

August 23, 2002

Chairman James L. Connaughton  
Council on Environmental Quality  
C/O  
NEPA Task Force  
PO Box 221150  
Salt Lake City, UT 84122

Re: Request for Comments on National Environmental Policy Act Task Force (67 FR 45510)

VIA ELECTRONIC SUBMISSION

Dear Chairman Connaughton:

Pacific Rivers Council respectfully submits the following comments regarding the July 9 Federal Register notice outlining the National Environmental Policy Act (“NEPA”) Task Force and its solicitation of comments on “ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public.” (67 FR at 45510.) Pacific Rivers Council (“PRC”) is a non-profit conservation organization whose mission is to protect and restore rivers, watersheds, and their 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 NEPA processes and analyzing the resultant documents. We have provided information for and commented on environmental analysis documents produced by federal land and wildlife management agencies--the US Forest Service, Bureau of Land Management, US Fish and Wildlife Service, and National Marine Fisheries Service in particular. Our experience in assessing these processes and documents has enabled us to identify certain weaknesses that repeatedly surface and, in our opinion, hamper the efficient and effective application of NEPA. We address these weaknesses in the following comments, linking them to the study areas set out in the Federal Register notice to the extent that we are able, and drawing upon specific examples to better illustrate the points we raise.

However, before continuing any further we must emphatically state that NEPA—despite its flaws—is one of the most important laws enacted in the continuing effort to protect and restore the unique and diverse natural systems of this nation. NEPA established an open and public approach to federal actions that has lead to better-informed decisionmaking overall. As is true with any law, the ensuing years of implementation reveals that there is room for improvement, but the underlying tenants of NEPA remain as legitimate today as they were in 1972.

## Study Area A: Technology, Information Management, and Information Security

### 1. The Science Disconnect Problem

In many of the EISs we review, repeatedly we have identified a gap between what the best available science indicates is an ecologically appropriate management approach and what the responsible agency actually proposes. Sometimes the preferred alternative even contradicts the recommendations of agency scientists. Other times, the analysis contained within an EIS relies on information that is not readily available to the general public, and so interested parties cannot evaluate the applicability of the underlying assumptions. And more often than not the analyses of different topic areas within an EIS are presented in a piecemeal fashion, so that the end result is a set of recommendations that is entirely disconnected not only from the best available science but also from the analytical underpinnings of the EIS itself. For example, many national forest EISs contain goals and desired future conditions that described a functioning landscape with natural watershed processes and biological integrity, but more often than not the preferred alternative does not describe adequately *how* management would achieve this vision nor what ecosystem improvements would be made during the life of the plan. In other words, there are no explicit linkages between ecological goals and the standards and guidelines necessary to achieve them. The end result is an EIS that lacks the necessary linkages between stated ecological goals (supported by the best available science) and management direction (standards and guidelines) to successfully implement a scientifically sound management plan.

Two examples of the science disconnect problem can be found in the development of the Interior Columbia Basin Ecosystem Management Project (“ICBEMP”) and the Sierra Nevada Framework for Conservation and Collaboration (“Sierra Framework”). In the case of the ICBEMP Draft EIS, scientific conclusions reached by federal agency scientists on the Science Integration Team (“SIT”) were ignored, misrepresented, misunderstood, and even misapplied. For instance, the Aquatic SIT Report identified road-related problems as a major contributor to the decline in status of fish species and stream condition. It concluded that the importance of existing refugia (i.e., aquatic species strongholds) and roadless areas to recovery of aquatic species would be difficult to overstate. The Report found a correlation between low road density and high quality habitats and between increasing road density and declining aquatic habitat conditions. It also found that increases in sedimentation are unavoidable even using the most cautious road building methods. The preferred alternative, however, did not incorporate these findings. It did not adopt standards to require a reduction in road density in subwatersheds that support fish refugia, nor did it adopt standards prohibiting new road construction in areas important for recovery of vulnerable fishes. Moreover, the preferred alternative explicitly allowed for an increase in road density in the least disturbed sub-watersheds; provided no direction regarding decreasing road density in moderately roaded subwatersheds; and allowed construction of new roads through the few remaining areas of high quality habitat in the most degraded subwatersheds. We documented many other science disconnect problems with the ICBEMP Draft EIS that followed a similar pattern. The ICBEMP effort ultimately stalled, partly because of problems like the one described above, and partly because of a lack of political will to complete the regional planning process.

