



***Southeast Alaska  
Subsistence Regional  
Advisory Council***

**Don Hernandez, Chairman  
1011 E. Tudor Road, MS121  
Anchorage, Alaska 99503**

September 2, 2020

To: Office of Information and Regulatory Affairs  
Office of Management and Budget

RE: Alaska Roadless Rule  
RIN: 0596-AD37

Testimony of Southeast Alaska Subsistence Regional Advisory Council members:

**Donald Hernandez, Chairman**

My name is Don Hernandez and I am the chairman of the Southeast Alaska Regional Advisory Council for subsistence management. I am here today with Vice-chair Cathy Needham, council member Robert Schroeder and Deanna Perry our council coordinator and designated federal official. We want to thank you for the opportunity to testify on this very important issue affecting our region, namely the exemption of the Tongass National Forest from the national roadless rule. Our council has been made aware by extensive testimony at our public meetings that this issue is of critical importance to the rural residents who live within and depend on the resources of the Tongass national forest.

The ten regional advisory councils in Alaska of which we are one are chartered under Title 8 of the Alaska National Interest Lands Conservation Act, referred to as ANILCA, and are a Federal advisory committee act committee for the departments of agriculture and interior. We advise the secretaries of agriculture and interior and their officials with delegated authority, in our case the Tongass regional forester on all matters related to subsistence uses on federal land. These include regulation on the harvest of fish and wildlife as well as management plans and land use policy.

The regional councils are directed by Title 8 of ANILCA to be forums for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife in the region. Our council has heard extensive testimony on the roadless rule exemption and our comments and recommendations to the secretary of agriculture reflect those public comments as well as the extensive knowledge and experience of our 13 council members.

Members of the regional councils are appointed by the secretary of interior with the concurrence of the secretary of agriculture and they are selected after a thorough vetting of their knowledge and experience of the subsistence way of life in rural Alaska. They must also be familiar with and consider other non-subsistence uses of the resources.

Our council has provided you with extensive comments to and correspondence with the secretary of agriculture and Tongass regional forester in regards to the Tongass roadless rule exemption. As I mentioned earlier, we are chartered under title 8 of ANILCA and so we must be very familiar with that statute in order to properly execute our role in implementing it. Therefore we are requesting that you return the EIS for this rule change to the forest service so that they can re-engage with the public and fully comply with section 810 of ANILCA.

I urge you to carefully consider the comments which we have provided you, and to further explain them I now introduce two of our more informed council members on these matters, Cathy Needham and Robert Schroeder.

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**Robert Schroeder, Council Member**

1. My name is Robert Schroeder. I have been a Southeast Regional Advisory Council member for about 6 years and have worked with the Council since its inception following the passage of the 1980 Alaska National Interest Lands Conservation Act.
2. The council's mission is to ensure the continuation of subsistence hunting and fishing cultural and social traditions by rural Alaskans.
3. Two ANILCA subsistence protections form the basis of the Council's work:
  - a. The council makes recommendations concerning the subsistence harvest of fish and wildlife on Federal Public Land to ensure that subsistence needs are met.
  - b. Secondly, the Council examines and evaluates federal land use actions that may restrict subsistence uses. Provisions under Section 810 of ANILCA are designed to maintain the fish and wildlife populations that are needed for subsistence by rural residents.
  - c. Together, these provisions, with Council input, have done an acceptable job of maintaining a subsistence way of life in rural Alaska for 40 years.
  - d. The proposed changes to the Roadless Rule, namely exempting the Tongass National Forest from the rule to promote more logging, would adversely affect subsistence.
4. I have provided you with two attachments that show Council involvement and attention to the Roadless Rule proposed changes as they have developed. These attachments were

compiled by DeAnna Perry, the designated federal official for our council:

- a. The first attachment, SE RAC Transcript Excerpts - roadless 2018Oct to 2020Mar[14269] includes Council discussion on the Roadless Rule at our last 5 meetings.  
The Council has been consistent in its request that ANILCA Sec. 810 be followed in this planning and rule making process.
  - b. The second attachment, 2020 8-28 SERAC Roadless correspondence compiled, includes written comments that the council submitted over the past 2 years
  - c. We would like these documents to be part of the record of today's meeting.
5. As these attachments document, the Council has been very actively engaged with the Roadless Rule.

Over this time period we have welcomed Forest Service management and planning staff to our meetings and have received briefings.

We have heard from:

Nicole Grewe, Tongass Planning Staff  
Beth Pendleton, Alaska Regional Forester  
Dave Schmid, Alaska Regional Forester  
Troy Heithecker, deputy Forest Supervisor  
Earl Stewart, Forest Supervisor  
Chad VanOrmer, Director of Ecosystem Planning and Budget, Tongass National Forest  
Chris French, Deputy Chief of the U.S. Forest at Washington, D.C.,

Most of the Forest Service staff waffled on whether the legal requirements of Section 810 would be followed. Dave Schmid, however, was unequivocal in assuring the Council and our chair that a Sec. 810 determination would be made. There has been no finding in which to base a determination, and therefore the Section 810 process has not been followed. Cathy will cover this point in more detail in her testimony

6. We have also heard from representatives of most of the tribes and communities in Southeast Alaska. They were adamant that the Roadless Rule MUST meet the legal requirements of ANILCA Section 810.
7. Our detailed comments on the Roadless Rule are found in the document package as item 20191212\_SERAC\_RoadlessDEIS.....
8. Section 810 has been extensively litigated in the 1980s and 90s. The ruling from this litigation has not been followed in developing a roadless rule.
9. I will now turn it over to Ms. Needham who will cover the Roadless Rule fatal Section 810 problems.

