

Tribal Roundtable – Discussion Guide

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Background on the purpose of rulemaking

What does a planning rule do?

A national Forest Service planning rule provides the overarching framework for individual forests and grasslands in the National Forest System to use in developing, amending and revising land management plans. The Forest Service needs a stable planning rule that will enable our national forests and grasslands to respond the challenges of today and tomorrow.

The Forest Service is required by statute to have a national planning rule: the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, requires the Secretary of Agriculture to issue regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 for the development and revision of land management plans.

What is the difference between the planning rule and a Forest Plan?

The National Forest Management Act (NFMA) of 1976 requires every national forest or grassland managed by the USDA Forest Service to develop and maintain a Land Management Plan (also known as a forest plan).

The process for the development and revision of the plans, along with the required content of plans, is outlined in the planning regulations, or Planning Rule. Individual forests and grasslands then follow the direction of the Planning Rule to develop a land management plan specific to their unit.

Past Planning rules have dealt with these issues:

- Minimum content of Plans
- When and how plans are revised / amended
- Who makes the Plan decisions
- How the public is involved
- Analysis, assessment, or evaluation requirements
- How the decisions are subject to appeals or objections
- Relationship of Plans to Projects

Forest Plans, deal with these types of issues:

- Multiple use goals and objectives
- Management requirements (standards and guidelines)
- Management Areas
- Designation of suitable timber land
- Wilderness recommendations
- Monitoring and evaluation requirements

Why are we developing a new planning rule now?

National Forests and Grasslands are a vital part of the solution to a number of environmental and social challenges facing the nation, including addressing climate change, restoring forests, protecting watersheds and habitat, sustaining local economies, improving collaboration, and working across landscapes. A new planning rule provides the opportunity to help protect, reconnect, and restore national forests and national grasslands for the benefit of human communities and natural resources.

The national planning rule has had a complicated legal history: see questions below for further discussion. At this time, the Forest Service has an urgent need for a stable planning rule. Working with the public to develop a new rule will help the Forest Service to be more responsive to modern challenges and better able to adapt to address future needs.

What is the history of the Forest Service planning rule?

The National Forest Management Act (NFMA) requires regulations “under the principles of the Multiple-Use, Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards” the Act prescribes (16 USC 1604 (g)).

In 1979, the Department first issued regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule, which has formed the basis for all existing land management plans.

In 1989, the Agency initiated a comprehensive Critique of Land Management Planning, which identified a number of adjustments that were needed to the 1982 planning rule. The Critique found that the 1982 planning rule process was very complex, had significant costs, was lengthy, and was cumbersome for public participation. The recommendations in the Critique and the Agency’s experiences with planning led to the Agency issuing an advance notice of proposed rulemaking for new regulations in 1991, and two proposed rules, in 1995 and 1999.

After working with a committee of scientists, the Department issued the 2000 rule to replace the 1982 regulations. The 2000 revision of the planning rule described a new framework for NFS planning; made sustainability the foundation for NFS planning and management; required the consideration of the best available science during the planning process, and set forth requirements for implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. The 2000 rule included transition provisions that allowed the Forest Service to continue to develop, revise, and amend forest plans using the provisions of the 1982 planning rule.

Reviews in the spring of 2001 found that the 2000 rule would be unworkable. The results of the review led the Department to issue a new planning rule in 2005, and a revised version again in 2008, but each of those rules was held invalid by a Federal District Court (*Citizens for Better Forestry v. USDA*, 481 F. Supp.2d 1059 (N.D. Cal. 2007) (2005 rule); *Citizens for Better Forestry v. USDA*, 632 F. Supp.2d 968 (N.D. Cal. 2009) (2008 rule)). The 2000 rule legally came back into effect when the 2008 rule was set aside.

The Agency now has an urgent need to establish a stable, modern planning rule that protects, reconnects, and restores national forests and grasslands for the benefit of human communities and natural resources.

Why did the 2005 and 2008 planning rules get overturned by the court?

In the 2005 planning case, the United States District Court for the Northern District of California found the rule was issued in violation of the Administrative Procedure Act (APA), the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA).

To respond to the district court’s ruling on the 2005 rule, the Department prepared an environmental impact statement and engaged in ESA consultation with the US Fish and Wildlife Service and the National Marine Fisheries Service in the development of the 2008 Rule.

