



***Bureau of Land Management  
Director's Summary Protest Resolution  
Report***

**Final Environmental Impact  
Statement for the Proposed  
Haines Amendment to the  
Ring of Fire Resource  
Management Plan**

February 7, 2020

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## *Acronyms*

<b>ACEC</b>	Area of Critical Environmental Concern
<b>ADFG</b>	Alaska Department of Fish and Game
<b>AM</b>	adaptive management
<b>ANILCA</b>	Alaska National Interest Lands Conservation Act
<b>BLM</b>	Bureau of Land Management
<b>CEQ</b>	Council on Environmental Quality
<b>CFR</b>	Code of Federal Regulations
<b>CIV</b>	Chilkat Indian Village of Klukwan
<b>DEIS</b>	Draft Environmental Impact Statement
<b>EA</b>	environmental assessment
<b>EIS</b>	environmental impact statement
<b>EO</b>	Executive Order
<b>EPA</b>	U.S. Environmental Protection Agency
<b>FEIS</b>	Final Environmental Impact Statement
<b>FLPMA</b>	Federal Land Policy Management Act
<b>LCC</b>	Lynn Canal Conservation
<b>MCA</b>	Monitoring and Control Area
<b>NEPA</b>	National Environmental Policy Act
<b>NWSGC</b>	Northern Wild Sheep and Goat Council
<b>RMP</b>	Resource Management Plan
<b>ROD</b>	Record of Decision
<b>SDEIS</b>	Supplemental Draft Environmental Impact Statement
<b>SRMA</b>	Special Recreation Management Area

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
Jessica Pletcher	N/A	Dismissed – No Standing
Kimberly Strong	Chilkat Indian Village of Klukwan	Denied
Eric Holle and Jessica Plachta	Lynn Canal Conservation	Denied

## ***NEPA –Cumulative Impacts on Wildlife***

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** FEIS fails to consider cumulative impacts at all and particularly how Climate Change will be an added stressor to goat populations with the very possible admitted outcome of extinction.

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Climate Change (4.6 and page 42) is not analyzed in terms of being an added stressor to goats, and is not included in a cumulative impacts section.

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Shockingly, the SDEIS kept it a secret that in 2018 BLM entered an agreement with Green Mountain College to analyze the 10 years of goat monitoring data collected between 1995 and 2005 in the Planning Area. (FEIS at 41). We believe it was included in the FEIS only because of our request (LCC SDEIS comments). A 1995 EA “ROD required development of a mountain goat monitoring plan to attempt to evaluate goat population responses to the [helicopter] activities.” (FEIS at 41). BLM states Geospatial Analysis of Historical BLM Mountain Goat Aerial Surveys: issues affecting conservation, specifically targeting the effects of commercial helicopter activity on southeast Alaska mountain goat populations was completed in June of 2019 and is included in the FEIS at 3.3. (Appendix A at 91) Yet FEIS information at 3.3 states only that it was a geospatial study indicating where goats can be found in the Planning Area. However, the study title indicates that information is contained regarding effects of helicopter activity on goat populations. This is critical information about how past helicopter activity may have impacted goat populations in the Planning Area. LCC received this study recently and has not had the opportunity to thoroughly review it. However, information provided in this analysis is critical to understanding past impacts and a discussion of the correlations made therein is warranted in order to be in compliance with NEPA. Again, NEPA requires that relevant environmental information be included and analyzed in the FEIS, rather than be summarily dismissed by omitting any substantive observed correlations made in this 2019 paper between areas of no, low, and high helicopter activity and goat populations. Also included are citations of other studies which indicate that “mining construction, development and daily operating activity levels” provide a variety of stressors to goats (Hamr, 1988 and Cote 1996). (At 20). This is relevant because LCC requested the FEIS evaluate cumulative impacts, including impacts from the nearby developing Constantine Mine, but no evaluation occurred because of BLM’s erroneous interpretation of cumulative impacts (as discussed previously)

### **Summary:**

The Final Environmental Impact Statement (FEIS) for the Proposed Haines Amendment to the Ring of Fire Resource Management Plan (RMP) (BLM 2019a) failed to adequately analyze cumulative effects on goat populations by not adequately considering climate change and helicopter activity stressors.

### **Response:**

The Bureau of Land Management (BLM) must discuss the cumulative effects of the proposed action and the alternatives when preparing an environmental impact statement (EIS) (BLM Handbook H-1790-1, Section 6.8.3). The Council on Environmental Quality’s (CEQ’s) regulations define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 Code of Federal Regulations [CFR] 1508.7).

The BLM has complied with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the alternatives under consideration. The cumulative impact analysis for wildlife (see FEIS Section 4.3, pp. 58–68) considered the effects of climate change and helicopter landing permits in addition to other past present and reasonably foreseeable (not speculative) Federal and non-Federal actions.

