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The Proposed Alaska Roadless Rule

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SUMMARY

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The Proposed Alaska Roadless Rule

Inventoried roadless areas (IRAs) are areas of the National Forest System (NFS) identified administratively by the U.S. Department of Agriculture (USDA)'s Forest Service (FS). IRAs are managed according to regulations, known as *roadless rules*, that limit timber harvesting, road construction, and road reconstruction within designated areas. Although IRAs occur in multiple states, this report refers only to IRAs in Alaska and the FS's proposed rulemaking for Alaska roadless area management.

IRA management in Alaska has generated particular controversy. Alaska contains the nation's two largest national forests, the Tongass and the Chugach. Approximately 14.8 million acres of NFS lands in Alaska are designated IRAs; they cover almost 67% of the state's NFS acres. Alaska national forests can be regionally significant settings for economic sectors such as forestry, commercial fishing, and tourism. Alaska's national forests also are unique ecological resources, containing large, undeveloped tracts of rare ecosystems, such as temperate rainforest. Thus, the scale of the proposed rule, and its potential impacts to NFS lands and resources and to adjacent communities, has generated interest.

In January 2018, the State of Alaska requested that the USDA consider creation of a state-specific rule to exempt the Tongass National Forest from the currently applicable roadless rule, the Roadless Area Conservation Rule (2001 Rule). The FS agreed to undertake this rulemaking and published the proposed rule and draft environmental impact statement (DEIS) on October 17, 2019. The FS's proposed rule specifies that the 2001 Rule shall not apply to the Tongass National Forest. As such, the proposed rule would remove all 9.2 million IRA acres in the Tongass from roadless designation, and the 2001 Rule's prohibitions on timber harvesting, road construction, and reconstruction would no longer apply to the forest. In addition, the proposed rule would establish an administrative process allowing the Alaska Regional Forester to issue boundary corrections and modifications for IRAs designated by the 2001 Rule in the Chugach National Forest.

The practical impact of the proposed rule's provisions is difficult to predict, due to various factors. Timber harvesting (and associated road works) in national forests is influenced by national and global timber market conditions. Timber harvesting in the Tongass is additionally influenced by unique legal and management factors, such as relatively long transportation distances and high costs, special provisions for timber export, and a planned transition away from traditional timber types. The FS predicts the proposed rule will have a minimal to moderate beneficial effect on some local and regional economic activities (e.g., the forest products industry), no impact on other activities (e.g., the fisheries industry), and a minimal adverse effect on the visitor industry. The FS predicts effects on ecosystems and wildlife generally will be similar to predicted effects under current management.

Stakeholders have expressed a variety of views on the proposed rule's possible impacts. Some have expressed concern that the proposed rule may have significant negative effects (e.g., to the visitor and fishing industries or to ecosystems and wildlife), possibly without creating beneficial impacts (e.g., to the timber industry). Others expect significant benefits to the timber industry and other sectors. The FS's predicted impacts appear sensitive to changes in assumptions regarding timber markets and other factors.

Debates surrounding the proposed Alaska Roadless Rule have generated interest on a national scale. Debates surrounding the proposed rule often center on the potential impacts to communities and resources, either due to the proposed rule itself or due to potential differences between the proposed rule and the 2001 Rule. Concerns also have been raised about the State of Alaska's use of federal funds during the rulemaking process. Congress has engaged with both issues through oversight actions.

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Introduction

Inventoried roadless areas (IRAs) are areas of the National Forest System (NFS) identified administratively by the Forest Service (FS) and managed according to regulations, known as roadless rules, that limit timber harvesting, road construction, and road reconstruction. For decades, the FS has inventoried and designated generally undeveloped areas of the NFS (under various names) and has managed these areas to preserve their undeveloped qualities. In 2001, the FS issued the first roadless rule and defined the modern-day IRAs, setting the framework for modern FS roadless area policy. In 2018, the FS began work on a state-specific rulemaking for Alaska IRAs, spurring interest in how such a rulemaking may affect associated NFS lands and resources.

IRA management in Alaska, including the proposed rulemaking, has generated particular controversy. Alaska contains the two largest national forests, the Tongass and the Chugach, which comprise approximately 22.1 million acres of land (over 34,000 square miles; see **Figure 1**).[1] IRAs in Alaska are approximately 14.8 million acres in extent and comprise almost 67% of NFS land in Alaska.[2] National forests in Alaska are significant for local communities and the overall regional economy. Alaska's national forests also are unique ecological resources because they contain large, undeveloped tracts of rare ecosystems, such as temperate rainforest. Thus, the scale of the proposed rule, and its potential impacts to NFS lands and resources and to adjacent communities, has generated stakeholder interest.

[1] Congressional Research Service (CRS) calculation from U.S. state land area data, Sonja Oswalt et al., *Forest Resources of the United States, 2017: A Technical Document Supporting the Forest Service 2020 Update of the RPA Assessment*, U.S. Department of Agriculture (USDA), Forest Service (FS), 2017 (hereinafter cited as Oswalt et al., *Forest Resources*); and USDA, FS, "National Forest System Land Area" in *Land Areas Report (LAR)*, 2019.

[2] CRS calculation from inventoried roadless area (IRA) data, FS Legislative Affairs Office, March 20, 2020; U.S. state land area data, Oswalt et al., *Forest Resources*; and USDA, FS, "National Forest System Land Area" in *Land Areas Report (LAR)*, 2019.

Figure 1. National Forest System (NFS) and Inventoried Roadless Area (IRA) Lands in Alaska

Sources: Congressional Research Service, from Forest Service (FS), FS Geodata Clearinghouse, "Roadless Areas: 2001, Idaho, and Colorado Rules Combined," and U.S. Geological Survey, Protected Areas Database of the United States.

Congress has considered previously and continues to consider policy for roadless area management, including roadless area management specific to Alaska, through legislative and oversight activities. Congressional interest in the proposed Alaska Roadless Rule also has generated policy proposals applicable to FS roadless areas nationwide.

This report provides an overview of the FS's proposed rule and contextual information regarding the affected NFS lands and resources. The report provides information on the national forests in Alaska, particularly the Tongass National Forest, which has been the focus of both the proposed rule and associated stakeholder attention. The report also describes the proposed rule's contents and its potential impacts. The report concludes with a discussion of issues for potential congressional consideration related to the proposed rule and the FS's rulemaking process.

National Forests in Alaska

Two national forests are in Alaska, the Tongass and the Chugach National Forests. The Tongass, the largest national forest, is approximately 16.7 million acres (more than 26,000 square miles) in extent, of which approximately 9.2 million acres (55%) are designated IRAs.[3] The Chugach is approximately 5.4 million acres in extent, of which approximately 99% are designated IRAs.[4]

[3] CRS calculation from IRA data, FS Legislative Affairs Office, March 20, 2020; and USDA, FS, "National Forest System Land Area" in *Land Areas Report (LAR),* 2019. For further information, see FS, "Alaska Roadless Rule," at https://www.fs.usda.gov/roadmain/roadless/alaskaroadlessrule.

