

To: Interested Persons
From: Mike Anderson, The Wilderness Society
Re: Forest Service Planning Directives
Date: April 8, 2005

Following is a brief summary and analysis of the national forest planning directives that were published in the Federal Register on March 23, 2005 (70 Fed. Reg. 14637).¹ The directives supplement the National Forest Management Act planning regulations that the Bush Administration issued on December 22, 2004 and published in the Federal Register on January 5, 2005 (70 Fed. Reg. 1023).²

While the interim directives take effect immediately, the Forest Service will be taking public comments on them for 90 days until June 21. Comments may be sent electronically to the following address: planningdirectives@contentanalysisgroup.com (include “planning directives” in the subject line of the message).

This analysis begins with some background and an overview of the content and process of forest plan revisions, followed by analysis of several key issues in forest planning:

- Ecological sustainability (ecosystem and wildlife diversity)
- Wilderness review
- NEPA lite (comprehensive evaluation report and options)
- The Environmental Management System (EMS)

This is a preliminary investigation of the new forest planning process. The analysis will be continually updated and expanded to address additional key issues and implications.

Overview of Forest Plan Revisions

Background

The National Forest Management Act of 1976 (NFMA) requires the Forest Service to develop land and resource management plans for the National Forests and to revise those plans at least every 15 years. With the assistance of an independent Committee of Scientists, the Reagan Administration adopted regulations in 1982 to guide the forest planning process. In 2000, the Clinton Administration issued new NFMA regulations, but those regulations were quickly suspended by the Bush Administration. Consequently, the Forest Service continued to use the 1982 regulations in revising the forest plans until the Administration adopted final regulations in January 2005.

¹ The planning directives were issued as a series of 12 interim directives amending different sections of the Forest Service Manual and Handbook. All references in this memo are to the directives located in the Forest Service Manual (FSM 1920) and Forest Service Handbook (FSH 1909.12) or to the regulations as codified in the Code of Federal Regulations (CFR).

² For a discussion of the NFMA regulations, see my December 22 memo, available at <http://www.tws.org/Library/Documents/upload/NFMA-Final-Regs-Analysis.pdf>.

Currently, the Forest Service is roughly midway through the process of revising those plans. As of March 2005, 42 revision efforts were underway in various National Forests around the country. For those plan revisions already initiated, the 2005 regulations allow Forest Service Supervisors to choose whether to continue using the 1982 regulations or switch to the new regulations (36 CFR 219.14(e)). Any plan revision initiated after the regulations were published on January 5, 2005 will be required to follow those regulations (36 CFR 219.14(d)(1)). Citizens interested in a particular National Forest may need to contact the local Forest Service planning staff to find out which regulations that Forest will be using.

Plan Components/Content

Under the new NFMA regulations and directives, each forest plan will describe desired conditions of the Forest, set measurable objectives to achieve those conditions, determine the general suitability of lands for various uses, designate special areas such as proposed wilderness, and provide guidelines governing the management practices and uses of the Forest (36 CFR 219.7(a)(2); FSM 1921.11-.16; FSH 12.11). The regulations and directives refer to these as the five “components” of the forest plan.³ The plan components can apply to either the entire Forest or to specifically mapped management areas or geographic areas, including special areas (FSH 12.2b).

Desired conditions are narrative descriptions of the social, economic, and ecological attributes of the plan area toward which management is directed (36 CFR 219.7(a)(2)(i), FSM 1921.12, FSH 12.21). For example, the desired condition for a semi-primitive recreation management area might be a generally unmodified natural environment that allows visitors to experience solitude and closeness to nature. The area might also contribute to economic sustainability by appealing to birders who hire local outfitting guides (FSH 12.2, Exhibit 01).

Objectives are the projected outcomes that measure progress toward achieving the desired conditions within specific time frames (36 CFR 219.7(a)(ii), FSM 1921.13, FSH 12.22). Objectives and other plan components should be based on realistic budget expectations (FSM 1921.11, para. 2). An example of a plan objective would be to reduce hazardous fuels on 5,000 acres per year for 5 years in the wildland/urban interface (FSH 12.22, Exhibit 01). The directives also specify that the plan objectives should include the Timber Sale Program Quantity (TSPQ), which is the estimated volume of timber expected to be produced, given past and projected budgets and agency capacity (FSH

³ The directives also conceptualize a plan as having 3 overarching components: (1) *Vision*, which includes the *desired conditions*, the Environmental Management System *policy* [discussed later in this memo], and *performance measures* to monitor progress toward desired conditions; (2) *Strategy*, including measurable *objectives*, identification of generally *suitable lands*, designation of *special areas*, and *performance measures* to monitor accomplishment of objectives; and (3) *Design Criteria*, which include plan *guidelines* (with associated performance measures) and other “minimum requirements that are needed to protect resources and ensure the plan outcome is fulfilled,” such as state best management practices, endangered species consultation terms and conditions, and applicable laws, regulations, and directives (FSM 12.11).

