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*Attorneys for Plaintiffs Southeast Alaska Conservation Council, et al.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

SOUTHEAST ALASKA CONSERVATION COUNCIL; )  
SIERRA CLUB; NATURAL RESOURCES DEFENSE )  
COUNCIL; and ALASKA WILDERNESS LEAGUE, )

*Plaintiffs,* )

v. )

Case No.

UNITED STATES FOREST SERVICE; )  
UNITED STATES DEPARTMENT OF AGRICULTURE; )  
THOMAS L. TIDWELL, in his official capacity as Chief )  
of the United States Forest Service; BETH PENDLETON, )  
in her official capacity as United States Forest Service )  
Region 10 Regional Forester; and FORREST COLE, in his )  
official capacity as Forest Supervisor of the Tongass )  
National Forest, )

*Defendants.*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

(5 U.S.C. §§ 701-706; 16 U.S.C. § 1604; 42 U.S.C. § 4332)

## SUMMARY

1. This action challenges the Record of Decision for the 2008 Amendment to the Tongass Land and Resource Management Plan (2008 Plan Amendment), signed by Regional Forester Dennis E. Bschor on January 23, 2008, and the associated Final Environmental Impact Statement (FEIS). The 2008 Plan Amendment and the FEIS fail to address adequately the need to maintain sufficient habitat for the Sitka black-tailed deer, a species hunted by local residents and also the principal prey of the Alexander Archipelago wolf in large parts of the Tongass National Forest.

2. The Tongass occupies most of Southeast Alaska and is the largest national forest in the United States. It contains old-growth forests with trees hundreds of years old. These old-growth forests provide important habitat for deer, wolves, and many other species.

3. The 2008 Plan Amendment allows the sale of up to 267 million board-feet of timber per year, on average, from the Tongass National Forest. During the intended 10-15 year life of the amendment, commercial logging would come primarily from old-growth forests.

4. The 2008 decision amended the 1997 Tongass National Forest Land and Resource Management Plan (1997 Forest Plan). The 1997 Forest Plan included a conservation strategy to protect wolves and other species affected adversely by old-growth logging. Its Standards and Guidelines stated, in part, “Provide sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.” 1997 Forest Plan at 4-114, WILD112.XI.A.3. Describing this provision, the agency wrote, “This standard should preclude further declines in deer habitat capability that would adversely effect [sic] the [deer-human-wolf] equilibrium.” 1997 Forest Plan FEIS at 3-405. Under the 1997

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Forest Plan, a “standard” is “required . . . to promote achievement of goals and objectives.” 1997 Forest Plan at 7-47.

5. In the 2008 Plan Amendment, the Forest Service modified this provision to require, in part, “Provide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands.” 2008 Plan Amendment at 4-95, WILD1.XIV.A.2. The Forest Service described the modifications to the wolf standards and guidelines as “minor changes” that would “improve their effectiveness with respect to near-term and long-term wolf viability concerns described in the 1997 Forest Plan EIS.” 2008 Plan Amendment Record of Decision at 24.

6. The Forest Service, however, interprets the provision in the 2008 Plan Amendment as merely a guideline, not a standard. A “guideline” describes a preferred or advisable course of action. 2008 Plan Amendment at 7-14. Under the Forest Service’s interpretation of the deer habitat capability provision, maintaining sustainable wolf populations is a goal that may be sacrificed to meet conflicting plan objectives, such as logging.

7. The expert biologists who advised the Forest Service on measures to protect wolves consistently and uniformly explained that the deer habitat capability standard contained in the 1997 Forest Plan was an essential part of the conservation strategy. The adoption of a nonbinding guideline, rather than a binding standard, renders arbitrary the Forest Service’s finding that the 2008 Plan Amendment would adequately ensure well-distributed, viable populations of wolves as required by regulations that governed the amendment process.

8. The 2008 Plan Amendment FEIS did not disclose that the Forest Service had changed its interpretation of the deer habitat capability provision from a “standard” that “should preclude further declines in deer habitat capability” to a nonbinding guideline that may be

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sacrificed to meet timber cutting objectives. Nor did it disclose the magnitude of the potential loss of deer habitat, nor that the areas of the Tongass that could provide economically appraised timber sales are located almost entirely in wolf habitat where there is an immediate conflict with the deer habitat capability standard. The failures of the 2008 Plan Amendment FEIS to disclose potential impacts to deer, deer hunting, and wolves violate the National Environmental Policy Act (NEPA).

