

# Forest Service Inventoried Roadless Areas (IRAs)

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## Forest Service Inventoried Roadless Areas (IRAs)

Inventoried roadless areas (IRAs) are areas of the National Forest System (NFS) managed according to regulations, known as *roadless rules*, that generally limit timber harvesting and road building. The NFS contains approximately 193 million acres of land located in more than 150 national forests and grasslands; IRAs comprise approximately 58.2 million acres of NFS lands, constituting approximately 30% of NFS lands, though IRAs are highly concentrated in a few states. The scale of roadless rules, and associated impacts to NFS lands, resources, and adjacent communities, has generated congressional interest.

For decades, the FS has inventoried and administratively designated undeveloped areas of the NFS under various names and has managed these areas to preserve their undeveloped qualities. From the 1920s to 1964, the FS designated and managed undeveloped NFS lands, first through forest-level planning and later through regulations. In 1964, the Wilderness Act (P.L. 88-577) directed the Secretary of Agriculture to review certain FS lands for wilderness potential and to make recommendations to the President regarding the suitability of those lands for wilderness designation. The FS attempted to inventory and review so-called *roadless areas* for wilderness potential twice, but the results were blocked, and FS management of associated lands was limited, through legal action. Congress intervened to legislatively address the reviewed areas, such as by designating them as wilderness or returning them to multiple-use management. In 2001, the FS issued the Roadless Area Conservation Rule (*2001 Rule*) and designated the first IRAs, which were based on the roadless area reviews. The rule's intended purpose was to protect the nation's collective roadless area resources from the negative impacts of roads and timber harvesting, control costs associated with roads on FS lands, and reduce the costs of litigation. However, the issuance of the 2001 Rule prompted more than a decade of conflict, including revocation and replacement with an alternate rule in 2005 (*2005 Rule*) and litigation challenging both rules.

*Inventoried roadless areas* are now defined, and their management specified, by three separate rulemakings. The 2001 Rule defines IRAs as areas identified in a set of inventoried roadless area maps. This definition initially applied to all IRAs. However, the FS subsequently issued individual roadless rules for Colorado and Idaho following issuance of the 2005 Rule. IRAs for Colorado and Idaho are also designated through a set of maps that accompanied their individual roadless rules. IRAs may have characteristics associated with generally undeveloped land (e.g., high-quality or undisturbed soil, water, or air; plant and animal diversity; sources of public drinking water; and others).

The 2001 Rule addresses two issues: (1) roads and (2) timber harvesting in IRAs. Under the 2001 Rule, road construction, road reconstruction, and timber harvesting are prohibited in IRAs except under specified circumstances. These restrictions apply to NFS lands, except those in Colorado and Idaho. The rules of Colorado and Idaho also address restrictions to road building and timber harvesting but may address other IRA uses or resources.

FS management of roadless areas has been contentious and is often the subject of congressional interest. Debates surrounding IRA management often center on whether current FS roadless rules specify desirable levels of resource protection or resource development, with various sides supporting or opposing the rules' current provisions. Debates also center on which level of governance—national forest, state, or federal—should manage roadless areas and on which branch of federal government should lead roadless area policymaking.

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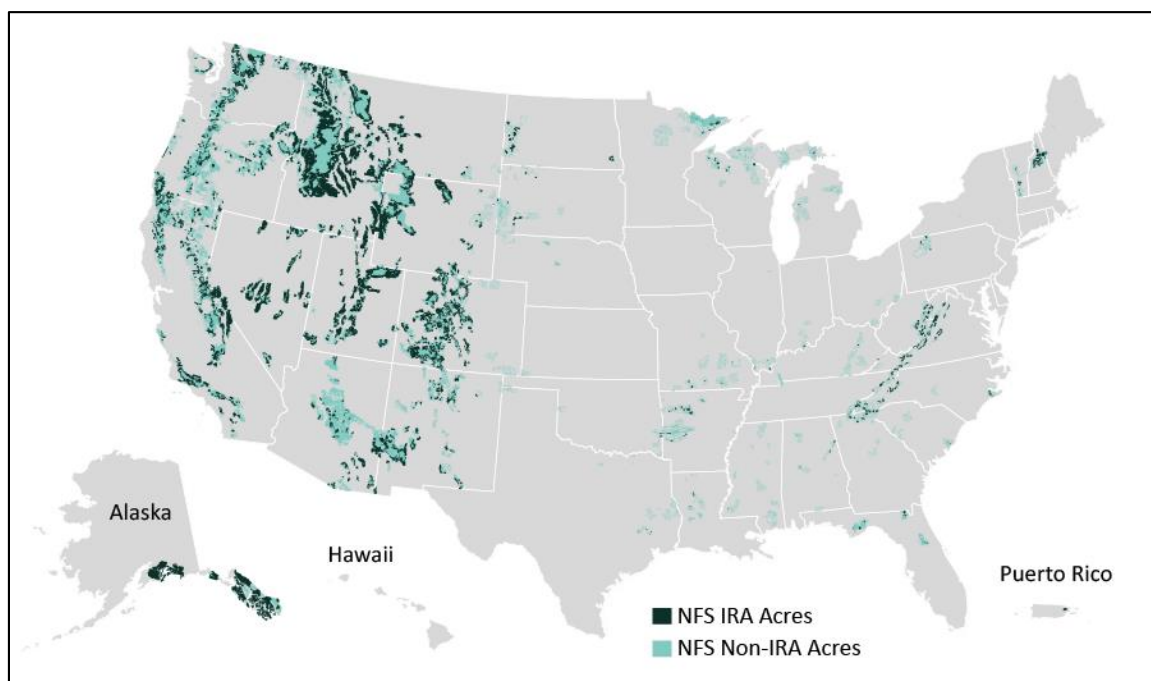
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## Introduction

Inventoried roadless areas (IRAs) are areas of the National Forest System (NFS) identified administratively by the Forest Service (FS) and managed according to regulations, known as *roadless rules*, that limit timber harvesting and road building.<sup>1</sup> For decades, the FS has inventoried and administratively designated undeveloped areas of the NFS under various names, and managed these areas to preserve their undeveloped qualities. In 2001, the FS issued the first roadless rule and defined the modern-day IRAs, setting the framework for modern FS management of these areas.

The NFS includes approximately 193 million acres of land located in more than 150 national forests and grasslands.<sup>2</sup> NFS lands cover large portions of some states, especially in the West. IRAs comprise approximately 58.2 million acres of NFS lands, constituting roughly 30% of NFS lands. IRAs are highly concentrated in a few states (see **Figure 1**). Thus, the scale of the roadless rules, and associated impacts to NFS lands, resources, and adjacent communities, has generated high interest, particularly in states where a large proportion of NFS lands are affected.

**Figure 1. Inventoried Roadless Areas (IRAs)**



**Source:** Congressional Research Service (CRS), from Forest Service (FS), FS Geodata Clearinghouse, “Roadless Areas: 2001, Idaho, and Colorado Rules Combined,” and U.S. Geological Survey, Protected Areas Database of the United States.

**Notes:** Given the relatively small acreage of some IRAs, not all IRAs may be visible on this map. Due to limitations in the map’s resolution, IRAs may not be accurate as relative areas of the National Forest System (NFS). *NFS Non-IRA Acres* includes all areas of the National Forest System that are not IRAs.

<sup>1</sup> For more information on the National Forest System (NFS), see CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle.

<sup>2</sup> U.S. Department of Agriculture (USDA), Forest Service (FS), *Land Areas Report (LAR)*, 2019.

Congress has weighed in on the issue of IRAs at numerous points and continues to actively consider FS roadless area management through legislative and oversight activities. Congress may continue to exercise these prerogatives in regard to various aspects of the issue, such as whether roadless area designation is an appropriate activity for the executive branch and, if so, at what scale; specific provisions of the roadless rules themselves, either nationwide or in specific areas; the appropriate level of state involvement; and other issues.

This report provides an overview of FS roadless area management. It provides a historical overview of FS roadless area policy, including the legal challenges surrounding the Roadless Area Conservation Rule of 2001 (*2001 Rule*). The report also covers the definition of IRAs, IRA statistics, and FS management of IRAs under current FS regulations. It concludes with a discussion of issues and options that Congress may wish to consider in the context of FS roadless area management.

## History of Forest Service Roadless Area Management

The publication of the first roadless rule in 2001 is the most recent phase in a long history of FS efforts to manage undeveloped NFS lands. The FS has sought to identify NFS lands with undeveloped conditions and provide for special management of those lands since early in its history. The first such areas were approved or planned at the regional level through recreation planning on individual national forests. For example, beginning in 1924, FS district foresters approved or planned the administrative designation of *wilderness areas* in district recreation plans in several states. Road building, summer home construction, and other activities were temporarily restricted in these areas.<sup>3</sup>

In the 1930s, the FS issued the first nationwide regulations for undeveloped areas, the so-called *L regulations*. The L regulations directed the Chief of the FS to administratively designate *primitive areas*, to be managed for “primitive conditions of environment, transportation, habitation, and subsistence.”<sup>4</sup> Construction of permanent improvements, occupancy under special-use permits, and other activities were not allowed in these areas.<sup>5</sup> The FS had designated approximately 14 million acres of primitive areas by 1939.<sup>6</sup> In 1939, the FS superseded the L-regulations through the so-called *U regulations*, which authorized the Secretary of Agriculture to designate *wilderness* and the Chief of the FS to designate *wild areas*. Roads, motorized transport, commercial timber harvesting, and occupancy under special-use permits were prohibited in both wilderness and wild areas.<sup>7</sup>

<sup>3</sup> Dennis Roth, “The National Forests and the Campaign for Wilderness Legislation,” *Journal of Forest History*, vol. 28, no. 3 (1984).

