

NATIONAL FOREST SYSTEM LAND MANAGEMENT PLANNING RULE

NATIONAL SCIENCE PANEL

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Introduction

I was asked by the U.S. Forest Service (USFS) on March 8, 2010 to provide comments on particular topics regarding the development of the new planning rule. I want to thank the agency for its invitation. I am a professor of natural resources policy in the College of Forestry and Conservation at the University of Montana.

I will first summarize my general comments, questions, and recommendations. Further background and explanation is provided in the remainder of my statement.

1. The problems and opportunities evident in national forest management require a broader analysis of the System's statutory and regulatory framework—one that goes beyond the purview of the planning rule. In addition to writing a new rule, lawmakers and the USFS should convene a National Forest Law Review Commission.
2. The planning rule can be made more durable if it views core environmental laws and regulatory standards as goals, not constraints.
3. The planning rule should require the writing of meaningful forest plans that have workable and enforceable standards and guidelines.
4. Clear standards and guidelines will facilitate more adaptive and collaborative approaches to forest planning and management.
5. There are political risks if the USFS gives itself too much discretion in the planning rule or views forest plans as non-decision making documents. This includes the possibility of having more "place-based" (national forest-specific) bills introduced in the future.
6. Forest plans should be financially realistic.
7. The planning rule should encourage more formally collaborative approaches to planning (e.g., the use of FACA committees, RACs, etc.)
8. The USFS should assemble a national advisory committee and more specialized scientific/technical committees that will provide outsider experience and counsel to the planning team.

9. Plans should be more adaptive in nature. But adaptive management must be guided and bounded by applicable laws and standards and be accompanied by fully funded monitoring programs.
10. The development of private lands adjacent to the national forests must be given due consideration at some point in the forest planning process.
11. The Forest Service should consider how to better coordinate and integrate forest plans with other agency plans at different scales (more multi-scaled planning).
12. The planning rule should be informed from the bottom-up. The agency should assess how various collaborative groups have approached problems in national forest management and learn applicable lessons of relevance to planning.
13. Several place-based bills and agreements share some common characteristics that are of relevance to the planning rule, including: A) the search for more certainty in forest management, B) a focus on landscape-scale restoration and its relationship to rural communities, and C) a desire for more collaborative decision making with the USFS in a more formalized way.

Before proceeding, I would like to begin by commending the agency for preparing such a thoughtful and constructive Notice of Intent. The right questions are being asked, and their framing has forced respondents to think critically about a number of difficult issues. Several of these are essentially about governance. How, for example, should the agency strike a balance between the need for standards and accountability on the one hand and the need for adaptive management on the other? Or consider how we might reconcile the widespread criticism of predictive-based rational comprehensive planning with the pervasive interest in more integrated planning at larger landscape-levels? And of course, there are lots of difficult questions about decision making, such as how to institutionalize more collaborative approaches to forest management while safeguarding the rule of law and the nation's interest in federal lands and resources.

I. Durability

A. Planning Rule Limitations

When it comes to the durability of a new planning rule, we must appreciate the limitations of rulemaking and planning as a form of conflict resolution. By their very nature these venues will be subject to executive-level pendulum swings.

The problems and opportunities evident in National Forest management require a broader analysis of the System's statutory and regulatory framework. More than thirty years have passed since NFMA's enactment in 1976. New laws, court decisions, executive orders, science, population growth, private land development, economic transitions, collaborative efforts, motorized recreation, and international trade deals, among other developments, are but a few reasons why it is time to revisit the cumulative body of laws and regulations in systematic fashion.

With appropriate sideboards and a clearly defined charter, a National Forest Law Review Commission has the potential of providing more enduring solutions to a wider-range of problems than can be addressed in a

planning rule. I hope lawmakers and the agency consider convening such a Commission, in addition to moving forward with a new planning rule.¹

B. Environmental Laws as Goals, Not Constraints

Notwithstanding the need for such a review, the planning rule can be made more durable if it tries to effectively implement the spirit and letter of our federal lands and environmental laws. Finding efficiencies in the decision making process should be encouraged. But the USFS must not view its legal obligations as inconvenient procedural hurdles that must be overcome or water them down in regulatory minutia. Instead, these laws should be viewed as precautionary tools that lead to more inclusive and environmentally-sound decisions.

