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The Alaska Roadless Rule: Eliminating Inventoried Roadless Areas (IRAs) in the Tongass National Forest

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SUMMARY

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The Alaska Roadless Rule: Eliminating Inventoried Roadless Areas (IRAs) in the Tongass National Forest

Inventoried roadless areas (IRAs) are areas of the National Forest System (NFS) identified administratively by the U.S. Department of Agriculture (USDA) 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.

IRA management in Alaska's Tongass National Forest has generated particular controversy. The Tongass is the nation's largest national forest and is a regionally significant setting for economic sectors such as forestry, commercial fishing, and tourism. It is also a unique ecological resource, containing large, undeveloped tracts of rare ecosystems, such as temperate rainforest. Thus, the impacts to NFS lands and resources and to adjacent communities from Tongass roadless area management has generated congressional interest.

In January 2018, the State of Alaska requested that the USDA consider creation of a state-specific rule to exempt the Tongass from the then-applicable roadless rule, the Roadless Area Conservation Rule (hereinafter, the 2001 Rule). The FS agreed to undertake this rulemaking and published the final rule, final environmental impact statement (FEIS), and regulatory impact assessment (RIA) in October 2020. The FS's rule specifies that the 2001 Rule shall not apply to the Tongass National Forest. As such, the rule removed all 9.3 million IRA acres in the Tongass from roadless designation and the 2001 Rule's prohibitions on timber harvesting, road construction, and reconstruction no longer apply to the forest.

The practical impact of the 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 rule will affect various Tongass uses and values positively (e.g., the timber industry, regional transportation development), negatively (e.g., tourism, overall roadless area characteristics), or not at all (e.g., commercial fisheries). The FS expects effects on ecosystems and wildlife generally will be similar to predicted effects under current management. The FS predicts that the economic impacts of the exemption could range between a net present value of approximately $2.5 to $3.5 million, to approximately -$27.8 to -$29.3 million.

Debates surrounding the rule have generated interest on a national scale and often center on the potential impacts to communities and resources. Concerns also have been raised about the FS's management of the rulemaking process. In particular, stakeholders have questioned the State of Alaska's use of federal funds during the rulemaking process and the FS's treatment of Alaska Native tribal governments' input. 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.[1] 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, the Roadless Area Conservation Rule (hereinafter, the *2001 Rule*), which defined the modern-day IRAs and set a nationwide framework for modern FS roadless area policy. It remains in effect for most national forests (see "History of Roadless Area Management in Alaska"). In 2018, the FS began work on a state-specific rulemaking for IRAs in Alaska's National Forests, the Tongass and the Chugach, spurring interest in how such a rulemaking may affect associated NFS lands and resources. On October 29, 2020, the FS issued the final rulemaking, which removes the 2001 Rule's applicability to Alaska's Tongass National Forest, thereby eliminating the designation of IRAs in the Tongass and the associated prohibitions on timber harvesting, road construction, and road reconstruction.

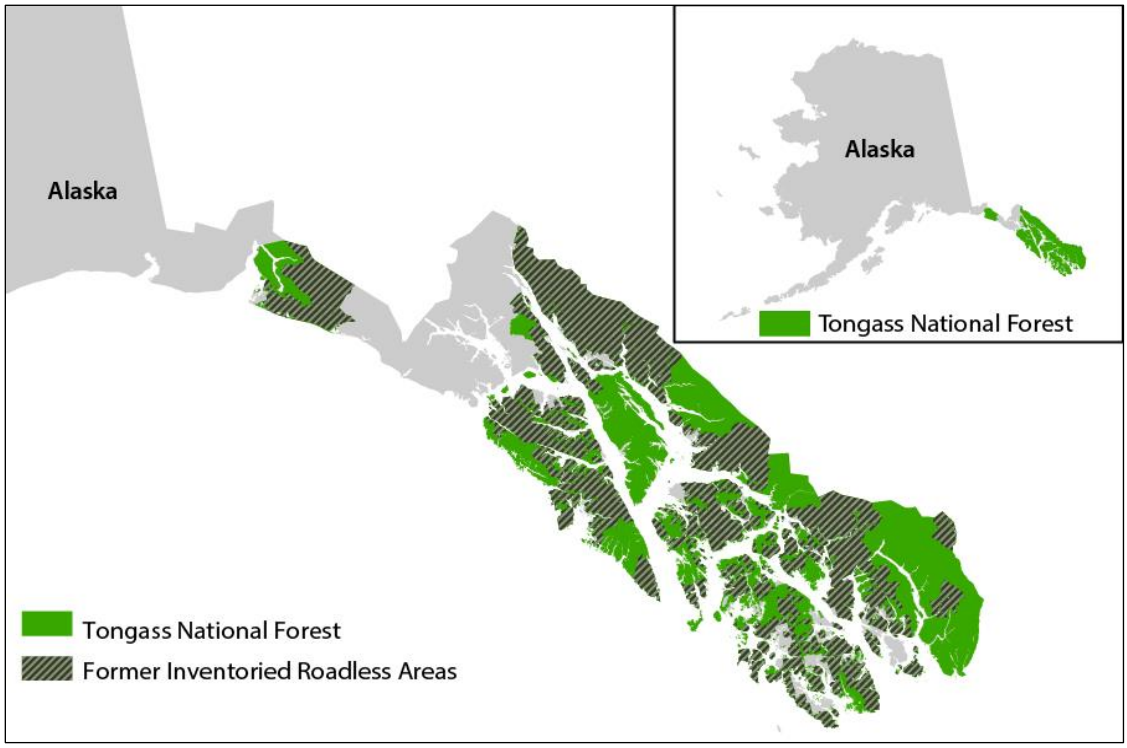
IRA management in Alaska, including the rulemaking, has generated particular controversy. At approximately 16.7 million acres (more than 26,000 square miles), the Tongass is the nation's largest national forest (see **Figure 1)**.[2] It contained approximately 9.3 million acres of IRAs, or approximately 56% of its area and approximately 16% of nationwide IRA acres.[3] The Tongass is significant for local communities and the overall regional economy. The Tongass also is a unique ecological resource, because it contains large, undeveloped tracts of rare ecosystems, such as temperate rainforest. Thus, the scale of the rule, and its potential impacts to Tongass lands and resources and to adjacent communities, has generated stakeholder interest.

