

Alaska Roadless Rule

Testimony before Subcommittee on National Parks, Forests, and Public Lands

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Introduction:

The 2001 Roadless Area Conservation Rule (Roadless Rule) remains a national, one-size-fits-all regulation that inappropriately, and likely unlawfully, limits opportunities for Alaskans that live and work in the Tongass National Forest (Tongass). As such, the State of Alaska (State), along with Alaska's Congressional Delegation, has worked tirelessly over the consecutive terms of six governors (one Democratic, one Independent, and four Republican) to exempt the Tongass from the Roadless Rule.

In January 2018, the State petitioned U.S. Department of Agriculture (USDA) Secretary Sonny Purdue for rulemaking to exempt the Tongass from the Roadless Rule in the interest of the socioeconomic well-being of its residents. Following acceptance of the State's petition, the State and the USDA entered into a Memorandum of Understanding (MOU), in which the State agreed to assist the USDA, as a cooperating agency, in developing an Environmental Impact Statement (EIS), per the National Environmental Policy Act (NEPA). Through Administrative Order 299, the State established the Alaska Roadless Rule Citizen Advisory Committee (Committee) to provide an opportunity for Southeast Alaskans to advise the State on the future management of Inventoried Roadless Areas in the Tongass. The Committee was charged with providing recommendations to assist the State in fulfilling its role as a cooperating agency under the MOU.

On October 18, 2019, the USDA published a Draft EIS and Proposed Alaska Roadless Rule for concurrent 60-day public review and comment periods. The State supports the Preferred Alternative (Alternative 6) that proposes exempting the Tongass from the Roadless Rule, as it is the most responsive action alternative to the State's petition and would allow the U.S. Forest Service greater flexibility to implement local solutions to address local challenges affecting the communities, residents, and industries that rely on the Tongass. State personnel are currently reviewing the published documents and developing comprehensive comments for submission to the USDA for their consideration in the rulemaking process. Additionally, the State's contracted facilitator for the Committee, Meridian Institute, is reviewing the Draft EIS to assess how the State's earlier comments to the USDA have been incorporated. Meridian Institute is also conducting one-on-one interviews with Committee members to further assist the State in its continuing role as a cooperating agency in the NEPA process.

The Tongass is unique:

At nearly 17 million acres, the Tongass is the largest forest in the National Forest System - covering an area larger than West Virginia and providing one of the world's most important intact ecosystems. Thirty-two communities are located within the forest boundaries, with roughly 72,000 residents. The Tongass is home to the Tlingit, Haida and Tsimshian peoples, who have lived in Southeast Alaska since time immemorial. The Tongass is also known as the "salmon forest", and it is a source of great pride and passion for many Alaskans.

The U.S. Forest Service is governed by numerous federal laws including the Organic Administration Act, the Multiple-Use Sustained-Yield Act, and the National Forest Management Act. Three federal laws affecting management of the Tongass include the Alaska National Interest Lands Conservation Act (ANILCA), the Tongass Timber Reform Act (TTRA), and the Carl Levin and Howard P. "Buck" Mckeon National Defense Authorization Act for Fiscal Year 2015. In 1980, Congress passed ANILCA, which established more than 100 million acres of federal land in Alaska as new or expanded Conservation System Units, including 14 Wilderness Areas and two National Monuments within the Tongass. Through ANILCA, Congress sought to provide "sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time [provide] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people. Specific to timber, ANILCA Section 705 required annual funding be made available to the Secretary of Agriculture to maintain a defined level of timber supply from the Tongass to support the dependent industry. In 1990, the TTRA amended ANILCA Section 705 to require the Secretary "seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber from such forest and (2) meets the market demand from such forest for each planning cycle", to the extent consistent with providing for the multiple use and sustained yield of all renewable forest resources. The TTRA also prohibited timber harvest within 100 feet of fish streams and established six additional Wilderness Areas and 12 Land Use Designation (LUD) II areas, which are managed in a roadless state to retain their wildland character. More recently, the Carl Levin and Howard P. "Buck" Mckeon National Defense Authorization Act for Fiscal Year 2015 finalized the outstanding land entitlements of Sealaska Regional Native Corporation and established eight additional LUD II areas in the Tongass. Together, the Conservation System Units and LUD II areas established and expanded through these laws protect the wilderness and roadless character of 6.8 million acres of the Tongass.

