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Organization: Sitka Tribe of Alaska

Title: Chairman

Comments: The following text was copy/pasted from an attached letter. The system cannot display the formatting, graphics, or tables from the attached original.

Attached please find the written comments from the Sitka Tribe of Alaska regarding the Forest Service proposal to exempt the Tongass National Forest from the 2001 Roadless Area Conservation Area Rule. The fact that the Tribe has provided these comments should not be considered any waiver of rights to government to government consultation and appropriate consultation regarding our subsistence rights.

If there is any need for follow up to our comments please contact, Lisa Gassman, Sitka Tribe of Alaska General Manager.

Sincerely,

KathyHope Erickson Chairman

Enclosure: STA comments on Proposed Rule and DEIS

Comments from Sitka Tribe of Alaska

Alaska Roadless Rule; Roadless Area Conservation; National Forest System Lands in Alaska

Please accept these comments on the above-referenced Proposed Exemption of the Tongass National Forest from the 2001 Roadless Area Conservation Rule[mdash]Draft Environmental Impact Statement (DEIS), on behalf of the Sitka Tribe of Alaska (STA).' STA is the beneficiary of a trust relationship with the United States, the Trustee, with constitutionally protected subsistence rights to harvest, consume and gather in and adjacent to the Tongass National Forest. The United States has specific and enforceable fiduciary responsibilities to protect [mdash] and refrain from impairing [mdash] tribal dependent resources. 2 These comments are submitted in view of the need to ensure protection and preservation of these and other reserved rights, resources and habitats, and to safeguard the health, livelihood and well-being of STA tribal citizens.

The Sitka Tribe of Alaska (STA) is a federally recognized Indian tribe whose traditional territory consists of the lands and shorelines that now make up the Tongass National Forest in Southeast Alaska. STA's ancestors founded the community of Sitka where Tlingit people from across the region have come to harvest, worship and reside in the lands and shores of the Tongass National Forest since time immemorial. STA represents the interests of tribal citizens with a central mission to protect the social, economic, and cultural well-being of its tribal citizenship, including its tribal citizens legally protected rights for opportunity and priority to continue their subsistence practices for; fish, such as salmon and herring, deer, bear, berries, medicinal plants, migratory and non-migratory birds in the Tongass. STA carries the obligation for future Tlingit generations to protect and when necessary, actively defend the ecosystem upon which future Tlingit generations will rely upon for continued existence of the culture. The Tongass National Forest is a critical ecosystem for the continued survival of the

Tlingit culture.

STA has strong comments relating to the process undertaken by the Forest Service, the data that has been relied upon and the lack of clear compliance with other applicable federal laws.

ANILCA and Subsistence

The DEIS includes a superficial report of both Alaska National Interest Lands Conservation Act' (ANILCA) subsistence users and Alaska Native subsistence users.' The DEIS includes subsistence data references that is old and out of date; back to 1987 for some of the Native subsistence users or no subsistence data, like in the case of Sitka.⁵ The Forest Service states that it obtained the subsistence data from the Alaska Department of Fish & Game (ADF&G). It appears that the Forest Service engaged in no independent analysis for this data, yet the Forest Service relies heavily upon old and in some cases non-existent data to engage in the subsistence effects analysis. With its reliance upon outdated data, the DEIS cannot be viewed as appropriately evaluating the scope and distribution of subsistence users in Southeast Alaska. STA specifically takes issue with the lack of inclusion of Sitka and its environs in the subsistence user data points.

The DEIS discusses a distribution of subsistence harvest in the context of available technology such as boats and sea planes but fails to recognize that changing ocean conditions and climate have impacted the distribution of subsistence harvest.' The changes in ocean condition have occurred and been documented since the ADF&G study of the late 80s; those changes in ocean condition have changed the necessary practices of subsistence harvesters. The DEIS fails to account for changes in the distribution of subsistence as a result of modern ocean and climate changes. The subsistence distribution has changed since the late 80s but the DEIS is making determinations as if it has remained static.

A final EIS must include updated subsistence distribution, access and competition data with appropriate evaluation of climate and ocean changes; reliance upon old data created by the State is not an appropriate evaluative metric to assess the impacts of the proposed action on Alaska Native subsistence harvesters and users of the Tongass.

ANILCA and Consultation

Section 805 of ANILCA establishes local and regional advisory councils and mandates that the Secretary shall consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses.' STA believes that this DEIS and alternatives analysis was undertaken by the Forest Service without appropriate reliance upon the recommendations of the Southeast Alaska Subsistence Regional Advisory Council. Prior to making determinations that change the use of public lands, Section 810 of ANILCA mandates federal agencies to evaluate the "effect of land use, occupancy or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved and other alternatives which would reduce or eliminate the use, occupancy or disposition of public lands needed for subsistence purposes."

