

the safe and efficient flow of air traffic within the National Airspace System (NAS).

### History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2022–0541 in the **Federal Register** (87 FR 32373; May 31, 2022), revoking Alaskan V–621 due to the planned decommissioning of the Atqasuk, AK, NDB. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal airway action listed in this document will be published subsequently in FAA Order JO 7400.11.

### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Rule

This action amends 14 CFR part 71 by revoking Alaskan VOR Federal airway V–621 due to the planned decommissioning of the Atqasuk, AK, NDB. The airway change is described below.

*Alaskan V–621:* Alaskan V–621 extends between the Barrow, AK, VOR and the Atqasuk, AK, NDB. The airway is removed in its entirety.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not

warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

The FAA has determined that this airspace action of revoking Alaskan VOR Federal airway V–621, due to the planned decommissioning of the Atqasuk, AK, NDB, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

*Paragraph 6010(b) Alaskan VOR Federal Airways.*

\* \* \* \* \*

### V–621 [Removed]

Issued in Washington, DC, on January 23, 2023.

**Brian Konie,**

*Acting Manager, Airspace Rules and Regulations.*

[FR Doc. 2023–01606 Filed 1–26–23; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 294

RIN 0596–AD51

### Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule and record of decision.

**SUMMARY:** The U.S. Department of Agriculture (USDA or Department) is repealing an October 2020 rule (the 2020 Alaska Roadless Rule) that exempted the Tongass National Forest (the Tongass) from the 2001 Roadless Area Conservation Rule (2001 Roadless Rule). Repealing the 2020 Alaska Roadless Rule will reinstate the pre-existing management regime, which prohibited timber harvest and road construction/reconstruction with limited exceptions within designated Inventoried Roadless Areas (IRAs).

**DATES:** This rule is effective January 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** Joe Krueger, Interdisciplinary Team Leader, at 202–649–1189 or [sm.fs.akrdlessrule@usda.gov](mailto:sm.fs.akrdlessrule@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:

##### Background

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 the 2001 Roadless Rule (66 FR 3244), 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 intent of the 2001 Roadless Rule is to provide lasting protection for IRAs in the context of overall multiple-use land management.

During the development of the 2001 Roadless Rule, the Forest Service analyzed an alternative that would have exempted the Tongass from the Rule's application, but in the final rulemaking, the Department applied the Rule to the Tongass, with an additional mitigation measure designed to protect natural resources and accommodate an adjustment to the timber program in Southeast Alaska to focus harvest activities outside of designated inventoried roadless areas. In 2003, the Department reversed that decision and exempted the Tongass from the 2001 Roadless Rule (68 FR 75136, December 30, 2003). The 2003 rulemaking was later overturned by the U.S. District Court for the District of Alaska and the 2001 Roadless Rule was reinstated on the Tongass (with special instructions). See *Organized Village of Kake v. USDA*, 776 F. Supp. 2d 960 (D. Alaska, 2011). That decision was appealed by the State of Alaska, and ultimately the District Court's ruling was upheld by the U.S. Court of Appeals for the Ninth Circuit, and the Supreme Court declined further review. See *Organized Village of Kake v. USDA*, 795 F.3d 956 (9th Cir. 2015) (*en banc*), *cert denied sub. nom Alaska v. Organized Village of Kake, Alaska*, 577 U.S. 1234 (2016).

Following the reinstatement of the 2001 Roadless Rule on the Tongass in 2011, the State of Alaska filed a new lawsuit in the U.S. District Court for the District of Columbia challenging the legality of the 2001 Roadless Rule, both nationwide and as applied within Alaska. Ultimately, the District Court ruled that the State had not shown that

USDA violated any Federal statute in promulgating the 2001 Roadless Rule, see *Alaska v. USDA*, 273 F. Supp. 3d 102 (D.D.C. 2017). The State appealed the ruling, but the appeal was subsequently held in abeyance (temporarily placed on hold) pending resolution of the State's rulemaking petition discussed immediately below. Following promulgation of the 2020 Alaska Roadless Rule, the Federal Government filed a motion with the D.C. Circuit to dismiss the appeal and vacate the underlying District Court ruling on the basis of mootness. On November 16, 2021, the D.C. Circuit dismissed the State of Alaska's challenge to the 2001 Roadless Rule, directing that Alaska's claims regarding application of the Roadless Rule to the Tongass be dismissed as moot, those portions of the District Court's decision regarding the Tongass be vacated, and the remaining claims on appeal (regarding the Chugach National Forest) be dismissed for lack of standing, see *Alaska v. USDA*, 17 F.4th 1224 (D.C. Cir. 2021).

On January 19, 2018, the State of Alaska submitted a rulemaking petition to Secretary of Agriculture Sonny Perdue pursuant to the Administrative Procedure Act (APA). In the petition, the State requested that USDA consider creation of a state-specific rule to exempt the Tongass from the 2001 Roadless Rule and conduct a forest plan revision or amendment for the Tongass. In June 2018, Secretary Perdue accepted the State's petition and agreed to review the State's concerns on roadless area management. The Secretary then directed the Forest Service to move forward with a State-specific roadless rule. The Secretary did not commit to the State's request for a forest plan revision or amendment. A proposed state-specific rule and draft environmental impact statement (DEIS) were issued in October 2019. USDA released a final environmental impact statement (FEIS) in September 2020 (the 2020 FEIS) and published the final rule exempting the Tongass from the 2001 Roadless Rule on October 29, 2020 (85 FR 68688, part 294 of title 36 of the Code of Federal Regulations (CFR), subpart E). That rule will be referred to as the "2020 Alaska Roadless Rule."

At the time of rulemaking in 2020, USDA stated that land use designations, standards, and guidelines in the 2016 Tongass Land Management Forest Plan (2016 Forest Plan), along with other conservation measures, would assure protection of roadless values on the Tongass while offering modest additional flexibility to achieve other multiple-use benefits.

On January 20, 2021, President Biden directed all executive departments and agencies to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations during the prior four years that may conflict with important national objectives including protecting the environment, and to immediately commence work to confront the climate crisis (Executive Order 13990). On January 26, 2021, President Biden directed all Federal agencies to review Tribal consultation policies and practices and recommit to more robust nation-to-nation relationships and respect for our Federal trust responsibilities (Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships). On November 23, 2021 (86 FR 66498), the USDA proposed to repeal the 2020 Alaska Roadless Rule. The USDA published a notice of proposed rulemaking (NPR) for repeal of the 2020 Alaska Roadless Rule and requested comments, thus initiating a comment period ending January 24, 2022 (86 FR 66498, November 23, 2021). Approximately 112,000 comment documents were received, of which about 9,000 were unique submissions; the majority of these comments were in favor of the proposed repeal. In addition to the comments, 14 petitions with over 130,000 names attached were received, all in favor of repeal. The Department of Agriculture and the Forest Service invited consultation with 19 tribes in Southeast Alaska regarding the repeal of the 2020 Alaska Roadless Rule. Four formal consultation sessions were held beginning in July 2021 with 12 of the 19 tribes represented in at least one session. The Tribes represented at these consultations expressed their desire to return to the 2001 Roadless Rule as quickly and expeditiously as administratively possible.

##### Decision

The USDA hereby repeals the 2020 Alaska Roadless Rule and returns roadless management on the Tongass to the regulatory regime previously in force, resulting in the reinstatement of the 2001 Roadless Rule as provided for in the U.S. District Court for the District of Alaska's Judgment in *Organized Village of Kake v. USDA*, 776 F. Supp. 2d 960 (D. Alaska 2011). This rulemaking is not subject to pre-decisional administrative objection regulations set out in 36 CFR part 218 or 219 as it is neither a project nor plan level decision.

### Alternatives Considered

As discussed below in the section titled “National Environmental Policy Act,” the USDA has determined that the 2020 FEIS adequately analyzes the environmental effects of this final rule and has relied on that FEIS in issuing this rule.

The 2020 FEIS analyzes six alternatives. Alternative 1 was the no action alternative in the 2020 FEIS and would maintain the 2001 Roadless Rule, as prescribed in the Alaska District Court’s Judgement. Alternative 1 would maintain the designation of 9,368,000 acres of Inventoried Roadless Area on the Tongass that was established in the 2001 Roadless Rule.

Alternative 2 provided limited additional timber harvest opportunities in comparison to Alternative 1 by removing protections from certain areas designated as roadless in 2001 while maximizing protection for unroaded areas by adding other Roadless Area designations. It removed from roadless designation approximately 142,000 acres that were substantially altered by road construction or timber harvest conducted during periods when the Tongass National Forest was exempted from the 2001 Roadless Rule. Alternative 2 also would have added 110,000 acres of unroaded lands as Alaska Roadless Areas that were not designated by the 2001 Rule, and by extension, remained undesignated in Alternative 1.

Alternative 3 would have provided moderately more timber harvest opportunities than Alternative 1 by increasing the available land base from which timber harvest opportunities could occur. It would have accomplished this 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. Alternative 3 also established a Community Priority category to allow exceptions for small-scale timber harvest and associated road construction and reconstruction within certain designated roadless areas. Overall, Alternative 3 proposed a net decrease of 1.14 million roadless acres relative to Alternative 1.

Alternative 4 provided substantial more timber harvest opportunity than Alternative 1 while maintaining inventoried roadless designations for areas defined in the 2016 Forest Plan as Scenic Viewsheds, T77 Watersheds, and The Nature Conservancy/Audubon Conservation Priority Areas. Overall, alternative 4 proposed a net decrease of

394,000 roadless acres relative to Alternative 1.

Alternative 5 provided the greatest amount of additional timber harvest and road construction/reconstruction opportunities by removing 2.32 million acres from Roadless designation, including areas defined as Scenic Viewsheds and some T77 Watersheds and TNC/Audubon Conservation areas.

Alternative 6 fully exempted the Tongass from the 2001 Roadless Rule, removing 9.37 million acres from roadless area designation. This was the alternative selected for the 2020 Alaska Roadless Rule.

Taken together, the six alternatives represent the spectrum of management regimes identified by the Forest Service through public comments, public meetings, Tribal and Alaska Native corporation consultations, and cooperating agency input.

### Environmentally Preferable Alternative

The Council on Environmental Quality’s regulations require that a Record of Decision specify the alternative or alternatives considered environmentally preferable, 40 CFR 1505.2(a)(2). As defined in the USDA’s regulations, the environmentally preferable alternative is the alternative that will best promote the national environmental policy as expressed in section 101 of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321). Ordinarily, the environmentally preferable alternative is that which causes the least harm to the biological and physical environment; it also is the alternative that best protects and preserves historic, cultural, and natural resources. In some situations, there may be more than one environmentally preferable alternative (36 CFR 220.3).

NEPA does not require the decisionmaker to select the environmentally preferable alternative or prohibit adverse environmental effects. Indeed, Federal agencies often have other concerns and policy considerations to take into account in the decision-making process, such as social, economic, technical, or national security interests, as well as agencies’ statutory missions.

As described in the 2020 Alaska Roadless Rule decision, Alternative 2 has been determined to be the environmentally preferred alternative, although the environmental benefits of Alternative 2 in comparison to Alternative 1 are minor. While Alternative 2 would designate and manage slightly fewer acres (approximately 32,000 acres) as Alaska Roadless Areas relative to the acres of

Inventoried Roadless in Alternative 1, it would increase conservation of roadless characteristics and values because all the acres designated and managed as Alaska Roadless Areas under Alternative 2 are undeveloped at this time. Specifically, Alternative 2 would remove the roadless designation from 142,000 acres that are designated as Inventoried Roadless Areas under Alternative 1, but have already been roaded, harvested, or substantially altered, and therefore do not currently possess the roadless characteristics and values the 2001 Roadless Rule is intended to conserve. At the same time, Alternative 2 would designate as Alaska Roadless Areas approximately 110,000 acres that are undeveloped land but that were not designated as Inventoried Roadless Areas under the 2001 Rule and, by extension, are not designated as such in Alternative 1. Alternative 2 limits timber harvest opportunities, road construction, and road reconstruction, on the most acres of undeveloped land out of all the alternatives considered. All other action alternatives considered in the 2020 FEIS involve sizeable roadless area reductions. For this reason, Alternative 2 is the environmentally preferred alternative.

That conclusion is appropriate notwithstanding modest changes between Alternative 1 and Alternative 2 in certain designated roadless areas. Alternative 2 assigns a Roadless Priority management category to 5.2 million acres that include more exceptions than allowed under Alternative 1, thereby modestly diminishing protection for those areas. However, Alternative 2 also includes a Watershed Priority category, applied to 3.28 million acres, which is more restrictive than Alternative 1. Therefore, on balance, Alternative 2 is at least as protective as Alternative 1.

