

MERCATUS CENTER  
GEORGE MASON UNIVERSITY

REGULATORY STUDIES PROGRAM

**Public Interest Comment on**  
Exempting the Tongass and Chugach National Forests from the Roadless  
Rule and Whether the Tongass Should Be Exempted from the  
Roadless Rule until a Final Rule is Promulgated<sup>1</sup>

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The Regulatory Studies Program (RSP) of the Mercatus Center at George Mason University is dedicated to advancing knowledge of the impact of regulation on society. As part of its mission, RSP conducts careful and independent analyses employing contemporary economic scholarship to assess rulemaking proposals from the perspective of the public interest. Thus, this comment on the U.S. Forest Service of the Department of Agriculture's (USDA) Advanced Notice of Proposed Rulemaking soliciting comments on whether the Tongass and the Chugach National Forests should be permanently exempted from the roadless rule<sup>2</sup> and Forest Service's Notice of Proposed Rulemaking to exempt the Tongass National Forest from the roadless rule until the USDA promulgates a revised final roadless rule<sup>3</sup> does not represent the views of any particular affected party or special interest group, but is designed to evaluate the effect of the Agency's proposals on overall consumer welfare.

In Sections I and II, this comment provides background on the legal and administrative history behind the roadless rule and its application to the Tongass and Chugach National Forests. Section III examines the lack of quantifiable benefits supporting application of the roadless rule to the Tongass or the Chugach. Section IV argues that alternatives not considered by the Forest Service could provide better environmental protection while minimizing economic costs. Section V explains that while there are real problems in forest management, the roadless rule is misdirected. The comment concludes that a one-size-fits-all policy like the roadless rule fails to address the environmental and economic needs of the Tongass and the Chugach. Furthermore the roadless rule fails to address the real problems in forest management today. Therefore, the Forest Service should not apply the roadless rule to the Tongass or the Chugach and the Forest Service should also exempt the Tongass from the roadless rule at the very least until a final rule is promulgated.

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<sup>1</sup> Prepared by Daniel R. Simmons, Mercatus Center Research Fellow. This comment is one in a series of Public Interest Comments from Mercatus Center's Regulatory Studies Program. The views expressed herein do not reflect an official position of George Mason University.

<sup>2</sup> National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation, 68 Fed. Reg. 41,864 (July 15, 2003).

<sup>3</sup> Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska, 68 Fed. Reg. 41,865 (July 15, 2003) (to be codified at 36 C.F.R. pt. 294).

## I. Introduction

The Forest Service (a division of the Department of Agriculture) is soliciting comments on two questions. The first is an advanced notice of proposed rulemaking which asks if “any exemption[s] from the applicability of the roadless rule to the Tongass National Forest [should] be made permanent and also apply to the Chugach National Forest?”<sup>4</sup> The second request is a notice of proposed rulemaking to change the roadless rule so that it does not apply to the Tongass until the final roadless rule is issued.

In comments authored by Randal O’Toole, an expert on forest management issues,<sup>5</sup> the Mercatus Center has twice commented on the roadless rule. The first comment concerned the notice of intent to prepare an Environmental Impact Statement (EIS).<sup>6</sup> The second comment concerned the Draft EIS (DEIS).<sup>7</sup> In these comments, the Mercatus Center explained that:

- A blanket roadless rule cannot sensibly apply to forty states because the national forests represent diverse ecosystems and huge variations in management needs.
- Prohibitions on roads and commercial timber cutting could make ecological restoration extremely costly and in some cases impossible.
- The Forest Service failed to provide any data indicating that all the millions of acres of roadless land require the same level of protection. In fact, some of the few quantitative data in the draft EIS suggests that that many roadless areas are in need of ecosystem restoration activities that will require some level of construction.
- The DEIS failed to consider alternatives to comply with President Clinton’s directive without the high environmental risks or economic costs associated with the roadless rule.
- The rule failed to address the real cause of costly roads and other problems in forest management activities, namely the perverse incentives inherent in current law that encourages the Forest Service to overbuild roads, sell timber at a loss, and give lower priority to resources that are more valuable than timber.