Laws like NEPA, the ESA, and NFMA's diversity mandate should be viewed as goals, not constraints. If the planning rule does so, the rule will be viewed favorably by the Courts and have lasting value. Starting from this foundation, we can then turn to the question of how we might meet the purposes of these Acts in more effective and efficient ways.

C. Lessons from the Grassroots

The planning rule can also be made more durable if it is informed as much as possible from the bottom-up. Instead of trying untested paradigm shifts in planning from the top-down, this rule should carefully consider how various collaborative groups throughout the nation are approaching things and where planning fits into those endeavors. I discuss this issue in more detail below.

II. Forest Plans Should be Meaningful, Financially Realistic, and Collaborative

A. Vision, Decisions, and Standards

The new planning rule should require the writing of meaningful forest plans. There is little value in writing expensive, time-consuming plans if such plans make no decisions and have no vision.

Legally-binding and enforceable standards and guidelines should be included in the new planning rule. NFMA was designed to reign in agency discretion by providing clearer standards and enforceable checks on the USFS. Meeting such standards has proven difficult for the agency at times. But the solution is not the removal of such standards, but rather to figure out ways to more effectively and efficiently meet them.

While inherently difficult, especially at the front-end, setting standards will facilitate adaptive management and collaborative decision making over the long run. Regarding the former, standards help define the purpose and boundaries of the process. After all, adaptive management is a means to an end, and that end needs to be clearly articulated. Without standards, adaptive management is too susceptible to political exploitation and the dodging of tough political choices. As for collaboration, standards provide the necessary direction, legal sideboards, and additional certainty to those engaged in the process.

¹ For more on why such a comprehensive review is necessary and how it might be assembled see Jim Burchfield and Martin Nie, *National Forests Policy Assessment: Report to Senator Jon Tester* (Missoula, MT: University of Montana, College of Forestry & Conservation, Sept. 2008).

B. The Problem of Agency Discretion

There is an inherent tendency for agencies like the USFS to want to maximize their administrative discretion. That was certainly a central theme of the 2005/2008 planning regulations. Those planning rules tried to relieve the USFS from NEPA-based planning procedures so that the agency could utilize its expertise and respond to new problems, science, and information more expeditiously. Those rules also embraced *Ohio Forestry Association v. Sierra Club* and *Norton v. Southern Utah Wilderness Association (SUWA)* as a justification of why plans must be only strategic and aspirational in nature.² The agency continues to use *SUWA* in other contexts as well, successfully arguing that various agency actions are not “sufficiently discrete” and therefore not reviewable by the Courts.

It appears that the Courts are willing to grant the USFS such discretion. But I hope the agency thinks carefully before over-utilizing these decisions. As discussed below, several collaborative “place-based” groups are seeking *more certainty* and *less discretion* for the agency—and they are willing to go to Congress to get these things. I predict that more place-based forest laws will be introduced in the future, among other statutory remedies, if the USFS clings too strongly to its administrative discretion and views planning as nothing more than strategic and aspirational in nature.

C. Forest Plans and Budgets

As we all know, Congress has a history of failing to fully fund forest plans. And because of the inadequacy of resources, forest plans have become viewed in some respects as more of a contingent wishlist than a secure commitment. Frankly, the agency has too often over-promised and under-delivered in forest plans. This has set lots of interests and communities up for disappointment, for example, by putting forward unrealistic timber sale programs to making promises of monitoring that go unfulfilled. The budget-planning mismatch leads to unhealthy levels of mistrust toward the agency. This problem should be addressed in the planning rule so that plans are financially realistic as possible.

D. Collaboration

1. Be Clear About the Purpose of Participation

Planning should also be done collaboratively. There are others on this panel that can speak more persuasively about the benefits and particulars of collaboration, so I will not elaborate much here.

