

Tongass National Forest Interim Special Forest Products Resource Management Policy

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INTRODUCTION

On March 10, 2000 the Alaska Region of the Forest Service issued an Interim Special Forest Products (SFP) Resource Management policy, which had been developed over 2 ½ years with input from Forest Service personnel, federally recognized Alaska Native Tribes (hereafter referred to as Tribes), and the public. In the process of developing the Alaska Region policy it became apparent that certain key SFP resource management issues could not be addressed at the Regional level. Therefore the Deputy Regional Forester, Natural Resources, directed the Tongass and Chugach National Forests to develop policies addressing forest level issues.

The following interim policy was developed in consultation with Tribes of Southeast Alaska and responds to issues and concerns that are specific to the Tongass National Forest. It is intended to supplement the national and Regional policies on SFP resource management, and must be used in concert with those higher-level policies. Refer to the Regional Interim Policy for direction that this policy is based on.

This interim policy will be in effect until a final Alaska Region policy on SFP resource management is implemented, at which time a final Tongass SFP management policy will be subsequently developed.

DEFINITION OF TERMS:

Administrative Use – The Code of Federal Regulations says that trees, portions of trees, or other forest products, may be disposed of by administrative use, by sale or without charge, as may be most advantageous to the United States, and limited to the following conditions and purposes:

- (a) For construction, maintenance or repair of roads, bridges, trails, telephone lines, fences, recreation areas or other improvements of value for the protection or the administration of Federal lands.
- (b) For fuel in Federal camps, buildings and recreation areas.
- (c) For research and demonstration projects.
- (d) For use in disaster relief work conducted by public agencies.
- (e) For disposal when removal is desirable to protect or enhance multiple-use values in a particular area

ANILCA – The Alaska National Interest Lands Conservation Act, signed in 1980 for the designation and conservation of certain public lands in the State of Alaska. Title VIII of ANILCA addresses subsistence management in Alaska.

Bioprospecting – This activity involves the sampling of small amounts of plants, animals, and microorganisms (often from soil). The samples are used in laboratory testing for compounds that might be active for use in cancer drugs or other medical cures, as well as potential microorganisms for use in environmental cleanup.

Categorical Exclusion – The Council on Environmental Quality has defined the categorical exclusion as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor and environmental impact statement is

required.” The Forest Service Environmental Policy and Procedures Handbook (FSH 1909.15) lists the categories that may be used for proposed actions in Chapter 30.

CFR – Code of Federal Regulations. References can be looked up on line at www.gpo.gov.

Commercial Use – SFP resources harvested for the primary purpose of sale, resale, use in a manufacturing process resulting in a product that will be sold, or use in business activities. Research collections directed at development of a commercial product are also treated as commercial use.

Customary Trade – Customary trade means cash sale, not otherwise prohibited by Federal law or regulation, to support personal and family needs, and does not include trade which constitutes a significant commercial enterprise.

Educational Use – Educational use is a non-commercial use where the class or workshop is affiliated with a recognized non-profit organization, such as (but not limited to) Tribes, colleges, universities, public schools or other educational institutions. The class instructor may be compensated for his/her time in gathering and preparing the materials for the classroom, either by the organization or by the students, but neither the resources themselves, nor the products made from them, can be sold.

FOIA – The Freedom of Information Act, passed by Congress in 1966 and amended in 1974 allows any member of the public to request information from a Federal agency.

FSH – Forest Service Handbook. Contains policies for management of Forest Service programs.

Minimum Rates – These are rates used for sale of SFP resources established by the Director of Forest Management in the Alaska Regional Office. Minimum Rates are generally based on 10% of the “shed” or wholesale value of the resources.

Non-Commercial Research – Collections of plants for research or demonstration projects with entities that have a cooperative agreement with the Forest Service or other Federal government agency or department. The research is not directed toward development of a commercial product.

Personal Use – Gathering of SFP resources for personal or family use or consumption, not otherwise included as subsistence use (i.e. gathering by non-rural residents), and including cultural and traditional use by non-rural residents. Personal use resources cannot be sold or used for business activities.

Rural and Nonrural Areas – These terms are applied as determined by the Federal Subsistence Board, under the direction of ANILCA, Title VIII. Refer to the most recent Subsistence Management Regulations for maps of nonrural areas. At the time of printing of this document, there are two nonrural areas on the Tongass National Forest, the Juneau Nonrural Area, and the Ketchikan Nonrural Area.

Sensitive Species – Defined in the Forest Service Manual (FSM 2670.5) as “Those plant and animal species identified by a Regional Forester for which population viability is a concern, as evidenced by: a.) Significant current or predicted downward trends in population numbers or density; or b.) Significant current or predicted downward trends in habitat capability that would reduce a species’ existing distribution.” In July 1999, the Alaska Region Sensitive Plant list contained 18 species.

