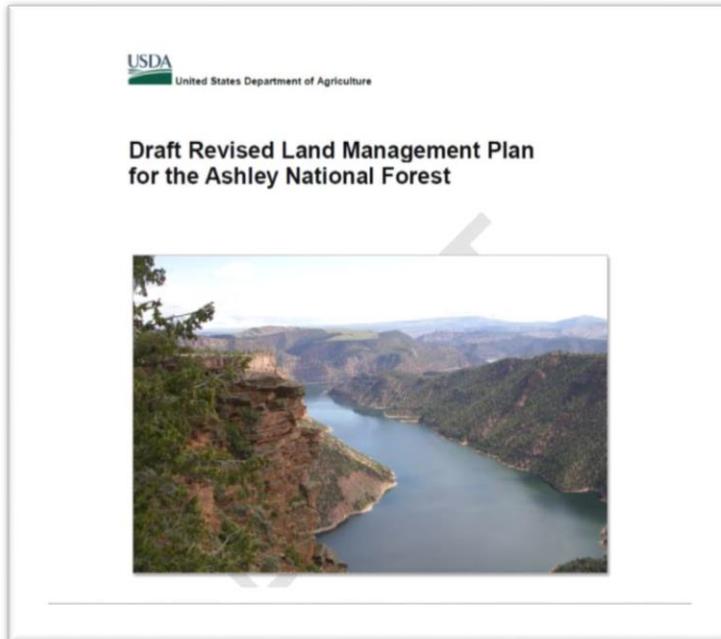


The 2012 Planning Rule's Effect on Forest Planning



The National Forest Management Act of 1976 requires every National Forest (and grassland in the National Forest System) to prepare a resource management plan, which details how each National Forest will manage itself. The Ashley National Forest is currently preparing a new plan, updating its 1986 plan.

The original forest planning rule was made in 1982, but was re-written in 2000. The 2000 rule was never implemented, considered unworkable by the Forest Service. The Forest Service re-wrote those regulations in 2005, and again in 2008 – but these newest regulations lost in court because of their failure to meet legal requirements. Because of this legal uncertainty, the Ashley National Forest put any attempts to re-write its 1986 plan on hold.

The Forest Service re-wrote its planning rule in 2012, with a greater degree of inclusivity and public participation. The new rule was immediately challenged in court and the Forest Service won. Several forest user groups argued that the new rule exceeded statutory authority, and failed to comply with NFMA and other laws. The district court dismissed the industry plaintiffs' lawsuit. The court said that the plaintiffs did not demonstrate that they had standing to bring their suit because they could not demonstrate that the new 2012 planning rule caused the plaintiffs immediate and particularized harm that could be remedied by the court. The court said the plaintiffs would have to wait until new forest plans were revised, under the 2012 planning rule, to show how the rule harms their interests.

The 2012 Plan is a change from previous Forest Service thinking about managing National Forests, a more bottom-up than top-down approach. The 2012 Planning Rule calls for a more scientific, adaptive approach – with more public involvement. Among other areas of emphasis, the 2012 Rule seeks more emphasis on climate change monitoring, land restoration, ecosystem services of each National Forest, and a more efficient and responsive planning process.

Each National Forest begins its new Forest Plan with a “plan assessment.” The National Forest identifies existing information (to include ecological, economic and social) and evaluates the information. The National Forest identifies key assumptions,



uncertainties, and risks in making its evaluations. The Ashley National Forest completed its assessment in 2017 and the assessment is available in the Forest Plan Revision (green Documents Library tab) part of the Ashley National Forest Webpage. Using the assessment, that National Forest identifies a “need to change” the existing plan and begins the plan revision.

As part of the 2012 Planning Rule, the Forest Service created a National Advisory Committee to provide advice on implementing the rule. The committee lasted until 2018 (was not re-chartered in 2018) and was made

up of people representing interests such as tribal, timber, grazing, and conservation. Below are some of these members’ thoughts on the 2012 Planning Rule:

Timber Industry (Tom Troxel and Lindsay Warness)



“Forest planning is tough. It is a long, tedious, detailed, dry process, with a great deal at stake...” for many interests. The 2012 Planning Rule changes in some key ways from the 1982 Planning Rule.

- Forest Supervisors are now the Responsible Official instead of Regional Foresters. This change arguably brings decision making “closer to the ground.”

