

111TH CONGRESS  
1ST SESSION

# S. 1738

To provide lasting protection for inventoried roadless areas within the  
National Forest System.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 2009

Ms. CANTWELL (for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. LIEBERMAN, Mr. CARDIN, Mr. KAUFMAN, Mr. DURBIN, Mr. WEBB, Mr. MERKLEY, Mrs. BOXER, Mr. WHITEHOUSE, Mr. KERRY, Mr. SCHUMER, Mr. LAUTENBERG, Mr. AKAKA, Mr. DODD, Mr. BURRIS, Mr. MENENDEZ, Mr. HARKIN, Mr. WARNER, Mr. REED, Mrs. MURRAY, Mrs. HAGAN, Mr. BROWN, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To provide lasting protection for inventoried roadless areas  
within the National Forest System.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Roadless Area Con-  
5 servation Act of 2009”.

### 6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) IN GENERAL.—Congress finds that—

1           (1) there is a compelling need to establish na-  
2           tional protection for inventoried roadless areas of the  
3           National Forest System in order to protect the  
4           unique social and ecological values of those irreplace-  
5           able resources;

6           (2) roadless areas protect healthy watersheds  
7           and their numerous benefits including—

8                   (A) protecting downstream communities  
9                   from floods and tempering the effects of  
10                  drought;

11                  (B) ensuring a supply of clean water for  
12                  domestic, agricultural, and industrial uses;

13                  (C) helping maintain abundant and healthy  
14                  fish and wildlife populations and habitats;

15                  (D) providing the setting for many forms  
16                  of outdoor recreation; and

17                  (E) providing drinking water to millions of  
18                  citizens from the more than 354 municipal wa-  
19                  tersheds found on roadless areas;

20           (3) maintaining roadless areas in a relatively  
21           undisturbed condition—

22                   (A) saves downstream communities mil-  
23                   lions of dollars in water filtration costs; and

24                   (B) is crucial to preserve the flow of af-  
25                   fordable, clean water to a growing population;

1           (4) the protection of roadless areas can main-  
2           tain biological strongholds and refuges for many im-  
3           periled species by halting the ongoing fragmentation  
4           of the landscape into smaller and smaller parcels of  
5           land divided by road corridors;

6           (5) roadless areas conserve native biodiversity  
7           by serving as a bulwark against the spread of non-  
8           native invasive species;

9           (6) roadless areas provide unparalleled opportu-  
10          nities for hiking, camping, picnicking, wildlife view-  
11          ing, hunting, fishing, cross-country skiing, canoeing,  
12          mountain-biking, and similar activities;

13          (7) while roadless areas may have many wilder-  
14          ness-like attributes, unlike wilderness areas, the use  
15          of mechanized means of travel is allowed in many  
16          roadless areas;

17          (8) roadless areas contain many sites sacred to  
18          Native Americans and other groups that use  
19          roadless areas for spiritual and religious retreats;

20          (9) from the inception of Federal land manage-  
21          ment, it has been the mission of the Forest Service  
22          and other agencies to manage the National Forest  
23          System for the dual purposes of resource extraction  
24          and conservation;

1           (10) consistent with that dual mission, this  
2    Act—

3           (A) protects social and ecological values,  
4           while allowing for many multiple uses of inven-  
5           toried roadless areas; and

6           (B) does not impose any limitations on the  
7           use of, or access to National Forest System,  
8           State, or private land outside inventoried  
9           roadless areas;

10          (11) establishing a consistent national policy for  
11    the protection of inventoried roadless areas—

12           (A) ensures that the considerable long-  
13           term ecological and economic benefits of pro-  
14           tecting roadless areas for future generations are  
15           properly considered;

16           (B) diminishes the likelihood of con-  
17           troversy at the project level; and

18           (C) enables the Chief of the Forest Service  
19           to focus on the economic and environmental  
20           benefits of reducing hazardous fuel buildups in  
21           portions of the landscape that already have  
22           roads;

23          (12) the National Fire Plan indicates that fires  
24          are almost twice as likely to occur in roaded areas  
25          as in roadless areas, because roadless areas are gen-

1 erally located further away from communities and  
2 are harder to access;

3 (13) the report entitled “Protecting People and  
4 Sustaining Resources in Fire-Adapted Ecosystems—  
5 A Cohesive Strategy” (65 Fed. Reg. 67480) advo-  
6 cates a higher priority for fuel reduction on land  
7 that is near communities and readily accessible mu-  
8 nicipal watersheds;

