FSEEE Forest Service Employees for Environmental Ethics

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September 8, 2026

**TRANSMITTED VIA REGULATIONS.GOV (DOCKET FS-2025-0001) AND ELECTRONIC MAIL**

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*cc:* The Honorable Brooke L. Rollins, Secretary of Agriculture
Tom Schultz, Chief, USDA Forest Service
Jacque Buchanon, Regional Forester, Pacific Northwest Region
Administrator, Office of Information and Regulatory Affairs, OMB

**RE: Request to Extend the Public Comment Period — Special Areas; Roadless Area Conservation, RIN 0596-AD66, Docket No. FS-2025-0001, 91 FR 53827 (Aug. 20, 2026)**

Dear Acting Director White:

Forest Service Employees for Environmental Ethics (FSEEE) respectfully requests that the Department extend the public comment period on the proposed rescission of the 2001 Roadless Area Conservation Rule and its accompanying draft environmental impact statement (DEIS). FSEEE is a national organization of current and former federal land management employees and members of the public dedicated to public lands stewardship grounded in ecological integrity, scientific soundness, fiscal responsibility, and good governance. This letter draws on the undersigned's 31 years with the Forest Service (1995–2025), including 27 years in Southeast Alaska (1999–2025) and four years as the Alaska Region's Tribal Relations Program Manager (2021–2025).

FSEEE intends to submit substantive comments on the proposed rule and draft environmental impact statement before the close of the comment period. This letter raises distinct procedural objections to the adequacy of that period, and FSEEE submits it now to preserve those objections. FSEEE's substantive comments will necessarily be limited by the constraints described below, and FSEEE does not waive, and expressly reserves, any issue it is unable to develop within the time the Department has allowed.

## I. Relief requested

We request that the Department:

- **Extend the written comment period to 90 days from the date of publication, closing November 18, 2026.** In the alternative, and at minimum, extend the comment period to the 60 days contemplated by Executive Order 12866 § 6(a)(1), closing October 19, 2026.
- **Extend the comment period for federally recognized Tribes and Alaska Native Corporations to not less than 120 days, closing December 18, 2026**, and accept Tribal government comments, resolutions, and consultation records on a rolling basis thereafter.
- **Complete all 64 requested government-to-government consultations before closing the written record**, and publish the final Tribal Summary Impact Statement for public and Tribal comment rather than issuing it for the first time with the final rule.
- **In either case, hold the written comment period open for not less than 30 days after the final ANILCA § 810 subsistence hearing** now scheduled for October 1, 2026 — a date no earlier than November 2, 2026.
- **Accept written comments and documentary exhibits at and after the subsistence hearings**, reversing the statement in the Alaska Region notice of August 24, 2026, that written comments will not be accepted at the hearings.
- **Schedule additional in-person subsistence hearings in rural Southeast Alaska communities**, including at minimum Juneau, Sitka, Hoonah, Kake, Angoon, Craig or Klawock, Petersburg, Wrangell, and Yakutat.
- **State whether the Alaska subsistence analysis accounts for the Federal Subsistence Board's designation of the Ketchikan Area as rural (NDP25-01, 90 FR 34152, July 18, 2025)**, and if it does not, publish a revised Alaska subsistence analysis reflecting the current federally qualified subsistence user population and provide a comment period on that revised analysis.
- **Formally solicit recommendations from the Southeast Alaska Subsistence Regional Advisory Council** on the Alaska subsistence analysis, as the Federal Subsistence Board did when confronted with the same changed information.
- **Place a verbatim transcript of each subsistence hearing in Docket FS-2025-0001** promptly after each hearing, and hold the written record open for comment on those transcripts.
- **Hold public meetings in the ten (10) Western states containing more than 95 percent of inventoried roadless area acres managed under the 2001 Roadless Rule** (outside Colorado and Idaho), or explain in the final rule why none were held.

## II. The Department has determined this rule economically significant under Executive Order 12866 § 3(f)(1), and that Order contemplates a public comment period of at least 60 days.

The proposed rule states, under Regulatory Planning and Review, that **"[t]his proposed rule has been determined to be economically significant under E.O. 12866 section 3(f)(1)."** A rule is economically significant under § 3(f)(1) when it will have an annual effect on the economy of $100

million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. Executive Order 12866 § 6(a)(1) directs that "each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days." Executive Order 13563 § 2(b) is to the same effect, directing that each agency "shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days." **The 30-day period provided here is half the period both Executive Orders set as the ordinary baseline, for a rule the Department has placed in the most consequential category of E.O. 12866.** We recognize that neither Order creates a private right of action; we cite them as the Executive Branch's own statement of what constitutes reasonable process.

The Department has offered no explanation for the departure, and none is apparent. The Unified Agenda entry records **no legal deadline**, statutory or judicial. It projected publication of the proposed rule in **February 2026**; the notice of intent published in this docket projected the proposed rule and draft EIS by **March 2026**. Publication in fact occurred on **August 20, 2026**. The Department therefore took an additional five to six months to prepare the proposal and allowed the public 32 days to respond to it.