<sup>4</sup> FS, “Forest Service Policy Covering Preservation of Natural Areas,” Regulation L-20, National Forest Manual, July 12, 1929, as amended August 7, 1930. This regulation predates the *Federal Register*.

<sup>5</sup> FS, “Lands,” 1 *Federal Register* 1100, August 15, 1936.

<sup>6</sup> Robert Glicksman, “Wilderness Management by the Multiple Use Agencies: What Makes the Forest Service and the Bureau of Land Management Different?,” *Environmental Law*, vol. 44, no. 447 (2014), p. 447. Hereinafter cited as Glicksman, “Wilderness Management.”

<sup>7</sup> FS, “Land Use,” 4 *Federal Register* 3994, September 20, 1939. FS undeveloped area regulations were issued under the Organic Administration Act of 1897 (16 U.S.C. §473-476).

The Wilderness Act of 1964 created the National Wilderness Preservation System and designated FS wild and wilderness areas as parts of that system.<sup>8</sup> The law specified further actions for the FS in regard to remaining primitive areas, which had not all been redesignated as wild or wilderness areas after the U regulations were issued. These primitive areas today form part of the basis for the IRAs.

## Roadless Area Inventories

The Wilderness Act directed the Secretary of Agriculture to review the wilderness potential of NFS primitive areas and to make recommendations to the President about the suitability of those lands for wilderness designation, within 10 years of the act's passage (i.e., by 1974).<sup>9</sup> The act provided that the President "shall advise" Congress regarding wilderness designation of those areas, including revising the boundaries of proposed wildernesses (e.g., by "recommending the addition of any contiguous area of national forest lands predominantly of wilderness value").<sup>10</sup> The FS conducted two inventories of NFS lands under this authority. As discussed below, courts enjoined both inventories, and neither inventory was presented to Congress. Legal decisions also constrained FS management actions in areas related to the inventories.

The FS referred to the first such inventory as the Roadless Area Review and Evaluation (RARE I). RARE I included previously identified NFS primitive areas as well as other undeveloped areas.<sup>11</sup> The FS recommended 12.3 million acres for possible wilderness designation in RARE I.<sup>12</sup> However, RARE I was abandoned following a judicial ruling that the agency had failed to comply with the National Environmental Policy Act (NEPA) in conducting a timber sale in the Teton National Forest.<sup>13</sup> The FS began a second review (RARE II) in 1977, which recommended 15.1 million acres for possible wilderness designation by Congress.<sup>14</sup> However, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) found that the agency again failed to comply with NEPA requirements in promulgating RARE II.<sup>15</sup> In the case of RARE II, the Ninth Circuit again

<sup>8</sup> P.L. 88-577, §3a, 16 U.S.C. §1132a. The Wilderness Act designated all existing FS *wild*, *wilderness*, and *canoe* areas as part of the National Wilderness Preservation System (NWPS). *Canoe* areas referred to a single administratively designated FS area, the Boundary Waters Canoe Area. For more information on wilderness, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

<sup>9</sup> Pub. L. No. 88-577 §3(b), 16 U.S.C. §1132(b) ("The Secretary of Agriculture shall, within ten years after September 3, 1964, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the national forests classified on September 3, 1964 by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President.")

<sup>10</sup> Pub. L. No. 88-577 §3(a), 16 U.S.C. §1132(a).

<sup>11</sup> FS, *Roadless and Undeveloped Areas Draft Environmental Statement: Selection of Proposed New Study Areas from Roadless and Undeveloped Areas of the National Forests*, January 1973. Notice of availability given at FS, "Selection of Proposed New Study Areas from Roadless and Undeveloped Areas of the National Forests: Notice of Availability of Draft Environmental Statement," 38 *Federal Register* 2774, January 30, 1973.

<sup>12</sup> *Id.*

<sup>13</sup> National Environmental Policy Act (NEPA), 42 U.S.C. §§4321-4370m-12. *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1221 (10<sup>th</sup> Cir. 2011), citing *Wyoming v. U.S. Dep't of Agric. Outdoor Coordinating Council v. Butz*, 484 F.2d 1244, 1246 (10<sup>th</sup> Cir. 1973) (overruled, in part, on unrelated grounds by *Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970, 973 (10<sup>th</sup> Cir. 1992)).

<sup>14</sup> FS, *Roadless Area Review and Evaluation II: Final Environmental Statement*, January 1979. Notice of availability given at FS, "Receipt of Environmental Impact Statements," 44 *Federal Register* 3087, January 15, 1979.

<sup>15</sup> *California v. Block*, 690 F.2d 753, 775 (9<sup>th</sup> Cir. 1982).



enjoined the FS from releasing areas not recommended for wilderness designation, which included 47 million acres recommended for either further study or non-wilderness use.<sup>16</sup>

The ongoing legal issues with FS inventories, and the associated limits on timber harvesting, road building, and other management actions, generated considerable congressional debate and interest.<sup>17</sup> In the 1980s, Congress enacted a number of state-specific wilderness laws.<sup>18</sup> These laws designated millions of acres inventoried in RARE I and II as wilderness, specified some areas for further study as potential wilderness, and released remaining RARE I and II lands from potential wilderness designation.<sup>19</sup> Management direction for the remaining RARE I and II areas was determined at the national forest level, through individual FS land and resource management plans (*forest plans*).<sup>20</sup>

## The 2001 Roadless Rule

In the late 1990s, under the Clinton Administration, the FS began a process of returning to administratively designating and managing undeveloped NFS lands at the system level. In January 2001, after a 14-month rulemaking process, the FS promulgated the first roadless rule.<sup>21</sup> The 2001 Rule both defined and designated modern IRAs, which were based (in part) on RARE I and II areas not designated as wilderness. It prohibited timber harvesting, road construction, or road reconstruction in inventoried roadless areas except under specified conditions (see “Inventoried Roadless Area Management” for more information on the provisions of the 2001 Rule).

When the 2001 Rule was promulgated, the FS indicated that several issues warranted a nationwide rule, as opposed to the existing system of roadless area management at the unit level. In the explanatory text accompanying the rule, and in the final environmental impact statement for the 2001 Rule, the FS discussed the following issues:

<sup>16</sup> *Id.* at 765.

<sup>17</sup> See, e.g., *Hearing on RARE II Wilderness Proposals*, S. Comm. on Agric., Nutrition, and Forestry, Subcomm. on Env., Soil Conservation, and Forestry, 96<sup>th</sup> Cong. (1979), and *Hearing on Rare II Review Act of 1981*, S. Comm. on Energy and Nat. Res., Subcomm. on Public Lands and Reserved Water, 97<sup>th</sup> Cong. (1981).

<sup>18</sup> For example, in 1984, 18 state-specific wilderness acts were passed. See Michael Blumm and Andrew Erickson, *Federal Wild Lands Policy in the Twenty-First Century: What a Long, Strange Trip It's Been*, 25 COLO. N. RESOURCES ENERGY & ENVTL. L. REV. 1, 14 (2014).

<sup>19</sup> For example, the Arizona Wilderness Act of 1984 (P.L. 98-406) designated approximately 1.1 million acres of wilderness. The law specified parcels of NFS lands to be studied further for potential wilderness designation and released remaining NFS lands in Arizona that were reviewed in the RARE II program, and Arizona NFS roadless lands of less than 5,000 acres, from further wilderness review by the USDA. H.R. 406 provides that areas in Arizona reviewed in RARE II that were not designated wilderness or wilderness study shall be managed for multiple use. See also Robert Glicksman and George Coggins, *Wilderness in Context*, 76 DENV. U. L. REV. 383 (1999).

<sup>20</sup> Michael Anderson, *The Roadless Rule: A Tenth Anniversary Assessment*, The Wilderness Society, 2011; hereinafter cited as Anderson, *Roadless Rule*. The National Forest Management Act of 1976 (P.L. 94-588) requires that the FS prepare a comprehensive land and resource management plan (*forest plan*) for each NFS unit. Forest plans specify desired resource conditions of the unit and inform decisions on how uses of the unit will be balanced, pursuant to any additional statutory authorities or requirements. See also CRS Report R43872, *National Forest System Management: Overview, Appropriations, and Issues for Congress*, by Katie Hoover and Anne A. Riddle. For a summary of management provisions for roadless areas in forest plans prior to the 2001 Rule, see FS, Chapter 3 in *Forest Service Roadless Area Conservation, Final Environmental Impact Statement*, vol. 1, November 2000.

<sup>21</sup> FS, “Special Areas; Roadless Area Conservation,” 66 *Federal Register* 3244, January 12, 2001.



