



December 16, 2019

Mr. Ken Tu  
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Alaska Roadless Rule  
USDA Forest Service, Alaska Region  
Ecosystem Planning and Budget Staff  
P.O. Box 21628  
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**United State Department of Agriculture**

**36 CFR Part 294**

**Rin:** 0596-AD37

**Re: Notice of Proposed Rulemaking for Revising Management of Inventoried Roadless Areas in Alaska**

Dear Mr. Tu:

The Pew Charitable Trusts appreciates the opportunity to comment on the U.S. Department of Agriculture / U.S. Forest Service's proposed rulemaking on the Roadless Area Conservation Rule (Roadless Rule) and draft environmental impact statement (DEIS) regarding the management of inventoried roadless areas (IRAs) on the Tongass National Forest. Pew aims to preserve ecologically and culturally diverse publicly owned lands and waters through congressionally designated wilderness and wild and scenic rivers, and administrative protections. Pew has a long history of engagement in national forest management issues, including supporting the protection of roadless areas and ensuring their long-term protection through the development of the national Roadless Rule.

At nearly 17 million acres and containing more than 9 million acres of IRAs, the Tongass is America's flagship national forest. The forest contains thousand-year old hemlock, red cedar and spruce trees that comprise nearly 40 percent of all the remaining intact forest landscape managed nationwide by the Forest Service. These landscapes are large, unfragmented areas, sufficient in size to maintain biological diversity and habitats for viable populations of wide-ranging species such as all five of North America's Pacific salmon species, brown bear, and Sitka black-tailed deer. Its trees have a remarkable capacity to store carbon, increasing our resilience to climate change; in fact, the Tongass holds eight percent of all carbon stored in U.S.

national forests.<sup>1</sup> Removing roadless area protections from the Tongass National Forest, as proposed by the Forest Service would have significant ecological downsides.

In the 1990s, scientists within and outside the Forest Service documented the harmful impacts of road construction on wildlife populations and habitat, especially the silt and sediment from unmaintained roads flowing into streams and rivers. These disturbances often destroy fish habitat, which depends on healthy waterways, and degrade water quality for downstream users. By contrast, the areas in the Tongass National Forest that provide the cleanest drinking water and most pristine habitats are those with protections provided by the Roadless Rule.

When the Roadless Rule was being considered in the late 1990s, the Forest Service had accumulated a \$4.5 billion road maintenance backlog caused by decades of publicly-subsidized road building to support commercial logging. In total, roughly 380,000 miles of roads were built across our national forests and surveys found that most were in serious disrepair. Pew supported the efforts by the Forest Service to develop a policy to address these problems by prohibiting additional road construction in the most remote areas in the national forest system.

To address these environmental and fiscal concerns, in 2001 the Forest Service issued the Roadless Area Conservation Rule that protected nearly 60 million acres of national forests across 39 states and territories. When it was adopted, the Roadless Rule was the most publicly supported rulemaking in U.S. history with over one million comments and 600 public hearings. This policy was endorsed by more than 500 scientists who believed that the Roadless Rule was the most scientifically credible approach for managing and protecting our last undeveloped national forests.

For two decades, the Roadless Rule has been a cornerstone of national forest policy and conserves significant landscapes for future generations. Although challenged in a number of lawsuits both nationally and in Alaska specifically, various appellate-level judicial decisions have upheld the Roadless Rule as lawful.

As the scientific record indicates, the proposed decision by the Forest Service to fully exempt the Tongass from the Roadless Rule will cause adverse and irreparable harm to its ecological, watershed, habitat, and recreational values. Accordingly, there is no obvious rational basis for a different management approach within IRAs in the Tongass or Chugach National Forests. Therefore, Pew urges the Forest Service to select the ‘no action’ alternative and maintain existing roadless protections.

### **The Roadless Rule allows sufficient flexibility.**

While the Roadless Rule generally prohibits road building and other disruptive activities from taking place in roadless areas, existing Forest Service authority allows the Regional Forester to grant exemptions from the rule, including projects related to mining, hydroelectric power, and

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<sup>1</sup> [https://link.springer.com/article/10.1007/s10021-005-0028-3?utm\\_medium=affiliate&utm\\_source=commission\\_junction&utm\\_campaign=3\\_nsn6445\\_brand\\_PID4003003&utm\\_content=de\\_textlink](https://link.springer.com/article/10.1007/s10021-005-0028-3?utm_medium=affiliate&utm_source=commission_junction&utm_campaign=3_nsn6445_brand_PID4003003&utm_content=de_textlink)

geothermal energy. Previously, the Forest Service Chief was responsible for making the decision on roadless exemptions. However, a 2018 USDA determination granted this authority to the Regional Forester to expedite the approval process for qualifying exemptions.

