



NSG
NEPA
Services
Group

Notice of Intent to Prepare an Environmental Impact Statement— National Forest System Land Management Planning Rule

Summary of Public Comment

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Table of Contents

Summary of Public Comment	1
INTRODUCTION AND OVERVIEW	1
CONTENT ANALYSIS PROCESS	2
PROJECT BACKGROUND	2
SUMMARY OF CONCERNS	3
General Analysis	3
Planning Rules	6
Environmental Effects	13
Public Involvement	14
Economic/Social Concerns	17
Alternatives and Items To Be Discussed in the Environmental Impact Statement	17
Compliance with Other Laws and Regulations	24

Appendices (Under Separate Cover)

Appendix A: Content Analysis Process

Appendix B: Coding Structure

Appendix C: Demographics

Appendix D: Organized Response Report

Summary of Public Comment

Introduction and Overview

This document is a summary of public comment received by the U.S. Department of Agriculture (USDA) Forest Service (Forest Service) regarding a notice of intent (NOI) to prepare an environmental impact statement (EIS) for the National Forest System (NFS) land management planning rule, and request for comment. The comment period was May 11, 2007 to June 11, 2007. The Forest Service has received 807 responses. Of these, approximately 672 are form letters, while the remaining letters consisted of original responses or form letters with additional original text.

A *response* is a single, whole submission that may take the form of a letter, email, fax, presentation at an organization-sponsored public meeting, etc. Each response may contain anywhere from one to several hundred comments.¹ Although many of the responses were *original responses*, which include both those submitted by individuals and those from agencies and organizations, the majority of the responses were *form letters*. Form letters are five or more letters that contain identical text but are submitted by different people.

Each original letter and an example of the form letter were analyzed to ensure that the concerns of all respondents were considered. In addition, if a respondent added information to a form letter, this content was also analyzed. No out-of-scope letters were analyzed. This *Summary of Public Comment* captures concerns in a narrative analysis.

Although this analysis attempts to capture the full range of concerns raised, it should be used with caution. The respondents are self-selected; therefore, their comments do not necessarily represent the sentiments of the entire population. This analysis attempts to provide fair representation of the wide range of views submitted, but makes no attempt to treat input as if it were a vote or a statistical sample. In addition, many of the respondents' reasons for voicing these viewpoints are varied, subtle, or detailed. In an effort to provide a succinct summary of all of the concerns raised, many subtleties are not conveyed in this *summary*.

This *Summary of Public Comment* is divided into the following sections:

- Introduction and Overview
- Content Analysis Process
- Project Background
- Summary of Concerns

The appendices to this document provide more detailed descriptions of the process used to analyze the comment received, the coding structure used by the analysts, demographic data about the respondents, and information about the organized responses (i.e., form letters):

- Appendix A, *Content Analysis Process*
- Appendix B, *Coding Structure*
- Appendix C, *Demographics*
- Appendix D, *Organized Response Report*

¹ Responses refer to single, whole submissions from respondents—(e.g., letters, emails, faxes, presentations at public meetings). Comments refer to identifiable expressions of concern made within responses.

Content Analysis Process

The goals of the content analysis process are to:

- Ensure that every response is considered.
- Identify the concerns raised by all respondents.
- Represent the breadth and depth of the public's viewpoints and concerns as fairly as possible.
- Present those concerns in such a way as to facilitate the Forest Service's consideration of comments.

Content analysis is a method developed by a specialized Forest Service unit, the National Environmental Policy Act (NEPA) Services Group (NSG), for analyzing public comment. This method employs both qualitative and quantitative approaches. It is a systematic process designed to provide a mailing list of respondents, extract topics from each letter, evaluate similar topics from different responses, and identify specific topics of concern. The process also provides a relational database capable of reporting various types of information while linking comments to the original letters.

Throughout the content analysis process, the team strives to identify all relevant concerns, not just those represented by the majority of respondents. Breadth and depth of comment are important. In addition to capturing relevant factual input, NSG identifies the relative emotion and strength of public sentiment behind particular viewpoints.

This *Summary of Public Comment* attempts to capture all significant concerns related to a project. However, it is only a summary. Content analysis summaries and reports are not intended to replace original letters. As noted above, the database reports are linked directly to individual letters.

Project Background

This section summarizes the project background information supplied in the Notice of Intent (NOI) published in the *Federal Register* on May 11, 2007 (72 FR 26775). Some passages are quoted directly from that publication.

The Forest Service is preparing an environmental impact statement (EIS) to analyze and disclose the environmental consequences associated with the National Forest land management planning rule published in 2005 (2005 Rule). The EIS is being prepared in partial response to an order dated March 30, 2007, in which the United States District Court in *Citizens for Better Forestry et al. v. USDA* (N.D. Calif.) enjoined the USDA from implementation and utilization of the 2005 Rule until the agency complies with the court's order regarding the Administrative Procedures Act, the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA). While the agency is not in agreement with the Court's decision, it has decided, in the interest of moving forward with land management planning, to prepare an EIS to comply with the court order.

The 2005 Rule was developed in response to a previous National Forest land management planning rule that was issued on November 9, 2000 (2000 Rule). During its review of the 2000 Rule, the Forest Service affirmed the plan's underlying concepts of sustainability, monitoring, evaluation, collaboration, and the use of science; however, the Forest Service concluded that the

2000 Rule was complex and difficult to implement resulting in inconsistencies and high costs. The Forest Service promulgated the 2005 Rule to provide a planning process that was easier to understand and implement. Additionally, as a result of public comments received during the 2005 rulemaking, the 2005 Rule identified additional needs and purposes, stating that land management planning should:

- Be strategic in nature
- Be adaptive and based on current information and science
- Guide sustainable management of NFS lands
- Involve the public
- Comply with all applicable laws, regulations, and policies

Publication of the NOI in the *Federal Register* on May 11, 2007, initiated the scoping process in compliance with the NEPA and implementing regulations (40 CFR part 1500). The content analysis for this summary of public comment pertains to scoping comments on this NOI. Scoping also includes review of the extensive amount of comments previously collected during promulgation of 1) the 2005 Rule (70 FR 1022), 2) agency planning directives (72 FR 4478, 71 FR 10956m 71 FR 5124), and 3) the Forest Service categorical exclusions for land management planning (71 FR 75481).

Summary of Concerns

The following is a summary of the comment received on the NOI and reflects public sentiment on a variety of concerns both diverse and interrelated regarding the 2005 Rule. These concerns range in nature from the strictly procedural to the technically specific. Public comment on these concerns demonstrates the interest, feelings, and awareness Americans have regarding the management of NFS lands.

These comments reflect the convictions many respondents have about the National Forests, the planning process, and the priorities the Forest Service should use to guide planning and management decisions.

This section begins with a general analysis and proceeds with identification and discussion of respondents' main areas of concern. It is divided into the following parts:

- General Analysis
- Planning Rules
- Environmental Effects
- Public Involvement
- Economic/Social Concerns
- Alternatives and Items To Be Discussed in the Environmental Impact Statement
- Compliance with Other Laws and Regulations

General Analysis

The NOI to Prepare an EIS on the NFS Land Management Planning Rule is the latest stage in a national debate on the appropriate way to develop and implement forest management plans for the NFS. Comments received on this NOI reflect this continued debate, and many of the concerns raised during this comment period were raised as part of the earlier rulemaking efforts for the 2005 Planning Rule and the 2000 Planning Rule. Respondents are clearly aware of the

earlier debates and often refer to earlier rules, earlier public involvement processes, and the various court cases and rulings that surround these earlier proceedings. In several cases, respondents ask that their earlier comments be included in the record for this NOI, and many attach copies of their earlier comments or simply resubmit their earlier comments.

