

# TONGASS LAND MANAGEMENT

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JOINT HEARINGS  
BEFORE THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE  
AND THE  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
FIRST SESSION  
ON  
THE TONGASS LAND MANAGEMENT PLAN

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JULY 9, 1997  
JULY 10, 1997



Printed for the use of the  
Committee on Energy and Natural Resources and  
the House Committee on Resources

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(ii)

# CONTENTS

	Page
Hearings:	
July 9, 1997 .....	1
July 10, 1997 .....	95

## STATEMENTS

### JULY 9, 1997

Bumpers, Hon. Dale, U.S. Senator from Arkansas .....	5
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado .....	8
Craig, Hon. Larry E., U.S. Senator from Idaho .....	6
Janik, Phil, Regional Forester, U.S. Forest Service, Juneau, AK; accompanied by Dr. Tom Mills, U.S. Forest Service, Portland, OR; Dr. Fred Everest, U.S. Forest Service, Juneau, AK; Brad Powell, U.S. Forest Service, Ketchi- kan, AK; Fred Norbury, U.S. Forest Service, Juneau, AK; John Day, U.S. Forest Service, Juneau, AK; Kimberly Brown, U.S. Forest Service, Juneau, AK; and Chris Iverson, U.S. Forest Service, Juneau, AK .....	29
Katzen, Sally, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget .....	16
Murkowski, Hon. Frank H., U.S. Senator from Alaska .....	1
Murphy, Robert P., General Counsel, General Accounting Office .....	12
Pickett, Hon. Owen, U.S. Representative from Virginia .....	8
Vento, Hon. Bruce, U.S. Representative from Minnesota .....	8

### JULY 10, 1997

Allen, David B., Alaska Regional Director, U.S. Fish and Wildlife Service, Anchorage, AK .....	138
Janik, Phil, Forester, U.S. Forest Service, Juneau, AK; accompanied by Dr. Tom Mills, U.S. Forest Service, Portland, OR; Dr. Fred Everest, U.S. Forest Service, Juneau, AK; Brad Powell, U.S. Forest Service, Ketchikan, AK; Fred Norbury, U.S. Forest Service, Juneau, AK; Beth Pendleton, U.S. For- est Service, Juneau, AK; and Dr. David Brooks, U.S. Forest Service, Port- land, OR .....	95
Murkowski, Hon. Frank H., U.S. Senator from Alaska .....	95

(iii)

## **TONGASS LAND MANAGEMENT**

**WEDNESDAY, JULY 9, 1997**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
AND U.S. HOUSE COMMITTEE ON RESOURCES,  
*Washington, DC.*

The committees met jointly, pursuant to notice, at 11:11 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Frank H. Murkowski, chairman, presiding.

### **OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA**

The CHAIRMAN. Good morning. We will call the joint Senate-House hearing to order, and let me introduce Owen Pickett.

Representative PICKETT. Good morning, Mr. Chairman.

The CHAIRMAN. Who is with us this morning from Virginia from the House. I think everybody else is recognizable from past hearings and performances. How is that?

What we are here for today is a joint oversight hearing on the final Tongass Land Management Plan. This is the first of two scheduled hearings, and I want to welcome everyone to what is the next stage, if you will, of the Tongass land management planning process. This is a process as interminable and perhaps conflict-borne as, as somebody suggested, the Mideast peace process. Indeed, for newcomers to the debate, I believe you can gain a quick understanding of the conflicts in southeastern Alaska only if you are already well versed in the politics of the Middle East—a good comparison.

Nevertheless, today and tomorrow we will commence the first Congressional review of the Forest Service's final Tongass Land Management Plan. This is an effort that has been a considerable time commitment in the making. I believe it was roughly 11 years and a cost of some \$13 million or thereabouts.

As we pursue this inquiry, we are going to be focusing on two basic questions. The first one is the final Tongass Land Management Plan: Is it a balanced plan for future environmental and economic well-being of southeastern Alaska and will it work on its own terms, or is the final TLMP, as it is known, little more than a batch of partially baked prescriptions and untested theories that cater to some perhaps elite, post-modern version of a new age rural lifestyle?

Second, does the final TLMP properly reflect the compromises that were struck in past Congressional efforts to resolve conflicts in the Tongass? I think the second question is important because,

with the public's intense interest in Alaska generally and the Tongass National Forest specifically, Congress for the last 20 years has been an active participant in the management of the Tongass, for better or for worse. Congress has intervened in the management of the Tongass and directed many of the land use decisions.

I think it is fair to say that the Tongass is perhaps the only national forest subject to its own authorizing statutes—the 1980 Alaska National Interest Lands Conservation Act and the 1990 Tongass Timber Reform Act. In these Congressional debates, many promises were made, promises about the protection of special areas, as well as the protection of the economic well-being of the communities of southeastern Alaska. As we continue our active Congressional role in the process, we will be listening closely to whether and which of these promises the administration has honored in the final Land Management Plan.

So today I plan to focus closely on how this plan differs from the draft released last year. On April 18 and on May 28 and 29, 1996, we held extended oversight hearings on the draft plan. Then as now, I was concerned that the proposed plan may unnecessarily limit economic activity on the Tongass on the basis of unsubstantiated scientific hypotheses. But I was assured that was not the case. Then-Chief Jack Ward Thomas told us that

“When I became Chief of the Forest Service I promised that the use of science would be balanced in decisionmaking. The document is an example of that commitment becoming a reality. I believe that this draft is scientifically sound, and the most responsive to public input of any plan yet produced by the Forest Service. I believe that the analysis in this draft will provide a superior step toward guiding resource decisions in the future.”

Mr. Phil Janik, who is with us today, added the following comments to increase our understanding of the draft by stating:

“In refocusing the Tongass planning effort, I followed two principles. First, I wanted to make better use of scientific information in the planning process. Second, I wanted to improve our cooperation, consultation, and coordination with other Federal and State agencies that had special expertise or statutory jurisdiction in the issues we were facing. I was and am convinced that early and constant consultation was and is the best way to avoid late inning surprises that can overturn even the best of planning efforts.”

Both today and tomorrow, with both the Forest Service and the U.S. Fish and Wildlife Service, we will have an opportunity to assess whether that early and continual consultation actually did produce a scientifically sound plan.

Dr. Mills, as head of the agency's Pacific Northwest Research Station, you told us last April that:

“As the Station Director I am familiar with the issues surrounding the management of the Tongass National Forest and the intensity of the debate. I believe the efforts of the scientists of the Pacific Northwest Station, in concert with the other team members, has assured that the alternatives and their estimated consequences that are displayed in this planning document are based on the best scientific information available.”

Finally, Abigail Kimball, the lead Forest Supervisor involved in the development of the draft, assured us in April 1996 that:

"We wanted an alternative that would meet the requirements of all laws governing the management of the Tongass, maintain future options, and allow for changes based on new information, and be implementable."

Well, for her part, Abigail Kimball has solved the Tongass crisis in the only way so far discovered. She has found another job. We wish her well in her new endeavors as Supervisor of the Big Horn National Forest in Wyoming.

I read these quotes from testimony last year because I think there are significant changes between the draft that we reviewed then and the final that we will review today. And in each case I want to understand: one, why; two, what rational or information was used to make and justify the changes; and three, when this information was first discovered; and four, who had the opportunity to review and comment on these changes.

As I indicated in my letter of invitation to the Forest Service, we view this hearing to be the initiation of our Regulatory Flexibility Act review. We will also be using the information that we glean from your testimony to decide how best to proceed.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Good Morning. I would like to welcome everyone to the next stage of the Tongass Land Management Planning process—a process as interminable and conflict-prone as the Mideast peace process. Indeed, for new-comers to this debate I believe you can gain a quick understanding of the conflicts in southeast Alaska, only if you are already well versed in the politics of the Middle East.

Nevertheless, today and tomorrow we will commence the first congressional review of the Forest Service's final Tongass Land Management Plan—an effort that has been a considerable time in the making. As we pursue this inquiry, we will focus on two basic questions. First, is the final Tongass Land Management Plan a balanced plan for the future environmental and economic wellbeing of southeast Alaska that will work on its own terms. Or, is the final TLMP little more than a batch of half-baked prescriptions and untested theories that cater to some elite, post-modern vision of a new-age rural life style. Second, does the final TLMP properly reflect the compromises that were struck in past congressional efforts to resolve conflicts on the Tongass.

This second question is important because, with the public's intense interest in Alaska generally, and the Tongass National Forest specifically, Congress has—for the last twenty years—been an active participant in the management of the Tongass. For better or worse, Congress has intervened in the management of the Tongass and directed many of the land use decisions. The Tongass is perhaps the only national forest subject to its own authorizing statutes—1980 Alaska National Interest Lands Conservation Act and 1990 Tongass Timber Reform Act.

In these congressional debates many promises were made—promises about the protection of special areas, as well as the protection of the economic wellbeing of the communities of southeast Alaska. As we continue our active congressional role in this process, we will be listening closely to see whether and which of these promises the Administration has honored in this final land management plan.

I also plan to focus very closely on how this final plan differs from the draft released last year. On April 18, and May 28 and 29, 1996 we held extended oversight hearings on the draft plan. Then, as now, I was concerned that the proposed plan would unnecessarily limit economic activity on the Tongass on the basis of unsubstantiated scientific hypotheses.

But I was assured that this was not the case. Then-Chief, Jack Ward Thomas, told me that:

When I became Chief of the Forest Service I promised that the use of science would be balanced in decision-making. The document is an example of that commitment becoming reality. I believe that this draft is scientifically sound, and the most responsive to public input of any plan yet produced by the Forest Service. I believe that the analysis in this draft will provide a superior step toward guiding resource decisions in the future.

Phil, you added the following comments to increase our understanding of the draft. You stated:

In refocusing the Tongass planning effort I followed two principles. First, I wanted to make better use of scientific information in the planning process. Second, I wanted to improve our cooperation, consultation, and coordination with other Federal and State agencies that had special expertise or statutory jurisdiction in the issues we were facing. I was and am convinced that early and constant consultation was and is the best way to avoid late inning surprises that can overturn even the best of planning efforts.

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As I indicated in my letter of invitation to the Forest Service, we view this hearing to be the initiation of our Regulatory Flexibility Act review. We will also be using the information that we glean from your testimony to decide how best to proceed.

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#### ADDITIONAL STATEMENT OF SENATOR MURKOWSKI

One of our longest and possibly most abstruse areas of discussion yesterday was on the question of what was required to comply with the National Forest Management Act, species diversity requirements. This section of the act gave rise to the Forest Service's population viability regulations. This, in turn, has been the subject of a considerable amount of biological debate, as well as erudite review by various lawyers and judges. One would assume that as a result of this level of scrutiny the meaning of the basic terms of debate would be better known. Unfortunately, this does not appear to be the case. That was in retrospect abundantly clear to me last night after I reflected upon an almost Talmudic exchange that I had with Chris Iverson over the difference between a viable population and a sustainable population. Quite honestly we could have been debating about how many angels could dance on the head of a pin. And frankly, we were.

The question here is relatively straight forward, if not very simple. It is: what does the Forest Service have to do to assure that for planning purposes a viable population will be maintained? The definition says that "a viable population should be regarded as one which has the estimated numbers and distribution of reproductive individuals to ensure its continued existence as well distributed in the planning area. In order to ensure that viable populations will be maintained, habitat must be provided to support, at least a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area. Complications arise because there is no definition of a planning area to begin with. There is also no definition of what a minimum reproductive number of individuals involves. Finally and most importantly, for most species we

have no idea of what the numbers and distribution of reproductive individuals are needed to ensure the continued existence in a well distributed fashion. This is as true for old-growth dependent species as it is for species that are dependent upon disturbance ecosystems.

The courts have not been very helpful in assisting us in this regard. The Ninth Circuit has decided to keep asking the same questions that I am asking today until they are satisfied with the answer. But they chose not to provide any guidance as to the precedential value or nature of that answer. By contrast, the Fifth Circuit has suggested that the Ninth Circuit is all wet. That's not surprising. In the last Supreme Court session the Supreme Court heard 20 cases on appeal from the Ninth Circuit and reversed the Circuit on 19. I would be careful before I would pattern a management program on the basis of Ninth Circuit dicta. They have a poorer track record in the Supreme Court relevant to the Forest Service has had in the courts generally over the last 20 years.

I must say I am dumbfounded that one of the most sweeping and important aspects of federal land management of this half-century is still subject to this much confusion. I agree with Senator Craig that this, more than anything, suggests an overarching need for Congress to intervene. In testimony before the Committee last April the former Chief, Dr. Jack Ward Thomas, agreed. He said that, and I am paraphrasing now, federal land policy has evolved to where we are absorbing all of the costs and impacts associated with the protection wildlife species on federal lands. Now with that let's review a bit of yesterday's testimony.

We touched briefly on the VIPOP strategy for assessing viability in 1994. Chris Iverson wrote a critique of that strategy in July 1994 and a critique of the peer review of that strategy where in he noted that the limitations expressed by the peer reviewers was "made without the reviewers having any of the TLMP revision SDEIS documents or maps available for the review and, therefore, the peer review did not include any actual analysis of viability in relation to the alternatives proposed for the TLMP revision. There was no time scale discussed." Nevertheless, we went well beyond the VIPOP analysis in developing the final TLMP. In a January 29, 1997 memorandum describing the old-growth forest conservation strategy and the Alexander Archipelago Wolf and Queen Charlotte Goshawk analyses, Chris Iverson notes further that "the revised TLMP is more than a minimum strategy relative sustaining viable wildlife populations. While fully integrating the large and medium VIPOP HCAs and the mapping of the smaller reserves, the revised TLMP has protected substantial additional productive oldgrowth forests to further risks to wildlife viability and enhance protection of biological diversity. For comparison, reserves allocated in the revised TLMP exceed the amount recommended by VIPOP by 147%. Old-growth allocated in the revised TLMP exceeds the amount recommended by VIPOP in 20 of 21 biogeographic provinces, ranging from 9% to 460% over VIPOP recommendations."

Yesterday we agonized over whether the TLMP was a population viability strategy or a hunter viability strategy as far as the Sitka blacktail deer was concerned. There was no need for agonizing over this because on page 16 of the same Iverson analysis he states that "the revised TLMP provides for maintaining deer habitat capability sufficient to sustain both wolf populations and current levels of human deer use." The regulatory (not statutory) requirement to maintain population viability has been enhanced by an assumed responsibility to maintain population viability and hunter use. The question is, where was that assumed responsibility imposed. Was it imposed in the review the scientists did in defining viability, or was it a decision that the policy makers made during the development of the TLMP? I will tell you frankly, that given that we could not together come to a common understanding (even among you, let alone with me) about what constitutes a viable population, I have to assume it was the former, not the latter. I will close this opening statement by suggesting that I hope your interpretation is challenged all the way to the Supreme Court because I do not believe that you: (a) understand what you are doing; (b) have applied whatever it is you are doing whether you understand it or not in a scientifically sound fashion; or (c) care whether it is being applied in a way that balances the equities between people and animals.

The CHAIRMAN. Senator Bumpers.

**STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR  
FROM ARKANSAS**

Senator BUMPERS. Mr. Chairman, I do not have a formal opening statement. I would just like to make a few comments.



First, all of us on this committee are completely familiar with the uniqueness of the Tongass and the uniqueness of the economic opportunities that it affords to the people of Alaska. And of course, the chairman has labored in this vineyard for a very long time, and I want him to understand that, so far as this Senator is concerned, I am not unmindful of how important this forest is to both the chairman and the people of Alaska.

Having said that, I also want to say that, as much respect as I have for the GAO—I have a lot of respect for them; the General Counsel is here with us this morning—I have a little difficulty with the decision that a forest management plan is actually a rule. I think it would be good to have that clarified.

Secondly, we should all bear in mind during this hearing that the Tongass Timber Reform Act of 1990, specifically stated that the Secretary was directed to “seek to meet” market demand for timber, but only to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources.

Now, the revised Tongass plan calls for a maximum of 267 million board feet. I understand that this level is considerably less than it used to be under previous plans. The original plan contained an ASQ of 520 million board feet.

The Governor, Governor Knowles of Alaska, sees this plan as an opportunity to promote opportunities for smaller operators and value added operators. I know that his concern for the economic opportunities of the people of Alaska is certainly no greater than the chairman of the committee. But I certainly, as a former chairman of the Small Business Committee and one who has always for 22 years now been active in the Small Business Committee and its activities to protect and promote small business, I have a tendency to agree with Governor Knowles’ position on this.

Mr. Chairman, I am happy to be here and will do my best to contribute in the hearing as time permits. I am going to have to be in and out. I thank the chairman for calling this hearing and I think it will give all of us a chance to clarify some of these questions.

The CHAIRMAN. Thank you very much, Senator Bumpers.

Let me welcome additional House members: Donna Christian-Green from the Virgin Islands, welcome to the committee; and Bruce Vento from Minnesota. Bruce, nice to have you here.

Let me call on Senator Craig and then I would go back and forth for the opening statements.

Senator Craig.

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR  
FROM IDAHO**

Senator CRAIG. Thank you very much, Mr. Chairman.

In fact, it is almost reminiscent to have Congressman Vento here this morning, because he was serving as one of the ranking majority members of the Interior Committee when I first started serving in the House in 1981. It was interesting to me that that committee and this committee had in the late seventies just finished the Tongass Land Management Plan, and I got to Congress in 1980, started serving in 1981, only to find out that we are going to redo it again.

I will never forget, Mr. Chairman, asking some of the witnesses, in this case an environmental witness, why we were redoing this again. We had just done it. It had been finished in 1979. And he said: Well, but that was my predecessor. We have changed our mind. We have a new position.

I guess I can tell you that the only thing that has changed about this issue is the name of the Interior Committee over in the House. It is now called what, Bruce?

Representative VENTO. Resources.

Senator CRAIG. Resources Committee.

Representative VENTO. Not Natural Resources, just Resources.

Senator CRAIG. But the issue is the same.

And I can also tell you, Mr. Chairman, that I am glad that the Tongass is not in Idaho. I have a tough enough time trying to balance the interests of the citizens of my State as it relates to our forests and the resources of those forests, and I am glad the Tongass is not in the mix of all of that because, while mine are tough, yours is tougher.

In fact, I would suggest that maybe the Tongass should be referred to as the "Velcro Forest," where all issues stick, or at least come to play at some point in time, because it appears that in my few years here in the Senate and a few in the House that this has always been front and center on the burner of almost everyone's agenda, that somehow we ought to redo and rewrite a forest plan or a management plan or an approach because it is not the way we want it, of the Tongass.

I think the *New York Times* accurately described the Tongass as the "talismanic forest," and they mean that primarily to the environmental community, because for some reason it has a rather mythical place in most people's minds, and as a result of that we have wanted to change its character or its management systems or its plan.

I have had the privilege of visiting Alaska over the years. I will tell you, the whole State is talismanic in that respect. But in my belief to multiple use management, I think you can balance resource use and you should. In this instance I hope we can get there, and I hope that this plan might stick like velcro to the forest if it is the right plan.

Most importantly, though, I think, Mr. Chairman, is the dedication you take to oversight. I think Congresses of the past have been negligent in doing so and I think it is critically important that we exercise the appropriate oversight as our responsibility when the Executive Branch passes or moves regulations into their full force and effect of law.

However, as we deal with the Regulatory Flexibility Act and bring all of that into context, I think it even exercises more our responsibility. And you are taking that well today. I will stay and listen with interest. I have come to know this forest in a rather intimate way by not so much being there, but by simply knowing it on paper and by the image or sometimes the illusion that some people hold of this forest in their own mind.

I hope we can get at the business of keeping consistency and responsibility and having a balanced plan that protects the environment and allows responsible multiple use and allows a few people

to provide for themselves a livelihood of the resources of the State of Alaska.

The CHAIRMAN. Thank you, Senator Craig.  
Congressman Pickett.

**STATEMENT OF HON. OWEN PICKETT, U.S. REPRESENTATIVES  
FROM VIRGINIA**

Representative PICKETT. Mr. Chairman, I do not have an opening statement. I want to commend you for calling this hearing, though. I think this is an issue that very definitively needs to be resolved, and I look forward to the testimony of our witnesses.

The CHAIRMAN. Thank you very much.  
Senator Campbell.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S.  
SENATOR FROM COLORADO**

Senator CAMPBELL. Thank you very much. I do not have an opening statement, but I am very interested in this issue.

The CHAIRMAN. All right.  
Congressman Christian-Green.

**STATEMENT OF HON. DONNA CHRISTIAN-GREEN, U.S.  
REPRESENTATIVES FROM THE VIRGIN ISLANDS**

Representative CHRISTIAN-GREEN. Thank you, Mr. Chairman. I do not have an opening statement. I just do want to say I am pleased to be here to join with members of my committee and your committee and you, Mr. Chairman, to look at the issues in the Tongass management plan.

As you said in your opening statement, it does not take long for one to be here to realize that it is a difficult issue. But I look forward to working with members of both committees and you, Mr. Chairman, and my chairman, Don Young, to find a balanced approach and resolve some of the issues involved.

The CHAIRMAN. Thank you very much.  
Congressman Vento.

**STATEMENT OF HON. BRUCE VENTO, U.S. REPRESENTATIVE  
FROM MINNESOTA**

Representative VENTO. Thank you, Mr. Chairman. I do have an opening statement. I might add that we are on the House floor considering a forest bill, the Quincy Library bill, and that is the reason for the absence of, I am sure, Chairman Young and ranking member Miller, who of course has a strong interest in this matter, and I will be in and out because of that.

I want to concur with the comments of Senator Bumpers with regards to the applicability of this new ruling in terms of the 60-day issue, Mr. Chairman. I am concerned about and have been concerned about these efforts to go over rules again because they frustrate the implementation of policy very often. We need to look at forest management plans and the outreach process that occurs before them, I think, in some of these areas.

In this particular instance, I am sure those who are pursuing this have legitimate concerns about the 60 days for small business to be able to react to a plan or rule, but in other instances it may

be a different view in terms of implementing the sort of activity that puts these types of limits on the implementation rules. No one has been better at that, I think, than those of us who are working on land management policies to put the limits on the land managers. We make it more difficult and adding in some cases to the problems we are so concerned about.

Overall, Mr. Chairman, I note that, with regards to the plan, I am disappointed with it for probably different reasons than others on the committee. The Tongass certainly is one of the most significant fragments of an old North American temperate rain forest. It is really a jewel of the National Forest System. But it needs to be soundly managed and conserved.

I do not think, in reference to my colleague from Idaho and friend, with regards to changing policies with regards to land management, I do not think any of us—I think it is a pretty dynamic process in terms of information and needs, and I think that all of us want to—and if Congress wants to stay involved, we are going to have to obviously be ready to accept and make modifications based on the information that is coming to us.

I have been, frankly, very surprised and sometimes disappointed about all the information with regards to the Pacific Northwest and the fact that we have constantly had to monitor and change policies there. Most of the information did not make the issues more easy to resolve, and that sometimes—and that is the case with the Tongass as well.

The Forest Service' new management plan, however, here is controversial and continues, I think, an environmentally unsound policy path characterized by timber-driven decisionmaking and clearcutting on the Tongass National Forest. It doubles the current levels of logging, from 120 million board feet to 267.

Of course, we know that for decades under the contracts that there was a mandate to cut 450 million board feet a year, and that was not sustainable. The increase will prove, I think, environmentally and economically unsustainable. Indications are that the demand for timber, Tongass timber, over the next 10 years will just be over 100 million board feet, which is supposed to be one of the prerequisites in the 1990 law, what leads this as to what will be the demand, what part of the demand we could meet.

Based on the land being harvested, demand, and the U.S. Federal taxpayers' continued subsidies, this of course is very high cost timber in North America.

The new plan appears to ignore the counsel and peer review advice of some of the best objective and independent scientists who reviewed the impact of the Tongass harvest on wildlife issues, such that scientists from many disciplines recently concluded that wildlife in unroaded portions of the Tongass will significantly be harmed by clearcutting and timber harvesting in such areas.

The new plan does not consider all the public comments. 70 percent of those who had written and commented to the Forest Service called for lower logging levels and greater protections. I suppose in light of this maybe the 60 days will help.

Surely this plan merits significant questioning in the hearing. Perhaps those most interested and present today will not be assail-

ing the Tongass plan from the same perspective that I am pointing out.

Frankly, the Forest Service should return to the drafting table and write a management plan that represents the priorities of all Americans, not just cut the baby in half to satisfy the various interests. The magnificent Tongass resource of wildlife and fisheries has an outstanding long-term sustainable and tourism potential. It should not be sacrificed for short-term gratification.

This administration, the Clinton administration, has bitten the bullet on this issue concerning the Tongass contracts. It has paid compensation, and I believe that this halfway measure will lead the U.S. Forest Service Tongass policy write back to where we began. If I look at what the goal is here, the goal is to get this back up close to a half billion board feet a year.

We owe the natural legacy of the Tongass to our children and grandchildren, not to the special interests' bottom line.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Congressman Vento.

Before we call on the witnesses, let me just make a couple of comments relative to points that are important to consider as we reflect on the disposition of the Tongass and the completeness of the TLMP that we have before us. Two particular species were of concern relative to the U.S. Fish and Wildlife. One was the archipelago wolf and the other was the goshawk.

It was interesting to note that the evaluation done by the U.S. Fish and Wildlife on the goshawk was limited to proposed timber sales. There was no effort, because of lack of funds, for the U.S. Fish and Wildlife or the Forest Service to go out in the rest of the forest and try and determine the abundance or shortage of the goshawks. So a questionable point of what kind of science we have on the true nature of the potential listing of the goshawk is still up in the air because of the inability to go out and make a determination.

The other issue is rather interesting, and that was the archipelago wolf, which there is a legitimate question as to whether there indeed is a sub-species, because those that are familiar with southeastern Alaska know the wolves swim from island to island, with the exception of Admiralty, Baranof, and Chichagof, where there are no wolves but there are the brown bear. So the reality of whether or not there is a potential listing justification for the wolf is rather inconsistent with the State Department of Fish and Game, who manages trapping and hunting, and in either case has not put any limitation on the hunting or trapping of the wolf, and one would assume that if indeed there was a potential concern over listing that the State Department of Fish and Game would alert the U.S. Fish and Wildlife Service to take appropriate action.

These are inconsistencies that will be brought out during the 2 days of the hearing.

Another point that I would like to bring up before we get into the witnesses is the question of drawing attention to two documents that dramatize how late, how late some changes were made to the May 25 record of decision. This is important to reflect on because it shows an inconsistency within the TLMP group to reach an accord in advance of the final action on the 25th.

I am referring to a May 24 statement from the TLMP team, and it is initialed and it is to Gary Morrison, Gail Kimball, Brad Powell, Phil Janik, and Fred—it is a little hard to read—Norbury. The appropriate portion is the next to the last paragraph, which says: “Please look these changes over and give us any comments no later than close of business on Thursday, May 15, if at all possible.” That would be the next day after the document was prepared. “It covers, for your review, additional measures for proposed standards and guidelines and lists some additional measures for landscape connectivity, et cetera, modifications to the bear and wolf standards. Enclosed are the proposals as they modify the December 1996 version.”

So here we have on May 14 this memorandum from the TLMP team to the specific Forest Service personnel requesting that they look over changes and give comments the next day. And this will be entered into the record.\*

Then on the next chart we have a response dated May 12. That is not the next day. That was the day before. This says: “Region X forest management has had an opportunity to review the most recent draft of the proposed TLMP forest-wide standard and guidelines drafted on 5-5 at 11 o’clock. The initial reaction of forest management was that the revised standard and guidelines would result in a significant reduction in the amount of viable timber available for planned harvest.”

It goes on in the last paragraph to state the following: “We believe that the impacts on timber harvest are so great that the current allowable sale quantity is unobtainable,” and this is the presumption of the 267 million. In order to adhere to Forest Service policy and applicable laws and regulations, changes of the magnitude reflected in the reviewed and revised S and G’s must be supported by a recalculation of the ASQ. We fear that to do otherwise would open the Forest Service to allegations of deceiving the public.”

So I think that sets the stage where we surely have questions, because the first is to dramatize how late some changes were made and the second is the May 14 memorandum asking for comments by May 15, and the second is the May 12 memorandum from the director of the forest management which states that the ASQ is not achievable, and the ASQ was not recalculated. So for whatever consistencies we might have anticipated, we certainly have changes at the last minute and a legitimate question as to whether or not what was recommended by the Forest Service is achievable.

That kind of leaves some questions in the minds of many in southeastern Alaska as to what the true allowable cut may be in relationship to the discrepancies within the memorandums that have been presented to the committee.

Let me proceed with panel one: Mr. Robert P. Murphy, General Counsel for the U.S. General Accounting Office in Washington, D.C., accompanied by Ms. Sally Katzen, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. We look forward to your statement and testimony and ask that you proceed as you see fit.

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\* Retained in committee files.

**STATEMENT OF ROBERT P. MURPHY, GENERAL COUNSEL,  
GENERAL ACCOUNTING OFFICE**

Mr. MURPHY. Thank you. Mr. Chairman, Senator Bumpers, members of the committees: I am pleased to appear before you today to discuss whether the Tongass plan is subject to a statute which was enacted last year which provides for Congressional review of agency rulemaking. With your permission, I will provide an abbreviated statement and ask that my full statement be included in the record, Mr. Chairman.

The CHAIRMAN. Your entire statement will be entered in the record.

Mr. MURPHY. The statute in question which was enacted last year goes by a number of names. The actual title of it is the Small Business Regulatory Enforcement Fairness Act, which I will refer to as "SBREFA." It was enacted on March 29 last year and was intended to balance the respective authorities of the Congress and the Executive Branch in rulemaking.

Over the years the Congress has delegated a lot of legislative authority to Executive Branch agencies and there was a concern that that delegation had deprived the Congress of much of its policy-making responsibilities. We at GAO believe that Congressional oversight of agency rulemaking can be positive, that it is important to balance the concerns of American citizens and American businesses with Federal agency rulemaking. We believe that Executive Branch agencies should be responsive to citizens and businesses about the reach, cost, and impact of regulations without compromising their statutory mission.

As of July 3 of this year, under the terms of SBREFA there have been almost 5,000 rules filed with the Congress and with the General Accounting Office. 79 of those are major rules. Typically, major rules are rules that have more than a \$100 million impact on the economy. About 5,000 of them were non-major rules. These range from the Federal Aviation Administration's airworthiness certifications to changes in bridge opening and closing schedules, a wide variety of rules that executive agencies promulgate. They file them with the Congress and they file them with GAO.

On June 18 of this year the Chief of the Forest Service forwarded copies of the Tongass plan to the Congress and to GAO under the procedures that are applicable in SBREFA. At the same time, he said that it was the view of the Forest Service that the Tongass plan was not a rule under SBREFA and that it was not a major rule in any event.

We disagree. SBREFA provides that before a rule may become effective it must be filed with the Congress and with GAO. A major rule may not be effective until 60 calendar days after it is filed. Once a rule—whether it is determined to be major or not, is filed with Congress and with GAO there are expedited procedures for Congressional review and passage of a joint resolution of disapproval.

The definition of a rule in SBREFA is extraordinarily broad. Without reading the entire definition, the applicable excerpt is "an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy." It is the breath

of that rule definition that causes agencies to send us 5,000 of them every year.

The Tongass plan in our view clearly meets this definition of "rule." It implements the requirements of the National Forest Management Act that the Secretary of Agriculture develop, maintain, and revise land resource management plans and assure compliance with the Multiple Use Sustained Yield Act of 1960 in setting forest management direction and harvesting levels. It prescribes the manner or the policy of the Forest Service for managing the Tongass National Forest for the future, 10 to 15 years. The various management prescriptions and land use designations when read together set out what types of activities may occur in various sections of the national forest.

Thus it meets the elements of a rule. It is of general applicability, it has future effect, and it implements, interprets, and prescribes law and policy.

Now, there are some exceptions in the statute to this definition of a rule. They are crafted quite narrowly. The one that we thought was the only one that might be arguably applicable in this case is an exception for an agency rule of procedure that does not substantially affect the rights or obligations of non-agency parties.

I ought to say that, while the Forest Service has taken the position that the Tongass plan is not a rule, they have not provided us the background or their analysis. So what we have been doing is hypothesizing what their point of view might be.

In our view the plan is not procedural. It does not meet the requirements of the exception to the rule. And it does have a substantial effect on non-agency parties. It allocates areas of the forest to land use designations and describes the uses to which the land may be put and the activities which may occur there. This management prescription gives general direction on what may occur within an area allocated to a particular designation, the minimum standards for accomplishing each activity, and guidelines on how to go about accomplishing the standards.

Many of the standards and guidelines are quite specific and they provide no discretion for the Forest Service in management of the forest. For example, if you look at the wilderness designation you find that managers may permit special use cabins only if, among other things, the permit is non-transferable, limited to a 5-year term, and provides no motorized equipment that may be used without specific approval of the regional forester.

One of the specific provisions of the plan is found in the area of timber harvesting. In an effort to comply with the Clean Air Act, the Forest Service has provided for a 1,000 foot buffer around beach and estuary areas. It has provided a number of standards that relate to the survival of wildlife in the Tongass plan.

I may say that those provisions of the plan cannot be amended without notice and comment procedures that the National Forest Management Act requires. In other words, they are binding on the Forest Service in its management of the forest.

That briefly summarizes our view that the Tongass plan is a rule that is subject to review by the Congress in accordance with the procedures of the act. Thank you, Mr. Chairman. I will be happy to respond to any questions that the committees may have.



## [The prepared statement of Mr. Murphy follows:]

## PREPARED STATEMENT OF ROBERT P. MURPHY, GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE

Chairman Murkowski, Chairman Young, and Members of the Committees:

I am pleased to appear before you today to discuss the General Accounting Office's views on whether the Tongass National Forest Land and Resource Management Plan, issued by the United States Forest Service on May 23, 1997, is a "rule" under the provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA). Attached to this statement is a detailed legal opinion we recently issued on the question.\*

SBREFA was enacted on March 29, 1996, establishing a government-wide congressional review mechanism of new rules, including the availability of expedited procedures to act joint resolutions of disapproval to overrule federal rulemaking actions. As the joint statement on the new law by Senators Stevens, Nickles, and Reid explained, the purpose of the legislation was to restore balance between the enactment of laws by Congress and their implementation by the Executive branch. The Congress sought to reclaim some of the policymaking authority that had been assumed by regulatory agencies with increased delegation of legislative functions from the Congress to these agencies.

Congressional oversight of rulemaking as contemplated by SBREFA can be an important and useful tool for balancing and accommodating the concerns of American citizens and businesses with federal agency rulemaking. It is important to assure that Executive branch agencies are responsive to citizens and businesses about the reach, cost, and impact of regulations without compromising the statutory mission given to those agencies. SBREFA seeks to accomplish this by giving the Congress an opportunity to review rules before they take effect and to disapprove those found to be too burdensome, excessive, inappropriate, duplicative, or otherwise objectionable. As of July 3, 1997 (about 15 months following enactment), 79 moor rules and 4,833 non-moor rules have been submitted under SBREFA.

On June 18, 1997, the Chief of the Forest Service forwarded copies of the Tongass Plan to both Houses of Congress and our Office following the procedures outlined in SBREFA, while stating at the same time that land and resource management plans are not subject to the statute. An attachment to the transmittal letter states that the Plan is not a moor rule.<sup>1</sup>

We conclude that the Tongass Plan constitutes a "rule" under SBREFA. Therefore, submittal of a report to each House of Congress and the General Accounting Office was necessary in order for the rule to become effective. If the Office of Information and Regulatory Affairs determines the rule to be major, it is not effective until 60 days after the submission of the report to the Congress or publication in the Federal Register, whichever is later. This would result in an effective date of August 17, 1997, 60 days after submission to the Congress.

SBREFA provides that before a rule becomes effective, the agency promulgating the rule must submit to each House of Congress and to the Comptroller General a report containing: "(i) a copy of the rule; (ii) a concise general statement relating to the rule, including whether it is a moor rule; and (iii) the proposed effective date of the rule."

On the date the report is submitted, the agency also must submit to the Comptroller General and make available to each House of Congress certain other documents, including a cost-benefit analysis, if any, and agency actions relevant to the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995, and any other relevant information or requirements under any other legislation or any relevant executive orders.

Once a rule, whether determined to be a major rule or not, is submitted, special procedures are available for a period of 60 session days in the Senate or 60 legislative days in the House for Congress to pass a joint resolution of disapproval. These time periods can be extended upon a congressional adjournment. SBREFA provides that a major rule may not become effective until 60 days after it is submitted to Congress or published in the Federal Register, whichever is later.

There are two questions concerning whether SBREFA procedures are applicable to the Tongass Plan. The first is whether the Tongass Plan is a "rule" under SBREFA, that is, an "agency statement of general . . . applicability and future ef-

\* The legal opinion has been retained in committee files.

<sup>1</sup> A "moor rule" is one found by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), to meet certain criteria, such as whether the rule will have an annual effect on the economy of \$100 million or more. 5 U.S.C. § 804(2).

fect designed to implement, interpret, or prescribe law or policy.” The second is whether any of the statutory exceptions in SBREFA are applicable. If the Tongass Plan is a rule, which we conclude it is, there is a third question—is it a “major” rule, which cannot be effective for 60 days after presentation to the Congress and GAO. This determination is reserved to OMB’s Office of Information and Regulatory Affairs.

A summary description of the Plan shows clearly that it meets the definition of a “rule.” The Plan implements the requirement of the National Forest Management Act that the Secretary of Agriculture develop, maintain, and revise land resource management plans and assure compliance with the Multiple-Use Sustained-Yield Act of 1960 in setting forest management direction and harvesting levels. It prescribes the manner or the policy of the best Service for managing the Tongass National Forest for the future (10-15 years). The various management prescriptions and land use designations, when read together, set out what type of activities may occur in various sections of the National Forest. Thus, it meets the elements of a “rule”: it is of general applicability (it affects many parties, private and governmental, concerning the National Forest) and future effect (10 to 15 years in duration), and it implements, interprets, and prescribes law and policy.

SBREFA sets forth several exceptions to the definition of rules subject to congressional review. The only one arguably applicable here is “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.”

In our view, the Plan has a substantial effect on non-agency parties. It allocates areas of the Forest to Land Use Designations and describes the uses to which the land may be put and the activities which may occur there. This “management prescription” gives general direction on what may occur within an area allocated to a particular designation, the minimum standards for accomplishing each activity, and guidelines on how to go about accomplishing the standards.

Some minimum standards and guidelines provide considerable discretion to forest managers. For example, for the Karst and Caves Resource in areas of the Wilderness Designation, managers are to: “Identify opportunities for interpretation of caves for public education and enjoyment. Interpretation will generally occur outside this Land Use Designation.” Other standards and guidelines are more specific. For example, for the Lands Resource in areas of the Wilderness Designation, managers may permit new special use cabins only if, among other things, the permit is non-transferable, limited to a 5 year term, and provides that no motorized equipment may be used unless specifically approved by the Regional Forester.

Among the more specific standards are those applicable to timber harvesting. Timber may not be harvested within the 1,000 foot beach and estuary fringe or buffer zone. In the Wildlife standards and guidelines, forest stand structural characteristics are listed which must be maintained after harvesting. For example, in the American Marten habitat (1) 10-20 percent of the original stand, (2) four large trees (20-30 inches in diameter) per acre, (3) three large dead or dying trees (230 inches in diameter) per acre, and (4) an average of three large pieces of down material per acre must remain.

The specific restrictions and prohibitions are binding unless a land resource plan is amended in accordance with the requirements of the National Forest Management Plan Act, which provides that a plan may be amended after adoption following public notice. If the amendment is a significant change, the revision must be made available to the public in the vicinity of the affected area at least 3 months before amendment and the agency must hold public meetings or comparable processes that foster public participation. We note that the predecessor Tongass Plan was only amended through this process twice in over 15 years and both amendments resulted from congressional action.

In concluding that decisions made in the Plan substantially effect non-agency parties and are, therefore, not “agency procedures,” we also recognize that the regulatory scheme includes a second stage of decisionmaking in managing the Forest. That stage occurs when Forest Service officials implement the Plan with respect to a particular area of the Forest. Clearly the Tongass Plan as a whole has itself a substantial effect on non-agency parties—it is not in that sense “procedural”—even though Plan restrictions will ultimately be embodied in site-specific decisions. We note that to conclude otherwise would effectively frustrate the SBREFA congressional review mechanism. The vast majority of site-specific actions concern individual use of particular areas of the Forest. They would in many cases be rules of “particular applicability” and thereby be excluded from congressional review. If only site-specific actions were considered “rules,” a regulatory scheme in preparation for 10 years at a cost of over \$13 million, with substantial impact during the next 15 years on all those who use the Forest, would be insulated from congressional review.

For the foregoing reasons, it is our opinion that the Tongass Plan constitutes a "rule" under SBREFA; it is subject to review by the Congress in accordance with the procedures set forth therein.

Thank you Mr. Chairmen. This concludes my prepared remarks. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Murphy.  
Ms. Katzen.

**STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET**

Ms. KATZEN. Good morning, Mr. Chairman, Senator Bumpers, members of the committee. It is a pleasure to be here today to discuss the applicability of the "Congressional Review of Agency Rule-making" statute to the final draft of the Tongass Land Management Plan. SBREFA generally, and the congressional review provisions in particular, have the strong support of President Clinton. He signed the law over a year ago with a supportive signing statement. The Federal agencies began complying with the law immediately, since the law took effect upon signing. And based on what I hear, they are doing an excellent job.

As Mr. Murphy has reported, as of the beginning of this month, Federal agencies have submitted 4,912 final rules, including 79 that were designated as major rules within the meaning of these provisions, to both houses of Congress and to the GAO.

In general terms, under the congressional review statute, agencies are to send a copy of each new final rule, along with certain analyses that they may undertake related to the rule, to both houses of Congress and to the GAO before the rule is to take effect. When an agency sends a final rule to the Congress and GAO, it is to indicate whether the rule is major or not.

The statute directs OMB's Office of Information and Regulatory Affairs to indicate whether a rule meets the statutory definition of "major," that is, whether a rule is likely to result in an annual effect on the economy of over \$100 million, a major increase in costs or prices, or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of American companies to compete.

In a June 5, 1997, letter, the Chairmen of the Senate Committee on Appropriations, the Senate Committee on Energy and Natural Resources, and the House Committee on Resources wrote to me regarding the applicability of the Congressional review provisions to the Tongass Land Management Plan. Specifically, they wished to apprise me of their view that "this massive and long-awaited proposed policy revision must rightfully be considered both a 'rule' and a 'major rule'" under the congressional review statute.

In your July 2, 1997, letter of invitation for me to appear at this hearing, you indicated you would be looking into the question of whether the Tongass Land Management Plan was a rule and whether or not it was major under these provisions.

With respect to the first question—whether the Tongass Land Management Plan is a "rule"—the provisions of the statute at issue state that before a "rule" can take effect, the Federal agency promulgating such "rule" shall submit it to both houses of Congress and GAO. The plain implication of this provision is that it is the

agency promulgating the regulation that has the responsibility for deciding whether a particular issuance is or is not a “rule” under the relevant provisions.

As I explain in my written testimony, this allocation of responsibility to the issuing agency makes eminently good sense as a policy matter, given the different statutory authorities, practices, program needs, and basic institutional cultures of different agencies. Moreover, it is fully consistent with agency administration of the Administrative Procedure Act, which has been in effect since 1946, and it is from that act that the definition of “rule” was taken for the congressional review provisions.

Upon receipt of your letter of invitation, in preparation for this testimony, I asked whether the Forest Service has decided whether the management plan is or is not a “rule” as defined in the congressional review statute. I was advised that the Forest Service does not consider this Land Management Plan a “rule” within the meaning of the statute. I was also advised that, since the statute was signed by President Clinton on March 29, 1996, the Forest Service has issued six revisions to land management plans, none of which was treated as a “rule” under the congressional review statute. At the same time, there were three other “rules” that they had worked on that were submitted to the Congress under that provision.

I also should note that the Forest Service has so far as I know never treated land management plans as “rules” subject to the notice and comment provisions of 5 U.S.C. 553, and that is the “rule-making” provision of the APA.

I would also note in this connection that under President Clinton’s Executive Order 12866 and its predecessors—the Reagan and Bush Executive Order 12291, and its predecessor, President Carter’s Executive Order 12044—OIRA or its predecessor has had the responsibility of reviewing agency rules. I have been advised that at no time has OIRA or any of its predecessors ever reviewed a land management plan under any of the applicable executive orders. During my tenure, the last 4 years at OIRA, we have not reviewed any Forest Service land management plans. In short, based on agency practice and our own experience, we have no basis to disagree with the Forest Service’s decision that these plans do not constitute “rules.”

Now, as I mentioned earlier, the congressional review statute gives me the responsibility of determining whether or not, if it were a “rule,” it would or would not be a “major” rule. The definition that I am to use in that regard is taken not from the current Executive Order, but from the predecessor Reagan-Bush Executive Order 12291. That was the definition of “major” in that Executive Order.

I have instructed OIRA staff, who are career civil servants and many of whom have been in OIRA for a number of years and therefore were responsible for carrying out the regulatory reviews under the Reagan-Bush Executive Order with its definition of “major,” to use the same definition of “major” that they used in carrying out their responsibilities in the previous administration in advising me as to whether or not a rule is major under the congressional review provisions.

To the best of my recollection, I have always deferred and never overruled the staff on a recommendation as to whether or not a rule is "major" under the act. Again, upon receipt of your letter of invitation, Mr. Chairman, and in preparation for this testimony, I asked OIRA staff whether, assuming *arguendo* that the plan is a "rule," would they recommend that it be considered "major" under the congressional review statute.

There is obviously one obstacle in that we do not have the plan to review, and so we did not have much information available. But your June 5, 1997, letter provided certain facts that I asked the staff to consider to give me, in effect, an advisory opinion. That letter suggests that the Tongass Land Management Plan would call for a drop from a harvest of about 320 million board feet annually to a harvest of approximately 220 million board feet a year.

Staff responded that, assuming that the Tongass Land Management Plan can properly be interpreted as causing a drop in the timber harvest of 100 million board feet a year, they would then interpret the plan as being "major" if in fact it were a rule.

I appreciate the opportunity to testify and welcome any questions you may have.

[The prepared statement of Ms. Katzen follows:]

PREPARED STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Good morning, Mr. Chairmen, and members of these Committees. It is a pleasure to be here today to discuss the applicability of the "Congressional Review of Agency Rulemaking" (Congressional Review) statute<sup>1</sup> to the Final Draft of the Tongass Land Management Plan.

LEGISLATIVE AND CONGRESSIONAL BACKGROUND

The Congressional Review statute had the strong support of the President. He signed the law over a year ago. The Federal agencies began complying with this law promptly and, based on what I hear, are doing an excellent job. As of July 3, 1997, Federal agencies had submitted 4,912 final rules, including 79 designated as "major" rules within the meaning of the Congressional Review statute, to both House of Congress and to the General Accounting Office (GAO).

In general terms, under the Congressional Review statute, agencies are to send a copy of each new final "rule"<sup>2</sup> (and certain analyses that they may undertake related to the rule) to both Houses of Congress and to the GAO before the rule can take effect. When an agency sends a final "rule" to Congress and GAO, the agency is to indicate whether the rule is "major" or not.

The statute directs OMB's Office of Information and Regulatory Affairs (OIRA) to indicate whether a "rule" meets the statutory definition of "major"—that is, whether the rule is likely to result in an annual effect on the economy of over \$100,000,000; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States used enterprises to compete with foreign-based enterprises.

In a June 5, 1997, letter, the Chairmen of the Senate Committee on Appropriations, the Senate Committee on Energy and Natural Resources, and the House Committee on Resources wrote to me regarding the applicability of the Congressional Review statute to the Tongass Land Management Plan. Specifically, they wished to apprise me "of [their] view that this massive and long-awaited proposed policy revision [to the Tongass Land Management Plan] must rightfully be considered both a 'rule' and a 'major rule' under the Congressional Review statute. In your July 2, 1997, letter of invitation to this hearing, you indicated that you would be looking into the question of whether the Tongass Land Management Plan is both a "rule" and a "major rule" under this legislation.

<sup>1</sup> 5 U.S.C. chapter 8, "Congressional Review of Agency Rulemaking," passed in Title II, Subtitle E, of P.L. 104-121, March 29, 1996.

<sup>2</sup> 5 U.S.C. 804(3).

## IS THE TONGASS LAND MANAGEMENT PLAN A "RULE"?

The Congressional Review statute states that "[b]efore a rule can take effect, the Federal agency promulgating such rule shall submit" it to both Houses of Congress and the GAO.<sup>3</sup> The plain implication of this provision is that it is the agency promulgating the regulation that has the responsibility for determining whether a particular issuance is a "rule" under the Congressional Review statute.

