

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 294**

RIN 0596-AD37

**Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska****AGENCY:** Forest Service, Agriculture Department (USDA).**ACTION:** Final rule and record of decision.

**SUMMARY:** The U.S. Department of Agriculture (USDA or Department), is adopting a final rule to exempt the Tongass National Forest from the 2001 Roadless Area Conservation Rule (2001 Roadless Rule), which prohibits timber harvest and road construction/reconstruction with limited exceptions within designated inventoried roadless areas. In addition, the rule directs an administrative change to the timber suitability of lands deemed unsuitable, solely due to the application of the 2001 Roadless Rule, in the 2016 Tongass National Forest Land and Resource Management Plan (Tongass Forest Plan or Forest Plan), Appendix A. The rule does not authorize any ground-disturbing activities, nor does it increase the overall amount of timber harvested from the Tongass National Forest.

**DATES:** This rule is effective October 29, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ken Tu, Interdisciplinary Team Leader, at 303-275-5156 or [akroadlessrule@usda.gov](mailto:akroadlessrule@usda.gov). Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Services at 1-800-877-8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The USDA Forest Service manages approximately 21.9 million acres of federal lands in Alaska, which are distributed across two national forests (Tongass and Chugach National Forests). These national forests are characterized by a diverse array of landscapes, ecosystems, natural resources, and land use activities.

In January 2001, the USDA promulgated a discretionary rulemaking establishing prohibitions on timber harvesting and road construction on approximately 58 million acres of the National Forest System (NFS), including over 14 million acres within Alaska. The 2001 Roadless Rule has been the subject of litigation for almost two decades. Initially, the 2001 Roadless Rule was challenged in multiple

lawsuits, including a suit brought by the State of Alaska. Another suit filed by the State of Alaska in 2015 is still ongoing. Citing various concerns, including damage to the economic and social fabric of southeast Alaska and compliance with the Alaska National Interest Lands Conservation Act (ANILCA) and Tongass Timber Reform Act (TTRA), the State of Alaska petitioned the USDA to exempt the Tongass National Forest from the 2001 Roadless Rule.

Having carefully considered the petition, public comments on the proposed rule, and a wide range of alternative approaches to the 2001 Roadless Rule, the USDA is granting the State of Alaska's request to exempt the Tongass National Forest from the 2001 Roadless Rule. The Tongass Forest Plan along with other conservation measures, will assure protection allowing roadless area values to prevail on the Tongass National Forest while offering additional flexibility to achieve other multiple-use benefits.

**Background**

On January 12, 2001, the USDA promulgated the Roadless Area Conservation Rule (hereafter 2001 Roadless Rule) (66 FR 3244), establishing nationwide prohibitions on timber harvest, road construction, and road reconstruction within inventoried roadless areas (IRAs) with certain limited exceptions. The intent of the 2001 Roadless Rule is to provide lasting protection for IRAs within the NFS in the context of multiple-use land management. Based on the State of Alaska's Roadless Rule Petition (described below) and a review of public comment, the USDA analyzed rulemaking alternatives addressing whether and how the national prohibitions on timber harvesting, road construction, and road reconstruction should apply on the Tongass National Forest.

In 2001, the State of Alaska filed a lawsuit challenging the USDA's promulgation of the 2001 Roadless Rule and its application in Alaska. *State of Alaska v. USDA*, A01-039 CV (JKS) (D. Alaska). The USDA and the State of Alaska reached a settlement in 2003, and the USDA subsequently issued a rule temporarily exempting the Tongass National Forest from the 2001 Roadless Rule. In 2011, a Federal district court set aside the Tongass Exemption Rule and reinstated, with clarifying instructions, the 2001 Roadless Rule on the Tongass National Forest. The district court's ruling was initially reversed by a three-judge panel of the Ninth Circuit but was ultimately upheld in a 6-5 *en banc*

ruling in 2015. Consequently, the 2001 Roadless Rule (as provided for in the district court's judgment) remains in effect in Alaska and the Forest Service continues to apply the 2001 Roadless Rule to both the Tongass and Chugach National Forests.

Currently there are over 21.9 million acres of NFS lands within the State of Alaska, of which approximately 14.7 million acres (67%) are designated IRAs as defined by the 2001 Roadless Rule, including both the Tongass and Chugach National Forests. The Tongass National Forest is approximately 16.7 million acres of which approximately 9.3 million (55%) acres are designated IRAs. The Alaska Roadless Rule focuses on the Tongass National Forest only and does not apply to the Chugach National Forest.

*State of Alaska Petition*

In January 2018, then-Commissioner of the Department of Natural Resources for the State of Alaska, Andrew Mack submitted a petition on behalf of the State of Alaska to Secretary of Agriculture Sonny Perdue pursuant to the Administrative Procedure Act (APA). The petition requested USDA consider creation of a state-specific rule to exempt the Tongass National Forest from the 2001 Roadless Rule and conduct a forest plan revision for the Tongass National Forest. In June 2018, the Secretary of Agriculture accepted the petition and agreed to review the State's concerns on roadless area management and economic development opportunities in southeast Alaska through a rulemaking process. The Secretary directed the Forest Service to begin working with representatives from the State of Alaska concerning a state-specific roadless rule. However, the Secretary did not commit to the State's request for a forest plan revision. On August 2, 2018, the State of Alaska and the USDA Forest Service signed a memorandum of understanding concerning the development of a state-specific rule. The Forest Service initiated its environmental analysis process with the publication in the **Federal Register** of a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) on August 30, 2018 (83 FR 44252).

On September 6, 2018, Governor Walker issued Administrative Order 299 to establish the Alaska Roadless Rule Citizen Advisory Committee (the committee) to provide an opportunity for Alaskans to advise the State of Alaska on the future management of Tongass National Forest roadless areas. The committee was comprised of 13 members, appointed by Governor

Walker, intended to represent a diversity of perspectives, including Alaska Native tribes and corporations, fishing, timber, conservation, tourism, utilities, mining, transportation, local government, and the Alaska Division of Forestry. The committee's specific task was to present a written report on the rulemaking process to the Governor and State Forester, which included options for a state-specific roadless rule. The committee met for three in-person meetings during the fall of 2018 (October 2–3 in Juneau; October 24–26 in Ketchikan; and November 6–8 in Sitka). Meetings were open to the public and each meeting included opportunity for public comment. The committee's report was submitted to the Governor and State Forester during late November 2018, and recommendations from the committee informed the State of Alaska input, as a cooperating agency, to the Forest Service in the development of the alternatives and comments on the Draft Environmental Impact Statement (DEIS).

On October 17, 2019, the USDA published a notice of proposed rulemaking to exempt the Tongass National Forest from the 2001 Roadless Rule (84 FR 55522). The Office of Federal Activities of the U.S. Environmental Protection Agency published a Notice of Availability (NOA) for the DEIS in the **Federal Register** on October 18, 2019 (84 FR 55952), with corrected end of comment period published on October 25, 2019 (84 FR 57417).

### Consideration of the State of Alaska's Petition

In response to the State of Alaska's petition for rulemaking, the USDA has sought a long-term, durable approach to roadless area management that accommodates the unique biological, social, and economic situation found in and around the Tongass National Forest. The Tongass is unique from other national forests with respect to size, percentage of IRAs, number of communities dependent on federal lands (the Tongass comprises almost 80% of southeast Alaska and supports 32 communities), and Alaska and Tongass-specific statutory considerations (e.g., ANILCA, TTRA).

The USDA and Forest Service believe that both roadless area conservation and other multiple-use values with important local socio-economic consequences are meaningfully addressed through local and regional forest planning on the Tongass, without the 2001 Roadless Rule prohibitions on timber harvest and road construction/reconstruction.

### Decision

The USDA hereby promulgates a regulation exempting the Tongass National Forest from the 2001 Roadless Rule as described in Alternative 6 of the *Rulemaking for Alaska Roadless Areas Final Environmental Impact Statement* (FEIS) (USDA Forest Service, 2020). This decision is not subject to Forest Service administrative review regulations, which allow the public to administratively challenge certain agency decisions. In addition, the final rule directs the Tongass Forest Supervisor to issue a notice of an administrative change pursuant to 36 CFR 219.13(c) to the timber suitability determination as described in Appendix A of the Forest Plan. The final regulatory text differs slightly from the text published with the FEIS, reflecting nontechnical changes made to conform to the Office of **Federal Register's** guidelines.

### Alternatives Considered

In addition to Alternative 6, the selected alternative, the FEIS analyzes five other alternatives for managing roadless areas on the Tongass National Forest. Alternative 1 is the no action alternative and would result in the continued implementation of the 2001 Roadless Rule as prescribed in the Alaska District Court's Judgement. Alternative 2 provides limited additional timber harvest opportunity while maximizing roadless area designations. It removes approximately 142,000 acres from roadless designation that have been substantially altered by prior road construction or timber harvest generally conducted during periods of time the Tongass National Forest was exempted from the 2001 Roadless Rule. These substantially altered areas are generally known as "roadless" acres, but include additional areas considered to be substantially altered. Alternative 2 also adds 110,000 acres as Alaska Roadless Areas. Following an approach similar to that taken for the other two State-specific roadless rules, Colorado and Idaho, the FEIS uses the term *Alaska Roadless Areas* to refer to the areas in which the Alaska Roadless Rule would apply in Alternatives 2 through 5.

Alternative 3 would increase the available land base from which timber harvest opportunities could occur by making timber harvest, road construction, and road reconstruction permissible in areas where roadless characteristics have already been substantially altered and areas immediately adjacent to existing roads and past harvest areas. Adjacent areas

are considered to be the logical extensions of the existing road and/or harvest systems, which would remove approximately 401,000 acres from the roadless classification system. The adjacent areas represent the most likely locations where future timber harvest could occur and have the least environmental impacts to overall roadless characteristics while providing for additional timber harvest opportunities.

