



# Sustaining the Forest Service

REVITALIZING THE CULTURE AND STREAMLINING PROCESSES

National Association of Forest Service Retirees | September, 12, 2018

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## About this Report

The National Association of Forest Service Retirees (NAFSR) is dedicated to sustaining the Forest Service mission and adapting to today’s and tomorrow’s challenges.

With respect for the past and a look ahead to the future, the organization has dedicated significant time and effort exploring four topic areas:

- Agency Culture
- Council on Environmental Quality National Environmental Policy Act Regulations
- Forest Service Environmental Analysis and Decision Making Processes
- Endangered Species Act Processes



Teams of retirees were assigned to each topic and produced reports, letters and formal comments which have been submitted to the appropriate agencies and departments. Wanting to capitalize on this substantial body of work, this report has been compiled to describe the key findings and recommendations. For three of the four topic areas, full narratives are available as appendices.

## Executive Summary

These are extraordinary times. Frequent large wildfires have elevated the issues of climate change, forest health and the case for active forest management into the consciousness of the American people. An Executive Order shined the spotlight on agricultural issues (including forestry) and prosperity in rural America stating an intent to “...protect the rural communities where food, fiber, forestry and many of our renewable fuels are created.”

In September 2017, The USDA Forest Service launched an agency-wide effort to improve processes associated with environmental analysis and decision making (EADM). In June 2018 the Council on Environmental Quality (CEQ) announced it was initiating an effort to update regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

These efforts have the potential to make significant positive changes in Forest Service processes and culture, and are strongly supported by NAFSR, an organization that has invested significant time tapping into the collective knowledge and experience of retirees to recommend reform measures that will make processes more efficient and effective ensuring critical on-the-ground work can be accomplished in a timely manner.

Key reform recommendations include:

### *Culture*

- Revitalize Forest Service culture, rededicating the agency to its core values
- Rebuild the capacity of the Forest Service whose ranks have been ravaged from cuts in non-fire personnel

### *CEQ NEPA Reform*

- Distinguish between a “major federal action” and “major significant action”
- Allow prior NEPA to be used to evaluate project impacts
- Reduce the scope of alternatives that must be formally evaluated
- Clarify which decisions may be made through Categorical Exclusions (CEs)
- Develop an integrated process where regulatory processes are synchronized with planning and decision points

### *EADM Reform*

- Make better use of existing authorities and policies
- Develop alternatives to litigation
- Decrease ambiguity and improve efficiency
- Complete the blueprint for reform with short- and long-term priorities

### *Endangered Species Act (ESA) Reform*

- Increase agency authorities
- Focus on process and program management actions
- Develop and monitor reasonable consultation goals and deadline

## Agency Culture

### *The importance of the conservation idea amid changes in agency culture*

#### Introduction

As with any company or organization, the culture of the Forest Service has changed many times and in many different ways since it was created in 1905. The ideas of conserving and protecting important forest lands for America and Pinchot's vision of a decentralized on-the-ground organization of field rangers came together as the strength of the new agency and public land management. The *Use Book* set forth and guided the new agency and reflected the culture that Pinchot expected. Using sound professional forestry principles and an unwavering commitment to conservation, the fledgling agency developed strong roots but there were tough times and many obstacles to overcome.



The complexity grew as the nation grew and the agency had to endure challenges, but the cornerstone of the organization's success and support remained the ranger with the authority and responsibility to make decisions on the ground. The culture of the Forest Service was influenced repeatedly by the realities of the times. Whether it was seeking to find balance on the range, the scars left by the fires of 1910, the depression, the wars, the nation's demand for wood, the emergence of the multiple-use concept, the call to protect wilderness, the emergence of the era of environmentalism, the controversy of the 1980s, or the appeals and litigation, from one crisis to another the agency responded, learned, recalibrated, and got stronger. It became known as a "can do" organization.

If an Administration wanted a Job Corps program delivered, the Forest Service delivered. If there was need for lumber and timber sales, the Forest Service responded. If the country wanted wilderness, the Forest Service stepped forward. If there was need for an organization to respond to a crisis, the Forest Service advanced the incident command system and trained personnel to get things done. The Forest Service knew it needed to be anchored in science and created the strongest natural resource research organization in the world. Similarly, the Forest Service guided and supported the fifty states and U. S. territories in the growth and development of state and private forestry.

The fabric of the Forest Service culture was woven together by the dedication and commitment, not only of the employee, but most often by the family. Many found themselves in isolated compounds and remote locations where families bonded and supported each other. Indeed, "the Forest Service family" was a phrase often used to describe the closeness and ties experienced in the outfit.

By the early 80's, a report by the Office of Personnel Management identified the Forest Service as one of the most successful agencies in government because of its clear mission, decentralized structure, and reputation as a career organization. So the culture of the

organization was built on strong leadership, professionalism, public service, dedication to conservation, on-the-ground decision making, and commitment to the outfit.

### Definition of Culture

The three top definitions of culture from Merriam-Webster are:

1. The beliefs, customs, arts, etc., of a particular society, group, place or time.
2. A particular society that has its own beliefs, ways of life, art, etc.
3. A way of thinking, behaving or working that exists in a place or organization.

It seems the last definition most accurately and appropriately reflects the context that frames the issue of culture within the Forest Service today. It is the way the people within the agency think, behave, or work.

The six foundational cultural values identified above still are recognized as central to the Forest Service organization, but there are undoubtedly many factors that have come to influence the “culture” of the Forest Service presently. Some of those factors are more specific to the Forest Service, and some of are of broader nature and a reflection of our society overall in today’s world.

### Cultural Changes in our Society Overall

Some of the factors which are a reflection of that larger perspective and changes in culture within our entire society are:

#### *Technology Dominance*

Today’s society is hugely influenced by technology. We are plugged in, tuned in, turned on, and in constant contact with the technology that is at our fingertips. Much of our time, energy and wealth are tied up using technology. We can analyze planning options better, we can communicate faster, we can record and store information better, and we can evaluate data quicker. We can become so caught up with technology that we lose sight of our objectives. For Forest Service employees this means increasing amounts of precious time are being diverted to learning the agency’s latest technological systems and entering information into the ever-growing number of mandatory reports and databases, leaving much less time for the land, the resources and the people.

For those in the Forest Service it might be that employees spend more time knowing about and using technology and less time knowing about the land, the resources and the people, including neighbors.

#### *Social Media*

People in the Forest Service, not unlike people everywhere, are influenced by social media. We know more about what’s going on near and far than ever before. We are connected with those we want to be connected with, we are connected faster, we choose who we connect with, and we can be greatly influenced by others. Information flows very fast and opinions are expressed freely within social media circles. It can bring people together and it can also cause division and polarization. Some become nearly addicted to being connected with others electronically and don’t have the time to know much about the

person next door or in the next office. Many service organizations, like Kiwanis, Lions, etc., and even professional organizations have experienced drops in membership and participation. Some feel it is because people use social media to feel connected and don't join organizations as they did in the past. There are many ideas and lingering questions about how social media is impacting our society and our culture now and into the future.

### *Workforce Itself*

The composition of the workforce across the country has brought about a very obvious need for change in the workplace culture. This has happened to different degrees over the decades in different sectors, but without question the composition of the workforce in general better reflects and is more welcoming to the diversity represented within our society. There are more dual career families and shifts in traditional family roles. Changes in the culture of organizations and companies were, and continue to be, needed to ensure that the workplace is a caring, respectful, and safe environment free from harassment and discrimination. Even though the Forest Service has worked hard in making cultural changes in this area, there is, without doubt, still work to be done as our society evolves.

### *World of Plenty*

We are a society that seemingly has plenty. Generally, most of us in the developed world have what we want, but our wants seem to expand as activities evolve and new products emerge. Few want for the basics. As a society we are blessed and, in a sense, have not had the challenge of living without. However, times are changing and as new realities face our nation we will likely face new stresses, and demands on available resources will continue to increase. The Forest Service is experiencing unprecedented budget and personnel challenges and is not able to accomplish all the things that are needed to manage, protect, and restore the land and resources for which the agency is responsible.

### *"Me or Selfie" Society*

There seems to be a growing trend toward becoming a more "me" dominated society. We take pictures of ourselves, we have our own Facebook pages, we read things that "me" likes, we do things that "me" wants to do, and we go by the idea that no one is looking out for me, except "me." As organizations have grown and become larger there is a trend toward more specialization which has a tendency to lead toward compartmentalization and separation from the bigger picture, the more generalist view, or the whole of the organization. There can be a tendency for folks to care more about defending and protecting their specialty (their "me") and less about the agency. This has the potential to influence the culture of the Forest Service to some extent today.

### *Generational Realities*

In today's working world there is a growing complexity created by the motivations and expectations of different generations. Sociologists generally agree that there are five different generations interacting today with traditionalists (greatest generation), baby boomers, x, y (millennials) and the z classifications. How these individually each fit into the culture of an organization is as important as how the culture of an organization is influenced by a specific generation. Mobility, recognition, mission, and career aspirations



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are some of more apparent changing generational variables. No longer is it likely that an employee will work for the same organization for an entire career, but rather the employee will probably move multiple times. Even though many still see the Forest Service as a career organization, there are increasing numbers of people who come into the organization at mid-career and there is much more movement in and out of the organization than in past years.

### Cultural Changes within the Forest Service

To some degree, the Forest Service culture of today is probably being influenced by each of those broader changes occurring within society as described above. Looking directly at the Forest Service, the culture is also being shaped by some more agency-specific trends and realities.

#### *Trend toward More Centralization*

Even though the basic decentralized organizational structure is still in place, there continue to be recognizable shifts toward centralization. The centralization of law enforcement, creation of the Albuquerque Service Center and numerous consolidations of districts and forests which may impact reach and connection are but some examples of this trend over time. In most cases this has indirectly increased the workload of the person at the district level as centralization has taken away support that used to be close at hand. Centralization tends to move people further away from on-the-ground resources, realities and local citizens being served. Centralization also leads to more specialization. There are benefits and there are downsides to centralization and specialization.