- **Cumulative Impacts of Roads and Timber Harvesting.** The FS specified a number of negative impacts of these activities in issuing the 2001 Rule, such as fragmentation and degradation of habitat; increased erosion, runoff, and slope instability; reduced water quality for wildlife and human uses; and increased human disturbances in remote areas (such as increased frequency of human-caused fires.)<sup>22</sup> The FS specified that, compared with other uses of roadless areas, road construction, road reconstruction, and timber harvesting had the greatest likelihood of creating such negative impacts, and their management at the unit level could result in significant cumulative losses to roadless area quantity and quality.<sup>23</sup>
- **Management and Fiscal Constraints Created by the NFS Road Network.** When the 2001 Rule was issued, the NFS road system was over 386,000 miles long.<sup>24</sup> The FS argued that budget constraints, coupled with the size of the forest road system, prevented the agency from managing the road system to required safety and environmental standards.<sup>25</sup> For example, in issuing the 2001 Rule, the FS indicated that there was an estimated \$8.4 billion in deferred maintenance and reconstruction on NFS roads and that, in addition to the 2001 Rule, it sought additional measures to control the transportation share of its budget.<sup>26</sup>
- **Costs of Litigation.** The FS asserted that controversy over roadless area management had been a major point of conflict in land management, generating “costly and time-consuming” litigation.<sup>27</sup> The FS specified that issuing a nationwide policy would reduce local appeals and litigation about activities addressed in the rule, which could avoid future costs to the agency.

The issuance of the 2001 Rule prompted more than a decade of conflict, through two primary means: (1) its revocation and replacement with an alternate rule in 2005 (*2005 Rule*) and (2) litigation challenging both rules.

## A Decade of Uncertainty: The 2001 and 2005 Rules

The controversy over FS management of IRAs has been shaped by the issuance of two contrasting rules and ongoing legal challenges to those rules. At certain points, federal courts were in conflict, leading to uncertainty over which rule (if any) was in effect. Furthermore, as a result of related rulemaking efforts during this period (see the “State-Specific Rules and Provisions” section, below), even after resolution of the legal challenges to the nationwide rules, a patchwork of differing roadless rules remains in effect for some states.

<sup>22</sup> *Id.* at 3244 and 3246-3247, and at USDA, FS, *Forest Service Roadless Area Conservation: Final Environmental Impact Statement, Volume 1*, November 2000, at ES-5 and 1-14 through 1-17. Hereinafter cited as 2001 Rule FEIS.

<sup>23</sup> 2001 Rule, at 3246. The FS acknowledged that other activities create impacts to roadless areas but specified that these other activities’ effects were difficult to analyze at the national level and were best handled through forest-level planning. *Id.* at 3244.

<sup>24</sup> *Id.* at 3245.

<sup>25</sup> *Id.* at 3245-3246.

<sup>26</sup> *Id.* at 3245.

<sup>27</sup> *Id.* at 3244.

## Challenges to the 2001 Rule

Upon the transition between Administrations in late January 2001, the incoming George W. Bush Administration postponed for 60 days the effective date of any regulations not yet in effect, which included the 2001 Rule.<sup>28</sup> In May 2001, before the 2001 Rule's effective date, a federal district court in Idaho granted an injunction to block implementation of the 2001 Rule, based on a finding that alleged flaws in the NEPA process for the rule could result in irreparable harm.<sup>29</sup> This ruling was reversed on appeal by the Ninth Circuit in December 2002, with the court finding that the plaintiffs had not demonstrated a "substantial likelihood of success on the merits" of their NEPA claims.<sup>30</sup> As a result, the Ninth Circuit reinstated the 2001 Rule.<sup>31</sup>

On July 14, 2003, the federal District Court of Wyoming enjoined the 2001 Rule, finding that the FS had violated NEPA in several respects.<sup>32</sup> The court also equated the roadless areas with de facto wilderness, finding substantial similarities in the consequences of the two designations.<sup>33</sup> Finally, the court concluded that the rule itself was a "thinly veiled attempt to designate 'wilderness areas' in violation of the clear and unambiguous process established by the Wilderness Act for such designation."<sup>34</sup> As discussed below, on appeal, the Tenth Circuit vacated the district court decision.<sup>35</sup>

## The 2005 Rule

In 2005, the Bush Administration issued new roadless area regulations,<sup>36</sup> sometimes called the *State Choice Rule* and referred to here as the *2005 Rule*. The 2005 Rule gave state governors 18 months to submit petitions to the Secretary of Agriculture requesting adoption of special rules governing roadless area management within their respective states.<sup>37</sup>

Governors' response to the 2005 Rule was mixed. Many states did not file petitions. Of those that did, most sought to preserve existing roadless areas under the same protections provided under the 2001 Rule, though some sought to reduce roadless acreage or increase development.<sup>38</sup>

## After the 2005 Rule: Challenges, Injunctions, and Uncertainty

In August 2005, a group of states and environmental organizations filed a legal challenge to the 2005 Rule. The plaintiffs alleged that the 2005 Rule offered less protection and a more localized approach than the 2001 Rule,<sup>39</sup> and thus required environmental analysis under NEPA and

<sup>28</sup> Andrew H. Card, Jr., *Memorandum for the Heads and Acting Heads of Executive Departments and Agencies* (Jan. 20, 2001).

<sup>29</sup> *Kootenai Tribe of Idaho v. Veneman*, 2001 WL 1141275 (D. Idaho 2001).

<sup>30</sup> *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1123 (9<sup>th</sup> Cir. 2002).

<sup>31</sup> *Id.* at 1126.

<sup>32</sup> *Wyoming v. U.S. Dep't of Agric.*, 277 F. Supp. 2d 1197, 1231-32 (D. Wyo. 2003).

<sup>33</sup> *Id.* at 1236.

<sup>34</sup> *Id.* at 1239 (D. Wyo. 2003).

<sup>35</sup> *Wyoming v. U.S. Dep't of Agric.*, 414 F.3d 1207 (10<sup>th</sup> Cir. 2005).

<sup>36</sup> 70 *Federal Register* 25,654 (May 13, 2005).

<sup>37</sup> *Id.*

<sup>38</sup> States that filed to protect all of their roadless areas are California, New Mexico, North Carolina, South Carolina, and Virginia. Petitions from Colorado and Idaho recommended development in some of the inventoried roadless areas.

<sup>39</sup> The states of California, Oregon, and New Mexico filed a lawsuit in the federal District Court for Northern

consultation under the Endangered Species Act (ESA).<sup>40</sup> In a summary judgment effective September 20, 2006, the federal District Court of Northern California set aside the 2005 Rule and reinstated the 2001 Rule until the FS complied with NEPA and ESA.<sup>41</sup> The court also “enjoined from taking any further action contrary to the Roadless Rule without undertaking environmental analysis consistent with this opinion.”<sup>42</sup> On November 29, 2006, the district court clarified that its previous order prohibited the FS from taking any management activities that would have been banned under the 2001 Rule.<sup>43</sup> This had the effect of, among other things, nullifying oil and gas leases that had been issued under the 2005 Rule.<sup>44</sup>

The promulgation of the 2005 Rule also impacted ongoing litigation related to the 2001 Rule. On July 11, 2005, the Tenth Circuit vacated the Wyoming district court’s decision that had enjoined the 2001 Rule, holding that the 2005 Rule mooted the dispute over the 2001 Rule.<sup>45</sup> This created a disparity between the Ninth Circuit, which had held that the 2001 Rule was in effect, and the Tenth Circuit, which had enjoined the 2001 Rule.

Following the injunction of the 2005 Rule, the State of Wyoming filed a new legal challenge to the 2001 Rule.<sup>46</sup> In 2008, the District Court of Wyoming again enjoined the 2001 Rule, finding that it was issued in violation of NEPA.<sup>47</sup> The Wyoming court acknowledged the California decision that had enjoined the 2005 Rule, saying that “the [Wyoming] Court is disturbed, and frankly shocked” that the California court reinstituted the 2001 Rule, which the Wyoming court had concluded violated the law.<sup>48</sup>

Faced with this uncertainty, the FS filed motions in both the Wyoming and California district courts to suspend the injunctions so as not to risk violating one of the injunctions in the course of administering IRAs.<sup>49</sup> In response to the FS motion, the district court in California issued a ruling in December 2008 limiting the scope of the injunction by reinstating the 2001 Rule only to New Mexico and the 10 Western states and territories within the Ninth Circuit.<sup>50</sup> In 2009, the Ninth

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California challenging the 2005 Rule on August 28, 2005. Environmental groups also filed suit to challenge the rule, and the cases were consolidated. The State of Washington joined the states’ suit as a plaintiff intervenor. Montana and Maine filed an amicus brief on behalf of plaintiffs. However, Alaska and Wyoming filed an amicus brief on behalf of defendants.

<sup>40</sup> Endangered Species Act, 16 U.S.C. §§1531-44. *California v. U.S. Dep’t of Agric.*, 459 F. Supp. 2d 874, 882 (N.D. Cal. 2006).

<sup>41</sup> *Id.*

<sup>42</sup> *California v. U.S. Dep’t of Agric.*, 459 F. Supp. 2d at 919.

<sup>43</sup> *California v. U.S. Dep’t of Agric.*, 468 F. Supp. 2d 1140 (N.D. Cal. 2006).

<sup>44</sup> *Id.* at 1149.

<sup>45</sup> *Wyoming v. U.S. Dep’t of Agric.*, 414 F.3d 1207, 1212 (10<sup>th</sup> Cir. 2005).

<sup>46</sup> *Wyoming v. U.S. Dep’t of Agric.*, 570 F. Supp. 2d 1309, 1318 (D. Wyo. 2008).