Special Forest Products – Special forest products (SFPs) are defined as products derived from non-timber biological resources that are used for subsistence, personal, spiritual, educational, commercial, and scientific use. SFP resources include, but are not limited to: mushrooms, boughs, Christmas trees, bark, ferns, moss, burls, berries, cones, conks, herbs, roots, and wildflowers. Also included are cuttings (such as of willow used for restoration) and transplants (as for landscaping purposes). SFP resources exclude saw-timber, pulpwood, cull logs, small round-wood, house logs, utility poles, minerals, animals, animal parts, rocks, water and soil (except for research samples where soil microorganisms are the target product; see Appendix III).

Subsistence Use – Subsistence gathering of SFP resources is customary and traditional uses by rural residents, as defined in ANILCA Title VIII, for direct personal or family use or for consumption, barter, sharing, or customary trade that does not constitute a significant commercial enterprise.

Tribe(s) – Federally recognized Alaska Native Tribes according to the Indian Reorganization Act

SUBSISTENCE USE

Subsistence resources and uses of these resources shall be protected, directing other SFP resource uses to locations identified as not important to subsistence use. Where resources are limiting, subsistence use is the top priority for SFP use. Areas important to subsistence use will be identified during the scoping process for project proposals and reserved for subsistence uses.

Subsistence use on the Tongass National Forest is allowed without a permit as long as there are no significant cumulative environmental effects of such use. If cumulative effects occur, the local line officer will regulate subsistence use of the area as needed to protect the resource values. [36CFR261.58(t)] The line officer shall work in coordination with the local Tribe(s) and community to manage subsistence areas.

PERSONAL USE

Personal use of SFP resources shall be protected, directing commercial use to locations identified as not important to personal use. Where resources are limiting, personal use has a lower priority than subsistence, but is higher in priority than other uses. Areas important to personal use will be identified during the scoping process for project proposals and reserved for personal use.

Personal use on the Tongass National Forest is allowed without a permit as long as there are no significant cumulative environmental effects of such use. If cumulative effects occur, the local line officer will regulate personal use of the area as needed to protect the resource values. [36CFR261.58(t)] The line officer shall work in coordination with the local Tribe(s) and community to manage personal use areas.

Free personal use of SFP resources without a permit is allowed up to a cumulative value of \$100.00 per individual per year on the Tongass National Forest. [36CFR223.8(a)] Values are based on the Region 10 SFP Minimum Rates.

OTHER NON-COMMERCIAL USES

Non-commercial SFP applicants, who are collecting for purposes other than subsistence or personal use, must provide information on the purpose of the collection during the application process, in order to determine the appropriate category of use. Harvest quantity limits for other non-commercial uses will be determined on a case-by-case basis.

Non-Commercial Research:

An administrative use permit may be issued for research and demonstration projects with those entities that have cooperative agreements with the Forest Service or other Federal government agencies or departments. [36CFR223.2(c)] A copy of the cooperative agreement must be provided during the application process before an administrative use permit can be issued. All other research and bioprospecting must be treated as commercial use.

Non-commercial research applicants must identify the areas in which they intend to do research collections and the purposes of the collections. A list of all species collected and amounts must be reported to the Forest Service office issuing the permit within 60 days of termination of the permit.

Bioprospecting is an activity of intense concern among Alaska Native Tribes and organizations. Any non-commercial research application that is considered to be bioprospecting must be made available for scoping to the Tribes and other interested groups in the area of collection.

An administrative use permit may be issued on form FS 2400-8 and is free of charge. Categorically excluded permits must include the appropriate Washington Office "Terms and Conditions for Botanical Collection Permits" (see Appendix I). These will be listed under Other Conditions on the permit.

See FSH 2409.18, 83 for Administrative Use procedures; see FSM 2673.2(2) and FSM 2673.32 for direction on permits for Sensitive Plant collections.

Educational Use:

Educational use is considered non-commercial when the class or workshop is affiliated with a recognized non-profit organization, such as (but not limited to) a Tribe, college, university, public school, or other educational institution. SFP materials provided to such a class or workshop may be authorized as administrative use. [36CFR223.2(c)(e); FSH 2409.18, 83]

Educational use applicants must provide a detailed list of species requested, including scientific names, amount of each species, locations where they will be collected, and timing of the collections. Issue the permit on form FS 2400-8.

The instructor may be compensated for time spent gathering materials either by the organization or the students. However, the plant materials may not be sold, nor shall any of the products derived from them be sold.

COMMERCIAL USES

SFP resources that are sold, processed for sale, or used in business operations are considered commercial use. Research collections for bioprospecting or other purposes by entities that do not have a cooperative agreement with the Forest Service or other Federal government agency or department are considered commercial use and are subject to the same permitting procedures and

requirements as other commercial uses. Commercial use on the Tongass National Forest is subject to the Standards & Guidelines in the Tongass Forest Plan, national and Regional SFP policies, and the following management guidelines. In all cases, commercial use should not displace subsistence, personal or other non-commercial uses.

MANAGEMENT AREAS

Allowable harvest of SFP resources will vary depending on the goals, objectives and desired condition of the various land use designations (LUDs), as well as other Standards and Guidelines (S&Gs) in the Tongass Forest Plan. In addition, the Regional SFP policy directs that the priority areas for commercial SFP resource harvest are areas where planned disturbance activities will otherwise damage or destroy the products. Areas identified as important for subsistence or personal use will be reserved for those uses.

