

# FOREST ROADS WORKING GROUP

**Wildlife Forever    Wildlife Management Institute    The Wildlife Society**  
**Trout Unlimited    Izaak Walton League of America    International Paper**  
**Outdoor Industry Association    Pinchot Institute for Conservation**

## RECOMMENDATIONS FOR PROTECTION OF ROADLESS AREAS

**March 26, 2003**

### **I. Introduction and Overview**

This paper outlines the Forest Roads Working Group (FRWG)'s recommendations to the USDA Forest Service regarding the management and conservation of Inventoried Roadless Areas (IRAs) of the National Forest System. These recommendations are based on nearly two years of deliberations by the FRWG and informed by the range of views expressed by a diverse group of interested stakeholders who participated in the ***Multi-Stakeholder Dialogue on Roadless Area Conservation*** on December 3-4, 2002.

The FRWG is an ad hoc coalition comprised of organizations that collectively represent conservationists, sportspersons, members of the forest products industry and outdoor recreation businesses that support the protection of roadless areas of the National Forest System. The FRWG believes that it is possible to protect inventoried roadless areas in a manner acceptable to a diverse array of interested stakeholders and that the best way to work toward that solution is to engage the parties in discussion. Towards this end, the FRWG asked the Meridian Institute to convene and facilitate the Multi-Stakeholder Dialogue. Through the purposeful and focused exchange of information and perspectives that took place at the dialogue, the FRWG developed a deeper understanding of the underlying interests and concerns of key stakeholder groups, and identified key issues related to roadless areas and their values and characteristics that require additional data gathering and further in-depth discussion to resolve, as well as some overarching areas of common ground.

Following the background section, the discussion that follows details the FRWG's recommendations in three areas: (1) the FRWG's support for the existing RACR because of its nationwide applicability, suitable management structure, and solid legal foundation; (2) the need to establish a

process to consider future measures that might strengthen the rule to address important issues such as forest health maintenance and management of recreational vehicle impacts; and (3) the need for a formal, ongoing deliberative consultation process during implementation of the rule over the next several years to consider whether and, if so, what improvements should be made to the rule. In summary, the FRWG believes the existing RACR provides an acceptable basis for national management of IRAs, but recognizes there are legitimate questions concerning the rule, and recommends that it be implemented while potential adjustments are considered through a structured process of information gathering and continued multi-stakeholder dialogue.

## **II. Background**

The members of the FRWG came together in 2001 as various litigants began to challenge the Roadless Area Conservation Rule in district court actions around the country. The members of the FRWG had varying views of the RACR. However, they all agreed that the unsettled posture of the RACR could possibly lead to a result that would threaten the conservation of roadless areas and their unique values, and that despite the ongoing controversy surrounding promulgation of the RACR, an acceptable solution could be identified and supported by a diverse array of interested stakeholders.

### **A. FRWG Comments in Response to the Advance Notice of Proposed Rulemaking**

On May 4, 2001, Secretary Veneman announced that the Department of Agriculture would allow the RACR to go into effect, but would also initiate a process to propose amendments to the rule in accordance with a set of principles. On May 10, 2001, a Federal District Court preliminarily enjoined the Department from implementing the RACR. The Forest Service published an Advance Notice of Proposed Rulemaking (ANPR) on July 10, 2001. In response to this ANPR, the FRWG submitted comments on September 10, 2001. These comments stated the FRWG's understanding of the Forest Service's objectives and discussed how those objectives could be achieved, including: the Forest Service's May 4, 2001 pledge to retain the RACR's protections, addressing the Court's and plaintiff's concerns related to alleged NEPA irregularities, public participation in the ANPR and possible rule modifications, and local input to implementation of the rule. The FRWG's September 10, 2001 comments set forth the FRWG's belief that, in considering modifications to the Rule, the Service must adopt policies, standards and procedures designed to preserve roadless area values to the greatest extent possible by largely eliminating road construction, resource extraction and other intrusive activities that can compromise the significant social and ecological values of roadless areas. Specifically, the FRWG proposed accomplishing this by: (1) maintaining and strengthening the current Rule's prohibitions against such activities; (2) carefully defining and limiting the circumstances under

which exceptions to the prohibitions may be considered to those that specifically enhance the ecological values of roadless areas; (3) prescribing the necessary types of conditions and restrictions that would apply in the event such exceptions are authorized; and (4) establishing procedures for considering requests for exceptions that provide for adequate consideration of all potential impacts and alternatives, full public participation, and final decision making at the highest level of the Service.

**B. FRWG Proposal for Dialogue and Exchange of Letters with the Forest Service**

On November 7, 2001, in an exchange of letters with Forest Service Chief Dale Bosworth, the FRWG pledged to initiate a good-faith dialogue among interested stakeholders in an effort to resolve the highly polarized debate over the RACR. Chief Bosworth agreed that a good-faith dialogue among interested stakeholders could contribute to the resolution of the roadless area conservation issue. Chief Bosworth committed the Forest Service to: providing a summary of the comments received in response to the ANPR along with documentation of the RACR rulemaking effort; ensuring that senior Forest Service personnel attend the dialogue; confirmed the Service's May 4, 2001 commitment to adequately protect roadless area values; and considering any substantive outcome of the dialogue in future rulemaking or policy development that addressed IRAs. In addition, the Forest Service confirmed that it did not intend to take further action on the RACR prior to completion of the FRWG's proposed dialogue, unless intervening events required otherwise.

