

March 7, 2005

USDA FS,
Content Analysis Team
Attention: Planning Categorical Exclusion
PO Box 22777
Salt Lake City, UT 84122
Fax 801-517-1015
planningce@fs.fed.us

**RE: COMMENTS ON THE PROPOSED "NATIONAL ENVIRONMENTAL POLICY ACT
DOCUMENTATION NEEDED FOR DEVELOPING, REVISING, OR AMENDING LAND
MANAGEMENT PLANS; CATEGORICAL EXCLUSION (36 CFR PART 219)**

To Whom It May Concern:

Pacific Rivers Council submits the following comments regarding the January 5, 2005, Federal Register notice of proposed changes to the Forest Service Handbook 1909.15, Chapter 30. 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, and Polson, Montana. For over a decade PRC has proven to be one of the most effective advocates of a watershed based 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/INFISH, and the Sierra Nevada Framework, among others. Our experience in assessing these processes has enabled us to identify substantial flaws in the proposed FS Handbook changes 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 We address these flaws in the following comments and request that the current proposal be withdrawn.

We incorporate by reference comments previously submitted by Pacific Rivers Council on the all NFMA regulatory changes. Comments have also been FAXED and mailed to the Content Analysis Team.

Respectfully,

Wes Smith
Pacific Rivers Council
PO Box 10798
Eugene, OR 97440
(541) 345-0119 phone
(541) 345-0710 fax

Introduction

The National Forest Management Act (NFMA) is the primary statute governing the administration of national forests. NFMA requires each forest to develop a Land Management Plan or forest plan. A forest plan develops desired conditions (i.e. goals) and is the primary document governing future management prescriptions including watershed and aquatic conservation efforts, watershed restoration, logging, road construction and decommissioning, wildland fire management, recreational uses, etc. New regulations implementing NFMA were posted in the Federal Register January 5, 2005. In section § 219.4 National Environmental Policy Act compliance, the Forest Service outlines how forest plans “may be categorically excluded from National Environmental Policy Act (NEPA) documentation under an appropriate category.”

The same day the new regulations were released the Forest Service issued a proposed revision to Forest Service Handbook 1909.15, Chapter 30. The proposed change would create a categorical exclusion (CE) for land management plans. According to the proposed rule, categorical exclusions are “categories of actions that will not result in significant impacts on the human environment and which are therefore exempt from requirements to prepare further NEPA documentation absent extraordinary circumstances.” The proposed rule would also add an extraordinary circumstance if a forest plan contains a project or activity decision. Although this is not specifically defined, the Forest Service implies that a project or activity is a management prescription having potential effects to a specific location on the ground.

This approach ignores the reality that forest plans do in fact control how management actions play out on the landscape, including but not limited to: determining watershed and aquatic desired conditions (e.g. what is healthy, functioning salmonid habitat), 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; standards and guidelines for protecting sensitive resources such as riparian areas; designation of Wilderness Areas and Wild and Scenic Corridors; and more.

The implications of such decisions require a higher level of environmental review than what a categorical exclusion provides. In fact, these programmatic-level decisions indisputably result in significant impacts on the human environment. For example, forest plans designate large sections of the Forest’s land base as appropriate for timber harvest. This requires environmental effect analysis at a scale and resolution matching these programmatic, plan-level decisions. Although a forest plan does not allow for analyzing the detailed effects of individual timber sales or other management actions, they need to analyze the overall cumulative effects of logging and other activities on the other resources (e.g. soils, water, and fisheries). The Forest Service should project out over the plan’s lifetime and estimate what the future timber harvest targets or management related fire vegetation changes. This is forest planning after all. Part of the planning process is to predict how the forests will obtain their desired conditions and the resulting effects to other resources since this informs project-level planning and feeds back into forest plan effectiveness assessments as well as revision and amendment processes. Forest-scale assessments also are needed to properly inform a cumulative effects analysis, which is both required by NEPA and necessary under the

forest planning revision process. Therefore the proposed changes should be dropped so a higher level of environmental review will occur that simply cannot be met solely at the site-specific project scale.