- There is a strong emphasis to complete plan revisions within four years. This emphasis is a big deal, considering that many plan revisions have taken 10 or more years to complete.
- There is much more emphasis on involving groups such as the public and Local governments in the revision process
- There is a pre-decisional objection process (public can comment earlier in the process, rather than later), rather than the administrative appeals process
- There is a requirement to use the best available science throughout the planning process
- Well-written plans will speed-up project planning and will lead to increased and more efficient on-the-ground planning

We recommend focusing on forest management strategies, timber outputs, maintaining a diversity of age classes, and reducing the potential for catastrophic fires and insect epidemics.

Private Land Ownership/Grazing (Jim Magagne)



As a representative of the grazing industry who has felt the impacts of lack of management of the National Forests for more than 25 years, I was anxious to embrace a new direction. I also shared serious concerns with certain provisions of the Rule that had already caused my industry to begin litigation challenging the rule. My dilemma was whether I

could have meaningful talks with groups that my industry opposed, in order to find common ground in implementing the Rule. Finding common ground was going to be challenging, because there were parts of the Rule in which my interests felt had serious flaws.

The committee addressed several of my initial concerns:

- Increasing emphasis on the requirement for socioeconomic analysis
- Defining landscape-level analysis in a manner that assures respect for private property rights
- Increasing focus on cooperation with State and Local governments in the planning process
- Recognition of livestock grazing in forest management

I still have some significant concerns about the 2012 Rule, about the need for targeted changes when necessary and clarification of Congressional intent. The singular issue in which I was most often at odds with many of my committee colleagues was species viability – as applied to animal species. I feel that wildlife management should be at the State level jurisdiction, as opposed to Federal. I feel that the appropriate role of the Forest Service, as a land management agency, is to provide habitat to assure the opportunity for wildlife managers to maintain the viability of a species - as defined by that State agency (the exception being the Endangered Species Act's listed or candidate species). I believe the 2012 Planning Rule fails to provide State wildlife agencies their role in wildlife management on National Forest lands.

The 2012 Planning Rule allows for identification of species of conservation concern to be a separate process that occurs before development of plan components, and authority for this designation is held by the Regional Forester. This means the Rule further reduces cooperation between the National Forest and State/Local governments.

Science Community (Martin Nie)



Six years after the 2012 Planning Rule began, it is uncertain whether Forest Plan Revisions will reflect the promise of the Planning Rule. But the Planning Rule (though far from perfect) gives the Forest Service the tools and framework to succeed with National Forest management and with the public. One

uncertainty is the ever-changing political climate. With all these uncertainties, the Forest Plan Revisions based on the 2012 Planning Rule offer a more bottom-up, participatory, science informed alternative than the sometimes ideological and deregulatory measures coming from Congress. Hopefully, Congress, the Executive and public give the Planning Rule - and the planning teams implementing it - a chance to succeed.

There have already been some early successes. The Francis Marion National Forest in South Carolina was the first National Forest to update its Forest Plan using the 2012 Planning Rule. The Francis Marion took a bold step in designating two broad management areas distinguishing where prescribed fire will be used as a management

tool. Other National Forests (Inyo, Sequoia and Sierra in California) developed strategic fire-management zones that will help guide fire-based decision making in the future.

The NFMA requires integrated forest planning and the 2012 Planning Rule gives each National Forest the chance to create management efficiencies, in both planning and general forest management. My message to any National Forest is that if you must produce a Forest Plan, go all in and use the process in a more methodical fashion. As I see it, the Forest Service has a tendency to postpone the hard decisions and defer to the project-level – plan now to plan again later. Some committee members expressed fatigue in constantly fighting the same battles at the project level, instead preferring to make the hard decisions at the plan level. A “big picture” forest can give more regulatory certainty and clear expectations for both the public and decision-makers.

Another concern of mine is the use of plan components. Plan components, along with management area designation, are at the core of Forest Planning. Plan components include desired future conditions, objectives, standards, and guidelines. Components provide the vision and strategy (and constraints) to achieve the plan, and are also enforceable. Perhaps no issue challenged the committee as much as the best way to write the plan components. On one end of the argument was those members who valued measurable, monitor able, enforceable plan components. The other end of the argument had those members who cautioned about the need for more discretion and flexibility, partly because of the uncertainty and complexity of National Forest management. The committee was still working these issues when it got disbanded.

My main motivation to be on the committee was to see the Forest Service attempt a science-driven approach to adaptive management, starting at the plan level. I don't think the National Forests are currently using the Rule's science potential. At the crux, the Forest Service must acknowledge what it does not know and commit itself to finding the answers through monitoring that is tied back into decision-making. The best chance at success will be conducting this monitoring with the public. The National Forests must each commit themselves to learning, not just using adaption to avoid making tough decisions. In return, the public must help each National Forest by cutting planning teams some slack, appreciating the complexity of resource management, and working with each National Forest. Hopefully, this will help fulfill the potential of the 2012 Planning Rule.