This allocation of responsibility to the promulgating agency makes sense as a policy matter, given the different statutory authorities, practices, program needs, and institutional culture of each agency. Moreover, it is fully consistent with agency administration of the Administrative Procedure Act (APA). Since the term "rule" was used in the APA in 1946, each agency has determined, for its own issuances, what is and what is not a "rule" subject to the APA's informal rulemaking procedures. Indeed, I would note that the definition of "rule" in the Congressional Review statute explicitly incorporates the definition of "rule" adopted in the APA, and then makes certain exceptions to that definition. In so doing, it appears to us that the Congress intended to incorporate agency (and any related court) interpretations of what is meant by a "rule" under the APA into the definition of "rule" adopted in the Congressional Review statute.

Upon receipt of your letter of invitation, and in preparation for this testimony, I sought to ascertain whether the Forest Service has decided that the Tongass Land Management Plan is or is not a "rule" as defined in the Congressional Review statute. I was advised that the Forest Service does not consider this Land Management Plan a "rule" within the meaning of the Congressional Review statute. Since that statute passed on March 29, 1996, the Forest Service has issued six revisions of Land Management Plans, none of which was treated as a "rule" under the Congressional Review statute.<sup>4</sup> Nor, I understand, has the Forest Service ever treated its Land Management Plans as "rules" subject to the APA's informal rulemaking procedures under 5 U.S.C. 553.

I would note that under Executive Order No. 12866,<sup>5</sup> and its predecessor Orders, Nos. 12291<sup>6</sup> and 12044,<sup>7</sup> OIRA (or its predecessor) has been given the responsibility to review agency rulemakings. I am advised that OIRA has never reviewed Forest Service Land Management Plans under these Orders. During my tenure, OIRA has not reviewed any Forest Service Land Management Plans, nor do we disagree with the Forest Service's inclusion that these Plans do not constitute "rules."

## IS THE TONGASS LAND MANAGEMENT PLAN A "MAJOR RULE"?

As noted above, the Congressional Review statute gives me the responsibility of determining whether a "rule" is or is not "major."<sup>8</sup> The definition of "major" that I am to use is taken from Executive Order No. 12291, the Executive Order preceding Executive Order No. 12866, currently in effect. I have instructed OIRA staff to use the same interpretation of "major" that they relied upon in carrying out their regulatory reviews under Executive Order No. 12291. To the best of my recollection, I have consistently deferred to OIRA staff in determining whether a "rule" is "major" for purposes of the Congressional Review statute.

Upon receipt of your letter of invitation, and in preparation for this testimony, I asked OIRA staff whether, assuming that the Tongass Land Management Plan was a "rule," they would recommend that it be considered "major" under the Congressional Review statute.

Your June 5, 1997, letter suggests that the Tongass Land Management Plan would call for a drop from a harvest of about 320 million board feet annually, to a harvest of about 220 million board feet a year. Assuming that the Tongass Land Management Plan can be properly interpreted as causing a drop in timber harvest of 100 million board feet a year, OIRA staff would interpret the Tongass Land Management Plan as being "major," if it were a rule.

I appreciate the opportunity to testify, and welcome any questions that you may have.

<sup>3</sup> 5 U.S.C. 801(a)(1)(A).

<sup>4</sup> In contrast, I am advised that, after the Congressional Review statute passed, the Forest Service published three notice-and-comment final rules which were sent to both Houses of Congress and the GAO under that statute.

<sup>5</sup> E.O. 12866, "Regulatory Planning and Review," 58 Fed. Reg. 51735 (October 4, 1993), Sec. 3(d) & (e), issued by President Clinton on September 30, 1993.

<sup>6</sup> E.O. 12291, "Federal Regulation," 46 Fed. Reg. 12193 (February 19, 1981), Sec. 1(a), issued by President Reagan on February 17, 1981.

<sup>7</sup> E.O. 12044, "Improving Government Regulations," 43 Fed. Reg. 12661 (March 24, 1978), Sec. 6(a), issued by President Carter on March 23, 1978.

<sup>8</sup> 5 U.S.C. 804(2).

The CHAIRMAN. I am going to defer to Senator Craig, who is on a tight schedule, and I have got some people that I have got to visit with very briefly. So please proceed with your questions, and then Senator Bumpers.

Senator CRAIG [presiding]. Mr. Chairman, thank you. And to both of you, thank you very much for those opinions, interpretations.

Let me go to you, Mr. Murphy, and the General Accounting Office. Now, the Forest Service apparently disagrees with your assessment about the TLMP revision being a rule. The Forest Service claims that the TLMP is not a rule. First of all, let me ask, does the Forest Service's opinion that the TLMP is not a rule at all affect your own finding that it is a rule?

Mr. MURPHY. Well, I have to say, Senator Craig, that we took it very seriously, because agencies that promulgate rules are given some level of deference by the courts in how they characterize rules, whether they are subject to the Administrative Procedures Act or not. The result is that we have scrutinized the issue probably a lot closer than we would have otherwise. We really dug into it, although we did not have the benefit of the Forest Service's rationale.

Now, the courts in the District of Columbia Circuit, which I know better than others in the country, would say that they would give some weight to that determination, but it is not decisive. And we found that we could not support the Forest Service's conclusions, so we did not go with it.

Senator CRAIG. It is our understanding of your testimony and our own reading of the Regulatory Flexibility Act that the General Accounting Office has been given the role of advising Congress and perhaps agencies on whether their policy decisions constitute rules. It is our understanding that the GAO's independent opinion is generally given considerable weight by the agencies. Is this also the GAO's understanding of its role?

Mr. MURPHY. SBREFA does not provide any identification of who is to decide what a rule is, unlike the issue of whether a rule is a major rule or not, which, as Ms. Katzen pointed out, has been assigned to her. So in that sense, I cannot say that GAO has a special role under the statute for making that determination.

The decision, the opinion, that we issued last week on the question was done in our role as adviser to the Congress in response to the request of three chairmen of congressional committees.

Senator CRAIG. So notwithstanding your advice, clearly there is a disagreement between the GAO and the Forest Service over whether the TLMP revision is a rule. This then brings us to the question of who is the final arbiter of whether an agency action is a rule or not. Now, OMB apparently believes that the agency promulgating the regulation, in this case the Forest Service, has the final authority over whether it will be considered a rule.

We have copious case law on this matter, however, that clearly demonstrates that OMB is wrong. According to the case law, when there is a dispute over whether an agency regulation is a rule, the question is settled by the courts, which have developed and will apply well-defined criteria that determine what constitutes a rule.

All of this makes perfect sense because laws designed to check administrative abuse by Federal agencies would most likely not want to put the fox in charge of guarding the henhouse.

As we have stated, the courts have clearly laid out the criteria of a rule and the TLMP revision we believe meets that criteria. In I believe it is *Mada Luna v. Fitzpatrick*, the Ninth Circuit Court of Appeals stated that a regulation is a rule where it narrowly limits administrative discretion or establishes a binding norm that so fills out the statutory scheme that, upon application, one need only determine whether a given case is within the rule's discretion.

Well, is the Forest Service required to follow the Tongass forest plan once it goes into effect? Yes. That is, is TLMP establishing a binding norm for the Forest Service? I think the answer is yes. Would you agree with that, Mr. Murphy?

Mr. MURPHY. Yes, Senator Craig.

Senator CRAIG. Of course, the TLMP will be a binding form for the Forest Service. That is the very purpose of TLMP.

Another Federal court has defined a rule in a similar manner. In the case of *McLouth Steel Products Corporation v. Thomas*, the court stated that if the policy in question is in purpose or likely effect on the narrow limits or is of a kind calculated to have a substantial effect on ultimate agency decisions, it will be viewed as a legislative rule and thus subject to notice and comment requirements.

Does the plan limit the discretion of the Forest Service once it goes into effect?

Mr. MURPHY. Yes, sir.

The CHAIRMAN. Yes, the answer is, and we agree it certainly does. Again, that is the purpose of TLMP.

Finally, the Eighth Circuit Court has also weighed in on the issue and has found that a forest plan in general is a rule. In the 1994 case of *Sierra Club v. Robertson*, the court cited a previous Supreme Court ruling that a BLM land management plan was a rule and stated that the Forest Service plan is analogous. It noted that the BLM plan and by implication a forest plan can be regarded as rules of general applicability announcing with respect to vast expanses of territory that they cover the agency's intent to grant requisite permission for certain activities, to decline to interfere with other activities, and to take other particular actions if requested.

It appears to be well settled, therefore, that: first, the courts are the final arbiter of whether a policy is a rule; and second, the forest plan is a rule.

We first ask then whether the GAO shares our understanding that the question of what constitutes a rule is not decided by the promulgating agency, but rather it is decided by the courts according to well settled principles of administrative law? Would you agree with that, Mr. Murphy?

Mr. MURPHY. In the end, Senator Craig, this judgment will be made by the Judicial Branch, yes.

Senator CRAIG. We would then like to ask whether GAO agrees that, according to the precedent mentioned above, that the TLMP revision would be considered a rule? Do you still hold that?

Mr. MURPHY. Yes, we do.



Senator CRAIG. Thank you.

Ms. KATZEN. Senator Craig, may I just respond to one comment that you made? I thought my testimony quite clearly stated that the responsibility for determining whether or not an issuance was a "rule" was made by the agency in the first instance. That was not a final determination. We believe in the rule of law, and the field of administrative law is rife with cases in which the courts clearly are the ultimate arbiters. But, as Mr. Murphy had mentioned, it is the responsibility for the agencies to make the decision in the first instance, and the courts do, under the Chevron line of cases, provide great weight to those decisions.

Is the agency decision ultimately dispositive? No. The courts have an independent base for review and some of the cases you mentioned have gone specifically to that point.

I did not want the record to appear that we had in any way implied that the agencies were above the law or were not subject to the judiciary. I join Mr. Murphy in his statement that it will be the courts that will be ultimate arbiters of whether or not the TLMP is a rule. But in the first instance it is for the agency to decide.

Senator CRAIG. Well, thank you. I am not in dispute with you on that and I am glad you have underlined it.

Let me ask this question then. Is the U.S. Forest Service unusual in terms of agency compliance with the 1996 act?

Ms. KATZEN. No. I believe, as I indicated, there were three rules that they had issued that were subject to the APA's definition, which they sent to both Houses of Congress and to GAO in compliance with that act. To the best of my knowledge, all agencies have been fully responsive to the congressional review provisions of the statute.

Senator CRAIG. Both Agriculture and Department of the Interior, you mean?

Ms. KATZEN. Yes, sir.

Senator CRAIG. Could we then receive from your office a list of all U.S. Forest Service and Department of the Interior actions since passage that have been sent and analysis and a list of those that were not?

Ms. KATZEN. We would be aware only of those that are "major," because that is where our statutory responsibility rests. If they were to have issued a regulation that was not "major" and was sent to the Hill, we would not know. But GAO would have that information.

Senator CRAIG. You have answered it. Please send us the list of that which you have.

Ms. KATZEN. Certainly.

[The information referred to follows:]

DOI/Fish and Wildlife Service, Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations, RIN 1018-AD69, published in the Federal Register, 8/29/1996.

DOI/Fish and Wildlife Service, Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations, RIN 1018-AD69, published in the Federal Register, 9/26/1996.

Senator CRAIG. Thank you.

Mr. Chairman, thank you.

The CHAIRMAN [presiding]. Thank you very much, Senator Craig.

Senator Bumpers.

Senator BUMPERS. Mr. Chairman, this makes me think I am back in law school, and in that connection, on the congressional disapproval procedure of the Contract With America Act, section 802—both of you please listen carefully: “For purposes of this section, the term ‘joint resolution’—that is, a joint resolution of disapproval—‘joint resolution’ means only a joint resolution introduced in the period beginning on the date on which the report referred to in section—et cetera—‘is received by Congress and ending 60 days thereafter, excluding days either house of Congress is adjourned for more than 3 days during a session of Congress,’ et cetera.

Then over here it says: “After the expiration of the 60 session days beginning with the applicable submission or publication date”—now that is the day we get it. Then it says you have 60 session days after that, I assume, to pass a joint resolution of disapproval.

Now, I want you to tell me, what is a “session day”?

Ms. KATZEN. My understanding of the concept underlying these provisions is that after a rule has been issued by the agency, it should be sent to the Hill and to the Federal Register, and whichever occurs later starts 60 calendar days (excluding days of adjournment for more than three days) during which a Member could introduce a motion to disapprove. If a motion to disapprove is not introduced during that period of time, the time would have expired for introducing the motion to disapprove.

Once a motion for disapproval has been timely filed, then, going back to the date the rule is sent to the Hill, there is a total of 60 session days in which the Congress can utilize the expedited procedures for disapproval. There were two terms for that period—60 legislative days and 60 session days. The House used one term, the Senate used the other term. But the concept was days in which legislative action is taken during a session of Congress.

We testified at the time, and have been on record since then, that that could result in as much as a year to a year and a half following the submission of the rule to Congress during which Congress may follow its review procedures.

Senator BUMPERS. And do a joint disapproval if they are going to.

Ms. KATZEN. And do a joint disapproval, so long as it is introduced in the first 60 calendar days, excluding days of adjournment for more than three days.

Senator BUMPERS. Say that again?

Ms. KATZEN. The actual motion—I feel like I am back in law school, too, somehow. It is very uncomfortable.

The concept is that there are 60 calendar days—excluding days of adjournment for more than three days—during which a motion to disapprove would be introduced. That is a threshold.

Senator BUMPERS. Where are you getting that?

Ms. KATZEN. That is the 802(a) that you were beginning to read from. For purpose of this section, this has to be introduced within 60 days, excluding days on which they are adjourned for more than three days. Later, if it happens that on the forty-fifth calendar day or the fifty-fifth calendar day, a motion for disapproval is intro-

duced, then you go back to the date that it was submitted and you have 60 session or legislative days on which to follow through on the motion to disapprove in both houses.

This is all separate from whether or not the rule will be in effect during this time, because the effective date is triggered by a different provision. This is a very carefully drafted——

Senator BUMPERS. Let me frame the question a little differently, because you just hit on what I was driving at. Senator Murkowski, if he wants to introduce a joint resolution of disapproval, must do so within 60 legislative days.

Ms. KATZEN. No, within 60 days——

Senator BUMPERS. Sixty calendar days, but there are certain exclusions to that. That is not necessarily 60 days.

Ms. KATZEN. Right.

Mr. MURPHY. Right.

Senator BUMPERS. Is that not correct?

Ms. KATZEN. Yes.

Senator BUMPERS. So we have to introduce that, and then Congress has 60 session days in which to deal with it. Now that can run up to 18 months according to most definitions I have seen of a session day. What happens to the rule during that 18-month period?

Ms. KATZEN. The way we have interpreted the statute is that if the rule is a non-major rule it goes into effect the day it is sent to the Hill, and it would be in effect during that entire period. Should the joint resolution for disapproval be passed by both Houses and signed by the President—because you have bicameral passage and presentment to the President, and there not be an effective override of any presidential veto—then the rule would have been in effect up until that point, but once the joint resolution is signed by the President the rule would not be in effect.

If the rule is a major rule, then it would not take effect for 60 calendar days following the receipt by Congress. At the end of the 60 calendar days and without regard to the weekends, the rule would then take effect and would be in effect.

Senator BUMPERS. And assuming that Congress has not acted on the——

Ms. KATZEN. Assuming it has not passed in both Houses the joint resolution to disapprove.

Mr. MURPHY. Senator Bumpers, the legislative history of the statute evidences some concern on the part of Congress that that may present a difficulty for American citizens who are relying upon the rule. As I recall the legislative history, it says that the reason the statute was drafted to provide that major rules do not go into effect for 60 days is to provide an opportunity for the Congress, if it wants to act on a joint resolution disapproving that rule, to do it quickly, so that you do not have what Ms. Katzen has just described, a rule that is in effect for a year before it is disapproved by the Congress.

Senator BUMPERS. Let me ask you this question. How does the so-called Reg Flex Bill that we also passed last year, which was designed to help small businesses, how does the Reg Flex Bill on joint resolutions of disapproval compare with this Contract With America Act? Do you know the answer to that?

There is a 60-day period in the Reg Flex Bill, too.

Ms. KATZEN. It was combined in the same bill. What was ultimately passed, as part of the debt limitation bill, in March of last year had two pieces. SBREFA was the first piece that went through both the House and Senate Small Business Committees. It provided for guidance to small businesses in regulatory compliance, assistance to small businesses, and judicial review of the Reg Flex Act, which was the key ingredient of that particular piece of legislation.

In addition, Senators Nickles and Reid had introduced congressional review provisions, which were originally free-standing and were thought to be the response to the House-passed moratorium on all regulations, that had been passed by the House as part of the Contract With America.

In the Senate version, it was congressional review, not a moratorium. It was to provide Congress an opportunity to review regulations, as Mr. Murphy said, so that both the Legislative and Executive Branch would be co-partners in the regulatory regime.

It was passed by the Senate, I believe, 99 to nothing. When the debt limitation was to be extended, Congress took the SBREFA piece and the congressional review piece, put them together, and they were attached to a bill which the President signed on March 29, 1996. The Congressional review piece is now part of SBREFA and, since SBREFA included an amendment to the Reg Flex Act, congressional review is often referred to as part of the Reg Flex Act even though it was originally free-standing and does stand on its own.

Senator BUMPERS. Mr. Chairman, these provisions are very complex.

The CHAIRMAN. You got more out of that law school class than you bargained for.

Senator BUMPERS. I did indeed.

The CHAIRMAN. We have been joined by Congressman Romero. Nice to have you with us, Congressman.

Representative ROMERO-BARCELO. Thank you, Mr. Chairman. Nice to be here.

The CHAIRMAN. Mr. Vento.

Representative VENTO. Thank you, Mr. Chairman.

I listened with interest to the discussion of our distinguished colleague from Arkansas as he went through this procedure. And of course, the court will ultimately have to make the decisions. But it did make one on the legislative veto, as I recall, and this sounds as though the operable effect of this, that we all apparently voted for, I guess 99 to something in the Senate and big time in the House, too, is going to basically end up being, in terms of these instances, a legislative veto if it has the type of operation in the context that I hear here.

I think there would be some judicial questions or some questions about the constitutionality of this provision based on that infringement on the ability.

Now, Mr. Murphy, have you had other land management plans from the Park Service, the management plan for parks, from BLM or anyone else submitted to GAO and to Congress? We have got 4700 of these. Any of them contain other land management plans?

Mr. MURPHY. We do not have any land management plans, sir. I think there have been six that have been promulgated in the last year.

Representative VENTO. Well, the Forest Service—I do not know how many the Park Service had. We do not know how many the BLM had, do we?

Mr. MURPHY. No, we do not. Some of the—some of the plans which are single resource plans, for example, would not be rules and would not be major rules, either.

Representative VENTO. Well, I know, they would not be submitted because they may not be major. Is that your point?

Mr. MURPHY. No, they would not be rules at all. Some of them might not be rules at all.

Representative VENTO. Would not be rules at all? Some are rules and some are not. None of them are listed as rules, are they? None of them use the Administrative Procedures Act, to my knowledge, in terms of the way that they go through the development of the plans. Are you aware of procedures in these different agencies—

Mr. MURPHY. No, I agree with you. I agree with you, they would not use the Administrative Procedures Act.

Representative VENTO. And they are not listed as rules.

Mr. MURPHY. No.

Representative VENTO. I guess I think the issue in terms of “major” is a kind of a separate question here. But I mean, it does mean—do you have any idea—we would have a volume of these. Obviously we have other plans that may come forth from the Department of Defense or other instances where they have plans. Are they submitting their plans for the use of their public lands to the GAO and to the Congress?

Mr. MURPHY. I cannot tell you that they are.

Representative VENTO. Ms. Katzen.

Ms. KATZEN. I am not aware of that.

Representative VENTO. Well, I think that I am concerned. I disagree actually with this rule for different reasons than my distinguished colleague from Alaska. But I am concerned about the effectiveness of any type of procedure.

Mr. Chairman, I see your bells are going off, but I just have another question. Does this mean you have a vote, Senator?

The CHAIRMAN. Go ahead.

Representative VENTO. The issue of a major rule—my information is—I do not know; in other words, you are not taking the argument, setting aside the argument for whether it is a rule or a plan. Is that based on the information in Senator Stevens’ letter?

Ms. KATZEN. That is correct.

Representative VENTO. And of course, my information is somewhat different. I do not know whether they are looking at in fact the plan that was in effect and what it meant, but in terms of the amount of timber harvested last year, it was 120 million board feet is what I have, and that was with the pulp mill running, and now of course the pulp mill is not running. So the difference would come from the other end, where they would be increasing the harvest. It would still be a 100 million board feet increase.

But if we are both wrong in terms of that—but it would be close to—the dollar amount also may be different. So that this may be—

but obviously you accepted this information as such and I understand that.

Ms. KATZEN. Simply for the purpose of giving an advisory opinion, as I was requested to do. The facts are obviously key, and if the facts are as you state, then we may have a different interpretation.

Representative VENTO. Well, I do not know how you are using it in terms of the baseline data, whether you are taking something out of a previous plan or you are taking something out of reality.

Ms. KATZEN. I was basing the advisory opinion on the letter in which I was presented with the statement that the plan was responsible for a decrease in the amount of board feet in the amount specified in the letter.

Representative VENTO. Mr. Chairman, I think that the submission of this, of resource land plans, to this—what I would think is that if we have concerns about the procedures in terms of participation—have you made any type of evaluation, Mr. Murphy, about the participation nature of the land use management plans versus the APA procedure for rules?

Mr. MURPHY. They have their own—the National Forest Management Act provides explicit notice and comment procedures for these plans and those are implemented in regulations, and if I may say they go much beyond the APA in terms of their requirements on the agency.

Representative VENTO. Well, that is my judgment. My concern is that if you are going to address this you have something already that goes beyond it. I think that Senator Murkowski's concerns about the last minute modifications that then were brought about without, perhaps without comment, or the decisionmaking process after this came in is all very interesting. It obviously is not—to my knowledge, it does not in any way violate what the law is with regards to that.

I do not know, Senator, if you were suggesting that. I think it is desirable to have as much as discussion in terms of what the solid proposals are from the Forest Service with regards to the Tongass. I can appreciate that fact. But these land management plans go beyond that.

So I think the question for all of us, those working on issues of this nature, is whether or not we want to—if this is the procedure, if you want to treat these as rules and you want to condense the other side of the process in terms of land management plans, you may end up with something less in terms of public participation rather than more.

I do not think that anyone is served by the goal of frustrating the implementation of the law by selectively—or sending plans, because almost any decision that is made, even a listing under the Endangered Species Act, if that is considered an action or a plan that is submitted, that very well could lead us into this same quagmire where we never end up implementing the policy acts. It frustrates the action of a law that is passed by Congress and signed by the President. It is frustrated by virtue of this type of procedure.

Quite frankly, I think many of us had misgivings about the broader rule and regulation issues in terms of review, that they were ways to frustrate the implementation of law, and that this

was a simplified version that would work. But as Senator Bumpers unfolded this concern, it appears to be much more serious.

Now, I thought I was coming today to talk about the substance to some extent of this plan, but I do think that this procedure does not, and this recommendation that these be reviewed in this process, is not realistic nor helpful, whatever your viewpoint is with regards to land management. I think it would lead to even less input on the part of Congress, not more.

The CHAIRMAN. Well, I think we have to deal with the facts, and this procedure is law and it was signed by the President. And the question of whether or not the Forest Service is in concurrence with the law will probably be determined by someone other than those of us sitting on this committee or those two witnesses that we have had.

I think it is fair to note that under the statements made, in addition to the realization that the Tongass Land Management Plan is a major rule, the TLMP is also in that concept obviously synonymous under the terms set by the 1996 act and would therefore trigger other requirements and conditions before the rule can take effect. According to the 1996 act, 5 U.S.C. 804, a major rule, as stated, is any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted or is likely to result in, and that is: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, three, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises, et cetera.

So as a consequence of that, I think that we simply will have to wait until the court determines the eventual outlook and whether the Forest Service has been in compliance or acting outside of compliance with the law.

Yes?

Representative VENTO. I do not disagree with that. I was just talking about what the practical implication of it is in terms of if it is going to be applied to all land management plan decisions by agencies with regards to—I think we obviously would, especially given the description of this—and I do not think there is any disagreement about it, about what the practical effect of it is.

I would also suggest that there is this whole question of, beyond that, in terms of judicial review, and I am sure you would agree, whether or not this constitutes in essence a legislative veto.

The CHAIRMAN. Well, obviously the question of compliance within the law and the ruling as to whether it is a major rule or not is going to be determined by a process that is beyond the scope of those of us on the committee. But I think it is fair to say that, with Mr. Murphy's statement and Ms. Katzen as well relative to what they would have done had it been determined to be a rule by the appropriate agency, was, that if indeed it met the parameters that were suggested within the scope of Senator Stevens' letter, it probably would be a major rule, and Mr. Murphy's determination that it would have been a major rule had the Forest Service submitted it for a ruling.

Mr. Murphy, you said it would be a rule. So that is basically, I think, what we attempted to determine here, is the statements definitive relative to that, and the ambiguity associated with the fact that the Forest Service chose not to have the matter addressed. And the question is did they have the obligation to submit it under the rule theory or not? And I think the record will indicate the experience level and the authority associated with the General Counsel to the GAO as well as Ms. Katzen on Office of Management and Budget.

We thank you for your statement this morning and look forward to the next panel.

Mr. MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. The next panel will be: Mr. Phil Janik, Regional Forester, Juneau; followed by Mr. Tom Mills, U.S. Forest Service, Portland, Oregon; Dr. Fred Everest, U.S. Forest Service, Juneau; Mr. Brad Powell, U.S. Forest Service, Ketchikan; and Mr. Fred Norbury, U.S. Forest Service, Juneau.

Good morning, Phil. Good morning, Tom. I would ask that you proceed in any manner that you desire, and we would appreciate it if you would care to address or help clarify some of the lasting questions that perhaps were left by the previous panel or comment on any of the communications that have been addressed relative to the procedure so far.

Please proceed, Mr. Janik.

**STATEMENT OF PHIL JANIK, REGIONAL FORESTER, U.S. FOREST SERVICE, JUNEAU, AK; ACCOMPANIED BY DR. TOM MILLS, U.S. FOREST SERVICE, PORTLAND, OR; DR. FRED EVEREST, U.S. FOREST SERVICE, JUNEAU, AK; BRAD POWELL, U.S. FOREST SERVICE, KETCHIKAN, AK; FRED NORBURY, U.S. FOREST SERVICE, JUNEAU, AK; JOHN DAY, U.S. FOREST SERVICE, JUNEAU, AK; KIMBERLY BOWN, U.S. FOREST SERVICE, JUNEAU, AK; AND CHRIS IVERSON, U.S. FOREST SERVICE, JUNEAU, AK**

Mr. JANIK. Thank you, Mr. Chairman. I appreciate the opportunity to appear before the committee to supply information in regard to the Tongass Land Management Plan Revision. With me today are: Dr. Tom Mills, Director of the Pacific Northwest Research Station; Fred Norbury, Alaska Region Director of Ecosystem Planning and Budgeting; Brad Powell, Ketchikan Area Forest Supervisor of the Tongass National Forest; and Dr. Fred Everest, Project Manager of the Pacific Northwest Research Station. Those are the folks that are at the table with me.

Also present in the room are: Beth Pendleton, Co-Leader of the Tongass Planning Team; Dr. Terry Shaw of the Pacific Northwest Station, also a member of the team; Chris Iverson and John Day, other members of the Tongass team; and Kimberly Bown, my Staff Director in Alaska for Public Services. In response to staff input regarding possible questioning on tourism and recreation, Kimberly has joined us to respond to any line of questioning that might lead in that direction.

Regarding the Tongass revision per se, on May 23, just a few short weeks ago, I signed the record of decision for the Tongass National Forest plan revision, and that decision culminated a long, 10



year effort to come to that point in time. The original Tongass plan was the first of its kind, approved in 1979 under the National Forest Management Act of 1976.

As you know, a forest plan is intended to guide the management of a forest for 10 to 15 years, so the Tongass plan was ripe for revision. In 1987 the forest plan revision was initiated, beginning with the public scoping process. Throughout the 10-year planning effort, three draft environmental impact statements and draft plans were developed and released for public review: one in 1990, the second in 1991 just after the passage of the Tongass Timber Reform Act, and then the third in April 1996, the most recent public review.

In 1994, under my jurisdiction as Regional Forester, the Forest Service entered the final phase of the plan revision. Six research scientists from the Pacific Northwest Research Station, a specialist from the Environmental Protection Agency, and U.S. Fish and Wildlife Service were added to the planning team. We also received substantial assistance from the State of Alaska through the willingness of Governor Tony Knowles to provide representatives from several State agencies to participate in the process. The National Marine Fisheries Service also contributed to the effort.

The charter of the planning team, the instructions I gave them, was to develop a plan that was scientifically credible, that would ensure the sustainability of all forest resources over the long haul, and that would meet legal requirements. The final phases of the revision effort focused on a broad spectrum of issues, including local and regional economies and social concerns, wildlife and fish viability issues, habitat management, alternative timber harvest systems to clearcutting, tourism and recreation, and protection of karsts and cave management.

I believe that the comprehensive revision effort produced a solid and balanced plan for the Tongass National Forest. The revised plan provides for conserving 92 percent of the old growth forest that was present in 1950. That prediction is for the next 10-year implementation of the plan; 92 percent of the old growth that existed in 1950 will still be standing. Over a 100-year plan horizon, 84 percent of the old growth that stood in 1950 will remain standing.

The plan provides high levels of protection for fish and wildlife and enhances the opportunity for growth in tourism. The plan includes guidelines for all resources, such as timber and mining activities.

I believe that the revised plan will support the continued economic growth and development of southeastern Alaska communities. It provides support for the tourism industry, which is experiencing dramatic growth and becoming steadily more important to many communities in southeastern Alaska.

The plan assigns areas of key importance to the tourism industry for recreation, provides for subsistence uses, and protects important scenic vistas. The plan provides support for the continued health of the fishing industry and also for sport and subsistence uses of that resource. It contains riparian standards and guidelines and requirements for watershed analysis, to ensure the protection of spawning and rearing habitat for anadromous fish on the Tongass.

The plan also provides support to the timber industry, going through a very significant transition currently, as we all know. The owners of both of the pulp mills have closed them in response to changes in international and national markets in recent years. These closures have had enormous consequences for timber-dependent communities in southeastern Alaska because there are no other manufacturing operations in southeast currently that are capable of using the lower grade timber and sawmill residues that were once used by the pulp mills.

We are assisting local communities in a number of scientific, technical, and financial efforts. Scientists from the Forest Products Lab in Madison, Wisconsin, in part to your invitation, Mr. Chairman, are helping to identify new products and new uses for Tongass timber. Technical and financial assistance are offered through our State and private forestry programs on an ongoing basis, including participation in the emerging Southeast Alaska Economic Revitalization Team, which is a multi-agency effort that is currently under way and complements the activities undertaken by the communities themselves, much of that using as its base the economic assistance funds that were made available by Congress last year.

Finally, the biologically based allowable sale quantity for the Tongass is significantly above the current projected timber demand levels, based on the Brooks-Haynes study. Should private sector investments and efforts to promote new wood-based industries come to fruition in the next few years, there may very well be additional available timber supply from the Tongass as a contribution to that effort within the context of assuring sustainability of all the other resources.

I would like to spend a little time talking about the unique partnership that was developed between research and management in the Tongass revision. The Tongass National Forest, as you know, is the largest national forest in the Nation, encompassing about 17 million acres. The resources of the forest are vast, interactions very complex.

We owe it to the people of the future and the people who depend upon the resources today to manage the forest based on credible scientific information. In 1994, with the Pacific Northwest Research Station, I forged a partnership between research and management in the Alaska region to assure that the revised plan was based on the latest available science and information.

The Forest Service has always relied on the knowledge, expertise, and experience of scientifically trained personnel in the development of land and resource management plans, but the newness here was actually assigning people to the planning team. As I mentioned earlier, there were about six individuals what were so assigned from the Pacific Northwest Station.

They in turn saw to it that some 50 other scientists from other agencies, universities, private industry, were part of completing scientific assessments on key resources of the Tongass. They also assembled new information and published some six research documents, including two papers on the northern goshawk and the Alexander archipelago wolf, and drew heavily on more than 160 scientific papers in doing so.

The research science efforts for the Tongass revision also generated new information as a result of convening panels of experts to assess the risks associated with alternative resource management scenarios that were considered in the revision process. The assembled information was of sufficient breadth and depth to allow managers, such as the forest supervisors and myself, to make informed and reasoned decisions regarding the future management of the Tongass.

Scientists also evaluated how managers used the information in developing the plan. The scientists concluded that we considered the science information in all of its thoroughness, interpreted it appropriately, and were aware of the identified risks as identified by them.

It is important to note that the scientists did not make management recommendations, nor did they make management decisions. The research scientists provided decisionmakers with objective scientific information, rather than management recommendations.

There is great interest in the Tongass, both locally and nationally. In total we received over 30,000 comments over that 10-year period, from every community in southeastern Alaska and every State in the Union. In fact, of that 30,000, 22,000 were generated with that last April 1996 public review opportunity.

The people that we heard from care passionately about how the Tongass will be managed in the future, and it was obvious that many of them had different ideas among themselves about the best way to achieve that. We worked hard to find out what local citizens wanted from the National Forest, as well as citizens across the country, and I believe that the plan does strike a balance between local and national needs and responds well to public concerns.

The planning effort ended with the record of decision May 23, and we are now starting to focus on implementation in a big way. A very important feature of that is collaborative stewardship. The Alaska region is committed to continuing to build our working relationships with the local communities of southeastern Alaska and to continue to work with other Federal and State agencies, members of interest groups and the public throughout the country. I believe that our continued efforts to involve the public at the front end of decisionmaking through collaborative stewardship and improvement in that regard will result in better decisions, with greater public support, and hopefully in turn will lessen the potential delays in plan implementation in doing so.

A little bit on process. The notice of availability of the Tongass plan was printed in the *Federal Register* on June 27. The National Forest Management Act provides that the plan becomes effective 30 days after the notice of availability. Therefore it would become effective July 27. The legal notice of the decision on the Tongass plan was printed in the Juneau Empire on June 27, therefore generating a 90-day appeal period under the Forest Service Administrative Appeals Regulations beginning the day after publication of that legal notice.

The decision I have made and the record of decision, those decisions are appealable through the Forest Service Administrative Appeals Process, with the provisions indicating that filing such notice before September 26 would be the deadline, of this year.

The Tongass revision strikes a balance that protects the health, diversity, and productivity of Tongass ecosystems while it provides for resource uses well into the next century. It provides an ecosystem conservation plan that I believe will work. The plan provides for commercial and sport uses of the forest that support southeastern Alaska communities, including fishing, mining, logging, recreation, tourism, and other uses. And it provides resource for subsistence harvests and helps sustain Alaska's cultural values.

I believe that this plan is scientifically credible, legally defensible, and provides the basis to ensure sustainability of all forest uses over the long haul.

This concludes my statement, Mr. Chairman. We at the table or others we may call upon are available and very willing to answer any questions you may have. Thank you.

[The prepared statement of Mr. Janik follows:]

PREPARED STATEMENT OF PHIL JANIK, REGIONAL FORESTER, FOREST SERVICE,  
DEPARTMENT OF AGRICULTURE

Messrs. Chairmen and members of the committees, thank you for the Opportunity to address the committees concerning cooperation between the Fish and Wildlife Service (F&WS) and Forest Service (FS) on the Tongass Land Management Plan Revision and other issues of concern to both agencies.

Preventing the need to list species under the Endangered Species Act (ESA) is the current federal government policy; both the FS and the F&WS are dedicated to this policy, which is described in a federal national Memorandum of Understanding signed in January, 1994, by the FS, F&WS, Bureau of Land Management, National Park Service, and National Marine Fisheries Service. In December, 1994, the FS, the F&WS and the Alaska Department of Fish and Game signed a complementary Memorandum of Understanding to establish a cooperative program to promote conservation of species tending toward listing under the ESA.

Moreover, Department of Agriculture Regulation 9500-4 directs the FS to avoid actions "... which may cause a species to become threatened or endangered." More detailed direction is provided in Chapter 2670 of the Forest Service Manual. Managing habitat to maintain viable populations of wildlife, as required under the regulations implementing the National Forest Management Act is one of the most important tools we have for maintaining healthy populations of species and preventing the need to list species under ESA.

The agencies have been actively cooperating since 1988 regarding wildlife habitat management and wildlife conservation planning on the Tongass National Forest. We have collaborated on wildlife field studies since 1990, and the F&WS was a member of the interagency Viable Population Committee. This committee was formed in 1990 by the FS to help revise the Tongass plan by addressing wildlife viability. The committee continued its work until May 1994.

At the same time that I expanded membership in the Tongass planning team to include research scientists, I also asked other federal agencies and the State of Alaska for assistance. The Environmental Protection Agency and the F&WS had full time members on the Tongass revision inter-disciplinary team. We also received substantial assistance from representatives of several state agencies and the National Marine Fisheries Service. We received valuable information from all of the contributors. The representative from the F&WS brought additional experience and expertise and the Department of the Interior perspective to the Tongass Plan revision. He helped the interdisciplinary team to write standards and guidelines, mitigation measures, and land allocations, and to determine effects of alternatives.

The F&WS also had a full time senior line officer on the Tongass plan revision Policy Advisory Group. This group helped guide the revision process and identify policy issues critical to the revision. The two agencies jointly conducted a public information meeting in Ketchikan regarding wildlife conservation planning.

The F&WS senior staff was briefed on the plan alternatives and was asked for suggestions and concerns. I carefully considered these changes before I signed the final plan. These changes included additions to old growth reserves and modifications of standards and guidelines. As required by law, we consulted with the F&WS under provisions of the ESA concerning the few threatened or endangered species that exist in the Tongass before I made my decision.

I have briefly described the professional relationship that the FS and the F&WS enjoy in Alaska and the years of cooperation for the purpose of wildlife and wildlife habitat conservation. I am confident that the habitat strategies developed and implemented through the Tongass Plan Revision will provide adequate protection for fish and wildlife habitat to assure the viability of the species that we are concerned about on the Tongass National Forest.

I look forward to continuing to work closely with the F&WS to assure wildlife and fish species thrive on the Tongass.

This concludes my testimony. I would be happy to address any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Janik.

As we reflect today on some, what, 11 years in the process to come up with a 10-year plan which you have achieved—and I commend you—the realization that we have spent some \$13 million in the process. It seems a bit ironic, but I assume that those are the conditions under which you folks have to function and perform.

Have you got any comment relative to the apparent inconsistency of a process that takes you 11 years to develop a 10-year plan at the extraordinary cost? In other words, is the system so constricted to simply dictate that in the future we are going to be subjected to this extraordinary process of time and money?

Mr. JANIK. In looking at that number of \$13 million, Mr. Chairman, I try to keep that in perspective in terms of what has occurred over that 10-year period. The planning process, in credit to my predecessors, had been interrupted a number of times for a number of reasons that I am sure can be explained, including legislation and so on. And to the frustration of everyone, I am sure, at those times they had to go back to the drawing board and start re-constructing some things because of that new direction.

I am very proud of what has happened over the past 3 years, the time period that I was responsible for the revision portion of the 10-year period, and I believe that the folks both in the agency and those who helped us from other agencies and the responsiveness of the public—frankly, my opinion is that things came together quite well. We spent over the last 3 years I would say, if I remember the figures, about \$2.5 million per year, and that was the cost of the last 3-year surge, which was very intensive.

The other factor I try to consider is that we are covering a landscape of 17 million acres, the size of most other regions of the Forest Service, where 20 such efforts would be taking place in 20 separate national forest revisions.

So in looking at that figure, Senator, I try to find it “acceptable,” given the complexity of the issue, the national interest, the scrutiny, the landscape, the complexity of the issues. But frankly, I consider the last 3 years—that is all I can speak to with experience—as being done in a very efficient manner.

The CHAIRMAN. Well, quickly adding that up, there is about \$7.5 million then of the \$13 million that was expended over the last 3 years.

Mr. JANIK. That is correct.

The CHAIRMAN. The East Coast media editorial writers have not been very kind to the Forest Service in their characterization of the final TLMP. You and I both know that they evidently know a lot more about Alaska matters than you or I or your staff. Nevertheless, I feel compelled to review some of this material with you to see if in your opinion it is accurate to any degree at all. I think

Mario Cuomo said it best when he said the difference between reporters and young children is that if you say it often enough children eventually get it right.

Let us turn to the forestry experts at the *Kansas City Star* out in Kansas, where they have got as many trees as they have wheat. I do not know if you have read this quote, but it is as follows: "Unfortunately, the Forest Service seems to be on the side of the robber barons, who would rape this forest for short-term gain with long-lasting consequences. For some of the wildlife in that forest, the end is drawing near unless there is a stop to the attacks on the Tongass. The Tongass plan appears to be inadequate for the protection of these species. They need to be protected by placing them in a Federal listing of threatened species." They do not say which ones. "The administration needs to take steps to halt the Forest Service's management plan on the Tongass or to modify it considerably. The plan is abominable public policy."

What do you think of that, Phil?

Mr. JANIK. I strongly disagree with that conclusion. In fact, we have worked very hard over the past 3 years. One of the principal reasons we brought the scientists on board and went to the extent we did to get the scientific information that has been used as the underpinning for this plan and the interaction with the other agencies was in fact to make sure that we met our environmental requirements and, given the importance of those resources on the Tongass with regard to commercial, sport, as well as subsistence use.

We have, I believe as the ultimate decisionmaker—with confidence I can say that we have met those requirements and then some.

The CHAIRMAN. Well, let us turn to the forestry experts at the *New York Times*. I think they have done a good job of maintaining the pristine quality of the environment in New York City and they must feel compelled to provide a little advice for Alaskans. It seems that we get an editorial about once a month from them on the Tongass. They indicate:

"The Service recently issued the broad outlines of its long-awaited management plan for the Tongass in southeastern. The plan is not reassuring. It calls for too much logging in a forest that is already heavily cut"—that is contrary, I think, to your statement earlier—"and, worse, would threaten watersheds vital to the Tongass' biological future and the livelihoods of commercial fishermen."

I wonder what gives here, Phil. Are we threatening the Tongass' biological future and the livelihoods of commercial fishermen?

Mr. JANIK. I do not believe that, Senator. Again, based on the direction in the revision, I am very confident that we are going to sustain those uses over time and we are going to protect the resources that enable that kind of use.

There obviously have been some very different kinds of opinions stated, both in the media and elsewhere. Those two articles you have just referred to I am familiar with. There have also been many articles that I have read that I believe strike a pretty objective description of what has come out of the Tongass revision in terms of all the features that we have provided for.

Again, just quoting from some of the numbers I just presented in my testimony, when one considers that 94 percent of the old growth that existed——

The CHAIRMAN. 92 percent I think is what you said.

Mr. JANIK. Excuse me. 92, that existed in the fifties will remain after 10 years of implementation of this plan; and 84 percent over a 100-year period. And when you look at the beach and estuary protection and the riparian standards that we have established and the responsiveness to community protection areas—I guess I would like to sit down with one of these folks or all of them and discuss the perspective they have, because we have tried to be very responsive to those needs.

The CHAIRMAN. When you go back and refer to 92 percent of the old growth that was present in 1950's, it is assumed that that is when large-scale logging basically began.

Mr. JANIK. That is correct.

The CHAIRMAN. So there was virtually little large-scale logging prior to 1950.

Mr. JANIK. That is correct.

The CHAIRMAN. And one wonders why we have not been able to get our story across relative to the factual information. You have indicated that 92 percent of the old growth forest is still there and this plan provides for its continuation.

We heard from the *Houston Chronicle* in Texas, where they have always had a problem with Alaska, with the arithmetic, and the fact that there is somebody bigger than them. But their view of Alaska, of course, is that I guess Texas has never gotten over the fact that it used to be the largest State.

I note that, a quote from the *Houston Chronicle*: "Half of the Tongass old growth trees have already been logged," quote, unquote. "The increased logging in the new TLMP not only means more old growth trees lost, but more roads through virgin areas, built at taxpayers' expense by the way, more runoff and more fouled streams, to the detriment of salmon."

Well, we have already harvested half the trees, according to them, and we are going to foul up the streams as well.

Mr. JANIK. Senator, I have been asked the question several times: What difference does the new revision make as compared to previous practices by the Forest Service on the Tongass that have been authorized. I think some of the criticism that may be valid with regard to our authorizations have been distributional. There are certain areas on the Tongass where we definitely are going to have to do things differently. There are some areas where the new standards and guidelines will not permit the level of harvest that occurred in that particular area in the past.

So there is definitely a change emerging here with the revision. But we are still presented with an opportunity to do things right for the long haul. As I have often said, even in front of your committee, sir, we are in a prevention mode still and we would like to stay in that mode and not have to correct problems later, so that 50 years from now we can look back and enjoy the same kinds of things on the Tongass that we enjoy today.

The CHAIRMAN. 50 years from now under this plan you will still have 92 percent of the old growth forest.

Mr. JANIK. Moving towards that 84 percent figure. After 10 years we will have the 92 percent.

The CHAIRMAN. Then we go West to the *San Francisco Examiner*. That is a paper owned by a corporation that still owns and manages a significant amount of private timber in California, and publishes in a city that was built to a large degree on timber wealth. The *Examiner* is even worse with its numbers than most papers. Its editors have not yet grasped the difficult concept of multiplication, because they claim:

"The Forest Service would double the number of trees logged each year. The plan threatens to destroy virgin forest and pristine watersheds. The Clinton administration should stop this plan and should do it now."

Mr. JANIK. I appreciate you drawing attention to that particular article, because it does reveal one item that is often misunderstood and misquoted. The old forest plan before the revision was signed had an allowable sale quantity of some 520 million board feet. That is total volume, often misquoted as being 450 because at that time we only expressed volume based on saw log portions of the total volume. But really the important comparison is 520.

The new calculation is 267 in the revision, which is a substantial decrease, of course.

Another figure that is misquoted is that the ASQ, the allowable sale quantity, is often referred to as a timber target, which it is not. It is a planning calculation. It establishes the maximum that could be cut off the Tongass over a decadal period, meaning 2.67 billion board feet, on the average 267 per year.

But it was only last year that we had a harvest as low as 120 million board feet. For the last 17 years the average harvest on the Tongass has been about 327 million board feet. So when some folks refer to a doubling of the harvest, comparing the 267 with the 120 I think is what they are doing. They are looking at a very exceptional year, last year, when the timber industry was sent into a tailspin with regard to the closure of the mill in Sitka and Wrangell and then the upcoming announcements with regard to Ketchikan Pulp Company and so on.

But this revision does substantially decrease timber offerings and potential harvesting on the Tongass, and we certainly have heard a lot about that from many of our critics.

The CHAIRMAN. I will not ask you why we have not been able to communicate factually the correctness and accuracy of your new TLMP. But clearly it has not been evidenced in public consumption in these editorials.

The Lewiston, Idaho, Tribune—that is a town that has a large pulp mill. The *Lewiston Tribune* states: "Organizations like the National Resource Defense Council will not be happy until every tree on every national forest is declared off limits to the timber industry. The industry, once habituated to buying 200 year old Tongass trees for \$2 each, will not be satisfied until the Tongass returns to logging limits of old, about twice that of the new plan."

I guess we could all feel good to be in the middle of this. But being in the middle between a questionable policy of the past and a draconian view of the future is not necessarily a position of very high virtue. Also, I think that the Lewiston editorial writers exag-



gerate a bit as they characterize what the communities and the industry in southeastern Alaska have asked for.

Would you care to characterize the position of the Governor's Timber Task Force, Phil? Or should we ask them directly?

Mr. JANIK. It would probably be best to ask them directly. But as an adviser to that group, what I have experienced with that task force—that was by invitation of the Governor; I felt very privileged to be invited to sit on that group. I find them a group that is trying to identify their futures, given all the changes that have occurred in southeastern Alaska and the timber industry, trying to determine where to make the kinds of investments that would fill some of the voids that now exist in southeast, particularly dealing with the lower grade material that has, frankly, no place to go now with the pulp mills having closed, and kind of a forward-looking group.

Yet a great deal of uncertainty exists within the group because of the dramatic changes that have occurred. But I am optimistic about the task force and where it may lead. I think a forum like that is necessary right now to help folks make those kinds of decisions.

We are there in the role of technical assistance, again helping with one of the things you have gotten involved in, Mr. Chairman, that is the Wisconsin lab representatives coming out from the Forest Service to help those folks determine what the potentialities are and so on.

So I feel good about the forum.

