

How to Influence Decisions on National Forest Lands

Training Manual for Wild Virginia Forest Defense Task Force (for use by Task Force members or any interested citizens)

Introduction

The participation of citizens in monitoring activities on Virginia's National Forests is an indispensable part of the effort to protect and restore the ecological health of the valuable resources in OUR forests. Always remember that these lands belong to us all and are merely managed on our behalf by the U.S. Forest Service. You are to be applauded for your commitment to exercise your rights and responsibilities to affect the future of these lands.

Our Mission - Your Mission

Wild Virginia is a grassroots, non-profit organization dedicated to preserving wild forest ecosystems in Virginia's National Forests through education and advocacy

By becoming a member of the FDTF, you have accepted the challenge and the opportunity posed by Wild Virginia's Mission Statement. You will be learning about the laws, regulations, and agency procedures that govern Forest Service actions and, of course, any proposals and positions we take regarding Forest management must be consistent with these these legal guidelines. However, despite the multitude of rules that apply to project planning and conduct, there are many areas where judgment must be applied. Whenever you make comments, proposals, or protests remember that the one guiding principle in our Mission Statement is that we are dedicated to preserving wild forest ecosystems.

Goals and objectives for the FDTF

Objectives

- ◆ To help Wild Virginia fulfill its mission to protect biological resource values and natural forest processes
- ◆ To help inform Wild Virginia members, the general public, and decision-makers about threats to the Forests

Goals

- ◆ To learn about Forest Service administrative processes and rules and how to effectively work within the system
- ◆ To develop working relationships with key Forest Service personnel
- ◆ Affect staff decisions on projects, by having entire projects dropped or by having certain features of projects dropped or changed in accordance with our objectives
- ◆ To have staff decisions reversed through objections/appeals

- ◆ To establish individual and group standing for possible legal challenges, to “exhaust all administrative remedies,” and to build a factual and legal basis for lawsuits (to “preserve issues and arguments”)

Threats to National Forests

Some of the activities that are proposed for National Forest lands are well known for their potential to damage the forests. Others, cloaked beneath titles such as “vegetation management” or “wildlife management,” sound generally benign. In any case, our primary question in regard to any project is the same: will this activity benefit or damage the ecosystems affected? The list below includes many of the threats that can or have arisen in the George Washington and Jefferson National Forests but we can never assume that new ones won’t appear.

logging
vegetation management
wildlife management
restoration
biomass/energy burning
oil and gas extraction
mining
road building
off-road (ORV) and all-terrain (ATV) vehicles
herbicides and pesticides
prescribed burning
wind power
land swaps
special-use permits

Roles and Players

In addressing any of the threats on the forests the following can be important players.

1. The Forest Service
2. Money
3. State Agencies
 - a. Department of Natural Heritage (Conservation Sites/Stream Conservation Units)
 - b. Department of Game and Inland Fisheries (game and non-game species and fish management)
 - c. West Virginia Division of Natural Resources
4. Involved citizens
5. Stakeholders (LIST)
6. Elected Officials
 - a. Key Senate and Congressional Committee Members
 - b. Local Senators and Congresspeople
 - c. Governor
 - d. State Assembly and State Senators
 - e. Counties and Municipalities

7. Public opinion
8. Social Networking
9. Science

Resource Goals and Issues

Conservation Conflicts

Multiple -Use

Forest Watch(ers) Project Time Line

Call FS Main office-ask to be put on scoping/SOPA and project list for all ranger districts

- 1. Check SOPA**
- 2. Start a folder on your project (electronic or paper)**
- 3. Check scoping letter or call* Ranger to verify**
 - a. The paper the notice is published.**
 - b. If project has a “comment period” or “predecisional objection period”**
 - c. length of comment period**
- 4. Call* or check website or newspaper to verify publishing date**
- 5. Record last date to send (e-mail) or postmark (usps) comments.**
- 6. Get a map-USGS topographical, National Geographic Trail map, gazetteer or all of the above-and see where the project is located. Map it out and how to get there.**
- 7. Call* Ranger or contact if any questions or to set up site visit.**
- 8. List/outline main issues and concerns**
- 9. Contact or get added to Heartwood Forest Watch List serve-ask questions**
- 10. Create comments**
- 11. If you want, ask one person you know on Forest Watch list to review comments before you submit them...that extra pair of eyes is always helpful**
- 12. Check SOPA regularly (at least at beginning of each quarter) for progress updates**
- 13. EIS and Decision, EA or CE released -consider next steps**

You should be contacted via mail when the EA is released or decision memo is issued.

