



February 2, 2018

NEPA Services Group  
c/o Amy Barker  
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via email: [nepa-procedures-revision@fs.fed.us](mailto:nepa-procedures-revision@fs.fed.us)

Re: DEPARTMENT OF AGRICULTURE Forest Service 36 CFR Part 220 [Docket No. RIN0596–AD31 National Environmental Policy Act Compliance AGENCY: Forest Service, USDA. ACTION: Advance notice of proposed rulemaking; request for comment.

Arizona Sportsmen for Wildlife Conservation (AZSFWC) appreciates the opportunity to comment on the Forest Service proposal to revise its NEPA procedures (including its regulations at 36 CFR part 220, Forest Service Manual 1950, and Forest Service Handbook 1909.15) with the goal of increasing efficiency of environmental analysis.

AZSFWC is a 501c-3 organization dedicated to wildlife conservation, habitat work, youth recruitment and retention, as well as educating sportsmen and women on issues important to their passions. We have 42 member and affiliate organizations that span the spectrum of hunting, angling, shooting and outdoor recreation groups and businesses from all across Arizona.

We request you consider the following comments and suggestions as you revise these procedures.

- a. Reconsider all levels of agency transparency with a focus on meeting the agency mission and goals while instilling the public's trust and providing an avenue to reduce non-agency groups concerns that incite requests for information and notices of intent to sue. This is important in all aspects of agency management but is also critical specific to NEPA processes.

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This should involve not only written or electronically available information easily accessible to the public (similar to the USFWS library of biological opinions), but also better communication with the public at the District level, Supervisors Office, Regional Office, or Washington Office. The District Office employees should be the first to address public concerns in an open and transparent manner. Making a phone call, providing a public meeting, or having information available electronically on a website is less time consuming than having to respond to a lawsuit, repeated FOIAs, or other long term delays that often occur because of employees indolence, lack of knowledge, or unwillingness to address an issue at the District level on some Forests. Ensure District employees have a full and clear understanding of their pertinent agency laws, regulations, and policies, and their role as a public servant. There have been many instances where ignorant, indolent, or unwilling District employees have caused years of delays in completing NEPA analyses, including simple categorical exclusions on some Forests.

Transparency to some degree occurs through directives. For example, it is known that annual meetings occur to review various permit holders operations, this general information should also be posted on the Forest website on a page that focuses on "Working with the Public." This page should include notice of all meetings including those with special interest groups, universities, or other non-agency groups that have occurred and a brief of those meetings. State and U.S. elected officials who help with constituent needs specific to Forest Service lands, should be notified of those meetings with outside groups, so as representatives of the people they can participate. Consider other ways to instill transparency, which can reduce long term unnecessary work load due to lawsuits, FOIA requests, complaints because of lack of trust, or other related concerns.

- b. Create an on-line accessible national library of prior NEPA documents and references for Forest employees to easily access. Information in established NEPA records across all forests can reduce significant time for new analyses by narrowing reference research time. Include NEPA document templates as are available now, but with more explanation of document sections, particularly because the Forest workforce is filling more with limited experience employees.
- c. Require higher quality pre-NEPA work, so when NEPA processes are in full swing, the specialists are better informed and have the information ready to move forward towards final analyses and the Deciding Officer has more confidence in outcomes.
- d. The specific direction in Forest Handbooks and Manuals for Rangeland NEPA processes emphasizing pre-NEPA work, FLPMA Section 402 d

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collaboration, and adaptive management, should be more specifically incorporated into other program areas directives. The existing directives, where they have been shown in some Forests to have successful implementation, should lead the way for successful implementation in other Forests where this has not occurred due to employee shortcomings.