The Sierra Framework planning process also languished for many years because of the large gap between the best available science and what was being recommended in the plan. The problem was so severe that on September 4, 1996, then Under Secretary of Agriculture James R. Lyons convened a Federal Advisory Committee of scientific and planning experts to review the Draft EIS (at that time called the California Spotted Owl DEIS) in light of findings of a congressionally sponsored scientific report detailing the ecological and social status of the Sierra Nevada (the Sierra Nevada Ecosystem Project Report or “SNEP”). The Committee found numerous discrepancies between the SNEP Report and the Draft EIS despite the fact that they were being drafted simultaneously and shared many of the authors (i.e., federal agency scientists). Unfortunately, many of the Committee’s findings and recommendations were ignored in drafting the next iteration of the EIS, and many SNEP findings still were ignored, misapplied, or maligned. For example, the Committee recommended that the Forest Service develop a spatially explicit analysis at the appropriate scale of the potential effects of road development associated with the alternatives on aquatic resources, hydrologic connectivity, refugia, roadless areas, and other ecosystem values, as well as cumulative effects analysis in relation to existing road network (including non-Forest Service roads). No such analysis was developed for the Draft or Final EIS, and the Framework was finalized in 2001 still lacking a comprehensive approach to addressing forest road impacts on aquatic systems.

## 2. Information Availability

As stated above, environmental analyses often are based on information that is not readily available to the public. Very often, upon receiving a draft NEPA document, we must carefully comb through the document and identify studies and other primary information sources that only are contained within the administrative record, and then request these studies or data from the responsible agency. The recent trend of copying the administrative record onto a CD-ROM has helped alleviate some of the frustration involved in this process. It would be even more helpful for agencies to identify this information at the incipient stages of the NEPA process, and to make it available electronically (e.g., via the world wide web), so that interested parties can help identify information gaps as soon as possible. This would likely improve agency efficiency and help reduce the risk of lengthy revisions and/or administrative or legal challenges because important information was not considered.

### Study Area B: Federal and Inter-governmental Collaboration

A pervasive problem in NEPA decisionmaking is a lack of coordination or outright conflict between federal agencies and/or between them and state or local agencies. As discussed above, often the science/research arm of an agency is not involved with important management planning endeavors at an early enough stage or is involved only peripherally, which can lead to contradictory recommendations and scientifically and legally vulnerable NEPA decisions. Additionally, intra-agency conflicts can draw-out and confuse NEPA processes and frustrate all parties concerned. While these problems often have more to do with how agencies are structured and funded, we feel that improved coordination within and between agencies is not only possible but necessary to realize the full potential of environmental planning and protection under NEPA.

### Study Area C: Programmatic Analysis and Tiering

Programmatic analysis and tiering can prove invaluable if the analysis is consistent with principles of ecological and biological processes. The spatial (geographic) and temporal scale of an environmental analysis is predicated upon which species and resources are present in the planning area, and what activities are proposed. Wide-ranging species, such as Pacific salmon and steelhead, require large-scale planning to address the multitude of impacts they face throughout their life histories at the regional, basin, sub-basin, and stream-reach scales. Endemic species, such as the Yosemite toad (found in a limited area of the Sierra Nevada), require smaller scale analysis but may also benefit from programmatic analysis when certain impacts are pervasive across a region. For example, grazing of wet meadows impacts large portions of federal lands in the Sierra Nevada and is one of the primary factors in habitat loss and overall decline of the Yosemite toad. But wet meadow grazing also impacts the viability of the willow flycatcher, degrades water quality, increases soil loss, and aids in the conversion of native plant communities to invasive exotics. Thus, activities that occur over a wide area can have a disproportionate impact on a species, suite of species, or habitat type, that may not be adequately addressed at the small-scale (i.e., project level).

Likewise, tiering can play an important role in environmental planning processes *if* the overarching programmatic analysis is done properly and *if* it is employed to verify the appropriateness and accuracy of the larger scale programmatic analysis and not simply to validate it. All too often tiered analyses are seen as an “easy out”—instead of making a good faith effort to evaluate and ground-truth the underlying assumptions of the programmatic analysis, site-level analysis utilize the original document as a stamp of approval for going forward with a given project. A recent example of this is the proposed Bitterroot National Forest Burned Area Recovery Project Final EIS and the accompanying Biological Opinion (BO) issued by the Fish and Wildlife Service.