The CHAIRMAN. Well, I think we all agree that the position of the Governor's Task Force has been a positive one, and I would agree there is uncertainty relative to the assurance of the industry being maintained at a yet undetermined level, but optimism that it can achieve a significant contribution to the economy of southeastern Alaska.

But I am not sure just where the Clinton administration is on the same subject. I note that a May 21 story in our own *Washington Post* made the following observation: "The White House had no specific comment on the Forest Service's plan yesterday when it came out, saying only that the administration is committed to national forest management that protects the environment and maintains a sustainable supply of timber across the country. Congressional sources familiar with the new plan said the administration would probably wait to see what kind of a response the plan generated from the public and on Capitol Hill before taking a stand one way or another."

They did not say anything about the editorial writers. We have already seen that.

I would ask you, what is your interpretation of the administration's position on the plan now that we have had an opportunity to hear from the editorial writers? And I am not sure you can take a sample of what the reaction is here on the Hill, but many people are informed by the editorial writers as to the attitude generally of the public.

What is your opinion of the administration's position on the plan?

Mr. JANIK. Before I answer that question, just one response, if I may, to the somewhat mixed reaction by the public at large, al-

though there again there have been many editorials and newspaper articles that I have reviewed that have indicated that the opinion is that the plan is a balanced one. But I think again the interest in the Tongass and different expectations of what occurs there or should occur there pretty much leads to some often polarized positions on what the expectations might be on that forest.

The CHAIRMAN. Would you care to explain in your opinion why this polarization?

Mr. JANIK. Well, I think it is because, Senator, the Tongass still represents to many folks—and I hear this a lot from people getting off ferries in Juneau, where I live—they come to Alaska to see the pristine environment and the wildlife, and at the same time they come to look at the lifestyles of the people. So there is mixed expectations. People come there for different reasons.

But I think the wildness of Alaska is what draws most people up there, and I think the notion of not disturbing any of it is often what folks kind of imagine as an expectation, anyway, on the Tongass, where others recognize what a national forest is and that is a multiple use mission kind of setting and in fact appreciate being able to view a mining operation or a logging operation, and so on.

I do think that across the board, based on the public comments we have received, that regardless of where people come from they do expect the job to be done right and environmentally sound, regardless of what it is we may be taking on, whether it be mining, logging, road construction, or whatever.

There is a sense of, let us make sure we do it right in Alaska. I hear a lot of that regardless of the philosophy that people come to me with.

Regarding specifically your question regarding the administration, all I can say to that I guess is that the plan is signed. I am the decisionmaker. If there had not been, I guess, strong support with the review that we had throughout the process—and I expected that kind of review to occur—I am not sure that would have happened. But the regional forester did sign that document, meaning me, on May 23.

I also would point out that we need to be a little bit careful because of the appeals process, with regard to who might be reviewing these challenges that may emerge to the planning decisions that I ultimately made, and that comes to the Chief's office for deliberation. So I would guess there is some hesitancy to weigh in on some of these things immediately.

The CHAIRMAN. I assume it is fair to say that you have gotten your last paycheck after signing the document?

Mr. JANIK. That was still delivered, yes. That goes automatically into my account, and I did not hear anything from the bank.

The CHAIRMAN. And you did not have anything bounce, all right.

Let us turn to the *St. Louis Post-Dispatch*. I guess in St. Louis they do not really worry too much about endangered birds except perhaps the Cardinals are having a hard time staying above .500 in the weakest division in baseball. But they would believe that the Clinton administration should and could stop this plan. They also note:

"Standing in a downpour during his trip in May to a Costa Rican tropical forest, President Clinton extolled the rain forest. 'I came here to emphasize the importance of the forest that surrounds us, the chain of life, not only in Costa Rica and Central America, but in all the world,'" he said.

The *Post-Dispatch* goes on to editorialize that: "The Tongass is no less important, no less deserving of preservation, and no less worthy of presidential protection."

I happen to agree that the Tongass is no less important, Phil. But my constituents live there, as you know, and so do you and I, and that is why I must make the following request. At our last hearing I noted a June 20 *Washington Times* story that reported that in order to accommodate the President's speech it was necessary to bulldoze and pave a 350-foot path to the podium. As you recall, he was on crutches at the time. So the Costa Rican Government bulldozed and paved a path right through the rain forest, the Barelo Carilio National Park.

Now, whatever the current administration finally decides on the TLMP, I hope you can assure me today that we will not be bulldozing it and paving any paths to accommodate perhaps presidential proclamations on the Tongass. I would assume that we could agree on that, Phil?

Mr. JANIK. We will do whatever is right, Senator.

The CHAIRMAN. Not whatever is necessary. Well, that is reassuring.

I could not help but note a certain inconsistency there, that obviously was too good to pass up.

Mr. JANIK. That is one article I have not seen.

The CHAIRMAN. We would be happy to provide it for you.

Mr. JANIK. I would like to read that.

The CHAIRMAN. It probably is not in your circulated reading, but it is certainly in ours.

I am going to move over to an area that you highlighted in your statement with regard to recreation and tourism, where the Forest Service is focusing more of its area of attention. I am pleased that the tourism standard and guidelines provide assistance for appropriate recreation needs and tourism, using the different land use designations or the various LUD's.

I think the guidelines will be helpful in advising local Forest Service officials about what kind of recreation and tourism opportunities should be considered and can be accommodated in different land use categories. I am pleased the agency will be able to work with the recreation and tourism industry to provide and develop some of these guidelines and standards.

I think that there is a presumption that you have stated that Alaska is that pristine area that ought to be available, and the opportunity to just take off and walk through the Tongass is something that was epitomized in a conversation I had with the Vice President, where he and his family were looking forward a couple years ago to an opportunity, that conflicted I think with a book, so as a consequence the trip had to be cancelled.

But you and I know you just do not go for a nice long walk through the Tongass. Unfortunately, there are very few areas in the Tongass that allow a visitor for a walk through the Tongass.

I think there is a road around—excuse me. There is a trail around Ward Lake in Ketchikan that offers something of that nature. But few areas really have that kind of an experience. You have to put a trail in, you have to brush it out, you have to clear oftentimes timber because of the density.

But yet the vision is, we will just go for a walk, we will cross the island. And of course, you get a couple hundred yards into that and you suddenly are faced with the reality that you are likely not going to reach your goal.

So I would suggest that attention be given, particularly in the area of high density visitor opportunities, for some kind of a forest walk. I know that there has been some advance and there has been more concern expressed. But I understand that there is a proposal for permanent oversight facilities in some of the remote recreation or old growth habitat LUD's areas, and I am curious to know how those proposals will be evaluated in the course of planned implementation as you look at more and more requests for accommodations for visitors in the areas, as opposed to what we pretty much had, which were day-type trips or the availability of a Forest Service cabin, which really do not provide the visitor with the opportunity that many visitors would like, a little more in the idea of accommodations being provided.

Mr. JANIK. Senator, I will attempt to answer that. But while I am doing that, I would ask Kimberly Bown, if I may, to come to the table.

The CHAIRMAN. Yes.

Mr. JANIK. If we are going to pursue some questions on tourism, she has traveled 4,000 miles here. I would like her to have an opportunity to answer some of these questions.

The CHAIRMAN. That is fair enough.

Mr. JANIK. Thank you.

Senator, I am really pleased with what has happened with regard to our interaction with tourism, the tourism industry representatives, regarding this revision, because I believe they at least have some level of satisfaction with our responsiveness to their requests. That has dealt with identification of some of the areas that they have been particularly interested in, and it does represent somewhat of a menu or a mix of opportunities for different clients that they serve and what their expectations are.

With regard to all the land use designations and how that affects them, there are standard and guidelines that apply to each of those in the forest plan and would represent certain restrictions on some of those expectations. But I think we have tried to front-load consideration of those needs early on in the planning process and, even though there will be further NEPA work and analysis—the forest plan is not going to resolve all those things, of course—I am confident that we have in a great degree reduced the potential conflict that will come from project implementation, including considerations within old growth reserves or anywhere else.

The CHAIRMAN. Well, I note in the standard and guidelines, for example, permanent overnight facilities in the areas of old growth habitat are 24. That would be number of overnight guests that you would consider as appropriate in old growth habitat in the entire Tongass?

Mr. JANIK. Kimberly, would you like to answer?

Ms. BOWN. At any one site, Senator.

The CHAIRMAN. For what?

Ms. BOWN. At any one site.

The CHAIRMAN. At any one site? How many sites might you anticipate?

Ms. BOWN. That would be evaluated on a case by case basis as the proposals came in. What the plan—actually, the plan really does lead the Nation in terms of looking at types of facilities and capacities, a range, providing some sideboards in the range of capacities that these kinds of developments, the scales of developments, and by prescription or by LUD offering some guidelines to the staff on the forest in evaluating proposals as they come in the door.

We were lacking that in the past. The industry has asked very aggressively for some and helped us develop, actually, develop those sideboards so that that capacity question that has been debated a lot in the past does now have some better direction and guidelines to provide the staff in evaluating proposals.

The CHAIRMAN. Do you anticipate establishing pretty much along the lines of the concession type contracts that the Park Service has?

Ms. BOWN. We operate a little bit differently from the Park Service. They often invest their own Government funds to build the facilities. We work in partnership with the industry, the Forest Service providing some of the facilities, the cabins, as you mentioned, campgrounds, trails, and then we look to the industry to provide other services, the more outfitted and guided services, the vehicles.

The CHAIRMAN. Do you within your budget, do you have the capability to build, say, a lodge at a site with 24 beds?

Ms. BOWN. We would not necessarily pursue that. We would go out with a request for proposal and solicit proposals from—

The CHAIRMAN. The private sector.

Ms. BOWN. From the private sector.

The CHAIRMAN. Okay. And are you prepared to give them a lease?

Ms. BOWN. Yes.

The CHAIRMAN. And would the lease be adequate to amortize the cost?

Ms. BOWN. That is what we are—within the confines of the national direction, which for large-scale developments such as ski areas, there are long-term leases available. For the shorter term operations there's a scale that applies to the various levels of development. More typically the operations are authorized for 5-year periods, and then the larger scale developments are often up to 15 years or longer, depending.

The CHAIRMAN. When do you anticipate having available to the visitor industry a pro forma of what they can—what definitive areas might be available, what the lease terms might be, and what would be most desirable from the standpoint of the professional planner?

Ms. BOWN. In terms of the larger scale developments?

The CHAIRMAN. Yes.

Ms. BOWN. Well, in working with the industry to define that, we do not have in the current plan specific sites laid out for those larger scale developments.

The CHAIRMAN. Does industry have any requests in to you?

Ms. BOWN. They do not at this time. And we had some difficulty in working with that upper scale development with them because they feel themselves in a competitive nature and are not necessarily ready to share their long-term visions for where their interests are.

For the smaller scale developments, however, we are working with them actively to look at various options for small base camp facilities or hut to hut type systems or trail connectors that they might need.

The CHAIRMAN. It is kind of a chicken and egg deal, which begins first. In other words, does the industry come to you with requests or do you kind of define your parameters that you are prepared to make available to encourage industry to put in facilities so that visitors can have access? Your experience in observing the Park Service in Glacier Bay may be of some assistance to you. That is a concessionaire, but clearly you are going to have to provide a sufficient lease to encourage investment to come in and amortize, because it is probably quite a seasonal opportunity.

Ms. BOWN. We do have sites in the Alaska region, one right now in fact that is out on the street up on Turnigan Pass, to respond to that heavy demand for rest room facilities and other services.

The CHAIRMAN. I am well aware of the demand for rest room facilities and the reluctance of the Forest Service to necessarily have to provide that service. But you have been and it is much to your credit.

Ms. BOWN. And right now we are in the request for proposal process from the industry or from the private sector to develop a fairly broad level facility up there to accommodate the rest rooms and the lodging and others. That came or it was generated as a catalyst from the demand that was there.

That is the pattern, typically, that a demand arises and then we respond to it with a request for proposal if it is not appropriate for us necessarily to offer that service. Other ways that those proposals or activities are authorized or initially generated are from the industry walking in with an idea, as for instance the icefield flights out of Juneau were initially conceived of by the industry and walking in, and as we all tested that together it has really expanded to quite an industry there.

Mr. JANIĆ. I think Kimberly, Mr. Chairman, used a very important word. What we are trying to do is position ourselves so we can be responsive to requests, and the involvement of the tourism industry in the revision has taken us a giant step, I think, in terms of where they would like to see some opportunities for further consideration.

But the kinds of operations you are suggesting, I do not think we really have seen any serious large proposals come in yet.

Ms. BOWN. Not in southeastern Alaska.

Mr. JANIĆ. Not in southeast.

Ms. BOWN. We have had a number on the Chugach.

The CHAIRMAN. Well, again, I think the industry is still formulating its plans for expansion, and there has been an assumption that it would be very difficult to get long-term leases sufficient to amortize investments in the Tongass. But perhaps more aggressive posturing by the Forest Service will resolve that.

I am interested in exploring the different ways that you would evaluate impact and desirability of different forms of tourism in the wilderness areas and other nondeveloped land use designations. Would you evaluate, say, a boat landing facility on how many people would have access to the wilderness, or does the valuation include impacts associated with length of stay?

For example, how do you assess the different impact of a boat landing for a vessel that may deposit 75 people onto a wilderness beach who may stay for 1 or 2 hours against a set of kayakers that may camp overnight, build fires, spend more time, and therefore impact for a longer period of time the area involved?

How do you balance between those impacts? Or let us assume that you have one of the smaller tour boats simply drop anchor and run a group ashore in a wilderness area in their shore boats?

Ms. BOWN. May I?

Mr. JANIK. Certainly.

Ms. BOWN. Actually, that specific situation or scenario was discussed with the industry between draft and final and some changes were made to our matrix and standard and guides on recreation and tourism to accommodate those boat-based small excursion opportunities in the less developed LUD's, which is what they were requesting. What they were requesting was that the capacity should be higher than the 12. At that point it was at 12-person capacity, and now it is sitting at anywhere from groups of 50 to it is accommodating the larger, the small cruise ship but larger excursions onto that one fringe of the beach.

In evaluating a proposal that would come in for, let us say, a boat base facility for a kayak group versus a motorboat or whatever, that would be evaluated on a case by case basis and the cumulative effects of what that activity did to the surrounding area certainly would be considered under the NEPA process for that specific project.

But as I said, originally the capacities really offer some long-awaited guidelines for the staff across the forest to use as sideboards where they can consider the proposal.

The CHAIRMAN. Well, as we move towards more utilization for tourism as an attraction to southeastern Alaska, let us take again the proposed construction of a 24-person overnight facility in an area that the industry would select, but let us assume that area is sensitive. It is an old growth LUD habitat and the environmental analysis required to evaluate the desirability of locating such a recreation facility would probably be substantial.

So the agency may be hard-pressed to find the cost of an environmental review sufficiently capable to satisfy the interested parties that such a facility will have an acceptable level of impact on the old growth habitat or LUD. One of the easiest ways to fund that would be to have the analysis be required to be underwritten by the applicant, that is the cost of the analysis.

How would you work that if indeed the opportunities would be mandated that you consider a competitive process? So the question is can you negotiate with one or do you have to put it out for competition? And if the applicant is going to underwrite the cost and suddenly finds out that he has a competitive situation there, how do you make sure that the special use permit is considered as being competitively offered at the same time you find an applicant who is willing to defray part of the cost of doing the environmental evaluation?

Have you addressed these questions?

Ms. BOWN. Yes, we have, not necessarily to the satisfaction of the proponents. This is a national issue to some degree, but as a proponent would like to expedite the evaluation of their idea or proposal or project, they can expedite it through offering to pay for the analysis, the EA or EIS as is determined necessary.

In doing that, we enter into a third party agreement where the Forest Service contracts with a firm or the private sector to do the environmental analysis or assessment, and in doing that they retain the decisionmaking position that they need to retain or that the agency needs to retain.

At that point when the environmental or the NEPA process is finished, then you do have to go out with a solicitation or prospectus to ask for or request proposals again in a competitive nature, because the bottom line is that what we are trying to do out there is to get the best offering to the public. The proponent that initially underwrites the cost of the environmental assessment does have a risk associated with not being competitive for the end project that is authorized through a special use permit.

The CHAIRMAN. Do you not think that is going to discourage people from running the risk of underwriting the cost, if they have no assurance? Because you know, this is pretty much pioneering in a sense. You have got a short season. It is dependent on, what, Memorial Day to Labor Day or something of that nature.

I mean, I am being a devil's advocate here, but I think it is important that you recognize that if you are going to pursue this in a sincere and yet feasible manner you are going to have to have flexibility.

Mr. JANIK. Mr. Chairman, you have keyed on a very troublesome area in terms of what we would like to do, and it is in conflict with the competitive bidding process and so on. All I can say to that is we are trying to find a way to make that work. We do not have the answer to that yet.

The CHAIRMAN. Have you asked for any Congressional assistance?

Mr. JANIK. I do not think that has happened, no.

The CHAIRMAN. Well, that is what we are here for. If you need special consideration relative to the uniqueness, the short season or any number of functions, I would suggest that you pursue it with a request, and we can always hold a hearing and see if it is feasible and equitable.

Let me ask a question about how you calculate permit fees. As I understand it, your fee is 3 percent of the adjusted gross cost of a trip. Does that not penalize expensive trips involving expenditure of a short time on a forest, like a large boat, helicopter landings,



to the benefit of less expensive trips where the participants on the trip spend a lot longer time and therefore have a greater impact? I am talking about the kayakers or those that organize pack trips.

It seems that one would question, should not your fee be related to the amount of time and the level of impact that is being visited on the forest as a factor, a major factor?

Ms. BOWN. The current fee structure that has been in place since the early eighties does give the operator the choice of either a fee per service day or a 3 percent of the gross revenues. The 3 percent of the gross revenues can be adjusted for time on forest, which we do very, very frequently up in Alaska, is the time that they are on national forest for a day is the only time that is associated or calculated into the fee calculation.

Additionally, we have instituted nationally, but we have taken advantage of it especially at our visitor centers for bus visits or taxi drivers or such, that a short stop fee is then instituted where the stop or the visit is generally less than 4 hours. That has also been able to minimize or make more equitable the fee charged to those operators.

The CHAIRMAN. Well, I am still a little concerned about penalizing the expensive trips and not reflecting more on the related amount of time and the level of impact of some of the visitor types. Are you comfortable with that?

Ms. BOWN. I am afraid I really do not understand your question, Senator.

The CHAIRMAN. Well, the kayakers are in there, as an example, or the organized pack trips, and they are in there for several days. So their impact is obviously much different than a boat or a helicopter. A helicopter lands, they are in there for 20 minutes if that long. Is there an equity there or is there an inequity?

Ms. BOWN. The current system with 3 percent of gross—

The CHAIRMAN. I am not asking about the current system, because we can always change the current system.

Ms. BOWN. My point is that we have changed it for a short stop fee, and we are pursuing that same system to be applied to those icefield flights, which is exactly I think the point that you are making. The short stop fee, which is available only for very short stops, generally 4 hours or less, and not more than 2 service days for that package trip, which certainly the trips to the visitors centers by the buses and the taxis fall within that and do get it, it is a per-head charge and it is much less and a lot less calculation that goes along with it.

We are hopefully—I am certain that by next season we would have the air flights, the icefield flights for instance, under the same short stop fee, which will ease their accounting and the fee structure to them considerably.

The CHAIRMAN. Why does it take so long to resolve the helicopter issue?

Ms. BOWN. Well, we have—

The CHAIRMAN. That is where you have got a substantial visitor demand, as I understand it.

Ms. BOWN. Right now we have a regional working group, four outfitter guides that are working hard on this. They all have other jobs. We pull them in at least—we pulled them in twice this year

so far. They are working with our fiscal folks to bring this together. Phil's leadership has put a tremendous emphasis on accommodating and being responsive to the visitor industry's needs as authorized through our special uses.

The special uses really are the vehicle that we authorize all these uses, and so we have a special team. But they are working hard on this and they——

The CHAIRMAN. How long have they been working on this?

Ms. BOWN. Well, we came in with this short stop fee nationally, it became available to us last year, to the Nation. And we have instituted it for the visitor centers initially and now we are pursuing it for the air flights, the air carriers.

The CHAIRMAN. When will you have it completed?

Ms. BOWN. Applicable to the icefield flights?

The CHAIRMAN. Well, helicopter flights, wherever they are.

Ms. BOWN. I can assure you by next season. I am not sure if they could get any sooner, but I could certainly check for you.

The CHAIRMAN. Phil, is there a reason that we cannot make some decisions on this? I mean, you have been working on it for a long time. The operators, you know where they want to go, you know what they do. They need some finality, some certainty. Somebody has got to make some decisions.

Mr. JANIK. I took a note on this, obviously, and we will see if we can expedite this faster than it has been.

The CHAIRMAN. Is there some uniqueness that makes it very difficult to reach a decision how you are going to set them up and manage them?

Ms. BOWN. I cannot speak for all the fiscal implications that I know that are involved in this. The current fee structure, though, has been working fairly well for these folks, and primarily the leadership of the Alaska region has pushed for a short stop fee that has changed the national fee structure to accommodate these specific kinds of short stops on national forests, because a lot of the use is off national forests.

The CHAIRMAN. Well, we have seen an extraordinary time sequence involved with the Forest Service's actions, and I would hope that certain things are within the parameters of decisions being made in a reasonable time, because we have a seasonal reality associated with Alaska. You get the information, say you want a decision by a certain date, put a team together, and get it done, make a decision.

Let us go to wild and scenic rivers. How many of the recommendations or the recommended wild and scenic river corridors are adjacent to development LUD's, in the sense of corridors adjacent to those areas? Got any idea?

Mr. JANIK. Why do not I start the answer to that, Mr. Chairman, and then if Kimberly has anything to add. As identified in my decision in the record of decision, 32 of the 112 rivers that were deemed eligible for possible recommendation were selected and passed on as a recommendation as part of the forest plan revision, 32 of the 112.

An additional 37 of the 112 have the majority of their corridors within wilderness and LUD-2 areas. And then I am going to add another figure to that: Another 25 occur in non-development

LUD's. So with the recommendation of 32, and then you add to that the 37 and add to that the 25, you end up with 94 of those 112 have a pretty substantial level of protection.

That was one of the considerations in terms of choosing the 32 figure, in addition to it simply shaking out as being representative streams in various provinces as part of the study. I emphasize that point because I have heard quite a bit of criticism regarding why did that shake out as such a low number, 32, when you had 112 to select from. Well, part of that had to do with this observation on our part.

So 84 percent of 112 are in a pretty high level of protection, considering the 32 we are also recommending. In addition, there were some communities that responded back to us that basically said that designation as wild and scenic was not something they would prefer to have happen, and we took some of that response into consideration, I believe.

I am going to stop there and see if Kimberly has anything to add to that.

Ms. BOWN. I do not.

The CHAIRMAN. Could you provide for the record which communities objected and were accommodated as a consequence of their rejection?

Mr. JANIK. Certainly.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. In assessing the effects of potential wild and scenic river recommendations, I gather you assumed a half-mile corridor, even though all the currently designated rivers in Alaska have a one-mile corridor. I am wondering what would be the effect of the wider corridor on the timber base and transportation corridors?

Mr. JANIK. In total acreage, I do not have that available. But again, we could provide that.

The CHAIRMAN. Does anybody have that number?

[No response.]

The CHAIRMAN. Can you provide us with that?

Mr. JANIK. Yes, we can.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. You have pretty well, I think, acknowledged what kind of comments you received on your proposals relative to your ability to accommodate some of the communities on the proposed designations. So I assume you had comments that were in favor and those that were in opposition?

Mr. JANIK. Yes, we did.

The CHAIRMAN. What was the basis for the additional recommendations in the final TLMP?

Mr. JANIK. On the five additional streams?

The CHAIRMAN. Yes.

Ms. BOWN. I am sorry, I do not have that in front of me.

Mr. JANIK. These were, as I remember, these were recommendations from the public in terms of going from, I believe it went from 25 to 32, is my recollection, Mr. Chairman, from the draft to the

final. And I believe it had to do with recommendation from the public that we considered.

Mr. Norbury, perhaps you have something else to add to that. I think that was the reason.

Ms. BOWN. Brad may be able to answer as well, because I think they were in your area.

Mr. POWELL. That is very accurate. There was public comment in support of those, and the majority of those were also in protected areas, as Phil already mentioned.

The CHAIRMAN. Can you recall a few of the names of the five?

Mr. POWELL. I would have to check. The five we added, the majority I think were in LUD-2's or——

The CHAIRMAN. You do not remember the names of the rivers?

Mr. POWELL. I can look that up.

The CHAIRMAN. We would appreciate that for the record.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Let us go into the funding a little bit now, on the implications of the plan, cost estimates and so forth. I am informed that you were advised by staff that you would be asked to estimate what it would cost in out year appropriations to implement the final TLMP. I wonder if you could give us some indication on how that cost would compare to appropriations over the last several fiscal years?

Mr. JANIK. I am going to ask Mr. Norbury to help me with that answer. But the estimate for implementing the forest plan that I approved approximates about \$83 million. That assumes fulfilling the full potential of the 267 million board feet of timber. That is a significant assumption because, again, that is not a target.

The CHAIRMAN. Is road building in that?

Mr. JANIK. Sir?

The CHAIRMAN. Or has road building been taken out?

Mr. JANIK. I believe roads are in there. That is the total number, approximately \$83.5 million. The timber portion of that, of course, is substantial, and any reduction from the allowable sale quantity in terms of what the offering might be for that particular year would significantly affect that number, that total.

The CHAIRMAN. Now, if the legislation in the House that would terminate any road building as part of the timber purchase credit, if that is stricken, then you would assume that the contractor would bid the timber in at a price to put his own roads in, which would mean that the stumpage would be substantially less than it is assumed under your proposal of some, what, \$83 million?

Mr. JANIK. \$83.5 million.

The CHAIRMAN. Is it basically a push, even though recognizing you do not get that back under the same funding mechanism?

Mr. JANIK. Are you asking if road building was prohibited?

The CHAIRMAN. No, no.

Mr. JANIK. Or the purchaser credit were eliminated?

The CHAIRMAN. You have got it in here, but there may be a change if Congress eliminates that.

Mr. JANIK. The \$83.5 million does assume the existing purchaser credit. That is in the plan, so if there is any change to that those numbers would have to be adjusted.

Mr. NORBURY. Mr. Chairman, to clarify, the \$83 million does not include the purchaser credit allowance.

Mr. JANIK. Oh, I am sorry.

The CHAIRMAN. How does that compare to previous years? I understand it does not, it does not include purchaser credits. Purchaser credits are how much more?

Mr. NORBURY. For a program of 267 million, we are estimating \$32 million a year in purchaser credit.

The CHAIRMAN. How does this compare with previous years' appropriations on a fiscal year basis?

Mr. NORBURY. For the past 3 years the allocation to the Tongass has been around \$65 million a year.

The CHAIRMAN. For the past 3 years it has averaged \$65 million?

Mr. NORBURY. Around \$65 million in total funds.

The CHAIRMAN. And with the exception of last year, those were years when the allowable cut was in excess of 250.

Mr. NORBURY. Yes, sir, that is correct.

The CHAIRMAN. And the rationale for the \$83 million when you are harvesting less timber and spending, needing a greater appropriation compared to previous years, when you were harvesting more timber and had less appropriation, is due to what?

Mr. NORBURY. Mr. Chairman, I can provide some detail of what the changes are, but before doing so let me emphasize that we do not regard the plan as a budget document.

The CHAIRMAN. Well, you might not, but the taxpayer might.

Mr. NORBURY. The plan is implementable at various budget levels. We do have some estimates of what we think a desirable budget level is, and those estimates simply represent what we think would be a desirable way to progress toward the objectives established by the plan. I will provide some detail on what those are.

But if we get different budget levels, we will continue to implement the plan. There are increases in several areas. One of them is in the NFEM fund code, which is currently titled land management planning inventory and monitoring. That is to provide for an expanded monitoring program for the Tongass and also some additional administrative studies.

The CHAIRMAN. Monitoring? What do you monitor that you do not monitor anyway? You have got your forest people out there. I mean, you use a term, but what does it really mean? What are you going to physically do more than you are doing now?

Mr. NORBURY. The detail on that is provided in the plan. The monitoring plan, our estimate is \$1.4 million a year. Much of that are things that we are doing now, but what we intend to do a better job of is things like monitoring stream conditions to be sure that the standard and guidelines that we have established for streams will in fact achieve the objectives and have the results that we intend that they have.

The CHAIRMAN. I assume the U.S. Fish and Wildlife Service does some of that. The State Department of Fish and Game does some of that. You are saying more monitoring and there is less logging occurring.

Mr. NORBURY. One of the problems we have had with monitoring in the past that is done by the other agencies is that it is done in a piecemeal fashion and it is not always laid out in a way that

would let us determine the extent to which the changes they pick up in their monitoring are attributable to our management actions.

What we really hope to do with this new plan is to work cooperatively with the other Federal agencies and the State of Alaska in developing a joint monitoring program in which we can all be looking at it from the same point of view and produce data that we could share and use commonly.

The CHAIRMAN. I can certainly appreciate and understand that. But I would assume that there would be some efficiencies associated with that. You are going to monitor, then somebody else's budget, maybe the U.S. Fish and Wildlife Service, can be reduced in the sense of their monitoring. But you know, just for everybody increasing the monitoring budget, if you want to wander down that rabbit trail because everybody wants to assume the responsibility—I would like you to provide for the record what you propose to do with an \$83 million fiscal budget excluding purchaser credits that is going to be different than what you have been doing previously when you have been spending \$65 million and producing a higher volume of timber.

[The information requested was not received at the time the hearing went to press.]

Mr. NORBURY. If I may, Mr. Chairman, I will touch on a couple of other differences that are actually of larger magnitude than the one you just mentioned. The timber program would be—funding for the timber program would be increased. Our costs for preparing timber sales have increased.

The CHAIRMAN. Why have they increased? Environmental concerns?

Mr. NORBURY. Because of environmental concerns. Our costs 3 years ago were running at around \$50 a thousand. They are running closer to \$80 a thousand.

The CHAIRMAN. Do you think that has something to do with those that suggest that the Federal Government subsidizes the Tongass Forest for the benefit of the industry? I mean, if your costs go up to a point, we would have to acknowledge that there is substantial Government subsidy.

Phil, you know what I am getting at.

Mr. JANIK. I think I understand your inference, yes, Mr. Chairman.

The CHAIRMAN. What encouragement do you have to control your costs so that the forest will stand on its own? Or can the Tongass stand on its own in relationship to the increased costs associated with what it costs you to manage it?

Mr. JANIK. The display here simply tries to depict what it would cost to get out the various outputs, and it does not really get into that philosophy.

The CHAIRMAN. I know, but you and I are continually confronted with the criticism that the Tongass is a subsidized forest for the benefit of industry. Is that not a fair statement?

Mr. JANIK. We do hear that, yes, sir.

The CHAIRMAN. How do you counter that when your costs are increasing and you are using, what, \$50?

Mr. NORBURY. On the projections—Mr. Chairman, on the projections that we have in the plan, the timber program is about a

breakeven proposition. The anticipated revenues will just about cover the costs of operating it. The other programs do not generate revenues and are in fact subsidized.

The CHAIRMAN. And are in fact subsidized?

Mr. NORBURY. Yes, sir.

The CHAIRMAN. Well, go ahead, Phil, and give me a degree of comfort.

Mr. JANIK. I do not think I have any comfort to offer. The costs for the timber program are increasing and, yes, you are correct, you have heard us state and you have seen that the expectation of projections for timber are decreasing.

The CHAIRMAN. How much—how far do you go with this? I do not know. Are your costs increasing 10 percent, 15, 20, over what they have been? And how do they compare with other forests?

Mr. JANIK. I think Mr. Norbury has the figures per thousand. I think we are close now to nearly \$100 per thousand for preparation.

Mr. NORBURY. The allocation for fiscal 1997 was based on \$80 a thousand. Our expectation is that under the plan it will be closer to \$100 per thousand. The last time I did a regional comparison on this, our costs were still lower than the costs in the Pacific Northwest.

The CHAIRMAN. Well, that is as a consequence of the President's forest plan, is it not, the President's forest plan as it is applicable in the Pacific Northwest?

Mr. NORBURY. I have not investigated the reasons behind the costs.

The CHAIRMAN. Well, you ought to investigate it.

It appears to me that we are moving—and as you look at your planning, I think you have got an obligation to recognize that it appears that we are well on our way to the Tongass doubling the costs. What are you going to do about it? And if you cannot do anything about it, are you going to ask for some kind of relief? Or do you just let it go?

The forester who is working on the tourism plan is working on a plan. You folks are moving to almost doubling your costs, which brings on the question of justification for commercialization of the forest. What kind of relief do you need? What are you asking for? Or is it just a reality that we have to live with it and Katy bar the door.

Mr. JANIK. Well, with regard to today's discussion, Mr. Chairman, it is simply a reality that we tried to depict here on this page, and that is that the outputs—and I think I would go back to Mr. Norbury's statement. This is not a budgeting document as such, so that if we do not get budgeted at \$83.5 million, which is likely, that we will not, then some of these expectations will not be realized.

So this plan can be implemented at any funding level.

The CHAIRMAN. Well, what I asked is which ones goes out the window and which ones remain.

Mr. JANIK. That is deliberated every year in the budget process.

The CHAIRMAN. You have got that process under way, because—and assuming you do not get full funding, and the reality is nobody gets full funding around here. What would happen if you got 80 or 70 or 60 percent of your requested funding levels? How do you im-

plement and pattern your land management outcomes at these different funding levels?

Mr. JANIK. That is the very struggle we go through every year in the negotiations of the budget with the national office and beyond.

The CHAIRMAN. Well, it would appear that something would have to give.

Mr. JANIK. Yes.

The CHAIRMAN. And my question to you is, does the timber preparation? Is that what gives first in this scenario of 60 to 70 percent of funding?

Mr. NORBURY. Mr. Chairman, we do not have that kind of discretion with respect to our budget. We do not get a sum of money that we can allocate amongst the programs. It comes to us tied to specific programs, so if we get less than full funding that will vary from program area to program area. Those decisions are made both by the Congress and by the national office.

The CHAIRMAN. If the Congress appropriates into the timber funding program an adequate amount, you can perform that task, perhaps at the expense of monitoring or doing something else; is that right?

Mr. NORBURY. We will pursue the timber program to the extent we receive timber funding. We will pursue the monitoring program to the extent we receive monitoring funding.

The CHAIRMAN. Given the completion of the plan and the administration's emphasis on downsizing, it would appear that now would be an appropriate time to evaluate the personnel complement and the organizational structure of the region and the Tongass National Forest as a whole. In broad terms, can you describe what sort of downsizing initiatives you envision and whether you envision any office shifts or major organizational changes?

Mr. JANIK. I would like to start again with that answer and then maybe give Mr. Powell an opportunity to talk about his specific area in Ketchikan, just to speak from what is happening on his area.

Let me start this way, Mr. Chairman. We have formed what we are calling a transition team in the region to analyze this very subject area, and that is with the changes in the plan, with the changes in the Federal budget, as we have seen the trend, how ought the region to respond to those changes? And there have been some things already in motion because of having to do more or the same with less, depending on how you look at it.

We have figures which represent, for instance, that in 1996 we had about 662 people serving the Tongass National Forest, and in 1997 that is down to 654. We are projecting that could drop as low as around 566, again for the Tongass National Forest. If you compare that number, that projection, for the year 2000 with back as recently as 1994, you will see a number of about 725.

We have these numbers and we would be happy to submit them for the record if you wish.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. How many of those in 1994 were contract or brought up to assist in the preparation of various Forest Service



activities? Because there was an effort at one time to bring up from, I think, Oregon, the Willamette area, to expedite.

Mr. JANIK. I think these numbers only reflect, if I am correct, permanent full-time employees on the payroll.

The CHAIRMAN. So in 1994 you had about 725?

Mr. JANIK. And in 1997 we are looking at 654, and projecting a loss of nearly 100 more by the year 2000.

The CHAIRMAN. What type of positions are you losing?

Mr. JANIK. Here is just a quick display. On the Chatham area, for instance, we are looking at a loss of about 48 positions during this transition, with about 16 of those being engineers, 3 various line positions, biologists about 9, foresters about 13, and then administrative types about 7. We have breakouts like this for each of the areas of the Tongass, and if you would like me to go through those I will.

The Stikine area, considering it started, this process of "downsizing," a few years ago, the influence of this plan in their judgment is that they will probably hold level. But the Ketchikan area, Mr. Powell's area, you are looking at minus 40 positions, Brad?

Mr. POWELL. That is correct, that is what we are currently anticipating. The only thing I would add to what Phil has said is each of the areas has undertaken a process to look at the new forest plan, try and anticipate what type of organization that we think it will take to implement that plan, and then try and develop plans for the future to make those adjustments in our organization.

The CHAIRMAN. You indicated a reduction of so many engineers and so many biologists.

Mr. JANIK. Yes.

The CHAIRMAN. How many engineers do you have?

Mr. JANIK. I do not know if I have that figure with me. Do we have that?

The CHAIRMAN. How many biologists do you have?

Mr. JANIK. I am sorry, Mr. Chairman. I do not think I have those numbers with me.

The CHAIRMAN. Can you provide us for the record the breakdown of the various capabilities?

Mr. JANIK. Just to clearly understand, for the Tongass?

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Of the 654. This is just the Tongass, as opposed to the Chugach. How many personnel do we have in the Chugach?

Mr. JANIK. I believe we have nearly, what, 200 people on the Tongass?

The CHAIRMAN. Chugach.

Mr. JANIK. Excuse me, on the Chugach.

I cannot pick that number up. I will provide that to you.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Does anybody know that?

[No response.]

Mr. JANIK. We will provide that number to you.

The CHAIRMAN. Is there also a downsizing contemplated in the Chugach?

Mr. JANIK. They are going through a downsizing as we speak, yes.

The CHAIRMAN. Do you have any plans for a reorganization of any of your offices, functions, districts, regions?

Mr. JANIK. We do not anticipate that currently. What we are trying to do is develop shared services and teams that approach things in a more efficient way. Kimberly referred to special uses. We have made a decision regionally that we could get that job done more efficiently if we not try to do it by each individual unit, but rather provide a central experience bank of people that could handle those requests that come in. We are looking at various areas like that and trying to respond similar in kind.

But we have not anticipated any changes in units, such as district reconfiguration or forest areas or whatever.

Mr. POWELL. Phil, just one addition to that. We are looking at one district combination, between our Ketchikan ranger district and Misty Fjords. But it is not really derived from the Forest Service plan. We are looking at it because we think it makes good sense to serve the citizens of Ketchikan and we think that we can be more efficient in doing that. So it is just occurring at the same time, and we currently have not made a decision on that. But we are looking at that to see if it makes sense to combine those into one office.

The CHAIRMAN. Well, is there any reason why it would not? Misty Fjords' access to Ketchikan is—I cannot understand why you would have two to begin with.

Mr. POWELL. Well, it is a very large administrative unit when you take all of Misty Fjords and Ketchikan ranger district. Traditionally it has been managed as two. We have an opportunity now with a vacancy in one of those positions and we are taking a hard look at it. In fact, we have one manager operating both of them now as we explore that.

Mr. JANIK. Brad's basically got that on a trial basis right now it and it is so far looking like it makes sense.

The CHAIRMAN. In Ketchikan you utilize the old Federal Building and the Forest Service Building out towards the ferry terminal?

Mr. JANIK. Right.

Mr. POWELL. We have two primary offices there in Ketchikan: the old Federal Building where the supervisor's office is and then the ranger district building, which is close to the post office, which serves now as the office for both Misty Fjords and Ketchikan ranger district.

The CHAIRMAN. How many people are in the Juneau office, the regional office?

Mr. JANIK. In the regional office, we have about 200. I think we have just under 200 at the regional office. And we have been attempting to downsize there as well. We have gone, for instance, from, what was it, 12 staff directors to 7. That occurred about 2½, 3 years ago. And we are looking at ways to improve efficiencies through that kind of merging.

The CHAIRMAN. I draw your attention to a document that is part of your administrative record. You have it as exhibit 1 in the materials that were sent to you, a document summarizing commitments made between the Forest Service and the Fish and Wildlife Service

in December of last year concerning implementation priorities. Can you give us an estimate on how much success you had in the completion of these tasks and what the cost would be?

Mr. JANIK. Yes, I could go through each of these 18. I am sure you do not want me to do that, but these are referred to as the list of the 18 commitments that were made between Dave Allen and myself, my counterpart interest Alaska region for the Fish and Wildlife Service.

I would say there has been substantial agreement and progress on these points. Some of these points were items that I agreed were appropriate for inclusion in the record of decision in discussion with Dave Allen and his staff. Others represent follow-up commitments for implementation of the plan. For instance, I will just pick one out here: number 13 and 14, for instance, inter-agency monitoring of wolf mortality. That would be done with the Department of Fish and Game as well.

No. 14, conduct TLMP studies as a collaborative effort; there are some scientific studies that are identified in the plan that we are going to do some follow-up on, and we definitely would want the Fish and Wildlife Service being part of that.

Those are just two examples.

The CHAIRMAN. Would in your opinion any of these require a plan amendment in the near future?

Mr. JANIK. No, no.

The CHAIRMAN. Would the costs be included in your earlier estimates of what would be required to fully implement the plan?

Mr. JANIK. Regarding these 18?

The CHAIRMAN. Yes.

Mr. JANIK. Yes, sir.

The CHAIRMAN. And they were totaling what?

Mr. JANIK. Just for these 18? I have no idea.

The CHAIRMAN. Can you provide that?

Mr. JANIK. Yes, we can provide that.

[The information requested was not received at the time the hearing went to press.]

Mr. JANIK. Although some of that is going to be estimates, not absolute assurances, because some of this, Mr. Chairman, we are going to basically determine and forge based on what our budget realities are.

The CHAIRMAN. Would you anticipate seeking additional appropriations or authority from Congress or the Department of the Interior or the Department of Agriculture in association with this list?

Mr. JANIK. I would say that remains to be seen. We did not anticipate that at the time this list was put together.

The CHAIRMAN. Well, if you anticipate any as you review and provide for the record, I would appreciate it if you would review that and indicate kind of an update on whether or not.

Under appendix N of the FEIS there is a statement, "Sitka blacktail deer are the principal prey of the wolf and long-term viability of wolves is directly related to long-term deer habitat capability," which is a point of common agreement among the wolf assessment panel. Now, that is a strong statement. If the long-term viability of the wolves is directly related to the long-term deer habi-

tat capability, how do you account for a viable wolf population in areas of southeastern Alaska, such as the mainland, Glacier Bay? Moose and goat populations are certainly not high enough in these areas to offset the 13 deer per square mile you project as needed to maintain wolves.

Appendix N states further—okay. Well, why do you not answer that one.

Mr. JANIK. May I ask Chris Iverson to replace Kimberly Bown at the table?

The CHAIRMAN. Sure.

Mr. JANIK. I think we are going to be needing his expertise, as well as perhaps some of Tom Mills' people on this one.

Thank you, Kimberly.

Chris, would you please address the 13 deer per square mile and its significance with regard to the prey base for wolves?

Mr. IVERSON. Those values and the relationship you quoted is related to the wolf assessment that was prepared. Those values are derived from the Prince of Wales study area and we make the statement that where deer are the principal prey of wolves in that analysis.

The CHAIRMAN. Is there any place that deer are not the principal prey of wolves?

Mr. IVERSON. We hypothesize that on the mainland, where goats may be a principal prey, and in the Stikine River delta, where moose may be a principal prey, on the Chilkap Peninsula moose may be a principal prey. So in other areas off of the islands, we believe that deer may not be the principal prey items.

So those conclusions are restricted to the islands by and large, Prince of Wales especially.

The CHAIRMAN. Well, there is not 13 goats or 13 moose per square mile in the Stikine, that is for sure. So what are they eating there?

Mr. IVERSON. They are eating moose and it would take many fewer moose. We have not—

The CHAIRMAN. Not necessarily goats?

Mr. IVERSON. Certainly fewer goats. But we have not made those assessments relative to mainland wolves. The issue in the assessment was relative to deer and the equilibrium models that were done in the wolf assessment were relative to deer populations. And the analysis was careful to restrict it to island populations, where deer is the principal prey of wolves.

The CHAIRMAN. What did you factor in relative to Admiralty, Baranof, and Chichagof, where there are no wolves?

Mr. IVERSON. They were not factored in because wolves do not occur on those islands.

The CHAIRMAN. But deer do.

Mr. IVERSON. But deer do.

The CHAIRMAN. And what is the—outside of man, what is the predator then for the deer on those islands?

Mr. IVERSON. We suspect that perhaps brown bear may be taking fawns, and certainly the human harvest.

The CHAIRMAN. You have the human harvest on the rest of the islands, where you have both the wolf and the deer.

Mr. IVERSON. Correct.

The CHAIRMAN. Yet you do not have the wolves on Admiralty, Baranof, and Chichagof.

Mr. IVERSON. And I believe we have perhaps more deer and perhaps more liberal hunting seasons for human use on the mainland.

The CHAIRMAN. Because there are certain areas where you have high density, for example on Queuyu, where I believe the deer season has been for all practical purposes almost closed for a decade as a consequence of the high number of wolves. What do the wolves eat if there is no deer? Each other?

Mr. IVERSON. I would suspect out there that the wolf density is low, commensurate with the low deer density. So the wolves per area is much lower on Queuyu than it is on Prince of Wales, where there are much healthier deer populations.

The CHAIRMAN. But do not the wolves move to where the deer are?

Mr. IVERSON. To an extent. But certainly within the territory—

The CHAIRMAN. I mean, you see them swimming, and you have observed them surely, from the islands in southeastern Alaska, island to island.

Mr. IVERSON. Yes, they swim to a certain extent, 2, maybe 3 miles maximum.

The CHAIRMAN. Yes. And do they go back and forth from the mainland to the islands?

Mr. IVERSON. In the central southeast, in the Stikine area, the Stikine River delta, we believe they move from the mainland to the islands fairly readily. On Prince of Wales, where the swimming distance is much greater across Clarence Strait, I think the interchange—we have suspected that the interchange is much, much less. The genetic studies suggest there is some interchange, but based on a 3-year study no wolves left on Prince of Wales Island toward either Revilla or the mainland.

The CHAIRMAN. Because it is simply too far?

Mr. IVERSON. At least during that time period we did not see it, possibly because it could be a long swim, not too far. But the probability of a swim across there, a successful swim, is likely very low.

The CHAIRMAN. That is the same probability you are using to suggest that there is no wolves on Admiralty, Baranof, and Chichagof, because it is too far to swim.

Mr. IVERSON. That is one possibility, but we are not certain of why wolves have never colonized those three islands. It may be the swimming distance, it may be the presence of large brown bear populations. We simply do not know.

The CHAIRMAN. You have brown bear populations on the mainland, and you have wolves, and you have deer.

Mr. IVERSON. The brown bear populations on the mainland are much lower and you have a source population for the wolves through the interior possibly in British Columbia.

The CHAIRMAN. Appendix N states: "Furthermore, the wolf assessment concluded that sustaining the current estimated wolf populations on Prince of Wales"—and I guess it is "Koskiosko Island."

Mr. IVERSON. Koskiosko.

The CHAIRMAN [continuing]. "Koskiosko would require a deer population of from 42,000 to 54,000 for a 95 percent probability of equilibrium, given current human deer harvest levels." 95 percent

probability means that you are pretty sure of this finding, or at least I would think that would be the case.

In order to have such a high level of statistical confidence in the statement, I assume it is based on a carefully controlled experiment on Prince of Wales that is repeatable and carries with it the 95 percent probability. Is that correct, and could you provide the committee with a copy of the study or studies that generated such a high level of confidence?

Mr. IVERSON. That value and that analysis was done and included in the wolf assessment, which we can provide you a copy of. The details of that, it was a multiple iteration statistical analysis based upon three principal factors: one, the current deer harvest on Prince of Wales Island; the current estimated deer population; and the reproductive capacity of those species.

David Pearson at the University of Alaska was the statistician that developed that analysis. Beyond what is already in the wolf assessment, I could see if we could obtain the original printouts or whatever original analysis went into developing that relationship.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Well, I assume, since you used it, that you have got it.

Mr. IVERSON. We could try to obtain it from Dave Pearson, the principal author of that assessment.

The CHAIRMAN. Is that model-based or is it based on actual experiments?

Mr. IVERSON. It is based on estimated population size from several factors: the telemetry study that Dave Pearson did on Prince of Wales Island. He had estimates of the population size of wolves. He had reproductive, estimates of reproductive capacity of wolf size and number of pups. He had from Fish and Game the number of deer that were harvested on Prince of Wales Island. And we had estimates of deer population size on Prince of Wales and the proportion of the population that was harvested by humans.

He took those independent factors that are real data—they are not—well, deer harvest is real data—and he took those data and applied them into this statistical model to develop this equilibrium of 13 deer per square mile.