Environmental (Peter Nelson)



The advisory committee was by no means “rubber stamp,” it waded into the weeds on planning policy. The group pioneered the notion that a regulation can be collaboratively interpreted and implemented by interested citizens.

Conservationists care about Forest Planning because of

the critical role that the National Forest Service plays in supporting biodiversity. National Forests and grasslands provide habitat that is necessary for the recovery of hundreds of species listed under the Endangered Species Act, and protection for thousands more species in general.

The Planning Rule is designed to address many environmental challenges that affect National Forests - such as the effects of fires, road building, and land/river degradation. Effective Forest Planning is important because the plans can give clear direction in managing very large geographic land areas. The Planning Rule is also helpful in shaping the plan in that the Rule executes the NFMA’s landmark “diversity” provision. This provision establishes a flexible, yet enforceable conservation planning approach that manages for sustainable ecosystem and habitats - while responding to the needs of at-risk species.

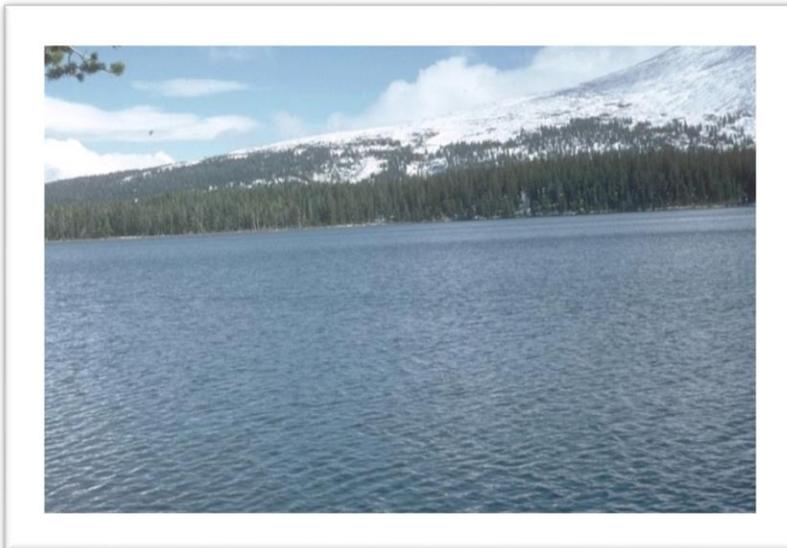
Evaluating the effectiveness of the Planning Rule would be tough to do right now, because only one Forest Revision Plan is complete (more are being worked). That the process takes so much time is not a negative, as long as the completed plans lead to measureable results. While developing a plan, conflicts between various interested groups will be inevitable. The advisory committee agreed that resolving the conflicts through the planning process is better than trying it later.

Conservationists have observed several worrying tendencies in Forest Planning. One is that my organization has seen significant variation in how National Forests are applying scientific information in evaluating risks to species. We worry that the Forest Service is trying to minimize conservation obligations, while the Rule encourages National Forests to take an “all lands” management approach. Also, the Forest Service

should work more closely with the Fish and Wildlife Service to develop clear strategies (within Forest Plans) that make positive contributions to the recovery of species listed under the Endangered Species Act, as envisioned in the Rule - rather than managing only to maintain baseline conditions.

We are also troubled by what we see as a trend in Forest Plans combining “adaptive management” with “flexibility,” which we feel builds undesirable uncertainty into plans. People vary on regulatory vs “discretionary” Forest Plans, but the Forest Service may be avoiding developing plans that provide certainty in the name of adaptive management. We feel this would be a mistake. The Planning Rule gave the Forest Service the ability to do both, develop Forest Plans that are adaptive *and* accountable. The plans are made accountable by adapting science-based assessments, measurable plan direction, targeted monitoring, and a method to update plans. The adaptive management program is challenging, but we can’t pass on this opportunity to improve our National Forests.

Watersheds (Susan Jane Brown)



Land and Resource Management Planning on National Forests has been fraught with peril, and has generally left many unhappy and distrustful of the Forest Service. The 2012 Planning Rule was made to be different. The Rule emphasizes collaboration, science, monitoring and adaptive management, ecological sustainability, and responding to a changing

climate.

The 2012 Rule also allows using new information gleaned through monitoring to enable amending Forest Plans to better achieve desired conditions. Many people see this part of the 2012 Rule as offering great promise in using adaptive management. Based on early use of the 2012 Rule amendment process, making good on this process may remain elusive.