As noted above, the FRWG asked the Meridian Institute to help convene and facilitate the proposed dialogue. In early 2002, Meridian interviewed over 70 individuals representing a wide diversity of perspectives on roadless area conservation. On March 11, 2002, Meridian made its recommendations to the FRWG regarding how to proceed with the proposed dialogue and made these recommendations publicly available. Reflecting the differing and strongly held points of view among interested stakeholders on roadless area conservation, Meridian recommended that the FRWG conduct a series of separate one-on-one consultation sessions with small groups of leading stakeholders, culminating in a multi-stakeholder dialogue. This approach would have had the FRWG meet separately with representatives from states, tribes, local governments and community interests, the forest products industry and other industry sectors (e.g., recreation, mining, energy development, and ranching), national and regional environmental groups, and academics and professional societies. The FRWG then sought to raise the funds to proceed with the recommended approach. Over the summer of 2002 it became clear that it would not be possible to raise sufficient funds for conducting all of the recommended one-on-one consultation sessions. Because the FRWG was committed to following through on its pledge, the FRWG decided

to conduct the multi-stakeholder session without the benefit of the consultation sessions.

### **C. Multi-Stakeholder Dialogue on Roadless Area Conservation**

On December 3-4, 2002 the FRWG conducted the *Multi-Stakeholder Dialogue on Roadless Area Conservation*, which was attended by over forty people representing a broad diversity of views and perspectives. The purpose of the meeting was to provide a forum for exchanging views and engaging in dialogue on this topic in a constructive, forward-looking, and respectful manner. Given the diverse and often conflicting views that exist on roadless area conservation, the meeting was not limited to achieving a consensus outcome. In preparation for the meeting, the FRWG prepared and distributed a discussion paper to help frame the issues and guide the discussion. While this “White Paper” represented the common views of the FRWG, it was intended to help focus and stimulate, rather than limit, the discussion at this meeting.

Participants in the dialogue included a very broad and diverse group of individuals in leadership positions in the forest products and mining industries; local, state, federal and tribal government; hunter, fisher, sportsmen groups; motorized and non-motorized recreation interests; environmental organizations; and academia. In addition, senior officials from the U.S. Department of Agriculture and the Forest Service and key congressional staff attended and contributed to significant portions of the meeting.

The Meridian Institute produced an independent summary of the discussion that took place at the meeting. Subsequent to the meeting the summary was shared in draft form with all attendees. Participant comments and suggestions were incorporated into the final summary as deemed appropriate. The Meridian Institute’s summary of the meeting, along with the FRWG’s White Paper prepared for the meeting, and copies of several letters stating the views of dialogue participants, as well as from some of the invited participants who were unable or chose not to attend is available at [www.merid.org/roadless](http://www.merid.org/roadless).

### **III. Forest Roads Working Group Recommendations**

Following its completion of the process described above, the FRWG met a number of times to develop recommendations to the Department and the Forest Service. As discussed in detail below, the FRWG’s recommendations can be grouped into three categories: (1) support for the existing RACR because of its nationwide applicability, suitable management structure and solid legal foundation; (2) the need to establish a process to consider future measures that might strengthen the rule and address important issues such as

forest health maintenance and management of recreational vehicle impacts; and (3) the need for a formal, ongoing deliberative consultation process during implementation of the rule over the next several years to consider whether and, if so, what improvements should be made to the rule, and to consider adjacent public lands, their management and their relation to IRAs.

**A. The Existing RACR Provides an Acceptable Basis for National Management of IRAs, and Should be Implemented While Adjustments are Considered.**

The FRWG maintains and re-emphasizes its strong belief that the protection of IRAs and their values and characteristics requires a national policy foundation and management structure to ensure consistency and minimize the cumulative, incremental loss of those values and characteristics. The existing RACR recognizes and implements this important principle. Accordingly, while the FRWG believes improvements to the RACR may be warranted over time, and acknowledges that other stakeholders are proposing revisions to the rule, we recommend that the existing rule be retained and implemented while the effects and desirability of potential improvements and revisions are considered through a deliberative process.

**1. Important, National IRA Values and Characteristics Must be Protected.**

Inventoried roadless areas constitute roughly one-third of all National Forest System lands, or approximately 58.5 million acres. Although inventoried roadless areas comprise only two percent of the land base in the continental United States, they are found within 661 of the over 2,000 major watersheds in the nation and provide many enduring social and ecological benefits.