Some respondents commend the Forest Service for its efforts to “simplify the planning process,” and several respondents urge the Forest Service to proceed expeditiously towards resolving the questions surrounding the current planning rule. There is an overriding concern, however, that the rapidity with which the Forest Service is proceeding may make it difficult to produce an adequate EIS within the timeframe allotted.

Comments reflect what individuals see as the appropriate role of the Forest Service in the management of Federal lands and resources. Overall, many see NFS lands as ecosystems providing a host of resources including wildlife habitat, clean water and air, a diversity of species, recreation, scientific research, and the potential capability to help control global climate change. Accordingly, many express the view that the primary goal of the Forest Service should be the “protection of our national ecosystems and resources.” These respondents believe that NFS lands need more environmental safeguards, not fewer. Some respondents argue that the Forest Service has a responsibility to protect Federal lands for the benefit of the entire nation, not just the interests of local groups, private corporations, extractive industries, or individual politicians. Some request specifically that the laws governing the National Forests should be designed to protect the forests from the destructive effects of mining and logging. Others go further and ask that mining and road building be prohibited. Some cite several polls showing that the American people no longer support using National Forests for logging, mining, or other industrial uses. While a few do acknowledge that limited interference in the management of NFS lands may be needed to remove nonnative species and man-made dams, to reintroduce native species, and as part of emergency rescue efforts, they prefer to ban all other management or extractive activities. Some respondents write “to encourage more compliance with environmental safeguards in an updated rule.” The sentiment among many is that NFS lands and their resources should be protected for the good of the nation, the globe, and human well-being.

Respondents argue that decisions regarding the use of NFS lands are significant and therefore, many respondents ask that the Forest Service comply with NEPA. There are two main requests: 1) that the EIS on the planning rule comply with NEPA, and 2) that the final planning rule ensures that NEPA is complied with during forest planning processes. Some respondents note that while they support the agency’s efforts to increase efficiency and “encourage decision-making at the local level”, they do not support this at the expense of public input or ecological sustainability. They urge the Forest Service to retain the use of the EIS at the core of the planning process. Some provide general comments about their belief in the NEPA process, as it benefits both resources and stakeholders when rigorously followed and interpreted. Some condemn the current Administration’s use of the categorical exclusion, and note that the Multiple Use Sustained Yield Act of 1960 and NEPA are intended to ensure that public lands belong to Americans and not the administration or public interest groups.

Others suggest that all forest management should take place within a construct of continual learning and adapting.

Although respondents believe that an EIS should be conducted, there is disagreement on whether the EIS should occur at the forest plan level or the project level. Some respondents note that land

management plans will set the framework for all project-specific actions on a forest. They assert that “the allocation of lands is one of the most far-reaching and profound decisions made in management of the national forests” because of its effects on economies, industries, and quality of life. Consequently, these individuals support conducting an EIS for all significant revisions to forest plans. Some go on to congratulate the Forest Service for reaching above and beyond the requirements set out in the court ruling by preparing an EIS instead of an Environmental Assessment (EA) for the planning rule. They support the Forest Service in its move forward with an EIS to resolve the procedural issues that resulted in the 2005 Rule being enjoined; they believe that doing so will result in a speedier resolution.

Commenters also suggest that the Forest Service stop viewing land management plans as strategic because “they have a concrete effect in guiding management activities.” Some further argue that cumulative impacts cannot be adequately analyzed at the project-level; for example, impacts on wide-ranging species, they argue, need to be analyzed at the forest-level. These respondents take issue with the argument that analysis is more expensive at the forest plan level and suggest that closer collaboration and sharing of scientific data with other state and federal agencies could help defray costs.

There is an equally vocal group who believes that rule making is not an appropriate level for EIS analysis. As one individual states “the court erred in forcing the agency to conduct NEPA on the 2005 [planning rule], which doesn’t propose specific, on the ground actions.” These respondents support the Forest Service in its current path towards project-level environmental analysis. They note that forest planning should “be focused...on projects, not plans, and certainly not on rules that govern the planning process.” Some caution the Forest Service not to expend unnecessary resources analyzing the planning rule. There is also sentiment among respondents that the current NEPA requirement is an unnecessary distraction from the truly important matter at hand, which is revising the land management planning process to facilitate forestry planning and proposed actions.

Commenters often express concerns over the components of the new planning rule, alternatives that should be analyzed in the EIS, and other topics they would like to see considered in development of the final rule. In a sense, comments on any one topic do not make up a separate category of concern, as these comments are tied inextricably to respondents’ concerns over other major topics. However, it is just as true that all of the topics of concern to respondents are interrelated and do not easily give way to independent discussion. Nevertheless, for purposes of analysis there are useful distinctions to make; therefore, the following six categories of concern will each be discussed in turn— planning rules, environmental effects, public involvement, economic and social concerns, alternatives and items to be discussed in the EIS, and compliance with other laws and regulations. These discussions often reflect competing views, which may be motivated by different assumptions and beliefs regarding the nature and role of NFS lands and the role and credibility of government.

One final point is worth making before moving on to these major categories of concern. Of all the responses received by the Forest Service, by far the majority have been form letters. To many of these, respondents have only added their signatures. To many others, respondents have added personal comments. In addition to original letters, these form letters represent some of the strongest positions taken by respondents. Many form letters opposing the 2005 Rule typically ask that the Forest Service return to the 1982 Rule. These letters claim that the 2005 Rule undermines important environmental protections and express concern about the possible

exemption of Forest Management Plans from environmental review. Some also request that additional alternatives be evaluated and that the EIS carefully analyze the environmental impacts resulting from implementation of the 2005 Rule. Other form letters speak in favor of the 2005 Rule and encourage the Forest Service to move quickly through the EIS process because the current injunction is disrupting forest planning efforts. The personal comments added to form letters frequently indicate the depth of emotion respondents feel over these topics.

Planning Rules

Many respondents appear to be confused or uncertain about the nature of the proposed rule. Many assume that the Forest Service plans to analyze the 2005 Rule as the proposed action in the EIS, and some, therefore, provide detailed comment on the 2005 Rule. However, because respondents are not certain about what the proposed action is, many make general comments about what they believe any planning rule should include. They reference the 1982 Rule, the 2000 Rule, and the 2005 Rule, variously. Comments related to what respondents view as the preferred contents of a planning rule, regardless of which rule they refer to, are included in this section.

2005 RULE

Opponents of the 2005 Rule believe it has served to undermine wildlife and water resources because of reduced requirements for environmental review, environmental protection, and public participation. Some find the 2005 Rule flawed because it does not require that alternatives be considered in the planning process. Respondents suggest that the lack of accountability in the 2005 Rule is a “recipe for big mistakes with big consequences.” Some respondents cite environmentally sound management as the paramount concern for NFS lands, and recommend that the current, “disastrous” 2005 Rule be replaced with a new set of rules that protect the environmental resources that forest lands provide.

Some respondents argue that the 2005 Rule is illegal because the process used to develop the rule did not comply with the Administrative Procedures Act (APA). Respondents also assert that the rule does not comply with the National Forest Management Act (NFMA), which was created by Congress to stem earlier abuses of the Forest Service. They see the 2005 Rule as an illegal undermining of the intent of Congress that legally cannot be approved, even if the Forest Service complies with APA. Others reference the two court cases cited by the Forest Service in support of its contention that forest plans can legally be exempted from full NEPA analysis because they have no significant environmental impacts. These cases, they contend, do not actually support this assertion, as neither case addressed the appropriate level of NEPA documentation for the approval, revision, or amendment of land management plans.