Alternative 3 also establishes a Community Priority category which allows for small-scale timber harvest and associated road construction and reconstruction. In addition, it allows for infrastructure development to connect and support local communities, recreation opportunities, and traditional Alaska Native cultural uses. Alternative 3 includes the Watershed Priority category, which is more restrictive than the 2001 Roadless Rule, and applied to approximately 3.26 million acres primarily identified in the Forest Plan as the Tongass 77 Watersheds and The Nature Conservancy/Audubon Conservation Priority Areas (T77 and The Nature Conservancy/Audubon Conservation Areas) and high-priority sockeye salmon watersheds. Approximately 90% of those 3.26 million acres fall within roadless area boundaries identified in Alternative 3. To provide heightened balance and integrity of watershed protections and establish management continuity across these high-priority watersheds, Alternative 3 would also include a prohibition on old-growth timber harvesting on the portion of the T77 and The Nature Conservancy/Audubon Conservation Areas that extend beyond roadless areas boundaries established by Alternative 3. The remaining 4,595,000 acres of Alaska Roadless Areas in Alternative 3 would be managed under a roadless management category called Roadless Priority, which is similar to the 2001 Roadless Rule but less restrictive and addresses Alaska-specific concerns for infrastructure development to connect and support local communities and access to renewable energy and leasable minerals.

In addition to roadless and adjacent acres being removed from the roadless classification system, approximately 854,000 acres designated as land use designation (LUD) II areas would be removed from the roadless classification system in Alternative 3. LUD II areas are statutory land use designations managed in a roadless state to retain their wildland character as defined in the TTRA (Pub. L. 101–626, Title II, Section 201) and the National Defense Authorization Act for Fiscal

Year 2015 (Pub. L. 113–291, 128 Stat. 3729, Section 3720(f)). These areas are proposed for removal from regulatory roadless classification because having two layers of protection (statutory and regulatory direction) that are substantially similar but slightly different does not make a meaningful difference to the level of conservation provided and can create confusion for land managers, stakeholder groups, and the public. Removal of the LUD II areas from regulatory roadless classification is an attempt to eliminate that confusion while remaining consistent with the congressionally established management regime for the LUD II areas. The statutory direction managing in a roadless state for wildland character within LUD II areas would remain in effect regardless of which alternative is selected.

Alternative 4 provides additional available land base from which timber harvest opportunities could occur while maintaining roadless designations for areas defined in the Tongass Forest Plan as Scenic Viewsheds, T77 Watersheds,

and The Nature Conservancy/Audubon Conservation Priority Areas. Additional timber harvest opportunities are provided by removing approximately 401,000 acres of roadless areas and adjacent extensions, as described in Alternative 3, from roadless classification. In addition, timber harvest opportunities are provided by managing approximately 757,000 acres of Timber Production and Modified Landscape LUDs, as defined in the Tongass Forest Plan, in a roadless management category called Timber Priority, which allows for timber harvest, road construction, and road reconstruction.

Alternative 4 designates approximately 7,000 acres as Alaska Roadless Areas, which were statutorily designated as LUD II areas, but not included in the 2001 roadless inventory. These 7,000 acres combined with the LUD II areas included in the 2001 roadless inventory total 854,000 acres that would be designated as roadless with regulatory direction mirroring the statutory direction.

The remaining 7,363,000 acres of Alaska Roadless Areas in Alternative 4 would be managed as Roadless Priority, which is similar to the 2001 Roadless Rule, but less restrictive and addresses Alaska-specific concerns for infrastructure development to connect and support local communities and access to renewable energy and leasable minerals.

Alternative 5 maximizes the land base from which timber harvest opportunities could occur by removing 2.32 million acres from roadless area designation. Taken together, the six alternatives represent the spectrum of management regimes identified to the Forest Service through public comments, public meetings, tribal and Alaska Native corporation consultations, and cooperating agency input.

The table below displays the acreage changes from the 2001 Roadless Rule to acreages that would be designated under each of the six alternatives displayed in the FEIS.

	Alternatives					
	1	2	3*	4	5	6 Final rule
Total Roadless Acres .....	9,368,000	9,336,000	8,224,000	8,975,000	7,047,000	0
Roadless Acres Removed .....	0	142,000	1,252,000	401,000	2,321,000	9,368,000
Roadless Acres Added .....	0	110,000	107,000	7,000	0	0
Net Acre Change** .....	0	– 32,000	– 1,144,000	– 394,000	– 2,321,000	– 9,368,000

\* Alternative 3 has less total areas designated as roadless than Alternative 4 due to 854,000 of LUD II areas removed but they are still managed for wildland character based on statutory direction, hence Alternative 3 is more restrictive than Alternative 4.

\*\* Numbers may not appear to sum correctly due to rounding.

**Environmentally Preferable Alternative**

The environmentally preferable alternative is the alternative that best promotes the national environmental policy as provided by Section 101 of the National Environmental Policy Act (NEPA), 42 U.S.C. 4331. In application, the environmentally preferable alternative causes the least damage to the biological and physical environment. It also best protects, preserves, and enhances historic, cultural, and natural resources. It is the alternative that achieves the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable or unintended consequences.

Alternative 2 is the environmentally preferable alternative. While it represents a slight decrease (approximately 32,000 acres) in total acres to be managed as Alaska roadless areas, all the acres designated as Alaska Roadless Areas in Alternative 2 are undeveloped at this time. Alternative 1

(the 2001 Roadless Rule) includes more total roadless acres; however, approximately 142,000 acres have been roadless, harvested, or significantly altered and those lands no longer retain the roadless characteristics and values the 2001 Roadless Rule is intended to conserve. In addition, approximately 110,000 acres of undeveloped land not included in the 2001 Roadless Rule were designated as Alaska Roadless Areas. Alternative 2 limits timber harvesting, road construction, and road reconstruction on the most undeveloped roadless acres of all the alternatives considered. While the Roadless Priority management category assigned to approximately 5.2 million acres in Alternative 2 includes more exceptions than Alternative 1, the Watershed Priority management category, which is more restrictive than the 2001 Roadless Rule, is applied to approximately 3.3 million acres in Alternative 2. For all these reasons, Alternative 2 is the alternative that best protects, preserves, and enhances roadless characteristics

and values on the Tongass National Forest.

**Decision Rationale and Important Considerations**

On July 12, 2001, the 2001 Roadless Rule was promulgated. Views on applying roadless restrictions on the Tongass National Forest changed dramatically over the course of that rulemaking, and since. Originally, the USDA’s proposed rule sought to exclude the Tongass from any roadless restrictions while promising to revisit the question in five years. Seven months later, the USDA’s Final EIS (FEIS) instead identified a preferred alternative to apply the roadless prohibitions after a five-year delay. A mere month later, the final Record of Decision (ROD) instead elected to apply the regulation’s roadless prohibitions immediately upon the effective date of the rule.

In 2003, USDA settled litigation with the State of Alaska challenging the promulgation of the 2001 Roadless Rule. The USDA proposed and finalized a rule temporarily exempting the Tongass

National Forest from operation of the 2001 Roadless Rule (e.g., Tongass Exemption Rule—68 FR 75136). However, the Tongass Exemption Rule itself was judicially set aside in 2011, and the 2001 Roadless Rule was reinstated under the terms set forth in the final judgment of the U.S. District Court for the District of Alaska. Since that time, no further regulatory action regarding this matter has taken place, and the 2001 Roadless Rule remains in effect as to the Tongass National Forest.

Considerable congressional interest has resulted in the introduction of competing legislative bills designed to alternatively codify or strike down the operation of the 2001 Roadless Rule, in whole or in part, since the rule was promulgated. These legislative proposals have included attempts to legislate an outcome for the rule's application to the Tongass National Forest, but none of these bills have been enacted into law.

Combined with the complex, and sometimes even conflicting, judicial rulings applicable to the 2001 Roadless Rule itself, the recent history of roadless management on the Tongass National Forest demonstrates that while differences in opinion seem inevitable, a wide variety of approaches are available for roadless area management. Roadless area management, like all multiple-use land management, is fundamentally an exercise in discretion and policy judgment concerning the best use of the NFS lands and resources, informed by the underlying facts and reasonable projections of possible social, economic, and environmental consequences.

While the Tongass National Forest has endured debate regarding land and natural resource management for decades, there are common agreements. Tongass National Forest roadless areas are vast and valuable. The Tongass National Forest contributes ecological values locally, regionally, nationally, and internationally. Local communities are reliant on or impacted by federal land management decisions, and there is not always consensus, at the local level, on land management priorities. All acknowledge that there are diverse opinions and views concerning whether and how road construction and timber harvesting should be restricted. To be sure, the USDA has received many comments that highlight differences in views concerning factual matters and methodologies, as well as general opinions and preferences. The USDA is grateful for the attention and interest that communities, stakeholder groups, and individuals have devoted to helping

shape and improve the FEIS for decision-making purposes.

Importantly, the final rule's change in policy does not fundamentally rest on new factual findings contradicting the factual findings the USDA made in its 2001 Roadless Rule. Rather, the policy judgments implemented through this new rulemaking are ultimately the result of assigning different value or weight to the various multiple uses. Although many circumstances have changed since 2001, such as the size and economic role of the timber industry in southeast Alaska, the nature and role of southeast Alaska's roadless areas have not changed. The currently-designated roadless areas continue to provide large tracts of undeveloped land for roadless values, watershed protection, and ecosystem health even while the Tongass National Forest was exempted from the 2001 Roadless Rule from 2001 to 2011.

The FEIS carefully analyzes the environmental consequences of both continued operation of and exemption from the 2001 Roadless Rule. That analysis reveals only a modest difference in potential environmental consequences between those (or any) alternatives. For example, although 9.4 million acres would no longer be subject to the 2001 Roadless Rule with the final rule, only 186,000 more acres would become available for timber production, and road construction is estimated to increase Tongass-wide from 994 miles in the no-action alternative to 1,043 miles in the final rule over the next 100 years. As many commenters have pointed out, the results of this analysis are attributable to the fact the 2001 Roadless Rule is not the primary limiting factor for Tongass National Forest timber harvest, and that the level of timber harvest defined in the Forest Plan has a greater influence. Similarly, the 2001 Roadless Rule would not seem to be the impediment to certain vital infrastructure and energy projects as claimed by some, given that some infrastructure and energy development is allowed under various statutes and/or the 2001 Roadless Rule.

Under the current Administration, the USDA has refocused policies, programs, and resources on increasing rural economic opportunity, decreasing federal regulation, and streamlining federal government services. The USDA concludes in light of the FEIS that a policy change for the Tongass National Forest can be made without major adverse impacts to the recreation, tourism, and fishing industries, while providing benefits to the timber and mining industries, increasing opportunities for community

infrastructure, and eliminating unnecessary regulations.

