IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CHATTOOGA CONSERVANCY, 867 Chattooga Ridge Road, Mountain Rest, SC 29664, MOUNTAINTRUE, 29 North Market Street, Asheville, NC 28801, and DEBBIE KRUZEN, [redacted] Plaintiffs, v. THE UNITED STATES DEPARTMENT OF AGRICULTURE, SECRETARY THOMAS VILSACK, THE UNITED STATES FOREST SERVICE, CHIEF RANDY MOORE, REGIONAL FORESTER KENDERICK ARNEY, REGIONAL FORESTER ANTOINE DIXON, DISTRICT RANGER ROBERT SITZLAR, DISTRICT RANGER JAMES BROWNING, and FOREST SUPERVISOR DAWN LAYBOLT, Defendants.	Civil Case No. _____ **COMPLAINT**

INTRODUCTION

1. This case challenges the U.S. Forest Service's failure under the National Environmental Policy Act to assess the direct, indirect, and cumulative effects on carbon storage and emissions of the numerous logging projects it authorizes on national forests to fulfill annual timber targets set by the agency and the Department of Agriculture.

2. Earth's climate is changing at a paced unmatched in several millennia. These changes are driven by increases in atmospheric greenhouse gases, such as carbon dioxide. These

gases trap heat in Earth's atmosphere, causing the planet's overall temperature to rise and disrupting global and regional climate patterns.

3. Climate change has already had devastating effects in the United States and around the globe. For example, climate change has been linked to higher temperatures, increased flooding, longer periods of drought, and more extreme storms. In fact, 2023 was the hottest year ever recorded. Further climate change will intensify these effects.

4. Mitigating climate change requires: (1) preventing further increases in atmospheric levels of greenhouse gases; and (2) where possible, pulling already-emitted greenhouse gases out of the atmosphere.

5. Forests contribute to both needs. Forests store billions of tons of carbon, keeping it out of the atmosphere. They also pull carbon out of the atmosphere through photosynthesis. As explained by Congressman Bruce Westerman (R-Ark.), "[d]espite incredible improvements in technology, trees are still the most large-scale, cost-effective and environmentally-friendly carbon sequestration devices we have."

6. Logging trees, in contrast, releases their stored carbon back into the atmosphere, increasing atmospheric greenhouse-gas concentrations and accelerating climate change. A forest newly planted to replace the harvested forest may recapture that released carbon but not for many decades or centuries at best.

7. The Forest Service is the largest single manager of forests in the United States, with approximately 146 million acres of forests in its care across the 193-million-acre National Forest System. Between 1984 and 2021, the Forest Service authorized the harvest of an average of 428,531 acres of forest per year, emitting millions of tons of carbon to the atmosphere. Other

forest disturbances, like wildfire, also produce carbon emissions, but Forest Service data show that logging is the largest source of carbon emissions from national forests in the East and South.

8. According to the Forest Service, over the past few years the volume of timber sold from national forests has been "higher than any period in the previous few decades." The agency intends "to increase the level of timber volume sold" even further in coming years, especially from carbon-dense Eastern and Southern national forests that face lower wildfire risks than other national forests. These increases in harvest will result in increased carbon emissions.

9. To achieve the planned increases in "timber volume sold," the Department of Agriculture and the Forest Service intend to increase timber targets. These "targets"—mandatory performance metrics—drive logging levels on the National Forest System. Each year, the Secretary of Agriculture sets a national timber target measured in timber volume and charges the Forest Service with fulfilling that target. The Washington Office of the Forest Service then assigns portions of the national target to each of the nine Forest Service regions and charges regional agency staff with fulfilling their region's target. To satisfy their obligations, regional staff distribute their regional target among the national forest units within their region. Those units then develop timber projects to meet their unit-specific target. If each unit fulfills its target, then each region will fulfill its regional target, resulting in fulfillment of the national target.

10. Despite authorizing numerous timber projects each year to meet these targets, the Forest Service has never accounted for the aggregate carbon effects of actions taken to fulfill its timber targets. This violates the National Environmental Policy Act.

11. The National Environmental Policy Act requires federal agencies to analyze and disclose the reasonably foreseeable direct, indirect, and cumulative effects of their actions as well as the effects of a reasonable range of alternatives. The statute is intended to ensure that agencies

make decisions with their "eyes . . . open to the environmental consequences of [their] actions." *Sierra Club v. FERC*, 827 F.3d 36, 45 (D.C. Cir. 2016).

12. The Department of Agriculture and the Forest Service make no effort to comply with the National Environmental Policy Act when setting national, regional, or unit-specific timber targets.

13. The Forest Service makes some attempt to comply with the National Environmental Policy Act when designing individual logging projects to achieve those timber targets. Depending on the effects of those individual projects, the Forest Service can satisfy the National Environmental Policy Act in one of three ways. The most significant projects require a detailed study called an Environmental Impact Statement. If the significance of a project is unclear, the Forest Service may sometimes approve it after conducting a less-demanding Environmental Assessment. Projects that categorically do not have significant environmental effects can be approved with a Categorical Exclusion, which require no detailed study at all.

