



August 26, 2019

NEPA Services Group  
c/o Amy Barker  
USDA Forest Service  
125 South State Street  
Suite 1705  
Salt Lake City, UT 84138

**RE: Department of Agriculture, Forest Service, 36CFR Part 220,  
RIN 0596-AD31, National Environmental Policy Act (NEPA) Compliance**

## **INTRODUCTION**

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 39 member, affiliate and associate organizations representing more than 10,000 sportsmen and women that span the spectrum of hunting, angling, shooting and outdoor recreation groups and businesses from all across Arizona.

Forest Service lands in Arizona provide habitat for most of Arizona's game and non-game species, as well as our sport fish species, and a myriad of hunting, angling and other recreational opportunities for residents and non-residents alike. The net effect of all of these endeavors is the generation of millions of dollars of economic activity from wildlife-oriented recreation, which are all valid and important uses of public land!

AZSFWC provided previous input in response to the Preliminary Notice of Rule Making (letter dated February 2, 2018) and is pleased to follow up with detailed comments on the Proposed Rule published in the Federal Register on June 23, 2019. We respectfully offer the following for your consideration.

## **1. PUBLIC NOTICE AND SCOPING**

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**Comment (a):** the proposed rule would substantially curtail public engagement, by removing the scoping requirement for Categorical Exclusions (CE) and Environmental Assessments (EA). This is inappropriate for complex and potentially controversial proposed actions that include a broad range of potential activities (e.g., as could occur under the proposed new CE for "*Ecosystem restoration and resilience activities*") or would affect a large geographic area (e.g., habitat restoration in multiple ecosystems across an entire ranger district).

**Remedy:** AZSFWC requests that the Forest Service continue formal scoping when preparing EAs as well as under the new CE for "*Ecosystem restoration and resilience activities*."

**Comment (b):** Under the proposed rule, the Forest Service would use the web-based Schedule of Proposed Actions (SOPA) as the primary means of public outreach during NEPA planning. The SOPA is a useful tool; however, the timeliness, completeness, and accuracy of SOPA information vary greatly, making it insufficient to facilitate effective public engagement, especially during time-critical comment periods.

**Remedy:** AZSFWC requests that the Forest Service also continue to use the Federal Register for public notice and engagement, and for EA's and EIS's also provide public notice in local and other appropriate news media so those directly affected without internet access, and those who have requested to be kept informed, continue to receive individual notice either electronically or by mail, so they are appropriately informed.

## **2. EXTRAORDINARY CIRCUMSTANCES DETERMINATION FOR CATEGORICAL EXCLUSIONS**

**Comment (a):** "*extraordinarily circumstances*" review is an important process check to ensure that CEs do not cause unexpected, undesirable impacts to wildlife and other resources. Currently, a CE may not be used if there is uncertainty concerning potentially significant effects of the proposed action. Under the proposed rule, an *extraordinary circumstance* would only exist when there is "*a likelihood of substantial adverse effects*." This essentially precludes analysis when uncertainty exists, potentially resulting in a decision that is not fully informed.

**Remedy:** AZSFWC requests that existing language be retained: "*If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.*"

**Comment (b):** the proposed rule would remove "*Forest Service sensitive species*" from the list of resource conditions considered when determining whether a proposed action has extraordinary circumstance sufficient to preclude a CE and warrant preparation of an EA or EIS. The 2012 Planning Rule dictated a shift from "*sensitive species*" to "*species of conservation concern*," which are likewise absent from the list of resource conditions. The process by which species were assigned to these categories was ad-hoc and the outcomes did not necessarily reflect priorities of the state/territorial agency with trust responsibility for managing wildlife. It is essential that all proposed actions include wildlife among the resource conditions that determine the level of NEPA analysis and the process be properly coordinated.

**Remedy:** natural resource agencies in all states and the one U.S. Commonwealth with public lands managed by the Forest Service have developed State Wildlife Action Plans

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(SWAP) which identify and rank species of importance in conservation and land management planning. The Arizona SWAP includes "species of greatest conservation need" (SGCN) and "species of recreational and economic importance" (SERI). It is incumbent on the Forest Service to formally incorporate this information in the NEPA process. AZSFWC supports moving away from "sensitive species" but requests that the proposed rule be modified to include SWAP-listed species.