The Secretary of Agriculture has broad authority to protect and administer the NFS through regulation as provided by the Organic Administration Act of 1897 (Organic Act), the Multiple-Use Sustained Yield Act of 1960, and the National Forest Management Act of 1976 (NFMA). These statutes provide the Secretary of Agriculture with discretion to determine the proper uses within any area, including the appropriate resource emphasis and mix of uses. In doing so, USDA considers the relative values of the various resources and seeks to provide for the harmonious and coordinated management of all resources in the combination that will best meet the needs of the American people. Roadless areas provide real and important values, such as high quality or undisturbed soil, water and air; sources of public drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species; primitive and semi-primitive classes of dispersed recreation; reference landscapes; natural appearing landscapes with high scenic quality; traditional cultural properties and sacred sites; and other locally identified unique characteristics. However, roadless values are not the only values that should be taken into consideration. The Organic Act and Multiple-Use Sustained Yield Act mandate the Forest Service to manage NFS lands for multiple uses and sustained yield of the various renewable surface resources to meet the needs of the American people.

The State of Alaska's Citizens Advisory Committee devoted considerable time and effort capturing the many and varied aspects of roadless characteristics from an Alaska-specific viewpoint, and the USDA is grateful for their dedication and insights. Similarly, tribal government cooperating agencies expressed concern about removal of the 2001 Roadless Rule but expressed an interest in expanded regulatory flexibility within their traditional territories. Here too, the USDA is grateful for their participation as cooperating agencies and for the knowledge and insights they have brought to the rulemaking.

Unquestionably, there are differences of perspective and opinion as to how to best shape restrictions that protect a beloved resource while providing cultural, social, and economic benefit for both local communities and the nation, which is reflected in the 267,000 comments received on the proposed

rule and DEIS (summarized in Appendix H of the FEIS). The USDA's assessment is that the best mechanism to account for these many and competing interests is to return the regulatory landscape back to what it was prior to the promulgation of 2001 Roadless Rule and to allow land management to be governed through the NFMA forest planning process.

#### *Alaska-Specific Statutes*

The USDA has also considered several Alaska-specific statutes applicable to the Tongass National Forest in selecting the final rule. To be clear, all the alternatives considered are within the lawful discretion of the USDA to select, and all would comply with applicable statutes. No statute compels or prohibits establishment of any of the various roadless rule alternatives; these alternatives would all be within the USDA's discretion.

In assessing roadless management for these lands, the USDA has considered the Alaska-specific legislation that Congress has enacted during the past forty years, especially the TTRA and ANILCA.

#### *Tongass Timber Reform Act*

The TTRA directs the Forest Service to seek to provide a supply of timber from the Tongass National Forest that meets annual market demand and the market demand for each planning cycle to the extent consistent with providing for the multiple-use and sustained-yield of all renewable resources and other applicable requirements, including the NFMA. The Tongass Forest Plan anticipates sufficient timber availability to meet projected demand as described in the 2016 Forest Plan FEIS and ROD. In addition, the Tongass Forest Plan provides guidance to conduct annual monitoring and review of current timber demand. Similarly, TTRA provides for protection of riparian habitats and the multiple use and sustained yield of all renewable surface resources.

#### *Alaska National Interest Lands Conservation Act—Subsistence Determination*

ANILCA, as amended, contains several provisions that apply to management of the Tongass National Forest. An ANILCA Section 810 evaluation and determination is not required to exempt the Tongass National Forest from the 2001 Roadless Rule—a rulemaking process and programmatic-level decision that is not a determination whether to “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition” of NFS lands. However, a forest-wide

evaluation and determination is included in this roadless area rulemaking to honor regional commitments and inform future project-level planning and decision-making subject to ANILCA Section 810 (16 U.S.C. 3120). An ANILCA Section 810 subsistence analysis and determination was not prepared when the 2001 Roadless Rule was promulgated.

The final rule has been evaluated for potential effects on subsistence uses and needs in a manner consistent with Section 810 of ANILCA. The FEIS discloses direct, indirect, and cumulative effects on three subsistence use factors including: (1) Resource distribution and abundance; (2) access to resources; and (3) competition for the use of resources (Chapter 3, Subsistence). Importantly, the final rule does not authorize ground-disturbing activities, but instead offers greater flexibility in locating future road construction, road reconstruction, and timber harvest activities. The Tongass Forest Plan will continue to guide timber harvest and road construction, with the administrative change prescribed in this rule only serving to conform and clarify the lands available for timber harvest following the exemption from the 2001 Roadless Rule.

Consequently, total timber harvest volume will remain constant across alternatives, and the risk of a significant restriction to subsistence resource abundance and distribution is largely equivalent across alternatives. The final rule may eventually influence subsistence resource access due to timber management activities, but these changes will be addressed on a site-specific basis, including appropriate public engagement opportunities, as projects are proposed.

Competition for subsistence wildlife and seafood resources near rural communities is affected by a variety of factors including regulations, technology, wildlife distribution, modes of access, and natural decreases in population. The final rule assumes new roads near communities connected to other communities by ferry or road, combined with increasing habitat reductions and consistent user demand, will likely increase subsistence resource competition over time.

Based on the identified assumptions and analysis, the final rule may eventually indirectly result in a significant restriction of subsistence use of deer by increasing overall competition for the subsistence resource by urban and rural residents. This finding is most applicable to Chichagof, Baranof, and Prince of Wales Islands where competition for deer and some

other land mammals is already high and habitat capacity has been significantly reduced due to prior timber harvest and road construction activities. Notably, the predicted restriction of subsistence use of deer due to increased competition in the FEIS is substantially similar to Forest Plan subsistence effects analysis because the Forest Plan will continue to guide total timber harvest volume.

ANILCA subsistence hearings were conducted for the DEIS and proposed rule, consistent with Section 810, by: (1) Giving notice to the appropriate state agency, local committees, and regional councils; and (2) giving notice of, and holding, “a hearing in the vicinity of the area involved.” As the geographic area of interest is the entire Tongass National Forest, subsistence hearings were conducted in 18 communities located across southeast Alaska to collect oral testimony regarding the DEIS and associated subsistence resource and use analysis.

Section 810 requires that when a use, occupancy, or disposition of public lands may result in a significant subsistence use restriction, a determination must be made whether: (A) Such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions. Each of these three points are discussed below.

*Necessary, Consistent with Sound Management of Public Lands.* The final rule has been examined to determine whether the potential for a significant restriction of subsistence uses is necessary, consistent with the sound management of NFS lands. The final rule is designed to provide a mix of resources and benefits to best meet the needs of the American people. Some of the resource uses necessary to achieve these benefits have the potential to adversely affect subsistence uses within the Tongass National Forest. In light of the Forest Service's multiple-use mandate and other requirements of law, the Forest Service has determined that these effects to subsistence uses are necessary and consistent with the sound management of NFS lands. (The Forest Service again notes that making this determination is not required for purposes of issuing this rule, but it is the Department's policy preference to make this determination, and the other

determinations explained below related to ANILCA Section 810, on a voluntary basis in light of the considerations noted above.)

*Amount of Public Land Necessary to Accomplish the Purposes of the Proposed Action.* The land area evaluated through this rulemaking is the Tongass National Forest and the IRAs therein. These lands constitute the amount of land necessary to assess operation of the 2001 Roadless Rule within the Tongass National Forest as requested by the State of Alaska's petition. This rulemaking considered applying various prohibitions and exceptions to different numbers of acres through the development and analysis of a range of alternatives. The final rule, however, removes the 2001 Roadless Rule's land classification system and associated prohibitions and exceptions, and allows management to return to operation under the Forest Plan. Accordingly, the final rule addresses the amount of NFS land necessary to accomplish the proposed action.

*Reasonable Steps to Minimize Adverse Impacts to Subsistence Uses and Resources.* The continuation of subsistence opportunities, and reasonable steps to minimize effects on subsistence resources, are provided by Tongass Forest Plan forest-wide standards and guidelines for subsistence, as well as related standards and guidelines for riparian areas, fish, and wildlife. Many important subsistence areas are assigned LUDs that exclude timber harvesting and road construction. Beach and estuary fringe forest-wide standards and guidelines generally apply to beach fringe and estuarine areas not under more restrictive designations. Adverse impacts to subsistence resources and uses are minimized through these measures. The potential site-specific effects on subsistence uses, and reasonable ways to minimize these effects, will be analyzed and considered during project-level design and decision-making.

The final rule does not authorize ground-disturbing activities, but instead offers greater flexibility in locating future development activities on the Tongass National Forest. It is not possible to substantially reduce timber harvest in some areas by concentrating it in other areas without affecting subsistence resources and uses important to other communities. Also, concentrating timber harvest outside more important subsistence areas while still meeting Tongass Forest Plan timber harvest goals could not be done without affecting the natural distribution of wildlife species or without potential

significant effects to watersheds. These potential environmental effects will be comprehensively studied and disclosed through the future analysis of Tongass National Forest projects.

#### *2001 Roadless Rule's Original Purpose*

The USDA is mindful of the original stated purposes of the 2001 Roadless Rule in lifting the rule's restrictions for the Tongass National Forest. The stated purposes of the 2001 Roadless Rule included retention of the largest and most extensive tracts of undeveloped land for the roadless values, watershed protection, and ecosystem health; and fiscal considerations, mainly the cost of managing the road system to safety and environmental standards. Specific to the Tongass, the 2001 Roadless Rule's Record of Decision noted that social and economic considerations were key factors in analyzing alternatives, along with the unique and sensitive ecological character of the Tongass National Forest, the abundance of roadless areas where road construction and reconstruction are limited, and the high degree of ecological health. (66 FR 3254). The past 20 years of experience managing the Tongass National Forest, with and without the rule in operation, provides an important window for assessing whether the 2001 Roadless Rule's prohibitions should be maintained.

From 2001 to 2011, the Tongass National Forest was exempt from the 2001 Roadless Rule. During this time, about 4,300 acres of IRAs were entered for timber harvest and about 19 miles of roads were constructed in association of that timber harvest. Of that only 300 acres of timber harvest and 0.5 miles of road were authorized during the exemption period and the remaining timber harvest and road construction were authorized prior to the promulgation of the 2001 Roadless Rule. After the harvest units and roads are buffered in GIS, this accounts for about one percent of the substantially altered areas (roadless areas) removed from roadless designation in Alternatives 2 through 5. The remaining 99 percent of the roadless areas are from mapping errors and activities that occurred before 2001 (36%) or were allowed under the 2001 Roadless Rule (62%).