But I will say that the rule should be clear about the purpose and role of public participation in forest planning. Agencies and interest groups often approach the planning process with incompatible sets of expectations when it comes to participation. The traditional explanation offered by the USFS is that that the role of public participation is to ensure that all possible pieces of information can be considered by the agency. Yet political interest groups often view public participation from a different perspective, with some wanting a larger role in setting agency agendas and implementation responsibilities. If the agency embraces more collaborative approaches to planning, it must clearly explain how and for what purpose the public will be engaged.

2. Formalize/Institutionalize Collaboration

I also hope that the USFS will further institutionalize collaboration with the agency. This could be done in several ways, from reinvigorating NFMA’s provision allowing for advisory boards to enhancing the number,

² 523 U.S. 726 (1998); 542 U.S. 55 (2004)

role, and responsibilities of Resource Advisory Committees (RACs). Another possibility is to encourage the development of collaboratively-written alternatives in the NEPA/EIS process. One of the central themes of NFMA's debate was the significance of authentic forms of public participation in forest management, so the planning team is on solid ground in this regard.

3. Use National Advisory Committees

I further recommend the USFS assemble some sort of national advisory committee that can provide outsider experience and counsel to the planning team. The committee could be used to write independent alternatives, consider and analyze agency-written alternatives, filter ideas, prevent agency groupthink, and most importantly, deliberate on various policy/planning problems. The Roadless Area Conservation National Advisory Committee provides one possible model that could be used. Its role would be quite different than that of another Committee of Scientists, mostly because it would focus on a more inclusive set of problems that go beyond science.

In addition to the national advisory committee, the agency could also assemble more specialized scientific/technical committees focused on particular parts of the planning rule, such as new approaches to population viability. If useful, the agency could then consider the possibility of retaining the national and scientific/technical advisory committees and consulting with them on a permanent basis.

II. Adaptive Management and Planning

A. The Problems of Rational Comprehensive Planning

Though forest plans should be meaningful, and include workable standards and guidelines, they do not have to become stale, bloated, predictive-based documents. My research and that of others in the field of natural resources policy consistently identify the problems and pathologies of rational comprehensive (synoptic) planning, the type often practiced by the USFS. This planning paradigm often tends to mistakenly define value and interest-based political conflicts, and so-called "wicked" policy problems, as scientific-technical ones.

The truth, of course, is that the theory of synoptic planning is trumped regularly by the practice of politics. The planning model is practiced in the messy world of countervailing political pressures, layered legislative mandates, muddled court decisions, and insecure agency budgets. And this happens against a backdrop rich in environmental, political, and stochastic uncertainty.

B. Adaptive Management in the Regulatory State

For these and other reasons, a number of academics and others have put forth planning approaches that are more collaborative and adaptive in nature. The USFS's 2005/08 planning regulations wanted to head in this direction as well. But there is a challenge looming large: how to practice adaptive management in the modern regulatory state. Again, the question is one of governance: how can we plan adaptively while ensuring accountability, transparency, inclusiveness, and other democratic principles and processes? I believe the last planning effort made the mistake of advancing a rather ill-defined adaptive management model while simultaneously abandoning NEPA (at forest plan level) and some substantive standards (e.g., wildlife viability). This seemed to have got an important dialogue off on the wrong foot.

C. Monitoring

For adaptive management to work, in theory and practice, a fully funded monitoring program is required. No one should take agency promises of adaptive management seriously unless it provides details about how such

monitoring is to be done and how exactly it will be paid for. Furthermore, we must recognize that monitoring is subject to political influence and possible agency bias. Take, for example, questions of what will be monitored and how the results will be evaluated. These sorts of issues need to be addressed before the agency is given a pass to adaptively manage something. And it helps explain widespread interest in multi-party monitoring.

D. Triggers and Thresholds

One possible approach to this problem is to consider using some type of pre-negotiated commitments in an adaptive management framework. These enforceable commitments would specify what actions will be taken by the agency if monitoring information shows X or Y. In other words, some predetermined decisions, or more general courses of action, are built into the adaptive framework from the beginning (i.e., if this, then what). Not every possible scenario can be prefigured of course, but having some thresholds or trigger mechanisms built into an adaptive framework might alleviate concerns about the amount of discretion ostensibly needed by agencies to plan and manage adaptively.