As the nation's population grows, forestlands and other open space continue to be converted to urban and agricultural uses. Between 1992 and 1997, almost 10 million acres of forests, wetlands and other open space were converted to more urban uses. This is an increase from the 7 million acres of forestland and other open space converted to other uses between 1987 and 1992, despite the fact that the population growth rate remained fairly constant from 1987 to 1997. (NRCS Natural Resources Inventory, 1997; USFS Final EIS on Roadless Area Conservation, 2000.) From 1978 to 1994, the proportion of private forest ownerships of less than 50 acres nearly doubled. (Birch, T.W. 1996. Private forestland owners of the United States, 1994, Resource Bulletin NE-134, USDA Forest Service, Northeastern Experiment Station, Radnor, Pennsylvania.) In an increasingly developed landscape, large unfragmented tracts of land become more important. Subdivision and other diminishment of tract size of these lands can discourage long-term stewardship and conservation.

Inventoried roadless areas provide clean drinking water and large, relatively undisturbed landscapes that are important to fish and wildlife species and their habitat needs. Inventoried roadless areas provide opportunities for dispersed outdoor recreation, and biological strongholds for populations of threatened and endangered species. They also provide reference areas for study and research and serve as bulwarks against the spread of non-native invasive species that can displace native fish and wildlife.

The following values or features often characterize inventoried roadless areas:

- ***High quality or relatively undisturbed ecosystems, soil, water, and air.*** These three key resources are the foundation upon which other resource values and outputs depend. Undisturbed watersheds catch, store, and safely release water over time; protect downstream communities from flooding; provide clean water for domestic, agricultural, and industrial uses; help maintain fish and wildlife populations; and are the basis for many forms of outdoor recreation, education and renewal.
- ***Sources of public water supplies.*** National Forest System lands contain watersheds that are important sources of clean water for industrial, agricultural and domestic uses. For example, roadless areas within the National Forest System contain all or portions of 354 municipal watersheds contributing drinking water to millions of citizens. Maintaining these areas in a relatively undisturbed condition saves downstream communities millions of dollars in water filtration costs. Careful management of these watersheds is crucial in maintaining the flow and affordability of clean water to a growing population.
- ***Diversity of plant and animal communities.*** Inventoried roadless areas serve as a bulwark against the spread of nonnative invasive species. Roadless areas are more likely than roaded areas to support abundant populations of selected fish and wildlife. For example:
  - In the Interior Columbia River Basin, 60 percent of the best remaining trout and salmon habitat are within roadless or low road density areas.
  - 85 percent of the healthiest populations of all western cutthroat trout species occur in wilderness and roadless areas.

- Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land.***

Roadless areas function as biological strongholds and refuges for many species. In the northern Rocky Mountains, for example, roadless areas provide core habitat areas, travel corridors and habitat connectivity for grizzly bear, mountain lion, and elk. Of the nation's species currently listed as threatened, endangered, or proposed for listing under the Endangered Species Act, approximately 25% of animal species and 13% of plant species are likely to have habitat within inventoried roadless areas on National Forest System lands. Roadless areas support a diversity of aquatic habitats and communities, providing or affecting habitat for more than 280 threatened, endangered, proposed, and sensitive species. More than 65% of all Forest Service sensitive species are directly or indirectly affected by inventoried roadless areas. This percentage is composed of birds (82%), amphibians (84%), mammals (81%), plants (72%), fish (56%), reptiles (49%), and invertebrates (36%).
- Semi-Primitive dispersed recreation.*** Roadless areas often provide outstanding dispersed recreation opportunities such as hunting, fishing, hiking, camping, picnicking, wildlife viewing, cross-country skiing, and canoeing. While they may have many wilderness-like attributes, unlike wilderness the use of mountain bikes and other means of travel often are allowed. These areas also can take pressure off heavily used wilderness areas by providing solitude and quiet, and dispersed recreation opportunities. Roadless areas offer some isolation from the sights and sounds of human activity and an environment with challenge and risk, necessitating some level of outdoor skill.
- Reference landscapes.*** Reference landscapes of relatively undisturbed areas serve as a barometer to measure the effects of development on other parts of the land. The body of knowledge about the effects of management activities over long periods of time and on large landscapes is very limited.
- Natural appearing landscapes with high scenic quality.*** High quality scenery, especially scenery with natural-appearing landscapes, is a primary reason that people choose to recreate. In addition, quality scenery contributes directly to real estate values in nearby communities and residential areas.

- ***Traditional cultural properties and sacred sites.***  
Roadless areas contain traditional cultural properties and sacred sites. Traditional cultural properties are places, sites, structures, art, or objects that have played an important role in the cultural history of a group. Sacred sites are places that have special religious significance to a group. Traditional cultural properties and sacred sites may be eligible for protection under the National Historic Preservation Act. However, many of them have not yet been assessed, especially those that occur in more remote inventoried roadless areas.
  - ***Other locally identified unique characteristics.***  
Inventoried roadless areas may offer other locally identified unique characteristics and values. Examples include uncommon geological formations, which are valued for their scientific and scenic qualities, or unique wetland complexes. Unique social, cultural, or historical characteristics may also depend on the roadless character of the landscape. Examples include ceremonial sites, places for local events, areas prized for collection of non-timber forest products, or exceptional hunting and fishing opportunities.
- 2. A National Approach is Needed to Protect Against Cumulative, Incremental Loss of IRA Values and Characteristics.**

The Forest Service is responsible for balancing the national interest with local needs. The local forest planning process does not always recognize the national significance of roadless areas and the important national values they possess in our increasingly developed landscape. Left to a case-by-case decision-making process without effective guidance and constraints, management decisions could lead to an incremental loss of roadless areas through new road construction, commercial timber harvest and mineral extraction, and irresponsible or unauthorized off-road vehicle use. Taken together, the cumulative national loss of roadless area values and characteristics could be significant.

