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First name: Mayra & & Vasco

Last name: Mendez & & Chavez Molins

Organization:

Title:

Comments: See attached file(s)

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## Tongass Comment Final

### Intro

The Tongass National Forest as well as the people and wildlife that inhabit this area are at threat from the proposed [ldquo]state specific roadless rule[rdquo], which aims to [ldquo]discontinue the existing regulation[rsquo]s prohibitions and instead rely upon existing statutory and management plan direction for managing roadless areas on the Tongass National Forest[rdquo][1]. This proposal poses a direct threat to 32 federally recognized tribes as well as three endangered species and two threatened species listed under the ESA. Allowing the timber industry to log one of the oldest growth rainforests in the world will drastically affect the region's biodiversity and ultimately affect America[rsquo]s largest carbon sink[2]. Likewise, allowing the issuance of permits for logging will also lead to road construction and resources extraction, which is destructive to fish and wildlife habitats. This will also increase the potential risk of fire and negatively impact Tongass[rsquo] 77 major watersheds.

More than 500 scientists have signed a joint letter stating that the Roadless Rule is the [ldquo]most scientifically credible approach for managing and protecting our last undeveloped national forest[rdquo]. However, the Forest Service (FS) preferred alternative challenges this and proposes the removal of 9.2 million inventoried roadless acres, while also claiming that [ldquo]the exception will have minimal environmental and economic effects[rdquo]. This doubtful assumption is made on the flawed premise that [ldquo]no more logging or road building is likely to occur regardless of whether the roadless rule applies to the Tongass[rdquo]. In fact, this proposal will affect the Queen Charlotte Goshawk, a threatened species that depends on old growth forests to survive. Road construction for timber transportation will directly affect the endangered humpback whale by increasing coastal habitat pollution, one of the major threats to this species. In addition, a recent study by [ldquo]Taxpayers For Common Sense[rdquo], a non-partisan budget watchdog in Washington DC, calculated that the U.S. Forest Service has lost nearly 600 million dollars over two decades through road building and timber sales on the Tongass National Forest[3]. Opening more areas in the Tongass to logging could accelerate this issue. The proposal to allow logging in Tongass is not only a threat to the regions biodiversity and the native communities that depend on it, but it will also cost taxpayers millions of dollars for an industry that has historically lost money in this region.

### Who we are and why this matters to us

My name is Vasco Chavez-Molina and I am currently pursuing a master[rsquo]s degree in environmental policy from the University of Colorado Boulder. Being born and raised in Peru, I have experienced first-hand how the timber industry has depleted the Amazon rainforest. In Peru, environmental laws are weak and with the increase in corruption over the years, private companies have been able to utilize the country[rsquo]s natural resources to their economic advantage. I would hate to see this happen in the United States, a country that has welcomed me with open arms since the day I got here 6 years ago. In addition, just like the Amazon rainforest, the Tongass

National Forest is a biodiversity hotspot that should be preserved for its intrinsic value. Americans often criticize mass deforestation in the Amazon, so allowing this proposal to go through would be hypocritical. The U.S. is well known for its strict environmental laws, many of which have not been taken into account in this proposal. I believe the Forest Service has not consulted with the Fish and Wildlife Service (FWS) on many issues and therefore could potentially violate legal requirements contained in laws such as the Endangered Species Act (ESA).

My name is Mayra Mendez and I am in the same Master's Program at the University of Colorado Boulder with Vasco. I grew up in Illinois where the landscape is covered by suburbs and cities, where greenspace is not a priority. I strive to preserve the land that we have that is not touched by our destruction. It is not only important that the Roadless Rule continues in the Tongass National Forest for the ecosystem, but for the purpose of having a pristine land accessible to all. As a young professional I see the necessity of preserving the Tongass National Forest. It is the largest intact forest in the United States and I hope to one-day visit, without having to witness the impacts from the timber industries destructive logging practices.

The Tongass National Forest is public land, and decisions such as these should involve the public. It is important that we as the public have our input considered. It is unjust that the Forest Service has prepared a draft environmental impact statement that fails to consider many federal regulations and when considered there are no details or significant information to base such an important decision on.

Environmentalism has always been a part of my life. It is our responsibility to ensure that economic driven decisions are carefully considered before decisions are made that will create irreversible commitment of our resources. I stand with the Alaskan Native tribes who fear that the proposed rule will endanger their sacred land but also create a disturbance to their way of living. It is unfair to continue to impose social injustice on these communities. It is important to me and a majority of Alaskan residents that this proposed rule does not pass[4].

For example, the Forest Service continuously cites the [ldquo]2016 Forest Plan[rdquo] as their major source of evidence for species conservation. The majority of this DEIS relies on the biological assessments (BA) conducted by the National Marine Fisheries Service (NOAA) for the 2016 forest plan. However, the new Forest Service plan is fundamentally different to that introduced in 2016. The new plan aims to open areas for logging that will no longer be protected by the roadless rule. Furthermore, as part of the proposed exception, the Forest Service would be able to modify an additional 185,000 acres of inventoried roadless areas. The 2016 Forest Plan should not be considered as a source of evidence for this proposal and instead be amended. Under section 7 of the ESA, the Forest Service has the responsibility to consult with FWS, undertake a new biological assessment (not the one done by NOAA), and ultimately determine the adverse impacts on the species affected. Failure to do this violates the Endangered Species Act. In fact, the Endangered Species Act Claim clearly states that a [ldquo]failure to prepare a biological assessment is comparable to a failure to prepare an environmental impact statement[rdquo]. It is important to us that the Forest Service abides to these regulations, because we would hate to see U.S. environmental policies ignored the same way many Peruvian environmental laws have been blatantly ignored.

Furthermore, environmental conservation has always been a part of our lives. It is our responsibility to ensure that economic driven decisions are heavily considered before decisions are made that will create irreversible commitment of our resources. We stand with the Alaskan Native tribes who fear that the proposed rule will endanger their sacred land, as well as the endangered and threatened species susceptible to this proposal.

#### Failure to Create a Biological Assessment Undermines Federal Environmental Regulations

The proposed rule would reverse the 2001 roadless rule as applied to the Tongass National Forest, a rule that would still remain applicable to 44.7 million acres of National Forest, and that for the most part prohibits road construction, reconstruction, timber harvest, and sale. The Tongass is currently more than 90% undeveloped and is unique in comparison to other national forests with respect to size, percentage of inventoried roadless areas

(IRA[rsquo]s), and the dependency of 32 communities on federal land. Similarly, the Tongass National Forest is home to a significant portion of the world[rsquo]s last remaining temperate rainforest and supports abundant wildlife such as 95% of the entire population of brown bears in the United States.

The U.S. Department of Agriculture has identified [ldquo]Alternative 6[rdquo] as the preferred alternative for this proposal. Alternative 6 would except the Tongass from the 2001 roadless rule and allow maximum timber harvest as well as remove 9.2 million inventoried roadless acres on the Tongass. This alternative will result in a greater degree of fragmentation as well as a greater effect on 947 watersheds, which provide cold clean water that sustain the majority of the tribes and wildlife throughout the region.

Most importantly though, this proposal fails to adhere to federal environmental laws. This undermines the credibility of the DEIS and weakens the proposal overall. The Forest Service is supposed to have asked FWS and NMFS whether any listed species may be present and affected in the [ldquo]action area[rdquo]. Not only did they not do this, but they listed some of the species present in the area and claimed that their actions would have minimal consequences on the survival of the species without even conducting a biological assessment. Issues such as these are exemplified across the entire EIS, ultimately affecting the proposals credibility on environmental issues. For example, despite acknowledging that road construction will pose environmental risks to marine wildlife, the EIS claims that [ldquo]excepting the Tongass from the Roadless Rule would have negligible effects on marine habitat[rdquo]. These contentions are both problematic and appalling because they show no evidence to back up their claims

The Forest Service is obligated to make a cost benefit analysis, that needs to be included in a DEIS available for public comment.

Alternative 6 of the DEIS is arbitrary and capricious

In October 2019 a report was released by Taxpayers for Common Sense, a non-profit nonpartisan organization focuses on the federal budget in Washington D.C., reported on the timber budget in the Tongass National Forest. In the report it was noted that over the last 20 fiscal years (FY1999-2018), the U.S Forest Service has spent \$632 million in connection with its timber sale program in the Tongass and collected \$33.8 million in timber sale receipts, resulting in a net loss of \$598.2 million. The U.S Forest Service lost \$29.9 million per year, on average from FY1999 to FY2018. Tongass timber sale revenues covered just 5.4 percent of timber sale costs[5]. The fact of the matter is that the timber industry in the Tongass is no longer economically viable and yet for reasons that are not explained the Forest Service continues to promote it. This alone would make the adoption of alternative 6 arbitrary and capricious because the Forest Service has failed to make a [ldquo]rational connection to the facts found and the choice made[rdquo] which is required based on Motor Vehicle Manufactures Ass[rsquo]n v. State Farm Insurance Co case (463 U.S. 29 (1983).

If the Tongass National Forest is exempt from the Roadless Rule, roadbuilding costs will likely increase. The USFS constructs or reconditions roads to provide harvesters access to timber stands. The cost of maintenance and current maintenance backlog is not considered. Covering roadbuilding costs improves the economics of a timber sale for logging companies, but also significantly increases the total costs of the USFS timber program to the American Tax Payer. The USFS spending on roads in the Tongass made up more than 40 percent of all timber sale expenses from FY1999 to FY2018.

The 2001 Roadless Rule prohibits new road construction and reconstruction in inventoried roadless areas with national forests, including 9.2 million acres in the Tongass. Exempting those acres from the rule in the future would allow the USFS to expand timber sales to new areas, which would require comparatively more road construction for timber access. This would only drive up USFS expenses and deepen taxpayer losses from Tongass timber sales.

The cost of carbon needs to be considered in the cost benefit analysis as required by federal regulation

Nowhere in the DEIS has the USDA Forest Service mention the cost of carbon. The Tongass is the biggest national forest in the United States and arguably one of the biggest tools to confront climate change. Encouraging more logging would make the Tongass National Forest a contributor to climate change. When forests are logged, the carbon that had been stored in the trees and soil is ejected into the atmosphere again. A report published in 2016 found one proposal to log old-growth trees in the Tongass would result in greenhouse gas emissions comparable to what would be added to the atmosphere if you put 4 million new vehicles on the road and had them drive around for the next 100 years[6]. In *High Country Conservation Advocates v. U.S. Forest Service* 52 F. Supp. 3d 1174 (D. Colo. 2015) and *Center for Biological Diversity v. National Highway Traffic Safety Administration* 538 F.3d 1172 (9th Cir. 2010) the courts held that it is not enough to quantify emission but must also assess the cost of carbon. The Interagency Working Group has made it easy for agencies to calculate the cost of carbon and the USDA Forest Service should not be exempt from calculating this into the economic factors associated with the Tongass National Forest[7]. The Forest Service is required to consider the cost of carbon in a cost benefit analysis (CBA). Through the CBA it will be evident that the cost of carbon alone outweighs any economic benefits, including that of the timber industry.