14. Because carbon emissions and decreases in carbon storage are reasonably foreseeable effects of individual timber projects, the Forest Service typically includes some discussion of carbon effects for timber projects it approves with Environmental Impact Statements or Environmental Assessments. However, those analyses invariably fail to consider and disclose the aggregate effects of other similar logging projects. Instead, the agency isolates each individual project's carbon effects and weighs them *against* regional, national, and global carbon emissions. It then dismisses the siloed effects of individual logging projects as "miniscule" or "imperceptibly small" drops in the bucket but never considers the effect of the full bucket of projects authorized to achieve timber targets. This too violates the National Environmental Policy Act.

15. For timber projects authorized with Categorical Exclusions, the agency makes no effort to consider the carbon effects of its actions at all—individually or cumulatively. The vast majority of Forest Service projects are authorized with Categorical Exclusions. *See* 85 Fed. Reg. 73,620, 73,620 (Nov. 19, 2020) (noting 83.8% of all Forest Service projects, including non-timber projects, are authorized with Categorial Exclusions). Yet the agency has never considered the aggregate effects of its numerous categorically excluded timber projects, nor considered the cumulative carbon effects of those projects combined with timber projects approved with Environmental Assessments or Environmental Impact Statements. As a result, cumulatively significant carbon effects—effects that must be studied and disclosed to the public under the National Environmental Policy Act—are going unaccounted for every year.

16. The failure to consider the cumulative carbon emissions of the agency's timber targets and the projects it designs to fulfill them disproportionately affects forests in the East and the South. Volumetric timber targets incentivize logging in the most carbon-dense (i.e., high volume) forests containing the oldest and largest trees, rather than, for example, thinning of small-diameter trees to prevent wildfire because the latter produces less timber volume. As a result, carbon-dense forests with lower relative risk of wildfire, like the South and the East, are often logged most heavily.

17. Analyzing the cumulative carbon effects of Forest Service logging projects could make a meaningful difference in agency decisions. With their eyes open to the carbon effects of their actions, the Department of Agriculture and the Forest Service could decide to reduce the national, regional, or unit-specific timber targets to reduce carbon emissions. Or, as another example, the Forest Service could choose to reduce emissions by scaling back logging in carbon-dense forests and focusing instead on forests that naturally store less carbon.

18. Chattooga Conservancy, MountainTrue, and Debbie Kruzen (collectively "Forest Advocates") seek a declaration that the Department of Agriculture's and the Forest Service's failure to consider the carbon effects of the national, regional, and unit-specific timber targets violates the National Environmental Policy Act. Forest Advocates also seek a declaration that the Forest Service's project-level analyses for three projects—the Sumter National Forest's White Pine Management Project, Nantahala National Forest's Buck Project, and Mark Twain National Forest's Forest Health Initiative Project—violate the National Environmental Policy Act. Forest Advocates additionally request that this Court enjoin the Forest Service from: (1) offering further timber sales to fulfill its fiscal year 2024 timber targets for Regions 8 and 9 including targets for the Francis Marion–Sumter, National Forests in North Carolina (which includes the Nantahala National Forest), and Mark Twain units, excluding harvests necessary to mitigate wildfire risks; and (2) implementing the remaining commercial timber-harvest portions of the White Pine Management, Buck, and Forest Health Initiative Projects until the agency complies with the National Environmental Policy Act.

JURISDICTION AND VENUE

19. Jurisdiction is proper in this Court because this action arises under the laws of the United States, including the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–06. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal-question jurisdiction) and 5 U.S.C. § 702 (APA judicial review). This Court may issue a declaratory judgment and further relief requested pursuant to 28 U.S.C. §§ 2201–2202.

20. Venue is proper in this District under 28 U.S.C. § 1391(e)(1)(A) because Defendants U.S. Department of Agriculture, U.S. Forest Service, Secretary of Agriculture

Thomas Vilsack, and Forest Service Chief Randy Moore are agencies, officers, or employees of the United States acting in their official capacities that reside in the District of Columbia. Venue is also proper in this District under 28 U.S.C. § 1391(e)(1)(B) because the national and regional timber targets that are a focus of this lawsuit were developed in the District.

PARTIES

Plaintiff Forest Advocates

Chattooga Conservancy

21. Chattooga Conservancy is a nonprofit organization founded in 1994 to protect and restore the Chattooga River Watershed; to educate and empower citizens to practice good stewardship on public and private land; and to ensure the viability of native species within the Watershed. Chattooga Conservancy's mission is specific to the lands within the Chattooga River Watershed, approximately 70% of which are located on national forest lands in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina, and the Chattahoochee National Forest in Georgia.

22. Chattooga Conservancy is based in Mountain Rest, South Carolina, and has approximately 650 members including Nicole Hayler. Most of Chattooga Conservancy's members live in Georgia and South Carolina. These members run and patronize businesses that rely on the health and beauty of the national forests to attract visitors, and they visit the national forests themselves to hike, kayak, observe nature, take photographs, and seek solitude.

