

USDA Forest Service Proposed Roadless Area Rule

On July 12, 2004, Agriculture Secretary Ann M. Veneman announced a proposed rule change by the USDA Forest Service affecting the management of inventoried roadless areas in the National Forest System. Basically, the proposed rule would replace the earlier "Protection of Inventoried Roadless Areas" Rule, which was adopted in January 2001. The new rule proposes to establish a process whereby the governor of any state that contains an inventoried roadless area on National Forest System lands could petition the Secretary and could propose changes to the management policies and practices affecting a given roadless area(s) within the state.

ATC believes the proposed rule, if adopted, would adversely affect the management of inventoried roadless areas along or near the Appalachian Trail, other trail systems, and the resource values associated with millions of acres contained within roadless areas in the National Forest System, including many thousands of acres in the eastern United States. While the provision for a petition from the state is the most problematic aspect of the rule, there are other problems as well, as described below (see pages 4-5).

Although ATC has not yet developed detailed written comments on the proposed new roadless-area rule, we intend to vigorously oppose it. We encourage you to do the same. We are providing below some information that you may find helpful as you and other leaders and members within your club consider this issue.

Background:

Roadless areas have been the focus of inventories and special management considerations since the early 1970s following passage of the Wilderness Act. Beginning in 1972, the Forest Service initiated inventories of roadless areas generally larger than 5,000 acres to determine their suitability for inclusion in the National Wilderness Preservation System. A second inventory process – known at the time as RARE II – was completed in 1979. Some of the identified areas have since been designated by the Congress as wilderness areas. Additional areas have been identified through land-management planning processes as well as large-scale assessments, such as the Southern Appalachian Assessment.

At this point, approximately 58.5 million acres are included in inventoried roadless areas, which represents roughly one-third of all lands administered by the USDA Forest Service in the National Forest System.

In January 1998, then-Forest Service Chief, Mike Dombeck, proposed suspending road construction and reconstruction within inventoried roadless areas and a process was set in motion to formulate new guidelines governing roadless-area management. In January 1999, then-President Bill Clinton issued an Executive Order directing the Forest

Service to develop new regulations to provide appropriate long-term protection for inventoried roadless areas. In complying with the Executive Order, the Forest Service followed the federal rule-making process – including the issuance of a proposed rule and preparation of an environmental-impact statement – with substantial public involvement, including hundreds of public meetings and an estimated 1.6 million public comments. Those comments overwhelmingly favored adoption of the proposed rule. Ultimately, the process culminated in the adoption in January 2001 of the Roadless Area Conservation Rule (36 CFR Part 294).

The basic purpose of the rule, as stated in the rule language, was “to provide, within the context of multiple-use management, lasting protection for inventoried roadless areas within the National Forest System.” To achieve that end, the rule, with only very limited exceptions, prohibited future timber cutting, mineral extraction, and road construction or reconstruction within all NFS inventoried roadless areas.

While the rule language itself does not include much detail about the values of such areas, the *Federal Register* notice announcing the adoption of the final rule provides a detailed discussion of the purposes of the rule and the importance of roadless areas. Among the significant roadless-area values or characteristics worthy of protection, the notice indicates that many roadless areas provide high quality or undisturbed soil, water, and air; serve as important sources of drinking water; provide diversity of plant and animal communities as well as habitat for threatened, endangered, and sensitive species, especially those dependent upon large, undisturbed areas of land; provide dispersed, non-motorized recreation opportunities; encompass natural-appearing landscapes with high scenic quality; and include significant cultural resources and sacred sites.

The *Federal Register* notice also discusses the need for national-level guidance affecting roadless areas. For example, it states that “local land management planning efforts may not always recognize the national significance of inventoried roadless areas and the values they represent in an increasingly developed landscape. If management decisions for these areas were made on a case-by-case basis at a forest or regional level, inventoried roadless areas and their ecological characteristics and social values could be incrementally reduced through road construction and certain forms of timber harvest. Added together, the nation-wide results of these reductions could be a substantial loss of quality and quantity of roadless area values and characteristics over time.”