#### *Capacity and Skills Reduction*

The capacity to accomplish resource management work at the field level (other than fire) has diminished greatly in recent years. Numbers of personnel devoted to non-fire related management on the National Forests and Grasslands have dropped nearly fifty percent since 2005. With an overall flat budget and an increasing proportion being used for fire suppression, other activities have been severely impacted including fire prevention and fuel treatment. The fire transfers over a repeated number of years have impacted programs, people and morale. Personnel procedures, hiring freezes, and reductions in on-the-ground professional and technical expertise have impacted the agency's ability to get work done, adding stress to those who continue to try to do everything. Though subtle, the long-term impacts and these stresses have influenced the culture of the Forest Service. A secondary impact is the increasing growth of the fire organization now spending more than fifty percent of the entire agency budget, with even some effort to have it be a separate organization.

#### *Process Dominance*

Without question, the amount of time and money that the agency spends on process, planning, analysis, documentation, and ensuring that all the procedures and regulations are fully met has expanded greatly over the years. The recent series of environmental and decision making roundtables conducted by the Forest Service revealed that a fear of risk promoted a focus on process, not outcomes. This change in agency culture was identified

as a potential problem facing the agency. This reality has been recognized as a costly problem for at least the last twenty years or so, and there is much work being done to reduce the level of analysis paralysis.

### *Workplace Norms*

The workplace of today is different than it was in previous decades. It is perhaps kinder and gentler, but it is also less together. It is more flexible and more employee oriented with opportunities to telecommute, work flexible hours and work from detached locations. Because of separation and perhaps less unit cohesion, the appearance of a strongly motivated available work force might be diminished. The Forest Service is not alone in this regard and in many cases private industry in some sectors is far ahead in establishing new workplace norms. Many companies presently have most of their workforce working remotely, and some productive employees never come to an office. Technology has provided opportunities to connect and perform in new ways. This reality influences and changes the culture of yesteryear.

### *Community Connections*

A strong traditional cultural expectation within the Forest Service has always been community presence. The complexity of the communities associated with the Forest Service has changed significantly over the years. Many National Forest communities have grown and become very complex, and the need for Forest Service leadership and presence is perhaps even greater today than yesterday. Some small rural communities of yesteryear are now major resort or recreation centers dominated by more urban values and expectations. With consolidations, many communities that once had a local ranger now have only a remote work center on location. There is a common perception that community presence has generally lessened and the culture has thus changed.

### *Professionalism*

The Forest Service culture of yesteryear was one of proud professionalism. Indeed professional organizations like the Society of American Foresters and the Forest Service organization were closely aligned and there was a culture that expected professions to be a part of their professional society. Whether it was the Wildlife Society, the American Fisheries Society, the Range Management Society, the American Society of Engineers, Administrative Management Society or others, participation and involvement in a professional society was, without question, supported. For a number of reasons, that cultural expectation has changed and the professions are suffering as a result. Forest Service professionals who currently belong to their professional society do it basically in spite of the agency, not through support of the agency.

### *Leadership*

The Forest Service has a long history of building and hiring strong leadership. The agency has a reputation of being progressive and innovative and it is a cultural expectation that the Forest Service invests in and grooms great leaders. It is also a reality that people in the agency are expected to be leaders no matter what their position, grade or skill. In the Forest Service it is critical that every person exhibit leadership within their sphere of



influence. Leading from your position, understanding and supporting the overall mission of the agency, and knowing how your contribution or work makes a difference in taking care of the land and resources you're responsible for is what has made the Forest Service culture so unique. Unfortunately, some ability to lead from where you are has been eroded as a result of centralization and limiting local authority and responsibility.

### *Partnership and Collaboration*

Over the past several decades there has been a growing reliance and dependency on partners and cooperators to get things done throughout the National Forest System. This has been a cultural transition that is without doubt a very positive trend. Partners accomplish important work and their involvement builds support for the programs and the work of the agency. Working together with others is not only good for the resource and the public overall, it is absolutely essential when the agency no longer has the funding or the people to do everything themselves.

### *Morale and Esprit de Corps*

Morale or organizational esprit de corps is usually an accumulation of many factors. When morale is high, it is usually evident that there is good leadership, clear mission, rewarding work with accomplishment, supported organizational programs, professional recognition, good communication and a high level of respect from community, forest users and other professionals. Leadership is without question the single most important factor in morale since ultimately most of the other factors are influenced by leadership. Extended periods of low morale can adversely impact the culture of an organization. There is legitimate worry that the continual negative impacts of endless process requirements, reduced budgets, lack of legislative support, questionable administrative support, the stress of fire borrowing, pushback against public lands, personnel issues and even stressful events like the recent harassment scandal are impacting the culture of the organization. Leadership at all levels can, and must, change that impact and ensure the organization moves forward positively and professionally.

### **Conclusion**

These are but some of changes or factors that may be influencing the culture of the USDA Forest Service today. Some offer new opportunities and position the agency to better serve an ever-changing and demanding public. On the other hand, some are cause for concern, especially if they lessen the agency's effectiveness in meeting its mission and purpose. Understanding the changes that are occurring in an organization—either positive or negative—is critical for effective leadership. The way people in the Forest Service think behave or work will continue to change. Leadership has the capability to influence, or at least adjust to, a good number of the factors influencing culture.

There are new realities in our society and new priorities for organizations at all levels. Even with all the changing variables, norms, technology, demands, attitudes and perhaps even work ethic, one thing that should not change for the people in the agency: the importance of the land and resources entrusted to the Forest Service on the National Forests and Grasslands. These public lands and the resources on them continue to grow in importance, and how they

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are used, managed and protected is ultimately the measure of success and also the most significant influence on the level of support the agency enjoys. It is the same awesome responsibility that biologists, range conservationists, foresters, rangers, technicians, scientists and Forest Service employees of all professions have accepted for many generations.

The agency is trying to respond to some huge challenges never experienced before. There are many millions of acres in need of restoration. There continue to be increasing impacts from fire and insects brought about by the stress of climate change. There are increasing public demands, tighter budgets, some internal challenges and even less traditional support from some sectors than in the past, all of which make these times even more difficult.

The culture of the outfit does change, just like that of our overall society, and some of these changes may be for the better and some may be viewed not so. Through these changes the organization must continue to be guided by the basic theme of “caring for the land and serving people,” and the people in the outfit must remember why they exist and that they are part of a tremendous conservation idea that will exist as long as the nation.

Leadership must never let the people in the organization forget the awesome responsibility they have and ensure that they remember the importance of the conservation ideal amid changes in agency culture. The Forest Service has a rich history and the strong tradition of excellence and dedication that has, over time, provided a strong foundation for enduring change. There are new realities, new challenges and new opportunities, and leaders today must recognize the importance of not forgetting the founding purposes of this organization and where conservation work gets done. The land and resources are too important to let the changing culture of the agency detract in any negative way from accomplishing the important work that needs to be done to fulfill the mission of the Forest Service.

The National Association of Forest Service Retirees’ efforts to “sustain the heritage” of the Forest Service is done with the hope that the core values that have guided the outfit for over a century will endure as they have been a solid foundation of excellence in conservation of our nation’s forests and grasslands. Hopefully, Forest Service leadership will consider these thoughts and perspectives as they lead the outfit into the decade of 2020.



# Council on Environmental Quality National Environmental Policy Act Reform

## *Introduction*

CEQ has issued advanced notice of proposed rulemaking, initiating an effort to update implementing regulations for the procedural provisions of NEPA to ensure a more efficient, timely and effective NEPA process (<https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/pdf/2018-13246.pdf>). Public comments were due August 20, 2018.

NAFSR believes this is a significant opportunity to streamline NEPA processes while meeting the intent of environmental laws. NAFSR worked together with The Public Lands Foundation (PLF) to develop formal and submit comments through the formal process. This section summarizes those comments. The complete unedited response is included in Appendix 1.

## *Reforming the NEPA Process*

### NAFSR and PLF Recommendations for Reforming CEQ NEPA Regulations

#### *Timely and Efficient Processes*

1. **Develop an integrated decision-making model.** The current NEPA analysis process isn't integrated with the regulatory system so the planning and regulatory processes aren't synchronized. There are extensive environmental analysis and public involvement procedures associated with the National Forest Management Act (NMFA), NEPA, ESA, the Clean Water Act (CWA), Federal Advisory Committee Act (FACA), etc. Agencies should be encouraged to forge agreements to merge and/or synchronize processes and ESA effects calls.
2. **Provide better definitions of a lead agency and a cooperating agency and describe their responsibilities.**

#### *Use of Existing Environmental Studies, Analysis and Decisions*

1. **Allow prior NEPA to be used for similar projects with effects/impacts.** Expand upon how past analyses could be used to support current environmental reviews. It is important to allow past NEPA to be referenced (or "tiered to"), to substantiate whether or not a project will have significant effects.
2. **Simplify the process for addressing "new information" and "changed circumstances."** CEQ needs to define the extent to which NEPA requires federal agencies to consider post-decisional information.
3. **Limit the analysis of unavailable and incomplete information.** Existing thresholds and requirements are cumbersome and costly. Greater flexibility is needed.
4. **Limit the on-going requirement for federal agencies to continually evaluate post-decisional information.** Several options exist: 1) adopt a "a deal is a deal" approach that allows federal decisions to proceed despite new

information; 2) develop less burdensome procedures for supplementation; 3) allow projects of limited duration to be completed; or 4) provide standards and guidance that allow for consideration of the likely effect of not incorporating the new information into ongoing or authorized.

#### *Format, Page Length, Time Limits*

1. **Emphasize that an environmental assessment (EA) is intended to be brief and concise.**

#### *Focus of NEPA Analysis*

1. **Clarify the need to focus on “significant effects” or impacts.** CEQ has used the term “significant issues,” which has created confusion and unnecessary work. Instead of “issues,” use and define the term “environmental effects” or “environmental impacts.”
2. **Decouple NEPA processes and decision-making processes.** NEPA was meant to serve as a public review process that informed the decision-making processes of federal agencies. NEPA is a review process that informs the decisions.

#### *Public Involvement*

1. **Agencies should continue to be allowed to exercise discretion in how and when they involve the public.** While there are some prescribed comment periods, the current regulations offer quite a bit of discretion for public involvement. This flexibility should be retained.
2. **Agencies should show responsiveness to public comments, but not required to provide “tit for tat” responses.** Set expectations in the definitions.
3. **CEQ should re-evaluate the need for 45-day public response periods.** In today’s environment of computer technology and web networks, federal agencies have the ability for immediate posting.
4. **CEQ should re-evaluate the timeframes agencies are required to wait before implementing decisions.** Existing timeframes were developed 40 years ago when paper documents had to be sent via mail.