E. NEPA

NEPA presents some challenges to adaptive management, mostly because of the Act's rational comprehensive foundation (i.e., its focus on ex ante prediction without requiring post-project monitoring and re-evaluation). But the challenges are not insurmountable. Perhaps most important is to recognize that NEPA requires a forward-looking approach—a requirement to assess possible environmental impacts before undertaking a major new action. As discussed above, once that general course is set, adaptive management becomes a means to an end. In other words, once a program, plan, or project is established using NEPA, adaptive management can be used as a way to ensure the goals are being met. After all, adaptive management is not about experimenting for the sake of experimenting. It needs a purpose and hopefully NEPA will be used as a way to define it.

Along the way, new information might require mid-course corrections. In some situations, such corrections will not be major and not trigger another round of NEPA. But in others, they may require an EIS amendment. Consider also that in some cases it is possible to fold a number of adaptive management alternatives into an EIS. In all of these situations, NEPA's procedural obligations do not have to preclude a more adaptive approach to planning.

III. All-Lands Approach to Planning

A. Private Land Development in Relation to National Forest Management

Other panelists can speak more intelligently than I can about the science of landscape-level planning. But I want to emphasize one component relevant to the discussion: the importance of considering private land development in National Forest planning.³ This section talks a little bit about that relationship and then recommends some possible ways in which private lands may be given due consideration at some point in the forest planning process.

Widely acknowledged are the ecological interconnections between public and private lands (e.g., fire, water, wildlife, etc.). But there is also an important historical and political relationship between national forest

management and private land development.⁴ There is ample historical precedent for the USFS to consider what is happening outside its jurisdiction and to respond accordingly on national forests. From their creation, national forests have been impacted by actions taking place on private land, and agency leaders have often responded in some fashion on national forest lands, often by reducing harvests.

We can also expect the national forests to become more politically contested in the future, as a result of the fragmentation taking place on private lands. A compensation principle will become more evident. In other words, as private lands are developed and fragmented, relatively intact public lands will become increasingly valuable, and people will want them further protected.

Calls to focus on private land development may also come from unexpected quarters and allow the agency to reconsider old problems in a new light. Take grazing-lease decisions, for instance, and the debate over “cows versus condos.” Will the demise of public-lands ranching lead to further land fragmentation as ranchers are forced to sell and subdivide their adjacent private property? Debate notwithstanding, it is reasonable to ask the Forest Service to consider the environmental impacts of their leasing decisions at a landscape level, with possible threats to private land included.

If the agency fails to consider the larger landscape when making decisions, we should also expect a growing number of interests to challenge it politically and legally, using such tools as NEPA’s cumulative effects analysis requirement, among others.

B. Private Land Development and Forest Planning

So where do we go from here? To begin, some of the problems must be addressed by using tools outside of (but related to) the forest planning process, such as land acquisition and conservation easements (meaning full funding of the Land and Water Conservation Fund and Forest Legacy Programs), among other approaches (e.g., tax and incentive-based, private land use planning and zoning, etc.).

But at some point, the USFS must consider what is happening on other lands in its planning process. The current approach is clearly insufficient. Allow me to quickly explain why.

To start at the apex of the planning pyramid, consider the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974. Its resource assessment provides a much-needed macro-level look at U.S. forest management, from timber and recreation inventories to trends in population growth and urban development. It is within this process, in fact, that the USFS has so clearly identified the “open-space challenge.”

The loss of open space is given some attention in the resulting USFS Strategic Plan (USFS 2004), but how far and fast that vision trickles down to the forest-level is hard to discern. Furthermore, in this plan much less is said about how the agency intends to deal with this threat than others, such as fire and invasive species. Perhaps this is because of the problem’s relative complexity or because the objectives and performance measures are harder to quantify and evaluate (compared, to say, acreage treated for hazardous fuels or invasives).