The differences between Alternatives 1 and 2 are minor in comparison to the differences between these alternatives and the 2020 Alaska Roadless Rule (analyzed as Alternative 6). No old-growth harvesting would occur in “logical extensions” or areas “distant from roads” under either Alternatives 1 or 2, for example, while 35% of old-growth logging would likely occur in such areas under Alternatives 4–6. Similarly, Alternatives 1 and 2 are comparable and preferable in terms of tree harvest for Alaska Native cultural purposes because of the relatively low level of competition with commercial timber harvest they would create. Alternatives 1 and 2 are also expected to generally result in very little to no effect on communities compared to Alternatives 4, 5, and 6 (especially Alternatives 5 and 6) which have an

increased potential for effects on communities relative to the other alternatives, especially in those communities where the visitor industry sector is important. This is primarily because those communities rely on undisturbed landscapes, which in turn may affect visitor use. The smaller and less economically diversified communities have a greater risk of effects.

While Alternative 2 is the environmentally preferred alternative, the USDA has determined that the minor environmental benefits of Alternative 2 in comparison to Alternative 1 do not warrant adopting it for the reasons set forth in the following section. These reasons are primarily because Alternative 1 promotes stability and predictability, and because it reflects the overwhelming consensus recommendation of Alaskan Native Tribes as expressed through formal consultation.

#### **Decision Rationale and Important Considerations**

The USDA has selected Alternative 1 to reinstate the pre-existing management regime established in the 2001 Roadless Rule because the USDA believes that this alternative strikes the appropriate balances among the various values that the Department must consider when managing the Tongass. In particular, the USDA believes that Alternative 1 best addresses the needs and concerns of local communities, including Tribal communities. These needs include the need for stability and predictability after over two decades of shifting management, which can best be served by restoring the familiar framework of the 2001 Roadless Rule.

Adopting Alternative 1 also takes appropriate consideration of consultation with sovereign Tribal Nations, which uniformly and strongly supported Alternative 1. Although Alternative 2 serves many of the same values as Alternative 1, Alternative 2 would introduce potentially confusing changes both to the location of designated Alaska Roadless Areas and to the management prescriptions associated with certain management categories. Alternative 2 also lacks a history of implementation consistent with the 2001 Roadless Rule and the 2016 Forest Plan, potentially complicating implementation. The minor environmental advantages of Alternative 2 do not outweigh Alternative 1's other advantages and those environmental benefits could be achieved under Alternative 1 through alternative planning and program mechanisms that provide greater

flexibility for achieving program goals. The Forest Service employs various planning and project-specific efforts to maintain and restore watersheds by strategically focusing investments on watershed improvement projects and conservation practices at the landscape and watershed scales. For example, watersheds have unique characteristics and can best be addressed through Forest Planning and site-specific planning. Alternatives 3 through 6, meanwhile, are insufficiently protective of the roadless characteristics and values the 2001 Roadless Rule is intended to conserve.

#### *Alternative 1 Appropriately Balances Competing Values*

When it issued the 2020 Alaska Roadless Rule, the USDA stated that the final rule's change in policy does not rest on new factual findings contradicting the factual findings the USDA made in its 2001 Roadless Rule. The policy judgments implemented through the 2020 rulemaking were ultimately the result of assigning different value or weight to the various multiple uses. Although 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. (85 FR 68691)

Like the 2020 Alaska Roadless Rule, this rulemaking is based on a reevaluation of the social value of the various uses of the Tongass, rather than on new factual findings. As the USDA noted at the time, the 2020 FEIS estimates that exempting the Tongass from the 2001 Roadless Rule (Alternative 6) would make 168,000 more acres of old-growth forest available for timber production (FEIS at 3–18) and would result in nearly 46 miles of additional roads on NFS land over the next 100 years, compared with Alternative 1 (FEIS at 3–121). The USDA also noted at the time of the 2020 Alaska Roadless Rule that “tribal government cooperating agencies expressed concern about removal of the 2001 Roadless Rule.” (85 FR 68691) Nonetheless, the USDA believed at the time that these consequences were acceptable in light of the Administration's policy preferences, which emphasized “increasing rural economic opportunity, decreasing federal regulation, and streamlining federal government services.” (85 FR 68691)

By contrast, the USDA now believes that the adverse consequences of exempting the Tongass from the 2001 Roadless Rule, particularly the increase in acreage available for timber

production, the increase in road construction, and the lack of consideration for the views of Tribal Nations, outweigh the benefits of “decreasing federal regulation” and the other advantages cited in the 2020 Alaska Roadless Rule. Moreover, restoring the protections afforded in the 2001 Roadless Rule will advance or is consistent with other USDA policy priorities, including promoting the continued health and resilience of mature and old-growth forests; retaining and enhancing carbon storage; conserving biodiversity; mitigating the risk of wildfires; enhancing climate resilience; enabling subsistence and cultural uses; providing outdoor recreational opportunities; and promoting sustainable local economic development. *See also* Executive Order 14072 on *Strengthening the Nation's Forests, Communities, and Local Economies*. As the 2020 FEIS notes, roadless areas on the Tongass provide important ecosystem services 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.

Roadless areas on the Tongass are also the world's largest remaining, intact, old-growth temperate rainforest, which supports biodiversity and stores carbon. The Tongass holds more biomass per acre than any other rainforest in the world and stores more carbon than any other national forest in the United States. Both old-growth and young-growth forests are important for carbon storage and sequestration: old-growth forests are capable of storing large amounts of carbon in the ecosystem, while young-growth forests are capable of rapid rates of carbon sequestration with new growth. By restoring protection to 188,000 forested acres, including 168,000 acres of old-growth forest, from future timber harvest and associated roadbuilding, Alternative 1 would support retention of the largest and most extensive tracts of undeveloped land for the roadless values, watershed protection, climate benefits, and ecosystem health those lands provide.

Roadless areas on the Tongass also include watersheds and areas important for fishing, hunting, outdoor recreation, and tourism, which support revenue and jobs in Southeast Alaska as well as

local community well-being. Subsistence, commercial, and sport fisheries in both marine and freshwater systems, for example, are all important to the way of life for Southeast Alaskan residents. As the 2020 FEIS explains, “[r]oads pose the greatest risk to fish resources on the Tongass (Dunlap 1996), partly because they pose the largest risk of management-caused sediment input to streams.” (FEIS at 3–134) Restoring the 2001 Roadless Rule will reduce the amount of potential new road construction and thereby minimize the potential for road and harvest operations to increase sediment displacement or delivery, thus minimizing associated adverse effects on fisheries and providing more durable protections to these resources than those provided under the forest plan.

Restoring the 2001 Roadless Rule protections also responds to the unanimous input provided by Tribal Nations during government-to-government consultation sessions conducted in 2021, and therefore honors the Nation-to-Nation relationship. See President Biden’s January 26, 2021, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (<https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-02075.pdf>). Roadless areas on the Tongass hold immense cultural significance for Alaska Native peoples. Restoring the 2001 Roadless Rule on the Tongass is in keeping with the broad Administration commitment to strengthening Nation-to-Nation relationships, and incorporating indigenous knowledge, stewardship, and priorities into land management decision-making.

By adopting Alternative 1, this final rule also is more responsive to the vast majority of comments received as part of the 2020 rulemaking as well as in response to this rulemaking. In issuing the 2020 Alaska Roadless Rule, the USDA noted that “[a] large majority of written comments and oral subsistence testimony supported retaining the 2001 Roadless Rule on the Tongass National Forest,” and that “A significant proportion of southeast Alaska municipal and Tribal governments submitted resolutions supporting the 2001 Roadless Rule’s application on the Tongass National Forest,” while also noting that “many of the State’s elected officials, including the Governor, the federal delegation, and some municipal governments support changing the 2001 Roadless Rule.” The comments received by the USDA on this proposed rulemaking demonstrated a similar pattern and breadth of support for

Alternative 1. Notably, in its 2021 comments, the Southeast Alaska Subsistence Regional Advisory Council (SEARAC) expressed the view that an exemption from the 2001 Roadless Rule would result in a decrease in the availability of subsistence resources and subsistence opportunities throughout the Tongass.

While agency rulemaking need not always reflect the views of a simple majority of commenters, the USDA believes that the strong support for restoring the 2001 Roadless Rule, especially from some local municipal and all the Tribal governments that were consulted, reflects the extraordinary ecological values of the Tongass National Forest and the cultural, social, and economic needs of the local forest dependent communities in Southeast Alaska. The USDA therefore believes that Alternative 1 represents the best balance of multiple uses and values for the Tongass.

Furthermore, in light of the 2020 FEIS and the additional comments received on the proposed rule, the USDA believes that selecting Alternative 1 would not have major adverse impacts to the timber, energy, and mining industries, and would be beneficial at best or neutral at worst for the primary economic drivers in Southeast Alaska, which include fishing and tourism.

The USDA acknowledges the continued importance of forest products from the Tongass. A number of businesses, Tribes and individuals rely on timber harvested from the Tongass for forest products, including cultural uses such as totem poles, canoes, and Tribal artisan use. Timber harvest and forest products from the Tongass for personal or administrative use (e.g., firewood and Christmas trees) would continue as provided by the Roadless Rule’s exceptions.

Since the Alaska Region of the Forest Service began documenting and tracking certain decisions for projects within roadless areas in 2009, the Tongass has received 59 project proposals in IRAs that included tree removal and/or road construction using the exceptions authorized by the 2001 Roadless Rule, including for mineral, energy, recreation, and transportation projects. All 59 projects were approved. These project approvals demonstrate that the 2001 Roadless Rule’s exceptions for access and mineral rights, as well as appropriate special uses, have been effective, and that the operation of the 2001 Roadless Rule on the Tongass has coexisted with State, Tribal, and private interests and allowed the Forest Service to fulfill its multiple use mission.

Proposed projects in IRAs will continue to be evaluated for consistency with Roadless Rule and forest plan requirements.

For these reasons, the USDA concludes that adopting Alternative 1 and reinstating the pre-existing management regime under the 2001 Roadless Rule strikes a more appropriate balance among the relevant values and policy objectives than Alternative 6, represented by the 2020 Alaska Roadless Rule. Similarly, Alternatives 3–5, like Alternative 6, would also significantly reduce roadless area protections on the Tongass in comparison to Alternative 1.

At the same time, the USDA believes that Alternative 1 strikes a better balance of relevant values and policy objectives than Alternative 2. Although, as noted above, Alternative 2 is the environmentally preferred alternative and might provide slightly greater protection to the roadless values on the Tongass than Alternative 1, Alternative 2 also represents a departure from the management approaches that have governed the Tongass over the last two decades. Notably, the comments received by the USDA during both the 2020 rulemaking process and this rulemaking process, including comments from Tribal, State, and local government entities, expressed very limited interest in Alternative 2, and instead focused on the choice between Alternatives 1 and 6.

Alternative 2 also lacks a history of implementation in comparison to the experience of managing under the 2001 Roadless Rule, potentially complicating implementation. The 2016 Forest Plan was designed to be consistent with the 2001 Roadless Rule, and in adopting the Plan, the Tongass Forest Supervisor concluded that “the best way to bring stability to the management of roadless areas on the Tongass is to not recommend any modifications to the Roadless Rule” (2016 Forest Plan Record of Decision (ROD) at 4, 19). Alternative 2 would represent a departure from this approach.

Therefore, the USDA believes that selecting Alternative 2 would conflict with the expectations of commenters and cooperating agencies, inject new uncertainty into the management of the Tongass, undermine the goal of stability and predictability that the USDA hopes to promote with this rulemaking, and insufficiently consider consultation with Tribal Nations.

*Adopting Alternative 1 is Permissible and Appropriate Under the Governing Laws*

*General Authorities*

The Secretary of Agriculture has broad authority to protect and administer the National Forest System (NFS) through regulation as provided by the Organic Administration Act of 1897 (Organic Act) and the Multiple-Use Sustained Yield Act of 1960. 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.

Combined with the complex, and sometimes even conflicting, judicial rulings applicable to the 2001 Roadless Rule, the recent history of roadless management on the Tongass demonstrates that 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, cultural, and environmental consequences.

While the Tongass has endured debate regarding land and natural resource management for decades, there are common agreements. The Tongass roadless areas are vast and valuable. The Tongass contributes social, cultural, economic, and 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 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. The USDA has received many comments that highlight differences in views concerning the best available information, as well as general opinions and preferences. The USDA is grateful for the attention and interest that Tribal nations, local communities, State offices, stakeholder groups, and individuals have devoted to helping shape the decision-making process.

Perspectives and opinions differ as to how to best shape restrictions that

protect a valuable resource while providing cultural, social, and economic benefits for both local communities and the nation, which is reflected in the nearly 500,000 comments received throughout the analysis and promulgation of the 2020 Alaska Roadless Rule (input received during official comment periods is summarized in Appendix H of the 2020 Alaska Roadless Rule FEIS as well as in the Scoping Summary) and the 112,000 comments provided in response to the 2021 NOPR.

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 the 2001 Roadless Rule. The USDA believes that the underlying goals and purposes of the 2001 Roadless Rule continue to be important, especially in the context of the values that roadless areas on the Tongass represent for local communities and Native peoples, and the multiple ecologic, social, cultural, and economic values supported by roadless areas on the Forest. This final rule therefore falls within the discretion afforded to the USDA under the Organic Act and the Multiple-Use Sustained Yield Act of 1960 to determine the proper uses within the Tongass.

*Alaska-Specific Statutes*

The USDA has also considered several Alaska-specific statutes applicable to the Tongass in selecting the final rule, including the Tongass Timber Reform Act (TTRA) and Alaska National Interest Lands Conservation Act (ANILCA).

