



THE WILDERNESS SOCIETY

To: Interested Persons
From: Mike Anderson, The Wilderness Society
Re: NFMA Regulations
Date: December 22, 2004

Following is a quick analysis of the final National Forest Management Act (NFMA) regulations that the Bush Administration released today governing land and resource management planning on the national forests. This analysis is based on the “pre-publication version” of the regulations available on the Forest Service website at <http://www.fs.fed.us/emc/nfma/>. For background on the NFMA and the draft regulations issued in December 2002, see <http://www.wilderness.org/OurIssues/Forests/nfma.cfm>

Overall, the final NFMA regulations take a large step backwards in wildlife conservation, environmental protection, and public involvement in the national forests. The regulations remove key environmental safeguards for national forests that have been in place for more than 20 years. They give local Forest Service officials much more discretion and flexibility in how they choose to manage the forests. The effect will be to make the national forests far more vulnerable to environmentally destructive logging and other harmful management activities.

Wildlife Viability

The final regulations eliminate the requirement to maintain “viable populations” of native fish and wildlife species in the national forests. This requirement has been a primary legal basis for some of the Forest Service’s most important forest conservation initiatives, including the Northwest Forest Plan and the Sierra Nevada Forest Plan. In place of the viability requirement, the regulations simply provide an “overall goal” to “provide a framework to contribute to sustaining native ecological systems by providing ecological conditions to support diversity of native plant and animal species in the plan area” [36 CFR 219.10(b)].

Rather than planning to ensure the continued existence of wildlife, forest plans will only “establish a framework to provide the characteristics of ecosystem diversity in the plan area” [219.10(b)(1)]. In fact, forest plans will no longer have to specifically address wildlife needs at all unless the Forest Service determines that the “ecosystem diversity” provisions of the plan need to be supplemented for a particular species [219.10(b)(2)]. The regulations also excuse the Forest Service from any duty to monitor wildlife populations [219.14(f)].

NEPA

The final regulations eliminate the requirement to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) whenever a forest plan is revised or significantly amended. Instead, forest plans “may be categorically excluded from NEPA documentation” [219.4(b)], which means that the Forest Service can entirely bypass the NEPA process whenever it revises or amends a forest plan.

Eliminating NEPA will severely limit public involvement and consideration of environmental values in the forest planning process. For example, people will have less access to information about the environmental impacts of the agency's proposed management plan. The Forest Service will not be required to examine alternatives to its proposed plan or to supply information about the comparative advantages of various alternatives. In addition, the Forest Service will not be required to study or disclose to the public the cumulative environmental effects of management activities across the national forest. Eliminating NEPA from the forest planning process also appears to violate specific direction in the NFMA that the regulations "insure that land management plans are prepared in accordance with [NEPA]" [16 USC 1604(g)(1)].

Furthermore, the planning regulations treatment of NEPA needs to be viewed in the context of other NEPA-related actions by the Bush Administration. For the past four years, the Administration has adopted a series of regulatory changes – mostly under the umbrella of the "Healthy Forests Initiative" -- aimed at reducing the Forest Service's duties to comply with NEPA at the project level, such as for timber sales. These actions undermine the credibility of the Administration's assurances that full NEPA analysis will be accomplished at the project level and therefore is unnecessary at the plan level.

Instead of NEPA, the final regulations require the Forest Service to establish an "environmental management system"(EMS) for each national forest. [219.5]. EMS is a planning and monitoring process that has been adopted by large timber companies like Weyerhaeuser Corporation to deal with environmental regulations while maximizing corporate efficiency and profits. It has never before been applied to federal forest lands, and it appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the national forests.

Role of Science

Although the Bush Administration claims to be strengthening the role of science in forest planning, in reality the final NFMA regulations give local agency officials broad discretion to reject scientific evidence and recommendations. The final regulations only require agency officials to "take into account" the best available science [219.11(a)]. The preamble to the final regulations [p. 18] makes it clear that science "is only one aspect of decisionmaking" and that "competing use demands" and other factors can override scientific input. In contrast, the draft rule issued in December 2002 gave science a much more prominent role in the planning process by requiring that Forest Service decisions must "be consistent with" the best available science.

Timber Management

Amazingly, the final regulations essentially ignore large parts of the law (NFMA) that they are supposed to be implementing. In an effort to protect the national forests from excessive and destructive logging, Congress specifically instructed the Forest Service through the NFMA to develop regulations that, among other things, limit the size of clearcuts, protect streams from logging, ensure prompt reforestation, and restrict the annual rate of cutting. Prior NFMA regulations complied with the statute by limiting clearcuts to 40 acres, requiring 100-foot stream buffers, and restricting the amount of timber cutting in each national forest.

However, the final regulations do none of these things. Instead, they simply state that procedures for complying with NFMA requirements will be included in the Forest Service's internal directives system (the Forest Service Manual and Handbook) [219.12(b)]. One major problem with this strategy is that federal regulations have the force of law, but management direction in the Forest Service's directives system is generally not legally enforceable. The agency's directives system is also much less visible and accessible to the general public and therefore is a poor forum for engaging people's interest in important forest management issues.

Also, the final regulations completely ignore the NFMA's requirement that forest plans identify lands that are economically unsuitable for timber production [219.12(a)(2)]. Consequently, forest plans will provide little if any information about the extent to which the Forest Service's plans may result in below-cost timber sales and taxpayer subsidies to the timber industry.

Discretion Unlimited

The final regulations display an obsessive determination to maximize the discretion of Forest Service managers. The regulations go so far as to entirely eliminate the use of mandatory "standards" in forest plans, in favor of discretionary "guidelines." The preamble to the regulations explains that the choice of "guidelines" is meant to emphasize that agency officials have "discretion to act within the range of guidelines, as well as the latitude to depart from guidelines when circumstances warrant it" [p. 14]. In other words, local agency officials can simply ignore any and all guidelines the plans might contain to protect wildlife or water quality. Without mandatory safeguards in forest plans, agency decision-making will become more vulnerable to the influence of timber and mining companies and their political allies who favor commercial exploitation of the national forests.