



Ruffed Grouse Society and American Woodcock Society
National Headquarters
451 McCormick Road
Coraopolis, PA 15108-9377
412-262-4044 • Fax 412-262-9207 • Toll Free 888-564-6747
www.ruffedgrousesociety.org

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

RE: National Environmental Policy Act Compliance, Docket RIN 0596-AD31

Dear Ms. Barker,

Established in 1961, the Ruffed Grouse Society/American Woodcock Society (RGS/AWS) is dedicated to uniting conservationists to improve wildlife habitat and forest health. National Forests can provide critical habitat for the conservation of grouse, woodcock, and other forest wildlife, which grouse and woodcock hunters in general, and RGS/AWS members in particular, recognize as an important reason to support the multiple use mission of the U.S. Forest Service (USFS). RGS/AWS therefore appreciates the effort by USFS to update its National Environmental Policy Act (NEPA) regulations to help “achieve its mission to sustain the health, diversity, and productivity of the nation’s forests... to meet the needs of present and future generations.”

NEPA provides a critical role of establishing restrictions and requirements for Federal agencies that propose any major actions with the potential for significant environmental impacts, with the stated purpose “to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” NEPA also establishes the Council on Environmental Quality (CEQ) to oversee implementation of the Act, primarily by providing broad guidance and interpreting specific regulations issued by agencies to meet NEPA’s procedural requirements. Prior to conducting a formal evaluation of the potential impacts of a given proposed major action, agencies must engage in a process commonly referred to as ‘NEPA scoping’ to publicly disclose and take input on the scope of issues to be addressed. NEPA scoping is publicly initiated by publishing a notice of intent in the Federal Register. RGS/AWS recognizes the challenges that accompany changing NEPA regulations, given importance of NEPA for addressing both environmental impacts and public



engagement. We appreciate the opportunity to submit the following comments for consideration, organized under four themes related to outcomes of the proposed rule.

1. ALIGN USFS NEPA SCOPING WITH PRACTICES UTILIZED BY OTHER FEDERAL AGENCIES

CEQ regulations only require NEPA scoping and notice in the Federal Register when agencies reach a decision to prepare an Environmental Impact Statement (EIS) for a proposed action. USFS has also implemented the NEPA scoping process prior to preparation of an Environmental Assessment (EA) and for actions categorically excluded from requiring an EIS or an EA and documented with a decision memo.

RGS/AWS recognizes that USFS may encounter considerable resistance from some segments of the public regarding the proposal to reduce the variety of actions mandating full NEPA scoping, but we reject the notion that such changes should not be pursued because of the likelihood that some parties may pursue legal action. NEPA scoping by USFS has historically greatly exceeded CEQ requirements, yet NEPA was the statute most often invoked by plaintiffs in the 729 suits USFS defended in federal courts from 1989 to 2002.ⁱ Past approaches to NEPA implementation have not prevented USFS proposed actions from facing legal action, but the threat of legal action and lack of clarity regarding the goals of NEPA compliance have constrained effective management implementation.ⁱⁱ The process for the public to file an objection and actions that are subject to objections are covered in 36 CFR Part 218 and would not be altered, as changes in the proposed rule are limited to 36 CFR Part 220. These proposed changes would:

- continue to mandate public engagement that exceeds CEQ requirements
- support decisions by local officials to increase engagement where appropriate and warranted
- implement a Determination of NEPA Adequacy process already applied by other federal agencies to make use of previously completed NEPA analyses for efficient decisions regarding similar future scenarios.