The CHAIRMAN. You are aware that the subsistence board made a recommendation to reduce hunting dramatically on Prince of Wales Island?

Mr. IVERSON. Yes, I am.

The CHAIRMAN. It was not finalized, but it was recommended. Do you concern yourselves with predator control of any kind to enhance the deer population?

Mr. IVERSON. That has not been an option that we have considered at this point.

The CHAIRMAN. It has not been an option?

Mr. IVERSON. Not so far that we have considered. That would not be one under our purview.

The CHAIRMAN. Why?

Mr. IVERSON. I think that is a State Fish and Game responsibility.

The CHAIRMAN. Well, I mean, if you are legitimately concerned—and you are—with the deer population and the largest, outside of the human take, is the wolf, you have no concern over limiting the number of wolves when you recognize that traditionally—and this is factual and scientifically proven—that on an island the deer population will be decimated dramatically over a period of time by the wolf and the wolf will swim off to the next island.

So if you want to maintain a higher number of deer on the island, you address the merits of some kind of reduction of the wolf population.

Mr. IVERSON. That may not be—our concern up to this point has been to sustain enough habitat to support the stable populations of all these species and to sustain the current human harvest of the deer.

The CHAIRMAN. But do you recognize the reality that the wolves take the deer and once the deer are reduced they move off to the next island, or do you dismiss that?

Mr. JANIK. Mr. Chairman, may I answer that?

The CHAIRMAN. Yes.

Mr. JANIK. I think that deals with more a policy kind of all. The Federal subsistence board, which I sit on—often Jim Kaplan, my deputy regional forester, represents me there—they dealt with that very recommendation that you mentioned and they voted not to follow through with that recommendation.

There is also coordination that goes on with the Alaska Department of Fish and Game and that board on some of the subject matter you are referring to, and that is when there is a problem with regard to predator control or whatever in terms of other expectations, that is discussed.

We also have free communications, obviously, from agency to agency, and the Fish and Wildlife Service, the Department of Fish and Game, and the Forest Service through that agreement that we signed in I believe it was December 1994, which deals with preventing listing of species, but nevertheless when there is a relationship like this with regard to predator and prey, if issues of this kind come up, that is discussed in that kind of forum.

And we have direct access to people in the Department. If we think actions are necessary that do not come under our jurisdiction, we bring them to our attention. So far that has not seemed to be necessary in that area.

The CHAIRMAN. Well, if you go over to Queuyu, I would suggest that you might find some different attitudes prevailing. I do not see how you can simply determine that you are going to manage all species at a maximum level and not recognize the reality of what happens with the wolf and the deer population relative to the cycles that have been in existence since you have got any recorded history of southeastern Alaska. That is just the reality.

Anyway, it is apparent that your business is not predator control.

Appendix N includes a discussion about the deer habitat models which for areas on Prince of Wales and Koskiosko predict a current deer habitat capability of 19 deer per square mile for an area as a whole and 20 deer per square mile for the unfragmented and unroaded wildlife areas, such as Honker Divide. The discussion and accompanying tables go on to show that scientific studies of deer

densities from northern southeastern Alaska to Vancouver, B.C., have found actual deer densities to be as much as two to seven times higher than would be predicted by your model.

Given the only real science around predicts significantly higher numbers than you have in your unvalidated deer model, why would you continually rely on your model as having any validity in predicting habitat capability of 13 deer per square mile as a "professional working hypothesis" for purposes of basically locking up areas to provide deer for wolves?

Mr. IVERSON. Senator, the model that we are using does predict habitat capability. It does not estimate deer populations per se. This table was developed to compare our model outputs, how well they compare, with other blacktail deer populations on the west coast, and our model was at or below most of these other. And these populations are estimated populations, not capabilities. So maybe those populations were higher at that time or those lands, like Vancouver Island, have a much higher capability for deer density than islands in southeast.

So we believe that the model is as good a model as we can produce with the data that we have right now relative to habitat capability, and it is careful to show in the table that it is capability and not population estimates, as the other numerical estimates in that table show.

The CHAIRMAN. So you are erring on the side of conservatism.

Mr. IVERSON. That is one possible explanation.

The CHAIRMAN. Appendix N concludes: "Wolf populations appear to be more resilient on Queuyu, Kupreanof, Mitkof, Wrangell, Zrimbo, and Etolin Islands than what you call GMU-2, Prince of Wales, and may possibly persist under relatively low deer densities."

Now, I find that rather startling in looking at the facts as I understand them. We do not have to speculate, to resort to untested models, to know wolves persisted in this region—that is Queuyu, Kupreanof, GU-3—through the consecutive severe winters of 1969 through 1972 and resulting extremely low deer densities in the seventies to the early nineties, and survived over 50 years of bounties which were paid on all wolves taken in the region. Now, that is a correct statement, is it not?

Mr. IVERSON. Yes, it is, Senator.

The CHAIRMAN. Is it not correct, as reported in appendix N, a researcher by the name of Smith in 1986 reported that 78 of 80 wolf scats located near the den of a wolf pack on Revilla Island were dominated by beaver hair and bones and that 70 percent of the telemetry relocations were within the vicinity of active beaver colonies? Is that true or false?

Mr. IVERSON. That is true.

The CHAIRMAN. Is it not also true that Revilla has a substantial deer population?

Mr. IVERSON. I am not sure of the current population on Revilla. They are lower, I believe, than Prince of Wales and associated islands, outer islands, probably higher than on the mainland.

The CHAIRMAN. Yet Prince of Wales was noted for special action by the subsistence board, as opposed to Revilla?

Mr. JANIK. The advisory recommendations, yes.



The CHAIRMAN. So that must mean something.

Wolves also persist, and have for as long as we have had records, on the mainland in Glacier Bay, where there is few if any deer. Pearson in his 1996 study acknowledges this, but attributed it to more a diverse prey base. Now, I assume that he meant moose, goats, and isn't it true that moose and goat numbers in the area are nowhere near high enough to offset the deer biomass available, say, on Prince of Wales Island?

Mr. IVERSON. I would say the densities of those species are much lower.

The CHAIRMAN. Also, Pearson in his study of wolves on Prince of Wales found that deer feces and parts in 90 percent of the seats—that is “scats.” This number was then assumed to be the floor of deer requirements to maintain Prince of Wales wolves and was then plugged into various models to come up with a conclusion that habitat capacity of 13 deer per square mile must be maintained to ensure wolf viability on Prince of Wales?

Mr. IVERSON. No.

The CHAIRMAN. That is not correct?

Mr. IVERSON. That is not correct.

The CHAIRMAN. What is correct?

Mr. IVERSON. An explanation of that, that 13 deer per square mile on this, and I think this line of thought, and let me explain, is that the analysis of 13 deer per square mile, the capability to produce those current number of deer would sustain the current condition. The current human harvest of deer I think is 2,500, 3,000 deer on the island. It would sustain the current deer—wolf population on the island.

So it would maintain the status quo. It is not a minimum level to maintain viable populations of wolves. The wolf assessment was careful to say we are not certain what that population level is. They were talking about in the wolf assessment what would sustain the current equilibrium.

The CHAIRMAN. In appendix N, double counting of wolf prey leads in the model to “no consideration of the annual increment of annual spring fawn production that may represent a 20 to 40 percent increase in population size until mid to late winter,” biomass available to wolves essentially throughout the year but not represented in the model, and the acknowledged likelihood you are underestimating deer habitat capability, possibly by a very substantial amount.

Is that a possibility?

Mr. IVERSON. That is certainly one of the factors that we listed in appendix N for believing that the deer habitat capability model was somewhat conservative.

The CHAIRMAN. Based on what you have told us, I am wondering if this is a habitat capability plan or a hunting capability plan. Do you have enough wolves for the hunters, the trappers?

Mr. IVERSON. We were assessing—we were not designing—this was an assessment of what does this plan provide in terms of capability. Our assessment was that I think it is over 80 percent of the range on Prince of Wales had sufficient habitat under this alternative to sustain the current equilibrium, this 13 deer per square mile estimate. So we were going to sustain the current human use

of the deer resource, the current wolf population, the current harvest of wolves. So we were providing a sustainable approach in over 80 percent of this range.

The CHAIRMAN. Well, what is your charge, to maintain a viable population or to maintain the current bag limits?

Mr. IVERSON. Our first obligation is to sustain habitat to provide for viable populations of all the species. What this analysis suggested was that with the habitat there we had a high assurance of the viable level, as well as sufficient habitat to maintain the current other uses of the resource—resources.

The CHAIRMAN. So you are doing both, in effect?

Mr. JANIK. I would say that, yes, that strategy was designed to do both. I guess I would ask Brad just to make a comment about the influence of the group there dealing with subsistence on that island.

The CHAIRMAN. Do you want to go next?

Mr. POWELL. I think, particularly back to the subsistence issue, that the Southeast Council when they made their recommendation they were influenced by some information that they thought indicated that there had been a downturn in deer harvest. Subsequently that information proved to not be factual and, as the subsistence board actually looked at it, that is why they made the determination not to change the seasons, because they did not find that there was any downturn in harvest.

What we have agreed to, though, is to do some additional work and increase our monitoring to really watch that harvest over time. So I think that it is really a little bit of apples and oranges, what we are talking about, because they really had some information that did not prove to be accurate in the long term.

Mr. JANIK. Mr. Chairman, one other thing—and Chris, correct me if I am wrong here—but as I remember us focusing in on this detail of habitat capability for deer on Prince of Wales, one of the primary reasons was in fact that that was judged to be a hot spot, so to speak, with regard to concern for wolf population trend. In other areas of the Tongass you will not find any specific deer management guidelines per se because the other measures that we decided, that I decided, to implement captured most of the concerns for the deer winter range, whether it be beach protection area or estuary or old growth reserves.

So the particular attention given here to Prince of Wales was because of the hot spot. Chris, is that correct?

Mr. IVERSON. That is correct, because of the substantial past harvest, the reduction in capability on the island, and the current what was perceived as possibly unsustainable mortality levels.

The CHAIRMAN. Well, I think what you are attempting to do is meritorious. On the other hand, you are overlooking the capabilities of the contribution of predator control, regardless of how unseemly it may be to the public. It is a management tool, if properly used, to enhance the species you want to see enhanced. And the fact that your agency shies away from it as far as any recommendation is concerned I think is a bit irresponsible relative to recognizing that it is and can be a very effective management tool.

Yet, for professional reasons and public opinion, and perhaps correctly, you have chosen not to consider that in the management.

Further, you take no note of the other reality, and that is the winter kill, which, as you and I both know, is significant. It is unpredictable. It is just a reality that is associated with southeastern Alaska. At the time when the heavy snowfall comes down, the deer are on the beaches eating kelp. They are vulnerable to the wolves, they are in a weakened condition, and in many cases that winter kill will dictate that some action should be initiated relative to assisting.

Of course, one of those actions can be reduction of the wolf population.

Mr. JANIK. Mr. Chairman, just for clarification, our position is not in opposition to any type of predator control, whether it be even trapping or hunting. It just so happens that particular measure does not come under our jurisdiction, so we would—

The CHAIRMAN. No, but you have the ability to make recommendations.

Mr. JANIK. That is correct.

The CHAIRMAN. And you are not making any in the area of predator control.

Mr. JANIK. In this particular setting, though, we are confronted with the observation that the wolf numbers are lower than they ought to be, and that is the—

The CHAIRMAN. The wolf numbers are lower than they ought to be?

Mr. JANIK. In this particular area, yes. And that is why—

The CHAIRMAN. Which particular area?

Mr. JANIK. Prince of Wales.

Mr. IVERSON. Let me—

The CHAIRMAN. You are going to get in trouble there, Phil.

Mr. JANIK. Well, let us talk about that.

Chris.

Mr. IVERSON. This analysis—we suspect that the populations are sustainable right now. What our concern is is for the long-term capability in terms of deer to support the wolf population.

The CHAIRMAN. You get a winter kill, what are you going to do about it?

Mr. IVERSON. There will be a natural predator-prey response so that the prey population of deer will go down and likely the wolf population will go down, similar to what you explained on Queyuyu.

The CHAIRMAN. Yes, it follows. The deer population drops down and then the wolf population either moves if they can or they drop down.

Mr. IVERSON. Correct.

The CHAIRMAN. Yet you are managing the forest in such a way as to enhance both the wolf and the deer, in the sense of habitat.

Mr. IVERSON. In the sense of habitat, for long-term sustainability of a population.

The CHAIRMAN. But these extending circumstances that you have no control over do occur, and you have no plan or any apparent effort to take whatever steps might be necessary to initiate a predator control program to offset the reality of the winter kill, and that is obvious.

Is it not fair to say that there is in part a tradeoff between the timber harvest, Phil, and deer bag limits, and that you choose to

maintain the status quo in deer harvests and to reduce the timber harvests accordingly? That is the conclusion I reached.

Mr. JANIK. My answer to that would be that the old growth reserve system on Prince of Wales that has been established, one of the largest on the Tongass—Brad, help me. How many acres?

Mr. POWELL. It is close to a quarter million acres on north Prince of Wales and interconnected reserves, primarily around the Honker Divide area.

Mr. JANIK. That is the more substantial influence on the timber yield, is that old growth reserve, as compared to specific measures for deer standard and guidelines there, I would say.

The CHAIRMAN. But you cannot give me a specific answer and I understand that, but that fringe area is an effort that has been attempted to have been maintained as a reality of where the deer spend the winter. They cannot get up to the meadows, they cannot get up on top.

Let us go over to the other hot one. How many goshawks are there on the Tongass, and is the population increasing, declining, or stable?

Mr. IVERSON. In the goshawk assessment and in our documentation, we have pretty clearly said that we do not know what the current population is. In response to the second part of your question, the assessment looked at the habitat relationships of goshawks, the clear and undeniable selection for productive old growth, the reduction of old growth in southeast Alaska that approximates about 15 percent of the region.

The goshawk assessment, based upon those two relationships, concluded that there has likely been a reduction in capability for goshawks, which would have an associated decline in the population.

The CHAIRMAN. Well, what do you say about the Justice Department's filing in the *Southwest Center for Biological Diversity v. Babbitt* in July 1996: "Because there is no current study to estimate relative abundance or density, no inferences can be made about the number of goshawks nesting in southeastern Alaska or their population trend."

Mr. IVERSON. I would agree with the first part, that we cannot make inferences on the population size. But as I just said, I believe that we can make some inference based upon relationships, that we are fairly certain that there has been a reduction in capability in southeastern Alaska over the past 40 or 50 years.

The CHAIRMAN. So I guess I would ask, who is wrong, you or the Justice Department? You suggest the Justice Department?

Mr. JANIK. Careful, Chris.

The CHAIRMAN. Anybody want to volunteer who is right?

Mr. JANIK. We do deal with habitat, Mr. Chairman, and we try to do the best we can in making the relationships and setting out prescriptions that respond to that. That really is what our strategy is based on.

The CHAIRMAN. Yet you recognize and acknowledge that you have not done an extensive inventory of the habitat beyond the areas of proposed timber sales of any consequences?

Mr. JANIK. We have not done an extensive search for goshawk nests, that is true, Tongass-wide.

The CHAIRMAN. So your studies have been done in association with timber sales?

Mr. JANIK. Not just limited to that. Chris, go ahead. We have gone beyond just the timber sale areas.

Mr. IVERSON. Yes. We testified before that we found a large number of nests relative to timber sale preparation activities. But we have also found a large number of nests outside of timber sales. And furthermore, the Fish and Wildlife Service conducted a survey in I think 1995 that surveyed all or surveyed only within legislatively withdrawn areas. And I think as we testified last year, they did not find a reservoir of goshawks in those areas.

The detection rates were not different between timber sale preparation areas and wilderness and LUD-2 areas.

The CHAIRMAN. Well, I am not going to ask you how much of the forest or the timbered area that you covered, because I do not think you have been able to cover an extensive amount to bring any scientific evaluation. But you have answered the question relative to how many goshawks there are. You do not know. And we know what the Justice Department has concluded, that there is no current study to estimate the relative abundance or density and no inferences can be made on the number of goshawks nesting in southeastern Alaska or the population trend.

So I question the science because there is not enough of it and what we have is not conclusive. Yet as a consequence of the goshawk, the theory of a threatened species is before us and currently before the U.S. Fish and Wildlife Service, and I think that indeed is unfortunate relative to the scientific evidence that we have.

Are goshawks an old growth-dependent species?

Mr. IVERSON. I would say "dependent" is not an accurate word. I would say they are closely associated with, with productive old growth forests.

The CHAIRMAN. Let me ask you whether they are dependent or not. You say closely associated. Well, that can mean—

Mr. IVERSON. They select for old growth relative to its abundance and availability in their habitat use patterns, but they also use other habitat types. So to say they are dependent upon old growth is unlikely accurate. They are closely associated.

The CHAIRMAN. Well, as you may know, quoting from the Justice Department filing in the *Southwest Center for Biological Diversity v. Babbitt*: "The Forest Service stated that, although its joint study with the Alaska Department of Fish and Game showed that goshawks were located in old growth areas, it also showed that, contrary to the earlier theory, the goshawks in southeastern Alaska do not necessarily require large areas of fragmented higher volume old growth forests. According to the Forest Service, the study revealed that, while goshawks were selecting productive old growth forests, male goshawks selected the edges rather than the forest interior habitat."

"Additionally, of the 1592 goshawk telemetry relocation points collected from 68 radio-marked goshawks, only 20 percent would occur in areas currently delineated under the old growth TLMP as available for timber harvest over the next 100 years."

Finally, as to population trends, the Forest Service concluded: "Despite low sample sizes, the current research and monitoring to

date have failed to reveal evidence of declining goshawk populations.”

Any comment?

Mr. IVERSON. I think most of that is accurate. There is a part in there about the selection of edge by male goshawks, and subsequent analysis last summer in the final goshawk assessment could not—based on new analysis, we no longer propose that relationship. There is not a selection or an avoidance of edge habitat, whether it is clearcut edge or old growth nonproductive forest edge. So that relationship—

The CHAIRMAN. What was the justification for the earlier contention that there was?

Mr. IVERSON. It was with a smaller sample size and a different statistical analysis and, as the goshawk assessment team, we put the new analysis and the assessment—we would stand behind the new analysis.

The CHAIRMAN. You would not the old one?

Mr. IVERSON. Not any longer.

The CHAIRMAN. Why did you the first time?

Mr. IVERSON. Because it was a preliminary analysis on smaller sample size, and a different statistical analysis. It was a preliminary result.

The CHAIRMAN. Well, putting aside the edge area, do the HCA's contribute to the goshawk viability?

Mr. IVERSON. Yes, they do.

The CHAIRMAN. You sure?

Mr. IVERSON. If they are providing productive old growth forest as a long term strategy for sustaining the population, yes.

The CHAIRMAN. Well, let me tell you what the Justice Department said in the same case: “Then from October 26 to October 28, 1994, the inter-agency workshop held a meeting to re-evaluate its June 30, 1994 recommendations in light of new information. The transcript of this meeting provides critical insights into the true state of the scientific knowledge concerning the Queen Charlotte goshawk.

“The transcript revealed that, although the inter-agency workshop team, a team composed of the leading goshawk experts, had doubled the information they had last June, they nevertheless still had ‘no information about the population dynamics, demography, or the habitat needs of the birds.’”

Mr. IVERSON. That is correct.

The CHAIRMAN. It sounds to me like less than perfect science.

Dr. MILLS. I would like to comment on that if I could, Mr. Chairman.

The CHAIRMAN. Go ahead.

Dr. MILLS. I think we have testified very clearly that the scientific record on systems as complex as the Tongass are far from complete. However, I think, as Mr. Iverson just cited, there has been additional goshawk information collected, and inevitably the decisionmakers are placed in a position of making decisions in the face of uncertainty. And if we had to wait until we had certainty, there is probably a whole bunch of opportunities that we would miss in the meantime.

The CHAIRMAN. Well, I do not know that I agree with you.

One of the things that I am sure you read in the Tongass testimony relative to Barry Hill is the lack of accountability for time and costs has delayed the forest plan revision. This particular listing states relative to your question, Dr. Mills, or statement: "An option on these things that we do not know all the science we would like would be to move forward with a decision, a decision conditioned on adequate monitoring components."

It further states: "The Forest Service has historically failed to live up to its own monitoring requirements, and Federal regulatory agencies and other stakeholders continue to insist the Forest Service front-load the process, perpetuating the cycle of inefficiency."

I am just wondering why on these questions that clearly you need more science, more time, more evaluation, you would not make your decisions conditioned on monitoring, so that you could initiate whatever changes.

According to the inter-agency task force chaired by the Council on Environmental Quality—and this is the Bible that we currently live under—according to that inter-agency task force chaired by the Council on Environmental Quality. "An agency can condition a decision the effects of which may be difficult to determine in advance because of the uncertainties or the costs. However, the Forest Service has historically given low or negligible priority to monitoring and continues to approve projects without adequate monitoring components and does not generally perform the monitoring of a forest plan implementation required by its current regulators."

I can understand your effort to finalize, but clearly in these areas that we have discussed there is a lot lacking and we both know it. But you have not in your evaluation of your TLMP done in my opinion what would seem to be an appropriate action, and that would be to condition your decisions on monitoring these scientific questions that you do not have the information.

Mr. JANIK. Two reactions to that if I may, Mr. Chairman. One is that our monitoring plan in the revision intends to address the very concerns you just mentioned. We may not be able to do 100 percent of the monitoring job that we would like to do, but we are definitely going to pick up the pace and do a more credible job of monitoring than perhaps has been done in the past.

That monitoring will in large part, again, deal with the habitat trends, with some tracking of populations, which are much more difficult to survey and analyze and draw any cause-effect relationships from.

The other part I would like to say is that the old growth reserve system and the beach areas that have been protected and the estuary areas that have been protected and the riparian standards that have been chosen all relate to a whole host of species that are believed to be associated and-or require those kinds of habitat conditions.

It is not just restricted to the goshawk or it is not just restricted to any single species, but a whole community of species. That is why I was persuaded to make the kinds of decisions I did.

The CHAIRMAN. Well, certainly no one would criticize you for making the decision based on constant monitoring. But once you set the level so low, there is little inducement and we basically lose the value of monitoring. I am personally of the opinion that that

is what we have done here, as opposed to setting it at a level that would meet the industry's current installed capability, which is not addressed in the TLMP unfortunately, and then monitor your process where your science is questionable.

It is so basic that maybe that is why it escapes me.

Dr. MILLS. Mr. Chairman, I would surely agree that there have been places where the Forest Service has not been as aggressive with monitoring as would be desirable. I believe that is why the regional forester included a fairly assertive monitoring package in this plan, and likewise in collaboration with the region PNW station scientists have some follow-on studies to do that very kind of enhancement of information.

I would also suggest, though, that opportunities are not necessarily being lost by taking the decision track——

The CHAIRMAN. Well, it depends on whose opportunities you are talking about. If you are talking about the state of the industry's opportunities and the jobs that go with it and the community and the welfare of the areas, we are not at a level of the existing sustained capability of the industry after we shut down the two major pulp mills.

But that is a responsibility I think only some of you bear.

Dr. MILLS. I think that there is also ample evidence that when we have taken the tack to wait until we had perfect information that, first of all, we never had it. But at that time, oftentimes the options available for decisions had far greater impact on the very people that you are concerned about than if a more conservative approach was taken in the absence of the complete information.

Some of the decisions that were made in the Pacific Northwest as a result of similar decisions I think would bear that out.

The CHAIRMAN. Well, I guess you and I disagree on that point.

Let us talk about marten. There seems to have been some misunderstanding by the national press on just what a marten is, but we all know. And maybe they can—there is not many of them left in here. Well, we will do the best we can.

The five biogeographic provinces to which the marten standard applies, I am told, is East Chichagof, Kupreanof, Mitkof, Etolin Island and the vicinity, minus Zrimbo, which does not have marten, north central Prince of Wales, and Revilla.

Now, in your record of decision you say: "The effect of the measures added to alternative 11 have not been explicitly modeled, but have been judged to be relatively small." However, in appendix M you further say: "Where applied and found necessary, the effect will be to approximately double the rotation age and reduce the volume available for harvest in any time period by about half."

Mr. Janik, the new plan schedules 496,000 acres of old growth for harvest. Over 304,000 or 60 percent of the 496,000 acres are found in the 5 provinces to which the measure added for that matter apply. About 130,000 acres of old growth scheduled from those provinces is classified as high volume.

The marten standard applies to high volume old growth stands below 1500 feet in elevation. Most high volume old growth is found below 1500 feet, possibly as much as 80 percent of the high volume. That would translate into as much as 104,000 acres in the 5 provinces to which the marten standard will apply. Almost 104,000



acres of high volume old growth would contain something like 3.8 billion board feet of timber.

According to appendix N, the added measure would reduce the contribution of these high volume stands to the allowable cut, allowable sales quantity, by half. That is a potential reduction of 1.9 billion board feet of timber. That is almost as much as your entire NICIASQ for the next decade, which is about 2.19 billion board feet.

Do you think that qualifies as a significant reduction in the ASQ?

Mr. JANIK. There was considerable discussion when we dealt with the mitigation measures as to what effect those would have on the calculated ASQ, and we spent a great deal of time on this very subject. One item that influenced the stay on the 267 calculation was that we have left determination of where to apply mitigation measures to interdisciplinary teams because we judged that even within those provinces those measures may not be necessary, depending on what other old growth conditions may exist there in such an analysis.

In addition, our experts who make those kinds of calculations—we have one of them here today, John Day—studied this at length and determined that, given the tradeoffs with other kinds of things that are conditioned into those calculations, that there was no reason to believe that this was a significant change at this point. It goes back to your message on monitoring, Mr. Chairman. We are going to watch this very closely, and if we experience that these mitigation measures are having to be applied in a very regular kind of fashion within these provinces and are going to accumulate into a level that will definitely have an effect on our projected yield, we will definitely address that problem.

The CHAIRMAN. Would you increase the yield then?

Mr. JANIK. Pardon me?

The CHAIRMAN. Would you increase the yield?

Mr. JANIK. That is possible.

The CHAIRMAN. You see, the point I am making here is, when you set a reduction of 1.9 billion feet of timber as a consequence of your analysis that may be so low that the monitoring and the public opinion associated with increasing the volume if your science proves too conservative is a reality that you could offset by monitoring a reduction of a billion board feet rather than almost two.

Mr. JANIK. The mitigation measures just for the marten, it would be very unlikely that the outcome of the monitoring would be an increase, because the additional restrictions suggested in those mitigation measures could only lead over time to a decrease if they are applied and accumulate over time.

But the 267 generally, if overall monitoring suggests that the potential is greater than that overall, considering all things, then, yes, we have as much of an obligation to look at an amendment there as we would with a reduction.

The CHAIRMAN. What would you do if the State banned trapping on marten? Would that make any difference?

Mr. JANIK. In terms of mitigation measures?

The CHAIRMAN. In terms of available timber. If you made a reduction of 1.9 billion board feet as a consequence of this extended

evaluation and the State prohibited trapping of marten, what would that do?

Mr. JANIK. The responsibility we have is with the habitat, Mr. Chairman, and we have—

The CHAIRMAN. Yes, but if you have more species because nobody is trapping them?

Mr. JANIK. But if we deteriorate the habitat base upon which the species depends, over time, regardless of what other measures are in place, that will become the limiting factor and they will decline.

The CHAIRMAN. Well, will these mitigation measures that you have taken be adequate for the current take that occurs by trapping?

Mr. JANIK. We believe the mitigation measures and the old growth reserve system—I do not want to just say mitigation measures here, but the total response to what we understand are the habitat relationships with the marten—we believe are adequate to sustain that species over time.

Now, there are other variables that come to play on the actual fluctuation of population trends, and we are back to that discussion that we had earlier in terms of who is in charge of these measures and, if in fact things like trapping need to be, regulations need to be changed, the Department of Fish and Game would be the appropriate authority to do that, one way or another.

The CHAIRMAN. Well, have you looked at trying to maintain the current level of harvest? Marten I am talking about, trapping of marten.

Mr. JANIK. Chris, help me there.

Mr. IVERSON. That has not been an implicit objective of the design of the conservation strategy. It is to maintain sufficient habitat so that in the long term sufficient viable populations would be maintained.

The CHAIRMAN. That is contrary apparently to your management on the deer population, where you acknowledge you are trying to keep both up in the air.

Mr. IVERSON. The discussion earlier relative to deer populations was an analysis of what the habitat from the strategy could produce, and for deer it would sustain the current situation. The strategy, in addition to these additional measures, are what we judge necessary for a reasonable likelihood of long-term sustainable populations.

The CHAIRMAN. And you observed the marten populations on Prince of Wales, where you had extensive logging, is that right?

Mr. JANIK. Are you asking if we actually observed?

The CHAIRMAN. The population levels.

Mr. JANIK. The concern for the marten was really revealed through some of the panel assessments that were conducted and the risk level. At least that is what influenced my decisionmaking.

The CHAIRMAN. Was the risk panel a major factor in the decision-making process on the marten, your own decision?

Mr. JANIK. The information on risk totally, not just what came from the panel but then as was interpreted by the science team, influenced my decision, yes, sir. Risk in terms of viability of all these species.

The CHAIRMAN. In calculating the ASQ you used something called "regulation classes," with regulation class 1 being clearcut, 2 clearcut and reserves, and 3 group selection; is that correct?

Mr. JANIK. I understand those as broad categories we used, yes. If we are going to pursue a line of questioning on this calculation of ASQ, we may want to shift here with emphasis on Mr. Norbury and Mr. Day, but that is of course your preference.

The CHAIRMAN. Well, if a particular stand was in regulation class 1 for purposes of the ASQ, is it not true one of the effects of either the added marten or goshawk standard will be to change the regulation class from 1 to 2 or maybe 3?

Mr. JANIK. I think we are going to have to ask Mr. Day to come up and answer some of these. Chris, why do you not step back for a second. We may call you back.

John Day is coming to the table.

Mr. DAY. In regards to the regulation class question, regulation class 1, 2, 3 is kind of a derivation of land use designation and a variety of scenic classes. Reg class 1 is managed more intensively than 2 and 3. But one thing we have done, realizing from our experience on the ground in the visits we have done and input from the forest supervisors, is we have reduced, say, the total permissible harvest from those down slightly, because we know—at least in Brad's case, he has stated 20 percent of his areas in green will not be managed as green, for a variety of competing reasons.

So it is true they have been dropped down, and they would be impacted by the standard and guidelines. If laid on top of the reg class 1, we would certainly make that change in the model.

The CHAIRMAN. What are the scheduled acres by regulation class for alternative 2—excuse me—alternative 11 as used to calculate the ASQ, scheduled acres by regulation class?

Mr. DAY. In terms of percent?

The CHAIRMAN. Uh-huh.

Mr. DAY. Of the entire available land base, I know that about 65 percent is scheduled. I do not have the breakdowns.

The CHAIRMAN. Of the total land base. Why do you not provide that for the record.

Mr. DAY. Okay.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. How many of the high volume acres below 1500 feet in elevation in the 5 provinces to which the additional marten standard applies were regulation class 1 for purposes of calculating the ASQ?

Mr. DAY. Again, may I explain the way we went about incorporating—

The CHAIRMAN. Not really. I just need the answers.

Mr. DAY. Again, I am not exactly sure.

The CHAIRMAN. Why do you not provide that for the record.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Table B-12 of appendix B illustrates how sensitive the economics of timber harvesting are to regulation class change. For example, on the Chatham area high volume normal operable timber in regulation class 1 has a net dollar per acre value

of \$4,958 per million board feet—excuse me, per thousand board feet. Change the regulation class to 2 and the net dollars per acre drops to 2,054 per thousand, a drop of some 61 percent. Change the class from 1 to 3 and the value drops to a minus \$13,000.

Given this, how much of the timber in your NICI from the FEIS is still economic after the additional protective measures are applied and the necessary changes to regulation class have been made? Anybody know?

Mr. DAY. Well, the way we determined NIC 1, the N-I-C 1, it is based on the operability classes. Now, the incorporation of the marten standard and guide and the goshawk standard and guide would not influence the operability call for that particular area. But granted, there would be additional costs certainly from the standard and guidelines if it moved from a 2 to a 3 or a 1 to a 3 rate class.

Mr. NORBURY. Mr. Chairman, the application of the marten standard and guidelines or the goshawk standard and guidelines is far more complicated than simply moving from one regulation class to another. Basically, the marten standard and guidelines established certain habitat objectives and leaves considerable flexibility to the field to determine what silvicultural prescription would achieve those objectives.

We have done some experimental layouts in the Ketchikan area—Brad may want to comment on this here in a few minutes—where we have looked at what are the alternative silvicultural prescriptions that might achieve the marten and goshawk habitat objectives. What we are finding is that there are choices and there are significant choices, and that there are silvicultural regimes that can get as much as 70 percent of the volume, rather than the 50 percent that we were thinking at the time the plan was adopted.

The other interesting thing that is coming out of that analysis is that the value of the timber that is coming out of those areas has increased. Basically, we are leaving a lot of the lower value timber there to provide the habitat objectives established by the standard and guidelines.

So while it is true that the costs of harvesting are going up substantially in those areas where you apply those standards and guidelines, the values of the timber coming off are also increasing. And based on the field trials that we are doing right now, it looks like it is about a wash.

Would you like to add to that?

Mr. POWELL. I could only add from the standpoint that I think Phil mentioned earlier that we need to monitor this, because we have just started to—

The CHAIRMAN. I do not have any problem with that. It is where you start, it is your base, that concerns me.

Mr. POWELL. I understand, but just to explain a little bit the wide variation.

The CHAIRMAN. No, just go back to this report. They say you have basically been derelict in the monitoring process and your decisionmaking process. You either have or you have not. Now, maybe you are getting better.

Mr. POWELL. I think we have acknowledged, as we talked earlier, that we intend to increase our monitoring. But what I think is im-

portant relative to the issue that we are talking about, as we try to apply the standard and guide there are many different options. We have got our field foresters out looking at it right now.

What we are finding out is if you look at these standards and guides they do not require that merchantable trees be left, so oftentimes we think we will be able to leave utility grade trees or lower value trees, thus increasing the value of the stand and meeting that marten standard. But we are not going to really know until we lay out a few of these, see how they sell, see what it takes to administer them and what it takes to actually accomplish the standards and guide.

The CHAIRMAN. Well, I do not dispute that, Brad. But by the same token, you could be in here making the same presentation relative to the unknown lack of scientific evidence on the goshawk or the marten or the wolf at a level of 350 and saying you are going to monitor it because you do not know.

Now, clearly because of peer pressure and national environmental pressures and so forth, you have chosen to come down with what you feel you find defensible, and it may be conservative and you are maybe going to monitor. But I think it points out the reality to anybody who has sat here for 5, 4 hours at least, the extraordinary complexities and the constriction that is within the Forest Service in its ability to responsibly come up and say: Well we do not know; this is what we are going to do and we are going to monitor in the process.

And you have not been monitoring in a manner that has certainly been commendable by the report on the lack of accountability for time and costs, which you have all read, as I have, and underlined.

Mr. JANIK. Mr. Chairman, I just want to emphasize that my decision was not politically based. It was based on the science input and the risk assessments and, frankly, I want to stay out of the courtroom.

The CHAIRMAN. Well, I am not going to argue that. But by the same token, your decision could have been signed by any one of two people that were there previous to you, or at least one, because this thing has been ready at different numbers at different times and could have been signed, but was not.

And I am not going to go into the reasons why it was not signed, but maybe that is a subject for another hearing at another time.

Mr. JANIK. But all I can say to that, not passing judgment on any of those previous events, but the information base we are dealing with today is different than I am sure what they were dealing with then, and that is what influenced me.

The CHAIRMAN. I could not agree with you more, but the opportunity to monitor was there and it was not then, and it is becoming now I think something that you are considering. Why you were not considering a long time ago, I do not know.

Anyway, the question of viability. In developing your approach to meeting the species viability requirement under the National Forest Management Act, did either you or your cooperating agencies include consideration of the impact of timber harvesting on non-Federal lands in your analysis?

Mr. JANIK. The information that was totally considered and that I understand did consider some of the information available of what was happening adjacent to Federal land. But the predominant focus was the habitat trend on Federal land, meaning the national forest.

Dr. MILLS. If I could add to that, Mr. Chairman. The risk assessment panels were asked to evaluate the likelihood that habitat was available to provide for at least a minimum number of reproductive individuals that were well distributed across the planning area, and the planning area with the interspersed State and Native corporation lands was considered in that scope of planning.

The CHAIRMAN. And that included Native lands?

Dr. MILLS. Yes.

The CHAIRMAN. Was your approach to species viability modeled after the President's Northwest forest plan?

Dr. MILLS. The methods that were used to extract expert opinion from recognized experts in the field, yes, was a method that had a lot of similarities to the expert opinion panel process used in the Northwest forest plan.

The CHAIRMAN. In your decision did you apply a viability standard requiring 80 percent chance of viability for 100 years of every native vertebrate species?

Mr. JANIK. I think Dr. Mills is looking at me because that is a decisionmaker's reference. I did not use any fixed percentage to persuade me to make the decisions I have made. 80 percent has been—

The CHAIRMAN. Well, how did the risk panels advise you? What did the risk panels advise you to do?

Mr. JANIK. They did not.

Dr. MILLS. If I could comment—

The CHAIRMAN. What did they use? Certainly they addressed it.

Dr. MILLS. The risk panels did not use any particular cutoff of what constituted an acceptable level of risk. They were very careful simply to provide estimates of what the risk level was. And in fact, the results from the risk assessment panels for the final alternative include some estimates of the range of risk, many of which are well below 80 percent.

The CHAIRMAN. Well, what did they use as a definition of viability, then?

Dr. MILLS. Viability was defined as habitat that was available for a viability population well distributed across the planning area.

The CHAIRMAN. What is a viable population?

Dr. MILLS. That was articulated by the magnitude and connectivity of habitat that was deemed to be necessary for these individual species.

The CHAIRMAN. Well, you still are left with the question of viability as a broad interpretation. It means different things to different people. How many martens, how many deer, how many goshawks? How many do you need to have a viable population?

Dr. MILLS. We have acknowledged that the information on population levels and trends is fragmentary at best and therefore, consistent with our planning regulations, we looked at the presence of habitat and its connectivity across the planning area.

The CHAIRMAN. Well, yes, but is that what the planning regulations require? You have got 90 percent theoretically of the forest or thereabouts is going to remain in the state that it was in 1950. So when you give me viability and you generalize, yet you have been quite specific on setting an allowable cut. I just cannot necessarily accept that you can use a general term of viability without some association of what does that mean in numbers?

Dr. MILLS. What we are required by regulations to consider is to maintain a habitat to support at least a minimum number of reproductive individuals—

The CHAIRMAN. What's a minimum number?

Dr. MILLS. Well, in habitat that is well distributed so that those individuals can interact with others in the planning area. We did not do an estimate, a direct estimate of population. We did do an estimate, based upon the experts, of how much habitat was necessary to maintain a viable population—

The CHAIRMAN. You have got 80 to 90 percent of your habitat retained under this plan.

Dr. MILLS. That is true, Mr. Chairman. 80 to 90 percent of the productive old growth, and a requirement that that habitat must be well distributed across the planning area and therefore connectivity in those habitat components. Therefore, that is what the experts on the panel evaluated and provided estimates of the likelihood that implementation of the alternatives over a 100-year time period would lead to various levels of habitat magnitude and connectivity.

The CHAIRMAN. Well, that is what bothers me about the process. You can justify your experts in your particular profession, but as a layman—and I am going to ask you, well, is 78 percent non-viable? You cannot tell me it is or is not.

Dr. MILLS. No, Mr. Chairman, I cannot say that 78 percent is viable or non-viable. Scientists worked very hard to provide some estimates of the level of risk of achieving viability and well distributed populations.

Mr. JANIK. In terms of how I looked at that as the decision-maker, Mr. Chairman, in those areas where there was a pretty high level of assurance that I heard from the risk assessments, it led me to a decision of one kind. When there was not as much assurance with some of these paneled species and then further interpretation by others, that is what led to the response with some of the mitigation measures, to demonstrate that where we were less certain as to whether the job was being done adequately some additional measures would be employed to make sure we would not commit any fatal flaws.

The CHAIRMAN. Well, that is fine. But, you acknowledge that this was modeled after the President's Northwest forest plan, and that was dealing with a forest that was to a high degree harvested. They were harvesting second growth. Now, here you have a different forest. You have virgin forest that is probably 30 percent dead or dying.

Mr. JANIK. I believe what Dr. Mills meant was that the procedures might be similar, but the people providing the information were confronted with the conditions of the Tongass, not the Pacific Northwest, when they gave their assessments.

The CHAIRMAN. Well, that is true, but when you deal with a figure of what is viable and what is not, we are flying kites.

Mr. JANIK. Well, the courts have chosen not even to try to be precise with that.

The CHAIRMAN. But your defense of a decision is now based on your comment that you are going to monitor.

Mr. JANIK. And the risk ratings.

The CHAIRMAN. But risk ratings are beyond your control in many cases. Winter kill is beyond your control.

Mr. JANIK. The risk ratings represent an important piece of information to me.

The CHAIRMAN. Sure they do. But some of the risks associated with the viability is beyond your control, beyond habitat control.

Mr. JANIK. Yes, these are habitat-related.

Dr. MILLS. If I could comment on the habitat versus non-habitat considerations. Much for the same reasons that I believe are implied in your questions, Mr. Chairman, we wanted to make sure that the information we provided did not unnecessarily restrict management of habitat based upon impacts on population that had nothing to do with habitat, and therefore the risk assessment panels were asked to evaluate the habitat contribution to viable and well distributed population and to ignore non-habitat factors, and thereby did not indicate some higher level of risk that led to more habitat protection based upon non-habitat impacts on populations.

The CHAIRMAN. The assumptions that you just described, did the public ever have an opportunity to comment on those?

Dr. MILLS. The public? The public did have information in a science report that was published about the same time that the draft EIS was published. The draft EIS had the panel results in it, and therefore the public had opportunity to comment on the information that was considered in the risk assessment.

Mr. JANIK. I believe the information was also discussed in the face to face visits that we made twice to 32 communities in south-east as a matter of the science component to that.

The CHAIRMAN. In the 1997 panelists, the question comes up, why did the panelists not review all of the original proposed alternatives, including the preferred alternative in the draft TLMP and the selected alternative and the unreleased record of decision. Particularly if there will be different panel members comparing these risk assessments with the previous risk assessments for certain of the alternatives, it may have been an apples to oranges comparison.

At a minimum, to ensure that the same individuals are applying the same opinion-based analysis in the same way, looking at the same management prescriptions, the new panels could have reviewed all the alternatives. Am I not correct?

Dr. MILLS. The second set of panels were called, Mr. Chairman, because the preferred alternative in the draft EIS and the alternative that was emerging as the final alternative had never been subjected to risk assessment panels.

The CHAIRMAN. Why was that?

Dr. MILLS. Because the risk assessment panels that were called prior to the draft EIS evaluated the alternatives in the draft prior to the selection of both the preferred and the development of the



final, so that those two alternatives simply were not available when we called the panels in 1995 and 1996, and therefore the principal reason for calling the panels in 1997 was to evaluate the two alternatives that had not previously been provided to the panels.

The CHAIRMAN. Well, why did this process occur after the public participation effort had been completed?

Dr. MILLS. In an effort to make sure that the draft could get out in as timely a manner as possible, and likewise——

The CHAIRMAN. Well, it took how many years?

Dr. MILLS [continuing]. And likewise not to subject the public to another supplement after about three after this draft was out.

The CHAIRMAN. Well, it is supposed to be a public process, is it not? I mean, you pride yourself on public participation up to a point, and then after the public participation effort has been completed this occurred.

Dr. MILLS. The risk assessment panel results for the nine alternatives that were paneled and were available for public comment in the draft spanned the preferred alternative and the draft and the final alternative, and therefore the public certainly had considerable information about risks associated with different alternatives.

The CHAIRMAN. Well, that is my point. The 1997 panel risk assessment did alter the analysis of each alternative, including the regional forester's selected alternative.

Dr. MILLS. I am sorry, could you repeat that? I did not catch it all.

The CHAIRMAN. The 1997 panel risk assessment did alter the analysis of each alternative, including the regional forester's selected alternative.

Dr. MILLS. No, the risk assessment panel that was called in 1997 did not alter the analysis. It analyzed two alternatives that had not previously been available for analysis and also paneled several other alternatives that had been previously paneled to determine whether in fact the second set of panels provided results that were comparable to the first set. Our analysis of the second set of panels confirmed that in fact they were comparable.

The CHAIRMAN. And you are suggesting the public had a chance to comment on those two alternatives that you analyzed?

Dr. MILLS. Well, the public had a chance to comment on the preferred alternative in the draft.

The CHAIRMAN. No, no, I am talking about what your risk assessment panel did. If you say it did not alter, then I am asking you if the public had an opportunity specifically.

Dr. MILLS. I have acknowledged that, no, the public did not have the particular risk assessment results from the preferred alternative in the draft, nor the final alternative in the final EIS, to comment on. But I also commented that those two alternatives are well within the bounds described by the nine alternatives for which the public did have risk assessment results and could comment on the draft.

Mr. JANIK. Mr. Chairman, the primary reason for reconvening the panels was to increase the legal defensibility of the plan, in that those two were not subjected to the same kind of rigor ini-

tially. We made that decision at expense of criticism of having the process linger on for that reason.

The CHAIRMAN. Well, I would suggest that that kind of a compromise may cause you problems. I think it is fair to say that we have acknowledged that the public did not have a chance to comment on the two alternatives and, given the significance of these assessments in the final decisionmaking process and the problems that we have articulated with the first round of assessments in our view of the draft TLMP, I find no rational reason why the public was precluded from any meaningful review on these new risk assessments.

The public should have had a right to see, review it and comment on it in the context of comments on a new draft preferred alternative; and why did they not?

Mr. JANIK. I would ask if I could just clarify one point. The forest supervisor's recommended alternative did receive public comment. It just was not subjected to the paneling. That was in April 1996. That is because when they formed the recommendation they picked and chose from various alternatives that had been paneled.

Dr. MILLS. If I could add just one more, Mr. Chairman. I am not sure I heard everything that you said there, but—

The CHAIRMAN. I will repeat it if you want.

Dr. MILLS. No, that is okay. But there were no flaws that we identified with the first set of panels, nor the second set of panels. The second set of panels were called in no way as an indication that the information provided from the first set was in any way in error or incomplete.

The CHAIRMAN. The difference, of course, is that you have different personnel on the different panels. And still we are faced with the reality that the public had the right to see, review, and comment on the context of commitments in the new draft preferred alternative, and I still do not have an explanation of why the public did not have a chance to comment on it.

Dr. MILLS. There are two—

The CHAIRMAN. Other than the time element.

Dr. MILLS. There are two points there, Mr. Chairman. One, we were concerned about the question of whether the ability not to get all 24 panelists back together would in fact cause a problem. We were able to get 20 of the 24 back together, but we had to have 4 new panelists. The four new panelists nonetheless were experts in their fields, just as the other four who could not be there.

One of the reasons that we repaneled in 1997 some of the same alternatives that we paneled earlier was in fact to be able to do that comparison, and the results from comparing the 1997 panels and the 1996 confirmed that in fact estimates from the two sets of panels were very comparable.

The CHAIRMAN. Well, anyway we have acknowledged that the public did not participate.

What measures were taken to protect the scientific integrity of the panel process? The process was conducted under a modified version of the Delphi method that is not described anywhere in the scientific literature. It was imperative that the process be conducted in a fashion that is both credible and empirically defensible.

However, the confidentiality of the new panelists' identity and views was breached and seriously compromised.

On April 3 I was contacted by media representatives who had in their possession lists of the new panel members. They asked my office to react to the selection of the panel members. A few days before that we were informed that the interest group representatives also had in possession the new lists and were urging their members to contact—now get this—to contact the panel participants for the purpose of providing them with information and their views regarding the appropriate management of the Tongass.

These contacts may have affected, perhaps grievously, the integrity of the panel process. For example, I understand the Department's Office of General Counsel expressed a similar concern in writing.

Now, maybe you can reassure me about your promises about the scientific integrity of the new risk assessment process. This would be a good time to do it.

Dr. MILLS. The risk assessment process that we used is a nominal group process that is described extensively in the literature. It is very similar to a Delphi method, which likewise has an extensive body of literature. It similarly was used in the Northwest forest plan and has stood the rigors of court scrutiny and stood to those rigors.

Concerned that some of the panel members might have been contacted and influenced by outside sources, we made special pains during the 1997 panels to ask all the panelists whether they had been contacted with any attempt to influence them, and they responded to a person that they had not. Therefore we continue to support the credibility and integrity of the panel process and the results it has produced.