[1] For more information on inventoried roadless areas and roadless rules, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

[2] U.S. Department of Agriculture (USDA), Forest Service (FS), "National Forest System Land Area" in *Land Areas Report (LAR)*, 2019.

[3] 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. Note that other sources may report different acreages of Tongass IRAs; for example, the FS reported Tongass IRAs to be both 9.3 million and 9.4 million acres in extent in the explanatory material accompanying the final rulemaking.

Figure 1. The Tongass National Forest



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 shown continuing concern about policy for roadless area management, including roadless area management specific to Alaska, through legislative and oversight activities. Congressional interest in Alaska roadless area management also has generated policy proposals applicable to FS roadless areas nationwide.

This report provides an overview of the FS's 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 is the focus of the final rule and associated stakeholder attention. The report also describes the rule's contents and its potential impacts. The report concludes with a discussion of issues for potential congressional consideration related to the rule and the FS's rulemaking process.

National Forests in Alaska

Of the two national forests in Alaska, the Chugach is the less developed, with limited access to much of the forest. About 99% of its approximately 5.4 million acres are designated as IRAs, and its major resources and uses are fish, wildlife, and recreation.[4] The Tongass, the largest national forest, had about 9.3 million acres (56%) of its approximately 16.7 million acres designated as

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

IRAs.[5] The Tongass is an important setting for regionally significant tourism, seafood, and resource extraction industries (e.g., timber harvesting).[6] Therefore, controversy regarding IRAs in Alaska has focused on the Tongass. For example, the proposed Alaska roadless rule was focused largely on the Tongass, with minor provisions related to the Chugach, and the final rule eliminated provisions related to the Chugach altogether.

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 resource-based 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.

In 2018, more than 29% of total employment in southeast Alaska was in forestry, commercial fishing, tourism, and mining and mineral development, 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 (such as 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] 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.[12] In addition, the Tongass sequesters large quantities of carbon and plays other important roles in the global carbon cycle.[13]

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[5] 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.

[6] USDA, FS, *Final Environmental Impact Statement: Rulemaking for Alaska Roadless Areas*, R10-MB-867b, September 2020, pp. ES-3. Hereinafter cited as *FEIS 2020*.

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

[8] *FEIS 2020*, "Background," "Key Issue 1-Roadless Area Conservation," and others.

[9] *FEIS 2020*, Table 3.2-1. The visitor industry accounts for approximately 62% of resource-based employment, followed by seafood (28%), mining and mineral development (7%), and timber (3%). The visitor industry represents 18% of total employment, followed by seafood (8%), mining and mineral development (2%) and timber (1%). *FEIS 2020*, Table 3.2-1.

[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 except in one region, Prince of Wales Island. *FEIS 2020*, p. 3-163.

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

[13] *FEIS 2020*, "Climate and Carbon," and Heather Keith, Brendan Mackey, and David Lindenmeyer, "Re-evaluation of 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

Special Considerations for Tongass Roads and Timber

Prior to the October 2020 rulemaking, the roadless rule applicable to the NFS (the 2001 Rule) placed restrictions on timber harvesting, road construction, and road reconstruction in IRAs. These issues are intertwined: the Tongass's road transportation system is mostly in support of timber harvesting.[14] 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 forest:** Usually, 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 forest:** 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 forest is associated with many of the Tongass's unique qualities, such as habitat for sensitive or endemic 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.