On June 30, 2009, the United States District Court for the Northern District of California invalidated the 2008 rule, holding that it was developed in violation of NEPA and ESA.

Because the 2000 Rule was the last valid rule, it came back into effect when the 2008 rule was set aside. The Department has determined that a new planning rule is the best way forward.

What steps is the Forest Service taking to address the concerns expressed by courts in litigation over prior rulemaking efforts?

The Forest Service is planning to develop an environmental impact statement and to fully evaluate the environmental impacts of the new planning rule. The Forest Service will also consult with the ESA regulatory agencies (US Fish and Wildlife Service and NOAA National Marine Fisheries Service) on the rule's effect on threatened and endangered species.

We are looking for public input to help us determine and describe these potential environmental effects, to ensure that we have fully considered and addressed all environmental impacts in final rule, and that we have complied with all legal requirements. The collaborative process will extend to other federal agencies, Tribal governments, non-governmental agencies and interested individuals. The agency will also engage the scientific community to assist in the creation of the draft EIS.

Why not reinstate the 1982 rule?

The 1982 rule ceased to exist in the Code of Federal Regulations when the 2000 rule was issued. The 1982 rule would have to be re-issued through notice and comment rulemaking process, which includes issuing a proposed rule for comment before issuing a final rule. This process would compete with and impede the creation of the new, and much needed planning rule.

What is the current state of land management plans?

The 155 National Forests and 20 Grasslands operate under a total of 127 land management plans. NFMA requires plans to be revised at least every 15 years (16 USC 1604 (f)(5)). Fifty-five of these plans have been revised, 37 plans are currently being revised, and the remaining plans are in need of revision.

On June 30, 2009, the United States District Court for the Northern District of California issued a decision ordering the Forest Service to cease use of the 2008 rule. The 2000 rule legally came back into effect when the 2008 rule was set aside. The 2000 rule allows the Forest Service to develop, revise, and amend forest plans using the provisions of the 1982 planning rule (1982 rule). Given our experience with the 1982 rule, it is anticipated that until a new rule is issued, the Forest Service will continue to use the 1982 rule provisions to develop, revise and amend plans.

Background on the development of the NOI questions

Has the agency or the department made any decisions about the content of a new rule?

The Department has not made any decisions as to the content of a new rule. We intend this process to be open, transparent, and participatory. Issuing an NOI ensures that the public is involved at the ground level.

To begin the conversation, the Forest Service has included in the NOI a set of potential principles that *could* guide development of a new planning rule. The potential principles identified in the NOI are:

- *Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats.*
- *Plans could proactively address climate change monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information.*
- *Land management plans could emphasize maintenance and restoration of watershed health, and could protect and enhance America's water resources.*
- *Plans could provide for the diversity of species and wildlife habitat.*
- *Plans could foster sustainable NFS lands and their contribution to vibrant rural economies.*
- *Land management planning could involve effective and pro-active collaboration with the public.*
- *Plans could incorporate an "all-lands" approach by considering the relationship between NFS lands and neighboring lands.*
- *Plans could be based on the latest planning science and principles to achieve the best decisions possible.*

How were the "Substantive Principles for a New Rule" (hereafter "principles") developed?

The principles suggested in the NOI reflect modern challenges that we know land managers will face, including addressing climate change, restoring forests, protecting watersheds, supporting local economies, improving collaboration, and working across landscapes. They were developed from a variety of sources, including: new understanding about emerging challenges such as climate change; agency planning experience over the last 27 years; public comments on past planning rules; the 1990 Critique of Land Management Planning; the 1999 *Committee of Scientists'* report; and updated suggestions regarding contemporary planning practices from professional planning associations.

Are all of these principles guaranteed to be addressed by the new rule? Might additional principles be added?

The Department has not made any decisions as to the content of a new rule.

Will the rule require that each land and resource management plan (LRMP) address each of these principles? Will the rule address each of these principles independently or in an integrative manner?

The Department has not made any decisions as to the content of a new rule.

Principle 1 (Restoration and Conservation)

Principle 1) Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats.