*Tongass Timber Reform Act*

The TTRA directs the Forest Service to seek to provide a supply of timber from the Tongass that meets annual market demand and the market demand for each planning cycle subject to appropriations and to the extent consistent with providing for the multiple-use and sustained-yield of all renewable resources and other applicable requirements, including the requirements of the National Forest Management Act (NFMA). The 2016 Forest Plan, which was prepared at a time when the 2001 Roadless Rule was in effect, anticipates sufficient timber availability to meet projected demand as described in the 2016 Forest Plan FEIS and ROD. In addition, the 2016 Forest Plan provides guidance to conduct annual monitoring and review of current timber demand. Because the Department has considered market demand for timber as one of the goals to be balanced with environmental preservation and other multiple-use

goods and services, reinstating the 2001 Roadless Rule fully complies with the TTRA.

*Section 810 of ANILCA—Subsistence Determination*

Section 810 of ANILCA (16 U.S.C. 3120) provides that in determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. Section 810 also specifies that if the “withdrawal, reservation, lease, permit, or other use, occupancy or disposition” of Federal lands “would significantly restrict subsistence uses,” the agency must take certain additional steps. Specifically, the agency must give notice to the appropriate State agency and the appropriate local committees and regional councils and give notice of, and hold, a hearing in the vicinity of the area involved, and determine that (1) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (2) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (3) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

When it issued the 2020 Alaska Roadless Rule, the USDA determined that an ANILCA section 810 analysis was not required because the action it was taking was “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.” Nonetheless, the USDA conducted a subsistence use analysis in order “to honor regional commitments and inform future project-level planning and decision-making subject to ANILCA Section 810,” and provided notices and conducted subsistence hearings consistent with section 810.

After analyzing potential impacts to subsistence uses and resources in the 2020 FEIS, the USDA concluded in the 2020 Alaska Roadless Rule ROD that “the risk of a significant restriction to

subsistence resource abundance and distribution is largely equivalent across” the six alternatives considered in that rulemaking, that “the final rule may eventually influence subsistence resource access due to timber management activities,” and that “[t]he 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.” The USDA therefore proceeded to make the three factual determinations required by section 810, determining that the anticipated subsistence impacts are necessary, consistent with the sound management of NFS land; that “the final rule addresses the amount of NFS land necessary to accomplish the proposed action;” and that implementation of the 2016 Forest Plan will result in “reasonable steps [being taken] to minimize effects on subsistence resources.”

Like the 2020 rulemaking, this final rule is a rulemaking and programmatic-level decision, and does not “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition” of National Forest System land. Therefore, no section 810 subsistence analysis is required for this rulemaking.

However, for consistency with its practice when promulgating the 2020 Alaska Roadless Rule and in order “to honor regional commitments and inform future project-level planning and decision-making subject to ANILCA Section 810,” the USDA has reviewed the subsistence impact analysis in the 2020 FEIS, which was conducted “in a manner consistent with Section 810 of ANILCA.” This review relies on the information contained in the 2020 FEIS (see the section below titled “National Environmental Policy Act”). In addition, because the 2020 rulemaking process took place recently and addressed the same issues as this rulemaking, the USDA did not conduct additional subsistence hearings, but instead relied on the notices and hearings conducted as part of the 2020 rulemaking process, as supplemented by the general notices and consultations carried out in connection with this rulemaking.

#### Likelihood of Significant Restriction of Subsistence Uses

This subsistence impact review begins by considering whether reinstating the 2001 Roadless Rule may “significantly restrict subsistence uses.” The 2020 FEIS analyzes the effects of each of the alternatives on three subsistence use factors: (1) resource distribution and

abundance; (2) access to resources; and (3) competition for the use of resources.

With regard to distribution and abundance of subsistence resources, the 2020 FEIS indicates that “[a]s a result of their association with old-growth forest habitat, which is the main terrestrial habitat type affected by the alternatives, deer are considered the ‘indicator’ for potential subsistence resource consequences” related to distribution and abundance. The 2020 FEIS acknowledges that both the 1997 Tongass Forest Plan Revision FEIS and the 2008 Tongass Plan Amendment FEIS concluded that deer habitat capabilities in several areas of the Tongass may not be adequate to sustain current levels of deer harvests, and, therefore, implementation of any of the 1997 or 2008 Forest Plan alternatives could lead to a significant possibility of a significant restriction on the abundance or distribution of the subsistence use of deer. The 2016 Forest Plan EIS made the same conclusion with regard to abundance and distribution, although it concluded that the possibility of a significant restriction would be less than the possibility under the 1997 or 2008 Forest Plans because of the lower than anticipated rates of timber harvests. Because harvest levels were expected to be the same under all of the alternatives considered for roadless rulemaking, the 2020 FEIS found that “future [timber] harvest and road building is not expected to result in large reductions in abundance or a major redistribution of deer under any of the alternatives [compared to the 2016 Forest Plan],” and that “the risk of a significant restriction would be the same under all of the alternatives.”

Regarding access to resources, the 2020 FEIS found that “[n]ew road construction is likely to result in the development of some new use patterns around some communities, but these changes are not likely to lead to a significant possibility of a significant restriction of subsistence access to the resources.” The analysis identified some differences between the alternatives, with Alternatives 1 “likely [to] have the lowest impact on subsistence users who prefer unroaded areas,” while likely resulting in “increas[ed] road density in already developed areas,” such that “[m]ore harvest is likely to occur in the vicinity of existing roads.” Nonetheless, across all alternatives, the FEIS found that “future harvest and road building are not expected to result in substantial interference with access to active subsistence use sites.”

Regarding competition for subsistence resources, the 2020 FEIS also noted the findings in the 2016 Forest Plan FEIS,

and again found that, for all the alternatives considered, “[t]he significant possibility of a significant restriction [in subsistence use], resulting from a change in competition, still exists but would be less than the possibility under [past Forest Plans] . . . because of the much lower anticipated rates of timber harvest and road construction” under the 2016 Forest Plan. When considering potential differences between alternatives, the FEIS noted that increases in competition could result from a variety of factors, including habitat reduction and the types of community access to subsistence resources. The FEIS assumed that “[n]ew road construction adjacent to communities with ferry access” and “[n]ew road construction adjacent to existing road systems where interties between communities exist” could result in increased competition, and noted that “Alternatives 1, 2, and 3 would have a higher potential to result in additions to existing road systems because harvest would be limited to areas outside existing IRAs,” whereas under Alternatives 4, 5, and 6, “harvest could also occur in these areas . . . but additional acres in presently undeveloped areas would also be available for harvest.” Under all of the alternatives, increased competition for subsistence resources was found to be most likely on Chichagof, Baranof, and Prince of Wales Islands, where competition for deer and other land mammals is already high and habitat has been significantly reduced due to prior timber harvest and associated road construction.

Considering these potential impacts, the USDA concludes that a significant possibility of a significant restriction of the subsistence use of deer due to increased competition exists in some locations under the reinstated 2001 Roadless Rule. While the FEIS noted that Alternative 1 would “likely have the lowest impact on subsistence users who prefer unroaded areas,” it assumed that concentrating development outside of IRAs would lead to increased competition in some locations, particularly areas near existing roads with existing roaded interties or ferry access to other communities. Therefore, the USDA conservatively concludes that reinstating the 2001 Roadless Rule may indirectly result in a significant restriction of subsistence use of deer by increasing competition for the resource in some locations. This conclusion is consistent with the conclusion reached in the 2020 Alaska Roadless Rule ROD.

Because the USDA concludes that there is a significant possibility of a significant restriction of subsistence use,

it proceeds to consider whether: (1) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (2) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (3) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions. The Department again notes, however, that it is not required to make these determinations for purposes of issuing this rule, but rather, makes these determinations voluntarily in light of the considerations noted above.

#### Necessary, Consistent With Sound Management of Public Lands

The USDA concludes that any significant restriction of subsistence uses that may result from reinstating the 2001 Roadless Rule is necessary, consistent with sound management principles for the utilization of NFS lands. As noted in the previous section, the potential restriction of subsistence uses exists under all of the alternatives. This decision reinstates restrictions on development within IRAs and may lead to the concentration of new development in areas near existing roads, indirectly leading to increased competition for subsistence resources in those areas. As explained above, however, reinstating these restrictions on development within IRAs will promote many important values that are central to the USDA's management of NFS lands, including protection of soil, water and air resources, species habitat, opportunities for recreation, traditional and cultural uses, and respect for indigenous knowledge, stewardship, and priorities. Moreover, this alternative would minimize overall road miles, and would therefore minimize some impacts to subsistence uses, including impacts on subsistence users who prefer roadless areas. The USDA also notes that in its 2021 comments, the Southeast Alaska Subsistence Regional Advisory Council (SEARAC) expressed the view that an exemption from the 2001 Roadless Rule would result in a decrease in the availability of subsistence resources and subsistence opportunities throughout the Tongass. Therefore, any restriction on subsistence uses that may result under Alternative 1 (which restores the 2001 Roadless Rule) is necessary, consistent with the sound management of NFS lands.

#### Amount of Public Land Necessary To Accomplish the Purposes of the Proposed Action

As explained in the 2021 NOPR, “[t]he stated purposes of the 2001 Roadless Rule included retention of the largest and most extensive tracts of undeveloped land for the roadless values of watershed protection and ecosystem health that these lands provide” (86 FR 66503). Specific to the Tongass, the 2021 NOPR noted that the 2001 Roadless Rule recognized “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” (86 FR 66501–66502). In addition to these original purposes of the 2001 Roadless Rule, the proposed action also serves the purpose of respecting indigenous knowledge, stewardship, and priorities.

Each of these purposes requires the USDA to evaluate, and take action with respect to, the Tongass as a whole. The Tongass as a whole was addressed in the 2020 FEIS. As explained above, in the section titled “Alternative 1 Appropriately Balances Competing Values,” the USDA believes that Alternative 1—which would reinstate the 2001 Roadless Rule throughout the Tongass—best balances the competing values that the Department must consider when managing the Tongass, which include both the ecological and social values served by the 2001 Roadless Rule and the need of local and Tribal communities for stability and predictability. Therefore, the USDA concludes that restoring the 2001 Roadless Rule's land classification system and associated prohibitions and exceptions to all IRAs within the Tongass is necessary to accomplish the purposes of this action, and that the action will involve the minimal amount of lands necessary to accomplish those purposes.

#### Reasonable Steps To Minimize Adverse Impacts to Subsistence Uses and Resources

The 2016 Forest Plan provides forest-wide standards and guidelines for subsistence and related standards and guidelines for riparian areas, fish, and wildlife, which collectively minimize adverse impacts to subsistence uses and resources. Many important subsistence areas are assigned land use designations that limit timber harvesting and road construction. For example, beach and estuary fringe forest-wide standards and guidelines generally apply to beach

fringe and estuarine areas not under more restrictive designations.

In addition, any adverse subsistence impacts of the proposed action are likely to be modest, at most. While the 2020 FEIS concluded that both this final rule (Alternative 1 in the FEIS) and the 2020 Alaska Roadless Rule (Alternative 6) could lead to a significant possibility of a significant restriction on the subsistence use of deer, the final rule is expected to result in fewer overall road miles than the 2020 Alaska Roadless Rule, and to have “the lowest impact on subsistence users who prefer unroaded areas.”

The potential site-specific effects of future actions, including potential future development near existing roads, on subsistence uses, and reasonable ways to minimize these effects, will be analyzed and considered during project-level design, analysis, and decision-making. Therefore, reasonable steps will be taken to minimize any potential adverse impacts on subsistence uses and resources resulting from the final rule.

#### 2001 Roadless Rule's Original Purpose

The USDA is increasingly mindful of the original stated purposes of the 2001 Roadless Rule in restoring the rule's restrictions for the Tongass, especially in the era of addressing climate change and the need to reduce and avoid greenhouse gas emissions. The stated purposes of the 2001 Roadless Rule included retention of the largest and most extensive tracts of undeveloped land for roadless values, watershed protection, and ecosystem health. The purposes also included 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, 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 plus years of experience managing the Tongass, with and without the rule in operation, provides an important window for assessing whether the 2001 Roadless Rule's prohibitions should be maintained.

A significant percentage of the Tongass 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 ensure that the additional 188,000 forested acres made available for timber harvest by the 2020



Alaska Roadless Rule, with the majority characterized as old-growth timber, will remain protected from timber harvest and roadbuilding.

Watershed protection was a prominent aspect in the decision to adopt the nationwide 2001 Roadless Rule. In the Tongass today, watershed protection goals are served both by the roadless rule and by complementary and reinforcing policies. Large tracts of undeveloped lands and watershed protections are protected by existing statutory and forest plan direction, including lands in designated Wilderness 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 Land Use Designations (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 2016 Forest Plan as Tongass 77 Watersheds and The Nature Conservancy/Audubon Conservation Areas) are currently managed for no old-growth timber harvest, thus minimizing adverse impacts to fisheries. Management direction of LUD II areas and key watersheds within IRAs would be afforded additional, regulatory protections by applying Roadless Rule protections.