The adoption of the 2001 rule also was driven by fiscal concerns, including a more than \$8 billion backlog in deferred maintenance and reconstruction on the more than 386,000 miles of roads in the Forest Transportation System, and the fact that development activities in inventoried roadless areas often cost more to plan and implement than on other NFS lands. Finally, it was noted that roadless- area management had become a major point of conflict in the local or forest-level land management planning process,

resulting in a large number of appeals and lawsuits. The hope was that national-level direction would reduce some of the fiscal and procedural burdens on the agency.

Unfortunately, the 2001 Roadless Area Conservation Rule has never been fully implemented. Initially, the then-new Bush administration delayed implementation in order to permit further review. Then, the new rule was challenged in several major court actions. In 2003, the U.S. District Court for the District of Wyoming issued a nation-wide injunction and set aside the roadless rule. (That ruling currently is under appeal before the U.S. Court of Appeals for the Tenth Circuit.) Consequently, management practices affecting inventoried roadless areas continue to be governed by management prescriptions developed on a forest-by-forest basis through the forest planning process. At present, more than one-half of the inventoried roadless areas (34.3 million acres) have been assigned management prescriptions that permit activities (timbering, roads, mineral extraction) that would be prohibited under the 2001 Roadless Areas Conservation Rule.

In the eastern U.S., in the eight National Forests crossed by the Appalachian Trail, the A.T. has been assigned a special management prescription, and most inventoried roadless areas have been assigned relatively benign management prescriptions, such as remote, backcountry, non-motorized recreation, or to certain habitat-enhancement categories, although some of these prescriptions would permit limited timbering or road-reconstruction activities. Of course, such prescriptions are subject to change through forest plan revisions or amendments. In general, however, the immediate environs surrounding the A.T. are well protected by the management prescriptions that have been assigned in the plans developed for the National Forests crossed by the A.T.

The Proposed Roadless Area Rule:

As noted previously, the proposed roadless-area rule seeks to replace the 2001 Roadless Area Conservation Rule. In its place, the new rule would substitute a petitioning process that would provide governors an opportunity to seek establishment of management requirements for National Forest System inventoried roadless areas within their states. Only a limited timeframe – 18 months – would be permitted for governors to exercise their right to petition. Any petition that meets the limited criteria set forth in the rule would be reviewed by the Secretary of Agriculture, possibly with the assistance of an advisory committee. Such a review and a response must occur within 180 days of receipt of a complete petition. If the petition were accepted, then the Secretary would direct the Forest Service to initiate state-specific rulemaking for the management of inventoried roadless areas in cooperation with the state involved in the petitioning process.

The proposed rule outlines information that should be included with any state petition. The petition should describe: (1) the location and a description of the roadless-area

lands at issue; (2) the particular management requirements recommended; (3) the circumstances or needs intended to be addressed by the petition; (4) how the management requirements proposed in the petition differ from the existing land management plans or policies affecting the inventoried roadless area(s); (5) how the recommended management requirements compare to existing state land-management policies and plans; (6) how the recommended management would affect fish and wildlife resources and habitats within the affected roadless area(s); (7) any public-involvement efforts undertaken by the state in developing its petition; and (8) a commitment by the state that it will participate as a cooperating agency in any environmental analysis for a state-specific rulemaking process.

The notice of proposed rulemaking that accompanies the proposed rule allows for the possibility of the creation of an advisory committee to assist the Secretary in evaluating any petitions. It notes that such a committee could consist of members with expertise in fish and wildlife biology and management, forest management, outdoor recreation, other important disciplines, as well as state and local governments. However, no such advisory committee requirement currently appears in the proposed rule language.

The notice of proposed rulemaking also provides a number of justifications to support the need for the proposed rule. Most prominent among those justifications are the legal challenges that have arisen in connection with the earlier (2001) rule and the perception among some that state governments did not have a sufficient opportunity to comment during the earlier rulemaking process.