The following guidelines apply to LUDs and other management areas on the Tongass NF. Variances from these guidelines must be accompanied by substantial justifications and/or mitigations for such use. Within the context of the following guidelines, districts will determine, in consultation with the local Tribe(s) and with public input, appropriate areas for commercial SFP resource harvest, as well as areas that will be limited to subsistence and/or personal use.

In all cases, any proposed commercial harvest is subject to the goals and objectives of the LUD prescription in the Forest Plan, and appropriate project-level National Environmental Policy Act (NEPA) analysis.

LUD Prescription Guidelines:

Wilderness – Subsistence and personal use are allowed within Wilderness areas, as provided by ANILCA and the Forest Plan. Commercial harvest of SFP resources is not consistent with the provisions of the Wilderness Act or the goals, objectives and desired condition for Wilderness in the Forest Plan, and therefore is not allowed in these areas. However, customary trade and barter, as defined in ANILCA the regional SFP policy, are allowed as part of subsistence use.

Wilderness National Monument – Subsistence and personal use are allowed within Wilderness Monument areas, as provided by ANILCA and the Forest Plan. Commercial harvest of SFP resources is not allowed, except in the Cooperative Management Area on Admiralty Island, which will be managed in agreement with Kootznoowoo Incorporated, with participation from Angoon Community Association.

Nonwilderness National Monument – Subsistence and personal use are allowed within Nonwilderness National Monument areas, as provided by ANILCA and the Forest Plan. Commercial harvest of SFP resources is not consistent with the goals, objectives and desired condition for Nonwilderness National Monument in the Forest Plan, and therefore is not allowed in these areas. However, customary trade and barter, as defined in ANILCA the Regional SFP policy, are allowed as part of subsistence use.

Research Natural Areas – Commercial harvest of SFP resources is not compatible with the RNA prescriptions in the Forest Plan, and is not allowed. Subsistence and personal use, except for firewood and Christmas trees, may be allowed if compatible with the purposes of the individual RNA.

Special Interest Area – Subsistence and personal use may be allowed if consistent with the objectives of the individual Special Interest Area. Commercial harvest of SFP resources is not allowed.

Remote Recreation – Subsistence and personal use are allowed within Remote Recreation Areas. Small-scale commercial SFP resource harvest is allowable.

Municipal Watershed – Consult with municipalities on the appropriate level of commercial and non-commercial SFP resource harvest activities in their Municipal Watersheds.

Old-Growth Habitat – Subsistence and personal use are allowed within Old-Growth Habitat Areas. Commercial harvest of SFP resources is allowable if compatible with LUD objectives and as part of silvicultural treatments designed to promote accelerated development of old-growth characteristics.

Semi-Remote Recreation – Subsistence and personal use are allowed within Semi-Remote Recreation Areas. Small-scale commercial harvest of SFP resources is allowable.

LUD II – Subsistence and personal use are allowed within LUD II areas. Small-scale commercial harvest of SFP resources is allowable.

Wild River – Subsistence and personal use are allowed within Wild River areas. Commercial harvest of SFP resources is not allowed.

Scenic River – Subsistence and personal use are allowed within Scenic River areas. Commercial harvest of SFP resources is allowable if compatible with the goals and objectives of the adjacent LUD.

Recreational River – Subsistence and personal use are allowed within Recreational River areas. Commercial harvest of SFP resources is allowable if compatible with the goals and objectives of the adjacent LUD.

Experimental Forest – Subsistence, personal and commercial use are allowable only as consistent with provisions in the experimental forest's development plan. If no plan is in effect for the Experimental Forest, subsistence and personal use are allowable, but not commercial harvest of SFP resources.

Scenic Viewshed – Subsistence and personal use are allowed within Scenic Viewshed areas. Commercial harvest of SFP resources is allowable. Identify SFP resource harvest opportunities in coordination with timber sales, road construction, or other disturbance activities.

Modified Landscape – Subsistence and personal use are allowed within Modified Landscape areas. Commercial harvest of SFP resources is allowable. Identify SFP resource harvest opportunities in coordination with timber sales, road construction, or other disturbance activities.

Timber Production – Subsistence and personal use are allowed within Timber Production areas. Commercial harvest of SFP resources is allowable. Identify SFP resource harvest opportunities in coordination with timber sales, road construction or other disturbance activities.

Minerals – Subsistence and personal use are allowed within Minerals areas. Commercial harvest of SFP resources is allowable if not in conflict with the underlying management prescription. Coordinate commercial harvest with planned mining, road construction, or timber harvest activity wherever possible.

Transportation and Utility System – Subsistence and personal use are allowed within Transportation and Utility System areas. Commercial harvest of SFP resources is allowable if not in conflict with the underlying management prescription. Consider commercial harvest opportunities in coordination with development and maintenance of transportation and utility corridors.

Beach and Estuary Fringe:

The beach fringe is an area of approximately 1,000 feet slope distance inland from mean high tide around all marine coastlines. The estuary fringe is an area of approximately 1,000 feet slope distance around all identified estuaries. Estuaries are ecological systems at the mouths of streams where fresh and salt water mix, and where salt marshes and intertidal mudflats are present. The landward extent of an estuary is the limit of salt-tolerant vegetation.