**Comment (c):** open communication and collaboration is central to effective management of public lands and reducing administrative and legal challenges that are founded on incomplete information. The proposed rule adds language concerning public involvement, stating that: "*In addition to public notice in the SOPA, as required at 220.4(d), the responsible official may choose to conduct additional public engagement activities to involve key stakeholders and interested parties.*" This is a positive step, but treats collaboration as an option, not a responsibility.

**Remedy:** AZSFWC requests that language in the rule be changed to read as follows (modifications underlined): "*In addition to public notice in the SOPA, as required at 220.4(d), the responsible official shall ~~may choose to~~ conduct additional public engagement activities as needed, and also with those already established within the Forest Service's public engagement records for all Forest Service actions, or as is mandatory in all other pertinent Forest Service edicts that require engagement with key stakeholders, established participants, interested individuals, directly affected public, and interested parties.*"

### **3. CONDITION-BASED MANAGEMENT**

**Comment:** Conditions on the ground are highly variable and the Forest Service often lacks site-specific data needed to determine an optimal course of management action a priority, especially for large-scale projects. Thus, the flexibility afforded by *Condition-based Management* is a useful addition to the NEPA toolbox. However, the proposed rule provides only a general definition and description of this approach.

**Remedy:** AZSFWC supports the concept of *Condition-based Management*, but recommends that this portion of the rule be expanded to provide the intended "clear and consistent direction as mandated in all pertinent Forest Service edicts."

### **4. DETERMINATION OF NEPA ADEQUACY (DNA)**

**Comment:** The DNA process would determine whether or not a previously completed analysis can satisfy NEPA requirements for a subsequent proposed action, potentially negating the need for further analysis and expediting important work. AZSFWC has observed the positive streamlining effects of DNA, as implemented by the Bureau of Land Management in Arizona.

**Remedy:** AZSFWC supports adoption of DNA by USFS and requests that the Final Rule include provisions requiring formal concurrence on DNA decisions by the state or commonwealth wildlife agency. There may also be circumstances where a cooperating agency or stakeholder in the original NEPA should provide concurrence as well.

### **5. CATEGORICAL EXCLUSIONS**

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**Comment (a):** Proposed CE 220.5 (a) indicates a proposed action may be categorically excluded from analysis and documentation in an EA or EIS when there are no extraordinary circumstances related to the proposed action, and the proposed action is within one or more of the categories listed at 7 CFR part 1b.3 or 36 CFR 220.5(d) or (e).

**Remedy:** AZSFWC requests that all CEs will be in compliance with policies and guidelines established by a current management plan addressed in an earlier NEPA analysis. Similar language is included in some of the proposed CEs, however, to avoid further confusion AZSFWC requests this be explicitly stated for all CEs.

**Comment (b):** Proposed CE 220.5 (b)(1) outlines resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant analysis and documentation in an EA or an EIS. This includes among others: (i) Federally listed threatened or endangered species or designated critical habitat and species proposed for Federal listing or proposed critical habitat. AZSFWC is concerned that state wildlife species of conservation concern are not included in this list of conditions.

**Remedy:** AZSFWC requests that state wildlife species of conservation concern be added to this list of conditions that warrant analysis and documentation in an EA or EIS.

**Comment (c):** Proposed CE 220.5 (d)(7) includes sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to: (d)(7)(ii) exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices. AZSFWC is concerned that such exchanges could result in inconsistent land management practices which would result in the loss of multiple-use management. For example, a county could have similar resource management objectives but not allow all the same activities that could occur on USFS land (e.g., hunting or other wildlife related recreational activity).

**Remedy:** AZSFWC requests that any land exchange that could result in loss of multiple-use management be analyzed in an EA or EIS with public participation.

**Comment (d):** Proposed CE 220.5 (d)(11) would allow issuance of a new special use authorization to replace an existing or expired special use authorization. Special use authorizations are commonly used for wildlife management activities undertaken by a state or territorial wildlife agency, but are not specifically mentioned.

**Remedy:** AZSFWC requests the following example be included: "Issuing a new authorization/permit for wildlife management actions and/or facilities that support wildlife management."

**Comment (e):** Proposed CE 220.5 (e) (7) would allow modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. This description is not sufficiently inclusive.

**Remedy:** AZSFWC requests the following example be modified to include: "Addition of artificial fish habitat including aeration systems which are normal practices."

**Comment (f):** Proposed CE 220.5(e)(18) covers "Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled." Such actions have the potential to adversely impact native fish conservation, sportfish management, and associated recreational opportunities.

**Remedy:** AZSFWC requests that USFS obtain concurrence from the state or territorial wildlife management agency when using this CE.