The State of Alaska claims in its petition that the Roadless Rule unnecessarily burdens development activities in the Tongass. However, the Roadless Rule currently provides flexibility in the form of special use exemptions, which allow for reasonable development activities that maintain the overall character of roadless areas. To date, all 58 project exemptions that have been requested in the Tongass have been approved by the Forest Service, and all are typically decided and approved within one month of submittal. Included in this list for the Tongass are dozens of mining projects, nine hydropower or power transmission intertie projects, a road realignment, and an aerial tram. These actions demonstrate that the current rule incorporates a flexible approach if the development activity is consistent with the conservation mandate of the Forest Service including the Roadless Rule.

### **Removing roadless protections would threaten the aquatic and terrestrial habitat and the fishing and tourism industries in southeast Alaska.**

The wild salmon spawned and reared in the Tongass National Forest account for approximately 70 percent of all wild salmon harvested from our national forests, roughly 24 percent of Alaska's overall salmon catch, about 30 percent of the salmon caught on the West Coast of the United States, and close to 13 percent of all salmon harvested on the Pacific Rim. All five of North America's Pacific salmon species are found in the forest: Chinook, coho, pink, sockeye, and chum.<sup>2</sup>

We are concerned about the impacts of the proposed action on Tongass fisheries. While the Forest Service acknowledges that, "...roads pose the greatest risk to fish resources on the Tongass,"<sup>3</sup> the DEIS concludes that "none of the alternatives are expected to have a significant change to the commercial fishing or fish-processing industries."<sup>4</sup> Those living in the region and depending on the land and water for their livelihood, disagree with this assessment.

Commercial fishing operators in the Tongass disagree with the Forest Service's assessment of impacts on their livelihood. In an October 2019 letter to Secretary Perdue and Chief Christiansen from over 200 men and women in the Alaska fishing industry, the signatories request that the Forest Service select, "...an alternative that broadly protects fish habitat, continues the phase-out of industrial scale old growth clear-cutting, and prioritizes the restoration of degraded watersheds and streams."<sup>5</sup> They believe that removing roadless protections and reinstating more clear-cut logging will directly threaten their industry and livelihood.

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<sup>2</sup> [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd554592.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd554592.pdf)

<sup>3</sup> Draft Environmental Impact Statement (DEIS) on Rulemaking for Alaska Roadless Areas, United States Department of Agriculture (October 2016) page 3-112.

<sup>4</sup> DEIS, ES-13

<sup>5</sup> Letter from 222 commercial fishermen who live and work in the Tongass National Forest to Secretary Perdue and Chief Christiansen on protecting roadless areas, Oct. 22, 2019, [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.eenews.net\\_assets\\_2019\\_08\\_22\\_document-5Fgw-](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.eenews.net_assets_2019_08_22_document-5Fgw-)

While industrial logging was a more significant economic driver in southeast Alaska from the 1950s to the 1990s, the regional economy has largely transitioned to other, more sustainable industries, such as tourism and commercial fishing. Currently, the timber industry accounts for less than one percent of both total employment and total earnings in southeast Alaska. By contrast, the tourism and seafood industries collectively account for 26 percent of the total employment and 21 percent of total earnings in the region.<sup>6</sup> These two sectors of the economy would be directly threatened if the full exemption is selected and the Roadless Rule is revoked in the Tongass National Forest.

**Timber suitability designations can only be changed through a forest plan revision or amendment.**

According to the DEIS and the Notice of Proposed Rulemaking, the Forest Service is proposing to change suitability designations in the Tongass Land Management Plan (TLMP) through an administrative change, a directive that the Forest Service recognizes differs from previous rulemaking proceedings.<sup>7</sup> Specifically, the Forest Service claims that it can add 185,000 acres of IRAs to the Tongass National Forest’s suitable timber harvest base without amending the TLMP. In doing so, the Forest Service asserts it does not have to adopt a plan amendment and conduct an environmental review process if the Tongass National Forest Supervisor provides notice of this administrative change concerning lands previously deemed unsuitable in the 2016 TLMP solely due to the application of the 2001 Roadless Rule.

The Forest Service is attempting to take advantage of the ‘administrative change’ procedure in the 2012 Planning Rule, which can only be used to fix clerical errors, conform a plan to new statutory or regulatory requirements, or change the monitoring program or similar plan content.<sup>8</sup> By using this administrative change procedure to reclassify vast tracts of pristine, old-growth forest to facilitate logging, the Forest Service proposal does not comply with the intent of the administrative change procedure.