Socioeconomics impacts of the Roadless Rule:

The Roadless Rule significantly and disproportionately impacts the Southeast Alaska timber industry and rural communities. Through the 1990s, an average annual harvest of nearly 250 million board feet (MMBF) of timber was supplied from the Tongass, supporting over 3,500 fulltime jobs, which supported families, schools, and local businesses. Today, less than 350 timber industry jobs remain.

The 2001 Roadless Rule Final EIS projected up to 895 jobs and \$38.7 million in personal income would be lost following application of the Roadless Rule on the Tongass. However, broader socioeconomic impacts in Southeast Alaska were not analyzed or described in detail. Southeast

Alaska has experienced reduced student enrollment and school closures in some communities as the timber industry declined over the past 20 years. Energy and transportation industries have faced significant challenges from the Roadless Rule, affecting important infrastructure projects that would connect communities through transmission lines, roads, and shorter ferry routes. Although mining industry jobs have increased steadily over the last decade due to the continued success of the Greens Creek Mine and operations starting at the Kensington Mine in 2010, access to mineral claims in inventoried roadless areas have been limited by the Roadless Rule, which has impacted the timing, scope and scale of mineral exploration in the region.

Inventoried roadless areas have also become attractive to guides and outfitters, small cruise vessels, and other visitor industry stakeholders due to their relative accessibility compared to statutorily designated wilderness areas. This has created public expectations that may not align with management directions of the 2016 Tongass Land and Resource Management Plan (Forest Plan).

The socioeconomic impacts of the Roadless Rule are disproportionately significant and create challenges that cannot be adequately addressed locally or regionally through project or forest-level planning. The State supports the growth experienced over the past decade in the fishing, visitor and mining industries of the region. However, the timber industry has borne the costs paid out by a national policy that should have never been applied to the Tongass. A sustainable timber industry is important to a diversified regional economy and the success of rural Southeast Alaska communities.

The 2003 Tongass Exemption Rule:

In a 2003 Record of Decision, the USDA promulgated a regulation (Tongass Exemption) exempting the Tongass from the Roadless Rule, in which the USDA provided in-depth analysis of the requirements and limitations of TTRA and ANILCA if the Roadless Rule were applied to the Tongass. After thorough statutory analysis, the USDA concluded that the best way to implement the spirit and the letter of these laws was to exempt the Tongass from the Roadless Rule. Furthermore, the USDA concluded that exempting the Tongass was not only consistent with the intent of Congress but was also sound management, because roadless values in the Tongass are adequately protected without adding the additional restrictions included in the Roadless Rule. The USDA stated that roadless areas are common, not rare, in the Tongass, and the vast majority of the more than nine million acres of roadless areas have restrictions on road building and timber harvest, irrespective of the Roadless Rule.

In its decision to exempt the Tongass, the USDA weighed the value of imposing unnecessary additional restrictions against the very significant social and economic costs to Southeast Alaska that were disclosed in the 2001 Roadless Rule decisional documents. Upon reconsidering these facts, the USDA concluded in the 2003 Tongass Exemption that the needs of the people of Alaska outweighed adding more restrictions when roadless areas in the Tongass are adequately protected without the Roadless Rule.

After the Organized Village of Kake and environmental interest groups challenged the Tongass Exemption in 2009, the USDA aggressively defended the rule in its 2010 opening brief in the Federal District Court for the District of Alaska. USDA argued that "the Tongass Exemption was

a well-reasoned decision, supported by the evidence" and that after reconsidering the same economic, social and environmental factors considered in the 2001 Record of Decision, the USDA concluded that "the roadless values on the Tongass could be protected and social and economic impacts minimized by exempting the Tongass from the Roadless Rule."

