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California  
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# Native Plant Conservation Campaign

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April 3, 2003

USDA Forest Service Planning Rule  
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To Whom It May Concern:

The following are the comments of the Native Plant Conservation Campaign (NPCC) on the proposed revisions of the regulations implementing the National Forest Management Act (proposed 36 CFR §219, Proposal).

## INTRODUCTION

The Native Plant Conservation Campaign (NPCC) is a project of the California Native Plant Society (CNPS) and the Center for Biological Diversity. It is coalition of 28 affiliate native plant conservation organizations, representing more than 57,000 laypersons and professional botanists in 28 states. The mission of the NPCC is to promote appreciation and conservation of native plant species and communities through education, law, policy, land use and management. NPCC affiliate organizations and their members work closely with state and federal agencies to manage and conserve the native plants and ecosystems of the United States. We also extensively use National Forests and other public lands for research, education, and recreation.

The California Native Plant Society is a non profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to conserve them and their natural habitats, through education, science, advocacy, horticulture and land stewardship.

## CONCERNS WITH THE PROPOSED RULE

We are extremely concerned by the Proposed Rule. It is vague, poorly written, inconsistent and incomprehensible in some sections. It is therefore difficult to interpret with any certainty what the exact on-the-ground consequences of its implementation would be. It is clear, however, that those consequences will be profound. The Proposal would reshape every aspect of national forest management to greatly reduce public involvement in the

*Promoting appreciation and conservation of native plant species and communities through collaboration, education, law, policy, land use and management*

development of land and resource management plans and significantly weaken national forest ecosystem health standards. We recommend that the Proposal be withdrawn.

Discussion of our principle concerns follows.

## **Expanded Bureaucratic Discretion**

A central issue of concern regards the shift in emphasis towards local line officer (agency bureaucrat) discretion and away from consistent, objective scientific analysis of and standards for ecosystem health as the basis for management and decisionmaking. The 2002 Proposal represents a marked departure from both the 1982 and 2000 regulations in this regard.

One example of this trend is the Proposal's focus on "desired condition" as the basis and goal of national forest management planning. This contrasts with current regulations which mandate that ecosystem health, soil productivity, sustainability, species viability, and other objective goals guide forest management.

The desired condition concept permeates the Proposal: the "*fundamental purpose of a plan...is to establish the desired conditions to be achieved*" (Proposed §219.2); the primary purpose of monitoring under the Proposal is to "*assess...achievement of the desired conditions and objectives of the plan*". Yet inexplicably desired condition is not defined in the Proposal. No standards are set for either the form or content of a forest plan desired condition definition. Instead the Proposal proposes that quantitative "objectives" and "standards" that "are intended to contribute to the achievement of desired condition" be included in forest plans (Proposed §219.4(a)).

In the past, desired condition descriptions in forest plans have often been vague, unquantifiable and thus essentially unimplementable. However, this problem has been to some extent offset by the numerous clear and objective ecosystem health requirements in the 1982 NFMA regulations, including species viability (§219.19), management indicator species condition and trend (§219.19 (a)(1)), soil productivity (§219.27(a)(1)), and riparian ecosystem health (§219.27(e)). All national forest management plans have been required to adhere to these standards. The Proposal either weakens or removes all of these measurable standards. This is likely to lead to inconsistent on-the-ground management which may not adequately maintain ecosystem health, prevent species declines or extinctions, or conserve our natural heritage.

Other examples of new powers for agency bureaucrats include:

- The ability to determine the scope and types of "appropriate inventory data" that must be gathered, and the ability to determine how often such data is gathered (Proposed §219.5(a))
- The ability to determine whether forest plan development may be categorically excluded from the scientific and public review requirements of the National Environmental Policy Act (NEPA) (Proposed § 219.6) (see below for more discussion)
- The ability to exempt site specific projects from forest plan standards (Proposed §219.10 (d)(3) and (e))

- The ability to solely determine the “methods and timing of opportunities [for the public] to participate in the planning process” (Proposed §219.12(a))
- The ability to change monitoring methods without public input or review (Proposed § 219.11)
- The ability to exceed timber harvest limitations in some circumstances when the limits are determined to be “infeasible” (Proposed §219.17 (c))
- The ability to determine the degree of biological diversity conserved in the planning area in Option 2 (Proposed §219.13 (b)(2)(i) Option 2).

## Species Viability Optional?

The most problematic aspect of the new powers conferred on bureaucrats is the remarkable proposal to make maintenance of species viability on national forests optional. Agency bureaucrats would have full authority to decide whether a forest plan could allow species extirpation within the planning area.