#### *Definitions*

1. **Clarify the term “major federal action.”** Current regulations apply to all ground-disturbing activities as “major federal actions” unless specifically categorically excluded. This is inconsistent with the intent of the 1969 law which intended NEPA to apply to “major significant” actions. CEQ should define what constitutes a “major federal action” helping to establish the appropriate NEPA requirements for scope, range of issues, range of alternatives, depth of analyses and type of NEPA documents required.
2. **Reform and clarify the term “significant.”** Currently, major federal action does not have a meaning apart from “significant.” Clarify that 1508.27(b)(1) does not mean agencies are required to disclose significant beneficial impacts,

and that the statement means agencies may have significant impacts even if the agency believes that on balance the effect will be beneficial. Clarify that 1508.27(b)(4) is about scientific controversy over effects versus public controversy over a project and its effects.

3. **Redefine “site-specific effects.”** Allow the use of programmatic analyses which establish standards and mitigation parameters at the broad landscape, ecosystem or regional level to assess “site-specific effects.”
4. **Support the adoption of “condition-based management” in decision making and implementation.** Condition-based management provides for a proposed action to be implemented on a conditional basis, based upon clearly identified on-the-ground conditions. Condition-based management is grounded in the recognition that the environment is dynamic, changing in response to natural and human-caused events. It is derived from the principles of adaptive management but more responsive to ecosystem changes to achieve an objective.
5. **Clarify the definition of “emergency” to include post-fire activities that are needed and that contribute to quicker recovery of the area.**

#### *Documents*

1. **Change the format requirement for an Environmental Impact Statement (EIS).** Move away from the linear decision structure from the 1960s.
2. **Reorganize the regulations by document type, clarifying which provisions apply to each type of document.** The purposes of an EIS, EA and (CE) are different, yet there are many instances where the agencies apply EIS requirements to EAs. Many agencies now have documentation requirements for some of their CEs. This is contrary to CEQ intent.
3. **Establish a clear set of requirements and procedures for an EA and for an EIS.** CEQ needs to clearly distinguish between an EA (determine the significance of a federal action) and an EIS (disclose impacts of an action determined to significantly affect the quality of the human environment). Emphasize that an EIS is an in-depth look that informs decision-making processes, but is not **the** decision-making process. Current lack of clarity is resulting in costly and unnecessary administrative paperwork.
4. **Decouple the act of NEPA analysis from federal decision-making processes.** NEPA was never intended to be a decision-making process, only to inform the decision.
5. **Redefine the concept of a “detailed statement (EIS).** In today’s rich technological environment detailed statements could be shortened with links to evidence about significant effects and alternatives.
6. **CEQ regulatory requirements should be removed from definitions and placed in more logical places within the regulations.** For example, the content requirements for an EA are in the terminology section under “environmental assessments.”

7. **Amend CEQ regulations to ensure that NEPA’s “detailed statement” requirement does not apply to actions that do not involve an irretrievable or irreversible commitment of resources.** This would help eliminate overlapping, costly and redundant project-by-project and programmatic NEPA procedures while providing a more meaningful scale in which to assess environmental effects.
8. **Allow federal agencies to use other federal agencies’ categories for CE activities.** Through agreement, federal agencies should be allowed to adopt other agencies’ CE categories.
9. **Provide provisions for functional equivalents such as what Environmental Protection Agency (EPA) or Department of Interior Bureau of Land Management (DOI BLM) has for NEPA.** Agencies that do environmental planning shouldn’t be required to do both processes.
10. **Write new definitions in simple, easy-to-understand language.** Some words don’t even need to be defined (e.g., “trivial”).

#### *Timing of Agency Actions*

1. **Regulations regarding the timing of agency actions should be revised.** Rather than file EISs with the EPA for publication in the Federal Register, agencies should send notices directly to the Federal Register. This would slightly speed up the process.
2. **Eliminate the 90-day period for preparing an EIS after a Notice of Intent (NOI) is filed.** Most agencies take more than 90 days to prepare an EIS and, in emergency situations, the 90-day period followed by the 30 day waiting period between final EIS and Record of Decision (ROD) could be critical.

#### *Programmatic Documents*

1. **Improve the use and application of programmatic analyses.** Clarify how programmatic analyses can be used through “tiering” to support cumulative effects analyses for project level decisions. This includes the use of programmatic analyses for ESA consultation.
2. **Clarify when a site-specific effects analysis is required.** Site-specific looks should only be required at the project level. Land management plans are strategic in nature, and requiring a site-specific effects review results in hypothetical “reasonably foreseeable scenarios” which may or may not happen.
3. **Allow agencies to tier to programmatic documents to fulfill requirements of a site-specific effects analysis.** Individual actions or decisions that federal agencies determine to be consistent with programmatic standards and mitigation measures should satisfy the “hard look” for site-specific effects. This would eliminate redundant analyses and provide a more meaningful scale in which to assess environmental effects.



### *Range of Alternatives*

1. **Reduce the scope of alternatives that must be formally evaluated.** The collaborative model narrows the range of alternatives through constructive discussions. Require, at a minimum, the “no action” and one action alternative. Current regulations discourage collaboration.
2. **Provide flexibility in documentation requirements for alternatives.** A single document should not be the goal. With today’s electronic records, agencies should be able to maintain various draft alternatives to demonstrate they have evaluated a reasonable range of feasible alternatives without incorporating them all into a single all-encompassing EIS.

### *Obsolete Provisions*

1. **Replace requirements to “mail” with requirements to “distribute.”** In 1978 the Post Office was the primary option; today there are electronic means to access and exchange information.
2. **Re-define what constitutes a “detailed statement” as required in NEPA.** Expand the concept of a detailed statement so it includes electronic records and is more than specific draft and final EISs. The definition of detailed statement should be closer to what is presently called the “summary,” with clear references to information available electronically.
3. **Revise the “recommended format” so it requires only what NEPA requires for a detailed statement.** Additional information could be available in electronic files.
4. **Provide guidance for documenting the collaborative process so agencies can demonstrate compliance with the requirement to conduct a rigorous and objective evaluation of reasonable alternatives.**
5. **Update timeframes and process steps to reflect the use of technological advancements.**

### *Additional Actions to Reduce Unnecessary Burdens*

1. **Canvass agencies to identify where agencies have processes required by other laws or regulations that can be used as a functional equivalent for NEPA.** For example, the Forest Service has an in-depth forest planning process that also requires an EIS. There should be a functional equivalent category that would cross-walk with CEQ NEPA.

## Forest Service Environmental Analysis and Decision Making Processes

In 2017, the Forest Service launched a national EADM initiative with the goal of increasing the efficiency of environmental analysis and decision-making policies and procedures to accomplish more work on the ground (<https://www.fs.fed.us/managing-land/eadm>).

The reform process included the input of outside partners who were invited to a series of ten roundtable discussions throughout the nation. NAFSAR was one of those partners and was represented at most regional sessions.

Following those discussions, NAFSR developed a position paper to document the membership's suggestions. A summary of that paper follows, with the complete text included in Appendix 2 of this report.

### *Suggestions for Reducing Inefficiencies in the Forest Service Planning and Decision-Making Processes*

#### *Make Better and More Consistent Use of Existing Authorities and Policies*

Many authorities designed to expedite analysis and implementation are not being used as consistently or as effectively as they could be resulting in lengthy analyses and delayed implementation for critical restoration work. In the interest of finding solutions, NAFSR recommends that agency leadership issue administrative direction to:

1. **Use the Healthy Forest Restoration Act (HFRA) authorities to expedite collaborative planning processes and establish accountability measures.** This bipartisan authority is not being used consistently across the nation. Full use of the authority would significantly speed up planning processes through collaboration and effective public engagement; build accountability, transparency and trust; and address a complex variety of landscape treatment and restoration needs.
2. **Request authority to use Emergency Alternative Arrangements to comply with NEPA when agency action is necessary to protect human health or safety, natural resources, or both** (e.g. large-scale fire restoration, tornado response, insect and disease infestation, etc.). The Forest Service has taken a conservative approach to requesting this NEPA provision. Use of this authority can streamline planning processes while meeting legal requirements for action.
3. **Use CEs more effectively and consistently when an action fits within an identified category and no extraordinary circumstances exist.** Clarify direction regarding CEs to clearly specify a process by which CE categories can be created for activities that have been repeatedly shown to have no significant impact to the human environment. Additionally, clarify regulations to more clearly describe whether specific findings under ESA constitute extraordinary

circumstances. The benefits of this action are reduced costs and more timely analysis and implementation.

4. **Use stewardship end result contracting authority to its fullest extent where appropriate, establish timelines and hold units accountable.** Some units pursue only limited use of this tool because they do not have the experience or skill to implement it, leadership direction is not clear or they perceive the process to be too cumbersome.
5. **Use landscape-scale EISs to address large-scale mortality.** Taking a large-scale, landscape approach to NEPA planning has been recently sanctioned by the Washington Office and by CEQ. There are examples around the country where landscape approaches are effectively responding forest health challenges and providing for more timely treatments and use of resources for rural community development.
6. **Utilize authorities provided by the 2015 Farm Bill wherever conditions meet the requirements set forth in the Act.** The Farm Bill required the Forest Service to designate forest insect and disease treatment areas at the request of the states. The Secretary designated 45 million acres in 35 states pursuant to state petitions. To date there has been limited use of this authority.
7. **Establish and implement an aggressive schedule to review and resolve ESA-related conflicts.** Level one and level two review procedures are established on some units but often aren't used in an efficient or expedited manner. On other units the process is not established. When working as designed, these reviews expedite the resolution of conflicts between action and regulatory agencies, first at the local level by a designated interagency team (level one), then to local agency administrators (level two).

### *Develop Alternatives to Litigation*

It is difficult to overstate the enormous effect litigation and the threat of litigation has on the Forest Service and the acres of land it is able to treat. It is damaging when an important collaborative project with widespread support is delayed or halted. It is also discouraging to realize there is a financial incentive to pursue such litigation through the Equal Access to Justice Act (EAJA).

1. **Support legislative reform to judicial review of Forest Service NEPA decisions. Specific legislative reform provisions should include:**
  - a. Policy and process reforms to speed action on integrated, large-scale collaborative projects.
  - b. Incentives for finding solutions outside of the judicial system and disincentives for filing “nuisance litigation” against collaboratively-developed forest management projects.
  - c. Requirements for a bond as part of legal challenges to collaborative projects.
  - d. Limited injunctive relief at the forest plan and/or project levels to provide for speedy resolution of issues.