Subsistence and personal use are allowed in the beach and estuary fringe. Commercial harvest of SFP resources is allowable subject to the underlying LUD prescription, and if it is determined during project scoping that other areas are not available, that the harvest would be sustainable, and subsistence and personal use would not be significantly affected. Where commercial use is allowed, SFP resource availability and harvest level shall be determined on a species-by-species basis, based on abundance and distribution. Many beach fringe species have limited spatial distribution and/or slow growth rates.

Riparian Management Areas:

Riparian areas encompass the zone of interaction between the aquatic and terrestrial ecosystems and include riparian streamsides, lakes and flood plains with distinctive resource values and characteristics.

Subsistence and personal use are allowed in Riparian Management Areas. Commercial SFP resource harvest should be directed away from Riparian Management Areas where practicable. Where commercial harvest is allowed, the following guidelines apply to Riparian Management Areas:

- Do not allow soil disturbing harvest (root, whole plant, or any digging) or harvest of shrubby stems within a buffer of 10 meters (33 feet) from stream banks. Berry picking, mushroom harvest, and harvest of leafy materials is allowable within the 10-meter buffer. However, monitor such areas to ensure that harvest activities inside the buffer do not significantly accelerate channel migration or stream bank erosion. Restrict the activity if necessary to maintain the process group objectives.
- Outside the 10-meter buffer, and within the Riparian Management Area, a maximum of 10% total area of ground-disturbing SFP resource harvest is allowable, and a maximum of 15% total harvest of shrubby foliage is allowable. These maximums apply to the extent of the Riparian Management Areas as defined in the Tongass Forest Plan and as detailed in GIS mapping coverages for streams.
- In all cases, commercial SFP resource harvest in Riparian Management Areas shall not conflict with the underlying LUD prescription, and shall not negatively impact subsistence or personal use. In addition, species-by-species and location-by-location limits might be more restrictive than these overall guidelines for the Riparian Area, based on species abundance, regenerative capacity, or other factors.

Wetlands:

Subsistence and personal use are allowed in wetlands. Commercial harvest of SFP resources is allowable as long as wetland functions are maintained and wetland species harvested are monitored for sustainability, subject to the underlying LUD prescription. The Tongass National Forest supports many different kinds of wetlands. Whereas forested wetlands are not of special concern, non-forested wetlands are more sensitive and should receive limited commercial use. Soils are sensitive and easily damaged. Harvest methods shall minimize soil disturbance. Many wetland plant species are slow growing. Harvest limitations shall be established on a species-by-species basis, based on abundance and growth/regeneration rates.

Developed Recreation Areas:

Low-impact subsistence and personal use are allowed in developed recreation areas and other specially designated recreation areas if compatible with the applicable recreation plan. High-impact gathering, such as (but not limited to) stripping cedar bark, digging for roots, or cutting Christmas trees is not allowed in developed recreation areas, except as a by-product of planned development or vegetation management.

Commercial harvest of SFP resources is not allowed in developed recreation areas except as a by-product of planned development or vegetation management. In general, commercial harvest activity will be discouraged on or near developed recreation facilities such as cabins, trails, picnic areas or other developed sites to prevent conflicts with the users of the facilities and to maintain the integrity of the site.

Commercial harvest in other recreation areas is determined on a case-by-case basis but in all cases shall not displace existing subsistence or personal uses.

SFP RESOURCES WITH SPECIAL CONCERNS FOR COMMERCIAL HARVEST

In many cases, certain species or categories of SFP resources may have special concerns due to their ecological or cultural status, or other factors. As such resources are identified through the scoping process, districts shall maintain records of such species and their management considerations. The following categories have been so far identified as having special concerns.

Red and Yellow Cedar Bark:

Demand for bark from red and yellow cedar trees has been increasing on the Tongass. Because of the high impact of bark harvest, in most cases tree bark shall be sold for commercial use only from trees that will be cut on NEPA cleared projects for timber harvest, road building, personal use, or other projects that require the removal of trees. Where these opportunities do not exist, allow small sales of bark from non-harvested trees to support local needs. Such sales should draw upon traditional knowledge as well as scientific research for sustainable harvest methods and intensities. Before bark is sold from timber sales or other projects in which trees are cut, offer the bark to subsistence or personal use bark gatherers.

In areas where cumulative effects are occurring from subsistence or personal use bark gathering, consider requiring free-use permits to protect the resource from damages caused by over-harvest. Whenever subsistence or personal use is regulated, such areas shall be managed with participation from the local Tribe(s) and community.

Burls:

Removal of burls from live trees can imperil the tree or weaken it to where breakage could occur. In such cases, either direct burl harvest to dead trees, or sell the entire tree if burl removal is likely to lead to mortality. Also consider the visual impact of removed burls when determining harvest location.