<sup>47</sup> *Id.* at 1350. Initially, the State of Wyoming moved to reinstate the 2003 Wyoming district court decision enjoining the 2001 Rule. However, the 2003 decision had been appealed, and the Tenth Circuit dismissed it as moot based on adoption of the 2005 Rule. The federal District Court of Wyoming refused to consider Wyoming’s action to revive the 2003 ruling, holding it lacked the authority. Therefore, the State of Wyoming brought a new suit. *Wyoming v. U.S. Dep’t of Agric.*, No. 01-CV-86 (D. Wyo. June 7, 2007).

<sup>48</sup> *Wyoming*, 570 F. Supp. 2d at 1352.

<sup>49</sup> *California v. U.S. Dep’t of Agric.*, 710 F. Supp. 2d 916, 919 (N.D. Cal. 2008).

<sup>50</sup> *Id.* at 921. The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, the Northern Mariana Islands, Oregon and Washington. New Mexico was included even though it is not part of the Ninth Circuit because the state was a plaintiff in the case.

Circuit affirmed the lower court's decision enjoining the 2005 Rule, returning the 2001 Rule to effect in the relevant jurisdictions.<sup>51</sup>

## Resolution

In October 2011, the FS appealed the 2007 Wyoming district court decision enjoining the 2001 Rule, arguing it was improper.<sup>52</sup> The Tenth Circuit agreed with the FS and upheld the 2001 Rule, vacating the injunction imposed by the Wyoming district court.<sup>53</sup> In reinstating the 2001 Rule in the Tenth Circuit, the court rejected arguments that the 2001 Rule violated NEPA and created de facto wilderness in violation of the Wilderness Act.<sup>54</sup> As a result, the 2001 Rule is currently in effect throughout the United States, except in Colorado and Idaho, as discussed in the following section.

## State-Specific Rules and Provisions

At various periods, individual states have sought state-specific policies for roadless area management on NFS lands within their borders. States, especially states containing large areas of NFS lands or IRAs (or both), have contended that a nationwide rule creates disproportionate burdens on adjacent areas and reduces land managers' abilities to make site-specific management decisions. At times, the USDA has been responsive to these arguments; at other times, the USDA has issued nationwide policies. Thus, state-specific policies have been pursued through both executive and judicial means.

The 2005 Rule created a process for developing state-specific policies, but no state-specific policies were issued under it due to the Ninth Circuit's injunction of the rule (see "After the 2005 Rule: Challenges, Injunctions, and Uncertainty"). However, prior to the injunction, a number of states had submitted petitions under the 2005 Rule. In response, petitions for roadless area management for two states, Colorado and Idaho, were processed under the Administrative Procedure Act (APA) rather than under the 2005 Rule.<sup>55</sup> The Colorado and Idaho Roadless Rules remain in effect as of the publication of this report.

States also have sought specific policies through legal challenges to nationwide rules. For example, the State of Alaska petitioned the courts for exemption from the 2001 Rule several times, first in 2003. In December 2003, the Bush Administration exempted the Tongass National Forest's inventoried roadless areas from the roadless rule through a settlement following Alaska's 2003 suit.<sup>56</sup> In 2018, Alaska petitioned the USDA for a state-specific roadless rule, a request which USDA granted; that rulemaking is ongoing as of the publication of this report.

<sup>51</sup> *California v. U.S. Dep't of Agric.*, 575 F.3d 999, 1005 (9<sup>th</sup> Cir. 2009).

<sup>52</sup> *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1220 (10<sup>th</sup> Cir. 2011).

<sup>53</sup> *Id.* at 1272.

<sup>54</sup> *Id.* at 1229-34.

<sup>55</sup> 5 U.S.C. §553(e), 7 C.F.R. §1.28. On October 4, 2006, the charter for the advisory committee responsible for considering state petitions was formally amended to direct the committee's review of state petitions under the Administrative Procedure Act and associated regulations. FS, "Roadless Area Conservation National Advisory Committee," 71 *Federal Register* 58577, October 4, 2006.

<sup>56</sup> FS, "Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska," 68 *Federal Register* 75136, December 30, 2003.

# Inventoried Roadless Areas: Definition, Description and Statistics

*Inventoried roadless area* is an administrative land designation for areas of the NFS that were simultaneously defined and designated in the 2001 Rule. It is in effect for 48 of 50 states. The 2001 Rule defined IRAs as “areas identified in a set of inventoried roadless area maps, contained in the Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, and any subsequent update or revision of those maps through the land management planning process.”<sup>57</sup> The FS derived the 2001 IRAs primarily from lands surveyed for potential inclusion in the National Wilderness Preservation System pursuant to the Wilderness Act of 1964 (e.g., the RARE inventories; see “Roadless Area Inventories”).<sup>58</sup> Some areas were derived from lands inventoried pursuant to other laws or as part of the forest planning process.<sup>59</sup>

The definition specified in the 2001 Rule applies to IRAs in all states except Colorado and Idaho, which have individual rules for roadless area management (see “State-Specific Rules: Colorado and Idaho,” below). IRAs for these states are also defined and designated through a set of maps that accompanied their individual roadless rules.<sup>60</sup> Although Colorado’s and Idaho’s IRAs are defined in each state’s respective rules, they are generally derived from the 2001 IRAs for these states. For the purposes of this report, *IRAs* will refer to IRAs defined in the 2001 Rule, the Colorado Roadless Rule, and the Idaho Roadless Rule.

## What Characteristics Do Inventoried Roadless Areas Have?

Given the map-based definition of IRAs and the disparate historical origins of the areas designated as IRAs, it is sometimes unclear what precise criteria were used to include, exclude, or delineate designated areas or what characteristics these areas have. However, various descriptive criteria exist, both in the 2001 Rule itself and in the inventories on which it was based.

Explanatory material accompanying the 2001 Rule described IRAs as potentially having some or all of the following characteristics, known as *roadless area characteristics*:

- High-quality or undisturbed soil, water, or air
- Sources of public drinking water
- Diversity of plant and animal communities

<sup>57</sup> 2001 Rule, p. 3246, and 2001 Rule FEIS.

<sup>58</sup> 2001 Rule, p. 3246, and 2001 Rule FEIS.

<sup>59</sup> The FS must develop and maintain an inventory of all NFS lands and renewable resources and land and resource management plans (*forest plans*) for units of the NFS (16 USC §§1603-1604). The Eastern Wilderness Act of 1975 (P.L. 93-622) directed that 17 areas in national forests in Arkansas, Florida, Michigan, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin be studied for “suitability for nonsuitability” for inclusion in the NWPS.

<sup>60</sup> FS, “Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho,” 73 *Federal Register* 1135, January 7, 2008, hereinafter cited as Idaho Rule, and FS, “Special Areas; Roadless Area Conservation; Applicability to the National Forests in Colorado,” 77 *Federal Register* 39576, July 3, 2012, hereinafter cited as Colorado Rule.

- Habitat for threatened, endangered, proposed, candidate, and sensitive species and for species dependent on large, undisturbed areas of land<sup>61</sup>
- Primitive, semi-primitive nonmotorized, and semi-primitive motorized classes of dispersed recreation
- Reference landscapes<sup>62</sup>
- Natural appearing landscapes with high scenic quality
- Traditional cultural properties and sacred sites
- Other locally identified unique characteristics<sup>63</sup>

Some aspects of IRAs management (for example, timber harvesting) are based on maintaining or enhancing roadless area characteristics.

Many lands that became IRAs in the 2001 Rule initially were inventoried for potential designation as wilderness, within the purpose and meaning of the Wilderness Act. Thus, the inventory criteria for these areas often centered on identifying and determining whether areas met the criteria for wilderness consideration under the Wilderness Act.<sup>64</sup> For example, the RARE II inventory criteria focused on areas without improved roads but specified that the lands could include some other development, such as evidence of past timber harvesting or mining, range improvements, or minor recreation sites, if the area appeared natural (and therefore could still provide wilderness benefits to the public).<sup>65</sup> However, these inventories were sometimes conducted prior to the 2001 Rule's issuance. Therefore, it is possible that some of these characteristics changed in the intervening period. For example, the FS specified that in 2001 (prior to the 2001 Rule's issuance), road construction was allowed on 34.3 million acres of IRAs and approximately 2.8 million acres of IRAs had been "roaded" or developed.<sup>66</sup>

## Inventoried Roadless Area Statistics

IRAs constitute roughly one-third of all NFS lands, or approximately 58.2 million acres. NFS lands constitute approximately 193 million acres, or 6% of the U.S. land base; thus, IRAs cover approximately 3% of the land base in the continental United States (see **Figure 1**).<sup>67</sup> As shown in

<sup>61</sup> For definitions of terms (such as *endangered*) related to the Endangered Species Act (P.L. 93-205), see CRS Report RL31654, *The Endangered Species Act: A Primer*, by Pervaze A. Sheikh.

<sup>62</sup> *Reference landscapes* are areas that are generally unaltered by human activity and as such can act as baselines in scientific research on changes to the natural environment.

<sup>63</sup> 2001 Rule.

<sup>64</sup> The Wilderness Act defined wilderness as

an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

P.L. 93-622, §1(c). For more information, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

<sup>65</sup> FS, *Roadless Area Review and Evaluation II: Final Environmental Statement*, January 1979, p. 6.