RGS/AWS supports the proposed rule changes and approach to scoping and public engagement, including:

Section 220.4

- Require NEPA scoping only for EIS preparation
- Prepare an announcement of actions and public contact for additional information through public notice under the Schedule of Proposed Actions (SOPA) for all proposed actions that will be documented with a decision memo, EA, or EIS



- Emphasize the importance of the responsible official actively leading the environmental analysis process
- Establish a process for Determination of NEPA Adequacy based on the Department of Interior, Bureau of Land Management procedure (BLM), consistent with CEQ policy to reduce paperwork and avoid redundancy

Section 220.5

- Clarify that beyond basic requirements for public notice, the responsible official may choose to conduct additional public engagement activities to involve key stakeholders and interested parties

2. CLARIFICATIONS AND UPDATES TO NEPA REGULATIONS

The proposed rule would provide important clarification and updates to regulations that USFS acknowledges largely “reflect the policies and practices established by the Agency’s 1992 NEPA Manual and Handbook.” Many of these changes would advance CEQ policy to reduce paperwork and avoid redundancy. RGS/AWS is supportive of improved efficiency as a means of focusing environmental analysis and accelerating the pace of restoring healthy forest habitat. USFS produces more EISs than any other federal agency, with a recent assessment finding more than 25% of the EIS national total generated by USFS alone.ⁱⁱⁱ This volume of EIS preparation contributes to demanding more than 40% of the time of USFS employees at the National Forest level to be spent conducting planning and analysis, slowing the pace at which they can accomplish actual restoration and management to benefit the resources for which they are responsible.^{iv} As one result, the National Forests in the Eastern and Southern Regions of the USFS have seen nearly a 50% decrease in young forest stands, and substantial increases in the oldest classes of greater than 80 years of age over approximately the past decade and a half. This aging of the forests has been counter to the forest plans that were previously developed with substantial public input across all eastern National Forests (USFS Regions 8 and 9). Data indicate that the even age habitat treatments needed to regenerate these young forests have been accomplished on average over only 24% of the acreage needed to meet *minimum* goal treatment levels established in forest management plans.^v These impacts are felt in combination with the increased fragmentation, parcelization, and loss of active forest management on private lands. As a result, population declines since 1980 have been documented among 53% of the bird species that breed in shrub-dominated or young forest habitats across the entire eastern United States and Canada.^{vii} Over the same regions and time period, declines have been documented among just 34% of those bird species that breed in mature forests.

Important points of clarification and updates specifically supported by RGS/AWS include:



Section 220.5(a)

- Clarify that where all activities comprising a proposed action fall within more than one Categorical Exclusion (CE), the responsible official may rely on multiple CEs for a single proposed action
- Clarify that, given that CEs are independently established, a constraint or limitation in a particular CE (such as a spatial or temporal limitation) does not constrain or limit the operation of other CEs that do not explicitly address the same limit

These clarifications will help ensure that managers accurately and fully document the conditions and rationale shaping their decisions. Properly applying all relevant CEs will allow future evaluations of CE implementation to benefit from identifying all scenarios to which existing CEs were applicable.

Section 220.5(b)

- Explain that when evaluating resource conditions to be considered in determining whether extraordinary circumstances warrant analysis and documentation in an EA or EIS, the responsible official may consider whether the long-term beneficial effects outweigh short-term adverse effects
- Clarify that the degree of effects threshold for extraordinary circumstances is when the responsible official determines a likelihood of substantial adverse impacts from a cause-and-effect relationship between a proposed action and listed resource conditions, and not simply the presence of one or more of these resource conditions
- Addition of wild and scenic rivers and potential wilderness areas to the list of Congressionally designated areas constituting extraordinary circumstances
- Inclusion of roadless areas designated under 36 CFR part 294, including Idaho and Colorado Roadless Areas, as areas constituting extraordinary circumstances

RGS/AWS appreciates that short-term adverse effects from disturbance associated with management actions can be a necessary consequence of achieving greater long-term benefits, and respects the need for considering the potential for direct effects of management actions on important resource conditions rather than a simple determination of presence or absence of such conditions in a project area. We also recognize the benefits of clarifying the list of Congressionally designated areas and areas designated under other rules that constitute resource conditions that should be considered in determining extraordinary circumstances.