Moss and Lichens:

Due to concern about their rates of growth in Alaska, moss and lichens shall be sold for commercial use only from trees that will be cut on NEPA cleared projects for timber harvest, road building, personal use timber, or other projects that require the removal of trees. Moss and lichens may also be sold from ground, rocks, logs and other features within the prism of a planned and NEPA cleared road.

Bioprospecting and Medicinal Plants:

Bioprospecting and medicinal plant harvest have been identified as cultural concerns by Alaska Native Tribes and organizations. The scoping process for any such requests – whether commercial or administrative – shall alert these groups to the proposed activities and seek their comments. Bioprospecting permits are subject to the Terms and Conditions for Botanical Collection Permits, which must be included in the permit (see Appendix I).

Devil's Club:

Due to its cultural and spiritual significance to Alaska Natives, commercial harvest of devil's club is not allowed on the Tongass National Forest. This prohibition does not affect subsistence or personal use of devil's club, or its management on other land ownerships.

PERMITTING PROCESS

Application:

Persons or entities requesting commercial use of SFP resources must provide detailed information about the request before the permitting process can begin. Required application information includes:

- Name of the applicant. This is the primary individual responsible for the harvest. Names of others participating in the harvest or transport must also be listed, but kept to a minimum for one permit.
- Social Security number or Tax Identification number of the applicant
- Address and phone number of the applicant (email address optional)
- A complete list of all species that will be harvested, with scientific names. For each species, indicate what part will be harvested (e.g. cuttings, bark, roots, whole plant).
- Quantities requested for each species in units of measure designated on the Regional SFP Minimum Rates Table for each species
- Description of the proposed plant collection methods
- Locations of proposed harvest for each or all species. Be as specific as possible and attach a map.

- Timing of proposed harvest (requested start and end dates for the permit)
- (Optional) Vehicle identification information. For automobiles, the year, make, model, color and license plate number (with state). For boats, the size, type, name and/or AK numbers.

NEPA Guidelines:

Pre-NEPA scoping with Forest Service staff, local Tribes and any interested parties can identify key biological, environmental, or cultural issues and help to determine the appropriate level of NEPA analysis for a project proposal. An appropriate level of scoping must be completed for all commercial use requests, as well as any other uses for which there are expressed concerns (e.g. bioprospecting, whether commercial or administrative).

All commercial SFP resource harvest requests must be analyzed for environmental effects under the National Environmental Policy Act (NEPA). There are three possible options for this analysis:

- A commercial SFP resource harvest proposal may be analyzed in a separate NEPA document or Categorical Exclusion (CE).
- If sold as a by-product of another action, SFP resource use may be included in the NEPA analysis and documentation for the primary project.
- Commercial SFP resource harvest may be analyzed under a collective pre-clearance NEPA document for a specific area, allowing a cumulative annual harvest level for specified species in the area, which may then be permitted to multiple harvesters as requested.

Refer to the Forest Service Environmental Policy and Procedures Handbook [FSH 1909.15] for direction on the appropriate NEPA process for any project.

Consultation and coordination with Tribes is a critical part of scoping for any commercial SFP resource request. It should begin at an early stage and include written and oral communications, and in-person meetings where appropriate. During consultation, any confidential or proprietary information belonging to the Tribe shall be identified as such. Access to, and use of, this information shall be expressly controlled by the Tribe. In order to protect a Tribe's proprietary knowledge from FOIA, do not include such information in Forest Service files or documents.

Input from the Tribe(s) and public might supply information about important subsistence or personal use gathering areas. Such areas shall be prioritized for these uses, as outlined under the Subsistence section above. It is unnecessary to identify specific gathering sites or specific resources at those sites, as this is often sensitive information (e.g. traditional family berry patches). If a general area is known for subsistence or personal use gathering activities, that entire area shall be reserved for such uses. For example local trails and/or other locations easily accessible to a community might be avoided when granting a commercial harvest permit.

Rates:

Rates used for commercial sale of SFP resources shall be those established by the Regional Forest Management Office. The minimum charge is \$10 for a commercial use permit.

Permits:

Issue all permits through the Timber Information Manager system on the FS unit issuing the permit. Use permit form FS 2400-1 for small commercial sales.

Do not use form FS 2400-1 for SFP permits:

1. with a product value over \$300.00
2. that are advertised
3. with a period over one year
4. with multiple payment units
5. that have special protection needs for aquatic resources, heritage resources, threatened and endangered species habitat or significant resource protection requirements
6. with cooperative agreements such as road maintenance or erosion control
7. set-aside for small business
8. if modifications may become necessary
9. requiring a performance bond

For larger or more complex sales, use form FS 2400-4. Administrative use will be authorized using form FS 2400-8 Free Use Permit, as well as any other free use for which a permit is required.

Only the Washington Office (WO) Forest Management staff will make changes to Page 1, General Conditions, or the WO Other Conditions on a permit. The Forest Supervisor or District Rangers may create Other Conditions if needed. If the permit is for bioprospecting or other research, add the Terms and Conditions for Botanical Collection Permits (see Appendix I) in the Other Conditions section.