60.5, 64.4).⁴ The TSPQ, like other objectives, is not a firm commitment, but expresses an aspiration to achieve desired economic and other conditions (FSH 61.4).

Suitability is the identification of areas as being generally appropriate for various uses that are compatible with desired conditions and objectives (36 CFR 219.7(a)(iv) and 219.12, FSM 1921.15, FSH 12). Such uses may include timber production, mineral development, livestock grazing, and recreation activities (FSH 61.1). For timberland suitability, the directives distinguish between lands that are suitable for timber “production” and lands that are more broadly suitable for timber “harvest” to achieve other objectives and desired conditions (FSM 1921.17c, FSH 61.7-62.3). Both types of suitable timberland are included in the calculation of TSPQ (see above).

Special areas are designated in recognition of their unique or special characteristics, such as botanical areas and significant caves (36 CFR 219.7(a)(2)(v)). The directives include extensive guidance in the evaluation of potential wilderness areas and wild and scenic rivers. As discussed below, potential wilderness areas must be considered during the plan revision process (36 CFR 219.7(a)(7), FSM 1923.03).

On the other hand, evaluation of potential wild and scenic rivers is not necessarily required during plan revision if a river study was completed in a prior planning process. In that case, additional wild and scenic river evaluation is only required if “changed circumstances warrant additional review of eligibility or if the Responsible Official considers the river study (suitability) an issue.” (FSM 1924.03).

Guidelines provide information and technical specifications for project-level decision-making to achieve desired conditions and objectives (36 CFR 219.7(a)(iii)). The regulations and directives carefully differentiate legally binding “standards” from non-binding “guidelines” and make it abundantly clear that forest plans should no longer include any standards. The directives allow the Forest Service to “depart from guidelines when it is necessary to deal effectively with unusual situations.” (FSM 1921.14). The directives go to great (almost comical) lengths to ensure that guidelines are worded in ways that do not suggest that they are requirements:

“Do not write guidelines in the imperative mode because imperative mode conveys mandatory compliance. Guidelines should not use the helping verbs ‘do not,’ ‘may not,’ ‘may only,’ ‘must,’ ‘not allowed,’ ‘prohibit,’ or ‘shall.’ These helping verbs convey a degree of compliance or restriction that is not appropriate for guidelines. The helping verb ‘should’ or ‘ought’ is recommended for guidelines to recognize that extenuating circumstances are likely to occur.” (FSH 12.23b)

Forest Service Planning Process and Public Participation

⁴ The TSPQ is not the same as the Allowable Sale Quantity (ASQ), a term familiar to those with experience with 1982 regulations.

The Forest Service's main responsibilities in the process of revising a forest plan involve the following steps: assess the need for change in current management direction, conduct a comprehensive evaluation of ecological, social, and economic conditions and trends (including wilderness review); prepare a proposed plan for public comment; and issue a final plan.

The Forest Service is required to provide public opportunities to “collaborate and participate” in the planning process. At a minimum, the public must be involved in developing the comprehensive evaluation report, establishing plan components, and designing the monitoring program (36 CFR 219.9(a)).

Formal Notice and Comment

The first formal public comment opportunity begins with publication of the notice of initiation of development of a plan revision. The Federal Register notice will summarize the need for change and identify the major issues that the Forest Service proposes to address in the plan revision (36 CFR 219.9(b)(1) and (3)(i), FSM 1921.31, FSH 25.1). The regulations and directives do not specify a length of time for commenting on the notice of initiation; consequently, the comment period may vary from Forest to Forest.

The next formal comment opportunity comes when the Forest Service releases the proposed plan revision for 90 days of public comment. The public will also be able to comment on the comprehensive evaluation report (36 CFR 219.9(b)(3)(ii)).

Finally, there is an opportunity to file written “objections” to the plan revision prior to final approval. Only persons or organizations who submitted written comments during the planning process are eligible to object. The pre-decisional objections must be filed with the Regional Forester within 30 days following publication of the Federal Register notice (36 CFR 219.13(a)).

