Timber Reform Act in 1990. SEACC’s public advocacy, education, and organizing efforts have created a legacy of effective partnerships with leaders within the region and across the state and country. SEACC’s community forest planning efforts; promotion of restoration, stewardship, and renewable energy projects; and land protection advocacy all contribute to its efforts to address ecological, energy, and economic needs throughout the Tongass.

5. The Boat Company is a non-profit business incorporated in 1980. It operates two vessels—the M/V Liseron and the M/V Mist Cove—accommodating up to 24 passengers each. Throughout the summer season, The Boat Company offers week-long cruises through the archipelago of Southeast Alaska, providing its passengers opportunities to fish, hike, kayak, and view wildlife in the waters and old-growth forests of the Tongass. In so doing, The Boat

Company seeks to educate its guests about the benefits of conserving and preserving one of the Earth's last great wild and beautiful places. The Boat Company's cruises visit North Kuiu Island regularly during the summer cruise season. Guided visitors kayak along the shores of Security, Saginaw and Rowan Bays for wildlife viewing and utilize the adjacent uplands and old logging roads for beachcombing, hiking, and sport fishing in North Kuiu Island streams and interior lakes. The Kuiu Timber Sale would prevent The Boat Company from using the bays for those purposes.

6. Alaska Rainforest Defenders (ARD, formerly the Greater Southeast Alaska Conservation Community) is a non-profit, volunteer-run organization dedicated to protecting Alaska's coastal rainforest. ARD's mission is to defend and promote the biological integrity of Southeast Alaska's terrestrial, freshwater, and marine ecosystems for the benefit of current and future generations. Since its founding in 2011, ARD has pursued this mission by submitting comments on Forest Service proposals, educating the public and public officials about threats to the Tongass, and litigating.

7. Alaska Wilderness League ("the League") is a non-profit organization with approximately 5,000 Alaskan members, as well as other members throughout the United States. The League was founded in 1993 to advocate for the protection of Alaska's public lands and waters, which are threatened with environmental degradation. The League is headquartered in Washington, DC and has an Alaska office in Anchorage. The League works to preserve Alaska's wild lands and waters by engaging citizens and decision-makers with a courageous, constant, victorious voice for Alaska. The League works at the federal level on a variety of issues affecting Alaska's wild land and waters including the Tongass National Forest. The League's rainforest program is focused on protecting old-growth forest in the Tongass.

COMPLAINT

Southeast Alaska Conservation Council et al. v. Stewart et al.

Case No.

8. The Center for Biological Diversity (“the Center”) is a non-profit organization with over 63,000 members, with offices in Arizona, California, Oregon, Washington, and a number of other states. The Center has over 280 members who reside in Alaska, and numerous members who reside in and/or regularly recreate within Southeast Alaska, including the Tongass National Forest. The Center works to ensure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. The Center has been actively involved in protecting Alaska’s wildlife since the early 1990s. With regard to the Tongass National Forest, the Center has filed petitions to protect the Queen Charlotte goshawk and the Alexander Archipelago wolf under the Endangered Species Act. The Center carefully follows the fate of these and many other species that depend upon the Tongass.

9. Defenders of Wildlife (Defenders) is a non-profit organization with its principal office in Washington, D.C. and field offices throughout the country. Defenders has approximately 1.8 million members and supporters, including over 6,000 in Alaska. Defenders’ primary mission is to further the protection of native wildlife and plants in their natural communities. Defenders has advocated for the protection of Tongass species, including the Alexander Archipelago wolf, Queen Charlotte goshawk, northern flying squirrel, marten, and bats in comments on the Tongass National Forest Management Plan amendment process, by submitting detailed comments on proposed rules and environmental impact statements, providing information to its members and the public, and litigating.