Note if there have been any significant changes in the project or interesting information in the decision. Take note and include in project file.

Also note if you feel there may be grounds for objection, appeal or litigation.

If the decision is subject to *appeal or objection* consider if there are sufficient grounds to take further action. If so, get help asap. *Time is ticking.*

If it is not, note what new information is included with the decision. If you feel there are grounds for *litigation*, get help.

Chain of Legality

1. Legislation – Congress
2. Court Rulings – the legal record of litigation and decisions
3. Rules and Regulations – administrative detailing of legislation – Department of Agriculture – published in the Federal Register

Procedural Guidelines (non-binding but relevant) <http://www.fs.fed.us/im/directives/>

1. Forest Service Manual – FSM (*The Forest Service Manual contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities.*)
2. Forest Service Handbook – FSH (*The principal source of specialized guidance and instruction for carrying out the direction issued in the FSM.*)
3. USFS Directives (*Legal authorities, responsibilities, delegations, and general instructions and directions to plan and execute programs.*)

Legislation that establishes USFS policies, procedures and citizen input

- **1891 - The Forest Reserve Act** authorized the set-aside of public lands as forest reserves.
- **1897 - The Forest Management Act** created the U.S. Forest Service as managers of the National Forests.
- **1897 - The Organic Act** provided purpose for and stated the criteria for forest reserves: timber production, watershed protection and forest protection.
- **1905 - The Transfer Act** moved the National Forests and the Forest Service from the U.S. Department of Interior to the U.S. Department of Agriculture.
- **1911 - [The Weeks Act](#)** gave the Secretary of Agriculture the authority to purchase forested, cut-over, and denuded lands for the regulation of navigable streams and opened up the possibility of creating National Forests in the eastern United States.
- 1924 - The Clark-McNary Act established cooperative assistance programs to assist private forest owners in the management of their lands.
- 1928 - McSweeney-McNary Act officially recognized the research program of the U.S. Forest Service.
- 1944 - Sustained Yield Management Act authorized the Secretaries of Agriculture and Interior to establish cooperative sustained yield units encompassing both public and private lands.
- **1960 - [Multiple Use - Sustained Yield Act](#)** provided a mandate for management priorities on the National Forests to include all resource uses.
- **1964 - [The Wilderness Act](#)** created a system of wilderness reserves and specific management guidance for wilderness areas designated by Congress. Today there are 107.5 million acres of designated wilderness on federal lands and more than 35 million acres of that wilderness is on the National Forests.
- 1968 – The Wild and Scenic Rivers Act
- **1969 - [The National Environmental Policy Act](#)** established a U.S. national policy promoting the enhancement of the environment and also established the President's

Council on Environmental Quality (CEQ). NEPA also established procedural requirements for all federal government agencies to prepare Environmental Assessments (EAs) and Environmental Impact Statements (EISs). EAs and EISs contain statements of the environmental effects of proposed federal agency actions.[2] NEPA's procedural requirements apply to all federal agencies in the executive branch.

- **1973 - [The Endangered Species Act](#)** is to protect species and also "the ecosystems upon which they depend." It encompasses plants and invertebrates as well as vertebrates.
- **1974 - [The Forest and Rangeland Renewable Resources Planning Act](#)** authorizes long-range planning by the US Forest Service to ensure the future supply of forest resources while maintaining a quality environment. RPA requires that a renewable resource assessment and a Forest Service plan be prepared every ten and five years, respectively, to plan and prepare for the future of natural resources.
- **1975 – The Eastern Wilderness Act** allowed lands to be considered for Wilderness designation which have suffered previous abuse, but that also have the ability to recover, and therefore be designated for wilderness protection. It designated 16 new wilderness areas in the eastern United States
- **1976 - [National Forest Management Act](#)** is the primary statute governing the administration of national forests and was an amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974, which called for the management of renewable resources on national forest lands. The 1976 legislation reorganized and expanded the 1974 Act, requiring the Secretary of Agriculture to assess forest lands, and develop and implement a resource management plan for each unit of the National Forest System.
- **1992 - Appeals Reform Act** – ARA - § 322, Pub. L. No. 102-381, 106 Stat. 1419 - <http://www.fs.fed.us/emc/applit/includes/93appreform.pdf> which requires the U.S. Forest Service and the Secretary of Agriculture to allow the public to help guide how logging and other projects take place on our National Forests. Congress required the Forest Service to inform the public about pending projects, let the public comment on proposed projects so that they could be improved or rejected entirely, and required the Forest Service to allow administrative appeals contesting projects before they were implemented. It was adopted in response to a Forest Service proposal to do away with most administrative appeals of project decisions, such as timber sales, implementing forest plans.
- **2001 - Roadless Area Conservation Rule** protected 58.5 million acres of roadless areas in our national forests from most logging and road-building. The rule allowed for continued management of roadless areas against fire and disease. The roadless rule is the law of the land after surviving its final legal challenge on March 25, 2013, when the U.S. District Court for the District of Columbia rejected the state of Alaska's challenge that, while aimed at the Tongass National Forest, would have nullified the national rule. The Alaska case was the final litigation challenging the rule nationwide. The Court held that no further challenges are allowed, because the statute of limitations has run out.
- **2003 - Omnibus Appropriations Act of 2003** – allows Stewardship Contracting
- **2008 - Healthy Forests Restoration Act (2008)** –36 CFR 218 - was designed by the Bush Administration, timber interests, and their Congressional allies as a means of opening public forests up to more logging under the guise of "community fire protection," "fuels reduction," "restoration" and "forest health." The HFRA eliminates