Further down the pyramid are forest plans. But under the 2005/2008 planning regulations, these non-decision documents were merely “strategic and aspirational” in nature. So even if they addressed the private-land problem, it would be in the most cursory fashion. Most forest-plan revisions I’m familiar with did not consider the issue anyway: Take, for example, the Lolo and Flathead draft forest plan revisions, which did not analyze corporate timber divestment and how Plum Creek’s real estate development plans may impact natural

⁴ For elaboration see Martin Nie and Char Miller, “National Forest Management and Private Land Development: Historical, Political, and Planning Considerations,” *Society & Natural Resources* (forthcoming 2010).

resource management in the region. The divestment of corporate timber land to real estate is considered by many people to be one of the most significant environmental threats in the region, yet nowhere did these plans even describe what has happened on these checkerboarded sections and what it means for resource management.

At the pyramid's base are project-level decisions, and it is at this level that the USFS might respond to private-land development or where cumulative effects analysis will occur. Just as likely, however, is a more constricted view, with managers deeming the private-lands problem beyond a project's "purpose and need." And given the widespread use of categorical exclusions by the agency, at the project and plan level, it is debatable whether landscape-level analysis will prove the exception to the rule (see GAO 2007, showing that from 2003-05, 72 percent of vegetation management projects were approved using categorical exclusions).⁵

C. Possible Approaches to Problem

At some point, and at some level of forest planning the agency needs to give due consideration to this issue and situate a national forest in its larger landscape. Perhaps the USFS should adopt more programmatic, regional, watershed, and/or place-based environmental impact statements in the future. In 1997, the Council on Environmental Quality recommended a place-based approach to decision making and NEPA-based strategic planning, partly as a better way to address cumulative effects within a geographic area.⁶ The CEQ-sponsored NEPA Task Force (2003) also recommended programmatic analyses and tiering as a way to reduce or eliminate redundant analyses and effectively address cumulative effects; it also found this type of analysis conducive to collaborative and adaptive-based approaches to planning, two current USFS priorities.⁷

Collaboration will certainly be required in dealing with private-land development, leading the USFS to seriously engage a number of actors, from counties to private-property owners. If this approach to planning is implemented, the USFS must also provide a planning roadmap, letting others know when deferred issues will be addressed and final decisions made, so that the public understands the process and can be certain that difficult decisions are not simply being avoided by the agency.⁸

As discussed below, I also hope an "all-lands" approach can be informed by various bottom-up endeavors going on throughout the country. Consider, for example, the much celebrated "Blackfoot Challenge" in western Montana. The USFS is quite involved in this landscape-level approach to conservation, including the related "Blackfoot-Clearwater Landscape Stewardship Project" (which is now part of Senator Tester's S. 1470, as discussed below).

IV. Forest Plans in Relation to Other Plans at Different Scales

A significant question is whether or not a forest plan is the right vehicle for analyzing and making decisions about particular resources and actions other than those specified in NFMA. On the one hand, we should recognize the inherent problems of rational comprehensive (and centralized) planning and pause before dumping yet more analytical responsibilities on planning teams. It is easy to imagine a plan collapsing under its own weight because of additional requirements, like the quantification of ecosystem service benefits to climate change scenario planning to assessing the full range of threats posed by private lands development.

Some of these matters might be more appropriately addressed at higher or lower levels of planning and decision making. For example, many people saw the virtue of making a decision over roadless areas at a national, or even state-level, and not at smaller-scale forest plans. There are also programs and activities that

⁵ *Wildland Fire Management: Lack of a Cohesive Strategy Hinders Agencies' Cost Containment Efforts* (GAO-07-427T)

⁶ *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years* (CEQ, 1997).

⁷ *Modernizing NEPA Implementation: The NEPA Task Force Report to The Council on Environmental Quality* (2003)

⁸ *Ibid.*, at 39.

can be addressed across units and in separate planning processes, such as oil and gas leasing and travel management. Landscape level restoration planning might be best addressed at more regional levels. And some consider public participation to be more effectively utilized at much lower levels of decision making.