Ecosystem health was another important element of the 2001 rulemaking. Although the FEIS reveals a modest difference between implementation of the 2001 Roadless Rule and the 2020 Alaska Roadless Rule, a key indicator of ecosystem health for the Tongass is a functional and interconnected old-growth ecosystem. While protection of productive old-growth would continue to occur under the 2016 Forest Plan's old-growth habitat conservation strategy and Southeast Alaska Sustainability Strategy (SASS) initiatives, existing connectivity between these old-growth reserves would be maintained and provided more long-term and durable protection under this final rule by prohibiting timber harvest on 188,000 acres that include significant blocks of old-growth timber.

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. While 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 road work 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. There are approximately 3,500 miles of deferred maintenance on the Tongass road system with a projected cost of \$59 million estimated in 2021. The amount of deferred maintenance indicates that this factor remains relevant during this rulemaking process.

The 2020 FEIS projected a range of 994 to 1,043 miles of new road construction (primarily in support of timber harvesting) over the next 100 years across all alternatives with Alternatives 1 and 2 at the low end and Alternative 6 at the high end and Alternatives 3, 4, and 5 in between. The locations of future harvests and associated roadbuilding are unknown, however, the additional 49 miles of new road projected under the 2020 Alaska Roadless Rule would be expected to adversely affect roadless values, watershed protection, and ecosystem health. The final rule is not expected to materially increase or decrease the amount of timber harvested in the Tongass, as that is governed by the 2016 Forest Plan and influenced by a number of other non-roadless factors.

#### *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 2001 Roadless Rule's approach to roadless area management is once again considered the best approach for roadless area management on the Tongass. 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 was temporarily enjoined or set aside. The State of Alaska's 2018 rulemaking petition asked 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 appear to be best managed through the local planning processes.

The Department acknowledges the importance of local planning processes and benefits of conservation solutions developed through NFMA planning procedures, such as occurred during the 2016 Forest Plan amendment process. Throughout the development of the 2020 FEIS and in response to this proposed rulemaking, the Department and Forest Service conducted extensive public engagement, received thousands of comments, including from Alaskan citizens; and conducted government-to-government consultation sessions. It is clear that roadless areas on the Tongass support multiple ecologic, social, cultural, and economic values that are significant locally, regionally, nationally, and even internationally. This includes the fact that the Tongass represents, along with adjacent areas in Canada, the largest intact tract of coastal temperate rainforest on earth, and it contains nearly a third of all old-growth temperate rainforests left in the world. This ecosystem is recognized for its relatively large forest carbon stocks and ability to sequester carbon that can help to moderate climate change. The Tongass stores more carbon than any other national forest in the United States. Large old-growth trees in the Tongass are important for carbon storage and sequestration, which can play a role in addressing the climate crisis.

Moreover, roadless areas on the Tongass support a wide variety of ecosystem services that the American people enjoy and maintain the productivity and health of the region's fisheries and fishing industry. The underlying goals and purposes of the 2001 Roadless Rule continue to be important, especially in the context of the values that roadless areas on the Tongass represent for local communities and Native peoples. These facts warrant the restoration of the 2001 Roadless Rule provisions.

The final rule ensures that future forest planning efforts maintain the conservation values associated with 9.37 million acres of Inventoried Roadless Areas.

In selecting the final rule among the several alternatives considered, the USDA has considered State of Alaska's policy preferences as expressed in its 2018 Petition. USDA has also reflected on the original decision rationale for applying the roadless rule to the Tongass in 2001. As described in the response to comments on the final rule on January 12, 2001, USDA noted that "the agency has considered the

alternatives of exempting and not exempting the Tongass, as well as deferring a decision per the proposed rule. Social and economic considerations were key factors in analyzing those alternatives, along with the unique and sensitive ecological character of the Tongass, the abundance of roadless areas where road construction and reconstruction are limited, and the high degree of ecological health.” Then, and again now, in making this decision, the Department considered the extraordinary ecological values of the Tongass and the cultural, social, and economic needs of the local forest dependent communities in Southeast Alaska. USDA believes that this management approach best reflects and responds to those multiple values.

From an ecologic perspective, restoring the 2001 Roadless Rule protections on the Tongass would help conserve natural resources by restoring roadless area management on 9.34 million acres, which protects 188,000 acres of forest from potential harvest and roadbuilding and would support retention of the largest and most extensive tracts of undeveloped land for the roadless values, watershed protection, and ecosystem health those lands provide. Roadless areas on the Tongass represent the world’s largest remaining, intact, old-growth temperate rainforest, which supports biodiversity and sequesters carbon. The final rule reflects the Administration’s priority on protecting those values.

Restoring the 2001 Roadless Rule protections also reflects the Administration’s priorities to build on the region’s primary private-sector economic drivers of tourism and fishing. Roadless areas on the Tongass include watersheds and areas important for fishing, hunting, outdoor recreation, and tourism, which support revenue and jobs in Southeast Alaska as well as local community well-being. Restoring 2001 Roadless Rule protections to those areas would support those values. This approach is consistent with the Department’s Southeast Alaska Sustainability Strategy (more about the strategy is available at <https://go.usa.gov/xMNzF>), announced on July 15, 2021, to serve the broader economy of Southeast Alaska, support community resiliency, and conserve the social, cultural, and ecologic values supported by the Tongass.

Restoring the 2001 Roadless Rule protections also responds to the January 26, 2021, Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships issued by President Biden (<https://>

[www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-02075.pdf](https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-02075.pdf)). This rule is directly responsive to unanimous input from Tribal Nations during government-to-government consultation sessions conducted in 2021 and 2022. Roadless areas on the Tongass are of immense cultural significance for Alaska Native peoples. Restoring application of the 2001 Roadless Rule to the Tongass would reflect the Administration’s commitment to strengthening nation-to-nation relationships, and incorporating indigenous knowledge, stewardship, and priorities into land management decision-making.

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

The 2001 Roadless Rule’s scope and applicability language was designed to avoid conflicts between the rule and forest plans, as well as to avoid unnecessary or duplicative administrative processes for the operation of the 2001 Roadless Rule. As such, the 2001 Roadless Rule expressly directed that the rule did not compel the amendment or revision of any land and resource management plan. See 36 CFR 294.14(b) (2001). When the Tongass Land Management Plan was amended in 2016, the Forest Service elected to directly implement the 2001 Roadless Rule’s timber harvesting prohibitions in determining suitability (see 2016 Forest Plan, Appendix A, page A–3, Appendix I, page I–177, indicating all Inventoried Roadless Areas were removed from the suitable land base during Stage 1 of the suitability analysis due to the 2001 Roadless Rule).

As part of the Department’s 2020 final rulemaking decision to exempt the Tongass from the 2001 Roadless Rule, the Department directed the Forest Service to issue a ministerial notice of an administrative change to the 2016 Forest Plan pursuant to 36 CFR 219.13(c), to alter the timber suitability of lands deemed unsuitable solely due to the application of the 2001 Roadless Rule. 36 CFR 294.51. Further, the 2020 rulemaking was clear that the administrative change simply provided conformance of the 2016 Forest Plan to the final rule in regard to lands suitable for timber production and would not change the level of timber harvest, how timber is harvested on the Tongass, or any other aspects of the 2016 Forest Plan. See 85 FR 68695. However, the ministerial administrative change was never issued, and no change has been made to the suitable timber lands designation in the 2016 Forest Plan.

#### **Public Comment Process**

The Forest Service published a Notice of Intent to prepare an EIS for the Alaska Roadless Rule in the **Federal Register** (83 FR 44252) on August 30, 2018. The Notice of Intent 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 Alaska: 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, over 144,000 comment letters or emails were received.

On October 17, 2019, the Department published a NOPR in the **Federal Register** (84 FR 55522) and on October 18, 2019, a Notice of Availability for the DEIS was published (84 FR 55952). On October 25, 2019, an amended Notice of Availability 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 meetings in 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.

On November 23, 2021, the USDA published the NOPR for repeal of the 2020 Alaska Roadless Rule, initiating a 60-day comment period (86 FR 66498). Approximately 112,000 comment documents were received (about 9,000 were unique submissions). In addition to the comments, 14 petitions with over 130,000 names attached were received.

#### **Cooperating Agencies**

As part of the 2020 rulemaking, the Forest Service invited 32 federally recognized Tribes in Alaska to participate as cooperating agencies during the rulemaking process. Originally, the State of Alaska and 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.

The Forest Service made several trips to potentially affected villages to work individually with Tribal cooperating agencies, provide technical expertise, and collect input. All Tribal cooperating agencies opposed the proposed rule (Alternative 6), while some expressed support for 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 Tribes' traditional use areas for the community use analysis boundaries in the development of the DEIS. USDA did not apply 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 these areas to the Tribes.

The USDA revisited the community use analysis boundary issue between the DEIS and the 2020 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. This data indicated Southeast Alaskans are traveling further for subsistence gathering.

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 USDA appreciates and recognizes the contributions of all the Alaska Native Tribes that participated in development of the 2020 FEIS but later withdrew as cooperating agencies. The USDA understands that the previous 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 decision in this rulemaking to restore 2001 Roadless Rule protections to the Tongass reflects input received by USDA and the Forest Service during additional government-to-government consultation sessions in 2021 and 2022 (see Consultation with Indian Tribal Governments section). USDA and the Forest Service recognize and value Indigenous stewardship, knowledge, cultural values, ways of life and connection to this land since time immemorial. The Department's hope is that restoring the 2001 Roadless Rule will create space for more creative solutions that are sensitive to the diverse interests of Alaskan Native Tribal communities and begin to restore the trust between our sovereign nations.

### Comments on the Proposed Rule

About 112,000 comments were received on the 2021 NOPR, including several petitions with more than 100,000 signatures in total, during the 60-day comment period. Several Southeast Alaska municipal and Tribal governments and industry organizations also submitted comments or resolutions. A large majority of comments supported repeal of the 2020 Alaska Roadless Rule and reinstatement of the 2001 Roadless Rule on the Tongass. The USDA considered all substantive comments submitted as part of this rulemaking, as well as comments submitted on the 2019 DEIS and testimony given at subsistence hearings in 2019. The following is a summary of the comments received relating to the 2021 NOPR and the agency response. A complete response to comments on the NOPR is contained in a response to comments report available through <https://www.fs.usda.gov/project/?project=60904>. Also, see Appendix H of the 2020 FEIS.

#### *Comments Opposed to the Repeal of the 2020 Alaska Roadless Rule and Reinstatement of the 2001 Roadless Rule on the Tongass*

*Comment:* Some commenters opposed the repeal of the 2020 Alaska Roadless Rule, stating it does not make sense for Alaska and hinders economic development. They state the 2001 Roadless Rule has been a major barrier to developing resources and improving transportation in Southeast Alaska. Some comments expressed that the rationale provided by the USDA when it exempted the Tongass in 2003 is still valid today.

*Response:* The 2001 Roadless Rule does not prohibit many of the activities cited in these comments. For example, the 2001 Roadless Rule does not prohibit tree removal for the

construction or maintenance of utility lines. While new temporary or permanent roads are not permitted in IRAs, with exceptions, temporary linear construction zones can be authorized to facilitate the construction of utility lines. The 2001 Roadless Rule does not prohibit the construction, operation, and maintenance of hydropower facilities, including otherwise lawful road construction associated with such facilities. The 2001 Roadless Rule does not prohibit statutorily authorized mineral exploration or development, including roads that may be needed to provide access to mining claims or mining facilities. The 2001 Roadless Rule also provides exceptions to allow the construction, reconstruction, or realignment of Federal aid highways in IRAs and road construction or reconstruction pursuant to reserved or outstanding rights, and as provided by statute or treaty. This includes the State of Alaska's rights under section 4407 of Public Law 109–59, as amended. For additional discussion of the activities allowed under the 2001 Roadless Rule, see pages 3–166, 3–167, 3–169, 3–170, 3–178, and 3–179 of the 2020 FEIS.

#### *Comments in Support of the Repeal of the 2020 Alaska Roadless Rule and Reinstatement of the 2001 Roadless Rule on the Tongass*

*Comment:* Many commenters supported the reinstatement of the 2001 Roadless Rule in Alaska, stating that restoring Roadless Rule protections in the Tongass will support many environmental, economic, and cultural values, and will help maintain the way of life of the Native peoples who live there. Many requested that the USDA fully restore 2001 Roadless Rule protections on the Tongass; as well as end large-scale old-growth timber sales on the entirety of the Tongass.

*Response:* The USDA has considered the importance of roadless area conservation for a combination of cultural, social, ecological, and economic values. The USDA recognizes that the underlying goals and purposes of the 2001 Roadless Rule continue to be important, especially in the context of the values that roadless areas on the Tongass represent for local communities and Native peoples, and the multiple ecologic, social, cultural, and economic values supported by roadless areas on the Forest.

#### *Comments Relating to the Alaska Roadless Rule Citizens Advisory Committee (CAC) Recommendations*

*Comment:* Commenters were concerned that the USDA disregarded the substantial work of the CAC, its final

recommendations (November 2018), its recommended exceptions for timber harvesting and road building, and its input on unique characteristics found on the Tongass.