- e. Allowing employees to promote or move before completing important NEPA analyses or projects causes a significant cycle of delays – in many cases ten or more years of NEPA delays exist because analysis is not completed, even for small projects. There is loss of employee knowledge. The NEPA work done by one employee who leaves before completion is often not well defined and it ultimately becomes a waste of that employee's time because a new employee cannot use the incomplete information and often must start from scratch to do a proper NEPA analysis. This causes further delays. Bottom line, employees that start a NEPA analysis should stay the course and finish the NEPA project in all instances where possible. This will make NEPA processes more efficient and save on agency costs. This is accountability.
- f. Where there are agreements, memorandums of understanding (MOU), or similar documents, keep these posted on the involved Forests website for public information.  
Ensure the Forest employees actually implement or fulfill the conditions within the agreement, MOU, or similar document and make certain all employees of the Forest involved have a clear understanding of those conditions agreed upon. Agency policy or regulation should refine the obligations of employees to carry out or fulfill the conditions agreed upon. Established agreements or MOUs should be reconsidered for implementation rather than ignored as some currently are and reinstated for long term use where those agreements are found to meet the agency goals and mission, particularly for NEPA processes. This is particularly important when there are agreements or MOUs or similar documents that involve other federal agencies, State, Tribal, County, City, or local governments and elected officials, or directly affected persons. Also, those agreements, MOUs or similar documents, should be designed to put into practice careful and considered consultation, cooperation, coordination, and collaboration, all key elements of long-lasting NEPA decisions.
- g. The issues at hand and those potentially significantly affected by a proposed action should determine the length of a public comment period (i.e., facility maintenance vs. watershed analysis). If a comment is submitted after the close of a comment period that provides new information or circumstances critical to a proposed action, the agency employees involved in the evaluation and implementation of the action

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should consider that new information and document their findings in the record.

Proper documentation is critical for both short-term and long-term administration of the Forest, specific to NEPA processes. At this time, appropriate documentation is lacking in some records that could have expedited several NEPA analyses. In one instance, a field monitoring data report was found that simply had a personal comment written across the paper, nothing more. In another instance, a biologist record of field data only listed the dates and general locations of where he went to look, nothing more. In another instance, the only field data for a particular specialists' report was a primarily empty table listing various species. In some instances, the records of permit holders, State Game and Fish Department data, University data, or County Cooperative Extension data, or Natural Resource Conservation data, is more extensive than that of the Forest Service Districts. This certainly causes unnecessary delays in NEPA analysis.

In the early years of Reading the Range performed by the Gila County Cooperative Extension Agent and University students, District Rangers refused to utilize the detailed data on rangeland condition trends and other information, even though there was a formal agreement in place and the District lacked monitoring data. Several employees were not educated enough to understand the data. In one instance, inexperienced employees were tasked to perform a watershed level EIS. The results were very problematic, as one would expect, though it took three years to stop the process.

Employee training, accountability, specific direction from the Washington office, and clearly understanding consequences and needs are critical to correct these internal employee problems. Also, a stronger respect towards and emphasis on working collaboratively with local governments, wildlife management agencies, universities and stakeholders more commonly has positive outcomes. These things do occur on some Forests, but not all, so there are inconsistencies. Reevaluating these things will ultimately make NEPA processes more efficient and less costly.

- h. Categorically excluded actions should include established actions with commonly or regularly renewed permits over many years or permits that benefit natural resources or the economic health of rural communities and have been shown to have no significant impacts. This should include language in permit renewals similar to "This permit will be in effect until such time the permittee requests the permit to expire, the deciding officer determines a need for expiration due to unforeseen circumstances, there are changing needs of the natural resources or wildlife or location and area as defined for use in the permit, or the continuation of the permit would cause some form of harm or harassment, as determined by agency specialists. This would occur only if the permittee provides annual or as determined by the deciding officer,

regular reports of the activities and outcomes of the permitted use, and there are no significant changes to the resources involved with the authorized permitted use, as determined by agency monitoring.” Or, regarding the expiration of a permit for a categorically excluded action, extend the time based on the above criteria or something similar so the permitting process does not have to be repeated as often, reducing the process work load so agency employees can devote more time on the ground monitoring the natural resources for health and productivity and sustainable use.

The potential categorically excluded action may be substantiated in established NEPA analysis or Section 7 consultations that have already evaluated the area of concern, or similar area, with either comparable activities, or other actions with greater potential effects as determined by the deciding officer or agency specialist, and that are shown to have no significant impacts as determined by agency monitoring.

Sideboards for categorical exclusions should more closely reflect the agencies adaptive management focus to more efficiently address changing resource needs.

Some CEs that could be used as examples:

36 CFR 220.6(e) (6): This CE addresses timber stand and/or wildlife habitat improvement activities and could be utilized more often; however, any acreage limitations associated with it should be clarified.

36 CFR 220.6(e) (11): This CE addresses post-fire rehabilitation activities but is currently enjoined. The FS should issue a new decision so that this CE may be used.