### **JURISDICTION, RIGHT OF ACTION, AND VENUE**

9. 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.

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

### **PLAINTIFFS**

11. Southeast Alaska Conservation Council (SEACC) is a non-profit, member-based organization with hundreds of 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. 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

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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, Alaska National Interest Lands Conservation Act, National Forest Management Act, and the Multiple Use Sustained Yield Act. 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 led the nearly decade long grassroots push for passage of the Tongass Timber Reform Act in 1990. 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.

12. The Sierra Club is a national nonprofit organization of approximately 620,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Members of the Sierra Club nationally, and the Tongass Group Sierra Club locally, use the Tongass National Forest for recreation, commercial and recreational fishing, subsistence, wildlife viewing, and other activities. The Sierra Club has advocated for the protection of Tongass wildlands and the values therein since 1892 when the club was created by John Muir. The Sierra Club has been active in creating, opposing, or supporting Tongass land management actions for 45 years. These efforts include helping to secure the final passage of the Tongass Timber Reform Act, commenting on successive Tongass National Forest Plans and Amendments, advocating for the inclusion of the Tongass National Forest in the Roadless Area Conservation Rule, advocating for the designation

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of Tongass inventoried roadless areas as wilderness, and commenting on numerous individual timber sales and other projects in Southeast Alaska. The Alaska Chapter of the Sierra Club has approximately 1,400 members with about 290 of them residing in Southeast Alaska as members of the Tongass Group Sierra Club.

13. Natural Resources Defense Council (NRDC) is a non-profit organization working to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. NRDC has 1.2 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.

14. Alaska Wilderness League (the League) is a non-profit organization with approximately 90,000 members and activists located in Alaska and throughout the United States. The League was founded in 1993 to advocate for protection of Alaska’s public lands and waters, which are threatened with environmental degradation. The League is headquartered in Washington, DC, and has Alaska offices in Anchorage, Barrow, Fairbanks, and Juneau. 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

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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.

15. Members of plaintiff organizations reside near, visit or otherwise use and enjoy the Tongass National Forest, including areas approved for timber sales under the 2008 Plan Amendment. In particular, members of plaintiff organizations use these areas for recreation, subsistence and sport hunting and fishing, wildlife viewing, photography, education, and aesthetic and spiritual enjoyment. The plaintiffs and their members derive scientific, recreational, aesthetic, and conservation benefits from these areas. Logging authorized under the 2008 Plan Amendment will directly and irreparably injure these interests.

16. Plaintiffs 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 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 the plaintiffs are directly and irreparably injured by Defendants' violations of the laws as described in this complaint.

17. Plaintiffs participate actively in the administrative processes established for management of the Tongass National Forest, including the 2008 Plan Amendment and timber sale projects approved under it. Plaintiff groups have submitted comments on proposed actions and draft environmental impact statements (EISs) for the 2008 Plan Amendment and for timber sale projects approved under it. These groups have also filed and intervened in administrative appeals of the 2008 Plan Amendment and timber sale projects approved under it. Plaintiffs have

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exhausted administrative remedies for the 2008 Plan Amendment. These organizations seek declaratory and injunctive relief preventing the Forest Service from proceeding with actions that cause harm to the environment, and thereby to their members, pending compliance with the law.

## **DEFENDANTS**

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

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

20. Defendant Thomas L. Tidwell is sued in his official capacity as Chief of the United States Forest Service. A Reviewing Officer for Tidwell's predecessor as Chief rendered the decision affirming the 2008 Plan Amendment on administrative appeal.

21. Defendant Beth Pendleton is sued in her official capacity as Regional Forester for Region 10 of the United States Forest Service. Pendleton's predecessor, Dennis E. Bschor, signed the Record of Decision for the 2008 Plan Amendment.

22. Defendant Forrest Cole is sued in his official capacity as the Forest Supervisor for the Tongass National Forest. Cole signed or approved the records of decision for the Navy, Logjam, Central Kupreanof, Tonka, and Big Thorne timber sale project decisions implementing the 2008 Plan Amendment.

## **FACTS**

### **The Tongass National Forest**

23. The Tongass National Forest is one of the few old-growth temperate rainforests in the world and this country's largest national forest. Its towering stands of 700 year old trees

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provide vital habitat for Sitka black-tailed deer, bears, salmon, goshawks, and the Alexander Archipelago wolf. Large portions of the Tongass have been devastated by decades of industrial clearcut logging.