The Proposal for some reason presents two “options” for “sustainability” (Proposed §219.13). Both make viability optional. Option 1 states

*“Plan decisions **should** provide for ecological conditions that **the Responsible Official determines** [would likely support species] viability” (Proposed 219.13 (b)(2)(ii)), Option 1, emphasis added).*

By contrast current (1982) regulations state:

*“Fish and wildlife habitat **shall** be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.” (current §219.19, emphasis added).*

The crucial words in the Proposal are “*should*” and “*that the Responsible Official determines*”. Use of “should” rather than the “shall” in the current regulations clearly relegates viability conservation to an optional component of forest planning. The delegation of the authority to determine what ecosystem conditions are likely to support species viability to the “Responsible Official” further weakens this mandate. Such determinations should not be made solely by an agency bureaucrat, but should be made by an interdisciplinary team of qualified specialists based on the best available science.

As the preamble to the Proposed Rule states regarding evaluation of a forest plan’s likelihood of maintaining species viability under Option 1:

*“Note that the “high likelihood” is not necessarily a statistical or mathematical determination. Rather it is a application of expert agency judgment based on a **reasonable** review ...of **available** information” (67 Fed. Reg. 72785 (emphasis added))*

The Proposed Rule does not even mandate a “thorough” or “scientifically sound” review or expect that data gaps will be filled if “available” information is insufficient. The Proposal leaves no room for doubt that attempts to maintain species viability would now be optional and unenforceable on national forests if it is adopted.

Of course, in Option 2, viability is also optional:

*“Plan decisions, **to the extent feasible**, should foster the maintenance or restoration of biological diversity in the plan area....” (Proposed 219.13 (b)(2)(i), Option 2, emphasis added).*

Again, presumably a “Responsible Official”, rather than a scientific team, will make the determination of what is and is not feasible in biological diversity conservation.

The species viability requirement in the current NFMA regulations has been one of the most important tools for conservation of biological diversity and other resources on forest service lands. It has also been an important tool to promote scientific progress in the fields of conservation biology and ecological restoration. As the 1982 rule clearly states, species viability depends on suitable habitat: healthy and diverse ecosystems, dominated by native species (1982 rule §219.19). The viability rule has been essential in ensuring that national forests are managed to maintain ecosystem health. This has required both good management and good science. The proposal to make species viability optional essentially makes ecosystem health, and the scientific analysis necessary to maintain it, optional as well. This is unacceptable.

## **Ecosystem Health Mandates are Weak or Missing**

The species viability requirement is not the only ecosystem health mandate that would be weakened under the Proposal. Current section 219.27 (a) of the 1982 regulations introduces the management requirements governing all national forests:

*“The minimum specific management requirements to be met in accomplishing goals and objectives for the National Forest System are set forth in this section. **These requirements guide the development, analysis, approval, implementation, monitoring and evaluation of forest plans.**” (emphasis added)*

The regulation then lists numerous standards that must be met through the implementation of national forest plans including for healthy soils, watersheds, and riparian ecosystems. As noted above, these management requirements are weakened substantially, made discretionary, or missing entirely in the Proposal.

The Proposal does mandate that forest plans contain measurable objectives but sets no requirements for the type or scope of ecosystem health attributes they should include (Proposed §219.4(a)(2)).

The Proposal provides direction regarding plan standards for some aspects of ecosystem health, but this direction is a good deal more vague and weak than that in the current 1982 rules. For example the management requirements in 1982 rules require that plans provide that *“all management prescriptions shall”* :

*“Conserve soil and water resources and not allow significant or permanent impairment of the productivity of the land;” (1982 rule §219.27(a)(1)).*

This requirement is stated twice so that there will be no confusion.

and

*“Special attention shall be given to land and vegetation [in] at least the recognizable area dominated by the riparian vegetation.”* (1982 rule 219.27(g) emphasis added)

In contrast, the Proposal makes the weaker statement that plans shall include

*“requirements for maintaining or restoring soil and water resources, including protections for streams, streambanks, shorelines, lakes, wetlands and other bodies of water from ... management activities which are likely to seriously and adversely affect water conditions on (sic) fish habitat”* (Proposed §219.4)(a)(3)(v)).

In addition, the Proposal states *“Standards generally should be adaptable and assess performance measures”* (Proposed §219.4(a)(3)). Thus, even the few weak ecosystem health standards set by the Proposal include language that further reduces their clarity, strength, and enforceability. This ambiguity will make it extremely difficult for the public or agency staff to understand or implement direction in forest plans.

## **Suitability**

The Proposal weakens and thoroughly obfuscates important current requirements for objective, scientific analysis of the suitability of national forest lands for various uses. These requirements are seen, among other places, in current requirements for timber harvest suitability analysis (current §219.14), suitability and capability analysis requirements for livestock use (current §219.20) and suitability analysis for recreation uses (current §219.21).