During the March 19-21, 2019, Winter meeting of the Southeast Alaska Subsistence Council, Nicole Grewe, regional economist and core member of the Alaska Roadless rulemaking team gave a presentation to the members of the Council where she stated, "that the agency [USFS] interpretation of ANILCA 810 is that the roadless rulemaking is not the withdrawal, reservation, leasing or otherwise permitting of the land."⁹ During that same meeting the Council moved to send a comment letter to USFS seeking Section 810 evaluation of the Roadless Rule. No record of any response to the Council's letter regarding Section 810 concerns has been located in the public record. It is shocking to STA that the Roadless Rule could be considered outside the scope of Section 810 given the practical effect on subsistence practice access and opportunity from most of the alternatives analyzed in the DEIS.

Subsequent to the release of the DEIS, USFS did have a series of "informational meetings" around Southeast and some of them were identified in the media as being carried out pursuant to Section 810.¹⁰

It is entirely unclear to STA whether USFS believes Section 810 is controlling to the Roadless Rule and whether USFS attempted to comply with Section 810 in this process. The USFS Roadless Rule website does contain a list of meetings that took place in Native communities but it is clear the meetings were not truly for purposes of addressing Section 810 subsistence concerns as no comments were accepted by USFS.¹¹ Subsistence commenters appear to have been directed to participate in this, the more generalized, NEPA comment period.

STA requests that the USFS undertake an ANILCA Section 810 analysis as part of a final EIS and include that in the Record of Decision. Part of that Section 810 analysis must include a meaningful solicitation and review of comments and recommendations from the Southeast Alaska Subsistence Regional Council. The ANILCA analysis is separate from the NEPA analysis and must evaluate the "significance" of the proposed actions on subsistence interests.¹²

NEPA and Subsistence Analysis

USFS did invite STA and other tribes and tribal organizations to participate as "cooperating agencies." The USFS outreach to tribes suggested that tribes were invited "to be a cooperating agency due to their expertise on subsistence and potential impacts to specific communities in Alaska."¹³ This statement suggests that the USFS was approaching its NEPA requirements as also meeting its ANILCA subsistence review obligations; that is an incorrect approach under federal law. ¹⁴

The same outreach to tribes stated that the "[t]he State of Alaska is a cooperating agency in this rulemaking effort because of its expertise on the economic development concerns related to

roadless area management within Alaska."¹⁵ This statement is curious; how can the State have any significant expertise regarding development of federal lands that have never been developed? STA came to understand this attitude of deference to the State in better context upon learning about the Governor's meeting with President Trump, the delayed release of the DIES and the agency preferred alternative 6.¹⁶ STA believes this political entanglement of the federal executive and the state executive has the effect of nullifying meaningful public participation.

Ultimately, STA did not participate as a cooperating agency but did seek government to government consultation with USFS as part of the rulemaking process. STA requests that USFS comply the prevailing and controlling case law and engage in the subsistence analysis separate from the NEPA process. STA also requests that the NEPA process be based on objective findings regarding environmental, social and economic effects rather than politically aligned interests outside of Alaska.

184 Fed.Reg. 55522, October 17, 2019, (hereafter "DEIS").

2 Cf. *United States v. Winans*, 198 U.S. 371 (1905). See also *People of Togiak v. United States*, 470 F.Supp. 423, (D.C. D.C. 1979), and *Kenaitze Indian Tribe v. Alaska*, 860 F. 2d 312 (9th Cir. 1988), cert. den., 491 U.S. 905 (1989).

3 16 U.S.C. [sect][sect] 3111-3126.

4 DEIS 3-217.

5 DEIS 3-221.

6 DEIS 3-222.

16 U.S.C. [sect] 3115.

8 16 U.S.C. [sect] 3120(a).

9 See, Southeast Alaska Subsistence Regional Council Winter 2019 Meeting Notes, page 12.

to <https://www.kfsk.orR/2019/11/08/u-s-forest-service-holds-roadless-rule-meeting-hearing-in-petersbura>. Last viewed December 15, 2019.

11 https://www.fs.usda.gov/inf/11558/wwwinepa/109834_FSPLT3_5060967.pdf. Last viewed December 15, 2019.

12 Village of Gambell v. Hodel, 774 F.2d 1414, 1419-20 (9th Cir. 1985) ("Hodel") (requirement for agency to study subsistence impacts is separate from requirement of National Environmental Policy Act to study environmental impacts), rev'd on other grounds sub nom. Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531 (1987).

13 USFS Roadless Rule Letter and Attachments to Tribes 20180730. Received by STA Chairman KathyHope Erickson on September 6, 2018.

14 Hodel at supra.

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[Position]