Under the 2016 *Tongass Land and Resource Management Plan*, 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, *Final Environmental Impact Statement: Rulemaking for Alaska Roadless Areas*, R10-MB-867b, September 2020; 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, has declined from its peak levels in the 1970s and 1980s.[15] Timber industry employment in southeast Alaska also has been declining since its peak in 1982.[16] The FS estimates the number of timber jobs directly supported by the Tongass fell from 199 in 2003 to 62 in 2018.[17] During this period, total Tongass-related

R46313, *U.S. Forest Carbon Data: In Brief*, by Katie Hoover and Anne A. Riddle.

[14] *FEIS 2020*, p. 3-163.

[15] 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*. According to GAO, timber harvests from the Tongass peaked at an annual average of approximately 494 million board feet in the 1970s. For more information on the history of NFS timber harvesting, see CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle.

[16] GAO, *Tongass National Forest.* There were approximately 2,500 timber industry jobs in southeast Alaska in 1982.

[17] *FEIS 2020*, p. 3-34, Table 3.2-2. The FS estimates that total timber industry employment in southeast Alaska

timber harvest activities supported about 42% of total timber industry employment in southeast Alaska, on average.[18] In FY2018, approximately 19.9 million board feet (MMBF) of timber was harvested from the Tongass.[19] Tongass timber sale levels for the last three years have averaged 15 MMBF per year, or about one-third of the quantity of timber expected to be sold.[20] Generally, most timber harvested in southeast Alaska is sent to other states and exported internationally.[21]

Several legal and policy considerations shape timber harvesting in the Tongass. The FS must seek to meet market demand for timber from the Tongass, both annually and for each forest planning cycle.[22] 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.[23] 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.[24] Although international and interstate export of unprocessed timber from Alaska NFS lands requires approval by the FS, 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.[25] In 2018, 46% of the timber harvested from the Tongass was exported, with approximately 44% exported internationally.[26]

History of Roadless Area Management in Alaska[27]

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

declined from 561 jobs in 2003 to 193 jobs in 2018. 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 *FEIS 2020*. This source does not estimate employment over time. It is unclear whether these sources measure equivalent employment categories.

[18] CRS, from *FEIS 2020*, p. 3-34.

[19] Forest Service, "Cut and Sold Reports," Region 10, FY2018 4th Quarter cumulative report, September 2019.

[20] *FEIS 2020*, p. H-29.

[21] 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.

[22] P.L. 101-626.

[23] P.L. 116-94 §436. The requirement to offer positively appraised sales is generally specified in annual Interior appropriations bills.

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

[25] 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.

[26] CRS calculation from *FEIS 2020*, p. 3-39.

[27] For more information on the history of inventoried roadless areas, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*, by Anne A. Riddle and Adam Vann.

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.[28]

In 1964, Congress passed the Wilderness Act, simultaneously designating many FS undeveloped areas as part of the National Wilderness Preservation System (NWPS) and directing the FS to inventory other undeveloped areas throughout the NFS for possible NWPS inclusion.[29] 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.[30]

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 specified that remaining RARE I and II acres were to be managed for multiple use.[31] 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*).[32]

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 (the 2001 Rule).[33] 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

[28] 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 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).

[29] P.L. 88-577.

[30] 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.

[31] Pursuant to the Multiple Use-Sustained Yield Act of 1960, the FS manages the National Forest System to balance multiple uses of its lands and to ensure a sustained yield of those uses in perpetuity. For more information, see CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle.

[32] 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, hereinafter cited as *2001 Rule FEIS*.

[33] 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*.

building, or road maintenance in those IRAs except under specified conditions.[34] 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-caused fires).[35] 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.[36] 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.[37] 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.[38]
- **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.[39] 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.[40] Between 2001 and 2011, federal courts enjoined both the 2001 and the 2005 Rules.[41] For a time, it was unclear which rule, if any, governed FS management of roadless areas. However, in 2011, the 2001 Rule was returned

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

[35] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[36] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule."

[37] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule."

[38] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[39] *2001 Rule*, "Purpose and Need for the Roadless Area Conservation Rule"; *2001 Rule FEIS*, "Purpose and Need."

[40] 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.

[41] 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.

to effect in most states (see "Alaska and the Roadless Rule" for a discussion of the 2001 Rule's applicability to Alaska).[42]

Alaska and the Roadless Rule[43]

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.

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.[44] 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.[45]

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.[46] 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.[47] The court thus vacated the exemption and reinstated the applicability of the 2001 Rule to the Tongass.[48] 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.[49] The 2001 Rule applied to the Tongass until the final Alaska roadless rule was issued in 2020 (see "The Final Alaska Roadless Rule: The Tongass Roadless Exemption").

The Final Alaska Roadless Rule: The Tongass Roadless Exemption

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.[50] The FS previously issued state-specific roadless rules for two states in response to their petitions under the 2005 Rule.[51] The FS subsequently published a notice of intent on August 30,

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[42] 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.

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

[44] *2001 Rule,* "Public Comments on the Proposed Rule."

[45] 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.

[46] *2005 Rule*, "Summary of Public Comments and the Departments' Responses."

[47] 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.

[48] *Id*. at 976-77.