Suitability is one of the most important aspects of the current regulations because the clear requirements for when and how suitability analyses must be performed protect sensitive resources from inadvertent damage.

The suitability language in Proposed §219.4(a)(vii)(4) is remarkable for its ambiguity. First the Proposal tells us that

*“National forest lands are generally suitable for a variety of uses....Rather than determine the suitability of all lands for all uses, a plan should assume that all lands are potentially suitable for a variety of uses...”*

The proposal then reverses course and continues:

*“...except when specific areas are identified and determined not to be suited for one or more uses”.*

The Proposal next lists circumstances under which lands are not suited for certain uses. Which is it? Is the Forest Service to do suitability analysis or not? This section appears to allow Responsible Officials to open areas to potentially damaging activities such as recreational vehicle use, grazing, mining, etc. As written, this section will compromise

resource conservation, at the same time as it confuses agency staff and the public who must struggle to determine when suitability analysis is appropriate.

## **Scientific Review and Public Involvement**

Several sections of the Proposal reduce opportunities for the public, the taxpayers who own our national forests, to participate in planning and decisionmaking for these public lands.

One of the most troubling aspects of the Proposal is that it would make National Environmental Policy Act (NEPA) analysis of national forest management plan development optional (proposed §219.6(b)). NEPA review is essential to good public land management. It requires interdisciplinary, scientific analysis of the environmental impacts of forest management and requires public disclosure of those impacts. NEPA also requires the Forest Service to develop and examine alternative approaches to forest management, a process that is invaluable in producing well thought out management plans that provide multiple uses while protecting resources. Perhaps most important, the NEPA process provides a process for the public – the owners of national forests - to be informed of management proposals and their environmental impacts, and to provide input to the Forest Service regarding sensitive resources, recreational uses, economic concerns and other critical issues. The proposed option to categorically exclude forest plans from NEPA review would eliminate all of these important benefits and would greatly reduce the quality and usefulness of forest plans.

The Proposal justifies the possibility of categorical exclusion by stating that forest plans do not directly affect management on the ground, and thus do not significantly impact the quality of the human environment, which would legally require the preparation of an environmental impact statement (NEPA Statute Sec. 102(c)). However, the preamble to the Proposal states (67 Fed Reg. 72773) that forest plans will, among other things,

- identify high priority areas for wildfire hazard reduction
- designate major utility corridors
- identify areas of high diversity that will require special management and conservation
- identify which lands are suitable for certain uses

All of these determinations clearly may have significant impacts on the human environment and thus legally should trigger an environmental impact statement.

The rule also restricts the public's right to appeal forest plan proposals using Forest Service administrative procedures (Proposed §219.19). For example, the section on objections sets new limits on the form that objections may take. Post cards and other form letters will no longer be accepted as legitimate objections, removing an important mechanism for many members of the public, who often do not have time to develop a formal administrative appeal, to participate in forest planning (Proposed § 219.19(d)).

## **Other Shortcomings of the Proposed Rule**

The Proposal has other important flaws:

1. Removal of the requirement that national forests maintain current resource inventories. The current (1982) regulations state "*Each Forest Supervisor shall **obtain and keep current inventory data** appropriate for planning and managing the*

*resources under his or her administrative jurisdiction.” (current §219.12 (d), emphasis added).*

In contrast Section 219.5 (a) of the Proposed Rule merely states that inventories “may be used” to determine whether to amend or revise a plan and that Responsible Officials must “obtain appropriate inventory data”. The requirement to keep such data current is removed, as are current regulatory requirements regarding the “kind, character and quality” of inventory data, its organization and ease of use. This change would significantly weaken the scientific foundation and factual basis of national forest planning.

2. The weakening of monitoring requirements and scientific standards relative to the 1982 regulations. For example 1982 §219.10 (g) requires

*“The Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have change significantly.”*

And Section 219.12 (k) of the 1982 regulations sets forth detailed requirements for monitoring programs, including requirements for specific monitoring schedules. Under the Proposal, there are no requirements for 5 year reviews of national forest condition. Although there are requirements for annual reporting of monitoring results, there are no requirements that forest plans set or disclose schedules for collecting monitoring data:

*“...[S]pecific monitoring items and evaluation of specific resources of conditions may occur at other intervals.” (Proposal §219.11(d))*

Thus, under the Proposal resource condition may deteriorate unmonitored and thus undetected for years, and the public has no way to know when or whether monitoring occurs.

Further, current regulations (e.g. current §219.23) require science based quantitative estimates of the health and condition of national forests. As elsewhere, these requirements are weakened in the Proposal. The section on monitoring states

*“Monitoring information should include ... data and other information pertinent to ...diversity... **as determined relevant by the Responsible Official**” (Proposed §219.11(a), emphasis added)*

Once again, agency bureaucrats are given sole responsibility for determining what scientific information is relevant, a task few are qualified to perform.