The Outdoor Recreational Industry needs to be considered in the cost benefit analysis

According to the Outdoor Industry Association the State of Alaska generates 7.3 billion in consumer spending annually. About 72,000 direct jobs are maintained and \$337 million are generated in state and local tax revenue[8]. Outdoor recreation is a major driver of economic activity in Alaska. The DEIS clearly states that the proposed rule will have direct negative effects to the outdoor industry. Impacts to existing outfitter/guide use are likely to be greatest where changes in roadless designations allow development in remote areas that are used for outfitter/guide activities dependent on high scenic integrity and undisturbed landscapes. Changes in roadless area designations could also affect outfitter/guide use in other adjacent or nearby areas as outfitter/guides displaced from one location seek other places to take clients. Some use areas are presently at capacity, which could serve to exacerbate potential displacement effects. Long-term changes in roadless area management could affect the Forest's ability to meet future outfitter/guide demands[9]. Effects to the outdoor recreational sector should be evaluated as the State of Alaska significantly benefits economically from this sector. The proposed rule is bound to have significant disruption in the outdoor recreation industry, the agency has an obligation to evaluate the effect of the proposed rule, failure to do so will result in significant economic lost to the State of Alaska. The outdoor recreation industry contributes 72,000 jobs, if the industry is cut there will be many Alaskan residents out of work, which ultimately defeat the goals of economic growth proposed by the rule.

Existence Value must be considered in the cost benefit analysis

When considering economic value of the Tongass National Forest the agency must also look at existence value of wildlife. In the DEIS the Forest Service has failed to address many endangered species that will be effected by the proposed rule. The Forest Service has an obligation to consider not only wildlife but also endangered species in the Tongass National Forest. The proposed rule has direct implications to endangered species, are the economic values greater than the preservation of a specie? It is important that the Forest Service takes these existence values into consideration when completing a cost benefit analysis.

The Forest Service has an obligation to produce a cost benefit analysis for the Tongass National Forest. In the DEIS alternative 6 focuses on economic opportunity through the exemption of the 2001 Roadless Rule. However the Forest Service has failed to conduct a cost benefit analysis to include road maintenance, the cost of carbon and the economic cost to the recreational industry. In addition the impact of wildlife that will result from this proposed rule which cannot be quantified but have existence value to our society and biological systems. The proposed rule will inflict an irreversible commitment of resources that cannot be justified by economic gains.

Primary Habitat for Species such as the Queen Charlotte Goshawk and Marbled Murrelet will become fragmented due to Logging and Road Construction

The Tongass National Forest is already naturally fragmented. If you look at its geography and topography, one can easily notice the island separations, patchy distributions of old growth forest, and a variety of landscape conditions. Increasing the already natural fragmentation will lead to habitat loss, eventually decreasing the amount of interior old growth forest habitat. This type of habitat is critical for the survival of two threatened species, the Queen Charlotte Goshawk and the Marbled Murrelet.

In addition to the effects of fragmentation on threatened species, alternative 6 would result in the most fragmentation because of its proposal to log in more remote watersheds and roadless areas. It is well known that habitat fragmentation leads to species isolation, and therefore poses a greater risk for local extinctions. This applies to all wildlife and not only those listed as threatened or endangered. However, threatened and endangered species may face a higher threat due to their low population numbers. The Forest Service has failed to address the impacts of fragmentation, habitat loss, penetration into remote roadless areas, and greater road lengths for several listed species. This is the case for Queen Charlotte Goshawk (T), Marbled Murrelet (T), Short Tailed Albatross (EN), Humpback whale (EN), and Eskimo Curlew (EN). Their actions would be arbitrary and capricious because the Forest Service would have failed to consider an important aspect of their proposal, the impact of logging on threatened species.

Conservation Provisions under Section 7 of the Endangered Species Act (ESA) have been blatantly ignored

Section 7 of the ESA clearly states that Federal Agencies must (1) request information about listed species from the FWS and NMFS, (2) prepare a BA to ascertain impacts and (3) consult with the FWS and NMFS if adverse impacts are found. Although no laws or regulations have been broken yet, the DEIS clearly shows that the Forest Service has not followed many of the requirements imposed under the ESA. If this proposal does go through, then the Forest Service would be in violation of the ESA.

The Endangered Species Act clearly states that [ldquo]federal agencies must ensure that their actions are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species[rdquo]. [sect] 7(a)(2). The fact that the Forest Service chose alternative 6 as their preferred alternative, demonstrates that the agency has no problem in destroying or adversely modifying the critical habitat for threatened or endangered species in the Tongass. Alternative 6 will [ldquo]provide the maximum additional timber harvest opportunity, remove 9.2 million inventoried roadless acres on the Tongass, and convert a net total of 165,000 old growth acres and 20,000 young growth acres[rdquo].

The Forest Service appears to be aware that endangered species are present in the area, but it has failed to prepare a biological assessment (or biological evaluation) and has failed to formally consult with FWS. Instead, the Forest Service has cited the 2016 Forest Plan and used NOAA[rsquo]s BA as their own; but the proposed rule involves a new action that triggers a new requirement for the Forest Service to comply with the ESA. The agency[rsquo]s failure to do so in this case directly violates the ESA. It might also be arbitrary and capricious because the Forest Service entirely failed to consider important aspects of the problem as well as considering relevant factors[10]. What the Forest Service has done is fundamentally wrong because the 2016 Forest Plan does not account for a major changes on the roadless rule that allow for logging in areas that are no longer protected. The Forest Service proposal needs a new BA that specifically addresses their proposal and its effects on old growth forests and the species that depend on it.

Moreover, the Forest Service must comply with the [ldquo]strict substantive provisions of the ESA, and its procedural requirements designed to ensure compliance with the substantive provisions[rdquo]. The Forest

Service has clearly failed to comply with many of these provisions and therefore should provide the Secretary with [ldquo]the best scientific and commercial data available[rdquo] on the effects of their actions on threatened and endangered species. 16 U.S.C 1536 (a)(2). Using NOAA[rsquo]s BA as evidence is not only not enough; it fails to address the major changes that their proposal will have on individual species. Furthermore, consideration of cumulative effects under section 7 of the ESA requires the Forest Service to [ldquo]insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species[rdquo]. The Forest Service is implicitly ignoring biological information by not doing their own BA. Furthermore, CEQ rules require federal agencies, such as the Forest Service, to get necessary information that can be reasonably obtained 40 CFR 1502.22. Not only is the Forest Service ignoring their need to conduct a new Biological Assessment, but they are also violating CEQ rules. Ultimately, if this proposal goes through, then the Forest Service would have violated the ESA by [ldquo]failing to use the best information available to prepare a comprehensive biological assessment considering all stages of their action, and thus failing to adequately assess whether their action was likely to jeopardize the continued existence of endangered and threatened species 7(a)(2)[rdquo].

The population of the Queen Charlotte Goshawk in the Tongass must be listed under the ESA

Although distinct population segments of the Queen Charlotte Goshawk, a subspecies of the Northern Goshawk, are currently listed as threatened under the ESA, the Tongass population is not. The Fish and Wildlife Service decided that the Alaskan population was [ldquo]sufficiently protected by the Tongass Plan[rdquo] and therefore did not need to be listed. If the Forest Service proposal to adopt Alternative 6 (or any of the other action alternatives) goes through, then the basis for the decision to not list the Tongass population of the Queen Charlotte Goshawk will be removed and the FWS will have to reconsider its decision. Removing the Roadless Rule could extirpate this species population only protection. If this is the case, then The Fish and Wildlife Service must intervene this proposal and list the Alaskan Queen Charlotte Goshawk population under the ESA.

The Queen Charlotte Goshawk prefers mature and old growth forest habitats for nesting and foraging. These old growth habitats are the ones targeted by alternative 6, posing a threat to this species home. In addition, alternative 6 will create longer road developments, increase habitat fragmentation, and deforestation. The Queen Charlotte Goshawks typically nests in [ldquo]large patches of tall, mature, and old trees with dense canopies[rdquo]. Due to their high value, these are the type of trees that the timber industry is interested in. As stated before, alternative 6 would remove 24,000 old growth acres, a substantial portion of the goshawk[rsquo]s habitat.

Very much like in the Northern Spotted Owl v. Hodel case, [ldquo]allowing the continued old growth harvesting is likely to lead to the extinction of the subspecies in the foreseeable future[rdquo]. The most recent research from the Center for Biological Diversity shows that Queen Charlottes Goshawks high mortality rates are linked with heavily logged forests[rdquo]. Similarly, previous research shows that availability of adequate prey resources has been linked to goshawk territory, occupancy, and breeding success. The Queen Charlotte Goshawk is a keystone specie, so a threat to the survival of the species will have a major effect on the entire ecosystem. In addition, the Forest Service presents [ldquo]three Key Issues[rdquo] in their DEIS, which include Roadless Area Conservation, Support Social and Socioeconomic well-being, and conserve terrestrial habitat. Questionably, by choosing alternative 6 as the preferred alternative, they would not satisfy any of their three key issues. For example the third key issue, conserving terrestrial habitat, strictly contradicts alternative 6, which would generate the most logging and road building. Therefore, one could argue that alternative 6 does not satisfy any of the three key issues, and choosing it would be arbitrary and capricious.

The sub population of the Queen Charlotte Goshawk must be listed under the ESA threatened species if the Forest Service proposal is to go through. If this is the case, then critical habitat for this species must be assigned, making it extremely difficult for the Forest Service proposal and alternative 6 to be authorized. Nonetheless, if the roadless rule is removed and the Queen Charlotte Goshawk subpopulation does not become

listed, the Service's decision would be [qu]arbitrary and capricious or contrary to law[qu].

The population of the Marbled Murrelet in the Tongass Must be listed under the ESA

Similar to the Queen Charlotte Goshawk, the Marbled Murrelet is federally listed as threatened under the ESA. However, this does not include the Tongass population. Fish and Wildlife Service listed the Marbled Murrelet population as threatened in 1992 for the Pacific Region population, which includes California, Oregon, and Washington. Once again, the Tongass Roadless Rule served as a strong protection for the species subpopulation, and as a result this population was not listed under the ESA[11]. Removing this rule will drastically affect the species future. While FWS does not list this sub population as threatened, the Marbled Murrelet is listed as Endangered on the International Union for Conservation of Natures Red List (IUCN). Furthermore, the Forest Service commitment to [qu]conserving terrestrial habitat[qu] under their [qu]three key issues[qu] does not align with their preferred alternative (alternative 6) which would destroy Marbled Murrelet habitat. Alternative 6 would not satisfy the Forest Service [qu]three key issue[qu], especially conserving terrestrial habitat, and therefore choosing alternative 6 would be arbitrary and capricious.