COORDINATION WITH OTHER PROJECTS

In accordance with the Region 10 SFP resource management policy, consider opportunities for subsistence or personal use gathering, and/or sale of SFP resources in the planning of other Forest Service activities, including timber sales, road construction, road, trail and recreation facilities maintenance, as well as any other projects that might produce SFP resources as a by-product of the activity. The impact of any sale of SFP resources in conjunction with other activities must be addressed either in the NEPA analysis and documentation for the primary activity, or in a separate NEPA analysis. Wherever possible, requests for commercial sale of SFP resources should be coordinated with other projects. SFP resource byproducts should be made available for subsistence and personal uses before they are sold. The following section outlines the options and priorities specific to coordination of SFP resource sales with timber sales.

Guidelines For Coordination of SFP Resource Harvest with Timber Sales:

There are several alternative methods for coordinating SFP resource sales with timber sales in the same project area. The following three options are listed in order of priority. However, the contracting officer should work with the local conditions and contractors/permitees involved to come up with the best option for the individual sale.

1. Opportunities for sale of SFP resources are covered in the timber sale NEPA. Language is included in the timber sale advertisement and contract, stipulating that non-timber resources are being sold concurrently, and that coordination will be necessary. Sale of SFP resources

occurs concurrently with the timber sale, maximizing the amount of non-timber tree products and epiphytic mosses that can be taken, and minimizing the level of risk related to the possibility of the timber not being sold. The contracting officer, timber contractor, and SFP permittee(s) work together to ensure that the timing of harvests optimizes the opportunities, product quality and safety for all.

2. Opportunities for sale of SFP resources are addressed in the timber sale NEPA analysis. After NEPA clearance, SFP resources are made available, sold and harvested before the timber sale is advertised. Any effects of SFP resource harvest on timber values are reflected in the appraised value of the timber being sold. SFP resource sales are completed and the timber is advertised within one year after NEPA clearance. This allows for sale of different SFP resources at different seasons, depending on their ideal harvest time (e.g. bark in the spring, boughs in late fall).
3. NEPA analysis for sale of SFP resources is completed prior to completion of the timber sale NEPA on a project area. SFP resources are made available and sold prior to advertisement of the timber sale. In this case SFP resource harvest must be limited to sustainable levels in case the timber is not sold. Harvest of bark, burls and boughs in particular must not be to the extent that it would kill the trees if left standing.

BLANKET PERMITS

Tribal governments may apply for commercial SFP resource harvest permits to accommodate the commercial use needs of the Tribe's citizens. As with all commercial permits, a blanket permit is subject to the regulations of Forest Service policy and related laws, including the appropriate level of NEPA analysis, as well as established rates. In order to issue a blanket permit, identify the permit area, species, quantities, timeframe, and conditions of the permit in a project proposal.

As a result of appropriate NEPA analysis, the district establishes the maximum thresholds for harvest of the identified species on the blanket permit. The Tribal government may impose additional harvest quantity or method restrictions as a condition for its sub-permittees to harvest under the permit, so long as they are equitable, and not in conflict with those provided on the Forest Service blanket permit.

The Tribe that is the permittee must provide the district with an updated list of all persons authorized to collect under the permit. Each harvester must in turn carry with them a sub-permit from the Tribe showing the species, quantities and locations they are authorized to harvest. The Tribe is accountable to the Forest Service for compliance with the terms and conditions on the blanket permit. Tribal sub-permittees are accountable to the Tribe. Any persons engaging in SFP resource harvest activities, who are not authorized to harvest under a Tribe's sub-permit, are accountable directly to the Forest Service.

As a condition of the permit, the Tribe must report annually the locations and quantities harvested for each species to the Forest Service office issuing the permit. In addition, the Tribe may optionally participate with the Forest Service in site monitoring related to the blanket permit through a memorandum of understanding or a contract.

The Forest Service may provide technical advice and assistance to a Tribe applying for or holding a blanket permit, in order to maximize the benefits and success of such a permit.

INVENTORY

Inventory for SFP species on the Tongass NF shall be developed in two tiers:

1. A broad based inventory of SFP species will be derived from the Southeast Alaska Forest Inventory and Analysis (PNW Station, Anchorage), showing general distribution and abundance of the species across the forest.
2. As part of the environmental analysis for any proposed commercial harvest, adequate site-specific field inventory must establish sufficient abundance of the resource to accommodate the commercial harvest. Existing field inventories (stand exams, botany surveys, ecology plot data) may be used as they apply. These shall be supplemented as needed for the type and scale of harvest proposed. For example, specific inventory would be needed before cedar bark could be harvested, whereas mushroom and berry picking will have less intensive inventory needs.

Integrate SFP resource inventory for important species into timber stand exams in order to identify opportunities for commercial or non-commercial uses in coordination with timber sales.

Inventory data from both tiers shall be integrated within the appropriate components of the Natural Resource Information System database in a way that will contribute to overall forest SFP resource inventory.

