

**MEMORANDUM OF UNDERSTANDING**

**between the**

**State of Alaska**

**and**

**USDA Forest Service, Alaska Region**

**on**

**Coastal Zone Management Act/  
Alaska Coastal Management Program**

**Consistency Reviews**



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**TITLE I -- INTRODUCTION**

**Section 101. Purpose**

A. This MOU is entered into solely for the purposes stated below and is not a contract or other agreement with obligations enforceable at law, and no third-party beneficiary rights are created. Accordingly, this MOU shall not be evidence, cited or otherwise relied on in any administrative adjudication or judicial proceeding.

B. This Memorandum of Understanding (MOU) serves the following purposes:

1. Improve cooperation, coordination, and communication between the Alaska Division of Governmental Coordination (DGC) and the Alaska Region of the USDA Forest Service (FS).
2. Describe the process both agencies will follow in making and reviewing consistency determinations for FS initiated "Federal Agency" activities.
3. Describe the process both agencies will follow to synchronize consistency reviews with the process used by the FS to analyze and display the environmental effects of its activities and development projects under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4346) and its implementing regulations (40 CFR 1500-1508).
4. Describe the process both agencies will follow for review of applicant-initiated activities that affect the coastal zone of Alaska and require FS permits.
5. Define the types or categories of FS activities that will not require an individual Alaska Coastal Management Program (ACMP) consistency determination.
6. Facilitate, refine, simplify, and expedite State review of Federal activities, development projects, and permitted activities on National Forest System lands.
7. Facilitate, refine, simplify, and expedite resolution of disagreements over FS consistency determinations.

**Section 102. Authority**

The authority to enter into this MOU is based on Executive Order 12372. Additional authority is found at section 319 of the Clean Water Act and in the "Alaska Nonpoint Source Pollution Control Strategy."

**Section 103. Boundaries of the Coastal Zone**

A. The boundaries of the "Coastal Zone" are identified in the Federally approved ACMP. Boundary maps are available from DGC.

B. Excluded lands (15 CFR Part 923.33)

Lands, the use of which is by law subject solely to the discretion of, or which is held in trust by, the Federal government -- In the context of this MOU, FS lands -- are excluded from the coastal zone. The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the CZMA when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a State's management program.<sup>1</sup>

#### **Section 104. Coordination of Changes in District Coastal Management Plans and the ACMP**

DGC will ensure that the FS has an opportunity to provide comments on any proposed modification to the ACMP that may affect the FS under this MOU, including proposed changes to district coastal management plans, the "Classification of State Agency Approvals", known as the "ABC" list, regulatory changes, and changes in standards of review. Notice of such changes and associated comment schedules will be provided to the Regional Forester.

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<sup>1</sup> See CZMA Section 304 (1), 16 U.S.C. 1453.(1)

## TITLE II -- FEDERAL AGENCY ACTIVITIES

### Section 201. Applicable Federal Law

#### A. Coastal Zone Management Act Section 307(c)(1) and (c)(2)

*(c)(1)(A): Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.*

*(c)(2): Any Federal agency which shall undertake any development project in the coastal zone of a State shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.*

#### B. Clean Water Act Section 319(k) (In Part)

"...each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.<sup>2</sup>"

#### C. Executive Order 12372 (In Part)

*"2. ...Federal agencies shall, to the extent permitted by law:*

*(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.*

*(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner. "*

### Section 202. Applicable FS Activities

#### Definition of "Federal Activity"

The term *Federal Activity* does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency. Such activities are addressed in Title III of this MOU.

This Section of the MOU applies to FS activities and development projects as defined by 15 CFR 930.31:

(a) The term *Federal Activity* means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities.

(b) A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

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<sup>2</sup> The State's nonpoint source pollution management program is established and described by the Alaska Nonpoint Source Pollution Control Strategy. This Strategy includes policies and procedures for the conduct of S319 Federal consistency reviews.

## B. Guidelines For Determining Whether Proposed FS Activities Require a Consistency Determination

1. DGC and the FS recognize that the activities listed below, which may affect the coastal zone, will normally be considered to require a consistency determination:
  - a. Proposed timber sales (including harvest units and associated roads, logging camps, and other planned facilities) requiring an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).
  - b. Activities such as construction and reconstruction of roads, administrative sites, fish passes, and large-scale campgrounds, trails, recreation sites and facilities that require an EA or an EIS.
2. Pursuant to 15 CFR 930.35(c), the listing of activities under this section does not eliminate the FS' responsibility to provide consistency determinations for development projects in the coastal zone and other Federal activities that affect the coastal zone.
3. Negative Determinations: Pursuant to 15 CFR 930.35(d), the FS will provide a negative determination to DGC if the FS determines an activity listed in subsection 202 (B) (1) does not affect the coastal zone. The FS will provide a brief description of the project and the reasons it will not affect the coastal zone. Disagreements between the FS and DGC about a FS negative determination may be resolved using the methods outlined in Section 208.

## C. Guidelines for, and Examples of, FS Activities That Do Not Normally Require A Consistency Determination

For the purposes of this MOU only, DGC and the FS recognize that the activities that do not normally require documentation in an EA or EIS (e.g. Categorical Exclusions) are "de minimus", normally do not affect the coastal zone and therefore normally do not require a consistency determination. This does not relieve the FS of the responsibility to determine whether there are affects to the coastal zone.

Examples include, but are not limited to, the following:

1. Closure orders issued pursuant to 36 CFR 261 - to provide resource protection or to protect public health and safety.
2. Reconstruction or maintenance (i.e. to return a site to its original design level) of:
  - a. Administrative sites.
  - b. Roads, trails, and landline boundaries.
  - c. Recreation sites and facilities.
3. Acquisition of land or interest in land.
4. Minor construction and reconstruction of trails, recreation sites and facilities.
5. Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides, or result in vegetation type conversion.
6. Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or road construction.



7. Reconstruction or maintenance activities for stream or lake aquatic habitat or fish improvement structures that do not involve coordination under the *Supplemental MOU 1 between the Alaska Department of Fish and Game and the USDA Forest Service, Alaska Region Regarding Fish Habitat and Passage* (FS-DFG Title 16 MOU.)

8. Construction and reconstruction of small, temporary field camps.

9. Construction, reconstruction, operations, or maintenance of administrative sites located on NFS lands within areas that are subject to local zoning regulations.

10. Timber sales of small volumes<sup>3</sup> and without extraordinary circumstances<sup>4</sup> that:

a. are not primarily located in beach fringe, riparian buffers, or old growth reserves, and

b. remove 250,000 board feet or less of merchantable wood products; or

c. for merchantable salvage<sup>5</sup> wood products:

i. on the Tongass, remove 1,000,000 board feet or less;

ii. on the Chugach, remove 40 acres or less that do not include timber lands within 90 meters of anadromous and high value resident fish waters<sup>6</sup>.

11. Regeneration of harvested or salvaged areas, where required.

12. Other minor activities, such as aircraft landings, shore ties, etc.

#### D. Activities That Do Not Require an Individual Consistency Determination

1. Pursuant to 15 CFR 930.37(b) the FS may develop a "general" consistency determination for a class of substantially similar, repetitive, or periodic actions other than a development project. The State will then initiate a general consistency review for the class of actions. The FS must thereafter periodically consult with the State.

2. All activities that are found to be generally consistent will be listed on Attachment 4 to this MOU. As of the effective date of this MOU, no activities have been found generally consistent. Attachment 4 will be updated as needed.

#### E. State Tracking of FS Activities (includes SOPA)

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<sup>3</sup> See also the "A-List" Department of Natural Resources Division of Forestry section of the *Classification of State Agency Approvals* published by DGC.

<sup>4</sup> Forest Service Handbook FSH 1909.15 - ENVIRONMENTAL POLICY AND PROCEDURES HANDBOOK WO AMENDMENT 1909.15-92-1 EFFECTIVE 9/21/92 CHAPTER 30.3 - Policy.

2. Extraordinary circumstances include, but are not limited to, the presence of the following:

a. Steep slopes or highly erosive soils.

b. Threatened and endangered species or their critical habitat.

c. Flood plains, wetlands, or municipal watersheds.

d. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas.

e. Inventoried roadless areas.

f. Research Natural Areas.

g. Native American religious or cultural sites, archaeological sites, or historic properties or areas.