*Response:* The Forest Service considered the input and recommendations provided by the CAC to the State of Alaska. It is important to recall that the CAC's Final Report (page 11) stressed that it "represents options to consider for analysis, not recommendations for what the Committee expects or desires to see as the final Alaska Roadless Rule." Many of the CAC options were incorporated into Alternatives 2, 3, 4, and 5 of the 2020 FEIS and were considered during both the 2020 rulemaking and as part of today's final rule.

#### *Comments on Effects to Energy, Renewable Energy, and Infrastructure*

*Comment:* Commenters were concerned that repeal of the 2020 Alaska Roadless Rule would make it more expensive to site, plan, permit, develop, operate, and maintain energy and renewable energy projects such as hydropower and geothermal and associated infrastructure. Some commenters stated that while the effects on the energy systems of Southeast Alaska may not be immediate, the action will have a deleterious impact on consumer rates and the ability for electric utilities to access crucial infrastructure and constitutes a significant energy action as defined in Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, issued May 18, 2001).

*Response:* The 2001 Roadless Rule has and will continue to accommodate access for qualified mining, energy, and community infrastructure needs while also conserving the multiple ecologic, social, cultural, and economic values supported by roadless areas on the forest. The USDA has considered this 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 believes that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action as defined in Executive Order 13211. Therefore, a statement of energy effects is not required.

The Federal Power Act (FPA) grants the Federal Energy Regulatory

Commission (FERC) the authority to issue and administer licenses for hydropower projects. For projects located on NFS lands, section 4(e) of the FPA requires FERC to assure the project will not interfere or be inconsistent with the purpose for which the forest reservation was created or acquired. While section 4(e) of the FPA gives the Forest Service the authority to impose mandatory conditions in the FERC license to ensure the adequate protection and use of forest land and resources, these 4(e) conditions cannot usurp FERC's role in deciding whether to license a hydropower facility. In short, if FERC decides that a road is necessary for facility development, the Forest Service cannot veto the project or road, but rather is limited to imposing reasonable terms and conditions necessary for the adequate protection and utilization of the forest. The 2001 Roadless Rule (at 36 CFR 294.12(b)(3) (2001)) provides that a road may be constructed or reconstructed in an IRA if "[a] road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty." The FPA is one such statute.

The 2001 Roadless Rule also does not prohibit the construction or maintenance of transmission lines. While new temporary or permanent roads are not permitted in IRAs, temporary linear construction zones can be authorized to facilitate the construction of transmission lines, along with other applicable exceptions set forth in the 2001 Roadless Rule. The courts have sustained that interpretation on more than one occasion. The USDA has acknowledged that the restriction on road construction, including the construction of access roads, may pose a challenge for transmission routes that cross IRAs, potentially increasing construction and maintenance costs. However, based on analysis for previous transmission projects on the Tongass, roaded alternatives are not necessarily less expensive to construct and maintain than those relying on other means of access. Construction and maintenance costs depend on terrain, distance to communities, and other factors. Helicopter access, temporary construction zones, and/or trails can also be used to provide access and may even be less expensive than the road construction and maintenance costs associated with permanent roads in remote areas. In addition, the rights-of-way granted in section 4407 of Public Law 109-59, as amended, also allows for specified roaded access in the forest for transmission lines and other utility systems.

The 2001 Roadless Rule does prohibit road construction in IRAs for new leasable mineral projects, including geothermal projects. Although road construction is prohibited, leasable mineral projects are not prohibited in IRAs, including the incidental cutting, sale, and/or removal of trees associated with such projects. Mineral leasing laws are clear that mineral leasing is a wholly discretionary activity. In making a decision to make minerals available for leasing on the Tongass, the determination as to what restrictions should be placed on surface occupancy, as well as how access will be provided, are within the discretion of the Forest Service. As discussed in the 2020 FEIS, no leasable minerals are currently being produced on the Tongass and demand is expected to remain low (p. 3-58). In addition, no geothermal development activity is anticipated in the near future. Therefore, the repeal of the 2020 Alaska Roadless Rule and the reinstatement of the 2001 Roadless Rule will have limited impact on mineral leasing economic activity.

#### *Comments About Alaska Mental Health Trust Lands*

*Comment:* Commenters were concerned that repealing the 2020 Alaska Roadless Rule would adversely impact the value of Alaska Mental Health Trust (AMHT) lands, build uncertainty around access to AMHT lands, and impede the State's ability to generate revenue and to abide by the AMHT Enabling Act.

*Response:* Access to non-Federal lands, including AMHT lands, is guaranteed by ANILCA and the 2001 Roadless Rule recognizes statutory rights to access. The Forest Service has already issued the easements requested by the AMHT to access their conveyed lands. None of the easements issued as part of the AMHT Act of 2017 crossed IRAs.

#### *Comments About Compliance With ANILCA*

*Comment:* Commenters assert that implementing the 2001 Roadless Rule violates ANILCA because it withdraws more than 5,000 acres (sec. 1326(a)) and it violates all three of ANILCA's "no more" clause directives (sec. 1326 (a) and (b) and sec. 708).

*Response:* Reinstating the 2001 Roadless Rule does not constitute a withdrawal. Under section 1326(a) of ANILCA, the operative issue is whether the action taken exempts portions of the public land within the Tongass from the operation of the public land laws. Applying an agency regulation that protects and conserves the inventoried

roadless areas of the Tongass does not exempt these lands from operation of the public land laws; rather, it's an example of the Forest Service's statutory responsibility to provide for the multiple use and sustained yield of the products and services from units of the National Forest System (NFS), *Southeast Conference v. Vilsack*, 684 F.Supp.2d 135, 144 (D.D.C. 2010). This protective designation is consistent with the agency's responsibility to plan for multiple uses of NFS lands, *Wyoming v. USDA*, 661 F.3d 1209, 1234–35 (10th Cir. 2011) (holding the Roadless Rule consistent with USDA's multiple use authorities).

#### *Comments Related to Subsistence*

*Comment:* In its 2021 comments, the Southeast Alaska Subsistence Regional Advisory Council (SEARAC) reiterated its subsistence-related concerns shared with the Forest Service in 2019 and 2020, including the SEARAC's conclusion that an exemption from the 2001 Roadless Rule would result in a decrease in the availability of subsistence resources and subsistence opportunities throughout the Tongass. Some commenters stated that access to subsistence resources would be better under the 2020 Alaska Roadless Rule, while others stated that subsistence resources would be better protected under the 2001 Roadless Rule.

*Response:* This final rule repeals the 2020 Alaska Roadless Rule and reinstates the 2001 Roadless Rule on the Tongass. This is consistent with the management direction described in the 2016 Forest Plan and upon which the environmental analysis for the 2016 Forest Plan was based. Reinstatement of the 2001 Roadless Rule will prevent any additional effects on subsistence that could indirectly result from the 2020 Alaska Roadless Rule due to increased access and competition.

Although rulemaking related to the management of roadless areas on the Tongass is a programmatic policy decision and does not make a specific decision on whether to "withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition" of NFS lands that is subject to a determination under section 810 of ANILCA, subsistence hearings were conducted in 19 communities across the Tongass between the Draft and Final EISs for the 2020 Alaska Roadless Rule. Testimony regarding subsistence activities that was submitted at those hearings has been further considered in the current rulemaking effort, as have the comments received from SEARAC and other comments and input.

The USDA concluded that the 2020 Alaska Roadless Rule may eventually indirectly result in a significant restriction of the subsistence use of deer by increasing overall competition for the subsistence resource by urban and rural residents, especially on Chichagof, Baranof, and Prince of Wales Islands where competition for deer and some other land mammals is already high and habitat capability has been significantly reduced due to prior timber harvest and road construction (85 FR 68692). As stated above, this final rule prevents any additional effects on subsistence that could result from the 2020 Alaska Roadless Rule due to increased access and competition.

In compliance with NEPA and section 810 of ANILCA, future projects that include timber harvest, road construction, and/or road reconstruction that may significantly impact the human environment or significantly restrict subsistence uses would undergo site-specific analysis when they are proposed, and the potential impacts to subsistence resources and users would be assessed as part of these project-level analyses. Project-level analyses require a subsistence evaluation and finding in accordance with ANILCA section 810, which specifically address potential impacts in terms of: (1) resource distribution and abundance; (2) access to resources; and (3) competition for the use of resources.

#### *Comments About Mining and Access to Minerals*

*Comment:* Commenters expressed concern that reinstating the 2001 Roadless Rule would limit roaded access to mineral exploration and development and that the USDA should work with other agencies to update mineral studies conducted in the past. Some stated that even the perception of regulatory uncertainty brought by the 2001 Roadless Rule will limit investments in mineral projects.

*Response:* The 1872 Mining Law gives a statutory right of reasonable and necessary access related to the exploration and development of mineral resources, and the 2001 Roadless Rule recognizes this right. This statutory right is subject to reasonable regulation for the protection of surface resources. For any area in an IRA that is open to mineral entry, locatable mineral mining, including certain activities ancillary to mining (e.g., access roads for exploration and development), may be approved. Whether or not roaded access is needed to provide reasonable access is determined on a case-by-case basis based on conditions specific to each request. This process is no different

than how requests outside of IRAs are handled, as regardless of where the proposed mining activity is located, the Mining Law provides for reasonable access.

#### *Comments on Fishing, Hunting, Outdoor Recreation, and Tourism*

*Comment:* Commenters stated that reinstating the 2001 Roadless Rule would benefit fishing, hunting, recreation, and tourism users and industry by providing remote and adventurous recreation opportunities and healthy, intact watersheds and habitat. They state that the 2001 Roadless Rule is crucial to protecting these opportunities and resources for Southeast Alaska residents and visitors from across Alaska and around the globe.

*Response:* Roadless areas on the Tongass include watersheds and areas important for fishing, hunting, outdoor recreation, and tourism, which provide revenue and jobs in Southeast Alaska as well as local community well-being. Subsistence, commercial, and sport fisheries in both marine and freshwater systems, for example, are all important to the way of life for Southeast Alaskan residents. In comparison to the current rule, this final rule reduces the potential for road and harvest effects on fisheries in areas that will again be protected by the 2001 Roadless Rule and provides more durable protections to these resources than those provided under the forest plan.

#### *Comments Concerned About Declining Community Stability*

*Comment:* Commenters question why reinstating the 2001 Roadless Rule is needed when the 2016 Forest Plan adequately provides for the ecological sustainability of the Tongass. They state that every community in Southeast Alaska is in decline, population is declining, and jobs are being eliminated, and they ask that the USDA reconsider its conclusion that the social and economic hardships to Southeast Alaska are outweighed by the ecological benefits of reinstating the 2001 Roadless Rule. They stated that if sustainability were the priority, policy should prioritize well-conceived road building and expanding job opportunities and commerce to encourage additional infrastructure to reduce the cost of living.

*Response:* The 2016 Forest Plan was developed while the 2001 Roadless Rule was in effect on the Tongass. While the 2016 Forest Plan Final EIS did include alternatives that would be reliant on a roadless rulemaking (Alternatives 2 and 3), the ROD for the 2016 Forest Plan

concluded that, “the best way to bring stability to the management of roadless areas on the Tongass is to not recommend any modifications to the Roadless Rule” (Tongass Forest Plan ROD, p. 19).

The 2001 Roadless Rule provides flexibility for the development of roads, hydropower, transmission lines, and minerals, which are acknowledged as important to the socioeconomic well-being of Southeast Alaska residents along with the subsistence, cultural, and recreational values that also contribute to socioeconomic well-being. Restoring the 2001 Roadless Rule protections reflects this Administration’s priorities to build on the region’s primary private-sector economic drivers of tourism and fishing. Roadless areas on the Tongass include watersheds and areas important for fishing, hunting, outdoor recreation, and tourism, which generate the majority of employment opportunities and private sector revenue across Southeast Alaska that, in turn, supports local community well-being. This approach is consistent with the USDA’s broader SASS initiative to serve the broader economy of Southeast Alaska, support community resiliency, and conserve the social, cultural, and ecologic values supported by the Tongass.

#### *Comments Regarding Stability in Forest Management*

*Comment:* Commenters note that the Forest Supervisor concluded in the 2016 Forest Plan ROD that “the best way to bring stability to the management of roadless areas on the Tongass is to not recommend any modifications to the Roadless Rule,” thereby benefiting local communities by reducing local conflicts over forest decisions and community tensions. Others, however, stated that the 2020 Alaska Roadless Rule is more effective in providing stability in forest management.

*Response:* This final rule is in alignment with the conclusions reached in the 2016 Forest Plan ROD to retain the regulatory protections of the 2001 Roadless Rule, thereby benefiting local communities by reducing conflicts over forest management decisions and community tensions. The 2001 Roadless Rule provides flexibility for the development of roads, hydropower, transmission lines, and mineral resources.