As stated in the BLM’s response to comment HA-1-EM-1700 (see FEIS Appendix A, p. 91), a data-sharing agreement was initiated in September of 2018 with Green Mountain College in an effort to compile and analyze mountain goat data collected by the BLM between 1995 and 2006, with a final report provided to the BLM in June 2019 (Larsen 2019). Information contained in the final report was reviewed and incorporated where appropriate in the affected environment and environmental consequences sections, including cumulative impacts, of the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see FEIS Section 3.3, pp. 35–42, and Section 4.3, pp. 58–68) (BLM 2019a).

The BLM complied with the National Environmental Policy Act’s (NEPA’s) requirement to analyze the cumulative effects on cultural resources in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP.

## ***Tribal Consultation***

### ***Chilkat Indian Village of Klukwan***

***Kimberly Strong***

**Issue Excerpt Text:** The purpose of tribal consultation under the Federal Land Policy Management Act (FLPMA) and the NEPA is to identify potential conflicts between proposed actions and tribal interests and to avoid, reduce or resolve impacts to tribes through the planning process. BLM Handbook 1780-1, states that “Tribal consultation must take place at key points in the NEPA process”. The Handbook lists the key points including ‘when an assessment of impacts is projected’, ‘at the Final EIS’ and, ‘before the final decision is rendered’. As previously stated, in both the DEIS and FEIS, BLM’s proposed actions will impact our traditional and cultural values, subsistence resources and Tribal land use in the Haines Block planning area. In Chapter III of the BLM Handbook 1780-1 “Consultation is necessary on land use actions when the BLM manager determines that the nature or location of a proposed land use could affect tribal interests or concerns”. Based on our assessment of the FEIS it seems that the BLM failed to implement the points listed under section E. F. G. and I of Chapter III of the BLM Handbook of 1780-1.

### ***Chilkat Indian Village of Klukwan***

***Kimberly Strong***

**Issue Excerpt Text:** Environmental Justice requires the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair Treatment requires that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies. Meaningful Involvement requires that (1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their human health or environment; (2) the public’s input can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected. Because of the above list of process considerations and failures, we conclude that Government to Government Consultation and Environmental Justice principles have not been met by BLM in the Haines Block planning process and development of the FEIS.

### ***Chilkat Indian Village of Klukwan***

***Kimberly Strong***

Issue Excerpt Text: Requirements under Secretarial Order 3355 for fast-tracking and streamlining NEPA's EISs is limiting access to BLM for consultation with Tribes to meet with BLM. There are no pressing development projects that require the completion of this FEIS on a fast-tracked basis. Secretarial Order 3355 does not rescind the agency's lawful obligations to Tribes to carry out meaningful consultation.

***Chilkat Indian Village of Klukwan***

***Kimberly Strong***

**Issue Excerpt Text:** BLM Alaska failed to provide a Tribal Liaison. This person should have provided outreach to CIV from the DEIS through the FEIS. There was no communication from BLM between the DEIS and the FEIS. Considering BLM highlights the cultural significance of the area in the Haines Block it makes no sense as to why the agency would not conduct outreach in the development of the FEIS.

***Chilkat Indian Village of Klukwan***

***Kimberly Strong***

**Issue Excerpt Text:** The FEIS highlights key concerns as they relate to the United States Federal Government's definition of "meaningful consultation". This construct is defined specifically and steps for BLM to achieve meaningful consultation are clearly articulated in the BLM Handbook 1780-1, the Alaska National Interest Lands Conservation Act (ANILCA) and under the Environmental Justice EO 12898.

**Summary:**

The BLM failed to conduct meaningful consultation and coordination with the Chilkat Indian Village Council as required by BLM Handbook 1780-1, the ANILCA, and under the Environmental Justice Executive Order 12898.

**Response:**

Federally recognized tribes have a special, unique legal and political relationship with the Government of the United States as defined by the U.S. Constitution, treaties, statutes, court decisions, and executive orders. These definitive authorities also serve as the basis for the Federal Government's obligation to acknowledge the status of federally recognized tribes in Alaska. As such, it is the policy of the BLM to formally consult with federally recognized tribes in Alaska prior to taking action or undertaking activities that will have a substantial, direct effect on the tribes, their assets, rights, services, or programs.

It is BLM policy to "involve tribes early in the action and/or decision development process to ensure meaningful tribal input" (BLM Handbook 1780-1, Improving and Sustaining BLM-Tribal Relations, page III-1). As noted in the FEIS in Section 5.2, the BLM has consulted with the Chilkat Indian Village Council during the Proposed Haines Amendment to the Ring of Fire RMP planning effort. The BLM communicated with the tribe to receive input on the EIS and discuss concerns and issues to be addressed. While the BLM manager must give tribal concerns and preferences due consideration and make a good-faith effort to address them as an integral part of the decision making process, final decisions may not always conform with the preferences and suggestions of the tribes (BLM H-1780-1, p. III-17).

