

Thomas S. Waldo
Eric P. Jorgensen
EARTHJUSTICE
325 Fourth Street
Juneau, Alaska 99801
T: 907-586-2751
F: 907-463-5891
E: twaldo@earthjustice.org
E: ericj@earthjustice.org

Nathaniel S.W. Lawrence
NATURAL RESOURCES DEFENSE COUNCIL
3723 Holiday Drive, SE
Olympia, WA 98501
T: 360-534-9900
F: 360-534-9909
E: nlawrence@nrdc.org

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ORGANIZED VILLAGE OF KAKE; THE BOAT)
COMPANY; ALASKA WILDERNESS RECREATION)
AND TOURISM ASSOCIATION; SIERRA CLUB;)
SOUTHEAST ALASKA CONSERVATION COUNCIL;)
NATURAL RESOURCES DEFENSE COUNCIL;)
TONGASS CONSERVATION SOCIETY; GREENPEACE,)
INC.; WRANGELL RESOURCE COUNCIL; CENTER)
FOR BIOLOGICAL DIVERSITY; DEFENDERS OF)
WILDLIFE; and CASCADIA WILDLANDS,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF AGRICULTURE;)
UNITED STATES FOREST SERVICE; TOM VILSACK,)
in his official capacity as Secretary of Agriculture; HARRIS)
SHERMAN, in his official capacity as Under Secretary of)
Agriculture for Natural Resources and Environment; and)
TOM TIDWELL, in his official capacity as Chief, USDA)
Forest Service,)

Defendants.)

Case No.)
1:09-cv- _____ - _____)

**COMPLAINT FOR)
DECLARATORY AND)
INJUNCTIVE RELIEF)**

**(5 U.S.C. §§ 702, 706;)
16 U.S.C. §§ 529, 551,)
1608; and 42 U.S.C. §)
4332))**

INTRODUCTION

1. This action challenges a Forest Service rule, 36 C.F.R. § 294.14(d) (2004); 68 Fed. Reg. 75,136, 75,146 (Dec. 30, 2003) (“Tongass Exemption”), purporting to exempt the Tongass National Forest (“Tongass”) from the Roadless Area Conservation Rule, 36 C.F.R. §§ 294.10-.14 (2001); 66 Fed. Reg. 3244, 3272-73 (Jan. 12, 2001) (“Roadless Rule”).

2. Tongass roadless areas are the relatively untouched stretches of the national forest where traces of human impact are minor or absent. They and the stands of pristine old-growth forest contained within them are important in their intact state for wildlife, biological diversity, and other natural resource values, as well as many social and cultural uses.

3. Plaintiffs are organizations whose members use and rely on the roadless areas of the Tongass for customary and traditional purposes (often referred to as “subsistence”), recreation, commercial guiding and tourism, scientific research, sport hunting, both sport and commercial fishing, camping, photography, wildlife viewing, and other activities that depend on natural old-growth forest and undisturbed ecological values. These organizations seek declaratory and injunctive relief preventing the Forest Service from proceeding with actions in the Tongass that would violate the 2001 Roadless Rule.

JURISDICTION, RIGHT OF ACTION, AND VENUE

4. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201-02. Judicial review is available under the Administrative Procedure Act. 5 U.S.C. §§ 701-06.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PLAINTIFFS

6. The Organized Village of Kake (OVK) is a federally recognized Indian Tribe organized under the authority of the Indian Reorganization Acts of 1934 and 1936. 60 Fed. Reg. 9250, 9254 (Feb. 16, 1995). OVK represents about 400 Tribal members, all of whom reside in Kake. OVK's mission is to promote the welfare of tribal members and descendants through the development and operation of social, economic, and cultural enterprises, and to preserve and maintain Native cultural traditions and the subsistence lifestyle. One of OVK's highest priorities is to protect the Village's customary and traditional hunting, fishing, and gathering areas.

7. The Boat Company is a non-profit business incorporated in 1980. It operates two vessels—the M/V Liseron and the M/V Mist Cove—accommodating up to 24 passengers each. Throughout the summer season, The Boat Company offers week-long cruises through the archipelago of Southeast Alaska, providing its passengers opportunities to fish, hike, kayak, and view wildlife in the waters and old-growth forests of the Tongass. In so doing, The Boat Company seeks to educate its guests about the benefits of conserving and preserving one of the Earth's last great wild and beautiful places.

