



February 2, 2018

Sent via public participation portal

NEPA Services Group
c/o Amy Barker
USDA Forest Service
Geospatial Technology and Applications Center
2222 West 2300 South
Salt Lake City, UT 84119

Re: Forest Service National Environmental Policy Act Procedures Revision

Please accept the follow scoping comments from Trout Unlimited (TU) regarding the advanced notice of proposed rulemaking to revise National Environmental Policy Act (NEPA) procedures for the United States Forest Service.

TU is a national sportsmen's conservation organization with more than 300,000 members and supporters organized into over 400 chapters from Maine to Alaska. Our mission is to conserve, protect and restore North America's coldwater fisheries and their watersheds. Public lands are incredibly valuable to our members, both for recreation opportunities and fishery values. As much as 50 percent of the nation's blue ribbon fisheries cross lands managed by the Forest Service, and in many cases National Forest lands serve as the last, best refuge for native trout and salmon.

Trout Unlimited's conservation work on public lands focuses on engaging with local, state and federal partners to find solutions that balance multiple interests and uses. This work is multi-faceted, including both participating in land use decisions as a member of the public, and as a partner with the Forest Service on restoration projects that require NEPA review. In this way, we have a unique perspective having participated on both sides of the NEPA coin.

NEPA is one of our America's bedrock environmental laws, providing meaningful opportunities for the public to be involved in the management of their public lands and ensuring that agency decisions are fully informed and grounded in the best available information. The public land hunting, fishing, and conservation heritage we enjoy today is in large part due to NEPA.

In our experience, collaboration is one of the most important tools for fostering efficient land management. When projects are conceived, developed, analyzed and implemented in a collaborative manner, the result is not only increased efficiency, but also more durable decisions that are less prone to litigation. As the Forest Service revises its NEPA procedures, we encourage the agency to consider revisions that strengthen opportunities for collaboration.

Additionally, we note that revising regulations is no substitute for ensuring the Forest Service and our other public land management agencies have the resources necessary to be effective land managers. The Forest Service is right to seek opportunities to increase efficiency, but until Congress fixes the

problem of fire borrowing and adequately funds both fire and non-fire programs, the fundamental challenges facing the Agency will only increase.

Pursuant to the request for comment, we offer the following comments:

Processes and analysis requirements

Generally, TU supports efforts to increase the efficiency of decision-making and environmental review. However, efficiency should not come at the expense of public participation, transparency, or rigorous scientific analysis that ensures fully-informed decisions. We strongly recommend that any revisions of the Forest Service's NEPA requirements adhere to these principles.

Landscape-scale analysis and decision making

Landscape scale decision-making should start with sound land use planning. As numerous national forests revise their forest plans under the 2012 Planning Rule, these plans should reflect the landscape-scale context of the planning rule, including opportunities for landscape-scale restoration. If forest plans fully incorporate landscape-scale context for management, then project-level analysis will benefit from analysis and assessment at the forest plan stage. In addition to revisions to NEPA procedures that may increase efficiency of environmental analysis, we encourage the agency to consider if and how full implementation of the 2012 Planning Rule will in itself lead to increased efficiency.

Categorical exclusions

We encourage the Forest Service to emphasize tiering to broader environmental analysis (e.g., forest plan environmental impact statements) and incorporating by reference existing analyses. By focusing on what is new or unique about a given project, this could help to streamline the NEPA process. In many cases, we believe that a more concerted effort to utilize these existing tools will negate the need for new categorical exclusions.

The Forest Service should not only consider if new categorical exclusions are warranted, but also if there is a need to clarify existing ones. For instance, the Energy Policy Act of 2005 created five statutory categorical exclusions (referred to as Section 390 categorical exclusion) that permit the Bureau of the Land Management and Forest Service to approve certain oil and gas projects without completing either an Environmental Impact Statement or an Environmental Assessment. Subsequently, a 2009 Government Accountability Office (GAO) found that "A lack of clarity in section 390 and BLM's guidance has raised serious concerns about the use of section 390 categorical exclusions."¹

In response to the GAO study, the Forest Service issued guidance to all Regional Foresters to provide the necessary clarity on the use of Section 390 categorical exclusions². This guidance required Authorized Forest Officers to apply key NEPA requirements when using Section 390 categorical exclusions, including scoping, public involvement and applying extraordinary circumstances reviews; the BLM issued similar guidance. The Western Energy Alliance filed a lawsuit challenging this guidance and the court found that the memos violated the Administrative Procedures Act because they constituted a regulation adopted without using proper rulemaking procedures.

¹ [GAO-09-872](#): Published: Sep 16, 2009

² [Energy Policy Act of 2005, Use of Section 390 Categorical Exclusions for Oil and Gas](#), issued June 9, 2010.

The court issued an injunction blocking implementation of the guidance and neither the Forest Service or the BLM has pursued rulemaking to develop the necessary guidance on the use of Section 390 categorical exclusions. Given that the Forest Service has now initiated rulemaking to revise its NEPA procedures, we suggest that the agency take advantage of this opportunity to finally develop much-needed guidance on the application of Section 390 categorical exclusions and ensure that scoping, public involvement and extraordinary circumstances reviews are conducted.

Thank you for the opportunity to provide our perspective for improving the Forest Service's NEPA procedures. We hope that are suggestions are helpful and look forward to future engagement with this important rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Fisher". The signature is fluid and cursive, with the first name "Corey" being more prominent than the last name "Fisher".

Corey Fisher
Public Land Policy Director
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