23. Since its inception, Chattooga Conservancy has been involved in management of the national forests in the Chattooga River Watershed. Chattooga Conservancy routinely engages in decision-making processes for Forest Service projects that affect its interests, including by

filing comments and administratively objecting to the White Pine Management Project on the Andrew Pickens Ranger District of the Sumter National Forest.

24. The White Pine Management Project involves nearly two thousand acres of timber harvest and widespread herbicide application. The project will adversely affect Chattooga Conservancy's organizational interests and the interests of its members, including Ms. Hayler, who use the project area and connected waters for recreational, aesthetic, spiritual, and business purposes. Chattooga Conservancy members are particularly concerned about the cumulative impacts of this project with other Andrew Pickens Ranger District projects on water quality and terrestrial habitat for game and rare species. Chattooga Conservancy members like Ms. Hayler plan to continue using these areas despite the imminent and ongoing harms inflicted by the White Pine Management Project. These harms are germane to Chattooga Conservancy's organizational missions.

MountainTrue

25. MountainTrue is a nonprofit corporation with its principal office in Asheville, North Carolina. MountainTrue's mission is to champion clean water, resilient forests, and healthy communities in the Southern Blue Ridge Mountains. To accomplish this broad mission, MountainTrue focuses on developing programs to protect water quality, conserve and responsibly steward public lands, and help local communities develop in a sustainable manner.

26. MountainTrue has over 12,000 members and supporters, primarily in North Carolina. Many of these members live in close proximity to the Nantahala–Pisgah National Forests. Some of these members run or patronize businesses or conduct scientific research that depends on healthy, vibrant, and biodiverse national forest lands nearby. Many members regularly visit the national forests to hike, fish, kayak, hunt, whitewater raft, camp, bird watch,

trail run, mountain bike, research, observe rare and threatened species and other wildlife, take photographs, go on scenic drives, and experience Wilderness. MountainTrue's members and staff derive scientific, aesthetic, and spiritual benefit from the existence of the natural features of the area, including the Nantahala–Pisgah National Forests and the wildlife species that depend on them.

27. MountainTrue has long been involved in management of the Nantahala–Pisgah National Forests and routinely participates in administrative processes applicable to logging projects. For example, MountainTrue submitted extensive comments and filed an administrative objection over the Forest Service's Buck Project on the Nantahala National Forest.

28. MountainTrue members, including Josh Kelly, use and value the Buck Project area for its recreational, aesthetic, ecological, and biological values. The Buck Project includes extensive ground-based logging that will fragment intact forests, introduce non-native species, push roads into backcountry areas, cause stream sedimentation, harm rare species' habitats, and destroy biologically complex older forests. These effects will harm Mr. Kelly and other MountainTrue members and prevent them from enjoying the area as they did prior to logging. Nevertheless, many of them plan to continue visiting the Buck Project area. The Buck Project will also prevent MountainTrue from fulfilling its organizational mission of protecting biodiverse, ecologically significant public lands in western North Carolina.

Debbie Kruzen

29. Debbie Kruzen lives in Mountain View, Missouri, close to the Mark Twain National Forest. Ms. Kruzen has long advocated for responsible forest management, and has participated in administrative processes applicable to logging projects on the national forest. For

example, Ms. Kruzen submitted comments and filed an administrative objection over the Forest Service's Forest Health Initiative Project on the Mark Twain National Forest.

30. The Forest Health Initiative Project involves over 45,000 acres of commercial timber harvest across multiple ranger districts in the national forest, including the Willow Springs and Eleven Point Districts close to Ms. Kruzen's home. Ms. Kruzen uses and values the area to be impacted by the project for its recreational, aesthetic, ecological, and biological values. The project will harm her interests by increasing sedimentation in local streams, harming native understory plants, destroying rare species' habitats, and destroying biologically complex older forests. Nevertheless, Ms. Kruzen plans to continue visiting the project area for as long as she is able.

Forest Advocates' Collective Interests

31. In addition to being harmed by the individual projects discussed above, Forest Advocates are also harmed by the Department of Agriculture's and the Forest Service's failure to comply with NEPA when setting national, regional, and unit-specific timber targets. The White Pine Management, Buck, and Forest Health Initiative Projects were all designed, in part, to achieve timber targets. Considering and disclosing the carbon effects associated with those targets, as required under NEPA, might have led the Department of Agriculture and the Forest Service to reduce those targets, decreasing the incentive to log carbon-dense old and mature forests in the White Pine Management, Buck, and Forest Health Initiative Projects. This would have better protected Forest Advocates' organizational and personal interests.

32. For example, without needing to achieve a specific timber volume to fulfill timber targets, the Forest Service would have had more flexibility to drop controversial aspects of those projects opposed by Forest Advocates. Timber targets reduce that flexibility because the agency

needs to achieve a specific timber volume to hit timber targets. The agency often has to plan years in advance to produce a certain amount of timber volume from specific timber projects, which makes it difficult for the agency to make decisions in response to concerns raised by Forest Advocates that may be more environmentally protective but that would result in lower timber volume.