There are others who argue in favor of the 2005 Rule. Supporters believe it streamlines the implementation of forest management plans, facilitates amending and revising plans, establishes reasonable requirements for monitoring of wildlife, favors ecosystem diversity, removes wildlife populations viability requirements, allows for site-specific needs and variances, and allows the use of clear-cutting in certain circumstances. Some express a preference for the 2005 Rule because the 2000 Rule was too complex, unclear, and difficult to implement. These respondents feel the 2005 Rule clarifies requirements and provides a planning process that the Forest Service could implement. Others encourage the Forest Service to disclose to the public the impacts on time and resources that will be required if the 2005 Rule is eliminated or significantly changed.

PREVIOUS RULES (2000 RULE AND 1982 RULE)

Opponents of the 2005 Rule typically express a preference for the 2000 Rule or the 1982 Rule, which they believe provide greater protections for NFS lands. Many of them see the 2005 Rule as an “illegal and weak” plan. Some prefer the 2000 Rule because they believe that it was the result of “the coming together of many people” while they view the 2005 Rule as the “result of special interests throwing their weight around.” Others dispute the findings of the 2000 Rule review committee, which found the 2000 Rule to be too complex to be successfully implemented, stating the land itself is complex but not the rule, and feel that the 2005 Rule is a skeletal short-cut that “ill serves” the public. Still others believe that forest planning should comply with the 1982 Rule because it is based on science and ensures the protection of all resources. Some urge the Forest Service to re-adopt or strengthen the 1982 Rule because they believe it is well aligned with the NFMA. Some commenters argue that the Forest Service’s major concern with the 1982 Rule seems to be the difficulty it encountered when trying to circumvent the requirements of the rule. These commenters note that the Forest Service was never successfully challenged when it complied with the 1982 Rule; it encountered successful court challenges only when it failed to fully comply with the 1982 Rule. Others note that the 1982 Rule has been in use for 25 years and has never been found legally deficient by the courts.

Some respondents comment that the 2000 Rule was so unworkable that the Forest Service continues to use the 1982 Rule.

COMPONENTS OF THE PLANNING RULE

Respondents offer wide-ranging suggestions for what should be included in the final rule. Some ask that the Forest Service consider reorganizing the National Forests to focus on providing ecosystem services rather than commodity services. They further request that the rule separate restoration activities from commercial activities. One respondent notes that “roadless areas are the last, best places for wildlife, water, and scientific reference points” and, in concert with others, suggests that areas with low road density, and all roadless areas 1,000 acres or larger, be carefully evaluated and protected. Respondents challenge the assertion made in the 2005 Rule that all uses were suitable in all areas unless specifically restricted. These respondents argue that the Forest Service should not assume that management activities are benign.

Some respondents insist that the Forest Service use regulations rather than directives to set forth NFMA requirements; these respondents are concerned that the Forest Service appears to emphasize directives in the proposed 2005 Rule, which do not have the legal force of regulations.

Some respondents request that forest- and stand-level decisions be based upon broad-scale ecological assessments. Some suggest that large-scale planning be continued, and that “desired conditions, land allocations, and management activities should be spatially explicit in the plans.” They believe this would promote the link between design activities and biodiversity values, understanding by the public, and measurements of progress. Some stress the importance of planning on a forest-wide basis to provide consistent protection to unfragmented habitats, which these respondents believe is impossible on a project-by-project basis. Some respondents ask that the Forest Service develop regulations that would emphasize restoration of the watersheds and forest ecosystems while others ask that the planning rule emphasize preservation. Some further request that the plans specify how resource protection monitoring will be implemented.

Respondents also suggest that the following items be considered for inclusion in the final rule:

- A mandate for collaborative planning and public involvement regardless of the level of NEPA analysis on Land Resource Management Plans (LRMPs).
- Directing planning towards collaboration and public involvement at the pre-decisional stage and away from the technical effects analysis.
- Explicit recognition of the role of scientific uncertainty and adaptive management in land management planning.
- Explicit recognition of the need to consider the three interdependent aspects of sustainable NFS land management (ecological, social, and economic) and directing the Forest Service to consider all three in conjunction.
- The elimination of voluminous amounts of detailed NEPA analysis at the forest planning stage, which should be reserved for project level actions.
- Reducing or eliminating prescriptive elements in LRMPs (e.g., MIS, project level standards, and strict land use designations) to allow for maximum flexibility in light of climatic, demographic, and economic change.

Some commenters note that assumptions about risk should be disclosed and considered in the EIS, the planning rules, and forest plans. Additionally, some respondents ask the rule include a provision requiring that all public notification information be provided via the Internet and be emailed or mailed to all persons who request it.

TIMBER MANAGEMENT

Some respondents address specific concerns regarding timber management in 2005 Rule that they believe should be avoided or rectified in the proposed rule. Some state that the guidance in the 2005 Planning Rule for timber resource management (36 CFR 219.12(b)(2)) is inadequate because it does not include the level of specificity of the 1982 Rule. Further, some respondents contend that legally the rule must include the timber management requirements from the NFMA; however, these respondents note, the 2005 Rule states that these requirements will be found in internal Forest Service directives, which courts have frequently found are not judicially enforceable. Some respondents feel that the 2005 Rule was aimed at increasing timber sales “without pesky environmental considerations.” These respondents are concerned that the 2005 Rule would allow managers to ignore logging impacts on aquatic ecology, riparian zones, and uplands.

There is also a concern that the guidance in the 2005 Rule for identification of lands not suited for timber production (36 CFR 219.12(a)(2)(2005)) is insufficient because it does not include the level of detail that was included in earlier rules. Respondents believe this reduction in the level of detail represents an elimination of resource protection standards, which would result in increased logging. Further, some note that changes to the definition of long-term sustained yield provides the Forest Service with “unbridled power and discretion,” and that this could lead to “abusive management.” Respondents ask that the regulations be written to restrict the level of discretion and to comply with the NFMA. They suggest that the Forest Service add an economic limitation to the suitability determination, so that areas that cannot be harvested in an economically viable fashion (i.e., the cost to administer the timber sale would not exceed the revenue the agency would earn from the sale) be deemed unsuitable for timber harvest. In addition, respondents ask that the exceptions for harvesting on lands deemed unsuitable for

harvest be narrowed. Some are concerned that the suitability determination may be made at the project level, which would, they argue, conflict with NFMA.

USE OF SCIENCE

Many respondents believe that scientific credibility is critical in forest management decisions. Some suggest that the Committee of Scientists be reconvened to review the proposed rules. Others request that the Committee of Scientists assist in updating the 1982, 2000, and 2005 rules to ensure that they are scientifically correct, technically feasible, and socially and politically appropriate.

A few respondents feel that the 2005 Rule more successfully responds to the latest scientific knowledge than the other planning rules; however, the majority argues that the 2005 Rule would allow local forest officials to reject scientific evidence and recommendations. Some support the 2000 Rule because it requires the responsible official to be consistent with best available science (36 CFR 219.24, 2000 rule). They contend that the 2005 Rule requires the responsible official to only take into account the best available science. Respondents are concerned that the responsible official's discretion under the 2005 Rule may conflict with provisions for the use of scientific and collaborative input outlined in NFMA. Therefore, they urge that the planning rule include a requirement that all project level decisions "be consistent with the best available science" and "based on rigorous scientific consensus." They plead that science, rather than politics, guide planning efforts.