This very strange and mysterious seabird breeds inland on mountains near the coast and nests high up in mature old growth forests several miles inland (sometimes up to 50 miles) from the ocean. Alternative 6 of the Forest Service proposal will place a direct threat to this species habitat. Previous research shows that fragmenting the Marbled Murrelet habitat, can affect its breeding success.

Most importantly though, allowing this proposal to go through will remove the only protection for this subpopulation. For nearly two decades road building and logging has been prohibited in the Tongass, providing a strong conservation mechanism for the survival of this specie.

The Forest Service has not conducted a biological assessment for their proposal and therefore has not provided the [qu]best scientific and commercial data available[qu]. Instead the Forest Service conducted a comprehensive assessment, which is arguably neither comprehensive nor substantial enough. By not providing enough information on their effects on Marbled Murrelets, one could argue that their assessment violates NEPA rather than the ESA 40 CFR 1502.22. In fact, most of the information stated on their EIS on Marbled Murrelets come from the 90's with the most recent research cited in 2007. This does not provide a reliable depiction of their proposal effects on Marbled Murrelet and therefore can't be trusted. The Forest Service has the responsibility to conduct a new Biological Assessment that evaluates the effects of old growth forest logging and fragmentation on Marbled Murrelets. In addition, removing the roadless rule would require FWS to consider listing this subpopulation under the ESA. Without any sort of protection and the added threats of logging, road building and habitat fragmentation, the survival of this species will be at risk. Just like their counterparts in California, Oregon, and Washington, the Tongass sub population must become listed under the ESA. If FWS decides not to list the subpopulation, then it must under law suggest reasonable and prudent alternatives that will not jeopardize the continued existence of the species.

Environmental effects on the Endangered Short Tailed Albatross would violate the ESA

This pelagic sea bird forages offshore and in shelf-break waters through the North Pacific Ocean and is listed under the ESA as Endangered. The FWS has assigned Alaska as a lead region for the conservation of this species, and estimates the world population of Short Tailed Albatross to be under 2,200 birds. This species is known to forage in near shore waters adjacent to the Tongass and therefore could be at threat from the Forest Service proposal. In fact, the DEIS conducted by the Forest Service clearly states that Short Tailed Albatross [qu]could be affected by reduced marine water quality due to activities in the nearshore environment, including LTF use, log raft towing, vessel traffic, and timber harvest within the beach fringe[qu]. However, the DEIS fails to address the concrete effects on the species by just stating the [qu]possible[qu] effects. This is unacceptable, especially due to the low number of individuals remaining. The Forest Service must consult with

FWS and find out if their proposal will jeopardize the continued existence of the Short Tailed Albatross. Just stating the possible effects is not enough. The Forest Service must conduct a Biological Assessment that [ldquo]ascertains whether the species or its critical habitat is likely to be adversely affected by this proposal,[rdquo] and if so, it must consult with the FWS as required by [sect] 7(a)(2) of the ESA.

The Forest Service is violating its duty to conserve the Endangered Humpback Whale

The Western North Pacific stock of Humpback whales, which includes the Tongass population, was listed as Endangered under the ESA back in 1973. In Alaska, critical habitat was designated south of Anchorage and on the Alaskan Peninsula. Populations in the Tongass were among the best conserved, in fact recent estimates of the Central-North Pacific stock found 1,115 unique identifications in South East Alaska, accounting for 66.8% of the Central-North Pacific stock. The roadless rule has served as a strong protection for the Tongass waters and its species. Removing it will pose a direct threat to the Central North Pacific Stock.

Research has shown that some of the greatest threats to humpback whales today are entanglements in fishing gear, ship strikes and coastal habitat pollution. The latter two would result in potential impacts if the Forest Service proposal goes through. Under all action alternatives, especially alternative 6, activities implemented under the Forest Plan would result in higher vessel traffic and marine activity associated with LTF use and log transport. Because humpback whales inhabit coastal areas, [ldquo]they will become increasingly exposed to human activity[rdquo] through this proposal. The Forest Service must not allow future endangerment to an already endangered species. Conservation for this species is required under the ESA through the [ldquo]use of all methods and procedures necessary to bring any endangered or threatened species back to the point at which the measures provided under the ESA are no longer necessary[rdquo]. See ESA [sect][sect] 3(3) & 7(a)(1). Similarly, under section 7 of the ESA, the Forest Service must not [ldquo]jeopardize the continued existence of an endangered species[rdquo]. ESA [sect] 7(a)(2). Selecting alternative 6 as the preferred alternative violates section 7 of the ESA as well as the ESA[rsquo]s affirmative duty to conserve listed species.

Ultimately, the Forest Service did not ensure compliance with the substantives provisions of the ESA, by skipping step 1 and 2 of the consultation process. All agencies proposing to take an action [ldquo]must inquire with the FWS whether any threatened or endangered species are present in the area of the proposed action[rdquo] 1536(a)(2). If the answer is affirmative [ldquo]a biological assessment must be undertaken to determine if such species is likely to be affected by the action[rdquo]. By failing to do this the Forest Service has provided an unreliable depiction of the effects of their proposed actions on threatened and endangered species. In order to fully understand the effects of their proposal the Forest Service must prepare a Biological Assessment and eventually assure that their proposed actions won[rsquo]t have detrimental effects on the survival of humpback whales.

No consideration on the Endangered Eskimo Curlew

The Forest Service DEIS clearly states that Eskimo Curlews are not considered as inhabiting the Tongass National Forest. The Forest Service makes this claim without a single source to support it. All they state is that: [ldquo]there is no potential occurrence in the analysis area[rdquo]. This is a big mistake on their part because by ignoring an endangered species that may exist in the action area of their proposal, they would be in direct violation of the ESA and more importantly the consultation process under section 7 of the ESA. Indeed, FWA includes the Tongass as part of the species range. This shows once again how the Forest Service has violated the basic requirements of the ESA that it: (1) request information about listed species from the FWS and NMFS, (2) prepare a BA to ascertain impacts and (3) consult with the FWS and NMFS if adverse impacts are found.

Moreover, if the Forest Service truly believes that there are no Eskimo Curlews in the Tongass National Forest, then they should conduct a status review (Northern Spotted Owl v Hodel) under the consultation of the Fish and Wildlife Service. The Forest Service should assemble a group of experts to determine if any Eskimo

Curlews are present in the action area. The Forest Service proposal must not be allowed to proceed without any evidence that shows that Eskimo Curlews are not present and will not be affected under their preferred alternative.

The Forest Service has failed to adequately address the National Historic Preservation Act

Apart from possible violations to the ESA, the DEIS undermines federal requirements under the National Historic Preservation Act (NHPA). The Tongass National Forest is comprised of approximately 17 million acres. Cities within the Tongass National Forest include Yakutat, Hoonah, Sitka, Juneau, Petersburg, Wrangell, Thorne Bay, Craig, and Ketchikan. The Alaska Historic Preservation office has adapted historic properties in the cities of Sitka, Juneau and Ketchikan, all of which are deeply rooted in Native Alaskan History. The city of Sitka has 20 different sites designated as historical under the Alaska Historic Preservation Office. Many of the historical sites in the city Sitka have strong ties to the Tlingit people. The Tlingit people settled in Sitka over 10,000 years ago. In the draft environmental impact statement, the USDA Forest Service states that approximately 6 percent (26,418 acres) of the Sitka community use area (CUA) is presently managed in development land use designation (LUD). This total would increase under all action alternatives, with net gains ranging from about 230 acres (Alternatives 2 and 3) to 64,600 acres (Alternatives 5 and 6). The net gains are substantial with no clear indication of what areas within Sitka will be developed.

Juneau the capital of Alaska has 23 historical listings within its boundaries. Juneau's CUA encompasses a total of 2,029,326 acres. Most of this area (79 percent) is presently managed as roadless. [12] Within Juneau, X[un]un[acute]xi is one of the 23 historical listings, which is a traditional cultural property that was the site of the first Auk Tlingit village in the Juneau area. It is described by Tlingit people as a shamanic landscape due to the presence of shamans' graves and is considered a spiritual place and a ceremonial space used by contemporary Tlingit people. The area is a place to go for spiritual renewal, a place to acquire spirits, and where Tlingit people feed the spirits of their ancestors[13]. Approximately 1 percent (10,633 acres) of the Juneau CUA is presently managed in development LUDs. This total would increase under all action alternatives, with net gains ranging from about 37 acres (Alternatives 2 to 4) to 139,600 acres (Alternative 6). Alternatives 2-6 pose a threat to the historical sites in Juneau, the most concerning is X[un]un[acute]xi because of its culture significance[14].

Ketchikan a city within the Tongass National Forest has a total of 18 designated historical sites. The Totem Bight State Historical Park is located within the Ketchikan. The park is located on the former site of a traditional Native campground known as Mud Village and Mud Bight Village. The totem poles were abandoned by the natives when moved to areas with more job opportunities[15]. Each totem pole has a distinct meaning to the native people who inhabited the land. Approximately 6 percent (121,179 acres) of the Ketchikan CUA is presently managed in

development LUDs. This total would increase under all action alternatives, with net gains ranging from about 10,600 acres (Alternative 2) to 292,200 acres (Alternatives 5 and 6)[16].

Under the National Historical Preservation Act, historic property is defined to include: [ldquo]any prehistoric or historic district, site, building, structure, or object, included in or eligible for inclusion in the National Register. 36 C.F.R [sect]800.2 (e). The rules require the action agency to make a [ldquo]reasonable and good faith effort to identify historic properties that may be affected by the undertaking[rdquo] in consultation with the State Historic Preservation Officer (SHPO). 36 C.F.R [sect] 800.4 (b). In the draft environmental impact statement, the Forest Service has consulted with the with the State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology, resulting in a letter from the State Historic Preservation Officer concurring with the Forest Service's determination that changes in management direction for designated roadless areas on the Tongass would not result in an undertaking, as defined in 36 CFR 800.16. Although road construction and/or timber harvest could potentially increase within some designated roadless

areas, impacts under the NHPA would be based on site-specific proposals, which are currently unknown, and would be addressed in subsequent project environmental analyses.

The very fact that the Forest Service was required to prepare an EIS for this rule strongly suggests that this is indeed an undertaking. NEPA is a "close statutory analog" to the NHPA. *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1097 (9th Cir. 2005). "Because of the operational similarity between the two statutes, courts generally treat [ldquo]major federal actions[rdquo] under the NEPA as closely analogous to [ldquo]federal undertakings[rdquo] under the NHPA." *Sac and Fox Nation of Mo. v. Norton*, 240 F.3d 1250 (10th Cir. 2001). A federal undertaking requires that the agency completes a full analysis on the effects of the proposed rule and it is evident in the DEIS that the Forest Service has failed to comply with these requirements. Failure to comply will ultimately create an undertaking to these sacred locations.