**Comment (g):** Four CEs in the proposed rule could result in arbitrary loss of forest access for hunting, fishing, and other recreation, without meaningful engagement by the public and agency partners:

- proposed revised CE 220.5 (e)(20) would allow decommissioning of National Forest System (NFS) roads and trails for purposes of restoration
- proposed new CE 220.5 (e)(22) would allow construction, reconstruction, decommissioning or disposal of buildings, infrastructure, or improvements at recreational sites, including access routes and/or areas that are adjacent to, or connected to those sites
- proposed new CE 220.5 (e)(24) would allow closing or rerouting of NFS roads and bridges to address resource impacts
- proposed new CE 220.5 (e)(26) would allow road and/or trail decommissioning (system and non-system) for "*Ecosystem restoration and resilience activities*"

**Remedy:** AZSFWC requests the following modifications:

- The preamble of Section 220.5 (*Categorical exclusions*) should explicitly state that: "*All CEs will be consistent with applicable land management plan direction, travel management direction, trail-specific direction, and other related direction that has been subject to the NEPA process or as required by pertinent Forest Service edicts.*" Similar language was included in the proposed CE 220.5 (e)(23) regarding trail conversions.
- The CEs listed above should be restricted to proposed actions which result in only temporary loss of public access and have an explicit time limit (i.e., *not to exceed*). Any proposed action resulting in permanent loss of public access to roads, trails, access routes, and recreation sites/infrastructure must not be categorically excluded.

**Comment (h):** the proposed new CE for "*Ecosystem restoration and resilience activities*" 220.5 (e)(26) covers an extremely broad array of actions of potential benefit to wildlife populations and habitats. Some of the listed activities are specific practices (e.g., [F] *Prescribed burning*), while others (e.g., [A] *Terrestrial and aquatic habitat improvement and/or creation*) are general outcomes that could be achieved through a variety of active or passive management approaches. This mix of outcomes and individual practices (some of which overlap) is excessively vague, appears contrary to CEQ guidance, and will likely cause unnecessary confusion for the Forest Service and the public.

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**Remedy:** AZSFWC recommends refining the list of activities to focus on specific practices, as was done in the other proposed new CEs. Also, specific to prescribed burning ensure this action requires NEPA's hard look prior to being considered for a CE, and all mandated direction regarding public notice and cooperation is addressed.

**Comment (i):** the proposed new CE for "*Ecosystem restoration and resilience activities*" 220.5 (e)(26) allows *commercial timber harvest* on up to 4,200 acres of a 7,300 acre project area, when carried out in combination with at least one other restoration activity. Commercial timber harvest is but one means of accomplishing needed mechanical thinning on Forest Service lands; such work can also be accomplished through Stewardship Contracts, under Good Neighbor Authority, and other mechanisms. Moreover, *commercial timber harvest* is not a restoration practice per se; there are numerous examples in Arizona, both historical and recent, where that occurred in a manner that significantly and adversely affected habitat for big game and other wildlife.

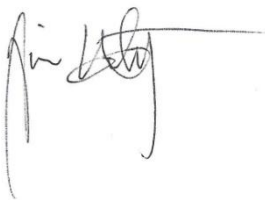
**Remedy:** AZSFWC requests that this activity be re-framed as "*mechanical thinning*" and the reference to "*commercial timber harvest*" be removed. The CE should also stipulate that mechanical thinning be done in a manner that reflects the best available science and seeks to restore forest stand structure and composition to within the historic range of natural variability.

## **CONCLUSION**

Overall, AZSFWC strongly supports streamlining the NEPA process, which has become burdensome, inefficient, and commonly fails to facilitate timely implementation of habitat improvements and other projects needed to maintain and enhance populations of game species, sport fish, and other wildlife. However, while addressing these shortfalls in interpreting and applying NEPA, it is critical to ensure informed decision-making by the Forest Service and effective engagement by the public and state/commonwealth natural resource and state wildlife agencies that have the trust responsibility for managing wildlife.

AZSFWC requests the Forest Service continue to collaborate with the respective cooperating agencies to consistently apply rules and guidelines across the National Forest system. The desire for consistency is of particular importance in Arizona, where we have six National Forests with rules and guidelines that oftentimes differ in application and approach. For the recreating public, this can not only complicate the experience, but make it less than desirable!

Thank you for considering our comments and requests as you assess the potential revisions.



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Executive Director

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