On many national forests and grasslands, roadless area management has been a major point of conflict in land management planning, adding to what the Forest Service describes as “process gridlock.” This controversy continues unabated in connection with proposals to harvest timber, build roads, develop energy resources, or otherwise develop roadless areas. The large number of appeals and lawsuits, and the extensive amount of congressional debate over the last 25 years, demonstrate the need for national direction to protect roadless areas and their values and characteristics.

Roadless areas are national resources that merit a protective national management policy. Within that policy, it is equally important to provide for the consideration of local priorities and local input to decision making, as well as to recognize variability among roadless areas and between regions of the country.

**3. The Management-By-Exception Construct of the Existing RACR, While Not Universally Supported by Stakeholders, Provides a Useful Regulatory Mechanism.**

The management policy for roadless areas, as implemented through the RACR, establishes prohibitions on specific activities -- i.e., those that present the greatest threats to roadless areas -- together with a system of explicit exceptions. The overall goal of this policy is to protect the important social and ecological values of roadless areas and the characteristics they possess by eliminating road construction, and severely limiting resource extraction and other activities that can compromise those areas. We believe the structure of the existing RACR is a suitable management framework to meet this need.

The FRWG also recognizes that other stakeholders believe the existing RACR is much too prescriptive, and fails to allow consideration of local priorities and needs. Still other stakeholders believe the rule to be too permissive. The FRWG does not necessarily share either of these views; we recognize that these concerns should be explored through further consultations among stakeholders, as discussed more fully under our third recommendation below.

In addition, as discussed in our second recommendation below, the FRWG believes that the existing RACR might be improved in the future by adding provisions for the management of Off-Highway Vehicle use, and by greater flexibility for ecosystem management activities.

**4. The Existing RACR is Based Upon Solid Legal Authority, and was Issued in Compliance with NEPA.**

At the time the FRWG commenced its consideration of the RACR in the Spring of 2001, implementation of the rule had been enjoined by Judge Lodge in Kootenai Tribe of Idaho, et al. v. Ann Veneman, et al., CV01-010-N-EJL (DC ID). Since that time, several events have occurred that we believe substantially undermine claims by some parties that the Forest Service lacked authority to issue the rule, and that it did so without compliance with NEPA documentation and procedural requirements. Accordingly, continuing implementation of the existing RACR is based upon solid legal authority, and the rule is not defective under NEPA.

Most important, the Ninth Circuit Court of Appeals overturned Judge Lodge's preliminary injunction on December 12, 2002. Kootenai Tribe of Idaho, et al. v. Ann Veneman, et al., Nos. 01-35472, 01-35539 (9<sup>th</sup> Cir., Opinion Dec. 12, 2002). The Ninth Circuit strongly disagreed with Judge Lodge's conclusions on each and every NEPA compliance issue, specifically finding that:

- The maps were not deficient, and even if they were, the plaintiffs had actual notice as to which roadless areas would be affected by the rule. Laws and regulations of general applicability do not have to be analyzed under NEPA with respect to each specific location on a map where they may apply;
- The Service's identification of 4.2 million additional roadless acres after publication of the DEIS did not require a Supplemental EIS because it was a minor flaw and, in any event, the public could comment on those acres after publication of the FEIS and before promulgation of the final rule;
- There was not adequate evidence that USFS personnel were poorly informed during the public participation process;
- The 69-day public comment period was adequate;
- The range of alternatives considered by the USFS was adequate in light of its policy objectives;
- The rulemaking result was not predetermined; and
- The potential cumulative effects of the RACR are too speculative to require in-depth analysis in the EIS.

In reaching these conclusions, the Ninth Circuit decided that Judge Lodge had overstated the potential harm from implementing the RACR. The Ninth Circuit said that, because the rule is designed to benefit the environment by restricting human intervention in roadless areas, the "incidental harms that may result from such restrictions" cannot outweigh these benefits. The court went on to say that the "district court in our view failed adequately to weigh the public interest in preserving our national forests in their natural state."

The Ninth Circuit also indicated, in dicta, that the issuance of a national regulation such as the RACR does not impermissibly infringe upon the local planning process established pursuant to the National Forest

Management Act. The Court said: “nothing in the National Forest Management Act, which establishes procedures and standards for National Forest System land and resource management plans, precludes national action on a conservation issue within the power of the Forest Service.” Slip. Op. at 32, n. 20.

Finally, we note that the Forest Service and USDA have stated unequivocally that the RACR is founded upon proper statutory authority and was issued in compliance with NEPA. In the case of Billings County, et al. v. Ann M. Veneman, et al., Civ. Nos. A1-01-045, 087 (D.ND), the Service and the Department presented a compelling argument that NEPA requirements had been met, and that the Service had “ample authority” to promulgate the RACR under several statutes, including the Organic Act, the Multiple Use Sustained-Yield Act, and the National Forest Management Act.