The CHAIRMAN. I think previously there had been acknowledgment that, Mr. Janik, you were heavily influenced by the marten panel. And I am going to read an excerpt from the marten panel: "Marten TLMP assessment silent observer notes," whatever that means, "March 25-26, TLMP Building, Juneau." I did not know they named a building after it, but I am not surprised.

This is a statement of the general introductory session: "The participants met on the planning process and alternative descriptions were very good. There was a lot of information presented in a short period of time. However, there were several topics that were not presented that should have been and some information presented that may have biased the panelists. They are:

"One, there was not any mention made of the young growth management program on the Tongass. Panelists left with the idea that once an acre is harvested the Forest Service walks away from it."

Page 2: "Observation of the panel. One panel member noted that he was the president of the local chapter of the Sierra Club in his area. Several panel members had a very anti-clearcut attitude and were very opinionated and outspoken on this. All panel members had a difficult time distinguishing the differences between a viable marten population and a sustainable marten population."

Any comments?

Dr. MILLS. I would like to make one and then I would like to ask Chris Wood to elaborate since he is very familiar with that panel.

It is certainly true that in the science process there is a lot of very strong discussion and views hammered out with a fair amount of intensity, and I am sure the marten panel was no exception to that. We did try to determine whether in fact the panel member was a member of the Sierra Club and found that that was not true. And there is a rather extensive body of literature that does talk about the effect of harvesting on suitability of marten habitat, and to conclude that that somehow means that there is a bias against clearcutting I do not believe is a correct result.

But if I could ask Chris Iverson to add to that in terms of in particular the information that was provided to the panels.

Mr. IVERSON. Yes, Senator, I gave the presentations on the alternatives and the background of forest ecology that we discussed, and it was true that in that presentation I did not discuss second growth management. Then there was a later discussion, I do not know if it was in that panel, but in subsequent panels we did provide the fact that we do have a second growth management program on the Tongass. Approximately 200,000 acres have been treated.

So that, as I recall, there was a sequence of several panels that I gave this presentation. I cannot recall if later in the discussion that issue came up or if it was in subsequent presentations, but it was apparently true that from that observer and that presentation we did not discuss second growth management.

The CHAIRMAN. Well, do you agree or not with this statement that "all panel members had a difficult time distinguishing the difference between a viable marten population and a sustainable marten population? Several panel members indicated that they considered both terms meant the same thing and could not distinguish between the two terms when doing their ratings. It might have been helpful to have spent more time trying to get these distinctions clear in the minds of the panelists."

Mr. IVERSON. I did not facilitate that panel. Jean Negaynor, one of our IDT members, did. We discussed as he was facilitating that panel and we wanted to bring that concept up to separate the distinction between a sustainable population and a viable one, and he did comment that there was at least one panel member that did have difficulty distinguishing between that.

The CHAIRMAN. It says here "all panel members."

What is the difference, again?

Dr. MILLS. Mr. Chairman, could I ask—

The CHAIRMAN. Let me just ask, since you worked this area of sustainability. I would like to know myself, and maybe some folks out there that are still sitting would like to understand the difference between a viable marten population and a sustainable marten population.

Mr. IVERSON. I cannot give you specifics, but I will give you conceptually what the difference would be. A sustainable one is one that had a principal population that, like in money management, would produce interest that you could harvest, a sustainable surplus or a harvestable surplus, and there was a habitat capability that could produce that level of a population. So that would be a sustainable population, that could sustain itself as well as a sufficient harvestable surplus.

Now, a viable population conceptually would be one that just had enough habitat, had a long-term capability to sustain itself without an additional harvestable surplus, in very brief terms.

The CHAIRMAN. That would be a minimum viability.

Mr. IVERSON. Well—

The CHAIRMAN. Sure it would.

Mr. IVERSON. It would be a population that could just—the habitat necessary just to sustain itself.

The CHAIRMAN. That is a minimum, is it not?

Mr. IVERSON. It has often been referred to as that.

The CHAIRMAN. I hope that some of the Alaskans that read this and have a familiarity with it will recognize the constriction that we run afoul of in representing the ability to make decisions here based on that kind of discernability, because I can certainly understand the panel members questioning the viability and the sustainability, because a sustainable marten population could become a viable marten population, depending on a number of things, including habitat, hunting—excuse me—trapping pressures or what have you.

Mr. IVERSON. Senator, you are on track with a good observation, that there is so much uncertainty or a lot of uncertainty in this concept in terms of population fluctuations, uncertainty about habitat relationships, that there is a continuum there of when a sustainable population may come to the level of a viable one because of this uncertainty.

The CHAIRMAN. Well, if I were sitting on the panel I do not know whether I would come down on the side of sustainable or viable as my charge.

Mr. IVERSON. They were clearly charged with the viable population, long term viable.

The CHAIRMAN. Yes, but you just acknowledged that a sustainable can become a viable.

Mr. IVERSON. I do not believe I said that. I said there is uncertainty.

The CHAIRMAN. You acknowledged that I said it, that it could happen.

Mr. IVERSON. Because of uncertainty, there is a continuum.

The CHAIRMAN. We have a letter here to Chris Iverson from David Pearson, who was one of the panelists in 1995.

Mr. IVERSON. He was a resource specialist, I believe.

The CHAIRMAN. He was on the team?

Mr. IVERSON. No, he was the author of the wolf assessment.

Dr. MILLS. He provided background information to the panelists.

Mr. IVERSON. He was a resource specialist.

Dr. MILLS. He was not one of the panel evaluators.

The CHAIRMAN. He provided background on the wolf?

Mr. IVERSON. Correct, at the first panel assessment.

The CHAIRMAN. He says as follows in the second paragraph: “Nonetheless”—he is commenting on the second day. “It was good to hear from biologists with years of experience. Nonetheless, it was very clear to me and to the panel members that the volume of information presented was overwhelming and the members felt uncomfortable evaluating a plan for an area with which they are almost completely unfamiliar.”

And of course, most of them have not lived in Alaska, so their familiarity is limited to they see in a short time or however they study.

He goes on to say: "I think it would have been best if a working definition of 'well distributed and viable' was established at the very beginning of the process."

He further states: "It is also clear that you folks are so pressed for time that you cannot doublecheck the information that you present and expect the panelists to reference when evaluating the planned alternatives."

"Further"—is that enough? The best part is yet to come.

I think the point is this is another case of a participant who does not know the definition of "viable."

Mr. IVERSON. Could I respond to that, Senator?

The CHAIRMAN. Sure.

Mr. IVERSON. In response to your first point, Dave Pearson was making an observation on behalf of the other panelists, which I am not sure—I think that was his perception. I do not know that we can take that as their belief.

In response to the second point, the definition of "well distributed population" is what I think you referenced, the panelists through the discussion of the behavior of each species on each panel came to conclusions of, through their discussion, what might be a well distributed population. There was no a priori definition of that, and it was developed as the discussion evolved in each panel.

The third, the haste that was referenced there in terms of the data I think that Dave was referencing. It was one column of data in one deer model outputs that I believe that Dave was referencing in terms of a problem in data, that was corrected.

The CHAIRMAN. I have got to take a telephone call back here. Go ahead with the questions.

If you gentlemen want to walk out, let us just keep going, but individually you can walk out and come back. That is what I am going to do.

Mr. REY. This will be questions for Tom. Did either sets of the panels—that is, either the 1995 or the 1997 panels—have members that were not full-time Federal employees?

Dr. MILLS. Yes, there were members that were not full-time Federal employees, including those who were identified by the Governor as representing the Governor. That included both State employees and university employees. We restricted the panel members to Federal employees and those that the Governor identified in order to meet the requirements of FACA.

Mr. REY. That was true in both 1995 and 1997?

Dr. MILLS. Yes.

Mr. REY. And there were no members in either 1995 or 1997 who were neither Federal nor State employees, then?

Dr. MILLS. Not at the time they were panelists, no.

Mr. REY. Were notices published of panel meetings?

Dr. MILLS. No, there were not notices published of panel meetings. They were not treated as a public event. They were treated as an opportunity to provide information on the effects of the alternatives.

Mr. REY. So there were no public observers or anything of that nature?

Dr. MILLS. There were no public observers. There were individual silent observers, just as the letter that the Senator read.

Mr. REY. Those were also Federal employees?

Dr. MILLS. I believe they were all Federal employees, all Forest Service employees.

Mr. REY. What criteria or considerations did you use in selecting panel members, and did you do any evaluation of either whether or now you wanted to balance their points of view or their areas of expertise?

Dr. MILLS. I would like to ask Dr. Everest to answer that. He was personally involved in the selection of the panels.

Dr. EVEREST. All the panelists were selected for their expertise in the given area, like all the wolf panel participants were experts on wolves from various places across the country, as often as possible from Alaska.

Mr. REY. Did the public have any chance to comment on the information in appendix M or appendix N of the FEIS prior to your publication of the record of decision?

Mr. JANIK. No.

Mr. REY. Was there any consideration given to making that opportunity available at any time in the process?

Mr. JANIK. There was only brief discussion, recognizing that alternative 11 and all of its implications was properly part of the public process and we saw no need to go back to the public with that alternative.

Mr. REY. Appendix M and appendix N were published in May 1997 and the FEIS was published in January 1997. How did you go about using M and N as information for the FEIS?

Mr. JANIK. The addition of appendix M and N pretty much came about, especially appendix N, as a result of the repaneling that took place, and therefore was provided as part of the record for purposes of fulfilling that obligation. Again, it was not subjected to public review.

Mr. REY. If I heard the testimony correctly, you were comfortable that the difference in individuals between the 1995 panels and the 1997 panels did not have an influence on the results, because you felt that the results were comparable in both cases. Did you hear that right?

Dr. EVEREST. That was correct.

Mr. REY. But you also published for public information a May 8 document called the 1997 TLMP Risk Assessment Panels, which described how to use the information from the risk assessment panels properly and how to avoid using it improperly. That was the purpose of the document, right?

Dr. EVEREST. Yes.

Mr. REY. And there you indicate that variability and mean likelihood scores of up to a maximum of about plus or minus 15 points was noted between the 1995 and 1996 panels and the 1997 panels when the same alternatives were rated by the same evaluators approximately 15 months apart.

Dr. EVEREST. That is correct.

Mr. REY. Can you square the two statements, first the fact that there were different people did not materially influence the results, but second that, even where they were some of the same people apparently, if I am not misreading this, there was still a plus or minus 15 percent factor?

Dr. EVEREST. I think that just indicates that there is some uncertainty around any estimate of risk that is done through expert opinion. In the panels where there were some new panel members, the variability that we saw was not greater than those areas, those panels where there were no new panel members.

Mr. REY. But the variability was pretty high in any case?

Dr. EVEREST. The variability was variable. For example, in the brown bear panel it was plus or minus 2 points. In some other panels it was as high as plus or minus—the highest was 17 points, a spread of 17 points.

Mr. REY. Which were the highest in your recollection?

Dr. EVEREST. Which were the highest in terms of variability? Marten was 14 points, goshawk was 17, wolf was 14, brown bear was 2, the other mammals widely distributed group was 5, other mammals endemics was 10.

Mr. REY. Was there any correlation between the fact that the mitigating measures that you added in at the very end of the process were for—is there any relevance to the fact, I guess I should say, that the mitigating measures that you added to the end of the process, at the end of the process, were primarily for species where the variability in the risk assessment panels was the highest as opposed to the lowest?

Dr. EVEREST. No, I would say no.

Mr. REY. Let us go back to the question of defining viability for a second. The document also says: "The inherent uncertainty in evaluating risk prevented the evaluators from identifying the precise trigger point for maintaining viability." Is that in the context of the discussion we had still a position that you—

Dr. EVEREST. What the panelists did was look at—well, first they defined what "well distributed and variable" meant to them—"well distributed and viable" meant to them. They did that by looking at the five outcomes that they had available to them in the panel process. In general, they identified and defined "well distributed and viable" as falling within outcome 3.

Outcome 3 was a situation where the habitat could have permanent gaps and there may be some difficulty of individuals interacting across those gaps. In general, the panelists said that was where their concept of viable and well distributed fell. So to span that particular outcome, we summed outcomes 1 and 2, outcomes 1 and 2 and 3, and the spread is within outcome 3.

But within outcome 3 the spread could have been a significant number of points, and there was no way to define exactly where within that spread of points the trigger was for well distributed and viable.

Mr. REY. It is true, as you say here, that the panel evaluators' concept of a well distributed habitat was a more difficult condition to meet than the maintenance of habitat to sustain viability, that they distinguished between those two and that the former was a tighter standard in their view than the latter?



Dr. EVEREST. That is correct. For example, you could have viable brown bear populations on Admiralty Island only, but to be well distributed they would have to be on Admiralty, Baranof, and Chichagof.

Dr. MILLS. But it is also true, if I could add, that since with most of the species the panelists could not define where those two triggers fell within outcome class number 3, the results, the numerical results, simply described the range of outcome likelihood that encompasses 3 without any indication of where those two triggers might fall within 3.

Mr. REY. So they did not have a specific idea of where they fell. They just knew that one was a tougher standard than the other.

Dr. MILLS. That is what they concluded.

Mr. REY. The last question: Where in either the regulations or the statute did you derive the authority to define the planning area to include all land ownerships in the geographic location of the Tongass?

Mr. IVERSON. I do not believe that is in the planning area. The planning area is the national forest system lands, and that was the area that the analyses were done in the FEIS. The panelists were displayed maps of the entire forest, but the assessment of likely outcomes was restricted to Federal lands.

Mr. REY. Did we not have testimony earlier that you looked at the Native lands as well in making the viability determinations? Not the panels themselves, but you in making the decision.

Dr. EVEREST. The panelists, the panelists were shown the entire planning area, which included the other ownerships as well. So when they did their risk assessments they were taking into account the entire planning area.

Mr. IVERSON. For a clarification, when we said yes, we included other non-Federal lands and analyses to do cumulative effects analyses, in many analyses we included the acreage of private lands in those analyses. Particularly I recall in appendix N in the goshawk analysis, there is a section in there that includes non-Federal lands to do a full cumulative effects analysis.

Mr. REY. And from whence does the responsibility to include the non-Federal lands in the analysis derive?

Mr. IVERSON. It is related to the requirement to do a cumulative effects analysis. There is two lines of question there. I think you are asking about viability in non-Federal lands. That was not the case. The question was did we consider non-Federal—my answer in the non-Federal land analysis is relative to cumulative effects analysis, not to viability.

Mr. REY. It was also disclosed in the viability panels that you were looking at the entire planning area. It was discussed that there was a significant amount of harvest on the non-Federal lands, was it not? And it entered into their considerations that the amount of harvest on non-Federal lands was in fact relevant, perhaps in some of their minds highly relevant, to the viability considerations; is that not correct?

Mr. IVERSON. They were shown the maps and the activities with the juxtaposition of the non-Federal lands, but their likely outcomes were restricted to Federal, the Federal land component of that landscape. Now, if the allocation of land, the combination of

allocation of lands among the various alternatives may vary, and their outcomes would be predicated on the combination of Federal allocations, say like on Prince of Wales, whether there is reserves or not, that was the component they were instructed to affect their likelihood of outcome assignment of points.

The CHAIRMAN. Well, I think we are just about wound up. I had hoped to get through panel one and panel two, and I think we are about two-thirds through with panel two. It would be my intention to reconvene tomorrow at 9:30.

But prior to that, I have a couple of questions that came up in association with the opening statement of Mr. Phil Janik. In your review, is there any other national forest with proportionally as much old growth and, if so, what? I am sure there is not, but what would be the second major forest of our national forests?

Mr. JANIK. Probably the Chugach.

The CHAIRMAN. Okay, so Tongass is the first, Chugach is the second. Where would we go for the third?

Mr. JANIK. That is a tough one.

Mr. IVERSON. One or more of the forests in the Pacific Northwest may be in the 15 to 20 percent range, maybe 30. We could check and get you some figures in the FEMAT.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Because it would be interesting to see a comparison of the manner in which the monitoring process occurs on other forests, the manner in which a forest management plan is structured, because I think that there is some significance and uniqueness associated with the Tongass.

I am also curious to know how you address your responsibility in two areas. One—and my terminology may be a little inconsistent here, but to meet the anticipated demand or market demand, which I think you have acknowledged as one of your criteria. Then the other is to fail to address, if you will, the installed capacity of the industry as we have it today without the two pulp mills.

There seems to be an inconsistency there. You want to meet market demand, but to meet market demand theoretically you would first address sufficient timber to meet your installed capacity. But we have had conversations about this before and, for reasons that are yet to be explained to me, you have not seen fit to address that. Yet you arbitrarily address many other factors.

Mr. JANIK. I will address the demand question first. That of course refers back to the Tongass Timber Reform Act, the often discussed clause, seeking to provide enough timber to meet market demand. We have been through a number of discussions on this, a number of court cases, and the rest of that clause is a very important part of that obligation and that is consistent with other multiple use objectives, using my own license here in terms of wording, but something to that effect.

But we have struggled with this subject, there is no question about that, and there has been great debate over just how demand should be calculated and what does it represent and what is the absolute obligation of the agency with regard to it.

I would like to inform you, Mr. Chairman, we are working up right now a set of procedures that I hope will enable us to treat

demand more definitively than we have in the past. I am not in the position to predict when those might be complete, but we are working on this very subject, because we know that we need to be more profiled with how we are addressing the subject of demand and how it relates to capacity of mills and all of that kind of thing.

Now, our current estimate of capacity of mills is, or consumption, I guess, of wood, is 230 million board feet saw log. We got that information from the operators themselves. Now, if you translate that to add the utility onto it——

The CHAIRMAN. Is this existing mills that are operational?

Mr. JANIK. Yes, as I understand, yes.

The CHAIRMAN. What about Wrangell?

Mr. JANIK. No, that does not include Wrangell.

The CHAIRMAN. Is there a reason? It is installed capacity.

Mr. JANIK. Well, it is not operating.

The CHAIRMAN. Why it is not operating?

Mr. JANIK. Well, because APC chose to close it.

The CHAIRMAN. No. There is not enough timber to attract a buyer.

Mr. JANIK. And we hear that, sir.

The CHAIRMAN. No, it is not "hear it." It is factual, Phil. Let us recognize a few realities.

Mr. JANIK. Well, I am going to acknowledge your difficulty in some of these areas.

The CHAIRMAN. Well, you have got 230, but you do not have Wrangell.

Mr. JANIK. Now, 230 is just——

The CHAIRMAN. Saw logs.

Mr. JANIK. So if you add the utility onto that——

The CHAIRMAN. Let us stay with saw logs, because what are you going to do with the Wrangell mill?

Mr. JANIK. The point I am trying to make here in terms of the total harvest that is needed to provide that is that it exceeds our calculated ASQ, I would suspect.

The CHAIRMAN. That is obvious. I asked the question what your obligation was to meet installed capacity. You talk about meeting market demand. You address market demand initially on the basis of installed capacity. That is one major——

Mr. JANIK. That is one definition.

The CHAIRMAN. Yes, but it is an appropriate definition to consider, because before somebody else comes in and establishes additional capacity prudence dictates that you address your current installed capacity, because the infrastructure costs, which you folks do not necessarily have to spend a lot of time on because it is not your charge, are significant. The loading facility, cold decking facility, environmental concerns relative to the sawdust disposal, hog fuel disposal, emissions, suggests that the logical place if you are going to do any manufacturing is where you already have installed capacity.

Mr. JANIK. We do not see it that way, Senator. A point of disagreement.

The CHAIRMAN. You tell me how you see it.

Mr. JANIK. The calculation of 267 million board feet as our calculated allowable sale quantity is our transmission to the world,

the public and the timber industry that this is the best that can be expected as a maximum, and our projection——

The CHAIRMAN. You did not relate it at all to the installed capacity?

Mr. JANIK. We certainly related in discussion, but we do not interpret it as an obligation.

The CHAIRMAN. You felt no obligation then? You felt no obligation?

Mr. JANIK. Not an absolute obligation, that is correct.

The CHAIRMAN. No obligation to the people of southeastern Alaska or the investment associated and the jobs in the sawmills? You felt no obligation?

Mr. JANIK. We tried to do the best we could to provide as much timber as possible, recognizing that need by the timber industry.

The CHAIRMAN. You had an obligation, just like you have an obligation for habitat, to address the concerns associated with the installed capacity and the sustainability of jobs associated with that.

Mr. JANIK. That is something we try to do, sir.

The CHAIRMAN. I can recall when the Chief sat right where you are sitting and told me there would be enough timber for the Wrangell mill; there was absolutely no reason why there could not be, with the ultimate disposition and demise of the two pulp mills.

What do you say to that? I can pull out the testimony if it would help.

Mr. JANIK. The very discussions that we are having with the Governor's Timber Task Force amount to this kind of discussion, and that is what can one reasonably expect off the national forest, off the Tongass, and then they are looking at other possible sources of timber and they are addressing these very references, such as capacity and-or utilization, which is from our record about 50 percent of the capacity. So that would be about 170 in terms of the existing operating facilities, which does not include Wrangell and does not include the new proposal at Ketchikan either.

We have tried to do our best, given all the other obligations we have, to put as much timber on the street as we can.

The CHAIRMAN. As I see the TLMP as it is presented now, you have as a consequence of a process which you could have made judgments on monitoring it because of the unknown science, lack of scientific evidence with regard to the qualifications of the goshawk or the wolf or the marten or any number, it is evident that you have come down with a figure which you say you can substantiate, and I cannot suggest that you cannot. But there is no scientific evidence as to the adequacy or inadequacy of this low base.

Now, if you are wrong on the marten, if you are wrong on the wolf, if you are wrong on the deer, the theory is you are going to increase the allowable cut. But that is hypothetical.

The point I am making is you cannot on the one hand try and meet market demand as an obligation without recognizing the association of installed capacity, because that is going to basically have the ability to meet market demand. You are not going to meet market demand without primary manufacturing, because you are not going to allow, I assume, the export of round logs out of the State, are you?

Mr. JANIK. That is another policy we are working on right now, and that is a very important item to this discussion.

The CHAIRMAN. Well, let us discuss it now. Are you going to allow round log exports outside of cedar?

Mr. JANIK. We have been approving some of those applications currently, Mr. Chairman. But we also hear much from our south-east communities and the timber industry that they want to see more manufacturing done on site, the value added notion, and we are taking that into consideration as well.

I am not in a position to predict the outcome as to how generous or restrictive we will be with that.

The CHAIRMAN. Do you want Congress to address the question of round log export and simply prohibit it? Would that help you out?

Mr. JANIK. I am sorry, I missed the first part of that.

The CHAIRMAN. Would you like Congress to address the issue of round log export off Forest Service lands in Alaska? Would that help you out?

Mr. JANIK. If Congress were to give us that instruction——

The CHAIRMAN. Yes, to not do it.

Mr. JANIK. I am not sure it would help us out. It would certainly clarify the issue.

The CHAIRMAN. Well, it would help meet market demand, would it not, in the State? Because if you are going to allow the export you are not going to meet the market demand associated with primary manufacturing.

Mr. JANIK. The difficulty we have in this transition is the timber industry right now is in a spot, as you know, without any place to go with their lower grade material.

The CHAIRMAN. And whose fault is that?

Mr. JANIK. It is a combination of factors.

The CHAIRMAN. Well, let us be realistic.

Mr. JANIK. International pricing——

The CHAIRMAN. Aw, come on, Phil. Let us get basic. ALP came in with a proposal for a 10-year extension, a 10-year contract to put in a fiberboard mill. The Secretary of Agriculture acknowledged that he was going to recommend it and it was turned down at the White House.

Now, that would have utilized utility grade had it been built, right?

Mr. JANIK. That would have utilized utility grade.

The CHAIRMAN. And what happened with Ketchikan Pulp? They came in and asked for a 15-year contract to put in an investment of, what, \$220 million into a pulp mill. It would be the state of the art, chlorine-free. You folks were non-players in that issue, but clearly this administration and the Forest Service chose not to consider and grant that extension.

So these are realities, and you can call it market demand, but both of those facilities would be operating today, and those jobs in those communities and that new technology, which the administration prides itself on, would be in existence, two cleaner mills, state of the art, and a place for the utility timber.

Now, I am not blaming anyone at the table, but I think we have to reflect on those hard core facts. They asked. They were denied.

Mr. JANIK. In terms of answering your initial question, Senator, I think there is obviously a basic disagreement here. We do not see any absolute obligation to meet any particular level as compared to trying to do the best we can to meet market demand. That is how we interpret TTRA.

The CHAIRMAN. Well, I think that particular acknowledgment might cause you to reconsider at a later time, so I will just leave it at that, because that certainly is a statement that I have never heard enunciated from the Forest Service or any representative of the Forest Service, that there was not an obligation to meet market demand and the association of meeting that through trying to address the existing installed capacity, recognizing that the two pulp mills are gone.

Which takes us back to the original Forest Service contribution of coming into southeastern Alaska with long-term contracts to utilize the utility timber that makes up the majority of the forest in southeastern Alaska. So now you have acknowledged that you are looking at individual requests for export, which simply drives the primary manufacturing base outside Alaska. If you allow that, that is what will happen.

But the irony of it is—and I think you have gone through and reviewed the records of the former Chief Frank Heinselman and the thought process that occurred in the fifties, that somehow we needed to stimulate a year-round industry in southeastern Alaska and it was up to the Forest Service to provide the assurance of a timber supply and hence the 50-year contracts, to utilize a product that you are proposing to ship out now in the round.

Mr. JANIK. I am not proposing that at all, Senator.

The CHAIRMAN. Well, you are suggesting that you are looking at requests and you have granted requests previously. Very few requests have been granted. I think you are the first person to—you and I had a conversation some time ago, a few years ago, when you first acknowledged that you had allowed a shipment to go out at a time when there was a shortage of timber in the State at a time when we had a pulp mill and certainly a market for that.

Yet you saw fit to—I would like to see, again have the record reflect your justification of that, because it still is a little foggy to me. But the Forest Service is going to either try and position its structure for the benefit of the job base in Alaska or it is not. That the obligation that you took on 50 years ago, but clearly that seems to have abandoned, and I really fail to understand the rationale.

Mr. JANIK. The perspective we have in reevaluating the export policy, Mr. Chairman, is that it is going to become more restrictive. We recognize the importance of keeping as much wood in southeast as possible. We are working with the timber industry on that subject and we will certainly work at levels beyond our regional level to finally resolve this as to what would be a working productive policy. I just want to make that clear with you.

The CHAIRMAN. I do not know how long we are going to have to wait. But I think it is important to reflect in your statement that to suggest that the responsibility for the pulp mills closing is a change in international and national markets in recent years is not a full disclosure by any means relative to what you could have added, that the Forest Service denied the extension of both compa-

nies to change their process and rejuvenate their facilities, and these were denied by the Forest Service.

Whether it be the Forest Service that wants to accept the responsibility or the administration, it is academic. To suggest in your statement that the economic disaster funds somehow make up for the disaster associated with the loss of the industry and the inability now to utilize the utility timber and the attitude of the Forest Service in simply dismissing that as a responsibility is just beyond me, and beyond many, many people in Alaska that fail to understand where the stewardship has gone.

Mr. JANIK. If I may react to that statement, Senator.

The CHAIRMAN. Go ahead.

Mr. JANIK. We are frankly very proud of the contribution we are trying to make to assist communities going through this transition that they are, those that have been dependent upon the timber industry as well as the industry itself. My testimony mentions our State and private forestry programs, the effort that Brad himself has been involved in with regard to the SRT formulation and working in a multi-agency fashion. We are doing the best we can with the resources we have to assist.

The CHAIRMAN. Well, you are getting the resources. Your budget seems to indicate that you have got some plans to expend the taxpayers' dollars. But clearly you do not have a plan to meet the installed capacity that is left in Alaska.

Is it not extraordinary that here we have the largest of all our national forests and we cannot even sustain a minimum base industry? Hell, New York State burns more for firewood than we cut commercially. I think these things have to be kept in a perspective. You have testified time and time again, and you know the merits of how you present your case, and so do I.

I am struck by your conclusion: "The Tongass revision strikes a balance. It protects the health, diversity, and the productivity of the Tongass ecosystem while it provides for resource use well into the twenty-first century. The plan provides for commercial use of the forest to support the southeastern Alaska community."

I do not know how you can make that statement if you do not even address the existing capacity in those communities after you have terminated the major users of the wood product, and that is the pulp mills.

So I guess we have come to the conclusion of 4½ hours, and I commend you for your patience and your willingness to respond. I think that we have touched on some delicate areas and touched on some broader areas and have structured a record that we will be able to reflect on in the future. I would appreciate giving any of you an opportunity to wind this up. I have no further statements, other than, relative to the testimony of the first panel, I would ask that we may have the agency's written findings on whether the TLMP is a rule, and I am going to ask for that to be determined within the week. If there is any reason why they cannot do it, why, we will see.

[The information requested was not received at the time the hearing went to press.]

The CHAIRMAN. Which leads me to I guess one other question, and that is who makes the decision in the Forest Service of wheth-

er this is a rule or not relative to the process that we were exposed to in the first panel?

Mr. JANIK. I believe we can expect that decision to come from the Chief, sir.

The CHAIRMAN. Has the Chief addressed this?

Mr. JANIK. The Chief today has taken the position that forest plans are not a rule, including the Tongass plan.

The CHAIRMAN. Including the Tongass plan.

Mr. JANIK. And given the input of GAO and OMB over the past few days, I would suspect he is going to read those documents very carefully. I have no way of predicting whether that can be done in a week in terms of any affirmation one way or another of what his position might be. But I would say the short answer to your question is the Chief.

The CHAIRMAN. Well, that is fair enough. That is where I would put it, too. I assume that—we are faced with a case of whether the Chief and the Forest Service is complying with under the intent of the law or they are not. The fact that they have not been is incidental to the reality of whether it fits into that qualification, and I guess somebody else is going to make that determination.

Mr. Norbury, do you have anything to wind up your 4 hours or 4½ hours?

Mr. NORBURY. No, sir, but thanks for the opportunity.

The CHAIRMAN. Mr. Powell.

Mr. POWELL. I have nothing to add.

The CHAIRMAN. Dr. Mills.

Dr. MILLS. I am sorry, Mr. Chairman. I cannot resist.

The CHAIRMAN. Go ahead.

Dr. MILLS. I would like to touch just very briefly on the question of timber demand and start a little bit where Phil Janik left off about the difficulty of—

The CHAIRMAN. I might add, that is the first thing that is going to be up tomorrow.

Dr. MILLS. Then I will be more than happy to wait until tomorrow.

The CHAIRMAN. Go ahead.

Dr. MILLS. No, that is fine. We will talk about it tomorrow.

The CHAIRMAN. If you want to get it on the record today, do it.

Dr. MILLS. I am sure I will have ample opportunity tomorrow.

The CHAIRMAN. Dr. Everest.

Dr. EVEREST. I will wait until tomorrow.

The CHAIRMAN. Chris.

Mr. IVERSON. I will pass, too, Mr. Chairman.

The CHAIRMAN. Phil.

Mr. JANIK. Thank you.

The CHAIRMAN. All right. Have a nice afternoon, and I suggest you go out and buy a nice steak or something. You deserve it.

[Whereupon, at 4:19 p.m., the hearing was recessed, to reconvene on July 10, 1997.]





## **TONGASS LAND MANAGEMENT**

**THURSDAY, JULY 10, 1997**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
AND U.S. HOUSE COMMITTEE ON RESOURCES,  
*Washington, DC.*

The committees met jointly, pursuant to notice, at 9:36 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Frank H. Murkowski, chairman, presiding.

### **OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA**

The CHAIRMAN. Good morning, ladies and gentlemen. We will call the hearing to order, and we will proceed where we left off yesterday. You all know your seats. We have got some fresh water for you and let us know if the chairs do not fit.

The good news is we are starting a little earlier this morning. Instead of 11 o'clock and going until 4:30 or thereabouts, why, we will start at 9:30 and hopefully finish a little earlier today.

Mr. Janik, we are going to start on some of the analysis that may involve Mr. Brooks, if you are so inclined. I see you have got an extra seat up there. What I propose to do is to direct the inquiries to you and you can field them as you see fit, Phil. Is that fair enough?

**STATEMENT OF PHIL JANIK, REGIONAL FORESTER, U.S. FOREST SERVICE, JUNEAU, AK; ACCOMPANIED BY DR. TOM MILLS, U.S. FOREST SERVICE, PORTLAND, OR; DR. FRED EVEREST, U.S. FOREST SERVICE, JUNEAU, AK; BRAD POWELL, U.S. FOREST SERVICE, KETCHIKAN, AK; FRED NORBURY, U.S. FOREST SERVICE, JUNEAU, AK; BETH PENDLETON, U.S. FOREST SERVICE, JUNEAU, AK; AND DR. DAVID BROOKS, U.S. FOREST SERVICE, PORTLAND, OR**

Mr. JANIK. Thank you, Mr. Chairman.

The CHAIRMAN. With regard to some of the projections on Alaska's export of manufactured residue and utility logs, recently the Louisiana Pacific announced their interest to pursue a veneer mill in Ketchikan that would utilize low grade logs. In light of this development, how might your demand projections change?

Mr. JANIK. I do think this line of questioning probably will focus on Dr. Mills and David Brooks. I am just going to ask them to take some of these.

Dr. MILLS. Let me comment first and then ask Dr. Brooks to elaborate.

The projections that were prepared by Dr. Brooks and Dr. Haynes to project demand for timber from the Tongass in the future were strongly based on the competitiveness of the Alaska producers in the world markets that they need to serve. That was based predominantly on the sawmills that are currently there, sawmills which would produce considerable mill residues in the form of chips as well as utility logs.

The assumption was made that either those chips and utility logs would be exported profitably into the export market or that some of the utility logs would be left, depending upon the scenario that was generated, as logging residue. To the extent that our understanding, which I am sure is far from complete, is that the veneer mill would utilize utility logs, the lower end of the grade spectrum rather than the high end, then there is certainly an opportunity for that veneer mill to utilize some of those utility logs that otherwise in the projection were assumed to be exportable, and therefore would enhance the profitability of the sawmill industry, but would not necessarily lead to any significant increase, if at all, in the total demand on standing timber that was projected in the Brooks and Haynes study.

David, could you elaborate on that?

Dr. BROOKS. Actually, not at all, except to say that that would be my answer to the question as well, with the exception that if we were to receive additional data that suggested that we needed to re-examine the assumptions that we made, that is something that we certainly would do. But given the information that we have now, that is the answer to the question.

The CHAIRMAN. What in your opinion would be the offhand percentage of volume that would come out of the forest relative to utility?

Dr. MILLS. It varies considerably by scenario in the projections.

The CHAIRMAN. Well, I know. The further north you go, the more utility you get; the further south you go, the better quality you have for saw logs. But generally speaking.

Dr. MILLS. The scenarios that I was describing were scenarios about competitiveness of market demand, especially in Japan.

The CHAIRMAN. I am talking about supply.

Dr. MILLS. Yes, I have got that. I am sure I am not getting at this fast enough, but let me give it a shot.

The different scenarios about the competitiveness of the Alaskan industry and the extent of demand in Japan led to three different scenarios that had associated different levels of demand for timber from the Tongass. Likewise, in each of those scenarios, a low, a moderate, and a high, there were different percentages of the utility volume that were assumed to be economically viable and utilized. So the amount of utility volume that was utilized depended upon the degree of optimism or pessimism about the ability of southeastern Alaska to produce.

The actual numbers ranged as low as approximately 50 percent in the lowest scenario and then the highest scenario was——

Dr. BROOKS. 80 percent.

The CHAIRMAN. That interprets into 50 percent and 80 percent?

Dr. MILLS. Of the utility volume would be utilized and not left as logging residues.

Dr. BROOKS. I am sorry.

The CHAIRMAN. I would assume that you were comparing utility with previously what went in for the most part, in the pulp process.

Dr. MILLS. Dr. Brooks has a better handle on the specific numbers in the assumptions. Let me turn to him.

Dr. BROOKS. What we tried to do was to incorporate in our projections estimates of the volume of both utility and lower grade saw logs that would not have currently identified local manufacturing use.

The CHAIRMAN. Right.

Dr. BROOKS. And that does range. It does change by the scenario.

The CHAIRMAN. What I am looking for here in this conversation is—maybe I can express it as the pie theory. You have got a stand that X percentage is utility, X percentage is low grade saw logs, X percent is, and it depends on where you are at. But I am just looking for your general application of the percentile.

Dr. BROOKS. In the median scenario we assumed that roughly two-thirds, 67 percent, of the volume of spruce and hemlock was used in saw milling in Alaska. That is, 67 percent of the volume we project to be demanded of the Tongass.

The CHAIRMAN. That is throughout the Tongass, of course?

Dr. BROOKS. That is correct.

The CHAIRMAN. An average between the north and south.

Dr. BROOKS. That is correct.

The CHAIRMAN. Okay.

Dr. BROOKS. In the low scenario, the figure is 47 percent, and in the high scenario the figure is 80 percent.

The CHAIRMAN. And the difference would be the utility that would be used or available for pulp or chips?

Dr. BROOKS. Both utility and lower grade saw logs. One of the differences across the scenarios is the assumption we make about the both efficiency and competitiveness of Alaska mills, and we assume that in the scenario that tries to describe a future in which those mills are not very competitive or efficient that they would be using only the higher log grades in the spectrum of the inventory.

The CHAIRMAN. Now, when you talk about “those mills” what are you talking about specifically in the current mills?

Dr. BROOKS. We are basing, we based our projection on what we have as data for the current mill structure of Alaska.

The CHAIRMAN. Which are what? Tell us what they are, the current mill structure?

Dr. BROOKS. We can provide that data for the record if you want.

The CHAIRMAN. Well, surely you know.

Dr. BROOKS. Well, the saw mill in Ketchikan.

The CHAIRMAN. Which one?

Dr. BROOKS. The KPC saw mill.

The CHAIRMAN. The one associated with the pulp mill?

Dr. BROOKS. That is correct.

The CHAIRMAN. Okay, that is one mill.

Dr. BROOKS. The Hemlock Mill.

The CHAIRMAN. That primarily cuts the larger logs.

Dr. BROOKS. That is correct.

The CHAIRMAN. That is two mills.

Dr. BROOKS. I would have to refer to paper that I could find in my files for the list of mills that are recorded as currently having equipment, whether or not that equipment is operating. There are three or four larger mills and of course, as you know, a large number of small mills in Alaska.

The CHAIRMAN. Well, you know, we have identified two mills in the Tongass that are operational, that are not necessarily large, but I guess by Alaska standards they are two operating saw mills. Is that it?

Dr. BROOKS. Well, no, of course not, Mr. Chairman. But the—

The CHAIRMAN. Are there others of that size?

Dr. BROOKS. Well, I should say that our methodology is not mill-specific. I am using, I am referring to this information about individual mills to indicate my familiarity or some of my familiarity with the conditions in Alaska. But the method that we use to do this projection is not mill-specific and was not intended to be tied to or in reference to specific mills.

The CHAIRMAN. No, but you are talking about a volume that comes out of a primary manufacturing process, and you have identified two relatively small mills, one of which I think is operating—I think both are operating one shift, simply because of lack of timber supply. My observation obviously is, while there is a great deal of sophistication in the process, that there is not much coming out of the other end in the sense of production, simply because of a number of excuses or reasons that basically are as a consequence ultimately of a lack of timber available to the mills, whether it be with the current situation where we are today, not knowing what the TLMP is actually going to provide in real terms relative to available saw logs vis a vis utility, what we are going to do with the utility since we do not currently have a use for it other than exporting or making chips out of it.

Another thing that caught my mind in your comments was the generalization that you made of looking towards the Japanese market. I think if you look at the last couple of years of production of the major timber operations in the State, you are seeing a shift from the Japanese market to the domestic market. I wondered if you had included that in your analysis of future market demand?

Dr. MILLS. The answer to that, Mr. Chairman, is yes. In fact, that helps highlight the basic approach that was taken to estimate demand, which was based on the ability of the southeastern Alaska industry to compete in the markets that it supplies to. And you are certainly correct, it has increasingly sent a larger share of its supply to the domestic U.S. market, in part in response to some of the cost differences between the total cost, given the increased stumpage prices in the Pacific Northwest.

The CHAIRMAN. Well, there is also the application of the metric system in the export market as opposed to the domestic market. It is my understanding the export market, the cuts are in the metric cut. Is that not correct?

Dr. MILLS. I believe that is correct. I am not certain on the metric.

The CHAIRMAN. Some of the mills had converted some of their head rigs over to the standard.

Mr. Vento, good morning.

Representative VENTO. Good morning, Mr. Chairman.

The CHAIRMAN. I am going through an extensive list of questions. Any time you want to ask any, why, just pipe in. Do you have any statement?

Representative VENTO. Not this morning. Thank you.

The CHAIRMAN. It is my understanding that fair market prices are being offered for cants and dimensional ungraded lumber from the interior part of the State, most of that probably private Native land and some State land. I am wondering if this does not suggest that it would be possible to sell significantly more timber from Alaska's national forest?

Dr. MILLS. If the question, Mr. Chairman, is is there a market for additional volume, then the answer to that is yes, there is. It depends upon the competitiveness of that volume in the markets it serves. Perhaps one indicator of the competitiveness is what currently happens to timber that is harvested on Native corporation lands, the vast, vast majority of which goes into the export market as logs, which is some indication at least of the challenges that the southeast market has in a cost sense with some of its competitors in the markets it serves.

The CHAIRMAN. Well, of course that has been assisted by the Forest Service policy which prohibits round log export from Federal land, because I am sure we would all agree that if the Forest Service allowed the export we would not have any saw mills.

Dr. MILLS. There certainly is evidence to indicate that the round log exports are more profitable than the local processing, by observing what the Native corporations have done, yes.

The CHAIRMAN. But on the other hand, it is fair to say that the Native corporations also had a problem of disposing of their utility logs, and a number of that volume went in the pulp mills when there was a market for utility.

Dr. MILLS. It is my understanding that, yes, occasionally some utility volume was used in the pulp mills, and it at other times goes as export or is left as logging residues and cannot pay its way out of the woods in an economic sense.

The CHAIRMAN. And of course, as you recognize, there is a significant difference between the interior timber, the quality of that timber, and the timber quality of the southeast, which generally speaking is much higher, because you have the white spruce in the interior. So the point is it is even harder to market the interior timber because it does not meet the dimensional and oftentimes it is white spruce, vis a vis Sitka spruce and western hemlock, and it is smaller and limbier and it is more pole-type timber.

The point is, and I think it is a significant one, that if we are able to market the interior timber, which is you might say of an inferior comparison to the timber that dominates southeastern Alaska, it certainly suggests that there is a potential market for more southeast timber if it were available. Is that a fair statement?

Dr. MILLS. Well, it is certainly a fair statement, Mr. Chairman, that the amount of supply and the cost of that supply influences the ability of the industry in southeastern Alaska to compete. But I also suggest that another factor is that the cost structure of the southeastern Alaska industry in relationship to the other competitors that it faces, and in spite of some extensive efforts on the part

of the industry, there is some inherent difficulties at bringing their costs down to what some of their key competitors' are.

In fact, some of the information we have got indicates that the labor component, at least of the logging cost, in southeastern Alaska over the last 10 years has been some 65 percent higher than comparable costs in the Pacific Northwest, and that likewise the labor costs in the saw mill production are almost 50 percent higher. So there are some cost differences that are inherent in southeastern Alaska that do play into the eventual profitability of the industry and its ability to compete.

I sure would agree, as you said, that the amount of supply, the value of that timber, is certainly one of the factors, but there are a number of other factors as well.

The CHAIRMAN. Well, let us consider this. This is not, obviously, a debate society, but I think it is fair to point out that you have identified a significant amount of volume that is perhaps left in the woods because it is utility or less and has little market demand. That will increase unless there is a facility to utilize that, such as a pulp mill or a veneer plant. As a consequence, that, coupled with your increased costs, which we decided yesterday were double, the Forest Service cost of preparation, double what it was—how many years ago—5 years ago, you by the very nature of the process have created a curb against competitiveness vis a vis interior timber, which is of lesser quality. It has to be taken out of the woods far, far in many cases from any water transportation. Most of it is trucked into Nanana, loaded on rail cars, goes 200 miles or so to Seward, is cold decked, moved out of Seward.

So to suggest, if you will, that this can now compete in an export market with southeast timber, which is of a higher quality, clearly suggests a factor is the cost of the southeast timber as a consequence of the increased cost of the Forest Service in the manner in which their costs have increased and been added onto and-or utilization.

I think we have made that comparison. It is evident because we are seeing timber come out of interior Alaska that previously was not marketable, but it has become marketable because of the increased cost of the southeast timber. I think we owe it to good forest management practice to get busy and create a market, a real market for that residue that is either going to stay in the woods or has no other utilization because it is so marginally profitable. But if you had a veneer plant, it might be.

You know, when you say whose responsibility is it, remember it was through the Forest Service that the two pulp mills were created to utilize this volume that otherwise would be exported out of the State or left in the woods, because previously most of the logging was very selective, for the saw mills only, and there was only one saw mill, one in Ketchikan, Ketchikan Spruce Mill, and Columbia Lumber in Juneau. That is virtually all we had after the war, and we are almost to that point now.

In any event, British Columbia is expected to drastically curtail lumber harvesting as we understand it. British Columbia produces a significant volume quite close to Alaska, south in Prince Rupert. They are exporting much of their spruce, their pine, their fir to the

Pacific Rim. Is it not possible that Alaska can fill in a portion of the niche as British Columbia producers cut back production?

Dr. MILLS. Well, there is a couple points there and then I would ask Dr. Brooks to elaborate.

First of all, there is the issue of British Columbia's future harvest levels, which is an item on which different people have different opinions. I think the preponderance of the opinion is not in support of a drastic curtailment of harvesting in British Columbia, although I acknowledge that there are different opinions on that subject. Some evidence in the past of the ability, the relative competitiveness of southeastern Alaska and British Columbia, is apparent from what happened when the prices went up materially on stumpage in the Pacific Northwest as a result of reduced harvest level on Federal lands.

What happened at that time was that, rather than southeast Alaska picking up some of the slack or any significant piece of the slack that was left by the reduced production in the Pacific Northwest, instead British Columbia did, in part because of a cost advantage that British Columbia has relative to southeast Alaska, according to the information we have.

The CHAIRMAN. That cost is associated with what?

Dr. MILLS. With logging, that some of the logging, the processing and the stumpage prices that British Columbia has marginally lower costs in total for the products they produce than southeast Alaska does.

The CHAIRMAN. In the letter that we sent you, one of the author's most important assumptions was that British Columbia's current historical high timber production levels will continue for the next decade is challenged by I think four specific experts. One was Mike Aspy, and Les Reid, entitled "World Timber Resource Outlook: Current Perceptions," a discussion paper that forecast the production would drop to 63 billion in 2010. That would be a 20 percent reduction.

A 1996 analysis by Taylor noted in the Robert Flynn and Associates reports, "Timber Supply from the Tongass National Forest: Meeting Market Demand," predicted a British Columbia harvest of 65 in the year 2000.

A 1995 study by Price Waterhouse entitled "An Analysis of Recent Forest Product and Land Use Initiatives in B.C. and Implications for Timber Supply Jobs" estimated the harvest would drop to 59 over the next 5 to 10 years.

In other words, four experts here are suggesting something contrary to what your opinion is. Would you explain the discrepancy?

Dr. MILLS. I would go back to what I acknowledged in the beginning, that these projections of the future can have different scenarios.

I would ask Dr. Brooks to explain the rationale behind the assumption of continued production from British Columbia which continues the trend that we have observed in the past in spite of earlier suggestions by others, including some of those authors, that there would be precipitous reductions.

Dr. BROOKS. Yes. Mr. Chairman, we are familiar with almost all of the studies that were cited and certainly with the authors and have had the opportunity to speak with some of them directly, and



particularly Mike Aspy and Les Reid, as well as other colleagues in Canada who have different views as to the future of British Columbia.

For those specific studies, at least two or three of them, they were done as analyses of the early 1990's British Columbia forest practice and policy revisions that had been proposed or put in place, and those studies were projections of what would happen to British Columbia timber production if those policies were fully implemented. In the ensuing 5 or 6 years or 4 or 5 years, a number of those policies and practices have in fact changed. It is based on the decision of the British Columbia ministry to not implement some of the practices and some of the revisions to their management that leads us to conclude that the scientists who suggest that British Columbia will continue to harvest timber at its current level is a more credible projection than those who suggest that it will fall precipitously.

The CHAIRMAN. Well, Dr. Con Schalau, you have read his statement, and if you have not I will summarize it. He says: "We do not share this pessimistic assessment by Brooks and Haynes of the stiff competition from producers in Canada. They neglect to point out that production from British Columbia will decrease significantly in the very near future."