The proposed Burned Area Recovery (“BAR”) Project would have allowed salvage logging on 41,000 acres within the Bitterroot National Forest in Montana. The project, as originally designed, would have caused prolonged degradation of habitat in bull trout streams already stressed (in the short term) by the fire. This unacceptable risk to federally-listed bull trout was due in large part to the Biological Opinion (BO) issued by the Fish and Wildlife, and which was tiered to a programmatic BO for the larger Columbia River Distinct Population Segment (DPS) of bull trout that encompasses the project area. Although the BO conceded that the Columbia River bull trout DPS is highly fragmented and that the upper Columbia River portion of the DPS is nearly extirpated, the Service illogically concluded that the project would not jeopardize the Columbia River bull trout DPS. Yet the bull trout BO for the Bitterroot BAR project lacked any analysis of the claim that loss of local populations does not compromise the recovery of the DPS as a whole—in place of thoughtful analysis, it refers back to the programmatic BO for the entire Columbia River DPS as justification for signing off on a project that would have devastated local bull trout populations.

## 2. The Unfulfilled Promise of Cumulative Effects Analysis

Programmatic analysis and tiering can be further hampered by inadequate cumulative effects analysis. The Bitterroot National Forest BAR provides a good example for this problem too. The Bitterroot BAR Final EIS acknowledged that there would be significant cumulative effects without in fact providing a cumulative effects analysis. The FEIS divided the Bitterroot National Forest bull trout population into four distinct geographic regions (Blodgett, Skalkaho-Rye, East Fork Bitterroot, and West Fork Bitterroot). It then divided each geographic region into smaller drainages so that each region encompassed dozens of streams. The FEIS then discussed potential impacts to individual stream segments (and by association bull trout subpopulations) but at no point did the FEIS analyze cumulative impacts for each of the 4 subregions, the greater BAR project area, the Bitterroot National Forest, or the Columbia River DPS. Although the FEIS recognized the potential of negative cumulative effects to fisheries within the planning area, it concluded that the cumulative effect of sediment on bull trout habitat and populations would likely be insignificant in all streams, despite contradictory information within the FEIS and the BO.

Unfortunately, incomplete, inadequate, or inexistent cumulative effects analyses are all too common in the NEPA documents we review. This problem has long plagued agencies responsible for preparing NEPA documents, despite recognition by scientists, the courts, and the CEQ itself. In fact, in 1997 the CEQ issued a report titled “Considering Cumulative Effects Under the National Environmental Policy Act” and concluded that consideration of cumulative effects is essential for evaluating and modifying alternatives to avoid adverse environmental impacts and developing appropriate mitigation and monitoring plans. The CEQ report specifically addresses the “scale” issue as follows:

Many times there is a mismatch between the scale at which environmental effects occur and the level at which decisions are made. Such mismatches present an obstacle to cumulative effects analysis. For example, while broad scale decisions are made at the program or policy level (e.g., National Energy Strategy, National Transportation Plan, Base Realignment and Closure Initiative), the environmental effects are generally assessed at the project level (e.g., coal-fired power plant, interstate highway connector, disposal of installation land). Cumulative effects analysis should be the tool for federal agencies to evaluate the implications of even project-level environmental assessments (EAs) on regional resources. (Id. at 4.)

The report goes on to discuss a study that evaluated 89 EAs published in the Federal Register in 1992 and found that for the 22 EAs that actually identified the potential for cumulative impacts, five took conclusions from a previous document, one provided for “future” analysis, and only 3 actually discussed cumulative impacts for all affected resources. (Id. at 6.)

Clearly, incorporating cumulative impacts analysis into every NEPA decisional document is not only required by the act itself (40 CFR § 1508.7) but is necessary to achieve an accurate depiction of potential impacts at both the project and programmatic levels.

### Study Area D: Adaptive Management/Monitoring and Evaluation Plans

In theory, PRC agrees that adaptive management is a valuable tool for adjusting agency action to management outcomes that were unforeseen or inaccurately predicted. In another 1997 report

(“The National Environmental Policy Act: A study of Its Effectiveness After Twenty-Five Years”) the CEQ summarizes the consensus on the appropriate trigger for adaptive management as follows: “where resources are not likely to be damaged permanently and there is an opportunity to repair past environmental damage, and adaptive environmental management approach may be the best means for an agency to meet its specific and NEPA missions.” (Executive Summary, p. x.) In other words, adaptive management should not be an open-ended experiment of “wait and see” conducted across large areas, but rather a carefully designed experiment that ameliorates rather than invites risk.