There are 61 sites recognized by the Alaska[rsquo]s State Historic Preservation Office in the Tongass National Forest. There is no doubt that the proposed rule will have a tremendous effect on these various sites. The proposed rule has no mention of the direct effect or potential effects it will have on these historical preservation sites. Sitka, Juneau and Ketchikan all have less than 6 percent of developed land, the proposed rule will exempt all undeveloped land from the roadless rule. It is necessary that USDA Forest Service addresses this issue. The draft environmental impact statement states that issue that arise will be addressed on a site- specific proposal. The agencies failure to identify the potential issues and submit substantial information in the draft environmental impact statement is in violation of The National Historical Preservation Act considering the agency has not made [ldquo]reasonable and good faith effort to identify historic properties that may be affected by the undertaking[rdquo]. In comparison to *Pueblo of Sandia v. United States* (50 F.3d 856) case, where the agency had failed to also to make a reasonable, good faith effort in identify Historical Preservation site. The duty of the Forest Service is clearly identified in the National Historical Preservation Act, and the agency must comply.

#### Proposed Rule Create Environmental Injustice

The disparities among Native communities in Alaska are rooted in its history. In 1959 when Alaska became a state, 104.5 million acres of Native land was transferred to public domain and then transferred to the state. It wasn[rsquo]t until 1971 that Congress approved the Alaska Native Claims Settlement Act (43 USC 1601-1624) which authorized Alaska Natives to select and receive title to 44 million acres of public land in Alaska, and \$962,000,000 in cash as settlement of their aboriginal claim to land in the State[17]. The inequalities faced by Native communities in 1959 continue to be prevalent today.

The Affiliated Tribes of Northwest Indians, which represents 57 tribal governments, passed a resolution in support of the Roadless Rule in Alaska. If the Tongass is made exempt from the Roadless Rule, it will not only destroy the forest and our global climate but the exemption will actively contribute to the ongoing genocide of Indigenous Peoples whose identities, cultures, and livelihoods are integral to the forest. The proposed rule will have significant effects on the indigenous communities, at the cost of temporary economic relief. The proposed rule exemplifies and further advances inequalities faced by many Indian Tribes. Alaskan Natives have continuously inhabited Southeast Alaska and the Tongass for thousands of years, relying on the bounty of salmon, deer and moose for food. Inventoried roadless areas protect healthy watersheds which provide cold, clean water that sustains many of the tribes in Alaska. Inventoried roadless areas conserve natural diversity and help ensure the continued protection of indigenous fish and wildlife habitat as it relates to spiritual, social, nutritional, and ecological value.

The first nations include the Tlingit, Haida and Tsimshian, and the forest itself is named for the Tlingit people who inhabited the southernmost areas of Southeast Alaska near what is now the city of Ketchikan. Dependence on the land is still a way of life here, a cultural tradition as well as a necessity, made possible by the abundance of fish and wildlife in the region. Today, the Tongass is home to approximately 70,000 people spread among 32 communities, including approximately 32,000 in the state capital of Juneau.

In February, the Organized Village of Kake and the other cooperating agencies received a robust, 500-page document, detailing the various options on the table for the Tongass National Forest. The Forest Service gave the tribes two weeks to submit comments, and for smaller tribes this task was impossible. The fact of the matter is that the Forest Service did not give the Tribes substantial amount of time to review the complicated document and submit comments within a two-week turnaround. The expectation to complete this task is unfair, and inequitable. When the tribes asked for more time from the Forest Service agency stated [ldquo]They said they had a timeline and they were going to stick to it[rdquo][18].

In the draft environmental impact statement, it highlights the cooperation between the Forest Service and the Native Tribes in Alaska. On July 30, 2018, the Forest Service invited 19 Southeast Alaska federally-recognized tribes to participate as cooperating agencies during the rulemaking process. Six tribes agreed to become cooperating agencies and entered into a Memorandum of Understanding (MOU). The tribes were invited to be cooperating agencies due to their specialized knowledge and expertise of land management, subsistence, natural resources, and potential impacts to specific communities within Alaska[19]. Many tribes within the community report that the agency has not taken the tribes input into consideration, that the attempt of cooperation is more of a formality. On October 29, 2019 in an unprecedented show of unity, the six federally recognized Tribal governments stepped forward to voice their concern over the federal government[rsquo]s handling of the proposed Alaska Roadless Rulemaking process and its potential negative impact on tribally significant lands in the Tongass National Forest. [ldquo]In a joint letter to U.S. Secretary of Agriculture Sonny Perdue, the Angoon Cooperative Association, Central Council of Tlingit & Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan expressed deep disappointment in the year-long process that has not been designed to be fair or equitable from the beginning and has completely ignored the Tribal governments[rsquo] voices and concerns. Concern was also expressed as a rushed timeline seemed more focused on political expediency rather than settling on an equitable solution that addressed Tribal concerns[20].[rdquo]

[ldquo]It[rsquo]s absolutely critical that we be at the table instead of on the menu[rdquo] stated Richard Peterson, President of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA). Throughout the process Tribal leaders have felt their roles and responsibilities as [ldquo]cooperating agencies[rdquo] have been undermined by a politically motivated, expedited timeline to be finished by June 2020, even though all of the Tribal representatives repeatedly requested extensions in writing, at meetings, and during teleconferences with the United States Forest Service. The Tribes agreed to participate in this process as [ldquo]cooperating agencies[rdquo] in order to have meaningful engagement with, and provide unique knowledge and expertise to, the US Forest Service regarding the Alaska Roadless rulemaking process but that has not been the case.

Native Tribes of Alaska continue to face issue of social injustice. It is the reasonability of the US Forest Service to ensure that this decision regarding the Tongass National Forest are reached through collaboration with the Native Tribes. Throughout the draft environmental impact statement, the idea of cooperation is embedded in the document however, it is not truly held. Alaskan Native Tribes are speaking out against the Forest Service saying that their concerns and ideas are not taken into consideration. The Forest Service should not promote collaboration if there is none occurring.

#### Tongass Conclusion:

The DEIS claims that the exemption of the Tongass National Forest from the 2001 Roadless Rule will have minimal environmental and economic effects, on the Tongass National Forest but that is not the case. The exemption will result in maximum timber harvest and the removal of 9.2 million inventoried roadless acres. The Forest Service cannot rationally claim that the exemption will not affect the environmental, Alaskan residents/ tribes, and endangered species. Our prepared comment demonstrates how the DEIS has failed to consider all the effects that the proposed rule will have. The DEIS fails to analyze the effects it will have on the endangered

species, national historical sites, the environment, the Alaska economy and environmental and social justice. For the DEIS to make a claim that there will be minimal effects demonstrates the lack of analysis completed by the agency in the DEIS.

The Forest Service DEIS lacks significant information critical to making the determination of exempting the Tongass National Forest from the 2001 Roadless Rule. The DEIS makes no effort to evaluate the potential effects of the proposed rule on Native Tribes, endangered species and National Historical Preservation sites. If the Forest Service decides to commit to alternative 6 of the DEIS the agency is obligated under 40 CFR [sect]1502.22 to address the issues stated above and make the analysis available for public comment before a final decision is made. For all of the reasons listed here we urge the Forest Service to either withdraw the proposed rule or choose alternative 1, the no action alternative as its decision. For the benefit of present and future generations, the 2001 Roadless Rule should be retained on the Tongass National Forest. Once the forest is opened to new roads and logging it will never be the same again.

[1] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[2] Aton A., 2019. Experts claim admin used misinformation to justify logging. Climate Wire.

[3] Ben A., Ross W.G., (2014). The Tongass National Forest and the Transition Framework: A new Path Forward? Head Water Economics.[https://headwaterseconomics.org/wp-content/uploads/Tongass\\_Report.pdf](https://headwaterseconomics.org/wp-content/uploads/Tongass_Report.pdf)

[4] Richard Chalyee E'esh Peterson, (2019). Southeast Alaska Tribal Governments Call for Protection of Tongass National Forest. HIA Environmental. <https://www.hia-env.org/wp-content/uploads/2019/10/Tribal-CA-Press-Release-2019.pdf>

[5] Taxpayers for Common Sense (2019). Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass. KCAW. <https://kcaw-org.s3.amazonaws.com/wp-content/uploads/2019/10/TCS-Cutting-Our-Losses-2019-.pdf>

[6] The Wilderness Society (2019). 5 reasons Tongass National Forest is worth fighting for. The Wilderness Society.

<https://www.wilderness.org/articles/blog/5-reasons-tongass-national-forest-worth-fighting#:~:targetText=1.,tool%20to%20combat%20climate%20change&targetText=The%20underlying%20soil%20absorbs%20some,the%20tide%20of%20global%20warming>.

[7] Environmental Protection Agency (2016). Technical Support Document: [shy]

Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis [shy] Under Executive Order 12866. EPA.[https://www.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf)

[8] Outdoor Industry Association (2017). Alaska Outdoor Recreation Economy Report. OIA<https://outdoorindustry.org/resource/alaska-outdoor-recreation-economy-report/>

[9]USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[10] Garvey T. (2017). A Brief Overview of Rulemaking and Judicial Review. Congressional Research Service. <https://fas.org/sgp/crs/misc/R41546.pdf>

[11] Center for Biological Diversity (2008). Comments on the 90 day finding on a petition to remove the California, Oregon and Washington population of the Marbled Murrelet from the list of Endangered Species. Federal Rulemaking Portal. [https://www.biologicaldiversity.org/species/birds/marbled\\_murrelet/CBD-MAMU-90-day-comments.html](https://www.biologicaldiversity.org/species/birds/marbled_murrelet/CBD-MAMU-90-day-comments.html)

[12] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[13] USSA, 2019. X[rsquo]un[aacute]xi Traditional Cultural Property. Forest Service. <https://www.fs.usda.gov/detail/r10/learning/history-culture/?cid=fseprd504932>

[14] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[15] <http://dnr.alaska.gov/parks/units/totembgh.htm>

[16] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[17] USDA, 1971. Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service. Forest Service. <https://www.fws.gov/laws/lawsdigest/ALASNAT.HTML>

[18] Elizabeth Jenkins, 2019. The Alaska Roadless Rule decision is moving along. Some tribal governments say it[rsquo]s moving too fast. KTOO Public Media. <https://www.ktoo.org/2019/03/13/the-alaska-roadless-rule-decision-is-moving-along-some-tribal-governments-say-its-moving-too-fast/>

[19] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[20] Richard Chalyee E'esh Peterson and Joel Jackson, 2019. Southeast Alaska Tribal Governments Call for Protection of Tongass National Forest. HIA Environmental. <https://www.hia-env.org/wp-content/uploads/2019/10/Tribal-CA-Press-Release-2019.pdf>

[Position]

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

Tongass Comment Final

## Intro

The Tongass National Forest as well as the people and wildlife that inhabit this area are at threat from the proposed [ldquo]state specific roadless rule[rdquo], which aims to [ldquo]discontinue the existing regulation[rsquo]s prohibitions and instead rely upon existing statutory and management plan direction for managing roadless areas on the Tongass National Forest[rdquo][1]. This proposal poses a direct threat to 32 federally recognized tribes as well as three endangered species and two threatened species listed under the ESA. Allowing the timber industry to log one of the oldest growth rainforests in the world will drastically affect the region's biodiversity and ultimately affect America[rsquo]s largest carbon sink[2]. Likewise, allowing the issuance of permits for logging will also lead to road construction and resources extraction, which is destructive to fish and wildlife habitats. This will also increase the potential risk of fire and negatively impact Tongass[rsquo] 77 major watersheds.