30.5 - Definitions.

Extraordinary Circumstances. Conditions associated with a normally excluded action that are identified during scoping as potentially having effects which may significantly affect the environment (sec. 05).

<sup>5</sup> *Salvage harvest*: Shall be defined by the applicable Forest Plan.

<sup>6</sup> "ABC List" at A-list P. 8

1. Each FS Responsible Official will review all FS projects or activities for which the official is responsible on a quarterly basis to determine whether new information about an individual activity indicates an activity may affect any land or water use or natural resource of Alaska's coastal zone. FS responsible officials will use the following to help determine if an activity or project affects the coastal zone:

- a. The list of generally consistent activities found as Attachment 4 to this MOU.
- b. Consideration of applicable factors, including but not limited to whether:
  - i. The action causes a change in the manner in which land, water, or other coastal zone natural resources are used.
  - ii. The action causes a limitation on the range of uses of coastal zone natural resources.
  - iii. The action causes changes in the quality or quantity of coastal zone natural resources.
- c. Consideration of cumulative and secondary effects.

2. The procedure below specifies how the State will track FS activities:

- a. The Schedules of Proposed Actions (SOPA) (see Attachment 6) will be used by the State to monitor FS activities. Each Forest Supervisor shall provide to DGC and to each State resource agency a copy of the current Forest SOPA quarterly. Each SOPA will clearly indicate those proposed activities not previously listed in previous SOPAs. Each project will also be identified as either a 'Federal activity' or a 'Federal license or permit' (see section 202 A of this MOU for the definitions of these terms).
- b. For each project identified as a Federal activity, the SOPA will also classify the project as belonging to one of the following four categories:
  - i. The FS will provide the State with either a consistency determination or a negative determination (i.e., the project is listed as normally requiring a consistency determination in section 202 B of this MOU).
  - ii. The project is listed on Attachment 4 as categorically consistent (i.e., the FS will not provide either an individual consistency determination or negative determination).
  - iii. The FS does not expect to provide either a consistency determination or a negative determination (i.e., neither i nor ii apply, and the project is not expected to affect the coastal zone).
  - iv. The FS has not yet decided whether it intends to provide a consistency determination (i.e., i and ii do not apply and the FS has not yet determined whether the project will affect the coastal zone).
- c. DGC will notify the appropriate Forest Supervisor within 45 days of receipt of the SOPA if the State believes any activity listed as category iii or iv above does in fact require a consistency determination.
- d. After receipt of a request from DGC for a consistency determination under the preceding paragraph, the FS will either provide a consistency determination to DGC or, if the FS decides that the activity does not affect the coastal zone, per 15 CFR 930.35(d) the FS will provide a negative determination to DGC at least 90 days before final approval of the activity.

- e. If DGC disagrees with a FS negative determination, it will notify the FS within 30 days of receipt of the negative determination, or agreement will be presumed.
- f. Disagreements between the FS and DGC about a FS negative determination may be resolved using any of the methods outlined in Section 208.

## F. Emergency Actions

FS actions taken in an emergency will not require standard procedures for advance review for consistency with the ACMP. An "emergency" is a situation that would result in an unacceptable hazard to life, a significant loss of property, or immediate, unforeseen, and unacceptable resource damage if corrective action is not undertaken within a time period less than the normal time needed to complete CZMA review. Reasonable efforts will be made to receive comments from the State. Nothing in this section relieves the FS of responsibility to comply with the CZMA. The FS responsible official authorizing the action will ensure, if the action affects uses or resources within the coastal zone, that consultation with DGC is accomplished as soon as possible. Post-action review and analysis will be conducted if requested by DGC as a result of such consultation. Inadequate planning will not constitute an emergency.

## Section 203. FS Consistency Determination Procedure

### A. Determination

If an activity or project affects the coastal zone, the FS will determine whether the activity is consistent to the maximum extent practicable with the enforceable policies of the ACMP.

The State and FS disagree over some aspects of the CZMA's application to FS activities. However, in order to achieve the purposes of this MOU, the FS will use the following references to help make this determination:

1. Alaska Forest Resources and Practices Act and Regulations - AS 41.17 & 11 AAC 95. These provisions apply as follows:

a. AS 41.17.900(b) for Federal land,

(1) the degree of resource protection may not be less than that established by this chapter for state land except that AS 41.17.119 establishes the minimum riparian standard.

(2) a timber harvest activity subject to this chapter shall satisfy the requirement to be consistent to the maximum extent practicable<sup>7</sup> with the Alaska coastal

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<sup>7</sup> "Consistent to the maximum extent practicable" is defined in 15 CFR Part 930.32. The term "consistent to the maximum extent practicable" describes the "requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations. If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the management program. *Coastal Zone Management Act Regulations 15 CFR 930.32 (a) (In Part)* Based on the CZMA and implementing regulations, there are three situations in which a Federal activity may deviate from full consistency with a State's approved coastal management program:

- (1) if existing Federal law prohibits an agency from full consistency ;
- (2) when circumstances arise after the approval of a State coastal management program which were unforeseen at the time of program approval and these circumstances present a "substantial obstacle" preventing "complete adherence" by the agency; or
- (3) through a presidential exemption authorized by CZMA Section 307(c)(1)(B).

management program if the federal land management plans, guidelines, and standards applicable to that timber harvest activity provide no less resource protection than the standards that are established in this chapter provide for state land, except that

(A) AS 41.17.119 establishes the minimum riparian Standards.<sup>8</sup>; and

(B) this paragraph does not apply to a timber harvest activity that requires a state or federal authorization under a provision of law other than this chapter.

b. The State and FS recognize that AS 41.17.119 and AS 41.17.900 identify the relevant standards, but disagree over the further relevance of AS 41.17.118 for the 100'-300' portion of the riparian zone. The FS will, however, provide the State with the information specified in Attachment 1.

c. AS 41.17.900(b)(2)(B): If Federal timber harvest projects and plans include an associated activity that requires State or Federal permits or authorizations (e.g., construction or operation of a log transfer facility), the consistency determination for that associated activity is based on ACMP standards found at 6 AAC 80 and the enforceable policies of approved district coastal management plans of affected coastal districts.

2. ACMP Standards (6 AAC 80) and District Coastal Management Plan Enforceable Policies will be considered to be the applicable review standards for non-timber projects that are in or that affect the coastal zone (See Attachment 7).

3. Information generated through NEPA analysis (e.g., contained in an Environmental Impact Statement (EIS) or an Environmental Assessment (EA)).

4. Applicable FS plans, standards and guidelines.

5. State of Alaska Water Quality Standards.

6. Applicable MOU's - e.g. FS-DFG title 16 MOU.

7. The list of generally consistent activities found as Attachment 4 to this MOU.

## B. Initiating ACMP Consistency Reviews

1. Content - A consistency determination will contain sufficient information to describe the expected activity and its coastal zone effects, and a detailed project description. FS consistency determinations will include:

a. A statement that the proposed activity will affect the coastal zone.

b. A statement indicating whether or not the proposed activity is consistent, to the maximum extent practicable, with the enforceable policies of the ACMP.

c. A description of the project, associated facilities and coastal zone effects, and any other comprehensive data and information sufficient to support the FS consistency determination.

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<sup>8</sup> Harvest of timber may not occur within 100 feet from the shore or bank of an anadromous or high value resident fish water body

i. Section 205 and Attachment 1 of this MOU contain the information needed for timber harvest activities requiring an EIS or EA.

ii. Attachment 3 describes the information the FS will provide for other types of FS activities.

d. Any completed applications for required authorizations submitted to other Federal agencies and associated required State authorizations (e.g. Clean Water Act 402 or 404 permits and associated State CWA Sec. 401 certifications See Attachment 3.)

## 2. Timing

a. Consistency Determination - At that point in the NEPA process when the FS is ready to submit a detailed project description for formal CZM review, and can provide the information set forth in this MOU, the FS may provide the State with a consistency determination. The FS will provide an adequate consistency or negative determination, if required, to DGC as early as practicable in the project planning process, and no less than 90 days prior to final Federal approval.

i. For EIS's, the State and FS agree that the appropriate point in the process for a consistency determination is usually at the issuance of a DEIS.

ii. At the same time, the FS will provide a copy of the consistency determination to each State resource agency. A mailing list of State resource agency contacts to whom the NEPA and consistency correspondence should be sent is included in Attachment 2, which may be updated as needed by the State.

iii. After preparing responses to DEIS comments and prior to publishing a FEIS/ROD or, after the FEIS but before issuing the ROD, if the two are separate, the FS will transmit to the State a project clarification, at which point, the State per 15 CFR 930.41(b) will have up to 60 days to agree or disagree with the FS consistency determination (see Sec. 206).

iv. For EA's, see Sec. 207.