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

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

[51] For information on the state-specific rules for these two states, Colorado and Idaho, see CRS Report R46504, *Forest*

2018, to begin the environmental analysis process required to issue a new rule concerning roadless area management in the state of Alaska.[52] The FS published the proposed rule and draft environmental impact statement on October 17, 2019.[53] The proposed rule would have removed the 2001 Rule's applicability to the Tongass and would have established an administrative process for issuing boundary corrections and modifications for IRAs in the Chugach National Forest.

In developing the final 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.

The FS published the final rule on October 29, 2020.[54] The FS's final rule specifies that the 2001 Rule shall not apply to the Tongass National Forest (hereinafter, the *Tongass roadless exemption* or *exemption*).[55] As such, the rule removed all 9.3 million IRA acres in the Tongass from roadless designation and the 2001 Rule's prohibitions on timber harvesting, road construction, and reconstruction 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 are designated as suitable for timber production under the exemption (see "Timber Harvesting").[56] The rule also requires the FS to update the Tongass forest plan to conform with the rule, including updating the designation of lands suitable for timber production. Unlike the proposed rule, the final rule does not include any provisions related to the Chugach National Forest.

In the explanatory matter accompanying the final rule, the FS discussed its rationale for choosing to exempt the Tongass from the 2001 Rule. The FS stated that the exemption does not contradict the factual findings it made in issuing the 2001 Rule (i.e., the findings on cumulative impacts of roads and timber harvesting, NFS management constraints, and litigation described in "The Roadless Rule").[57] Rather, the rule assigns different values to the various multiple uses of the Tongass.[58] In the final environmental impact statement, the FS further specified that an overall reduction in federal regulations is beneficial for the American public and that substantial

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.

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

[53] For more information, see CRS Report R46505, *The Proposed Alaska Roadless Rule*, by Anne A. Riddle.

[54] FS, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 85 *Federal Register* 68688, October 29, 2020. Hereinafter referred to as *Final Rule 2020*. The rule is effective as of October 29, 2020.

[55] FS, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 85 *Federal Register* 68688, October 29, 2020. The FS refers to this rule as the Alaska Roadless Rule. For the purposes of this report, CRS refers to the rule as the *Tongass roadless exemption* to clarify that the rule does not apply to all national forests in Alaska.

[56] 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 (also known as the Tongass forest 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 final rule, these restrictions have been removed. For more information, see CRS Report R45688, *Timber Harvesting on Federal Lands*, by Anne A. Riddle.

[57] *Final Rule 2020*, "Decision Rationale and Important Considerations."

[58] *Final Rule 2020*, "Decision Rationale and Important Considerations."

preference was given to the State of Alaska's preferred policy, due to states' insights into the balance between rural economic development and environmental protection.[59]

The FS also stated that the best mechanism to account for the wide variety of interests regarding Tongass resources and uses is to remove the applicability of the 2001 Rule and allow land management to be governed by the "NFMA forest planning process"—the requirement that the FS plan forest management using a systematic, interdisciplinary process specified in the National Forest Management Act (NFMA).[60] The meaning of this is somewhat ambiguous, as the Tongass was managed according to NFMA before the exemption.

On December 23, 2020, a coalition of Alaska Native tribal governments, nonprofit organizations, and business organizations sued the USDA regarding the final rule.[61] The suit remains pending as of the date of publication of this report.

How the final rule will 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 final environmental impact statement, regulatory impact assessment, and cost-benefit assessment accompanying the rule, along with stakeholder concerns regarding such impacts.

Timber Harvesting

By removing the 2001 Rule's applicability to the Tongass, the final rule exempts the Tongass from the 2001 Rule's provisions regarding timber harvesting, which prohibit timber harvesting in IRAs except under specified circumstances.[62] Under the exemption, an additional 168,000 acres of old-growth timber and 20,000 acres of young-growth timber became suitable for timber production.[63] These areas were previously designated as unsuitable for timber production due to designation as IRAs under the 2001 Rule. Prior to the exemption, about 227,000 acres of old-growth timber and 334,000 acres of young-growth timber were suitable for timber production; therefore, the exemption caused a 74% increase in suitable old-growth timber acres and a 6% increase in suitable young-growth timber acres.[64] The majority of old-growth areas made suitable by the rule are "more distant from roads."[65]

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.[66] As

[59] *FEIS 2020,* p. H-26-H-27.

[60] *Final Rule 2020,* "Decision Rationale and Important Considerations." National Forest Management Act (NFMA), P.L. 94-588. NFMA sets the framework for general management of the NFS and, as such, is applicable to all national forests since it was issued in 1976. Regulations for planning issued to implement NFMA have varied since that time. See CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle.

[61] Complaint for Declaratory and Injunctive Relief, Organized Village of Kake et al. v. Perdue, No. 1:20-cv-00011 (D. Alaska Dec. 23, 2020)

[62] 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.

[63] *FEIS 2020,* p. 2-16, Table 2-9.