The District Court nevertheless invalidated the Tongass Exemption, but upon appeal, a three-judge panel of the Ninth Circuit Court of Appeals reversed and upheld the Exemption. However, in a 6-5 *en banc* decision, the Ninth Circuit struck down the Tongass Exemption on a procedural ruling, holding that the USDA failed to adequately explain its change of position from the 2001 Roadless Rule to the 2003 Tongass Exemption. The Court did not find any substantive legal infirmities with the Tongass Exemption, that is, the Court did not hold that the USDA analysis or rationale could not support exempting the Tongass, or that the USDA reached the wrong decision, but only that the USDA failed to provide an adequate explanation of its change of position from 2001 to 2003. No judge questioned the fact that the USDA had a right to change position on exempting the Tongass, if the change was adequately explained.

2016 Forest Plan and Alaska Roadless Rule:

Approximately 55 percent of the forested land in the Tongass (approximately 5.5 million acres) is classified as productive forest land; these lands are considered biologically capable of producing industrial wood products. Approximately 500,000 acres of the productive forest lands on the Tongass have been converted to young-growth forest due to harvest or other disturbances such as fire or wind. This equates to approximately three percent of the total Tongass land base and nine percent of the productive forest lands and represents approximately 15 billion board feet of harvested timber. However, only approximately 270,000 acres of the total young-growth forest are available for harvest under the Forest Plan, as the remainder of the young-growth forest acres are managed in non-development LUDs.

In addition to productive forest lands, the Tongass includes approximately 4.6 million acres of unproductive forest. These are lands that are not capable of producing industrial forest products, but are important for watershed protection, wildlife habitat, recreation, scenic values and other multiple use purposes.

Under the Forest Plan, about 560,000 acres of forest lands are suited for timber production. The U.S. Forest Service projects about 23,000 acres of old-growth and 43,000 acres of young-growth will be harvested in the first 25 years of implementation from these lands. One hundred years following implementation, the U.S. Forest Service projects that about 42,000 acres of old-growth and 280,000 acres of young-growth could be harvested from these lands. This equates to only nine percent of the original productive old-growth forest being harvested over the next 100 years; thus, retaining 91 percent for future generations.

The Preferred Alternative (Alternative 6) for the Alaska Roadless Rule proposes to exempt the Tongass from the 2001 Roadless Rule. If implemented, the roughly nine million acres currently inventoried as roadless areas would continue to be managed under the Forest Plan and statutory laws that provide lasting protections for roadless values. Alternative 6 would add about 165,000 old-growth acres and 20,000 young-growth acres to the land base suitable for timber production. Although the U.S. Forest Service projects harvest on these additional suitable acres would be

about 18,000 acres over 100 years, none of the action alternatives for the Alaska Roadless Rule would result in changes to the timber objectives of the Forest Plan, including the current projected timber sale quantity (PTSQ) of 46 million board feet (MMBF) annually and transitioning to primarily young-growth harvest within the next 15 years (i.e. Young-Growth Transition Strategy). Moreover, all proposed timber harvest or ground disturbing activities, such as timber sales, road construction and road reconstruction, would require rigorous environmental review and public engagement under NEPA prior to implementation.

Conclusion:

The rationale the USDA provided for exempting the Tongass in their 2003 Record of Decision and again in their 2010 court brief remains valid today. The extensive damage resulting from the application of the Roadless Rule to the economic and social fabric of Southeast Alaska remains as real today as it was 16 years ago, while the Tongass roadless values remain more than adequately protected under the Forest Plan, ANILCA, TTRA, NEPA, and numerous other federal and state laws.

The State supports the Preferred Alternative (Alternative 6) of the Draft EIS and Proposed Alaska Roadless Rule, which proposes to exempt the Tongass from the 2001 Roadless Area Conservation Rule, as it is the most responsive action alternative to our petition and would allow the U.S. Forest Service greater flexibility to implement local solutions to address local challenges affecting the communities, residents, and industries that rely on the Tongass.

Thank you for the opportunity to submit written testimony and for your consideration of this important issue.