Informal Involvement and Collaboration

In addition to the formal notice and comment opportunities, the regulations and directives strongly encourage public involvement through other, less formal means such as public meetings, open houses, workshops, and field trips (FSH 31.3). The Forest Supervisors “has discretion to determine the methods and timing of public involvement opportunities.” (36 CFR 219.9(a)).

Collaboration is defined as “people working together and sharing knowledge and resources to achieve desired conditions.... Collaboration is the primary method for surfacing and addressing issues and building a collective vision for the plan area.” (FSM 1921.62).

Collaborative activities should focus on the plan's desired conditions and the management strategies to achieve those conditions, including objectives, suitable uses, and special designations (FSH 31.42a). Strategy development should take an iterative

approach that focuses on one evolving or “rolling” strategy, starting with multiple options and then looking for areas of agreement and narrowing the range of options (FSH 31.42b). However, in situations where collaborative processes are not effective, the Forest Supervisor has authority to proceed with planning processes without further collaboration (FSM 1921.63).

Key Issues

Ecological Sustainability

One of the most controversial issues in the Bush NFMA regulations is the elimination of the species viability requirement, which was the legal basis for the Northwest Forest Plan, Sierra Nevada Conservation Framework, and other wildlife and old-growth habitat conservation strategies. The new regulations replaced the viability requirement with vague direction to “provide appropriate ecological conditions” for at-risk fish and wildlife species (36 CFR 219.10(b)(2)). As discussed below, the regulations and directives aim to shift the focus of planning from individual species to ecosystems, and to protect habitat for species only if the ecosystem management strategy is insufficient.

Ecosystem Diversity

The regulations emphasize that “ecosystem diversity is the primary means by which a plan contributes to sustaining ecological systems. Plan components must establish a framework to provide the characteristics of ecosystem diversity in the plan area.” (36 CFR 219.10(b)(1)).

The primary approach to evaluate ecosystem diversity involves identifying selected ecosystem characteristics and considering their natural variation under historic disturbance regimes (FSH 43.1). General ecosystem characteristics that the plan should address include vegetation types and successional stages, disturbance regimes, rare habitats, invasive species, soil, air, and water (FSM 1921.77b). The directives contain a list of 29 examples of specific characteristics of ecosystem diversity, divided into categories of ecosystem composition, structure, and processes (FSH 43.12, exh. 01).

For each ecosystem characteristic selected, planners are supposed to evaluate current, past, and potential future conditions (FSM 1921 74a). For assessing historical conditions, the appropriate reference period usually will be the climatic period associated with establishment of modern vegetation types, focusing on the period of indigenous settlement prior to the arrival of European settlers (FSH 43.13). The purpose of this evaluation is to determine how well ecosystems are functioning and where plan adjustments are needed, and to identify important threats (FSH 43.16).

Species Diversity

The directives add considerable detail to the bare-bones guidance contained in the regulations regarding species diversity. The directives appear to mandate significantly

greater protection for rare species than the regulations provide. However, the directives only extend that high level of protection to a small number of very rare and imperiled species.

The regulations and directives distinguish between three categories of species: federally listed threatened and endangered species, “species of concern,” and “species of interest.” The directives require plans to “contribute to conserving federally listed species, supporting self-sustaining populations of species-of-concern, and supporting species-of-interest as deemed appropriate by the Responsible Official...” (FSM 1921.77c).

The habitat protection requirement in the directives for species of concern appears to be comparable to the viability requirement of the 1982 regulations: **“The plan for a species of concern must provide for habitats that are of sufficient quality, distribution, and abundance to allow species populations to be well distributed and interactive, within the bounds of life history, distribution, and natural population fluctuations of the species and the capability of the landscape ... across the plan area.”** (FSM 1921.77c, emphasis added). Coupled with the direction quoted above to “support self-sustaining populations,” the directives seem to require plans to provide for species needs above the level of maintaining minimum viable populations.

The problem is that the directives define “species of concern” very narrowly, relegating many at-risk species to the less protective status of “species of interest.” Species of concern are “species for which the Responsible Official determines that management actions may be necessary to prevent listing under the Endangered Species Act.” (FSH 43.22a). In particular, species must fall into one of the following three categories:

1. Species identified as candidate and proposed species under the ESA.
2. Species with ranks of G-1 through G-3 on the NatureServe ranking system.
3. Intraspecific (subspecific) taxa with ranks of T-1 through T-3 on the NatureServe ranking system. (FSH 43.22a).