My point is to simply suggest that some of the issues identified in the NOI may be more effectively dealt with at different scales of planning and governance. I therefore encourage the USFS to consider adopting a nested, multi-scaled framework (and one that differs from the status quo). If this is done, serious thought must be given to how such plans and assessments are tiered and integrated. And the agency would need to be clear about how all these plans and assessments relate to one another, so we avoid the problems of the so-called planning “shell game.”

V. Lessons from the Bottom-Up

A. Background

My recent research focuses on an important emerging trend: the increasing interest in “place-based” (national forest-specific) legislation and the use of formalized agreements/MOUs between the USFS and various collaborative groups.⁹

Considerable attention has been given to Senator Tester’s Forest Jobs and Recreation Act (S. 1470) and Senator Wyden’s Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009 (S.2895). While these bills are generating national debate, there are place-based initiatives happening on other national forests as well, including the Lewis and Clark, Colville, Clearwater and Nez Perce, Fremont-Winema, Tongass, and federal forests in Arizona, among others. Each initiative is different in significant ways. But all are searching for more durable, bottom-up, and pro-active solutions to national forest management. Some negotiations, like that on Idaho’s Clearwater and Nez Perce, may result in proposed legislation. But others, including arrangements on the Colville and Fremont-Winema, aren’t based on forest specific laws but instead operate through formalized agreements and protocols with the USFS.

Here is a list of such initiatives that my work is now focused on:

Bills and Legislation
S. 1470 Forest Jobs & Recreation Act (Senator Tester/Montana Bill)
S. 2895 Oregon Eastside Forests Restoration, Old Growth Protection, and Jobs Act of 2009 (Senator Wyden Bill)
Pub. L. No. 111-11, Forest Landscape Restoration Act
Rocky Mountain Front Heritage Act (unsponsored proposal) (Lewis & Clark National Forest, Montana)
Agreements
Northeast Washington Forestry Coalition Blueprint (Colville National Forest)
Lakeview Stewardship Group (Fremont-Winema National Forest, Oregon)
Misc/In Development
Clearwater Basin Collaborative (Clearwater and Nez Perce National Forests, Idaho)
Others at various stages of development (e.g., Arizona’s Four Forests Restoration Initiative,

⁹ More detailed analyses of these issues see Martin Nie and Michael Fiebig, “Managing the National Forests through Place-Based Legislation,” *Ecology Law Quarterly*, 37, no 1 (2010); and Martin Nie, Place-Based Forest Law: Questions and Opportunities Presented by Montana Senator Jon Tester’s Forest Jobs and Recreation Act, *Headwaters News* (Sept. 24, 2009), available at <http://www.headwatersnews.org/p.ForestJobsAct092809.html>.

I've chosen this sample because it includes two controversial bills and two well-established MOUs that share some similar goals and purposes, but go about things differently. I've also included the proposed Rocky Mountain Front Heritage Act because it provides a specific proposal focused on travel management and other resource management issues, like weeds. My analysis also includes the Forest Landscape Restoration Act (Pub. L. No. 111-11). I included this Act because it shares some similar goals and purposes as found in the aforementioned bills and MOUs, and because some initiatives hope to use funds already authorized in the law. Also included in parts of the analysis are some proposals that are still in the drafting stage. In these cases, no final agreements have been made, but in some situations there are preliminary areas of agreement that are of relevance. This list is not exhaustive, and there are others I hope to learn from as well, like the impressive restoration efforts in Alabama, the Four Forests Restoration Initiative in Arizona, and the tumultuous life of the Tongass Futures Roundtable.

B. Relevance to Planning Rule

As the planning team moves forward, I encourage it to learn lessons from these and other initiatives. The USFS has stated its intentions to write a planning rule that is collaborative. This is good but also a challenge when it comes to a national-level rule. I hope that I'm wrong but I expect little to emerge from the national and regional roundtables. There will be lots of political posturing but no real deliberation.

In the spirit of collaboration, I encourage the agency to take a different approach and ask how the planning rule can be informed by various collaborative initiatives focused on National Forest management. What do they have in common? What visions do they have? How do they interact with the agency? What role did forest plans play in their formation and implementation? The agency should consider bringing these groups to Washington to hear their stories, or better yet visit their places and see how they are doing things.