MONITORING

Three types of monitoring shall be required, depending on the type and scale of commercial SFP resource harvest:

- Each permittee shall be required to report actual quantities harvested from specific areas. This will be tracked over time to monitor amounts of specific SFP resources being removed from specific areas, and to determine trends in the program.
- Each project shall have an identified monitoring plan to address its potential environmental impacts. Low impact harvests, such as berries, cones and mushrooms may have lower monitoring requirements than high impact harvests such as transplants, cedar bark, or roots/limbs. Determine the necessary monitoring plan based on harvest level, frequency, cumulative effects, plant abundance, habitat and type of harvest.
- Impacts to subsistence and personal use shall also be monitored through ongoing input to the NEPA process from Tribes and the public.

If monitoring shows that existing harvest levels are exceeding sustainability, then adjust the permit(s) for that species and/or area. Use monitoring results to identify areas and/or species in need of rotational rest periods. Include consultation and collaboration with Tribes to enhance or accomplish monitoring efforts. This can include contracting Tribes to do monitoring work.

Appendix I

Washington Office Terms and Conditions for Botanical Collection

File Code: 2400; 2600
Route To: 4000

Date: March 3, 1999

Subject: Terms and Conditions for Plant Collection and Bioprospecting
To: Regional Foresters

Enclosed for your use are terms and conditions which must be used when issuing permits for plant collections and bioprospecting. These terms and conditions were developed by an interagency group. As you recall, you were directed to suspend issuance of this type of permit in Deputy Chief Joslin's letter of April 3, 1998, pending further direction. An interagency team has been meeting to determine how best to proceed with bioprospecting permits with as much consistency as possible between agencies. Questions of authority for sharing in the revenues from valuable finds is still an issue as our agencies' authorities are different. Further, the National Park Service is in litigation with the authority issue as one of the elements of the lawsuit. Therefore, it was concluded that we should issue permits on a year to year basis only until such time as we have better answers to the long-term questions. The one year limitation also facilitates the use of a categorical exclusion (CE) for these permits.

These terms and conditions are required for all permits issued to Colleges and Universities, as well as botanical organizations that may be involved in bioprospecting. Permit form 2400-1 or 2400-8 should be used for permits issued as free use or for charge up to \$300 value. Fair market value should be charged when the permit does not qualify for free use. This charge will be only for the plants and no authority is present to collect any future revenues from valuable discoveries from these plants. You may also issue an administrative use permit for research and demonstration projects with those entities that have cooperative agreements with the Forest Service or other Federal government agencies or departments. To use a CE these permits must be limited in context and intensity. You are not required to issue a permit for activities such as grade school students collecting leaves for a class project.

These terms and conditions were designed to facilitate the use of categorical exclusions. Therefore, your analysis must confirm that the permit is for minor amounts and that the permit does qualify for such an exclusion. If you determine that there are extraordinary circumstances or other reasons that a CE is not appropriate, then you should prepare an environmental assessment or environmental impact assessment as needed.

/s/Gloria Manning
GLORIA MANNING
Acting Deputy Chief for
National Forest System

Enclosure: Terms and Conditions For Botanical Collection Permits

Terms and Conditions
For
Botanical Collection Permits

1. Field collections will be performed only by the lead Investigator or botanical personnel under their direct field supervision. The permittee must certify that those doing the collections have the qualifications necessary to properly identify the species collected.
2. The quantity (number and/or biomass) of live species to be collected from a population is limited to that specified in this permit for purposes of the survey, consistent with Forest Service responsibilities for maintaining viable populations under the National Forest Management Act.
3. The permittee is encouraged to prepare a voucher specimen for each species collected during the survey and deposit the voucher in a scientifically recognized herbarium. The permittee is requested to advise the agency of the herbarium selected (the herbarium listed in the Index Herbariorum published by the International Association of Plant Taxonomists is preferred).
4. The permittee will provide the Forest Service with a list of the species collected, quantity taken, and location sites by Forest.
5. The permittee is encouraged to provide the Forest Service with one copy of each publication or report resulting from this collection and advise the Forest Service of any materials collected that are conveyed to a third party.
6. The Forest Service may use the information obtained through this permit as needed, to further the management and conservation of the species collected under this permit.
7. Collection or disturbance of any federally listed, threatened or endangered species or any Regional Forester's Sensitive Plant Species shown on the attached list is prohibited.
8. Entry into closed areas is prohibited.
9. Collecting specimens in Primitive, Wilderness, Research Natural, Botanical, or Scenic Areas or Forest Service Campgrounds or Picnic Areas is prohibited.
10. The permit area does not include areas within 200 feet of any highway, road or trail and thus collecting of specimens is not permitted in those areas.
11. This permit shall be carried at all times when collecting, and must be shown upon request, to a Forest Service officer.
12. The granting of this permit does not convey any rights for future collection.