The previous comments did not comment specifically on the applicability of the roadless rule to the Tongass and the Chugach, but were rather comments on the roadless rule overall. This comment extends that logic to point out that the one-size-fits-all roadless policy would fail to address the environmental and economic needs of the Tongass and the Chugach. Furthermore the roadless rule fails to address the real problems in forest management today. Therefore, the Forest Service should not apply the roadless rule to the Tongass or the Chugach. The Forest Service should also exempt the Tongass from the roadless rule at the very least until a final rule is promulgated.

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<sup>4</sup> 68 Fed. Reg. at 41,865.

<sup>5</sup> O’Toole is the author of many publications about the Forest Service including *Reforming the Forest Service*, *The Citizens’ Guide to the Forest Service Budget* and *The Citizens’ Guide to the Timber Industry*.

<sup>6</sup> Randal O’Toole, *Comments on the Forest Service’s Notice of Intent to Prepare an Environmental Impact Statement on National Forest System Roadless Areas*, Mercatus Center, Dec, 17, 1999, available at <http://www.mercatus.org/article.php/106.html>.

<sup>7</sup> Randal O’Toole, *Public Interest Comment on the Forest Service Roadless Area Conservation Draft Environmental Impact Statement*, Mercatus Center, July 17, 2000, available at <http://www.mercatus.org/article.php/91.html>.

## II. History

The Organic Act of 1897 created the National Forests (then called forest reserves).<sup>8</sup> These reserves were created to provide a perpetual supply of timber and to prevent destruction of the forests in an effort to help regulate water flows. In 1905, the Forest Service was created as a part of the Department of Agriculture. The forest reserves, which had been managed by the Department of Interior, were transferred to the Forest Service. Beginning in the 1930's the Forest Service began to manage certain lands as wilderness areas and primitive areas. During World War II and the postwar housing boom, timber production increased rapidly. In 1940, 2 billion board feet of timber was harvested on National Forests per year. By the mid 1960's, the annual harvest had increased to 12 billion board feet. The massive increase in timber harvest caused changes in how people thought about National Forests. As a result, in 1964, Congress passed the Wilderness Act, which protected designated areas from timber production, roads, and other development. Besides creating Wilderness Areas, the Wilderness Act also directed the Forest Service to evaluate other roadless areas for inclusion as Wilderness Areas.

As required by the Wilderness Acts and throughout the 1970s and 1980s, the Forest Service analyzed roadless areas. During the Clinton Administration, the emphasis on protection for roadless areas increased. In March 1999, the Forest Service declared a moratorium on new road construction for eighteen months. A few months later, in October, President Clinton ordered the Forest Service to “provide appropriate long-term protection for most or all of these currently inventoried ‘roadless’ areas.”<sup>9</sup>

During the preparation of the rule to implement President Clinton's directive, the Forest Service took different approaches to dealing with the Tongass National Forest. At the proposed rule and draft environmental impact statement (DEIS) stage, the preferred alternative was to postpone a decision on whether to prohibit new road construction in inventoried roadless areas on the Tongass until the 5-year forest plan review occurred in 2004. If the forest service decided at that time to extend the prohibition under the roadless rule to the Tongass, the prohibitions would occur as part of an amendment to the forest plan.<sup>10</sup> Later, at the final environmental impact statement (FEIS) stage, the preferred alternative was to implement the prohibitions on road construction and timber harvest in the Tongass in April 2004.<sup>11</sup> The Final Rule and Record of Decision (ROD) applied the prohibition on road construction and timber harvest to the Tongass immediately, but allowed for the all projects that had been previously published in the Federal Register to proceed.<sup>12</sup>

The State of Alaska, fearing that the application of the roadless rule to the Tongass would eliminate a number of jobs in Alaska, and seriously damage some forest dependent communities,

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<sup>8</sup> 16 U.S.C. §§ 475–482.

<sup>9</sup> President William J. Clinton, *Memorandum for the Secretary of Agriculture: Protection of Forest “Roadless Areas*, Oct. 13, 1999, available at [http://roadless.fs.fed.us/documents/chief\\_memorandum.htm](http://roadless.fs.fed.us/documents/chief_memorandum.htm).