Consultation included the following:

- On February 8, 2013, the BLM held a teleconference with members of the Chilkat Indian Village Council to provide an update and discuss tribal concerns regarding the land use planning process and followed up with a letter to the Chilkat Indian Village on February 21, 2013.
- On March 6, 2013, the BLM met with the Chilkat Indian Village Council at the Chilkat Indian Village Council Office to provide an update on the land use planning process and discuss tribal concerns and followed up with a letter to the Chilkat Indian Village on March 15, 2013.
- On May 16, 2014, the BLM met with the Chilkat Indian Village Council at the Chilkat Indian Village Council Office to provide an update on the land use planning process and discuss tribal concerns.



- On March 7, 2018, the BLM held a teleconference with members of the Chilkat Indian Village Council to provide an update and discuss tribal concerns regarding the land use planning process, including tribal comments on previous drafts of the Supplemental EIS.
- On April 3, 2018, the BLM met with the Chilkat Indian Village Council at the Chilkat Indian Village Office to provide an update on the planning effort and answer questions.
- On July 13, 2018, the BLM met with the members of the Chilkat Indian Village Council to provide an update on the land use planning process and discuss tribal concerns.
- On May 16, 2019, the BLM emailed the tribe to notify them the BLM had incorporated their comments into the alternatives and analysis, and to confirm they had access to the latest version of the Haines Amendment to the Ring of Fire RMP EIS. The BLM also requested an in-person consultation with the tribe during the public review period for the Draft EIS. The in-person meeting was held on June 21, 2019, at the Chilkat Indian Tribe Hall, and included discussions between the tribe and the BLM on changes to the document and tribal concerns.

The BLM completed meaningful consultation with tribal governments regarding the Haines Amendment to the Ring of Fire RMP.

## ***Alaska National Interests Lands Conservation Act Section 810***

### ***Chilkat Indian Village of Klukwan***

#### ***Kimberly Strong***

**Issue Excerpt Text:** in BLM's policy guidance for implementing ANILCA Section 810 (im\_ak\_2011\_008\_Policy.pdf) it is recognized that the public may be best served by satisfying the Section 810 requirement even though they may not be legally required. The information provided by BLM and ADF&G points to helicopter noise (FEIS 3.3) and climate change (FEIS pg. 41) having significant impacts. The types of impacts from helicopter noise and climate change include area extinction and dispersion of the species. These impacts will definitely significantly restrict subsistence uses. ANILCA Section 810 details that actions which significantly restrict subsistence uses can only be undertaken if they are necessary and if the adverse effects are minimized.[1] The EPA recommends that the FEIS include a discussion of the reasonably foreseeable effects that changes in the climate may have on the proposed action and the planning area. The Preferred Alternative G authorizes a 307% increase in landings and 1733% increase in noise and does not address how this increase will impact the mountain goat nor does it address how climate change will impact the mountain goat. CIV demands that BLM, demonstrate how these future will not significantly restrict subsistence uses by implementing ANILCA Section 810

#### **Summary:**

The BLM failed to address the effects of the land use planning actions on subsistence uses in the Planning Area as required by ANILCA Section 810.

#### **Response:**

The BLM completed an ANILCA Section 810 Evaluation (Appendix F). From the outset of the planning effort, all lands were selected. The State only recently relinquished a selection of 15.8 acres. A total of 326,397 acres are either State- or Native- selected, BLM-managed lands. Of those 326,397 acres, 15.8 acres are unencumbered lands, thus Federal Public land as defined by ANILCA Section 102. The evaluation concluded that the action will not result in a significant restriction in subsistence uses for all alternatives as well as the cumulative case.

## ***NEPA – Wildlife Impact Analysis***

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** ADFG believes a one third shrinking of the original Monitoring and Control Area (MCA) that was set up to evaluate impacts of helicopters in goat habitat will compromise its purpose. ADFG also objects that the proposed SRMA designation will not exclude fixed wing aircraft as the MCA did. ADFG comments that these changes do not provide the “consistency” needed for a control area. (Appendix A at 29). ADFG asks BLM to either maintain the MCA or at least add MCA stipulations in order to provide “consistency” (a necessary attribute for a control area). BLM denies this request with no rationale given (Appendix A at 33), and later erroneously claims that a SRMA “would not preclude monitoring and control studies.” (Appendix at 90).

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Handbook H-1790-1, Section V.B.4.a., p. V-11. The agency’s responses to comments in the FEIS do not meet the above requirements. A “hard look” means BLM cannot simply ignore opposing scientific opinions, as was done in FEIS Appendix A. Rather, BLM is required to respond to adverse opinions held by respected scientists, disclose scientific uncertainty, and rigorously investigate environmental consequences in an effort to present complete and accurate information in the FEIS.