24. The communities of Southeast Alaska depend on the Tongass National Forest in important ways, including employment in commercial fishing and fish processing, recreation, and tourism. Many residents in communities throughout the Tongass depend heavily on subsistence hunting and fishing, including subsistence hunting of deer, to meet their basic needs.

### **Sitka Black-Tailed Deer and Alexander Archipelago Wolf**

25. On the southern islands of the Tongass, two species play a critical role in helping to define the unique biodiversity of the Tongass National Forest: the Alexander Archipelago wolf and the Sitka black-tailed deer. These species are linked inextricably to the overall abundance and health of old-growth forest, because deer provide the wolf's primary prey and depend upon low elevation old-growth forest to survive the winter.

26. Given their importance to the Tongass ecosystem, the Forest Service has designated both the Alexander Archipelago wolf and the Sitka black-tailed deer as Management Indicator Species pursuant to the National Forest Management Act. The Forest Service uses the response of Management Indicator Species to land management decisions to predict the responses of other species.

27. Logging of old growth in the Tongass reduces the amount of winter habitat for deer. This reduction, over the long-term, will result in a decline in deer numbers. Fewer deer will increase competition between wolves and human deer hunters in those areas where deer are the primary prey of wolves. Logging of old growth in the places on the southern islands the

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2008 Plan Amendment makes available for logging creates a high risk that there will be an insufficient number of deer to sustain both wolves and human hunting.

### **Forest Plan Standards and Guidelines for Deer Habitat**

28. Regulations governing the 2008 Plan Amendment process required maintenance of “viable populations” of deer, wolves, and other species, which must be “well distributed in the planning area.” 36 C.F.R. § 219.19 (2000).

29. According to the Forest Service, the 2008 Plan Amendment would have a high likelihood of maintaining viable and well-distributed populations of wolves. This was based in part on a provision in the Standards and Guidelines protecting deer habitat.

30. The 2008 decision amended the plan adopted in 1997. The 1997 Forest Plan contained the following provision in its Standards and Guidelines:

Provide sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands. This is generally considered 13 deer/square mile in biogeographic provinces where deer are the primary prey of wolves. Use the most recent version of the interagency deer habitat capability model and field validation of local deer populations to estimate deer habitat capability.

1997 Forest Plan at 4-114, WILD112.XI.A.3. Describing this provision, the agency wrote, “This standard should preclude further declines in deer habitat capability that would adversely effect [sic] the [deer-human-wolf] equilibrium.” 1997 Forest Plan FEIS at 3-405.

31. In designing the 1997 Forest Plan’s wolf conservation strategy, the Forest Service relied heavily on an expert review panel consisting of four biologists with expertise in wolves. In its summary of this panel’s conclusions, the Forest Service noted that, of the four reviewers, “two considered the Deer Standard and Guideline to be critical and two as important.” Summary of the 1997 Alexander Archipelago Wolf Risk Assessment Panel at 4. The report added that

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“any features that provided for greater deer habitat capability were important.” *Id.* The panelists consistently stated that maintaining deer habitat capability was the most important factor in ensuring a viable population of wolves.

32. About a year after the 1997 Forest Plan was adopted, on the basis of expert input, the Tongass Forest Supervisor recognized that there was an error in this standard and directed the agency to apply a standard of 17 deer per square mile, rather than 13. The reason for the change was that to generally provide a population of 13 deer per square mile, there needs to be an average long term habitat capability of 17 deer per square mile. In effect, this directive changed the standard from 13 to 17.

33. Because of the new protections adopted in the 1997 Forest Plan, the U.S. Fish and Wildlife Service later in 1997 declined to list the Alexander Archipelago wolf as a threatened species under the Endangered Species Act. The Fish and Wildlife Service noted that it “considers potential loss of prey the most serious threat” but expects “the population decline to stop at an acceptable level.” *Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Alexander Archipelago Wolf as Threatened and to Designate Critical Habitat*, 62 Fed. Reg. 46,709, 46,710 (Sept. 4, 1997).

