



August 26, 2019

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

Via email: nepa-procedures-revision@fs.fed.us

Subject: Comment in Response to Proposed Rulemaking: National Environmental Policy Act (NEPA) Compliance, Docket Number FS-2019-0010, RIN 0596-AD31

Dear Ms. Barker:

The Project On Government Oversight (POGO) submits the following comment in opposition to the proposed rule titled, “National Environmental Policy Act (NEPA) Compliance,” submitted by the U.S. Forest Service and published in the Federal Register on June 13, 2019. POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. For the following reasons, POGO opposes the proposed rule and urges the Forest Service to withdraw it.

POGO is concerned that the proposed rule would erode transparency and accountability by significantly reducing public involvement in and environmental assessments of future projects in the nation’s national forests. The Forest Service has previously stated that public involvement is a critical piece of analyzing proposed projects.¹ That’s because public involvement allows individuals and local organizations—who often have valuable local expertise and knowledge—to provide critical insight to proposed projects and suggest improvements. Public comment periods hold government agencies accountable by ensuring their decisions are made in a transparent way. Similarly, the process affords agencies, like the Forest Service, a chance to generate greater public support for a project by fully explaining to the public why particular choices were made and why alternatives were deemed unworkable. POGO strongly believes that the Forest Service must maintain the public comment requirement of the NEPA process and continue to empower citizens with information and tools to hold their government accountable.

Since 1970, NEPA has ensured that the federal government takes into consideration environmental consequences of proposed actions, while simultaneously recognizing the

¹ U.S. Forest Service, “Frequently Asked Questions (FAQs) Scoping Period R5 Forest Plan Revisions Inyo, Sequoia and Sierra National Forests,” updated September 12, 2014.

https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3821555.pdf

importance of public participation in the government decision-making process. POGO strongly believes that removing these transparency and analysis requirements will result in a less accountable and less responsive federal government.

Determination of NEPA Adequacy

The proposed rule outlines a process for a “determination of NEPA adequacy” in which a previous Forest Service NEPA analysis can satisfy NEPA’s requirements for a subsequent proposed action. According to the proposed rule, “the process requires the consideration of the following factors: the similarity between the prior decision and the proposed actions, the adequacy of the range of alternatives for the proposed action, any significant new circumstances or information since the prior decision, and the adequacy of the impact analysis for the proposed action.”²

While the determination of NEPA adequacy of Forest Service procedures would provide the agency an opportunity to be more efficient by reducing the number of times the agency has to conduct a new analysis, there are several flaws to this proposal. First, while projects may be similar in nature, not all project environments are the same. For example, the Army Corps of Engineers proposed a plan to dredge the Cache River for flood control—something it does numerous times each year all across the country. However, the plan was challenged based on the adequacy of the NEPA analysis, which did not take into account that the dredging project would threaten the hardwood wetlands the endangered ivory-billed woodpecker called home. As a result of the challenge, the project was cancelled. Had the agency not considered the unique habitat of the Cache River, it would have further endangered the ivory-bill woodpecker.³ Each analysis must consider the unique location, potential negative outcomes, and solutions to reduce negative impacts. Certainly, there are lessons to be learned from similar projects, but POGO does not believe that every new project should skip a complete NEPA review simply based on a potential similarity to a previous project.

Second, local communities are usually the most knowledgeable about the unique characteristics of the region and can offer invaluable insight into projects. For example, the Forest Service proposed a plan to reduce the likelihood of large wildfires in Bighorn National Forest, Wyoming. Nearby private landowners used the NEPA process to express their concerns that the Forest Service plan—which required greater access to the region—would open up their private lands to trespassers. In response, the agency revised the plan, adding gates, among other design elements, to assuage the landowners’ concerns.⁴ Skipping the process of informing and gathering input from the public means the agency and the project will lose out on the public’s specialized knowledge. Inviting the input of the public on every project takes time, but it ensures that each project is fully vetted and that as many problems as possible are identified and addressed before the project moves forward.