More than 500 scientists have signed a joint letter stating that the Roadless Rule is the [ldquo]most scientifically credible approach for managing and protecting our last undeveloped national forest[rdquo]. However, the Forest Service (FS) preferred alternative challenges this and proposes the removal of 9.2 million inventoried roadless acres, while also claiming that [ldquo]the exception will have minimal environmental and economic effects[rdquo]. This doubtful assumption is made on the flawed premise that [ldquo]no more logging or road building is likely to occur regardless of whether the roadless rule applies to the Tongass[rdquo]. In fact, this proposal will affect the Queen Charlotte Goshawk, a threatened species that depends on old growth forests to survive. Road construction for timber transportation will directly affect the endangered humpback whale by increasing coastal habitat pollution, one of the major threats to this species. In addition, a recent study by [ldquo]Taxpayers For Common Sense[rdquo], a non-partisan budget watchdog in Washington DC, calculated that the U.S. Forest Service has lost nearly 600 million dollars over two decades through road building and timber sales on the Tongass National Forest[3]. Opening more areas in the Tongass to logging could accelerate this issue. The proposal to allow logging in Tongass is not only a threat to the regions biodiversity and the native communities that depend on it, but it will also cost taxpayers millions of dollars for an industry that has historically lost money in this region.

## Who we are and why this matters to us

My name is Vasco Chavez-Molina and I am currently pursuing a master[rsquo]s degree in environmental policy from the University of Colorado Boulder. Being born and raised in Peru, I have experienced first-hand how the timber industry has depleted the Amazon rainforest. In Peru, environmental laws are weak and with the increase in corruption over the years, private companies have been able to utilize the country[rsquo]s natural resources to their economic advantage. I would hate to see this happen in the United States, a country that has welcomed me with open arms since the day I got here 6 years ago. In addition, just like the Amazon rainforest, the Tongass National Forest is a biodiversity hotspot that should be preserved for its intrinsic value. Americans often criticize mass deforestation in the Amazon, so allowing this proposal to go through would be hypocritical. The U.S. is well known for its strict environmental laws, many of which have not been taken into account in this proposal. I believe the Forest Service has not consulted with the Fish and Wildlife Service (FWS) on many issues and therefore could potentially violate legal requirements contained in laws such as the Endangered Species Act (ESA).

My name is Mayra Mendez and I am in the same Master[rsquo]s Program at the University of Colorado Boulder with Vasco. I grew up in Illinois where the landscape is covered by suburbs and cities, where greenspace is not a priority. I strive to preserve the land that we have that is not touched by our destruction. It is not only important that the Roadless Rule continues in the Tongass National Forest for the ecosystem, but for the purpose of having a pristine land accessible to all. As a young professional I see the necessity of preserving the Tongass National Forest. It is the largest intact forest in the United States and I hope to one-day visit, without having to witness the impacts from the timber industries destructive logging practices.

The Tongass National Forest is public land, and decisions such as these should involve the public. It is important that we as the public have our input considered. It is unjust that the Forest Service has prepared a draft environmental impact statement that fails to consider many federal regulations and when considered there are no details or significant information to base such an important decision on.

Environmentalism has always been a part of my life. It is our responsibility to ensure that economic driven decisions are carefully considered before decisions are made that will create irreversible commitment of our resources. I stand with the Alaskan Native tribes who fear that the proposed rule will endanger their sacred land but also create a disturbance to their way of living. It is unfair to continue to impose social injustice on these communities. It is important to me and a majority of Alaskan residents that this proposed rule does not pass[4].

For example, the Forest Service continuously cites the [ldquo]2016 Forest Plan[rdquo] as their major source of evidence for species conservation. The majority of this DEIS relies on the biological assessments (BA) conducted by the National Marine Fisheries Service (NOAA) for the 2016 forest plan. However, the new Forest Service plan is fundamentally different to that introduced in 2016. The new plan aims to open areas for logging that will no longer be protected by the roadless rule. Furthermore, as part of the proposed exception, the Forest Service would be able to modify an additional 185,000 acres of inventoried roadless areas. The 2016 Forest Plan should not be considered as a source of evidence for this proposal and instead be amended. Under section 7 of the ESA, the Forest Service has the responsibility to consult with FWS, undertake a new biological assessment (not the one done by NOAA), and ultimately determine the adverse impacts on the species affected. Failure to do this violates the Endangered Species Act. In fact, the Endangered Species Act Claim clearly states that a [ldquo]failure to prepare a biological assessment is comparable to a failure to prepare an environmental impact statement[rdquo]. It is important to us that the Forest Service abides to these regulations, because we would hate to see U.S. environmental policies ignored the same way many Peruvian environmental laws have been blatantly ignored.

Furthermore, environmental conservation has always been a part of our lives. It is our responsibility to ensure that economic driven decisions are heavily considered before decisions are made that will create irreversible commitment of our resources. We stand with the Alaskan Native tribes who fear that the proposed rule will endanger their sacred land, as well as the endangered and threatened species susceptible to this proposal.

#### Failure to Create a Biological Assessment Undermines Federal Environmental Regulations

The proposed rule would reverse the 2001 roadless rule as applied to the Tongass National Forest, a rule that would still remain applicable to 44.7 million acres of National Forest, and that for the most part prohibits road construction, reconstruction, timber harvest, and sale. The Tongass is currently more than 90% undeveloped and is unique in comparison to other national forests with respect to size, percentage of inventoried roadless areas (IRA[rsquo]s), and the dependency of 32 communities on federal land. Similarly, the Tongass National Forest is home to a significant portion of the world[rsquo]s last remaining temperate rainforest and supports abundant wildlife such as 95% of the entire population of brown bears in the United States.

The U.S. Department of Agriculture has identified [ldquo]Alternative 6[rdquo] as the preferred alternative for this proposal. Alternative 6 would except the Tongass from the 2001 roadless rule and allow maximum timber harvest as well as remove 9.2 million inventoried roadless acres on the Tongass. This alternative will result in a greater degree of fragmentation as well as a greater effect on 947 watersheds, which provide cold clean water that sustain the majority of the tribes and wildlife throughout the region.

Most importantly though, this proposal fails to adhere to federal environmental laws. This undermines the credibility of the DEIS and weakens the proposal overall. The Forest Service is supposed to have asked FWS and NMFS whether any listed species may be present and affected in the [ldquo]action area[rdquo]. Not only did they not do this, but they listed some of the species present in the area and claimed that their actions would have

minimal consequences on the survival of the species without even conducting a biological assessment. Issues such as these are exemplified across the entire EIS, ultimately affecting the proposals credibility on environmental issues. For example, despite acknowledging that road construction will pose environmental risks to marine wildlife, the EIS claims that [ldquo]excepting the Tongass from the Roadless Rule would have negligible effects on marine habitat[rdquo]. These contentions are both problematic and appalling because they show no evidence to back up their claims

The Forest Service is obligated to make a cost benefit analysis, that needs to be included in a DEIS available for public comment.

Alternative 6 of the DEIS is arbitrary and capricious

In October 2019 a report was released by Taxpayers for Common Sense, a non-profit nonpartisan organization focuses on the federal budget in Washington D.C., reported on the timber budget in the Tongass National Forest. In the report it was noted that over the last 20 fiscal years (FY1999-2018), the U.S Forest Service has spent \$632 million in connection with its timber sale program in the Tongass and collected \$33.8 million in timber sale receipts, resulting in a net loss of \$598.2 million. The U.S Forest Service lost \$29.9 million per year, on average from FY1999 to FY2018. Tongass timber sale revenues covered just 5.4 percent of timber sale costs[5]. The fact of the matter is that the timber industry in the Tongass is no longer economically viable and yet for reasons that are not explained the Forest Service continues to promote it. This alone would make the adoption of alternative 6 arbitrary and capricious because the Forest Service has failed to make a [ldquo]rational connection to the facts found and the choice made[rdquo] which is required based on Motor Vehicle Manufactures Ass[rsquo]n v. State Farm Insurance Co case (463 U.S. 29 (1983).

If the Tongass National Forest is exempt from the Roadless Rule, roadbuilding costs will likely increase. The USFS constructs or reconditions roads to provide harvesters access to timber stands. The cost of maintenance and current maintenance backlog is not considered. Covering roadbuilding costs improves the economics of a timber sale for logging companies, but also significantly increases the total costs of the USFS timber program to the American Tax Payer. The USFS spending on roads in the Tongass made up more than 40 percent of all timber sale expenses from FY1999 to FY2018.

The 2001 Roadless Rule prohibits new road construction and reconstruction in inventoried roadless areas with national forests, including 9.2 million acres in the Tongass. Exempting those acres from the rule in the future would allow the USFS to expand timber sales to new areas, which would require comparatively more road construction for timber access. This would only drive up USFS expenses and deepen taxpayer losses from Tongass timber sales.

The cost of carbon needs to be considered in the cost benefit analysis as required by federal regulation

Nowhere in the DEIS has the USDA Forest Service mention the cost of carbon. The Tongass is the biggest national forest in the United States and arguably one of the biggest tools to confront climate change. Encouraging more logging would make the Tongass National Forest a contributor to climate change. When forests are logged, the carbon that had been stored in the trees and soil is ejected into the atmosphere again. A report published in 2016 found one proposal to log old-growth trees in the Tongass would result in greenhouse gas emissions comparable to what would be added to the atmosphere if you put 4 million new vehicles on the road and had them drive around for the next 100 years[6]. In High Country Conservation Advocates v. U.S. Forest Service 52 F. Supp. 3d 1174 (D. Colo. 2015) and Center for Biological Diversity v. National Highway Traffic Safety Administration 538 F.3d 1172 (9th Cir. 2010) the courts held that it is not enough to quantify emission but must also assess the cost of carbon. The Interagency Working Group has made it easy for agencies to calculate the cost of carbon and the USDA Forest Service should not be exempt from calculating this into the economic factors associated with the Tongass National Forest[7]. The Forest Service is required to

consider the cost of carbon in a cost benefit analysis (CBA). Through the CBA it will be evident that the cost of carbon alone outweighs any economic benefits, including that of the timber industry.