- e. Clarification that the definition of the phrase “ultimately prevails on the merits” means a court must rule in favor of the plaintiff on at least one cause of action in all actions brought by the plaintiff.

*Modify Existing Regulations to Decrease Ambiguity and Improve Efficiency*

1. **Promulgate administrative rules that emphasize an adaptive management approach to decision making.** Forest Service NEPA regulations currently requires that an EA or EIS disclose not only the effects of the proposed action or alternative, but also the “effect of the adjustment” (i.e., adjustment(s) that may be made when monitoring indicates the action is not having the intended effect or is causing unintended or undesirable effects). An adaptive management approach would reduce the emphasis on speculative analysis and documentation and increase the emphasis on monitoring and learning.
2. **Revise Forest Service regulations to describe NEPA procedures at forest plan and project levels. Establish which decisions require which type of assessment and documentation.** Presently, many line officers opt to prepare an EIS if it is questionable whether a proposed action may have a significant effect on the human environment. This takes substantially more time and funding than an EA or a CE.
3. **Build greater flexibility into Forest Service regulations regarding the analysis required when information is unavailable and/or incomplete.** Current direction is cumbersome and costly.
4. **Amend Forest Service (and CEQ) NEPA regulations to address: 1) integration of NEPA, NFMA and ESA; 2) procedures for analyzing “new information” and “changed circumstances;” 3) guidance for narrowing the range of alternatives developed through collaboration; and 4) direction regarding how the agency’s decision-making process considers cumulative effects.** Because the courts are generally more differential to regulations than internal guidance, these should be codified in regulation. Reform must also be made to CEQ regulations as described previously in this report.
5. **Revise Forest Service (and CEQ) regulations to require narrowly-crafted purpose and need statements, and to describe the relationship of the purpose and need with the scope of analysis.** Additionally, regulations should clearly state that the only analysis needed to disclose social and environmental impacts directly related to the need for action will be addressed in the subsequent NEPA document.

*Reforming Internal Forest Service Systems*

1. **Complete the EADM process, compiling and sorting regional work, prioritizing it, and creating short- and long-term blueprints for reform.** Capitalize on the good work done in the regions to identify and implement meaningful changes.

2. **Rebuild the capacity of the Forest Service through expedited recruitment and hiring processes.** As previously noted, the agency has lost roughly 50 percent of its non-fire workforce since 2005, and employees are struggling to provide the expected goods and services. Even though “fire borrowing” has been fixed, there is still a backlog of work to be accomplished. After 12+ years of staff declines, it will take years to staff appropriately if there isn’t significant process reform to recruitment and hiring processes.
3. **Provide administrative oversight for public participation processes.** While regulations are clear on minimum public participation requirements for the various levels of NEPA, it has become routine to extend comment periods and to hold extensive public meetings and hearings. The result has not necessarily been better public input, but more comments resulting in increased workloads to categorize and respond to all comments. The vast majority of projects should adhere to public participation requirements required in CEQ and Forest Service regulations

## *Conclusion*

Natural resource policy laws enacted over the last 40 years are complicated and, in some cases, overlapping. The interaction between these laws and a lack of consistent application by land management and regulatory agencies has resulted in the process gridlock that currently exists.

This section describes a list of actions that could occur in a piecemeal manner to make the existing situation better. All recommendations pertain to existing laws and regulations, or insist on the execution of those laws and regulations. These suggestions merely offer potential short-term improvement, but they do not fix the larger longer-term problem.

Many retirees and federal leaders believe a long-term fix is needed. This would require Congress to review existing environmental laws, agree on overall policies for land management across the nation, and create a single consolidated “Natural Resource Policy” law. With proper leadership, this would be the “gold nugget” approach.

This short-term action list coupled with the longer-term legislative fix would be the ideal solution.

## Endangered Species Act Reform

As part of the EADM process, the Forest Service identified actions that could be taken to improve species recovery by improving the efficiency and effectiveness of consultation with the U.S. Fish and Wildlife Service (USFWS) and the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) Fisheries division (regulatory agencies). As part of that process, an ESA task force was charged with recommending improvements for the conservation and recovery of threatened and endangered species on National Forest System lands. The task force produced a report—*Endangered Species Act Consultation Task Force Recommendations for Improving Endangered Species Act Consultation Efficiency and Conservation Outcomes*—that was issued in February 2018.

The report identified 17 actions, initially giving priority to five actions: 1) improving training; 2) increasing the use of programmatic consultations; 3) developing guidance and templates for biological assessments; and 4) clarifying how ESA effects determinations inform the level and scope of environmental analysis.

After considering the report in conjunction with the ESA consultation and species recovery experiences of many NAFSR members, NAFSR provided a letter of feedback to Interim Forest Service Chief Vicki Christiansen in July 2018. The letter is included in Appendix 3 of this report.

While commending the agency for its efforts to improve ESA consultation and species recovery NAFSR also expressed concern about the report, recommending the prioritization of actions and a focus on those actions that would result in the most significant improvements to the consultation process.

While the Forest Service report addressed “formal consultation”—the process used for the more complex or high profile agency projects—the agency did not significantly address the “informal consultation” process which is used for the majority of agency projects. These are the more “routine,” albeit important, projects and activities. Since many more projects are delayed or altered through informal consultation than through the more formal process, NAFSR believes an emphasis should be placed on the informal consultation process. The organization offered three major suggestions for reform.

- 1. Emphasize and actively pursue the actions included in recommendation 17 of the report—Increase long-term Forest Service authorities.** This recommendation has the potential to make the most significant improvement in the consultation process. Forest Service field biologists are second to none and are capable of making “may affect” and “not likely to adversely affect” determinations for most projects. Regulatory agencies would monitor those calls. This would require the support of the Forest Service, regulatory agencies, USDA, DOI and the Department of Commerce. NAFSR recommends the Forest Service initiate the process to convene these Departments to forge agreements necessary to implement this critical reform.



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In conjunction with this action, pursue the following:

- a. Allow action agencies 30 days to review draft biological opinions.
  - b. Request the regulatory agencies define the “minimal rule change” as follows: “the regulatory agencies will rely on the action agency, or applicant’s input, in the development of reasonable and prudent measures and/or terms and conditions to ensure projects are implementable and do not require major alterations of the proposed action of a plan or project in terms of design, location, scope and results.”
  - c. Pursue more programmatic consultations, and request the regulatory agencies respond with more programmatic biological opinions.
  - d. Increase the length of time consultations are valid, making it more efficient to renew consultation for actions such as road maintenance, special use permits and grazing permits that have not changed but must be reauthorized.
2. **Focus on recommendations 5 (develop guidance and templates for biological assessments), 6 (increase the use of programmatic consultations), and 7 (clarify the relationship between ESA effects determinations and “significance” in the context of NEPA).** These actions have the potential to save significant amounts of time.
  3. **Create and monitor reasonable consultation goals and deadlines for various situation and projects.**
  4. **Develop policy and conduct training to clarify the concept of “significance” as it relates to biological assessments related to ESA and NEPA.** There appears to be confusion around the definition and how it applies to the two statutes and implementing regulations.
  5. **Update and simplify manual direction related to sensitive species.**

Since issuance of the letter, NAFSR members have had many discussions about the concept of risk as it relates to ESA. The current consultation process is largely risk adverse. Regulatory agencies favor projects with little-to-no risk, frequently requiring modifications that eliminate as much short-term risk as possible. This focus on the short-term impedes projects that could have significant long-term benefits for listed species. Given that the Forest Service and regulatory agencies have a common goal to recover listed species, it is time for the Forest Service, USDA, and Departments of Interior and Commerce to convene and have serious discussions about the need to consider both the short- and long-term effects of land management action and inaction when evaluating land management projects.

Allowing short-term impacts for longer-term gain would likely involve the establishment of special regulations under section 4(d) of the Endangered Species Act. The Society of American Foresters will soon publish *193 Million Acres: Toward a Healthier and More Resilient U.S. Forest Service* authored by Stephen Mealey, Jack Ward Thomas, Gary J. Roloff, and Jay O’Laughlin. Page 495 offers three suggestions for how Section 4 should be changed to incorporate consideration of the long-term in the consultation process.

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1. *Require in ESA Section 7 consultations, when ecological scales and hazards warrant, biological assessments that include formal, rigorous, comparative ecological hazard or risk assessments (e.g., Ager et al. 2007; O’Laughlin 2010; Calkin et al. 2011; Roloff et al. 2012). These hazard or risk assessments should balance (as required in Section 106 of the 2003 Healthy Forests Restoration Act), the “impact to the ecosystem likely affected by the project, [and compare] the short- and long-term effects (both positive and negative) of undertaking the agency action, against the short and long-term effects of not undertaking the agency action.”*
2. *Require that regulatory agencies consider comparative hazard, or risk, assessment results in decision making and include those results in Section 9 and 10 determinations, with special consideration for outcomes that contribute the greatest net benefits to affected species in the long term.*
3. *Determine that for take, harm, or harass to occur from habitat modification or degradation, the proposed project must adversely affect listed species at both the individual animal and species population-levels.*

NAFSR strongly recommends that action and regulatory agencies consider these recommendations during their discussions.

## About the National Association of Forest Service Retirees (NAFSR)

The National Association of Forest Service Retirees (NAFSR) is a national nonprofit membership organization that represents thousands of Forest Service retirees who have dedicated their lives to research, international work and caring for the nation's National Forests and Grasslands. The organization is dedicated to sustaining the heritage of caring for the National Forests and Grasslands, partnering with the Forest Service, and helping understand and adapt to today's and tomorrow's challenges.



The Association has a core set of beliefs and values which includes:

- Protecting and managing diverse lands and valued resources while providing a wide array of uses and services to the public. •
- Actively managing landscapes, where needed to improve both health and resilience. • Protecting Special Areas and Landscapes, like designated wilderness, monuments and other special landscapes to maintain their unique character. •
- Balancing social, environmental, and economic considerations with the best science available. •
- Communicating effectively to increase awareness of the National Forests and Grasslands importance to an increasingly urban populace. •
- Responding professionally and responsibly in support of the agency's efforts to protect the public interest and ensure public safety. •
- Addressing emerging (national) issues professionally and deliberately with facts and science. • Partnering with the agency, communities and cooperators in a dependable and credible way. •
- Respecting the Forest Service's rich traditions and history. • Maintaining a diverse and productive field organization that is accessible to the public.