One further feature of the record makes the compressed period harder to defend:

- **The § 3(f)(1) determination is difficult to reconcile with the Department's certification under 5 U.S.C. § 605 that the rule will not have a significant economic impact on a substantial number of small entities.** The Unified Agenda likewise lists "Small Entities Affected: No." If the rule will have an annual effect on the economy of $100 million or more, the question the certification must answer is where that effect lands and on whom. Small guide and outfitter businesses, lodges, air and water taxi operators, charter and commercial fishing operations, and seafood processors in Southeast Alaska are the entities most directly exposed to the recreation and fishery effects the economic analysis describes only qualitatively. Rebutting the certification requires assembling small-entity revenue and employment data for those sectors, which cannot be gathered and analyzed in 32 days. The certification is subject to judicial review under 5 U.S.C. § 611.

We also note that reginfo.gov records **42 Executive Order 12866 meeting entries** on this RIN at the proposed rule stage, concentrated in July and August 2026. The Office of Information and Regulatory Affairs afforded outside parties dozens of separate meetings across two months while the rule was under review. The public interest reflected in that volume of engagement is not served by a 30-day comment period.

## III. The Biological Evaluation, released eight days into a 30-day comment period, analyzes 3,591 species and cannot be reviewed in the 24 days remaining

The DEIS, published August 20, 2026, states that the analysis and findings presented in the draft biological assessments and biological evaluation "are incorporated into this DEIS by reference and summarized in the sections that follow," and that "[t]hese draft analyses are available with the

supporting documents on the project website." The Biological Evaluation was not. **The Department posted the 276-page draft Biological Evaluation on August 28, 2026 — eight days after the DEIS was published, and 24 days before the comment period closes.**

FSEEE appreciates the release of the document and does not renew its request that the Department publish it. The release does not, however, cure the problem it created. A commenter who organized their review of the record around the documents available on August 20 must now absorb a 276-page analysis in the 24 days remaining, alongside everything else. And the analysis is not a simple one.

Three features of the Biological Evaluation make 24 days insufficient.

- **First, the Biological Evaluation is the sole vehicle for the sensitive-species analysis.** The DEIS expressly declines to analyze species of conservation concern under the 2012 Planning Rule, stating that "[b]ecause no alternatives would compel the amendment or revision of any land management plan, analysis of species of conservation concern at this stage is not required," and defers that analysis to future land management plan amendments and revisions. With that analysis deferred, the Biological Evaluation is the entire record on non-listed at-risk species across approximately 44.7 million acres. There is no other document in which the public may examine that analysis.
- **Second, the Biological Evaluation is where the Department's methodology is applied to a category of species for which the DEIS concedes the analysis is weakest.** The draft statement acknowledges that "[t]he potential exposure of sensitive species to activities following rescission of the 2001 Roadless Rule is not well understood," and states that exposure was categorized by comparing species occurrence data against inventoried roadless area operability, with existing land management plan protections then considered to determine how they may affect the determinations. Each of those steps is contestable, and each requires the underlying occurrence data and habitat crosswalk to test.
- **Third, the sheer scale and heterogeneity of the Biological Evaluation does not allow adequate time for a reasonable analysis.** The Biological Evaluation combines the sensitive species lists of all nine Forest Service regions — 4,059 listings, resolved to a combined list of **3,591 unique species** — and assigns each an exposure category and an effects determination. The species span ten taxonomic groups of wildly differing biology and data quality: 74 amphibians, 152 birds, 56 bivalves, 77 crustaceans, 162 fish, 303 insects and arachnids, 99 mammals, 48 reptiles, 139 snails, and 2,481 vascular plants, lichens, fungi, and bryophytes. The regional lists from which they are drawn range in currency from 2009 to 2023, and in size from 23 listings in the Alaska Region to 973 in the Eastern Region. The document also notes that for these purposes "species" may mean a species, a subspecies, a botanical variety, or a distinct population or population segment. Reviewing determinations for 3,591 species across ten taxonomic groups, ten determination tables, and a species-by-species appendix is not work that can be compressed into 24 days.

The methodology compounds the problem. Occurrence records were drawn from the Global Biodiversity Information Facility and the Forest Service Natural Resource Manager as presence-only

data; habitat associations were crosswalked from NatureServe descriptions to National Land Cover Database classes; and exposure was assigned Low, Moderate, High, or Unknown by a four-part ruleset keyed to occurrence points falling within operable or "operable but complex" areas. Of the 3,591 unique species on the combined list, only 2,850 had one or more occurrence records from either database on National Forest System lands; the remainder were assessed manually for habitat associations. The document itself acknowledges that identification accuracy in the occurrence data varies among taxonomic groups, that absence of observations is not evidence of absence, and that abundance cannot be determined from the data used. Each of those assumptions is contestable, and testing any of them requires the underlying data.

**These circumstances raise a question independent of the length of the comment period.** An agency must make available the technical studies and data on which it relies in time for the public to comment on them meaningfully. See Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973); American Radio Relay League v. FCC, 524 F.3d 227 (D.C. Cir. 2008); Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392 (9th Cir. 1995). The DEIS incorporates the Biological Evaluation by reference and represented that it was available with the supporting documents on the project website. It was not. FSEEE raises the point here so that it is preserved, and notes that the defect is readily cured: reopening the comment period for a full period running from the date of actual disclosure would resolve it.