environmental review and analysis impacts for a category of insect logging projects up to 1,000 acres in size and removes the public's ability to review, comment on and participate in these types of projects and removes the requirement to consider a full range of alternatives.

- **2014 Farm Bill** – Expands HFRA allowing categorical exclusions on projects up to 3000a in areas with existing, past or potential insect or disease infestations. Affects 45 million acres.
- Congressional Appropriations (for current year)

CFR – Code of Federal Regulations

Rules and Regulations

The Code of Federal Regulations (CFR) is an annual codification of the general and permanent rules of the executive departments and agencies of the Federal Government published by the Office of the Federal Register (OFR) in the National Archives and Records Administration (NARA) in the [Federal Register](#). The purpose of the CFR is to present the official and complete text of agency regulations in one organized publication and to provide a comprehensive and convenient reference for all those who may need to know the text of general and permanent Federal regulations.

The CFR is divided into 50 titles representing broad areas subject to Federal regulation. Each Title is divided into chapters that are assigned to agencies issuing regulations pertaining to that broad subject area. Each chapter is divided into parts and each part is then divided into sections - the basic unit of the CFR. Those interested in a specific topic, such as Telecommunications, need only purchase a specific volume or groups of volumes that pertain to the desired topic. A full set of the CFR consists of approximately 200 volumes. The approximately 200 CFR volumes are revised at least once a year on a quarterly basis as follows:

- Titles 1 -- 16 as of January 1
- Titles 17 -- 27 as of April 1
- Titles 28 -- 41 as of July 1
- Titles 42 -- 50 as of October 1

The CFR is keyed to and kept up-to-date by the daily [Federal Register](#). These two publications must be used together to determine the latest version of any given rule. When a Federal agency publishes a regulation in the Federal Register, that regulation usually is an amendment to the existing CFR in the form of a change, an addition, or a removal.

1. Planning Objection Process– 36 CFR 219
2. Notice, Comment and Appeal Procedures for National Forest System Projects and Activities – 36 CFR 215
3. HFRA and Project Level Objection Process- 36 CFR 218
4. Direction for the project-level objection process is at [36 CFR 218](#), and for the planning objection process is at [36 CFR 219](#)

Roles

1. The agency
2. Money
3. State Agencies
 - a. Department of Natural Heritage (Conservation Sites/Stream Conservation Units)
 - b. Department of Game in Inland Fisheries (game and non-game species and fish management)
 - c. West Virginia Division of Natural Resources
4. The public
5. Stakeholders
6. Elected Officials
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 - d. State Assembly and State Senators
 - e. Counties and Municipalities
7. Public opinion
8. Social Networking
9. Science

Opportunities for public participation

1. Forest Planning Land and Resource Management Plans and Revisions (Plans)
2. Amendments to Forest Plans
3. Projects

FOREST PLANS

Forest Planning in the George Washington National Forest

1. 1982 Planning Regulations (82 Regs)
2. 2012 New Planning Regulations
 - Purpose and Need
 - Forest Assessment Report
 - Ecological
 - Economic
 - Social trends
 - Landscape level
 - Planning - Alternatives
 - Preferred Alternative and Draft Plan
 - Final Plan and Environmental Impact Statement
3. *Possible Appeal*
4. *Possible Litigation*

Congressionally and Administratively Designated Special Areas

- Wilderness Areas
- Wild and Scenic Rivers
- National Monuments (Adm)

- National Scenic Areas
- Roadless Areas (Adm)

Forest Plans and Goals

- Management Areas
- Management Prescriptions
- Special Biological Areas
- Research Natural Areas
- Wilderness Study Areas

FOREST SERVICE PROJECTS

Schedule of Proposed Actions – SOPA - <http://www.fs.fed.us/sopa/> -

As part of carrying out the mission of the Forest Service, agency resource specialists develop proposals for projects that will enhance or maintain resource values on public lands, as well as generate products. These projects implement the current forest plan and must be consistent with the plan.