[4] CRS calculation from IRA data, FS legislative affairs office, March 20, 2020; and USDA, FS, "National Forest System Land Area" in *Land Areas Report (LAR),* 2019.

There is little developed access to much of the Chugach, and its major resources and uses are fish, wildlife, and recreation.[5] The Tongass is an important setting for tourism and commercial fisheries and a major historical source of timber for Alaska's forestry industry.[6] Therefore, controversy regarding IRAs in Alaska has focused on the Tongass; for example, the FS's proposed rule (see "The Proposed Rule") is largely focused on the Tongass National Forest, with minor provisions related to the Chugach. This report provides additional background and context on the Tongass's lands and resources.

The Tongass National Forest in Context

The Tongass National Forest covers approximately 80% of the Southeast Alaska Panhandle's land area.[7] It is a regionally significant setting for economic sectors such as forestry, commercial fishing, and tourism. The Tongass also contains rare wildlife habitats, ecosystems, and visual characteristics of national and international significance.[8] These factors shape the debate surrounding the roadless rule's impacts on the Tongass.

Because it dominates the region's land area, the Tongass is a regionally important setting for a number of resource-based industries, including forestry, commercial fishing, tourism, and mining and mineral development. In 2017, more than 28% of total employment in southeast Alaska was in these four resource-related industries, with the visitor and seafood industries accounting for 90% of this figure.[9] In addition, the Tongass is often the setting for regional transportation, communications, and other infrastructure.[10] Regional residents frequently depend on the Tongass for subsistence hunting and fishing, cultural and sacred sites, and other uses.

The Tongass is also a unique ecological resource. The forests of southeast Alaska, including the Tongass, comprise approximately 19% of the world's temperate rain forest.[11] In addition, the Tongass is unique within the NFS in regard to the substantial amount of old-growth forest (see text box on "Tongass Timber and the Young-Growth Transition," below) present outside of designated wilderness.[12] The Tongass's large tracts of intact ecosystems help to preserve the region's biodiversity, including habitat for over 300 species of birds and mammals, many of which are found only in that region.[13] In addition, southeast Alaska forests sequester large quantities of carbon and play other important roles in the global carbon cycle.[14]

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[5] USDA, FS, "The Setting and Planning Background: Chugach National Forest," May 14, 2002, at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5334507.pdf.

[6] USDA, FS, *Draft Environmental Impact Statement: Rulemaking for Alaska Roadless Areas*, R10-MB-867a, October 2019, pp. 2-21. Hereinafter cited as *DEIS 2019*.

[7] FS, "About the Alaska Region," at https://www.fs.usda.gov/main/r10/about-region.

[8] *DEIS 2019*, "Background," "Key Issue 1-Roadless Area Conservation," and others.

[9] *DEIS 2019*, Table 3.2-1. The visitor industry accounts for approximately 60% of resource-based employment, followed by seafood (30%), mining and mineral development (7%), and forestry (3%).

[10] Because of the region's island geography, residents primarily use air and water transportation to travel between communities, although state and local roads may cross National Forest System (NFS) lands. Most of the NFS road network is for timber harvesting and does not connect communities. *DEIS 2019*, p. 3-141.

[11] Jane Wolken et al., "Evidence and Implications of Recent and Projected Climate Change in Alaska's Forest Ecosystems," *Ecosphere*, vol. 2, no. 11 (2011), pp.1-35. This forest type is also referred to as *coastal temperate* and covers less than 0.5% of the Earth's land area.

[12] *DEIS 2019*, 3-20.

[13] FS, *Tongass Land and Resource Management Plan: Final Environmental Impact Statement*, R10-MB-603a (Washington, DC: January 2008), p. 3-9.

[14] *DEIS 2019*, "Climate and Carbon," and Heather Keith, Brendan Mackey, and David Lindenmeyer, "Re-evaluation of

Special Considerations for Tongass Roads and Timber

The roadless rule places restrictions on timber harvesting, road construction, and road reconstruction in specified areas. These issues are intertwined: the Tongass is an important source of timber for the region, and the Tongass's road transportation system is mostly in support of timber harvesting.[15] Thus, debate surrounding the roadless rule in Alaska often has centered on timber activities in the Tongass.

Tongass Timber and the Young-Growth Transition

In the past decades, management of the Tongass National Forest has been shaped by shifting policies relating to two classifications of forests, old growth and young growth:

- **Old growth:** The final stage of forest development. *Old growth* can be defined many ways, often related to forest characteristics (such as tree size, age, and number; canopy conditions; dead and down trees; debris; and others)
- **Young growth:** A relatively young forest that has regenerated after a major disturbance, such as wildfire or extensive timber harvesting. In the Tongass, forests younger than 150 years in age are considered *young growth*.

Historically, most timber harvesting in the Tongass has been of old-growth timber. However, old-growth timber is associated with many of the Tongass's unique qualities, such as habitat for sensitive wildlife species, and harvesting old-growth timber is increasingly controversial.

In 2010, the Secretary of Agriculture (Secretary) announced the Tongass Transition Framework, a framework for directing greater support from the Forest Service (FS) and other U.S. Department of Agriculture agencies to non-timber industries deemed to be of importance to the Tongass region's economy, such as recreation and fisheries. In 2013, the Secretary further directed the FS to shift away from harvests of old-growth timber and toward harvest of young-growth timber over a period of 10 to 15 years. The FS specified that the plan was intended to conserve the Tongass's "exceptional natural resources" while providing economic opportunities for local communities. In 2016, the FS revised the Tongass's land and resource management plan to reflect this planned shift.

According to the draft environmental impact statement for the proposed Alaska Roadless Rule, the FS plans for the old-growth proportion of planned timber sales to be high initially and to decrease over time as young-growth timber becomes more economically viable. The phased reduction in old-growth timber sales in the plan is intended to allow for regional timber industry adaptation over time.

Sources: USDA, FS, *Draft Environmental Impact Statement: Rulemaking for Alaska Roadless Areas*, R10-MB-867a, October 2019; Letter from Thomas Vilsack, U.S. Secretary of Agriculture, to the Tongass Futures Roundable, May 24, 2010; USDA, Office of the Secretary, Addressing Sustainable Forestry in Southeast Alaska, Secretary's Memorandum 1044-009, 2013; USDA, FS, *Tongass National Forest Land and Resource Management Plan,* R10-MB-769j, December 2016; USDA, FS, *Tongass National Forest Land and Resource Management Plan Final Environmental Impact Statement*, R10-MB-769e,f, December 2016.

Timber harvesting activity in the Tongass, as in the NFS generally, and timber industry employment in southeast Alaska have declined from their peak levels in the 1970s and 1980s.[16] From 2002 to 2017, the FS estimates the number of timber jobs directly supported by the Tongass

Forest Biomass Carbon Stocks and Lessons from the World's Most Carbon-Dense Forests," *Proceedings of the National Academy of Sciences,* vol. 106, no. 28 (July 14, 2009), pp. 11635-11640. For additional information on forest carbon, see CRS Report R46312, *Forest Carbon Primer,* by Katie Hoover and Anne A. Riddle and CRS Report R46313, *U.S. Forest Carbon Data: In Brief*, by Katie Hoover and Anne A. Riddle.