Thus, both the federal courts and the Administration have concluded that the existing RACR is legally valid. As the law of the land, the RACR should be maintained and implemented while the Forest Service and stakeholders consider the advisability of recommended changes through a measured, face-to-face process that can be informed by experience through implementation of the rule.

**B. The FRWG Recommends Consideration of Important Measures to Strengthen the Rule.**

The FRWG recommends that the Forest Service and the public learn from the implementation of the rule to determine if improvements might be necessary on issues such as forest health maintenance and management of recreational vehicle impacts. We wish to emphasize, however, that if such measures are necessary, they should be undertaken through the deliberative stakeholder process discussed below in our third recommendation. The FRWG believes that the Service would be well advised to refrain from making adjustments to the existing RACR, without data gathering, dialogue and the full development of stakeholder recommendations on whether and how to implement these or any other modifications. The details will be very important, and the effectiveness of these measures in the long run will depend upon the degree of factual and stakeholder support that can be achieved through the deliberative process.

**1. Forest Health Maintenance.**

In addition to the exceptions in the existing RACR, the FRWG is prepared to consider authority for additional activities that are specifically designed to enhance the ecological values of roadless areas. Importantly, the FRWG believes that any changes should first be informed through several years of implementation of the RACR, and the process outlined below. If it is

determined that such exceptions are warranted, the FRWG believes they must be accompanied by: clear definitions and criteria for justifying them; appropriate conditions and restrictions; and a decision-making process that is adequate to ensure protection of roadless areas. For example:

- Construction of temporary roads could be authorized to facilitate management activities that are necessary in order to restore ecological processes such as fire or to make ecosystem improvements to benefit fish and wildlife (including managed species) and accomplish forest habitat restoration on public lands, provided that such activities enhance roadless area values. Such temporary roads should be allowed only when there is a finding of extraordinary need, and only where low impact technology and methods cannot achieve the desired objectives.
- In allowing these activities, geographic considerations should guide the decision. For example, while temporary roads in areas with stable soils may be justified for extraordinary reasons, such action should be precluded in higher elevation forests that are more prone to erosion.
- Given the Forest Service's backlog on road maintenance and reconstruction, secured funding sources for road removal and land restoration must accompany any extraordinary authorization of temporary road construction in order to enhance the ecological values of roadless areas.
- Consistent with existing law and the RACR, we also expect that any regulation would provide access, otherwise not reasonably available, through the inventoried areas to adjacent State and private lands for similar purposes. We would expect such provisions to apply to narrow corridors that are absolutely necessary for achieving these purposes.

It will be important, in defining the implementing mechanisms that govern this authority, to impose specific types of conditions and restrictions. We believe these should include:

**a) Time Limits.** The activity must be authorized for a period of time that is commensurate with the extraordinary justification on which it is based, with mandatory reviews of conditions giving rise to the activity at appropriate intervals.

**b) Spatial Limits.** The extent of authorized activity must be the minimum found to be necessary to address the underlying justification and enhance roadless area values.

**c) Equipment Limits.** Any authorized activity should be conducted using the lowest impact technology and methods available.

**d) Detailed Description.** The activity must be carefully defined in terms of: (1) how it will specifically enhance roadless area values (2) actions that are authorized; (3) prohibitions on deleterious design/construction/ implementation features; (4) safeguards necessary to enhance roadless area values; and (5) restoration requirements.

**e) Secured Funding.** Secured funding (e.g., financial assurance mechanisms) must be provided for ensuring the temporary nature of any disturbance (e.g., funding for obliteration and reseedling of a temporary road).

**f) Monitoring and Reporting.** Appropriate monitoring and reporting on authorized activities, including funding, must be required in every case to ensure compliance with conditions and restrictions.

## **2. Management of Recreational Vehicle Impacts.**

Protection of roadless area values and characteristics dictates the proper administration and management of recreational use in roadless areas. Taking recreational vehicles off trail can damage soils and degrade water quality by creating ruts and erosion pathways into streams and other water bodies. It can lead to the proliferation of trails that have not been specifically authorized by forest managers. Human use and new technologies allow for the transportation of noxious and invasive plant species into remote landscapes. Improper use or cumulative impacts can lead to wildlife harassment and disturbance, habitat fragmentation and alteration.

Additionally, as a potentially significant source of air and noise pollution, off road vehicles can compromise these roadless area values and characteristics.

In roadless areas, the FRWG believes the Forest Service should work collaboratively to educate and inform user groups on roadless area characteristics and values; establish the capacities to manage and monitor recreational impacts; and implement policies to designate appropriate trails and uses.

The FRWG believes that the Forest Service should develop a policy in roadless areas to ensure that legitimate recreational use of motorized vehicles is limited to designated trails and areas. (The concept of designated

trails received support from motorized interests in the Multi-Stakeholder Dialogue, as discussed below.)

Relative to roadless areas the FRWG believes that:

- Where off-road motorized access presently is prohibited, such prohibitions should remain in place and be enforced.
- Where off-road motorized access presently is permitted, such access should be allowed to continue unless changed in the next forest plan amendment or revision, as described below.