NAFSR is a strong advocate for keeping public lands in public hands, and supporting responsible sustainable management of these lands that are so vital and important to our American Publics and keeping our nation strong.

Membership is open to all agency retirees. Information about the organization, membership and its activities is available on [www.nafsr.org](http://www.nafsr.org).

## Appendix 1—Comments Submitted to the CEQ

Federal eRulemaking , GPSMR Case 2016–105–1.”

Submitted by **National Association of Forest Service Retirees (NAFSR) and The Public Lands Foundation (PLF)**

**The National Association of Forest Service Retirees (NAFSR)** is a national nonprofit membership organization that represents thousands of Forest Service retirees who have dedicated their lives to research, international work and caring for the nation’s National Forests and Grasslands. NAFSR is a strong advocate for keeping our public lands in public hands, and supporting responsible sustainable management of these lands that are so vital and important to our American publics and keeping our nation strong.

**The Public Lands Foundation (PLF)** is a national nonprofit membership organization that advocates and works for the retention of America’s public lands in public hands, professionally and sustainably managed for responsible use and enjoyment by American citizens. The PLF endorses and embraces the multiple-use mission of the BLM. Members are predominately retired employees of the BLM from across the United States and as such have spent their careers dedicated to the sound management of these valuable lands and resources. Members have personal knowledge of the public lands and resources and expertise in their management.

**Advanced Rulemaking, Council on Environmental Quality (CEQ) request for public comment on potential revisions to update and clarify CEQ National Environmental Policy Act (NEPA) regulations and procedures.**

Thank you for the opportunity to comment on the potential revisions to the CEQ NEPA regulations. NAFSR and PLF memberships together span the entire spectrum of natural resource and research professionals. Many of our federal retirees spent their professional careers working at all levels of the USDA Forest Service (USDA FS) and DOI Bureau of Land Management (DOI BLM), at the national and community levels, to implement NEPA since its passage in 1969. Our members literally have thousands of years of collective on-the-ground and applied experience in implementing the laws, regulations, and policies that affect NEPA. Today several of our members remain involved with the working of NEPA by serving as private consultants to advise Federal Agencies on NEPA regulations and requirements.

**The following are the CEQ questions and NAFSR's and PFL's responses recommending changes and reforms to current CEQ NEPA regulations and procedures.**

### NEPA Process

1. **Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?**
  - *CEQ should look at development of an integrated decision-making model. Amend CEQ's Environmental Analysis and Review Procedures/Decision Making Procedures*

so that they are integrated with the regulatory system that harmonizes the various planning levels and decision points (NFMA, ESA, NEPA, etc.). Decision making is complicated by the extensive environmental analysis and public involvement procedures developed under NFMA, NEPA, ESA, CWA and FACA. All these factors in combination can prevent or seriously delay work from getting done to protect species, improve water quality, restore watersheds, or treat fuels next to communities at risk from wildfire. For example the differences between agency's administrative review processes can become a pinch point for processes and coordination. Agencies up front through agreement should be allowed to adopt a single agency's process for conducting their coordinated reviews as cooperating agencies.

A further example of where time and cost could be reduced or eliminated is the overlapping process reviews and effects calls that are made by both the land management agencies and the regulatory agencies for site-specific projects. The site-specific project reviews could be delegated to a single agency such as the action agency (USDA Forest Service or DOI BLM) if the project conforms and is tiered to a boarder landscape decision with a Finding of No Significant Impact (FONSI). Decisions made at the broader landscape (forests and grasslands or resource units) or regional planning might be jointly delegated to a suite of agencies with natural resource management. CEQ should detail the elements of an interagency review process to coordinate the procedural requirements of conservation and environmental programs, thus creating a system within which would also allow regulatory agencies to do their reviews concurrently with action-agency NEPA analysis and reviews.

- *CEQ regulations should better define a lead agency versus a cooperating agency and their respective responsibilities.*

**2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier federal, state, tribal or local environmental reviews or authorization decisions, and if so, how?**

- *Adopt into regulations a determination of NEPA adequacy to allow prior NEPA to be used for projects with similar effects/impacts.* Amend the regulations to expand upon how past analyses could be used to support a current environmental review. For example, CEQ should look at the DOI BLM implementing regulations which cover this subject as a good template. As an example, past NEPA could be used to substantiate that there would be no significant effects and therefore a FONSI could be prepared. There currently is an inordinate amount of time spent on doing repetitive NEPA analyses showing that there would be no significant effects on similar actions that have already had a finding of non-significance. Regulations need to be expanded to include the use of analysis from other NEPA reviews to support a FONSI. Reference to, or "tiering to," these prior reviews should be adequate and a viable part of reaching a FONSI.

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- *Amend the CEQ regulations and NEPA procedures for addressing “new information” and “changed circumstances,”* as a simpler process is needed for adjusting approved NEPA decisions in response to new information. CEQ needs to define the extent to which NEPA requires federal agencies to consider post-decisional information.
  - *Amend CEQ regulation to limit the analysis of unavailable and incomplete information.* Under existing CEQ regulations (40 CFR 1502.22), the thresholds and requirements for accomplishing these analyses can be cumbersome and costly. Greater flexibility should be built into the regulations on this requirement.
  - *The CEQ regulations should be amended to define the extent to which NEPA and other environmental laws require federal agencies to consider post-decisional information.* CEQ needs to limit the on-going responsibility for federal agencies to continually evaluate post-decisional information. Several options exist: 1) to adopt a “a deal is a deal” approach that allows federal decisions to proceed despite new information inconsistent with original predictions; 2) to develop less burdensome procedures for supplementation; 3) to allow projects of limited duration to be completed; or 4) provide standards and guidance for new information that (rather than halting ongoing projects pending reevaluation) allow for consideration of the likely effect on the environment of not incorporating the new information into ongoing or authorized projects and commit to *considering* it for new projects in early stages of planning.
3. **Should CEQ’s NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?**
- *CEQ should look at development of an integrated decision-making model.*  
(Addressed in question #1)
4. **Should the provisions in CEQ’s NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?**
- *The more useful addition would be to emphasize the intent of the environmental assessment (EA).* Emphasize early in the regulations that an EA is brief, concise document to determine whether to prepare an FONSI or EIS.
5. **Should CEQ’s NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decision makers and the public, and if so, how?**
- *Clarity is needed to state that “significant issues” are the same as “significant effects/impacts.”* CEQ NEPA already calls for agencies to focus on significant issues that are relevant and useful to decision makers. However ,CEQ should get rid of the term “issues.” This term has caused quite a bit of confusion, discussion, and



unnecessary work in NEPA. Instead of focusing on issues, use the term “environmental effects” or “environmental impacts.”

- *Through definition CEQ should decouple of the act of doing NEPA procedures and requirements related to federal decision processes.* Clearly NEPA was meant to serve as a public review process that informed the decision-making processes of federal agencies. The act of doing NEPA was never intended to be a decision making process-in of itself-but rather that the intent of NEPA is a review process that help to inform the decision.

**6. Should the provisions in CEQ’s NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?**

- *The current regulations offer quite a bit of discretion for public involvement.* The only time frames imposed are for the 45-day comment period for draft EISs and a comment period for some EAs and FONSI. While public comments are a form of involvement, agencies should continue to be allowed to exercise discretion in how and when they involve the public.
- *In responding to comments, agencies should show responsiveness to comments, but not “tit-for-tat” responses (set expectations in definition).*
- *CEQ should re-evaluate the time requirements or need for 45-day public response periods.* In today’s environment of advanced computer technology and web networks, federal agencies have the ability to do immediate and transparent posting of public comments.
- *CEQ should re-evaluate the time requirements or need for agencies to wait a period of time (i.e., 15 days, 30 days, etc.) before executing a ROD and/or decision.* Given today’s requirements and agency practices to fully engage the public upfront and throughout the NEPA process, these time requirements may not be necessary. These requirement(s) were put in place over 40 years ago and are in need of a hard look and updating based on today’s practices and the use of the world-wide web.

**7. Should definitions of any key NEPA terms in CEQ’s NEPA regulations, such as those listed below, be revised, and if so, how?**

- a. **Major Federal Action;**
- b. **Effects;**
- c. **Cumulative Impact;**
- d. **Significantly;**
- e. **Scope; and**
- f. **Other NEPA terms.**
- *CEQ Regulations 40 §1508.18 Major Federal Action-CEQ’s NEPA regulations currently apply to all ground-disturbing activities as a “major federal action,” unless specifically categorically excluded. However, the intent of the 1969 law was to have it apply to “major significant” actions. The term “major federal action” includes actions with effects that may be major and which are potentially subject to*

*federal control and responsibility. Major reinforces **but does not have a meaning independent of significantly** (§1508.27). Based on the 1969 Act, CEQ should issue guidance as to the what constitutes a "major federal action" helping to establish the appropriate NEPA requirements for defining use and scope, range of issues, range of alternatives, depth of analyses, and the type of NEPA document required. Further clarification or guidance related to the term "major federal action" could result in not subjecting minor actions to the same level of analysis as those actions for which NEPA was actually intended. Minor actions (decisions) federal agencies make that truly have no opportunity for "significant" environmental effects such as "administratively permitting" an activity that could occur under general use of an area should not be subject to detailed environmental reviews. An example of this is the issuance of an outfitter and guide permit for conducting guided hikes, horseback riding, or guided hunts. These activities could occur in the absence of the "permittee" and would not be subject to environmental review under NEPA. However, in some agencies it has been interpreted that the decision to issue a permit is a possible major federal action although the environmental effects are the same regardless of the permit or perhaps even less due to the administration of the action. While some people argue that this is the type of action that can be handled under a CE as prescribed by CEQ regulations, the process for establishing a CE is often times burdensome and the result is often still an activity that is subject to unnecessary project level environmental review to determine whether extraordinary circumstances exist. Clarifying what is not a major federal action would benefit multiple federal agencies, including CEQ, as this burden would be reduced and the intent of NEPA would still be met to provide harmony between "man" and the environment.*

- *For major federal actions, CEQ has made it clear that a major federal action does not have a meaning apart from "significantly." We would support an approach as well that would simply reform and clarify "significantly" by clarifying 1508.27(b)(1) does not mean that agencies are required to disclose significant beneficial impacts and that the present statement merely means that agencies may have significant impacts even if the agency believes that on the balance the effect will be beneficial. Clarify (as the courts have) that 1508.27(b)(4) is about scientific controversy over the effects versus public controversy over a project and its effects.*
- *Amend CEQ regulations to re-define "site-specific effects" to include the use of programmatic analyses which establish standards and mitigation parameters at the broad landscape, ecosystem, or regional level to satisfy "site-specific effects." An individual project, therefore, would not be required to re-address "site-specific effects" if it has fully adapted programmatic mitigations measures into its design and project decision.*

Specifically, individual actions or decisions that federal agencies find to be consistent with these programmatic standards and mitigations measures would satisfy the hard look "site-specific effects" requirement of NEPA. This would

eliminate the overlapping, costly and redundant project-by-project and programmatic NEPA procedures and requirements while providing a more meaningful scale in which to assess environmental effects.