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<sup>6</sup> Southeast Conference, “Southeast Alaska by the Numbers” (2019),

<http://www.seconference.org/sites/default/files/FINAL%20Southeast%20by%20the%20Numbers%202019.pdf>.

<sup>7</sup> 84 Fed. Reg. 55,522 at 55,525 (Oct. 17, 2019) (“The proposed rule would direct the Tongass Forest Supervisor to provide notice of an administrative change (36 CFR 219.13(c)) concerning lands that were deemed unsuitable in the 2016 Tongass Forest Plan . . . solely due to the application of the 2001 Roadless Rule.”); *see also* DEIS at 2-2 (“Alternatives 2, 3, 4, 5, and 6 would result in an administrative change to the timber land suitability determinations made in the 2016 Forest Plan. Specifically, lands identified as suitable for timber production that were deemed unsuitable solely due to roadless designation in the Plan would be designated as suitable for timber production.”).

<sup>8</sup> 36 C.F.R. § 219.13(c)

### **Tongass timber sales lose significant taxpayer money.**

The Forest Service's timber program in the Tongass National Forest operates at a considerable loss, as documented by government sources and taxpayer watchdog groups. The Government Accountability Office (GAO) in 2016 examined the funds that the Forest Service expends to prepare and oversee timber sales and conduct required environmental reviews, as well as revenues taken in from timber sales and harvests. From fiscal years 2005 to 2014, the Forest Service reported an average of \$12.5 million in annual timber-related expenditures and took in an average of \$1.1 million annually, accounting for \$11.4 million in losses per year over that timeframe. GAO did not incorporate expenditures related to road construction and maintenance, which add significantly to the costs of administering the timber program.<sup>9</sup>

Taxpayers for Common Sense (TCS) recently completed a more comprehensive, twenty-year analysis of the Tongass timber program that included costs of road construction and maintenance. TCS concluded that, in total, the Forest Service lost around \$600 million over two decades, or \$30 million per year on average.<sup>10</sup> In its projection over the next four years, TCS concluded that the Forest Service could end up losing more than \$180 million during that period. Given the significant losses that the Forest Service incurs through administering its timber program in the Tongass, Pew does not find it prudent public policy to exacerbate this problem by making more timberlands available in the Tongass. We do not believe it is good policy for taxpayer subsidies to underwrite the cost of logging some of our last remaining, ecologically important old growth forests on public lands.

A recent example of this taxpayer loss is the North Kuiu timber sale, which the Forest Service offered twice, in 2016 and 2018. Total costs of preparing this sale were \$4.5 million, including \$3 million in construction of logging roads, and both times received no bids. Timber sales such as that in Kuiu reflect the current realities of logging on the Tongass, that even with substantial taxpayer subsidies, the high costs of production and distance to market make this timber uncompetitive and unprofitable.

### **Inadequate coordination with Tribal entities.**

Despite the Forest Service being obliged to consult with tribes on a government-to-government basis, the Forest Service has not meaningfully engaged Southeast Alaska tribal communities in this rule-making process. Six sovereign tribal governments became cooperating agencies with the Forest Service in the rulemaking process. These tribes became cooperators in good faith and invested considerable time and effort in the process, communicating with the Forest Service and meeting deadlines for meaningful comments. All six cooperating agency tribes co-signed a letter opposing a full exemption of the rule, and individual tribes including Craig, Kake, Saxman, and Kasaan passed tribal resolutions favoring the 'no action' alternative in the rulemaking process. The Forest Service should utilize the Tribes' important traditional ecological knowledge about the Tongass forest environment as part of its decision-making process.

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<sup>9</sup> The Government Accountability Office, "Forest Service's Actions Related to Its Planned Timber Program Transition" (2016), <https://www.gao.gov/assets/680/676788.pdf>.

<sup>10</sup> Taxpayers for Common Sense, "Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass" (2019), <https://www.taxpayer.net/wp-content/uploads/2019/09/TCS-Cutting-Our-Losses-2019-.pdf>.

There is broader concern by indigenous people about this rulemaking process. The National Congress of American Indians (NCAI), the oldest and largest national organization of American Indian and Alaskan Native organization, and the Affiliated Tribes of Northwest Indians (ATNI), a regional organization of American Indians and Alaskan Native tribes in eight northwest states, also passed resolutions favoring the ‘no action’ alternative, demonstrating indigenous community support for the southeast Alaska Tribe’s concerns.