At the time of the next forest plan revision or amendment, an explicit decision should be made relative to off-road motorized access within roadless areas. The policy to guide such decisions should include,

- Off-road vehicle use may occur in roadless areas only during specified seasons and on designated trails; and
- Seasonal and trail designations should be made only after a finding that such use will not jeopardize the social and ecological values of roadless areas.

**C. The FRWG Recommends the Forest Service Establish a Formal, Deliberative Process to Consider Guidance for Implementation of, and if Necessary Improvements to, the RACR.**

The RACR addresses some of the most fundamental and contentious resource management issues facing the Forest Service today. As evidenced by the litigation and ongoing debate surrounding the rule, these issues have not been resolved into enduring national policy despite completion of one of the most extensive rulemaking processes in the history of the federal government. The FRWG is convinced -- especially after conducting its stakeholder dialogue -- that traditional rulemaking processes, even with the benefit of exhaustive hearings and NEPA documentation, are not always best suited to resolving these issues. While they are an important way to demonstrate leadership on nationally vexing issues, rulemakings sometimes lack the indispensable ingredient of informed dialogue and debate among stakeholders.

Most of the participants in the FRWG's Multi-Stakeholder Dialogue agreed that the opportunity for face-to-face discussions with other stakeholders had been highly beneficial from the standpoint of debating their views, sharing information and, perhaps most important, identifying needs for further development and/or exchange of data and perspectives. On issues such as OHV use, temporary roads, and fire and fuel management policy, the participants agreed to pursue additional discussions and to seek additional

information from each other and the Forest Service. We believe most of the participants would agree that further policy development affecting IRAs should be informed by such discussions over time, based on the knowledge and experience that implementation of the RACR will provide. Indeed, a number of participants specifically suggested that the stakeholders urge the Forest Service to convene a diverse and balanced advisory committee for this purpose.

The FRWG strongly agrees with this suggestion, and recommends this course of action to the Service. We are convinced that an advisory committee could effectively assist the Forest Service to ensure an enduring, widely accepted policy on many of the issues if it is given: (1) a strong mandate; (2) sufficient time and resources to complete its work; (3) data and information to inform its deliberations; and (4) stability in the Service's implementation of the RACR in order to evaluate real-world experience under the rule.

The FRWG believes this approach will lead to decisions that are based upon accepted factual premises and stakeholder consideration of opposing viewpoints. As we believe the Multi-Stakeholder Dialogue demonstrated, positions can be refined, improved and even shifted through such a process. Common ground can be identified even in the midst of disagreement. And better information tends to force closer examination of stakeholders' views and recommendations.

**1. Dialogue Participants Advanced Competing Views on Key Issues that Require In-Depth Discussion and Better Information to Resolve.**

As noted above, the FRWG began the Multi-Stakeholder Dialogue having developed a working consensus among its members on the most effective structure and content for the rule, as reflected in its comments on the ANPR and the White Paper distributed to participants prior to the meeting. At the same time, the FRWG came to the Dialogue with an open mind, prepared to learn how other participants believed the RACR should be implemented and/or modified.

Not surprisingly, it was apparent that many participants held strong views concerning virtually every aspect of the rule, from the fairness with which it was developed to its basic structure and the degree of flexibility that should, or should not, accompany its implementation. We were struck, however, by the recurring theme of the discussions -- that proponents of a position frequently believed those holding a contrary view lacked sufficient factual support for their position, and vice versa. On point after point, there appeared to be a need for more data or a much better understanding of the basis for participants' concerns in order to narrow the gaps and begin to assess the possibility that common ground could be explored. The FRWG wishes to make clear, however, that the need for data does not undermine the NEPA

analysis used for the RACR. Instead, it makes clear that even the most exhaustive and comprehensive environmental analyses may benefit from further study and adaptive processes to strengthen policy. We concluded the Dialogue with a strong sense that the controversy surrounding the RACR stems, at least in part, from two things: (1) lack of consensus on basic facts and information; and (2) the lack of understanding among some stakeholders concerning policy objectives and implementation mechanisms. The following discussion illustrates this conclusion.

**a. Structure of the RACR.** As noted earlier, the FRWG White Paper strongly endorsed the structure of the existing RACR -- i.e. management by exception, with prohibitions on activities constituting the principal threats to IRAs, and exceptions for certain purposes under controlled circumstances designed to protect IRAs and their values and characteristics. Many other participants expressed strong objections to the very concept of a national rule that prohibits certain activities with limited exceptions. After considerable discussion, it appeared to us that these participants did not necessarily oppose the use of a nationally applicable regulation for guiding the management of IRAs, but rather objected to the existing RACR because, they believe, it is simply too restrictive in its current form. Basically, they felt that the current exceptions are neither broad enough nor sufficiently flexible to accommodate legitimate, local needs and concerns.<sup>1</sup> Some participants also believed that the RACR covers some acreage that was mistakenly included or otherwise does not belong under the rule because it is roaded or significantly modified in other ways.