[15] *DEIS 2019*, p. 3-113.

[16] U.S. Government Accountability Office (GAO), *Tongass National Forest: Forest Service's Actions Related to its Planned Timber Transition*, GAO-16-456, April 2016, hereinafter cited as GAO, *Tongass National Forest,* and *DEIS 2019*, p. 3-28. According to GAO, timber harvests from the Tongass peaked at an annual average of approximately 494 million board feet in the 1970s and general southeast Alaska timber industry employment peaked at approximately 2,500 jobs in 1982.

varied but declined overall.[17] During this period, total Tongass-related timber harvest activities supported about 41% of total timber industry employment in southeast Alaska, on average.[18] In 2017, approximately 19.9 million board feet of timber were harvested.[19] Generally, most timber harvested in southeast Alaska is sent to other states and exported internationally.[20]

Several legal and policy considerations shape timber harvesting in the Tongass. By law, the FS cannot offer timber for sale unless the sale is positively appraised (sometimes referred to as *appraising positive*)—that is, the estimated value of the timber exceeds the cost of conducting the harvest.[21] A number of factors specific to the Tongass—for example, the long distances and high costs associated with transportation in the region, the low value of young-growth timber, and others—affect whether sales appraise positive and can be offered.[22] Although international and interstate export of timber from Alaska NFS lands is allowed only under certain circumstances, a policy allowing specified interstate and international exports is in place for timber harvested from the Tongass, which affects the number of positively appraised sales.[23]

History of Roadless Area Management in Alaska

The history of roadless areas in Alaska is intertwined with the FS's nationwide policies for roadless area management. The FS has sought to identify NFS lands with undeveloped conditions, and provide for special management of those lands, since early in its history. The FS designated and managed undeveloped areas to preserve their character—for example, through prohibiting road construction, motorized use, timber harvesting, and other actions—through regulations from the 1920s through 1964.[24] In 1964, Congress passed the Wilderness Act,

[17] In *DEIS 2019*, p. 3-28, the FS estimates that total Tongass-related timber employment declined from 173 jobs in 2002 to 24 jobs in 2017, with a "recent high" of 199 jobs in 2003. Total timber industry employment in southeast Alaska declined from 512 jobs in 2002 to 202 jobs in 2017, with a "recent high" of 562 jobs in 2003. Other FS sources may estimate jobs related to the Tongass timber industry differently. For example, in FS, *Jobs and Income: Economic Contributions at a Glance in 2016, Tongass National Forest*, the FS estimates the Tongass "forest products" industry directly supported 320 timber jobs in 2016, compared with total Tongass-related timber employment of 151 jobs in *DEIS 2019*. This source does not estimate employment over time. It is unclear whether these sources measure equivalent employment categories.

[18] CRS, from *DEIS 2019*, p. 3-28.

[19] *DEIS 2019*, p. 3-28, and GAO, *Tongass National Forest.*

[20] Jean Daniels, Michael Paruszkiewicz, and Susan Alexander, *Tongass National Forest Timber Demand: Projections for 2015 to 2030*, FS, PNW-GTR-934, 2016, hereinafter cited as Daniels, Paruszkiewicz, and Alexander, *Timber Demand*. In the context of the Tongass, *export* can refer to shipping to other areas of the United States or internationally.

[21] P.L. 116-6 §410. The requirement to offer positively appraised sales is generally specified in annual Interior appropriations bills.

[22] Daniels, Paruszkiewicz, and Alexander, *Timber Demand*.

[23] 36 C.F.R. §223.201 provides that unprocessed timber from national forests in Alaska may not be exported internationally or out of the state of Alaska without prior approval from the Alaska Regional Forester. The Tongass Limited Export Policy establishes a limited program-level approval for interstate and international export of certain unprocessed timber, although approval for other situations also may be sought. For more information, see the summary and history of the Tongass Limited Export Policy at *Tongass Land and Resource Management Plan Final Environmental Impact Statement*, Appendix H, R10-MB-769e,f, 2016. Congress also sometimes addresses Tongass timber appraisal and export policies in annual Interior appropriations bills (e.g., P.L. 116-6 §410). Because timber sales appraised for export use different price structures, the limited export policy may increase the number of timber sales that appraise positive.

[24] In the 1920s, the FS issued the so-called *L regulations*, which directed the Chief of the Forest Service to administratively designate *primitive areas* to be managed for "primitive conditions of environment, transportation, habitation, and subsistence." Construction of permanent improvements and occupancy under special-use permits were

simultaneously designating many FS undeveloped areas as part of the National Wilderness Preservation System (NWPS) and directing the FS to inventory other undeveloped areas for possible NWPS inclusion.[25] The FS conducted two inventories of NFS lands (Roadless Area Review and Evaluation [RARE] I and II) under this authority, and both inventories were challenged in court. Legal decisions related to the inventories constrained FS management actions in the relevant areas.[26] In part due to these issues with the inventories, in the 1980s, Congress simultaneously designated thousands of RARE I and II acres as wilderness and released remaining RARE I and II acres back into multiple-use management. Management direction for the remaining RARE I and II areas was determined at the national forest level, through individual FS land and resource management plans (*forest plans*).[27]

The Roadless Rule

In late January 2001, the FS returned to administratively designating and managing undeveloped NFS lands at the national level when it issued the Roadless Area Conservation Rule (for the purposes of this report, the *2001 Rule*).[28] The 2001 Rule defined and designated modern IRAs, which were based (in part) on RARE I and II areas not designated as wilderness. The rule prohibited timber harvesting, road building, or road maintenance in those IRAs except under specified conditions.[29] When the 2001 Rule was issued, the FS indicated that several issues warranted a nationwide rule, as opposed to the then-current system of roadless area management at the forest level:

- **Cumulative Impacts of Roads and Timber Harvesting**. The FS specified a number of negative impacts of these activities in issuing the 2001 Rule, such as fragmentation and degradation of habitat, increased slope instability and landslides, reduced water quality for wildlife and human uses, and increased human disturbances in remote areas (such as increased frequency of human-

not allowed in these areas. FS, "Forest Service Policy Covering Preservation of Natural Areas," Regulation L-20, *National Forest Manual*, July 12, 1929, as amended August 7, 1930, and FS, "Lands," 1 *Federal Register* 1100, August 15, 1936. In 1939, the FS issued the so-called *U regulations*, which authorized the Secretary of Agriculture to designate *wilderness* and the Chief of the Forest Service to designate *wild areas*. Roads, motorized transport, commercial timber harvesting, and occupancy under special use permits were prohibited in both wilderness and wild areas. FS, "Land Use," 4 *Federal Register* 3994, September 20, 1939. Prior to this, FS district foresters approved or planned the administrative designation of wilderness areas in district recreation plans in several western states. Dennis Roth, "The National Forests and the Campaign for Wilderness Legislation," *Journal of Forest History*, vol. 28, no. 3 (1984).

[25] P.L. 88-577.