Some conservation agencies cite 16 U.S.C [section] 1604 (g) (3) (C), which requires that any proposed regulations for implementation of NFMA be reviewed by an independent scientific committee. In addition to the scientific review, these respondents believe that the planning rule must take into account forest resources and socio-economic trends.

Some respondents suggest that the Forest Service should seek out science that least supports logging in order to counteract the institutional bias towards logging projects. They further suggest that the Forest Service should develop a system to ensure that new science is incorporated into agency action plans much sooner. Others ask that forest plans be required to include a "scientifically valid restoration program" that would be peer-reviewed by an interdisciplinary team of scientists. Further, some note that the most recent science should be used in the development of LRMPs. Respondents also request that the Forest Service employ models that are sufficiently transparent to allow independent verification of key linkages and the veracity of model inputs.

FOREST PLAN STANDARDS AND PROHIBITIONS

Respondents remind the Forest Service that NFMA requires that standards and guidelines be prescribed for all NFS land units. Some believe that the 2005 Rule has eliminated the use of standards in favor of guidelines, which, they feel, increases agency vulnerability to the influences of commercial exploitation and development. Many respondents are proponents of a final rule that would include measurable and enforceable standards.

Most of the respondents who discuss requirements of planning rules are in agreement that land management plans should contain standards that ensure environmental protection of forest resources, such as wildlife habitat and populations, water quality, soils, and primitive recreational opportunities. Respondents further ask that these standards be strong and

enforceable. This includes some State agencies, which request that performance-based measures be incorporated to allow for adaptive management and encourage State agency collaboration. Some also note that the requirement to maintain adequate habitat to support viable populations of vertebrate species is an important component of current regulations and should be retained. Respondents also request that the rule include “monitoring of wildlife and plants” which should be combined with baseline environmental standards. Some respondents are concerned that the 2005 Rule only includes guidelines (36 CFR 219.12(b)(2)), which would allow the responsible official enforcement discretion. Respondents argue that measurable mandatory standards keep the Forest Service accountable to the public. Some respondents ask that Forest Plans be required to provide real guidance and not just strategy. They are concerned the 2005 Rule limits plans to strategic plan components rather than requiring a more conventional plan (as 1982 Planning Rule requires) with a traditional package of standards and guidelines.

NEPA REQUIREMENTS

The 2005 Rule’s removal of the NEPA requirement and its affect on the public participation process is a concern to many respondents. These letter writers feel that the 2005 Rule would allow public involvement to be left “to the whim of the Forest Supervisor.” Some respondents challenge the Forest Service’s claim that forest plans should not be subject to NEPA because they do not result in concrete actions. They note that other Federal agencies, including the U.S. Fish and Wildlife Service (USFWS), Minerals Management Service, and the National Park Service, prepare EISs on their planning documents. These respondents ask why the Forest Service should be different and they express concern that this Forest Service action will set a precedent for other agencies to follow. Some condemn the Administration for irresponsible land management planning regulations, and ask that rules be adopted to protect and restore NFS lands. Some State environmental agencies believe that any decision made through the 2005 Rule would be required to undergo NEPA analysis. Others ask that any planning rule that is adopted include a requirement that all Forest Plans undergo full NEPA analysis. Other respondents, citing the Environmental Policy and Procedures Handbook, state that extraordinary circumstances are likely to be attendant and affected by decisions made in any and all forest plans. Some carry this argument further noting that the types of extenuating circumstances include: presence of endangered species, wetlands, and roadless areas. Since these are present in virtually all National Forests, virtually all LRMPs would require NEPA analysis.

Respondents further argue that the Forest Service is using a “poorly executed trick of semantics” when it distinguishes between plans and projects, because NEPA requires analysis whenever a final decision is made regardless of whether the decision is made at the plan or project level. These respondents note that final decisions are made at the planning level. Such decisions include designation of special areas, opening of lands to mineral exploration, and development of and recommendations for wilderness areas.

Some respondents criticize the Forest Service’s argument that NEPA analysis will be undertaken at the site-specific level. They note that the agency has increased the number of projects that can be categorically excluded from NEPA analysis. Therefore, they argue, the proposed rule combined with the other exclusions would allow the Forest Service to entirely bypass NEPA analysis. Similarly, respondents are confused by the vague nature of the proposed action and the uncertainty as to how it will be implemented. These respondents are skeptical of the Administration’s assurances that NEPA is unnecessary at the planning level because it will be

accomplished on a project level. They cite adopted changes by the Administration under the “Healthy Forests Initiative” to reduce project-level NEPA compliance, especially regarding timber sales. This is especially alarming to respondents when combined with the removal of NEPA review at the forest plan level.

Some respondents note that the lack of cumulative impact assessment in the forest planning process, as described in the 2005 Rule, would place the burden on each project-level EIS, making the project-level analysis more burdensome. In addition, some note that both alternative analysis and public involvement required for an EIS assist land managers in making better decisions; they argue that these two components often lead to new and improved management options that land managers might not develop on their own. Still others note that the failure to consider a reasonable range of alternatives on wilderness recommendations “would be an obvious and easily litigated NEPA violation.” Some respondents question whether the Forest Service will be able to do a legally adequate job of meeting NEPA’s requirements for analysis of alternatives and indirect and cumulative impacts at the project level.

Additionally, some respondents argue that by pushing all NEPA analysis to the project level, the Forest Service is in essence splitting the action into smaller component parts, thereby violating NEPA.

ENVIRONMENTAL MANAGEMENT SYSTEMS

Many respondents express a variety of concerns about the proposed use of an Environmental Management System (EMS) as a central component of forest planning. Some respondents express concern that the 2005 Rule procedures for EMSs are improper because no comment was taken on the use of EMSs and because the ISO 14001 is a copyrighted document which the public must purchase in order to review. Respondents ask that the Forest Service strive to have the ISO documents in the public domain before relying on them. Others note that the copyright on the ISO documents creates legal problems when the Forest Service relies on such non-public information in the management of public lands. Respondents also note that because the ISO document would be a central part of the management process, it would be subject to Freedom of Information Act (FOIA) requests. Once the applicant receives the information through the FOIA request, respondents argue, the applicant could make that information available to the public as long as they did not profit from it. The resulting copyright infringement would legally need to be resolved by the American National Standards Institute (ANSI) and the Forest Service. On the other hand, respondents note that if the Forest Service did not comply with FOIA or found a legal exemption from FOIA, the regulations themselves would be subject to legal challenge because management decisions would be based on a system not available to the public.

Some respondents express their concern that in the 2005 Rule, NEPA compliance is replaced with the EMS requirement for each National Forest. Respondents comment that the 2005 Rule requires each National Forest to complete an EMS within three years and question whether all forests could meet that timeline. Further, they argue that Forests should not be allowed to implement any projects until the EMS has been completed. Respondent also ask that the public be involved in the development of the EMS.

Opponents believe that the EMS, which is a planning and monitoring process used by timber companies, does not serve the public’s interest in environmental protection, and that the NEPA review requirement should be reinstated in the new rule. Some also argue that the use of the EMS is unlawful and that the Forest Service is abdicating its responsibility to comply with both

NEPA and NFMA. Others note that the requirements described in the ISO 14001 would become legally binding and some argue that the ISO standards could be seen as contradicting other portions of the 2005 Rule. These respondents also note that the monitoring and auditing requirements of the ISO seem to be stronger than those of the 2005 Rule itself, which could create legal problems for the Forest Service if it complied with the requirements of the 2005 Rule, but violated the requirements of the ISO.

Others ask the Forest Service to clarify why an EMS is needed to implement NFMA and note that the EMS may not be particularly effective in helping the Forest Service comply with NFMA.