34. In preparing the 2008 Plan Amendment, the Forest Service again consulted expert wolf biologists. The agency conducted an Interagency Conservation Strategy Review on April 10-14, 2006, in Ketchikan, Alaska. The wolf experts in that review reiterated the conclusions of the experts in 1995-97 regarding the high importance of maintaining quality deer habitat in areas open to logging. The Workshop Summary Report stated, “High quality habitat for deer must be maintained within and outside the non-development [Land Use Designations].” *Workshop Summary Report* at 115. It further noted that “matrix management (in terms of amount of

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development activity within the home range) is important to conservation.” *Id.* The “matrix” is the part of the forest open to logging.

35. In the 2008 Plan Amendment, the Forest Service modified the deer habitat capability provision in the Standards and Guidelines. It further corrected the numerical standard from 17 to 18 deer per square mile, to best reflect expert interpretation of the model and habitat needs. It also made other changes. The new provision reads:

Provide, where possible, sufficient deer habitat capability to first maintain sustainable wolf populations, and then to consider meeting estimated human deer harvest demands. This is generally considered to equate to the habitat capability to support 18 deer per square mile (using habitat capability model outputs) in biogeographic provinces where deer are the primary prey of wolves. Use 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. Local knowledge of habitat conditions, spatial location of habitat, and other factors need to be considered by the biologist rather than solely relying upon model outputs.

2008 Plan Amendment at 4-95, WILD1.XIV.A.2.

36. The Forest Service described these modifications to the wolf standards and guidelines as “minor changes” that would “improve their effectiveness with respect to near-term and long-term wolf viability concerns described in the 1997 Forest Plan EIS.” 2008 Plan Amendment Record of Decision at 24. However, the Forest Service interprets the deer habitat capability provision in the 2008 Plan Amendment as merely a “guideline.” A guideline is a preferred or advisable course of action. As a guideline, providing sufficient deer habitat capability to maintain sustainable wolf populations is merely a goal that may be sacrificed to meet conflicting objectives of the Forest Plan, such as logging.

37. In preparing the 2008 Plan Amendment, the Forest Service also conducted analyses showing that all or nearly all the areas of the Tongass that could produce timber sales

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with positive net stumpage value—i.e., places where it would be possible to offer a timber sale with an appraisal indicating that it could make a profit for an operator—were located in the southern islands. These are the very areas where deer are the principal prey of wolves. The FEIS did not disclose this finding.

38. As a result, in part, of the Forest Service’s weakened interpretation and application of the deer habitat capability provision, the U.S. Fish and Wildlife Service in 2014 found “substantial scientific or commercial information” indicating that listing the Alexander Archipelago wolf as threatened or endangered under the Endangered Species Act may be warranted and indicated it would initiate a status review. *Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Alexander Archipelago Wolf as Threatened or Endangered*, 79 Fed. Reg. 17,993, 17,994 (March 31, 2014). The Fish and Wildlife Service wrote, “Forest Plan standards that appear to require maintenance of deer habitat capability of at least 18 deer per square mile to provide adequate prey for wolves and human hunters are not met in many timber harvest areas. Additional logging is predicted to reduce deer habitat capability further in many of those areas, and result in additional areas that fail to meet the standard.” Appendix: 90 Day Finding on petition to list the Alexander Archipelago wolf as an endangered or threatened species at 6-7 (citations omitted).

#### **Approval and Implementation of the 2008 Plan Amendment**

39. The Regional Forester signed the Record of Decision for the 2008 Plan Amendment on January 23, 2008.

40. Plaintiffs and other groups filed timely administrative appeals of the 2008 Plan Amendment and participated as intervenors in those appeals.

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41. On August 22, 2008, a Reviewing Officer for the Chief of the Forest Service rendered a decision affirming the Plan Amendment. This decision was final agency action for the 2008 Plan Amendment.

42. The Forest Service has implemented the 2008 Plan Amendment through numerous timber sales. Some sales currently under contract were already under contract at the time the 2008 Plan Amendment was adopted. New timber sales have been offered from project-level decisions that were finalized before the 2008 Plan Amendment was adopted. The Forest Service has finalized new timber sale decisions for the Logjam Timber Sale project, the Central Kupreanof Timber Harvest project, the Tonka Timber Sale project, and the Big Thorne Project. The Forest Service has also prepared a FEIS, but not yet a final agency action, for the Navy Timber Sale project. The Forest Service has also prepared an Environmental Assessment, but not yet a final agency action, for the Mitkof Island project.