[26] See, for example, Parker v. United States, 448 F.2d 793 (10th Cir. 1971), California v. Block, 690 F.2d 753 (9th Cir. 1982. For more information on these proceedings, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

[27] The National Forest Management Act of 1976 (P.L. 94-588) requires the FS to prepare a comprehensive land and resource management plan (*forest plan*) for each NFS unit. Forest plans specify desired resource conditions of the unit and inform decisions on how uses of the unit will be balanced, pursuant to any additional statutory authorities or requirements. See also CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle. For a summary of management provisions for roadless areas in forest plans prior to the 2001 Rule, see FS, *Forest Service Roadless Area Conservation, Final Environmental Impact Statement*, November 2000, Volume 1, Ch.3.

[28] FS, "Special Areas; Roadless Area Conservation," 66 *Federal Register* 3244, January 12, 2001. Hereinafter cited as *2001 Rule*. The 2001 Rule has not been classified to the *Code of Federal Regulations*.

[29] For more information, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

caused fires.)[30] Furthermore, the FS specified that forest-level management of these issues might increase cumulative loss of roadless area characteristics nationwide.

- **Management and Fiscal Constraints Created by the NFS Road Network.** When the 2001 Rule was issued, the NFS road system was over 386,000 miles long.[31] The FS argued that budget constraints, coupled with the size of the forest road system, prevented the agency from managing the road system to required safety and environmental standards.[32] For example, in issuing the 2001 Rule, the FS indicated there was an estimated $8.4 billion in deferred maintenance and reconstruction on NFS roads, and the agency sought additional measures to control the transportation share of its budget.[33]
- **Costs of Litigation**: The FS asserted that controversy over roadless area management had been a major point of conflict in land management, generating "costly and time-consuming" litigation.[34] The FS specified that issuing a nationwide policy would reduce local appeals and litigation about activities addressed in the rule, which could avoid future costs to the agency.

The Clinton Administration's issuance of the 2001 Rule prompted more than a decade of conflict, through two primary means: (1) the rule's revocation and replacement with an alternate rule in 2005 by the George W. Bush Administration (*2005 Rule*) and (2) litigation challenging both rules. The 2005 Rule allowed state governors to submit petitions for individual rules for IRAs within their respective states, substantially altering the FS's IRA policy.[35] Between 2001 and 2011, federal courts enjoined both the 2001 and the 2005 Rules.[36] For a time, it was unclear which rule, if any, governed FS management of roadless areas. However, in 2011, the 2001 Rule was returned to effect.[37]

Alaska and the Roadless Rule[38]

As the legal and political conflicts regarding the roadless rules progressed over the decade, the FS and stakeholders raised questions regarding the management of Alaska's roadless areas—specifically, the application of the roadless rule to the Tongass.

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[30] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[31] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule."

[32] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule."

[33] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[34] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[35] FS, "Special Areas; State Petitions for Inventoried Roadless Area Management," 70 *Federal Register* 25654, May 13, 2005, hereinafter cited as *2005 Rule*. For a discussion of policy differences between the two rules, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann, or Robert Glicksman, "Traveling in Opposite Directions: Roadless Area Management Under the Clinton and Bush Administrations," *Environmental Law*, vol. 34, no. 1143 (2004), pp. 1143-1208.

[36] See, for example, Wyoming v. U.S. Department of Agriculture, 277 F. Supp. 2d 1197, 1231 (D. Wyo. 2003); California v. U.S. Department of Agriculture, 468 F. Supp. 2d 1140 (N.D. Cal. 2006). For further discussion of litigation related to the roadless rules, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

[37] Before the 2001 Rule was reinstated, the FS issued individual roadless rules for two states, Colorado and Idaho. The 2001 Rule does not apply to these states.

[38] Adam Vann, CRS Legislative Attorney, American Law Division, contributed to this section.

Before the 2001 Rule was issued, the FS grappled with how the rule would apply to Alaska. After initially proposing otherwise, the FS decided the 2001 Rule would apply immediately to Alaska, with some limited exceptions.[39] However, in 2003, the FS temporarily exempted the Tongass from the 2001 Rule pursuant to settlement of a legal dispute with the State of Alaska over the validity of the 2001 Rule.[40]

After the George W. Bush Administration issued the 2005 Rule, the FS took the position that further Tongass-specific rulemaking was unnecessary and that timber harvesting in IRAs would be managed in accordance with the forest plan unless changed through a state-specific rulemaking.[41] However, in 2011, the U.S. District Court for the District of Alaska ruled that the FS violated the Administrative Procedure Act in adopting the 2003 Tongass exemption.[42] The court thus vacated the exemption and reinstated the applicability of the 2001 Rule to the Tongass.[43] After an initial reversal by a three-judge panel, the district court decision was ultimately upheld en banc by the full U.S. Court of Appeals for the Ninth Circuit in 2015.[44] Since then, the 2001 Rule has applied to the Tongass.

The Proposed Alaska Roadless Rule

In January 2018, the State of Alaska requested that the U.S. Department of Agriculture (USDA) consider creation of a state-specific rule to exempt the Tongass National Forest from the 2001 Rule.[45] The FS previously issued state-specific roadless rules for two states in response to their petitions under the 2005 Rule.[46] The FS subsequently published a notice of intent on August 30, 2018, to begin the environmental analysis process required to issue a new rule.[47] The FS published the proposed rule and draft environmental impact statement on October 17, 2019.[48] The FS expects to publish a final environmental impact statement and final rule in 2020.[49]

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[39] *2001 Rule, "*Public Comments on the Proposed Rule."

[40] FS, "Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska," 68 *Federal Register* 75136, December 30, 2003. The FS indicated that the exemption would be in place only until the agency was able to promulgate a planned Alaska-wide roadless rule. *Id.* at 75138.

[41] *2005 Rule*, "Summary of Public Comments and the Departments' Responses."

[42] Organized Village of Kake v. U.S. Department of Agriculture, 776 F. Supp. 2d 960, 976 (D. Alaska 2011). Administrative Procedure Act, P.L. 79-404.

[43] *Id* at 976-77.

[44] Organized Village of Kake v. U.S. Department of Agriculture, 795 F.3d 956, 970 (9th Cir. 2015).

[45] Alaska: Letter from Andrew T. Mack, Commissioner, Alaska Department of Natural Resources, to Sonny Perdue, Secretary of Agriculture, January 19, 2018.

[46] For information on the state-specific rules for these two states, Colorado and Idaho, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann. Utah also submitted a request for a state-specific roadless rule in 2018. Utah's request remains pending.

[47] FS, "Roadless Area Conservation; National Forest System Lands in Alaska," 83 *Federal Register* 44252, August 30, 2018.

[48] FS, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 84 *Federal Register* 55522, October 17, 2019. Hereinafter referred to as *Proposed Rule 2019*.

[49] The FS expected to publish the final environmental impact statement in April 2020 and the final rule in June 2020. FS, "Alaska Roadless Rule Frequently Asked Questions," at https://www.fs.usda.gov/detail/roadless/alaskaroadlessrule/?cid=fseprd591995.