8. The Alaska Wilderness Recreation and Tourism Association (AWRTA) is a members-driven trade association formed to be a collective voice for wilderness-dependent businesses. AWRTA advocates for the sustainability of Alaska's natural and cultural resources, responsible tourism, and tourism planning for communities. AWRTA represents nature-based tourism businesses, individuals, and organizations throughout the state, including Southeast Alaska. Member businesses and partners strive to work with communities to protect and enhance the quality of life, to provide good jobs and business opportunities, and to create strong incentives for protecting Alaska's wildlife, wilderness and special places.

9. The Sierra Club is a national grassroots conservation organization. The Sierra Club's members are about 620,000 Americans, including about 1,500 Alaska residents, who are inspired by nature. They explore, enjoy, and protect the wild places of the earth including the Tongass. They practice and promote the responsible use of the earth's ecosystems and resources. For over a hundred years they have sought to educate and enlist humanity to protect and restore the quality of the natural and human environment. In Southeast Alaska, the Sierra Club is represented by the Juneau Group of the Sierra Club. Sierra Club members reside in nearly every community of Southeast Alaska, from Yakutat to Ketchikan, and derive benefits and enjoyment from the natural environment and unlogged areas of the Tongass.

10. Southeast Alaska Conservation Council (SEACC) is a nonprofit organization of fifteen volunteer conservation groups in thirteen communities across the Southeast Alaska panhandle, from Yakutat to Ketchikan, and over 2,000 individual members, the majority of whom live in Alaska. SEACC advocates the conservation and wise long-term management of the scenic, wilderness, fish, wildlife, recreation, subsistence and other natural resources and values of southeast Alaska and the Tongass in particular.

11. The Natural Resources Defense Council (NRDC) works to protect wildlife and wild places and to ensure a healthy environment for all life on earth. NRDC has over 1,500 members in the State of Alaska and more than 650,000 members in all. NRDC's ongoing conservation and public education efforts involving the Tongass date back almost to the organization's inception.

12. Tongass Conservation Society (TCS), based in Ketchikan, Alaska, is dedicated to conserving the biodiversity of the many island forests of the Tongass through protection of habitat and promotion of sustainable use. TCS strives to nourish an attitude of responsible

stewardship and to enable the community at large to become more active and informed. TCS is a non-profit organization with over 300 members, the majority of whom live in southeast Alaska.

13. Greenpeace, Inc. is a non-profit environmental organization headquartered in Washington, D.C., with offices in Sitka and Anchorage among other locations. Greenpeace's mission is to raise public awareness of environmental problems and promote changes that are essential to a green and peaceful future. There are approximately 250,000 current Greenpeace members in the United States, several hundred of whom live in Alaska. The organization's involvement in forest issues concerning the National Forest System generally, and the Tongass in particular, goes back to the early 1990s. Its concerns have included the effects of logging and associated road building on ecosystems, roadless areas, fish, and wildlife, and protection of the last remnants of old-growth forest in the United States.

14. The Wrangell Resource Council is a non-profit conservation organization whose members advocate for a viable community through the sustainable use of the fish, wildlife and forest resources upon which their way of life depends. Based in Wrangell, Alaska, the Council has about twenty members, all of whom live on Wrangell Island.

15. The Center for Biological Diversity (the Center) is a non-profit organization with 250,000 members and online activists, with offices in Alaska and a number of other states. The Center has numerous members in southeast Alaska and an office in Anchorage. The Center works to insure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need to survive. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. The Center has been actively involved in protecting Alaska's wildlife since the early 1990's. With regard to the Tongass, the Center has filed petitions to

protect the Queen Charlotte goshawk and the Alexander Archipelago wolf under the Endangered Species Act. The Center carefully follows the fate of these and many other species that depend upon Tongass wildlands.

16. Defenders of Wildlife (Defenders) is a non-profit organization with its principal office in Washington, D.C. and field offices throughout the country. Defenders has over one million members and supporters, of whom approximately 3,000 live in Alaska. Defenders' primary mission is to further the protection of native wildlife and plants in their natural communities. Defenders has strongly supported application of the Roadless Rule to all the national forests, including the Tongass, by submitting detailed comments on proposed rules and environmental impact statements, providing information to its members and the public, and litigating.