Background:

Plans could facilitate restoration of impaired watersheds considering the best available science and meaningful monitoring programs. The planning process provides an opportunity for the Agency to engage other Federal land management agencies; Tribes, State, and local land managers; private landowners; and non-governmental partners to collaborate on strategies to restore and sustain healthy forests and grasslands across landscapes. Current Forest Service directives define restoration as follows:

Ecological restoration. The process of assisting the recovery of resilience and adaptive capacity of ecosystems that have been degraded, damaged, or destroyed. Restoration focuses on establishing the composition, structure, pattern, and ecological processes necessary to make terrestrial and aquatic ecosystems sustainable, resilient, and healthy under current and future conditions. (FSM 2020.5).

Potential discussion questions:

- What does restoration mean to you in the context of forest planning?
- How can the next planning rule foster restoration on NFS lands?
- Other questions from roundtable participants?

Principle 2 (Climate Change and Adaptive Management)

Principle 2) Plans could proactively address climate change through monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information.

Potential discussion questions:

- How can the planning rule be proactive and innovative in addressing climate change adaptation and mitigation?
- What, if any, climate change assumptions should be used in the development of plan alternatives?
- How can, or should, a planning rule incorporate flexibility and adaptive management principles to address a changing climate?
- Other questions from roundtable participants?

Principle 3 (Watershed Health and Water Resources)

Principle 3) Land management plans could emphasize maintenance and restoration of watershed health, and could protect and enhance America's water resources.

Background:

The NFS alone is the source of fresh water for more than 60 million people from coast to coast. In coming decades, climate change; impacts from catastrophic fire and tree mortality; the increasing intensity of weather patterns; events including droughts and storms; increasing pollution; and increasing development pressures will combine to impact the quantity, availability, and quality of America's water resources and the health of its watersheds.

Plans could promote the restoration and maintenance of watersheds to ensure abundant clean water, the protection of soils, and the health of aquatic and terrestrial ecosystems.

Potential discussion questions:

- Should forest planning be conducted in the context of watersheds? If so, how?
- What should the planning rule say about water resources and watershed health? For example, should the rule include:
 - Planning or management guidance? What kind?
 - Requirements for forest plans to adhere to standards and/or BMPs? At what level (local, regional, national or other)?
- How might the agency consider water availability and quality factors outside the Agency's control?
- Other questions from roundtable participants?

Principle 4 (Diversity and Habitat)

Principle 4) Plans could provide for the diversity of species and wildlife habitat.

Background:

The NFS lands provide habitat for numerous species, including 425 threatened and endangered species. The NFMA directs the Agency to provide "for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives ..." (16 U.S.C. 1604 (g)(3)(B)).

The 1982 planning rule required management prescriptions to provide for diversity as well as additional prescriptions to provide for the viability of native vertebrates and desired non-native vertebrate species. The 2000 planning rule required (with qualifications) ecological conditions that provide a "high likelihood" that conditions are capable of supporting viability of native and desired non-native species over time. The 2005 and 2008 planning rules required plans to provide a framework for contributing to ecological sustainability, in terms of ecosystem diversity and (where necessary) species diversity, in terms of "species of interest," and "species of concern." These two rules had much less detail than the 2000 rule with additional detail set forth in the Forest Service Directive System.

The Agency faced a number of challenges in implementing the species viability requirements of the 1982 rule. These challenges will be exacerbated as climate change affects the range and viability of species, both flora and fauna. In anticipation of coming changes, the Agency is exploring new ways to meet diversity requirements.

The new rule needs to provide planning procedures that meet the intent of NFMA to provide for diversity in a way that achieves protection for species, habitats, and ecosystems while taking into account environmental and management factors and impacts that are outside of the Agency's control.

Potential discussion questions:

- At what landscape scale should the FS analyze and provide for a diversity of plant and animals (individual unit, watershed, landscape scale)? What are workable ways to incorporate a broader perspective?
- How should the planning rule guide monitoring and protection of at-risk species of animals and plants?
- How should plans anticipate and address changing conditions or impacts outside of agency control? How can external factors be incorporated or recognized in plan guidance and requirements?
- Other questions from roundtable participants?

Principle 5 (Sustainable NFS lands and vibrant rural economies)

Principle 5) Plans could foster sustainable NFS lands and their contribution to vibrant rural economies.

Background:

Forests and grasslands offer enormous environmental benefits, including clean air, clean and abundant water, wildlife habitat, carbon sequestration, erosion control, and other ecosystem services.

In pursuit of sustainable management in the new planning rule, the Agency could include provisions for the protection and enhancement of ecosystem services, such as clean water, clean air, and wildlife habitat.