<sup>66</sup> FS, *National Forest System Road Management Strategy Final Environmental Assessment*, January 2001, p. 40.

<sup>67</sup> CRS, from data provided by the FS legislative affairs office, March 20, 2020. This acreage is smaller than the 58.5

**Figure 2**, IRAs are overwhelmingly concentrated in the West, with more than 96% of all IRAs located in 12 western states.<sup>68</sup> Alaska, the largest state, is also the state with the most NFS and IRA acres, containing over 25% of all IRA acreage. However, states with more NFS acres do not necessarily have the most IRA acres. For detailed information on state IRA acres, see **Appendix A**.

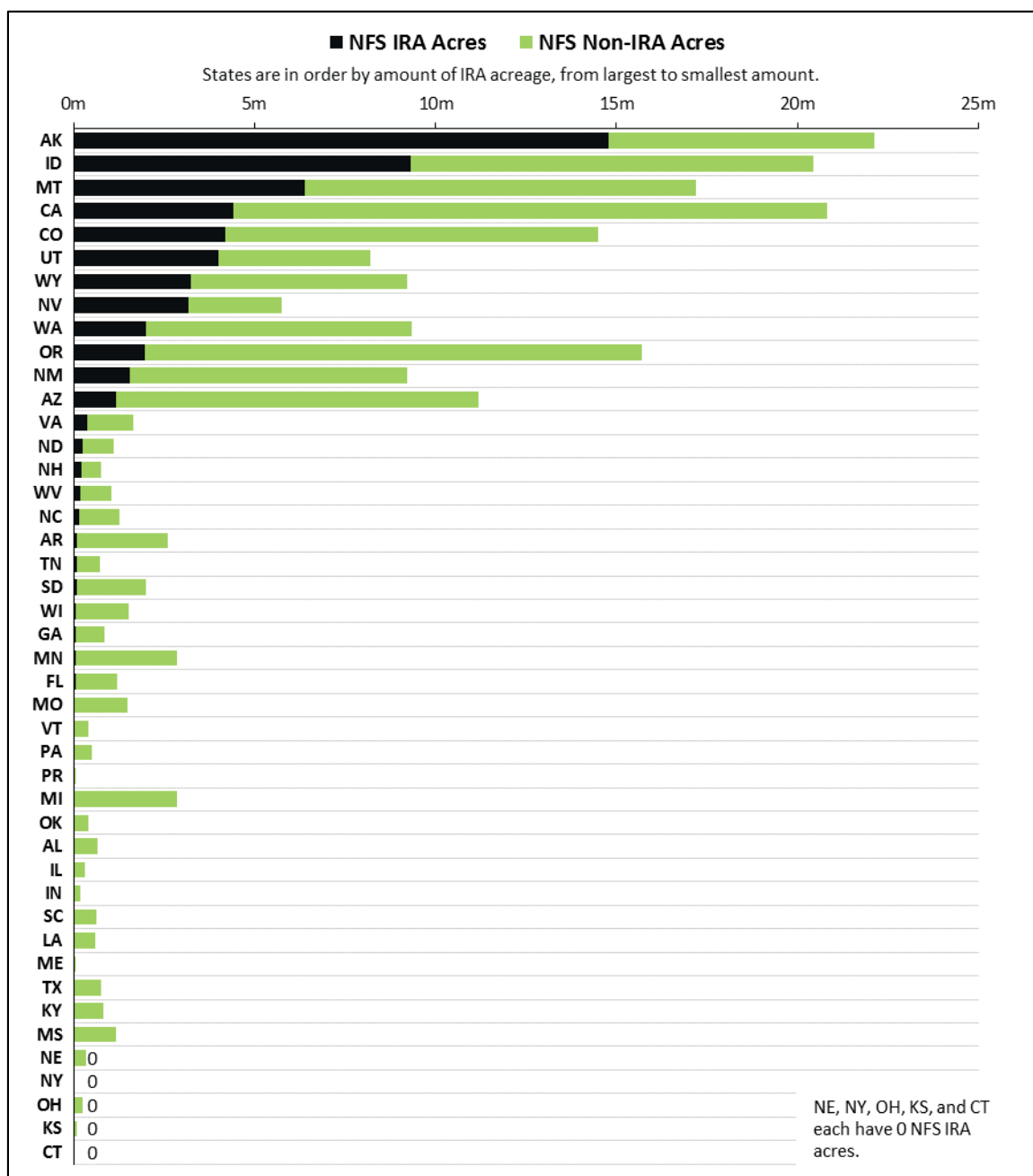
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million acres specified in the *2001 Rule*, for unclear reasons. Some reasons could include improvements in mapping technology since the publication of the 2001 Rule, changes in land designation due to congressional action (for example, designation of IRAs as wilderness), or other factors.

<sup>68</sup> These states are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.



**Figure 2. Inventoried Roadless Areas (IRAs) and National Forest System (NFS) Lands**  
(in millions of acres)



**Source:** CRS. States are ordered from greatest to smallest IRA area. Calculation from inventoried roadless area data, Forest Service (FS) legislative affairs office, March 20, 2020; and National Forest System land area, FS, USDA, *Land Areas Report (LAR)*, 2019.

**Notes:** NFS Non-IRA Acres refers to NFS lands that are not IRAs. Total NFS acres are given by the sum of NFS Non-IRA Acres and NFS IRA Acres. Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, and Rhode Island contain no NFS lands and are not listed. Listed states contain NFS lands but may or may not contain IRAs.

## Inventoried Roadless Area Management

The 2001 Rule addressed two issues: roads and timber harvesting in IRAs. Specifically, the 2001 Rule placed restrictions on road construction, road reconstruction, and timber harvesting in IRAs. These restrictions apply to 48 states, with separate rules governing IRAs management in Colorado and Idaho. The rules for these two states are discussed under the heading “State-Specific Rules: Colorado and Idaho.” The following sections refer to IRAs management in the remaining states under the 2001 Rule.

### Roads

The 2001 Rule defines three types of roads within the NFS (see **Table 1**) and specifies under what conditions road construction, reconstruction, or maintenance of NFS roads may occur on each road type. Some road definitions given in the 2001 Rule relate to the *forest transportation system*, the overall system of roads, trails, and airfields on NFS lands. The forest transportation system consists of *forest roads and trails*, which the FS authorizes and manages as needed for the administration of the NFS and its resources, and *NFS roads and trails*, which the FS authorizes through a legally documented right-of-way with a state, county, or other local public road authority, primarily for regional transportation purposes.<sup>69</sup>

**Table 1. National Forest System (NFS) Road Types, 2001 Roadless Rule**

Classified Road	Unclassified Road	Temporary Road
A road wholly within, partially within, or adjacent to NFS lands that is determined to be needed for long-term motor vehicle access, including state roads, county roads, privately owned roads, NFS roads, and other roads authorized by the Forest Service.	A road on NFS lands that is not managed as part of the forest transportation system, such as unplanned roads, abandoned roads, and off-road vehicle tracks that have not been designated and managed as a trail and roads that were once authorized but were not decommissioned when the authorization ended.	A road authorized by the Forest Service through a contract, permit, lease, other written authorization, or emergency operation, not intended to be part of the forest transportation system and not necessary for long-term resource management.

**Source:** Forest Service, “Special Areas; Roadless Area Conservation,” 66 *Federal Register* 3244, January 12, 2001.

The 2001 Rule addresses road *construction* (building a new road) and *reconstruction*, which includes both road realignment (i.e., relocating the roadway) and improvement (i.e., expanding a road’s capacity or changing its function).<sup>70</sup> Under the 2001 Rule, the three road types may not be constructed or reconstructed in IRAs except in specified circumstances:<sup>71</sup>

- A road is needed to protect health and safety in cases of imminent danger, such as wildfire
- A road is needed to conduct a response action to mitigate environmental hazards under the Comprehensive Environmental Response, Compensation, and Liability

<sup>69</sup> 36 C.F.R. §212.1

<sup>70</sup> 2001 Rule, Section 294.11.

<sup>71</sup> 2001 Rule, Section 294.12.

Act (CERCLA) or a restoration action under CERCLA, the Clean Water Act or the Oil Pollution Act<sup>72</sup>

- A statute or treaty provides for a road or one is needed in accordance with outstanding or reserved rights
- The Secretary of Agriculture determines that a federal aid highway project is in the public interest or is consistent with the purposes for which the land was reserved or acquired, and there is no alternative route or site<sup>73</sup>
- For the continuation, extension, or renewal of a mineral lease originally issued prior to 2001, provided such a road minimizes resource impacts and is removed at the termination of the lease or when no longer needed for the purposes of the lease

In addition, the rule allows for certain actions to be performed on only *classified roads* (see **Table 1**) under these specified circumstances:

- Classified roads may be realigned to prevent irreparable resource damage, if the damage cannot be mitigated by maintenance alone and if the road is deemed essential for health and safety, natural resource management, or public or private access
- Classified roads that are deemed hazardous to vehicle traffic may be reconstructed to improve road safety
- Classified roads may be maintained

Other than these specified circumstances, roads may not be constructed or reconstructed in IRAs. Although comprehensive data are unavailable, limited anecdotal information indicates that road construction and reconstruction still occur in IRAs.<sup>74</sup> The scale and purposes of such activities is unclear.