## Section 204. State Consistency Review Procedure

The State will use the following procedure for reviewing a consistency determination submitted to the State by the FS. DGC will coordinate the State's review of FS consistency determinations under procedures contained in Title 6, Alaska Administrative Code, Chapter 50, as amended, and 15 CFR 930.

### A. Review Schedule

#### 1. EIS's

a. The State and FS will employ concurrent public comment periods for EIS/CZM reviews. The ACMP comment period will run within the NEPA comment period. The NEPA comment period will run for at least 45 days.

b. Following the State public comment period, the State will respond to the FS with NEPA, and/or preliminary ACMP comments, per Section 206 (D) (3) of this MOU, within the NEPA public comment period.

c. The State comment period may be extended if the FS extends the NEPA public comment period, in which case the review period will be extended for the duration of the extended NEPA public comment period.

d. After consideration of all comments received on the DEIS and refinement of the preferred alternative, and prior to publishing a FEIS/ROD, the FS will describe any proposed changes to the DEIS Preferred Alternative in a document called the "Project Clarification" and provide the description to DGC and concurrently to the State resource agencies by hand delivery or certified mail. Refer to Attachment 1 for identified information that will be provided with the project clarification of a FS timber sale.

e. Subsequent to receipt of the above, the State per 15 CFR 930.41(b) will have 60 days to agree or disagree with the FS consistency determination.

f. This MOU constitutes a blanket request for, and approval of, an additional fifteen (15) days to the 45-day review timeline provided in 15 CFR 930.41(b).

g. An extension for State review beyond the 60-day period specified above must be approved by the FS.

#### 2. EA's and other minor consistency reviews

a. The State will conduct a 30-day review. The normal milestones for this type of review will be as follows:

i. The comment deadline will be at close of business on Day 17 of the review.

ii. The State will issue a proposed consistency response on Day 24 of the review.

iii. Absent a mutually agreed upon alternative schedule or an elevation, the State will conclude its review within 30 days.

b. The State comment period may be extended if the FS extends the NEPA public comment period, in which case the review period will be extended for the duration of the extended NEPA public comment period.

c. The State and FS may agree to extend the timeline (e.g. the 30-day review timeline set out in 1 above).

## B. Requests for Information

### 1. Review of Timber Harvest Activities

a. If information identified in Sec. 205 and Attachment 1 of this MOU is not available at the time of the consistency determination, the State and the FS may agree to one or more of the following:

i. An extended review schedule (new milestones to be negotiated per agreement)

ii. A phased review<sup>9</sup>

iii. General consistency

iv. Later re-submission of a consistency determination with sufficient information.  
*(Starts a new review - usually associated with significant project changes)*

v. DGC, after consultation with State agencies who receive due deference under the ACMP, may agree to waive provision of specific information where warranted by conditions pertaining to the specific activity and site.

b. The information identified in Attachment 1 will be sufficient for State review of consistency determinations associated with these activities unless unusual or unique circumstances raise site-specific information needs. In such cases, the State will identify the information requested and the reason the information is necessary to determine the consistency of the Federal activity with the enforceable standards of the ACMP. The FS may either answer information requests, state that the information is unavailable, and/or extend the review timelines per mutual agreement.

### 2. Due Date

Any request by the State for additional information beyond that supplied by the FS along with its consistency determination or Project Clarification must be received by the FS within 25 days of receipt by the State of the consistency determination or Project Clarification.

## C. State Response

DGC will notify the FS of the State's agreement or disagreement with the consistency determination at the earliest practicable time. DGC's response will be presented as a consolidated State position.

1. For EIS reviews, the State response period will not exceed 60 days after receipt of the Project Clarification (See Sec. 204 (A)(1)(d)) unless both the FS and the State agree to an alternative schedule. The FS may presume the State's agreement with the FS consistency determination if DGC does not provide a response within 60 days from receipt of the Project Clarification unless both the FS and the State agree to an alternative schedule. The FS will contact DGC, however, before making this presumption.

2. For EA reviews, the State response period will not exceed the timelines established in Sec. 204 (A)(2) of this MOU, unless both the FS and the State agree to an alternative schedule. The FS may presume the State's agreement with the FS consistency determination if DGC does not provide a response within 30 days from receipt of a FS consistency determination, unless both the

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<sup>9</sup> Phasing must meet the requirements of 15 CFR 930.37(c)

FS and the State agree to an alternative schedule. The FS will contact DGC, however, before making this presumption.

#### D. Implementation

Agreement by DGC with a FS consistency or negative determination or resolution of any dispute under any process listed in Section 208 will be considered to be agreement by the State that implementation of the proposed activity that is subject to ACMP/CZMA may proceed immediately, whether or not the 90-day period referred to in 15 CFR 930.34(b) has expired. This does not exempt the FS from timelines associated with other applicable State or Federal law or regulation.

### **Section 205. Timber Harvest Reviews**

#### A. Information

The FS and State concur that the information identified in Attachment 1 contains information sufficient to conduct State review of a consistency determination for a timber harvest project requiring an EIS or EA.

The identified information will be sufficient for State review of consistency determinations associated with these activities unless unusual or unique circumstances raise site-specific information needs. In the case of unusual or unique circumstances that raise site-specific information needs, the FS will endeavor to either answer information requests, state that the information is unavailable, and/or extend the review timelines per mutual agreement. Providing the identified information does not indicate that the FS considers the material to be relevant to analysis of a project or commit the FS to address the material in a project's analysis or decision document.

Chugach National Forest information: For timber sales on the Chugach National Forest requiring an EA or EIS, the FS will provide as much of the information identified in Attachment 1 as possible, recognizing that some of these information items are not available from the Chugach. In such cases, the FS will identify as early in the planning process as possible which items are not available and consult with the State on an alternative form of information, if any, that will be provided in lieu of any unavailable item.

### **Section 206. Coordinating a Consistency Determination with an EIS.**

Recognizing that CZM consistency coincides with the NEPA process, and that it is difficult for the FS to respond to State consistency concerns after issuance of a final EIS (FEIS), the following procedure will be used to coordinate CZMA requirements and NEPA requirements when an EIS must be prepared:

#### A. State of Alaska Communications

In order to avoid confusion, official communications from the State of Alaska to the FS regarding CZMA/ACMP will be addressed to the FS, reference the specific project, and be signed by the responsible State official.



## B. Pre-Scoping

The FS will solicit early collaboration, cooperation, and coordination, including participation in the conceptual packaging and delineation of the project. Field visits by FS and State staff to proposed project areas are encouraged.

## C. Scoping

1. The FS will issue a Notice of Intent (NOI) to prepare an EIS, and provide it, along with a project location map, to DGC and State resource agencies.
2. On a routine basis any State agency, at its discretion, may provide scoping comments directly to the FS at the project scoping stage, with a copy to DGC. Agency comments will include a clear indication of potential problem and opportunity areas within the proposed project area. In addition, State comments shall endeavor to include a separate "Preliminary ACMP Comments" section that will consist of ACMP comments and related applicable ACMP standards and policies. DGC may consolidate scoping comments. The State will supply the above scoping response within the public scoping deadlines specified for the project, unless the FS and State agree to an alternate schedule.