<sup>10</sup> Forest Service, *Changes from the Proposed Rule*, available at [http://roadless.fs.fed.us/documents/rule/zRULE\\_Changes\\_from\\_prop\\_2\\_final\\_1\\_4\\_01.htm](http://roadless.fs.fed.us/documents/rule/zRULE_Changes_from_prop_2_final_1_4_01.htm).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

sued the Department of Agriculture arguing that the application of the roadless rule to Alaska violated, among other laws, the Alaska National Interest Lands Conservation Act (ANILCA).<sup>13</sup>

Passed in 1980, ANILCA set aside millions of acres of land in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas. In exchange for these set asides, the federal government agreed that there would be no more administrative land withdrawals. Because the Roadless Rule prohibits road construction and timber harvest in 9.3 million acres of the Tongass and 5.4 million acres in the Chugach, the state of Alaska viewed this as new set asides.<sup>14</sup> It is useful to consider that if the Tongass and Chugach forests were in New England, they would cover Vermont, New Hampshire, and 1/3 of Massachusetts.

In June 2003, the state of Alaska and the Department of Agriculture reached a settlement that maintains protections on the Tongass consistent with the recently passed Tongass Revised Land Management Plan.<sup>15</sup> The settlement thus maintains existing protections on 15.6 million of the Tongass' 16.9 million acres and the settlement makes available 300,000 acres as suitable for harvest under the approved forest plan.<sup>16</sup> The settlement also commits the forest service to publish a proposed rule to make sure that the management of the Tongass is consistent with ANILCA. This advanced notice of proposed rulemaking and notice of proposed rulemaking are the Forest Service's response to the settlement agreement.

The advanced notice of proposed rulemaking asks if "any exemption[s] from the applicability of the roadless rule to the Tongass National Forest should be made permanent and also apply to the Chugach National Forest?"<sup>17</sup> The second request is a notice of proposed rulemaking to change the roadless rule so that it does not apply to the Tongass until the final roadless rule is implemented. This comment explains that the Tongass and the Chugach should be exempt from the roadless rule, and that the roadless rule should not apply to the Tongass until a final rule is issued. The roadless rule does not provide a justification for its application to these forests. Decisions about forest management are best made at the local level, and not through a national one-size-fits-all policy. Furthermore, the Forest Service provides no evidence that it will help improve the ecosystem health of these forests by application of the roadless rule. Instead, we conclude it would divert focus from the real problems in forest management.

### **III. The Roadless Rule Provides No Explanation of Why a Nationwide Blanket One-Size-Fits-All Rule Should Apply to the Tongass or the Chugach**

The Mercatus Center has previously described in comments to the Forest Service the major shortcomings in the roadless rule. Most importantly, the Forest Service failed to explain why a

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<sup>13</sup> United States Department of Agriculture, *USDA Retains National Forest Roadless Area Conservation Rule*, <http://www.usda.gov/news/releases/2003/06/0200.htm> (last visited Aug. 27, 2003).

<sup>14</sup> 68 Fed. Reg. 4186. National Forest System Land and Resource management Planning; Special Areas; Roadless Conservation, July 15, 2003.

<sup>15</sup> USDA, *USDA Retains National Forest Roadless Area Conservation Rule*.

<sup>16</sup> *Id.*

<sup>17</sup> 68 Fed. Reg. at 41,865.

nationwide blanket one-size-fits-all rule should apply to all forests in the United States.<sup>18</sup> The roadless rule applies to tens of millions of acres in 38 states and Puerto Rico. It covers the deserts of Arizona, the rainforests of the Northwest, and the mixed hardwood forests of Georgia.<sup>19</sup> It is obvious that these ecosystems and their needs vary widely from states to state, and even within a few miles on the same forest. As Randal O’Toole wrote concerning these problems in his comments on the DEIS:

Given this wide geographic range and ecological diversity, it is difficult to imagine how a blanket nationwide prescription for roadless management can make any sense. The failure of RARE I and RARE II taught that it is not possible for decision-makers located in Washington, D.C. to know with certainty the best prescription of every single roadless area. Yet the current DEIS and proposal do not even attempt to identify the most appropriate prescription for each roadless area.<sup>20</sup>