Forests and grasslands generate economic value by attracting tourism and recreation visitors; sustaining green jobs; and producing timber, other forest products, minerals, food, and energy, both renewable and non-renewable. They are also of immense social importance; they enhance rural quality of life, sustain scenic and culturally important landscapes, oftentimes define the essence of a community, and provide opportunities to engage in outdoor activity and reconnect with the land.

Plans could provide a sustainable set of opportunities for goods and services that will support vibrant rural and national economies in a way that is compatible with natural resource conservation and restoration goals.

National Forest System lands provide a variety of experiences and recreational uses for the public. There is a spectrum of experiences from highly developed to primitive settings.

Potential discussion questions:

- What should the planning rule say about how plans deal with the provision of goods and services that contribute to economies?
- How can the planning rule reflect the interdependency of social, economic, and ecological systems in a way that supports sustainable management of national forests and grasslands?
- Should, and if so, how can, the rule include provisions for managing lands for the sustainable delivery of ecosystem services?
- What should the planning rule say about suitable uses?
- What should the planning rule say about places of interest?
- What should the planning rule say about recreation/enjoyment of FS lands?
- What should the planning rule say about traditional and cultural practices/uses of NFS lands?
- Other questions from roundtable participants?

Process Principle 1 (Collaboration)

Process Principle 1) Land management planning could involve effective and pro-active collaboration with the public.

Background:

The Agency welcomes and encourages public collaboration and participation in developing land management plans. This roundtable reflects the Agency's commitment to engaging the public in the development of the Planning Rule itself. One of the more challenging aspects of using a collaborative approach to land management plan revisions is that plans can at times take 8-10 years to revise. That is a timeframe that is too long to sustain a true collaborative effort and use the most up-to-date science and management thinking.

Potential discussion questions:

- What is the best way to involve Tribes and other stakeholders in the planning process?
- What kind of administrative review process should be offered to the public in the planning rule? (E.g. pre-decisional objections and/or post-decisional appeal processes?)
- Other questions from roundtable participants?

Process Principle 2 (All-Lands)

Process Principle 2) Plans could incorporate an "all-lands" approach by considering the relationship between NFS lands and neighboring lands.

Background:

National forests and grasslands are part of large landscapes that need to be restored, conserved and managed across boundaries in ways that respect private rights. The planning process provides direction for NFS lands only. Plan revision gives an opportunity to look beyond the national forest boundary to learn the unit's role within the larger landscape.

Potential discussion questions:

- How should the agency collaborate with adjacent landowners and partnerships?
- Should the forest planning process move to an all lands approach? If so, how? For example, should the planning rule require forest plans to:
 - Evaluate how land management off the national forest affects forest resources?
 - Propose landscape goals for large geographical areas that include all ownerships (including NFS lands)?
 - Include a description of the unit’s distinctive roles and contributions to the local area, State, region and Nation?
- What other planning and assessment efforts or processes at the national, state, or local level could help inform an “all-lands” approach?
- How can we incorporate an all-lands approach to planning without creating NEPA “analysis paralysis”?
- How can a planning rule incorporate a landscape scale perspective?
- Other questions from roundtable participants?

Process Principle 3 (Latest Science and Principles)

Process Principle 3) Plans could be based on the latest planning science and principles to achieve the best decisions possible.

Background:

The Forest Service has 70 plans that are over 15 years old and need to be revised.

Much discussion has been centered on how plans should be viewed; are they strategic documents that lay the foundation for specific future actions to help meet unit goals? Or, should plans also make project or activity decisions?

Potential discussion questions:

Plan revision and NEPA processes

- What suggestions do you have for making forest planning faster, simpler, more straight forward and less expensive?
- What kinds of information, methods, and analyses should the Agency provide to the public during the planning process to aid the understanding of the possible consequences of a proposed rule and alternatives?
- With regard to the development of the planning rule itself, how should the Agency describe and analyze the environmental effects in the environmental impact statement of the proposed rule?
- Other questions from roundtable participants?

Adaptive management questions

- How can a new planning rule build in flexibility to adapt to changing science, information or conditions and/or incorporate new data? How should the rule deal with uncertainty?

- How could the planning rule help the Agency to create a “structured approach to change?”
- When and how should plans be evaluated to see if they are working?
- Other questions from roundtable participants?