These NatureServe ranks apply only to species and subspecies that are globally rare and imperiled. For example, the ranking excludes the wolverine – a G-4 species (uncommon but not globally rare) – even though the Forest Service considers it to be a sensitive species. This narrow definition of species of concern could generate more ESA listing petitions aimed at designating additional candidate and proposed species, which would, in turn, automatically qualify them as species of concern.

Many more at-risk species are likely to fall into the less protective “species of interest” category. That category includes state-listed threatened and endangered species; birds on the U.S. Fish and Wildlife Service Birds of Conservation Concern National Priority list; S-1 and S-2 ranked species in the NatureServe ranking system; and other species of regional or local concern due to significant threats, declining populations, or rarity (FSH 43.22b). For these species, as well as game species like deer, the directives give broad discretion to the Forest Supervisor to provide protection “to the degree determined appropriate.” (FSM 1921.77).

Wilderness Review

The regulations and directives provide significant requirements and guidance for the evaluation of potential wilderness areas. The regulations state that “unless otherwise provided by law, all National Forest System lands possessing wilderness characteristics must be considered for recommendation as potential wilderness areas during plan development and revision.” (36 CFR 219.7(a)(5)(ii)).⁵ This means that the Forest Service is required to conduct a wilderness review during the plan revision process in all national forests.

The directives broadly define the lands that must be included in the wilderness review. “Potential wilderness areas include *newly identified areas*, as well as areas previously identified in the [Roadless Area Conservation Final Environmental Impact Statement, Volume 2] ... which remain essentially roadless and undeveloped.” (FSM 1923.03 para. 3, emphasis added). In other words, previously uninventoried roadless areas -- in addition to nearly all of the 58.5 million acres identified in the Roadless Rule EIS – must be evaluated as potential wilderness areas.

The wilderness review process could present a significant opportunity for conservationists in areas where past Forest Service roadless area inventories omitted large amounts of wilderness-quality lands. For example, conservationists in Washington State estimate there are approximately 150,000 acres of uninventoried roadless land in the Colville National Forest in addition to the 181,000 acres of inventoried roadless areas.

The first step in the evaluation of potential wilderness areas is to inventory all undeveloped areas in the National Forests (FSH 71). The inventory criteria that the Forest Service will use in determining whether lands might qualify as potential wilderness are basically unchanged from past inventories. Perhaps most important, potential wilderness areas generally must contain at least 5,000 acres⁶ and must not contain “improved roads maintained for travel by standard passenger-type vehicles.” (FSH 71.1, para. 3). With the Forest Service facing a multi-billion backlog in road maintenance, the existence of primitive old mining roads or relatively new routes created illegally by off-highway vehicle users in otherwise undeveloped areas should not disqualify them from wilderness consideration, at least at the initial inventory stage.

The next step in the evaluation process is to determine what areas are suitable for designation as wilderness, based on a 3-part test of capability, availability, and need (FSH 72). A full explanation of the suitability evaluation process is beyond the scope of this memo, but in short the evaluation must consider the following:

1. the values of the area as wilderness;

⁵ Similarly, the directives require that “all roadless, undeveloped areas that satisfy the definition found in section 2(c) of the Wilderness Act of 1964 shall be evaluated and considered for recommendation as potential wilderness areas...” (FSM 1923.03, para. 2).

⁶ Areas can contain less than 5,000 if they are contiguous to existing or potential wilderness, are self-contained ecosystems such as islands, or their natural conditions can be preserved due to physical terrain (FSH 71.1, para. 2).

2. the values foregone and impacts on adjacent land of wilderness designation;
3. feasibility of management as wilderness, in respect to size, nonconforming use, land ownership patterns, and contractual agreements;
4. proximity to other wilderness and relative contribution to the National Wilderness Preservation System;
5. long-term changes in species diversity. (FSM 1923.03).

In the evaluation of each potential wilderness area, the Forest Service must involve the public in addressing significant resource issues (FSM 1923.03). The Forest Service also should “develop and evaluate an adequate range of wilderness and nonwilderness options.” (FSH 72.41). The results of the potential wilderness evaluation are to be documented in an appendix to the comprehensive evaluation report.

NEPA Lite: Comprehensive Evaluation Report and Options

In addition to eliminating the species viability requirement, the 2005 regulations sparked a great deal of controversy by exempting forest plans from the normal requirements of the National Environmental Policy Act (NEPA). In particular, the regulations categorically exclude forest planning from the NEPA requirements to prepare an environmental impact statement (EIS) and to consider a range of alternatives.