The Tongass is the only forest where the Forest Service conducted a forest-level analysis. However, even though the Tongass was analyzed separately, there was no explanation of why a roadless prescription was a better solution than the 1999 Tongass Land Management Plan (TLMP) Record of Decision (ROD). Instead of any type of quantitative analysis, the roadless FEIS contains passages such as:

Over the long term, the Tongass Exempt Alternative, when considering the reasonably foreseeable increases in habitat fragmentation and loss of connectivity in adjacent landscapes, would pose a higher risk of adverse cumulative effects to biodiversity. In contrast, over the long term, the Tongass Not Exempt Alternative, the Tongass Deferred Alternative, and the Tongass Selected Areas Alternative would be more likely to result in measurable beneficial cumulative effects on the forest’s ecological resources. The Tongass Not Exempt Alternative, because it could apply prohibitions to all inventoried roadless areas, would likely have the greatest beneficial cumulative effects to biodiversity.<sup>21</sup>

The problem is that the FEIS provides no support for the magnitude or scope of these “beneficial cumulative effects to biodiversity.” This is not to say that there will not be beneficial effects, but a credible analysis should contain a description of these effects. This is especially true since the livelihoods of many families and communities are at stake. These people deserve to know why they lost their jobs if timber production is dramatically decreased. Glib assertions about “beneficial cumulative effects” are not sufficient.

Furthermore, because the roadless rule overrides the TLMP, the roadless rule should describe with some precision why its management prescription is preferable to the TLMP. This is especially true since the 1997 TLMP and the 1999 ROD for the TLMP analyzed nine different alternatives to manage the Tongass.<sup>22</sup> The FEIS admits that “the 1999 ROD administratively

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<sup>18</sup> See O’Toole, *Comments on DEIS*, p. 3.

<sup>19</sup> *Id.*

<sup>20</sup> O’Toole, *Comments on DEIS*, p. 4.

<sup>21</sup> FEIS 3-389.

<sup>22</sup> See USDA, *Forest Service Roadless Area Conservation: Final Impact Statement: Tongass Biological Resources Specialist Report*, p. 7 (Nov. 2000).

protects additional lands from road building and extended timber harvest rotations in some areas, thus slowing the rate of harvest in old growth that remains in those land use development prescriptions.”<sup>23</sup> But the FEIS never explains why the nationwide roadless rule is a superior management prescription to the site-specific TLMP.

The lack of information in the FEIS may be excusable if it pointed to more pertinent information in the Biological Resources Specialist Report. However, though the Specialist Report contains more information than the FEIS itself, it also lacks the specific information needed to make informed land management decisions. For example, the Biological Resources Specialist Report states:

While the 1999 ROD does not provide the same emphasis or level of protection to species and their habitat as TLMP FEIS alternative 1, the 1999 decision is favorably comparable, and perhaps lower risk than the other TLMP FEIS alternatives that were ranked among the alternatives as having lower species risk ratings (e.g. alts 3, 4, and 5). Thus, it is reasonable to assume current risk level under the current TLMP ROD is similar to that predicted for TLMP FEIS alternatives 3, 4, and 5. A roadless area decision could further shift risk toward the outcomes predicted for TLMP FEIS alternative 1. The magnitude of the shift that may be predicted differs among the various roadless area alternatives.<sup>24</sup>

Land management decisions should be based on better information than the assertion that a management scheme “could further shift risk.” If it could shift the risk, how much risk shifting are we talking about? What is the approximate number of plants and animals that would be affected? Over what area? These are basic questions for land management, but the FEIS and even the Biological Resources Specialist Report contain little information. Instead the report assumes that statements that assert that one generic scenario is less risky than another is sufficient for site-specific land management decisions.

The Tongass and the Chugach should not be managed under the roadless rule because the roadless rule fails to provide sufficient information on why a rule that applies to forests in the desert southwest should apply equally to the Tongass’ temperate rainforest.