Now, you have taken another posture perhaps to support your contention or the current TLMP. But it says further, and it is the position of Dr. Schalau, that: "There is nothing to prevent Alaska from filling the niche vacated by the B.C. producers, provided there is a reliable national forest timber supply. If there is low-cost material base and economic transportation," which there certainly is, "Alaska lumber could compete very well in Pacific Rim markets in certain niches."

The fact of the matter is that B.C. is exporting heavily to Asia. Alaska is right next door, just across the border. There are three Canadian mills just over the border where most of the—I do not know what "SPF"—spruce, pine, and fir, I guess, production went to Japan. One mill is located less than 75 miles from the Alaska border.

I rest my case.

An important assumption behind the Brooks-Haynes calculation of reduced demand for Tongass timber is increased Russian timber production in the near future. Your report stated that the Russian timber production, in combination with other considerations, simply weakens the case for seeing this decade as a time when lumber production in Alaska can expand rapidly and find markets at any price.

I mean, your report is almost a defeatism: at a time when the market for Alaska lumber was expanding into a domestic market from a pretty much dependent on export market to a projection or pronouncement that the market is relatively in a potential future decline because of Canadian competition and Russian competition, and so forth.

Let me go on. But many forest economists agree with the statement that the Russian timber production simply weakens the case for seeing Alaska production to be competitive. The economists disagree. The considerable political and economic difficulties, the in-

stability in Russia, along with its huge infrastructure problems, have made it very difficult to have confidence that the country will become a major consistent supplier any time soon.

Now, apparently we have differences of agreement, but some facts bear this out. In the 1996 report by Robert Flynn and Associates, the notation is: "A considerable number of U.S. companies have explored the possibility of developing log and-or lumber export projects in Siberia and the Russian Far East, but, with few exceptions, these projects have all ground to a halt. Weyerhaeuser's failure in this region is perhaps the best known example."

I have been over there. I have seen the volume of timber. It is certainly there. They are using Korean loggers. They are bringing them in from Korea because the Russians have such a poor work ethic that they cannot get them to work in the woods. It is an incredible situation.

But I wonder if you could explain why, against the weight of much expert opinion and actual experience, you would assume that Russia will soon become a significant timber supplier? I cannot help but note that you have built a case here for Alaska being less competitive and it seems that it is one that is structured to support your contention of less market demand and less production, less responsibility by the Forest Service to provide timber by coming up with scenarios that, while they are contrary in the sense of expert opinions, simply suggest that we cannot be competitive.

Your increased costs substantiate that. But go ahead and tell me why, in the weight of opinion, you would assume that Russia will soon be a significant supplier in the Asian market?

Dr. MILLS. Mr. Chairman, I will leave it to Mr. Norbury to comment on the issue of whether the increased costs of preparing the timber effectively influences the stumpage price paid for by the industry. But the two principal competitors that southeast Alaska has faced and the authors project would continue to face are British Columbia and in Europe, and that the European suppliers in the sawn wood products have penetrated the Japanese market from less than 1 percent to about 10 percent in a decade.

Those are the two most important sources of competition that the southeastern Alaska producers face.

I would ask Dr. Brooks to describe how other potential sources of supply and competitors were faced, and in particular whether that is a fair representation of their consideration of supply from Russia.

Dr. BROOKS. Mr. Chairman, the description in our report about Russia or the reference to Russia was not intended to or does not suggest that we believe that production from Russia will increase substantially or change from its current position. We do project, however, that in some scenarios that production from regions other than North America or, more accurately, shipments from other regions other than North America to the Japanese market will increase.

In the median projection, however, we do not project an increase over the current volume. There is, of course, considerable disagreement, as you point out, about the future for Russia. The only additional piece of information that I think is worth considering is that in fact in the period since roughly 1990 Russian shipments into the

Japanese market have increased from their long-term—or they stopped declining and they in fact increased slightly.

Part of the explanation for that is that the export market is the most attractive market, given the collapse of the domestic economy in Russia and the desire to earn hard currency.

But we fully agree with the analysis that suggests that there are considerable difficulties and that the prospects for Russia are not that great. But we try to point out Russia is—the potential for Russia is an example of the challenges faced by Alaska in trying to produce and deliver to market lower grade products.

The CHAIRMAN. Robert Flynn's study or report notes, and this is with regard to Scandinavian, European timber going to Japan: "The potential to expand timber production in the region is relatively insignificant in comparison with the reductions in timber harvest in western North America in the first half. The estimated timber harvest in Finland may increase. In Sweden softwood harvests are expected to increase. But the potential increase pales in comparison to the anticipated drop in timber supply in other regions."

Is the Forest Service doing anything to help the Russians in their timber development?

Dr. MILLS. We do have some assistance programs that deal predominantly with reforestation and afforestation. I am not familiar with any direct assistance associated with processing and harvesting.

The CHAIRMAN. How about technical assistance?

Dr. MILLS. Technical assistance for reforestation and regeneration I am aware of. I am not aware of any technical assistance associated with harvesting or processing.

The CHAIRMAN. Anybody else on the panel?

Mr. JANIK. I would add fire prescriptions to that list. We are very active as a region in our international program, Mr. Chairman, with Russia, and on any particular trip that is made by our specialists, particularly through the State and private forestry program, we are confronted with quite an array of requests with regard to providing assistance. I am sure that during some of these visits we have talked about processing, but the targeted areas are the ones that Dr. Mills mentioned.

The CHAIRMAN. When you talk about reforestation, you are talking about your technical expertise that has been developed in the manner in which you what, leave fringes for natural receding on hillsides?

Mr. JANIK. Establishment of nurseries, those kinds of things.

The CHAIRMAN. Well, you do not have nurseries in Alaska?

Mr. JANIK. No, but we have experienced individuals in that subject area that are assisting the Russians.

The CHAIRMAN. So I guess it would follow that, while it is good to assist the Russians, the old theory of charity beginning at home occasionally—you cannot do the thinning that is necessary in the Tongass National Forest. You have acknowledged that in other meetings we have had, because of limited funding; is that right?

Mr. JANIK. That is correct. There are opportunities for thinnings that are not being realized because of funding restrictions.

The CHAIRMAN. But you go over and help the Russians.

Mr. JANIK. As part of the funding that is provided through the international program, yes.

Dr. MILLS. And if I could comment, Mr. Chairman, about some ongoing research work to provide information about opportunities that might exist in southeast Alaska to utilize the material that is there, including a subject that I know you are interested in, the second growth timber, some studies are currently under way working with some of the Native corporations in southeastern Alaska to determine the yields that can be achieved, the lumber yields that can be achieved from second growth timber, so that they can do a better job of assessing the profitability of opportunities.

So clearly the technical assistance is not only technical assistance that is given to the Russians, but a very active program of technical assistance to landowners in Alaska as well.

The CHAIRMAN. You assert that the Japanese Government may intervene to protect its domestic lumber producers. How do you reconcile this belief with the fact that the Japanese have been shifting increasingly to finished lumber from logs and with that outcome of the recent negotiations that have led to less, rather than more, protection of Japan's small inefficient producers?

Dr. BROOKS. Mr. Chairman, that comment about Alaska was perhaps—about Japan, excuse me—was a speculative comment. I think, however, there is more information, more contemporary information about the Japanese market that we conclude provides evidence of the competitiveness of that market and the challenges faced by all competitors in that market, not just Alaska.

We do not single out Alaska as particularly ill suited to compete in that market. We are simply trying to describe the conditions in that market and the realities of what is going on as part of the information base that is necessary to assess what likely market developments might be.

The CHAIRMAN. You know, what I fail to understand is why the Forest Service is not more inclined to let industry establish what market demand is, rather than come down with your proposed ASQ and have you substantiate what you think it is based on your ASQ, which is what you have done here. And virtually all of the projections that we have noted here have been subject to different points of view.

In a free market system, why, the market demand is set by the basic opportunity to market, as we traditionally look at the saw mill industry or the wood products industry in a world market. They either compete in the world market on a prevailing price or they shut down. There is no magic to it.

But what we are doing in this sophisticated analysis is something entirely different. We are setting an ASQ and backing it up with projections that are arbitrary relative to what the future market demand may be. When we started this process 15, 20, 25 years ago, this kind of sophistication was not part of the process. Capital went in, made an investment, and they either competed or they did not.

Dr. MILLS. I would certainly agree, Mr. Chairman, that in the end demand is the demand that is realized and it is a function of industry's decisions and ability to effectively compete or not compete. We have acknowledged very clearly that there is a great deal

of uncertainty associated with the demand that will occur in the future, and that is clearly represented by at least three scenarios that are provided, which vary considerably in terms of what that demand is.

Nonetheless, for timber as well as for other resources provided from the national forest, it was relevant information to consider when the decision was made, and I would certainly leave it to Phil Janik to describe how that demand information was considered and what weight it had in the determination of the ASQ. But I am fairly confident it was not the only consideration in setting the ASQ.

The CHAIRMAN. Well, no, but if the Forest Service had approved Alaska Lumber and Pulp's request for a 10-year contract and they had converted the pulp mill into fiberboard, which is what they wanted to do, that would have from their standpoint met what they assumed would be a demand for that new product, which would create obviously a market demand on the Forest Service to provide the timber. But the Forest Service chose not to consider the merits and grant that 10-year extension.

If the Ketchikan Pulp Company had been given their 15-year extension, they would have expended over \$200 million in a state of the art, chlorine-free pulp mill to utilize the utility grade and established a market demand, obviously, at a significantly higher level than exists now.

So as you subjectively apply your market demand on the basis of what you assume after you have taken away these two major users of utility volume, you have arbitrarily drafted a scenario for the future that you have basically controlled by the inability to allow the private sector to come in with new technology and amortize the investment with an assured supply of timber, since there is no other source other than the Native timber. There is no State timber, there is no private timber.

When you have a situation where you allow the export from the private land, which you do not allow that—that is just a reality. Maybe we should have put a restriction. In fact, had I have been here I think I would have insisted that the Native private land be subject to the same restrictions as the Forest Service, because that is the only way we are going to have any primary industry in southeastern Alaska or any jobs associated with the timber industry, because otherwise it would be subject to export because that is the most immediate return and the highest profitability.

That still leaves the dilemma of what to do with the utility, because much of that cannot stand being exported out.

But I guess my frustration is that you were the godsend in the sense of providing a market for utility. You have abandoned that obligation and left us with no alternative of what to do with the utility. I think you bear a responsibility, and it is not part of your walking papers, so to speak, as you put together your TLMP.

But anyway——

Representative VENTO. Mr. Chairman, let me——

The CHAIRMAN. Sure, go ahead.

Representative VENTO. On this point on the demand issue, I guess the numbers I had seen for 1996 were like 120 million board feet. This report, of course, provides for, the plan provides for up to 267. Can you explain the differential in terms of the existing de-

mand? That was with one pulp mill running, which is not now running. What is your response? Obviously, we are very concerned about going to that number.

I think, frankly, the whole issue of demand here—the United States is making, we made the market in this area, and it is a question of whether or not we want to continue the type of program that will sustain that market in terms of costs, because this becomes a very high cost type of program. Admittedly, in a mixed economy one might argue that there is a responsibility, an ongoing responsibility, a thing that the Senator, the chairman, would argue.

But would you respond to my question in terms of the 120 versus the 267 for the projected implementation of the plan?

Mr. JANIĆ. Mr. Vento, if I may start the answer to that and then maybe Dr. Mills would have a follow-up. But if I may try to clarify those numbers as you asked, the calculated allowable sale quantity in the revision is, as you state, 267 million board feet. I quickly point out, that is an average per year figure. You are familiar with those provisions, I know.

That is not a timber target. We are very careful not to describe it as such because funding and many other things affect what we actually offer per year.

The 120 figure that you quote was in fact what was harvested off the Tongass last year. However, the last 17 year average of what was harvested exceeds 300 million board feet off the Tongass. So that was kind of a blip in a long series of harvest statistics that were much higher, over 300 million board feet.

When you compare the 267 allowable sale quantity calculation with the old plan, the number is 520 million board feet. That was the calculation. So we have many that have pointed to this as a dramatic, substantial reduction in timber potential in terms of yield, and we have to acknowledge by the statistics that it is. It is about a 50 percent reduction in terms of potential, meaning the allowable sale quantity limit.

Now, next year, for instance, just as another example, we are projecting about 170 million board feet in terms of our timber offering, not 267. That is just based on anticipated budget restrictions and so on.

So we have been very careful trying to explain that the that 267 is a planning calculation, but a lot more comes into play when we actually deal with what we offer every year. The new revision does represent a substantial reduction in timber projection.

Representative VENTO. I know Dr. Mills wants to respond further, but there have been a significant number of changes in terms of land use in the area. So that issue—I mean, I do not know that the private lands, in this case the Native American lands, should be discounted as not providing jobs and so forth, because I think it is very important. That is the impression I had in listening.

But with regards to that, of course, I think it is appropriate to try to go to demand. It is a question of what gets factored into demand. If we are looking at the absence of these mills or the limited competitive ability of mills or other products, I thought the view was from the standpoint that we were trying to in fact sell a processed product rather than being a raw material supplier for the Pa-

cific Rim. Of course, pulp was one of them, chipboard could have been another, plywood would be another, I guess. But that is not realistic with the quality.

There have been a lot of changes in terms of these particular products. I know, for instance in my State, we have built up the number of chip plants to actually use the entire production in the State and in fact are utilizing a lot of hardwoods that were not formerly used in terms of pulp and paper. Of course, 20 years ago we thought of long fibers as being necessary to paper production. Today of course that is a much changed environment in terms of the technology. Because principally the woods produced in southeast Alaska are long fibers, the type of advantages that they had are not as apparent as they were 17 years ago when you had a cut.

But I think it is appropriate to look at where the demand is and what the costs are, and this is relatively high cost timber in terms of sale preparation, in terms of harvest, and so forth. So as a result we get a lower—it is something that we need to look at in terms of where the demand would be in terms of where the Forest Service and how we ought to function.

Of course, I think there are some other issues besides, that come in besides just the harvest, that come into consideration with regards to the forests in the southeastern Alaska and generally with regards to the American public.

Let me yield to Dr. Mills to respond to this ongoing dialogue and question.

Dr. MILLS. Well, I certainly agree with what I said earlier about the degree of uncertainty. I would also agree that the presence or absence of the pulp mills clearly affects what the effective demand for timber is in southeastern Alaska, and that there is a number of things that influences the industry's decisions to establish or to close individual facilities, and that those conditions can change over time. I would certainly agree that decisions by the U.S. Government can influence that cost structure, which simply adds to the uncertainty about projecting future demands.

The comparison—the only additional question I would raise is that the comparison between ASQ and the projection of demand—the ASQ is an estimate of technical and biological sustainability of the timber harvest over time, given the land allocations and the standards and guidelines for management of those various pieces of land, rather than some sort of calculation of the timber demand, and that some estimate of likely future demand levels is simply something considered in the setting of those land allocations and standards and guides, along with demands for all sorts of other resources and considerations, be they habitat for species or recreation opportunities.

So I want to caution on some direct comparison between allowable sale quantity and demand if they were intended to be the same thing.

Representative VENTO. They are of course not, not the same. I understand that, of course. But we look at these averages. As was pointed out, I pointed out in my statement, that neither of the pulp mills now are functioning. So in looking at demand, I think this is an unusual approach in terms of the Forest Service, to actually look at demand; is it not, Mr. Janik?

Mr. JANIK. As I said yesterday—I believe you had already left, Mr. Vento—we are developing procedures right now so as to become more definitive in how we are treating demand than we certainly have in the past. References like the Brooks and Haynes study will be just one reference in that regard.

If I may ask Mr. Norbury to just cover some of the other variables that we do and have considered in the past and will be considering as we develop these new procedures, I think that would help understand how we are seeing the total demand function.

Mr. NORBURY. Mr. Vento, let me comment on an earlier statement of yours. All the national forests as part of their National Forest Management Act planning cycle do consider demand for timber. In the analysis of the situation, demand for timber and demand for all the resources of the forest is considered.

It is the Tongass Timber Reform Act that has put particular emphasis on the treatment of timber in the Tongass plan. For that reason, I think we are going further in our analysis of demand here than perhaps has been customary in the past. As Mr. Janik said, we are going to try to carry that further and be a little bit more definitive in our treatment of it in the future.

One of the things that we are looking at is, in the Tongass Timber Reform Act demand is actually treated in two time frames. One of them is a planning cycle time frame, the other is an annual time frame. The study that has been the subject of dialogue here this morning has primarily addressed the planning cycle time frame, which is appropriate because what we are talking about today is the plan.

What Mr. Janik is talking about is how do we get from the plan level consideration, which has the—we have a demand forecast for and we also have an ASQ—to the annual timber offerings that we do? Now, the demand information coming to us from the planning cycle analysis is critical in beginning to figure out what we are going to do year by year. But there is other information that we have to consider as well when we make a decision on a year by year basis. There are other indicators of demand that are available to us year by year, that are not available to us when we are doing the planning cycle level analysis.

There are things like what is the volume under contract and what is happening to the volume under contract, what is happening to the ratio of our sale offerings to actual sales, how many of our sales go unsold, what is the ratio of the bids to appraised price? When bids run well ahead of our appraised price, that is an indicator of market scarcity; it is another indicator of demand. When we have sales that go unsold, that may be an indication that our actual sale offerings are running ahead of demand.

So our intention is to try to take all of this information into account in addition to the demand forecast done by the Pacific Northwest Station in setting our annual sale program.

Representative VENTO. Or what is in the package that is being offered for sale? For instance, so often I think the problems that I encountered in reviewing some of the issues in southeast Alaska, Mr. Chairman, is that there was interest in a certain type of Sitka spruce or old growth and there was not as much interest in some of the interior, more expensive type and less valued timber, which



might have served the Forest Service's purpose in terms of the totality of management of that particular forest.

But the issue with regards to timber under contract that has not been harvested in Alaska, what is the number of board feet that are under contract or have been sold but not harvested at this point?

The CHAIRMAN. I think, Bruce, you also have to ask at the same time how much of it is tied up in litigation.

Representative VENTO. Well, that is fine. I think that would be appropriate. Percentage numbers, and I think you may want to give a more definitive answer or a more precise answer for the record if you do not have that with you. But I think, in other words, this would be an indication.

I expect there is a problem now with two mills going down in anticipation. What is needed and what is your estimation in terms of what is needed if in fact—so we are trying to respond. I think this is a case where Milton Friedman does not have a chair at the table, Mr. Chairman.

The CHAIRMAN. But my point is, Bruce, that there is an assumption that you have got timber in the pipeline that ought to be available. But what happens more often than not is you get a timber sale and there is a challenge to the EIS.

Representative VENTO. That is fair.

The CHAIRMAN. So you have got it out there, but you do not have it.

Representative VENTO. Can we get any response to this now, or would you rather—

Mr. NORBURY. I think we would rather provide the information for the record.

Representative VENTO. There may be more correspondence on this, I think, and the nature of the question.

[The information requested was not received at the time the hearing went to press.]

Representative VENTO. It is important, I think, if we have to make a decision from a public policy standpoint in terms of what the responsibility is for the Congress, the Government in terms of monitoring, and the effect on the economy in southeast Alaska. I have some concern with that and with some of the other values, obviously, outside of simply the harvesting of the timber.

For instance, there is a suggestion that with longer contracts, of course, which is bidding on the hope that there would be jobs available—that is what they were doing with the 50-year contracts with the 2 mills, and that turned out to be a problem in my view.

But in fact, do we have any answers on possible scenarios that might play out in the future in terms of the competitive ability of southeast Alaskan mills to produce processed products other than pulp, like a veneer plant or some other types of alternatives? Was that part of the study here? Did we look at that in terms of what the jobs would be to be produced?

Dr. MILLS. We did not in the study incorporate some of the more recent proposals—the veneer mill is one, an ethanol plant is another; another has been described as a medium-density fiberboard plant—predominantly because we do not have sufficient informa-

tion to fully evaluate their competitiveness and only have estimates of what they state their utilization capability or capacity would be.

To the extent, though, that the veneer mill would actually utilize some of the lower grade utility logs to produce veneer, which is our understanding at least of what is proposed here, if they could do it with a cost structure that would permit them to compete, in fact it would complement quite nicely the saw mill industry that is there, which cannot utilize some of those utility logs and right now would have to try and sell them into the export market, and in fact if they could not sell them into the export market it begins to affect the profitability of the saw mill.

But we did not include those in the demand projections for want of sufficient information to evaluate their effective competitiveness.

Mr. JANIK. May I just add to that, Mr. Vento. The chairman is certainly aware of this. He has been partially responsible for getting our representatives from our Wisconsin Forest Products Lab to southeast Alaska.

Representative VENTO. From Madison.

Mr. JANIK. Yes, from Madison. What did you say?

Representative VENTO. No, no, you said Wisconsin.

Mr. JANIK. Okay, yes, at Madison. Thank you.

They have been out several times. Not only are they interacting with the Governor's Timber Task Force, but they have also held several workshops throughout southeast Alaska, and the very purpose of their visits is to help potential investors understand what opportunities might exist for the products at hand and maybe open some awareness, because of the changes that have taken place, as to what those new opportunities might be.

Representative VENTO. Well, I am sure the chairman would remind me that they want certainty and predictability. There is less flexibility for any entity that establishes a business in southeast Alaska based on a product from the Federal Government. So they need a reliable partner in the process, but I think it has to match what the forest plan is for the use driving the wood products.

I was listening to the discussion about the technical assistance, Mr. Chairman, with interest because up to a point most of the technical assistance in terms of forestry only went to countries that were subject to Agency for International Development funding, and we made some changes, for instance, in that at one point. You may have been involved. I was involved in the House side in providing some assistance to Brazil and other countries that were not AID countries.

So I am pleased to hear that they are providing technical assistance, I think in the broad sense. I do not know that it is appropriate to set up a platform for competition with southeast Alaska in Russia. I do not think that that was the intent. But it is—I think it should be a source of strength and I suppose a degree of pride that Forest Service research work and the technical expertise that they have developed is sought out and utilized by other nations.

In that vein, of course, looking at what might happen, of course, Siberia and Russia do possess a tremendous amount of timber, and it is not unlikely that, as in other cases, nations like Japan, perhaps Korea, would in fact set up entities that would in fact have

a contract to harvest, ship, do the entire. So that is, I think, a valid point.

However, I do not know how much it fits into your study, Dr. Brooks, but I was surprised to read the sudden increase in timber supply from Scandinavia in 10 years, going from less than 1 percent to 10 percent. What is the difference in terms of the cost of timber harvest in Alaska? You pointed out labor, but I am certain—I was sort of rankled by that. I came out of sort of a labor background, so I know it is not all going to the workers, but it is the cost of living in southeast Alaska compared to the difference in terms of Canadian dollar value and other factors as well, is it not?

But what is the differential in terms of is Alaskan timber, with or without the type of government support that is provided for it in terms of the Forest Service and other subsidies, what is the differential in terms of prices that we are facing?

It is lower grade, I heard you say that. Do you want to comment on that? Can you give that to me in sort of layman's language in terms of what we are facing in terms of a differential?

Dr. BROOKS. Well, if I may, Mr. Vento, avoid providing the details of prices, part of how I understand your question is the comparison of southeast Alaska to some of its competitors, including Canada and Europe or Scandinavia in this case. The explanation for the rapid increase in European shipments to the Japanese market is partly a consequence of cost differentials and partly a consequence of the products that they are able to provide to the Japanese market and the way in which the Japanese market is changing.

For nearly 20 years the Japanese market has been learning to do with less and less old growth timber and to adapt to use second growth and smaller diameter timber, and especially the products of smaller diameter timber. What Scandinavia and Austria are supplying to the Japanese market is small dimension, kiln-dried lumber that is used to be laminated into the posts that they use in traditional Japanese houses. That is the primary product.

There are a number of factors that have contributed to the attractiveness of that semiprocessed or final product in the Japanese market. That has been able to substitute for some of the old growth hemlock that has been used to manufacture that same product. It is partly a consequence of prices of the delivered product to the market and the cost structure of the producers and changing tastes and preferences in the marketplace.

Those are the kinds of factors that we have tried to bring to the forefront in our analysis of changes in market conditions and prospective future market conditions.

Representative VENTO. In your response to me it sounds as though they are using less old growth or that they are adapting to use less, that some of our products from Alaska would in fact be as desirable. But they are obviously also looking for raw logs, which obviously there is a limitation in terms of the export from Alaska or from other Federal lands, or should I say national lands. Get my semantics right.

But that, of course, I think is the concern, that we not end up being a source for raw materials as such, that we try to add value to the product.

Let me just skip over. Mr. Chairman, I have to leave here. There are a couple other hearings going on. But one of the issues, of course, is that you find out the wolf in southeast Alaska and the goshawk is species that are under consideration. I know that the chairman raised those and probably may have discussed it in more detail, and I hope I am not going over something that—

The CHAIRMAN. Great detail yesterday.

Representative VENTO. But the thing I want to talk to, I just want to get some idea, because I had not examined or studied the whole report, but do you consider these symbolic—or not symbolic, but keystone species in some way, that they are indicative of what is going on in the total ecosystem? What is the response here? I know that there is someone from the Fish and Wildlife Service here to answer questions concerning that as well.

Dr. EVEREST. I will take a shot at that, Mr. Vento. The wolf and goshawk are old growth-associated species, but they are just two of many old growth-associated species. The strategies for meeting the needs of the old growth species have addressed all of the species, not just those two.

Representative VENTO. We have addressed all of them, but they are highlighted in the report, or at least in the debate that is going on here. I would suggest that when you were dealing with the northern spotted owl that there was sort of a forest full of problems under that owl. What I am asking you here is, are these species, are they indicator species or keystone species, in the words of the ecologists?

Dr. EVEREST. I think you could reasonably call them indicator species. I would not call them keystone species.

Representative VENTO. Pardon me?

Dr. EVEREST. I say you could reasonably call them indicator species.

Representative VENTO. Well, you could call them keystone species. Jack Ward Thomas sort of schooled us a little bit on this. So they are keystone species. So when we start talking about them, they are old growth indicators. I think it is always a mistake to pick out, look at a bird, look at an individual species. It is kind of hard to defend a banana slug, but some of the others are working a little better when we are talking about the bald eagle or something.

It is important, I think, to recognize that this is the total ecosystem that we are probably talking about in this case; is that right?

Dr. EVEREST. Yes, that is right.

Mr. JANIK. If I may add to that, Mr. Vento. As the decisionmaker of the revision, the old growth habitat component is what the focus was, as Dr. Everest said. And that is that whole host and community of wildlife to depend upon that.

Representative VENTO. So we could isolate out the goshawk or the wolf and take care of those, raise them in zoos or whatever the Speaker has recently proposed, or lately—or not lately proposed, but some time ago—and it would not really satisfy and it sort of begs the question, is what my point is. The issue is that you make a decision about it, that these are helpful in terms of giving you

some guidance as to what the status is in the health of the old growth system.

Dr. EVEREST. That is correct.

Representative VENTO. And I do not know if anyone is debating that, but I just think that it sort of begs the question. You can have a disagreement about how much of that you would like to have available, that low elevation old growth in this sort of 6½ million acres that exists out of the 17 million in this area, if it is even that much that has not been harvested.

But that is what the debate is about and that is of course what many of us will be focusing on.

Mr. Chairman, I have been buzzed to come back and have my presence in the House recorded, so I am going to yield and thank you for your patience and courtesy to me in asking questions.

The CHAIRMAN. Happy to respond, my friend. Let me just remind you that it is estimated that the Tongass, of the old growth, about 30 percent is dead or dying. That is just the natural phenomenon of the recycle. Under our current proposal, 92 percent of the forest would remain untouched for the next 10 years, I think, 84 percent for 100 years.

I do not know how many saw mills or wood manufacturing facilities you have in your State, but I know you are traditionally a producer, a large producer. I think it is important to note here that we have three saw mills left that are considered large operators—one in Metlakatla, one in Ketchikan, one in Klawak—that would require about 155 million board feet a year.

There is a group of small mills that are very, very small. They cut between 5 and 10 a year. If you add them all up, there is two, four, six, eight of them. They cut about 75 million a year. So if you take the 3 mills that we have and the small ones that operate infrequently, you are looking at about 230 million a year.

The problem with this is that the Forest Service has not seen fit in its ASQ to consider the potential of the Sealey mill, which may or may not become a reality in Ketchikan. It formerly was an operating mill, so the Forest Service provided timber. The Wrangell mill which sits there has been shut down for the last 3 years. In a community of 2,200, it is the only job base year-round—down, no timber. Then the potential ethanol or veneer plant, which would utilize utility timber.

That is the problem we have got, Bruce. When the Forest Service lab comes up and presents me with an analysis that they have studied the utilization of marketing the dead yellow cedar, well, that is such a fraction, and the Japanese will not buy dead wood. I am a little perplexed.

We need their expertise, but you and I know the sophistication of capital. And with the example that capital has had in the wood manufacturing products in Alaska, banks are not anxious to lend and entrepreneurs are not anxious to invest because of the continual problems associated with the ability of the Forest Service to provide and, if they can provide, the ability to deliver, because more often than not there are continuing lawsuits brought to bear.

You are in for—your frustration as you put up timber sales and do the best you can on the EIS' and have them challenged. As a consequence, Bruce, we have got 67 environmental groups in Alas-

ka now, all with young attorneys in Anchorage where they have their offices, and they come from Brown, they come from Harvard. They do their missionary work in Alaska, and they have to have a cause. So the cause is any environmental.

You do not quite have that in your State because you have private land, you have a developed resource. We are the new kids on the block, and we are a public land State. Sometimes, Bruce, it is like rowing uphill. And it is important that you come over and expose yourself to some of these problems, because they are a little unique.

Representative VENTO. It has been some time, Mr. Chairman, since I have been to southeast Alaska. Perhaps in the near future we will find an opportunity to visit.

We do have a lot, of course, of State and national land in Minnesota, a couple national forests, as you know, that have their own issues, and they do add to it.

The CHAIRMAN. I am aware of your Boundary Waters. But keep one thing. What has happened to us in the last 5 years is the Forest Service's cost of preparation of timber has doubled. It has gone from \$50 to \$100. As you look at the generalization that, well, you know, this is a subsidized forest, that is part of the problem.

Representative VENTO. Part of the problem might be treating plans like rules, Mr. Chairman. You know, it is expensive to prepare those plans, and if you do not want to go through the expense of preparing the plans and doing the work, the preparatory work that is necessary to integrate with the other laws that we have on the environment, and then to add to that now something that is going to—I mean, I understand the concern, but this obviously is a two-way street. All of a sudden it is every lease we do, every sale we do that is going to be subjected to the type of rule.

Basically, I voted for that and most of us voted for it, but I do not think we anticipated necessarily—and hopefully we can get this issue resolved in a way that will provide for some predictability and certainty.

I will have to excuse myself, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you again.

I think we have to call a spade a spade, and if the costs go up then it is a subsidy and we are going to have to live with it.

Phil, you said in your testimony yesterday that it is your belief that the Forest Service is under no legal obligation to meet the demand for the Tongass timber. I found this statement disturbing yesterday. I find it disturbing today, in light of the fact that the Tongass Timber Reform Act declares that the Forest Service "seeks to meet the demand" for timber from the Tongass.

I wonder if you could give us a little further explanation of your statement?

Mr. JANIK. I will try to do that, Mr. Chairman. What I tried to express yesterday was that, although we very much have an obligation to try, to try to do the best we can to meet demand, because the law says that we ought to do just that, there is no legal obligation as we interpret it that we have to achieve a precise level that may be estimated or observed.

That does not mean we are less committed to trying to achieve that level. But there is no absolute legal obligation.

The CHAIRMAN. Well, would it not seem to you if the forest management provision—and I am going to read it to you: “The Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of the renewable forest resources, seek to provide a supply of timber from the Tongass National Forest which: meets the annual market demand for timber from such forest and meets the market demand from such forest for each planning cycle.”

Now, that to me says you seek to meet market demand.

Mr. JANIK. Yes.

The CHAIRMAN. And it is part of the statute.

Mr. JANIK. That is exactly what I am trying to explain in terms of how we interpret that. That is that that second part of that phrase is very important. We have tried to address all our other obligations with regard to multiple use on the Tongass. That is what the revision represents and the best we can do with regard to that in combination with the timber projection is to calculate a 267 ASQ.

The CHAIRMAN. Well, notwithstanding the 1990 Tongass Timber Reform Act “seek to meet market demand” language, did you calculate the ASQ in basically the same way that it is derived on other national forests?

Mr. JANIK. I cannot honestly say I know how demand is calculated on other national forests. As Mr. Norbury said earlier, we have the additional—

The CHAIRMAN. I am not talking about the demand. I am talking about the ASQ.

Mr. JANIK. The ASQ is a function, as was said by someone here earlier, and I agree, of the total land base, the land allocations, and the prescriptions that were decided in the revision. And from that comes the calculation—

The CHAIRMAN. My question is is it calculated in the Tongass the same way it is calculated in other national forests?

Mr. JANIK. In that sense I would say yes.

The CHAIRMAN. You would all agree to that?

Dr. MILLS. In general, yes.

The CHAIRMAN. What do you mean, “in general”? It is or it is not. Is it calculated as the same basic concept or way? Are there different regulations or different laws?

Dr. MILLS. Using your terms, conceptually in the same way, based upon the requirements of law and land allocations and standards and guidelines, I would answer yes. In terms of any particular computational method that is used, it varies considerably from forest to forest, or computation to computation.

The CHAIRMAN. So it varies considerably from computation to computation?

Dr. MILLS. It varies in the details of the computational procedure, not in terms of the concepts that underlie the calculation.

The CHAIRMAN. In terms of laws that are applicable, you are telling me it is identical to your other national forests? Is that what you are telling me?

Mr. JANIK. No.

The CHAIRMAN. Okay. Well, let us start again.

Mr. JANIK. Let us start again. I thank you for that.

The CHAIRMAN. I just noticed you were briefed there a little bit, so go ahead.

Mr. JANIK. Well, yes, my legal adviser wanted to make sure that I was clear on this.

The CHAIRMAN. I thought we would catch a little attention on this one.

Mr. JANIK. What I was trying to explain earlier is the actual calculation of ASQ, the mechanical computation is very similar.

The CHAIRMAN. Very similar.

Mr. JANIK. Right, to the rest of the forests.

The CHAIRMAN. But it is not the same?

Mr. JANIK. What is considered——

The CHAIRMAN. It is not the same?

Mr. JANIK. What is considered in that process is——

The CHAIRMAN. It is not the same or is it the same?

Mr. JANIK. I would say the actual process and methodology of calculation is very similar.

The CHAIRMAN. But not the same?

Mr. JANIK. I cannot say how each forest does this, Mr. Chairman. But I believe our procedures are in line with the rest of the national forest system direction that comes out of NFMA.

However, in terms of the existence of the Tongass Timber Reform Act—and I want to be clear on this point—we certainly have an additional emphasis put on demand, and we are very serious about that and pay very close attention to that. But the second part of that phrase is what in fact has limited our ability to go any higher with the allowable sale quantity, and that is all the obligations that we have in the multiple use setting.

The CHAIRMAN. When you say with regard to demand, and we have gone through the demand and it is so hypothetical relative to what the demand really is.

Mr. JANIK. I do not argue that point. That is a very difficult situation to deal with and to say here is what the number is. I do not argue that point.

The CHAIRMAN. So you would say then that you do calculate the ASQ in basically the same way that it is derived on other national forests?

Mr. JANIK. We consider different things and we put more emphasis on observing demand because of TTRA. The actual computation based on features that control and limit the ASQ, I would say that is similar, meaning land allocation, size of the forest, and standards and guidelines that cause restrictions in our ability to realize more timber yield.

The CHAIRMAN. Dr. Brooks, I wonder if you could comment on your analysis of demand that suggests that your estimate of demand should be a hard cap on timber sale offerings?

Dr. BROOKS. Mr. Chairman, I have never said that.

The CHAIRMAN. Go ahead. The point is does your analysis suggest that there should be a hard cap?

Dr. BROOKS. No, it does not. Our analysis suggests that this information that we provide is among the information that should be considered in establishing the annual sale quantity. But we also try to point out in our analysis that there is considerable uncertainty associated with our projections of demand, and we have tried



to display that as explicitly as possible, not only the range of uncertainty through the three scenarios, but to describe some of the other factors that would contribute to additional uncertainty around the trends that we project.

The CHAIRMAN. Well, we have acknowledged the uncertainty. Yet the uncertainty has resulted in the conclusion of an ASQ. So you have pulled down a scenario to fit, if you will, recognizing the uncertainty. Is that a fair statement?

Dr. BROOKS. Our analysis simply focuses on projected demand in markets, and we have provided information and this analysis to the region. There is no science component or no science responsibility in setting the ASQ.

The CHAIRMAN. I am going to go back to my discussion with Mr. Vento very briefly relative to—and I am sure you are familiar with—the material that consists of the recognition of, here we have the largest of all our national forests and we can identify an industry that is left with three modest sized mills, that would be modest in comparison to what California, Oregon. Modest; they are not large.

I see Mr. Powell nodding his head. The rest of you are refraining, but I will just generalize by suggesting these are modest, 3 modest sized saw mills that probably employ, what, 50, 75 people? Mr. Powell, you know what Ketchikan employs?

Mr. POWELL. I do not have those numbers with me. They actually employ a few more than that. I think the 2 saw mills that Ketchikan Pulp Company is running, they are estimating they employ somewhere in the neighborhood of 200 people. It is a little hard, though.

The CHAIRMAN. Is that in the saw mill, though, or in the woods?

Mr. POWELL. I was going to say, they also have their woods operation people and their loggers and their administrative people that are tied into those numbers.

The CHAIRMAN. We have the personnel numbers here and I will get them.

Then we have the Viking Lumber Company in Kawak and that is really the state of the industry as it exists. We have seen the saw mills being built in Seward on two occasions, saw the impact of logging in Chugach, relatively limited as far as anything compared to southeastern is concerned; is that not right? Not much going on up there.

Mr. JANIK. Not much going on up there.

The CHAIRMAN. And there has not been for a long time. Costs are too high and just it is a tough, tough operation, barging off Montague and Hitchinbrook and other areas. So it is fair to say that the opportunities, limited as they are, are located in the southern part of the State. So the industry consists of 3 saw mills left, and the estimated requirements are 155 million board feet a year. Is that right?

Does anybody know?

Mr. POWELL. I could comment on that. That is I think approximately the capacity of those mills. Now, the requirements may be substantially different. As you mentioned, those mills can operate on one shift or they can operate on two shifts, and in reality they

generally operate somewhere between that depending on the economic conditions.

The CHAIRMAN. Or the availability of logs.

Mr. POWELL. That is certainly one of the factors.

The CHAIRMAN. You cannot run a saw mill if you do not have any logs.

Mr. POWELL. I would say that is accurate.

The CHAIRMAN. Well, we have established that.

If you take their requirements of 70 million in Metlakatla and I believe it is 50 million in Ketchikan and 35 in Kawak, I think that is 155 million. Then there is a small mill in Petersburg, 10 million, that operates once in a while. There is Pacific Rim Cedar in Wrangell that I think takes, I do not know, 10 million. There is a Metlakatla tribal mill that is at the old airport at Annette Island that tries to take 10. There is the Kensley mill which I am not aware, that takes 10. Herring Bay takes 5. Icy Straits Lumber in Hoonah is 10. Then there is a shake mill at Thorn Bay that takes 10, and there is something up at Chatham.

These little guys, 75 million if they are all operating. Now, that gives us 230 million. And your ASQ is 267, and that includes utility, right? And how much utility is in that 267?

Mr. JANIK. About 18 percent, as I understand it.

The CHAIRMAN. Give me a figure.

Mr. JANIK. 18 percent.

The CHAIRMAN. I will have to figure the percent out?

Mr. JANIK. That comes out to nearly, I think——

The CHAIRMAN. About 50 million?

Mr. POWELL. About 50 million.

Mr. JANIK. About 50 million.

The CHAIRMAN. And you are pretty satisfied that you will stand behind your statement that there is a real, a real 210, 215, 217 commercial saw log availability?

Mr. JANIK. With the caveats you mentioned to Mr. Vento. That is, our ability to deliver that depends very much on appeals, litigation, that kind of thing.

The CHAIRMAN. And how much of that do you have in the pipeline now?

Mr. JANIK. If I reference this year, Mr. Chairman, and next year as an example——

The CHAIRMAN. No, this year right now.

Mr. JANIK. 220 million board feet, although 50 of that was part of the KPC settlement. So 150 to 170 million board feet is what we anticipate offering this fiscal year.

The CHAIRMAN. How much of that is tied up in litigation?

Mr. JANIK. Fred, do you happen to know that?

Mr. NORBURY. We have several lawsuits right now, but we do not have any significant amount that is actually under injunction.

The CHAIRMAN. Well, is 150 available, then? No lawsuits against it until tomorrow?

Mr. POWELL. One thing I would add to that, there is about 500 million currently under contract, sold timber. So that is what the industry is currently operating on, in addition to the timber that Mr. Janik has just mentioned that is being prepared and offered this year.

The CHAIRMAN. Well, I am talking about the 150 that Mr. Janik mentioned, 220 less 50.

Mr. JANIK. That is what we are shooting for this fiscal year.

The CHAIRMAN. You are shooting for, but it is not available now? It is not under contract?

Mr. JANIK. Unless interfered with, it will be available.

The CHAIRMAN. By when?

Mr. JANIK. By the end of the fiscal year.

The CHAIRMAN. By the end of September?

Mr. JANIK. Yes, sir.

The CHAIRMAN. Now, in addition, since we have spent so much time on the issue of utility, if we look at the potential of a veneer mill in Ketchikan, I am told that is going to require, what is this, 30 to 80 million board feet? 50 to 80 million board feet. And the Wrangell saw mill would require 100 million board feet, and Sealey's mill 20 million board feet, and an ethanol, which I assume would use pretty much hog fuel, you are looking at another 190 million board feet.

If you add 190 to what you have got, the large mills needing 155, the small mills needing 75, that is 230. You add 190, you are up to 420, which is far in excess of your ASQ, right?

Mr. JANIK. That is correct.

The CHAIRMAN. So you have disregarded how you are going to meet your obligation to fully utilize the product of the forest, the significant portion being the utility, then you have just not addressed in your ASQ as to how we utilize that.

Mr. JANIK. I think that is the basic disagreement we have, Senator.

The CHAIRMAN. Well, let us talk about it.

Mr. JANIK. We have set our contribution to satisfying whatever need—

The CHAIRMAN. Well, just a minute. Now, the last time you gave a 50-year contract to address utility timber, right? That is what you did. Is there a reluctance to acknowledge that?

Mr. JANIK. To stimulate the markets in southeast Alaska.

The CHAIRMAN. Stimulate—to create the market.

Mr. JANIK. Yes.

The CHAIRMAN. There was not any market before.

Mr. JANIK. I believe that was the justification for doing it by the Government.

The CHAIRMAN. And the rationale is we would ship those utility logs down to Bellingham or Everett as opposed to manufacturing them in southeastern Alaska. That was the justification for the contract, because that is what would have happened. And that was the whole rationale that the Government had.

Now, 50 years later, we are left with the utility, which is 30 percent or whatever. What is the utility?

Mr. POWELL. About 18 percent. Mr. Chairman, one clarification on what you were saying, though, when you added those numbers, particularly with the ethanol plant, particularly with the veneer plant. Those numbers that do utilize primarily the utility grade would not be additive onto that total, because they are really looking at using that portion of that that is not going to the saw mills. So those numbers would be discounted somewhat.

We do anticipate if those types of mills were brought on line that they could fit.

The CHAIRMAN. Well, the Sealey mill would not be part of that.

Mr. POWELL. No, just the veneer plant, just the ethanol plant. In fact, the Ketchikan proposal would see Alaska really looking at trying to use that material that we have talked about as utility, that has been talked about being exported, and could be encompassed within this ASQ figure that we are talking about.

The CHAIRMAN. Yes, but what you fail to in my opinion address is any responsibility to try and accommodate and encourage investment to utilize this resource, because, as you stated yesterday, Phil, you prepared—you have allowed the export based on, I assume, the circumstances as you see them.

Mr. JANIK. There is no available market for utility and some of these smaller companies are about at their limits.

The CHAIRMAN. My question to you is, I think you have an obligation to substantially assist in some manner or form the creation of a utility utilization, as you did 50 years ago. Now, it is not going to be the same kind of a contract, but clearly forest management practice dictates you are going to leave more wood in the woods if you do not have that utilization.

Your business is the best forest monitoring practice, and that suggests you get the greatest utilization out of the resource that you can. I am disappointed that you are not putting more emphasis on that, because that I think is the significant void that we face. I am going to continue to keep preaching that until we get something done about it.

We are going to have a vote in a few minutes, so I am going to continue the questioning, because we have got probably, we have got two or three, three more areas of questioning that I want to pursue.

This is on general timber sale economics and the final TLMP. Historically, only about two-thirds of the ASQ has actually been harvested and processed by the mills, due to losses from appeals, litigation, and non-economic sales. If this trend continues under the new plan—and I see little reason to suggest it will change—the actual harvest we can expect to see from the Tongass would drop to around 150 million board feet or less.

Is that a realistic assessment based on the history?

Mr. JANIK. I personally would not translate that to the revision. What we have tried to do in the revision is improve our ability to successfully defend sales if they should be litigated, based on the provisions and the compliance with the law.

The CHAIRMAN. Would you say that is an unrealistic assessment?

Mr. JANIK. I would hope we would do better than that.

The CHAIRMAN. What would you hope you would do?

Mr. JANIK. I have no idea, Mr. Chairman.

The CHAIRMAN. Well, that is why I posed this question, because if the trend continues, and there is no reason to suggest that you will not have as many suits as you had before, then the new plan will harvest about 150 million board feet. Now, what do you see as you doing that would change that?

Mr. JANIK. As I have said, I believe the revision is now better prepared to not keep us out of the courtroom, but to have us be

successful in the courtroom. Certainly we are going to experience delays, as we have in the past, and that does deal with the subject area reliability, which we all want to see improved upon, and we are going to do our best in that regard.

The CHAIRMAN. The reaction to the new plan from both environmental interests and commodity users suggests a continuation of the existing tension between the various interests. Now, both sides, for decidedly different reasons, appear less happy with your decisions. Is that a fair statement?

Mr. JANIK. I think that is a judgment that can be reflected by some of the reaction we have gotten, yes.

The CHAIRMAN. At the harvest level of 150 million board feet, which we can or cannot assume, but is historically at least possible, a not unlikely outcome given, as I suggested, the past decade history, only about 75 million board feet would be saw log quality; is that correct?

Mr. JANIK. I could use some help on that.

Mr. POWELL. I do not think that is correct.

The CHAIRMAN. What do you think is?

Mr. POWELL. Well, again, if we use the utility figures that we have talked about, you would discount about 20 percent of that. I think what you may be referring to is again another 10 percent or so of that would be cedar products, and then again you have got low quality saw logs that typically have gone to a pulp mill, but now we would be looking at a higher percentage of that actually going to a saw mill.

The CHAIRMAN. Well, what do you figure, then, would be saw log, saw timber quality out of 150?

Mr. POWELL. Well, a simple calculation again would be taking about 18 percent off for utility. So you are going to end up around 80 percent is of a saw log grade, and then discount 10 percent of cedar if you assume that that is not a part of what you are talking about and you are around 70 percent is of the saw log grade. Granted, some of that would be lower grade.

The CHAIRMAN. So you are looking at roughly, you would suggest, 100 million?

Mr. POWELL. I think with your 150—

The CHAIRMAN. Well, it is important, you know, that we have some degree of accuracy. I might suggest we are going to hold you to these figures to some extent, because this is what the industry has to depend on. It is all they have got.

Mr. POWELL. With your scenario of 150, 70 percent of that would be close to 100, 105 or so.

One other point to remember, though. The cedar part of this, as Mr. Janik mentioned, we are also looking at how that would be handled in the future in terms of export. In fact, Mr. Sealey's mill that you mentioned earlier, Mr. Sealey is actually looking at his mill processing cedar. So if in fact there were cedar mills, then you would have to add that cedar.

The CHAIRMAN. Well, would the Forest Service stop the export of cedar if Mr. Sealey's mill got on line?

Mr. POWELL. I would say that very issue about export of cedar is one of the things that we are reviewing currently.

The CHAIRMAN. Yes, but gentlemen, no one in his right mind is going to build a cedar mill if you are going to allow the export of cedar. You are either not going to allow it if somebody builds a mill and they have the assurance that they will have a market, because the stupidest thing that they could do would be to build a mill and not have the assurance that you are going to prohibit the export of cedar.

Mr. JANIK. Mr. Chairman, I said yesterday—I believe it was me that said this, and I will say that again with emphasis—the very reason we are looking at the export policy is because we think we do need to be more restrictive with the policy. What you are asking for here is you are asking for some predeterminations.