On the other hand, a number of proponents support the implementation of the EMS as a “pivotal resource management tool” that will allow more monitoring, the incorporation of more adaptive management, and increased accountability.

FOREST PLAN AMENDMENTS/REVISIONS

Some respondents note that the 2005 Rule allows the Forest Service to implement significant changes to a forest plan with no public notice whatsoever by defining such changes as “administrative corrections.” Respondents are particularly concerned with two categories of administrative corrections: changes in timber management projections and changes in the monitoring program. Some people say the administrative corrections option allows responsible officials to change the logging level set in forest plans at their discretion at any time without public notice. Some respondents also argue that the administrative corrections option would allow the responsible official to alter the prior monitoring program without public review or public notice. Because of this, respondents complain, managers have unlimited discretion to make plan amendments that force consistency with a proposed project. This effectively eliminates meaningful protections of resources because of the 2005 Rule’s lack of standards and guidelines, elimination of species viability requirements, equal weighting of economic considerations and ecosystem health, and elimination of the requirement for “best available science.”

Respondents request that the Forest Service ensure that alternatives are considered, environmental consequences are disclosed, and experts and the public are consulted in all parts of the planning process, including forest plan amendments, to ensure compliance with NFMA and NEPA.

APPEALS AND OBJECTIONS

Some people express concern over the objections process described in the 2005 Rule. They comment that successful appeals to the Regional Forester under the 1982 Rule would stop a project that was harmful to their interests, while the objections process outlined in the 2005 Rule does not stop plans or projects that they allege will be harmful to their interests. They disagree with the Forest Service’s determination that NFMA regulations do not apply to site-specific projects. Respondents ask that the final planning rule allow for appeals of LRMPs. Some express dismay over the proposed 30-day objection period because it is inadequate to review and comment on an entire forest plan, while others ask that the rule allow for a 90-day time period for the filing of “pre-decisional objections.” Further, some ask that the final rule contain an administrative appeals process that would allow for post-decisional appeals, as was possible under the 1982 Rule.

Environmental Effects

Many insist that forests should be managed as ecosystems to preserve natural resources including: wildlife habitat, clean air and water, diversity of species, historic artifacts, recreation, and opportunities for scientific research. They also note that forests are an important component in the combat against climate change and mudslides that result from erosion. In addition, respondents are concerned that a decrease in environmental requirements would result in actual, physical effects on the human environment. They believe that lowering environmental requirements in a planning rule will have a negative effect on the environmental requirements in plans promulgated under the rule, and in turn, will result in reduced environmental requirements for projects and activities under the plans.

Some respondents also note that because non-federal lands are not managed to sustain public values such as clean water, wildlife habitat, and carbon storage, there is a greater need to ensure that public lands are so managed. To this end, they oppose using these lands for commodity extraction, though some would make an exception for those cases when the commodity extraction could serve restoration goals.

Respondents comment that special area designations are final decisions that approve projects and activities. Some letter writers document their difficult and unsuccessful attempts to implement the “Special Areas” designation provided for in the 2005 Rule, stating that even after they presented the required documentation, none of their suggestions were incorporated into the plan.

PLANT AND ANIMAL COMMUNITIES

Many respondents feel that the 2005 Rule fails to comply with environmental protection measures mandated in the NFMA and reverses more than 25 years of environmental protection. Some respondents suggest that the 2005 Rule procedures for diversity weaken species protection because the 2005 Rule does not include requirements to:

- Manage habitat to maintain viable populations
- Selectively manage indicator species (MIS) (included in the 1982 Rule)
- Establish habitat objectives for MIS (included in the 1982 Rule)
- Monitor population trends of MIS (included in the 1982 Rule)

Respondents stress their opposition to the 2005 Rule because it eliminates or relaxes substantive environmental protections and does not maintain the species viability requirement, which is “widely thought to be the most important standard in the NFMA regulations.” Some further note that the change to the viability requirement could “undermine important regional conservation plans.” Further, some argue that the 2005 Rule eliminates any protection for invertebrates and non-vascular plants, which are important for the proper functioning of the forest ecosystem.

Respondents argue that it is especially important to protect biodiversity during this time of ecological changes brought on by climate change. Others note that biodiversity allows for the potential discovery of new cures for disease and new food sources, and may assist in the adaptation to climate change. Some individuals are specifically concerned that lynx habitat be protected, which they feel can only be ensured with mandatory requirements in the new planning rule. These “must-do” provisions should also apply to other species listed, or under consideration for listing, under the ESA.

In addition, the 2005 Rule procedures provide guidance in the Forest Service Directive System for self-sustaining populations (FSM 1921.76c). However, some respondents argue that agency directives are unenforceable by the courts.

SUSTAINABILITY

Many respondents are concerned that NFS lands have experienced intensive use over the past century and that current planning rules don't address the cumulative impacts of such use. One letter writer suggests that the revised rule should "put ecological sustainability as the highest of the multiple uses of our national forests." Some state that the current directive for ecological sustainability, which substantially enhances biodiversity protection, should be a required component of the new planning rule. Respondents note that managing forests with sustainability as the "guiding principle" will contribute to economic security, community vitality, equity, quality of life and the welfare of future generations. Others ask that the Forest Service craft planning rules that would apply principles of intergenerational equity; these would acknowledge "that we hold the earth and its resources in trust for future generations." Several are concerned that the 2005 Rule would not ensure the healthy sustainability of the forests.

Other respondents ask that the Forest Service mandate that all logging on NFS lands meet the Forest Stewardship Council's (FSC's) certification. These respondents argue that this would help preserve our resources while allowing for long-term economic stability and would reduce the costly legal conflicts with environmental organizations.

A State environmental agency notes that it supports a planning rule that would maintain viable populations of native and preferred nonnative species, and argues that economical and social growth and sustainability can only be achieved with ecological sustainability.

AIR / CLIMATE CHANGE

Global climate change is a mounting concern among respondents who address the impact that the management of National Forests could have either to increase or decrease climate change. A number of respondents believe that the Forest Service has a moral responsibility to minimize its contribution to global warming. They cite the value of forest lands for carbon storage, and the negative impacts that logging and road construction have in the release of significant amounts of carbon dioxide into the atmosphere. These respondents feel that carbon fluxes involving forests and soils must be accounted for in all planning and management activities in order to comply with the requirements of NFMA to inventory renewable resources and identify hazards.

Public Involvement

Not surprisingly, commenters view public involvement as a critical component in the planning process. Many comments are in response to the perception that this right has been eliminated, or greatly weakened. Some letter writers criticize the proposed rule because it "threatens to undermine public participation in the forest planning process." Many respondents are concerned that the 2005 Rule would significantly limit public involvement in the forest planning process.

ADEQUACY OF NOTIFICATION

Many commenters are dismayed that the Forest Service has not taken the intent of the NOI seriously. They note that the timing of the proposed rule and draft EIS coincide, indicating that

the Forest Service may be preparing the EIS in advance of receiving comment on the proposed rule. Others note that the schedule does not give the public the opportunity to review the proposed rule in order to offer scoping comments for the EIS. Some commenters go on to state that the Forest Service must allow comment on any proposed rule, even if the 2005 Rule is proposed as the new rule. Some respondents also express confusion regarding the proposed action, stating there “is not a sufficient description of the proposed rule,” and consequently, they are unable to provide input. Some respondents point out that the NOI does not comply with Council of Environmental Quality guidance because it does not describe the proposed action, and they suggest that the Forest Service is attempting “to meet the letter of NEPA without complying with its intent.”