Unlike the earlier rule, the authors of the proposed rule argue that it is unnecessary for the proposed rule to be further evaluated through an environmental-impact statement process under the National Environmental Protection Act (NEPA). Instead, only in the event that a petition is accepted and a state-specific rulemaking is proposed would the state-specific rulemaking be subject to NEPA review.

Although it is not clearly stated in the proposed rule, or in the notice of proposed rulemaking, it should be understood that, if a state-specific rulemaking is proposed and ultimately adopted, the management direction applicable to affected inventoried roadless areas would take precedence over management prescriptions affecting the area(s) developed previously through the forest planning process and could not be modified through any future plan-revision or plan-amendment process. The rulemaking could only be modified by some future state- or national-level rulemaking process.

Issues of Concern:

ATC has identified quite a number of concerns with the proposed new roadless area rule. In brief, those concerns include:

- The notice of proposed rulemaking appears to ignore or to dismiss the substantial amount of public comment and participation that occurred through the development of the earlier 2001 rule, including ample opportunities for participation and comment by the states.
- Both the notice and the proposed rule place too great an emphasis on the role of the states in influencing the management direction affecting what, in many cases, represent nationally significant roadless-area lands and resources.
- The fact that the proposed rule does not require the formation of an advisory committee of independent subject-area experts to assist the Secretary in evaluating the merits of a petition gives the appearance, at least, that such decisions could be made on largely political grounds.
- The proposed rule does not include explicit requirements for public involvement in evaluating the merits of any state petition.
- The emphasis in the proposed rule on a state-specific focus ignores the fact that some inventoried roadless areas include lands in more than one state, and that many roadless-area values (*e.g.*, watershed protection, wildlife habitat) have multistate significance.
- The 2001 Roadless Area Conservation Rule included a provision stating that it did not compel the amendment or revision of any existing land or resource management plan. No such explicit provision appears in the proposed rule.
- The information required to support a state petition as outlined in the proposed rule is entirely too skeletal, especially in view of the fact that management practices advocated by a petition, if incorporated in a state-specific rulemaking, would override management prescriptions for affected roadless areas that were developed through a highly deliberative process (the forest plan process) spanning many years, with broad public participation, and incorporating the multidisciplinary views of many subject-area experts.
- The information required to support a state petition should be similar in scope and depth to the information examined through the forest planning process. While such detailed information is not required in the language of the proposed rule, if it were, it is highly questionable whether most states would be willing to expend the resources necessary to assemble such information, especially in the narrow 18-month window provided by the proposed rule.
- There also is no requirement that any petitioning state should absorb the costs of analyses involved with evaluating petitions or any state-specific rulemakings that might arise from a petition. Consequently, the proposed rule simply would further add to the workload of an already overburdened agency and staff.
- The cost-impact estimates provided in the notice of proposed rulemaking appear unrealistically optimistic. For example, it is estimated that the time required to fully evaluate a state petition is likely to be less than 1,000 hours. The estimates also completely ignore any additional staff/time requirements associated with any NEPA compliance associated with any proposed state-specific rulemaking.

- The implicit assumption underlying the proposed rule is that it will somehow reduce or eliminate lawsuits, appeals, and the contentious nature of roadless-area management issues in general. Given the history of roadless-area management, this assumption also appears unrealistically optimistic.

Public Comment:

Again, ATC intends to vigorously oppose the new rule and we encourage you to do the same. In the event the proposed rule is not adopted, then inventoried roadless areas will continue to be managed in accordance with whatever management prescriptions have been assigned to them through the forest planning process, at least until such time as the legal challenges associated with the earlier Roadless Area Conservation Rule have been resolved. Regardless of the position you embrace, we urge you, and other leaders and members within your club, to evaluate the proposed rule and to exercise your right to express your opinions during the public comment period. The **deadline for public comments** ends **September 14, 2004**. Contact information for submitting comments in writing and electronically is provided below.

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