United States Department of Agriculture | Forest Service | Alaska Region | P.O. Box 21628 Juneau, AK 99802-1628

File Code: 1560
Date: July 30, 2018

President Richard Encelewski
Ninilchik Traditional Council
P.O. Box 39070
Ninilchik, AK 99639

Dear President Encelewski:

The State of Alaska submitted a petition for rulemaking to the Secretary of Agriculture, Sonny Perdue. The Secretary and the Governor of Alaska, Bill Walker, have reached an agreement to cooperatively undertake a state-specific roadless rule to address the State's roadless management and access concerns on the national forests in Alaska. The USDA Forest Service is in the process of convening the resources and personnel to move forward in support of this agreement.

With this letter, I am inviting government-to-government consultation in advance of a formal public comment period and an opportunity for your Tribe to participate as a cooperating agency. I am seeking input from federally recognized Tribes concerning the development of an Alaska state-specific roadless rule for the Tongass and the Chugach National Forests. The USDA Forest Service wants to ensure Tribal perspectives are heard and fully considered in the development of an Alaska roadless rule.

An Alaska state-specific roadless rule would replace the Roadless Area Conservation Rule (2001 Roadless Rule), which was adopted into regulation in January 2001. The 2001 Roadless Rule prohibits road construction/reconstruction and timber harvest in areas designated as roadless on National Forest System lands, with certain exceptions. Alaska has about 14.8 million acres of roadless areas subject to the 2001 Roadless Rule. Provisions of a new Alaska state-specific roadless rule would apply to these 14.8 million acres, and would be based on providing for activities needed to further Alaska's economic development while conserving roadless areas for future generations.

Both the National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) regulations encourage agency cooperation early in the environmental review process to help inform the analysis and establish a mechanism for active intergovernmental communication. Cooperating agency status under NEPA is determined under the Council of Environmental Quality (CEQ) requirements for cooperating agency status (40 C.F.R. § 1501.6). The CEQ regulations addressing cooperating agencies status (40 C.F.R. §§ 1501.6, 1508.5) implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise (42 U.S.C. §§ 4331(a), 4332(2)). The NFMA planning regulations (36 C.F.R. § 219.4(a)(1)(iv)(v)) provide direction to Forest Service responsible officials to encourage Federal agencies, federally recognized Indian Tribes, States, counties, and other local governments to seek cooperating agency status where appropriate.

Therefore, I would like to encourage your Tribe to be a cooperating agency. In that role, you will be able to:

1) Provide meaningful and early input on the range of alternatives to be considered.
2) Participate in coordination meetings.
3) As the lead agency, we may request you develop information and prepare environmental analysis concerning your area of special expertise.
4) Provide timely review and comment on the pre-draft or pre-final environmental documents to reflect your views and concerns on the adequacy of the document, alternatives considered, and the anticipated impacts.

Cooperating agencies are expected to provide their own funding to support their participation in this process.

The USDA Forest Service, as the lead agency, retains the exclusive authority to make decisions on the land and resources it administers, and this authority cannot be delegated to a non-Federal entity. Cooperating agencies participation would enhance the analysis and result in a more informed USDA Forest Service decision. To foster clear understanding, the roles and responsibilities of the lead and cooperating agencies will be defined by a Memorandum of Understanding executed by all parties.

Enclosed is a list of Frequently Asked Questions, as well as a document providing information and reference links which describe the cooperating agency process to assist you. If you would like to join us as a cooperating agency, please reply within 60 days from the date of this letter. If you choose not to be a cooperating agency, the USDA Forest Service will continue to honor our commitment for meaningfull government-to-governmentconsultation throughout the planning process.

Tribes, whether or not participating as participating agencies, will be invited to consult in advance of any formal public comment periods. Consultation for rulemaking may occur at the regional, forest, and district levels, as well as at the Washington Office (WO) level. I encourage you to request a consultation meeting with your local Forest Service line officer, and we look forward to assisting you in meeting your consultation needs. If you have any questions about what it means to be a cooperating agency, or about the consultation process, please contact the Alaska Region Tribal Relations Program Manager, Melinda Hernandez Burke, via email at mhernandezburke@fs.fed.us or phone at 907-586-7089.

Thank you for your consideration, and I look forward to working with you throughout this rulemaking effort and associated processes.

Sincerely,

DAVID E. SCHMID
Acting Regional Forester

Enclosures: (2)

cc: Robin Dale, Chad VanOrmer, Terri Marceron, Earl Stewart, Melinda Hernandez Burke, Carla Casulucan, John Kinsner, Ken Tu, R10 FLT's

Topic: Frequently Asked Questions Concerning an Alaska Specific Roadless Rule

When and Where Was the Roadless Rule In Effect in Alaska? The Roadless Rule was adopted in January 2001, but due to litigation did not become effective and operational until April 2003. After three months of being in effect on the Chugach NF and Tongass NF, the Roadless Rule was again judicially enjoined on a nationwide basis and was not operational for the next three years. In September 2006, the Roadless Rule was judicially reinstated and became operational on the Chugach NF, but the Tongass NF remained exempt from the Rule because USDA had issued a temporary rule in 2003 exempting the Tongass National Forest from the Roadless Rule while it examined whether a state-wide exemption was appropriate. In 2011, the U.S. District Court for the District of Alaska set aside the 2003 Tongass Exemption and reinstated the Roadless Rule (with special instructions) on the Tongass National Forest. The District Court's ruling was upheld by the U.S. Court of Appeals for the Ninth Circuit and the Supreme Court declined further review.