Some complain that the regulation that will be analyzed in the EIS is not clear and will not be clear until June. Some argue that the purpose and need, as defined in the NOI, is merely a justification for why the 2005 Rule is better than the 2000 Rule and that it appears the Forest Service has already chosen the 2005 Rule as superior.

Some complain that the NOI does not mention the NFMA anywhere, even though the purpose and need would seem to be to create a planning rule that implements NFMA. They ask that the Forest Service be explicit that the purpose and need is to implement the requirements of NFMA. Further, some ask that the Forest Service reissue the NOI with an explanation of the statutory basis and purpose for the rulemaking.

ROLE OF CITIZENS

Many emphasize that the public plays an important role in the planning process. They argue that exclusion of the public from the planning process increases the likelihood that the final plan will cater to special interest groups. A number of respondents criticize the 2005 Rule because it limits the opportunities for public participation, which “will make the public more distrustful, reduce public support, and effectively reduce the scope of the agency’s power.” Interestingly, others argue that the 2005 Rule improves public involvement because it shortens the time required to develop a final forest plan, which allows “citizens to efficiently engage.”

DECISION-MAKING PROCESS/AUTHORITY

Some respondents feel that the 2005 Rule disengages the public from participation in forest planning activities, that their ability to influence decision-making is weakened, and that they have “difficulty knowing whether their fish, wildlife, water quality, and recreational resources are being protected or not.” Some respondents are concerned that 2005 Rule procedures supply too much discretion to the responsible official and therefore, delegate decision-making authority that will not be subject to stringent review by the courts. Out of this concern, some suggest that the final planning rule should include a requirement that the responsible official heed public comments and “incorporate them, as much as possible, into the plan.”

TRUST AND INTEGRITY

Many respondents distrust the process. Some are concerned by what they see as the inappropriate influence by corporations and politicians on the rule-making process and a reduction in or elimination of public involvement. Some argue that the corporations’ influence stems from corporate financing of political campaigns, and that this rule appears to be a *quid pro quo* from the funded politicians. Others are suspicious of the short timeframe provided in the Federal

notice, asserting that there is not enough time for proper planning. They suggest that the Forest Service has already made important decisions and now is just “going through the motions.” Some argue that the proposed rule is “another back door attempt” to compromise environmental protections for the benefit of extractive industries. Others argue that the Forest Service has been intentionally dishonest in its approach to the planning rule and has misrepresented the truth on a number of occasions.

ADEQUACY OF THE COMMENT PERIOD

Letter writers frequently note that public notice and comment pursuant to the Administrative Procedures Act must be requested, received, considered, and addressed and emphasize that more time is required to consider public comment. Respondents argue that the NOI is insufficient to meet either the letter or the intent of NEPA’s scoping provisions; therefore, they argue, the Forest Service should issue another NOI when the proposed rule is available for review and extend the scoping process from that point. Some believe that the 30-day comment period and lack of public meetings are an injustice to such an important topic as this, especially, some say, because of the broad public disapproval of the current rule combined with the Forest Service and Administration’s failure to protect valuable resources on NFS lands over the past 6 years. Some respondents request that the comment period be extended to 90 days. Others ask that the comment period be extended, but do not specify for how long.

ADEQUACY OF THE TIMEFRAME

The over all timeframe for the production of the EIS raises concerns for many of the respondents. Several note that the new rule and the EIS will both be available in June or July of 2007. They argue that the Forest Service will not have sufficient time to consider comments from the NOI before formulating the rule or writing the EIS. Both individuals and representatives of public agencies believe the timeline to collect comments, identify the scope of concerns, develop a range of alternatives, and release a draft EIS is unrealistic. Some respondents condemn the Forest Service for trying to develop a draft EIS for 193 million acres of public lands within the 3-week time frame provided in the NOI and suggest that the EIS and new rule will therefore be vulnerable to legal challenges. Many suggest the timeframe must be lengthened in order to appropriately consider and analyze alternatives and provide time for public comment. It is “disturbing,” some believe, that the estimated date of the draft EIS is June, and the final EIS is November, because the abbreviated schedule ensures that the EIS will be inadequate. Some respondents cite the fact that other narrower federal actions, with fewer impacts, often take significantly longer than the proposed timeframe for the EIS on the planning rule. Others comment that the timeframe indicates that the EIS has already been written and that this potentially violates NEPA. They also note that the short time between the close of the NOI comment period and the publication of the EIS seems to indicate that the Forest Service does not intend to incorporate any suggestions from the scoping process into the EIS. Some note that even if the draft EIS is delayed until July, as some staffers have indicated may be the case, this still does not allow sufficient time for the agency to consider and evaluate the possible alternatives and their impacts. Many feel the unrealistic timeline suggests that alternatives and the preferred rule have been predetermined and that the approach will “once again” result in a failed effort.

Those with an opposite perspective ask for an expedited process because “numerous avenues for the expression of opinions and ideas have been provided to the public, agencies and interest groups...via previous rulemaking processes.”

Some respondents note that the public should be provided the opportunity to review the Biological Opinions of USFWS and National Marine Fisheries Service (NMFS) on the proposed rule and alternatives, and that these findings should be integrated into the Draft EIS.

Economic/Social Concerns

Some supporters of the 2005 Rule state that it would reduce administrative costs, saving more the \$27 million annually that would be available for forest projects. Opponents note that the economic value of forests is often too narrowly construed. They believe the proposed planning rule should include the economic value that forests provide to water quality, air quality, global warming, and wildlife and botanical species preservation. Some respondents note that the Forest Service has a significant backlog of maintenance activities resulting from the active management philosophy of the past many years. This includes pre-commercial thinning, fuel reduction, weed control, and road repair and removal. Respondents argue that it would be more economical to allow natural forest systems to prevail by limiting fire suppression activities, logging, road building, and salvage logging.

Some note that they value snowmobiling and want to see opportunities for such preserved.

COMMODITIES

Respondents note that while National Forests can provide commodity resources such as wood fiber, range forage for livestock, and minerals, these resources can also be provided, to a considerable degree, by other lands; therefore, the Forest Service should emphasize protection of resources that cannot be provided by other lands. This includes habitat for wide ranging wildlife species, sources of clean water, sources of clean air, outdoor laboratories for conduction scientific research, opportunities for natural resource education, historic and pre-historic resources, and opportunities for recreation and solitude. Some respondents argue that the Forest Service, not the timber industry, should determine how much timber can be safely removed from the forest. These respondents argue that forests are not tree farms. Respondents also comment that the economic impact on rural communities from timber sales has been overemphasized. They argue that many rural communities do not benefit significantly from the timber industry, and in fact, that the more closely tied the communities are to resource extraction industries “the slower the growth rate of the economy as a whole.”

Alternatives and Items To Be Discussed in the Environmental Impact Statement

Many respondents are dissatisfied with the 2005 Rule and support the proposed EIS as a means to strengthen management of NFS lands and to ensure proper environmental protection. They believe that the analysis of alternatives required in a NEPA document would help the public understand the impacts of each management scheme and would provide the public the knowledge and opportunity to comment meaningfully. Some suggest that an EIS is required whenever the allocation of NFS land is recommended, and they are concerned that the 2005 Rule procedures related to NEPA are inadequate because an EIS is not required. Under the 2005 Rule, a responsible official may categorically exclude plan approval from NEPA documentation. Preparation of an EIS would require consideration of alternatives, public participation, and cumulative effects analysis. Therefore, respondents are concerned that because the 2005 Rule

does not require an EIS for plan revisions, it does not require consideration of a full range of planning alternatives, reduces public involvement in land management planning, and leaves consideration of cumulative effects to project-level analyses. Respondents further argue that the LRMPs are “major federal actions” because they determine Desired Future Conditions (DFCs), determine how and what to monitor, zone and designate forest uses, and determine which areas will be logged; therefore, LRMPs should be analyzed in an EIS. Some respondents also request that the Forest Service review the complete administrative record for prior planning rule efforts and incorporate the previously raised concerns into the EIS for this current effort. Some suggest that the Forest Service clearly state in the EIS that they are preparing the EIS voluntarily, “to take advantage of the precedent that voluntary preparation of an EIS does not prove that the document is legally necessary.” Others would prefer to see the Forest Service prepare an EA instead of an EIS.