The roadless rule also has other shortcomings. To prove its benefits, the FEIS for the rule asserts that:

- Lakes, streams, and rivers within inventoried roadless areas can also function as biological strongholds for many fish species.<sup>25</sup>
- Inventoried roadless areas also support a diversity of aquatic and terrestrial habitats, species, and communities.<sup>26</sup>

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<sup>23</sup> USDA, *Forest Service Roadless Area Conservation: Final Impact Statement: Tongass Biological Resources Specialist Report*, p. 6 (Nov. 2000).

<sup>24</sup> USDA, *Forest Service Roadless Area Conservation: Final Impact Statement: Tongass Biological Resources Specialist Report*, p. 8 (Nov. 2000).

<sup>25</sup> FEIS at 1-1.

<sup>26</sup> FEIS at 1-1.

- Roadless areas “play an important role in helping to conserve native plant and animal communities and biological diversity.”<sup>27</sup>

While these statements may all be true, the mere assertion of these statements does not justify the application of a nationwide rule to the Tongass or the Chugach. Local forest service personnel are fully aware that inventoried roadless areas support important resources. One reason they know is because they that have personally seen many of the areas in the forest and have a much better on the ground understanding than the drafters of the FEIS. Also, while these statements may be true, the FEIS does not explain why they are true in the Tongass or the Chugach, nor does the FEIS explain that even if they hold true in some places on the Tongass or Chugach, why they hold true for all areas in both forests.

The forgoing is not an exhaustive critique of the application of the roadless rule to the Tongass and the Chugach, however, it does support the Forest Service’s proposal to exempt these forests from the blanket roadless rule. The roadless rule, as issued in 2001, does not explain why a generic nation-wide rule is the best way to protect ecosystems in the Tongass and the Chugach. Though there is some forest specific discussion of the Tongass in the FEIS, there is no information that makes the case for managing the Tongass or the Chugach under the roadless rule.

#### **IV. The Roadless Rule Fails to Consider Alternative Means of Achieving the Goals of the Roadless Rule that Could Better Protect the Environment and Minimize Economic Costs**

The FEIS failed to consider important alternatives to a blanket roadless rule that would prohibit more road construction than the no action alternative, but be less restrictive than the preferred alternative. Indeed, alternatives between the extremes of the roadless rule and the no-action alternative would likely prove better at protecting the ecosystems of the Tongass and Chugach. Temporary roads could be built in roadless areas for “forest health or ecosystem restoration activities, including salvage sales, thinnings, prescribed fires, removal of exotic pests, streamside restoration, and wildlife habitat improvements, provided such roads were closed and restored to a natural condition after use.”<sup>28</sup>

The roadless rule is a response to the historic tendency of the Forest Service to overbuild roads, but it is possible to build low-cost temporary roads that have minimal environmental effects.

As Randal O’Toole has previously explained:

Temporary roads can be built at a much lower cost than permanent roads. Since the landscape can be restored after they are closed, they have much lower maintenance and environmental costs than permanent roads. Were it not for the incentives created by the Forest Service budgeting process, it is likely that most of

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<sup>27</sup> FEIS at 1.3.

<sup>28</sup> O’Toole, *Comments on the Roadless DEIS*, p. 9.

the nearly 400,000 miles of national forest roads today would have been temporary and would be closed today. This alternative would comply with President Clinton's directive to provide greater protection to roadless areas. Yet it would allow forest managers to do effective ecosystem restoration activities at a much lower cost than would be imposed by the proposed ban on all roads. Like any blanket prescription, it carries with it a risk that some roadless area somewhere would be better off if it had a permanent road instead of just a temporary one. But this risk is much lower than under the proposed rule, which would ban all roads. In sum, a ban on permanent, but not temporary, roads would provide nearly all, if not all, of the environmental benefits of the proposed action with less risk lower economic costs, and without imposing new barriers to ecosystem restoration.<sup>29</sup>

The FEIS failed to explain why temporary roads could not be used in the Tongass and the Chugach. This failure weakens the case for a blanket ban on road construction in the roadless areas of the Tongass and the Chugach because temporary roads could be used for necessary activities without unduly impacting important ecological processes.