HFRA, Section 603(c) (1): This CE addresses forest restoration treatments for insect and disease infestation, not exceeding 3,000 acres could likely be used more often.

- i. For landscape-scale analysis and decision making under NEPA that facilitate restoration of National Forest System lands, consider the same process as described above for categorically excluded actions. Reference or tier to established NEPA analysis and ESA Section 7 consultations that have already evaluated the area of concern, or a similar area, with either comparable activities/landscape conditions/species and habitat, or other similar actions with greater potential effects as determined by the deciding officer or agency specialists. In many cases and locations, there are multiple NEPA analysis and ESA Section 7 consultations or other ESA consultations already completed. The analyses and consultation efforts already

completed should be evaluated for use in any new analysis of the same or similar area, to avoid repetition where various levels of analyses are already done. Ensure the employees involved have appropriate knowledge and understanding of the area to be analyzed and the data to be referenced or tiered to. Also, include prior archaeological clearances or other project specific data, reports, or other prior determinations made for the same or similar areas. Some Forests have dozens of NEPA analyses and ESA consultations already completed that include or overlap an area that may be involved in a new landscape-scale analysis. Tier from the work already done, to avoid repetition where unnecessary. Also, ensure an understanding of other local government analyses efforts and make sure any new analyses does not result in conflict with State wildlife agencies, Tribal, or other local government's legal mandates. Enforce specifics in directives. This could expedite the NEPA process by addressing these concerns early in the process, rather than after a decision is made, which would likely cause delays due to needed revisions.

- j. "Significant impacts or effects" and "similar actions" should again be more clearly defined in agency policy or regulation.
- k. Wildlife, wildlife resources, and the AZ Game & Fish Department's (Department) authority and need to actively manage wildlife must be included as a primary component and/or priority characteristic of any special land use designation including, but not limited to: national monuments, recreation management areas, Recreation Opportunity Spectrum allocations, wilderness, and recommended wilderness.
- l. With the Department's long history of wildlife management in special land use designation areas, and in anticipate of the challenges, complications, or obstruction of its ability to implement the following management activities (especially in national monuments and designated or recommended wilderness areas). We support the Department's request that the following state wildlife management activities be specifically included in procedures as consistent with federal land management planning:
  - Motorized big game retrieval for legally taken and tagged elk, mule deer, bear, and bison
  - Use of aircraft for translocations, monitoring, captures, surveys, and research (including overflights, landings, and drones)
  - Wildlife research, surveys, scientific sampling, capturing/markings, and radio telemetry

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- Aquatic species management and monitoring including stocking, stream renovations using electrofishing equipment, and barrier construction and repair
- Construction, redevelopment, and maintenance of wildlife waters catchments using motorized and mechanized equipment
- Wildlife water catchment monitoring and water delivery by use of motorized vehicles, helicopters, pumps and hoses.
- Habitat enhancement, creation and/or restoration projects using mechanized and motorized equipment and prescribed fire
- Angling, hunting, trapping, and recreational shooting
- Emergency translocations and/or removal of fish and wildlife (ie. due to fire, etc) when necessary to conserve species of concern, retrieve dead animals for disease testing, retrieve sick or wounded animals, or to prevent transmission of diseases or parasites affecting wildlife and humans. Staging various equipment and vehicles for emergency response
- Fencing to protect wildlife habitats and/or restrict wildlife
- Providing salt or other special wildlife habitat features
- Fence removal
- Removal and/or control of nonnative animal species
- Introduction, supplementation and translocation of native or naturalized fish and wildlife
- Predator control
- Access to existing roads and trails to meet harvest objectives and distribute hunters
- Law Enforcement wildlife investigations and response to illegal wildlife activities by use of motorized equipment.
- Creation of alternate access routes to public lands to mitigate private land closures.
- Overarching directives for federal land planning should also include specific language that directs the FS to utilize existing overarching Memorandum of Understandings (MOUs) and other agreements with local governments for wildlife management activities within the areas of special designation. It should be explicit that if the FS anticipates impacts to local governments' ability to carry out their trust responsibilities and statutory authorities, those impacts must be disclosed and analyzed within the environmental review process.
- The Department also requests that the overarching guidance include direction to require the mutual agreement of the state wildlife agency and the U.S. Fish and Wildlife Service for all fish and wildlife conservation, protection, and management plans. Such direction may be modeled after similar language requiring state concurrence via the Sikes Act on Integrated Natural Resource Management Plans.