We therefore ask that the comment period be extended by not less than the number of days by which the Biological Evaluation was late, and in any event that the period remain open for not less than 60 days from August 28, 2026, so that the document the Department has incorporated into its environmental analysis can actually be reviewed.

## IV. The volume of the record cannot be reviewed in 32 days

Counting the Biological Evaluation, the Department has released approximately **1,289 pages of new analysis** together with an 11-layer geospatial data viewer, the last 276 pages of it on August 28, 2026. Attachment A itemizes the record.

The biological assessments alone total **580 pages** and disclose preliminary determinations of "may affect, likely to adversely affect" for **329 ESA-listed species and 70 designated critical habitats** under Alternative 2. The U.S. Fish and Wildlife Service assessment analyzes at least **342 species across nine taxonomic groups**, plus birds: 34 mammals, 16 reptiles, 22 insects and arachnids, 19 amphibians, 59 fish, 45 freshwater bivalves, 9 crustaceans, 4 snails, and 134 conifer, fern, flowering plant, and lichen species. Its bird table adds a further 25 entries. The National Marine Fisheries Service assessment analyzes 30 listed units by evolutionarily significant unit or distinct population segment. The assessments state that species lists were sent to the Services in **September and October 2025** for review. The Department has thus had approximately 11 months of pre-consultation engagement with the Services. The public has 32 days to review the product.

The DEIS further incorporates by reference the 2020 Alaska Roadless Rule Final Environmental Impact Statement and the 2023 Determination of NEPA Adequacy — a further 706 pages. Meaningful comment on the Alaska analysis requires review of those documents as well.

The Department will be obliged to respond to the significant comments it receives. See Ohio v. EPA, 603 U.S. 279 (2024). A comment period that prevents interested parties from developing significant comments in the first place does not lessen that obligation; it narrows the record on which the final rule must rest.

### V. The subsistence hearings are scheduled to conclude after the comment period closes, and no written record channel exists at them

On August 24, 2026 — 28 days before the comment deadline — the Alaska Region announced four ANILCA § 810 subsistence hearings:

| Date and time | Format | Location |
|---|---|---|
| Sept. 29, 2026, 5–7 p.m. | In person | Southeast Alaska Discovery Center, Ketchikan |
| Sept. 30, 2026, 11 a.m.–1 p.m. | Virtual / call-in | — |
| Sept. 30, 2026, 5–7 p.m. | Virtual / call-in | — |
| Oct. 1, 2026, 5–7 p.m. | In person | Loussac Library, Anchorage |

Every hearing occurs **after** the written comment period closes on September 21. The notice states that the Forest Service "will not accept written comments at the hearings." Taken together, these two facts mean there is no mechanism by which a participant may:

- Submit documentary evidence into the subsistence record — harvest data, community use-area maps, expert analysis, or Tribal resolutions.
- Comment in writing on anything disclosed or elicited at a hearing.
- Respond in writing to the testimony of others.

Eight total hours of oral testimony, in two locations, is the entire channel for public participation in the subsistence evaluation of a rule affecting approximately 44.7 million acres.

The hearing locations compound the problem. The Federal Subsistence Board designated the Ketchikan Area a rural community on February 5, 2025, effective on publication at 90 FR 34152 (July 18, 2025). Ketchikan is therefore now a community of federally qualified subsistence users, and a hearing there is appropriate. It is not, however, a substitute for the rest of the region. **Juneau** — the largest population center in Southeast Alaska, the seat of the Forest Service's Alaska Region, and the seat of the Central Council of the Tlingit and Haida Indian Tribes of Alaska — remains nonrural and receives no hearing. Neither do Angoon, Kake, Hoonah, Hydaburg, Klawock, Craig, Sitka, Petersburg, Wrangell, Yakutat, Saxman, Metlakatla, Kasaan, Pelican, Point Baker, Tenakee

Springs, Thorne Bay, or Gustavus. Each is offered a telephone line. Anchorage, the second in-person location, is nonrural, lies approximately 600 air miles from Ketchikan, and is situated on a different national forest.

ANILCA § 810(a) directs that a hearing be held "in the vicinity of the area involved." We ask the Department to identify the appropriate State agency, local committees, and regional advisory councils to which notice was given under § 810(a)(1), and the dates on which that notice issued.

## VI. Thirty-two days does not provide sovereign Tribal governments sufficient time to deliberate and act

The comment period assumes a commenter who reads documents and writes a letter. Federally recognized Tribes are sovereign governments, and their participation requires far more than that. It requires review, deliberation, and formal governmental action, in that order, and each step consumes time the Department has not provided.

### *The sequence a Tribal government must complete*

- **Review.** Approximately 1,013 pages of new analysis available before the Biological Evaluation was posted, an 11-layer geospatial viewer, and two incorporated prior environmental analyses totaling a further 706 pages must be read and assessed by staff who, in most Tribal governments in the affected geography, are limited in number and who already have full-time work on their plates.
- **Assessment of effects on Tribal citizens.** A Tribal government must determine how the rescission bears on treaty and reserved rights, subsistence and food security, sacred sites and traditional cultural properties, ancestral trails, water quality, economic opportunity including cultural tourism and co-stewardship, and the ecological integrity of ancestral homelands. The DEIS identifies each of these as affected, and states that impacts would be "more frequent and broader in scale" under Alternative 2.
- **Convening the council.** Formal Tribal positions require action by a Tribal council. That means agenda notice, quorum, and in many cases a special meeting convened under the Tribe's constitution or bylaws. Many councils in the affected region meet monthly or quarterly. A 32-day window may not contain a single regularly scheduled meeting.
- **Deliberation and formal action.** Drafting comments, adopting a resolution, and authorizing its transmission are separate governmental acts. A resolution is not a letter; it is the exercise of sovereign authority and cannot be delegated to a deadline.