## **V. The Roadless Rule Fails to Address the Real Problems**

Lastly, the problem with the applying the roadless rule to the Tongass and the Chugach is that the roadless rule fails to address the real problems in forest management. Because the FEIS contains no valid scientific or ecological support for the imposition of the roadless rule on the Tongass and the Chugach, it begs the question of why they rule is needed. One answer is that Forest Service officials in Washington, D.C. may not trust the field staff in Alaska.

A superficial reading of Forest Service history suggests that there are good reasons not to trust regional and district forest staff. Local officials often built expensive, ecologically damaging roads in roadless areas to access low value timber.

While the story is compelling, a careful analysis shows that forest managers were rational actors responding to poor incentives. As forest service expert, Randal O'Toole has explained:

Under the historic Forest Service budgeting process, national forest managers were:

- Rewarded for building expensive, heavily-engineered roads which have high environmental impacts when low-cost temporary roads with minimal environmental effects are all that may be needed;
- Rewarded for clearcutting when selection cutting might be more ecologically appropriate, not to mention politically popular and aesthetically appealing;
- Rewarded for losing money on timber sales;
- Penalized for returning profits from timber sales to the U.S. Treasury.<sup>30</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 5.

The real problem is bad incentives, not bad forest managers. A result of the misguided incentives is that:

The quality and type of roads on any given national forest do not reflect the needs of that forest for roads. Instead, they reflect the value of timber found on that forest. In western Oregon and Washington, where national forest timber values are highest, many of the roads are paved. Even when unpaved, roads in forests with high timber values were typically fairly wide and often required huge cuts and fills. On forests with much lower timber values, roads tended to be narrower and avoided steep (and expensive) slopes.

In most cases, wide permanent roads greatly exceeded the needs of the national forests. Although forest managers argued that such roads were valuable for multiple purposes, such as recreation, Forest Service studies have clearly shown that the supply of roaded recreation on the national forests greatly exceeds the demand even at a zero price, which is all that most recreationists are charged....

Prohibiting roads in roadless areas does not change the incentive to build high-cost, high-impact roads. It can be expected that the agency will continue to build such roads outside of roadless areas. The [Forest Service] should consider an alternative that reduces the incentives to build high-standard roads and allows temporary roads instead.<sup>31</sup>

The blanket roadless rule would undermine any efforts at improving incentives in favor of a one-size-fits-all prohibition that precludes scientifically credible decision-making in response to proper incentives. For the same reasons the roadless rule fails to correct the poor incentives that O'Toole identified in the DEIS, the rule should not be applied to the Tongass and the Chugach. To make meaningful change, the roadless rule should attack the heart of the problem of poor incentives, instead of merely covering up poor incentives with blanket restrictions on the managers who know the most about the individual situation on each forest.

## **VI. Conclusion**

Forest Service officials, both in Washington D.C. and in the various regional and district offices face some difficult management challenges. Millions of acres of forestlands are not healthy, and forest managers will need to work hard to improve forest ecosystem health. Furthermore, decisions about forest management have a large impact on the communities in and near forests. It is difficult, and likely impossible, for forest managers to select a management plan that maximizes environmental, social, and economic benefits. However, this difficulty should not excuse the Forest Service from conducting in-depth analyses before changing course in their forest management plans. The people that live in and around national forests should be able to expect the forest service to continue with the same management plans unless very persuasive evidence exists to justify changing the plans.

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<sup>31</sup> *Id.* at 6.

The problem with the roadless rule and its application to the Tongass and the Chugach is that the roadless rule creates a large management change, but fails to justify this change. Instead of providing forest specific information, the roadless rule is a blanket nationwide prescription for forest management. The Forest Service is correct to examine carefully the appropriateness of a nationwide roadless ban<sup>32</sup> as well as the applicability of any such ban on the Tongass and Chugach forests.<sup>33</sup>

While the FEIS and related documents provided little evidence that the rule would actually improve the ecological health of the Tongass or the Chugach, it provided good quantitative data on the economic impact of the rule. According to the FEIS, the rule would eliminate “364 to 383 direct jobs and \$16.7 to 17.6 million [per year] in personal income in Southeast Alaska. Additional impacts could occur from losses in Forest Service employment of 141 direct jobs and \$7.1 million in personal income.”<sup>34</sup>

To justify this type of economic disruption, the roadless rule should produce substantial environmental benefits. The lack of quantifiable benefits in the FEIS and Tongass Biological Resources Specialist Report suggest that the environmental benefits are small at best, and illusory at worst.