- *CEQ should clarify that condition-based management is an appropriate form of a proposal by federal land management agencies. CEQ should support the adoption of condition-based management to decision making and implementation. Condition-based management is where a proposed action is implemented on a conditional basis, based upon clearly identified on-the-ground conditions. Condition-based management is responsive to today's ecosystem and stems from the recognition that the environment is dynamic, changing in response to changing natural and human caused events. Condition-based management is derived from the principles of adaptive management but focuses more on adjusting the management actions to the ever-changing ecosystem to achieve an objective versus a more passive learning objective associated with adaptive management.*
- *Clarify the definition of "emergency" to include post-fire activities that are needed and contribute to quicker recovery of the area.*

**8. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?**

- a. Notice of Intent;**
  - b. Categorical Exclusions Documentation;**
  - c. Environmental Assessments;**
  - d. Findings of No Significant Impact;**
  - e. Environmental Impact Statements;**
  - f. Records of Decision; and**
  - g. Supplements.**
- *Change the format requirement for the EIS and allow for a detailed statement that is more responsive to today's agency decision processes, especially dynamic processes involving collaboration. Some federal agencies' NEPA regulations do allow for some of this now, but CEQ regulations could be more modern and move away from the linear decision structure from the 1960s.*
  - *Reorganize the regulations by document type, making it clear what provisions apply to each type of document. The purpose of an EIS is different from the purpose of an EA, and each of those are different from the purpose of a CE. There are many instances where agencies apply EIS requirements to EAs. This undermines the efficiency of preparing EAs. Regarding CEs, many agencies now have documentation requirements for at least some of their CEs. This is contrary to CEQ intent where CEs are categorically excluded from documentation in an EA or an EIS. CEQ regulations could clarify that agency procedures should not require documentation for CEs.*

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- *EIS vs. EA*-Specifically the Act only requires a rather rigorous planning process involving alternatives, environmental analysis and public involvement with everything documented in an EIS. Under the Act these requirements apply to “major federal actions significantly affecting the quality of the human environment.” For lesser decisions, the Act requires federal agencies to give “appropriate consideration to environmental values.” Specifically, CEQ should establish a clear set of requirements and procedures for doing an EIS versus EA. EAs are to inform the decision process of the significance/non-significant of actions affecting the quality of the human environment. CEQ needs a clearer definition that an EIS is intended to be an in-depth look that helps to inform the federal agencies’ decision-making processes but is not *the* decision-making process. The EAs purpose is intended to only determine significance of the federal action, yet under the current CEQ procedural requirements there is little distinction made, resulting in a number of administrative and paperwork requirements placed on federal agencies without distinguishing the definition of “major federal actions” or EIS versus EA intent. For EAs many of the same requirements for an EIS exist for environmental analysis and go well beyond what is needed to review the federal actions and to inform the decision-making processes of the federal agency as to the “significances.” This lack of clarity under CEQ procedures has resulted in overlapping, costly and redundant project-by-project procedures and requirements.
- *In definition CEQ should clarify the decoupling of the act of doing NEPA procedures and requirements from the federal decision processes.* Clearly the NEPA Act meant for NEPA to be a reviewing process that informed the decision-making processes of federal agencies. NEPA itself was not intended to be a decision making process in of itself, but rather the intent of NEPA is a review process that informs the decision.
- *The idea of a “detailed statement,” which is now known as an EIS, should be redefined in today’s world.* In 1978 we were still using typewriters and U.S. Postal Service to send documents and comments. In today’s rich technological environment the detailed statements could be shortened with links to the evidence about significant effects and alternatives
- *CEQ regulatory requirements are buried throughout the regulations, including in definitions.* Requirements should be removed from definitions and placed in a more logical place within the regulations. For example, the content requirements for an EA are in the terminology section under “environmental assessments.”
- *Amend CEQ regulations to ensure that NEPA’s detailed statement requirement does not apply to actions that do not involve an irretrievable or irreversible commitment of resources.* This would help to eliminate the overlapping, costly and redundant project-by project and programmatic NEPA procedures and requirements while providing a more meaningful scale in which to assess environmental effects.

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- *Revise CEQ Regulations to allow federal agencies to use other federal agencies' categories for CE activities. Federal agencies should, through agreement, be allowed to use other agencies' CE categories*
- *Provide provisions for functional equivalents such as what EPA or DOI BLM has for NEPA. Agencies that do environmental planning shouldn't do both processes.*
- *Use plain English and state what you mean versus new definitions. Do we really need a new definition for "trivial"? These seem to be common words. Keep it simple.*

**10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?**

- *40 CFR 1506.9 and 1506.10 should be revised to be more relevant today. Rather than have agencies file EISs with the EPA for publication in the Federal Register, agencies could send notices directly to the Federal Register to slightly speed up the notice process. Federal Register notices will still cause delay problems during administration transitions, regardless of the agency submitting the notice. Delaying Federal Register notices are more of an administrative problem from Washington than a regulatory problem.*
- *Recommend eliminating the 90-day period (40 CFR 1506.10 (b)(1)). It doesn't seem to have a relevant purpose and most agencies take more than the 90 days. In some emergency situations the 90-day period and 30-day wait period between the final EIS and ROD could be critical. CEQ should examine the need to have these.*

**12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?**

- *CEQ should focus on improving the use and application of programmatic analyses. In December 2014 CEQ provided guidance on the effective use of programmatic environmental reviews under NEPA. This guidance should be expanded upon to further clarify how programmatic analysis can be used through tiering to support cumulative effects analysis on project level decisions. This includes the use of programmatic analysis as part of consultation efforts associated with ESA. This gets back once again to the overall purpose of NEPA in effectively evaluating federal actions as part of the decision process, thus promoting future project-level decisions under the realm of a programmatic analysis as consistent with the intent of NEPA.*
- *Revised CEQ regulations should make it clear that site-specific effects do not have to be addressed in a strategic programmatic EIS, such as a broader land management plan that is strategic in nature. Doing a site-specific effects review under these long-term plans results in doing hypothetical "reasonably foreseeable scenarios," which may or may not happen. In these cases the CEQ regulations should define the site-specific look would only occur at the project level review. Having a clearer definition of when a site-specific review is needed would allow federal agencies to*

invest their scarce resources, and American tax dollars, in a more meaningful manner. Define the role of strategic programmatic NEPA documents as compared to project level activities.

- *CEQ regulations should allow for a "site-specific effects" analysis to be satisfied* for individual projects tiered to a broad-scale programmatic analysis which looks at specific actions and their effects. These programmatic analyses should and can provide the "site-specific effects" long-term cumulative effects analyses required under NEPA for post-project decisions. A programmatic document that has looked at specific actions, contains cumulative effects analysis, and standards and mitigation parameters at the broad landscape, ecosystem, or regional level should satisfy "site-specific effects" for post individual projects. These future projects—if fully designed to follow programmatic standards and guidelines and mitigations measures—should not be required to re-address "site-specific effects." Specifically, individual actions or decisions that Federal Agencies find to be consistent with these programmatic standards and mitigations measures would satisfy the hard look "site-specific effects" requirement of cumulative effects for NEPA. This would eliminate the overlapping, costly and redundant project-by-project and programmatic NEPA procedures and requirements while providing a more meaningful scale in which to assess environmental effects.

**13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?**

- *Amend CEQ regulations to provide guidance that reduces the scope of alternatives that formally must be evaluated.* This is responsive to the collaborative model of decision-making that seeks to narrow the range of options considered through constructive discussion. Require, at a minimum, the no action and one alternative. Current regulations often tend to force and discourage such collaborative efforts. CEQ should either work to enhance collaborative processes in support of better NEPA analyses or remove barriers hindering such collaboration. In 1997 CEQ published a report entitled *The National Environmental Policy Act: A Study of its Effectiveness after Twenty-five Years*. This report identified important ways to improve NEPA's effectiveness and improve the environmental analysis and documentation processes outlined in NEPA. *Collaboration, place-based decision-making, and adaptive management* were identified as key areas for improving the NEPA process. A decade later those elements are fundamentally common practices for federal agencies such as the USDA FS and DOI BLM. These three elements have proven to be the key linkages for moving public trust forward and accomplishing important work on the ground for the communities they serve. However, CEQ has not updated its regulations or procedures to reflect its own findings and proven practices by federal agencies.



- *CEQ could further explain in the regulations that it is not a single document that is important.* What is important is that agencies do consider options that have less impact on the human environment. Allowing for evidence of this effort beyond creating huge EISs would be helpful. With today's electronic records, agencies should be able to maintain various draft alternative iterations to show that they have done this inquiry. EISs are integrated into agency decision making. Decision making requires choosing among alternatives. Thus, alternatives are not unique to NEPA. A decision process that includes NEPA compliance is not actually as linear as CEQ's impact statement content requirements imply. However, because we have this construct of what a "detailed statement" should look like based on our 1970s experience, we are stuck in a rut in how agencies can comply with NEPA. NEPA's intent is for agencies to develop and study alternatives that reduce impacts on the human environment.