Section 220.6(a)



- Emphasize CEQ regulations at 40 CFR 1508.9, that establish the primary purpose of preparing an EA is to determine between preparing an EIS or a Finding of no Significant Impact (FONSI)

RGS/AWS believes this clarification is warranted. In many instances, USFS has appeared to treat preparation of an EA as a slightly abbreviated EIS, which is not the intended purpose.

Section 220.7(a)

Revise the list of classes of actions normally requiring an Environmental Impact Statement (EIS) to:

- include development of a new land management plan or land management plan revision
- remove classes of actions that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area

A new or revised land management plan warrants EIS analysis and full NEPA scoping to engage partners and the public in establishing guidance for future management actions. With the revisions suggested above, Section 220.5(b) would identify inventoried roadless areas under the Roadless Area Conservation Rule and state-specific roadless rules at 36 CFR part 294 – plus Congressionally designated wilderness, wilderness study areas, potential wilderness areas, and wild and scenic rivers – as resource conditions to be considered in determining whether extraordinary circumstances warrant an EIS. These considerations already extend additional protection of the ‘undeveloped character of such areas’ beyond the overall consideration of whether environmental impacts of proposed actions warrant an EIS, and management actions already must conform to restrictions under the roadless rules and establishing statutes of Congressional designations. Presumptive preparation of an EIS for such areas is not warranted.

3. NEW AND REVISED CATEGORICAL EXCLUSIONS

Categorical exclusions are developed pursuant to CEQ regulations, to identify categories of actions that will not result in individual or cumulative significant impacts that, therefore, do not require analysis or documentation in either an EA or EIS. CEs are an important component of NEPA, not a circumvention of NEPA or NEPA scoping. Furthermore, USFS proposed forest management actions are planned under the guidance of land management plans that have been previously prepared under the full impacts consideration and NEPA scoping of an EIS, and yet subsequent proposed actions and a public contact for additional information will still be announced through public notice under the SOPA. CEs do not apply



where there are extraordinary circumstances in which a normally excluded action may have a significant environmental effect (see Section 220.5(b) above), and the responsible official retains discretion for final determination of the level of NEPA review to be undertaken regardless of the opportunity to apply a CE.

New and revised CEs specifically supported by RGS/AWS include:

Sections 220.5(e)(20), (23), (24), (25)

RGS/AWS supports implementation of these revised and new CEs to efficiently manage construction and reconstruction of roads and associated infrastructure, restoration and stabilization of lands following closure of roads or trails, and conversion of unauthorized roads or trails to authorized roads or trails. USFS infrastructure includes over 370,000 miles of roads and 13,000 road and trail bridges that are depended upon for resource protection and management as well as hunting and other recreational access. Deterioration of road and trail networks not only constrains access, but failure or delays in addressing but also creates environmental and safety concerns from the risk of erosion, landslides, and slope failure.

Decisions regarding decommissioning, restoration, and conversion of roads and trails, and construction or reconstruction of roads and associated infrastructure are driven by land management plans, travel analysis processes, travel management decisions, and overall goals and objectives of transportation programs, with their own associated public engagement and comment opportunities. Once these actions are determined to be necessary, these CEs, developed based upon reviews of previously implemented projects and extensive USFS experience managing roads and trails, should be relied upon to consider and address potential environmental impacts and allow for efficient management of USFS transportation infrastructure that is facing both growing demand and increasing concerns regarding its condition.

Suggested revisions to new and revised CEs supported by RGS/AWS include:

Section 220.5(e)(26)

RGS/AWS strongly supports implementation of this new CE to address the severe shortfall in USFS management efforts to meet and sustain desired conditions and goals in land management plans. We appreciate USFS effort to apply their experience, professional expertise, and analysis of EAs and associated FONSI for previously implemented projects to conclude that the restoration activities proposed in this CE would not result in potentially significant environmental effects; however, we are concerned that the selection of completed projects from fiscal years 2012 to 2016 for this review will perpetuate the recently overly conservative approach to applying management actions. We strongly encourage ongoing consideration of opportunities to