[64] *FEIS 2020,* p. ES-13 and p. 2-20.

[65] CRS, calculation from *FEIS 2020,* Table 3.2-8, p. 3-52. 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.

[66] Unlike for other national forests, the Secretary of Agriculture must "seek to meet" market demand for timber from

described above (see "Special Considerations for Tongass Roads and Timber"), these factors affect whether timber sales appraise positive and can be offered.[67] 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 rule are sensitive to assumptions regarding these factors.

The FS asserts that overall harvest levels are not expected to vary significantly under the exemption, compared with those planned under the current Tongass forest plan.[68] The FS further states that the main effect of the exemption will be to increase flexibility in sale development, spreading out the same general harvest level over increased acreage and improving the FS's ability to make positively appraised sales that meet the timber industry's needs.[69] The FS expects the relative amount of old-growth and young-growth timber harvested under the exemption will be the same as current management, because of the planned transition to primarily young-growth timber harvest specified in the Tongass forest plan.[70] The FS predicts the rule will have a small beneficial effect on the forest products industry.[71]

The exemption'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 timber provisions in the 2016 Tongass forest plan amendment, such as projected timber sale levels and the young-growth transition.[72] 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 different than predicted or if forest planning objectives changed).

Some have expressed concern that timber harvesting could be higher than predicted, particularly harvesting of old-growth timber, with associated impacts to lands and resources.[73] Although the FS predicts little additional old-growth harvest, most of the lands that became suitable for timber production are old growth. However, in concurrence with the FS's analysis, other stakeholders have contended the exemption is unlikely to increase timber harvesting.[74] Lands that are more distant from roads—the majority of the land made suitable for timber harvesting under the exemption—are likely to be more costly to harvest and less likely to be accessed for timber production.[75] In general, it is unclear how the FS's predicted effects of the exemption are to be reconciled—namely, that it will improve the FS's ability to offer economically viable timber sales

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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. As described in the box titled "Tongass Timber and the Young Growth Transition," the FS also is 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.

[67] *FEIS 2020*, p. 3-50.

[68] *FEIS 2020*, p. ES-13.

[69] *FEIS 2020*, p. ES-13.

[70] *FEIS 2020*, p. 3-50 and p. ES-13.

[71] *FEIS 2020*, p. 2-25 (Table 2-12).

[72] *FEIS 2019*, p. 2-20.

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

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

[75] Forest Service, *Alaska Roadless Rulemaking: Regulatory Impact Assessment and Cost-Benefit Assessment*, October 29, 2020. Hereinafter, *RIA 2020*.

but that overall timber harvest levels and relative amounts of young- and old-growth harvest will not significantly change.

Road Construction and Reconstruction

The final rule exempts the Tongass from the 2001 Rule's provisions related to roads, which prohibit road construction and reconstruction in IRAs except in specified circumstances.[76] The impacts estimated by the FS of any new road construction or reconstruction due to the final 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.[77] 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.[78]

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).[79] The FS specifies that more road miles under the exemption are expected because the exemption makes areas suitable for timber harvest in relatively more remote areas, which would require more road construction to reach.[80] 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. Uncertainties surrounding road construction and reconstruction under the exemption 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 parallel fiscal and environmental impacts.[81] One original purpose of the 2001 Rule was to control costs associated with maintaining the existing NFS road network.[82] As of 2019, the FS estimated the road maintenance backlog in Alaska to be $68 million.[83] In regard to the exemption, the FS specifies that uncertainty exists regarding the funds to maintain and decommission the existing NFS road network and that risks are associated with inadequate funding, such as increased safety

[76] 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.

[77] *FEIS 2020*, p. 3-166.

[78] *FEIS 2020*, p. 3-166. 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.

[79] *FEIS 2020*, p. 3-163.

[80] *FEIS 2020*, p. 3-166.

[81] 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.

[82] *2001 Rule*, "Purpose and Need for Action."

[83] 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.

hazards and adverse effects to fish, water quality, and wildlife.[84] However, the likelihood of future funding shortfalls is difficult to predict, as the balance of deferred maintenance depends on future appropriations and revenues, the size and condition of the Tongass road network, and other uncertain future conditions. The degree to which the FS's analysis accounts for the possibility of imperfectly maintained roads (either new or existing) also is unclear. The FS estimates that additional road maintenance due the exemption (i.e., in addition to current conditions) will result in an annual cost to the agency of $250,000.[85]

Overall Impacts of the Exemption

The FS predicts the exemption will have a moderate adverse effect on overall protection of roadless area characteristics in the Tongass.[86] The FS anticipates the exemption will have a small 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 small adverse effect on the visitor industry.[87] The FS predicts effects on ecosystems and wildlife generally will be similar to predicted effects under current management, with minimal increases in road density and young-growth timber harvesting in special habitats.[88]

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, the FS specifies that the effects on old-growth dependent wildlife species are expected to be "almost identical" to effects predicted under current management, because long-term old-growth timber harvesting and road densities are not predicted to change significantly.[89] If timber harvesting or road density increased, these wildlife 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 impacts to water quality and quantity, soils, and essential fish habitat would be assessed for individual projects.[90] Therefore, the expected overall impact to these Tongass lands and resources under the exemption is unclear.