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### Special Designations

Federal lands comprise 42% of Arizona's lands, of which more than 43% have special land use designations, with significant restrictions relating to the public's ability to recreate and the Department's ability to fulfill its trust responsibilities for wildlife management. Currently, 77% of Arizona lands harbor restrictions on public access and recreation through ownership (private, state, and tribal) or federal special land use designations, leaving only 23% free of restrictions and open for public multiple-use. Arizona has 4.5 million acres of designated wilderness, with an additional 5.8 million acres of special land use designations in the form of National Monuments, Parks, Wildlife Refuges, Conservation Areas, Areas of Critical Environmental Concern, Wild and Scenic Rivers, and Wilderness Characteristics Areas. The 2012 USFS Planning Rule (and subsequent handbook) directs the FS to evaluate special designation areas through the Land and Resource Management Plan (LRMP) revision process. When evaluating special designation areas, the overarching handbooks and guidelines should direct the FS to adequately establish a purpose and need and consult with partners to establish language that ensures state jurisdictions will not be impacted. Significant changes in public land management resulting from special land use planning should only occur after formal Congressional approval/designation. Due to special designations on roughly 10 million acres in Arizona, the Department experiences extensive and widespread project delays, elevated costs, increased man-hours and legal challenges, which has resulted in decreased efficiency in the conservation and management of Arizona's wildlife resources.

NEPA procedures should direct the FS to fully analyze the cumulative impacts of further loss of public lands that provide for multiple use and wildlife related recreation and economic opportunities prior to recommending or approving special land use allocations and designations. Both the Multiple-Use Sustained-Yield Act of 1960 and the Federal Land Policy Management Act of 1976 (FLPMA) prohibit federal land management agencies from affecting the State's jurisdiction and responsibilities, and managers of public lands are mandated to provide multiple-use recreational opportunities on public lands to both present and future generations. The Department perceives the conversion of public lands to a special use status as a breach of the FLPMA mandate, with those lands forever lost for multiple-use. The Department supports public land use that provides Arizona's public and resources with a net benefit, and does not support the conversion of public lands from multiple-use to land use designations that will result in a net loss of wildlife resources, wildlife related recreational opportunities, and wildlife dependent economic benefit.

### Coordination with Partners

To avoid duplicate efforts and inconsistent analyses, NEPA procedures should fully incorporate the legal authorities of local and state management agencies and

direct the FS to align and adopt areas of overarching state and local planning efforts at the earliest stages of federal planning. A mutually developed and specific pre-planning coordination process should be identified within the procedures and carried forward in all implementation guidelines and handbooks. Coordination should include a pre-NEPA assessment phase to collaboratively identify and adopt existing state planning efforts and management goals and/or objectives.

With the implementation of the 2012 Forest Planning Rule, Arizona has seen an increasing number of state conflicts between state and federal agencies that could and should have been resolved before the objection/appeal phase of the FS planning process. A crucial coordination step to ensure all resolvable issues are addressed before the proposed decisions are released/noticed is missing between the draft and proposed alternatives/decisions (leaving agencies with only the objection/appeal process for resolution).

Another aspect of the 2012 Rule that has proven to be problematic for both the federal and state agencies is the timeline for implementation. The FS is directed to implement decisions 30 days after the Notice of Availability (before the resolution of objections). Common sense dictates that implementation should occur after the objection resolution process. The state should have the opportunity to review preliminary draft final documents (including responses to state comments/concerns/inconsistencies) to afford an opportunity to resolve outstanding issues, potentially eliminating the need for the state to appeal/object.

We know the Department is committed to improving effective federal land use planning coordination and collaboration with Arizona's FS offices to avoid costly and unnecessary administrative and legal appeals. Overarching regulations should provide a specific designated timeline and process for:

1. FS and state wildlife agencies to collaborate on the preliminary development of all planning guidance that identifies state jurisdictional or shared jurisdictional wildlife species (i.e., species nomenclature, grouping, or lists, direction on assessing impacts to species or species management guidance);
2. Collaboration and conflict resolution between FS and state wildlife agencies before the release of any final planning documents with potential to impact state jurisdictional authorities and ability to manage wildlife on public lands;
3. Coordination with the state wildlife agencies during the development of any planning regulation or guidance including policy, rules, manuals, handbooks, and plan amendments to facilitate appropriate state wildlife agency involvement, including the development of guidance for special designations or allocations including wilderness, wilderness characteristics, Areas of Critical Environmental Concern, Wildlife Management Area, Recreation Opportunity Spectrum and Visual Resource Management classifications, Cooperative Management Area, etc.