## Timber Harvesting

Under the 2001 Rule, timber may not be cut, sold, or removed from IRAs except under specified circumstances. “Generally small diameter timber” may be cut, sold, or removed if doing so will

<sup>72</sup> Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended; for more information, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by David M. Bearden. Clean Water Act, P.L. 92-500, as amended; for more information, see CRS Report RL30030, *Clean Water Act: A Summary of the Law*, by Laura Gatz; Oil Pollution Act, P.L. 101-380; for more information, see CRS Report RL33705, *Oil Spills: Background and Governance*, by Jonathan L. Ramseur.

<sup>73</sup> For more information on federal aid highways, see CRS Report R44332, *Federal-Aid Highway Program (FAHP): In Brief*, by Robert S. Kirk.

<sup>74</sup> Although comprehensive data are unavailable, examples of road construction and reconstruction for mining and timber sales predating the 2001 Rule (Anderson, *Roadless Rule*) for energy and infrastructure projects, to facilitate military uses, and to facilitate access to adjacent communities have been reported. USDA, FS, “Frequently Asked Questions Regarding Inventoried Roadless Areas in Alaska, 2018”; hereinafter cited as FS, “FAQs Regarding IRAs.” Because comprehensive information on road construction and reconstruction in IRAs is unavailable, it is unclear whether the scale of such activities changed after the 2001 Rule was issued. Anderson, *Roadless Rule*, found that, as of 2011, 75 miles of roads had been built in IRAs since 2001. In 2001 Rule FEIS, the FS had expected to construct or reconstruct 1,160 miles of roads in IRAs between 2000 and 2004, but it is unclear if this level of road construction and reconstruction would have occurred or if comparable levels of road construction and reconstruction occurred prior to 2001.

improve or maintain *roadless area characteristics* (see “What Characteristics Do Inventoried Roadless Areas Have?”) and will serve one of the following purposes:

- Improve habitat for endangered, threatened, proposed, or sensitive species, as defined under ESA<sup>75</sup>
- Restore ecosystem structure and function, such as reducing the likelihood of uncharacteristic wildfire

In addition, “generally small diameter timber” may be cut, sold, or removed if doing so will improve or maintain roadless area characteristics and if the following conditions are met:

- On the date of the rule’s publication, roadless area characteristics already had been substantially altered due to the construction of a classified road and subsequent timber harvest. In these cases, timber can be harvested only in the altered area
- The timber harvest is incidental to other management activities that are not otherwise prohibited
- The timber harvest is “needed and appropriate” for personal or administrative use<sup>76</sup>

Other than these specified circumstances, timber harvesting is not permitted in IRAs. Although comprehensive data are unavailable, limited anecdotal information indicates that timber harvesting still occurs in IRAs. The scale and purposes for such timber harvesting (for example, whether it relates to specified exceptions) are unclear.<sup>77</sup>

## Other National Forest System Uses Under the 2001 Rule

The 2001 Rule does not place restrictions on activities other than road construction, road reconstruction, and timber harvesting in IRAs. It specifies that activities that do not require the construction of new roads will be allowed, such as motorized uses of existing roads, off-highway motorized use in specified areas, livestock grazing, and energy and mineral development. Although comprehensive data are unavailable, the available information suggests a variety of uses continue to occur in IRAs. For example, energy-related projects (such as pipelines, hydropower facilities, and others) have been authorized.<sup>78</sup> However, the overall scale and scope of such activities are unclear.

<sup>75</sup> Endangered Species Act, P.L. 93-203. For more information, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by Pervaze A. Sheikh.

<sup>76</sup> “Generally small diameter timber” is referred to in *2001 Rule*, Section 294.13. The FS specified in *2001 Rule*, p.3257, that a description of what constitutes generally small diameter timber is not specifically included in the rule because such determinations are better guided by project- or forest plan-specific analyses due to variation in vegetation types. *Administrative use* includes FS activities such as research and demonstration projects; construction, maintenance, or repair of NFS resources (such as trails or fences); and management for multiple-use values and disaster relief by public agencies (36 C.F.R. §223.2). *Personal use* includes use by settlers, prospectors, miners, and residents within and immediately adjacent to NFS lands for personal use (such as firewood, building, or mining) or to protect and improve forests, in which case generally dead or damaged timber, or debris, may be used (36 C.F.R. §223.5).

<sup>77</sup> For example, Anderson, *Roadless Rule*, specified that timber harvesting for hazardous fuels reduction, to enlarge recreation sites, and to fulfill timber contracts issued before the 2001 Rule had been reported, without specifying the size of such activities. In another case, conservation groups alleged that timber harvesting had occurred on 18,000 acres of IRAs in Idaho and 32,000 acres in Montana over a decade. The purpose for this timber harvesting is unclear. Rob Chaney, “Conservation Groups Accuse Forest Service of Evading Roadless Rule,” *Missoulian*, March 31, 2019.

<sup>78</sup> Anderson, *Roadless Rule*; FS, “FAQs Regarding IRAs.”

Few data exist to confirm or dispute whether the 2001 Rule may have contributed to reductions in any given activity on NFS lands. The uncertainties related to both the FS policies and the legal status of roadless area management potentially influenced the behavior of NFS managers, prospective users, or both.

## State-Specific Rules: Colorado and Idaho

Under the provisions of the 2005 Rule, Colorado and Idaho (among other states) submitted requests for state-specific roadless area rulemakings. Although the rule was vacated prior to the individual rules being finalized, the FS specified that state-specific rulemakings would continue under the authority of the Administrative Procedure Act and subsequently issued state-specific rules for Colorado and Idaho (for more information, see “The 2005 Rule”).<sup>79</sup> Both rules established limitations regarding timber harvesting, road construction, and road reconstruction within the designated IRAs. Both rules also addressed topics not explicitly mentioned in the 2001 Rule, such as wildland fire, fish habitat, surface occupancy, and energy and mineral development.

### Idaho Rule

Idaho’s roadless rule (Idaho Rule) established five different management classifications within IRAs: Wild Land Recreation; Special Areas of Historic or Tribal Significance; Primitive; Backcountry/Restoration; and General Forest, Rangeland, and Grassland.<sup>80</sup> The Idaho Rule specifies a “management continuum” across these classifications related to the extent certain activities may occur.<sup>81</sup> Across the general categories mentioned above, the Idaho Rule places fewer restrictions on activities in General Forest, Rangeland, or Grassland areas and more restrictions on Wild Land Recreation areas. The FS identified 9.3 million IRA acres in Idaho that were subject to the Idaho Rule. The Idaho Rule was applied to approximately 9.0 million acres. The remaining acres, deemed *forest plan special areas*, were excluded.<sup>82</sup>

Like the 2001 Rule, the Idaho Rule addresses timber harvesting and road construction and reconstruction in Idaho IRAs. However, the Idaho Rule addresses other resources and land uses not explicitly mentioned in the 2001 Rule. For example, the Idaho Rule addresses energy and mineral development (e.g., the use or sale of common variety mineral materials) and associated road construction or reconstruction to access those mineral materials. The Idaho Rule also addresses surface occupancy for leases, contracts, permits, and other associated activities, which is not mentioned in the 2001 Rule.<sup>83</sup>

### Colorado Rule

Colorado’s roadless rule (Colorado Rule) established two different management classifications of IRAs: Upper Tier Acres and Non-Upper Tier Acres, with differential management provisions regarding timber harvesting, roads, and other developments between the two areas. In general, the Colorado Rule places more restrictions on Upper Tier Acres than on Non-Upper Tier Acres. The

<sup>79</sup> Administrative Procedure Act, P.L. 79-404.

<sup>80</sup> 36 C.F.R. §294.22.

<sup>81</sup> 36 C.F.R. §294.22.

<sup>82</sup> Idaho Rule, “Alternatives Considered.” *Forest plan special areas* are defined by map but include research natural areas, designated and eligible wild and scenic river corridors, developed recreation sites, or other areas with specified management purposes. 36 C.F.R. §294.21.

<sup>83</sup> 36 C.F.R. §294.25.

Colorado Rule applies to approximately 4.2 million acres of NFS lands, including roughly 410,000 acres not covered by the 2001 Rule. It does not apply to approximately 467,000 acres that were covered by the 2001 Rule.<sup>84</sup>

Like the 2001 Rule, the Colorado Rule addresses timber harvesting, road construction, and road reconstruction in Colorado IRAs. In contrast to the 2001 Rule, the Colorado Rule specifies that any authorized road construction or reconstruction (pursuant to the other provisions of the rule) must minimize and mitigate impacts to native cutthroat trout habitat.<sup>85</sup> The Colorado Rule also addresses timber harvesting and road construction under circumstances not explicitly mentioned in the 2001 Rule, such as to reduce wildfire risk or maintain authorized water conveyance structures.<sup>86</sup> Unlike the 2001 Rule, the Colorado Rule also addresses *linear facilities*, such as pipelines, telecommunications lines, canals, and power lines, and linear surface disturbances used to install or maintain them (*linear construction zones*).<sup>87</sup>

## Issues for Congress

Stakeholders continue to debate several issues regarding FS roadless area management. The appropriate scale (e.g., forest, state, or national) and authority (e.g., FS, Congress, or others) for designation and management of IRAs continue to be points of contention and have been particularly expressed through the disparities in different Administrations' rulemaking approaches. Debates surrounding the roadless rules also often center on the tradeoffs between resource development and resource protection inherent in their provisions. Since 2018, state-specific petitions to the FS for individual roadless rulemakings have reemerged and have been a focus of congressional, media, and other stakeholder attention. These issues often intersect in regard to specific IRA topics (e.g., ongoing FS state-specific rulemaking; see "Inventoried Roadless Areas in Alaska and Utah," below, for more information).