A significant percentage of the Tongass National Forest remains undeveloped, providing for large, extensive tracts of undeveloped land, but much of that is characterized as rock, ice, or muskeg. The final rule will make an additional 188,000 forested acres available for timber harvest with the majority characterized as old-growth

timber. The young-growth transition strategy as described in the 2016 Tongass Forest Plan ROD outlines a glide path to decrease old-growth harvest annually on the Tongass until it reaches about 5 million board feet (MMBF) harvest per year, expected to occur in about 2032. After the young-growth transition is fully implemented, it is unlikely that a significant portion of the areas previously designated as IRAs would be considered for harvest because the focus for timber harvesting will shift to the previously roaded, young-growth areas.

Watershed protection was a prominent aspect in the decision to adopt the nationwide 2001 Roadless Rule. Looking at the Tongass National Forest today, watershed protection goals are well provided for even without the current roadless rule. Large tracts of undeveloped lands and watershed protections are provided by existing statutory and forest plan direction, including lands in designated Wildernesses and National Monuments. In addition, the TTRA (Pub. L. 101-626, Title II, Section 201) and the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291, 128 Stat. 3729, Section 3720(f)) designated approximately 856,000 acres as LUD II areas, which are managed in a roadless state to retain their wildland character. Approximately 3.6 million acres in key watersheds (defined in the Forest Plan as Tongass 77 Watersheds and The Nature Conservancy/Audubon Conservation Areas) are managed for no old-growth timber harvest, thus minimizing adverse impacts to fisheries. Management direction of LUD II areas and key watersheds would remain unaffected with the final rule.

Ecosystem health was another important element of the 2001 rulemaking. Once again, the FEIS reveals only a moderate difference between implementation of the 2001 Roadless Rule and the final rule. A key indicator of ecosystem health for the Tongass National Forest is a functional and interconnected old-growth ecosystem. Under the final rule, long-term protection of productive old growth would continue to occur under the Forest Plan's old-growth habitat conservation strategy. Connectivity between old-growth reserves would continue to be maintained through Forest Plan direction for stream buffers, the beach and estuary fringe, and legacy forest structure. Under the final rule, the projected amount of old-growth harvest and percent of original productive old-growth remaining over the next 100 years would remain unchanged from

implementation of the 2001 Roadless Rule (Alternative 1—No Action).

Although it may seem counter-intuitive that eliminating the 2001 Roadless Rule's timber harvest restrictions across 9.3 million acres would not increase old-growth timber harvest, timber harvest levels are controlled to a far greater extent by other factors, primarily economic factors. Additionally, the Forest Plan's young-growth transition strategy will transition harvest locations away from roadless areas containing old growth and into areas where timber harvest has previously occurred, avoiding or reducing effects to roadless areas. The underlying economic considerations and the young-growth transition strategy are far greater influences than the 2001 Roadless Rule. This strategy will remain in place, with or without the 2001 Roadless Rule.

Limited road maintenance budgets were another factor cited in support of the 2001 Roadless Rule. The 2001 Roadless Rule cited fiscal concerns over building new roads in IRAs due to an \$8.4 billion backlog of deferred maintenance across the NFS transportation system at that time. Recent deferred maintenance records were reviewed; a sound comparison could not be made with the deferred maintenance levels of 2001, due to substantial changes in defining and interpreting deferred maintenance. Since 2001, the inventory methods and roads considered to be part of deferred maintenance have changed multiple times (2002, 2005, 2007, 2012, and 2013). These changes make a direct comparison with 2001 deferred maintenance numbers impracticable.

The FEIS projects that about 1,043 miles of new road construction could occur over the next 100 years across the Tongass National Forest, mainly to support timber harvest operations, as compared with the approximately 994 miles of new roads projected forest-wide over the next 100 years under Alternative 1—No Action. The 994 miles of new road construction projected for Alternative 1 are outside of inventoried roadless areas. The final rule is not expected to materially increase the amount of timber harvested in the Tongass, as that is prescribed and managed by the Forest Plan. However, the final rule does impact the location from which the timber may be harvested, by allowing access to areas that were off limits under the 2001 Roadless Rule.

#### *National Versus Local Decision-Making*

For decades, the USDA has worked with states, tribes, local communities

and collaborative groups toward land management solutions for roadless areas. Sometimes solutions have been found nationally. Sometimes a state-by-state approach has been the best option. Often, the solutions are found forest-by-forest or even area-by-area. In this instance, the national rule's one-size-fits-all approach to roadless area management is not the best approach for roadless area management on the Tongass National Forest. Other states, Idaho and Colorado, have sought and been granted the opportunity for roadless management to be tailored to their needs. Indeed, the USDA received at least thirteen individual state petitions seeking various state-specific solutions during the timeframe in which the 2001 Rule had been judicially invalidated. The State of Alaska's 2018 rulemaking petition implores the USDA to recognize that in contrast to the scarcity of undeveloped lands that occurs in many other states, undeveloped areas are plentiful in Alaska. Instead, the State of Alaska maintains that the circumstances of the Tongass National Forest appear to be best managed through the local planning processes. The Forest Service's 40 years of experience with forest planning under NFMA, which includes forest plans subject to periodic review and adjustment, routinely demonstrates the planning system's capacity to account for both local and national interests and provide durable and widely accepted solutions providing for the multiple use and sustained yield of the many goods and services provided by the NFS.

The final rule would leave the roadless area management issue open for future consideration in the forest planning process. The forest planning process is more flexible than the 2001 Roadless Rule's regulatory approach, because plans are expected to be designed and attuned to local circumstances and are intended to be periodically reviewed. The 2001 Rule's prescriptive approach forecloses a full balancing of interests during future forest planning processes. The final rule will allow local decision makers the flexibility to address roadless management based on changed local conditions, new unforeseen issues, and take into account state and local economic development plans. In addition, the final rule will provide local discretion during future forest planning efforts to explore roadless area management alternatives, unconstrained by the 2001 Roadless Rule, with local stakeholders, communities, and tribal governments.

In selecting the final rule among the several alternatives considered, the USDA has given substantial weight to the State of Alaska's policy preferences as expressed in its Petition. The State of Alaska's preference to emphasize rural economic development opportunities is consistent with the findings of the Interagency Task Force on Agriculture and Rural Prosperity established by Executive Order 13790 issued April 25, 2017.<sup>1</sup> The USDA recognizes that ensuring rural Americans can achieve a high quality of life is one of the foundations of prosperity.<sup>2</sup> The State of Alaska's views on how to balance economic development and environmental protection offer valuable insight when making management decisions concerning NFS lands within Alaska.

Southeast Alaska's rural communities have relied upon the Tongass for important natural resources and environmental opportunities supporting recreation, fishing, and the timber industries. In particular, the timber industry has historically played an important economic role in southeast Alaska's rural economy providing jobs in small and remote communities with high unemployment rates and limited employment opportunities. In these isolated communities, every job has impacts at household and community levels. Notably, the timber industry has faced sustained hardship during the past two decades, with rural communities suffering the socioeconomic consequences. The final rule will increase the number of acres available for timber harvest acres and improve overall flexibility in locating timber sales. In turn, this would provide additional opportunity for the struggling timber industry and support rural communities with limited employment opportunities without increasing the amount of overall timber harvested. USDA and the State of Alaska believe both roadless area conservation and other multiple-use values with important local socioeconomic consequences are meaningfully addressed through local and regional forest planning on the Tongass National Forest without 2001 Roadless Rule prohibitions on timber harvest and road construction/reconstruction.

The USDA recognizes that the majority of Alaska Native tribes and

<sup>1</sup> See *Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity* (Oct. 21, 2017), <https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>.

<sup>2</sup> See *id.* at 2, 21–25; see also *id.* at 26–29, 35–42 (calls to action for supporting a rural workforce and developing the rural economy).

local communities throughout southeast Alaska support keeping the 2001 Roadless Rule in place, as expressed in the multitude of resolutions and comment letters received during the 60-day comment period. USDA appreciates that not all local communities share the State of Alaska's views and has carefully considered the views and preferences provided by all the leaders and citizens that have participated through various public meetings and comment periods. The USDA urges those groups and individuals to regularly engage with the Tongass National Forest and Forest Service Alaska Region concerning forest planning efforts and project design. The lifting of the 2001 Roadless Rule on the Tongass National Forest in no way impedes citizen participation; rather, it affords interested parties the opportunity to work with the Forest Service to seek more efficient solutions that account for all interests.

#### *Relationship of the Alaska Roadless Rule to the Forest Plan*

The NFMA requires the Forest Service to develop, maintain and, as appropriate, revise land and resource management plans for units of the NFS. Land management plans provide a framework for integrated resource management and for guiding project and activity decision-making, but plans do not authorize projects or activities or commit the Forest Service to take action. A revised Tongass Forest Plan was issued in 1997 and amended in 2008 and 2016. Forest planning is a distinct and separate process from USDA's various roadless rulemakings.<sup>3</sup> Excluding the Tongass from the 2001 Roadless Rule's prohibitions returns management discretion to the Agency's standard planning process. The existing Forest Plan provides adequate direction and protection of roadless characteristics such that retention of the 2001 Roadless Rule is not required. Future plan revisions will assure roadless characteristics are periodically assessed and management direction can be adjusted if warranted (increased, decreased or blended differently) in order to account for the best multiple use management possible.

All forest plans must conform to existing laws and regulations as well as new laws and regulations. See 36 CFR 219.1(f) and 219.13(c). The USDA's previous roadless rules, national and state-specific, have directed that: (1) No amendment or revision of any forest

plan was compelled by promulgation of such rules; (2) subsequent forest planning decisions could not revise the Secretary's regulatory instructions; and (3) line officers were to conform project decisions to the prohibitions and exceptions set forth in the applicable rules. The final rule continues this approach, with one exception necessitated by a single element of the 2016 Tongass Forest Plan Amendment.