9 (14) the Forest Service has an enormous back-  
10 log of maintenance needs for the existing 386,000  
11 mile road system of the Forest Service that will cost  
12 millions of dollars to eliminate;

13 (15) no State or private land owner would con-  
14 tinue to build new roads in the face of such an enor-  
15 mous backlog;

16 (16) failure to maintain forest roads—

17 (A) limits public access; and

18 (B) causes degradation of water quality  
19 and wildlife and fish habitat; and

20 (17) protection of roadless areas—

21 (A) will impact less than 0.5 percent of the  
22 national timber supply; and

23 (B) will have a negligible impact on oil and  
24 gas production because—

1 (i) the entire National Forest System  
 2 provides only approximately 0.4 percent of  
 3 the quantity of oil and gas that is pro-  
 4 duced in the United States; and

5 (ii) roadless areas provide only a frac-  
 6 tion of the quantity of oil and gas that is  
 7 produced in the National Forest System.

8 (b) PURPOSE.—The purpose of this Act is to provide,  
 9 within the context of multiple-use management, lasting  
 10 protection for inventoried roadless areas within the Na-  
 11 tional Forest System.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) CLASSIFIED ROAD.—

15 (A) IN GENERAL.—The term “classified  
 16 road” means a road wholly or partially within,  
 17 or adjacent to, National Forest System land  
 18 that is determined to be needed for long-term  
 19 motor vehicle access.

20 (B) INCLUSIONS.—The term “classified  
 21 road” includes a State road, county road, pri-  
 22 vately-owned road, National Forest System  
 23 road, and any other road authorized by the  
 24 Forest Service.

1           (2) INVENTORIED ROADLESS AREA.—The term  
2           “inventoried roadless area” means an area identified  
3           in a roadless area map.

4           (3) RESPONSIBLE OFFICIAL.—The term “re-  
5           sponsible official” means a Forest Service line offi-  
6           cer or employee with the authority and responsibility  
7           to make decisions regarding the protection and man-  
8           agement of inventoried roadless areas under this  
9           Act.

10          (4) ROAD.—The term “road” means a motor  
11          vehicle travelway over 50 inches wide, unless des-  
12          ignated and managed as a trail.

13          (5) ROAD CONSTRUCTION.—The term “road  
14          construction” means activity that results in the ad-  
15          dition of classified road or temporary road miles.

16          (6) ROAD IMPROVEMENT.—The term “road im-  
17          provement” means activity that results in—

18                (A) an increase of the traffic service level  
19                of an existing road;

20                (B) an expansion of the capacity of the  
21                road; or

22                (C) a change in the original design func-  
23                tion of the road.

24          (7) ROAD MAINTENANCE.—The term “road  
25          maintenance” means ongoing upkeep of a road nec-

1        essary to retain or restore the road in accordance  
2        with approved road management objectives.

3            (8) ROAD REALIGNMENT.—The term “road re-  
4        alignment” means an activity that results in—

5            (A) a new location for all or part of an ex-  
6        isting road; and

7            (B) treatment of the old roadway.

8            (9) ROAD RECONSTRUCTION.—The term “road  
9        reconstruction” means an activity that results in im-  
10       provement or realignment of an existing classified  
11       road.

12           (10) ROADLESS AREA CHARACTERISTICS.—The  
13       term “roadless area characteristics” means re-  
14       sources or features that are often present in and  
15       characterize inventoried roadless areas, including—

16           (A) high quality or undisturbed soil, water,  
17       and air;

18           (B) sources of public drinking water;

19           (C) diversity of plant and animal commu-  
20       nities;

21           (D) habitat for—

22           (i) threatened, endangered, candidate,  
23       or sensitive species, and species proposed  
24       for listing, under the Endangered Species  
25       Act of 1973 (16 U.S.C. 1531 et seq.); and



1 (ii) species dependent on large, undis-  
 2 turbed areas of land;

3 (E) primitive, semiprimitive nonmotorized,  
 4 and semiprimitive motorized classes of dis-  
 5 persed recreation;

6 (F) reference landscapes;

7 (G) natural appearing landscapes with  
 8 high scenic quality;

9 (H) traditional cultural properties and sa-  
 10 cred sites; and

11 (I) other locally identified unique charac-  
 12 teristics.