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** According to the BLM response in Appendix A, precluding helicopter use would conflict with the multiple use mandate of FLPMA to utilize public lands “in the combination that will best meet the present and future needs of the American people.” (Id.). There is no justification for this assertion, and in fact, other Appendix A comments indicate that reducing the areas of helicopter impacts would promote other public uses, including wildlife viewing and photography, cultural resource conservation, hunting, subsistence, and non-motorized backcountry recreation. (Appendix A at 104 and 71). The FEIS conveniently ignores other FLPMA mandates for the utilization of public lands, such as the one immediately following the one the FEIS cites: FLPMA requires BLM to protect the quality of scientific, ecological and environmental values and also provide food and habitat for wildlife, in addition to human recreational use. (43USC1701(a)(8)). Selectively citing laws and regulations is not an appropriate use of an EIS process.

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Environmental Consequences section (4.0) is deficient and does not truly evaluate the environmental consequences envisioned by the Alaska Department of Fish and Game in Appendix A (pages 18-34) if Alternative G is adopted, and as predicted by climate change models.

***Lynn Canal Conservation******Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** The known and potential impacts to mountain goats from helicopter incursions into their habitats are well documented in the FEIS (e.g. at 4.3) and in past LCC comments (e.g. SDEIS comments at 7). BLM states it is relying on Alaska Department of Fish and Game (ADFG) expertise to help manage what BLM has finally determined to be an important and relevant resource. Yet ADFG is highly skeptical that BLM’s management choices and strategies will indeed protect goats. (Appendix A at 18-34). The EIS process includes a draft document so that expert agency comments and opinions can be incorporated into the FEIS, where they are supposed to be analyzed and a rationale given why expert advice will not be adopted. Instead, the FEIS merely includes opposing expert opinion in Appendix A and provides weak to no rationale for why the management strategies remain unchanged (with one exception), circumventing the “hard look” required by NEPA.

***Lynn Canal Conservation******Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Relationship of Short-Term Uses to Long-Term Productivity (4.13) does not discuss total extirpation of goat populations, as predicted by climate change models and Alaska Department of Fish and Game comments regarding the preferred alternative.

**Summary:**

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) failed to adequately analyze potential impacts from the range of alternatives on mountain goats and failed to consider an alternative that reflected expert scientific opinion on the best management approach for mountain goats.

**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the planning actions.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM analyzed impacts on mountain goats from the planning and implementation decisions in Section 4.3, *Wildlife* (beginning on p. 58). In Section 4.3, the BLM included specific assumptions related to the analysis for mountain goats; under the subheading *Impacts common to all alternatives*, the BLM presented more specific information related to aviation impacts on mountain goats and incorporated into the FEIS analysis based on comments received on the Supplemental Draft Environmental Impact Statement (SDEIS) for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019b).

The references noted by the protestor were reviewed and summarized in the analysis (see p. 58); along with a summary of the joint BLM-ADFG research studies that were specifically conducted to assess impacts on mountain goats from aviation activities (see pp. 59–60, 62–65).

The BLM provided a discussion of the adaptive management strategy for monitoring and changing management outcomes of the permitted aviation activities (FEIS Appendix D).

The FEIS also addressed climate change and impacts on mountain goats on page 60, specifically noting the possibility for extirpation. “The impacts of climate change are likely to vary by species, but in general, climate change will introduce significant uncertainty in predicting demographic trends of species in the area and will make the predicted impacts of permitted activities more difficult to accurately assess. However, White et al. (2018) did indicate that in 5 of 10 climate change related modeled scenarios, local extirpation was likely by 2085 for mountain goats in coastal Alaska. Warmer summer temperatures and the resulting decreased forage quality did not offset the benefits of reduced winter snowfall. Additionally, extirpation is more likely for smaller initial populations.”

The BLM complied with NEPA’s requirement to analyze the environmental impacts from the planning actions on mountain goats in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a).

## ***Response to Comments***

### ***Lynn Canal Conservation Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** BLM was completely unresponsive to the other ADFG request for a more gradual increase in landings allowed in the preferred alternative. (Appendix A at 26). ADFG’s request for smaller increases is based on the fact that a 433% increase in landings in year 1 and a 1733% increase in year 9 will make it “difficult to document mountain goat impacts so that any negative impacts can be assessed, and mitigation implemented in time to preserve a healthy mountain goat population.” (Appendix A at 27). This is a very serious failing of the proposed management strategy. It is unbelievable that BLM does not respond to this specific request because the entire purpose of AM is to respond to potential negative impacts in real time in order to implement mitigation to preserve healthy populations.

#### **Summary:**

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) did not adequately consider public comments on the SDEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019b) project alternatives.

#### **Response:**

The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the SDEIS for the Haines Amendment to the Ring of Fire RMP (BLM 2019a). The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix A of the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP presents the BLM’s responses to all substantive comments.