The final rule directs the Tongass Forest Supervisor to issue a ministerial Notice of Administrative Change pursuant to 36 CFR 219.13(c) identifying plan changes made in conformance with the regulatory determinations of this subpart; specifically the rescission of the portion of the December 9, 2016, ROD concerning suitable timber lands attributed exclusively to implementation of the January 12, 2001, Roadless Area Conservation Rule (66 FR 3244). This administrative change is appropriate because the Region took the step in 2016 of amending the Tongass Forest Plan to directly implement the 2001 Roadless Rule's timber harvesting prohibitions despite the 2001 Roadless Rule's express admonition that it did not compel the amendment or revision of any land and resource management plan. See 2016 Tongass Forest Plan, Appendix A, page A-3, Appendix I, page I-177 (indicating all IRA were removed from the suitable land base during Stage 1 of the suitability analysis due to the 2001 Roadless Rule) and 36 CFR 294.14(b) (directing that the 2001 Rule does not compel the amendment or revision of any land and resource management plan). The 2016 Forest Plan sought to directly implement the 2001 Roadless Rule prohibitions via the timber suitability analysis. Today's decision to rescind the 2001 rule's prohibition as to the Tongass National Forest makes the 2016 Amendment's effort to implement the 2001 rule's prohibitions obsolete. Because allowing the inconsistent portion of the 2016 suitability designations to stand would effectively nullify the Department's regulatory choice to remove the 2001 timber harvest prohibitions, the final regulation gives an express regulatory instruction to conform the plan to the new regulatory regime. As explained in greater detail below, there is no requirement or credible justification that warrants undertaking additional planning efforts above and beyond the administrative change directed by this rulemaking. The administrative change simply provides conformance of the Forest Plan with the final rule in regard to lands suitable for timber production

and does not change the level of timber harvest, how timber is harvested on the Tongass, or any other aspects of the Forest Plan.

As previously noted, forest planning is a distinct and separate process from USDA's various roadless rulemakings. The referenced 2001 Roadless Rule's scope and applicability language was designed to avoid conflicts between itself and forest plans, as well as avoiding unnecessary or duplicative administrative processes for the operation of the 2001 Roadless Rule. Just as it was unnecessary to immediately install the 2001 Roadless Rule's higher order prohibitions through individual plan amendments, it is unnecessary here to duplicate these rulemaking efforts through a separate plan amendment. Fortunately, the 2012 NFMA planning regulations (36 CFR 219.13(c)) make provision for instances where overriding statutes or regulations change. The planning regulations direct that plans may be adjusted via notice of administrative change without resorting to the standard plan amendment process. The USDA is empowered to prescribe such regulations as it determines necessary and desirable to carry out the planning process (16 U.S.C. 1613) as well as to redeem and reconcile its regulations governing overall multiple use management responsibilities, including roadless matters.

To promote clarity, transition language has been added to the final rule. The language is similar as was set out for the other action alternatives in the DEIS. The operational result will be that 188,000 acres will be returned to the suitable timber base via the administrative change provision of the planning regulations (36 CFR 219.13(c)). The revised transition language assures that all other aspects of the Tongass Forest Plan remain operational under the rule including the goals, objectives, management prescriptions, standards, guidelines, projected timber sale quantity, projected wood sale quantity, and the young-growth transition strategy. This includes direction for non-timber resources including riparian management standards and guidelines, which provide protection for fisheries with subsistence and commercial importance. Any timber harvest, including any timber harvesting in areas formerly designated as IRAs, would be compelled to adhere to these resource standards and guidelines including fish habitat, water quality, air, recreation, and other resources. Consistency with Forest Plan direction continues under all alternatives.

<sup>3</sup> See *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1117 n.20 (9th Cir. 2002), *abrogated on other grounds by Wilderness Society v. USFS*, 630 F.3d 1173 (9th Cir. 2011); and *Wyoming v. USDA*, 661 F.3d 1209, 1269-72 (10th Cir. 2011).



Although the Forest Service has broad discretion to amend or revise forest plans management direction, any change would need to be consistent with applicable law, regulation, and policies. Any future forest plan amendments or revisions would include a public involvement process pursuant to the Agency's planning regulations and NEPA.

### Public Comment Process

The Forest Service published an NOI to prepare an EIS for the Alaska Roadless Rule in the **Federal Register** (83 FR 44252) on August 30, 2018. The NOI initiated a 45-day scoping period which ended on October 15, 2018. During this time period, the Forest Service conducted 17 public meetings including meetings in Anchorage, AK; Washington, DC; and communities throughout southeast AK: Angoon, Craig, Gustavus, Hoonah, Kake, Ketchikan, Petersburg, Point Baker, Sitka, Tenakee Springs, Thorne Bay, Wrangell, Yakutat, and two meetings in Juneau. During the scoping period, just over 144,000 comment letters or emails were received.

On October 17, 2019, the Department published a notice of proposed rulemaking in the **Federal Register** (84 FR 55522) and on October 18, 2019, an NOA for the DEIS was published (84 FR 55952). On October 25, 2019 an amended NOA was published (84 FR 57417) which amended the comment closing date of the 60-day comment period to December 17, 2019. During the 60-day comment period, the Forest Service conducted 21 public meetings including Anchorage, Alaska; Washington, DC; and southeast Alaska communities: Angoon, Craig, Gustavus, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Pelican, Petersburg, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, and Yakutat. Approximately 267,000 comment letters or emails were received during the 60-day comment period, including 11 petitions containing about 117,000 signatures.

### Cooperating Agencies

On July 30, 2018, the Forest Service invited 32 Alaska federally recognized tribes to participate as cooperating agencies during the rulemaking process. Originally six tribes agreed to become cooperating agencies including Angoon Community Association, Central Council Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan. After the publication of the proposed rule

(October 17, 2019), the Organized Village of Kake withdrew as a cooperating agency. After the publication of the FEIS (September 25, 2020), the remaining tribal cooperating agencies, Angoon Community Association, Central Council Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, and Organized Village of Kasaan withdrew as cooperating agencies.

The State of Alaska agreed to become a cooperating agency on August 2, 2018. Cooperating agencies participated throughout the rulemaking, providing their knowledge and expertise to design alternatives, analyze alternatives, and refine the analysis set out in the DEIS and FEIS.

The Forest Service made several trips to several of the villages to work individually with tribal cooperators, provide technical expertise, and collect input. All tribal cooperators opposed the proposed rule (Alternative 6), however, were supportive of additional local control, increased opportunity for local forest product businesses, and limited increased access for a variety of local needs.

Based on input from tribal cooperating agencies, USDA considered the use of the Alaska Native tribes' traditional use areas for the community use analysis boundaries in the development of the DEIS. USDA did not utilize the traditional use areas for the impact analysis because they are considerably larger than the community use areas. The use of larger analysis areas diffuses the impacts and the Agency wanted the impacts to be focused by community. The Agency added an appendix displaying the traditional use areas to recognize the importance of the traditional use areas to the Alaska Native tribes.

The Agency revisited the analysis boundary issue between the DEIS and FEIS, and solicited subsistence use data by community from the State of Alaska. Alaska Department of Fish and Game provided updated survey information from six communities regarding areas of subsistence gathering. Data indicate southeast Alaskans are traveling further for subsistence gathering, meaning the community use areas are larger. Again, the larger area would diffuse the impacts. The agency determined this would not be an improvement to the impact analysis and would make it more difficult for readers to determine the impacts.

The USDA appreciates and recognizes the contributions of the five Alaska Native tribes who withdrew as cooperating agencies on October 13,

2020. The USDA understands that the final rule is not the outcome the tribal cooperating agencies had hoped for, and the Department recognizes the concerns they expressed. The Department and Forest Service greatly value each tribal cooperating agency. The participation and advice of tribal cooperating agencies improved the analyses and alternatives. The Department's hope is that removal of the 2001 Roadless Rule's blanket prohibitions will create space for more creative solutions that are sensitive to the diverse interests of Alaskan Native Tribal communities. As the tribal cooperating agencies' withdrawal letter eloquently suggests, the Department too desires to invest in solutions that will tend the land and serve the people.

### Comments on the Proposed Rule

Approximately 267,000 comments were received on the proposed rule and DEIS, including 11 petitions containing about 117,000 signatures, during the 60-day comment period. A large majority of written comments and oral subsistence testimony supported retaining the 2001 Roadless Rule on the Tongass National Forest. Notably, a significant proportion of the 267,000 comments letters were from outside Alaska. A significant proportion of southeast Alaska municipal and tribal governments submitted resolutions supporting the 2001 Roadless Rule's application on the Tongass National Forest. However, many of the State's elected officials, including the Governor, the federal delegation, and some municipal governments support changing the 2001 Roadless Rule. The USDA considered all substantive comments as part of the rulemaking, including testimony given at the subsistence hearings. The following is a summary of the comments received relating the final rule and the agency response. A full detailed response to comments is contained in Appendix H of the FEIS.

*§ 294.50 Tongass National Forest.*  
No substantive comments were received in regard to the rule language for this section. Therefore, no changes were made to this section.

*§ 294.51 Chugach National Forest.*  
Comments were received expressing concerns regarding the proposed administrative correction and boundary modification provisions for the Chugach National Forest. Commenters and cooperating agencies were concerned that the proposed provisions were too broad and could be used by the Forest Service to open significant portions of the Chugach to additional logging.

Based on the experience of implementing the 2001 Roadless Rule,

boundary modifications are sometimes needed to account for errors, better mapping technology, land exchanges, etc. Thus, the two state-specific roadless rules, Idaho and Colorado, have administrative correction and modification provisions (36 CFR 294.27 for Idaho and 36 CFR 294.47 for Colorado) that operate differently than the 2001 Roadless Rule. The intent of the administrative correction and modification provisions for Alternatives 2 through 5 was to align processes and install a single system for the two National Forests of Alaska. However, some members of the public expressed alarm that the provision could be used to entirely undo roadless protections on the Chugach National Forest. This was never USDA's intent. While alignment of administrative procedures between all state-specific roadless rules might have offered some administrative efficiencies for managing roadless boundaries nation-wide, the final rule gains some administrative efficiencies by fully removing roadless rule provisions for the Tongass National Forest.

Section 294.51 has since been retitled as "Transition," and now includes the instruction to the Tongass Forest supervisor to issue an administrative change in regard to the lands suitable for timber production. This provision was inadvertently not included in the Alternative 6 rule language but was included in Alternatives 2 through 5 rule language and noted in the DEIS as applying to the final rule.

*Comments regarding perceived impropriety associated with the State's petition.* Commenters expressed concern that the State developed the petition and the Secretary accepted the petition without public involvement, and that the petition was motivated by politics and outdated timber economics.