17. Cascadia Wildlands (Cascadia) is a non-profit public interest membership organization, headquartered in Eugene, Oregon, with about 1,500 members. Cascadia's mission is to educate and to inspire a movement to protect and restore Cascadia's wild ecosystems. Cascadia envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia bioregion. The Cascadia bioregion includes the watersheds of North America's western temperate rainforests from northern California to Kodiak, Alaska. Cascadia has had staff and/or board members working in Cordova, Alaska continuously since 1998. Cascadia and its members and staff regularly participate in government decision-making processes that affect the Tongass.

18. Plaintiffs participate actively in the administrative processes established for management of the Tongass. Plaintiff groups have submitted comments on proposed actions and draft environmental impact statements (EISs) for the Tongass Land and Resource Management

Plan (Tongass Plan) and for timber sales in roadless areas. These groups also have filed administrative appeals (including interventions and interested party comments) of the Tongass Plan and of timber sales in roadless areas. Plaintiff groups also participated in the administrative process for the Roadless Rule and advocated inclusion of the Tongass in the Rule. They also submitted comments in opposition to the Department of Agriculture's proposed rule exempting the Tongass from the Roadless Rule. Plaintiffs have exhausted their administrative remedies.

19. Members of Plaintiff organizations reside near, visit, or otherwise use and enjoy roadless portions of the Tongass, including places in which the Forest Service has authorized roadless area timber sales. In particular, members of Plaintiff organizations use these areas for recreation, subsistence, hunting and fishing, research, wildlife viewing, photography, education, and aesthetic and spiritual enjoyment. Plaintiffs and their members derive subsistence, cultural, scientific, recreational, aesthetic, and conservation benefits and enjoyment from these areas. Decisions to allow logging and road construction authorized in these areas will directly and irreparably injure these interests. Plaintiffs and their members also regularly utilize environmental review documents prepared by Defendants to inform themselves about and provide comments and other advocacy concerning proposed activities that affect roadless areas of the Tongass.

DEFENDANTS

20. Defendant United States Department of Agriculture is the department of the executive branch responsible for overseeing the activities of the Forest Service.

21. The full name of Defendant United States Forest Service is United States Department of Agriculture, Forest Service. It is an agency of the Department of Agriculture entrusted with the administration of the national forests, including the Tongass.

22. Defendant Tom Vilsack is sued in his official capacity as Secretary of Agriculture.

23. Defendant Harris Sherman is sued in his official capacity as Under Secretary, Natural Resources and Environment, United States Department of Agriculture.

24. Defendant Tom Tidwell is sued in his official capacity as Chief of the Forest Service.

FACTS

25. The Tongass, located in Southeast Alaska, is this country's largest National Forest. The Tongass contains approximately 29% of the world's remaining unlogged coastal temperate rainforests, a rare ecosystem type globally.

26. In 1999, the Forest Service began a renewed nationwide process to evaluate the values of and provide management direction for all inventoried roadless areas in the National Forest System.

27. In May 2000, the Forest Service published a Draft EIS for the Roadless Rule. The EIS considered alternatives for protecting inventoried roadless areas within the National Forest System, including an alternative that would have exempted the Tongass from the rule. After considering over a million public comments, overwhelmingly supporting adoption of the rule including the Tongass, the Forest Service published the Final EIS ("FEIS") for the Roadless Rule in November 2000.

28. In January of 2001, the Secretary of Agriculture adopted the Roadless Rule. This rule, with specific exceptions, prohibited logging and road building in inventoried roadless areas throughout the National Forest System. *See* Final Roadless Area Conservation Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001). In adopting the Roadless Rule, the Secretary relied on the fact that

“[u]ndisturbed landscapes provide a variety of monetary and non-monetary benefits to the public. Many of these benefits are associated with the protection of ecological, social, and economic values in inventoried roadless areas.” *Id.* at 3267. The Roadless Rule was adopted in compliance with all applicable laws.

29. The Roadless Rule applied to the Tongass. However, the Secretary of Agriculture exempted from its protections any Tongass timber sale for which the notice of availability of a draft EIS was published in the Federal Register before January 12, 2001. This amounted to a transition pipeline of 852 million board feet of timber for Southeast Alaska’s timber industry. *Id.* at 3266. This volume of timber was nearly eight times the projected annual harvest from Tongass roadless areas in the absence of the Roadless Rule. *See* Roadless Area Conservation Rule FEIS, vol. 1 at 2-34.