33. The need to meet volumetric targets also pushes the Forest Service to design timber sales that get the biggest "bang for the buck," often by greenlighting projects involving clearcut-style logging of older, bigger trees. In other words, timber targets drive the very types of harvest that cause the greatest harm to Forest Advocates' interests and result in high carbon emissions.

34. Forest Advocates are harmed by Forest Service decisions that exacerbate climate change. Chattooga Conservancy and MountainTrue invest significant time and financial resources attempting to mitigate climate-change effects on national forests in North Carolina, South Carolina, Georgia, and Tennessee. Forest Service actions that result in increased levels of atmospheric carbon—such as increasing timber targets—make it more difficult and expensive for the organizations to fulfill those objectives. Forest Advocates, including organizational members, are also personally harmed by climate change's effects.

35. The failure to comply with NEPA when setting national, regional, and unit-specific timber targets also inflicts informational harm on MountainTrue and Chattooga Conservancy. Part of their missions involve informing their members and the public about decisions made affecting public lands. The Department of Agriculture's and the Forest Service's failure to assess and disclose the carbon effects of the national, regional, and unit-specific timber

targets hampers MountainTrue's and Chattooga Conservancy's ability to inform their members and the public about those effects.

36. The lack of information also makes it more difficult for Forest Advocates to engage in Forest Service decision-making processes. This includes project-level advocacy and national policy efforts. For example, the Forest Service recently announced its intention to amend all forest plans to include consistent direction related to old-growth forest management. Responding to the proposal, Chattooga Conservancy and MountainTrue attempted to explain how protecting those forests from logging would lead to better carbon storage. Those efforts were stymied by the fact that the Forest Service has not analyzed the cumulative carbon impacts of its logging projects, making the carbon benefits of not logging those forests less clear.

37. To the extent required, Forest Advocates have exhausted their administrative remedies.

38. The injuries to Forest Advocates, including to the members of organizational Plaintiffs, would be redressed by an order from this Court requiring the Department of Agriculture and the Forest Service to comply with NEPA and the APA.

Defendants

U.S. Department of Agriculture

39. Defendant U.S. Department of Agriculture is a federal agency responsible for overseeing the U.S. Forest Service, among other subagencies. The Department of Agriculture sets the Forest Service's annual national timber target.

Secretary Thomas Vilsack

40. Defendant Thomas Vilsack is the Secretary of Agriculture, the highest-ranking official within the Department of Agriculture, and is sued in his official capacity. Defendant

Vilsack has supervisory authority over the Forest Service and specifically the national timber target set by the Department of Agriculture.

U.S. Forest Service

41. Defendant U.S. Forest Service is a subordinate federal agency within the U.S. Department of Agriculture. The Forest Service is charged with stewarding nearly 193 million acres of publicly owned forests and grasslands throughout the country.

42. The Forest Service is charged with fulfilling the national timber target set by the Department of Agriculture.

43. As part of that process, the Forest Service sets regional and unit-specific timber targets.

44. To manage its public lands, the Forest Service employs a hierarchical structure where there is "a direct line of command from one designated official to another." Forest Service Manual (FSM) 1230.6. At the top of this chain of command is the Chief of the Forest Service, who is responsible for overseeing the National Forest System. The Chief (along with Deputy Chiefs) directly supervises Regional Foresters, who each oversee one of the Forest Service's nine regions. Next in line are Forest Supervisors, who oversee a specific Forest Service unit. These units typically include one or more national forests.

45. For example, the National Forests in North Carolina is a Forest Service unit located in the Forest Service's Southern Region (Region 8). The National Forests in North Carolina unit includes the Croatan, Uwharrie, Pisgah, and Nantahala National Forests. Each Forest Service unit is also broken into Ranger Districts managed by a District Ranger. The Croatan and Uwharrie National Forests each have one Ranger District while the Pisgah and Nantahala National Forests each have three Ranger Districts.

Chief Randy Moore

46. Defendant Randy Moore is the Chief of the U.S. Forest Service and is sued in his official capacity. Defendant Moore is ultimately responsible for meeting the national timber target and setting the regional timber targets.

Regional Forester Kenderick Arney

47. Defendant Kenderick Arney is the Regional Forester for Forest Service Region 8, which encompasses thirteen Southern states and Puerto Rico. Defendant Arney is ultimately responsible for satisfying Region 8's timber target and for promulgating unit-specific timber targets to meet the regional target. Defendant Arney is sued in his official capacity.

Regional Forester Antoine Dixon

48. Defendant Antoine "Tony" Dixon is the Regional Forester for Forest Service Region 9, which encompasses twenty Eastern states. Defendant Dixon is ultimately responsible for satisfying Region 9's timber target and for promulgating unit-specific timber targets to meet the regional target. Defendant Dixon is sued in his official capacity.

District Ranger Robert Sitzlar

49. Defendant Robert Sitzlar is the District Ranger for the Andrew Pickens Ranger District in the Sumter National Forest and is sued in his official capacity. Defendant Sitzlar is the responsible official for the White Pine Management Project challenged in this action.