The BLM’s responses to comments on the SDEIS for the Haines Amendment to the Ring of Fire RMP (BLM 2019b) raised by ADFG are included in Appendix A of the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP. The BLM’s responses identified modifications to the alternatives, clarification and additional information added as a result of the public comments, improvements to the impacts analysis, and factual corrections made as a result of public comments. The BLM’s response also explained why certain public comments did not warrant further agency response.

The BLM’s response to the ADFG’s request for a more gradual increase in helicopter landings than that considered in the Preferred Alternative of the SDEIS is found on page 26, comment number HA-1-EM-0700. As stated in the response, the 3-year period was increased to 4 years in Alternative G of the FEIS, which is the BLM’s Proposed RMP Amendment (see FEIS Table 4.3, p. 66). This 4-year period better aligns with the age at first reproduction for mountain goats and better enables the BLM to assess the effects of increases in activity.

The BLM adequately responded to public comments in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP.

## ***NEPA – Purpose and Need***

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Alternatives F and G do not legitimately address purpose and need and there continues to be no logical rationale for the large increases in helicopter landings in Alternatives F and G.

### ***Lynn Canal Conservation***

***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** In our SDEIS comments we claim that the data presented on actual helicopter use (Table 3.1) shows that the “need” for large increases in numbers (by over 1700%) is belied by the evidence presented. NEPA demands a rational connection between facts found (patterns of actual use) and the choice made (to drastically increase landings, at the potential expense of declining wildlife populations). If the need is manufactured, as appears to be the case, the action is not justified. Erroneous assumptions of need preclude the FEIS from rigorously and objectively evaluating alternatives.

### **Summary:**

The BLM violated NEPA by not establishing a rational need for the proposed action and alternatives analyzed in the EIS.

### **Response:**

The CEQ NEPA regulations direct that an EIS “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action” (40 CFR 1502.13). To the extent possible, the BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project. The BLM is not required to conduct additional scoping for supplemental EISs (40 CFR 1502.9(c)(4)). The BLM established the purpose and need for the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a), which is described on page 7 of Chapter 1, to meet its land use planning mandate under FLPMA.

Specifically, action is needed to reevaluate recreation and visitor services designations in the Planning Area to account for changes in BLM recreation policy in BLM Handbook H-8320-1, Planning for Recreation and Visitor Services, and to evaluate the designation of Areas of Critical Environmental Concern (ACECs) in the Planning Area (see FEIS Chapter 1, p. 7, and Section 3.2, pp. 30–35). The purpose and need provided the appropriate scope to allow the BLM to analyze a reasonable range of alternatives that represent alternative approaches for achieving the purpose and need.

The BLM properly established the purpose and need for the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a).

## *NEPA – Best Available Science*

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** Specific comments in Appendix A, particularly those of ADFG (pages 18-34) point to numerous flaws in conclusions drawn throughout the FEIS regarding impacts to wildlife. In addition to this general problem of erroneous conclusions, we specifically find fault with the conclusion that Alternative G provides a balance of resource protection and recreation development and growth (FEIS at 20). We continue to maintain that the overwhelmingly downward trend of actual helicopter use (Table 3.1, page 33) should have been used to extrapolate a reasonable level of “need”.

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** Irreversible and Irrecoverable Commitment of Resources (4.12) does not mention a predicted 50% likelihood of goat extirpation, both due to climate change in general, and in instances of smaller herds as discussed in Appendix A by Alaska Department of Fish and Game (ADFG)

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** Irreversible and Irrecoverable Commitment of Resources judgment is erroneous due to an even probability of total goat extirpation by 2085 (FEIS at 42).

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** It is ironic that this goat data was analyzed and ready in June of 2019, but the contents of this analysis has not been revealed in the FEIS. Not only is this counter to NEPA but also the March 2008 Ring of Fire Record of Decision which states “The BLM will use the data gathered through monitoring to evaluate the decisions made and determine if the management practices meet the objectives.” (At 13). So much rudimentary information remains unknown, such as the number of landings tolerated before goat populations decline (Appendix A at 91), or whether it is better to spread impacts over a wide area or confine them (id at 92).

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** ADFG is concerned that BLM is relying on untested and perhaps scientifically unjustified methods to protect goat populations. Specifically, the AM “triggers have not been tested” and “the analytical process has not been developed to calculate and assess these population measures.” (Appendix A at 23). Contrary to FEIS assertions, this really is “trial and error” rather than “learning by doing” (FEIS at 16). Further, ADFG states AM “will require a substantial time and financial commitment.” (Appendix A at 23). Again, environmental information needs to be available before decisions are made and actions taken (40 CFR 1500.1(b)). 40 CFR 1500.1(b) is not simply a portion of NEPA, but rather the “purpose” of NEPA.

### *Lynn Canal Conservation*

*Eric Holle and Jessica Plachta*

**Issue Excerpt Text:** NWSGC guidelines, the most scientifically valid goat management recommendations available, are not “consistently” followed. The Response is telling: if BLM incorporated all NWSCC recommendations helicopter use would be precluded “from nearly the entire planning area.” (Appendix A at 19). Precluding helicopter use would be the scientifically prudent outcome of a legitimate EIS process given that a reasonably foreseeable cumulative impacts from large increases in helicopter activity coupled with climate change is total extirpation.