The APA and USDA's implementing regulation (7 CFR 1.28) allows any interested person to petition the Secretary to change a regulation. There is no prescribed process for developing or responding to a petition other than that it must be given prompt consideration and the petitioner will be notified promptly of the disposition made of their petition. The Secretary has no control over the underlying motivations or data offered in support of a petition. However, once a petition is accepted, a rulemaking in response to a petition will be conducted in compliance with applicable law and regulations. The USDA has conducted this rulemaking in compliance with all applicable law and carefully considered the information provided by all those who participated in the various public

meetings and comment periods. The Department has drawn its own conclusions based on the information provided by all parties and its own analysis.

*Comments on sufficiency of public outreach and involvement.* Commenters raised concerns regarding whether the length of comment periods and the quantity and locations of public meetings were sufficient.

The Forest Service conducted two cycles of public comment: the first was a 45-day scoping period from August 30, 2018, to October 15, 2018, in which about 144,000 comment letters were received; and the second was a 60-day comment period on the proposed rule and DEIS from October 18, 2019, to December 17, 2019, which resulted in about 267,000 comment letters. During the scoping period 17 public meetings were held and during the comment period 21 public meetings were held throughout southeast AK, Anchorage, AK, and Washington, DC. The USDA recognizes that many would have desired long scoping and comment periods. The length of the scoping and comment periods are standard for both the rulemaking and EIS processes. The robust meeting attendance and the 411,000 total comments received indicates the timing and length were clearly adequate for many.

*Comments on consideration of public input.* Commenters were concerned that input from the public was ignored because a large majority of comments supported retaining the 2001 Roadless Rule and opposed the full exemption, which was identified as the proposed rule and preferred alternative.

The USDA values the comments received, and the concerns expressed during the rulemaking process. The USDA considered public comments received, the range of alternatives examined in the DEIS and FEIS, and input from cooperating agencies and elected officials. Public comments were utilized to craft the range of alternatives examined in the DEIS and FEIS, modify the alternatives between DEIS and FEIS, and modify analyses. The NEPA and rulemaking public comment process are not vote-counting processes. Every comment has value, whether expressed by one individual or thousands. The public comment process considers the substance of each individual comment rather than the number received. No interest group's views or comments are given preferential treatment or consideration, and comments are considered without regard to their origin, commenter's affiliation, or number received. Based on the comments received, the Secretary

reconsidered all alternatives and has opted for alternative 6, the full exemption alternative.

*Comments on tribal government-to-government consultation.* Commenters expressed concern that tribal consultation was inadequate.

In 2018, the Forest Service sent letters to the 32 federally recognized tribes and 27 Alaska Native corporations in southeast and southcentral Alaska to invite government-to-government and government-to-corporation consultation. The in-region consultation invitation was continuous throughout the rulemaking process.

The Alaska Region and the Tongass National Forest have an ongoing government-to-government relationship with all federally recognized tribes in southeast Alaska. The agency will continue to meet its responsibility to consult with federally recognized tribes and Alaska Native corporations through government-to-government and government-to-corporation consultation on all topics. In addition to district rangers, Regional Office staff also met with tribes, tribal cooperators, and other interested parties to answer questions and provide information as requested when feasible. Forest and Regional Office staff provided briefings, information meetings, supported formal consultations, and formal public hearings in or within the vicinity of communities throughout southeast Alaska. Most tribal governments took advantage of these opportunities. To date, twelve government-to-government consultations have occurred in association with this rulemaking effort.

*Comments on the State's Citizen Advisory Committee.* Commenters expressed concerns regarding the composition and role of the committee in the rulemaking process, whether the committee had undue influence, and whether their involvement violated the Federal Advisory Committee Act (FACA).

The committee was established by the State of Alaska under an Administrative Order issued by Governor Walker in September 2018. The committee was charged with providing recommendations to assist the State of Alaska in fulfilling its role as a cooperating agency. The thirteen committee members were selected by Governor Walker, and the USDA and Forest Service had no part in the selection. The Forest Service provided an individual to participate on the committee as a non-voting member to provide procedural and technical information to the committee.

The committee does not meet the definition of an advisory committee as

defined by the FACA implementing regulations at 41 CFR 102–3.25. The committee was established under state law by the Governor of Alaska. The committee reported directly to the Governor who submitted the committee's report to the USDA as part of the State's participation as a cooperating agency. Intergovernmental coordination with the Governor or his appointees is not subject to FACA. In any event, the USDA and Forest Service did not manage or control the committee's operation and did not utilize its work within the meaning of FACA. USDA's involvement with the committee was limited to non-voting participation, providing technical assistance. The committee did not have undue influence over the rulemaking process.

*Comments on support to the State of Alaska.* Commenters expressed concern that granting funds to the State of Alaska to support the State's involvement in the Alaska roadless rulemaking process was a misuse of congressional appropriations.

The agency provided the State of Alaska's Forestry Division with \$2 million from the fiscal year 2018 Consolidated Program Grant (CPG), Modification 2, utilizing the State Fire Assistance budget line item as the source code. The modification discussed the specific use of the funding, which could be used for: convening and facilitating a group with a diverse mix of state-specific interests to inform the State's input as a cooperating agency, public meetings, cooperating agency support, economic analysis and planning, and to coordinate the proposed state rule with existing land management planning efforts in progress within the State of Alaska. A subsequent modification has been executed utilizing \$1.3 million of the funding to undertake wildland fire risk reduction projects in several Alaska communities, primarily construction of fuel breaks and maintenance of established fuel breaks. USDA Office of the Inspector General has been asked to investigate this matter and the agency is cooperating with the investigation.

*Comments on the need to change from the 2001 Roadless Rule.*

Commenters highlight that the DEIS projects minimal benefit for the forest products industry and thus contend that the analysis does not support the conclusion that eliminating the roadless rule will support rural economic development. In addition, commenters questioned any need for change and rationale in the Notice of Proposed Rulemaking to support a change.

USDA's approach to rural economic development is a long-term multi-faceted strategy outlined in the *Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity* (October 21, 2017), which includes regulatory reform, increasing the production of natural resources, modernizing rural utilities, and improving transportation infrastructure. The final rule reduces the regulatory barrier to achieving these aspects of USDA's strategy for rural economic development. Although there is only a minimal benefit from the final rule to the forest products industry at this time, small incremental change can help achieve rural prosperity over the long-term. The final rule is a step in the right direction for rural prosperity.

*Comments on a local approach for roadless management.* Commenters questioned the proposed rule's assertion that the Tongass should be managed locally suggesting it ignores the Forest Service's 2001 conclusion that national rulemaking was needed to protect roadless areas.

As noted above, the unique circumstances of the Tongass National Forest have been recognized and assessed since the 2001 rulemaking. Then, as now, inclusion of the Tongass National Forest under the national rule was not mandatory but represented a policy choice, as did the national rule itself. In 2001 the Department eventually opted for inclusion of the Tongass National Forest. In 2008 and 2012, two other states requested and were granted the opportunity to discontinue operation under the national rule. Today, the USDA concludes that the interests furthered by the national rule are not improperly undone by exempting a single forest that is now, and will remain for the foreseeable future, substantially undeveloped and roadless. The estimate of 49 miles of additional road construction (from 994 to 1,043) spread across 9 million acres of land, over the next 100 years, will not undo the national rule's underlying goal of protecting roadless area characteristics within the NFS, and moreover are well within the USDA's discretion to further in light of the mix of mandates and policy discretion embodied in the relevant governing statutory provisions.

*Comments on the administrative change procedure.* Commenters were concerned with the administrative change instruction for the lands suitable for timber production in the Forest Plan, alleging it is inconsistent with the National Forest System Land Management Planning regulations at 36 CFR part 219 (2012 Planning Rule) and

would require an amendment. In addition, commenters were concerned that the agency did not include this aspect of the rule during scoping.

The administrative change provision at 36 CFR 219.13(c) clearly states that an administrative change includes changes to conform to new regulatory requirements. Although the provision was not expressly included in the proposed action during scoping, it was highlighted in the DEIS and conforms to the requirements of the NEPA implementing regulations.

*Comments on subsistence mitigation.* Commenters allege that the Forest Service violated ANILCA and NEPA by refusing to consider updating the roadless inventory to include lands important to the Organized Village of Kake, mitigation measures proposed by Kake, and allowing a greater management role for Kake in their traditional territory.

The roadless inventories were updated and additional areas were included in Alternatives 2 and 3 as designated Alaska Roadless Areas. All unroaded areas were reviewed and some areas identified in the 2003 and 2008 roadless analyses associated with Tongass forest planning efforts were included. In addition, small islands previously excluded from roadless designation were included if not substantially altered.

Mitigation measures such as identifying specific road segments, selling carbon credits, and workforce development are outside the scope of the Alaska roadless rulemaking, which is programmatic and does not evaluate projects or partnerships.

Co-management of the Tongass National Forest with tribal partners was considered as an alternative but eliminated from detailed analysis as it does not comport with existing legal authorities.

*Comments on the site-specificity and qualitative nature of the impact analyses.* The analyses in the FEIS are a generalized review which the Council on Environmental Quality recognizes as appropriate for any broad or high-level NEPA review of proposed policies, plans, programs, or projects. It is reasonable and efficient to limit detailed site-specific impact analyses to when specific proposals are brought before the agency. Locations of potential timber harvest and road construction are not known at this time. While locations of other developments, such as a regional energy or transportation project, may be more predictable based on published information, it is not known if, when, or specifically where they would occur. When specific timber harvest or other

projects are proposed, site-specific NEPA analysis and required public involvement would be conducted at that time. No on-the-ground actions are authorized by the final rule.

*Comments on the adequacy of the impact analyses.* Commenters variously questioned the adequacy of the impact analyses, disagreed with the conclusions made, and contended that the effects are understated. Commenters noted the obvious impacts of past timber harvesting and road construction as evidence the impacts were understated. In addition, commenters noted that the basis of the 2001 Roadless Rule was the recognition that timber harvesting and road construction were impactful to roadless area values and characteristics.