## **Cathy Needham, Vice-Chair**

Thank you Member Schroeder, my name is Cathy Needham and I currently serve as the Vice Chair for the Southeast Alaska Regional Advisory Council. I'd like to spend a few moments outlining one of our bigger concerns regarding how difficult and confusing the Alaska Roadless Rule process has been to the public and to us as a FACA committee.

As you are aware, the National Environmental Policy Act, or NEPA, requires an "impact statement" as a way to ensure federal agencies give special consideration to certain issues during the rulemaking process. The U.S. Forest Service, on behalf of the Secretary of Agriculture, determined that an Environmental Impact Statement for the Alaska Roadless Rule would need to be prepared. U.S. Forest Service policy states in Public Law 96-487 ANILCA, that Title 8 would provide for Federal Subsistence Management and use on public lands in Alaska including National Forests. Additionally, it states that Section 810 specifically provides of how subsistence considerations shall be incorporated in the Federal land use decision making process within Alaska.

When the U.S. Forest Service first met with the Southeast Alaska Regional Advisory Council regarding the Alaska Roadless Rule, they were not planning on conducting a Section 810 Analysis, stating it was not required for the rule-making process. However their own policy does require a Section 810 analysis under NEPA when they are preparing a NEPA evaluation at an Environmental Impact Statement level. What became evident in conversations, public hearings and in even some analyses within the DEIS was that the U.S. Forest Service uses both NEPA and the rule-making process interchangeably. While we have not yet seen whether or not this has been cleared up between the DEIS and FEIS, we believe it created enough confusion that we commented on it numerous times in our correspondence with the Alaska Roadless Rulemaking Team. We also believe that the confusion between the DEIS overseen by NEPA and rule-making governed by the Administrative Procedures Act played over into the public process as well.

Outlined in our comments on the DEIS and reiterated in our letter dated April 16, 2020 to the Alaska Roadless Team, the Regional Forester and the Forest Supervisor, the SE RAC requested the suspension of the Draft EIS until the process complied with Section 810 of ANILCA. We believe the U.S. Forest Service effectively violated their own Forest Service Handbook Policy.

Referring to the Forest Service Handbook 2090.23 titled "Subsistence Management and Uses Handbook," Chapter 10 titled "Components of an ANILCA Section 810 Evaluation" outlines a 4 step process.

1. First would be to conduct an evaluation of the expected effect of the proposed action. This would consider the availability of other lands for the purpose of the proposed action, and evaluate alternatives that would avoid or minimize the proposed action from lands that are needed for subsistence purposes, using best available science.
2. In step 2, the agency would present a finding based on the evaluation. A finding will fall into one of two categories:

- a. the USFS concludes that the action will not result in a significant restriction of subsistence uses, which concludes the Section 810.
  - b. Or 2), there is a significant possibility of a significant restriction. If there is a significant possibility of a significant restriction of subsistence uses, then the U.S. Forest Service would move to Step 3.
3. The third step would be to issue a public notice and conduct formal subsistence hearings. These hearings would present the finding and take testimony from potentially affected subsistence users.
  4. The fourth and final step of the process, which I will touch more on in a moment, would be to make a subsistence determination.

The U.S. Forest Service did conduct subsistence hearings, which they did concurrently with the 60 public comment period on the DEIS, however no analysis information or finding was presented and no notice including the finding was issued prior to the hearings or at the hearings. This prevented subsistence users from being able to identify location-specific impacts to hunting and fishing areas.

In our view, the U.S. Forest Service has used the guise of a “programmatic” EIS, because rule-making is programmatic, as an excuse not to conduct a thorough evaluation of impacts or restrictions to subsistence that would result from “full exemption” being the preferred alternative.

If the agency had correctly followed its own process, the Final Environmental Impact Statement would include a subsistence determination based on the Forest Service Handbook 2090.23 Chapter 10 guidance. This guidance states that a Section 810(a)(3) Determination shall be prepared and shall make three determinations for the proposed action. The Subsistence Determination shall show that:

- a. Such a significant possibility of a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the National Forest lands;
- b. The proposed activity shall involve the minimum amount of National Forest lands necessary to accomplish the purposes of such use and occupancy, or other disposition; and;
- c. Reasonable steps shall be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Because the Forest Service has not followed the clearly stated provisions of ANILCA Section 810 and the process reflected in the Forest Service’s own handbook, the Council finds the DEIS inadequate and requests that the EIS process be suspended until a finding is issued and a new round of subsistence hearings on that finding is conducted in order to comply with the Section 810 of ANILCA. With that I will hand it back to Chairman Hernandez.

**Donald Hernandez, Chairman**

We would really like to thank you for the time you have taken to listen to our summation of our engagement in the Alaska Roadless Rulemaking process. Again, we hope you will review the materials we have uploaded to your site, and consider our request to return the EIS to the U.S. Forest Service for their reconsideration of ANILCA Section 810. At this time I would like to ask if there any questions?