In the cost-benefit analysis associated with the rulemaking, the FS estimates economic impacts of the rulemaking could range from an upper-bound net present value of approximately $2.5 million to $3.5 million annually to a lower-bound net present value of approximately -$27.8 million to -$29.5 million annually.[91] The FS included the predicted economic costs or benefits of increased stumpage value (the market price of standing trees), costs to recreation and tourism, forgone old-growth conservation benefits, and agency road maintenance costs in this analysis.[92] Most of the costs were associated with the loss of old-growth conservation benefits; only increased stumpage

[84] *FEIS 2020,* p. 3-170.

[85] *RIA 2020,* Table 10.

[86] *FEIS 2020,* p. 2-25 (Table 2-12).

[87] *FEIS 2020,* p. 2-25 (Table 2-12).

[88] *FEIS 2020,* p. 2-25 (Table 2-12). "Special habitats" include beach and estuary fringes, riparian management areas, and old-growth mosaic habitats.

[89] *FEIS 2020,* p. 164.

[90] *FEIS 2020,* p. 1-11.

[91] *RIA 2020,* Table 11. Net present value is a sum of discounted future costs and benefits.

[92] *RIA 2020,* Table 11.

value was associated with a benefit. Some sectors (such as energy and mineral development, commercial fisheries, and infrastructure development) were not included because the FS predicted the exemption would have no significant effects.[93] In other cases (e.g., scenic values, traditional cultural properties and sacred sites), economic impacts were not estimated due to a lack of available data, uncertainty about future conditions, or other factors.[94] Therefore, the costs and benefits given may not represent the actual costs and benefits of the exemption.

Issues for Congress

Debates surrounding Tongass roadless area management have generated interest on a national scale.[95] These debates often center on the impacts to communities and resources, due either to the rule itself or to potential differences between the rule and the 2001 Rule. Certain issues also may relate to the FS's rulemaking process.

Impacts to Lands, Resources, and Communities: Stakeholder Views

Stakeholders hold a variety of views regarding impacts from the exemption on various economic, ecological, and cultural resources and uses of the Tongass, in addition to the perspectives on timber harvesting and road construction discussed above (see "The Tongass National Forest in Context"). For example, some have expressed concern that the rule may negatively affect the seafood and tourism industries (e.g., through impacts to salmon spawning habitat or scenic views).[96] Others have expressed concern that increased timber harvesting due to the rule may affect endangered species habitat, carbon sequestration, or other ecological resources.[97] Some may assert the exemption will increase opportunities for rural economic development.[98] Other stakeholders have stated the exemption may improve regional residents' access to technology (e.g., internet access), transportation, or affordable clean energy.[99]

Some FS conclusions appear to broadly align with various stakeholder views, whereas others do not. For example, the FS's cost-benefit analysis finds the exemption would generate costs to the tourism industry and result in forgone old-growth conservation benefits but asserts the exemption will have no impact on fisheries.[100] In general, the depth and range of possible impacts of the exemption, the uncertainty associated with future Tongass conditions and management (e.g., future timber harvesting levels or adherence to current forest plan guidelines), and the lack of data

[93] *RIA 2020.*

[94] *RIA 2020.*

[95] 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.

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

[97] 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.

[98] For example, see Marc Heller, "Trump's Tongass rule deepens Alaska tribal divides," *E&E News*, December 11, 2019.

[99] For example, see Elwood Brehmer, "What Comes After the Roadless Rule Repeal?," *Alaska Journal of Commerce*, November 11, 2020.

[100] *RIA 2020.*

on many possible impacts mean it is often difficult to evaluate competing claims on the impacts of the exemption.

Stakeholders may support the following courses of action:

- maintaining the Alaska Roadless Rule's current provisions and applicability (i.e., continuing to exempt the Tongass from the 2001 Rule);
- maintaining the general framework of the Alaska Roadless Rule but altering its provisions or applicability;
- revoking the Alaska Roadless Rule altogether, thereby reinstating the applicability of the 2001 Rule to the Tongass, or revoking and replacing the rule; or
- action not directly related to the rulemaking, such as legislative action (see "Options for Congress").

Opponents of the exemption may seek to reinstate the applicability of the 2001 Rule, though some may advocate for broadening its prohibitions or applicability or applying other resource protections to the Tongass. Proponents often seek to maintain or enhance resource protections for the Tongass.[101] Some groups may assert that the 2001 Rule assists in protecting resource conditions that support economically significant sectors.[102] Some also may contend that lifting the 2001 Rule would not significantly help the Alaska timber industry.[103] Some groups may assert that timber harvesting in the Tongass is an inefficient use of federal resources.[104]

Proponents of the exemption may seek to maintain its current provisions or to increase access to certain Tongass lands and resources. Those favoring this position often seek to ensure former IRAs are open to various resource uses.[105] Such groups may contend the 2001 Rule negatively affected rural economic prosperity, with particularly sustained and detrimental impacts to the Alaska timber industry.[106] Some also may contend the 2001 Rule was not needed to confer additional resource protection.[107]

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

[102] 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.