USDA does not dispute that timber harvesting and road construction impact roadless area values and characteristics. However, the impact analyses in the Rulemaking for Alaska Roadless Areas DEIS and FEIS do not analyze the effects of harvesting timber and constructing roads in a specific roadless area. Rather, the DEIS and FEIS analyze the difference in effects under the 2001 Roadless Rule, the current Tongass Forest Plan, and the other action alternatives. The baseline for comparison of alternatives is not a pristine wilderness. Rather it is the continuation or adjustment of current management. Under the 2001 Roadless Rule and Tongass Forest Plan, the Forest Service projects the harvest of about 46 MMBF of timber per year across 227,000 available acres of old-growth and 334,000 available acres of young-growth lands with about 994 miles of new road construction across the 100-year analysis period. Under the final rule (Alternative 6) the agency projects the harvest of about 46 MMBF of timber per year across 395,000 available acres of old-growth and 354,000 available acres of young-growth lands with about 1,043 miles of new road construction across the 100-year analysis period.

In addition, the impact analyses considered the continuation of the young-growth transition strategy in all alternatives analyzed, including the no-action alternative and the final rule alternative. The young-growth transition strategy defines a 16-year period starting in 2016 in which the old-growth contribution to the projected timber sale quantity decreases over time as young-growth matures and becomes more economical to harvest. At year 16, the old-growth contribution to the projected timber sale quantity would stabilize at 5 MMBF per year. The young-growth transition strategy has a large beneficial environmental effect on roadless areas

because it shifts the focus of the Tongass timber sale program to young-growth areas which are largely already roaded. In addition, the smaller contribution of old-growth to the projected timber sale quantity makes roadless areas less economical because there are fewer acres of old-growth to off-set the high cost of road construction in the Tongass National Forest. Old-growth is generally more profitable than young-growth to harvest due to higher volume per acre and the higher value of the larger trees. The impact analyses in the FEIS is reflective of the small change between the baseline and the action alternatives, and the impact of the young-growth transition strategy.

*Comments on cost-benefit analysis.* Commenters expressed concern about the cost-benefit analysis using changes in suitable old-growth and young-growth acres as an indicator for potential displacement of recreationists interested in primitive recreation experiences. Primitive recreation is a class of recreation utilized to describe and manage recreation opportunities. Primitive recreation opportunities occur more than 3 miles from a road or motorized trail; in areas generally greater than 5,000 acres; where social setting provide for less than 6 party encounters on a trail; and are non-motorized, typically include hiking, horse packing, fishing, hunting, and camping. There was concern about the methodology used to measure adverse visitor impacts. Commenters sought consideration of scenic values in the cost-benefit analysis. Commenters also sought a cost-benefit economic analysis that uses best available science to assess socioeconomic impacts of each alternative as well as analysis of the socioeconomic value and impact on fisheries, ecotourism, special use permits, recreation, game populations, and subsistence resources. Other commenters expressed concern about the inclusion of harvesting costs (felling, yarding, and loading) and recreation expenditures, as a distributional impact, in the cost-benefit analysis.

In response to public comment, the analysis of recreation visitation related displacement and associated expenditures, in the Regulatory Impact Analysis (RIA), has been updated based on new information received during proposed and final rule preparation. Scenic values, game species, and subsistence are discussed qualitatively in the RIA and examined in more detail in the EIS. A cost-benefit analysis has also been included in the RIA with new data and information received during proposed and final rule preparation. This analysis includes benefits from a

more efficiently managed timber sale program alongside agency costs, forgone conservation value, and costs of potentially displaced recreationists. The revised RIA includes discussion and analysis of costs from felling, yarding, and loading timber and acknowledges their limited scope alongside other costs to the timber industry and costs to the agency from road maintenance. In addition, detail has been added to the RIA, noting that road cost changes before and after 2011 were twice as high during the exemption, and the relevance of these costs alongside haul cost savings. Potential recreation related revenue losses can be considered distributional if there are substitute opportunities in southeast Alaska or on the Tongass National Forest. However, in some cases visitors may choose to not come to southeast Alaska due to impacts from harvesting and road construction; thus, these estimates are appropriate for inclusion in the costs and benefits analysis.

*Comments on ecosystem services.* Commenters sought an effects analysis disclosing how the rule will directly and indirectly impact ecosystem services in the region, including economic cost and benefits related to impacts on ecosystem services. There was concern that exemption from the rule could lead to removal of trees and damage to ecosystems which can adversely impact ecosystem services.

In response to the comments received, additional qualitative information and discussion related to biological and physical ecosystem services values has been added to the RIA between proposed and final rule preparation. In addition, the cost-benefit analysis includes quantitative estimates of forgone conservation value, from peer reviewed research designed to facilitate the consideration of ecosystem services in land management. Cost of forgone conservation value are applied to the net-change in suitable old-growth acres across the alternatives. While only a portion of suitable acres will be harvested, the analysis includes an upper estimate of value associated with all suitable old-growth acres and a lower estimate assuming all suitable old-growth acres would be harvested over 100 years. This range of estimates accounts for uncertainty application of value associated with conservation demand.

*Comments on road costs.* Commenters sought cost data for road building and maintenance (per mile) in the areas considered for exemption from the rule.

The RIA for the final rule includes new information on road costs. Road construction and decommissioning

costs are not considered since it is unlikely that they would be paid by the agency given the influence of the limited export policy. In 2007, the Forest Service approved a limited export policy, and this boost to appraised values has made rare the construction of roads by the agency in advance of timber sales. Road maintenance costs are considered quantitatively in the cost-benefit analysis of the final rule and regulatory alternatives.

*Comments on agency costs.*

Commenters were concerned that the reduction in expenses from exempting the Tongass from the 2001 Roadless Rule were not quantified. In addition, commenters disagreed with the assertion that the rule would not increase agency costs because it would not increase timber harvest levels and sought a more comprehensive estimate of anticipated agency costs and losses from below-cost timber sales. In addition, commenters asserted that analysis should include an overall assessment of the Tongass timber program costs including road costs. In addition, commenters noted the agency costs section should also include the estimated cost for conducting this rulemaking.

Details on agency costs from road maintenance have been added to the RIA for the final rule in the RIA section called "Agency Costs including Control of Regulatory Costs". Detailed analysis of reductions in environmental compliance cost are not possible. This final rule and the regulatory alternatives are programmatic, meaning that they establish direction for broad land areas, rather than schedule specific activities in specific locations. None of the alternatives authorize any site-specific projects or other ground-disturbing activities and, therefore, it is not possible to estimate future activities and subsequent marginal changes in environmental activities. However, potential incremental reductions in compliance costs are noted in the RIA for the final rule. The cost of rulemaking is the cost of managing NFS lands as a part of normal agency operation and exists as part of the baseline 2001 roadless rule so there are not incremental costs.

*Comments on recreation and tourism.* Some commenters suggested that the recreation-related assessment provided in the RIA understated potential impacts to the visitor industry because it considers only changes in suitable timber acres and does not address indirect effects to adjacent areas, whereas, timber harvest and road construction have the potential to affect

much larger areas than the area that is logged. In addition, commenters expressed concern that the Forest Service did not analyze the corresponding effects on rural communities from the displacement of outfitters, guides, and tour operators.

The analysis of recreation in the RIA for the final rule is not a site-specific review; rather, it uses available information to illustrate broad patterns of use and differentiate between the regulatory alternatives. It assumes all visitation, and half of visitation, is displaced under the highest level of timber suitability designation, under the final rule, to provide an upper- and lower estimate of displacement, for a broad orders of magnitude comparison with other costs and benefits. Assuming all visitation is displaced considers not just effects on visitation occurring physically on lands suitable for timber production but also effects on visitation in other areas. The revised analysis also includes assessing the economic importance of nature-based tourism in southeast Alaska, as measured by business revenue, from data collected by the University of Alaska, Anchorage.

*Comments on the DEIS climate and carbon analysis.* Commenters were concerned that the DEIS analysis did not utilize the best available science and the qualitative nature of the analysis is not sufficient.

The climate and carbon analysis in the DEIS and FEIS is based on the best available science on carbon stocks and fluxes, and is consistent with the latest literature including the Pacific Northwest Research Station's Science Findings that became available after publication of the DEIS (*Forestry as a Natural Climate Solution: The Positive Outcomes of Negative Carbon Emissions*, March 2020). The DEIS and FEIS analysis utilized Forest Inventory and Analysis data sets specific to the Tongass National Forest to assess forest carbon stocks and disturbance trends over a recent 20-year period. The influence of potential future climate on the Forest was detailed using recent global circulation model projections and relevant scientific literature detailing climate impacts.

The foreseeable impacts of the final rule on carbon emissions and forest carbon stocks are extremely small because the level of timber harvesting is expected to be the same between implementation of the 2001 Roadless Rule and a full exemption. Therefore, a qualitative approach is appropriate and sufficient.

*Comments on the DEIS timber analysis—level of harvest.* Commenters were concerned that the timber analysis

assumed no increased level of timber harvest.

The level of harvest used in the DEIS and FEIS timber analysis is based on the Forest Plan projected timber sale quantity of 46 MMBF feet per year. This is a reasonable, conservative assumption for the analysis because it is based on estimates of long-term market demands. The Tongass National Forest actual volume sold was approximately 30.9 MMBF in fiscal year 2017, 9.3 MMBF in fiscal year 2018, and 5.6 MMBF in fiscal year 2019. Thus, 46 MMBF remains a reasonable estimate to utilize for effects analyses based on volume sold since 2016, when the forest plan was most recently amended, and more importantly it remains the agency's best estimate despite a few years of lower harvest levels.

The USDA recognizes the projected timber sale quantity is not a cap, like the allowable sale quantity from the 1982 Planning Rule. It is only an estimate, and at this time it is the agency's best estimate.

The agency has no reason to believe harvest levels will increase from the 2016 Forest Plan annual projected timber sale quantity based on implementation of the final rule. Although, the final rule will increase the acres of old-growth available for harvest by about 168,000 acres, this opportunity is likely to be constrained by the implementation of the young-growth transition strategy and the economics of timber harvesting in general. As previously mentioned, after 2032 the transition old-growth timber harvest will be limited to 5 MMBF per year, at which point entry into roadless areas will become less attractive because there will be fewer high-volume acres to off-set the cost of new road construction. As the young-growth matures and becomes a greater proportion of the annual harvest, the Tongass timber sale program will become more focused on previously roaded areas, where the majority of the young-growth stands exist. In addition, between 2003 and 2011 when the Tongass National Forest was exempted from the 2001 Roadless Rule, only about 300 acres of timber were harvested within IRAs. This indicates that there will likely not be a rush to harvest old growth within roadless areas under the final rule.