### *The legal analysis required is not uniform, and is not simple*

Because this is a national rule, the rights at issue differ by region and each requires its own legal review. Across the ceded territories of the Great Lakes, the Pacific Northwest, the Columbia Basin, and elsewhere, reserved treaty rights to hunt, fish, and gather on lands ceded to the United States are directly implicated, and the DEIS acknowledges that road construction and timber harvest "may create barriers to treaty-reserved hunting, fishing, and gathering areas." In Alaska, where there are

no ratified treaties, the corresponding rights arise from a different body of law — the Alaska Native Claims Settlement Act, Title VIII of ANILCA, the Federal trust relationship, and, for the Metlakatla Indian Community, the Annette Islands Reserve. A Tribe cannot responsibly comment on effects to its rights without first determining, as a legal matter, which rights are implicated and how. That is work for counsel, and most Tribes in the affected geography must retain counsel to do it.

**The DEIS compounds this by asking Tribes to make disclosure decisions on a compressed schedule.** The statement acknowledges that information Tribes provide is often protected from disclosure under section 304 of the National Historic Preservation Act, section 9 of the Archaeological Resources Protection Act, section 8106 of the Food, Conservation, and Energy Act of 2008, the Freedom of Information Act, and 36 CFR 296.18. A Tribe that wishes to identify sacred sites or traditional gathering areas within inventoried roadless areas must therefore decide what to disclose, secure legal review of the protections available, and obtain council authorization — before it can comment at all. Thirty-two days does not accommodate that sequence, and a Tribe that declines to disclose rather than rush the decision has effectively been excluded from the record.

### *Consultation is incomplete, and the record is scheduled to close before it concludes*

The Tribal Summary Impact Statement reports that the Forest Service has received **64 requests for consultation, that 34 consultations have been scheduled, and that 29 have been held**. Thirty-five requested consultations had therefore not occurred when the DEIS published. The Department states that consultations "will be ongoing throughout the rulemaking process, and a final Tribal impact summary statement will be included with the final rule."

Two consequences follow. First, the written record is scheduled to close while more than half of the Tribes that requested government-to-government consultation are still waiting for it. Executive Order 13175 and the Federal trust responsibility contemplate consultation that informs a decision, not consultation that continues alongside a closed record. Second, the document that will summarize Tribal input — the final Tribal Summary Impact Statement — will appear for the first time with the final rule. Neither Tribes nor the public will ever have an opportunity to comment on whether it accurately reflects what Tribes said.

We note additionally that Tribes requested alternatives the DEIS does not analyze in detail, including a strengthened roadless rule and a Traditional Homelands Conservation Rule incorporating Indigenous Knowledge, co-stewardship, and Tribal consent. Commenting on the omission of an alternative requires developing it, which for a Tribal government means council deliberation and formal action — again, the sequence set out above.

The DEIS itself states that "[s]ite-specific Tribal consultation is essential to understanding what access, uses or resources may be affected, the extent it could affect Tribal rights and interests, and how to avoid, minimize, or mitigate disturbance." **That is an acknowledgment that the analysis is incomplete without Tribal input the Department has not yet obtained.** Tribes told the Department during consultation that shifting review to the project level imposes an unsustainable burden on their limited resources. A 32-day comment period on the programmatic decision imposes that burden immediately.

The DEIS also states that broad aspects of management, "such as co-stewardship with Tribes, are better addressed through local land management planning or site-specific project level planning than through National Rulemaking." That choice enlarges what a Tribe must evaluate in 32 days rather than reducing it. A Tribe assessing whether dispersed future decisions can adequately substitute for a national protective baseline must consider how its rights and resources operate across project and administrative boundaries — across watersheds, cultural landscapes, subsistence systems, and in many cases multiple national forests and multiple Forest Service regions. It must then form a view on what role it would exercise in each of those future decisions. **That is a larger analytical undertaking than commenting on a single national standard, and it cannot be completed in the time the Department has allowed.**

### *The comment period coincides with the harvest season*

The period from late August through October is among the most demanding of the subsistence year in Southeast Alaska and much of the affected geography. Salmon runs and the associated subsistence and personal-use fish harvests fall squarely in this window, as do associated preservation activities like smoking and canning. So do the blueberry, huckleberry, and high-bush cranberry harvests; Sitka black-tailed deer hunting, including the alpine hunting that occurs before the snow line drops; moose seasons in Units 1 and 5; and the opening of waterfowl seasons.