Reduction of Public and Forest Service Specialists Participation

The importance of a well articulated and thought out forest plan cannot be stressed enough. Through the Environmental Impact Statement (EIS) process several alternative management scenarios can be thoroughly evaluated to determine whether the proposed management plans, via objectives, will attain the desired conditions given the proposed guidelines (i.e. sideboards). This provides a way for involving and focusing stakeholders working toward the desired conditions. The process also increases public and Forest Service input and commitment to the plan. Using a higher level of NEPA analysis lets the public help shape and critique the plan components (e.g. desired conditions and objectives). Congress and the Forest Service may not have anticipated the time and funding commitments required to develop and implement forest plans when NFMA was created but that does not reduce the need for an adequate level of evaluation of the proposed forest plan. Moreover, a forest plan undeniably qualifies as a major federal action under NEPA, thus necessitating full environmental review in the form of an EIS.

By creating a categorical exclusion for forest plans the Forest Service is removing formal public and outside agency buy-in and a stronger self-evaluation process. There is a common tendency for plans or projects that require less evaluation to have less input and less thoughtful outcomes from both the public and the agency. Creating a CE also allows the quality of work and focus to shift from developing a strong landscape-scale management vision to the numerous disjointed projects carried out across a forest, ignoring important environmental effects issues at multiple spatial and temporal scales. Therefore the Forest Service should use the EIS process to determine whether or not the management objectives and guidelines will actually obtain the desired conditions. This will also provide a critique and review of what the desired conditions should be for the next 10-15 years.

Forest Plan Decisions

The Forest Service makes the argument that forest plans do not require an environmental analysis because they don't make "project or activity" decisions. Forest plans to date have made, and should continue to make, several planning level decisions that require evaluation through a higher level of NEPA analysis than a CE allows.

These decisions include:

1. Forest-wide desired conditions, objectives, and standards and guidelines;
2. determining management areas and their desired conditions, objectives, and standards;
3. monitoring and evaluation requirements;
4. lands suitable for resource use and production (e.g. suitable timber, rangelands, and motorized use/designated travel routes);
5. identification of lands administratively available for mineral development including oil and gas and the consent to lease these available lands;
6. evaluations and recommendations for wilderness areas;

7. evaluations and recommendations for wild and scenic status; and
8. special area designations.

Although the ability to apply enforceable standards to forest plans was removed from the new regulations this does not take away from the fact that resource-impacting decisions are still necessary for effective planning. There are other decisions typically made within the forest plan, such as, how and whether wildland fire will be used to obtain the desired conditions. There are also decisions made in conjunction or updated with the forest plan, such as, travel management decisions (e.g. roads closed unless designated open). The new regulations attempt to remove all major decisions from the forest planning process. This approach will only reduce the forests ability to make sound effective decisions. Obviously these decisions are still necessary and will have to be made, whether it happens in separate NEPA documents or under a forest plan NEPA analysis. The Forest Service's desire to reduce their forest planning costs and responsibilities by removing forest plan decisions only weakens their ability to effectively and efficiently manage the land and serve the people. Therefore, Forest Plans should not be categorically excluded from further NEPA evaluation.

Categorical Exclusions

The definition found in the Forest Service Handbook for a categorical exclusion is a “category of actions which do not individually or cumulatively have a significant effect on the human environment and which have found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.” The Forest Service pulled this definition from the CEQ regulations (40 CFR 1508.4). The proposed rule describes “categorical exclusions as categories of actions that will not result in significant impacts on the human environment and which are therefore exempt from requirements to prepare further NEPA documentation absent extraordinary circumstances (36 CFR Part 219 Subpart B Summary).” Certain wording is highlighted for discussion in the following paragraphs.

It is important to note that by implementing a forest plan significant adverse cumulative effects can occur. This becomes apparent when examining old forest plans, which failed to address the increase in management-derived hillslope processes caused by high levels of harvesting and roading during the sixties, seventies and eighties. These impacts occurred across large sections of forests. Without a credible cumulative effects analysis completed through the EIS process it is unlikely that management effects will be analyzed thoroughly and adequate levels of protections will be given to watershed and aquatic resources.