² U.S. Forest Service, “National Environmental Policy Act (NEPA) Compliance,” 84 Fed. Reg. 27544, 27546 (June 13, 2019). <https://www.govinfo.gov/content/pkg/FR-2019-06-13/pdf/2019-12195.pdf>

³ Rober G. Dreher, “The Political Assault on the National Environmental Policy Act,” Georgetown Environmental Law & Policy Institute, 2005, 5. http://www.gelpi.org/gelpi/research_archive/nepa/NEPAUnderSiegeFinal.pdf.

⁴ Elly Pepper, “Never Eliminate Public Advice: NEPA Success Stories,” Natural Resources Defense Council, February 1, 2015. <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>

Finally, proposals should be evaluated using the most current and thorough scientific assessments possible. This is another area where the public comment process assists the agency. Stakeholders can cite in their comments the latest research and studies relevant to the project—new techniques, best practices, and methods to monitor and evaluate ongoing work. Projects should be accountable to the public and the latest science, not to previous agency determinations.

Adding and Expanding Categorical Exclusions

The Forest Service’s proposed rule would increase its use of categorical exclusions (CE), which allow federal permits to be issued for projects that are determined to have no significant environmental impact and therefore do not require extensive environmental analysis.⁵ The purpose behind the proposed reform of the environmental review process is to increase efficiency and reduce the time it takes for approval. Based on Forest Service data, the proposal would likely be used for about 75 percent of its decisions.⁶ Although the Forest Service claims the need to streamline NEPA tools for efficiency, it has not adequately documented the need for the new categorical exclusions. With such a large amount of cases being possibly decided by a CE, the Forest Service should better justify why these cases should be excluded.

If a project is determined from prior experience and analysis to result in no significant impact to the environment, and if no extraordinary circumstances exist which might cause a significant impact in the specific case, the proposed project can be “categorically excluded” from documentation in an environmental assessment or environmental impact study. The Forest Service should be fully transparent by publishing its analysis and scientific review of why a proposed project meets the criteria for a categorical exclusion and thus does not pose a significant environmental impact. This is critically important since there is no formal pre-decision comment period with a categorical exclusion.⁷

It’s important to note that environmental assessments are a central feature of NEPA and serve as an important tool to increase the transparency of proposed projects and reduce their potential negative consequences. The intent of NEPA was “to promote efforts which will prevent or eliminate damage to the environment” and to “stimulate the health and welfare of man.”⁸ Considering a project’s environmental impact is crucial to holding proposed projects accountable. Protecting sensitive natural habitats and ecosystems, as well as public health, should not be ignored in favor of bureaucratic expediency.

In addition, by enforcing existing transparency requirements, such as environmental assessments, the Forest Service holds extractive industries and other companies accountable by ensuring they are not pillaging national forests at the expense of the environment and public health.

⁵ U.S. Forest Service, “Proposed National Environmental Policy Act Rule,” June 2019.

<https://www.fs.fed.us/emc/nepa/revisions/includes/docs/NEPARuleFactSheet.pdf>

⁶ The Forest Service estimates that of its 277 annual decisions completed with an EA, up to 210 would be made with CEs if the proposed rule is finalized. National Environmental Policy Act (NEPA) Compliance, 84 Fed. Reg. 27544, 27550-27551 [see note 2].

⁷ U.S. Forest Service. “NEPA Definitions.”

<https://www.fs.usda.gov/detail/btnf/landmanagement/?cid=stelprdb5292699> (Accessed August 22, 2019)

⁸ 42 U.S.C. § 4321-4347 (1970) <https://www.govinfo.gov/content/pkg/STATUTE-83/pdf/STATUTE-83-Pg852.pdf>

Environmental assessments help identify reasonable alternatives which should always be considered, especially if they could help reduce the project's negative effects. Moreover, alternatives are often suggested or even improved upon by public involvement. The NEPA process of requiring agencies to conduct full environmental assessments and have public review of the assessments has served the Forest Service and other agencies well for decades, and we should be cautious in considering any changes to it.