**14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.**

- *CEQ should look for ways to modernize versus undermine the NEPA's objectives.*  
*Ways to modernize include:*
  - "Mail"—Delete the word "mail" and replace it with "distribute." In 1978 we had the U.S. Postal Service. Today there are many ways to access and exchange information with other agencies and the public.
  - "Environmental Impact Statement"—Define what constitutes a "detailed statement" by the responsible official as called for under NEPA. The present regulations are responsive to early court rulings about the intent of the "detailed statement" that we now know as an EIS. The CEQ regulations should expand the idea of a detailed statement as being an ongoing documentation record available electronically versus specific draft and final documents. The detailed statement should be closer to what is presently called the "summary" with clear references to information available electronically.
  - "Recommended format" for an EIS (40 CFR 1502.10)—This is presently a "recommended" format but the regulations state that it "should" be followed unless there is a compelling reason to do otherwise. The regulations should be changed to only require what NEPA requires for the "detailed statement." This would not preclude additional information, but with today's electronic files and internet access quite a bit of information could be available there. For example, is it necessary to require an index with today's ability to search documents? Our intent here is to go beyond what is currently allowed as "incorporation by reference" where a great deal of the detail is expected to be available elsewhere.
- *CEQ should specifically provide guidance that outlines how federal agencies can document the collaborative process of refining a proposal and conforming to the CEQ regulations requiring the rigorous and objective evaluation of reasonable alternatives.*

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- *CEQ should update required timeframes and process steps to reflect use of technological advancements since passage of the Act. For example postal mailings versus computer email/websites.*

**19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?**

- *It may be useful for agencies to identify the unnecessary burdens and delays caused by the regulations before identifying changes to the regulations.*

One area to explore is to identify where agencies have processes required by other laws or regulations that can be used as a functional equivalent for NEPA. For example, the Forest Service has an in-depth forest planning process that also requires an EIS. CEQ should consider that agencies identify planning and decision processes that are the functional equivalent of NEPA and therefore do not require additional NEPA documents. There should be a functional equivalent category that would cross walk with CEQ NEPA.

## Appendix 2—Environmental Analysis and Decision Making Processes

### *Suggestions for Reducing Inefficiencies in the Forest Service Planning and Decision-Making Process*

#### *Make Better and More Consistent Use of Existing Authorities and Policies.*

1. **Use the Healthy Forest Restoration Act to expedite collaborative planning processes.**

Use of this law varies across the nation. Full use of the authority presents opportunities to significantly speed up planning processes through collaboration and effective public engagement; to build accountability, transparency, and trust; and to address a complex variety of landscape treatment and restoration situations. HFRA includes requirements for collaboration, presentation of one action alternative and requirements for the public to be involved early on. This bill was passed with strong bipartisan agreement. Presently this authority is not being used consistently across the nation and all the procedures that go with it.

**Recommendation:** Administrative direction should be given that these authorities can be used where appropriate and accountability measures established.

2. **Use emergency alternative arrangements to comply with NEPA when there is insufficient time to prepare an EIS before the federal agency must make a decision (e.g. large scale fire restoration, tornado response, severe insect or disease infestation, etc.).**

Alternative arrangements can be issued by CEQ, in consultation with the agency, when agency action is necessary to protect human health or safety, or to protect natural resources, or both, and is likely to result in significant environmental impacts. Additionally, economic impacts of delaying action is also an aspect that can be considered in a request for alternative arrangements. Use of this authority can streamline planning processes while meeting legal requirements for action. The parameters of its use are clearly stated by the CEQ, but federal agencies, especially the Forest Service, have taken a conservative approach to its application. CEQ lists nine examples where the Forest Service has been granted alternative arrangements between 1980 and 2015, although this list seems incomplete as it does not include several projects that we know were granted alternative arrangements.

[https://ceq.doe.gov/docs/nepa-practice/Alternative Arrangements Chart 091815.pdf](https://ceq.doe.gov/docs/nepa-practice/Alternative%20Arrangements%20Chart%20091815.pdf).

**Recommendation:** Administrative direction should be given that this authority be used when unacceptable effects will result during the time it will

take to complete the NEPA process (including objections and litigation). There have been successes when land management agencies have crafted requests following the intent of the regulation. Its use has been highly successful with the majority of the publics, but up to now requests have been limited.

**3. Use Categorical Exclusions more effectively, consistently, and with clear direction.**

The current use of CEs within NEPA planning processes is inconsistent across the nation. Courts have been inconsistent as well, with some supporting and others rejecting the use of CEs. Units should utilize the authority granted by the Farm Bill on lands that have been altered by climate change or mortality from insects and disease. Present use of Farm Bill authority in terms of actual treatments (not analysis) on the land has been very limited.

Consider clarifying regulations regarding CEs to clearly specify a process by which categories can be created for activities that have been repeatedly shown to have no significant impacts to the human environment through previous analysis (e.g., such as actions that have been analyzed in several previous EAs and FONSI).

There is some confusion about whether specific findings under the Endangered Species Act such as “likely to adversely affect” a species constitutes an “extraordinary circumstance” which would preclude use of a CE. In many cases, actions that would otherwise meet the criteria for a CE are addressed in an EA or EIS even though the Biological Opinion (BO) requires mitigation to reduce impacts and come to a non-jeopardy determination. Consider clarifying regulations to more clearly describe whether specific findings under ESA constitute extraordinary circumstances.

**Recommendation:**-Administrative direction should be given that this authority be used consistently as appropriate across all units in the Forest Service when an action fits within an identified category and no extraordinary circumstances exist. This direction should specifically spell out its use so that there is no misinterpretation by the courts about what the words mean. The obvious benefits are reduced costs and more timely analysis of the effects of routine projects that have a proven track record of implementation.

**4. Use the Stewardship End Result Contracting Authority to its fullest extent.**

Some units pursue only limited use of this tool because they do not have the experience or skill to implement it, leadership direction is not clear, or they perceive the process to be cumbersome and difficult. Other agencies and locations around the west do not appear to have these administrative issues and the authority is more widely used, especially on projects where potential biomass product values are marginal.

**Recommendation:** Administrative direction should be given that stewardship end-result contracting be used where appropriate with accountable timelines.

**5. Utilize a landscape-scale approach for EISs that address large scale mortality.**

Taking a large-scale, landscape approach to NEPA planning has recently been sanctioned by the Forest Service's Washington Office and by CEQ. There are examples throughout the country where landscape approaches are effectively responding the forest health challenges and providing for more timely treatments and use of resources for rural community development. For example, the Black Hills National Forest located in western South Dakota and northeastern Wyoming, is implementing forest restoration treatments across large landscape using existing authorities. In 2011, the Black Hills developed its Mountain Pine Beetle Response Project (MPBR) using extensive collaboration under the Healthy Forests HFRA. Guided by its collaborative effort, particularly with the Black Hills National Forest Advisory Board, the Forest issued its decision in December 2012 to authorize treatments on 248,000 acres across the Forest. Using an adaptive management approach, the Forest works in partnership to implement up to 122,000 acres of commercial thinning or shelter wood harvest on the most affected landscapes to address pine beetles and protect values at-risk to communities. The project restores forest landscapes and reduces risk of catastrophic fire while creating substantial employment and an array of forest products. In 2016, with the pine beetle epidemic passing, the Forest started the Black Hills Resilient Landscapes Project, again using the existing HFRA authority, and the NFAB as its principal collaborator. The proposed action includes treating some 180,000 acres commercially to improve forest health and reduce hazardous fuels.

**Recommendation:** Issue administrative direction to follow the example set by the Black Hills National Forest in dealing with large scale landscape restoration situations and ensure that this direction is followed consistently. Currently there are very few units using this approach in NEPA yet this was sanctioned by the W.O., the Department, and CEQ.

**6. Utilize the Farm Bill to its maximum authorities where appropriate.**

The 2015 Farm Bill required the Forest Service to designate forest insect and disease treatment areas at the request of the states. Areas that met statutory criteria became eligible for expedited NEPA analysis, including potential use of a 3,000 acre CE. In May 2014, the Secretary designated 45 million acres in 35 states pursuant to state petitions. To date there has been limited use of acres actually treated using this tool. The possibility of using CEs for 5,000 acres or 15,000 acres with an effective collaborative would greatly boost the agency's ability to rehabilitate areas hit by large catastrophic fires.

**Recommendation:** Issue administrative direction to use existing authorities provided in the 2015 Farm Bill wherever conditions meet the requirements set forth in the Act.

**7. Establish and implement an aggressive schedule for reviews of Endangered Species Act conflicts.**

Level one and two review procedures are in place on some units, but they are not always used in an efficient or expedited manner. On other units, the process is not in place at all. When working as designed, these reviews expedite the resolution of conflicts with implementation of ESA that land management agencies can encounter when working with regulatory agencies such as USFWS and NOAA Fisheries. When a conflict arises over threatened and endangered species management, conflicts are elevated from the local unit to a previously designated interagency team for resolution. If that team fails, it is further elevated to local agency administrators. The point is to resolve conflicts in a timely and consistent manner.

*Develop Alternatives to Litigation*

It is difficult to overstate the enormous effect litigation and the threat of litigation has on the Forest Service and the acres of land it is able to treat. It is damaging when an important collaborative project with widespread support designed to improve a fire prone forest adjacent to a threatened community is delayed or halted. It is also discouraging to realize there is a financial incentive to pursue such litigation through the Equal Access to Justice Act.

**Recommendation:** The Forest Service should support legislation to reform judicial review of Forest Service NEPA decisions. We believe this important issue can be dealt with through legislation reform of EAJA Specific needs that should be addressed include:

1. Develop and implement policy and process reforms to speed action on integrated, collaboratively developed projects at a scale and scope that truly make a difference.
2. Support legislative action to enact reforms that reduce incentives for filing “nuisance” litigation against proposed collaboratively-developed forest management projects. Similarly, identify and codify incentives for finding solutions outside the judicial system.
3. Require a bond requirement as part of legal challenges to collaborative projects
4. Limit the scope of injunctive relief available to plaintiffs at the forest plan and/or project levels to provide an incentive for speedy resolution of issues. Restricting injunctive relief allows judicial review to continue but reduces the expense and delays of litigation, reinforces the role of courts as reviewers of legal compliance rather than ex officio forest managers, and provides an



incentive for speedy resolution of issues as plaintiffs have nothing to gain by delaying tactics.

5. Clarify that the definition of the phrase “ultimately prevails on the merits” means a court must rule in favor of the plaintiff on at least one cause of action in all actions brought by the plaintiff.

*Modify Existing Regulations to Decrease Ambiguity and Improve Efficiency*

Promulgate administrative rules emphasizing an adaptive management approach to decision-making. Forest Service NEPA regulations currently require that an EA or EIS “disclose not only the effects of the proposed action or alternative, but also the effect of the adjustment” (i.e., the adjustment(s) that may be made when monitoring indicated the actions is not having its intended effect or is causing unintended or undesirable effects).