[103] 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).

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

[105] For example, see *FEIS 2020,* p. H-25.

[106] 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.

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

Uses of Federal Funding During the Rulemaking Process

To support the Alaska Department of Natural Resources Division of Forestry (Alaska DOF) in its role as a cooperating agency in the rulemaking process, the FS awarded $2 million in grant funding to Alaska DOF by modifying an existing grant.[108] 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.[109] 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.[110]

After the FS awarded grant funding to Alaska DOF, some questioned whether the awarded funding could properly be used for rulemaking activities.[111] Some alleged that awarding this funding to the State of Alaska, which requested the rulemaking, or to the AFA, represented a conflict of interest, though others have stated the uses of grant funds were appropriate.[112] The FS and the Alaska DOF did not award funding to other cooperating agencies, such as tribal governments, leading some to allege that certain interests were favored over others in the rulemaking process.[113]

In November 2019, the ranking member of the Senate Agriculture Committee and the chairman of the House Natural Resources Committee requested that the USDA investigate the award and subsequent uses of the Alaska DOF grant.[114] In response to the request, the USDA Office of the Inspector General investigated the issue.[115] Although the FS has the authority to provide funding to agencies cooperating in rulemaking activities (including the State of Alaska), the USDA found the processes the FS used to award the grant to Alaska did not comply with federal laws and regulations.[116] Specifically, the FS issued the funds by modifying an existing grant under the

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[108] FS Modification of Grant or Agreement, FS Grant or Agreement No. 18-DG-11100106, Modification No. 02, October 22, 2018.

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

[110] 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.

[111] 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.

[112] 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.

[113] Elizabeth Jenkins, "Records Show Federal Government, Tasked with Rewriting Tongass Rules, Also Funded Alaska Timber Group," Alaska Public Media KT00-Juneau, September 24, 2019.

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

[115] U.S. Department of Agriculture, Office of the Inspector General, *Forest Service Grant for Roadless Area Management in the State of Alaska*, Inspection Report 08801-00001-24, December 15, 2020. Hereinafter, *USDA OIG 2020.*

[116] *USDA OIG 2020.*

Cooperative Forestry Assistance Act, which authorizes federal assistance for nonfederal forestry, not federal forests such as the Tongass.[117] Further, because the funding was discretionary, the funding should have been awarded by a competitive process. The funding had not yet been issued to the State of Alaska, and the USDA specified that the FS should not do so.[118] The USDA did not specifically investigate whether the grant funding represented favoritism on the part of the FS but noted that other cooperating agencies were not aware funding was available because the funding was not allocated through a competitive process.[119]

Tribal Consultation

Federal agencies, including the FS, are required to undergo government-to-government consultation with federally recognized Indian or Alaska Native tribes (*tribes* or *tribal governments*) when developing policies that have tribal implications.[120] Tribal governments also may act as cooperating agencies during environmental analysis of significant federal actions, if allowed by the lead federal agency.[121] Alaska Native tribal governments participated in the rulemaking process for the Alaska Roadless Rule in a variety of ways, including as cooperating agencies and through government-to-government consultation. However, multiple Alaska Native tribal governments have alleged the FS did not allow tribal input to meaningfully inform the Alaska roadless rulemaking process.

Six Alaska Native tribal governments joined the rulemaking process as cooperating agencies.[122] These six tribes allege the USDA disregarded their input, conducted insufficient outreach to them, and set arbitrary deadlines that prevented them from providing substantive input.[123] In July 2019, one tribe, the Organized Village of Kake, formally withdrew from cooperator status.[124] On October 13, 2020, the remaining five tribes formally withdrew as cooperators.[125] These five tribes demanded the FS issue an updated environmental impact statement reflecting that the tribes had withdrawn their cooperation. The tribes specified that the choice of full exemption over other alternatives developed with tribal collaboration during the environmental analysis process showed that the tribes' concerns had not been incorporated into the final decision.[126] The tribes further specified that full exemption was chosen over other alternatives due to "political interference," in a breach of the public and collaborative rulemaking process.[127]

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[117] Cooperative Forestry Assistance Act, P.L. 95-313.

[118] *USDA OIG 2020.*

[119] *USDA OIG 2020.*

[120] Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 *Federal Register* 67249, November 9, 2000. USDA Department Regulation 1350-002, "Tribal Consultation, Coordination, and Collaboration," January 18, 2013.

[121] 40 C.F.R. §§1501.8, 1508.1.

[122] Personal communication, FS legislative affairs office, December 2, 2020.