***Lynn Canal Conservation******Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** According to NEPA, BLM should have done more consultation with Alaska Department of Fish and Game (ADFG), the agency it relies on for goat management expertise, prior to publishing the FEIS so that ADFG input is incorporated into the document itself, rather than relegated to an appendix where they submitted “adversary comments on a completed document” (Planning Purpose: 40 CFR 1501.1(b) and Appendix A at 18-34). Instead Appendix A is full of ADFG concerns regarding how the preferred alternative will impact goat populations, and questions about the effectiveness of Adaptive Management to protect goat populations.

***Lynn Canal Conservation******Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** This is counter to the NEPA “purpose” of ensuring environmental information is available before decisions are made and actions taken (40 CFR 1500.1(b)). This is just one of several instances where BLM has failed to give evidence that it has made the necessary environmental analysis required. (40 CFR 1500.2(b)). This lack of information is problematic because small goat populations (less than 70) have more than “50% probability of decline or eventual extirpation.” (Appendix A at 23). Further, the amount of “time required to conduct the necessary population simulation and compute estimates can be considerable.” (Id). This is troubling because the number one goal for AM is to maintain the “quality and quantity of habitat necessary to support healthy populations of mountain goats and other wildlife.” (FEIS at 17). ADFG point out “incomplete” or “unavailable” information that NEPA requires to be included in an EIS. That is, a 50% likelihood of population decline or extirpation is a “reasonably foreseeable” impact which BLM is required to include in the EIS (40 CFR 1502.22(a)). This is particularly the case if impacts can have “catastrophic consequences even if their probability of occurrence is low.” (40 CFR 1502.22(b)(4)). And while catastrophic in nature, in this case the probability is anything but low. These ADFG comments are particularly troubling because “continued co-operation and collaboration with ADFG is paramount to the success of this [AM] strategy.” (FEIS at 17).

***Lynn Canal Conservation******Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Future Trends and Forecasts (3.2.7) does not include climate change forecasts and gives no rationale for why, after trending downward for more than a decade (FEIS at 33), use of permitted helicopter landings will increase at all, let alone by over 1700% (Alternative G).

**Summary:**

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) failed to use the best available information. The FEIS failed to consider:

- Northern Wild Sheep and Goat Council goat management recommendations
- The downward trend of helicopter use
- A 50 percent likelihood of mountain goat extirpation by 2085 due to climate change

**Response:**

The BLM NEPA Handbook directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

Information contained within the Northern Wild Sheep and Goat Council position statement was taken into consideration in the project alternatives and incorporated in the analysis presented in the FEIS for the

Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a). In particular, a no-landing buffer distance of 1,500 meters was applied to known mountain goat kidding areas between May 1 and June 15. Adaptive management in the Proposed Haines Amendment to the Ring of Fire RMP allows for the incorporation of new or additional data, such as the kidding/nursery habitat mentioned by the protester, should it become available. Alternative E has been modified to include the entire boundary of the original MCA. Additionally, the alternatives include areas where commercial helicopter activity is not permitted that can serve as “control” sites during future behavioral research (see Section 2.2.2 and Table 2.3 of the FEIS). Climate change impacts on mountain goats has been added in Section 3.3 of the FEIS.

As stated in the BLM’s response to comment HA-1-EM-1700 (see FEIS Appendix A, p. 94), the maximum number of landings for each alternative are an overarching number to cover the permitting needs for the life of the plan. The BLM’s adaptive management strategy takes demand and impacts into consideration. Before there is an increase in permitted landings, there would be 4 years of monitoring for goat health. Additionally, an average of 75 percent utilization of landings by combined operators is needed to trigger a step increase in number of landings.

As stated in the BLM’s response to comment HA-1-EM-1700 (see FEIS Appendix A, p. 91), a data-sharing agreement was initiated in September 2018 with Green Mountain College in an effort to compile and analyze mountain goat data collected by the BLM between 1995 and 2006, with a final report provided to BLM in June 2019 (Larsen 2019). Information contained in the final report was reviewed and incorporated where appropriate in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see FEIS Section 3.3, pp. 35–42, and Section 4.3, pp. 58–68) (BLM 2019a).

The FEIS also addressed the likelihood for mountain goat extirpation on page 60: “White et al. (2018) did indicate that in 5 of 10 climate change related modeled scenarios, local extirpation was likely by 2085 for mountain goats in coastal Alaska. Warmer summer temperatures and the resulting decreased forage quality did not offset the benefits of reduced winter snowfall. Additionally, extirpation is more likely for smaller initial populations.”