The CHAIRMAN. On the other hand, you are indicating you are going to approve specific requests for export of raw log utility because you have no use for them.

Mr. JANIK. The final policy will determine exactly what we will be doing. We would expect it to be more restrictive.

The CHAIRMAN. Well, let me tell you. Nobody is going to go in and invest a nickel unless there is some assurance from the Forest Service on continuity and a guarantee of a supply of timber. Now, one of the things that I am interested in Mr. Powell's statement, and I have got to run, but I will just leave you with this thought. You have just given us an indication that we are going to have roughly 100 million board feet, assuming the 150 million is correct relative to your ASQ deliverability.

So we are going to have 100 million board feet of saw logs. And yet our large operators' consumption requirements is 155 million board feet, and we have not taken care of the small operators, which are 75 million board feet, for a total of 230. So already we are 130 million under the capacity, if you will, of the industry, which is relatively insignificant in comparison with other States and operating in other forests. And we have not addressed the Wrangell mill, which is another 100 million.

So this ASQ that you have come up with as far as saw log availability in relationship to installed capacity is 130 million short. That is what you have left us with in your ASQ today, and I think that is unconscionable, if you will, relative to the obligation that you have and the volumes that we were cutting before, which was 450 with the 2 pulp mills.

I am going to have to go. I leave you with the questions, but you can answer that if you want or make any comments you would care to. You can keep going.

Mr. REY. Let me just continue and see if we can close out this area, and then maybe we will just take a break.

Generally speaking, notwithstanding the difference between the ASQ and actual production, it is your view that you still have met the "seek to meet market demand" language in TTRA, even though you may not deliver what is actually in the ASQ; is that correct?

Mr. JANIK. Let me make sure I understand the question. Even though we may not achieve the ASQ level of 267 in any particular year?

Mr. REY. Right.

Mr. JANIK. We would judge that we are still meeting the obligation of TTRA?

Mr. REY. Right.

Mr. JANIK. Let me answer that again this way. The direction in the law, TTRA, does say "seek to meet timber demand." But it also says within the context of the other multiple use objectives. That brings a whole new dimension and array of obligations that we have tried to address in the revision and we judge we have.

267 is the calculation that has come from that. We have tried to pay attention to the demand function as best we can in fulfilling that obligation. But yes, in the context of not achieving the ASQ and given all the other obligations that we judge we would have met, we would consider ourselves in compliance with the law.

Mr. REY. In your record of decision you precluded timber harvested on forested wetlands. How many acres of timber was scheduled to come from such lands and what was the ASQ effect of that measure?

Mr. JANIK. Mark, if I may get some help here, because we have some definite numbers on that that we can provide and I do not want to misquote those.

Fred, can you handle that?

Mr. NORBURY. Yes. There were 2,500 acres of forested wetlands of the 4 specified types scheduled for harvest over the next 100 years, approximately 70 acres in the first decade.

Mr. REY. The amount of economic timber in the new plan, or the NIC 1 lands as the plan calls them, is about 219 million board feet. Logging costs obviously have a big effect on whether or not timber is economic. As I understand it, you recently issued an interim directive to your timber sale appraisal handbook which shows logging costs—we are talking about logging costs rather than preparation costs now—logging costs had increased by some 34 percent.

What effect will this have on whether or not the 219 million board feet of economic timber can be achieved?

Mr. JANIK. If I may, Mr. Norbury.

Mr. NORBURY. The NIC 1 component is not based on logging costs directly. It is based on offerability, as you probably read. It is what is considered normal offerability, harvestable with normal equipment. We actually have done a recent comparison of appraisals in the 1994–97 period of the sales offered in 1994 to 1997 with what we used in the model, the FORPLAN model, for estimating the ASQ.

What we found was that the costs were actually very comparable. So we are fairly comfortable that numbers that were used in the model for calculating ASQ are comparable to the appraisal allowances that have actually occurred in recent years.

Mr. REY. So the increased costs would not in your expectation make the NIC 1 component substantially smaller as you move to plan implementation?

Mr. NORBURY. The costs themselves will not change the NIC 1, NIC 2 component. That distinction is based on the offerability layer. The standards and guidelines can have some effect on offerability, which would change the NIC 1, NIC 2 component. Increased logging costs, if they occur, could have the effect of making some more of the NIC 1 uneconomic. But we do not have a separate estimate of that.

Mr. REY. Do you have any sense of that at this time?

Mr. NORBURY. It depends critically on what you think is going to happen to prices. If you accept—the price projections done by the Pacific Northwest Station show that prices will increase in the coming years. If prices increase the way we expect them to, all of the NIC 1 will be economic. In fact, all the NIC 2 will become economic as well.

Mr. REY. But that is based on price assumptions as well?

Mr. NORBURY. That is based on price assumptions, yes. Currently our harvest comes about—some portion of the NIC 2 is also economic. About 8 percent of our current harvest comes off lands that we would now categorize as NIC 2.

Mr. REY. In appendix B of the FEIS, you indicate costs relating to timber harvests had been calculated using actual cost expenditure reports, so in other words these are historical costs for harvesting under the old TLMP, is that right?

Mr. NORBURY. It is based on harvests under the old TLMP since that is the plan in fact that is still in effect. So all the appraisals have been done under the old TLMP.

Mr. REY. In your ROD you say that 35 percent of the harvesting will be by methods other than clearcutting. Is it not true that it costs substantially more to log using these other methods?

Mr. NORBURY. It certainly does. The costs are much higher with the alternative logging methods. The FORPLAN model explicitly recognized different logging costs with different harvest methods and also with different volume classes. So that the costs for the low volume partial cut harvests as shown in the model is much higher than the clearcut, easy to access ground.

Mr. REY. One element from your timber model that will have a direct effect on the amount of economic timber is road construction costs. As I understand it, for at least the first decade you used an historic average of a mile of road for each 2 million board feet of timber; is that correct?

Mr. NORBURY. The FORPLAN model actually has .4 mile of road per million board feet harvested.

Mr. REY. That is close to what I calculated. Given that the road construction history was developed under the old plan, including nearly exclusive use of clearcut logging, fewer stream buffers, no 1,000 foot shoreline setbacks, and no additional standards for martens, wolves, goshawks, fewer visual constraints on harvesting, would you not expect the amount of timber harvested per mile of road to decline under the new plan?

Mr. NORBURY. It is generally true that with partial cut harvests and considering the facts that you have laid out that the miles of road constructed per unit of volume harvested are going to go up, and they have been going up on the Tongass for some time. We believe, though, we have modeled them accurately. We think this .41 estimate is what we expect to occur.

Mr. REY. So you would not expect a decrease in volume per mile to have any effect on the NIC 1 size?

Mr. NORBURY. Again, it will not affect our categorization of NIC 1 and NIC 2. It could—if the miles of road requirement goes up more than we expect, then what that could do is render some of the NIC 1 uneconomic, that is correct.



Mr. REY. I understand that the forest is nearing completion of a sale called the Indian River sale, and I believe that that sale largely incorporates the new standards and guidelines from this new TLMP. Is that correct? Anybody know?

Mr. NORBURY. All the sales that are about to be decided are incorporating the standards and guidelines of the new TLMP, with some room for interpretation of the mitigation measures that we discussed yesterday for goshawk and marten.

Mr. REY. As I understand it, the completed appraisal on the Indian River sale shows all of the alternatives that you are considering in the sale package turning up deficit. Is that correct? Does anybody know?

Mr. NORBURY. I am not familiar with the details of the Indian River sale.

Mr. JANIK. I am not, either.

Mr. REY. Why do you not submit that for the record.

[The information requested was not received at the time the hearing went to press.]

Mr. REY. The point of the questions was to look at Indian River as an example of a sale that incorporates the new standards and guidelines and evaluate whether the alternatives do turn up uniformly deficit or whether our information is wrong on that.

Mr. NORBURY. I would comment, however, that many of our existing sales have all the alternatives appraised at a deficit in the stage two stage, at the EIS preparation stage, and still sell positively. It is critical upon the state of the market when you offer the sale.

Mr. REY. I see.

In the record of decision you say that some of the measures added in alternative 11 have not been explicitly modeled, but were judged to be relatively small. Can you elaborate on which things were not modeled?

Mr. NORBURY. Are you speaking of the mitigation measures for goshawk and marten connectivity?

Mr. REY. Right.

Mr. NORBURY. We did not explicitly model any of those mitigation measures. The fundamental reason was that—actually there was several reasons that were prominent. One of them is that there is some suitable land that is not scheduled that is available to make up any slack that is created.

Part of it, though—and this is probably the major reason—was that our conclusion was we probably would be double counting if we tried to model it. There is two kinds of double counting that occur. The marten and goshawk mitigation measures basically force you to use something other than clearcutting, some sort of partial cutting regime. We already expected to do something other than clearcutting on about a third of the lands harvested anyway.

In addition, the FORPLAN model includes some constraints to meet visual quality objectives, and our estimate, based on some preliminary analysis, was that the restrictions on harvest that were already forced in order to meet visual quality objectives would account for any reduction in harvest for the marten and the goshawk.

The way that would work out, what we would do, if we had come back—we thought if we had gone back and explicitly modeled for the marten and goshawk, that would in turn allow us to relax the visual quality constraints and that would compensate for the harvest reduction that was caused by the marten and goshawk standards and guidelines.

Mr. REY. I am reading from a January 21, 1997, memorandum to "Fred" from Kent Julian. The subject of it is "NIC 1 consistency issue." At the beginning of it he states: "NIC 1 is overestimated in the preferred alternative, alternative 11, by about 12 percent based upon a proposed refinement of the operability layer developed by Don Gulnak and Gary Fisher during revision of the forest plan. The approach, which was not used in the final plan, consisted of reclassifying lands originally designated as having normal operability as difficult operability based upon their proximity to other areas designated as normal and distance from existing roads."

Can you tell me whether that difficulty has been corrected or is there still a problem in the model in terms of overestimating NIC 1?

Mr. NORBURY. I am aware of the memo and I can get into that topic quite deeply. John and Dave actually did the analytical work and if you want to get into that we can have John address some of the particulars.

My recollection of what John reported to me was that there was an error in the analysis that that memo rests on. It was an inadvertent error that was actually, they were running an algorithm that had originally been written to test the capabilities of a new work station that they had and it was not intended for production work. The fault of the algorithm was that it tended to find some areas to be NIC 2—it found NIC 2 within NIC 1, but did not find NIC 1 within NIC 2. So it had a bias in it.

Once we worked through that, we remained convinced that the original classification was correct. Now, we have acknowledged that NIC 1, NIC 2 distinction that is in the plan is based upon the existing operability layer, and that operability layer will be updated over the course of the plan implementation so that the NIC 1, NIC 2 balance may change.

The CHAIRMAN. To go back, Mr. Powell and Mr. Janik, relative to what we were looking at, you did not concede that, based on the historical experience, that the ASQ would actually drop down to 150 as I cited. Historically, only about two-thirds of the ASQ has actually been harvested and processed by the mills due to loss from appeals, litigation, and non-economic sales. You indicated that you thought you could do better than that as a consequence of your current commitment and structure.

So I want to go back and try and pin you down on what you think you can do.

Mr. JANIK. I have no idea, Mr. Chairman. You are asking me to predict the outcomes and frequency of appeals and litigation.

The CHAIRMAN. Well then, will you agree—

Mr. JANIK. I have no way of determining that.

The CHAIRMAN. Will you agree that, based on the historical harvest and the actual challenges that have been made, that we historically would see somewhere around 150 million or less?

Mr. JANIK. If you apply the historic statistics? I suppose if you just do that simple mathematics, that is what you would get. But what I am saying is there is no way to predict if that is going to be the reality.

The CHAIRMAN. Is it going to be less or more?

Mr. JANIK. I do not know.

The CHAIRMAN. Well, I know. But how does the—you have got 3 saw mills out there that are going to require about 150 million board feet of saw logs. We have already conceded if we apply the 150 as being somewhat in the ballpark that 50 of it will be utility. So as far as the ability of the Forest Service to provide for the Metlakatla, the Ketchikan, and the Kawak mill, we are already 50 million board feet short of what they would require.

Mr. JANIK. Mr. Chairman, these are the very kinds of discussions we are having in the Governor's Timber Task Force and looking at all ownerships and what kind of contribution can come in trying to meet whatever demand or request for timber might emerge from the timber industry. We are doing the best we can to identify our contribution to that and we think we have, and we will do our best to try to—

The CHAIRMAN. Well, what do you think your contribution is going to be?

Mr. JANIK. I believe we will be able to produce 150, as I said, for this fiscal year.

The CHAIRMAN. 150, of which 100 will be saw log approximately, high quality saw log. That is what we have ascertained here in our general discussion; is that not correct?

Mr. POWELL. Again, I think that is relatively close.

The CHAIRMAN. Okay.

Mr. POWELL. Again, around 18 percent utility.

The CHAIRMAN. 150 is relatively close.

Mr. POWELL. About 25 percent of the material would not go to the saw mill.

The CHAIRMAN. We have gone through that and agreed you roll out about 50, so you have got 100 million board feet. And you have got in the 3 modest sized mills you have got a requirement of 155. So you are roughly 55 short of meeting that. Is my arithmetic haywire or something? These are all hypothetical.

Mr. JANIK. There may be requests for timber out there that we will not be able to satisfy with what comes off the national forests, so we acknowledge that.

The CHAIRMAN. Well, I am glad you acknowledge that because that is clearly the case. If I have got 3 saw mills and they have got a capacity of 155 million and the market is out there and I can sell the lumber, the question is can you supply it. And we are already 50 short going in, and we have not taken care of the small mills, which are only 8, that require 75 million, and we have not taken care of the Wrangell mill.

What we have done is we have a surplus of something in the area of 50 or so million board feet of utility to hopefully plug into perhaps veneer. But I think we have made the point that in your ASQ you have not addressed the installed capacity. As a matter of fact, you are, well 125 million under it in your ASQ, which is I think an unfortunate economic reality for southeastern Alaska.

That is why we are so interested in the manner in which you came up with this process.

Now, with regard to the socioeconomic impact of the TLMP, we identified several of the shortcomings last May. What I would like to do is focus on some specific questions. There is always a good deal of rhetoric that continued timber harvesting in the Tongass will diminish Alaska's tourism industry, but I think it is true that tourism in Alaska has grown tremendously in the past 2 decades during the Tongass timber harvesting at much greater levels than proposed in the TLMP revision. Is that true?

Dr. MILLS. If I could provide, Mr. Chairman, a little bit of information, and then I am sure Mr. Norbury has got what is in the plan in terms of projections.

The recreation and tourism industry is, as you point out, the fastest growing resource-dependent——

The CHAIRMAN. Yes, but you have to qualify: seasonal.

Dr. MILLS. It is certainly true that many of those are not full-time jobs.

The CHAIRMAN. Well, let us face it now, gentlemen. It runs from Memorial Day to Labor Day.

Dr. MILLS. They certainly are not full-time jobs. Your average wage likewise——

The CHAIRMAN. Let me ask you. Why when you identify tourism do you not qualify it like you do everything else and say it like it really is? You would have the reader believe that the tourism industry operates 365 days a year coming to Alaska.

Dr. MILLS. Mr. Chairman, I am not suggesting they operate 365 days a year, and I am trying to respond with the information I do have, that probably is as relevant as how many days they work, which is what their average wage is, which is \$32,000 a year according to the information I have here, which is roughly a quarter less than the annual average earnings in the wood products sector, which is closer to \$45,000 per year.

It is the fastest growing at some 22 percent over the last 10 years, to a level now of approximately 3,000 jobs in southeast Alaska.

The CHAIRMAN. You are saying the average tourism business person is generating \$31,000 in 4 months?

Dr. MILLS. The information I have is that the average annual earnings in 1995 from those engaged in recreation and tourism is \$32,000 a year.

The CHAIRMAN. And your source for that?

Dr. MILLS. I do not have the source here, but I believe it comes from State employment data which was released last summer. But we would happy to provide for the record the source.

The CHAIRMAN. Yes, I think we need to. That seems a little high for 4 months work. I cannot think of anybody in the tourism industry that is working on a salary that is making that kind of money for 4 months. You know, that is 120 grand a year.

[The information requested was not received at the time the hearing went to press.]

Dr. MILLS. No, it is \$32,000 a year.

The CHAIRMAN. No, you are saying \$32,000 for 4 months.

Dr. MILLS. No, I am saying \$32,000 for the average annual earnings for recreation and tourism, and your calculation is they work 4 months and then translating that into some annual equivalent. All I am trying to say is my information says it is \$32,000 for their average annual earnings.

The CHAIRMAN. Well, can you annualize that with what you make in 4 months?

Dr. MILLS. We will provide the source for where the 32 comes from.

The CHAIRMAN. It is 8,000-plus a month. I think it is fair to say that somebody working in a curio shop or peddling tee shirts is hardly making \$8,000 a month during the 4-month tourism season, and that is what they are working because they are not employed those other months.

This is page 3490: "The estimate represents total net jobs"—"due to recreation and tourism actively under such alternative. Income"—now this is where we part, gentlemen. "Income was estimated using the IMPLAN-derived estimate of \$31,773 per employee. While this estimate may seem high, it is important to remember that much of the income from recreation and tourism employment is concentrated in a short period of time and will thus lead to higher estimates when extended to a whole year on an average annual employment basis."

Now, that is what you have done. You have taken the 4 months' salary and extended it out to a whole year, which is hardly accurate. Is that not correct?

Dr. MILLS. I am not as familiar as I might be with the table you are reading from.

The CHAIRMAN. Well, it is your stuff.

Dr. MILLS. The information that I have got has an estimate of average annual earnings in 1995 of \$32,000, and we will be happy to provide an explanation of that.

The CHAIRMAN. Can you, Mr. Janik, clarify this apparent inconsistency?

Mr. JANIK. I think Mr. Norbury has the table in hand. Go ahead, Fred.

And if we cannot explain the discrepancy here, we will, as Dr. Mills just mentioned, do so for the record later.

Mr. NORBURY. I think we should provide it for the record.

Mr. JANIK. He would prefer to provide it for the record.

The CHAIRMAN. Well, what you have done is you have taken and projected this for a whole year.

Dr. MILLS. Mr. Chairman, as I said, that is exactly what we will look into and clarify.

The CHAIRMAN. Well, I know, but does this not—

Dr. MILLS. If that is what we have done, we apologize.

The CHAIRMAN [continuing]. Skew your figures relative to the contribution of the industry, which is significant? I am not belaboring that point. But it is a pretty significant inconsistency. It is about a 400 percent error.

Mr. JANIK. We would like an opportunity to examine that, if you will, and then report for the record.

The CHAIRMAN. This is what you have got, and I am reading from it. And you have got the same page I have, right, Mr. Norbury?

Mr. NORBURY. Yes, sir, I do, and it is not clear to me yet what the discrepancy is.

The CHAIRMAN. Income was estimated, derived at \$31,773 per employee. Then it goes on further and it says "concentrated in a short period of time and will thus lead to higher estimates when extended to a whole year on an average annual employment basis. Total income and nonresident supported income was derived in the same fashion in the case of employment."

One can only reach the conclusion that this was extended for a whole year, while the employment season is, what, 4, 5 months?

Mr. NORBURY. Mr. Chairman, I do not think that is what the analyst did at this point, but I would like an opportunity to double check that.

The CHAIRMAN. Well, relative to the time spent by visitors and southeastern Alaska, I assume you would agree that little time is spent in the remote areas, including most of the Tongass, as far as most of the visitors that come up there? They do not spend much time in the remote areas. You have got no facilities. You have got a few cabins out there. You know, you have got a couple hundred thousand coming up by tour vessels, is that right?

Mr. NORBURY. Yes, sir. The tourism, particularly the out of State tourism, falls predominantly on developed areas, like Juneau, Ketchikan, Skagway, Sitka, in terms of numbers of visitors.

The CHAIRMAN. Now, we had a little conversation yesterday about the editorial policy of the various media on their presumption and attitude toward the Tongass, and I think it is fair to say that a lot of misinformation about tourism is sponsored by environmental groups, and the media have repeatedly said that timber harvesting poses great threats to salmon harvesting. But is it not true that salmon harvesting employment is not generally affected, if at all, by the differences in the 12—excuse me—the 11 alternatives considered by the Forest Service, including an alternative that called for no further timber harvesting?

Mr. JANIK. This is with respect to the fishing industry per se?

The CHAIRMAN. Yes.

Dr. MILLS. It is true that over the next 10 years, which is the time period for which the plan projected employment effects, that the difference amongst the alternatives would not likely have any significant effect on salmon harvesting and seafood processing employment. However, the effect over the long term could be considerably different.

The CHAIRMAN. Why?

Dr. MILLS. Because of the eventual effect of different management scenarios on protection of the fisheries' productivity and the resulting impact on fish population levels in combination with the other factors that affect fish population levels.

The CHAIRMAN. Yes, but those have all been taken into account in your TLMP.

Dr. MILLS. They have been taken into account and considered in the first 10 years, and in the first 10 years, no, there is not pro-

jected to be a significant change in fish productivity and in turn the associated employment.

The CHAIRMAN. Well, of course, you would change the plan. Theoretically the plan would be subject to change in 10 years, and you would be as prudent as you are now, one would have to assume, only you would have probably more and better science in 10 years than you have got now.

Dr. MILLS. I acknowledge that. I am sure I am not doing a very good job of touching on the point you are trying to touch on.

Mr. JANIK. Having been involved in some of these discussions personally, Mr. Chairman, if one were to choose an alternative which carries a high risk for fisheries, fisheries habitat that is, the incremental change occurring from year to year, what I believe Dr. Mills is trying to say and certainly what I have been exposed to, the incremental change that occurs from year to year in the sense of deterioration does not start revealing itself until after the 10-year period, but nevertheless is significant. That is why important action is being taken now to provide additional protective measures.

The CHAIRMAN. Do you have any figures relative or are you conversant in figures that show the southeast anadromous return runs at an all-time high, as a general statement? Because I have got the specifics here if you want.

Dr. EVEREST. They are at an all-time high now, have been for the last several years.

The CHAIRMAN. And I assume that the rationale for that is a combination of things, probably the termination of interception on the high seas by the driftnet fisheries, reasonable water levels, probably good fisheries, and forest habitat management with the buffers around the streams and so forth?

Dr. EVEREST. Certainly a combination of things, all of the things you named: good fish management, relatively good fresh water habitats, and extremely high ocean productivity, as we have discussed previously.

The CHAIRMAN. Now, Mr. Janik, you and Mr. Powell and others are professional foresters here. Was it not a policy 15 years ago or some time frame that the considered technology was that you cleared the streams, the fish, the anadromous streams, of deadfalls that blew down and so forth, tried to keep them as clean as you could?

Mr. JANIK. In fact, you referenced the portion of my career which was back in Oregon, Mr. Chairman. It is true back in the sixties, for instance, with the knowledge level that existed then, the understanding was that that accumulation of woody debris in streams was detrimental to fish.

Since then, research has shown that large woody debris has substantial value to fishery productivity, and no longer is that so-called stream cleanout occurring.

The CHAIRMAN. And you were an ardent, I assume, supporter of that scientific process that led to changes?

Mr. JANIK. That level of understanding led to management policies that involved stream cleanout, yes, sir.

The CHAIRMAN. I assume it is true that wood products jobs are being lost at a much higher percentage of residential employment than recreation and tourism or seafood processing?

Dr. MILLS. Mr. Chairman, if the question is whether the number of jobs in the wood products industry are dropping faster than others are increasing, the information I have here confirms that, yes.

The CHAIRMAN. Thank you.

Does the final environmental impact statement analyze how communities will be affected by decreasing tax revenues, decreasing real estate prices, utility prices, increasing costs per child in school, decreased school funding based on fewer students?

Mr. JANIK. Fred, can you help us with that one?

Mr. NORBURY. The list of factors that you describe, Mr. Chairman, are not addressed explicitly in the community by community analysis. But they are included under the general headings of the quality of life that was addressed by the panel that the station convened to evaluate the effects of the alternatives on the communities.

The CHAIRMAN. Why were they not on the affected communities? You have got so few of them. Community by community? I mean, no big deal.

Mr. NORBURY. The larger issue, the analytical issue that is raised here, is trying to figure out exactly which community is going to be affected by a reduction in timber harvest, and to a considerable degree that cannot be predicted by the Forest Service because we cannot predict who is going to continue to operate and who is going to close. If we knew that, we would know which communities were going to be affected and a lot more detailed analysis would be possible.

The CHAIRMAN. Well, you knew that Sitka was going to be affected. You knew Ketchikan was going to be affected. Pretty obvious. So why could you not do an analysis of the two most affected communities? Probably Wrangell, because the only thing they had was one saw mill.

Mr. NORBURY. There is a section in the EIS that goes into the effects of mill closing, that gets into some of the dimensions.

The CHAIRMAN. Why would you not take each of the three major communities that are affected and tell them? Is this not part of your obligation under the TLMP, to communicate this as part, as opposed to generalizing it?

Mr. NORBURY. As I was starting to say, Mr. Chairman, there is a section that addresses mill closings. It does not get down into the level of detail that you talked about in terms of some of the social effects.

The CHAIRMAN. Well then, why does it not? Why did it not?

Mr. NORBURY. We do not have the analytical capability of talking about—

The CHAIRMAN. You can contract for it. You have got all kinds of analytical capability.

Mr. NORBURY. It is not a question of personnel, sir. It is a question of methods. A lot of the discussions that you are talking about can be, with state of the art, in my opinion can only be discussed qualitatively. To the extent that that was possible, I believe we did that.



Mr. JANIK. I believe part of what we also did, in addition to the panel that Mr. Norbury mentioned, is I believe in those 32 visits to the communities that occurred, the face to face by the planning team, there was a basic survey of sorts held during those stops and that was included in the writeup in terms of the community profile. So that was generated by the community members themselves.

The CHAIRMAN. Well, you both were on the planning team, Dr. Everest and Mr. Norbury, right?

Mr. NORBURY. I was not a member of the planning team, sir.

The CHAIRMAN. You went into these communities, Mr. Everest, Dr. Everest?

Dr. EVEREST. Some of our staff folks did, yes.

The CHAIRMAN. Some of them did. Where did they go?

Dr. EVEREST. I think basically all of the communities were visited.

The CHAIRMAN. Which ones?

Mr. JANIK. Mr. Chairman, may I suggest, if I may, we call up Beth Pendleton, who was a co-leader of the team and participated extensively in those visits.

The CHAIRMAN. Sure.

Dr. EVEREST. All 32 of those communities were visited twice, I believe.

The CHAIRMAN. On the specific issue of the impact that would take place?

Dr. EVEREST. I will pass that over to Beth.

The CHAIRMAN. Please proceed.

Ms. PENDLETON. The communities that we visited were approximately 30 communities. We visited all the communities on Prince of Wales. We also visited Metlakatla, Ketchikan, Saxman, Meyers Chuck, communities to the north including Yakutat and Sitka, Juneau, and many other communities.

The CHAIRMAN. Wrangell?

Ms. PENDLETON. Yes.

The CHAIRMAN. Petersburg?

Ms. PENDLETON. Mm-hmm.

The CHAIRMAN. And what was the discussion?

Ms. PENDLETON. At each community we had various displays on all aspects of the plan, including socioeconomics, looking at employment trends. We also had a questionnaire that was provided to folks that they could fill out and provide information on related to quality of life.

The CHAIRMAN. Was that input from those people communicated and made a part of your plan?

Ms. PENDLETON. It is part of the planning record.

The CHAIRMAN. By community?

Ms. PENDLETON. That is correct.

The CHAIRMAN. What was the community response?

Ms. PENDLETON. We had actually very few actual responses. It was not a mandatory. It was something voluntary and we did not receive a great number of responses.

The CHAIRMAN. To what extent did the socioeconomic impact of providing timber, say to restart the Wrangell mill, impact the formulation of the final TLMP ASQ?

Mr. JANIK. Perhaps I could try to respond to that.

The CHAIRMAN. Yes.

Mr. JANIK. The emphasis and the concentration was on what was the feasibility of producing timber off the Tongass, again given the other obligations that we had. There was not a specific targeted "keep the Wrangell mill open" or such a kind of reference in the assessment, given that we see that as personal investment decisions made by the industry as such.

The obligation we judged that we are responsible for is providing what we believe we can produce off the national forest and then let the private sector sort that out.

The CHAIRMAN. You recognize that is contrary to what Jack Ward Thomas, who sat roughly where you are, stated that there would be enough in whatever the final resolve of this is for the Wrangell saw mill specifically? You were aware of that?

Mr. JANIK. I stand on my statement. I would suspect whatever the ex-Chief said at the time might have had to do with the context of those current conditions and maybe what was being delivered then—

The CHAIRMAN. I do not know. The current conditions then were you were still working on the TLMP.

Mr. JANIK. Well, and we did not have an idea of what the ASQ was going to be at that time.

The CHAIRMAN. Well, he obviously said there would be enough timber for the Wrangell mill, and you have left it out.

Mr. JANIK. I believe that was in reference to the draft EIS at the time. Is that correct? Was that the subject of the hearing?

The CHAIRMAN. It was part of the discussion of the calamity associated with the closure of the Sitka mill and the impending closure of the Wrangell mill, which came about I think in October. He went up to Wrangell. You were there.

Mr. JANIK. Yes.

The CHAIRMAN. And said that there would be enough timber for the reopening of the mill. And I do not know whether we hold people to a committed promise, but that was certainly the statement of the highest authority in the land on the topic.

Mr. JANIK. All I can say, Mr. Chairman, to that is that we do not see that the revision result would prevent the Wrangell mill from opening. That very well may happen.

The CHAIRMAN. But certainly, according to the figures we have here, it is not even on the list. There is 155 million board feet that are committed to the 3 existing mills and the Wrangell mill needs 100. So I mean, let us not kid ourselves. It is simply not there.

So whatever the Chief said is whatever the Chief said, but it certainly did not carry through to the end.

Did the Forest Service socioeconomic responsibility, say to the community of Wrangell, have a measurable impact on the final ASQ number?

Mr. JANIK. The ASQ again was determined on the features I mentioned earlier.

The CHAIRMAN. So the answer is no?

Mr. JANIK. Not specifically, but it was considered in the total context.

The CHAIRMAN. It is quite fair to say the only way the Wrangell mill could even consider being partially open is if the others scaled back their installed capacity, is that not right?

Mr. JANIK. I am not sure that calculation is right, depending on what you are looking at. But we do view it as a competitive situation, Mr. Chairman, yes. That is how we see that.

The CHAIRMAN. That is too bad, is it not? And the Forest Service bears no responsibility, because you are all able to make your mortgage payments and you all still have your homes and your schools and so forth. And here you have got a little town.

The thing that is so frustrating in this whole process is this is the largest of all the national forests. It has the smallest of any significant commercial activity currently. The likelihood of any occurring is minimal. You have got 30 percent of the timber that is dead or dying. And we have got a TLMP here, a Tongass Land Management Plan, that clearly leaves out the small communities, is inadequate to address even the reduced installed capacity. And outside of the hard-nosed Government "well, that is the way it is," the hardships are not part of this socioeconomic impact on the communities. The promises that have been made are simply overlooked and we are down to where we are today, which is to examine the completed product.

I certainly would not be very proud of it, but I do not bear that responsibility of putting this thing together. When I look at the hypothetical evaluations based on the archipelago wolf and the marten, my immediate reaction is to tell the State to stop trapping and stop hunting the wolf and stop trapping the marten, and I certainly do not know of anybody that is taking the other species of any consequence, the goshawk.

We are told that we are ready to go to panel number three, and that would be, I gather, just Mr. Allen and Mr. Janik. So I would excuse the rest of you. We will have questions for the record, and wish you a good day. Hopefully, we can come back and see ourselves again in a few years and see where we have gone with our responsibilities collectively and individually.

[Pause.]

The CHAIRMAN. While we are waiting for a couple of people to come in, I wonder, Mr. Janik, do you have any comment on the release, the draft of Barry Hill, lack of accountability for time and costs on the forest plan revision? I am sure you have a copy of it.

Mr. JANIK. You are speaking of the GAO report?

The CHAIRMAN. Yes.

Mr. JANIK. Yes, I will say this about the report. I would agree that 10 years is a long time for a revision to be under development, and I certainly would conclude that there should have been a more efficient way to do that. At the same time, I have to appreciate the history of what has gone on with the attempts with the revision in terms of the several interruptions that have occurred.

So I am a little hesitant to pass judgment on the historic events of that kind. I will repeat what I did yesterday: I do think that, given the nature of the Tongass, the large land base of 17 million acres, the complexity of the issues, the profile, often the polarized views that need to be dealt with, that it is not surprising that it was a cumbersome process. But the specific criticisms of the Forest

Service on lack of monitoring, the lack of the ability to make decisions?

Mr. JANIK. Let me speak to monitoring first. I think that in a relative sense we have a good record on the Tongass of monitoring. Some of the things that we have generated have been used by the forests in the lower 48. That does not mean, however, that we do not have room for substantial improvement.

The CHAIRMAN. I think the focus here and the criticism specifically was that monitoring was not used in the absence of the ability to make a decision, because of the questionable science. Do you take issue with that?

Mr. JANIK. I take some issue with that. I think the importance of the science, introduced especially over the past 3 years in a more intensive way than it has been in the past, and in terms of the anticipated reaction by the courts to a number of challenges these days that we often face, whether it be on viability of wildlife species or whatever—I do think that one needs to have a plan that is legally defensible. That was one of our principal focuses as we proceeded for the past 3 years.

The CHAIRMAN. Of course, that is non-guaranteed. Legally defensible is in the eyes of the beholder.

I am kind of curious relative to your comments yesterday where you indicated that, if indeed some of the species in the habitats you were concerned about showed an increase or the science showed more promise, that the ASQ would be increased.

Mr. JANIK. Yes, I was referring to the regular process of forest plan implementation, that through monitoring you observe how reality is shaking out as compared to projections in your plan. And if you find out over time that there is an accumulation of a difference, then you are obligated to amend the plan, make changes to it.

The CHAIRMAN. I noted on page 13 when they were commenting on the Forest Service not being accountable for time and costs of its decisionmaking process, the specific statement that the Forest Service is held accountable for developing a plan, and the plan may be scientifically credible and legally defensible, but it is not accountable for making timely, orderly, and cost effective decisions. While the agency incurs the time and costs associated with legal challenges to the scientific credibility and the legal defensibility of its decision, the costs of the Forest Service indecision and delay are borne by others, namely the taxpayer, while the costs associated with the uncertainty of not having an approved forest plan are borne by members of the public who are concerned about maintaining diversity.

So indeed there is a good deal of criticism over what the OMB suggests is the ability to use monitoring in lieu of scientific decisionmaking, which is less than totally supported because of the various exposures associated with coming up with a scientific decision.

So is it not conceivable that you can be as legally—have as legally defensible a position by simply saying, we are going to monitor this, and by monitoring if it is indeed a question of the science leaving questions unanswered, by monitoring it we can indeed de-

termine what action would be taken? Is your legal position any less defensible by that conceptual process?

Mr. JANIK. Our judgment, Mr. Chairman, is that we have taken the revision to the point of adequacy on the three points that I have stated a number of times, and we consider that absolutely required to sustain the implementation of the plan.

The CHAIRMAN. I think what you have done is debatable in that regard, but clearly the cost and the time are excessive. I cannot help but note the comment here: "The inefficiency that is occurring in the process to revise the Tongass plan is occurring at every single decisionmaking level within the Forest Service." You, sir, bear a portion of that responsibility.

It further states: "An internal Forest Service report estimates"—and this is an internal Forest Service report that you have access to—"estimates that inefficiencies within the agency's decision-making process cost up to \$100 million a year in the project level alone." Do you dispute that?

Mr. JANIK. I am not prepared to answer that national statistic, but I would like to say there on that point again, I would disagree. I think the effort that has occurred over the past 3 years that I have been familiar with the revision has been a very efficient one. As I said yesterday, if you equate this land base and the complexity to other situations in the country, you would be seeing anywhere from 60 to 20 different forest planning efforts, and we were producing one revision. I think that has to be kept in context.

The CHAIRMAN. I believe that you gentlemen have opening statements, Mr. Allen and Mr. Janik. Go ahead.

**STATEMENT OF DAVID B. ALLEN, ALASKA REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, ANCHORAGE, AK**

Mr. ALLEN. Thank you, Mr. Chairman. What I would like to do is submit my formal statement for the record, and I have some additional comments I would like to make just to highlight the important points in the statement.

The CHAIRMAN. Please proceed.

Mr. ALLEN. It is my pleasure to be here today to discuss U.S. Fish and Wildlife Service's involvement in the TLMP planning process. The involvement by the Service in the Forest Service planning process effectively began with the enactment of the National Environmental Policy Act in 1969. The thrust of our involvement has been to provide technical review for fish and wildlife conservation as part of the overall forest management planning process.

Beginning in the late 1980's, the Service provided technical advice on the Tongass plan through inter-agency committees and work groups. Examples include the Forestry-Fisheries Work Group, Viability Populations Committee, and the development of conservation assessments for the Alexander archipelago wolf, the Queen Charlotte's goshawk, and the marbled murrelet.

The goal of the Service's involvement in the TLMP planning process has been to work in partnership with the Forest Service to ensure adequate protection of fish and wildlife resources. In 1994 we accepted the Forest Service's invitation to be a full participant on the interdisciplinary team preparing the new TLMP plan. EPA, the National Marine Fisheries Service, the Biological Research Di-

vision of the U.S. Geological Survey, the State of Alaska and academia joined in this effort as well.

In January 1994 the Departments of Agriculture, Interior, and Commerce entered into a memorandum of understanding establishing a framework for cooperation in the conservation of species tending toward listing. In December of that same year, the Forest Service, the Fish and Wildlife Service, and the Alaska Department of Fish and Game entered into a similar MOU to establish a cooperative program consistent with the directive of the national MOU. This memorandum of understanding was the impetus for the conservation assessments I mentioned earlier prepared for the wolf, the goshawk, and the murrelet.

In April 1996 the Forest Service published the revised supplement to the draft TLMP EIS. In August 1996 the Service responded to that draft with detailed comments.

In the 11-month interval between the draft and the final NEPA document publication, numerous meetings were held between the Forest Service and the Fish and Wildlife Service technical staff and policy level managers to further overall inter-agency coordination. This was done in the interest of providing for fish and wildlife conservation in the Tongass.

For the future, the Service strongly endorses the Forest Service's commitment to establishing an inter-agency team to develop and implement a biological monitoring program for the new TLMP. A monitoring program is crucial to evaluating the overall effectiveness of the plan in terms of fish and wildlife conservation. With the Forest Service in the lead, the Service has already expressed its willingness to be a partner in this effort.

Thank you. That concludes my oral comments and I will be happy to answer any questions.

[The prepared statement of Mr. Allen follows:]

PREPARED STATEMENT OF DAVID B. ALLEN, REGIONAL DIRECTOR, ALASKA REGION,  
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, I am David B. Allen, Regional Director of the Alaska Region of the U.S. Fish and Wildlife Service. It is my pleasure to be here today to testify on the collaborative process between the Service and the U.S. Forest Service during the development of the new Tongass Land Management Plan (TLMP).

Eighty percent of the land area in Southeast Alaska is managed by the U.S. Forest Service. Thus, the fate of fish and wildlife resources therein, many of which are species for which the Fish and Wildlife Service has statutory responsibilities, are inextricably tied to management of the Tongass National Forest.

The involvement of the Service with Forest Service planning processes began, in earnest, with enactment of the National Environmental Policy Act of 1969. The two agencies have since agreed that the Service should provide input to overall forest management planning at the inception of the process in order to facilitate fish and wildlife conservation in any subsequent decision-making. Closer and earlier coordination promotes the concept of resource conservation as an overall management goal in all aspects of forest management.

Prior to the May 1997 completion of the new TLMP, the Forest Service was operating under the 1979 Plan, as amended in 1986 and 1991. All of these had received Service review and comment during their development. However, the working relationship between the Service and the Forest Service has evolved enormously over the last 7 years.

Beginning in the late 1980s, the Service provided technical guidance through staff-to-staff contacts as members of various interagency committees, work groups, teams, and panels that developed resource conservation information for incorporation into the Plan. Examples of these groups and their output included, the For-

estry-Fisheries work Group; Viable Populations Committee; the development of conservation assessments for the Alexander Archipelago wolf, Queen Charlotte goshawk and marbled murrelet; watershed analysis review; interim project review; and the deer model review.

The Service had a single goal for its involvement in these activities: to support Forest Service efforts to manage habitat to assure that viable populations of fish and wildlife would remain well distributed throughout the Tongass National Forest. This involvement not only furthers the Service's mandate to protect and conserve trust resources, but also helps fulfill the Forest Service's responsibilities to the American public under Forest Service regulations associated with the National Forest Management Act.

In 1994, at the invitation of the Forest Service, the Service assigned a biologist to be a full member of the interdisciplinary team preparing the new Tongass Land Management Plan. This invitation meant that in addition to Service participation in the various teams ancillary to the planning process, the Service was now involved with the actual development of TLMP. The Service was joined by other agencies in this effort when the Forest Service also involved the Environmental Protection Agency, National Marine Fisheries Service, the Forest Service Laboratory, USGS Biological Resources Division, State of Alaska, and academia in TLMP development. Subsequently, the Service's Assistant Regional Director-Ecological Services was invited to become a member of the TLMP policy team, a group comprising Forest Service, FWS, EPA, NMFS, and State of Alaska policy-level representatives that met periodically to review TLMP Team work.

In January 1994, the Departments of Agriculture, Interior, and Commerce entered into a Memorandum of Understanding (MOU) that established a framework for cooperation and participation among the agencies in the conservation of imperiled species in the Tongass National Forest. In April 1996, the Forest Service published the Revised Supplement to the Draft Tongass Land Management Environmental Impact Statement and Draft Forest Management Plan for public review and comment, in accordance with NEPA requirements. On August 24, 1996, the Department of the Interior submitted comprehensive comments and recommendations for improvement of these documents. During the 11-month interval between draft and final NEPA document publication, numerous meetings were held between agency technical staffs and policy level managers as part of our overall interagency coordination. Much of this interaction occurred from November through December 1996. Again, the objective of our efforts was to assist the Forest Service in their efforts to assure that the TLMP would provide for species viability throughout the Tongass, a responsibility of the Forest Service as required by Forest Service planning regulations under the National Forest Management Act.

Our interaction in the TLMP from January to the present has principally occurred at the staff level, dealing with technical issues only. Such issues include reviews of TLMP supporting documents, standards and guidelines, and NEPA projects in transition.

For the future, it is the Service's view that as the new TLMP is implemented, it must be carefully monitored. We believe that monitoring is critical to the TLMP's success because it is the only available mechanism by which the Forest Service can determine the effectiveness of the plan in terms of the conservation of fish and wildlife resources on the Tongass. The U.S. Forest Service has committed to establishing an interagency team to develop and implement a monitoring program. The Service has expressed a willingness to participate in the monitoring program as a full partner.

This concludes my testimony on the collaborative process between the Service and the U.S. Forest Service during the development of the new TLMP. Thank you for your interest in the TLMP. I would be happy to answer any questions you may have in regards to our collaborative efforts on the TLMP with the U.S. Forest Service.

The CHAIRMAN. Thank you, Mr. Allen.

Mr. Janik.

Mr. JANIK. Thank you, Mr. Chairman, for the opportunity to testify twice in 2 days. Thank you for this opportunity, and to accompany Mr. Allen with regard to our cooperation with the Fish and Wildlife Service during the revision of the plan.

Let me start by saying that preventing the need to list species under the Endangered Species Act is the current Federal Government policy both that the Forest Service and Fish and Wildlife Service are dedicated to. That is described in the Federal national

memorandum of understanding signed in January 1994 by the Forest Service, Fish and Wildlife Service, Bureau of Land Management, National Park Service, and the National Marine Fisheries Service. In fact, in December 1994 we localized that commitment. The Forest Service, Fish and Wildlife Service, and Alaska Department of Fish and Game signed a complementary memorandum of understanding to establish a cooperative program to promote conservation of species tending toward listing under the ESA.

Moreover, the Department of Agriculture Regulation 9500-4 directs the Forest Service to avoid actions which may cause a species to become threatened or endangered.

The CHAIRMAN. Avoid actions?

Mr. JANIK. Yes. It reads verbatim "to avoid actions which may cause a species to become threatened or endangered."

More detailed direction is provided in chapter 2670 of the Forest Service Manual, and managing habitats to maintain viable populations of wildlife as required under the regulations implementing the National Forest Management Act is one of the most important tools we have for maintaining healthy populations of species and preventing the need to list them under ESA.

The agencies have been actively cooperating for a long time, certainly since 1988 regarding wildlife habitat management and wildlife conservation planning on the Tongass National Forest. We have collaborated on wildlife field studies certainly since 1990 in a very obvious way, and the Fish and Wildlife Service was a member of the inter-agency viability population committee that has received quite a bit of notoriety. This committee was formed in 1990 by the Forest Service to help revise the Tongass plan by addressing wildlife viability. The committee continued its work until May 1994.

At the same time that I expanded membership in the Tongass planning team to include research scientists, I also asked each of the Federal agencies and the State of Alaska for assistance. The Environmental Protection Agency and the Fish and Wildlife Service had full-time members on the Tongass revision interdisciplinary team. That was over a 2½ year period.

We also received substantial assistance from representatives of several State agencies, as I mentioned yesterday, and the National Marine Fisheries Service. We received valuable information from all these contributors.

The representation from the Fish and Wildlife Service did bring additional experience and expertise and the Department of the Interior perspective to the Tongass plan revision. The personnel on the team helped write the standards and guidelines, mitigation measures, land allocation determinations, and were involved in those deliberations as the team put together their proposals and analysis.

Fish and Wildlife Service also had a senior person represented on the Tongass plan revision policy advisory group. This group helped guide the revision process and identify policy issues critical to the revision. The two agencies, just as one example of cooperation, also jointly conducted a public information meeting in Ketchikan regarding wildlife conservation planning.

Fish and Wildlife Service staff was briefed on the plan alternatives and was asked for suggestions and concerns. I did carefully



consider those recommendations in developing the final plan. Their recommendations included additions to old growth reserves, modifications of standards and guidelines. Also, as required by law, we did consult with the Fish and Wildlife Service under provisions of the ESA concerning the few threatened and endangered species that do exist on the Tongass currently. Those do not have many management implications, by the way, but we did go through the formal process before making the decision in the ROD.

I have briefly described the professional relationship that the Forest Service and Fish and Wildlife Service enjoy in Alaska and the years of cooperation for the purpose of wildlife and habitat conservation. I am confident that the habitat strategies developed and implemented through the Tongass plan will provide adequate protection for fish and wildlife habitat to assure the viability of the species we are concerned about on the Tongass.

I look forward to continuing our work together with the Fish and Wildlife Service to assure wildlife and fish species and their welfare on the Tongass, and I appreciate being able to accompany Mr. Allen today.

The CHAIRMAN. In your statement, Mr. Janik, you used the word, and I interrupted you, "avoiding" actions that would be detrimental to any of the concerned creatures that inhabit the forest or potentially could be identified to avoid listing; is that correct?

Mr. JANIK. That could lead to a listing, yes, sir.

The CHAIRMAN. And two of those creatures are hunted and trapped. The wolf is hunted and trapped, the marten is trapped, right?

Mr. JANIK. That is correct.

The CHAIRMAN. Your statement was: "Moreover, the Department of Agriculture directs the Forest Service to avoid actions which may cause a species to become threatened or endangered."

Why is it not within your purview to make a recommendation to the State, who manages fish and game, to terminate hunting and trapping of these species as a contributor to ensure that they are not listed?

Mr. JANIK. I believe the MOU that I mentioned in the testimony, Mr. Chairman, that we signed together in December 1994 provides a forum for doing just that kind of thing should that kind of action be observed as being necessary under the prerogative of the agency having the jurisdiction.

The CHAIRMAN. Well, why do you not do it?

Mr. JANIK. We constantly are talking about the needs of these species. The revision—my responsibility—

The CHAIRMAN. We have a species that is threatened potentially.

Mr. JANIK. Yes.

The CHAIRMAN. Why would it not be prudent to simply take that action? You have an interest. You are a landowner. You can close that land. If this were a recreation leaseholder, you could dictate terms and conditions to protect your land.

Mr. JANIK. There is no problem in doing that, Mr. Chairman, after one determines it is necessary.

The CHAIRMAN. Well, even the thought of it being—I can read you the process that we have gone through already with the U.S. Fish and Wildlife Service relative to the last time around. Why

would it not simply be prudent? Just a minute now. You are basing a good deal of your ASQ on habitat concern associated with two or three species.

Mr. JANIK. Yes, a whole host of species.

The CHAIRMAN. No, just a minute. Specifically the archipelago wolf because it was potentially on the list for threatened species, the goshawk, the marten. Those are the ones that we're specific about, right?