## D. DEIS

1. In preparing the DEIS, the FS will consult with DGC and State resource agencies for any clarification that may be needed regarding the applicable State enforceable policies, the information requested by DGC or State agencies (e.g. information in Sec. 205), or on alternative types of information that may fulfill the State's objectives if the FS finds it difficult to provide the information requested.
2. The FS will promptly provide DEIS copies to DGC and concurrently to all State resource agency contacts on a mailing list that will be supplied and updated by DGC. (Attachment 2)
3. At the DEIS stage, the State will provide comments to the FS within the NEPA comment period. State comments will include a clear distinction between NEPA, and preliminary ACMP comments.
4. Within a 60-day period following receipt of the Project Clarification (See Sec. 204 (A)(1)(c)) DGC, on behalf of the State, will submit a consolidated position in proposed and final consistency letters to the FS.
5. Whenever a State agency or a coastal district, through DGC, comments that the proposed project is inconsistent with the enforceable policies of the ACMP, it shall describe the specific standard(s) or enforceable policies with which it believes the project is inconsistent, and provide alternative measures that DGC believes are necessary to make the project consistent to the maximum extent practicable with the enforceable policies of the ACMP. Whenever State resource agencies recommend conflicting alternative measures, or have differing opinions on consistency, DGC will work with the State agencies to resolve the conflict.

## E. FEIS

1. In the process of preparing the FEIS, the FS is encouraged to consult with DGC on any alternative measures recommended by the State to make the project consistent with the ACMP. State resource agencies may be represented at these negotiations.
2. Upon completion of the State's ACMP review, the FS will issue a FEIS and ROD (or only a ROD if the FEIS was published when the consistency determination was provided to the State).

In either case, the FEIS and/or ROD shall include an explanation of any changes made in the project since the Project Clarification was provided to the State.

3. The FS may provide a consistency determination to the State at the same time the FEIS and ROD is published. In that case, the consistency determination is subject to all the information requirements specified elsewhere in this MOU. The consistency determination will be reviewed by the State as if it were a Project Clarification, except that the ACMP public comment process will be conducted separately, after the NEPA public comment period, on the FEIS/ROD/consistency determination instead of on the DEIS/consistency determination.

#### F. Modifications

1. If project changes at the FEIS and/or ROD stage may result in significantly greater or different effects to the coastal zone, beyond effects from any changes requested by the State, the following procedures will apply:

(a) In open (not completed) reviews, a consistency determination will be prepared, the file on the previous review will be closed, and DGC will initiate a new 60-day consistency review.

(b) In closed (completed) reviews, DGC will coordinate a consistency review for those activities and effects not previously found consistent.

2. Any change in standard of review of the Federally approved Coastal Management Program that may have occurred since the initial review will be applied in any consistency reviews as in 1(b) above.

### **Section 207. Coordinating a Consistency Determination with an Environmental Assessment (EA)**

For projects requiring an EA and a consistency determination, the following procedure will be used:

#### A. Scoping

The FS will provide to the State a scoping letter and location map that describes the project, including the purpose and need for the proposed project.

#### B. State Response

DGC will respond to the FS according to the timelines set out in Section 204 of this MOU. The State response will identify issues, concerns, and any other information that the State would like to see addressed during project analysis. The response will clearly delineate between NEPA and ACMP comments. ACMP comments will include reference to Standards and enforceable policies specific to the State's issues and concerns.

#### C. Consultation

In preparing the EA, the FS is encouraged to consult with DGC for any clarification that may be needed regarding the applicable State enforceable policies, the information requested by DGC, or on alternative types of information that may meet the State's objectives if the FS finds it difficult to provide the information requested.

#### D. Consistency Determination

At that point in the EA process when the FS has determined that the project will affect the coastal zone, and has sufficient information to describe the proposed activity and its coastal zone effects, per Sec. 203(B) of this MOU, the FS will provide a determination on project consistency with the enforceable policies of the ACMP, either as part of the EA or as a separate document. The State and FS agree that the appropriate point in the process for a consistency determination or a negative determination, if required, is usually at the issuance of an EA.

#### E. State Response

Whenever DGC believes a project is inconsistent with the enforceable policies of the ACMP, it shall describe the specific standard(s) and/or enforceable policies with which it believes the project is inconsistent, and provide alternative measures that the State believes are necessary to make the project consistent to the maximum extent practicable with the enforceable policies of the ACMP. Whenever State resource agencies recommend conflicting alternative measures, or have differing opinions on consistency, DGC will work with the State agencies to resolve the conflict.

#### F. FS Response

In the process of preparing the Decision Notice and the appendix to the EA that responds to public comments, the FS is encouraged to consult with DGC on any alternative measures that may have been recommended by the State in its consistency finding described above. The FS will issue a Decision Notice/Finding of No Significant Impact and an appendix to the EA that explains how the FS responded to public comments, including DGC's consistency finding.

### **Section 208. State Disagreement with a FS Consistency Determination**

#### A. State Response

If the State disagrees with a FS consistency determination, DGC will explain the reasons why the State believes the proposed activity is inconsistent with specific State standards and describe alternative measures, if any exist, that would allow the activity to proceed in a consistent manner.

#### B. Dispute Resolution

Disagreement over a consistency determination may be resolved, where possible, through timeline extension and discussion. Resolution methods may include, but are not limited to:

1. Reiterating and clarifying common points of agreement and mutual interests to help frame the context for the dispute.
2. Reconciling data and/or information interpretation and differences through competent mutually agreeable third party reviews.

When disputes cannot be resolved at the initial staff review level, the disputes may be informally referred to the next higher organizational level at the FS and State. Referral must be done in a timely manner, and shall be accompanied with a briefing paper that sets out the disagreements/issues in the format and context of applicable standards of the ACMP, proposed alternative solutions to resolve the differences, and the rationale for proposing each potential solution. In the event of inability to reach concurrence, the parties may employ the formal methods below.

#### C. Mediation

If a disagreement cannot be resolved through direct negotiations between the State and FS, either the State or the FS may seek informal negotiations through the Office of Coastal Resource Management of

NOAA (OCRM), or mediation by the United States Secretary of Commerce as described in Subpart G of the Federal consistency regulations (15 CFR 930.110-116).

#### D. Administrative Resolution

The FS retains its existing authority subject to the CZMA to proceed with implementation of a project, on NFS lands only, that it has determined to be "consistent to the maximum extent practicable", and over which a serious disagreement exists.

#### E. Judicial Review

The State and the FS will not seek judicial review until after informal negotiations and mediation have failed to resolve the disagreement.

## TITLE III -- PERMITTING ACTIONS

### Section 301. Individual Permits

Anyone proposing to conduct an activity affecting any natural resource or use of the coastal zone under a FS license or permit may be required to provide a certification that the proposed activity complies with and will be conducted in a manner consistent with the ACMP (CZMA Sec 307(c)). Any FS licenses or permits listed or referred to in Sec. 302(B) of this Title that are required for the project will be included in the State project review. Per 15 CFR 930.51(a) the term *Federal license or permit* means any authorization, certification, approval, or other form of permission that any Federal agency is empowered to issue to an applicant. This MOU uses the term "permit" to refer to all types of FS authorizations that meet this definition, including permits, term permits, leases, licenses, mining plans of operation, special use authorizations or easements.

The CZMA requires DGC to establish procedures for public notice and notification to all review participants, including the Federal permitting agencies, that the State concurs with or objects to the applicant's certification. Once the State has rendered a final consistency decision, or the Secretary of Commerce has found the activity consistent with CZMA objectives or otherwise necessary in the interest of national security, agencies, including the FS, may grant the permit.

### Section 302. Permits

#### A. Referring Applications to the State

When the FS receives applications for any of the permits listed below, it will inform the applicant that a consistency review may be necessary and that a DGC Coastal Project Questionnaire (CPQ) will need to be completed if the project is in or affects the coastal zone and that DGC is the appropriate State contact. The FS will refer the applicant to DGC for further information (907-465-3562; [www.gov.state.ak.us/dgc/](http://www.gov.state.ak.us/dgc/)), and will endeavor to provide the applicant with a CPQ if available.

#### B. Applicable Permits

1. The following activities that involve FS permits are reasonably expected to affect the coastal zone and will, upon adoption of this MOU as an amendment to the ACMP, be subject to coordinated ACMP project reviews, unless
  - a. they are included in the "A" or "B" list of the "Classification of State Agency Approvals" published by DGC; or
  - b. the coordinating agency determines that the proposed activity is not expected to result in significant effects to the coastal zone.

#### 2. Permit List

Outfitter/guide permits for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder (e.g., as a put-in, take-out, or rest stop).

