

Lecture 14 overview

1. Agency implementation
2. Example: *U.S. Forest Service*
3. Bush's *Healthy Forest Initiative*

NEPA §102

The Congress authorizes and directs that, to the fullest extent possible:

- (1) policies, regulations, and public laws shall be interpreted and administered in accordance with this Act
- (2) all agencies shall --

Flint Ridge

To the fullest extent possible:

*Flint Ridge Development Co v.
Scenic Rivers Association of Oklahoma*
U.S. Supreme Court, 1976

- Challenged HUD's failure to prepare an EIS for housing development
- HUD claimed conflict with filing of a disclosure statement under the Interstate Land Sales Full Disclosure Act (30d period)

Flint Ridge

Ruling:

1. "to the fullest extent possible" is a deliberate command that NEPA imposes upon the agencies;
2. nevertheless NEPA recognizes that where a clear and unavoidable conflict in statutory authority exists, NEPA must yield;
3. the Disclosure Act does not give HUD discretion to suspend the statement for time to prepare an EIS.

CEQ Regulations §1500.2

Federal agencies shall, to the fullest extent possible –

1. Implement procedures to make the NEPA process more useful to decision-makers & the public;
2. Integrate NEPA with planning & review procedures;
3. Encourage & facilitate public involvement.

Agency NEPA Procedures

NEPAnet

U.S. Navy	Office of the Chief of Naval Operations	32 CFR 775 / 64 FR 37069
National Oceanic and Atmospheric Administration	Office of Policy and Strategic Planning	48 FR 14734
U.S. Fish & Wildlife Service		Dept. Manual Part 516 DM 6 Appendix 1

Agency EISs

Army Corp of Engineers: feasibility reports

Bureau of Land Management: resource management plans

National Park Service: management plans

National Marine Fisheries Service: fishery management plans

U.S. Forest Service: timber harvesting plans

U.S. Forest Service



Mission:

Protection and management of natural resources on National Forest System lands:

- Research;
- Community assistance and cooperation;
- Achieving and supporting an effective workforce;
- International assistance in formulating policy and coordinating U.S. support.

U.S. Forest Service



NEPA Directives:

- Environmental Policy and Procedures Manual (FSM 1950)
- Environmental Policy and Procedures Handbook (FSH 1909.15)
- Economic and Social Analysis Handbook (FSH 1909.17)

U.S. Forest Service

Objectives: Policy & Procedures §1950.2:

1. Fully integrate NEPA requirements into agency planning and decisionmaking.
2. Fully consider the impacts of Forest Service proposed actions on the physical, biological, social, and economic aspects of the human environment (40 CFR 1508.14).

U.S. Forest Service

Objectives: Policy & Procedures §1950.2:

3. Involve interested and affected agencies, State and local governments, organizations, and individuals in planning and decision-making.
4. Conduct and document environmental analyses and subsequent decisions appropriately, efficiently, and cost effectively.

U.S. Forest Service

USFS Policy:

- Give early notice of upcoming proposals to interested and affected persons
- Give timely notice to interested and affected persons, Federal agencies, State and local governments, and organizations of the availability of environmental and accompanying decision documents.

U.S. Forest Service

USFS Policy:

- Make documents available to the public free of charge to the extent practicable.
- Apply the concepts of tiering, adoption, and incorporation by reference to both environmental impact statements and environmental assessments.

U.S. Forest Service

Director of Environmental Coordination:

1. Develop national policy, procedures, coordination measures, technical administration, and training
2. Developing policy, procedures, and training for conducting social impact analysis
3. Liaison with CEQ & EPA

Categorical Exclusions

31.1a Categories Established by the Secretary

31.1b Categories Established by the Chief

Categorical Exclusions

31.1b Categories Established by the Chief

1. Short-term resource protection or to protect public health and safety;
2. Rules, regulations, or policies to establish Service-wide administrative procedures;
3. Repair and maintenance of administrative sites, roads, trails, facilities;
4. Acquisition of land or interest in land;
5. Minor, short-term special uses of National Forest System lands;

Categorical Exclusions

31.2 Actions which require a Decision Memo

Routine, proposed actions which may be excluded from documentation in an EIS or an EA:

- Timber harvests for harvesting, salvaging & thinning;
- Timber stand or wildlife improvement projects.

Healthy Forests Initiative

President Bush: August 22, 2002:

1. Prevent damage caused by catastrophic wildfires by reducing *unnecessary regulatory obstacles* that hinder active forest management;



Healthy Forests Initiative

President Bush: August 22, 2002:

2. Pass legislation that addresses the unhealthy forest crisis by expediting procedures for forest thinning and restoration projects;
3. Fulfill the promise of the 1994 Northwest Forest Plan to ensure the sustainable forest management and appropriate timber production.



Healthy Forests Initiative

Major Points:

1. 2002 fire season worst in history;
2. Fires caused by deteriorating forest health;
3. Deteriorating health effects people, property & ecosystem health;
4. Enhanced measures needed.



Bitterroot National Forest 1895:

Natural forest. Natural conditions that evolved from regularly occurring, low-intensity, surface burning. The forest was open and dominated by fire-tolerant, fire-adapted ponderosa pine.



Bitterroot National Forest 1980:

Unmanaged forest. Small trees have established into dense thickets. These fire-intolerant tree species now crowd the forest, pre-disposing the area to insect infestations, disease outbreaks, and catastrophic wildfires.



Bitterroot National Forest 2001:

Catastrophic Wildfire. No "forest" and only a few trees survived the severe fire. Note the beginning of erosion in the stream channel

Healthy Forests Initiative

Causes for lack of good management:

1. Procedural delays;
2. Excessive analysis;
3. Appeals process is complex & time-consuming;
4. Court injunctions impact management.

Healthy Forests Initiative

Proposed actions:

1. Facilitate reviews: two new categorical exclusions;
2. Amend rules for project appeals;
3. Improve ESA process;
4. Improve process for Environmental Assessments.

Healthy Forests Initiative

New categorical exclusions :

1. *Hazardous fuels reduction*: thinning of trees & the removal of combustible vegetation;
2. *Rehabilitation and stabilization of resources after a fire*: reseedling or planting, fence construction, culvert repair, repair of roads ...

Healthy Forests Initiative

New EA Guidelines :

1. Outlines general framework for EAs;
2. Indicates area where compliance is optional and data can be referenced;
3. Suggests 10-15 pp. limit.

Healthy Forests Initiative

New ESA Guidelines :

1. Streamlining §7 consultations;
2. Discusses criteria: “no effect,” “not likely to adversely affect,” or “likely to adversely affect.”
3. Outlines procedures for consultation, review, and permits.

Healthy Forests Initiative

Natural Resources Defense Council:

1. Exploits the fear of fires in order to gut environmental protections and boost commercial logging;
2. Rolls back rules for the timber industry and eliminates public participation . . . to line the pockets of its corporate friends at the expense of public safety and our natural heritage.

Next Time. . .

- Policy Brief due
- Start reading Makah Whale Harvest EA
- Next: NEPA & ESA
- Reading:
 - Reinke & Swartz O-211