30. On July 15, 2003, the Forest Service published a notice of proposed rulemaking in the Federal Register for a temporary rule exempting the Tongass from the Roadless Rule. *See* 68 Fed. Reg. 41,865 (July 15, 2003).

31. On December 30, 2003, the Department of Agriculture published a final rule providing for a temporary exemption of the Tongass from the Roadless Rule. *See* 68 Fed. Reg. 75,136, 75,146 (Dec. 30, 2003) (“Tongass Exemption”). By its terms, the exemption would last only “[u]ntil the USDA promulgates a final rule concerning application of this subpart within the State of Alaska [to which the agency originally sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864)]” *Id.* at 75,146 (adopting 36 C.F.R. § 294.14(d) (bracketed text in original)).

32. Defendants did not prepare a separate Environmental Assessment or EIS for the temporary Tongass Exemption. The final rule asserted that the “decision to adopt the proposed

rule as final is supported by the environmental analysis presented in the roadless rule FEIS” *Id.* at 75,143. The Federal Register notice also served as the agency’s Record of Decision. *Id.* at 75,136. A record of decision is required by regulations adopted under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321, et seq., to explain the basis for agency action. *See* 40 C.F.R. § 1505.2.

33. In 2005, the Department of Agriculture attempted to repeal the entire Roadless Rule, including the temporary Tongass exemption, and replace it with a process by which state governors could request regulations governing roadless areas in national forests within their states. However, in a decision affirmed by the Ninth Circuit Court of Appeals, that repeal was held unlawful and set aside. As a result, the Tongass exemption—though adopted as a merely temporary measure—is still being implemented by the Forest Service.

34. Since completion of a Tongass Plan amendment in 2008, the Forest Service has made final decisions to authorize timber sales with new road construction in inventoried roadless areas of the Tongass. These decisions include the Kuiu Timber Sale project (signed May 13, 2008) and the Scratchings II Timber Sale project (signed July 21, 2008). The Forest Service prepared a site-specific EIS and a record of decision for each of these actions. These actions would violate the original 2001 Roadless Rule. They are based on the premise that the Roadless Rule does not apply to the Tongass.

35. The Kuiu and Scratchings II projects are projected to cause adverse impacts to wildlife and other resources including visual quality, roadless recreation, subsistence use, and sport hunting.

COUNT I

**ORGANIC ADMINISTRATION ACT
MULTIPLE-USE SUSTAINED-YIELD ACT
NATIONAL FOREST MANAGEMENT ACT
NATIONAL ENVIRONMENTAL POLICY ACT**

36. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1-35.

37. Under the Organic Administration Act, the Secretary of Agriculture is authorized to adopt rules to “insure the objects of” the national forests and “to preserve the forests thereon from destruction” 16 U.S.C. § 551. The Multiple-Use Sustained-Yield Act requires the Secretary to manage the national forests for “multiple use,” 16 U.S.C. § 529, defined to mean:

The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

16 U.S.C. § 531. Under the National Forest Management Act, the Secretary is required to install “a proper system of transportation . . . to meet anticipated needs on an economical and environmentally sound basis” 16 U.S.C. § 1608(a). Defendants acted pursuant to these authorities in adopting the Roadless Rule and the Tongass Exemption.

38. Under NEPA, federal agencies are required to identify and develop procedures to ensure that environmental values “may be given appropriate consideration in decisionmaking along with economic and technical considerations” 16 U.S.C. § 4332(2)(B). Accordingly, the Council on Environmental Quality has adopted regulations requiring a federal agency to prepare a record of decision explaining the basis of the agency’s decision for any action subject

to an EIS. In the record of decision, “[a]n agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.” 40 C.F.R. § 1505.2(b).

39. In its December 30, 2003 Record of Decision for the temporary Tongass Exemption, the Department of Agriculture cited as principal reasons for the exemption: (1) the Roadless Rule prevents the construction of roads needed to connect communities in Southeast Alaska; (2) the Roadless Rule prevents the construction of utility lines to communities in Southeast Alaska; (3) the Roadless Rule caused uncertainty for timber operators due to litigation; and (4) the Roadless Rule could cause the loss of up to 900 jobs.