This concern over the likely environmental benefits of applying a ban on road building to the Tongass or the Chugach is rooted in the fact that roads are sometimes necessary to maintain forest health. Instead of a blanket ban, the Forest Service should permit (and even encourage) low-impact, temporary roads (that would be closed and restored to a natural condition after use) to manage forest health and conduct ecosystem restoration activities. Such alternatives were not considered in the Forest Service’s roadless proposals but would likely prove better at protecting the ecosystems of the Tongass and Chugach. The Forest Service’s new efforts to reassess the blanket roadless rule ban open the door for examining such alternatives.

For these reasons, the roadless rule should not be applied to the Tongass or the Chugach and the Chugach should be exempted from the rule until the Forest Service promulgates a revised final rule.

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<sup>32</sup> Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska, 68 Fed. Reg. 41,865 (July 15, 2003) (to be codified at 36 C.F.R. pt. 294).

<sup>33</sup> National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation, 68 Fed. Reg. 41,864 (July 15, 2003).

<sup>34</sup> FEIS S-24.

**APPENDIX I  
RSP CHECKLIST**

**APPLICATION OF THE ROADLESS RULE TO THE TONGASS AND THE CHUGACH NATIONAL FORESTS**

Element	Agency Approach	RSP Comments
1. Has the agency identified a significant market failure?	The Forest Service does not address the question.  Grade: N/A	Because these forests are federally-owned, market forces do not guide resource allocation decisions. Rather we see a form of government failure, where historic incentives led forest managers to build invasive, expensive roads and value timber harvest over other resources.  It is not clear from these actions whether the Forest Service recognizes the source of these perverse incentives, in order to correct the problems in national forests today.
2. Has the agency identified an appropriate federal role?	National forests are nationally owned.  Grade: A	Because they are nationally owned, the federal government is the appropriate entity for managing national forests.
3. Has the agency examined alternative approaches?	The Forest Service examined four alternative approaches in applying the roadless rule to the Tongass.  Grade: B	In the FEIS for the roadless rule, the Forest Service examined four alternative approaches in applying the roadless rule to the Tongass. The problem is that the alternative approaches in the overall roadless rule failed to consider allowing low-impact, temporary roads (that would be closed and restored to a natural condition after use) to manage forest health and conduct ecosystem restoration activities.  By soliciting comments on the application of the roadless rule to the Tongass and the Chugach, the Forest Service will hopefully improve the quality of its analysis of alternatives for these forests.

Element	Agency Approach	RSP Comments
4. Does the agency attempt to maximize net benefits?	Grade: N/A	<p>The decision in the final roadless rule to impose the prohibition of the roadless rule on the Tongass was not a decision that maximized net benefits. Net benefits cannot be maximized if they are not properly quantified. Without some type of quantitative analysis, these qualitative assertions are meaningless.</p> <p>These new requests for comment open the door for the Forest Service to do the needed analysis.</p>
5. Does the proposal have a strong scientific or technical basis?	Grade: N/A	Neither the FEIS nor the Biological Resources Specialist Report contain specific information needed to make informed land management decisions about these two national forests. By soliciting comments and gathering needed data, the Forest Service should be able to base future decisions on better information.
6. Are distributional effects clearly understood?	Grade: N/A	The Forest Service should understand and inform the public about the effects of its proposals on the accessibility of these natural areas. It should also examine who will bear the costs.
7. Are individual choices and property impacts understood?	Grade: N/A	Controversial road-building projects largely result because national forest managers have no incentives to act as owners. The roadless rule would not change these incentives in any way, however the current notices provide the opportunity for examining the source of these incentives and correcting them.