## Scope and Scale of Roadless Area Designation and Management

The appropriate scale and authority for designation and management of IRAs continue to be points of contention. At various times, different presidential Administrations have taken different stances on the topic. Disputes on this issue include practical concerns about impacts when policy is implemented at various scales, beliefs regarding appropriate authority across governmental units, and other concerns. Some examples of unresolved questions in this area include the following.

- **What branch of the federal government should make roadless area policy?**  
Some argue that only Congress may appropriately make decisions regarding federal lands and resources at the scale of the 2001 Rule.<sup>88</sup> Others contend that IRAs' designation and management through executive authority is appropriate, in

<sup>84</sup> Colorado Rule, "Decision Rationale," p.39583. The excluded areas were either "substantially altered" (approximately 459,000 acres) or were associated with ski areas (approximately 8,000 acres).

<sup>85</sup> 36 C.F.R. §294.43.

<sup>86</sup> 36 C.F.R. §294.42. Some road construction and reconstruction provisions were added in 2017. FS, "Roadless Area Conservation; National Forest System Lands in Colorado," 81 *Federal Register* 91811, December 19, 2016.

<sup>87</sup> 36 C.F.R. §294.41.

<sup>88</sup> Sandra Zellmer, "The Roadless Area Controversy: Past, Present, and Future," *University of Nebraska-Lincoln College of Law, Faculty Publications*, 2002, hereinafter cited as Zellmer, "Roadless Area Controversy."

that Congress has granted the FS substantial discretion to determine uses of NFS lands.<sup>89</sup>

- **What is the appropriate scale for roadless area policymaking?** At various times, federal roadless area policy has been made at subnational (such as forest and state) and national levels. Which of these scales is most appropriate for roadless area management is not a settled question. Some contend that management at subnational scales (such as forest plans or state-specific rules) is most appropriate, because local decisionmakers may have a better understanding of the effects of management choices on affected communities.<sup>90</sup> Others contend that national decisionmaking is necessary to account for collective impacts to roadless area characteristics.<sup>91</sup>
- **What role should state governments have?** At various times, state governments have been involved in roadless area policymaking (see “State-Specific Rules and Provisions”). The substance of such involvement has varied, but it has included federal adoption or consideration of policies proposed or developed by states.<sup>92</sup> Questions about the suitability of such involvement in federal roadless area policymaking often relate to the above debates regarding appropriate scale and authority. Some contend that rulemaking involvement by state governments better accounts for local conditions and is more appropriate for addressing local management challenges.<sup>93</sup> Others may view rulemaking involvement by state governments as an abdication of federal responsibility or as setting precedent for state control of federal land management, particularly if such involvement is extensive.<sup>94</sup> Such disputes can be particularly contentious in regard to states with large amounts of IRAs.

## Resources Under the Roadless Rules

The FS specified that one purpose of the 2001 Rule was to prevent a variety of negative impacts to roadless area characteristics by prohibiting certain resource uses and developments. The 2001 Rule specifically did not limit resource development activities other than timber harvesting, road construction, and road reconstruction.<sup>95</sup> Thus, debates surrounding the 2001 Rule often center on the desirability of these provisions. Stakeholders may support maintaining the rule’s current provisions, increasing prohibitions under the rule, decreasing prohibitions under the rule, or removing the rule altogether.

<sup>89</sup> Glicksman, “Wilderness Management.”

<sup>90</sup> Zellmer, “Roadless Area Controversy.”

<sup>91</sup> *2001 Rule*, “Purpose and Need.” For example, the FS specified that a nationwide rulemaking was the appropriate decisionmaking path for roadless area conservation because at “the national level, FS officials have [sic] the responsibility to consider the ‘whole picture’ regarding the management of the NFS.” *2001 Rule*.

<sup>92</sup> For example, the FS’s proposed rule for the State of Alaska is the same as the rule requested in Alaska’s petition to the USDA. Letter from Andrew T. Mack, Commissioner, Alaska Department of Natural Resources, to Sonny Perdue, Secretary of Agriculture, January 19, 2018. The FS’s final Colorado Rule adopted aspects of Colorado’s initial petition, but changes and specific provisions were adopted through the rulemaking process. For examples of changes to Colorado’s petition, see FS, “Side by Side Comparison of the 2009 Draft Petition and the 2010 Final Petition,” March 25, 2010.

<sup>93</sup> Zellmer, “Roadless Area Controversy”; *2005 Rule*, “Overview.”

<sup>94</sup> Juliet Eilperin, “Roadless Rules for Forests Set Aside,” *Washington Post*, July 13, 2004.

<sup>95</sup> *2001 Rule*, “Purpose and Need for Action.”



Some proponents of the 2001 Rule seek to maintain the rule's current provisions or broaden its prohibitions, often to maintain or enhance resource protections. Those in support of maintaining or increasing restrictions may contend that the 2001 Rule has led to increased economic prosperity or that it is vital to conserve resources.<sup>96</sup> Some opponents of the 2001 Rule seek to relax or remove current provisions of the rule, often to increase management flexibility or open IRAs to resources uses. Such groups may contend that the 2001 Rule negatively affects rural economic prosperity or is not necessary to confer additional resource protection.<sup>97</sup>

Complicating this debate, comprehensive metrics on roadless area characteristics and resource use or development in IRAs (such as road construction and reconstruction, timber harvesting, and others) generally are not available, although certain local or anecdotal information is sometimes available (see "Inventoried Roadless Area Management"). Thus, it is not clear what, if any, general effect the 2001 Rule may have had on associated issues of concern, such as economic opportunity, roadless area characteristics, and others, and quantitative analysis of competing claims regarding these topics is difficult.

## Inventoried Roadless Areas in Alaska and Utah

Since 2018, two states, Alaska and Utah, have submitted petitions to the FS requesting state-specific roadless rulemakings.<sup>98</sup> Pursuant to the State of Alaska's request, the FS has initiated a rulemaking to exempt the Tongass National Forest from the 2001 Rule and has issued a proposed rule and draft environmental impact statement.<sup>99</sup> Utah's petition remains pending.<sup>100</sup>

Management of roadless areas in Alaska has been a source of ongoing controversy for decades, particularly as it concerns the Tongass, the nation's largest national forest.<sup>101</sup> Alaska's 2018 request follows a long history of attempts to seek specific roadless area management provisions for the State of Alaska.<sup>102</sup> The FS's proposed rulemaking has generated renewed interest from

<sup>96</sup> For example, see Robert Berrens et al., *Economic And Community Benefits of Protecting New Mexico's Inventoried Roadless Areas*, Center for Sustainable Economy, 2006 (positive economic impacts); Wilderness Society, "Why It's Important to Keep the Wildest Forests Free of Roads and Logging," *Wilderness Society Blog*, November 12, 2019 (resource conservation).

<sup>97</sup> For examples, see testimony of Kyle Moselle, Associate Director, Office of Project Management and Permitting, Department of Natural Resources of the State of Alaska, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., October 13, 2019 (negative economic impacts), and Senator Lisa Murkowski, "Why I Support Trump's Proposal to Lift Restrictions in the Tongass," *Washington Post*, September 25, 2019.

<sup>98</sup> Alaska: Letter from Andrew T. Mack, Commissioner, Alaska Department of Natural Resources, to Sonny Perdue, Secretary of Agriculture, January 19, 2018. CRS has been unable to locate the State of Utah's original petition. In a letter from the State of Utah to the House Committee on Natural Resources, the State of Utah confirmed that its petition to the USDA was dated February 28, 2019. Letter from the Office of the Governor, Public Lands Policy Coordinating Office, to Rep. Raúl Grijalva, Chairman, House Committee on Natural Resources, March 26, 2019.

<sup>99</sup> FS notice of intent to make a rule for Alaska: Forest Service, "Roadless Area Conservation; National Forest System Lands in Alaska," 83 *Federal Register* 44252, August 30, 2018. Proposed rule and draft environmental impact statement at FS, "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 84 *Federal Register* 55522, October 17, 2019.

<sup>100</sup> USDA, "USDA Forest Service and State of Utah Invest in Utah's Future Through Shared Stewardship," press release, July 16, 2019.

<sup>101</sup> There are two national forests in Alaska, the Tongass and the Chugach National Forests, which cover over 21.9 million acres (over 34 thousand square miles). The Tongass is approximately 16.7 million acres, or over 26,000 square miles. Of this, approximately 9.2 million acres, or 55%, are designated IRAs.