ALTERNATIVES LISTED IN THE NOTICE OF INTENT

Respondents ask that the Forest Service consider a full range of alternatives and that they not “prepare a quick EIS to support a pre-determined outcome.” Several others recommend that only the proposed rule and the no action alternative be analyzed. Some believe that a cost analysis should be provided to the public that will disclose the costs of dropping or significantly altering the 2005 Rule. They also ask that the directives be analyzed to ensure that the function of the 2005 Rule is to simplify and streamline the process rather than redirect cumbersome processes to the Forest Service manual and not the regulations. Some request that the 2005 Rule clearly disclose how the NFMA regulations interface with directives as written in the Forest Service Manual and the Forest Service Handbook.

Other respondents are concerned that Alternative C (1982 Rule), with its stringent procedures, may inhibit responsible officials from proposing effective actions to restore ecological function and sustain plant and animal communities because of the fear of appeals, litigation, and judicial oversight, and the possible waste of valuable resources on such projects.

Additionally, some note that the 2000 Rule review committee (cited in the NOI) did not find a technical deficiency in the rule, but rather determined that the 2000 Rule was costly and inefficient. As a result, one respondent argues, the EIS must substantiate the reasons for replacing the 2000 Rule with the 2005 Rule, and if justification cannot be found, the 2005 Rule should be abandoned because there would no longer be a purpose and need for project.

NEW PROPOSED ALTERNATIVES

Some respondents recommend that the EIS evaluate a broad range of alternatives and their impacts. Many favor alternatives that provide more environmental protections, emphasizing a need for a planning alternative that will better protect public forests, roadless areas, clean water, habitat for fish and wildlife, low-impact recreation, and a livable climate. There is concern that the 2005 Rule is an “ecological disaster,” and some suggest that the Forest Service should consider alternatives that will restore and protect the NFS lands that have been “degraded by a century of mismanagement.” Some respondents express concern that the 2005 Rule does not include the requirement to maintain “viable populations” of native fish and wildlife species, which has been the legal basis for some of the most important conservation initiatives on NFS lands; these respondents stress that all alternatives and any final rule must include the “viable population” requirement.

Some respondents turn to the 1982 Rule and applaud the strength of its requirements regarding wildlife habitat protection and wildlife population tracking and trends, and they ask that the EIS analyze these regulations along with others that are equally strong. Some believe adoption of protection standards from both the 1982 and 2000 Rules should be evaluated and that new scientific and socio-economic information should be taken into account. For some, the specific range of alternatives should include:

- No-action alternative (the 1982 Rule)
- 2000 Rule and associated 1999 Committee of Scientists Report
- Proposed Action
- “A substantially more protective alternative that considers the magnitude of the current climate crisis and provides additional protection for the fish and wildlife species”

Other respondents request that all alternatives “include measurable and enforceable ‘standards.’” They also suggest that the Forest Service list all mandatory requirements that are included in NFMA and prepare and implement rules that contain these requirements for analysis in the EIS. Other respondents insist that the Forest Service consider at least one alternative that completely complies with NEPA documentation. Some suggest that the full spectrum of management intensity and resource protection be analyzed, and that the 2005 Rule be considered the minimal management/no resource protection alternative.

Respondents also suggest that the selected alternative should reinstate standards to protect NFS lands from “destructive” logging by following the congressionally mandated NFMA, which requires that regulations be developed to limit the size of clear cuts and annual rate of cutting, protect streams, and ensure reforestation.

Respondents also ask that the EIS analyze an alternative that would modify the 2005 Rule to include the following:

- A requirement that forest plans contain an annual monitoring and evaluation process
- A requirement that forest plans must achieve natural resource standards
- An assertion that ecological sustainability is the prime directive for forest management
- A requirement that forest plans and forest plan amendments comply with NFMA and be documented in an EIS/ROD

Respondents also request that an alternative be included in the EIS that would protect all remaining old growth from the direct effects of logging, fuel reduction, and all other vegetation management projects.

Some respondents ask that a restoration alternative be considered. This alternative would:

- Acknowledge that restoration is the primary goal and commodities are a byproduct
- Use the natural or historic range of conditions to define the goals of forest management
- Protect areas that provide high-quality habitat
- Restrict activities that cause further degradation
- Prioritize active management in highly-modified areas
- Set restoration priorities to use resources efficiently
- Prioritize activities with low impacts and high effectiveness

- Recognize that both disturbance and periods of uninterrupted growth are part of the natural processes
- Incorporate the public in the planning process
- Reduce maintenance costs

Others suggest that an alternative be analyzed that would be “developed through a facilitated group problem-solving process involving all the diverse interests involved in the management of the National Forests.”

REQUESTS FOR IMPACT ASSESSMENT

Respondents ask for a wide variety of effects to be analyzed, ranging from impacts associated with the components of the 2005 Rule to specific resource effects. Many respondents ask that the EIS analysis consider the impacts of categorically excluding forest management plans, revisions, or amendments from environmental analysis. They note that the analysis must include a discussion of the impacts resulting from the elimination of the existing NEPA compliance requirements. Another respondent reminds the Forest Service to analyze proposed changes in relation to existing and previous regulations. These other regulations include:

- The categorical exclusion (CE) for hazardous fuel reduction projects.
- The CE for timber sales up to 70 acres and salvage sales up to 250 acres.
- The guidance from CEQ concerning environmental assessments of fuel reduction projects.
- The guidance from USFWS and NMFS concerning endangered species consultations on fuel reduction projects.
- The interim directive on NEPA categorical exclusions and extraordinary circumstances.

Some note that the EIS should evaluate the ability of the agency to complete forest-wide analysis at the project level, where environmental analysis would occur under the 2005 Rule. On the other hand, some respondents ask that the Forest Service disclose in the EIS the impacts associated with not implementing the 2005 Rule; specifically, those impacts related to changes in the costs of planning.

Respondents also request that the Forest Service disclose the effects of the various planning rules on the decision-making process, including effects on public disclosure and input, agency accountability, abuse of discretion, the quality of the evidentiary record, the use of science in adaptive management, and informed decision-making. They also ask that the EIS evaluate the impacts resulting from the level of discretion and accountability provided for in the 2005 Rule. Furthermore, they ask that the Forest Service to evaluate the effects of reducing public involvement.

The Forest Service is also asked to assess the impacts that will result from the proposed elimination of enforceable, numeric standards referred to as “management requirements” in NFMA. Respondents also ask that the EIS address NFMA diversity requirements in terms of the interrelatedness of composition, structure, and function.

Others ask that the EIS describe the areas where the 2005 Rule eliminates minimum management standards that were present in the 2000 or 1982 Rules. They argue that the EIS should include at least a qualitative discussion of the reasonably foreseeable impacts of those changes on future forest plans and projects. In addition, respondents say that streamlining the process should have a

positive impact on budget, which should allow the Forest Service to spend more money on fuels reduction and forest health projects; they ask that these beneficial effects also be analyzed in the EIS.