**Recommendation:** Amend Forest Service and CEQ regulations to encourage an adaptive management view of environmental decision making. The regulations could be modified to reduce the current emphasis on speculative analysis and documentation and increase the emphasis on monitoring and learning. With this option, agency responsibilities should be defined to: 1) predict potential environmental impacts of proposed actions; 2) inventory and monitor actual resource conditions and effects; and 3) apply the results of this monitoring and evaluation to future decision-making. CEQ regulations should allow for a more “risk based” approach to environmental impact analysis, i.e., an approach that accepts more uncertainty in the up-front analysis in exchange for ongoing monitoring and adjustment during implementation.

Regulations are less than clear regarding what level of NEPA is required for specific proposals. For instance, if it is questionable whether a proposed action may have a significant effect on the human environment, many line officers opt to prepare an EIS to avoid making a significance determination. An EIS typically takes substantially more time, funding and effort than an EA or a CE.

**Recommendation:** Revise Forest Service and CEQ regulations to describe NEPA procedures at forest plan and project levels. Establish which decisions require which type of assessment and documentation. Revise CEQ regulations to more clearly define significance, and thus when an EIS must be prepared; and to more clearly define what should be contained in an EA given that by definition it cannot authorize actions with significant effects. Clarify which decisions may be addressed through CEs, EAs, or an EIS.

Under existing CEQ regulations (40 CFR 1502.22), the thresholds and requirements for the analysis of unavailable and incomplete information can be cumbersome and costly.

**Recommendation:** Greater flexibility could be built into the Forest Service regulations/field guides on this requirement.

Because courts are generally more differential to regulations than internal guidance, the Forest Service should seriously consider issuing or clarifying regulations for NEPA compliance. Areas that would particularly benefit from regulatory direction include: 1) integration of NEPA, NFMA and ESA; 2) direction regarding how the agency will meet its duty to consider new information; 3) guidance for narrowing the range of alternatives as the result of collaborative decision making; and 4) clarification regarding how the agency's decision making system provides for consideration of cumulative effects.

**Recommendation:** Amend the CEQ regulations and Forest Service NEPA procedures regarding supplementation for “new information” and “changed circumstances.” While these rules may work fine for short-lived projects, they often have the perverse effect of discouraging monitoring and evaluation of ongoing programs and projects due to paperwork costs and potential disruption to previous decisions. The CEQ regulations should be amended to define the extent to which NEPA and other environmental laws require federal agencies to consider post-decisional information. Limit on-going responsibility for federal agencies to evaluate post-decisional information. Several options exist: 1) to adopt a “a deal is a deal” approach that allows federal decisions to proceed despite new information inconsistent with original predictions; 2) to develop less burdensome procedures for supplementation; 3) to specify a minimum timeframe within which agencies need not consider new information; 4) to allow projects of limited duration to be completed rather than grand fathering judicial decisions and appeals findings; or 5) provide standards and guidance for new information that (rather than halting ongoing projects pending reevaluation) allow for consideration of the likely effect on the environment of not incorporating the new information into ongoing or authorized projects and commit to considering it for new projects in early stages of planning.

CEQ and Forest Service regulations should clarify identification of the purpose and need for action, and the relationship of the purpose and need for action and the subsequent scope of analysis. It is well understood in the Forest Service that purpose and need statements must be crafted carefully to narrow the scope of analysis that must be conducted. Yet special interest groups continue to challenge the agency on crafting clearly defined purpose and need statements.

**Recommendation:** CEQ and Forest Service regulations should be revised to clearly require purpose and need statements to be crafted to narrowly identify the need to which the agency action is being proposed, and to clearly state that only the analysis that is needed to disclose social and environmental impacts directly related to the need for action be addressed in the subsequent NEPA document.

### *Internal Forest Service Systems*

#### 1. **Complete EADM reform, incorporating the work of regional cadres.**

Regional cadres were formed to seek input and to assemble the collective thoughts (internally and externally) about ways to increase efficiency and

timeliness of decisions. There has not, however, been a collection of the thoughts, comparison of ideas and assembly a collective package of actions that can be done short- term and long-term. There are consistencies in these efforts, but the Washington Office now needs to put a large effort into compiling and disseminating the information and working with the regions to prioritize all the work that has been accomplished so a blueprint can be created for agency reform.

## **2. Rebuild the Capacity of the Forest Service.**

The agency has reached critical mass in terms of being able to provide the services of permit administration, leasing, and other activities necessary to achieve multiple-use objectives. After many years of cutting non-fire personnel by over 45 percent and shifting to a fire-centered organization, the agency's ability to perform on-the-ground work has severely declined. Even though "fire borrowing" has been fixed, the backlog of work needing to be done still exists. The agency needs to recruit professionals to rebuild capacity. There needs to be a totally new approach to recruitment and hiring. It would take literally 2-3 years to staff appropriately because it has taken over 12 years of reductions to reach current levels. That is not acceptable, and a totally different expedited recruitment process would be needed along with the utilization of contracts, partnerships, etc. to fill vacancies in a timely manner.

Even with more resources and expanded authorities the agency cannot advance its work quickly because it does not have the right personnel in the right places.

**Recommendation:** To accomplish the task at hand to support rural communities in providing more use of resources from public lands, it is essential that there be a resolution to the fire funding issue and also that the agency be provided the resources to appropriately and professionally overcome the challenges it faces using all appropriate authorities and capabilities.

### *Public Participation*

While pertinent regulations are clear about public participation requirements for the various levels of NEPA, it has become routine to extend comment periods and to hold extensive public meetings and hearings. The result is not necessarily better public input, but more comments resulting in increased workloads to categorize and respond to all comments. We believe that extended comment periods and formal hearings should be rare exceptions, and that the vast majority of projects should adhere to the minimum requirements spelled out in CEQ and Forest Service regulations.

**Recommendation:** Tighten administrative control on when to engage in longer and more extensive public participation processes than are required by CEQ regulations or other applicable laws (e.g., Farm Bill).

## *Conclusion*

The number of laws that must be considered in the NEPA process has complicated the situation over the past 40 years. Many retirees and present leaders have been saying for years that a complete review of those laws, followed by legislation to consolidate them, would be the proper approach. The interactions of these laws coupled with lack of consistent application by land management and regulatory agencies have created the process gridlock that presently exists. A new "Natural Resource Policy" law would embody all of the well-meaning intent into one package. If Congress could agree on such an overall policy for land management across the nation, that would be the proper way to proceed. With the proper leadership, this would be the "gold nugget" approach to reform. It is possible given the number of people who are very frustrated with the present system. Former Chief Jack Ward Thomas wrote, published and spoke about this often, and his past works have much information about what that "overall approach" would entail. There are many groups working on environmental law reforms, and the wise way to approach this would be to combine the best of the best. What we have provided is a list of actions that could happen piecemeal in the event that something bigger is not be tackled. Execution of existing legislation, implementation identified short-term fixes and a new Natural Resource Policy law would be the ideal solution to the problems that currently exist.

## Appendix 3—Endangered Species Act Reform

July 13 letter to Interim Chief Vicki Christiansen



[www.nafsr.org](http://www.nafsr.org).

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July 13, 2018

Vicki Christiansen  
Interim Chief of the Forest Service

Dear Chief Christiansen,

We at NAFSR continue to be involved in, and are extremely supportive of, your EADM initiative and other important efforts directed at the reform of the current lengthy, complex, and impossible decision making and regulatory processes. We believe one of the most important areas in need of updating is compliance with the Endangered Species Act. We commend Forest Service efforts to improve ESA consultation and have taken the time to review and study your recent report culminating in the 17 recommendations. Many of our members spent large parts of their careers committed to species recovery and remain vitally interested in the agency's obligations under ESA. On that note, we offer the following thoughts on the next steps.

While we do believe each of the report's 17 recommendations could eventually be useful, we are disappointed in the bureaucratic nature of the report. The recommendations are not prioritized, and it will take years for a reduced workforce to address them all. Except for recommendation 17 and possibly numbers 5, 6, and 7 we fear the end result will be minor rather than major improvement. We believe that the Forest Service does have an important and affirmative role in species protection and that "formal consultation" on major projects is not the issue. Rather, it is the "informal consultation" process on the thousands of routine, albeit important projects and activities that is frequently delayed or unacceptably altered. Therefore, we suggest the following three actions to make the most effective use of this report at this moment in time.

First, the potential benefits of moving ahead on recommendation 17 vastly exceed all others, especially allowing the Forest Service to make "may affect" and "not likely" to adversely affect determinations. Forest Service field biologists are second to none and are completely capable of doing this under the monitoring of the "Services". This obviously cannot be done without the support of the USDA, DOI, and Commerce Secretaries and we suggest that a meeting/summit be arranged to align the three Departments. We pledge our assistance in any way possible. In addition, we submit the following recommendations as additional ways the Services could help the Forest Service and other Action Agencies.



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- a. Allow action agencies at least 30 days to review draft biological opinions. Currently less than two weeks is the norm and the Services internal process prohibits major changes to the BO. This often results in BO's being difficult to implement and often forces changes to the project.
- b. Request the Services define the minimal change rule in 402.14(i)(2). This would prevent the frequent practice of the Services modifying the action via "Reasonable Prudent Measures" and/or "Terms and Conditions." NAFSR recommends the minimal change rule be defined as follows: "The Services will rely on the Action Agency, or Applicants input, in the development of RPM's and/or T&C to ensure they are implementable and do not require major alterations of the proposed action of a plan or project in terms of design, location, scope, and results."
- c. As the Forest Service moves toward more programmatic consultations, they should request the Services to assist by doing programmatic BO's.
- d. Increase the length of time consultations are valid making it efficient to renew consultations for actions such as road maintenance, special use permits, and grazing permits that have not changed but must be reauthorized. The Forest Service simply no longer has the capacity to spend analysis time on repetitive routine activities.

Second, focus on recommendations 5, 6, and 7. We support developing and using biological assessment templates and effective programmatic consultations to save significant time.

Third, we also support creating and monitoring reasonable consultation goals and deadlines for various situations and projects.

Finally, two additional thoughts: Based on feedback and discussions with many FS employees we conclude the FS needs to be more forceful in policy development, training, and clarity on the proper context of "Significance" as it relates to BA's and ESA vs. NEPA. There remains much confusion around the definition of the term "Significance" and how it applies to these two statutes and their regulations.

Another area in need of revision is sensitive species, which should be specifically explained in the FS manual direction in 2670. The current manual direction is badly out of date and needs immediate updating, revision and simplification.

We appreciate the opportunity to offer our assistance and perspective.

Sincerely,

*James L. Caswell*

James L. Caswell, Chair  
National Association of Forest Service Retirees