increase the overall limit to no more than 7,300 acres of activities to improve ecosystem health, resilience, and watershed conditions and the limit to no more than 4,200 acres of commercial or non-commercial timber harvest as additional experience illustrates appropriate opportunities to expand limits in this CE. Furthermore, we see no legitimate reason to qualify commercial or non-commercial timber harvest activities for the CE only when they are proposed to be carried out in combination with at least one additional restoration activity. USFS defines restoration as “the process of assisting in the recovery of an ecosystem that has been degraded, damaged or destroyed” and ecological restoration as “reestablishing the composition, structural pattern and ecological processes necessary to facilitate terrestrial or aquatic ecosystem sustainability, resiliency and health under current and future conditions.” Managers are entirely capable of applying appropriate silviculture to achieve these outcomes through commercial or non-commercial timber harvest, and these tools are in fact vital to efficiently and effectively achieve these goals. **We request this CE be modified to indicate that actions intended to achieve restoration or ecological restoration through commercial or non-commercial timber harvest qualify for this CE regardless of whether they are proposed to be carried out in combination with additional restoration activities.**

Sections 220.5(e)(27)

RGS/AWS strongly supports the intent of this new CE, to authorize USFS to apply another Federal agency’s CE when implementing qualifying actions jointly with that agency, subject to applicable land management plan direction and other applicable laws, regulations, and policies; however, **we request this CE be modified, or additional modifications or new CEs be prepared to directly allow USFS application of such CEs when implementing qualifying actions independently of other agencies.**

4. CONDITION-BASED MANAGEMENT

RGS/AWS supports USFS efforts to define, codify, and apply condition-based management. Restricting actions to be applied based on important on-the-ground conditions can be of great benefit to ensure environmental protection while applying disturbance ecology to appropriately time and locate management actions to meet intended outcomes. This approach supports ecological restoration at a broader landscape or watershed scale under the challenges faced as site-specific conditions change even over the short-term, let alone over the lengthy time that regularly transpires between initial planning, public notice and response, and final implementation of proposed actions or alternatives. Codifying from existing practice to provide clear, consistent direction linking actions to a range of qualifying



conditions is an important step to encourage more widespread and responsible application of condition-based management.

The specific changes supported by RGS/AWS include:

Section 220.3 Add definition of condition-based management: a system of management practices based on implementation of specific design elements from a broader proposed action, where the design elements vary according to a range of on-the-ground conditions in order to meet intended outcomes.

Section 220.4(k): new paragraph for condition-based management, specifying that the proposed action and one or more alternatives may include condition-based management.

Respectfully submitted,

Brent A. Rudolph, Ph.D.
Chief Conservation and Legislative Officer

- ⁱ Keel, D., Malmshamer, R., Floyd, D., & Perex, J. (2006). Forest service land management litigation 1989–2002. *Journal of Forestry*, 104(4), 196–202.
- ⁱⁱ Auer, M., Richards, K., Seesholtz, D., Fischer, B., Freitag, C. & Grice, J. (2011). The U.S. Forest Service and its responsibilities under the National Environmental Policy Act: A work design problem. *Public Organization Review*, 11(2), 135–153.
- ⁱⁱⁱ CEQ (Council on Environmental Quality). (2007). Calendar year 2006 filed EISs. http://ceq.eh.doe.gov/nepa/Calendar_Year_2006_Filed_EISs.pdf.
- ^{iv} USDA Forest Service. (2002). *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management*.
- ^v Petition for Rulemaking re: Implementation of Management Measures to Maintain the Viability of Early Successional Forest Habitats and Associated Wildlife on National Forests in Regions 8 and 9 - filed April 30, 2015, by the Ruffed Grouse Society Before the Secretary of the United States Department of Agriculture and the Chief of the United States Forest Service.
- ^{vi} Dessecker, D. R., et al. 2007. Ruffed Grouse Conservation Plan Executive Report. https://ruffedgrousesociety.org/wp-content/uploads/2019/07/RG_ConservationPlan-ExecRep.pdf