10. Plaintiff Natural Resources Defense Council (NRDC) is a non-profit environmental advocacy organization with more than three million members and online

activists. NRDC has a long history of interest and involvement in Tongass-related management issues, dating back to the early 1970s. Over the years, NRDC has participated in numerous management and policy processes, and litigated both defending and challenging federal decisions, affecting the Tongass National Forest. Its members have filed many hundreds of thousands of comments with federal agencies advocating conservation of the Tongass. No other national forest has seen such sustained advocacy from NRDC. This commitment reflects the unique place the Tongass holds in the National Forest System, as its largest unit and the one with far and away the most natural values, and indeed one of the largest in the world's catalogue of remaining principally intact temperate rainforest ecosystems.

11. Members of Plaintiff organizations reside near, visit, or otherwise use and enjoy the Kuiu Timber Sale project area. They use and enjoy this area for recreation, subsistence, sport hunting and fishing, wildlife viewing, photography, education, and aesthetic and spiritual enjoyment. The Kuiu Timber Sale will directly and irreparably injure these interests.

12. Plaintiff organizations monitor the use of forest ecosystems and compliance with the laws respecting these ecosystems, educate their members and the public concerning management of these ecosystems, and advocate for policies and practices that conserve the natural value of these ecosystems. It is impossible to achieve these organizational purposes fully without adequate information and public participation in the processes required by law. The interests and organizational purposes of Plaintiffs are directly and irreparably injured by Defendants' violations of the laws as described in this complaint.

DEFENDANTS

13. Defendant Earl Stewart is sued in his official capacity as Forest Supervisor for the Tongass National Forest. Stewart approved the decision to proceed with the Kuiu Timber Sale in the absence of a supplemental EIS.

14. Defendant David Zimmerman is sued in his official capacity as District Ranger for the Petersburg Ranger District of the Tongass National Forest. Zimmerman is responsible for implementation of the Kuiu Timber Sale.

15. The full name of Defendant United States Forest Service is United States Department of Agriculture, Forest Service. It is an agency of the United States Department of Agriculture charged with the administration of the national forests, including the Tongass.

16. Defendant United States Department of Agriculture is the department of the executive branch responsible for overseeing the activities of the Forest Service.

FACTS

17. The Forest Service published the FEIS for the Kuiu Timber Sale Area project in July 2007. The project area for this EIS encompasses the north-central portion of Kuiu Island, extending into the peninsula between Security Bay and Saginaw Bay, about 12 air miles southwest of Kake, Alaska.

18. On May 13, 2008, the previous Forest Supervisor, Forrest Cole, signed a ROD for the Kuiu Timber Sale. The decision authorized logging of approximately 31.4 million board feet (mmbf) of timber from 1,208 acres of old-growth forest. It also authorized reconstruction of 6.8 miles of existing roads and construction of 6.5 miles of new long-term roads, as well as 3.5 miles of new temporary roads.

COMPLAINT

Southeast Alaska Conservation Council et al. v. Stewart et al.

Case No.

19. Since the adoption of the ROD for the Kuiu Timber Sale, the Forest Service has not sold any of the timber in the project area.

20. On August 9, 2016, Defendant Earl Stewart signed a Supplemental Information Report (SIR) for the Kuiu Timber Sale Area FEIS and ROD, concluding that there was no significant new information or circumstances that required preparation of a supplemental EIS, and that the Kuiu Timber Sale could proceed. That year, the Forest Service offered a version of the Kuiu Timber Sale.

21. On September 2, 2016, several conservation groups submitted a letter to the Forest Service asking that the agency rescind the 2016 version of the Kuiu Timber Sale. They argued that a supplemental EIS was needed to take into account significant new information and new circumstances since the 2007 Kuiu Timber Sale Area FEIS. The Forest Service did not respond to the letter. The 2016 sale did not receive any bids.

22. The Forest Service subsequently signaled its intent to attempt another timber sale offering on North Kuiu. On March 8, 2018, conservation groups submitted an additional letter to the Forest Service, citing new information and new circumstances since 2016. They again asked the Forest Service not to offer the sale, arguing that a supplemental EIS was required. The Forest Service did not respond to the letter.