The Department is committed to participating as a Cooperating Agency on federal land or travel management planning document development processes and

appreciates the collaboration and efficiency this agreement provides. The Department requests FS increase opportunities for state agencies to participate as Cooperating Agencies and increase interdisciplinary team involvement on planning efforts, specifically for wildlife management, resources, and recreation. The Department has experienced great success in collaboration with the Bureau of Land Management using the 'Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners' as well as the existing Travel Management process for designating roads through the 'Route Evaluation Tree Process.' The Department suggests that the FS look to these resources as templates for developing similar guidelines to build science-based, defensible Resource and Travel Management decisions.

#### Public Involvement and Comment Opportunities

The Department requests that FS planning processes and environmental reviews allow for formal public comment periods that provide adequate time to analyze and gather meaningful review and feedback. Adequate comment periods that facilitate meaningful public involvement should include 90 days for review. The Department recommends maintaining or increasing comment periods to 90 days. In addition, administrative appeals and objections should allow for at least a 60 day comment period.

The Department does not recommend reducing public comment periods as a means to reduce the timeliness of planning processes and environmental review. Instead, documents should be written in a fashion to reduce length and jargon to ensure to the extent possible that affected parties can provide timely review and effective comments. Public participation is the cornerstone in determining the needs of Arizonans and the future of their public lands, and a reduction in the public comment period would almost certainly reduce participation in the planning process. Reducing public comment periods may appear to reduce the process timeline, but more often leads to additional conflicts, appeals, objections, and litigation, delaying the overall process and implementation of decisions.

In regards to public involvement under NEPA procedures, it would also improve the quality of public involvement if the FS added a step between scoping and the issuance of a Draft document where the agency released "preliminary alternatives" with a request for public feedback. Soliciting public input on preliminary alternatives before formally proposing a range of alternatives in a Draft document would help the public have a deeper understanding of the alternatives from an early stage and would help them more constructively engage in the development of a document, its revision, or amendments.

#### Arizona's Hunting and Angling Heritage

Arizona has a rich heritage and historic tradition of hunting and angling and benefits from yearly economic contributions from sportsmen and women including: approximately \$54 million for wildlife and habitat conservation, \$1.2 billion to the state's economy, support for more than 18,000 jobs, and \$132 million in state and

local taxes Land management planning documents must consider and evaluate The Importance of Hunting and Hunting Heritage under each plan component per Executive Order (EO) 13443 (attached) which directs federal agencies ‘to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.’ Specifically, the FS must:

- Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;
- Consider the economic and recreational values of hunting in agency actions, as appropriate;
- Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;
- Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;
- Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;
- Ensure that agency plans and actions consider programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;
- Seek the advice of State and tribal fish and wildlife agencies, and, as appropriate, consult with the Sporting Conservation Council and other organizations, with respect to the foregoing Federal activities.
- Motorized Big Game Retrieval - The Department requests that big game retrieval be allowed for legally taken and tagged elk, deer, bear, and bison one mile from all designated roadways during an open season as designated for those species by the Commission and for twenty-four hours following the end of each season provided it can be done without unreasonable resource damage.
- Motorized Dispersed Camping - The FS must analyze all impacts to the public’s ability to access and camp on public land as a result of overarching

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planning decisions including, but not limited to all land use allocations, recommendations, prescriptions, or designations.

- Travel Management - The Department recommends that all Arizona National Forests adopt a reasonable and consistent approach to travel management that ensures resource protection while enabling continued recreation and multiple-use access under easily understood regulations and a uniform marking system.
- Recreational Shooting - Overarching regulations should direct agencies to recognize recreational shooting as an appropriate and publicly valued activity under federal multiple-use mandates and cite the importance of hunting and recreational shooting as a gateway to hunting, as recognized by Executive Order (EO) 13443.

AZSFWC appreciates the necessity, as well as the complexity of many of these issues and processes. Thank you for considering our comments and suggestions as you assess the potential revisions.

A handwritten signature in dark ink, appearing to read 'Jim Unmacht', with a long horizontal line extending to the right.

Jim Unmacht  
Executive Director