Mining Plans of Operation requiring an EA or EIS

Mineral material sales and sites that are greater than 5 ac. or not previously reviewed

Hotel, Motel

Resort

Service Station

Fish Hatchery

Mariculture

Liquid Waste Disposal Area

Sewage Transmission Line  
Hydroelectric Projects  
Oil and Gas Pipelines  
Airport, Heliport  
Dam, Reservoirs  
Water Transmission  
Fish Ladder  
Power Lines  
Telephone Lines  
Permits for water easements  
Permits for ground-disturbing construction (which excludes tent platforms, for example) that require an EA or EIS, or that require one or more of the following types of non-FS permits: permits from the Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act; permits from the Corps of Engineers (COE) under Section 404 of the Clean Water Act; Alaska Department of Environmental Conservation (DEC) wastewater, solid waste or air discharge permits; Department of Fish and Game (DFG) Title 16 authorizations; or Department of Natural Resources water rights and tidelands authorizations.

### C. SOPA

1. For each project listed on the SOPA (see Attachment 6) that requires a FS permit, the SOPA will indicate whether the permit activity is a type listed in Section 302(b) as requiring State review. For proposed FS permits on the ACMP list, except for those that may be exempted through the State's ABC list procedures or found by the State to have no effect on the coastal zone, it is the responsibility of the applicant to provide DGC with a copy of the permit application and a Coastal Project Questionnaire (CPQ) with consistency certification. The FS may not issue a signed permit until the State concurs with the applicant's certification or is deemed by law to have concurred (see Section 303 below).

2. Pursuant to 15 CFR 930.54, DGC will notify the appropriate Forest Supervisor, the applicant, and NOAA within 30 days of receipt of the SOPA if the State believes any proposed permit activity not listed as normally requiring consistency review does in fact require an ACMP review. If NOAA approves the State's request, the proposed permit will be subject to ACMP review.

## **Section 303. FS Procedure for Granting a Permit**

### A. Normal Process

The FS will not issue a signed permit listed in subsection 302 (b) until:

1. the State concurs with the applicant's consistency certification,
2. the State's concurrence is conclusively presumed by the State's failure to act within six (6) months of State review start-up pursuant to 15 CFR 930.60, or
3. the Secretary of Commerce finds the activity is consistent with the objectives of the CZMA or is necessary in the interest of national security.

## B. Draft Permits

Whenever the FS completes its processing of an application for a permit that requires State consistency review before the State finishes its review, the FS may send the applicant a draft (unsigned) permit. The FS may send a draft permit to an applicant as notification that FS requirements have been met and the FS is ready to issue its permit when the ACMP consistency review is completed. The draft permit is not an authorization for work. In such cases, the draft permit will state that the project or activity cannot begin until the State concurs in the applicant's consistency certification—or concurrence is presumed—and the FS issues a signed permit. Before transmitting a draft permit, the FS will contact DGC to verify the status of the State consistency review. The FS will also send a copy of the draft permit transmittal letter to DGC. During the State consistency review, DGC will notify the FS of any time extension. The FS will not issue a signed permit for the proposed activity until the State's consistency concurrence has been granted or presumed (see section 304 C below).

### **Section 304. State Consistency Review Procedure**

#### A. Timing/Review Schedule

The start-up date for the FS review process and the State consistency review process may not always coincide due to different requirements for a complete application. Since agency review start-up times may differ, the FS will not presume the State is waiving consistency review without first contacting DGC. DGC will keep the FS informed of a project's review status and will make every effort to obtain a complete packet in a timely manner.

##### 1. Length of review

DGC and the FS will consult on a proposed permit activity that has a substantial environmental impact, is considered controversial, is an emergency as defined in Subsection 2 below, or raises other unusual circumstances that may warrant an altered review schedule.

##### 2. Emergencies

FS permits issued in an emergency will not require standard procedures for advance review for consistency with the ACMP. An "emergency" is a situation that would result in an unacceptable hazard to life, a significant loss of property, or immediate, unforeseen, and unacceptable resource damage if corrective action is not undertaken within a time period less than the normal time needed to complete CZMA review. Reasonable efforts will be made to receive comments from the State. Nothing in this section relieves the FS of responsibility to comply with the CZMA. If the permit activity requires a CZM review per section 302 of this MOU, the responsible FS official will ensure that consultation with DGC is accomplished as soon as possible. Post-action review and analysis will be conducted if requested by DGC as a result of such consultation. Inadequate planning will not constitute an emergency.

#### B. State Response

The State will either concur with a consistency certification for a project, concur with stipulations, or object to a consistency certification. A State objection to a consistency certification must meet the requirements of 15 CFR 930.64. Concurrence with stipulations does not obligate the FS to carry the stipulations on its permit.

### C. FS Response

1. Upon receipt of a State objection to a consistency certification, the FS shall not issue a Federal permit unless an agreement is reached between the State, the applicant and the FS (if changes to the FS permit are involved), or as otherwise provided in 15 CFR 930 Subpart H (Secretarial Review).
2. Pursuant to 15 CFR 930, Subpart H, an activity that is inconsistent with the State's management program may be approved if the Secretary of Commerce finds the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security.

### **Section 305. Modifications**

#### A. Modifications to an Ongoing Review

Design changes or changes in the proposed activity received by either DGC or the FS while a consistency review is in process will be immediately forwarded to the other agency.



## TITLE IV -- MISCELLANEOUS PROVISIONS

### Section 401. Applicability to Ongoing Projects

A. This Memorandum of Understanding will not automatically apply in its entirety to FS activities for which, on the date the MOU becomes effective,

1. a draft EIS or an EA has been released to the public; or
2. a Decision Memorandum has been signed for an activity that is exempted by a categorical exclusion from review under NEPA.

B. DGC and the FS will consult one another to determine the extent to which the provisions of this MOU can be applied to ongoing FS projects listed above on a case-by-case basis.

### Section 402. FS-ADF&G Supplemental MOU No.1 Regarding Fish Habitat and Passage

In addition to the procedural and information exchange requirements specified under this MOU, *The FS-ADF&G Supplemental MOU No.1 Regarding Fish Habitat and Passage* (T16 MOU) applies to all instream activities associated with projects reviewed under this MOU. After completion of a CZMA/ACMP consistency review for a project involving instream activities, the FS will proceed with fulfilling the procedural requirements of the T16 MOU prior to conducting any instream activities.

### Section 403. General Requirements

A. This Memorandum of Understanding is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this Memorandum of Understanding will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This Memorandum of Understanding does not establish authority for noncompetitive award to DGC of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

B. Principal contacts for this Memorandum of Understanding are:

Forest Projects Analyst	ACMP Coordinator
Division of Governmental Coordination	USDA Forest Service
State of Alaska	Alaska Region
P.O. Box 110030	P.O. Box 21628
Juneau, Alaska 99811	Juneau, Alaska 99802-1628
(907) 465-8791	(907) 586-8814

C. Applicable provisions of this MOU will be adopted as an amendment to the ACMP. Such amendment will supersede all previous MOU's between the FS and State that may have amended the ACMP in the past.

D. Either of the parties may terminate this Memorandum of Understanding by providing notice in writing. Such termination will have the effect of deleting the MOU from the ACMP.

E. This Memorandum of Understanding shall be effective as of the last date shown below and shall not expire unless terminated as provided above. This Memorandum of Understanding shall be subject to review at any time.

F. Modifications within the scope of this Memorandum of Understanding may be made, but only by the issuance of a modification executed by both parties.

G. The State and FS will regularly re-assess this MOU for amendment every five years.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last date written below.

/s/ James A. Caplan      2/16/00      /s/ Pat Galvin      3/2/00

RICK CABLES                      Date  
Regional Forester  
Alaska Region, USDA Forest Service

PAT GALVIN                      Date  
Director  
Division of Governmental Coordination

/s/ John Shively                      2/25/00

JOHN SHIVELY                      Date  
Commissioner  
Alaska Department of Natural Resources

/s/ Michele Brown                      2/23/00

MICHELE BROWN                      Date  
Commissioner  
Alaska Department of Environmental Conservation

/s/ Frank Rue                      2/17/00

FRANK RUE                      Date  
Commissioner  
Alaska Department of Fish and Game

## **ATTACHMENT 1**

### **Information Needs for Timber Sale Reviews**

For the purposes of this MOU, and in order to ensure that the State has adequate project information to review the FS consistency determination, the FS will provide the following information for applicable timber harvest projects as defined in the MOU. Any of these items that change as a result of the Project Clarification, will be updated and provided to the State.