23. On March 21, 2018, small cruise ship operators sent a letter to the Forest Service describing their increased use of the Kuiu Timber Sale area, citing new information and new circumstances since the 2007 Kuiu Timber Sale Area FEIS, and asking the Forest Service not to offer the sale. They argued that a supplemental EIS was required. The Forest Service did not respond to the letter.

24. Robert Lindekugel works for Plaintiff SEACC. On or about April 17, 2018, Lindekugel had a telephone conversation with David Zimmerman, the District Ranger for the Petersburg Ranger District. The Kuiu Timber Sale is in the Petersburg Ranger District. Lindekugel asked Zimmerman when the Forest Service planned to offer the Kuiu Timber sale. Zimmerman told Lindekugel that the Forest Service planned to offer the Kuiu Timber Sale in the fourth quarter of fiscal year 2018. The fourth quarter of the federal fiscal year is July through September.

25. The Forest Service offered the Kuiu Timber Sale on May 5, 2018. The sale includes an estimated 13.64 mmbf of timber. If logged, it will cut the timber from about 523 acres. The site-specific NEPA analysis for the sale took place in the 2007 Kuiu Timber Sale Area FEIS.

26. In the nearly eleven years since the publication of the Kuiu Timber Sale Area FEIS, considerations relevant to natural resource protection, social values, timber sale economics, and employment opportunities for the Kuiu Timber Sale have changed significantly.

27. Part of the purpose and need of the Kuiu Timber Sale Area FEIS was to provide for management of the timber resource in an economically efficient manner, and to provide diverse opportunities for resource uses that would contribute to the local and regional economies of Southeast Alaska, including employment opportunities.

28. In adopting the ROD for the Kuiu Timber Sale, the Forest Supervisor considered the trade-off between resource protection, social values, and timber sale economics.

29. The Kuiu Timber Sale Area FEIS indicated that the purchaser would pay for road costs such as the cost of road reconstruction, reconditioning, and construction necessary for the

sale. For the approximately 31.4 mmbf sale approved in the ROD, the road costs were estimated to be \$54.09 per thousand board feet, or about \$1.7 million in total.

30. In or about 2014 and 2015, the agency funded the reconstruction, reconditioning, or construction of roads on Kuiu Island. The total work covered about 88 miles of roads. These roads provide access to the Kuiu Timber Sale. The direct cost of this road work to the Forest Service was about \$3,083,813.

31. The May 5, 2018, advertisement offering the Kuiu Timber Sale indicates that remaining road construction costs are estimated at \$86,546.64. The minimum acceptable bid for the Kuiu Timber Sale is \$195,465.56.

32. The Kuiu Timber Sale FEIS stated that the selected alternative would generate 198 jobs.

33. In 2016, the Regional Forester authorized 100 percent export of spruce and hemlock from the Kuiu Timber Sale. Exported timber generates fewer local jobs than locally processed timber. In addition, the sale will generate fewer overall jobs because it is less than half of the volume that was approved for sale in the ROD for the Kuiu Timber Sale. At the number of jobs per mmbf estimated by the Forest Service, the Kuiu Timber Sale would generate about 52 direct jobs.

34. In adopting the ROD for the Kuiu Timber Sale, the Forest Supervisor determined that the sale would have a limited effect or no effect on other natural resource employment.

35. Since the publication of the Kuiu Timber Sale Area FEIS, small cruise ship and other outfitter and guided public use of the project area and surrounding areas has multiplied. These businesses have increasingly contributed to the local and regional economy.

36. If the sale is implemented, small cruise ships that use the project area and surrounding areas will not be able to use these areas during logging, or after logging, until the logged areas grow back enough to be visibly pleasing to guests. Other outfitters and guides who use the project area and surrounding areas will not be able to use those areas during logging. After logging, hunting opportunities will likely be affected by the disturbance in and reduction of old-growth habitat, to the detriment of outfitters and guides.