(An alternative is to visit Missoula, MT June 8-9, 2010, for the "place-based forest agreements and laws symposium." This symposium will focus on the initiatives referenced above and what lessons they offer. It is being organized by the National Forest Foundation and Bolle Center for People and Forests. Registration information available at <http://www.nationalforests.org/conserve/learning/symposium>)

This is an excellent opportunity to write a new planning rule that is informed as much as possible from the bottom-up. This is not to suggest that all of these initiatives are worth emulating or facilitating, but they do share some common themes and defining characteristics that are worth considering. These include the following:

1. The Search for More Certainty in Forest Management

To begin, most of these initiatives share the goal of securing greater certainty and predictability in national forest management. This manifests itself in numerous ways. First, it explains why some groups have chosen to pursue national forest-specific legislation, and in other cases, why some groups formalized their relationships with the USFS through MOUs and decision making protocols.

Consider this trend against the backdrop of the 2005/2008 planning regulations that maximized agency discretion. Those regulations were generally based on the idea that plans are strategic and aspirational in nature and do not generally bind the agency to a future course of action. Furthermore, the USFS uses the *Ohio Forestry* and *SUWA* decisions to insulate itself from judicial challenge to all sorts of agency actions. Taken together, these judicial decisions and planning regulations created a great deal of uncertainty among the various interests and groups engaged in forest planning processes. Several actors want more certainty and predictability than "strategic and aspirational" plans can offer. Since its inception, the USFS has fought for

maximum levels of administrative discretion, and when it comes to planning, the courts appear willing to grant it. But such freedom comes with risks: in this case, the prospect of citizens looking to control the agency through legislative means.

Second, most initiatives I reviewed are seeking more permanent types of land designations than that provided by forest planning processes or roadless rules that are viewed as being more tenuous. Though differences exist, several groups are making rather straightforward designations, like those areas most suitable for wilderness or special management, more active management in roaded-front-country areas, and those areas prioritized for restoration.

Third, these groups hope to take some intractable issues off the table with some finality. Finding permanent protections for inventoried roadless areas is the most common example. But in some cases, this applies to old growth as well. Senator Wyden's Bill (S. 2895) is most direct in this regard, as it prohibits the cutting of live trees exceeding 21 inches in diameter (with some exceptions). Old growth is also addressed in the Colville and Fremont-Winema MOUs, as both seek to protect and restore old forests. And in Arizona, debate over a diameter cap is front-and-center in the Four Forests Restoration Initiative.

Fourth, several of these initiatives are seeking ways to generate a more certain and predictable flow of timber. This is most controversial when it takes the form of a codified harvest mandate, but the goal is being obtained in other ways elsewhere. On the Colville National Forest, for example, a collaborative group works with the agency to provide a more predictable land base from which timber may be harvested.

Securing a more predictable flow of timber is often explained by making linkages between local economies/sawmills and forest restoration goals. Several of these initiatives define the problem similarly: landscape-level forest restoration requires the harvesting of small diameter trees, and that means the necessity of some sustainably-scaled, locally-rooted forest products industry. And for that industry to survive, or to make the requisite capital investments (in say, small diameter processing equipment), it needs greater assurances about timber supply.

Also relevant to this theme is the widespread interest in stewardship contracting. In most of the initiatives I examined stewardship contracting is central to their restoration strategies. The tool is seen by some people as a means to secure more predictable dollars for restoration work, money that stays on a particular national forest and is not sent back to Washington, D.C., and thus not subject to the highly uncertain congressional appropriations process.

2. Landscape-Scale Restoration and Its Relationship to Rural Communities

Nearly every place-based bill and initiative examined thus far focuses on the need for "landscape-scale" restoration. From a collaboration standpoint, restoration is a common zone of agreement among several of these groups. The scale is sometimes defined by reference to (sub)watersheds or acreage (e.g., 25,000 to 50,000 acres) for which restoration projects should be planned and implemented.