<sup>102</sup> For an example of congressional action, see S. 3203, 114<sup>th</sup> Congress, Alaska Economic Development and Access to

Congress and other stakeholders. Those opposed to the rulemaking may contend that the proposed action jeopardizes the Tongass’s rare ecological qualities and certain economic sectors that depend on them.<sup>103</sup> Those in favor of the rulemaking may argue that it will improve economic activity in certain sectors, such as the timber industry, or that the Tongass is sufficiently protected without the 2001 Rule’s provisions.<sup>104</sup> Concerns regarding the Tongass have prompted congressional action and scrutiny.<sup>105</sup>

## Options for Congress

Congress has shown consistent interest in FS roadless area management for decades. Options for congressional action regarding FS roadless area management are broad and varied. Such actions could refer to roadless areas throughout the NFS generally or could be limited to a certain geographic region or state. Such actions also might relate to areas that fit a specified “roadless” or “undeveloped” definition and not only to IRAs.

## Oversight

One option for Congress may be to conduct oversight of the FS’s administration of roadless areas. Congress might oversee various aspects of FS roadless area management, such as

- **Directing the FS to Inventory or Report on Aspects of FS Roadless Area Management.** For example, Congress might direct the FS to inventory current IRA conditions, timber harvesting and/or road construction or reconstruction in IRAs, other resource uses in IRAs, the purposes of resource development and use in IRAs, or other aspects of roadless area management.
- **Directing the FS to Re-inventory or Report on FS Roadless Areas (i.e., areas fitting a specified “roadless” description but not necessarily IRAs).** Any resulting information may clarify how current IRA policies have affected NFS lands and resources and may inform other debates or legislative proposals related to roadless areas management. Inventories or reports of this scale may take substantial time to complete or be subject to legal challenges, however.

Unless Congress also addressed FS roadless area management legislatively (see “Legislative Action,” below), an oversight approach would maintain the FS’s broad autonomy to designate roadless areas; specify management provisions; and make other NFS-wide policies regarding roadless areas, including changing land designations or management provisions over time, such as it has in the past under different presidential Administrations.

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Resources Act.

<sup>103</sup> For example, see Tom Wathen, “Plan to Lift Roadless Rule in Alaska’s Tongass National Forest Threatens Economy,” *The Hill*, December 12, 2019, at <https://thehill.com/opinion/energy-environment/472757-plan-to-lift-roadless-rule-in-alaskas-tongass-national-forest>.

<sup>104</sup> Office of Governor Mike Dunleavy, “Governor Applauds USDA Support to Lift Tongass Roadless Rule Exemption,” press release, October 15, 2019, and Senator Lisa Murkowski, “Why I Support Trump’s Proposal to Lift Restrictions in the Tongass,” *Washington Post*, September 25, 2019.

<sup>105</sup> See, for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Roads to Ruin: Examining the Impacts of Removing National Forest Roadless Protections*, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., October 13, 2019.

## Respond to Newly Issued Forest Service Roadless Regulations

In the case of newly issued regulations, Congress may review and revoke the rule within a specified time frame, per the Congressional Review Act.<sup>106</sup> Congressional revocation of a newly issued rule would apply to the rule in its entirety but would not allow Congress to respond to portions of a rule. In addition, this action would prohibit the applicable agency from issuing a rule that is “substantially the same” and thus would constrain the FS’s related future rulemakings. This congressional authority is subject to specific procedural requirements.<sup>107</sup>

## Legislative Action

Congress could introduce legislation to address roadless area management and designation, taking a variety of approaches. For example, Congress could introduce

- **Legislation That Relates to the FS’s Roadless Rules Generally.** Such legislation could codify one of the existing rules into law, parts of an existing rule into law, or an existing rule into law while amending its provisions.<sup>108</sup> Such an action may allow Congress to ensure specific aspects of roadless rules remain in effect, while allowing the executive branch to make potential changes to aspects of the rules that are not codified in law. Legislation related to the FS’s roadless rules, by definition, would respond to the provisions the FS included in those rules.
- **Legislation That Specifies FS Roadless Area Management Provisions and/or Designations.** For example, Congress could specify a degree of federal or state control regarding roadless area management and designation, specify prohibited or permitted management actions in roadless areas, or specify other provisions. Such legislation also could designate lands, specify what branch of government may designate lands, and/or create designation criteria.
- **Legislation That Amends Related Laws to Specify Management and/or Designation of FS Roadless Areas.** For example, Congress could amend the Wilderness Act to specify management provisions or designation procedures for roadless areas.
- **Legislation That Designates and/or Releases IRAs into Management Under Other Laws.** For example, Congress could designate IRAs as wilderness or release IRAs into multiple-use management.<sup>109</sup> The effect of such legislation on the lands themselves would depend on what specific designation or management was chosen.
- **Legislation That Addresses the FS’s Authority to Issue Roadless Rules.** The legislative options discussed above would not supersede the FS’s broad authority

<sup>106</sup> Congressional Review Act, 5 U.S.C. §§801, 804(2). For an introduction to the Congressional Review Act, see CRS In Focus IF10023, *The Congressional Review Act (CRA)*, by Maeve P. Carey and Christopher M. Davis.

<sup>107</sup> For more information on the Congressional Review Act’s procedural requirements, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

<sup>108</sup> For example, see S. 1311, 116<sup>th</sup> Congress, Roadless Area Conservation Act of 2019, and H.R. 2491, 116<sup>th</sup> Congress, Roadless Area Conservation Act of 2019, which would codify certain FS roadless regulations into law, or untitled H.Amdt. 598 to H.R. 2, 115<sup>th</sup> Congress, Agriculture Improvement Act of 2018, which would exempt a state from FS roadless regulations.

<sup>109</sup> For example, see S. 193, 114<sup>th</sup> Congress, Inventoried Roadless Area Management Act, which would exempt certain areas from FS roadless regulations.

to manage NFS lands and resources. That is to say, while the options presented above represent various ways in which Congress could address roadless area management on FS lands, the FS would remain able to issue rules or policies addressing roadless area management or designation, including, for example, in areas not covered by enacted legislation. Congress could enact legislation specifying the FS's authorities to issue regulations or policies related to roadless area management (e.g., by amending existing FS authorities). The effects of such legislation could impact the FS's ability to manage other lands and resources.

- **Legislation That Addresses Other Issues.** Such other issues could include funding for activities in IRAs, for example.

## Appendix. Inventoried Roadless Area Statistics

**Table A-1. Inventoried Roadless Areas (IRAs)**  
(in thousands of acres)

State	IRA Acres	% NFS Acres	% State Acres
Alabama	12.7	1.9%	0.0%
Alaska	14,778.8	66.8%	4.0%
Arizona	1,174.2	10.5%	1.6%
Arkansas	95.0	3.7%	0.3%
California	4,416.1	21.2%	4.4%
Colorado	4,185.7	28.9%	6.3%
Connecticut	0.0	0.0%	0%
Florida	50.5	4.2%	0.1%
Georgia	63.4	7.3%	0.2%
Idaho	9,305.8	45.5%	17.6%
Illinois	10.7	3.5%	0.0%
Indiana	8.4	4.1%	0.0%
Kansas	0.0	0.0%	0.0%
Kentucky	2.8	0.3%	0.0%
Louisiana	7.2	1.2%	0.0%
Maine	6.0	11.1%	0.0%
Michigan	16.1	0.6%	0.0%
Minnesota	62.1	2.2%	0.1%
Mississippi	2.6	0.2%	0.0%
Missouri	25.5	1.7%	0.1%
Montana	6,395.2	37.2%	6.9%
Nebraska	0.0	0.0%	0.0%
Nevada	3,186.1	55.3%	4.5%
New Hampshire	234.7	31.1%	4.1%
New Mexico	1,549.2	16.8%	2.0%
New York	0.0	0.0%	0.0%
North Carolina	172.4	13.7%	0.6%
North Dakota	266.1	24.1%	0.6%
Ohio	0.0	0.0%	0.0%
Oklahoma	13.3	3.3%	0.0%
Oregon	1,965.0	12.5%	3.2%
Pennsylvania	24.9	4.8%	0.1%
Puerto Rico	23.7	82.4%	1.1%

South Carolina	7.6	1.2%	0.0%
South Dakota	79.6	4.0%	0.2%
Tennessee	84.9	11.7%	0.3%
Texas	4.1	0.5%	0.0%
Utah	4,013.5	49.0%	7.6%
Vermont	25.1	6.1%	0.4%
Virginia	393.7	23.6%	1.6%
Washington	2,014.8	21.6%	4.7%
West Virginia	201.7	19.3%	1.3%
Wisconsin	69.0	4.5%	0.2%
Wyoming	3,257.0	35.3%	5.2%
<b>Total</b>	<b>58,205.2</b>	<b>30.2%</b>	<b>2.6%</b>

**Source:** Congressional Research Service. Calculation from inventoried roadless area data, Forest Service (FS) legislative affairs office, March 20, 2020; U.S. state land area data, Sonja Oswalt et al., *Forest Resources of the United States, 2017: A Technical Document Supporting the Forest Service 2020 Update of the RPA Assessment*, U.S. Department of Agriculture (USDA), FS, 2017; and National Forest System (NFS) land area, FS, USDA, *Land Areas Report (LAR)*, 2019.

**Notes:** District of Columbia, Delaware, Hawaii, Iowa, Maryland, Massachusetts, New Jersey, and Rhode Island contain no NFS lands and are not listed. % NFS Acres is the percentage of NFS acres in the state that are IRAs. % State Acres is the percentage of state acres that are IRAs. Listed states contain NFS lands but may or may not contain IRAs, as shown. Totals may not add due to rounding. States with nonzero IRA acres may show percentages of 0.0% due to rounding.

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