Adaptive management under any of the alternatives analyzed in the FEIS would lessen the possibility of total goat extirpation. Adaptive management allows for modification of existing mitigation measures as wildlife data improves confidence in the tools used by decision makers (see FEIS Section 2.2, pp. 14–17). The management stipulations, mitigation measures, and strategies described in Section 2.2 apply to all the supplemental action alternatives.

The BLM relied on high-quality information and the best available data in preparation of the analysis and alternatives in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP.

## ***FLPMA – Multiple Use Mandate versus Resource Protection***

### ***Lynn Canal Conservation***

#### ***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Both the BLM Manual and FLPMA mandate BLM “give priority” to designating and protecting ACECs. (LCC SDEIS comments at 5). The only way BLM can give priority to the ACEC designation is to select a preferred alternative that creates an ACEC, and, this is Alternative E. But this has not occurred. The FEIS response to these FLPMA and BLM Manual mandates is “Thank you for your comment.” (Appendix A at 85). NEPA requires a response to substantive comments or at least “explain why the comments do not warrant further agency response.” (40 CFR 1503.4(a)(5)). The FEIS fails to do this.

### ***Lynn Canal Conservation***

#### ***Eric Holle and Jessica Plachta***



**Issue Excerpt Text:** ADFG requests a 1500 foot buffer around bear denning habitat. (Appendix A at 29). BLM responds by stating that accepting scientifically valid recommendations for both goat and bear habitat would “preclude use...from nearly the entire planning area.” (Id.) This response conflicts with 43 USC 1701(a)(8), 40 CFR 1500.1(c) and 1502.24. Again, BLM is overly concerned with a multiple use mandate and under concerned about protecting at risk wildlife populations and fulfilling the letter and spirit of NEPA. Further, BLM does not consider that there are other multiple uses that would benefit from these buffers; namely, protecting wildlife for viewing, photography, hunting, subsistence, cultural uses, and also non-motorized backcountry recreation.

### ***Lynn Canal Conservation***

#### ***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** According to the BLM response in Appendix A, precluding helicopter use would conflict with the multiple use mandate of FLPMA to utilize public lands “in the combination that will best meet the present and future needs of the American people.” (Id.). There is no justification for this assertion, and in fact, other Appendix A comments indicate that reducing the areas of helicopter impacts would promote other public uses, including wildlife viewing and photography, cultural resource conservation, hunting, subsistence, and non-motorized backcountry recreation. (Appendix A at 104 and 71). The FEIS conveniently ignores other FLPMA mandates for the utilization of public lands, such as the one immediately following the one the FEIS cites: FLPMA requires BLM to protect the quality of scientific, ecological and environmental values and also provide food and habitat for wildlife, in addition to human recreational use. (43USC1701(a)(8)). Selectively citing laws and regulations is not an appropriate use of an EIS process.

### **Summary:**

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) violates FLPMA by:

- Ignoring the mandate for environmental protection by overemphasizing FLPMA’s multiple-use mandate; and
- Failing to give priority to the designation and protection of ACECs.

### **Response:**

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield” unless otherwise specified by law. Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA’s multiple use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses, which involves tradeoffs between competing uses. The BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation.

Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) would not specifically authorize any uses of public lands. Therefore, all action alternatives evaluated in the FEIS comply with all applicable statutes, regulations, and policy, and the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA.

The alternatives considered in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see Chapter 2 of the FEIS, pp. 14–29) provide an appropriate balance of uses on the public lands. All action alternatives manage uses in the Planning Area consistent with applicable statutes, regulations, and BLM policy.

In FLPMA Section 103(a), an ACEC is defined as “areas within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish and wildlife resources; or other natural systems or processes, or to protect life and ensure safety from natural hazards.” This special designation is used to delineate areas for special management to protect important and relevant resource values. Furthermore, FLPMA Section 202(c)(3) requires that, in the development and revision of land use plans, the BLM give priority to the designation and protection of ACECs. The implementing regulations at 43 CFR 1610.7-2 provide the agency with guidance for the identification and consideration of ACECs for designation and protection during the resource management planning process. However, there is no statutory or regulatory requirement that the BLM designate any or all ACECs identified and considered during the planning process.

The BLM has discretion to select all, some, or none of the ACECs within the range of alternatives and there is no requirement that the agency carry forward potential ACECs into the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see BLM Manual 1613.33.E). A comparison of estimated effects and tradeoffs associated with the alternatives led to development and selection of the final alternative within the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see FEIS Chapter 2, pp. 14 through 21). For the proposed ACEC carried forward in Alternative E, the BLM concluded that special management attention is not required to protect the potential ACEC because standard or routine management prescriptions are sufficient to protect the resource or value from risks or threats of damage or degradation.

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP satisfies the requirements of FLPMA.

## ***NEPA – Alternative that Reduces Unavoidable Adverse Impacts***

### ***Lynn Canal Conservation***

#### ***Eric Holle and Jessica Plachta***

**Issue Excerpt Text:** Unavoidable Adverse Impacts (4.11) does not discuss lessening the possibility of total goat extirpation by implementing an alternative that will produce less impacts on goats.