This is not a scheduling inconvenience. Under Title VIII of ANILCA, subsistence harvest carries a Federal statutory priority precisely because it is not optional; it is the food supply. The Department has set a 32-day deadline that requires Tribal governments and rural residents to choose between provisioning their communities for winter and participating in a Federal rulemaking that will determine the management of the lands they harvest from. The four subsistence hearings, scheduled September 29 through October 1, fall in the same window.

**The choice the schedule forces is not one the Department should require anyone to make, and it falls hardest on exactly the communities whose subsistence uses ANILCA § 810 exists to protect.**

For these reasons, we ask that the comment period for federally recognized Tribes and Alaska Native Corporations be extended to not less than 120 days, closing December 18, 2026; that Tribal comments, resolutions, and consultation records be accepted on a rolling basis thereafter; that all 64 requested consultations be completed before the written record closes; and that the final Tribal Summary Impact Statement be published for comment rather than issued for the first time with the final rule.

## VII. The Alaska subsistence analysis incorporated by reference predates a Federal determination that has materially changed the affected subsistence user population

Although the DEIS takes the position that an ANILCA § 810 evaluation and determination is not required for this rulemaking, it nonetheless relies for its Alaska subsistence analysis on the 2020 Alaska Roadless Rule Final Environmental Impact Statement at pages 3-239 to 3-252, and on subsistence hearings conducted in 2019, on the reasoning that Alternatives 2 and 3 propose the same action for Tongass inventoried roadless areas as the 2020 Alaska Roadless Rule.

**That borrowed analysis rests on a subsistence baseline that no longer exists.** The 2020 Final EIS states that Juneau and Ketchikan were "the only two communities considered as urban areas for subsistence purposes" and reports its regional statistics on that basis — for example, an Alaska Native population share of 21 percent for rural communities "excluding Juneau and Ketchikan."

On February 5, 2025, the Federal Subsistence Board voted 7 to 3 to adopt Nonrural Determination Proposal NDP25-01, submitted by the Ketchikan Indian Community, designating the Ketchikan Area — the Ketchikan Gateway Borough excluding Saxman — a rural area under 36 CFR 242.23. The determination was published at 90 FR 34152 (July 18, 2025) and applies to the 2025–2027 regulatory years. **Approximately 13,000 Ketchikan residents thereby became federally qualified subsistence users**, with customary and traditional use determinations that include deer in Unit 2. On the population figures the 2020 Final EIS itself reports — a 2019 Southeast Alaska population of 72,373, of which Juneau accounted for 44 percent and the Ketchikan Gateway Borough 19 percent — that is an increase of roughly 50 percent in the federally qualified rural population of Southeast Alaska.

The consequences bear directly on each of the three factors ANILCA § 810 identifies — abundance and distribution of resources, access to resources, and competition for their use — and most acutely on competition. Unit 2 encompasses Prince of Wales Island, which contains a substantial share of the operable timber base within Tongass inventoried roadless areas. The effects of rescission on deer habitat there now interact with a federally qualified user population materially larger than the one the 2020 analysis assumed. The 2020 analysis modeled deer habitat capability by Wildlife Analysis Area against the communities from which roughly 75 percent of each community's deer harvest is drawn. Those assignments were made when Ketchikan residents were not federally qualified users.

**The designation is now administratively final, and the Board has since acted to manage its consequences.** As we understand the record:

- At its March 2025 meeting, the Southeast Alaska Subsistence Regional Advisory Council voted to submit two wildlife special action requests concerning Unit 2 deer in light of the designation. The Board denied those requests on July 17, 2025, on the ground that there was insufficient evidence of a conservation concern or threat to the continuation of subsistence uses.
- The Craig Tribal Association and Shaan Seet, Inc. filed Requests for Reconsideration (RFR25-01 and RFR25-02), asserting that the designation is contrary to ANILCA § 804, 16 U.S.C. § 3114, and that the Board failed to account for the effect of approximately 13,000 additional Ketchikan subsistence hunters on Unit 2 deer, described as a critical resource for Prince of Wales Island rural residents. **RFR25-01 also formally requested documentation of the Board's own ANILCA § 810 analysis**, including findings on potential subsistence restrictions and mitigation measures considered, and argued that the absence of such an evaluation rendered the decision deficient.

- On April 24, 2026, the Board rejected RFR25-01 and RFR25-02, determining that the requests did not meet the threshold for full analysis, and voted 8 to 2 to uphold the rural designation. The designation therefore stands.
- At that same April 2026 meeting, however, **the Board adopted restrictions on Unit 2 deer**: closing the Unit 2 deer season to federally qualified subsistence users from Units 1C, 1D, 4, and 5 and from Ketchikan from July 24 to July 31 and from January 1 to January 31, and reducing their harvest limit to two bucks. The Board also adopted fisheries proposal FP25-02 as modified by the Southeast Alaska Subsistence Regional Advisory Council.

The significance for this rulemaking is direct. **The competition effect of the Ketchikan designation is not speculative; a Federal body with jurisdiction over subsistence in the same geography has already found it necessary to restrict harvest in Unit 2 in response to the enlarged pool of federally qualified users.** The DEIS nevertheless relies for its Alaska subsistence analysis on a document prepared in September 2020 — more than four years before the Board reclassified Ketchikan, and more than five years before the Board restricted Unit 2 deer harvest in response.