The Proposed Rule

The FS's proposed rule specifies that the 2001 Rule shall not apply to the Tongass National Forest.[50] As such, the proposed rule would remove all 9.2 million IRA acres in the Tongass from roadless designation, and the 2001 Rule's prohibitions on timber harvesting, road construction, and reconstruction would no longer apply to that land. Lands identified as suitable for timber production that were deemed unsuitable solely due to roadless designation in the Tongass forest plan would be designated as suitable for timber production under the proposed rule (see "Timber Harvesting").[51] In addition, the proposed rule would establish an administrative process allowing the Alaska Regional Forester to issue boundary corrections and modifications for IRAs designated by the 2001 Rule in the Chugach National Forest.[52]

In developing the proposed rule, the FS considered six alternatives: the *no-action alternative* (leaving the 2001 Rule in place), the *preferred alternative* (the proposed rule specifying full exemption of the Tongass), and four additional alternatives. The additional alternatives comprise a range of provisions relating to timber, roads, energy and mineral development, and transportation projects, among others.

How the proposed rule would affect management of the Tongass is not yet clear and depends on a number of external factors, such as timber markets. The FS's anticipated effects are described below, as specified in the draft environmental impact statement accompanying the proposed rule, along with stakeholder concerns regarding such impacts.

Timber Harvesting

The proposed rule would exempt the Tongass from the 2001 Rule's provisions regarding timber harvesting, which prohibit timber harvesting in IRAs except under specified circumstances.[53] Under the proposed rule, an additional 165,000 acres of old-growth timber and 20,000 acres of young-growth timber would become suitable for timber production.[54] These areas are currently designated as unsuitable for timber production due to designation as IRAs under the 2001 Rule. Under the current Tongass forest plan, about 230,000 acres of old-growth timber and 334,000 acres of young-growth timber are suitable for timber production.[55] The majority of suitable old growth would be added in areas "more distant from roads."[56]

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[50] *Proposed Rule 2019*, p. 55528 (proposed codification at 36 C.F.R. §294.50).

[51] The FS is required to identify lands as suitable or unsuitable for timber production as part of the forest planning process. Timber harvesting cannot occur on lands unsuitable for timber harvesting, except for certain specified exceptions (e.g., salvage sales). Under the 2016 Tongass Land and Resource Management Plan, some lands were identified as unsuitable for timber production due to their location in IRAs and otherwise would be deemed suitable for timber harvesting. Under the proposed rule, these restrictions would be removed. For more information, see CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle.

[52] *Proposed Rule 2019*, p. 55528 (proposed codification at 36 C.F.R. §294.51).

[53] For additional information on the timber provisions in the 2001 Rule, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

[54] *DEIS 2019*, p. 3-45 and p. 2-17.

[55] According to *DEIS 2019*, young growth suitable acres "would increase slightly (3 through 6 percent) under the action alternatives." It is unclear what percentage increase would apply to the preferred alternative. Suitable old-growth acres would increase 72% for the proposed rule. *DEIS 2019*, p. 2-21.

[56] CRS, calculation from *DEIS 2019*, Table 2-11, p. 2-26. According to this table, approximately 59% of suitable old growth would be added in areas "more distant from roads." The meaning of "more distant from roads" is unclear.

The practical impact of this provision is difficult to predict, due to a variety of factors. Timber harvesting in national forests is influenced by national and global timber market conditions, and timber harvesting in the Tongass is additionally influenced by regional economic factors.[57] As described above (see "Special Considerations for Tongass Roads and Timber"), these factors affect whether timber sales appraise positive and can be offered.[58] The factors particularly influenced by global market conditions (e.g., timber prices, trade) cannot be easily predicted. Thus, the FS's expected effects of the proposed rule are sensitive to assumptions regarding these factors.

The FS asserts that overall harvest levels are not expected to vary significantly under the proposed rule, compared with those planned under the current Tongass forest plan.[59] The FS further states that the main effect of the proposed rule would be to increase flexibility in sale development, spreading out the same general harvest level over increased acreage.[60] The FS expects the relative amount of old-growth and young-growth timber harvested under the proposed rule would be the same.[61] According to the FS, newly suitable old-growth areas may not be economically feasible to harvest, due to their remote nature and because the planned transition to young growth is expected to continue.[62] The FS predicts the rule would have a "minimal beneficial" effect on the forest products industry.[63]

The proposed rule's potential effect on timber harvesting has generated particular concern and interest. Stakeholders have expressed various views on the topic, some (though not all) of which counter the FS's conclusions. The FS's predicted effects rely on assumptions regarding timber market forces and adherence to planned timber harvest levels under the Tongass forest plan and young-growth transition.[64] These factors are not binding and therefore do not ensure harvest levels will remain the same (e.g., if trade or timber price conditions were more favorable than predicted or if forest planning objectives changed).

Some have expressed concern that timber harvesting could be higher than predicted under the proposed rule, particularly harvesting of old-growth timber, with concomitant impacts to lands and resources.[65] Although the FS predicts little additional old-growth harvest, 89% of the lands that would become suitable for timber production are old growth. The conclusion that little additional old-growth timber would be harvested under the proposed rule may be particularly sensitive to assumptions in the analysis. However, in concurrence with the FS's analysis, other

[57] Unlike other national forests, Secretary of Agriculture must "seek to meet" market demand for timber from the Tongass both annually and for each forest planning cycle (P.L. 101-626). Federal law and policy also control how, and under what circumstances, timber from the Tongass may be exported from Alaska. For a history and summary of laws related to the federal timber export ban, CRS Congressional Distribution Memorandum CD1302059, *History of Export Restrictions of Federal Logs from the Western Continental United States*, by Katie Hoover, is available to congressional clients upon request. The FS is also shifting away from old-growth logging and toward harvesting younger timber stands, as part of a transition toward greater support for other regionally important industries, such as fisheries and recreation. USDA, Office of the Secretary, *Addressing Sustainable Forestry in Southeast Alaska*, Secretary's Memorandum 1044-009, 2013, and FS, *Tongass Land and Resource Management Plan: Final Environmental Impact Statement*, R10-MB-603a (Washington, DC: January 2008).

[58] *DEIS 2019*, p. 3-44.

[59] *DEIS 2019*, p. 3-154.

[60] *DEIS 2019*, p. 3-154. The FS is referring to the ability to develop and offer sales with positive appraisals.

[61] *DEIS 2019*, p. 3-44.

[62] *DEIS 2019*, p. 2-21, and *DEIS 2019*, p. 3-154.

[63] *DEIS 2019*, p. 2-25 (Table 2-11).

[64] *DEIS 2019*, p. 2-21.