Though the term "landscape-scale" is now fashionable, it is often used with some imprecision. (Just how, for example, does this differ from yesterday's focus on ecosystem management?). These cases give the term additional meaning, by occasionally making reference to other ownerships and by focusing on restoration goals that are transboundary in nature (e.g., water flow, wildlife, natural disturbances, etc.).

The place-based bills and initiatives also adapt a more ecologically-centered definition of restoration than has sometimes been used by lawmakers and the agency in the past. To be sure, all identify a clear need to mechanically treat some forests in order to reduce risks associated with uncharacteristic wildfire effects. But these initiatives go beyond this limited view and focus on additional restoration needs, such as habitat improvement, water quality, management of exotics, and road decommissioning.

Sideboards for restoration are also provided in most of these initiatives. This most often takes the form of prohibitions on new road building and road density standards. As discussed above, these groups have also worked hard to identify areas in which restoration projects should be prioritized and areas that should be more or less left alone in some protected (roadless) status.

Many of these initiatives also adopt a landscape-level view of restoration because of economics and agency budgets. Almost all make linkages between restoration and rural economies. They operate on the principal that a viable wood products industry is necessary for the attainment and financing of various restoration goals. This explains why most of them rely so heavily upon stewardship contracting authority. Some are also premised on the economic use of restoration byproducts. Take, for example, the interest in biomass and small wood utilization: in some cases “landscape-scale” is defined by accessibility to wood products infrastructure that is at an appropriate scale to use woody biomass.

3. More Formalized Collaborative Decision Making

Another common characteristic shared by these initiatives is their desire for more collaborative decision making with the USFS in a more formalized fashion. To begin, the bills and agreements are themselves the product of some type and degree of collaboration. Some groups have been more inclusive than others. But all have attempted to build bridges among some traditional adversaries.

More formal or “institutionalized” collaboration is also sought by many of these initiatives. This explains the use of the MOUs, as both documents explain the purposes and processes to be used in making decisions on these units.

But the place-based bills also attempt to do this by creating various resource advisory committees. These committees have particular compositional requirements, so to include various interests and perspectives, and they are given varying amounts of advisory powers and responsibilities. These responsibilities run the gamut, from helping plan restoration projects to multi-party monitoring. But what all share in common is a mutual desire to be continuously engaged in forest management decisions, not just during the limited timeframes offered by the APA and NEPA.

Conclusion

To conclude, it is my responsibility to note that this research is not yet complete, nor am I suggesting that all these groups share the same exact goals and methods. But qualifications aside, there are particular themes and characteristics that are of relevance to the planning rule.

The good news is that several of these initiatives want to push the agency in a direction that it actually wants to go. The Secretary and USFS leadership have made compelling statements recently about restoration, collaboration, the protection of roadless lands, and other goals shared by these initiatives. Predictably, the agency has reservations about codifying some of these arrangements, as it should. And the devil is always in the details. But there appears to be some general agreements as to where we should be headed in the future.

Of course, not all is smiles and sunshine. The bills, law, and agreements listed above also tell us something is not working on the national forests. All of these initiatives want to fix *something*. My colleagues and I are trying to figure out what problems are most commonly identified by these groups. Is it the agency’s statutory framework? NEPA and planning-related issues? Appeals and litigation? A problematic agency culture that is too resistant to change and too scared to try new ways of doing things? Problematic budgets? There are also some tensions already evident. How, for example, do we promote more certainty while planning and managing more adaptively? And might some of these place-based bills and agreements actually increase the confusion and amount of process required to make decisions?

There are no easy answers. But it seems like the agency has been given an excellent opportunity in this planning rule. Not only can it learn lessons from the 2005/2008 planning endeavors, but also more positive cases of conflict resolution and problem solving from the grassroots.

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Along with Sharon Friedman of the USFS, Nie co-administers a blog, *A New Century of Forest Planning* (<http://ncfp.wordpress.com/>), which has become a popular venue for discussing national forest management and planning issues. The blog promotes discussion among different political perspectives and makes connections between academic research and forest management.