Why is USDA's Forest Service beginning to work on an Alaska Specific Roadless Rule now?

The State of Alaska submitted a petition for rulemaking to the Secretary of Agriculture Sonny Perdue. The Secretary and Alaska Governor Bill Walker have reached agreement to cooperatively undertake a state-specific roadless rule to address roadless management and access concerns on the national forests in Alaska. The USDA Forest Service is in the process of convening the resources and personnel to move forward in support of this agreement.

What are the next steps the Forest Service will be taking?

The Secretary directed the USDA Forest Service to begin working with State of Alaska representatives to develop an Alaska state-specific roadless rule under the Administrative Procedures Act. The intent is to develop a state-specific roadless rule that will address the State of Alaska's concerns regarding roadless areas essential for infrastructure, timber, energy, mining, access, and transportation to further Alaska's economic development, while still protecting unique areas for generations to come.

How will the State of Alaska be involved?

The State of Alaska will work closely with the USDA Forest Service. The State will establish a task force reporting to the Governor concerning options for roadless management that will inform the USDA's consideration of the State's Petition for rulemaking. The rulemaking will be analyzed pursuant to the National Environmental Policy Act.

What is the timeframe for completion of an Alaska-specific roadless rule?

- *Late August, 2018* – begin a scoping period on the proposed rulemaking.
- *July 2019* – publish a draft environmental impact statement (EIS), start a comment period on the draft.
- *April 2020* – publish a final EIS.
- *June 1, 2020* – publish a final Alaska Roadless Rule

July 27, 2018

ALASKA ROADLESS RULE
COOPERATING AGENCY RESPONSIBILITIES (July 26, 2018)

The Forest Service is the lead agency for the development of the Alaska Roadless Rule. Cooperating agencies may be Federal, State, local, or Tribal agencies that have jurisdiction by law or special expertise with respect to an environmental issue that should be addressed in an environmental impact statement (EIS). The State of Alaska is a cooperating agency in this rulemaking effort because of its expertise on the economic development concerns related to roadless area management within Alaska. Alaska Native Tribes have been invited to be a cooperating agency due to their expertise on subsistence and potential impacts to specific communities within Alaska.

How are Tribal Governments designated as a cooperating agency?

If a Tribal Government decides to accept the Regional Forester's invitation to participate in the Alaska roadless rulemaking process, they should provide a written reply to the Regional Forester accepting the invitation. A memorandum of understanding will then be developed to establish specific responsibilities of the Forest Service and Tribal Government.

What are the responsibilities of a cooperating agency?

- Assist in the National Environmental Policy Act (NEPA) process at the earliest possible time.
- Participate in the public involvement processes, which help define and frame the issues to be addressed in the EIS.
- Review information and analyses (upon request from the Forest Service) for which the Tribal Government has special expertise.
- Contribute staff support and other resources at the Forest Service's request to enhance the NEPA team's capability.
- Share freely any information and data relevant to the NEPA analysis.
- Rely on its own funds to support its participation in the NEPA process.

What authority does a cooperating agency provide?

Becoming a cooperating agency does not provide any new authority to a Tribal Government. The U.S. Department of Agriculture and the Forest Service retain exclusive authority over the decisions related to the Alaska Roadless Rule.

When would this rulemaking take place and how much time would it take?

This rulemaking effort would begin as soon as possible and is estimated to be completed by June 2020. Meetings with cooperating agencies would be concentrated around milestones in the rulemaking/analysis process, which are likely to include: pre-scoping (August 2018); issue identification/alternative development (November 2018 to January 2019); post-comment period (November 2019 to January 2020); and final rule roll-out (May 2020). These times are initial estimates just to provide a sense of time commitment and could vary widely.

Where can I get additional information on cooperating agencies' responsibilities?

https://ceq.doe.gov/laws-regulations/regulations.html - 40 C.F.R. §§1501.6, 1508.5 - Council on Environmental Quality (CEQ) regulations that describe the responsibilities of a cooperating agencies.

https://ceq.doe.gov/guidance/guidance.html - The CEQ guidance on cooperating agencies and 40 Most Asked Questions (14a-d, 22) describing the rights and responsibilities of lead and cooperating agencies, dispute resolution, and devotion of resources to a particular proposal.

For additional information on cooperating agency status, roles, or responsibilities, please contact Melinda Hernandez Burke, Alaska Region Tribal Relations Program Manager, at 907-586-7089 or mhernandezburke@fs.fed.us.