In the course of the dialogue, a number of participants strongly recommended a new structure for the RACR along the following lines:

- The RACR should provide national guidance (sometimes referred to as “sideboards”) establishing values, criteria and priorities to guide the decision-making process.
- Management decisions should “designate” or “restrict” activities (where, when, why, how) rather than permit them under exceptions to prohibitions.
- The decision-making process should include a stronger role for local stakeholders.
- There should be a process for identifying areas that are not appropriate for coverage under the rule.

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<sup>1</sup> It is important to note that such a view did not reflect the views of stakeholders such as environmental groups, many of which were invited but chose not to participate in the FRWG-sponsored Dialogue.

Other participants strongly expressed the opposite view -- that such a flexible approach would restore the pre-RACR regime under which the incremental, cumulative loss of IRA values and characteristics was too extensive and in which the potential for abuse of the process was uncontrolled.

Thus, the dialogue discussions focused somewhat on the concept of appropriate “sideboards” and procedural protections that might be developed to guide a more flexible decision-making process, and also to “police” that process by promptly and effectively correcting inappropriate decisions. Some participants recommended, for example, that the structure of other federal environmental programs, such as the Clean Water Act, Clean Air Act, Endangered Species Act and the Refuge Act, could be considered as appropriate models from which national criteria, guidance, procedures and other features of a less restrictive decision-making process could be developed. Some FRWG members came away from these discussions with increased willingness to explore such a concept in the interest of securing a more enduring and more widely accepted national policy, while others remained dubious.

**b. Recreational Vehicle Impacts.** FRWG members and others stressed the increasing evidence of adverse impacts from OHV use on IRA values and characteristics, and the need for a national approach to managing OHV use and curtailing those impacts. As noted above, the FRWG White Paper suggested that OHV use should be restricted under the RACR to designated trails.

Participants representing OHV interests disputed the factual basis for the FRWG’s conclusions and recommendations, and objected that they had not been consulted in the development of the FRWG’s position. They argued that OHV use is an IRA value, not a threat to IRA values and characteristics. They also maintained that motorized use should be considered as equal in value to other uses such as hiking, hunting and fishing.

Of primary interest to FRWG members, it appeared from the discussions that at least some of the OHV representatives would support a national policy requiring a “route designation” management approach to OHV use in IRAs and on other public lands. They would condition such support on several key elements, such as: (a) essentially grandfathering existing areas of OHV use, subject to removal of these designations if there is a finding of unacceptable adverse impacts; and (b) assurance of USFS resources to undertake the route designation process. FRWG members believe this general approach of management by “route designation” is conceptually similar enough to the FRWG position that it would be worthwhile to pursue further discussions with OHV representatives aimed at seeking consensus on the details of an acceptable approach. The details will be very important, and should be developed through face-to-face dialogue.

**c. Fire and Fuels Management Policy.** The dialogue participants engaged in considerable discussion of fire policy for the IRAs, and generally agreed that better data and further discussions are needed. Some participants expressed the strong opinion that the most important threat to IRA values and characteristics, and to adjacent private lands, is catastrophic wildfire. Some participants maintained that high intensity fires are causing long-term, if not permanent, ecological degradation, and that such fires originate in IRAs at a higher rate than in roaded areas. These contentions were strongly disputed by others, and there was considerable debate about the nature and quality of data supporting such claims. In addition, there were divided opinions about whether, if this contention is true, the IRAs in which fires have originated had experienced natural fire cycles in the past or were, in fact, subject to fire suppression efforts that had increased fuel loading. In the end, there appeared to be general agreement on the need to examine fire intensity data more carefully and to continue discussions of the policy implications that could stem from this contention.

The FRWG has recommended that the national fire policy for IRAs should be changed so the presumptive standard becomes that naturally caused fires will be allowed to burn. If the Service determines that such fires pose a realistic risk to human communities adjacent to private lands or to important ecological values, then fire suppression should be applied, as necessary. Moreover, because the needs are so great in already-roaded portions of the national forest system and the urban/forest interface, the presumptive standard for roadless areas should be that mechanical hazardous fuels reduction efforts would occur within roadless areas on an exceedingly rare basis. While thinning programs cannot prevent fires, they may provide important reductions in fire intensity. By contracting for thinning, rather than selling stumpage, incentives to overcut could be removed. The wood could be sold separately as a byproduct of the restoration activity.

Some forest products industry participants disputed this view, arguing that private timber acreage adjacent to IRA's must be protected. As noted above, they maintained that fuel loads in IRAs provide unacceptable starting points for fires and must be thinned to avoid a "public nuisance." One recommended that all Category 2 and 3 IRAs within one mile of private timber lands be reduced to Category 1 through thinning, after which fires in those areas could be allowed to burn. They also stressed that some road building is necessary to accomplish these objectives, and that it would be wiser to construct permanent roads for this purpose, while also removing other, poorly located roads, as it is too costly to reduce fuel loads through less-intrusive means. Finally, one stakeholder stressed that economics do not support the use of thinning contracts because subsidies would be required and the Forest Service cannot provide them. Smaller timber companies expressed a strong interest in removing timber via fuel reduction efforts, and emphasized that this could be done with suitable controls to prevent abuse.