Scoping

Another serious flaw in the proposed rule is the elimination of an official outlet for public opinion in certain projects. Given that the Forest Service is proposing to start making most of its decisions through CEs, eliminating "scoping" means the Forest Service would eliminate public comment on the majority of the agency's decisions. This is particularly concerning since public input has been crucial to the NEPA since the law's inception.

Scoping is one of the earliest steps outlined by NEPA to gather input from both internal and external stakeholders to help focus environmental impact statements that can be used to revise proposed projects.⁹ Furthermore, according to the Forest Service, a scoping period gives the public a chance to tell the agency what issues and concerns should be addressed.¹⁰ Engaging the public provides a critical layer of transparency and accountability to proposed projects.

NEPA reinforces the democratic system by providing an avenue for citizens to comment upon and influence government decisions that affect their lives and communities.¹¹ For example, when a large timber sale in Washington's Gifford Pinchot National Forest was proposed, local citizens worked together with industry, labor representatives, and environmentalists to revise the plan to use timber harvesting to restore rather than destroy the forest's natural ecosystem. As Elly Pepper, deputy director of the Natural Resources Defense Council, wrote in 2015, "Instead of clearcutting, the new proposal, which the Forest Service adopted and is currently implementing, focuses on thinning dense stands of Douglas fir (the result of previous clearcutting) to re-create a more natural, diverse forest structure while still yielding 5.2 million board feet of commercial timber."¹² Engaging the public in decisions provides the opportunity to improve plans in a way that benefits all parties while safeguarding the local environment.

Handout to Industries

Finally, we are concerned that the proposed rule greatly benefits the extractive industries to the detriment of the general public. Under the proposed rule the Forest Service would allow a CE for commercial timber harvesting within a 4,200-acre area so long as the harvesting was carried out in combination with at least one additional restoration activity. While improving forest health

⁹ U.S. Forest Service, "Frequently Asked Questions (FAQs) Scoping Period R5 Forest Plan Revisions Inyo, Sequoia and Sierra National Forests" [see note 1].

¹⁰ U.S. Forest Service, "Frequently Asked Questions (FAQs) Scoping Period R5 Forest Plan Revisions Inyo, Sequoia and Sierra National Forests" [see note 1].

¹¹ Dreher, "The Political Assault on the National Environmental Policy Act," 1 [see note 3].

¹² Pepper, "Never Eliminate Public Advice: NEPA Success Stories" [see note 4].

and watershed conditions are laudable goals, the Forest Service should also guarantee that extractive proposals are in the public's interest.

In short, the agency should require assurance that the benefits of the restoration activity outweigh the harmful impact of the harvesting. If not, a timber harvester could simply make empty claims that they are making improvements to a local watershed or mitigating the effects of a possible forest fire, while helping themselves to more than six and a half square miles of timber for commercial use without having to invest in environmental impact studies or go through the public comment process. This section of the proposed rule flies in the face of the Forest Service's stated mission to "sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."¹³

Furthermore, the Forest Service should guarantee that when commercial harvesting takes place in the national forests, the industry pays a fair price for the timber. By failing to do so, the Forest Service forgoes potential revenue that can be used to further environmental protection, forestry management efficiency, and stronger oversight of commercial activities in the forests. The Forest Service should promote greater transparency and accountability from companies that extract natural resources from our nation's national forests.

Thank you for your consideration of this comment. Given that the Forest Service manages 193 million acres of public land, it is essential that adequate transparency and accountability mechanisms are in place. Cutting off all public involvement in project planning is undemocratic and threatens transparency and accountability. Therefore, we urge the Forest Service to withdraw the proposed rule.

Sincerely,



Danielle Brian
Executive Director

¹³ U.S. Forest Service, "About the Agency." <https://www.fs.fed.us/about-agency> (Accessed August 20, 2019)