A. Project area maps at least as detailed as 1:63,360 (1 in./mi.) will be provided at scoping where available, and updated or completed not later than with a consistency determination, that display the following information:

1. Project area
2. Township and range
3. Boundaries of past harvest units, with the year harvested
4. All existing roads, with FS identification number, where known and status regarding motorized public access
5. Location of existing sortyards and LTF's.
6. VCU and/or watershed boundaries with identifying name or number
7. Contour lines at least as detailed as 500' interval
8. AHMU stream classifications
9. Channel-type process group designations
10. Any known unstable or slide-prone slopes (MMI 3 or 4)
11. Existing forest condition, including productive forest condition class (e.g. high, medium, low, for Tongass), where known.
12. Indications of avalanche slopes based on forest cover, slope, and alpine areas
13. Adjacent land ownership, where known

B. Wildlife habitat map(s), at least as detailed as 1:63,360 (1 in./mi.) will be provided at scoping where available, and updated or completed at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. 800' elevation contour line
2. Vegetative condition class or classes that best identify high quality old growth habitat
3. Land use allocations where commercial timber harvesting is not permitted
4. Areas field-documented as being important brown bear foraging sites along fish streams using the Tongass Plan Implementation Team (TPIT) protocol, the brown bear cumulative effects protocol developed for the Kenai Peninsula, or a subsequent mutually agreeable protocol
5. All deer winter range in project area (that scores above 0 in most recent interagency approved version of deer HSI model) distinguished by quartile (i.e. by 25% of acres)
6. Estuary buffers
7. For the Chugach, known moose over wintering areas

C. On light paper or electronic GIS coverage at the same scale and registration as the existing project area and habitat map, provide the following project proposal elements at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process:

1. Location of proposed LTF's, sortyards, and material sites where known
2. Proposed unit boundaries and identification numbers, where known
3. All proposed roads and management intent regarding motorized public access including vehicles

D. Unit cards will be provided at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. Proposed roads.
2. Boundaries of proposed harvest units.
3. Proposed silvicultural treatments, harvest systems, and estimated location of landings.
4. The location of known surface waters that abut or are within harvest units.
5. Channel types as defined in the forest plan.
6. The area and proposed harvest of any known slopes with slope gradient greater than 72 percent.
7. Any measures to be taken to ensure wind firmness.
8. Applicable unit-specific BMP's.
9. Proposed reforestation and site preparation treatments.
10. Any existing harvest units or portions thereof in the area displayed on the unit card map, with year of harvest, where known.
11. AHMU stream classifications.
12. Contour lines, where known.
13. A line 300 ft from the bank of anadromous and high-value resident fish streams.

E. Road cards will be provided at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, that display the following information:

1. The location of all roads, with FS identification number or arrow to nearest numbered FS road, where known.
2. Road and landing location on slopes that are greater than 67%, unstable, or slide-prone.
3. Where known, site-specific erosion prevention measures to address slope instability due to road construction.
4. Road management objectives, traffic management strategies (including the status regarding motorized public access) and FPA equivalent status (active, inactive, closed) (See State-FS comparison below) for all roads in the project area.
5. BMP's applicable to the specific road segment.
6. A line 300 ft from the bank of anadromous and high-value resident fish streams.

F. A Road Location Report will be provided not later than with the consistency determination (see Attachment 5). This describes locations and types of stream crossings, control points, discussions of incursions into riparian areas and wetlands.

G. General Information will be furnished at the DEIS stage, or with the consistency determination if at the ROD stage in the NEPA process, including:

1. The latest road condition survey for existing roads.
2. Density and mileage of all existing and proposed system roads, whether or not open to public access (by Wildlife Analysis Area or VCU) by two elevation categories -below 800' and above 800'.
3. The year that timber harvest and associated forest development is expected to begin and end.
4. A description and the anticipated location of temporary housing, fuel storage sites, and associated wastewater and solid waste disposal facilities.
5. Most recent dive report submitted to EPA, if any, for each existing LTF and storage site intended for use in the project and the estimated past timber volume transferred at each facility, where known.

6. Fish species composition, and the type of fish habitat (i.e. spawning, rearing, over wintering, or migratory) above and below proposed fish stream crossings where known.
7. Location of known wolf dens will be communicated to DFG separately.
8. Field data or reports, if any, that are the basis for location of brown bear stream buffers.
9. Analysis of cumulative watershed effects as described in FS BMP 12.1.
10. Notification if the project area includes any VCU's on the State lists of VCU's with highest, second highest, and third highest community use values (from State TLMP Revision comments).
11. The most recent five-year average harvest data for marten, deer, moose, bear, goats, and wolves by WAA, where available.
12. Project documentation will include a description of any provision for BMP effectiveness monitoring required by the BMP effectiveness monitoring strategy.
13. A quantitative, objective, repeatable, and consistent estimate of changes to habitat productivity for deer, bears, marten, and wolf within the project area over the rotation.
14. An evaluation of the sustainability of historic harvest levels by the affected communities for marten, deer, moose, bear, goats, and wolves, in light of the estimated habitat changes created by the project and pertinent changes in public access.

H. Road Management Definitions Applicable to A (4), C (3), E (4), and G (1) Above:

*Active:* provide frequent cleanout of ditches and catch basins to assure controlled drainage. Control roadside brush to maintain sight distance. Grade as needed to maintain crown and running surface. These roads are assigned Maintenance Level 3. The active maintenance strategy will also at times be applied to roads intended for use only by high clearance vehicles, or Maintenance Level 2 roads. This will usually be the case when log haul is expected in the near future.

This level of maintenance is synonymous with Alaska Forest Resources and Practices Act (FRPA) active roads.

*Storm Proof:* Provide water bars, rolling dips, out sloping, etc., to assure controlled runoff until any needed maintenance can be performed on the primary drainage system. Control roadside brush to maintain passage. This strategy will provide roadway features such as drivable water bars, and out sloping to control runoff in case the primary drainage system of culverts and ditches is overwhelmed during a storm event. Each culvert will be evaluated as to where the water would go if the culvert were to fail to carry the high flow. A water bar or out slope at this location will minimize the potential of erosion of long stretches of ditch line or roadway. This is intended to be the primary maintenance strategy applied to roads assigned Maintenance Level 2. Storm proofing may also be a useful management tool to discourage or slow travel.

This level of maintenance is synonymous with FRPA inactive roads.

*Storage:* Remove or bypass all drainage structures to restore natural drainage patterns, add water bars as needed to control runoff, revegetate. This is intended to be the primary maintenance strategy applied on intermittent use roads during their closure cycle. In this strategy, bridges and culverts on live streams are completely removed to restore natural drainage patterns. Cross drains and ditch relief culverts will be bypassed with deep water bars but left in place to minimize the cost of reusing these roads in the future. Due to the isolated nature of the road system, which makes maintenance costly and difficult, and their infrequency of use, storage is the most appropriate strategy for these roads. Maintenance Level 1,

closure and basic custodial maintenance, is assigned. Storage eliminates car and truck use, and discourages use by other motor vehicles.

This level of maintenance is synonymous with FRPA closed roads.

*Existing road* (applicable to A (4), E (1), and G (1) above): Existing roads do not include temporary roads, if those temporary roads are in a status synonymous with FRPA closed roads.

**ATTACHMENT 2**  
**State Agency Contact Information**

**Alaska Department of Environmental Conservation (DEC):**

Program Manager, DEC Non-Point Source Water Pollution Control  
410 Willoughby Ave.  
Juneau, Alaska 99801

**Alaska Department of Fish and Game (DFG):**

Please send a copy of all projects to the Regional Supervisor.

TITLE	PHONE	FAX	E-MAIL
Regional Supervisor PO Box 240020 Douglas, AK 99824	(907) 465-428(907)	465-4272	lana_flanders@adfg.state.ak.us

Please send the following contacts a copy of any projects within their areas.

