

Given the great uncertainty about the implementation of the roadless rule due to the various lawsuits, the Department has decided to adopt this final rule, initiated pursuant to the settlement agreement with the State of Alaska, to temporarily exempt the Tongass National Forest from the prohibitions of the roadless rule. This final rule at § 294.14 allows the Forest to continue to be managed pursuant to the 1997 Tongass Forest Plan, which includes the non-significant amendments, readopted in the February 2003 record of decision (2003 Plan) issued in response to the District Court's remand of the 1997 Plan in *Sierra Club v. Rey* (D. Alaska), until the 2003 Plan is revised or further amended. Both documents were developed through balanced and open planning processes, based on years of extensive public involvement and thorough scientific review. The 2003 Tongass Forest Plan provides a full consideration of social, economic, and ecological values in Southeast Alaska. This final rule does not reduce any of the old-growth reserves, riparian buffers, beach fringe buffers, or other standards and guidelines of the 2003 Tongass Forest Plan or in any way impact the protections afforded by the plan. The final rule maintains options for a variety of social and economic uses of the Tongass, which was a key factor in the previous decision to approve the plan in 1997.

The final rule also addresses the important question of whether the rule should apply on the Tongass in the short term if the roadless rule were to be reinstated by court order. The Department has determined that, at least in the short term, the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and that the additional restrictions associated with the roadless rule are not required. Further, reliance on the Tongass Forest Plan in the short term does not foreclose options regarding the future rulemaking associated with the permanent, statewide consideration of these issues for Alaska. Indeed, this final rule reflects a conclusion similar to that identified as the preferred alternative in the original proposed roadless rule and draft EIS; that is, not to impose the prohibitions immediately, but to allow for future consideration of the matter when more information may be available.

Finally, the Department fully recognizes the unusual posture of this rulemaking, as it is amending a rule that has been set aside by a Federal court. The Department maintains that such an amendment is contrary neither to law nor to the court's injunction. Instead, it

is a reasonable and lawful exercise of the Department's authority to resolve policy questions regarding management of National Forest System land and resources, especially in light of the conflicting judicial determinations. Adopting this final rule reduces the potential for conflicts regardless of the disposition of the various lawsuits.

#### **Changes Between Proposed Rule and Final Rule**

Only one substantive change has been made between the proposed rule and the final rule. At § 294.14, the proposed rule stated at paragraph (d) that the temporary exemption of the Tongass would be in effect until the USDA promulgates a revised final roadless area conservation rule, for which the agency sought public comments in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918). Intervening events necessitate an adjustment, and, therefore, § 294.14 of the final rule now states at paragraph (d) that the temporary exemption of the Tongass National Forest remains in place until the USDA promulgates a final rule concerning applicability of 36 CFR part 294, subpart B within the State of Alaska, as announced in the agency's second advance notice of proposed rulemaking published on July 15, 2003 (68 FR 41864). A minor change also has been made for clarity by adding the word "road" before "reconstruction."

The Department has previously indicated that it would proceed with the roadless rulemakings, while taking numerous factors into consideration, including the outcomes of ongoing litigation. The Wyoming District Court's setting aside of the roadless rule with the admonition that the Department "must start over" represents such a circumstance. Since the roadless rule has been set aside, the Department has determined that the best course of action is to clarify that the duration of this Tongass-specific rulemaking will last until completion of rulemaking efforts associated with the application of the roadless rule in Alaska.

#### **Summary of Public Comments and the Department's Responses**

The proposed rule was published in the **Federal Register** on July 15, 2003, for a 30-day public comment period (68 FR 41865). Due to public requests for additional time, the comment period was extended by 19 days for a total of 49 days. The Forest Service received approximately 133,000 comments on the proposed rule. All comments were considered in reaching a decision on the final rule. In addition, appropriate sections of Volume 3 of the November

2000 roadless rule FEIS (Agency Responses to Public Comments) that addressed the Tongass alternatives were also reviewed and considered. A summary of comments and the Department's responses to them are summarized as follows.

**General Comments.** Virtually all of the Southeast Alaska municipalities that responded to the proposed rule expressed strong support for it. Many noted that Alaska contains more land in protected status than all other States combined, and that applying the roadless rule to the Tongass would foreclose opportunities for sustainable economic development throughout Southeast Alaska. Several respondents asked the Department to discontinue or abandon this rulemaking based on their preference to retain the roadless rule prohibitions for the Tongass. Others argued that it was illegal for USDA to pursue amendments to a rule that has been set aside by a Federal district court.

Respondents expressed different views regarding the roadless rule and its applicability to the Tongass. In general, they took one of two positions: (1) Some saw the exemption of the Tongass as a positive step toward reversing what they consider to be overly restrictive management direction imposed by the roadless rule, and therefore they recommended the exemption; and (2) others wanted the Forest Service to retain the roadless rule as adopted in 2001 because they believed it offers a well-balanced approach to forest management that has received overwhelming public support.

**Response.** The Department believes that the best course of action is to complete this rulemaking for the Tongass that would govern should the roadless rule come back into effect as a result of the pending litigation.

**Environmental Effects of the Proposed Rule.** The agency received comments regarding the effects the proposed exemption from the roadless rule would have on the natural resources of the Tongass. Some respondents expressed their view that 70 percent of the highest volume timber stands in Southeast Alaska have been harvested, and exempting the Tongass from the roadless rule would lead to the harvest of most or all of the remainder of such stands. Some regarded the highest volume stands as "the biological heart of the forest," and believed any additional harvest would have severe adverse effects on the environment, especially fish and wildlife habitat. Other respondents stated that the Tongass Forest Plan provides stringent environmental protection measures that