Forest plans directly affect all of the current eight extraordinary circumstances. For example, forest plan guidelines should describe the sideboards that prevent projects or activities, developed to achieve the objectives or desired conditions, from affecting steep slopes or highly erosive soils. The Forest Service Handbook lists the extraordinary circumstances:

1. Steep slopes or highly erosive soils,
2. Threatened or endangered species or their critical habitat,
3. Floodplains, wetlands, or municipal watersheds,
4. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreational Areas,

5. Inventory roadless areas,
6. Research Natural Areas.

Significant impacts are judged by their context and intensity (40 CFR 1508.27). When determining the intensity, ten items should be considered. Two items are used to show how forests plan actions could be considered significant. The first item emphasizes the “degree to which the effects on the quality of the human environment are likely to be highly controversial.” If the most recent forest plan revisions (e.g., southwest Idaho and Sierra Nevada Framework) are any indication, then it can be expected that future forest plans will most likely be highly controversial. This should be expected whenever a large segment of the population and the landscape is affected by a forest plan. The second item describes “the degree to which the effects on the quality of the human environment are highly uncertain or involve unique or unknown risks.” If the Forest Service chooses not to do a credible environmental assessment of how the plan will affect the human environment then the public will have little way of knowing the level of uncertainty or risk.

Meaningful Evaluations

The Forest Service claims that “a plan, plan amendment, and plan revision will not have environmental effects that can be meaningfully evaluated at the time of the plan decision.” However, if the Forest Service can develop desired conditions for a forest, then they certainly should and can predict how the proposed changes will affect the physical environment. Forest plans develop desired conditions, e.g. landscape or watershed goals and objectives, i.e. time-specific and measurable ways to obtain the desired conditions. Many of the desired conditions and objectives will be or lead to specific changes in the existing vegetation. Although no specific prescriptions are proposed, potentially significant changes can be expected over the life of the forest plan just based on the current number of projects being implemented. The effects may be positive or negative and may occur in the short or long-term. Either way NEPA requires an environmental assessment of the effects. If they are found to be significant then a higher level of NEPA analysis is required.

The Forest Service has invested large sums of money developing methods for evaluating the environmental effects of obtaining desired conditions, but now seems ready to discard these investments. Forest planning efforts such as the Northwest Forest Plan, Sierra Framework, PACFISH/INFISH and the numerous recently competed forest plans demonstrate that it is possible and extremely worthwhile to evaluate potential environmental effects of decisions at the programmatic planning level. The Forest Service uses forest plan monitoring reports, landscape-scale assessments, watershed analyses, Assessment of the Management Situation reports among other efforts to provide meaningful feedback. These reports are designed to evaluate how the forest plans are affecting the landscape and whether or not they are obtaining the desired conditions. Given the extensive resources spent and developed, it seems troublesome that the Forest Service would claim that they can't make meaningful evaluations. In fact, their assertion discredits all the recent forest plans' evaluations completed in the last several years, and does not stand up to a “straight face test.” Although, the evaluations do need to be improved to actually come up with substantial effects analyses doing nothing is just plain irresponsible.

In fact it seems very unlikely that the proposed adaptive management logic in the new rule can work if they do not initially predict the environmental effects. Although the Forest Service has become apprehensive about predicting environmental effects they should realize that is required for adaptive management to work. First, a management plan is proposed to achieve the desired results and the effects, positive or negative, are predicted. Second, specific management prescriptions and their effects are proposed and implemented to achieve or partially achieve the desired conditions. Third, the prescriptions are monitored and evaluated for how well they were implemented and if they were effective. Then, the results of the plan-generated projects are assessed to determine if the desired conditions were achieved or if the desired conditions, objectives and sideboards need to be modified or that they are still valid. This is of course an over-simplification of the adaptive management process. Yet, it makes the point that if the Forest Service is not predicting the potential effects of their plans on the environment, then they are simply not following an adaptive management process.

Allowing forest plans to be categorically excluded prevents the analysis of different possible alternative desired conditions or the means to achieve them. Analyzing different alternatives not only lends credibility to a process if done right, but also allows the public and Forest Service staff to follow the process and buy in. Why would a forest want to weaken their most powerful guiding document? The forest plan is the most effective tool for focusing a forest and resolving arguments between competing resource objectives. The Forest Service continually goes to their plan for guidance, such as, what vegetation desired conditions are they trying to achieve and how to blend the constantly competing efforts and demands from the public, industry, and Congress. It makes very little sense for the Forest Service to decide to shortchange itself. Forest managers should critically evaluate their approaches and predict the outcomes of their work. This is why having a critically evaluated plan is so important. It is surprising that the Forest Service wants to continue diminishing the levels of protections for forests, rangelands, watersheds, and aquatic species. Through a continued reduction in the levels of NEPA required for both projects (e.g. Healthy Forest Restoration Act generated Categorical Exclusions for timber sales) and major planning processes (e.g. severe modifications to the survey and manage and Aquatic Conservation Strategy of the Northwest Forest Plan).