District Ranger James Browning

50. Defendant James "Brian" Browning is the acting District Ranger for the Tusquitee Ranger District in the Nantahala National Forest and is sued in his official capacity. Defendant Browning's predecessor was the responsible official for the Buck Project challenged in this action.

Forest Supervisor Dawn Laybolt

51. Defendant Dawn Laybolt is the Forest Supervisor for the Mark Twain National Forest and is sued in her official capacity. Defendant Laybolt's predecessor was the responsible official for the Forest Health Initiative Project challenged in this action.

LEGAL BACKGROUND

National Environmental Policy Act

52. NEPA was enacted in 1969 "to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. Federal agencies must fulfill NEPA's mandates "to the fullest extent possible." *Id.* § 4332.

53. NEPA has twin aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (internal citation and quotation marks omitted).

54. NEPA's objectives are "realized through a set of 'action-forcing' procedures that require that agencies take a '"hard look" at environmental consequences,' . . . and [] provide for broad dissemination of relevant environmental information." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citation omitted).

55. These action-forcing procedures require agencies to complete certain requirements for "every" "proposal[]" for major federal action "significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

56. A "proposal" exists if "an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects." 40 C.F.R. § 1508.1(x).[1] "A proposal may exist in fact as well as by agency declaration that one exists." *Id.*

57. A "major Federal action" means "an activity or decision subject to Federal control and responsibility" that "tend to fall within one of the following categories:" (1) adoption of official policies or issuance of "formal documents establishing an agency's policies which will result in or substantially alter agency programs"; (2) adoption of formal plans "which prescribe alternative uses of Federal resources, upon which future agency actions will be based"; (3) adoption of programs, "such as a group of concerted actions to implement a specific policy or plan," or a set of "systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive"; and (4) approval of specific projects, "such as construction or management activities located in a defined geographic area." *Id.* § 1508.1(q). Major federal actions "may include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals." *Id.* § 1508.1(q)(2).

58. Current NEPA regulations explain that a major federal action must be a "final agency action under the Administrative Procedure Act." *Id.* § 1508.1(q)(1)(iii). "Agency action" is defined under the APA as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

[1] The Council on Environmental Quality has revised its NEPA implementing regulations twice in the past four years. Unless otherwise noted, references to these regulations refer to the 2023 version.

59. The "significance" of an agency action "varies with the setting of the proposed action." 40 C.F.R. § 1501.3(b)(1). "In considering the degree of the effects, agencies should consider" the proposal's "short- and long-term effects," "beneficial and adverse effects," and "[e]ffects on public health and safety," as well as effects that would violate environmental laws. *Id.* § 1501.3(b)(2).[2]

60. If an agency concludes that a proposal for major federal action is "likely to have significant effects," it must prepare an Environmental Impact Statement (EIS). *Id.* § 1501.3(a)(3). This "detailed statement" must disclose the "reasonably foreseeable environmental effects of the proposed agency action" and consider "a reasonable range of alternatives to the proposed agency action," among other things. 42 U.S.C. § 4332(C).

61. If the need for an EIS is unclear—i.e., if it is uncertain whether the major federal action will significantly affect the quality of the human environment—an agency may first prepare an Environmental Assessment (EA). 40 C.F.R. § 1501.5(a). If the EA concludes that the proposal is likely to have significant effects, the agency must prepare an EIS. *Id.* § 1501.3(a)(3). If the EA reveals that the action would not have significant effects, then the action could proceed with a Finding of No Significant Impact (FONSI). *Id.* § 1501.6.

62. Agencies may also promulgate Categorical Exclusions (CEs) for "a category of actions that the agency has determined, in its agency NEPA procedures . . . normally do not have a significant effect on the human environment." *Id*. § 1508.1(d). Projects that meet the terms of a

[2] Prior to July 2020, agencies were required to consider the "context" and "intensity" of an action in deciding whether it would have significant effects. 40 C.F.R. § 1508.27 (1978). To consider context, "the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality." *Id.* § 1508.27(a). Intensity "refers to the severity of [effects]." *Id.* § 1508.27(b). The regulation provided ten factors that "should be considered in evaluating intensity." *Id.*

CE can be authorized without completing an EA or EIS. The Forest Service has promulgated numerous CEs in its NEPA regulations. *See* 36 C.F.R. § 220.6.

63. When completing an EA or EIS, agencies are obligated to analyze the "environmental impacts of the proposed action" as well as any "reasonable alternatives." 40 C.F.R. §§ 1501.5(c), 1502.16(a)(1). Environmental impacts or effects include reasonably foreseeable direct, indirect, and cumulative effects. *Id.* § 1508.1(g). "Direct effects . . . are caused by the action and occur at the same time and place." *Id.* § 1508.1(g)(1). "Indirect effects . . . are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." *Id.* § 1508.1(g)(2). Cumulative effects "result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time." *Id.* § 1508.1(g)(3).

64. "The impact of [greenhouse-gas] emissions on climate change is precisely the kind of [ ] impacts analysis that NEPA requires agencies to conduct." *Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1035 (10th Cir. 2023) (quoting *Ctr. For Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008)). Even where an agency "determine[s] that each [project] individually has a de minimis impact on climate change, the agency must also consider the cumulative impact of [greenhouse-gas]

emissions generated by past, present, or reasonably foreseeable [agency projects] in the region and nation." *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019).