[123] For example, see Jacob Resneck, "'Another broken promise': Tribes say feds ignored their input on Roadless Rule exemption for Tongass," *CoastAlaska-Juneau*, October 16, 2020, and *USDA Letter 2020.*

[124] Personal communication, FS legislative affairs office, December 2, 2020.

[125] Letter from Ronald Leighton, President of the Organized Village of Kasaan, Sid Edenshaw, President of the Hydaburg Cooperative Association, and Richard Peterson, President of the Central Council of Tlingit and Haida Indian Tribes of Alaska, et al., to Sonny Perdue, Secretary of Agriculture, and Vicky Christiansen, Chief of the Forest Service, October 13, 2020. Hereinafter, *Letter from Tribal Cooperators, 2020.*

[126] *Letter from Tribal Cooperators, 2020.*

[127] *Letter from Tribal Cooperators, 2020.*

Multiple tribal governments, including those without cooperator status, also have alleged the USDA disregarded their input, ignored tribes' requests for government-to-government consultation, and otherwise failed to meaningfully engage with them during the rulemaking process.[128] In July of 2020, 11 tribes petitioned the USDA for a new rule concerning management of ancestral lands in the Tongass.[129] In the petition, the tribes specified that their "comments, input, and traditional knowledge [had] been repeatedly disregarded and ignored" in past attempts to work collaboratively with the USDA regarding the management of traditional Alaska Native lands, including the Tongass. The tribes also specified that the USDA's failure to address the tribes' concerns during the Alaska roadless rulemaking process amounted to the "collective disenfranchisement" of their sovereign tribal governments.[130]

In the petition, the tribes requested the USDA to commence a process to create a rule to protect traditional and customary uses and areas of the Tlingit, Haida, and Tsimshian peoples. The tribes requested the development of a methodology to identify sites of critical importance to their customary use and the implementation of forest-wide conservation measures to protect these uses. The tribes also requested that the USDA engage in a "more robust and legitimate" government-to-government consultation process with the tribes regarding the Tongass. Tribes requested consultation under the principle of *mutual concurrence*, defined in FS policy as meaning the tribes and the FS mutually agree consultation is taking place, to address their concerns about the "inadequate" consultation process during the Alaska roadless rulemaking.[131] The petition is pending as of the date of publication of this report.

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.[132] 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. Congress also may wish to see how challenges to the rule are resolved in court.

[128] For example, see Anna V. Smith, "Eleven Alaska Native tribes offer new way forward on managing the Tongass," *High Country News*, October 1, 2020 and *USDA Letter 2020.*

[129] Letter from Organized Village of Kasaan, Organized Village of Kake, and Klawock Cooperative Association, et al., to Department of Agriculture, July 21, 2020.

[130] Letter from Organized Village of Kasaan, Organized Village of Kake, and Klawock Cooperative Association, et al., to Department of Agriculture, July 21, 2020.

[131] Forest Service Handbook 1509.13, Forest Service Manual 1563.3.

[132] 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.

Oversight

Congress might broadly use its oversight powers to review FS activities, such as the FS's rulemaking process and/or its administration of former IRAs. Such approaches might include directing the FS to inventory or report on former IRA conditions or uses, the exemption's impact to specified resources or economic sectors, or other aspects of former IRA management. Similarly, Congress may wish to engage in oversight activities related to the FS rulemaking process, such as overseeing the FS's cooperation with the State of Alaska or with Alaska Native tribal governments.

Respond to Newly Issued Forest Service Roadless Regulations

In the case of newly issued regulations, the Congressional Review Act (CRA) authorizes Congress to review and revoke regulations.[133] The CRA is available to Congress within a specified time frame after a rule is finalized and transmitted to Congress. As of the date of publication of this report, it is unclear when the final rule was transmitted to Congress. Until that date of transmittal is established, the applicability of the CRA to the Tongass roadless exemption is an unresolved question.

Legislative Action Regarding Tongass Roadless Area Designation and Management

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

- **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.[134] Such actions could supersede or complement the Alaska roadless exemption or other FS Roadless Rules that are in effect.
- **Legislation That Specifies Management Provisions for Former IRAs**. For example, Congress could specify a manner and/or degree of state or tribal participation or direction regarding management of former IRAs, specify prohibited or permitted management actions in former IRAs, or take other actions.[135] Congress also could specify how aspects of the Tongass's timber program, such as timber export and appraisal, are to be conducted in former IRAs.
- **Legislation That Congressionally Designates Former IRAs.** For example, Congress could designate former IRAs under other federal land designations,

[133] Congressional Review Act, Title II, Subtitle E, P.L. 104-121, 5 U.S.C. §§601 et seq. 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.

[134] For example, see S. 1311, Roadless Area Conservation Act of 2019, and H.R. 2491, Roadless Area Conservation Act of 2019, from the 116th Congress, which would have codified 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.

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

- such as national monuments or wilderness.[136] Such designations would supersede FS rulemaking.
- **Legislation That Addresses Other Issues**. For example, Congress could address funding for activities in former IRAs.

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[136] 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.