The Outdoor Recreational Industry needs to be considered in the cost benefit analysis

According to the Outdoor Industry Association the State of Alaska generates 7.3 billion in consumer spending annually. About 72,000 direct jobs are maintained and \$337 million are generated in state and local tax revenue[8]. Outdoor recreation is a major driver of economic activity in Alaska. The DEIS clearly states that the proposed rule will have direct negative effects to the outdoor industry. Impacts to existing outfitter/guide use are likely to be greatest where changes in roadless designations allow development in remote areas that are used for outfitter/guide activities dependent on high scenic integrity and undisturbed landscapes. Changes in roadless area designations could also affect outfitter/guide use in other adjacent or nearby areas as outfitter/guides displaced from one location seek other places to take clients. Some use areas are presently at capacity, which could serve to exacerbate potential displacement effects. Long-term changes in roadless area management could affect the Forest's ability to meet future outfitter/guide demands[9]. Effects to the outdoor recreational sector should be evaluated as the State of Alaska significantly benefits economically from this sector. The proposed rule is bound to have significant disruption in the outdoor recreation industry, the agency has an obligation to evaluate the effect of the proposed rule, failure to do so will result in significant economic loss to the State of Alaska. The outdoor recreation industry contributes 72,000 jobs, if the industry is cut there will be many Alaskan residents out of work, which ultimately defeat the goals of economic growth proposed by the rule.

Existence Value must be considered in the cost benefit analysis

When considering economic value of the Tongass National Forest the agency must also look at existence value of wildlife. In the DEIS the Forest Service has failed to address many endangered species that will be effected by the proposed rule. The Forest Service has an obligation to consider not only wildlife but also endangered species in the Tongass National Forest. The proposed rule has direct implications to endangered species, are the economic values greater than the preservation of a species? It is important that the Forest Service takes these existence values into consideration when completing a cost benefit analysis.

The Forest Service has an obligation to produce a cost benefit analysis for the Tongass National Forest. In the DEIS alternative 6 focuses on economic opportunity through the exemption of the 2001 Roadless Rule. However the Forest Service has failed to conduct a cost benefit analysis to include road maintenance, the cost of carbon and the economic cost to the recreational industry. In addition the impact of wildlife that will result from this proposed rule which cannot be quantified but have existence value to our society and biological systems. The proposed rule will inflict an irreversible commitment of resources that cannot be justified by economic gains.

Primary Habitat for Species such as the Queen Charlotte Goshawk and Marbled Murrelet will become fragmented due to Logging and Road Construction

The Tongass National Forest is already naturally fragmented. If you look at its geography and topography, one can easily notice the island separations, patchy distributions of old growth forest, and a variety of landscape conditions. Increasing the already natural fragmentation will lead to habitat loss, eventually decreasing the amount of interior old growth forest habitat. This type of habitat is critical for the survival of two threatened species, the Queen Charlotte Goshawk and the Marbled Murrelet.

In addition to the effects of fragmentation on threatened species, alternative 6 would result in the most fragmentation because of its proposal to log in more remote watersheds and roadless areas. It is well known that habitat fragmentation leads to species isolation, and therefore poses a greater risk for local extinctions. This applies to all wildlife and not only those listed as threatened or endangered. However, threatened and

endangered species may face a higher threat due to their low population numbers. The Forest Service has failed to address the impacts of fragmentation, habitat loss, penetration into remote roadless areas, and greater road lengths for several listed species. This is the case for Queen Charlotte Goshawk (T), Marbled Murrelet (T), Short Tailed Albatross (EN), Humpback whale (EN), and Eskimo Curlew (EN). Their actions would be arbitrary and capricious because the Forest Service would have failed to consider an important aspect of their proposal, the impact of logging on threatened species.

Conservation Provisions under Section 7 of the Endangered Species Act (ESA) have been blatantly ignored

Section 7 of the ESA clearly states that Federal Agencies must (1) request information about listed species from the FWS and NMFS, (2) prepare a BA to ascertain impacts and (3) consult with the FWS and NMFS if adverse impacts are found. Although no laws or regulations have been broken yet, the DEIS clearly shows that the Forest Service has not followed many of the requirements imposed under the ESA. If this proposal does go through, then the Forest Service would be in violation of the ESA.

The Endangered Species Act clearly states that [ldquo]federal agencies must ensure that their actions are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species[rdquo]. [sect] 7(a)(2). The fact that the Forest Service chose alternative 6 as their preferred alternative, demonstrates that the agency has no problem in destroying or adversely modifying the critical habitat for threatened or endangered species in the Tongass. Alternative 6 will [ldquo]provide the maximum additional timber harvest opportunity, remove 9.2 million inventoried roadless acres on the Tongass, and convert a net total of 165,000 old growth acres and 20,000 young growth acres[rdquo].

The Forest Service appears to be aware that endangered species are present in the area, but it has failed to prepare a biological assessment (or biological evaluation) and has failed to formally consult with FWS. Instead, the Forest Service has cited the 2016 Forest Plan and used NOAA[rsquo]s BA as their own; but the proposed rule involves a new action that triggers a new requirement for the Forest Service to comply with the ESA. The agency[rsquo]s failure to do so in this case directly violates the ESA. It might also be arbitrary and capricious because the Forest Service entirely failed to consider important aspects of the problem as well as considering relevant factors[10]. What the Forest Service has done is fundamentally wrong because the 2016 Forest Plan does not account for a major changes on the roadless rule that allow for logging in areas that are no longer protected. The Forest Service proposal needs a new BA that specifically addresses their proposal and its effects on old growth forests and the species that depend on it.

Moreover, the Forest Service must comply with the [ldquo]strict substantive provisions of the ESA, and its procedural requirements designed to ensure compliance with the substantive provisions[rdquo]. The Forest Service has clearly failed to comply with many of these provisions and therefore should provide the Secretary with [ldquo]the best scientific and commercial data available[rdquo] on the effects of their actions on threatened and endangered species. 16 U.S.C 1536 (a)(2). Using NOAA[rsquo]s BA as evidence is not only not enough; it fails to address the major changes that their proposal will have on individual species. Furthermore, consideration of cumulative effects under section 7 of the ESA requires the Forest Service to [ldquo]insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species[rdquo]. The Forest Service is implicitly ignoring biological information by not doing their own BA. Furthermore, CEQ rules require federal agencies, such as the Forest Service, to get necessary information that can be reasonably obtained 40 CFR 1502.22. Not only is the Forest Service ignoring their need to conduct a new Biological Assessment, but they are also violating CEQ rules. Ultimately, if this proposal goes through, then the Forest Service would have violated the ESA by [ldquo]failing to use the best information available to prepare a comprehensive biological assessment considering all stages of their action, and thus failing to adequately assess whether their action was likely to jeopardize the continued existence of endangered and threatened species 7(a)(2)[rdquo].

The population of the Queen Charlotte Goshawk in the Tongass must be listed under the ESA

Although distinct population segments of the Queen Charlotte Goshawk, a subspecies of the Northern Goshawk, are currently listed as threatened under the ESA, the Tongass population is not. The Fish and Wildlife Service decided that the Alaskan population was [ldquo]sufficiently protected by the Tongass Plan[rdquo] and therefore did not need to be listed. If the Forest Service proposal to adopt Alternative 6 (or any of the other action alternatives) goes through, then the basis for the decision to not list the Tongass population of the Queen Charlotte Goshawk will be removed and the FWS will have to reconsider its decision. Removing the Roadless Rule could extirpate this species population only protection. If this is the case, then The Fish and Wildlife Service must intervene this proposal and list the Alaskan Queen Charlotte Goshawk population under the ESA.

The Queen Charlotte Goshawk prefers mature and old growth forest habitats for nesting and foraging. These old growth habitats are the ones targeted by alternative 6, posing a threat to this species home. In addition, alternative 6 will create longer road developments, increase habitat fragmentation, and deforestation. The Queen Charlotte Goshawks typically nests in [ldquo]large patches of tall, mature, and old trees with dense canopies[rdquo]. Due to their high value, these are the type of trees that the timber industry is interested in. As stated before, alternative 6 would remove 24,000 old growth acres, a substantial portion of the goshawk[rsquo]s habitat.

Very much like in the Northern Spotted Owl v. Hodel case, [ldquo]allowing the continued old growth harvesting is likely to lead to the extinction of the subspecies in the foreseeable future[rdquo]. The most recent research from the Center for Biological Diversity shows that Queen Charlottes Goshawks high mortality rates are linked with heavily logged forests[rdquo]. Similarly, previous research shows that availability of adequate prey resources has been linked to goshawk territory, occupancy, and breeding success. The Queen Charlotte Goshawk is a keystone specie, so a threat to the survival of the species will have a major effect on the entire ecosystem. In addition, the Forest Service presents [ldquo]three Key Issues[rdquo] in their DEIS, which include Roadless Area Conservation, Support Social and Socioeconomic well-being, and conserve terrestrial habitat. Questionably, by choosing alternative 6 as the preferred alternative, they would not satisfy any of their three key issues. For example the third key issue, conserving terrestrial habitat, strictly contradicts alternative 6, which would generate the most logging and road building. Therefore, one could argue that alternative 6 does not satisfy any of the three key issues, and choosing it would be arbitrary and capricious.

The sub population of the Queen Charlotte Goshawk must be listed under the ESA threatened species if the Forest Service proposal is to go through. If this is the case, then critical habitat for this species must be assigned, making it extremely difficult for the Forest Service proposal and alternative 6 to be authorized. Nonetheless, if the roadless rule is removed and the Queen Charlotte Goshawk subpopulation does not become listed, the Service[rsquo]s decision would be [ldquo]arbitrary and capricious or contrary to law[rdquo].

The population of the Marbled Murrelet in the Tongass Must be listed under the ESA

Similar to the Queen Charlotte Goshawk, the Marbled Murrelet is federally listed as threatened under the ESA. However, this does not include the Tongass population. Fish and Wildlife Service listed the Marbled Murrelet population as threatened in 1992 for the Pacific Region population, which includes California, Oregon, and Washington. Once again, the Tongass Roadless Rule served as a strong protection for the species subpopulation, and as a result this population was not listed under the ESA[11]. Removing this rule will drastically affect the species future. While FWS does not list this sub population as threatened, the Marbled Murrelet is listed as Endangered on the International Union for Conservation of Natures Red List (IUCN). Furthermore, the Forest Service commitment to [ldquo]conserving terrestrial habitat[rdquo] under their [ldquo]three key issues[rdquo] does not align with their preferred alternative (alternative 6) which would destroy Marbled Murrelet habitat. Alternative 6 would not satisfy the Forest Service [ldquo]three key issue[rdquo], especially conserving

terrestrial habitat, and therefore choosing alternative 6 would be arbitrary and capricious.

This very strange and mysterious seabird breeds inland on mountains near the coast and nests high up in mature old growth forests several miles inland (sometimes up to 50 miles) from the ocean. Alternative 6 of the Forest Service proposal will place a direct threat to this species habitat. Previous research shows that fragmenting the Marbled Murrelet habitat, can affect its breeding success.