#### **Summary:**

The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) fails to analyze an alternative that lessens unavoidable adverse impacts on goats.

#### **Response:**

NEPA requires the BLM to include a discussion of “any adverse environmental effects which cannot be avoided should the proposal be implemented” (40 CFR 1502.16). The FEIS addresses unavoidable adverse impacts in Section 4.11 as noted by the protestor’s issue statement, but discussion of the possibility for mountain goat extirpation is discussed on page 60 under the effects of climate change on mountain goats.

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action: “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic

standpoint and using common sense, rather than simply desirable from the standpoint of the applicant” (BLM NEPA Handbook, H-1790-1, at 50 [citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981]; see also 40 CFR § 1502.14).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the Proposed Haines Amendment to the Ring of Fire RMP and that address resource issues identified during the scoping period. The Proposed Haines Amendment to the Ring of Fire RMP FEIS analyzed the No Action and three action alternatives, which are described in Sections 2.2 and 2.3. The alternatives analyzed in the Proposed Haines Amendment to the Ring of Fire RMP cover the full spectrum by varying in: (1) degrees of protection for the planning and implementation actions; (2) approaches to management; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for mitigation.

The potential for extirpation of mountain goats in coastal Alaska as a result of climate change is acknowledged in Section 4.3 of the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (see FEIS p. 60). Adaptive management included in the FEIS allows for modification of existing mitigation measure as wildlife data improve confidence in the tools used by decisionmakers (see FEIS Section 2.2, pp. 14–17). The management stipulations, mitigation measures, and strategies described in Section 2.2 apply to all the supplemental action alternatives. Adaptive management would be applied to lessen impacts on goats regardless of the alternative chosen.

The BLM considered a reasonable range of alternatives in the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP in full compliance with NEPA.

## ***NEPA – Plain Language and Accessibility***

### ***Chilkat Indian Village of Klukwan***

#### ***Kimberly Strong***

**Issue Excerpt Text:** CIV demands BLM extend the timeline for the planning process to allow at least 90 days for at least one meeting with the CIV to consider FEIS language. CIV notes that like most of BLM’s resource management plans, the Haines Amendment FEIS, probably has a Flesch Reading Level of 18.7 and Flesch Kincaid Grade Level of 15.1. The Flesch index rating indicates the material is “very confusing” and is best understood by people with at least a college education. The complexity of the material requires input from diverse scholars on the various subjects. This expertise is not available to the CIV. Without any outreach to CIV to explain the FEIS it is unreasonable, unjust and goes against BLM guidance to expect the CIV to have the capacity to protest the FEIS within the 30-day public comment period. BLM did not provide a paper copy of the FEIS and has required the public and our tribal members to download the materials from the BLM website. Village internet connectivity is limited and because of the size of the material of the FEIS sections it is many times impossible to download for viewing. BLM needs to provide CIV with a hard copy so that impacted parties without access to a computer or reliable internet service are able to review the FEIS.

#### **Summary:**

The protest period for the FEIS for the Proposed Haines Amendment to the Ring of Fire RMP was prohibitively short and the BLM did not make the document available in hardcopy. The BLM also did not comply with 40 CFR 1502.8 for writing clarity and plain language.

**Response:**

All protests must be filed within 30 days of the date the U.S. Environmental Protection Agency (EPA) published the notice of receipt of the FEIS containing the plan or amendment in the *Federal Register* (43 CFR 1610.5-2(a)(1)). The 30-day protest period is prescribed by regulation and cannot be extended.

Public involvement and notification were described in Section 5.0, *Consultation and Coordination*, on pages 76 through 77 of the FEIS. The EPA published the Notice of Availability in the *Federal Register* on October 11, 2019. The BLM also made the document available in hardcopy format at the Skagway Borough, Haines Borough, Haines Public Library, Alaska State Office, Alaska Public Room, Anchorage District Office, and Glennallen Field Office.

The protest period for the Haines Amendment to the Ring of Fire RMP and access to hardcopies of the FEIS provided by the BLM were sufficient.

The CEQ NEPA regulation at 40 CFR 1502.8 states, “Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them.” The FEIS for the Proposed Haines Amendment to the Ring of Fire RMP (BLM 2019a) followed the suggested guidelines for plain language as described in the NEPA Handbook (H-1790-1) as well as the Federal Plain Language Guidelines (<https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf>, accessed November 22, 2019). The BLM used objective, professional language without being overly technical and avoided subjective terms such as “good,” “bad,” “positive,” and “negative.” The BLM also avoided the use of acronyms without first identifying the full term followed by the acronym.

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Acronyms

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 environmental assessment (EA).....2  
 Record of Decision (ROD) .....2  
 Final Environmental Impact Statement (FEIS).....2  
 Resource Management Plan (RMP) .....2  
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