#### *Comments Concerned About Natural Resource-Based Employment That Relies on a Healthy Forest*

*Comment:* Commentors state that the healthy forests and ecosystems on the Tongass are crucial to the economic

well-being of many communities in Southeast Alaska. Pointing out food security concerns and the high cost of importing food to Southeast Alaska communities, they state that their economic well-being depends on adequate subsistence resources. Commentors also state that the economies of many Southeast Alaska communities depend on commercial fishing, guiding and tourism, trapping, work in fisheries, wildlife and forest management, and small-scale harvest of forest products. They stated that all of these components of their economies depend on maintaining the ecological integrity of the forest and intact salmon-producing watersheds. Conversely, commentors also are concerned about impacts to industries like timber, energy, and mining.

*Response:* This final rule repeals the 2020 Alaska Roadless Rule and reinstates the 2001 Roadless Rule management regime expected by the 2016 Forest Plan and is expected to avoid any additional effects on subsistence due to the increased access and competition for resources under the 2020 Alaska Roadless Rule. This final rule also offers more long-term, regulatory protection for watersheds and other areas important for fishing, hunting, outdoor recreation, and tourism, which support revenue and jobs in Southeast Alaska as well as local community well-being. As discussed above in the rationale for the final rule, this policy change for the Tongass can be made without major adverse impacts to the timber, energy, and mining industries, while recognizing the importance of the primary economic drivers in Southeast Alaska, fishing and tourism, and contributing to the continued assurances that the carbon storage and sequestration associated with the Tongass are realized.

#### *Comments on the Balance of Competing Interests of All Small Businesses*

*Comment:* Commenters state that the Forest Service should work to balance competing interests to allow all industries a fair and equal opportunity for success while still meeting the conservation goals of the agency.

*Response:* Reinstating the 2001 Roadless Rule reflects this Administration’s priorities to build on the region’s primary private-sector economic drivers of tourism and fishing. Roadless areas on the Tongass include watersheds and areas important for fishing, hunting, outdoor recreation, and tourism, which support employment opportunities and private-sector revenue and jobs in and across Southeast Alaska. This contribution to

employment and revenue generation in turn supports local community well-being.

With regard to natural resource-based businesses, the 2020 FEIS indicates that direct employment in natural resource-based industries (visitor, seafood, mining, and timber) accounted for 28 percent of total employment in Southeast Alaska. Of the total natural resource-based employment, the visitor and seafood industries accounted for 90 percent of employment, while mining and timber accounted for 10 percent (2020 FEIS, pp. 3–32 to 3–33). The Final EIS also indicates that the Warehousing, Utilities, and Transportation sector of Southeast Alaska employment accounts for two percent of total employment in Southeast Alaska.

The economic priorities reflected in this final rule are consistent with the USDA’s SASS announced in July 2021. These competing interests have been weighed and documented in the 2022 Alaska Roadless Rule Regulatory Impact Assessment and Cost-Benefit Analysis. This Administration and USDA believe that a policy change for the Tongass can be made without significant adverse impacts to the timber and mining industries, while recognizing the importance of the tourism, and fishing industries.

For the timber industry, this final rule limits some harvest opportunities that would have been potentially available following the 2020 Alaska Roadless Rule’s removal of the regulatory roadless prohibitions and adjusting the suitable timber base. However, this final rule is not expected to alter projections for timber jobs and income compared to those under the 2020 Alaska Roadless Rule. Actual timber employment and income in Southeast Alaska would depend on factors and choices made by purchasers that exist outside the context of roadless restrictions; those choices may change as markets and prices shift, as well as other factors (2020 Alaska Roadless Rule Final EIS, page 3–56).

This final rule is not expected to affect existing or future locatable mineral exploration or mining activities on the Forest because the right of reasonable access is guaranteed by the General Mining Law of 1872. Exploration, mining, and mineral processing activities, including road construction and reconstruction, are presently allowed to the extent provided by statute in IRAs and will continue to be allowed under this final rule.

#### *Comments Supporting Commercial and Non-Commercial Fishing*

*Comment:* Commentors stated that roadless areas provide essential and

intact spawning, rearing, and migratory habitat for salmon and that protecting roadless areas benefits commercial, sport, and subsistence fishing. They further state that intact habitats such as those in roadless areas are more resilient to changing environmental conditions caused by climate change.

*Response:* The 2020 FEIS acknowledges that subsistence, commercial, and sport fisheries in both marine and freshwater systems are all important to the way of life for Southeast Alaskan residents. The abundant aquatic systems of the Tongass provide spawning and rearing habitats for most fish produced in Southeast Alaska. Maintenance of this habitat and associated high-quality water is a focal point of public, State, and Federal natural resource agencies, as well as user groups, Native organizations, and individuals. In comparison with the current rule, this final rule reduces the potential for road and harvest effects on fisheries in areas that will again be better protected by the 2001 Roadless Rule. As the FEIS explains, Alternative 1 “would have the lowest potential harvestable acres, the lowest number of new and rebuilt roads constructed, and likely the lowest number of new and reconstructed stream crossings of any alternative.” Although “these numbers are not substantially different than the other alternatives,” “[a]ll stream crossings increase risks to fish passage, and new crossings have a greater risk of sediment effects. (FEIS 3–138). Alternative 1 is therefore consistent with protection of intact spawning, rearing, and migratory habitat for salmon and the fishers who depend on that habitat.

Reinstating the 2001 Roadless Rule will help to ensure that the Tongass will continue to provide for ecosystem resiliency in changing climatic conditions.

*Comments on the Adverse Effects of Roads on Fish and Fish Habitat, Including Salmon*

*Comment:* Commenters noted that roads can have adverse impacts including increased sediment loads, modified stream flows, habitat fragmentation, degraded water quality, increased stream temperatures, fish passage barriers, loss of genetic fitness, loss of spawning and rearing habitat, and increased vulnerability to catastrophic events. They were concerned about the backlog of bridges and culverts that currently fail to meet fish passage standards. They stated that instead of building costly new roads, the Forest Service should invest in restoration, including the existing

backlog of culverts that impede fish passage (known as “RED crossings”).

*Response:* This final rule repeals the 2020 Alaska Roadless Rule and reinstates the 2001 Roadless Rule, thus restricting roadbuilding in IRAs on the Tongass, with limited exceptions. As noted in the 202 FEIS, Alternative 1 “would have the lowest potential harvestable acres, the lowest number of new and rebuilt roads constructed, and likely the lowest number of new and reconstructed stream crossings of any alternative.”

As of 2020, the Tongass has documented a total of 1,136 crossings (32 percent) that do not meet current fish passage standards, otherwise known as RED crossings, as established by the Alaska Department of Fish and Game and the Forest Service. Fragmented habitat upstream of RED crossings is estimated to equal about 0.4 percent (64 miles) and 2 percent (182 miles) of all mapped anadromous and resident fish stream miles on the Forest, respectively. The restrictions on roadbuilding in the 2001 Roadless Rule will protect the watersheds within IRAs on the Tongass, and the USDA will seek opportunities to leverage funding through the USDA’s SASS, the 2021 Infrastructure Investment and Jobs Act, the 2022 Inflation Reduction Act, and other sources to target priority restoration needs on the Tongass.

*Comments Related to Wildlife*

*Comment:* Commenters noted the high-value habitat that roadless areas provide for old-growth dependent species. Many species were mentioned, including birds, bears, wolves, and deer, among others. The commenters noted that the best method to ensure protection of old-growth dependent species and endemic species habitat is the reinstatement of 2001 Roadless Rule protections for the Tongass.

*Response:* Conserving terrestrial habitat, aquatic habitat, and biological diversity was a key issue in the development of the 2020 FEIS, recognizing that the Tongass includes large, undeveloped, and natural land areas that represent expansive, unfragmented blocks of wildlife habitat that is not available elsewhere in the NFS outside of Alaska. As stated above, the final rule restores roadless area management on 9.37 million acres, which protects 188,000 acres of forest from potential timber harvest and roadbuilding and retains the largest and most extensive tracts of undeveloped land for the habitat, biodiversity, and ecosystem health those lands provide.

*Comments Related to Suitability of Lands for Timber Harvest*

*Comment:* Commenters noted that the 2020 Alaska Roadless Rule directed the Tongass Forest Supervisor to issue a notice of administrative change to formally make 188,000 acres suitable for timber harvest, but that administrative change was not made. Some commenters stated that because the administrative change was never made, repeal of the 2020 Alaska Roadless Rule will not reduce the areas available for harvest or enhance ecological, wildlife, hunting, fishing, recreation, tourism, subsistence, cultural, and spiritual values. Other commenters stated that without the protection of the 2001 Roadless Rule, there is no reason to expect that the suitable timber base would not be expanded in the future.

*Response:* The 2020 Alaska Roadless Rule directed the Tongass Forest Supervisor to issue an administrative change to the 2016 Forest Plan (36 CFR 219.13(c)) that would make 188,000 acres of additional forest land suitable for timber harvest. While the Forest Service was determining the changes to the plan necessary under this direction, President Biden issued Executive Order 13990 (published on January 20, 2021) and the USDA began work to review the 2020 Alaska Roadless Rule in light of that order. If the 2020 Alaska Roadless Rule was not repealed, this administrative change to increase forest land available for timber harvest would proceed. Therefore, it is appropriate to consider the additional areas available for harvest under the 2020 Alaska Roadless Rule, as well as the ecological values of those areas.

The 2020 Alaska Roadless Rule removed the prohibitions on harvest in the 2001 Roadless Rule and could potentially result in a higher degree of habitat fragmentation and corresponding adverse effects on wildlife. The 2020 Alaska Roadless Rule could also potentially lead to more road construction and reconstruction, which could result in slightly higher adverse impacts to fish and aquatic resources and less protection for high-value watersheds. Additional roads in remote areas could provide more opportunities for roaded recreation and subsistence users who prefer roaded settings under the 2020 Alaska Roadless Rule. However, users who prefer non-motorized remote recreation, outfitter/guide use, and subsistence use of remote settings could be more adversely affected.

*Comments on Compliance With the Tongass Timber Reform Act “Seek To Meet Market Demand” Provision*

*Comment:* Commenters assert the Forest Service has historically failed to meet (or even approach) performance goals identified in its 2016 Tongass Forest Plan and has therefore not complied with its obligation to “seek to meet market demand.” They state that volumes offered for sale have consistently fallen short of volumes listed in 5-year schedules of timber sales and that many sales fail to sell due to poor design.

*Response:* The Tongass, in compliance with the TTRA, seeks to provide a supply of timber to meet market demand subject to appropriations and to the extent consistent with providing for the multiple use and sustained use of all renewable forest resources and other applicable laws. These other laws that apply to management of the National Forest System, such as the Organic Act, the Multiple Use and Sustained Yield Act, and the NFMA, provide broad authority and discretion to the Secretary of Agriculture to preserve, protect, and administer NFS lands and resources.

Timber is one of many resources managed by the Tongass in accordance with the Organic Act and the Multiple Use and Sustained Yield Act. While section 101 of the TTRA directs the Forest to “seek to meet market demand,” it specifically states that this direction is subject to appropriations, other applicable law, and NFMA. It is also noteworthy that section 101 was written to eliminate the timber supply mandate in the section of the ANILCA that it amended. Therefore, TTRA envisions not an inflexible or specific harvest level, but a balancing of the current market, law, and other uses, including preservation (*Alaska Wilderness Recreation and Tourism Association v. Morrison, et al.*, 67 F.3d 723 (9th Cir. 1995)). As specifically noted in the 2020 FEIS, pages 3–38 to 3–39, the actual volume of timber offered each year on the Tongass can fluctuate substantially due to a variety of factors, including but not limited to appropriations, competing agency and Forest obligations, NEPA resource evaluations and analysis, litigation, and market conditions.

The 2016 Forest Plan projections as applied in the 2020 FEIS remain the most reasonable estimates of long-term harvest levels to inform the decision among alternatives in this rulemaking. Recalculations of market demand projections and what timber harvest levels the Forest Plan should consider to

seek to meet that demand are better addressed through the forest planning processes.

*Comments Concerning Consideration of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETY-LU)*

*Comment:* Commenters assert that repeal of the 2020 Alaska Roadless Rule fails to consider or analyze Congress’s decision in SAFETY-LU transportation legislation to implement the 2004 Southeast Alaska Transportation Plan by authorizing 19 easements allowing for road construction in the Tongass irrespective of IRA status.

*Response:* Section 4407 of Public Law 109–59, as amended, grants the State of Alaska a statutory right to the specific easements authorized in that Act, and the 2001 Roadless Rule recognizes such statutory rights (36 CFR 294.12(b)(3)). Therefore, should the State of Alaska choose to proceed with road construction on these easements, the 2001 Roadless Rule would not prohibit that development. Section 4407’s provisions affect about 25 transportation and utility corridors located across the Tongass to connect communities and provide reciprocal access to NFS lands over State-managed lands.

*Comments About Projects That May Have Roads in Early Stages of Development*

*Comment:* Commenters requested that the Forest Service consider effects to projects in the early stages of road development that relied on the 2020 final rule and may now be prohibited by this rulemaking.

*Response:* The USDA is not aware of any early-stage road development projects on the Tongass which rely on the 2020 Alaska Roadless Rule. The only roads requested by any entity within IRAs on the Tongass since the decision on the 2020 Alaska Roadless Rule are those associated with a locatable mining project; these roads fall under the exceptions in the 2001 Roadless Rule that recognize the statutory rights provided by mining law.