The Board's handling of fisheries proposal FP25-02 is instructive, because it ran the full course. When the Board adopted NDP25-01 in February 2025 it deferred FP25-02 on the express ground that **"[t]he adoption of NDP25-01 substantially changed the information that the Board was provided on this proposal,"** and it used that deferral to revise the analysis and to give the Southeast Alaska Subsistence Regional Advisory Council an opportunity to provide recommendations on the revised analysis. In April 2026 the Board adopted the proposal as modified by that Council.

**Confronted with precisely the fact at issue here, the Federal Subsistence Board deferred its decision, revised its analysis, solicited recommendations from the Southeast Alaska Subsistence Regional Advisory Council, and then acted on the revised record. The Department cannot reasonably treat as immaterial a fact that a sister agency body found had substantially changed its own analysis. The sequence the Board followed is the relief requested in this letter.**

We note additionally that the 2023 Alaska Roadless Rule Determination of NEPA Adequacy, on which the DEIS also relies, likewise predates the designation, and that the draft statement's own review of new information and changed circumstances does not appear to address it.

Accordingly, we ask the Department to state whether its Alaska subsistence analysis accounts for NDP25-01; and if it does not, to prepare and publish a revised Alaska subsistence analysis reflecting the current federally qualified user population and to provide a comment period on that revised analysis. We further ask the Department to formally solicit recommendations from the Southeast Alaska Subsistence Regional Advisory Council, as the Federal Subsistence Board did when confronted with the same changed information, and to hold the written comment period open until those recommendations are received and available for public review.

## VIII. The Department's own precedent establishes a longer period as the norm

- **The 2001 Roadless Rule.** The proposed rule (65 FR 30276, May 10, 2000) allowed comment until July 17, 2000 — a 68-day period.
- **The 2020 Alaska Roadless Rule.** For a rule affecting a single national forest, the Department provided a 45-day scoping period (August 30 to October 15, 2018) with 17 public meetings and a 60-day comment period on the proposed rule and DEIS (October 18 to December 17, 2019) with 21 public meetings, and held subsistence hearings in 18 Southeast Alaska communities. In the resulting Final EIS, the Department stated that "[t]he length of the scoping and comment periods are standard for both the rulemaking and EIS processes."
- **This rulemaking.** This more comprehensive action undercuts established precedent with its 21-day scoping period and 30-day comment period with no announced public meetings outside Alaska, one in-person Southeast Alaska hearing, and a rule of nationwide scope.

The Department has previously characterized 45 and 60 days as standard. It has not explained why a national rescission warrants less process than a single-forest rule. An agency that departs from its established practice must supply a reasoned explanation for doing so, and must take account of the reliance interests its prior policy engendered. See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983); FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009); Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016); Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020). **The Department has expressly invited comment on reliance interests in this rulemaking while allowing a period too short to document them.**

We note additionally that the Department relies on the 2020 and 2019 Alaska record as support for the adequacy of the current subsistence analysis. It cannot legitimately both borrow the adequacy of a record built on 18 community hearings and offer a single in-person hearing in the affected region.

## IX. Specific analyses that cannot be reviewed in the time allowed

Without limiting the foregoing, the following require expert review that cannot be completed by September 21:

- The draft Biological Evaluation for Regional Forester Sensitive Species, released August 28, 2026, including the exposure ruleset, the NatureServe-to-National Land Cover Database habitat crosswalk, and the effects determinations for 3,591 species across ten taxonomic groups.
- The Alaska subsistence analysis, in light of the designation of the Ketchikan Area as rural and the approximately 13,000 residents who thereby became federally qualified subsistence users.
- The effects of the proposed rescission on treaty and reserved rights, sacred sites, and traditional cultural properties, which cannot be assessed by a Tribal government without legal review, council deliberation, and formal action.

- The operability model used to define the affected environment and to assign exposure categories in both biological assessments, together with the underlying data and processing scripts referenced in the Roadless Rule Geospatial Project Record.
- The exposure-and-response methodology by which "no effect," "not likely to adversely affect," and "likely to adversely affect" determinations were assigned across more than 300 listed species.
- The Department's reliance on existing land management plan components and best management practices as effects-reducing measures, including which of the plans relied upon predate the 2001 Roadless Rule or were adopted against its backdrop.
- The methodology used to monetize passive use values, the 15-year analytical horizon adopted under OMB Circular A-4, the treatment of maximum potential costs and benefits without adjustment for uncertainty, and the 3 and 7 percent discount rates applied.
- The § 605 certification regarding small entities, which requires small-entity revenue and employment data for the affected sectors.
- The eleven geospatial layers in the Data Web Viewer, at the unit- and community-scale needed to evaluate local effects.
- The reliance interests on which the Department has expressly invited comment, which by their nature require outreach to affected businesses, local governments, and Tribes as well as the collection of documentary support.

## X. Conclusion

An extension imposes no cost on the Department. The Unified Agenda records no legal deadline. Executive Order 12866 § 6(a)(1) contemplates at least 60 days for a rule the Department has designated significant. The Department's own precedent in this subject area is 45 to 68 days for narrower actions. A 276-page analysis of 3,591 species that the DEIS incorporates by reference was not released until 24 days before the deadline. Thirty-five of the 64 Tribes that requested government-to-government consultation had not received it when the DEIS published, and the comment period runs through the height of the subsistence harvest season. The Alaska subsistence analysis on which the Department relies predates a Federal determination that added approximately 13,000 federally qualified subsistence users to the affected region — a change the Federal Subsistence Board itself found substantially altered its own analysis. And the Department's own hearing schedule places the close of the subsistence record eight to ten days after the close of the written record, an outcome that serves no purpose.