37. Part of the purpose and need of the Kuiu Timber Sale Area FEIS was to provide for a vigorous and healthy forest environment.

38. Since the publication of the Kuiu Timber Sale Area FEIS, new information has arisen and circumstances have changed in ways that indicate the Kuiu Timber Sale will have significantly greater and comparatively more important negative consequences for the forest environment and its species than was described in the Kuiu Timber Sale Area FEIS.

39. Since the publication of the Kuiu Timber Sale Area FEIS, the Sitka black-tailed deer population on Kuiu Island has dropped in number. The Alaska Department of Fish and Game (ADF&G) has concluded that habitat loss due to logging may have played a role in the decline of the deer population in the game management unit that includes Kuiu Island.

40. Since the publication of the Kuiu Timber Sale Area FEIS, new research shows that as old-growth habitat becomes more and more isolated by logging, deer avoid it, lest they become stranded during rapid snow accumulation.

41. The Kuiu Timber Sale Area FEIS found that ADF&G's management objectives for black bears were being met or exceeded on Kuiu Island and that estimated densities of black bears on Kuiu Island were very high.

42. Since the publication of the Kuiu Timber Sale Area FEIS, the average male skull size for black bears, which can indicate changes in population size and composition, has fallen well below ADF&G's management objective of 18.5 inches. In 2014, ADF&G found that black bear populations on Kuiu Island may have declined significantly since the late 1990s.

43. Since the publication of the Kuiu Timber Sale Area FEIS, research has suggested that the hybridization of Pacific marten and American marten that happens on Kuiu Island produces genetic diversity that is unique to the island, resulting in a unique population of global significance.

44. Since the publication of the Kuiu Timber Sale Area FEIS, research has shown that the Kuiu Island marten population is small and in decline. In 2013, ADF&G characterized Kuiu Island marten numbers as "extremely low." A 2013 study conducted for AFD&G concluded that the population may continue to be suppressed in the long term because of a chronic low food supply and habitat conditions. The marten population on Kuiu Island did not rebound while trapping was prohibited from 2007-2018.

COUNT I

45. NEPA requires federal agencies to prepare an EIS on any proposal for "major Federal actions significantly affecting the quality of the human environment . . ." 42 U.S.C. § 4332(2)(C).

46. The Kuiu Timber Sale is a major federal action significantly affecting the quality of the human environment.

47. Federal agencies are required to prepare supplements to final EISs if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii).

COMPLAINT

Southeast Alaska Conservation Council et al. v. Stewart et al.

Case No.

12

48. The increased public cost of the Kuiu Timber Sale; the decline in employment opportunities; the increase in small cruise ship and other outfitter and guided public use of the project area and surrounding areas; the new information indicating low and declining deer, bear, and marten numbers on Kuiu Island; and recent scientific studies relating to these species are significant new circumstances and information that require a supplemental EIS for the Kuiu Timber Sale Area FEIS.

49. The Forest Service's conclusion that no supplemental EIS is required is arbitrary, unreasonable, and contrary to law. 5 U.S.C. § 706(2).

50. The Forest Service has unlawfully refused to prepare a supplemental EIS as required by NEPA. 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that Defendants' decision to proceed with the Kuiu Timber Sale without preparing a supplement to the 2007 Kuiu Timber Sale Area FEIS was arbitrary, unreasonable, and contrary to NEPA;
2. Enter preliminary and permanent injunctive relief as needed to prevent implementation of the Kuiu Timber Sale until Defendants comply with NEPA;
3. Award Plaintiffs the costs of this action, including reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
4. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 16th day of May, 2018.

s/ Erin Whalen

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COMPLAINT

Southeast Alaska Conservation Council et al. v. Stewart et al.

Case No.