Changing Times

The Forest Service claims that forest plans need to be able to quickly adapt to changing circumstances. This is true and why Congress included plan amendments in NFMA. The amendment process provides an excellent way to change aspects of the forest plans when needed. It was generally under-used during the first round of forest plans. However, it has been used effectively to modify numerous plans to changing conditions. For example, all the Utah National Forests modified their Forest Plans for more flexibility in allowing wildland fire use with an amendment. This is a great adaptation to changing conditions, national direction, and funding.

Forests are supposed to keep updating several living documents (forest monitoring reports, roads analyses, landscape scale assessments, watershed analyses, travel management plans, etc.) that describe existing and desired condition changes specifically by resource and location. Most of these planning documents do not require NEPA and serve as guidance for changing conditions on the ground. If an issue arises

and it becomes a forest priority then an amendment may be appropriate. These living documents are also the basis for the Assessment of the Management Situation (AMS) report prepared prior to forest plan development or revision. An AMS summarizes the current information and may discover holes in the information needed to adequately develop a forest plan. If the forests invested in and maintained these documents the forest plan revision and amendment processes is eased, because there is justification for changes. However, this part of the planning process is not usually given a high priority because projects requiring NEPA generally come first. Thus the burden has typically been placed on the forest planning process. Now the Forest Service appears to be shifting all the burden of proof down to the project level. The Forest Service has been using a tiered assessment (e.g. forest plan, watershed, and project level analyses) approach for years to reduce detailed analysis at the project level. Now the new regulations and this proposed CE will force all the analysis down to each individual project analysis.

The Committee of Scientists stated that the effects of management prescriptions may not always be easily predicted and it can be assumed that this applies to determining desired conditions as well. However, not only does this make forest management interesting but more important than ever. As demographic shifts continue across the US, population in the US rises, recreation demands increase, climate changes continue, etc., it is more important than ever to predict and evaluate how land management plans will influence vegetation, watersheds, and aquatic systems. Managers need to evaluate the quality and quantity of products we can sustainably remove from the forests, and the effects this will have on the landscape. One of the main roles, forest managers and scientists (all the Forest Service biologists, foresters, hydrologists, soils scientists, wildlife biologists, range managers, fisheries biologists, etc. are scientists) do is to determine desired conditions and predict the effects of actions aimed at obtaining these conditions. This is a large part of the planning process. Creating a categorical exclusion will reduce the Forest Service's ability and general desire to effectively evaluate the effects, especially cumulative effects, because it isn't necessary under a CE.

Conclusion

The National Forests contain some of the most productive and diverse watersheds and aquatic ecosystems within the U.S. They are complex and dynamic systems. A detailed, credible evaluation of a proposed forest plan, amendment, or revision should incorporate a watershed and aquatic conservation strategy, and evaluate the effects of the proposed management plan through a rigorous effects analysis, an EIS process. The Forest Service is extremely capable of doing a meaningful evaluation of what desired conditions, objectives, and guidelines are appropriate and how they will effect the environment. Given all the significant changes in the new implementation regulations, including incorporation of an untested and only partially explained forest planning process, it would seem prudent to put the new process through a strong evaluation process. Therefore, the current proposed categorical exclusion should be withdrawn. Remembering the twin aims of NEPA and the significant role the forest plan has in forest management it seems judicious to follow the EIS process.

1. "Agencies have the obligation to consider every significant aspect of the environmental impacts of a proposed action."

2. “Agencies will inform the public that the environmental concerns have been considered in the decision making process.”

The greater the effects prediction, the more likelihood the management plan will succeed in increasing public participation, obtaining the desired results, and achieving the Forest Service’s mission. Alternatively, reducing the scope of national forest management to the project level ignores the larger goals of governance under NFMA and the agency’s duty as a steward of the nation’s public forestlands.