We respectfully request that the comment period be extended to **November 18, 2026**, to not less than December 18, 2026, for federally recognized Tribes and Alaska Native Corporations, and in any event to a date not less than 30 days after the final subsistence hearing and not less than 60 days after publication of the Biological Evaluation.

**This request is submitted to preserve the issues it raises for the administrative record and for any subsequent review.** We ask that this letter and any response to it be placed in Docket FS-2025-0001.

Respectfully submitted,

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**ATTACHMENT A**

**Inventory of Docket FS-2025-0001**

***Documents released for the 30-day comment period***

| Document | Pages | Date available | Days to Sept. 21 close |
|---|---|---|---|
| Notice of proposed rulemaking and notice of availability, 91 FR 53827–53832 (FR Doc. 2026-16965) | 6 | Aug. 20, 2026 | 32 |
| Draft Environmental Impact Statement, Volume I | 333 | Aug. 19, 2026 | 33 |
| Draft Environmental Impact Statement, Volume II — Appendix, State Maps | 38 | Aug. 19, 2026 | 33 |
| Draft Biological Assessment — USFWS species | 428 | Aug. 19, 2026 | 33 |
| Draft Biological Assessment — NMFS species | 152 | Aug. 19, 2026 | 33 |
| Economic Analysis (Regulatory Flexibility Analysis and Cost-Benefit Analysis) | 43 | Aug. 19, 2026 | 33 |
| Tribal Summary Impact Statement | 6 | Aug. 19, 2026 | 33 |
| Data Web Viewer instructions | 5 | Aug. 19, 2026 | 33 |
| Alaska Region notice of subsistence hearings | 2 | Aug. 24, 2026 | 28 |
| Draft Biological Evaluation, Regional Forester Sensitive Species (3,591 species) | 276 | Aug. 28, 2026 | 24 |
| **Total new agency analysis published** | **1,289** | | |

### *Documents incorporated by reference*

| Document | Pages | Date |
|---|---|---|
| 2020 Alaska Roadless Rule Final Environmental Impact Statement (relied upon for the Alaska subsistence analysis at pp. 3-239 to 3-252) | 695 | Sept. 2020 |
| 2023 Alaska Roadless Rule Determination of NEPA Adequacy | 11 | 2023 |
| **Total incorporated by reference** | **706** | |

### *Species analyzed*

| Category | Count |
|---|---|
| ESA-listed species with "may affect, likely to adversely affect" determinations under Alternative 2 (DEIS Table 58) | 329 |
| Designated critical habitats with "may affect, likely to adversely affect" determinations under Alternative 2 (DEIS Table 58) | 70 |
| Species with critical habitat present but a "not likely to adversely affect" critical habitat determination (DEIS Table 58) | 24 |
| Mammals (USFWS BA, Table 5) | 34 |
| Reptiles (USFWS BA, Table 7) | 16 |
| Birds (USFWS BA, Table 10) | 25 |
| Insects and arachnids (USFWS BA, Table 11) | 22 |
| Amphibians (USFWS BA, Table 13) | 19 |
| Fish (USFWS BA, Table 15) | 59 |
| Freshwater bivalves (USFWS BA, Table 18) | 45 |
| Crustaceans (USFWS BA, Table 20) | 9 |
| Snails (USFWS BA, Table 22) | 4 |

| Category | Count |
|---|---|
| Conifers, ferns, flowering plants, and lichens (USFWS BA, Table 24) | 134 |
| Subtotal, USFWS BA taxonomic groups excluding birds | 342 |
| NMFS-jurisdiction listed units, by ESU or DPS (NMFS BA, Table 2) | 30 |
| Regional Forester Sensitive Species, combined list of unique species (BE, Table 3) | 3,591 |
| RFSS listings across all nine regional lists before de-duplication (BE, Table 2) | 4,059 |
| RFSS with one or more occurrence records on NFS lands (BE) | 2,850 |
| Amphibians (BE, Table 3) | 74 |
| Birds (BE, Table 3) | 152 |
| Bivalves (BE, Table 3) | 56 |
| Crustaceans (BE, Table 3) | 77 |
| Fish (BE, Table 3) | 162 |
| Insects and arachnids (BE, Table 3) | 303 |
| Mammals (BE, Table 3) | 99 |
| Reptiles (BE, Table 3) | 48 |
| Snails (BE, Table 3) | 139 |
| Vascular plants, lichens, fungi, and bryophytes (BE, Table 3) | 2,481 |