[65] For example, see Audubon Alaska, *Keeping the Roadless Rule in AK*, November 5, 2019.

stakeholders have contended the proposed rule is unlikely to increase timber harvesting.[66] The FS did not analyze potential timber harvest under varying scenarios (e.g., different timber price or trade situations), nor did it analyze the likelihood of those scenarios occurring.[67]

Road Construction and Reconstruction

The proposed rule would exempt the Tongass from the 2001 Rule's provisions related to roads, which prohibit road construction and reconstruction except in specified circumstances.[68] FS estimates of impacts of any new road construction or reconstruction due to the proposed rule are based on a 2016 baseline, when the Tongass had 5,100 miles of roads, including both forest transportation system roads and other roads.[69] At that time, the FS anticipated an additional 1,000 miles of new roads would be built over the next 100 years and 500 miles of roads would be constructed or reconstructed over decommissioned roadbeds.[70]

The practical implications of this provision are difficult to predict precisely, for a variety of reasons. Roads in the Tongass are largely developed in support of timber harvesting, as opposed to regional transportation purposes (although roads primarily for regional transportation do pass through the Tongass).[71] The FS specifies that more road miles under the proposed rule are expected because the proposed rule would add areas suitable for timber harvest in relatively more remote areas, which would require more road construction to reach.[72] The amount of additional road miles depends on the level of timber harvesting: if timber harvesting levels are lower than anticipated, fewer additional road miles than expected may be added, whereas if timber harvesting levels are higher than anticipated, more additional road miles than expected may be added.[73] Uncertainties surrounding road construction and reconstruction under the proposed rule may be compounded by assumptions or uncertainties regarding timber harvesting levels (see "Timber Harvesting").

Some stakeholders have expressed concern that road construction may increase, with concomitant fiscal and environmental impacts.[74] One original purpose of the 2001 Rule was to control costs associated with maintaining the existing NFS road network.[75] As of 2019, the FS estimated the

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[66] Liz Ruskin, "How Would Lifting the Roadless Rule Change Tongass Logging? Not Much, Both Sides Say," Alaska Public Media, November 14, 2019.

[67] *DEIS 2019*, "Issues Eliminated from Detailed Analysis: Changes in Timber Markets," p. 1-10.

[68] For additional information on road construction and reconstruction provisions in the 2001 Rule, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

[69] *DEIS 2019*, p. 3-144.

[70] *DEIS 2019*, p. 3-144. The FS specified that proposed expansions to the southeast Alaska regional road network would cross NFS lands, though it is unclear whether the proposed road construction would be affected by either the 2001 Rule or the proposed rule. Under the 2001 Rule, federal aid highway projects are permitted under certain circumstances, and the FS has granted requests to establish state and local highways in current IRAs. Furthermore, some such roads were authorized through P.L. 109-59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act.

[71] *DEIS 2019*, p. 3-113.

[72] *DEIS 2019*, p. 2-24.

[73] *DEIS 2019*, p. 3-148.

[74] For example, see U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, Testimony of Autumn Hanna, 116th Cong., 2nd sess., November 13, 2019, or Mark Kaelke, "Fish and Fiscal Responsibility: Let's Protect the Roadless Rule," *Trout Unlimited*, December 10, 2019.

[75] *2001 Rule*, "Purpose and Need for Action."

road maintenance backlog in Alaska to be $68 million.[76] In regard to the proposed rule, the FS specifies that uncertainty exists regarding the funds to maintain the existing NFS road network and that risks are associated with inadequate funding, such as increased safety hazards and adverse effects to fish, water quality, and wildlife.[77] However, the likelihood of future funding shortfalls is unclear. The degree to which the FS's analysis accounts for the possibility of imperfectly maintained roads (either new or existing) is unclear, and it does not appear to consider Tongass road construction and reconstruction costs as a factor.

Overall Impacts of the Proposed Rule

The FS predicts the proposed rule would have a "moderate adverse" effect on overall protection of roadless area characteristics in the Tongass.[78] The FS anticipates the proposed rule would have a minimal to moderate beneficial impact on some local and regional economic activities (e.g., the forest products industry and development of leasable minerals, state transportation projects, and renewable energy projects), no impact on others (e.g., the fisheries industry and development of locatable minerals), and a minimal adverse effect on the visitor industry.[79] The FS predicts effects on ecosystems and wildlife generally would be similar to predicted effects under current management, with minimal increases in road density and young-growth timber harvesting in special habitats.[80]

The FS's predicted impacts to these and other resources are sensitive to the agency's expectations regarding timber harvesting and roads, which depend on a number of assumptions (see "Timber Harvesting" and "Road Construction and Reconstruction"). For example, although the FS specifies that roads pose the "greatest risk" to fish resources in the Tongass through increased sedimentation and other impacts, the agency also notes that overall effects are expected to be minimal because timber harvesting is not predicted to increase.[81] If timber harvesting increased, fish resources might face greater impacts. In other cases, impacts are not assessed at a programmatic or cumulative level and the FS specifies that impacts would be assessed for applicable projects on a case-by-case basis. For example, the FS specifies that analyses of habitat fragmentation and connectivity, impacts to water quality and quantity, and impacts to soils would be assessed for individual projects.[82] Therefore, the expected overall impact to these Tongass lands and resources under the proposed rule is unclear.

Some stakeholders have raised concerns regarding overall impacts to the Tongass from the proposed rule on a variety of economic, ecological, and cultural resources and uses (see "The Tongass National Forest in Context"). For example, some have expressed concern that the rule may disproportionately affect the seafood and tourism industries (e.g., through impacts to salmon spawning habitat or scenic views).[83] Others have expressed concern that increased timber

[76] FS, Responses to Questions for the Record Submitted by Rep. Mike Quigley Following U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Examining the Spending Priorities and Missions of the U.S. Forest Service and the Bureau of Land Management*, 116th Cong., 2nd sess., April 10, 2019.

[77] *DEIS 2019*, p. 3-148.

[78] *DEIS 2019*, p. 2-25 (Table 2-11).

[79] *DEIS 2019*, p. 2-25 (Table 2-11).

[80] *DEIS 2019*, p. 2-25 (Table 2-11). "Special habitats" include beach and estuary fringes, riparian management areas, and old-growth mosaic habitats.

[81] *DEIS 2019*, p. 3-112.

[82] *DEIS 2019*, p. 1-8.

[83] For example, see Adelyn Baxter, "Tourism Advocates Say Proposed Roadless Rule Exemption Threatens Industry's

harvesting due to the rule may affect endangered species habitat, carbon sequestration, or other ecological resources.[84] It is difficult to assess these and other concerns in the context of the FS's analysis. Such concerns do not always directly respond to the FS's projected impacts from the rule, making direct comparisons difficult.[85] Furthermore, the FS's projected impacts depend on specific future timber harvesting levels (and their association with roads), which are not guaranteed to occur.

Potential Impacts to the Chugach from the Proposed Rule

In contrast to its effect on the Tongass, the proposed rule would not remove the applicability of the 2001 Rule to the Chugach National Forest. Chugach IRAs would remain designated, and the 2001 Rule's provisions related to IRAs would remain in place. The proposed rule would establish an administrative process allowing the Alaska Regional Forester to issue boundary corrections and modifications for IRAs designated by the 2001 Rule on the Chugach National Forest.[86] Specifically, after a 30-day comment period, the Alaska Regional Forester would be able to change the boundaries of IRAs in the Chugach to rectify errors (e.g., clerical and typographical errors); to reflect improvements in mapping technology; or to incorporate changes in IRA acres since 2001, such as excluding areas that have since been designated as wilderness (*boundary corrections*). After a 45-day comment period, the proposed rule would allow the Alaska Regional Forester to change the boundaries or classifications of an IRA (*boundary modifications).* The term "classification" is not defined in the proposed rule.