40. Each of these stated rationales is arbitrary or capricious. *See* 5 U.S.C. § 706(2)(A).

41. The Roadless Rule provides an exception to the prohibition on road building for Federal Aid Highway projects when the Secretary finds that the highway is “in the public interest or is consistent with the purposes for which the land was reserved or acquired and no other reasonable and prudent alternative exists.” 36 C.F.R. § 294.12(b)(6) (2001). The Forest Service stated in the FEIS for the Roadless Rule that this exception “maintains the Secretary’s discretion as it already exists.” *See* Roadless Area Conservation Rule FEIS, vol. 1 at 2-9. Thus, the Roadless Rule does not affect construction of Federal Aid Highways.

42. The 2003 Record of Decision for the Tongass Exemption also asserts that logging roads incidental to timber sales sometimes serve as new connections for communities in Southeast Alaska. *See* 68 Fed. Reg. at 75,143. This was true historically. However, nearly all communities in Southeast Alaska that are capable of being connected by logging roads have

already been connected. There are few if any circumstances in which future timber sales may result in roads connecting communities that wish to be connected. Any such circumstance, had it existed, could have been addressed with a narrow, site-specific exception to the Roadless Rule rather than a sweeping rule exempting the entire Tongass. The 2000 FEIS for the Roadless Rule did not find any adverse effect on community road connections. The 2003 Record of Decision cites no examples of communities whose connection by logging roads would be prohibited by the Roadless Rule, let alone during the limited duration of a temporary exemption. Defendants failed to consider an important aspect of the problem and acted counter to the evidence before the agency in their assertion that a need for community road connections supported the Tongass Exemption.

43. The Roadless Rule allows cutting trees incidental to utility corridors. 36 C.F.R. § 294.13(b)(2) (2001). In the 2000 FEIS, the Forest Service found that the rule would have minimal impact on the development of utility corridors nationally. *See Roadless Area Conservation Rule FEIS*, vol. 1 at 3-251. The 2003 Record of Decision contradicts this finding by asserting that roads may be required for some utility lines in the Tongass. *See 68 Fed. Reg.* at 75,143. The Record of Decision cites no examples or evidence to support the agency's reversal of position on this issue. Moreover, it is generally cheaper to build and maintain utility lines in southeast Alaska without constructing new roads. Any corridor where a road may have been required to build a utility line, had it existed, could have been addressed with a narrow, site-specific exception to the Roadless Rule rather than a sweeping rule exempting the entire Tongass. Defendants failed to consider an important aspect of the problem, acted counter to the evidence before the agency, and failed to provide a reasoned analysis for reversing their position in their assertion that the need for new utility lines supported the Tongass Exemption.

44. It is true that the Roadless Rule was subject to unresolved litigation over its validity. However, roadless areas are highly valued by people with a wide variety of interests. As a result, Forest Service decisions to proceed with timber sales in roadless areas of the Tongass are normally subject to administrative appeals and litigation. Many of these appeals and lawsuits have been successful. The 2000 FEIS concluded that the alternative in which the Tongass was not exempt from the Roadless Rule was anticipated to have the “[g]reatest savings in appeals and litigation costs related to inventories roadless area management” Roadless Area Conservation Rule FEIS, vol. 1 at 2-36. Moreover, adopting a new rule for Tongass roadless areas, subject to new court challenge, could not create a reasonable expectation of more rapid resolution of litigation uncertainty about application of the Roadless Rule to the Tongass. Defendants ignored completely the risk of litigation over roadless area project decisions and over the 2003 Record of Decision, recognizing only the uncertainty created by litigation over the Roadless Rule. *See* 68 Fed. Reg. at 75,138, 75,143. Defendants failed to consider an important aspect of the problem and failed to provide a reasoned analysis for reversing their position in their assertion that litigation uncertainty supported the Tongass Exemption.

45. At the time of the 2003 Record of Decision, there were fewer than 900 jobs, direct and indirect, attributable to the Tongass timber sale program. Thus, it was not possible to lose 900 jobs as asserted by the Record of Decision. *See* 68 Fed. Reg. at 75,137, 75,142.