Respondents also ask that the EIS provide an explanation of how the EMS proposal would implement NFMA and that the Forest Service fully evaluate the impacts, both environmental and legal, of using this new and unfamiliar approach to land management planning.

Respondents further insist that the Forest Service consider the cumulative impacts of this and other Federal programs in the EIS. They assert that the EIS should include analysis of direct, indirect, and cumulative effects. Some ask that the EIS include an analysis of cumulative impacts on Federal, other public, and private lands resulting from past, present, and foreseeable actions; some ask specifically that the EIS analyze the economic impacts on non-Federal lands if “management requirements on Federal lands are relaxed.” Respondents also request disclosure of the cumulative impacts of management activities such as:

- Logging
- Road construction, reconstruction, and use
- Mineral exploration and production and its impacts on:
 - Soils
 - Water quantity
 - Water quality
 - Introduction and spread of noxious weeds and invasive species

Some respondents also request that, pursuant to NEPA, the direct, indirect, and cumulative effects of each alternative be assessed for:

- Sensitive, threatened, and endangered species
- Plant and animal diversity (including effects related to non-native invasive species)
- Water quality and implementation of the Clean Water Act
- Hydrology
- Soil resources
- Air quality
- Stands of old growth trees
- Global climate change and its implication on management of NFS lands
- Productivity of public lands
- Fire behavior
- Recreation and associated economics
- Aesthetics

Other respondents ask that the Forest Service disclose whether each of the alternatives would:

- Affect the natural or historic range of variability of ecosystems.
- Mimic natural processes.
- Affect water pollution, soil disturbance, canopy cover, weed cover, biodiversity, carbon storage, aquatic integrity and complexity, large snags and down wood, fire resistant trees, hazardous fuels, and road density.
- Affect species population viability, including the ability of wildlife to adapt to climate change by moving to new areas.

Respondents note that if the viable population requirement is not part of the proposed rule, then the EIS must evaluate the economic and ecological costs of more species being listed as endangered. Many respondents request an assessment of impacts to fish and wildlife species resulting from the elimination of the 1982 viability requirement. Others urge the Forest Service to consider potential impacts to remaining old growth forests and dependent species, and they request that the Forest Service address how it would still be able to meet the NFMA's diversity requirement if old growth forests are removed. A few respondents cite the previous forest planning requirement of mandatory resource protection standards and request that the EIS analyze the effects of eliminating these standards.

Some also request that the Forest Service consider the impacts of the 2005 Rule on carbon sequestration and climate change. Many respondents express concern regarding global warming, and many request an assessment of the effects of commercial logging, livestock grazing, oil and gas development, and other activities on global warming. The Forest Service is advised to disclose how NFS lands and recreation will be affected by global climate change and to what extent it already has been affected. Respondents also ask that the EIS discuss the impacts of climate change on biodiversity, water supply, and wildfire.

Respondents request that the EIS evaluate the economic impacts on non-federal lands. Requests also include evaluating the economic impacts on rural communities from timber harvest. Some respondents ask that the public be made aware of the consequences of replacing active land management allocations with passive or non-managed allocations. Additionally, some request that the Forest Service explain the direct and indirect impacts of shifting the final determination of suitability for timber production to the project and activity level. Others ask that the EIS include an assessment of how forest planning rules can constructively constrain and channel the fuel reduction program to ensure its effectiveness.

Additionally, respondents note that the EIS should include analysis of the impacts on water quality and aquatic species and habitats resulting from timber sales, roads, and other management activities occurring within 100 feet of rivers, streams, and lakes.

Because the environmental analysis will be at a programmatic level, some respondents suggest that the analysis address sizeable areas and important wide-ranging resources (lynx, wolverine, grizzly bear, black bear, goshawk, lesser prairie chicken, and native fish species) and the impact on these species when protective standards are eliminated from land management planning. Respondents also ask that the effects on connecting corridors and migration routes be analyzed.

Legal counsel for an environmental group also states that the environmental consequences section of the EIS should minimally include:

- Environmental impacts of the alternatives and proposed action
- Adverse environmental effects that cannot be avoided
- Relationship between short-term uses of the environment and maintenance and enhancement of long-term productivity
- Irreversible or irretrievable commitments of resources.

OTHER REQUESTS FOR THE ENVIRONMENTAL IMPACT STATEMENT

Respondents provide a wide-range of requests for the inclusion of additional items in the EIS. Some ask that the EIS disclose how NFMA regulations will interface with directives, such as those in the Forest Service Manual (FSM) and the Forest Service Handbook (FSH). Others ask

the Forest Service to review the recommendations of the most recently convened Committee of Scientists. Some further request that the EIS disclose how the Forest Service will address the topic of “best available science” in forest plans. They also request that the EIS, the planning rule, and forest plans make explicit their operating theories about forest ecology so that they, too, can be evaluated.

Some respondents suggest that the 1982 Rule be the baseline and reference point for NEPA analysis.

Legal counsel for an environmental organization reminds the Forest Service that it must describe the affected environment in the EIS and that this should minimally include:

- Present status and distribution of sensitive, threatened, and endangered species
- Existing condition of rivers and streams
- Amount and distribution of old growth habitat
- Description and assessment of existing roads and trails
- Assessment of current extent of livestock grazing
- Current status of oil, gas, and mineral development
- Extent of past timber harvest and clear cutting

Concern about the management of roadless areas leads some respondents to ask that the EIS direct national forest planning to include a mandate to re-assess all roadless area boundaries so that inventories are updated any time activities that may impact wilderness suitability are proposed or analyzed. Others ask that all roadless areas of 1000 acres or more be assessed for wilderness suitability. Still others are concerned that the rule would effectively drop significant numbers of roadless areas from protection and open them up to resource extraction.

Some respondents ask that the EIS disclose the degree to which Forest Service management under the 1982 regulations, and any subsequent set of regulations, has been found to be in violation of those regulations or of the NFMA itself.

There are a number of other requirements regarding species protection and resource monitoring that individuals believe should be included in the EIS. Requests include:

- Mitigation for habitat fragmentation.
- A mandate that funding for monitoring be available before a project can be authorized and implemented.
- Use of most recent science in LRMPs.
- Increased involvement by scientists in monitoring, inventorying, and planning.
- Specific implantation and resource protection monitoring requirements, with the note that monitoring habitat does not ensure that species are being provided for or protected.
- Strengthened protection for soils.

DEVELOPMENT OF THE FINAL RULE

Conservation agencies request that development of the new rule should continue the broad and meaningful collaboration process that has been initiated in the past few months. Others ask that the final rule require that public notification be published in the Federal Register. Some note that the final rule should provide ample time for comment on any Notice of Initiation.

Compliance with Other Laws and Regulations

Some respondents remind the Forest Service that the 2005 Rule must contain standards to ensure that projects comply with the ESA and advise that the EIS analyze the impacts of all alternatives on species listed under the ESA. Others note that the Forest Service must consult with the USFWS regarding species listed under the ESA. Respondents are also concerned that the 2005 Rule would effectively weaken the NFMA and note that the proposed action must comply with the requirements of NFMA. Respondents ask that the National Trails System Act (P.L. 90-543, as amended) be listed as applicable law. Respondents also note that the Forest Service must comply with the National Historic Preservation Act, and must clarify how the agency will meet its Section 106 obligations without triggering a full NEPA analysis when using a categorical exclusion for forest plans. Others ask that the Forest Service clarify how it will comply with the Federal Land Policy and Management Act (FLPMA) requirements to maintain a current inventory of all public lands.