<b>DOUGLAS</b> Douglas Area Biologist PO Box 240020 Douglas, AK 99824	(907) 465-428(907)	465-4272	ben_kirkpatrick@adfg.state.ak.us
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<b>SITKA</b> Sitka Area Biologist 304 Lake Street, Room 103 Sitka, AK 99835	(907) 747-268(907)	747-6239	phil_mooney@adfg.state.ak.us
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<b>CRAIG</b> Craig Area Biologist PO Box 668 Craig, AK 99921-0668	(907) 826-256(907)	826-2562	moira_ingle@adfg.state.ak.us
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<b>KETCHIKAN</b> Ketchikan Area Biologist 2030 Sea Level Drive, Suite 205 Ketchikan, AK 99901	(907) 225-202(907)	225-2676	jack_gustafson@adfg.state.ak.us
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<b>PETERSBURG</b> Petersburg Biologist PO Box 667 Petersburg, AK 99833-0667	(907) 772-522	772-9336	jim_cariello@adfg.state.ak.us
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Please send a copy of all Chugach National Forest projects to the Regional Supervisor in Anchorage.

Regional Supervisor (907) 267-2335 (907) 267-2464 lance\_trasky@fishgame.state.ak.us  
333 Raspberry Road  
Anchorage, AK 99518

**Alaska Department of Natural Resources (DNR)**

Southeast Regional Manager  
Division of Mining, Land and Water  
400 Willoughby Avenue, 4th floor  
Juneau, Alaska 99801  
465-3400

Coastal Regional Forester  
Division of Forestry  
400 Willoughby Avenue, 3rd floor  
Juneau, Alaska 99801  
465-5401

Southcentral Regional Manager  
Division of Mining, Land and Water  
550 W. 7<sup>th</sup> Ave. Suite 900  
Anchorage, Alaska 99501  
269-8503



## **ATTACHMENT 3**

### **Information Provided for Non-Timber Projects**

For the purposes of this MOU, and in order to ensure that the State has adequate project information to review a FS consistency determination, the FS will provide the following information for non-timber projects requiring an EA or EIS. In fulfilling these requirements, reference may be made to the specific location of the information within a project-specific NEPA document.

#### 1. General Information

- A. Agency contact, phone number, fax number, and electronic mail address.
- B. Is the project a new project, modification to an existing project, modification of a previously approved but not existing/not constructed project, or reactivation of a previously approved project (e.g. old COE approvals)?
- C. If a modification or reactivation, has the project previously been reviewed by the State of Alaska pursuant to the ACMP? If so, what was the previous project name and previous state I.D. Number?
- D. What local, state, or federal permits are required for this project, if any?
- E. What is the proposed starting date and ending date of construction, proposed starting date and ending date of operation?

#### 2. A Project area map at least as detailed as 1:63,360 (1 in./mi.) will be provided containing the following information:

- A. Location (nearest community and name of nearest land feature or body of water) to project, a copy of the topographical map with the project location marked on it, a legal description (Township and Range or Latitude and Longitude), and land ownership, including Federal State, Municipal, and Private Land.
- B. A detailed description of the project and all associated facilities, noting whether facilities are existing or proposed and whether facilities will be modified.



## **ATTACHMENT 4 GENERAL CONSISTENCIES**

Pursuant to 15 CFR 930.37(b) the FS may develop a "general" consistency determination for a class of substantially similar, repetitive, or periodic actions other than a development project. The State will then initiate a general consistency review for the class of actions. The FS must thereafter periodically consult with the State. All activities found to be generally consistent will be listed on this attachment. As of the effective date of this MOU, no activities have been found generally consistent. This attachment will be updated as needed.



**ATTACHMENT 5**  
**Sample Road Location and Management Information**

<b>Project</b> Cholmondely	<b>System</b> Prince of Wales	<b>Land Use Designation</b> TP, ML
<b>Route No</b> 2710000-1	<b>Route Name</b> Lybrandberry Lane	<b>Begin Terminus</b> MP 0.00 Sunny Cove LTF
<b>Begin MP</b> 0.0	<b>Length</b> 1.75	<b>Status</b> Opportunity
	<b>Map Quarter Quad</b> Craig A1 NE	<b>End Terminus</b> MP 4.4
		<b>Photo year, roll, photos</b> 1989, 2284 113-117 & 145-149

**General Design Criteria and Elements**

<b>Functional Class</b> Local	<b>Service Life</b> LI	<b>Surface</b> Shot rock	<b>Width</b> 14'	<b>Design Speed</b> 10	<b>Critical Vehicle</b> Logging truck	<b>Design Vehicle</b> Logging Truck
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**Intended Purpose/Future Use**

Possible second entry in 5-10 years, depending on salvage opportunities. Roads to be constructed solely to accommodate silvicultural uses.

**Maintenance Criteria**

<b>Bmp</b> 0.00	<b>Emp</b> 1.75	<b>Operational Maintenance Level (Current/Initial Condition)</b> 2	<b>Objective Maintenance Level (Desired Future Condition)</b> 1 (storage)	<b>Alaska Forest Practices Act Class</b> Closed after use
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**Maintenance Narrative**

Storage: Remove culverts from live streams, bypass ditch relief culverts with waterbury leaving culverts in place for future use. Provide additional waterbury as necessary on steep grades to control runoff.

**Operation Criteria**

<b>Highway Safety Act:</b>	No	<b>Jurisdiction:</b>	National Forest ownership
<b>Traffic Management Strategies</b>	<b>Encourage:</b>	N/A	
	<b>Accept:</b>	Hikers, bicycles	
	<b>Discourage:</b>	ORV's, motorcycles	
	<b>Prohibit:</b>	N/A	
	<b>Eliminate:</b>	Standard passenger cars, high clearance vehicles	

**Travel Management Narrative**

This road system is not connected to any public or community road systems or to any ferry system terminal. Extensive water barring and removal of drainage structures on live streams will discourage ORV use. It is expected that vehicle use post sale will be minimal.

Approved \_\_\_\_\_  
 District Ranger

\_\_\_\_\_  
 Date

## ATTACHMENT 5 (Continued) - Site Specific Design Criteria

### Road 2700000-1

**ROAD LOCATION:** Road access units 675-027 & 028, road construction should be moderate to easy over. LTF will require sortyard area +/- 1000 feet from LTF, numerous non-wetland areas available. Grades are favorable to 12%; construction difficulty is easy to moderate. Location controlled by stream crossing along route and avoidance of impacts on private water system.

**WETLANDS:** Road location was completed to avoid wetlands wherever practicable. Wetlands were unavoidable on some portions of the location due to safety, engineering design constraints and considerations for other resources. Alternatives to the location on wetlands would mean longer higher cost roads that may have impacted similar areas of wetlands. High value wetlands (fens) were particularly avoided wherever practicable. Area in forested wetlands m.p. 0.3 to 0.5 is unavoidable due to stream crossing location and to reduce road miles. Other wetland areas crossed from m.p. 0.9 to m.p. 1.75 are controlled by topography and grade restrictions and other resource concerns.

**EROSION CONTROL:** An erosion control plan for construction and maintenance will be developed by the contractor and approved by the Contracting Officer (BMP 14.5). All areas of organic or mineral soil exposed during construction shall be grass seeded and fertilized (BMP 12.17, 14.8).

**ROCK PITS:** During periods of high rainfall (as defined in current Regional specifications), blasting operations will be suspended at quarries near potentially unstable sites where ground vibration may induce mass movement (BMP 14.6). Borrow for initial construction will come from a proposed rock pit at the LTF site that is planned as part of the LTF development.

#### STREAM CROSSINGS:

<b>A) MP 0.45</b>	<b>AHMU Class II</b>	<b>Channel Type MC1</b>	<b>Incision 1m</b>
<b>Max. Width 1.3 m</b>	<b>Max. Depth 0.3 m</b>	<b>Gradient 5% up, 3% down</b>	<b>Substrate cobbles, gravel</b>
<b>Structure 1500mm CMP</b>	<b>Passage YES</b>	<b>Timing dates 6/1-9/15</b>	

**Narrative:** Crossing on relatively flat area, overlay construction. Oversize cmp to accommodate burying ~.5m.

<b>B) MP 0.75</b>	<b>AHMU Class III</b>	<b>Channel Type HC5</b>	<b>Incision 2m</b>
<b>Max. Width 0.6 m</b>	<b>Max. Depth 0.1 m</b>	<b>Gradient 10%</b>	<b>Substrate bedrock</b>
<b>Structure 600mm CMP</b>	<b>Passage NO</b>	<b>Timing dates none</b>	

**Narrative:** Small side channel to mainstream is part of water system for private landowners. Stream empties into small lake before proceeding downstream.