13 (11) ROADLESS AREA MAP.—The term  
 14 “roadless area map” means an inventoried roadless  
 15 area map that is contained in the document entitled  
 16 “Forest Service Roadless Areas Conservation, Final  
 17 Environmental Impact Statement, Volume 2”, dated  
 18 November 2000.

19 (12) SECRETARY.—The term “Secretary”  
 20 means the Secretary of Agriculture, acting through  
 21 the Chief of the Forest Service.

22 (13) TEMPORARY ROAD.—The term “temporary  
 23 road” means a road that is—

1 (A) authorized by contract, permit, lease,  
 2 other written authorization, or emergency oper-  
 3 ation; and

4 (B) not intended to be part of the forest  
 5 transportation system and not necessary for  
 6 long-term resource management.

7 (14) UNCLASSIFIED ROAD.—The term “unclas-  
 8 sified road” means a road on National Forest Sys-  
 9 tem land that is not managed as part of the forest  
 10 transportation system, including—

11 (A) an unplanned road, abandoned  
 12 travelway, or off-road vehicle track that has not  
 13 been designated and managed as a trail; and

14 (B) a road that was once under permit or  
 15 other authorization and was not decommis-  
 16 sioned on the termination of the authorization.

17 **SEC. 4. PROHIBITION ON ROAD CONSTRUCTION AND ROAD**  
 18 **RECONSTRUCTION IN INVENTORIED**  
 19 **ROADLESS AREAS.**

20 (a) PROHIBITION.—Except as provided in subsection  
 21 (b), road construction and road reconstruction may not  
 22 take place in an inventoried roadless area of the National  
 23 Forest System.

24 (b) EXCEPTIONS.—Road construction and road re-  
 25 construction may take place, including through the use of

1 appropriated funds, in an inventoried roadless area of the  
2 National Forest System if the responsible official deter-  
3 mines that—

4 (1) a road is needed to protect public health  
5 and safety in a case of an imminent threat of flood,  
6 fire, or other catastrophic event that, without inter-  
7 vention, would cause the loss of life or property;

8 (2) a road is needed to conduct—

9 (A) a response action under the Com-  
10 prehensive Environmental Response, Compensa-  
11 tion, and Liability Act of 1980 (42 U.S.C. 9601  
12 et seq.); or

13 (B) a natural resource restoration action  
14 under—

15 (i) that Act;

16 (ii) section 311 of the Federal Water  
17 Pollution Control Act (33 U.S.C. 1321); or

18 (iii) the Oil Pollution Act of 1990 (33  
19 U.S.C. 2701 et seq.);

20 (3) a road is needed pursuant to a reserved or  
21 outstanding right, or as provided for by law or trea-  
22 ty;

23 (4) a road realignment is needed—

24 (A) to prevent irreparable resource damage  
25 that arises from the design, location, use, or de-

1           terioration of a classified road that cannot be  
2           mitigated by road maintenance; and

3                 (B) to provide for essential public or pri-  
4           vate access, natural resource management, or  
5           public health or safety;

6           (5) road reconstruction is needed to implement  
7           a road safety improvement project on a classified  
8           road determined to be hazardous on the basis of ac-  
9           cident experience or accident potential with respect  
10          to the road;

11           (6)(A) a Federal-aid highway project authorized  
12          under chapter 1 of title 23, United States Code, is—

13                 (i) in the public interest; or

14                 (ii) consistent with the purposes for which  
15          the land was reserved or acquired; and

16           (B) no other reasonable and prudent alternative  
17          to the project exists; or

18           (7)(A) a road is needed in conjunction with—

19                 (i) the continuation, extension, or renewal  
20          of a mineral lease on land that is under lease  
21          by the Secretary of the Interior as of January  
22          12, 2001; or

23                 (ii) the issuance of a new lease issued im-  
24          mediately on the date of expiration of an exist-  
25          ing lease described in clause (i);

1 (B) road construction or road reconstruction  
 2 under this paragraph will be conducted in a manner  
 3 that—

4 (i) minimizes the effects on surface re-  
 5 sources;

6 (ii) prevents unnecessary or unreasonable  
 7 surface disturbance; and

8 (iii) complies with all applicable laws (in-  
 9 cluding regulations), lease requirements, and  
 10 land and resource management plan directives;  
 11 and

12 (C) a road constructed or reconstructed under  
 13 this paragraph will be removed on the earlier of—

14 (i) the date on which the road is no longer  
 15 needed for the purposes of the lease; or

16 (ii) the date of termination or expiration of  
 17 the lease.