However, the 2005 regulations and directives retain some semblance of NEPA-like elements. Instead of preparing an EIS, the Forest Service has invented a document called a Comprehensive Evaluation Report (CER), which their regulations and directives require agency planners to produce. And while there is no requirement that the agency consider alternatives, the Forest Supervisor at least has the discretion to examine “options.”

The comprehensive evaluation report evaluates social, economic, and ecological conditions and trends that contribute to sustainability (36 CFR 219.6(a)(1)). Analogous to an EIS, the trend analysis must compare the likely outcome of continuing under existing plan direction with the proposed changes in the plan (FSM 1921.76, FSH 24.2). The ecological information in the CER will be derived largely from the analyses of ecosystem diversity and species diversity discussed earlier in this memo. In addition, as noted above, the CER must document the wilderness review in an appendix. The CER must be updated every five years (36 CFR 219.6(a)(1)).

There is no guarantee that the Forest Service will consider options to the agency’s proposed plan. The regulations allow, but do not require, the Forest Supervisor to use an “iterative approach” to planning in which “plan options are developed and narrowed successively.” (36 CFR 219.7(a)(6)). Consideration of options may be particularly appropriate when there is no clear proposal that can be readily adapted to address public concerns (FSH 25.32). If options are considered, they may differ in the plan components (desired conditions, timber objectives, special areas, etc) and in the methods and rate of progress for achieving desired conditions (FSM 1921.75). The extent of trend analysis of any options is at the discretion of the Forest Supervisor (id.).

Environmental Management System

A big, unknown wild card in the new planning process is the role of the Environmental Management System (EMS). The 2005 regulations provide uncharacteristically strong direction to the Forest Service regarding EMS, declaring that the agency “must establish an EMS for each unit of the National Forest System” and that forest plans “must be completed in accordance with the EMS.” (36 CFR 219.5 and 219.5(a)).

EMS is a process for tracking and improving an organization’s environmental performance. It requires an organization to develop an environmental policy; identify environmental aspects (key issues); establish objectives, targets and programs; assign roles, responsibilities, and resources to carry out the EMS; identify preventive and corrective actions to eliminate problems in compliance; and periodically audit the organization’s implementation of the EMS.

Since EMS has never before been used by the Forest Service, it is unclear how EMS will affect both planning and on-the-ground management of National Forests. The agency apparently views EMS as a way to promote “adaptive” planning and management (FSH 23). Unfortunately, the regulations and directives are not very helpful in clarifying the meaning of EMS or the relationship between EMS and forest planning.

For example, the regulations simply state that the Forest Service EMS must conform to the standard developed by the International Organization for Standardization (ISO), called the ISO 14001, and states that ISO 14001 is available on the ISO website. However, the ISO website only provides access to the ISO 14001 standard at a cost of \$81.00. Furthermore, since the ISO standards are copyrighted, it is illegal to reproduce or utilize the document without ISO permission. At this point, the Forest Service promises to make the ISO 14001 available to the public for inspection at each national forest headquarters office, but no one can make copies of the document.

The directives are also not much help in clearing up confusion. One problem is that the EMS process uses terminology that is similar to the forest planning process terminology, but sometimes has different meanings. For example, the term “objectives” has different meanings in EMS and forest planning. In the EMS context, an environmental objective is defined as an overall goal, whereas in the forest planning context objectives are defined as “concise projections of agency activities and program outcomes.” (FSH 12.22).

What role the public will have in the EMS process, if any, is also unclear. The directives simply state that “for EMS, the Responsible Official determines the method of public participation.” (FSM 1921.63)

The Forest Service acknowledges that the task of integrating EMS and forest planning and on-the-ground management will be a work in progress. The directives state, “As the Forest Service gains experience with ISO 14001, relationships between EMS and the land management planning process, projects and activities will be refined As experience

with EMS and applications of ISO 14001 grows, the lessons learned will be posted on the internet at www.fs.fed.us/emc/nepa/ems/work-in-progress.” (FSH 23 and 23.2, para. 6).

Overall, the new directives rely on “guidance,” not hard and fast rules, and provide a great deal of discretion to Forest Service managers in deciding the scope of planning and involvement of the public. This is a level of autonomy not seen in the National Forests since before the NFMA was enacted in 1976, with very little in the way of accountability in return.