65. The Forest Service has issued guidance to aid its consideration of climate-change effects under NEPA. That guidance calls on the Forest Service to "[c]onsider the effects of no action . . . , the effects tradeoffs of the proposed action[,] and other action alternatives on [greenhouse-gas] emissions." U.S. Forest Serv., *Climate Change Considerations in Project Level NEPA Analysis* at 5 (2009). The agency's website explains that this analysis can be difficult to complete when authorizing individual timber projects and therefore the "scale for quantitative analysis of biogenic sources of carbon such as from . . . harvest may be more appropriate at a regional or programmatic level" under NEPA. Leslie Brandt & Courtney Schultz, *Climate Change Considerations in National Environmental Policy Act Analysis*, U.S. Forest Serv. (2016), https://perma.cc/4VS7-NSAC.

66. The Council on Environmental Quality—which oversees NEPA compliance for all federal agencies, including the Forest Service—has also issued guidance to "to assist agencies in analyzing greenhouse gas [ ] and climate change effects of their proposed actions under the National Environmental Policy Act." Council on Environmental Quality, *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change*, 88 Fed. Reg. 1196, 1196 (Jan. 9, 2023). That guidance explains that "for actions involving potential changes to biological [greenhouse-gas] sources and sinks" such as forests, "agencies should include a comparison of net [greenhouse-gas] emissions and carbon stock changes that are anticipated to occur, with and without implementation of the proposed action and reasonable alternatives." *Id*. at 1207. That "analysis should consider the estimated [greenhouse-gas] emissions (from biogenic and fossil-fuel sources), carbon sequestration potential, and the net

change in relevant carbon stocks in light of the proposed actions and timeframes under consideration, and explain the basis for the analysis." *Id.*

Administrative Procedure Act

67. Since NEPA does not specify a standard of review, courts review agency compliance with NEPA under the APA's arbitrary and capricious standard. *See Sierra Club v. FERC*, 867 F.3d 1357, 1367 (D.C. Cir. 2017).

68. The APA creates a right to judicial review for any person wronged or aggrieved by a final agency action when there is no other adequate remedy available. 5 U.S.C. §§ 702, 704. Under the APA, a reviewing court shall "hold unlawful and set aside agency action[s], findings, and conclusions" that the court finds to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." *Id.* § 706(2).

69. Agency action is arbitrary and capricious, and must be set aside, where, among other things, the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise" or where the agency's action is not based on a "reasoned analysis." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983).

70. The APA also provides relief to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

FACTUAL BACKGROUND

Climate Change

71. Climate change refers to long-term shifts in temperatures and weather patterns.

72. As explained by the Forest Service, "Earth's climate changes with some regularity, going through ice ages and other periods of natural flux. However, since the Industrial Revolution in the mid-1700s, Earth's average temperature has risen at a much higher rate than any other time in the reconstructed climate record." U.S. Forest Serv., *How is Climate Change Detected?*, https://perma.cc/E6FU-5ECX.

73. "This temperature increase is primarily caused by increased atmospheric carbon dioxide levels, which are now the highest they've been in three million years." *Id.*

74. Increased atmospheric carbon dioxide levels lead to increased global temperatures because carbon dioxide absorbs heat radiating from Earth and redirects it back to Earth's surface, creating a "greenhouse effect" that warms the planet. EPA, *Basics of Climate Change*, https://perma.cc/L24Z-ZKFN. For that reason, carbon dioxide and other gases that cause a similar effect are referred to as "greenhouse gases." *Id.*

75. Due in large part to this greenhouse effect, the last ten years were the hottest ever recorded. Nat'l Oceanic & Atmospheric Admin., *Climate Change: Global Temperature* (Jan. 18, 2024), https://perma.cc/4J6X-BSQT.

76. This human-caused warming has triggered "widespread adverse impacts" in part by disrupting global and regional climate patterns that humans have relied on for all of recorded history. Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report: Summary for Policymakers* at 5 (2023). For example, climate change is virtually certain to have caused increases in extreme heat waves, resulting in human mortality, morbidity, and displacement. *Id.* at 6–7. In urban areas, most of these "adverse impacts are concentrated amongst economically and socially marginalised urban residents." *Id.* at 6. Climate change also

poses a threat to food and water security, and is very likely responsible for observed declines in terrestrial, aquatic, and marine ecosystems. *Id.* at 6–7.

77. Regarding national forests specifically, climate change threatens to undermine "the health, diversity, and productivity of the Nation's forests and grasslands." U.S. Forest Serv., *Climate Adaptation Plan* at 6 (2022).

Carbon Effects from National Forest Logging

78. Forests play two critical roles in regulating atmospheric greenhouse gases.

79. First, through photosynthesis, forests "remove carbon dioxide from the atmosphere." U.S. Forest Serv., *Baseline Estimates of Carbon Stocks in Forests and Harvested Wood Products for National Forest System Units: Southern Region* at 5 (2015).