The 2012 Rule contains direction regarding the amendment process. But the need for additional regulatory language regarding how to amend Forest Plans, using the new Rule, became evident as agency planners and stakeholders began to implement it. In particular, direction focused on how to amend Forest Plans developed using prior planning rules - was necessary to address committee members working on older plans. Reading the 2012 Rule, it could be argued that a 1980s-era Forest Plan would be amended to remove substantive Forest Plan components to authorize projects that otherwise would be inconsistent with those substantive provisions. Since dozens of National Forests are operating under old Forest Plans, the need to be able to reflect old plans to new (scientific, economic, etc.) realities – while also ensuring substantive natural resource protections – could be severe.

The committee helped create new language in 2016 to address this issue, embracing the concept of adaptive management. The 2016 Final Rule says that when a Forest Plan is amended by plan content, the Forest Service must determine what substantive contents of the 2012 Planning Rule are “directly related” to the changed plan, and apply that content to those parts of the 2012 Planning Rule to the Proposed Plan. The need to amend the 2012 Planning Rule on amendments came from practical experience working on Forest Plan Revision.

Public (Ray Vaughan)



Decades ago, I was cross-country hiking through my favorite National Forest. I came across a canyon, small but deep and shadowy, with a clear stream that started in a beautiful little waterfall. Descending into the cooler air

inside, I had found a tiny oasis from the summer heat. Not grand or spectacular, not even shown on my map, this canyon was still one of the most beautiful places I have ever seen in my life.

I cannot go there any longer - it no longer exists. The canyon fell victim to strip mining for coal. I filed the lawsuit that stopped coal mining on that forest, but not before my canyon was destroyed.

For many years, I waged litigation war on the Forest Service and raged against the politicians in DC. They constantly bickered. Yet they always seemed to agree on actions that led to the destruction of special places, and the displacement of people who loved those places or made their living from them.

Over time, I got to know the other people stuck in the trenches of the political and litigation warfare being fought over these national treasures. I learned that, regardless of their positions in the legal battles (whether agency personnel or industry spokesmen), these people cared about the National Forests and knew what they were talking about. As we spent more time talking together - and less time fighting over the positions that politicians and powerful special interests had put us in - we learned about each other, and from each other. Then, almost simultaneously, we all came to the realization that we were not each other's enemies.

Starting small with single projects, we worked together to find solutions to problems on individual forests - while meeting at least the most important of each other's needs. Eventually, we were finding agreement on how to manage entire National Forests for decades into the future. Though some "hard liners" on all sides warned us that cooperation and compromise would lead only to loss, it instead led to new solutions and demonstrably better management of the public lands. Litigation and conflict over these National Forests significantly decreased as a result.

Eventually, the leadership of the agency changed to the people who believed in such cooperative conservation. Even enough politicians realized that we had something that worked and wanted to see if it could grow. Federal advisory committees started to form around major issues for the Forest Service; all were successful beyond their founders' hopes. That led to the formation of the Planning Rule Committee. The committee was tasked with finding national solutions to problems and changing the entire management of the National Forest Service through the new 2012 Planning Rule.

For six years, despite difficulties and disagreements, this Committee made amazing progress on issues that had bedeviled the Forest Service and the public lands for decades. The Committee became a welcoming oasis in an ever hotter, more contentious political landscape; more and more people inside and outside the agency wanted the Committee to help them find new solutions to their problems.

The Committee had found a new way to govern. It was a way that left no one out. We found solutions to problems that had stymied our country for more than 50 years. We found respect for each other. We found hope, not just for the Forest Service, but for our nation. I believed in the future of America. But that was before our FACA Committee, like others used across the federal bureaucracy, was disbanded or had its charters not renewed.

Truly democratic methods of governance exist; their record of breaking through gridlock and finding solutions is proven. But such methods require cooperation from all, instead of unquestioning loyalty to one. They require listening and learning with respect, rather than dictating from ignorance and prejudice. They require more work than just watching your favorite cable news network and voting as you are told to every four years.

Not so long ago, we found a way to govern together in America, with fairness and success. That way is now gone. Maybe it can be brought back again. Or perhaps it was like that lovely little canyon—once gone, it will be gone forever.

Watershed and Conservation (Angela Sondenaa)



The 2012 Planning Rule is revolutionary in that it calls for an adaptive management framework for decision making, using the “best available scientific information.” It is clear that the crafters of the Rule wanted managers to use the logic and rigor of the scientific method and a clear framework of decision making to guide

forest management. What is not so clear is if the agency has the capacity (both staff expertise and budget allocations), and the socio-political fortitude, to actually implement the science-based approach called for by the Rule.