The FS specifies that this provision is administrative in nature and does not have any environmental effects.[87] However, this provision would allow the Alaska Regional Forester to change the boundary of an IRA following a public comment period. A decision by the Alaska Regional Forester to change the boundary of an IRA would remove the 2001 Rule's prohibitions on timber harvesting, road construction, or road reconstruction in any area excluded by the new IRA boundary. The FS did not assess the likelihood of such changes being made or the impacts of such changes. Some have characterized the proposed rule as broad and open-ended, potentially allowing for large changes to the Chugach.[88] Others assert that the proposed rule may allow logging in more cost-effective areas of the Chugach, thereby bolstering the local economy.[89]

Growth," Alaska Public Media KTOO-Juneau, October 17, 2019, and Laine Welch, "Some Southeast Alaska Fishermen Speak Out Against Push to Exempt Tongass from Roadless Rule," *Anchorage Daily News,* November 6, 2019.

[84] For example, see Patrick Lavin, "Protecting Wildlife in America's Rainforest," *Defenders of Wildlife* (blog), October 4, 2018, and Bobby Magill, "'Hail Mary Pass' in Alaska's Tongass Forest Sets Up Carbon Clash," *Bloomberg Law*, December 9, 2019.

[85] CRS identified one source that responded to the FS's analysis directly, which asserted that the FS's analysis of carbon impacts due to timber harvesting was deficient. Dominick DellaSala, *Analysis of Carbon Storage in Roadless Areas of the Tongass National Forest*, Geos Institute, 2019, at http://forestlegacies.org/wp-content/uploads/2019/12/tongass_carbon_2019_12_16.pdf.

[86] *Proposed Rule 2019,* at p. 55528 (proposed codification at 36 C.F.R. §294.51).

[87] *DEIS 2019,* p. 1-12.

[88] Benjamin Hulac, "Road Proposal for Tongass Includes Another Alaska Forest," *Roll Call*, December 16, 2019, hereinafter cited as Hulac, "Road Proposal for Tongass."

[89] Hulac, "Road Proposal for Tongass."

Issues for Congress

Debates surrounding the proposed Alaska Roadless Rule have generated interest on a national scale.[90] These debates often center on the impacts to communities and resources, either due to the proposed rule itself or due to potential differences between the proposed rule and the 2001 Rule. Certain issues also may relate to the FS's rulemaking process itself.

Impacts to Lands, Resources, and Communities: Stakeholder Views

Stakeholders may support the following courses of action:

- maintaining the 2001 Rule's current provisions and applicability;
- maintaining the general framework of the 2001 Rule but altering its provisions or applicability; or
- removing the 2001 Rule's applicability to Alaska altogether and either replacing the rule or returning roadless area management of Alaska's national forests to regional decisionmaking.

In general, these debates have focused on impacts to the Tongass, although some have expressed interest about the potential rule's impacts to the Chugach.[91]

Proponents of the 2001 Rule often seek to maintain its current provisions, though some may advocate for broadening its prohibitions or applicability. Proponents often seek to maintain or enhance resource protections.[92] Some groups may assert that the 2001 Rule assists in protecting resource conditions that support economically significant sectors.[93] Some also may contend that lifting the 2001 Rule would not significantly help the Alaska timber industry.[94] Some groups may assert that timber harvesting in the Tongass is an inefficient use of federal resources.[95]

Opponents of the 2001 Rule may seek to make less stringent the rule's current provisions or, as the State of Alaska proposed, to remove them altogether, particularly in the Tongass. Those favoring this position often seek to open IRAs to various resource uses—in particular, to open Tongass IRAs to timber harvesting. Such groups may contend that the 2001 Rule negatively affects rural economic prosperity, with particularly sustained and detrimental impacts to the

[90] See, for example, Coral Davenport, "Forest Service Backs an End to Limits on Roads in Alaska's Tongass Forest," *New York Times*, October 15, 2019, or James Freeman, "Trump Says Goodbye to More Red Tape," *Wall Street Journal*, August 27, 2019.

[91] For example, see Jenny Weis, "The Chugach National Forest Caught Up in Roadless Mess," *Trout Unlimited*, October 20, 2019.

[92] For example, see Ken Rait, *Tongass National Forest Plan Threatens Wildlife, Economy, and More*, Pew Charitable Trusts, December 10, 2019.

[93] For example, see Laine Welch, "Some Southeast Alaska Fishermen Speak Out Against Push to Exempt Tongass from Roadless Rule," *Anchorage Daily News*, November 6, 2019, and Adelyn Baxter, "Tourism Advocates Say Proposed Roadless Rule Exemption Threatens Industry's Growth," Alaska Public Media KT00—Juneau, October 19, 2019.

[94] For example, see U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, Testimony of James Furnish, 116th Cong., 2nd sess., November 13, 2019 (also described in Liz Ruskin, "How Would Lifting the Roadless Rule Change Tongass Logging? Not Much, Both Sides Say," Alaska Public Media, November 14, 2019).

[95] For example, see Taxpayers for Common Sense, *Pain in the Tongass—The Sequel*, November 15, 2019.

Alaska timber industry.[96] Some also may contend that the 2001 Rule is not needed to confer additional resource protection.[97]

Concerns Regarding the Forest Service's Rulemaking Process

The FS has provided grant funding to the Alaska Department of Natural Resources Division of Forestry (Alaska DOF) to support its role as a cooperating agency in the rulemaking process. The FS also entered into a memorandum of understanding with the Alaska Forest Association (AFA), a trade group, to provide industry perspective on the economic viability of timber harvesting in the Tongass.[98] As of September 2019, the Alaska DOF had awarded $200,000 of FS grant funding to the AFA for use in support of the rulemaking process.[99] At that time, the FS and the Alaska DOF had not awarded funding to some other cooperating agencies, such as tribal governments.[100] It is also unclear if the awarded funding could properly be used for rulemaking activities.[101] Some have alleged that awarding this funding to the State of Alaska, which requested the rulemaking, or to the AFA represents a conflict of interest, though others have stated that the uses of grant funds were appropriate.[102] In November 2019, the ranking member of the Senate Agriculture Committee and the chairman of the House Natural Resources Committee requested that the

[96] For example, see testimony of Kyle Moselle, Associate Director, Office of Project Management and Permitting, Alaska Department of Natural Resources, in U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, 116th Cong., 2nd sess., November 13, 2019.

[97] For example, Senator Lisa Murkowski, "Why I Support Trump's Proposal to Lift Restrictions in the Tongass," *Washington Post*, September 25, 2019.

[98] *Memorandum of Understanding Between United States Department of Agriculture, Forest Service, and Alaska Forest Association*, FS Agreement No. 17-MU-11100500-012, March 2017.