80. Forests continue pulling carbon dioxide out of the atmosphere as they age and as a result "many old-growth and mature forests have . . . higher carbon density." Secretary of Agriculture Memorandum 1077-004, *Climate Resilience and Carbon Stewardship of America's National Forests and Grasslands* (June 23, 2022).

81. Second, forests store—mostly in woody biomass and soils—the carbon they pull out of the atmosphere.

82. The combination of these two phenomena—pulling carbon out of the atmosphere and storing it in forests—reduces atmospheric greenhouse-gas levels.

83. The U.S. Forest Service is the primary manager of federal forests, overseeing approximately 146 million acres of forested land—comprising 76% of all federal forested land. J.E. Smith et al., U.S. Forest Serv., *Carbon Stocks and Stock Change on Federal Forest Lands of the United States*, 10 Ecosphere at 9–10 (2019). Collectively, national forests store approximately 13.8 billion metric tons of carbon. *Id.*

84. Carbon will generally remain stored in a forest until that forest is affected by a "disturbance" that causes tree mortality and releases some or all of the stored carbon to the atmosphere. Richard Birdsey et al., U.S. Forest Serv., *Assessment of the Influence of Disturbance, Management Activities, and Environmental Factors on Carbon Stocks of United States Forests* (2019).

85. According to the Forest Service, there are five primary "disturbances" that have historically resulted in tree mortality and carbon emissions from national forests: fire, timber harvesting, insects, disease, and wind events. *Id.* at 1–3.

86. Forest Service data show that the primary disturbance leading to reductions in carbon stored in the Forest Service's Eastern (Region 9) and Southern (Region 8) Regions is timber harvesting. *Id.* at 31, 40. Figure 1 below, prepared by the Forest Service, shows the effect of different disturbances on reductions in live biomass carbon storage from 1990–2011 in the Forest Service's Eastern Region (Region 9):

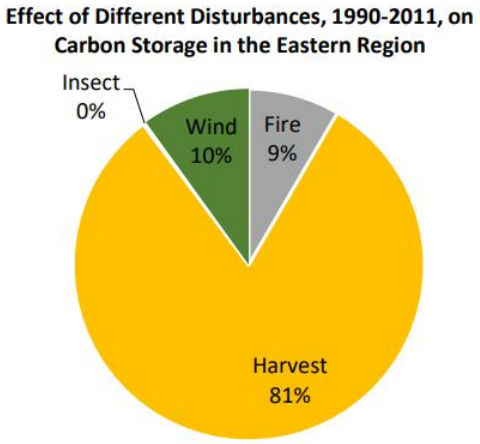

Figure 1: Effects of disturbances on carbon storage in Region 9.

87. Figure 2, also prepared by the Forest Service, shows the same analysis for the agency's Southern Region (Region 8):

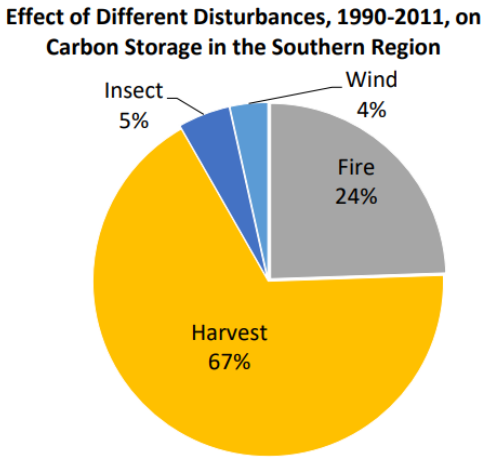

Figure 2: Effects of disturbances on carbon storage in Region 8.

88. Logging results in carbon emissions to the atmosphere (not including carbon emitted from using fossil fuels to harvest, transport, and process raw tree material) on several different timescales.

89. Significant portions of a logged forest such as tree limbs are never converted into an end-use wood product. These portions are often incinerated, resulting in immediate carbon emissions.

90. Other wood products, such as paper, are short-lived and quickly disposed of either by burning or shipment to landfills—both of which result in carbon emissions.

91. Finally, long-lasting wood products (like housing framing) can store carbon for decades before the product is disposed of and the carbon is released to the atmosphere, but only a fraction of harvested wood ends up as a long-lived, end-use wood product. *See* Tara Hudiburg et al., *Meeting GHG Reduction Targets Requires Accounting for All Forest Sector Emissions*, 14 Env't Rsch. Letters (2019).

92. Forest Service data confirm this conclusion. Figure 3 shown below was prepared by the Nantahala–Pisgah National Forests in North Carolina. *See* U.S. Forest Serv., *Assessment for the Nantahala and Pisgah National Forests* at 83 (2014) (Nantahala–Pisgah Assessment). The column titled "Total C in Allowable Sales Quantities" indicates the amount of live tree biomass carbon authorized for removal in a hypothetical timber sale. The column titled "Total Carbon Emissions" shows how much of that carbon has been released to the atmosphere on various timeframes. A decade after harvest, 57% of the carbon stored in the original forest—which likely took many decades or centuries to sequester—has been released to the atmosphere. Carbon emissions associated with the timber sale continue increasing over time as wood products are disposed so that fifty years post-sale, 70% of the carbon once stored in the harvested forest has been released to the atmosphere. After fifty years, only 12% of the carbon in the harvested forest is being stored in in-use wood products.