46. The average annual timber volume cut on the Tongass for the three fiscal years preceding the 2003 Record of Decision was about 44 million board-feet (mmbf). The 2000 FEIS and the 2003 Record of Decision estimated that Tongass logging could continue at a level of 50 mmbf/year in perpetuity under the Roadless Rule. *See* 68 Fed. Reg. at 75,140. Thus, full implementation of the Roadless Rule on the Tongass should not cause any layoffs. Defendants

acted contrary to the evidence before the agency in their assertion that the potential loss of 900 jobs supported the Tongass Exemption.

47. For these reasons, the 2003 decision to adopt the Tongass Exemption was arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(A).

COUNT II

NATIONAL ENVIRONMENTAL POLICY ACT

48. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1-47.

49. NEPA and its implementing regulations, 40 C.F.R. §§ 1500-1517, require that each federal agency prepare an EIS for every major federal action significantly affecting the environment. 42 U.S.C. § 4332(C). Major federal actions include “new or revised agency rules” 40 C.F.R. § 1508.18(a). The purpose of an EIS is to “provide full and fair discussion of significant environmental impacts and . . . inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts.” 40 C.F.R. § 1502.1.

50. NEPA requires the Forest Service to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). The consideration of reasonable alternatives is the “heart” of the NEPA analysis. 40 C.F.R. § 1502.14. For major federal actions significantly affecting the environment, NEPA requires that an agency “[r]igorously explore and objectively evaluate all reasonable alternatives,” *id.* § 1502.14(a), as well as describe the “underlying purpose and need to which the Agency is responding in proposing the alternatives including the proposed action.” *Id.* § 1502.13. The purpose and need for the proposed action govern what alternatives are reasonable.

51. The FEIS for the Roadless Rule asserted that the needs to which it responded were: (1) the fundamental threats to roadless characteristics posed by road construction, road reconstruction, and timber harvest; (2) budget constraints which permitted only a small portion of the existing forest road system to be properly maintained; and (3) continuing controversy over the management of roadless areas, including expensive and time-consuming litigation. Roadless Area Conservation Rule FEIS, vol. 1 at 1-14 to 1-15.

52. The reasons articulated for adopting the Tongass Exemption in 2003 were different from the purpose and need for the Roadless Rule. Nevertheless, Defendants relied on the alternatives in the Roadless Rule FEIS in adopting the Tongass Exemption. *See* 68 Fed. Reg. 75,144 (Dec. 30, 2003).

53. In adopting the Tongass Exemption, Defendants did not study, develop, and describe reasonable alternatives that would accomplish their newly stated purposes with less impact to the environment. They did not, for instance, consider broadening existing exceptions in the Roadless Rule to accommodate concerns about community infrastructure. Nor did they consider how, without completely exempting the Tongass from the Roadless Rule, they might respond to increased demand for Tongass timber, should it ever grow to exceed what could be sustainably sourced outside of Inventoried Roadless Areas.

54. By failing to consider reasonable alternatives to the Tongass Exemption, Defendants violated NEPA. The 2003 decision to adopt the Tongass Exemption was arbitrary, capricious, and not in accordance with law, 5 U.S.C. § 706(2)(A), and Defendants failed to observe the procedure required by law. *Id.* § 706(2)(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the court:

1. Enter a declaratory judgment that the Tongass Exemption, 68 Fed. Reg. 75,136, 75,146 (Dec. 30, 2003), was arbitrary, capricious, and not in accordance with law, and was adopted without observance of procedure required by law;
2. Set aside the Tongass Exemption and all Forest Service decisions not fully consistent with the Roadless Area Conservation Rule, as adopted in 2001;
3. Enter appropriate injunctive relief;
4. Award Plaintiffs the costs of this action, including reasonable attorneys' fees; and
5. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 22nd day of December, 2009.

s/ Thomas S. Waldo
Thomas S. Waldo (ABA # 9007047)
Eric P. Jorgensen (ABA # 8904010)
EARTHJUSTICE
325 Fourth Street
Juneau, AK 99801
T: 907-586-2751
F: 907-463-5891
E: twaldo@earthjustice.org
E: ericj@earthjustice.org

Nathaniel S.W. Lawrence
NATURAL RESOURCES
DEFENSE COUNCIL
3723 Holiday Drive, SE
Olympia, WA 98501
T: 360-534-9900
F: 360-534-9909
E: nlawrence@nrdc.org

Attorneys for Plaintiffs