The ability to design appropriate adaptive management programs so far has been hampered by a lack of current, quality baseline environmental data. For example, the Northwest Forest Plan has a prominent adaptive management component that so far has failed to speed up the project planning process because of a lack of data. Specifically, the plan included guidelines for surveying for certain animal and plant species before designing projects that could impact the identified species, and yet the plan contained no real mechanism for completing the surveys in a timely yet thorough manner. Conservationists were forced to challenge multiple projects that the Forest Service planned to initiate without survey data, which led to a legal settlement agreement. These legal challenges could have been avoided if the necessary funding and implementation provisions had been built into the Northwest Forest Plan, and if adaptive management principles truly were integrated at the project planning level. As it stands, the conservation community is still waiting to see a successful adaptive management plan in action.

#### Study Area E: Categorical Exclusions

In November of 2001, PRC submitted comments on the Forest Service’s proposed changes to its categorical exclusions regulations (National Environmental Policy Act Documentation Needed for Certain Special Use Authorizations [FR 66:183:48412-48416]). We feel that the points raised in our comment letter have broad applicability, and so they are paraphrased below.

With regard to the Forest Service’s regulations, categorical exclusions (CE) policy, CEs include a class of activities that take place on national forest lands but that do not undergo environmental analysis or meaningful public comment. The proposed policy change, as described in the Federal Register announcement, goes to great lengths to persuade readers that the agency merely is attempting a streamlining of the National Environmental Policy Act (NEPA) review process. Yet the very existence of the CE policy is redundant. NEPA already allows for an abbreviated environmental review of those activities that do not pose a significant impact (Finding of No Significant Impact or FONSI). A more efficient way to streamline the process would be to eliminate the CE exemption altogether.

Many of the activities that currently are authorized under the CE policy do in fact create environmental impacts. Perhaps individually the impacts are not significant, but the cumulative effects are unknown because *no environmental analysis is required*. The high potential for significant impacts, particularly cumulative impacts, is of particular concern with regard to the “extraordinary circumstances” section of the proposed policy,<sup>1</sup> which includes roadless areas,

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<sup>1</sup> Extraordinary circumstances (as defined in sec. 30.5) occur when a proposed action would have a significant effect on the resource conditions set out in the following paragraphs 2a through 2g. The responsible official may

high-risk sites, areas that support at-risk species, Native American sites, and other invaluable resources. Furthermore, the allowed activities are inappropriate for other ecologically sensitive areas that are not included in the current or proposed extraordinary circumstances list, such as riparian (streamside) areas, watersheds that serve as refugia for imperiled aquatic species, and uninventoried roadless areas.

Finally, the proposed changes are in response to a study that determined the current CE policy was resulting “in higher administrative costs to the agency and delayed service to the customer.” We believe that those individuals benefiting from the utilization of public resources should have to follow the same rules and regulations that were put in place to protect the needs and interests of the agency’s other customers (i.e., the species that inhabit our national forests and grasslands). Better outcomes for our national forest ecosystems are more likely if the US Forest Service does an environmental analysis and involves the public as directed under the National Environmental Policy Act.

### Conclusion

PRC agrees that implementation of NEPA is often complex, but so is the natural environment in which we function. The Task Force, in seeking ways to “improve and modernize NEPA,” must keep this complexity in mind when evaluating current environmental analysis procedures. The past 30 years of implementing NEPA, combined with our growing understanding of ecological processes, has taught us that rarely are important decisions about the health and well being of human, animal, and plant communities arrived at quickly and with little effort.

Respectfully,

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issue a categorical exclusion even when one or more of the resource conditions listed in paragraphs 2a through 2g are present, only if the official determines on a case-by-case basis that the proposed action would not have a significant effect on these resource conditions and thus an instance of extraordinary circumstances does not exist for that proposed action. The resource conditions to be considered in determining if extraordinary circumstances exist are: (No change to the following paragraph 2a:)

- a. Steep slopes or highly erosive soils. (Proposed revision to paragraph 2b, as follows:)
- b. Threatened, endangered, proposed, and sensitive species or their designated or proposed critical habitat. (No change to the following paragraphs 2c-2g:)
  - c. Flood plains, wetlands, or municipal watersheds.
  - d. Congressionally designated areas, such as wilderness, wilderness study areas, or National Recreation Areas.
  - e. Inventoried roadless areas.
  - f. Research Natural Areas.
  - g. Native American religious or cultural sites, archaeological sites, or historic properties or areas.