Appendix II

Key to Special Forest Product Permitting Requirements on the Tongass NF

- 1a. Applicant is a Rural Resident as defined by ANILCA Title VIII
 - 2a. Applicant's use does not include cash sale.....Subsistence Use (No charge)
 - 3a. Gathering area is not regulated for SFP via Subpart B Order*.....No permit required
 - 3b. Gathering area is regulated via a Subpart B Order*.....Free Use permit required
Use FS 2400-8
- 2b. Applicant's use includes cash sale
 - 4a. Cash sale is Customary Trade as defined by ANILCA Title VIII.....Subsistence
 - 5a. Gathering area is not regulated for SFP via Subpart B Order*.....No permit required
 - 5b. Gathering area is regulated via a Subpart B Order*.....Free Use permit required
Use FS 2400-8
 - 4b. Cash sale is considered a significant commercial enterprise.....Commercial use, see 8
- 1b. Applicant is not a Rural Resident
 - 5a. Applicant's use is for self and family only.....Personal Use (No charge)
(*annual use valued at less than \$100*)
 - 6a. Gathering area is not regulated for SFP via Subpart B Order*.....No permit required
 - 6b. Gathering area is regulated via a Subpart B Order*.....Free Use permit required
 - 5b. Applicant's use is not strictly for self and family
 - 7a. Applicant's use includes cash sale or use in business activities.....Commercial Use
(*for educational use, see 10a*)
 - 8a. Products requested are less than \$300 total; harvest period
is less than 1 year; involves no cooperative agreements.....Use FS 2400-1**
 - 8b. Conditions not as in 8a
 - 9a. Permit is for more than 1 year.....Use FS 2400-3P**
 - 9b. Permit is for less than 1 year; involves special conditions.....Use FS 2400-4**
 - 7b. Applicant's use does not include cash sale or business activities
 - 10a. SFP resources are materials for an educational class or
workshop affiliated with a college, university, Tribe or
other recognized non-profit organization.....Educational Use
(*instructor may be compensated for time spent gathering*) Use FS 2400-8
 - 10b. SFP resources are for research collections
(*See also Appendix I, Terms and conditions
for Botanical Collection Permits*)
 - 11a. Applicant's work is in a cooperative agreement
with the Forest Service or other Federal agency.....Administrative Use
Use FS 2400-8
 - 11b. Applicant does not have a cooperative agreement
with the Forest Service or other Federal agency.....Commercial Use, see 8

* Specific areas may be closed to subsistence or personal use except by permit if there are cumulative environmental effects or other concerns that must be mitigated [36CFR261.58(t)].

** See applicable permit instructions for further detail on their appropriate uses.

Appendix III

Alaska Region Clarification on Soil as a Special Forest Product



United States
Department of
Agriculture

Forest
Service

Alaska Region

P.O. Box 21628
Juneau, Alaska 99802-1628

File Code: 2460
Route To: (2460)

Date: October 11, 2000

Subject: Special Forest Products and Bioprospecting in Soil

To: Forest Supervisors

We have been receiving requests for soil samples on the Tongass and Chugach National Forests for the purpose of bioprospecting. Bioprospecting is a research activity conducted largely by pharmaceutical companies. Small samples of plants or other organisms are screened in the laboratory for biological activity against cancer and other diseases. It is usually considered to be a commercial activity and therefore requires a permit in Region 10.

In the "Alaska Region Interim Special Forest Products Resource Management Policy" currently in effect, the definition of special forest products states:

Special forest products (SFPs) are defined as products derived from non-timber biological resources that are used for personal, educational, commercial, and scientific use. SFP resources include, but are not limited to: mushrooms, boughs, Christmas trees, bark, ferns, moss, burls, berries, cones, conks, herbs, roots, and wildflowers. Also included are cuttings (such as of willow used for restoration) and transplants (as for landscaping purposes). SFP resources **exclude** saw-timber, pulpwood, cull logs, small round-wood, house logs, utility poles, minerals, animals, animal parts, rocks, water **and soil**. [Emphasis added]

In the case of bioprospecting in soil, only small samples are taken, with minimal ground disturbance. The desired products in the soil are microorganisms, though the whole soil must be removed in order for them to be fractioned out in the lab.

Thus, for purposes of permitting bioprospecting in soil, we consider the soil and the microorganisms inseparable and indistinguishable from one another, making soil the sale material. In these cases, such soil samples can be sold under the Terms and Conditions for Botanical Collection Permits, provided by the Washington Office on March 3, 1999.

The permit application should clearly state the portions of the soil that are being sought, and the purposes for the collection. The product and purpose should be put in the permit under "Description" (e.g., "actinomycetes for bioprospecting," or "soil microorganisms for cancer research"). The product category should be GrnBio-NCV (Green Biomass Non-convertible). The unit of measure should be in pounds. Note that we may NOT sell soil macro-organisms (e.g., insects, worms, snails, spiders), or mineral fractions of the soil, as special forest products. Again, the purposes in the application should clearly state which part of the soil is being used.

According to the Terms and Conditions accompanying the letter cited above, bioprospecting collections can be sold under a categorical exclusion (CE). Only small quantities of soil may be sold under these conditions, removed using hand tools. Be aware that bioprospecting is a known issue of concern for Alaska Native Tribes and other organizations. Therefore appropriate internal and external scoping should be completed before a permit is processed. For more information about this issue or the special forest products permitting process, contact Phyllis Woolwine at (907) 790-7447.

/s/ James A. Caplan
JAMES A. CAPLAN
Deputy Regional Forester
for Natural Resources

cc:
District Rangers
Phyllis Woolwine, Juneau
Ranger District