43. Each of the new timber sale projects subsequent to adoption of the 2008 Plan Amendment—Logjam, Central Kupreanof, Tonka, Navy, Big Thorne, and Mitkof Island—is located in areas where deer are the principal prey of wolves. In each of these projects, the habitat capability model shows that the wildlife analysis areas in which the project is located will not support 18 deer per square mile following project implementation.

44. The Forest Service is planning more timber sales, for which environmental impact statements or environmental assessments have not yet been published, in parts of the Tongass where deer are the principal prey of wolves.

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## STATUTORY FRAMEWORK

### National Forest Management

45. Under the National Forest Management Act (NFMA), forest management occurs at two stages. At the first stage, the Forest Service prepares a land management plan for each national forest. 16 U.S.C. § 1604. At the second stage, the Forest Service implements each land management plan by approving specific projects that are consistent with the governing forest plan. *Id.* § 1604(i).

46. NFMA directs the Secretary of Agriculture to adopt regulations governing the process for the development and revision of land management plans. *Id.* § 1604(g). Among other things, these regulations must “provide for diversity of plant and animal communities....” *Id.* § 1604(g)(3)(B).

47. Pursuant to this requirement, the Department of Agriculture adopted a regulation providing, “Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” 36 C.F.R. § 219.19 (2000). To be viable, a population must be “well distributed in the planning area.” *Id.* This regulation governed the 2008 Plan Amendment process. 71 Fed. Reg. 15,372, 15,373 (March 28, 2006).

### National Environmental Policy Act

48. Congress enacted NEPA to require federal agencies to incorporate environmental concerns into the decision-making process. 42 U.S.C. § 4331(a)-(b). In furtherance of this goal, NEPA compels federal agencies to evaluate prospectively the environmental impacts of proposed actions that they carry out, fund or authorize and ensures the public an opportunity to participate in the decision making process.

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49. NEPA requires federal agencies to prepare an EIS for any major federal action that may significantly affect the quality of the human environment. *Id.* § 4332(2)(C). The EIS “shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. It “is more than a disclosure document” and “shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.” *Id.*

### **Administrative Procedure Act**

50. The Administrative Procedure Act (APA) authorizes courts to review agency actions and “hold unlawful and set aside agency action, findings, and conclusions found to be— (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2).

### **FIRST CLAIM FOR RELIEF**

#### **(National Forest Management Act)**

51. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 50.

52. In fulfillment of its obligation under 36 C.F.R. § 219.19 (2000), the Forest Service concluded that the 2008 Plan Amendment would have a “high likelihood of maintaining viable wolf populations . . . .” 2008 Plan Amendment Record of Decision at 24. This conclusion was based heavily on input from experts who reviewed the wolf conservation strategy contained in the 1997 Forest Plan. Those experts consistently advised that the deer habitat capability standard in the 1997 Forest Plan was an important or critical part of the strategy to maintain a viable wolf population.

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53. The Forest Service interprets and applies the deer habitat capability provision in the 2008 Plan Amendment as a nonbinding guideline. The provision does not prevent the agency from authorizing timber sales or reducing deer habitat capability in areas where deer are the principal prey of wolves. Each of the new timber sale projects subsequent to adoption of the Plan Amendment—Logjam, Central Kupreanof, Tonka, Navy, Big Thorne, and Mitkof Island—is located in areas where deer are the principal prey of wolves. In each of these projects, the habitat capability model shows that the wildlife analysis areas in which the project is located will not support 18 deer per square mile following project implementation.

54. Under the APA, the Court “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . .” 5 U.S.C. § 706(2)(A).

55. With the deer habitat capability provision applied merely as a nonbinding guideline, there is no support in the record for the Forest Service’s conclusion that the 2008 Plan Amendment will have a high likelihood of maintaining viable wolf populations. The Forest Service’s conclusion that the 2008 Plan Amendment would have a high likelihood of maintaining viable populations of wolves is therefore arbitrary and in violation of the agency’s obligations under 36 C.F.R. § 219.19 (2000).

56. The 1997 Forest Plan FEIS described the deer habitat capability provision as a “standard” that “should preclude further declines in deer habitat capability that would adversely effect [sic] the equilibrium.” 1997 Forest Plan FEIS at 3-405. The 2008 Plan Amendment decision stated that changes to the wolf standards and guidelines would “improve their effectiveness” in ensuring wolf viability. 2008 Plan Amendment Record of Decision at 24. However, the Forest Service does not interpret the deer habitat capability provision in the 2008

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Plan Amendment as an enforceable standard. The Forest Service interprets it as a nonbinding guideline that may give way to conflicting timber objectives. This renders arbitrary the conclusion in the Record of Decision that the changes to the wolf standards and guidelines adopted in the 2008 Plan Amendment would improve the plan's effectiveness in ensuring a viable population of wolves under 36 C.F.R. § 219.19 (2000).