*Comments on the DEIS timber analysis—distribution of harvest.* Commenters were concerned that the DEIS timber analysis assumed old-growth and young-growth harvest would be evenly disturbed across suitable acres. Commenters were concerned this made it difficult to fully

understand the impacts of the alternatives to a community.

Based on these concerns, the timber analysis was refined to estimate where old growth is most likely to be harvested within the suitable acreage over the next 100 years. Estimates considered timber sale economics, old-growth volume, and timber sale history on the Tongass National Forest. The result of the analysis is a shift of expected timber harvest from the northern ranger districts to the southern ranger districts. The biggest declines in the north are in the Sitka and Hoonah ranger districts, and the largest increases are in the Thorne Bay and Petersburg ranger districts.

*Comments regarding environmental justice.* Commenters expressed concerns that tribal members rely on roadless areas for food security, cultural practices, and their traditional way of life and that the final rule would disproportionately impact them, which would be a violation of environmental justice principles.

The final rule is programmatic and, as such, does not schedule specific activities in specific locations. The final rule will increase the acres available for timber harvest, but harvest levels are expected to remain the same as they would under the 2001 Roadless Rule. The amount of new or reconstructed road miles is expected to be similar as the 2001 Roadless Rule. This makes it challenging to evaluate the effects of the final rule on communities or populations. However, the Civil Rights Impact Analysis (Departmental Regulation 4300-004) recognizes that although the rule itself does not have a disproportionate effect on any specific population, specific activities associated with implementation of the Forest Plan within roadless areas can have environmental justice implications. An opportunity for review for environmental justice concerns will be available if and when activities are proposed, and specific locations and extent are defined.

### Regulatory Certifications

#### *Regulatory Planning and Review*

The OMB determined this rulemaking to be a significant regulatory action as it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The agency has prepared a regulatory requirements analysis of impacts and discussion of benefits and costs of the final rule.

The final rule exempting the Tongass National Forest from the 2001 Roadless

Rule will provide additional opportunities for timber harvest and road construction to occur; however, it does not materially affect the total quantity of timber expected to be harvested or miles of new roads constructed. As to timber harvest activities, the final rule would increase the flexibility for land managers to locate and design timber sales. Improved flexibility could, in turn, improve the Forest Service's ability to offer economic sales that meet timber industry needs and contribute to rural economies. While many factors can influence the cost of timber harvest, areas along existing roads or those using marine access facilities are typically more economically efficient, followed by areas where existing roads can be easily extended. The most expensive harvesting costs are associated with areas without existing road or marine access facilities.

Cost savings from improved flexibility for timber harvest activities would accrue alongside other benefits, including reduced costs for leasable mineral availability and increased potential for development of renewable energy and transportation projects. While many of these activities were allowed under the 2001 Roadless Rule, industry advocates believe that the 2001 Roadless Rule discouraged private sector investment in projects within roadless areas. Although it is difficult to estimate the extent of investments that did not occur due to fear of regulatory burden, the perception of this does affect the level of investment, and the final rule will eliminate that concern.

Stumpage value benefits are quantified alongside agency road maintenance costs, cost of forgone conservation value, estimated lost revenue to outfitters and guides from visitors potentially displaced by annual harvest of suitable young- and old-growth, and forgone value of access to recreationists not using outfitter and guides. Dollars spent by visitors are not necessarily lost but subject to displacement-related changes. Some businesses may lose revenue if visitors choose not to travel to southeast Alaska, but others may see increases in revenue if visitors choose to stay longer or travel to substitute sites within southeast Alaska. Discounted upper bound estimates of net present value are positive for the final rule and regulatory alternatives.

#### *Regulatory Flexibility Act and Consideration of Small Entities*

The USDA certifies that the final rule does not have a significant economic impact on a substantial number of small

entities as determined in the Regulatory Flexibility Analysis because the final rule does not directly subject small entities to regulatory requirements. Therefore, notification to the Small Business Administration's Chief Council for Advocacy is not required pursuant to Executive Order 13272. A number of small and large entities may experience time or money savings as a result of flexibility provided by the final rule, or otherwise benefit from activities on NFS lands under the final rule.

#### *Paperwork Reduction Act*

This final rule does not require any additional record keeping, reporting requirements, or other information collection requirements as defined in 5 CFR part 1320 that are not already approved for use and, therefore, imposes no additional paperwork on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### *Regulatory Risk Assessment*

A risk assessment is only required under 7 U.S.C. 2204e for a "major" rule, the primary purpose of which is to regulate issues of human health, human safety, or the environment. The statute (Pub. L. 103-354, Title III, Section 304) defines "major" as any regulation the Secretary of Agriculture estimates is likely to have an impact on the U.S. economy of \$100 million or more as measured in 1994 dollars. Economic effects of the final rule are estimated to be less than \$100 million per year.

#### *Reducing Regulation and Controlling Regulatory Costs*

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, issued January 30, 2017, requires that significant new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.

The final rule has been reviewed in accordance with Executive Order 13771 on reducing regulation and controlling regulatory costs and is considered an Executive Order 13771 deregulatory action.

#### *Federalism*

The USDA has considered the final rule in context of Executive Order 13132, Federalism, issued August 4, 1999. The USDA has determined the final rule conforms with federalism principles set out in Executive Order 13132, would not impose any compliance costs on any state, and

would not have substantial direct effects on states, on the relationship between the National Government and the State of Alaska, or any other state, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the USDA concludes that this final rule does not have federalism implications. The final rule is based on a petition submitted by the State of Alaska under the APA (5 U.S.C. 553(e)) and pursuant to USDA regulations at 7 CFR 1.28. The final rule responds to the State of Alaska's petition, considers public comment received during the Forest Service's public comment periods, and considers input received from cooperating agencies. The State of Alaska is a cooperating agency pursuant to 40 CFR 1501.6 of the Council on Environmental Quality regulations for implementing the procedural provisions of the NEPA.

#### *No Takings Implications*

The USDA has considered the final rule in context with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, issued March 15, 1988. The USDA has determined that the final rule does not pose the risk of a taking of private property because it only applies to management of NFS lands and contains exemptions that prevent the taking of constitutionally protected private property.

#### *Consultation With Indian Tribal Governments*

On July 30, 2018, the Forest Service initiated government-to-government consultation with 32 Alaska federally recognized tribes and 27 Alaska Native corporations, and invited them to participate as cooperating agencies during the rulemaking process. Six tribes initially agreed to become a cooperating agency including Angoon Community Association, Central Council Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan. The Organized Village of Kake withdrew as a cooperating agency after publication of the proposed rule, and the remaining tribal cooperating agencies withdrew after the publication of the FEIS in collective protest over the identification of the full exemption alternative as the preferred alternative in the FEIS. Periodic cooperating agency meetings were held throughout the rulemaking process that included the tribal cooperating agencies. Furthermore,

government-to-government consultations occurred by request and twelve consultation meetings were held throughout the rulemaking process. Two of the twelve government-to-government consultation meetings were conducted by USDA Under Secretary James Hubbard and the remaining ten meetings were conducted by the Alaska Region of the Forest Service.

On July 21, 2020, the Secretary of Agriculture received a petition from nine southeast Alaska Tribal governments, requesting the United States government to commence a new rulemaking in collaboration with Tribes to create a Traditional Homelands Conservation Rule to identify and protect traditional and customary uses of the Tlingit, Haida, and Tsimshian peoples in the Tongass National Forest. This petition also requests the USDA create a new process for engaging in consultation with Tribes based on the principle of "mutual concurrence". The petition states that it was submitted in response to the Tribes' experience in the Alaska Roadless Rulemaking process and their belief that their contributions were not adequately considered. The petition is currently under review by the Secretary.

The final rule was reviewed in accordance with the requirements of Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Executive Order 13175 requires federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments, or proposed legislation, and other policy statements or actions that may have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations assessed the impact of the final rule on Indian tribes and determined the final rule has tribal implications that require continued outreach efforts in the implementation of the final rule to determine if tribal consultation under Executive Order 13175 is required. To date, as part of the regulatory review process noted above, the Forest Service conducted various outreach efforts to American Indian and Alaska Native tribes, villages, and corporations regarding the development of this final rule, and the tribal cooperation in this process.

If a tribe requests consultation, the Forest Service will work with the USDA Office of Tribal Relations to ensure

meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

#### *Civil Justice Reform*

The USDA reviewed the final rule in context of Executive Order 12988. The USDA has not identified any state or local laws or regulations that conflict with the final rule or would impede full implementation of the rules. However, if the rule is adopted, all state and local laws and regulations that conflict with this rule or would impede full implementation of this rule would be preempted. No retroactive effect would be given to this rule, and the final rule would not require the use of administrative proceedings before parties could file suit in court.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the USDA has assessed the effects of the final rule on state, local, and tribal governments and the private sector. The final rule does not compel the expenditure of \$100 million or more by any state, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### *Energy Effects*

The USDA has considered the final rule in context of Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*, issued May 18, 2001. The USDA has determined the final rule does not constitute a significant energy action as defined in Executive Order 13211. Therefore, a statement of energy effects is not required.

#### *E-Government Act*

The USDA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

#### **List of Subjects in 36 CFR Part 294**

National forests, Navigation (air), Recreation areas, Roadless area management.

■ For the reasons set forth in the preamble, the USDA amends part 294 of title 36 of the Code of Federal Regulations by adding subpart E, consisting of §§ 294.50 and 294.51, to read as follows:

**PART 294—SPECIAL AREAS****Subpart E—Alaska Roadless Areas Management**

**Authority:** 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

**§ 294.50 Tongass National Forest.**

Subpart B of this part, revised as of July 1, 2001, shall not apply to the Tongass National Forest.

**§ 294.51 Transition.**

The Tongass Forest Supervisor shall issue a ministerial Notice of Administrative Change pursuant to 36 CFR 219.13(c) identifying plan changes made in conformance with the regulatory determinations of this subpart; specifically, the portion of the December 9, 2016, Record of Decision concerning suitable timber lands attributed exclusively to

implementation of the January 12, 2001, Roadless Area Conservation Rule (see 36 CFR part 294, revised as of July 1, 2001) shall be designated as suitable.

Dated: October 26, 2020.

**Stephen Censky,**

*Deputy Secretary of Agriculture.*

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