#### OTHER RESOURCE INFORMATION (if applicable)

TIMBER/LOGGING SYSTEMS:

WILDLIFE:

VISUAL/RECREATION:

CULTURAL:

LANDS/MINERALS/GEOLOGY/KARST:

SOILS/WATER:

**ATTACHMENT 6  
Sample SOPA**

<p align="center"><b>Tongass National Forest Schedule of NEPA Proposed Actions (SAMPLE) October, 1999</b></p>							
<p>SITKA RANGER DISTRICT Ranger 201 Katlian, Suite 109</p>		<p align="center">JAMES S. FRANZEL, District (907) 747-</p>					
PROJECT TITLE & TYPE	LOCATION	PROJECT DESCRIPTION	SCOPING STATUS	ANALYSIS STATUS & CZMA CATEGORY *	DECISION DATE & DECISIONMAKER	CONTACT PERSON	
ADF&G Nakwasina tent platform CE	Nakwa, River, about 6 miles N of Sitka	Special use permit for a tent platform for 2000-2004	Began 9/1999	Began 9/1999 CZMA – FL/P (2)	12/1999; Sitka District Ranger**	Mike Johnson 747-6671	
Recreation Cabin Construction EA	Sitka RD, local Sitka area	Build 4-5 recreation cabins in the Sitka area	Began 10/1999	Began 10/1999 CZMA – FAA (1)	Fall 2000; Sitka District Ranger	Hans von Rekowski (907) 747-6671	
Indian River Timber Sale(s) EIS	E side of Chichagof Island, between Tenakee Springs & Hoonah	Harvest 25-45 MMBF of timber and construct 12 miles of roads in VCU's 204, 216, 220-222	NOI 10/95 Scoping ended 12/95	DEIS issued 11/1997; Comment period closed 1/98; FEIS due 12/1999 CZMA – FAA (1)	12/1999; Sitka Asst. Forest Supervisor	Linn Shipley (907) 747-6671	
Small Salvage Timber Sales EA	Chichagof & Baranof Islands	Harvest of salvage timber; under 1 MMBF total in multiple sales under 500 MBF	Will begin fall 1999	Will begin fall 1999 CZMA – FAA (3)	Fall 2000, Sitka District Ranger	Greg Overturf (907) 747-4220	
Shoreline based Outfitter/Guiding EA	Hoonah, Juneau, Sitka Districts and Admiralty NM	Recreation carrying capacity analysis done; proposal being developed to allocate a portion of that capacity to outfitter/guides.	Will begin fall 1999 (45-day comment)	Will begin fall 1999 CZMA – FAA (3)	Fall 2000; Sitka Asst Forest Supervisor	Marti Marshall (907) 747-6671	
Permit for construction of Make-believe Aquaculture Association fish ladder EA	Wonderful Creek on Fantastic Island, about 10 miles N of the village of Paradise	Special Use Permit for construction of a fish ladder over a 20-ft waterfall near the mouth of Wonderful Creek.	Will begin fall 1999 (45- day comment)	Will begin fall 1999 CZMA – FL/P (1)	Fall 2000; Woodsy Owl District Ranger	Joe Planner (907) 747-1234	
<p><b>*Coastal Zone Management Act (CZMA) Categories</b>  <b>FL/P = Federal License or Permit (15 CFR 930.50):</b>            (1) Applicant must provide a consistency certification to the Alaska Division of Governmental Coordination (DGC) and obtain DGC approval before FS can issue permit determination  <b>FAA = Federal Agency Activity (15 CFR 930.30):</b>            (1) FS will provide either a consistency determination or negative determination to DGC            (2) The project is generally consistent with the Alaska Coastal Mgt. Program (ACMP) determination            (3) FS does not expect to provide a consistency determination or a negative determination            (4) FS has not decided whether it intends to provide a consistency determination</p>							





## ATTACHMENT 7

### ACMP Standards For Non-Timber Harvest Projects That Affect The Coastal Zone

**6 AAC 80.040. COASTAL DEVELOPMENT.** (a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

- (1) water-dependent uses and activities;
- (2) water-related uses and activities; and
- (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

(b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 - 47 (July 19, 1977)). (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.050. GEOPHYSICAL HAZARD AREAS.** (a) Districts and state agencies shall identify known geophysical hazard areas and areas of high development potential in which there is a substantial possibility that geophysical hazards may occur.

(b) Development in areas identified under (a) of this section may not be approved by the appropriate state or local authority until siting, design, and construction measures for minimizing property damage and protecting against loss of life have been provided. (Eff. 7/18/78, Register 67)

**6 AAC 80.060. RECREATION.** (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

- (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or
- (2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

(b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.070. ENERGY FACILITIES.** (a) Sites suitable for the development of major energy facilities must be identified by districts and the state in cooperation with districts.

(b) The siting and approval of major energy facilities by districts and state agencies must be based, to the extent feasible and prudent, on the following standards:

- (1) site facilities so as to minimize adverse environmental and social effects while satisfying industrial requirements;
- (2) site facilities so as to be compatible with existing and subsequent adjacent uses and projected community needs;
- (3) consolidate facilities;
- (4) consider the concurrent use of facilities for public or economic reasons;
- (5) cooperate with landowners, developers, and federal agencies in the development of facilities;
- (6) select sites with sufficient acreage to allow for reasonable expansion of facilities;
- (7) site facilities where existing infrastructure, including roads, docks, and airstrips, is capable of satisfying industrial requirements;
- (8) select harbors and shipping routes with least exposure to reefs, shoals, drift ice, and other obstructions;
- (9) encourage the use of vessel traffic control and collision avoidance systems;
- (10) select sites where development will require minimal site clearing, dredging and construction in productive habitats;
- (11) site facilities so as to minimize the probability, along shipping routes, of spills or other forms of contamination which would affect fishing grounds, spawning grounds, and other biologically productive or vulnerable habitats, including marine mammal rookeries and hauling out grounds and waterfowl nesting areas;

(12) site facilities so that design and construction of those facilities and support infrastructures in coastal areas of Alaska will allow for the free passage and movement of fish and wildlife with due consideration for historic migratory patterns and so that areas of particular scenic, recreational, environmental, or cultural value will be protected;

(13) site facilities in areas of least biological productivity, diversity, and vulnerability and where effluents and spills can be controlled or contained;

(14) site facilities where winds and air currents disperse airborne emissions which cannot be captured before escape into the atmosphere;

(15) select sites in areas which are designated for industrial purposes and where industrial traffic is minimized through population centers; and

(16) select sites where vessel movements will not result in overcrowded harbors or interfere with fishing operations and equipment.

(c) Districts shall consider that the uses authorized by the issuance of state and federal leases for mineral and petroleum resource extraction are uses of state concern. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.080. TRANSPORTATION AND UTILITIES.** (a) Transportation and utility routes and facilities in the coastal area must be sited, designed, and constructed so as to be compatible with district programs.

(b) Transportation and utility routes and facilities must be sited inland from beaches and shorelines unless the route or facility is water-dependent or no feasible and prudent inland alternative exists to meet the public need for the route or facility. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.090. FISH AND SEAFOOD PROCESSING.** Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Register 67)

**6 AAC 80.110. MINING AND MINERAL PROCESSING.** (a) Mining and mineral processing in the coastal area must be regulated, designed, and conducted so as to be compatible with the standards contained in this chapter, adjacent uses and activities, statewide and national needs, and district programs.

(b) Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits, when there is no feasible and prudent alternative to coastal extraction which will meet the public need for the sand or gravel. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

**6 AAC 80.120. SUBSISTENCE.** (a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Register 67)

**6 AAC 80.130. HABITATS.** (a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;
- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;

- (7) rivers, streams, and lakes; and
- (8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources,

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tidflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Register 67)

**6 AAC 80.140. AIR, LAND, AND WATER QUALITY.** Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality, in effect on August 18, 1992, are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 5/20/93, Register 126)

**6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES.** Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Register 67)

**DISTRICT POLICIES** must also be considered when the project is located in or affects a coastal district with an approved management plan. Please refer to the applicable coastal district plan or discuss with the coastal district to determine whether the activity is consistent with the district standard. You may request a copy of the district plan from the coastal district or the Division of Governmental Coordination.