## **SECOND CLAIM FOR RELIEF**

### **(National Environmental Policy Act)**

57. Plaintiffs incorporate by reference each of the allegations in paragraphs 1 through 50.

58. NEPA requires all agencies of the federal government to prepare a “detailed statement” regarding all “major [f]ederal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

59. The 2008 Plan Amendment FEIS contains misleading information and fails to disclose the impacts of the amendment.

60. The 1997 Forest Plan FEIS described the deer habitat capability provision as a “standard” that “should preclude further declines in deer habitat capability that would adversely effect [sic] the equilibrium.” 1997 Forest Plan FEIS at 3-405. The 2008 Plan Amendment stated that changes to the wolf standards and guidelines would “improve their effectiveness” in ensuring wolf viability. 2008 Plan Amendment Record of Decision at 24. Nowhere does the 2008 Plan Amendment FEIS or Record of Decision disclose that the Forest Service had changed its interpretation of the provision from a “standard” that should preclude harmful declines into a nonbinding guideline that gives way when it conflicts with timber volume objectives. This

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presentation is misleading and fails to disclose the impacts of the 2008 Plan Amendment. For this reason, it violates NEPA.

61. The 2008 Plan Amendment FEIS discloses that the amendment could cause many wildlife analysis areas to drop below the deer habitat capability standard, increasing the risk of not sustaining a well-distributed, viable wolf population. However, it does not disclose the magnitude of that decline or its impacts. For example, it is impossible to tell, from the FEIS, whether these areas would drop to 17 deer per square mile or to 7 deer per square mile. It does not explain that large groups of wildlife analysis areas and even entire biogeographic provinces would fall below the 18 deer per square mile threshold. Correspondingly, it does not disclose how much these drops would harm wolves, deer, and deer hunting, or whether the Forest Service could continue to meet its obligation to ensure a well-distributed, viable population of wolves. For these reasons, the 2008 Plan Amendment FEIS fails to disclose the potential impacts of the amendment and violates NEPA.

62. The 2008 Plan Amendment FEIS discloses that these widespread declines in deer habitat capability would occur if logging occurred at maximum volume levels for 100 years. The 2008 Plan Amendment Record of Decision relies heavily on the assumption that actual logging levels would likely be far lower. This presentation misleadingly suggests that any conflicts between the deer habitat capability standard and logging are far away and theoretical. In fact, the Forest Service knew at the time of the 2008 Plan Amendment, but did not disclose in the FEIS, that all or nearly all of the areas where the agency could offer economically viable timber sales were located on the southern islands of the Tongass. This is the very region of the forest where deer are the principal prey of wolves and where previous logging has caused extensive loss of deer habitat capability, pushing many areas below the 18 deer per square mile threshold already.

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Thus, the conflict between timber goals and the deer habitat capability standard was immediate, not far away. By failing to disclose this fact, the FEIS is misleading, fails to disclose the impacts of the Plan, and violates NEPA.

### **PRAYER FOR RELIEF**

Therefore, Plaintiffs respectfully request that the Court:

1. Declare that Defendants United States Forest Service, United States Department of Agriculture, Forest Service Chief Thomas L. Tidwell, Region 10 Regional Forester Beth Pendleton, and Tongass Forest Supervisor Forrest Cole have acted arbitrarily and not in accordance with their obligations under the National Forest Management Act and the Forest Service's relevant implementing regulations;
2. Declare that the 2008 Plan Amendment FEIS violates NEPA by failing to disclose the impacts of the 2008 Plan Amendment to deer, deer hunting, and wolves;
3. Enter appropriate injunctive relief;
4. Award Plaintiffs the costs of this action, including reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant such other relief as the Court deems just and proper.

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Respectfully submitted this 22nd day of August, 2014.

*s/ Thomas S. Waldo*

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Thomas S. Waldo (AK Bar #9007047)  
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COMPLAINT

*Southeast Alaska Conservation Council, et al. v. U.S. Forest Service, et al.,  
Case No.*