FRWG members disagree with many of the perspectives raised on these issues. Even so, we see value in continuing the discussion of these issues, informed by adequate data, to explore the points of contention and search for consensus. It would appear that all sides agree that forest thinning can be an important and valuable component of forest health management. The questions that remain concern the circumstances under which thinning should be undertaken -- where, when, why and how to conduct these activities for maximum benefit with minimal ancillary disturbance of IRA values and characteristics. FRWG members would be prepared to pursue such discussions through a structured deliberative process.

**d. Temporary Roads.** As noted earlier, the FRWG White Paper supported the addition of some flexibility in the rule for the construction of temporary roads that are necessary for important management activities, such as fuel reduction and ecosystem improvements to benefit fish and wildlife, in IRAs and in adjacent State and private lands. The FRWG White Paper stressed that this flexibility should be exercised only to enhance roadless area values, based upon a demonstration of extraordinary need, and accompanied by funding and firm commitments for road removal and land restoration.

Dialogue participants discussed this issue at some length. Some expressed concerns that the FRWG's recommended criteria and conditions could be difficult to enforce and secure, and it was suggested that mechanisms similar to the closure and bonding requirements under the Surface Mining Control and Reclamation Act (SMCRA) be considered to address these concerns. Others endorsed the idea of flexibility for road building, but wished to see the concept expanded in several ways: to include permanent roads that meet the FRWG's recommended test (extraordinary need to enhance IRA values); and to include roads that are necessary to meet community economic needs for access to timber to support local saw mills.

While the FRWG does not endorse these latter suggestions, as noted above, we do acknowledge that further discussion of this issue based on the experience gained through implementation of the RACR would be very helpful to understanding whether such a change is needed and, if so, how it would be administered. In the context of a structured, on-going dialogue by advisory committee members, we also would support the consideration of other appropriate suggestions for added flexibility or added restrictions in the rule that would be necessary to protect roadless areas and their associated values.

**2. The Forest Service Should Leave the RACR Substantively Unchanged, and Inform Implementation of the Rule Through an Advisory Committee Process to Consider Any Needed RACR Policy Improvements.**

Given the important issues and fertile ground for further deliberation among stakeholders, outlined above, the FRWG recommends that the Service: (1) postpone the rulemaking process commenced by its July 10, 2001 ANPR for several years; (2) leave the RACR substantively unchanged in order to gain experience, information and policy insight from its implementation; and (3) establish an advisory committee to carry out the mandate described below.

**a. All Stakeholder Interests Should Be Represented on the Advisory Committee.** In order to develop consensus and present credible, balanced recommendations to the Service, the advisory committee must include representatives from all stakeholder interests. We believe the interests represented in the FRWG Dialogue provide a good starting point for the makeup of a suitable advisory committee. By its own choice, the public-interest environmental community was under-represented in the FRWG dialogue, but their involvement would be important to the success of this advisory committee.

**b. The Advisory Committee's Mandate.** The Forest Service should work with stakeholders to develop a specific charter to guide the advisory committee's work. The FRWG would be pleased to assist in facilitating this process, provided that adequate funding could be secured for this purpose. We recommend that the advisory committee's charter include at least the following elements.

**i. Identification of Issues for Consideration.** The charter should direct the advisory committee to address a specific agenda of issues affecting IRAs, subject to refinement over time. At a minimum, we recommend that this issue list include (a) the structure of the rule and its decision-making process, including questions such as the relevance of geographic and historical differences among areas, the importance of current forest plan designations, and appropriate means of considering local needs and perspectives; (b) management approaches for addressing recreational vehicle impacts; (c) fire and fuels management policy; (d) access to public and private lands for ecosystem improvements; (e) mechanisms to assure the accuracy of RACR coverage; and (f) policies that can reduce pressures on the IRAs by improved management of roaded areas. The Forest Service is a public agency. As such, it should invite public scrutiny from all quarters. Forest operations on public lands could invite independent third-party certification or reviews by independent, accredited

professional organizations to validate their management determinations. Such independent certifications would not replace legal and regulatory requirements, but would help to build public support for agency actions.

**ii. Data Gathering.** With respect to each of the issues on the advisory committee's agenda, the charter should direct the committee, working with the Service, to identify specific data and information that should be gathered in order to inform the committee's deliberations. This information should include both factual data needed to evaluate policy choices (e.g., fire intensity data, as well as information on current OHV usage in specific areas, discussed above), information concerning implementation of the existing rule (e.g., the types and justification for activities that are allowed, and not allowed, under the RACR), and any other information the committee believes may be relevant.

**iii. Formulate Recommendations.** The charter should direct the advisory committee to develop and present to the Service detailed recommendations concerning each issue on the agenda. These should include two types of recommendations: 1) those concerning implementation issues arising under the RACR; and 2) if warranted, those concerning potential improvements and adjustments to the rule.

#### **IV. Conclusion**

The FRWG believes these recommendations will serve to enhance the Forest Service's program and regulatory mechanisms for protecting roadless areas and the values and characteristics they possess and will provide a balanced, credible and productive forum for addressing concerns and issues that have been raised in connection with RACR. We look forward to discussing the recommendations with the Service.