Mr. JANIK. Those were given particular attention, but the strategy that has been developed has been for all of the old growth associated species.

The CHAIRMAN. Well, I know, but that answer circles the question relative to the court case that we had, the mandate to have the new TLMP down prior to a certain date before the court ruled and would rule on the existing TLMP, which potentially would threaten the likelihood of a listing as a consequence of not having a current plan.

Now, we all know this. We have gone through this. It is a charade to suggest otherwise. The point is your TLMP came down. We have still the exposure from the U.S. Fish and Wildlife or from the court relative to a listing. But my question to you is, do you not think it would ensure a more prudent response to the concern that you have as a landowner to simply make a recommendation to the State Department of Fish and Game that they terminate hunting and trapping for these species?

Mr. JANIK. The revision addresses habitat and I know you understand that, Mr. Chairman, that that is the responsibility of the revision. Mr. Allen has to consider other factors and he will raise those as he sees fit, I am sure, in the forum that we have established. If that observation is such to generate a recommendation to the Department of Fish and Game or whomever, I am sure that is where that discussion would lead.

The CHAIRMAN. Well, as we are all aware, the court decision, the Fish and Wildlife Service, and the negotiations that began with the Forest Service in an attempt to ensure that the final forest plan would prevent the need to list the goshawk or the wolf as endangered—so to suggest that they are not a part of this process specifically I think is misleading.

The Fish and Wildlife Service had until May 1997 to reach a decision, and then of course we know the rest. There was a question of a criticism for not having the proposal done and the exposure associated with not having that done relative to the court's ultimate decision.

So on the one hand we potentially have expedited a process to ensure that we would have a plan, and on the other we have not taken all the steps that could have been taken as a prudent landholder to ensure that there were no further threats to these particular species that have been identified, that could very easily have been taken.

Now let me ask you, Mr. Allen and Mr. JANIK. Had the State 5 years ago or last year even taken the initiative to ban trapping and hunting on these species, would that have been taken into consideration, that actual fact, in your evaluation of the TLMP?

Mr. ALLEN. Mr. Chairman, I will try to answer that issue with regard to wolf conservation. I think that obviously had the State taken such action that would have been very significant in evaluating the overall issue of conservation of the wolf. They have not.

One thing I would like to add, though——

The CHAIRMAN. Just do not leave me there, they had not. But it would have made a difference had they?

Mr. ALLEN. Well, certainly. I mean, obviously any direct impact on the take of wolves certainly would have had some significance.

The CHAIRMAN. It might have had a detrimental effect on the deer.

Mr. ALLEN. That is also possible, Mr. Chairman. In fact, it is also likely.

The CHAIRMAN. Very likely, because, what, one wolf takes how many deer a week?

Mr. ALLEN. I am not exactly sure.

The CHAIRMAN. You are a wolf expert.

Mr. ALLEN. No, I am not a wolf expert.

The CHAIRMAN. Well, it says here you are.

Mr. ALLEN. I have wolf experts that work for me, but I am not.

The CHAIRMAN. Well, what do they tell you? How many?

Mr. ALLEN. What do they tell me, how many they take a week?

The CHAIRMAN. A week or a month. I do not care.

Mr. ALLEN. I do not have that information.

The CHAIRMAN. You do not know?

Mr. ALLEN. No, I do not know.

The CHAIRMAN. Would you provide it for the record?

Mr. ALLEN. I certainly can.

[The information requested was not received at the time the hearing went to press.]

Mr. JANIK. Mr. Chairman, my part of that answer is, our obligation is to the National Forest Management Act, the provision of wildlife viability deals with habitat. We have to look at the long-haul implications of the effects of habitat. Our standard is looking at the viability provision. How that relates to requirements of the Endangered Species Act is a relationship, but one that falls under the jurisdiction of the Fish and Wildlife Service.

The CHAIRMAN. I do not buy that, Phil, because you are a landholder.

Mr. JANIK. Yes.

The CHAIRMAN. And if I am in your area on a lease for recreation you can tell me to do anything, and I have to do it or get out. You can do the same thing with your concern over the species associated with the habitat you are trying to maintain, if you want to do it. If you do not want to do it, that is something else.

Mr. JANIK. Mr. Chairman, we have provisions in the plan that deal with access, and that has to do with actual mortality of animals. So it is not as if we have not addressed some of these things. But when it comes to alteration of regulations, the provision for viability over the long haul calls on us to look at the habitat provisions.

The CHAIRMAN. The U.S. Department of Agriculture regs are clear: avoid actions which may cause a species to become endangered. The Forest Service has had two alternatives: change the

TLMP or close lands to hunting and trapping. So do not tell me you do not have the flexibility. You do. You did not choose to do it. That is your own business and you are held accountable for it.

Mr. Allen, we would appreciate you briefly recounting for us the nature and extent of the Fish and Wildlife Service's involvement in the Tongass land managing process. Specifically, could you indicate at what date the Service was brought into the TLMP planning?

Mr. ALLEN. Yes, Mr. Chairman. As I indicated, we became involved I think significantly in the late eighties, as I suggested in my testimony, in a variety of committees and work groups that were formed. That relationship became formal in 1994 when we actually placed an employee of the Fish and Wildlife Service on the TLMP planning group itself.

The CHAIRMAN. Based upon the Service's involvement with the TLMP planning effort as part of the interdisciplinary team, as well as its role in providing technical assistance to the viability analysis, do you concur with Mr. Janik that the TLMP will meet the National Marine Fisheries viability requirement?

Mr. ALLEN. The Forest Service's viability requirement?

The CHAIRMAN. The National Forest Management Act, I am sorry.

Mr. ALLEN. Thank you. I nor my staff have made no determination on the Forest Service standard with regard to the viability.

The CHAIRMAN. Do you anticipate doing so?

Mr. ALLEN. No, we do not, sir.

The CHAIRMAN. Why?

Mr. ALLEN. It is a Forest Service decision. The way we have addressed the issue of fish and wildlife conservation on the forest is in the broader context of measures that we think will be important to their long-term conservation. The viability standard is a Forest Service standard. It is their decision and we do not make any independent judgment.

The CHAIRMAN. Well, if you are not going to provide them any advice, then what was the point of your involvement?

Mr. ALLEN. Well, sir, our advice has—as I said, we look at what the prescriptions are for harvest. We look at what the protection measures that are laid out over the landscape. I can say this much: that what we have been able to examine with regard to the new plan versus the old plan, the changes significantly benefit wildlife.

But to answer your question directly, do I agree or concur that the Forest Service's viability standard has been met, I have not made that determination nor have I asked my staff to.

The CHAIRMAN. Well, I guess the question would be do you intend to?

Mr. ALLEN. No, sir.

The CHAIRMAN. The reason for that is?

Mr. ALLEN. It is a Forest Service decision.

The CHAIRMAN. But you have an involvement in the process and have had since the eighties.

Mr. ALLEN. Yes, sir.

The CHAIRMAN. And formally since 1994.

Mr. ALLEN. And we continue to make recommendations and give advice on what we think is good for fish and wildlife. How they determine whether or not—how they use that information to deter-

mine whether or not they have met their viability standard is their decision, sir.

The CHAIRMAN. Well, are you not in a position where you are going to have to tell the court your opinion on the viability of the two species in question?

Mr. ALLEN. No, sir.

The CHAIRMAN. Who is?

Mr. ALLEN. What we have to tell the court is whether or not these two species are eligible for listing either as threatened or endangered—an entirely different standard, a different law.

The CHAIRMAN. Does that not require you to make some decisions regarding the viability—

Mr. ALLEN. No, sir.

The CHAIRMAN. What is going to provide you with that decision-making process?

Mr. ALLEN. Not in terms of the standard of viability that is required by the Forest Service. We have a set of standards that we use to determine whether or not a species should be listed under the Endangered Species Act.

The CHAIRMAN. That is outside the—

Mr. ALLEN. A different set of standards, sir.

The CHAIRMAN. Outside that covered within this National Forest Management Act viability studies, outside of that?

Mr. ALLEN. Correct, totally outside.

The CHAIRMAN. Are they tighter or looser?

Mr. ALLEN. My personal opinion?

The CHAIRMAN. Sure. That is all we have got.

Mr. ALLEN. I think the law is a bit more prescriptive under the act on how we address and determine whether or not a species is endangered or threatened than the language that is in the, I guess it is, the Forest Management Act.

The CHAIRMAN. So in other words, you are telling me that your process is independent of your association with the Forest Service on their development of the TLMP and under the structure that the Forest Service had to follow?

Mr. ALLEN. Yes, our process for making a listing determination is, sir.

The CHAIRMAN. Which is the higher threshold?

Mr. ALLEN. I am not sure that I could answer that directly, which is the higher threshold.

The CHAIRMAN. Well, we assume that the higher threshold would prevail.

Mr. ALLEN. If we assume the higher threshold would prevail, if the issue—if you are trying to draw a connection between the viability standard and an endangered species determination, that has never been done, sir. Conceptually, it would be nice to be able to say that if you have a viable population for which the Forest Service in the actions that they take would have a significant effect to all or a significant portion of their range and you had a viable population, then conceptually you should be able to say that that species does not warrant listing.

The CHAIRMAN. Well, it sounds to me like, independent of your cooperative effort with the Forest Service, whatever you are going

to do on the listing issue is not associated with what you have been involved in.

Mr. ALLEN. Not directly, sir, no.

The CHAIRMAN. So I assume you are in a position at any time to make your evaluation based on other considerations.

Mr. ALLEN. The basic connection between the TLMP process and the issues relevant to fish and wildlife conservation and the viability issue and the listing actions is the science that is available to make those decisions. The science base is the same for both of us.

The CHAIRMAN. How do you handle a situation where you go to court and there may be a difference of opinion with regard to the Forest Service position and the U.S. Fish and Wildlife's position relative to the viability issue?

Mr. ALLEN. On the viability issue? We would not go to court enjoining the Forest Service over a viability question. The Fish and Wildlife Service would not.

The CHAIRMAN. Well then, are we in agreement?

Mr. ALLEN. Are we in agreement?

The CHAIRMAN. Yes, would you be in agreement on the viability? You would not take them to court, would not go to court. But if the court came down and said, okay, there is a difference of opinion here between the U.S. Fish and Wildlife Service and the Forest Service with regard to the analysis concerned with the species?

Mr. ALLEN. I think if the U.S. Government went to court over the issue of viability, a question that really is in the domain of the Forest Service, if there were any differences or concerns over that issue, they would be resolved as a matter of—as technical matters and science matters within the administration. They would not be issues that would be contested legally in court between the U.S. Fish and Wildlife Service and the Forest Service.

The CHAIRMAN. When we get to court—what is it, 60 days or so—are you going to be together?

Mr. ALLEN. On the issue of the remands to the petitions?

The CHAIRMAN. Yes.

Mr. ALLEN. Are we going to be together?

The CHAIRMAN. Are you going to have the same position?

Mr. ALLEN. The action agency here, sir, is the U.S. Fish and Wildlife Service, and whether or not—I will let Phil answer that question, but we are the action agency by law with regard to the listing decision, and that will be the position of the Government.

The CHAIRMAN. Why are you giving the question to Phil then?

Mr. ALLEN. Pardon me?

The CHAIRMAN. Then why do you give the question to Phil?

Mr. ALLEN. Why do I give—

The CHAIRMAN. You got a note there from your staff.

Mr. ALLEN. Oh, I do.

The CHAIRMAN. Yes. Go ahead and read it. I read mine.

Mr. ALLEN. It says I have no answer; we are in litigation, sir.

The CHAIRMAN. That is an honest answer.

Well, the next question is, when we are in court on the TLMP are you going to be together?

Mr. ALLEN. We will not be there, in all probability.

The CHAIRMAN. You do not think so?

Mr. ALLEN. No. No, sir.

The CHAIRMAN. Do you agree with that, Phil?

Mr. JANIK. I do not know who is going to be asked to be in the court should we end up there with TLMP.

The CHAIRMAN. Sure you will be in there. So you are not going to answer that one, either?

We are trying to, obviously, make the point of whether you have come together on your conclusions in the TLMP or you are independent. Are you saying that the U.S. Fish and Wildlife Service could list a species that is viable today and that the Forest Service has undertaken actions to maintain viability pursuant to its responsibility?

Mr. ALLEN. I could give you an example, sir, where indeed that could happen: where in fact the actions taken by the Forest Service, because of the range of the species, no matter how much they do, could in fact prevent a listing action because of actions outside of the control of the Forest Service.

The CHAIRMAN. Mr. Allen, looking at the development of habitat reserves and meeting the viability requirement, yesterday we discussed with the Forest Service whether they took into account activities on non-Federal lands and they indicated that to some extent non-Federal lands were evaluated. We note that in an October 3 letter to the Forest Service from Janet Hohn, the Assistant Regional Director for Ecological Service of the Fish and Wildlife Service, she said that:

"The habitat reserve analysis also suggests that where past and ongoing timber cutting have eliminated or precluded the opportunity for use of the 300-year rotation and even-aged harvest techniques, approximately 900,000 acres since 1954, adequately sized, appropriately placed strategic habitat conservation areas are going to be needed in combination with other silvicultural management. The HCA designation will also need to take into account logging on adjacent private lands, Native lands, that has occurred or is planned if maintaining regional goshawk populations is part of the conservation strategy."

So it would appear that the Fish and Wildlife Service did look hard at private lands. Is that correct?

Mr. ALLEN. Mr. Chairman, I believe basically all we did was look at the statistics that were made available to us by the Forest Service on how much of the private lands adjacent to Forest Service lands had been harvested.

The CHAIRMAN. So you did not look on private lands?

Mr. ALLEN. No, we did not look on private lands.

The CHAIRMAN. You did look on Forest Service lands?

Mr. ALLEN. In what?

The CHAIRMAN. For goshawks.

Mr. ALLEN. Yes, sir.

The CHAIRMAN. And how much Forest Service land did you feel you covered?

Mr. ALLEN. A small fraction of that forest.

The CHAIRMAN. A small fraction. How much is a small fraction?

Mr. ALLEN. Well, I believe that we were able to do a study 2 years ago that involved about 25 square miles of forest in wilderness and unroaded areas that were not currently scheduled for timber harvest.

The CHAIRMAN. You know, there is a representation here of ongoing harvesting taking place under the supposition. How do they know whether it is going to be on private or Forest Service lands, which private land is going to be developed vis a vis which will not?

Mr. ALLEN. That really was not—I think the context of—I think the comment that we were providing at the time was that we noted that the amount of harvest, total harvest in aggregate on private lands, was significant. As the Forest Service proceeded with laying out on the forest their plan for habitat conservation areas, that in order to assure a good distribution of those that it simply would be prudent to take into account adjacent lands which may be entirely cut or not.

The CHAIRMAN. You know, 25 miles seems pretty insignificant in a 17 million acre forest, recognizing that a significant portion of the 17 million is not goshawk habitat. Yet there could be an infrequent intermingling there, so I guess one can just question the reliability of that kind of a sample being accurate.

Mr. ALLEN. As I indicated to you, it represents a very small area. Certainly we are not trying to represent it as something that is representative of the whole forest.

The CHAIRMAN. No, but you are going to make your recommendation on that information.

Mr. ALLEN. That is just one very small piece of information that will be used.

The CHAIRMAN. Is that not fairly significant, an actual sampling of the forest as to what is there relative to the threatening of the species?

Mr. ALLEN. Sir, we made an effort to look in a very small area. We used methodology that is the current state of the art, which has many flaws in terms of its reliability.

The CHAIRMAN. That even substantiates my questionable concerns relative to how in the world you are going to have confidence in whatever your decision is.

Mr. ALLEN. Well, as I said, we do have other information about goshawks.

The CHAIRMAN. Other information that is as significant as an actual sampling? Such as what? What is more significant than an actual sampling?

Mr. ALLEN. Well, probably the most significant information we have about goshawks in the forest, of course, are those goshawks that have been located primarily as a result of the areas that have been surveyed for production, as well as some located in other areas of the forest. There has been considerable work done by the Alaska Department of Fish and Game.

The CHAIRMAN. Yes, but you are saying you took a sample. The Alaska Department of Fish and Game says they are not threatened.

Mr. ALLEN. We looked at one very small area, sir.

The CHAIRMAN. Well, that is fine.

Mr. ALLEN. We did not have enough resources to do any more.

The CHAIRMAN. But yet you are going to come down with a decision based on whatever you have been able to generate.

Mr. ALLEN. Yes, the law does require——



The CHAIRMAN. 25 miles.

Mr. ALLEN. The law does require us to use the best scientific and commercial information available, and we will address it in that context.

The CHAIRMAN. I note further in a November 19 letter to Beth Pendleton of the Forest Service Nevil Holmberg, the Fish and Wildlife Service's field supervisor for southeastern Alaska, noted in discussing the matrix management that: "The matrix is the body of the Tongass between old growth reserves, including those areas that will actively be managed for timber production. The current preferred alternative results in the additional harvest of 502,000 acres of old growth by the year 2025. When added to acres already harvested, the 387,000, and the 600,000 acres of private or State-owned lands, well over a million acres of old growth forest will be converted to younger serial stages. These factors require a careful long-term approach to avoid adverse consequences that will not be corrected for generations to come."

So here again it appears that Mr. Holmberg was looking at all ownership in assessing the Forest Service's responsibilities under the National Forest Management Act to meet the viability rule. Is it generally speaking the Fish and Wildlife Service's view in participating in the development of national forest plans that private and non-Federal land activities are relevant in advising the Forest Service as to what the Fish and Wildlife Service believes the Forest Service's statutory obligations are under the National Forest Management Act?

Mr. ALLEN. The way I would address that question is, again, when we looked at fish and wildlife conservation issues on the Tongass National Forest and in southeast Alaska as a whole we thought it was important that the Forest Service does take into consideration what is occurring on adjacent lands. But that in no way was meant to imply that they either somehow exercise some control over that activity or that whatever occurred outside of their control necessarily was something that had to be accounted for with regard to their statutory requirements for maintaining viable populations.

The CHAIRMAN. In the same letter, Mr. Holmberg notes that: "Throughout the planning process, now nearing closure, the Regional Forester, Mr. Janik, has steadfastly maintained that the Tongass must be science-based first. The Fish and Wildlife Service involvement, thus grounded, has sought to assure the fulfillment of this goal. The question before us is where do we go from here? The Fish and Wildlife Service believes that the cooperative working relationship exhibited over the last 2 years is but a flawed, pale shadow of that which will evolve as we enter the twenty-first century."

Well, I am a bit confused. Both of you appear to have had an epiphany over your ability to forge a cooperative relationship that sounded almost of a moving nature, and I would expect that you would both retire to a cottage at the sea if that were the issue. But Mr. Holmberg believes that your relationship is a flawed, pale shadow of something that has not yet to evolve.

What does Mr. Holmberg hope will evolve, Mr. Allen?

Mr. ALLEN. Well, sir, I cannot directly speak for Mr. Holmberg. As you might well surmise, through the whole course of interaction with the Forest Service we have had a number of very vigorous debates on the issues of fish and wildlife conservation and we have all had our ups and downs. I would have to say overall, on the whole, we have made very substantial, significant progress in our relationship working together on these kinds of issues.

What does Mr. Holmberg hope will evolve? I believe he would agree with me completely with the statement I made in my testimony, that what the next step is that is very important in this overall process is that the implementation of TLMP be accompanied by a good biological monitoring plan so we can learn from what we have laid out in this very complex comprehensive approach to land management.

The CHAIRMAN. Well, I am going to hazard a guess on one of the things I think Mr. Holmberg may have meant. On October 21, 1996, in a letter to Beth Pendleton, Mr. Holmberg states: "Finally, there remains an unaddressed issue of critical importance: the relationship of the revised TLMP to the NEPA completed timber sales through the Tongass National Forest. Given the number of such actions and the significant amount of forest they affect, failure to revise all unsold sales to conform with the new TLMP, regardless of their place in the NEPA process, would result in a de facto prolongation of forest management in accordance with the 1997 TLMP as amended. We find this prospect unacceptable."

I want both of you to respond to Mr. Holmberg's assertion and describe to me whether we are going to see you redoing sales where the preponderance of the NEPA compliance work has been completed. I also want you to provide me with cost breakdowns on what it would take to do this if that is where the two agencies are headed. If they are not, then let us say so.

The proposition that this is even being considered, after spending taxpayers' money, \$13 million, for the past, well, the total number of years that we have been in this process while your two agencies have been cooperating, suggests that this is perhaps a bit misleading relative to the exposure suggested by Mr. Holmberg.

Mr. ALLEN. That was a concern, sir, that we raised with the Forest Service. We expressed our desire to have an opportunity to advise and have them consider reviewing some of the projects that were in the planning, various stages of planning. That activity in fact began and is probably not as onerous as might have been portrayed. I cannot give you any specifics as to how far that has gone. Perhaps Mr. Janik has some more specific information.

The CHAIRMAN. You can give no assessment of the risk here?

Mr. ALLEN. Pardon me?

The CHAIRMAN. No assessment in your opinion of the risk associated with going back and doing these again?

Mr. ALLEN. The risk of?

The CHAIRMAN. Subjecting them to a new round.

Mr. ALLEN. No. I think again the process that was brought about was not viewed as being onerous or a complete redoing of the planning process. It was more an examination of where there might be aspects of current projects that are significantly out of line with the new plan, and that did not require a great deal of time and effort.

The CHAIRMAN. So you dismiss Mr. Holmberg's assertion?

Mr. ALLEN. His assertion? It was an area of concern for us, yes. So no, I do not entirely dismiss his assertion.

The CHAIRMAN. Well, I mean, where would we be if we have to go back? We would look pretty foolish, would we not, as a consequence of the caution that he expresses?

Mr. ALLEN. Again, I think that the cautions that were being expressed there, sir, first and foremost, we had hoped that many of these projects, again where possible, could be brought in compliance with the standards that were going to be part of the new plan. Anything that was done in our view that improved the opportunities for fish and wildlife conservation were in our view valuable and important to any future decisions we might have to make.

Mr. JANIK. Mr. Chairman, if I may add to that.

The CHAIRMAN. Go ahead.

Mr. JANIK. On page 40 and 41 of the record of decision, just as an example, we address a subject area that is always very awkward when you come out with a revised document of this kind, and that is called transition language: What do you do with existing projects that have already been under preparation and are in some degree of completion in terms of NEPA, or maybe even completed?

We have tried to take in full account the concern you expressed in one of your questions, and that is there is a great deal of investment in these projects, and that is why there are four categories. What is being looked for here are the kind of fatal flaw types of things in the screening of projects, whether they be in category 1, and as you get through to 3 and 4 they are less under degree of preparation, so there is more opportunity to modify them in full compliance with the plan.

Back in whatever date Mr. Holmberg wrote that note—when was that, October?

The CHAIRMAN. Yes, it was October 21, 1996.

Mr. JANIK. We actually did have a screening of projects with the Fish and Wildlife Service involved. I am not sure if Fred Norbury is still in the room, but he was part of that with one of Dave's staff locally in Juneau. As Mr. Allen pointed out, it was not quite as rigorous as Mr. Holmberg might have anticipated when he wrote that note. It was done in just a few weeks. There were a few minor modifications made to some projects that did not involve a great deal of expense or retrofitting.

We intend to do the same kind of cooperative screening now that we are 6 months hence or so, with regard to all the projects currently on the table.

The CHAIRMAN. Well, obviously we are all looking for output at the end of the process. I am just wondering if we do not have the problem already before us and are just not relating to it and facing up to it. It is not something that the two of your agencies are going to simply work out in a collegial fashion without hitting the taxpayers with a big, big chunk of money.

I refer you to a January 3, 1997, memorandum to Mr. Janik from Mr. Gary Morrison, the Forest Service supervisor in the Chatham area. In this memorandum he withdraws the In-Between timber sale, withdraws them. He states: "As I am to understand, the reason for the withdrawal of this sale is based on direction from the

Department of Justice," no less. He note further that: "My understanding is that I am directed to either (a) forge a new decision document for the 4.4 million board feet of In-Between volume, as well as the yet unadvertised 9 million board feet of Crab Bay volume, both of which were cleared for immediate sale in the AWRTA settlement, or (b) reanalyze the sale areas along with the remainder of the southeast Chichagof project area volume that was not released on the AWRTA settlement and a new environmental impact statement"—a new one—"in full compliance with the direction of the new Tongass forest plan."

I also refer you to the TG message delivered to Gary Morrison on June 30 from Tim Obst. In this computer message, Mr. Obst indicates: "I hate to tread on a sore subject, but the Department of Justice has been calling me to find out whether we have cancelled the advertisement for the In-Between and taken Crab Bay off the sale schedule. I know the message has come down the pike without leaving a trail and that Fred would like to get something in writing. But whatever we do to effectuate the direction, we need to do it this week so that it does not get closer to the bid opening date and there is no more effort wasted on the issue."

I have a concern with the effort that has already been wasted, already been wasted with this issue. I am further concerned that this seems to be an example of redoing sales that were already completed. I am most of all concerned that the Department of Justice is now intervening directly, for the first time, into timber sales decisions. It further states: Mr. Janik, please respond to my concerns.

Mr. JANIK. Certainly, Mr. Chairman. I am familiar with the situation of Crab Bay and In-Between. Frankly, those two sales are more related to the settlement that occurred with the Alaska Wilderness and Tourism lawsuit and the settlement that followed. Those sales were then identified as going to the Ketchikan Pulp Company, and during the Ketchikan Pulp Company settlement those sales were not encompassed in the 300-plus million that was involved in that settlement, but were taken out of that package through the settlement process under agreement with KPC and once again were then having to be prepared for independent offerings.

What is involved here, as you see in the memos, is a lot of frustration. These sales have been bouncing around for a bit.

The CHAIRMAN. It is pretty costly.

Mr. JANIK. And even though it is low volume, it is very frustrating. However, what is being dealt with here is an examination because it is the very thing that got us into a problem with the court in the AWRTA situation, that the NEPA documents and the NEPA sufficiency has to be evaluated at this point because now they are going to independent offering as compared to going to the long-term contract, which they were set up to do.

So there is no way currently to predict just what the outcome of this evaluation will be. We are going to look at both those sales.

The CHAIRMAN. So it is an exposure?

Mr. JANIK. Sir?

The CHAIRMAN. It is an exposure.

Mr. JANIK. What do you mean by "exposure"?

The CHAIRMAN. Well, you say you do not know yet what it may lead to.

Mr. JANIK. Our evaluation. I am not sure what you mean by the term "exposure." We are going to evaluate the two sales and the NEPA documents for adequacy.

The CHAIRMAN. Well, were you not allowed to have them go somewhere else? I thought that was the point of the AWRTA sale, the settlement, to allow those.

Mr. JANIK. Yes, but then they were identified to go to the Ketchikan Pulp Company and for a while they were identified as having been transferred as part of the long-term contract obligation. Then when the settlement for the Ketchikan Pulp Company occurred those two sales were rejected during the settlement, and they now have to be prepared for independent offering.

So we are going to examine whether the NEPA documents are sufficient for that new offering. It is the very thing that the court ruled on in the AWRTA case that bound up all of that volume for over a year, is that the purpose and needs statement and so on and so on in the NEPA documents were not targeted towards an independent offering. It was all that volume that went from the Alaska Pulp Corporation and was then offered for independent, and the court disagreed with our modifications and said we had to go back and do more work on the NEPA documents.

The CHAIRMAN. Well, I do not know. Did you make the same mistake twice? These sales have been, what, through three lawsuits and two settlements, and I cannot believe—

Mr. JANIK. These sales have been through two settlements.

The CHAIRMAN. Two settlements and three lawsuits.

Mr. JANIK. I am not sure how many lawsuits. I think two events associated with this problem have been the AWRTA settlement and the KPC settlement.

The CHAIRMAN. I cannot imagine why there was a restriction on where they would go after the last settlement.

Mr. JANIK. Well, they obviously were not going to go to another long-term contract because none existed. So they are up for independent offering.

The CHAIRMAN. Mr. Allen, yesterday we asked Mr. Janik what appropriations would be required to fully implement the Tongass plan. I would like to ask you, given the role that you have described in the forest plan implementation for the U.S. Fish and Wildlife Service, what additional resources will be required for your Service to play that role fully? I would also like to know what will happen if those resources are not fully forthcoming.

Mr. ALLEN. Mr. Chairman, I cannot answer what the total costs of the monitoring program might be for TLMP. We have made an estimate. In fact, I have made a recommendation, the Service has, to the Secretary for funding in fiscal year 1999. My estimate at this point of what I think would be sufficient involvement by the Fish and Wildlife Service just as one player, because we view the State of Alaska also has a major role to play, would be approximately somewhere in the neighborhood of \$500,000 to \$600,000.

The CHAIRMAN. Your Service seems intimately involved in all aspects of the TLMP implementation. What is your assessment on whether this is a wise investment of taxpayers' dollars as compared

to using the funds on a recovery plan development for the species that are already on the list?

Mr. ALLEN. Mr. Chairman, I think that the efforts that we have focused on in recent years, that is the Fish and Wildlife Service and the Forest Service, have all been preventative in nature. When we entered into an agreement in December 1994 to look at species that may be tending toward listing, we all agreed that anything that we could do of a preventative nature really was far less costly than ultimately what might be involved in taking remedial action if in fact it became necessary to list a species on the forest. It is like an insurance policy, sir.

The CHAIRMAN. Hypothetically, with regard to the listing of the goshawk and the wolf, suppose that a new species were considered for listing. How would you and the Forest Service interact and how would the implementation of the TLMP be affected?

Mr. ALLEN. Again, if for example, hypothetically, we were to receive a petition to examine another species on the forest, we would do essentially the same thing we did with the wolf and the goshawk. We would engage immediately with the Forest Service if we thought they were a major player, as well as with the State of Alaska. We would request additional public input for any other information relative to that. We would continue to consult and seek the advice of the Forest Service relative to that particular species.

Under the terms of our memorandum of understanding with the Forest Service and the State of Alaska, where we have agreed to exercise conservation measures on species tending toward listing, this could also apply to a species that someone may have petitioned, whether the ultimate action is a listing one or not. It gives us an opportunity to examine more closely what the environmental requirements are of that species and, if it is determined necessary, to enter into a conservation agreement taking conservation measures which might amount to management practices. In the case of the State of Alaska if it is a game species, it could involve some regulatory actions.

But these would be done, again, as measures that would prevent the need to invoke the Endangered Species Act.

The CHAIRMAN. I am reading from the AWRTA settlement, appendix 2: "The United States and AWRTA stipulate that, without further procedures under NEPA or ANILCA, the United States may prepare, advertise, offer, release, award, and allow operations to be completed for the following timber sales or offerings or portions thereof that are subject to a temporary injunction."

The specifics are Crab Bay, and it says "In-Between, approximately 4.4 million board feet." Is that not adequate?

Mr. JANIK. That is part of what I was trying to explain earlier, Mr. Chairman, that these projects then went to the KPC allotment under the obligation of the long-term contract. They were then rejected, and at this point we are making sure that they are suitable for independent offering.

The CHAIRMAN. Well, it says here you do not need to do that.

Mr. JANIK. Current discussion with a number of parties, including Department of Justice, indicates we need to take a look at this.

The CHAIRMAN. It says here—and this is an order, is it not? It says "court order" at the bottom of it.

Mr. JANIK. And this homework may need to immediate re-advertisement. I have no idea at this time.

The CHAIRMAN. "The United States stipulates that, without further procedures." Now, that is as clear as——

Mr. JANIK. I think the complication is the transfer over to the KPC and now the reversal into independent offering, what happened subsequent to that. And as I said earlier——

The CHAIRMAN. That is not what it says, is it?

Mr. JANIK. There are some remaining questions that need to be answered.

The CHAIRMAN. Well, you can have all the questions you want, but it says here "The United States and AWRTA stipulate, without further procedure under NEPA or ANILCA, the United States may prepare, advertise, offer, release, award, and allow operations to be completed on" the Crab Bay timber site.

Mr. JANIK. I agree, that language is quite clear.

The CHAIRMAN. Well then, why did you not do it?

Mr. JANIK. Because in subsequent discussion, with the complication of the KPC settlement——

The CHAIRMAN. Who did you discuss it with?

Mr. JANIK. A number of people: our own people, the Department of Justice, who was heavily involved in both these settlements, and our Office of General Counsel.

The CHAIRMAN. Why do you not just make a decision? You have got the Department of Justice. You have got a court order to back you up. What more do you need?

Mr. JANIK. I am not sure there is anything more needed. We are looking into it.

The CHAIRMAN. You know, Jack Ward Thomas made the statement in his opinion relative to the heart of the debate over public land management, and he said: "The simple fact has arisen from a series of events and the interaction of the ESA and the regulations issued pursuant to the National Forest Management Act, specifically that diversity regulations and executive orders to take the brunt of the consequences of law and regulation on forest land where possible"—"Federal land where possible. This has a profound impact on the capability of the managers of the public lands to carry out their multiple use mission in a manner that solidifies the evolved policy of biodiversity retention and meets the expectations of many western members of Congress for community stability and higher levels of resource extraction."

Do you concur with that in general?

Mr. JANIK. That was the personal view of the Chief, Jack Ward Thomas. I judge his opinion very highly. The questioning related to the TLMP revision, sir, is we deal with the laws that are on the table and what we are instructed to do by those. That is what we attempted to do.

The CHAIRMAN. Well, the way this thing reads is basically the Forest Service is going to make a decision and take the consequences, with the presumption that all Native land is harvested. That is the way it comes down on the application in your TLMP, and that is hardly true because it is not all harvested.

Mr. JANIK. Would you please put that in the form of—rephrase that question, Senator? I am not sure I am exactly reading——

The CHAIRMAN. The assumption is that the way you have come down and the application of this is that all Native timber is in fact assumed to have been harvested.

Mr. JANIK. I do not concur that that is the assumption we have made in the revision.

The CHAIRMAN. What is the assumption you made in the revision on Native timber?

Mr. JANIK. What I believe has happened here through the panel assessments that we discussed and all else is that the context of the Tongass setting was taken into account when the folks that we asked to give their opinions and judgments on what was needed in terms of habitat strategies and the risks associated with those on the Tongass, on the Federal land, what was needed.

So I would concur there was some consideration given to conditions on other lands. At the same time, the focus was what is needed on public land, the Tongass.

The CHAIRMAN. I am going to wind this up in about 5 minutes.

There was a question yesterday relative to a point on the timeliness of changes in the planning process that went into the development of the TLMP, and I want to go back to these two charts. Do I have my narrative in front of me? I cannot read it from here, that is my problem. You have got it somewhere? We will find it.

I am sure you figured I would get back to it, so you have probably got it memorized. Or maybe you can read it from there. It is dated——

VOICE. It is dated May 14, 1997.

The CHAIRMAN. And read the reference. It says at the bottom—I have got it here. This is “For your review.” It is from the TLMP team to Gary Morrison, Gail Kimball, Brad Powell, Phil Janik, Fred Norbury, and Tim Obst, I believe.

Mr. JANIK. Tim Obst.

The CHAIRMAN. And it says: “For your review, enclosed are the additional proposed standards and guidelines,” et cetera, et cetera, “additional measures for landscape collectively, modifications.” “Enclosed are the proposals as they modify the December 1996 version of the forest plan.”

It says then: “Please look at these changes,”—and these are underlined in yellow—“Look them over and give us any comments no later than close of business on Thursday, May 15, if at all possible.” That is the next day.

Then the next chart, and I think it is significant because it says at the top this is a “working document,” marked “confidential”: “Region X forest management has had an opportunity to review the most recent draft of the proposed TLMP forest-wide standards and guidelines for the marten, drafted 5-5-97 at 11 o’clock.” That is getting pretty close, too.

“The initial reaction of forest management was that the revised standards and guidelines would result in a significant reduction in the amount of viable timber available for planned harvest.”

Then down at the bottom it says: “We believe that the impacts of timber harvest are so great that the current allowable sales quantity is unobtainable. In order to adhere to forest policy and applicable laws and regulations, changes of the magnitude reflected in the revised S and G’s must be supported by the recalculation of



the ASQ. We fear that to do otherwise would open the Forest Service to allegations of 'deceiving the public.'"

Would you care to comment on that?

Mr. JANIK. Yes.

The CHAIRMAN. Some pretty strong stuff coming at the end of the process.

Mr. JANIK. I am familiar with the memo, and let me give a little backdrop to this so we all understand the setting.

The CHAIRMAN. The last minute, is it not?

Mr. JANIK. Very close. It was within the month that I signed the record of decision, yes.

The CHAIRMAN. A few days.

Mr. JANIK. About 2 weeks, yes.

There were many such things going on during the last 2 months. As you know, the panels were reconvened and we got some risk ratings on the previously unpaneled alternatives, as well as doing a final legal check and substantive check as we were driving towards finishing the process and preparing to sign the record of decision.

The subject of recalculating the ASQ, given some of the new stipulations that were being looked at that have come to be called mitigation measures, that are contained in appendix N that we discussed earlier, that was certainly a subject of discussion. We touched on that a little bit yesterday.

I would like to refer to that last paragraph of Fred Walk's note, which is important. It says: "If these requirements were characterized as mitigation measures to be used at the discretion of the land manager upon demonstrated and documented evidence that such measures are warranted to meet site-specific needs, then the current calculation could be used."

I point that sentence out because it is essential to the evaluation that took place, and that was the flexibility that we have written into the document, into the Tongass plan, that the ID team at the field level will examine whether these mitigation measures are truly needed or not, and some of the incidentals that Mr. Norbury and Mr. Day talked about in evaluating whether a recalculation was needed led to a conclusion that one was not.

That is the kind of thing that transpired on that subject, Mr. Chairman. We have left the flexibility for implementation of mitigation measures to the field.

The CHAIRMAN. I think it is a whole new area the public will really never know. They will not have had the opportunity to have had any input into this particular forest plan in the sense of these later developments, and that is certainly reality. They had it in the previous material, but not this.

Mr. JANIK. We did not see that as a need, to go out to the public again with this.

The CHAIRMAN. Well, that obviously was your decision and one that I respect, but you have to be held accountable for it.

Mr. JANIK. I understand that, Mr. Chairman.

The CHAIRMAN. I do not have any further questions, other than to thank the panel. You have been very gracious with your time, Phil.

I am disappointed, obviously, in a number of facets that we have discussed at length here. I think we have done one thing and established a record and certainly gotten to some of the questions that I think will bear later examination. But I think that there is a notable lack of sensitivity by you and the Forest Service in general on the socioeconomic impact of this action on the communities that are affected, and that gives me great concern.

I think that the input from the Forest Service technical experts in Madison, Wisconsin, are significantly lacking in the practicalities of what is possible to bring into the scene to replace the demise of the pulp mills, and utilizing specifically the utility timber. I think they need much more encouragement by you professionals, who recognize what it takes to attract industry into the Tongass of a nature that can meet the changing availability of wood fiber in the Tongass.

The reality that this particular management group within the Forest Service is such a significant departure from that of years previous, when the interest of the Forest Service was truly multiple use, stimulate the economy and jobs, has moved into more of a habitat concern. I really question much of the science based on the inability to resolve between experts opinions that are out there and small samplings that have taken place.

Nevertheless, we have got a legal process to pursue with regard to the question of listing, and that is going to be decided by a group other than this.

Little attention was given to the second growth, the renewability of the forest, and I think that was unfortunate. I think the Forest Service should be charged with the task of trying to respond a little more timely to some of the misconceptions that are associated with the Tongass, that only experts can respond to, relative to presumptions that it is being clearcut adversely, that there is little consideration for habitat, that the fish runs are in danger, and so forth. Clearly those are not the case.

I think that the combination of State and Forest Service management has probably been second to none in any forest. I think the Forest Service has exceeded the State's capability and I commend you for that. We have had, I think—the State has had an opportunity, from the standpoint of forest management practice, to see Federal managers leading the way, and that is as it should be.

I am not convinced, however, that the State, given an opportunity, will not be able to develop second growth management a little faster if given the opportunity and with the incentive of the Native corporations to want to see that cash flow reoccurring by investing in thinning and so forth, doing things that you cannot do.

I guess I am going to close again by referring to the GAO draft in testimony, because I think it is the crux of this whole issue and the manner in which the Forest Service has responded. It is referenced on page 12, and it is entitled "The Forest Service has not adequately monitored the effects of its decision." I think it is a legitimate criticism and I submit it to you in a constructive sense. It says:

"An option to the endless delays and increasing costs incurred attempting to ensure that a decision is scientifically credible and le-

gally defensible would be to move forward with a decision using the best information available, the best science available."

It further states that: "According to the inter-agency task force chaired by the Council on Environmental Quality"-and I do not know what better source you can go to—"an agency can condition a decision the effects of which may be difficult to determine in advance because of uncertainty or costs on the monitoring of those uncertainties, indicate how the decision will be modified with the new information as it is uncovered or when preexisting monitoring thresholds are crossed, and re-examine the decision in light of its results or when a threshold is crossed."

"However, the Forest Service: one, has historically given a low priority to monitoring; two, continues to approve projects without an adequate monitoring component; and three, has not generally performed the monitoring of forest plan implementation required by its own current regulations. As a result, Federal regulatory agencies and other stakeholders may continue to insist that the Forest Service prepare the detailed environmental analysis and documentation which have become increasingly costly and timely consuming before making decisions, rather than support what many Forest Service officials believe to be a more efficient and effective option of monitoring and evaluation."

I think it is fair to say that within your TLMP there is not enough attention given to the monitoring aspects associated with the decisionmaking process.

You may feel free to respond and we will call it a day.

Mr. JANIK. First of all, thank you, Senator, for the opportunity to have all of us testify before you.

In reference again to the GAO report, from the revision documentation we feel we do have a strong monitoring plan in terms of actual implementation of the plan. I believe I am already on the record with judgments about the process leading up to the record of decision, so I will not be redundant here. Thank you, again.

The CHAIRMAN. See, my point is that the monitoring, which you may or may not do, with regard to say the marten or the goshawk will not affect the U.S. Fish and Wildlife Service determination of whether they are going to list or not, for the goshawk at least, for the U.S. Fish and Wildlife Service.

Mr. ALLEN. The question is will our determination be based on whether or not—

The CHAIRMAN. The fact that they are monitoring it, you are going to make a decision regardless of the monitoring?

Mr. ALLEN. Yes, sir, based on the existing conditions, correct.

The CHAIRMAN. And I think that is unfortunate, because that hardly addresses the real application of your monitoring. But we have gone over that and there is not much point in repeating it.

There will be a period of probably 10 days for additional materials. We will probably have some questions for you, and I will have additional materials that we will be putting into the record. Hopefully, as a consequence of this 2-day exposure, Alaskans will have a better understanding of what degree of certainty they might expect as far as timber availability is concerned and the complexities associated with the bounds under which the Forest Service is currently compelled to operate, which are very constrictive.

I just wonder how far we are going to have to go before things come to a halt and we have to revisit the oversight process. But in any event, that is another story for another day.

The hearing is concluded. I want to thank those that have been involved, and the recorder as well, and I wish you all a good day. [Whereupon, at 1:35 p.m., the hearing was adjourned.]

[Subsequent to the hearing the following letter was received for the record:]

FRIENDS OF SOUTHEAST'S FUTURE,  
*Sitka, AK, July 5, 1997.*

Senator FRANK MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.*

Subject: Concerning the joint congressional hearing to review the new TLMP Revision, July 9 & 10. To be submitted in the Congressional Record: A request for Sitka, Alaska—an Alaskan ex-mill town request less logging not more.

DEAR SENATOR MURKOWSKI: We are requesting that you place this important brief in the Congressional Record as testimony submitted to the joint congressional hearing to review the new TLMP Revision.

In just three years Sitka has gone from being a mill town to a town calling for greater protection for our remaining high quality forest. Sitka needs your help to protect its subsistence, its heritage, and its way of life. We ask that currently approved projects near Sitka be canceled in the new TLMP. We also ask that the new TLMP Revision assures that future timber projects will respect the views of the Sitka public and the Alaska Department of Fish & Game (ADF&G), as explained and documented herein.

On February 4, 1997, Sitka had a special election to determine City and Borough policy concerning logging. Significantly, in one of the largest election turnouts in Sitka history, 98 percent of the voters cast ballots in favor of one or the other of two propositions that asked for either firm restrictions on the clearcutting of old growth forest near Sitka (52% yes), or the total avoidance of such logging (46% yes). The way to vote in favor of logging as currently planned by the Forest Service was simply to vote "No" on both propositions. Yet, 98 percent of the voters cast ballots in favor of tighter restrictions on logging in the Sitka Borough.

We believe that both propositions were consistent with the TTRA sec. 705, which states: ". . . the Secretary shall, to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, seek to provide a supply of timber from the Tongass National Forest. . . ." [Note: "seek" is not a synonym for guarantee.]

It is the concern of the Alaska Department of Fish & Game (ADF&G) [Tab 7]\* Friends of Southeast's Future that the new TLMP does not go far enough to provide for multiple use and sustained yield of all renewable forest resources.

The election makes it clear that Sitkans do not want the Forest Service to continue logging near Sitka in the way that has been decided for the recent Poison Cove-Ushk Bay and NW Baranof Projects and under the new TLMP.

The ordinance placed in the Sitka General Code by this election states in part: "It is further the policy of the City and Borough of Sitka to oppose all clearcut harvest which is not located so as to minimize negative impacts to critical fish and wildlife habitat, subsistence resources and scenic quality." [see proposition 2, under Tab 1.] According to the ADF&G, neither the Poison Cove-Ushk Bay and NW Baranof Projects, nor the new TLMP meet these criteria [Tabs 4,5, & 7].

For example, the most recently decided project in the Sitka area is the NW Baranof project. It will take nearly all of its timber by clearcutting (or closely related methods) and will remove 80-95% of the timber from the overwhelming majority of the cutting units [see graph under Tab 3]. Because of its conflict with subsistence such logging is therefore contrary to the vote of the people of Sitka, as well as the TTRA.

Sitka is the largest subsistence community in Alaska, and over 80% of Sitka households engage in subsistence. Deer is an important and vital subsistence resource for us, and the serious negative effects of the Poison Cove-Ushk Bay, NW Baranof projects, and the new TLMP are of major concern to both ADF&G and the community of Sitka.

\*Additional material submitted with this letter has been retained in committee files.

The result of past Forest Service logging (mostly by 1970 unacceptable clearcut methods) is that 87% of the high volume (VC 6 & VC 7) old-growth forest in the Sitka Cal Use Area has already been lost. Most of this was prime deer winter habitat [see Tab 5, p 14]. The Forest Service finally admitted to the 87% loss earlier this year, January 29, 1997 [Tab 6], and this figure is not disclosed in the Projects EIS's nor the new TLMP.

The Forest Service has ignored what is obvious to everyone else. The Sitka Fish & Game Advisory committee voted unanimously to ask the Forest Service to adopt the No Action Alternative when commenting on the NW Baranof DEIS [Tab 8]. In addition, 85 percent of the public comments on the DEIS also favored the No Action Alternative.

ADF&G comments such as those below should be viewed with heightened significance in light of overwhelming objection to the FS timber program in the Sitka area, as indicated by the planning record and the mandate from Sitka's recent special election:

"The ADF&G review and analysis [of the new TLMP] leads to several conclusions: 1) Significant loss of deer habitat capability has already taken place in the 1995 time period and additional loss of deer habitat capability will occur under the preferred alternative in the 1995-2095 time period. 2) The deer population in many areas of the Tongass National Forest is now being harvested at the maximum rate that can be sustained. The number of deer needed to meet future subsistence and non-subsistence needs will increase with projected population growth. 3) The preferred alternative proposes further logging with attendant reductions in the deer population for areas where: a) the deer population is presently harvested at a maximum sustainable rate and b) previous logging has already reduced deer habitat capability. 4) The preferred alternative proposes further timber harvest in areas rated of highest value to subsistence." [ADF&G Comments on Tongass Plan Revision, August 26, 1996; Tab 7, p 5]

"None of the NW Baranof alternatives adequately maintain subsistence resources and lifestyles. The FS has failed to demonstrate that the project is necessary and consistent with sound management principles for the utilization of public lands, or meeting the FS responsibilities to maintain subsistence values and uses." [Oct. 1995 ADF&G comments on the NW Baranof Draft EIS. See Tab 5, p18]

"From our perspective one of the most critical elements of the Northwest Baranof sales is it's potential impacts on subsistence, particularly deer harvest. The preferred alternative proposes harvesting a large volume of timber in close proximity to the region's largest subsistence community, in an area where every major drainage has been clearcut logged in the past using logging methods which are no longer acceptable. We fear that this sale may be the most deleterious of any sales that have taken place in the Chatham Area to date in terms of its impacts on subsistence." [Ibid. p 14]

Thank You For Your Considerations,

WILLIAM H. MILLER.