### *Regional Forester Sensitive Species lists combined in the Biological Evaluation*

| Forest Service Region | Year of current list | Number of RFSS listed |
|---|---|---|
| Northern (Region 1) | 2023 | 230 |

| Forest Service Region | Year of current list | Number of RFSS listed |
|---|---|---|
| Rocky Mountain (Region 2) | 2023 | 169 |
| Southwestern (Region 3) | 2013 | 344 |
| Intermountain (Region 4) | 2016 | 257 |
| Pacific Southwest (Region 5) | 2013 | 599 |
| Northwest (Region 6) | 2021 | 940 |
| Southern (Region 8) | 2023 | 524 |
| Eastern (Region 9) | 2023 | 973 |
| Alaska (Region 10) | 2009 | 23 |
| **Total listings (before de-duplication)** | **—** | **4,059** |

### *Geospatial layers in the Data Web Viewer*

| # | Layer |
|---|---|
| 1 | 2001 Inventoried Roadless Areas (Alternative 1 — No action) |
| 2 | Alternative 3 — Inventoried Roadless Areas (prohibitions remain) |
| 3 | Alternative 2 — Affected Environment (prohibitions removed) |
| 4 | Alternative 3 — Affected Environment (prohibitions removed) |
| 5 | Roads — 0.5-mile buffer |
| 6 | Healthy Forests Restoration Act Wildland Urban Interface |
| 7 | Designated Wilderness Areas |
| 8 | Wild and Scenic Rivers (wild sections only) |
| 9 | Wilderness Study Areas |

| # | Layer |
|---|---|
| 10 | Forest Service Administrative Regions |
| 11 | National Forest System lands |
| | **Total: 11 layers** |

### *New information post-dating the incorporated Alaska subsistence analysis*

| Date | Event | Source |
|---|---|---|
| Sept. 2020 | 2020 Alaska Roadless Rule Final EIS issued; treats Juneau and Ketchikan as the only two Southeast communities considered urban for subsistence purposes | 2020 FEIS, pp. 3-239 to 3-252 |
| 2023 | Alaska Roadless Rule Determination of NEPA Adequacy concludes prior analysis remains valid | 2023 DNA |
| Feb. 5, 2025 | Federal Subsistence Board votes 7–3 to adopt NDP25-01, designating the Ketchikan Area (Ketchikan Gateway Borough excluding Saxman) rural under 36 CFR 242.23 | FSB decision; DOI release, Mar. 26, 2025 |
| Feb. 2025 | Board defers FP25-02 because adoption of NDP25-01 "substantially changed the information," and routes the revised analysis to the Southeast Alaska Subsistence RAC for recommendations | DOI release, Mar. 26, 2025 |
| Mar. 2025 | Southeast Alaska Subsistence RAC votes to submit two wildlife special action requests on Unit 2 deer | FSB analysis, WP26-03/-04/-05 |
| July 17, 2025 | Board denies the special action requests for insufficient evidence of a conservation concern | FSB analysis, WP26-03/-04/-05 |
| July 18, 2025 | Designation published in the Federal Register; approximately 13,000 Ketchikan residents become federally qualified subsistence users, including for deer in Unit 2 | 90 FR 34152 (July 18, 2025) |

| Date | Event | Source |
|---|---|---|
| July 2025 | Craig Tribal Association and Shaan Seet, Inc. file Requests for Reconsideration (RFR25-01, RFR25-02) asserting the designation is contrary to ANILCA § 804; RFR25-01 requests documentation of the Board's § 810 analysis | RFR25-01; RFR25-02 |
| Feb. 2026 | Board receives update on RFR25-01; threshold determination deferred to the April regulatory meeting | DOI release, Feb. 2026 work session |
| Apr. 24, 2026 | Board rejects RFR25-01/-02 as not meeting the threshold for full analysis; votes 8–2 to uphold the rural designation | DOI release, Apr. 2026 |
| Apr. 2026 | Board adopts Unit 2 deer restrictions for federally qualified users from Units 1C, 1D, 4, 5 and Ketchikan (July 24–31 and Jan. 1–31 closures; two-buck limit), and adopts FP25-02 as modified by the Southeast Council | DOI release, Apr. 2026 |
| Aug. 19–20, 2026 | Draft EIS published relying on the 2020 and 2023 Alaska analyses | Docket FS-2025-0001 |

### *Comparative process history*

| Rulemaking | Scope | Scoping period | Comment period on proposed rule | Public meetings | Subsistence hearings |
|---|---|---|---|---|---|
| 2001 Roadless Rule | National | — | 68 days (May 10 – July 17, 2000) | 600+ public meetings | — |
| 2020 Alaska Roadless Rule | Tongass National Forest only | 45 days, 17 public meetings | 60 days | 21 public meetings | 18 Southeast Alaska communities |
| 2026 Roadless Rule Rescission | National, approx. 44.7 million acres | 21 days, no meetings | 30 days | None announced | 1 in-person Southeast (Ketchikan), 1 |

| Rulemaking | Scope | Scoping period | Comment period on proposed rule | Public meetings | Subsistence hearings |
|---|---|---|---|---|---|
| | | | | | Anchorage, 2 virtual |

*Note: Page counts and species counts in this attachment were verified against the documents as posted to Docket FS-2025-0001 and the project website. Page counts reflect total document pages, not the last printed page number. The public meeting figure for the 2001 Roadless Rule is drawn from the Forest Service's Roadless Area Conservation Rulemaking Facts sheet (Jan. 5, 2001), which reports that over 600 public meetings were held nationwide.*