

March 31, 2003

USDA FS Planning Rule,
Content Analysis Team
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Missoula, MT 59807

**RE: NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT
PLANNING; PROPOSED RULES (67 FR 72770)**

To Whom It May Concern:

Pacific Rivers Council submits the following comments regarding the December 6, 2002, Federal Register notice of proposed regulations for implementing the National Forest Management Act (67 FR at 72770.) Pacific Rivers Council ("PRC") is a non-profit conservation organization whose mission is to protect and restore rivers, their watersheds, and native aquatic species. PRC has offices in Eugene and Portland, Oregon, Polson, Montana, and Damascus, Virginia. For over a decade PRC has proven to be one of the most effective advocates of a whole watershed approach to land management in both national and regional planning efforts.

PRC has extensive experience working with the National Forest Management Act ("NFMA") (16 U.S.C. § 1600 *et seq.*). We have provided information for and commented on national forest planning efforts that lead to the Northwest Forest Plan, PACFISH, and the Sierra Nevada Framework, among others. Our experience in assessing these processes has enabled us to identify substantial flaws in the proposed regulations that, if adopted, may lead to serious setbacks for progress made in aquatic species protection and recovery efforts over the past two decades. We address these flaws in the following comments and request that the current proposal be withdrawn until they are remedied.

Respectfully,

Deanna Spooner
Public Lands Director
Pacific Rivers Council

Introduction

When Congress enacted the National Forest Management Act in 1976, it required that the Secretary of Agriculture promulgate regulations for developing and amending a Land Resource and Management Plan (“LRMP”). After several iterations, regulations were adopted in 1982 and have remained in force since that time. There have been subsequent attempts to revise the regulations, most noticeably in 1990, 2000, and 2002. Both the 1982 and 2000 regulations were developed by working closely with non-agency scientific experts, convened under the Committee of Scientists provision of the act (§ 1604 (h) (1)), yet the 2002 regulations discard the most recent committee’s recommendations, not to mention the time-tested fundamental soundness of the 1982 regulations.

Proposed Changes to Viability Provision

PRC adamantly opposes the elimination of the 1982 requirement to maintain viable, well-distributed populations of vertebrate fish and wildlife species and their habitats on forest service lands (36 CFR § 219.19). The viability provision addresses § 1604 (g) (3) (B) of the act which requires NFMA regulations to “provide for diversity of plant and animal communities” within a given national forest. The provision codified this statutory requirement by creating a non-discretionary duty to maintain the viability of vertebrate species on national forest lands. The proposed 2000 regulations made some changes to the provision but retained the basic viability duty. In contrast, the two options outlined in the 2002 proposed regulations eliminate any mandatory duty to maintain viable populations of species on lands managed by the forest service

Over the past several decades, public lands in general and national forests in particular have played an increasingly dominant role in the protection and recovery of at-risk species and their habitats. This largely is due to statutory duties that require federal agencies to carry a greater portion of the burden in the protection and recovery of vulnerable species (e.g., the viability provision under NFMA and the no-jeopardy provision under the Endangered Species Act). Without these statutory duties there would be no chance for the persistence of many key aquatic species, such as Pacific salmon and steelhead stocks, whose recovery relies principally on protecting their habitat on federally managed lands. Furthermore, all state and private efforts over the past two decades (e.g., private timber company Habitat Conservation Plans) would have to be reevaluated and perhaps even revised to reflect the new uncertainties these species will face. Rather than call into question years of local, state, and national species conservation efforts, we urge you to either reinstate the 1982 provision or alter the proposed viability language to a mandatory duty rather than a permissive action.

Proposed Changes to Environmental Review and Public Participation

PRC also opposes allowing a new, amended, or revised forest plan to be “categorically excluded” from National Environmental Policy Act (“NEPA”) review. That is to say, an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) with its supporting environmental analysis, and opportunity for public comment on such analysis,

without exception should be required ***for the major planning effort affecting national forests***. The rules propose to further circumvent the environmental review process by providing that even if an EA or EIS clearly is warranted a forest can get around this necessity by adopting an “interim” amendment of up to four years (§ 219.7). An interim amendment can be extended beyond the 4-year limit with no cap on future extensions; and although there must be an opportunity for public comment on subsequent interim amendments there is no requirement for environmental analysis and no opportunity to object to or appeal the extension. If adopted, this provision would promote an illegal and unscrupulous approach to the sustainable management of the nation’s forests.

Under the existing 1982 regulations, the forest plan sets out overarching standards and guidelines with which all projects must comport (e.g., no commercial logging in riparian areas of fish-bearing streams). However, the proposed regulations would allow for a forest plan to be amended to allow implementation of specific projects that otherwise would not conform to the plan’s binding standards (§ 219.10). This type of plan amendment also would be exempted from the proposed objection process. If a plan amendment is made in conjunction with a site-specific decision, a person may file an administrative appeal of the plan amendment and the site-specific decision as described in the forest service’s appeals regulations (§ 219.20). However, newly proposed changes to the appeal regulations call into question the applicability and usefulness of this provision.

The proposed regulations contend that a forest plan is simply a “zoning document” and thus should not be subject to any environmental review or subsequent appeal or legal challenge. This ignores the reality that forest plans do in fact control how management actions play out on the landscape, including but not limited to determining which portions of the forest are suitable for timber harvest, grazing, off road-vehicle use, and other active management activities; the number of board feet that can be cut on a forest annually and through the life of the forest plan; general standards and guidelines for protecting sensitive resources such as riparian areas; designation of Wilderness Areas and Wild and Scenic Corridors; and more. The forest-wide and regional implications of such decisions require a level of environmental review that simply cannot be met at the site-specific project scale. The proposed regulations should be altered to require an EIS for every LRMP adoption, a significant amendment, and revision.

Finally, the proposed pre-decisional objection process that replaces the 1982 provisions regarding post-decisional administrative appeal is illogical in that it requires an interested party to *challenge a decision that has yet to be made*. The practical implication of this provision is that all post-decisional challenges must be brought in a court of law, slowing implementation of a forest plan for months or years. Rather than “streamlining” the planning process, this approach will make it even more contentious and cumbersome. Furthermore, this section indicates that the reviewing officer will consider only substantive legal and policy issues raised in an objection. The narrowest reading of the proposed language indicates that arguments about the plan’s underlying scientific/ecological analysis need not be considered. Such changes clearly aim to stifle public participation in the forest planning process in clear contradiction of NFMA which

details in several sections the importance of public participation in the development, review, and revision of land management plans (*see e.g.*, 16 USC § 1604 (d)).

Conclusion

National Forests support complex and dynamic natural communities. To attempt better management of this vast system of lands by “streamlining” environmental review and curtailing citizen involvement demonstrates either a fundamental ignorance about ecological processes or a clear desire to disregard such processes for the sake of commodity production. Similarly, eliminating the viability provisions from the current proposed regulations goes against the original intent of both the NFMA itself and the 1982 regulations. Accordingly, the current proposed regulations should be withdrawn and either substantially revised or the 1982 regulations should be left in place.