In addition, the public may submit proposals for various uses such as rights-of-way, land exchanges, and recreational events.

A necessary part of the planning for these is the environmental analysis and documentation, pursuant to the National Environmental Policy Act (NEPA) and agency direction.

The Schedule of Proposed Actions (SOPA) is published in January, April, July, and October. It contains a list of proposed actions that will soon begin or are currently undergoing environmental analysis and documentation so that people can become aware of and indicate their interest in specific proposals. It contains the best available information at that time.

The Schedule of Proposed Actions includes proposals whose decisions are expected to be documented in a Decision Memo, Decision Notice, or Record of Decision, pursuant to the National Environmental Policy Act (NEPA) and agency direction.

Project Time Line

USFS Project Timeline

(draft updated 11/19/13)

1. District Ranger and Staff propose possible projects
2. Project Development - Preliminary Analysis –SOPA listing - <http://www.fs.fed.us/sopa/>
 - a. Location
 - b. Goals and objectives determined – must be consistent with plan
 - c. Range and scope of possibilities
 - d. Preliminary on site analysis by staff
3. Scoping Notice or “in progress” - The procedures by which the Agency identifies important issues and determines the extent of analysis necessary for an informed decision

on a proposal. Scoping is part of the public involvement process. Additional information about scoping can be found in [Forest Service Environmental Policy and Procedures Handbook 1909.15, Chapter 10](#).

4. Identify NEPA Process
 - a. Environmental Impact Statement (EIS) – appeal
 - b. Environmental Assessment (EA) – predecisional objection
 - c. Categorical Exclusion (CE) – appeal
5. A. Decision with EIS or CE
 - a. File appeal
 - b. Appeal resolution meeting
 - c. Appeal Ruling
 - d. Litigation
5. B. EA released
 - a. Predecisional objection filed
 - b. Decision and Ruling on Objection
 - c. Litigation

3 Possible Scenarios

1. Categorical Exclusion
 - Project is Announced
 - Project Planning Phase
 - No Decision, no analysis, no review
 - Litigation
2. Environmental Assessment
 - Project is announced
 - Pre-Scoping analysis
 - Project Announcement-begin Scoping
 - Ground Truthing
 - Comment
 - Environmental Assessment or EIS
 - Objection
 - Decision
 - Litigation
3. Environmental Impact Statement
 - Project Planning
 - Project is announced beginning Scoping Process
 - Comment
 - Ground truthing
 - Decision and EIS released
 - Appeal
 - Litigation

An appeal is a formal request to a higher agency authority for review of an environmental decision. The public's rights and responsibilities to file an appeal are defined in specific appeal

regulations. Usually, all administrative processes must be exhausted before a person can bring a court action (litigation) associated with an environmental planning decision.

Predecisional Objections

Many projects and activities, and certain land management plan amendments and revisions, are subject to a pre-decisional administrative review process, commonly referred to as an objection process. Direction for the project-level objection process is at [36 CFR 218](#), and for the planning objection process is at [36 CFR 219](#), subpart B. Under both processes individuals and entities may file objections after an environmental analysis document is completed and before a decision document is signed. These processes build on early participation and collaboration efforts, with the intention of resolving concerns before a decision is made.

The objection process is different from the optional plan appeal procedures that are made available in certain instances after a decision has been made, and the project-level appeal process under [36 CFR 215](#) that is used for projects that are categorically excluded under NEPA from documentation in an environmental assessment and an environmental impact statement, and documented with a decision memo.

Similar to Forest Service appeal processes, responses to objections are provided by the next higher level line officer above the Forest Service official proposing to sign the project or land management plan decision.

Separate part of our web site available only to FDTF members
Lots of hyperlinks in pdf version of manual
Forms and select portions of pertinent regs. and statute sections
Include a glossary
Roster of TF members w/ contacts so they can compare notes and share info.
Contacts for Misty, Dave, Ernie