Finally, Section 219.11(a)(1) of the Proposal allows monitoring methods to be changed “without plan amendment or revision”, presumably therefore without scientific or public review.

Monitoring is central to effective adaptive management of wildland ecosystems. Incomplete monitoring protocols, variable schedules for monitoring, and monitoring

protocols that can be changed on a whim without scientific or public review will not provide the quantity or quality of information that is required for effective conservation and restoration of national forest resources.

3. The weakening of the diversity requirement in the current regulations. Current (1982) Section 219.27 (g) states,

*“Reductions in diversity of plant and animal communities and tree species from that which would be expected in a natural forest, or from that similar to the existing diversity in the planning area, may be prescribed only where needed to meet overall multiple-use objectives.”*

In place of this language, the Proposal states that

*“plan decisions, **to the extent feasible**, should foster the maintenance or restoration of biological diversity in the pan area...” (emphasis added)*

The Proposal weakens the agency’s obligation to maintain diversity and adds this basic component of ecosystem health and sustainability to the list of national forest characteristics that will now be under the discretionary control of local line officers. This is not sufficient to ensure that the public’s resources on national forests will be conserved and restored for future generation.

4. Interdisciplinary planning is another centerpiece of the current (1982) regulations, and of all proper land and resource management. Ecosystems are complex and their management thus requires a wide spectrum of skills and knowledge. The 1982 regulations recognized this obvious fact. Section 219.5 of the 1982 regulation sets forth detailed instructions for what constitutes proper interdisciplinary planning and management. The Proposal makes a few vague references to the concept of interdisciplinary planning, but provides no definition of or clear requirements for how it shall be performed. .

## **THE 2000 NFMA RULE**

There are also important shortcomings in the Proposal when compared to the 2000 proposed rule. We will not discuss the 2000 rule in detail because it was not implemented. However, the dismissal of the 2000 rule and of the years of effort by the committee of eminent scientists in collaboration with the public is extremely disturbing. Most of the key recommendations in the 2000 rule are ignored in the current Proposal. Some of the more important changes are associated with management and conservation of sustainability and biological diversity:

## **CONCLUSION**

In conclusion, overall ambiguity and internal contradictions, absence of objective ecosystem health standards, removal of requirements for maintenance of species viability, excessive delegation of critical ecosystem health maintenance decisions to the sole discretion agency bureaucrats, the weakness of the monitoring requirements, and the substantial reductions in



public involvement in national forest management planning, are only a few of the numerous problems that make this Proposal essentially unworkable.

NPCC affiliate groups (see Appendix) have worked closely with the Forest Service and with the NFMA for decades. We directly participate in all aspects of national forest management throughout the nation, donating thousands of hours of volunteer time to monitor, restore and perform research on national forest lands. Our analysis of the Proposal is that it would be at least as difficult to implement as it is to understand. We recommend that the agency withdraw this proposal.

Thank you for the opportunity to submit these comments.

Sincerely,

Emily B. Roberson, Ph.D.  
Director  
Native Plant Conservation Campaign

**APPENDIX**  
**Native Plant Conservation Campaign**  
**Affiliate and Cooperating Organizations**

<b>NPCC Affiliates</b>	<b>NPCC Cooperators</b>
<p>Arizona-Sonora Desert Museum  California Native Plant society  Center for Biological Diversity  Colorado Native Plant Society  Florida Native Plant Society  Grand Prarie Friends of Illinois  Herb Society of America  Idaho Native Plant Society  Iowa Native Plant Society  Kauai Native Plants Society  Lady Bird Johnson Wildflower Center  Maryland Native Plant Society  Minnesota Native Plant Society  Missouri Native Plant Society  Montana Native Plant Society  New England Wild Flower Society (6 states)  New Mexico Rare Plant Technical Council  North Carolina Wild Flower Preservation Society  North Carolina Botanical Garden  Native Plant Society of New Mexico  Native Plant Society of Northeastern Ohio  Native Plant Society of Oregon  South Carolina Native Plants Society  Ticonderoga Arboretum and Botanical Gardens, VA  Utah Native Plant Society  Virginia Native Plant Society  Washington Native Plant Society  West Virginia Native Plant Society</p>	<p>Botresearch USA  CalFlora Database  California Trout  Center for Native Ecosystems  Defenders of Wildlife  Endangered Species Coalition  Forest Service Employees for Environmental Ethics  Pacific Rivers Council  PlantaEuropa  PlantLife, UK  Public Employees for Environmental Responsibility  T&amp;E Inc.  Xerces Society</p>