Most importantly though, allowing this proposal to go through will remove the only protection for this subpopulation. For nearly two decades road building and logging has been prohibited in the Tongass, providing a strong conservation mechanism for the survival of this specie.

The Forest Service has not conducted a biological assessment for their proposal and therefore has not provided the [ldquo]best scientific and commercial data available[rdquo]. Instead the Forest Service conducted a comprehensive assessment, which is arguably neither comprehensive nor substantial enough. By not providing enough information on their effects on Marbled Murrelets, one could argue that their assessment violates NEPA rather than the ESA 40 CFR 1502.22. In fact, most of the information stated on their EIS on Marbled Murrelets come from the 90[rsquo]s with the most recent research cited in 2007. This does not provide a reliable depiction of their proposal effects on Marbled Murrelet and therefore can[rsquo]t be trusted. The Forest Service has the responsibility to conduct a new Biological Assessment that evaluates the effects of old growth forest logging and fragmentation on Marbled Murrelets. In addition, removing the roadless rule would require FWS to consider listing this subpopulation under the ESA. Without any sort of protection and the added threats of logging, road building and habitat fragmentation, the survival of this species will be at risk. Just like their counterparts in California, Oregon, and Washington, the Tongass sub population must become listed under the ESA. If FWS decides not to list the subpopulation, then it must under law suggest reasonable and prudent alternatives that will not jeopardize the continued existence of the species.

Environmental effects on the Endangered Short Tailed Albatross would violate the ESA

This pelagic sea bird forages offshore and in shelf-break waters through the North Pacific Ocean and is listed under the ESA as Endangered. The FWS has assigned Alaska as a lead region for the conservation of this species, and estimates the world population of Short Tailed Albatross to be under 2,200 birds. This species is known to forage in near shore waters adjacent to the Tongass and therefore could be at threat from the Forest Service proposal. In fact, the DEIS conducted by the Forest Service clearly states that Short Tailed Albatross [ldquo]could be affected by reduced marine water quality due to activities in the nearshore environment, including LTF use, log raft towing, vessel traffic, and timber harvest within the beach fringe[rdquo]. However, the DEIS fails to address the concrete effects on the species by just stating the [ldquo]possible[rdquo] effects. This is unacceptable, especially due to the low number of individuals remaining. The Forest Service must consult with FWS and find out if their proposal will jeopardize the continued existence of the Short Tailed Albatross. Just stating the possible effects is not enough. The Forest Service must conduct a Biological Assessment that [ldquo]ascertains whether the species or its critical habitat is likely to be adversely affected by this proposal,[rdquo] and if so, it must consult with the FWS as required by [sect] 7(a)(2) of the ESA.

The Forest Service is violating its duty to conserve the Endangered Humpback Whale

The Western North Pacific stock of Humpback whales, which includes the Tongass population, was listed as Endangered under the ESA back in 1973. In Alaska, critical habitat was designated south of Anchorage and on the Alaskan Peninsula. Populations in the Tongass were among the best conserved, in fact recent estimates of the Central-North Pacific stock found 1,115 unique identifications in South East Alaska, accounting for 66.8% of the Central-North Pacific stock. The roadless rule has served as a strong protection for the Tongass waters and its species. Removing it will pose a direct threat to the Central North Pacific Stock.

Research has shown that some of the greatest threats to humpback whales today are entanglements in fishing gear, ship strikes and coastal habitat pollution. The latter two would result in potential impacts if the Forest Service proposal goes through. Under all action alternatives, especially alternative 6, activities implemented under the Forest Plan would result in higher vessel traffic and marine activity associated with LTF use and log transport. Because humpback whales inhabit coastal areas, [ldquo]they will become increasingly exposed to human activity[rdquo] through this proposal. The Forest Service must not allow future endangerment to an already endangered species. Conservation for this species is required under the ESA through the [ldquo]use of all methods and procedures necessary to bring any endangered or threatened species back to the point at which the measures provided under the ESA are no longer necessary[rdquo]. See ESA [sect][sect] 3(3) & 7(a)(1). Similarly, under section 7 of the ESA, the Forest Service must not [ldquo]jeopardize the continued existence of an endangered species[rdquo]. ESA [sect] 7(a)(2). Selecting alternative 6 as the preferred alternative violates section 7 of the ESA as well as the ESA[rsquo]s affirmative duty to conserve listed species.

Ultimately, the Forest Service did not ensure compliance with the substantives provisions of the ESA, by skipping step 1 and 2 of the consultation process. All agencies proposing to take an action [ldquo]must inquire with the FWS whether any threatened or endangered species are present in the area of the proposed action[rdquo] 1536(a)(2). If the answer is affirmative [ldquo]a biological assessment must be undertaken to determine if such species is likely to be affected by the action[rdquo]. By failing to do this the Forest Service has provided an unreliable depiction of the effects of their proposed actions on threatened and endangered species. In order to fully understand the effects of their proposal the Forest Service must prepare a Biological Assessment and eventually assure that their proposed actions won[rsquo]t have detrimental effects on the survival of humpback whales.

No consideration on the Endangered Eskimo Curlew

The Forest Service DEIS clearly states that Eskimo Curlews are not considered as inhabiting the Tongass National Forest. The Forest Service makes this claim without a single source to support it. All they state is that: [ldquo]there is no potential occurrence in the analysis area[rdquo]. This is a big mistake on their part because by ignoring an endangered species that may exist in the action area of their proposal, they would be in direct violation of the ESA and more importantly the consultation process under section 7 of the ESA. Indeed, FWA includes the Tongass as part of the species range. This shows once again how the Forest Service has violated the basic requirements of the ESA that it: (1) request information about listed species from the FWS and NMFS, (2) prepare a BA to ascertain impacts and (3) consult with the FWS and NMFS if adverse impacts are found.

Moreover, if the Forest Service truly believes that there are no Eskimo Curlews in the Tongass National Forest, then they should conduct a status review (Northern Spotted Owl v Hodel) under the consultation of the Fish and Wildlife Service. The Forest Service should assemble a group of experts to determine if any Eskimo Curlews are present in the action area. The Forest Service proposal must not be allowed to proceed without any evidence that shows that Eskimo Curlews are not present and will not be affected under their preferred alternative.

The Forest Service has failed to adequately address the National Historic Preservation Act

Apart from possible violations to the ESA, the DEIS undermines federal requirements under the National Historic Preservation Act (NHPA). The Tongass National Forest is comprised of approximately 17 million acres. Cities within the Tongass National Forest include Yakutat, Hoonah, Sitka, Juneau, Petersburg, Wrangell, Thorne Bay, Craig, and Ketchikan. The Alaska Historic Preservation office has adapted historic properties in the cities of Sitka, Juneau and Ketchikan, all of which are deeply rooted in Native Alaskan History. The city of Sitka has 20 different sites designated as historical under the Alaska Historic Preservation Office. Many of the historical sites in the city Sitka have strong ties to the Tlingit people. The Tlingit people settled in Sitka over 10,000 years ago. In the draft environmental impact statement, the USDA Forest Service states that approximately 6 percent (26,418

acres) of the Sitka community use area (CUA) is presently managed in development land use designation (LUD). This total would increase under all action alternatives, with net gains ranging from about 230 acres (Alternatives 2 and 3) to 64,600 acres (Alternatives 5 and 6). The net gains are substantial with no clear indication of what areas within Sitka will be developed.

Juneau the capital of Alaska has 23 historical listings within its boundaries. Juneau's CUA encompasses a total of 2,029,326 acres. Most of this area (79 percent) is presently managed as roadless. [12] Within Juneau, Xun[acute]xi is one of the 23 historical listings, which is a traditional cultural property that was the site of the first Auk Tlingit village in the Juneau area. It is described by Tlingit people as a shamanic landscape due to the presence of shamans' graves and is considered a spiritual place and a ceremonial space used by contemporary Tlingit people. The area is a place to go for spiritual renewal, a place to acquire spirits, and where Tlingit people feed the spirits of their ancestors[13]. Approximately 1 percent (10,633 acres) of the Juneau CUA is presently managed in development LUDs. This total would increase under all action alternatives, with net gains ranging from about 37 acres (Alternatives 2 to 4) to 139,600 acres (Alternative 6). Alternatives 2-6 pose a threat to the historical sites in Juneau, the most concerning is Xun[acute]xi because of its culture significance[14].

Ketchikan a city within the Tongass National Forest has a total of 18 designated historical sites. The Totem Bight State Historical Park is located within the Ketchikan. The park is located on the former site of a traditional Native campground known as Mud Village and Mud Bight Village. The totem poles were abandoned by the natives when moved to areas with more job opportunities[15]. Each totem pole has a distinct meaning to the native people who inhabited the land. Approximately 6 percent (121,179 acres) of the Ketchikan CUA is presently managed in

development LUDs. This total would increase under all action alternatives, with net gains ranging from about 10,600 acres (Alternative 2) to 292,200 acres (Alternatives 5 and 6)[16].

Under the National Historical Preservation Act, historic property is defined to include: "any prehistoric or historic district, site, building, structure, or object, included in or eligible for inclusion in the National Register. 36 C.F.R [sect]800.2 (e). The rules require the action agency to make a "reasonable and good faith effort to identify historic properties that may be affected by the undertaking" in consultation with the State Historic Preservation Officer (SHPO). 36 C.F.R [sect] 800.4 (b). In the draft environmental impact statement, the Forest Service has consulted with the with the State of Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, Office of History and Archaeology, resulting in a letter from the State Historic Preservation Officer concurring with the Forest Service's determination that changes in management direction for designated roadless areas on the Tongass would not result in an undertaking, as defined in 36 CFR 800.16. Although road construction and/or timber harvest could potentially increase within some designated roadless areas, impacts under the NHPA would be based on site-specific proposals, which are currently unknown, and would be addressed in subsequent project environmental analyses.

The very fact that the Forest Service was required to prepare an EIS for this rule strongly suggests that this is indeed an undertaking. NEPA is a "close statutory analog" to the NHPA. *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1097 (9th Cir. 2005). "Because of the operational similarity between the two statutes, courts generally treat "major federal actions" under the NEPA as closely analogous to "federal undertakings" under the NHPA." *Sac and Fox Nation of Mo. v. Norton*, 240 F.3d 1250 (10th Cir. 2001). A federal undertaking requires that the agency completes a full analysis on the effects of the proposed rule and it is evident in the DEIS that the Forest Service has failed to comply with these requirements. Failure to comply will ultimately create an undertaking to these sacred locations.