*Comments About Effects on Transportation Systems Within the Tongass*

*Comment:* Commenters stated that the limitations on roadbuilding under the 2001 Roadless Rule have been a major barrier to accessing resources and improving transportation within the Tongass.

*Response:* The 2001 Roadless Rule provides exceptions to allow the construction, reconstruction, or realignment of Federal aid highways in

IRAs and road construction or reconstruction pursuant to reserved or outstanding rights, or as provided by statute or treaty. This includes the State of Alaska’s rights under section 4407 of Public Law 109–59, as amended.

*Comments Supporting a Process for Improved Local, Tribal, and Community Input*

*Comment:* Commenters urged the Forest Service to ensure a process is in place for improved local input and review of local community priorities, possibly through community economic development plans or other community planning processes.

*Response:* The USDA has continued meaningful consultation throughout this rulemaking process. The Forest Service welcomes local, Tribal, and community input. Receiving such input is essential to the agency for determining how best to develop plans and accomplish projects. When there are projects with outcomes that may have substantial influence on a community or region’s economic, cultural, and ecological well-being, the Forest Service often convenes open houses to garner input or formally establishes working groups to develop recommendations and provide input from a cross-section of those directly affected, including local, Tribal, and community leaders. For example, a Federal advisory committee (Tongass Advisory Committee) was formed to provide recommendations on developing an ecologically, socially, and economically sustainable forest management strategy for the Tongass during the drafting of the 2016 Forest Plan Amendment (2016 Forest Plan, Appendix B).

As previously noted, on January 26, 2021, President Biden directed all federal agencies to review Tribal consultation policies and practices and recommit to more robust nation-to-nation relationships and respect for federal trust responsibilities (Executive Order 13175). The Forest Service invites Tribal input through formal government-to-government consultation, and Alaska Native corporation input through formal government-to-corporation consultation (Forest Service Handbook (FSH) 1509.13, Chapter 10). The USDA consulted with Tribes and Alaska Native corporations at the beginning of this rulemaking effort as well as during the public comment period. There have been ongoing government-to-government consultations involving Tribes pertaining to repealing the 2020 Roadless Rule. The first was conducted July 7–8, 2021, and involved nine Tribes: the Central Council of Tlingit



and Haida Indian Tribes of Alaska; the Organized Village of Kake; the Ketchikan Indian Community; the Klawock Cooperative Association; the Organized Village of Saxman; the Skagway Traditional Council; the Organized Village of Kasaan; the Douglas Indian Association, and the Hoonah Indian Association. A virtual consultation meeting was held with five tribes in August 2021. Another consultation was held February 18, 2022, at the request of one Tribe: the Organized Village of Kasaan. USDA has continued its coordination and consultation with Tribal Nations throughout development of the final rule, including another consultation with seven tribes on September 19, 2022. Tribes have also reaffirmed that their comments submitted during the 2020 EIS process are still valid (refer to appendix H of the 2020 FEIS).

In addition, the Forest Service has been working closely with local communities, Tribes, the State, and a broad range of partners through the OneUSDA Southeast Alaska Sustainability Strategy (SASS). The SASS process, projects and investments reflect USDA's commitment to a community-driven investment strategy that reflects input from local communities; acknowledges, respects and honors Indigenous stewardship, knowledge, and priorities; and values the many collaborative relationships that have developed to support social, cultural, ecologic, and economic sustainability and opportunity in the region.

Community economic development plans (or similar plans) may also be shared with the Forest Service at any time to inform and help ensure that the management of NFS lands is considerate of local, Tribal, and community needs. For example, the Southeast Conference 2025 Economic Plan, a comprehensive economic development strategy for 2021–2025, was one of the screening tools used for selecting SASS investment proposals for funding.

#### *Comments on the Rulemaking Process for the 2020 Alaska Roadless Rule*

*Comment:* Some commenters stated that the process leading to the 2020 Alaska Roadless Rule was inappropriately “top down” and that the process led to a decision (full exemption, the 2020 Alaska Roadless Rule) that did not resemble a durable solution.

*Response:* The long regulatory and litigation history concerning roadless area management on the Tongass is evidence that durable solutions for managing inventoried roadless areas on

the Tongass are challenging. The concerns expressed during this rulemaking reflected a sentiment that the 2020 decision was a “top down” decision, and it is true that the 2020 Alaska Roadless Rule was not representative of the vast majority of commenters who expressed support for maintaining roadless rule protections. In making this decision, the USDA has considered all of the comments throughout both rulemaking efforts, and the comments expressed during Tribal consultation. The USDA recognizes that the underlying goals and purposes of the 2001 Roadless Rule continue to be important, especially in the context of the values that roadless areas on the Tongass represent for local communities and Native peoples, and the multiple ecologic, social, cultural, and economic values supported by roadless areas on the Forest.

#### *Comments on the 2020 Alaska Roadless Rule Damaging Trusts and Relationships Between the Forest Service and Regional Stakeholders*

*Comment:* Some commenters stated that the 2020 Alaska Roadless decision damaged trusts and relationships.

*Response:* This final rule is directly responsive to unanimous input from Tribal nations provided during government-to-government consultation sessions conducted in 2021 and reaffirmed in additional consultations in 2022. Roadless areas on the Tongass have immense cultural significance for Alaska Native peoples. Restoring application of the 2001 Roadless Rule to the Tongass reflects this Administration's commitment to strengthening nation-to-nation relationships with Tribes and incorporating traditional ecological knowledge, shared stewardship, and priorities into land management decision-making.

The final rule also is more responsive to the vast majority of comments received as part of the 2020 rulemaking as well as the 2021 repeal effort. This final rule reflects the consideration of the extraordinary ecological values of the Tongass National Forest and the cultural, social, and economic needs of the local forest dependent communities in Southeast Alaska. USDA believes that this management approach best reflects those multiple values.

#### *Comments About Preordained Outcome*

*Comment:* Some commenters argued that the Administration and USDA's decision to repeal the 2020 Alaska Roadless Rule was preordained in violation of NEPA. Some commenters pointed to the Southeast Alaska

Sustainability Strategy's statement that the agency would pursue a repeal of the 2020 Tongass Exemption rule as proof of such predetermination.

*Response:* No NEPA violation occurs simply because an Administration or agency expresses its initial policy preferences before or at the beginning of a rulemaking. Here, the agency has carefully reviewed the potential environmental consequences before arriving at its decision.

#### *Comments About Changed Circumstances and New Information*

*Comment:* Some commenters noted that there may be changed circumstances or new information that render the 2020 EIS's analysis inadequate to support this rulemaking and urge a new or supplemental EIS be prepared.

*Response:* The proposed rule made a preliminary determination that the 2020 FEIS remained an effective analysis of the environmental effects of returning the Tongass to operation under the 2001 Roadless Rule. Commenters on the proposed rule have suggested that new information or changed circumstances related to (1) the USDA Southeast Alaska Sustainability Strategy, and (2) Sealaska Corporation's announced plan to transition away from logging its lands, may compel additional NEPA analysis for this rulemaking. The agency has carefully considered this information and concluded that it does not significantly alter the 2020 FEIS's analysis of the alternatives' effects on the quality of the human environment. More detailed discussion related to the agency's consideration of new information or changed circumstances is set out in the agency's Determination of NEPA Adequacy (DNA).

#### *Comments on Consideration of Public Input*

*Comment:* Commenters were concerned that the USDA based this final rule on the fact the large majority of comments received during the comment period for the 2020 Alaska Roadless rulemaking effort supported retaining the 2001 Roadless Rule and will again follow the majority and ignore local, informed input.

*Response:* The NPR pointed out the large majority of comments received during the comment period for the 2020 Alaska Roadless rulemaking effort supported retaining the 2001 Roadless Rule. It did not draw the conclusion that the 2001 Roadless Rule should be reinstated simply because the majority of comments received during that rulemaking process were opposed to the Tongass exemption from the 2001

Roadless Rule (*i.e.*, opposed the 2020 Alaska Roadless Rule).

The USDA values the comments received and the concerns expressed by the public during the rulemaking process. The USDA considered all public comments received, input from Tribal governments, communities, cooperating agencies, and elected officials. The NEPA and rulemaking public comment processes 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. 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. USDA reconsidered all alternatives and has opted to repeal the 2020 Alaska Roadless Rule for all the reasons discussed herein.

*Comments Concerning the Tongass Old-Growth Conservation Strategy and Protecting Roadless Area Quality and Values*

*Comment:* Commenters supported repeal of the 2020 Alaska Roadless Rule stating that it would have an adverse effect on the Tongass old-growth conservation strategy by directing an administrative change regarding timber suitability within IRAs and further stated that a supplemental EIS should be prepared with an alternative that would modify the 2016 Forest Plan to remove development land use designations from IRAs. They requested that the Forest Plan be amended to provide a comprehensive set of plan components that are compatible with Roadless Area qualities and values.

*Response:* The USDA has extensive authority governing forest management. The Secretary also has broad discretion concerning the development, amendment, or revision of land management plans, but new laws and regulations can supersede land management plan direction. The 2012 Planning Rule recognizes this authority and provides for administrative changes to forest plans to conform to new statutory or regulatory requirements (36 CFR 219.13(c)). The administrative change directed by the 2020 rulemaking regarding timber suitability only applied to lands that were deemed unsuitable solely due to IRA designation in the 2016 Forest Plan. While timber suitability is a Forest Plan component that would normally be changed through an amendment process (36 CFR 219.13(b)), the Planning Rule directs that Forest Plan components may be

changed through a different mechanism under certain circumstances.

In any event, that particular administrative change was never executed. While the Forest Service was determining the changes to the 2016 Forest Plan necessary, President Biden issued the Executive orders discussed above and the USDA began work to review the 2020 Alaska Roadless Rule. This final rule repeals the direction to issue that administrative change. Instead, the 2001 Rule will apply as a direct result of the repeal of the 2020 Alaska Roadless Rule. In turn, the 2001 rule itself expressly provided that it does not compel the amendment or revision of any land and resource management plan. That fits well with the recognition in the 2016 Forest Plan (p. 1–5) that Federal law and regulation receive the highest level of priority in setting direction for Forest activities. Thus, changes to land use designation assignments are not necessary to apply the regulatory protections of the 2001 Roadless Rule or any roadless rule for that matter.

*Comments Related to Climate Change, Carbon Storage, and Carbon Sequestration*

*Comment:* Commenters supported repeal of the 2020 Alaska Roadless Rule in consideration of the urgent climate crisis and the need to retain or increase carbon storage and sequestration. Others disagreed and stated that the USDA is overstating the importance of Tongass old-growth for carbon sequestration.

*Response:* Roadless areas on the Tongass represent the world's largest remaining, intact, old-growth temperate rainforest, which supports biodiversity and stores carbon. These areas are considered critical for carbon sequestration and carbon storage to help mitigate climate change: the Tongass holds more biomass per acre than any other rainforest in the world and stores more carbon than any other national forest in the United States. Both old-growth and young-growth forests are important for carbon storage and sequestration.

Reinstating the 2001 Roadless Rule will provide regulatory certainty that the Tongass IRAs will continue to sequester and store carbon into the future, while providing numerous other ecological, economic, cultural, and social values to the American people and providing for ecosystem resiliency in changing climatic conditions.

*Comments on Greenhouse Gases as a Result of Increased Fuel Consumption*

*Comment:* Some commenters stated that reinstating the 2001 Roadless Rule

could reduce greenhouse gas emissions caused by fuel consumption related to timber harvest while others stated that it would impede the development of renewable resources and thereby delay the transition to clean energy in diesel-reliant communities.

*Response:* Regarding increased fuel consumptions related to timber harvests, this final rule does not set or change the volume of timber offered for sale. Those decisions will continue to be made in accordance with USDA policy, the 2016 Tongass Forest Plan, and the Tongass National Forest's fiscal capabilities and organizational capacity.

Hydroelectric projects, and the roads necessary to support these projects, that may help transition communities from fossil fuel energy are not prohibited in IRAs on the Tongass. The 2001 Roadless Rule also does not prohibit the construction or maintenance of transmission lines. While new temporary or permanent roads are not permitted in IRAs, outside of the exceptions in the 2001 Roadless Rule, temporary linear construction zones can be authorized to facilitate the construction of transmission lines. In addition, Alaska's transportation system guaranteed in section 4407 of Public Law 109–59, as amended, also allows for roaded access in the Forest for transmission lines and other utility systems. Therefore, the USDA believes that this final rule adequately provides for renewable energy projects and the transition to clean energy in communities across Southeast Alaska.

*Comments on Opportunities To Conserve Cedar Forests in a Changing Climate*

*Comment:* Commenters note that conservation areas, such as roadless areas protected by reinstatement of the 2001 Roadless Rule, offer opportunities to conserve cedar forests in a changing climate. Commenters request protection for yellow-cedar, red cedar and large, or old-growth trees, under the 2001 Alaska Roadless Rule.

*Response:* The 2020 FEIS acknowledged that yellow cedar is one species that is already experiencing effects of climate change on its distribution on the Tongass; however, management actions that benefit specific individual tree species are better addressed through other management efforts, such as forest planning or specific project design features.