18 (c) ROAD MAINTENANCE.—A classified road in an  
 19 inventoried roadless area may be maintained.

20 **SEC. 5. PROHIBITION ON TIMBER CUTTING, SALE, OR RE-**  
 21 **MOVAL IN INVENTORIED ROADLESS AREAS.**

22 (a) PROHIBITION.—Except as provided in subsection  
 23 (b), timber may not be cut, sold, or removed in an inven-  
 24 toried roadless area of the National Forest System.

1 (b) EXCEPTIONS.—Timber may be cut, sold, or re-  
2 moved in an inventoried roadless area if the responsible  
3 official determines that the cutting, sale, or removal of the  
4 timber is expected to be infrequent and—

5 (1) the cutting, sale, or removal of generally  
6 small diameter timber—

7 (A) will improve or maintain 1 or more  
8 roadless area characteristics; and

9 (B) is needed—

10 (i) to improve habitat for threatened,  
11 endangered, candidate, or sensitive species,  
12 and species proposed for listing, under the  
13 Endangered Species Act of 1973 (16  
14 U.S.C. 1531 et seq.); or

15 (ii) to maintain or restore the charac-  
16 teristics of ecosystem composition and  
17 structure, such as to reduce the risk of  
18 uncharacteristic wildfire effects, within the  
19 range of variability that would be expected  
20 to occur under a natural disturbance re-  
21 gime of the current climatic period;

22 (2) the cutting, sale, or removal of timber is in-  
23 cidental to the implementation of a management ac-  
24 tivity not otherwise prohibited by this Act;

1           (3) the cutting, sale, or removal of timber is  
2       needed and appropriate for personal or administra-  
3       tive use, in accordance with part 223 of title 36,  
4       Code of Federal Regulations; or

5           (4) roadless characteristics have been substan-  
6       tially altered in a portion of an inventoried roadless  
7       area as a result of the construction of a classified  
8       road and subsequent timber harvest, if—

9           (A) the road construction and subsequent  
10       timber harvest occurred after the area was des-  
11       ignated an inventoried roadless area and before  
12       January 12, 2001; and

13           (B) timber is cut, sold, or removed only in  
14       the substantially altered portion of the inven-  
15       toried roadless area.

16 **SEC. 6. MODIFICATIONS TO ROADLESS AREA MAPS.**

17       (a) **AUTHORITY OF SECRETARY.**—The Secretary may  
18       make 1 or more modifications to a roadless area map to  
19       improve the accuracy or inclusiveness of the roadless area  
20       map.

21       (b) **REQUIREMENTS.**—In modifying a roadless area  
22       map under subsection (a), the Secretary shall—

23           (1) make the modification in accordance with  
24       the National Forest Management Act of 1976 (16  
25       U.S.C. 1600 et seq.); and

1           (2) to evaluate the effect of the modification,  
2       prepare an environmental impact statement or simi-  
3       lar analysis required under the National Environ-  
4       mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

5 **SEC. 7. SCOPE AND APPLICABILITY.**

6       (a) EFFECT.—This Act does not—

7           (1) revoke, suspend, or modify any permit, con-  
8       tract, or other legal instrument authorizing the occu-  
9       pancy and use of National Forest System land  
10      issued or entered into before January 12, 2001;

11          (2) compel the amendment or revision of any  
12      land and resource management plan;

13          (3) revoke, suspend, or modify any decision con-  
14      cerning any project or activity made before January  
15      12, 2001; or

16          (4) apply to road construction, reconstruction,  
17      or the cutting, sale, or removal of timber in an  
18      inventoried roadless area of the Tongass National  
19      Forest if a notice of availability of a draft environ-  
20      mental impact statement for such activity has been  
21      published in the Federal Register before January  
22      12, 2001.

23       (b) LIMITATION ON REVISION.—The prohibitions and  
24      restrictions established in this Act are not subject to re-  
25      consideration, revision, or rescission in any subsequent



1 project decision or amendment or revision to any land and  
2 resource management plan carried out in accordance with  
3 section 6 of the Forest and Rangeland Renewable Re-  
4 sources Planning Act of 1974 (16 U.S.C. 1604).