There are 61 sites recognized by the Alaska's State Historic Preservation Office in the Tongass National Forest. There is no doubt that the proposed rule will have a tremendous effect on these various sites. The

proposed rule has no mention of the direct effect or potential effects it will have on these historical preservation sites. Sitka, Juneau and Ketchikan all have less than 6 percent of developed land, the proposed rule will exempt all undeveloped land from the roadless rule. It is necessary that USDA Forest Service addresses this issue. The draft environmental impact statement states that issue that arise will be addressed on a site- specific proposal. The agencies failure to identify the potential issues and submit substantial information in the draft environmental impact statement is in violation of The National Historical Preservation Act considering the agency has not made [ldquo]reasonable and good faith effort to identify historic properties that may be affected by the undertaking[rdquo]. In comparison to Pueblo of Sandia v. United States (50 F.3d 856) case, where the agency had failed to also to make a reasonable, good faith effort in identify Historical Preservation site. The duty of the Forest Service is clearly identified in the National Historical Preservation Act, and the agency must comply.

#### Proposed Rule Create Environmental Injustice

The disparities among Native communities in Alaska are rooted in its history. In 1959 when Alaska became a state, 104.5 million acres of Native land was transferred to public domain and then transferred to the state. It wasn[rsquo]t until 1971 that Congress approved the Alaska Native Claims Settlement Act (43 USC 1601-1624) which authorized Alaska Natives to select and receive title to 44 million acres of public land in Alaska, and \$962,000,000 in cash as settlement of their aboriginal claim to land in the State[17]. The inequalities faced by Native communities in 1959 continue to be prevalent today.

The Affiliated Tribes of Northwest Indians, which represents 57 tribal governments, passed a resolution in support of the Roadless Rule in Alaska. If the Tongass is made exempt from the Roadless Rule, it will not only destroy the forest and our global climate but the exemption will actively contribute to the ongoing genocide of Indigenous Peoples whose identities, cultures, and livelihoods are integral to the forest. The proposed rule will have significant effects on the indigenous communities, at the cost of temporary economic relief. The proposed rule exemplifies and further advances inequalities faced by many Indian Tribes. Alaskan Natives have continuously inhabited Southeast Alaska and the Tongass for thousands of years, relying on the bounty of salmon, deer and moose for food. Inventoried roadless areas protect healthy watersheds which provide cold, clean water that sustains many of the tribes in Alaska. Inventoried roadless areas conserve natural diversity and help ensure the continued protection of indigenous fish and wildlife habitat as it relates to spiritual, social, nutritional, and ecological value.

The first nations include the Tlingit, Haida and Tsimshian, and the forest itself is named for the Tlingit people who inhabited the southernmost areas of Southeast Alaska near what is now the city of Ketchikan. Dependence on the land is still a way of life here, a cultural tradition as well as a necessity, made possible by the abundance of fish and wildlife in the region. Today, the Tongass is home to approximately 70,000 people spread among 32 communities, including approximately 32,000 in the state capital of Juneau.

In February, the Organized Village of Kake and the other cooperating agencies received a robust, 500-page document, detailing the various options on the table for the Tongass National Forest. The Forest Service gave the tribes two weeks to submit comments, and for smaller tribes this task was impossible. The fact of the matter is that the Forest Service did not give the Tribes substantial amount of time to review the complicated document and submit comments within a two-week turnaround. The expectation to complete this task is unfair, and inequitable. When the tribes asked for more time from the Forest Service agency stated [ldquo]They said they had a timeline and they were going to stick to it[rdquo][18].

In the draft environmental impact statement, it highlights the cooperation between the Forest Service and the Native Tribes in Alaska. On July 30, 2018, the Forest Service invited 19 Southeast Alaska federally-recognized tribes to participate as cooperating agencies during the rulemaking process. Six tribes agreed to become cooperating agencies and entered into a Memorandum of Understanding (MOU). The tribes were invited to be cooperating agencies due to their specialized knowledge and expertise of land management, subsistence,

natural resources, and potential impacts to specific communities within Alaska[19]. Many tribes within the community report that the agency has not taken the tribes input into consideration, that the attempt of cooperation is more of a formality. On October 29, 2019 in an unprecedented show of unity, the six federally recognized Tribal governments stepped forward to voice their concern over the federal government[rsquo]s handling of the proposed Alaska Roadless Rulemaking process and its potential negative impact on tribally significant lands in the Tongass National Forest. [ldquo]In a joint letter to U.S. Secretary of Agriculture Sonny Perdue, the Angoon Cooperative Association, Central Council of Tlingit & Haida Indian Tribes of Alaska, Hoonah Indian Association, Hydaburg Cooperative Association, Organized Village of Kake, and Organized Village of Kasaan expressed deep disappointment in the year-long process that has not been designed to be fair or equitable from the beginning and has completely ignored the Tribal governments[rsquo] voices and concerns. Concern was also expressed as a rushed timeline seemed more focused on political expediency rather than settling on an equitable solution that addressed Tribal concerns[20].[rdquo]

[ldquo]It[rsquo]s absolutely critical that we be at the table instead of on the menu[rdquo] stated Richard Peterson, President of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA). Throughout the process Tribal leaders have felt their roles and responsibilities as [ldquo]cooperating agencies[rdquo] have been undermined by a politically motivated, expedited timeline to be finished by June 2020, even though all of the Tribal representatives repeatedly requested extensions in writing, at meetings, and during teleconferences with the United States Forest Service. The Tribes agreed to participate in this process as [ldquo]cooperating agencies[rdquo] in order to have meaningful engagement with, and provide unique knowledge and expertise to, the US Forest Service regarding the Alaska Roadless rulemaking process but that has not been the case.

Native Tribes of Alaska continue to face issue of social injustice. It is the reasonability of the US Forest Service to ensure that this decision regarding the Tongass National Forest are reached through collaboration with the Native Tribes. Throughout the draft environmental impact statement, the idea of cooperation is embedded in the document however, it is not truly held. Alaskan Native Tribes are speaking out against the Forest Service saying that their concerns and ideas and not taken into consideration. The Forest Service should not promote collaboration if there is none occurring.

#### Tongass Conclusion:

The DEIS claims that the exemption of the Tongass National Forest from the 2001 Roadless Rule will have minimal environmental and economic effects, on the Tongass National Forest but that is not the case. The exemption will result in maximum timber harvest and the removal of 9.2 million inventoried roadless acres. The Forest Service cannot rationally claim that the exemption will not affect the environmental, Alaskan residents/ tribes, and endangered species. Our prepared comment demonstrates how the DEIS has failed to considered all the effects that the proposed rule will have. The DEIS fails to analyze the effects it will have on the endangered species, national historical sites, the environment, the Alaska economy and environmental and social justice. For the DEIS to make a claim that there will be minimal effects demonstrates the lack of analysis completed by the agency in the DEIS.

The Forest Service DEIS lacks significant information critical to making the determination of exempting the Tongass National Forest from the 2001 Roadless Rule. The DEIS makes no effort to evaluate the potential effects of the proposed rule on Native Tribes, endangered species and National Historical Preservation sites. If the Forest Service decides to commit to alternative 6 of the DEIS the agency is obligated under 40 CFR [sect]1502.22 to address the issues stated above and make the analysis available for public comment before a final decision is made. For all of the reasons listed here we urge the Forest Service to either withdraw the proposed rule or choose alternative 1, the no action alternative as its decision. For the benefit of present and future generations, the 2001 Roadless Rule should be retained on the Tongass National Forest. Once the forest is opened to new roads and logging it will never be the same again.

[1] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[2] Aton A., 2019. Experts claim admin used misinformation to justify logging. Climate Wire.

[3] Ben A., Ross W.G., (2014). The Tongass National Forest and the Transition Framework: A new Path Forward? Head Water Economics.[https://headwaterseconomics.org/wp-content/uploads/Tongass\\_Report.pdf](https://headwaterseconomics.org/wp-content/uploads/Tongass_Report.pdf)

[4] Richard Chalyee E'esh Peterson, (2019). Southeast Alaska Tribal Governments Call for Protection of Tongass National Forest. HIA Environmental. <https://www.hia-env.org/wp-content/uploads/2019/10/Tribal-CA-Press-Release-2019.pdf>

[5] Taxpayers for Common Sense (2019). Cutting Our Losses: 20 Years of Money-Losing Timber Sales in the Tongass. KCAW. <https://kcaw-org.s3.amazonaws.com/wp-content/uploads/2019/10/TCS-Cutting-Our-Losses-2019-.pdf>

[6] The Wilderness Society (2019). 5 reasons Tongass National Forest is worth fighting for. The Wilderness Society.

<https://www.wilderness.org/articles/blog/5-reasons-tongass-national-forest-worth-fighting#:~:targetText=1.,tool%20to%20combat%20climate%20change&targetText=The%20underlying%20s oil%20absorbs%20some,the%20tide%20of%20global%20warming.>

[7] Environmental Protection Agency (2016). Technical Support Document: [shy]

Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis [shy] Under Executive Order 12866. EPA.[https://www.epa.gov/sites/production/files/2016-12/documents/sc\\_co2\\_tsd\\_august\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf)

[8] Outdoor Industry Association (2017). Alaska Outdoor Recreation Economy Report. OIA<https://outdoorindustry.org/resource/alaska-outdoor-recreation-economy-report/>

[9] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[10] Garvey T. (2017). A Brief Overview of Rulemaking and Judicial Review. Congressional Research Service.<https://fas.org/sgp/crs/misc/R41546.pdf>

[11] Center for Biological Diversity (2008). Comments on the 90 day finding on a petition to remove the California, Oregon and Washington population of the Marbled Murrelet from the list of Endangered Species. Federal Rulemaking Portal. [https://www.biologicaldiversity.org/species/birds/marbled\\_murrelet/CBD-MAMU-90-day-comments.html](https://www.biologicaldiversity.org/species/birds/marbled_murrelet/CBD-MAMU-90-day-comments.html)

[12] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[13] USSA, 2019. X[rsquo]un[acute]xi Traditional Cultural Property. Forest Service.  
<https://www.fs.usda.gov/detail/r10/learning/history-culture/?cid=fseprd504932>

[14] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[15]<http://dnr.alaska.gov/parks/units/totembgh.htm>

[16] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[17] USDA, 1971. Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service. Forest Service. <https://www.fws.gov/laws/lawsdigest/ALASNAT.HTML>

[18] Elizabeth Jenkins, 2019. The Alaska Roadless Rule decision is moving along. Some tribal governments say it[rsquo]s moving too fast.KTOO Public Media. <https://www.ktoo.org/2019/03/13/the-alaska-roadless-rule-decision-is-moving-along-some-tribal-governments-say-its-moving-too-fast/>

[19] USDA, 2019. Draft Environmental Impact Statement Rulemaking for Alaska Roadless Area. Forest Service Alaska Region. [https://www.fs.usda.gov/nfs/11558/www/nepa/109834\\_FSPLT3\\_4876629.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/109834_FSPLT3_4876629.pdf)

[20] Richard Chalyee E`esh Peterson and Joel Jackson, 2019. Southeast Alaska Tribal Governments Call for Protection of Tongass National Forest. HIA Environmental. <https://www.hia-env.org/wp-content/uploads/2019/10/Tribal-CA-Press-Release-2019.pdf>

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