[99] The Alaska Department of Natural Resources (DNR), Division of Forestry, entered into two cooperative agreements with the Alaska Forest Association (AFA) related to the rulemaking, both titled *Cooperative Agreement Between Division of Forestry, DNR, State of Alaska Department of Natural Resources and Alaska Forest Association* and dated March 19, 2019, available accompanying Elizabeth Jenkins, "Faced with an Important Decision on the Tongass, Why Is the Federal Government Supporting Alaska's Timber Industry?," Alaska Public Media KT00-Juneau, September 24, 2019, hereinafter cited as Jenkins, "Important Decision on the Tongass." The agreements were for two purposes: (1) to provide estimates of roadless acreage, timber volume in roadless areas, and economically viable timber in roadless areas in support of the rulemaking and (2) to provide work plans for work developed under the FS-AFA memorandum of understanding. Both cooperative agreements were supported by FS funding.

[100] In 2018, the FS modified an existing FS grant to the Alaska DNR to grant the Alaska DNR an additional $2.0 million in funding. The purpose of the grant funds was to support the proposed FS rulemaking for IRAs in Alaska. The source of the funds for the modified grant is unclear, but some funds may be from the FS State Fire Assistance grant program, which provides financial and technical assistance, training, and equipment to state foresters to promote fire protection on nonfederal lands. Because the source of the funding in the modified grant agreement is unclear, it is also unclear whether the award was properly made or the awarded funds were properly used. FS Modification of Grant or Agreement, FS Grant or Agreement No. 18-DG-11100106, Modification No. 02, October 22, 2018. Additional discussion and a copy of the grant modification is available at Elizabeth Jenkins, "Records Show Federal Government, Tasked with Rewriting Tongass Rules, Also Funded Alaska Timber Group," Alaska Public Media KT00-Juneau, September 24, 2019.

[101] Jenkins, "Important Decision on the Tongass"; Elwood Brehmer, "Invoices Reveal How Federal Grant Was Used on 'Roadless Rule' Work in Alaska's Tongass National Forest," *Anchorage Daily News*, January 24, 2020.

[102] For example, see Earthjustice, "Forest Service Paying Timber Industry to Pick Which Trees It Wants in Alaska's Tongass National Forest," January 27, 2020, and State of Alaska DNR, "DNR Commissioner Says USFS Roadless Grant Used Properly," press release, November 20, 2019.

USDA investigate the award and subsequent uses of the grant.[103] In response to the request, the USDA Office of the Inspector General has opened an investigation, which is ongoing.[104]

Options for Congress

Congress has already engaged in the FS Alaska roadless rulemaking process through various means, such as hearings, correspondence with the USDA, and others.[105] If desired, options for congressional action regarding roadless areas in Alaska are broad and varied, depending on what aspect of Alaska roadless area management Congress wishes to address. Some of these options are detailed below.

Alternatively, Congress may decide that action related to the newly issued rule is not desirable at this time. For example, Congress may elect to observe FS implementation of the rule and its effect on related lands and resources. Should the rule be challenged in court, Congress also may wish to see how such challenges are resolved.

Oversight

Congress might broadly use its oversight powers to review FS activities, such as the FS's rulemaking process and/or its administration of roadless areas. Such approaches might include directing the FS to inventory or report on current roadless area conditions, the 2001 Rule's impact to specified resources or economic sectors, the FS's planned implementation of provisions of the 2001 Rule (if such planning exists), or other aspects of roadless area management. Similarly, Congress may wish to continue oversight activities related to the FS rulemaking process, such as overseeing the FS's cooperation with the State of Alaska or other groups.

Respond to Newly Issued Forest Service Roadless Regulations

In the case of newly issued regulations, Congress can review the rule within a specified time frame and may revoke the rule, if desired.[106]

Legislative Action

Congress could consider legislation to address Alaska roadless area management, taking a variety of approaches:

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[103] Letter from the Honorable Debbie Stabenow, Ranking Member, U.S. Senate Committee on Agriculture, Nutrition and Forestry, and the Honorable Raul Grijalva, Charman, U.S. House of Representatives Committee on Natural Resources, to Phillis K. Fong, Inspector General, U.S. Department of Agriculture, November 18, 2018.

[104] Letter from Phillis K. Fong, Inspector General, U.S. Department of Agriculture, to the Honorable Debbie Stabenow, Ranking Member, U.S. Senate Committee on Agriculture, Nutrition and Forestry, and the Honorable Raul Grijalva, Charman, U.S. House of Representatives Committee on Natural Resources, February 19, 2020.

[105] See, for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, Testimony of James Furnish, 116th Cong., 2nd sess., November 13, 2019, and Letter from the Honorable Debbie Stabenow, Ranking Member, U.S. Senate Committee on Agriculture, Nutrition and Forestry, and the Honorable Raul Grijalva, Charman, U.S. House of Representatives Committee on Natural Resources, to Phillis K. Fong, Inspector General, U.S. Department of Agriculture, November 18, 2018.

[106] Congressional Review Act, 5 U.S.C. 801, 804(2). For more information on the Congressional Review Act, see CRS In Focus IF10023, *The Congressional Review Act (CRA)*, by Maeve P. Carey and Christopher M. Davis.

- **Legislation That Refers to the FS's Roadless Rules**. For example, such legislation could codify a rule into law, codify a rule and amend its provisions, or exempt certain parts of the NFS from a rule.[107] Such actions could supersede or complement the FS's proposed rule.
- **Legislation That Specifies Roadless Area Management Provisions**. For example, Congress could specify a manner and/or degree of state participation or direction regarding Alaska roadless area management and designation, specify prohibited or permitted management actions in Alaska IRAs, or take other actions.[108]
- **Legislation That Congressionally Designates IRAs.** For example, Congress could designate Alaska IRAs under other federal land designations, such as national monuments or wilderness.[109] Alternately, Congress could designate Alaska IRAs for multiple-use management. Such designations would supersede FS rulemaking.
- **Legislation That Addresses Other Issues**. Such issues could include funding for activities in Alaska IRAs, for example.

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[107] For example, see S. 1311, Roadless Area Conservation Act of 2019, and H.R. 2491, Roadless Area Conservation Act of 2019, which would codify certain FS roadless regulations into law; H.Amdt. 598 to H.R. 2 from the 115th Congress, which would have exempted a state from FS roadless regulations; or S. 193 from the 114th Congress, which would have exempted certain areas from FS roadless regulations.

[108] For example, see H.R. 7090, Act to Save America's Forests, from the 110th Congress.

[109] According to FS, *Tongass National Forest Land and Resource Management Plan*, 2016, Congress had designated approximately 7.2 million acres of the Tongass under various federal land designations by 2016. These designations include wilderness, national monuments, wild and scenic rivers, and designations established under P.L. 101-626 §201 and P.L. 113-291 §3002. The provisions of each statutory designation differ from the provisions of the 2001 Rule. The acres of these designations may overlap (e.g., Congress may designate a wild and scenic river within a national monument); it is unclear to what degree these designations may overlap with IRAs. Congress may have since designated additional Tongass lands. For a description of federal land designations, see CRS Report R45340, *Federal Land Designations: A Brief Guide*, coordinated by Laura B. Comay. Pursuant to these and any other applicable statutory authorities or requirements, the Tongass land and resource management plan specifies desired resource conditions for units of the Tongass and informs decisions on how those uses will be balanced.

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