In the course of the Committee’s work with early-adopter forests, it quickly became apparent that the status of ecological data and scientific analysis were going to be significant obstacles to developing adaptive management plans for our National Forests. Early feedback from the committee to strengthen the decision making framework based on “triggers” or “thresholds” of key ecological conditions was met with the response that “we don’t have enough information to build such a framework.” Without a greater breadth and depth of scientific understanding of how our National Forests and grasslands function, these new plans will fall short of the vision captured in the Rule.

It also became apparent that research results and best available scientific information for some resource areas are more robust than others. A legacy of prioritization by forest managers has left the Forest Service with large discrepancies in their knowledge base. For example, the ecology of forest communities is better researched, monitored, and understood than the ecology of shrub–steppe or grassland communities on the same planning unit. At an even finer scale, the tree component of forest communities has been better studied and monitored than the understory vegetation or wildlife populations found in those same forested communities. These discrepancies will likely result in plans with a disproportionate emphasis on specific ecological communities or components over others. As a result, it may be hard for the agency to meet its required mandates to manage for multiple use and the conservation of biodiversity because of the paucity of information on these lesser-studied ecosystems.

A case in point is how the agency has approached the identification and incorporation of species of conservation concern. The Rule requires each Regional Forester to identify species of conservation concern when “the best available scientific information indicates substantial concern about the species’ capability to persist over the long-term in the plan area.” But what happens when the Forest Service does not have the best available science to decide on a species’ capability to persist? According to the Directives, the Forest Service would not list that species as a species of conservation concern because there is no scientific basis for the determination. Although this interpretation may be valid on its surface, it basically gives the Forest Service a free pass and incentivizes a lack of scientific rigor. This is a dangerous perspective for an agency mandated to conserve biodiversity.

While the Rule does not call for identification and prioritization of additional research as part of the creation of new Forest Plans, there is a clear need to do so. Especially important is improving our understanding of how management actions influence the ecological trajectory of plant communities in the face of climate change. For example, is rest-rotation grazing an appropriate management approach for allotments within the arid grasslands of the interior Northwest - in light of changing moisture regimes that harm native plants while benefitting exotic weeds? Would a change in seasonal timing or grazing intensity be more appropriate to mitigate impacts from the shift from winter moisture to more spring/summer moisture predicted by climate scientists? Without further scientific research and robust monitoring programs, Forest Service managers will be unable to appropriately answer even such basic questions. More importantly, this scientific ignorance could result in mismanagement of public resources with far-reaching ecological impacts long into the future. This has already happened on public lands with the historical lack of fire ecology research, which results in an inadequate understanding of the role of fire in maintaining specific ecosystems.

In conclusion, significant work remains for the Forest Service in order to fulfill the Rule's direction to create plans using a science-based and adaptive management decision making framework. There are issues with:

- Historic and current data-collection priorities
- A paucity of scientific data (both ecological and social)
- Diminished expertise in key areas
- Costs to obtain the necessary data
- Socio-political pressures to limit scientific investigation

Although these challenges are not insurmountable, it will take a dedicated and determined leadership to see the Forest Service achieve the ideals laid out in the 2012 Rule.

Conclusion

Two committee members, Martin Nie and Susan Jane Brown, closed with these thoughts about the 2012 Planning Rule and Forest Plan Revision:

Forest management – and planning – is not a technical problem to be solved by forest specialists, Wildlife habitat models, sustained yield calculations, or adaptive



management. Instead, forest management is a social problem needing to be resolved in a transparent and participatory process - helped by science and other values - with affected stakeholders. Stakeholders want to know that forest managers understand their views, and to see stakeholder views reflected in the forest plan and the subsequent projects that implement the plan. The

2012 Rule provides a carefully crafted participatory framework, one that needs to be embraced more fully by Forest Service. The future of the National Forest System requires shared stewardship with the public, to whom these forests belong.

Many in the Forest Service understand their public role and responsibilities well, but too many still cling to the belief that agency personnel know best how to accomplish

planning goals. This perceived exaggerated pride is noticeable to stakeholders. It can be understandable at times - as forest users often do not fully grasp the ecology of an area, the agency's legal and budgetary constraints, or other limitations and considerations that forest managers confront every day. This ignorance is just as frustrating to line officers, as the line officers' pretention is frustrating to public stakeholders.

Still, we believe that the 2012 Rule provides a framework and the tools necessary to overcome the impasse found so often regarding our national forests. In this effort, we hope the Forest Service remembers that its job is to promote unity by serving the public, in order to bring the greatest good to the greatest number of people for the longest time.