*Comments on the Difference in Environmental Consequences Between Continued Implementation of the 2001 Roadless Rule and Exemption From the 2001 Roadless Rule*

*Comment:* Some commenters disagreed with the USDA's determination in 2020 that there was only a modest difference in environmental consequences between continued implementation of the 2001 Roadless Rule and exemption from the 2001 Roadless Rule. The commenters stated that roading and logging of these undeveloped lands resulting from the full exemption would have profound and significant environmental consequences for the 188,000 affected acres and beyond, including the roadless areas in which they are located.

*Response:* The USDA considered and disclosed the effects to roadless areas in terms of acres designated as roadless and the degree of protection provided by each alternative. The Final EIS is clear that Alternative 6 (full exemption of the Tongass from the 2001 Roadless Rule) would likely result in more degradation of roadless area characteristics than any of the other alternatives. Effects to each roadless area were presented in the Final EIS using estimated old-growth harvest acres by alternative to compare the alternatives.

The 2020 FEIS concluded that there is only a modest difference between the alternatives considered in the EIS as far as environment effects resulting from timber harvest, because the estimated acreage of land subject to harvest is not proportional to the acres of suitable timber lands, but rather is based on the projected timber sale quantity established in the 2016 Forest Plan. Although 9.4 million acres were no longer subject to the 2001 Roadless Rule with the exemption, only 188,000 more acres would become available for timber production. Road construction was estimated to increase Tongass-wide from 994 miles in the no-action alternative (Alternative 1) to 1,043 miles under the full exemption alternative (Alternative 6) over the next 100 years.

The assumptions and findings in the 2020 FEIS are still true as those findings were attributable to the fact that all of the alternatives were expected to have harvest levels similar to the levels authorized in the Forest Plan. The modest differences reflect the additional flexibility the 2020 Alaska Roadless Rule was expected to provide in making 188,000 more acres suitable for harvest, and the projection that there might be more high-volume and large-tree old-growth harvested under Alternative 6

(the 2020 Alaska Roadless Rule Alternative) because of that flexibility (See Alaska Roadless FEIS Environmental Consequences Forest Products Page 2–23).

Similarly, the 2001 Roadless Rule has not been an impediment to vital infrastructure and energy projects, given that some infrastructure and energy development is allowed under various statutes and projects have been approved consistent with the exemptions in the 2001 Roadless Rule.

While the conclusion in the 2020 FEIS that the overall adverse effect of the 2020 Alaska Roadless Rule on roadless area characteristics was modest is still valid, this final rule reflects the USDA's belief that even a modest adverse effect of this type is undesirable, in light of the USDA's current policy objectives. As explained above in the section titled "Decision Rationale and Important Considerations," these objectives include prioritizing the values that roadless areas on the Tongass hold for local communities and Native peoples, as reflected, among other places, in the consultation with Tribal Nations, and the multiple ecologic, social, cultural, and economic values supported by roadless areas on the Forest.

*Comments in Support of a Traditional Homelands Conservation Rule or Co-Management With Tribal Governments*

*Comment:* Commenters stated Support for a Traditional Homelands Conservation Rule and increased co-management and consultations with Tribal governments.

*Response:* Shared stewardship of land management is a priority for USDA, and an important part of our responsibility to Native Nations. Ecological challenges do not recognize borders or boundary lines. Through shared stewardship, USDA is coming together with Tribal governments, States, and other partners to address these challenges and explore opportunities to improve forest health and resiliency. In July 2021, the USDA and the Forest Service held a consultation with nine Tribes in Juneau, Alaska. Topics included the Tribes' petition to create a Traditional Homelands Conservation Rule, the 2020 Alaska Roadless Rule, and the SASS. The Tribes represented at this consultation expressed their desire to return to the 2001 Roadless Rule on the Tongass as quickly and expeditiously as administratively possible, while also urging the USDA to take other steps. The USDA and the Forest Service have continued to consult with Tribal governments and Alaska Native corporations regarding this rule.

As part of the SASS, the USDA has committed up to \$25 million in investments in Southeast Alaska, over 50 percent of which is expected to support Tribal and indigenous interests and Tribal and community youth engagement. Additionally, the USDA is exploring new ways utilizing existing authorities to advance co-stewardship between Tribal Nations and the USDA on NFS lands across Southeast Alaska. See the USDA SASS Initial Investments and Recommendations, March 2022 at [https://www.fs.usda.gov/internet/FSE\\_DOCUMENTS/fseprd1008319.pdf](https://www.fs.usda.gov/internet/FSE_DOCUMENTS/fseprd1008319.pdf).

**Regulatory Certifications**

*National Environmental Policy Act*

The Department's determination is that the FEIS issued in association with promulgation of subpart E (85 FR 68688) adequately analyzes the environmental effects of this final rule and reasonable alternatives. Therefore, the USDA has prepared a Determination of NEPA Adequacy (DNA) for this rulemaking. Under the Forest Service's National Environmental Policy Act (NEPA) procedures (36 CFR 220.4(j)), a DNA is a NEPA compliance method that allows an existing environmental analysis to be used in its entirety for a new proposed action if the Responsible Official determines that the existing NEPA analysis adequately assesses the environmental effects of the proposed action and reasonable alternatives. The DNA and 2020 FEIS are available at: <https://www.fs.usda.gov/project/?project=60904>. The environmental effects associated with adoption of the final rule were analyzed and disclosed in detail in Alternative 1 of the FEIS for the 2020 Alaska Roadless Rule (the no action alternative).

The FEIS for the 2020 Alaska Roadless Rule was prepared less than two years ago and included an effects analysis for six alternatives covering a broad range of roadless management options, including both operation under, and exemption from, the 2001 Roadless Rule's prohibitions. The NOPR included a preliminary determination that the 2020 FEIS remained an effective analysis of the environmental effects of returning the Tongass to operation under the 2001 Roadless Rule. Commenters on the proposed rule have suggested that new information or changed circumstances related to (1) the USDA Southeast Alaska Sustainability Strategy, and (2) Sealaska Corporation's announced plan to transition away from logging its lands, may compel additional NEPA analysis for this rulemaking. The agency has carefully considered this information and concludes that it does

not significantly alter the 2020 FEIS's analysis of the alternatives' effects on the quality of the human environment. Additional discussion related to the DNA can be found at the link above.

#### *Regulatory Planning and Review*

OMB has designated this rulemaking as a significant regulatory action under Executive Order 12866. The Forest Service has prepared an analysis of potential impacts and discussion of benefits and costs of the final rule in its Regulatory Impact Analysis. By removing subpart E, consisting of §§ 294.50 and 294.51, the final rule would return the Tongass to management under the provisions of the 2001 Roadless Rule, which prohibits timber harvest and road construction or reconstruction within designated Inventoried Roadless Areas with limited exceptions. Exceptions in the 2001 Roadless Rule do allow for some activity, including to protect public health and safety, provide access for statutory rights and existing leases, and in specified circumstances prevent or repair natural resource damage, maintain or restore ecosystem characteristics, or improve habitat for certain species.

Protection of roadless characteristics through reinstatement of the 2001 Roadless Rule that would occur as a result of this final rule would provide benefits associated with old-growth conservation and would avoid displacement-related losses to recreationists and the outfitter and guide industry, estimated to be \$68,000 to \$224,000 annually. Estimated loss of access to suitable old-growth would not materially decrease timber related jobs, income, or output, since the final rule does not change the timber sale quantity or timber demand projections from the Tongass Land and Resource Management Plan.

The TTRA directs the Forest Service, subject to other applicable laws, to "seek to meet market demand" for timber from the Tongass. See 66 FR 3255. However, as USDA (and the courts) have repeatedly explained, the TTRA "does not envision an inflexible harvest level, but a balancing of the market, the law, and other uses, including preservation." *Id.* The TTRA expressly declares that subject to appropriations, other applicable law, the requirements of the National Forest Management Act; and to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources, the Forest Service is to "seek to provide a supply of timber from the Tongass, which: (1) Meets the annual market demand for

timber from such forest and (2) meets the market demand from such forest for each planning cycle" (16 U.S.C. 539d).

While the TTRA provides a qualified instruction that USDA "seek to provide a supply of timber" from the Tongass that meets market demand, the 2001 Roadless Rule does not prevent USDA from seeking to meet market demand through timber sales on lands outside of inventoried roadless areas or consistent with Roadless Rule exceptions. The TTRA does not require USDA to meet market demand, but only to "seek to . . . meet []" such demand. Even that qualified directive is "subject to" applicable law and must be "consistent with" USDA's authority to provide for the multiple use and sustained yield of renewable forest resources, including recreation, watershed, and wildlife and fish, in addition to timber. The final rule is fully consistent with TTRA.

Stumpage value changes are quantified in the regulatory impact analysis, alongside agency road maintenance costs, conservation value, avoided lost revenue to outfitters and guides, and value of access by recreationists not using outfitters and guides. Discounted upper bound estimates of net present value are positive for the final rule and regulatory alternatives.

The rule does not maximize net present value relative to the other regulatory alternatives as measured in quantitative terms (Alternative 2 is higher). However, such analysis does not fully capture the rule's qualitative effects (*i.e.*, biological diversity, habitat, physical values, scenic quality, recreation opportunities, traditional cultural properties, and sacred sites). Both quantitative and qualitative considerations were weighed in the agency's decision rationale for this rule.

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

This final rule has been considered in light of E.O. 13272 that addresses the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, requires agencies to prepare and make available to the public a regulatory flexibility analysis that describes the economic effect of a proposed or final rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Furthermore, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Despite this rulemaking not being subject to the requirements of sec. 553 of the Administrative Procedure Act, the Department nevertheless prepared a regulatory flexibility analysis which can be found at <https://www.regulations.gov/docket/FS-2021-0007>. The Forest Service is directly affected by this rulemaking and by definition is not a small entity; the final rule imposes no costs or recordkeeping requirements for small entities; nor does the final rule seek to impose any direct regulatory restrictions upon any small entities. A number of small and large entities may experience regulatory assurance provided by the proposed rule, or otherwise benefit from roadless protection under the proposed rule. In consideration of the facts and analysis set forth in the regulatory flexibility analysis prepared by the Forest Service, the undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *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.

#### *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.

#### *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*

The USDA has consulted and coordinated with Tribal Nations throughout the process of developing the proposed regulation. As part of this rulemaking, the USDA's Office of Tribal Relations determined that this final rule has Tribal implications that require continued outreach efforts under Executive Order 13175. The USDA Office of Tribal Relations has determined that this rulemaking review and analysis has been conducted in accordance with Departmental Regulation (DR) 1350-002, "Tribal Consultation" and Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments."

In support of the January 26, 2021, Executive Order 13175 and the President's Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, in July 2021, USDA and the Forest Service held a consultation with ten Tribes in Juneau, Alaska: Central Council Tlingit and Haida Indian Tribes of Alaska, Douglas Indian Association, Hoonah Indian Association, Organized Village of Kake, Organized Village of Kasaan, Ketchikan Indian Community, Klawock Cooperative Association, Organized Village of Saxman, Sitka Tribe of Alaska and Skagway Village (Skagway Traditional Council). A virtual consultation was also held with 6 Tribes in August 2021: Central Council Tlingit and Haida Indian Tribes of Alaska, Craig Tribal Association, Klawock Cooperative Association, Organized Village of Kake, Organized Village of Kasaan and Ketchikan Indian

Community. A virtual consultation was conducted at the request of one Tribe in February 2022 (Organized Village of Kasaan). Another virtual consultation was conducted with seven Tribes in September 2022: Central Council Tlingit and Haida Indian Tribes of Alaska, Hoonah Indian Association, Organized Village of Kake, Organized Village of Kasaan, Ketchikan Indian Community, Skagway Village (Skagway Traditional Council) and the Wrangell Cooperative Association. The Tribes represented at these consultations expressed their desire to return to the 2001 Roadless Rule as quickly and expeditiously as administratively possible. USDA committed to continuing meaningful consultation throughout the rulemaking.

This final rule reflects the input from Tribal nations provided during those government-government consultation sessions. Roadless areas on the Tongass have immense cultural significance for Alaska Native peoples. Restoring application of the 2001 Roadless Rule to the Tongass reflects this Administration's commitment to strengthening nation-to-nation relationships with Tribes and incorporating Indigenous Knowledge, stewardship, and priorities into land management decision-making.

#### *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. Nevertheless, if such conflicts were to be identified, 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 believes that the final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of the Office of Information and Regulatory Affairs has not designated this final rule as 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.

#### *Congressional Review Act*

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

#### **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, USDA is amending part 294 of title 36 of the Code of Federal Regulations as follows:

#### **PART 294—SPECIAL AREAS**

- 1. Add an authority citation for part 294 to read as follows:

**Authority:** 16 U.S.C. 472, 529, 551, 1131, 1608, and 1613 and 23 U.S.C. 201 and 205.

#### **Subpart E—[Removed]**

- 2. Subpart E, consisting of §§ 294.50 and 294.51, is removed.

Dated: January 19, 2023.

**Meryl Harrell,**

*Deputy Under Secretary for Natural Resources, USDA.*

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