### **Implications for the Chugach National Forest**

The proposed Alaska Roadless Rule exceeds the scope of the rulemaking and environmental impact statement that the Forest Service released following the mandatory scoping process. The draft rule now includes a provision to eliminate across-the-board protection for roadless areas on the Chugach National Forest, a proposal neither sought by the State of Alaska’s petition nor disclosed by the Forest Service during the Notice of Intent nor during scoping. Vastly expanding the potential scope of the rule to include the 5.4 million acres of Chugach roadless areas requires the agency to conduct a new scoping process.

The State of Alaska’s 2018 petition to the Forest Service requested that the USDA promptly commence “a rulemaking proposing a rule to permanently exempt the Tongass National Forest from application of the Roadless Rule.”<sup>11</sup> The petition mentioned only the Tongass National Forest, not the Chugach. In addition, the Forest Service also prepared a PowerPoint presentation that introduced the public to the rulemaking and National Environmental Policy Act (NEPA) process that stated: “Chugach National Forest –currently outside area of focus.” The Forest Service held public meetings in a dozen communities in or adjacent to the Tongass National Forest, but just one in a city close to the Chugach, in Anchorage.

The proposed rule and accompanying DEIS includes problematic language when referencing proposed changes to the management of IRAs in the Chugach National Forest. Specifically, the proposed Alaska Rule contains the following provision pertaining to the Chugach:

Administrative modifications to Classifications and Boundaries. The Regional Forester for the Alaska Region may issue modifications to the classifications and boundaries of an Inventoried Roadless Area after a 45-day public notice and opportunity to comment period.<sup>12</sup>

This provision would permit Forest Service staff to make decisions on road construction and commercial logging in the Chugach National Forest, which could effectively repeal existing roadless protections. The lack of clarity as to the definition and scope of *modifications* and *classifications* seems to allow the Regional Forester to completely remove an area’s protections, regardless of the size of the repeal or the activity to be permitted.

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<sup>11</sup> A. T. Mack, Commissioner, Alaska Department of Natural Resources, letter to Sonny Perdue, Secretary, United States Department of Agriculture, requesting an exemption from the Roadless Rule on the Tongass National Forest, Jan. 19, 2018, [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4406959.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4406959.pdf).

<sup>12</sup> DEIS, G-11

Pew urges the Forest Service to remove any provisions affecting management decisions on the Chugach National Forest in this rulemaking. The Notice of Intent for an Alaska-specific Roadless Rule released on August 30, 2018 stated that the alternatives would, "...leave current management under the 2001 Roadless Rule in place on the Chugach National Forest."<sup>13</sup> If the agency intends to keep provisions pertaining to the Chugach National Forest in the rulemaking, the scoping process should be reinitiated to accurately and adequately inform the public about the extent of the area involved in the rulemaking.

## **Conclusion**

Pew has a long history of supporting public policy decisions that are scientifically driven. This adherence to sound science and data led us to support the original 2001 Roadless Rule. We remain concerned that this process has been impacted by political interference, as indicated by President Trump directing his Secretary of the Department of Agriculture to change the preferred alternative in favor of allowing maximum development of our nation's largest national forest.<sup>14</sup> This undermines public confidence in this process as well as the credibility of the agency and its career staff.

Removing the Roadless Rule in the Tongass National Forest would harm critical habitats, old growth and intact forest landscapes, threaten the existing sustainable industries of fishing and tourism, and result in excessive taxpayer subsidies to support the timber industry. For these reasons, Pew urges the Forest Service to select the 'no action' alternative and maintain all current roadless area protections in the Tongass and Chugach National Forests.

Sincerely,



Ken Rait,  
Project Director  
U.S. Public Lands and Rivers Conservation

CC: Sonny Perdue, Secretary, United States Department of Agriculture

Vicki Christiansen, Chief, United States Forest Service

Chris French, Deputy Chief, National Forest System, United States Forest Service

James Hubbard, Undersecretary for Natural Resources and Environment, United States Department of Agriculture

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<sup>13</sup> Notice of Intent to prepare an environmental impact statement, 83 Fed. Reg. 44253 (Aug. 30, 2018).

<sup>14</sup> [https://www.washingtonpost.com/climate-environment/trump-pushes-to-allow-new-logging-in-alaskas-tongass-national-forest/2019/08/27/b4ca78d6-c832-11e9-be05-f76ac4ec618c\\_story.html](https://www.washingtonpost.com/climate-environment/trump-pushes-to-allow-new-logging-in-alaskas-tongass-national-forest/2019/08/27/b4ca78d6-c832-11e9-be05-f76ac4ec618c_story.html)