Year After Harvest	Total C in Allowable Sales Quantities (metric tons)	C Remaining in Primary Wood Products (metric tons)	Wood Product C Accumulating in Landfills (metric tons)	Total Carbon Emissions (metric tons)	Emitted with Energy Use (metric tons)	Emitted without Energy Use (metric tons)
0	44,489					
10		13,640	5,543	25,306	15,520	9,786
20		9,463	7,040	27,986	16,414	11,572
30		7,607	7,576	29,306	16,722	12,584
40		6,365	7,900	30,223	16,875	13,348
50		5,460	8,141	30,887	16,936	13,952

Figure 3: Table prepared by the Nantahala and Pisgah National Forests calculating carbon emissions following timber harvest.

93. Logging does not just release carbon trapped in the wood itself; it also releases large amounts of stored soil carbon into the atmosphere. *See* Steven Hamburg et al., *Losses of Mineral Soil Carbon Largely Offset Biomass Accumulation 15 Years After Whole-Tree Harvest in a Northern Hardwood Forest*, 144 Biogeochemistry 1 (2019) (finding timber harvest reduced

mineral soil carbon by 15% relative to pre-harvest levels by year eight, with no recovery in soil carbon stocks by year fifteen); Jason James & Rob Harrison, *The Effect of Harvest on Forest Soil Carbon: A Meta-Analysis*, 7 Forests (2016) (concluding timber harvest reduced soil carbon, on average, by 11.2%).

94. Like emissions from woody biomass, soil carbon losses can take place relatively quickly following harvest. *See* Hamburg et al.

95. Because soil carbon often represents the majority of total forest carbon stocks, G.M. Domke et al., U.S. Forest Serv., *Toward Inventory-Based Estimates of Soil Organic Carbon in Forests of the United States*, 27 Ecological Applications 1223, 1223 (2017) (finding carbon in soils accounts for 56% of total forest carbon stocks), even fractional losses in soil carbon can be significant.

96. Carbon released through timber harvest can eventually be re-sequestered by new forests that grow in place of the harvested forest. But even in the best-case scenario, forests do not re-sequester the carbon emitted during timber harvest for multiple decades to centuries—if ever. *See* Hudiburg et al. at 4 (noting that carbon removed from old-growth forests, for example, will not be fully replaced for hundreds of years—"and cannot be recovered [ever] if current management practices continue").

97. Between 1984 and 2021, the Forest Service harvested an average of 428,531 acres of forest per year, U.S. Forest Serv., *Harvest Trends on National Forest System Lands* (2021), contributing millions of tons of carbon to the atmosphere.[3]

[3] According to the Forest Service, the average acre of forest in the United States contains 48,980 pounds of tree carbon and 93,220 pounds of soil carbon. Richard Birdsey, U.S. Forest Serv., *Carbon Storage and Accumulation in United States Forest Ecosystems* at 3 (1992). Carbon densities are likely higher in the Northwest, East, and South, where the Forest Service has historically concentrated its logging operations.

98. The carbon effects associated with the Forest Service's timber projects are consequential. The agency itself has explained that even small reductions in national forest carbon stocks can "represent very large amounts of [lost] climate mitigation benefit." U.S. Forest Serv., *Assessment of the Influence of Disturbance, Management Activities, and Environmental Factors on Carbon Stocks of U.S. National Forests*, App'x 4 at 18 (2019).

99. Every timber sale implemented on National Forest System lands results in carbon emissions.

National Timber Target

100. Forest Service timber sales are implemented, in part, to fulfill annual national, regional, and unit-specific timber targets measured in timber volume.

101. Each year the Department of Agriculture establishes a national timber target for the Forest Service.

102. As explained further below, that national target is later divided among the nine Forest Service regions. The regional target is then divided among Forest Service units within that region. Those units then develop timber projects to offer timber sales to fulfill their unit-specific target.

103. As an example, Figure 4 illustrates the connection between national, regional, and unit-specific timber targets, with a focus on Region 8. The box on the far left represents the national timber target. The boxes second from left represent the Forest Service regions. (There is no Region 7.) The boxes in the middle represent the Forest Service units within Region 8. There are specific timber targets issued at the national, regional, and unit levels; the regional and unit-specific targets are issued to achieve the national target. Units then offer timber *sales* from timber *projects* to fulfill the unit-specific, regional, and national targets. The relationship between timber

sales and timber projects is discussed more below but, as an example, the Forest Service approved the Buck Project in 2020 and has since divided the volume of timber authorized in that *project* into multiple subsequent *sales* over different fiscal years to fulfill each respective year's timber target. Timber projects are represented by the boxes second from right and timber sales are represented by boxes on the far right. The only point within this chain of decision-making that the agency attempts to comply with NEPA is when approving timber projects.

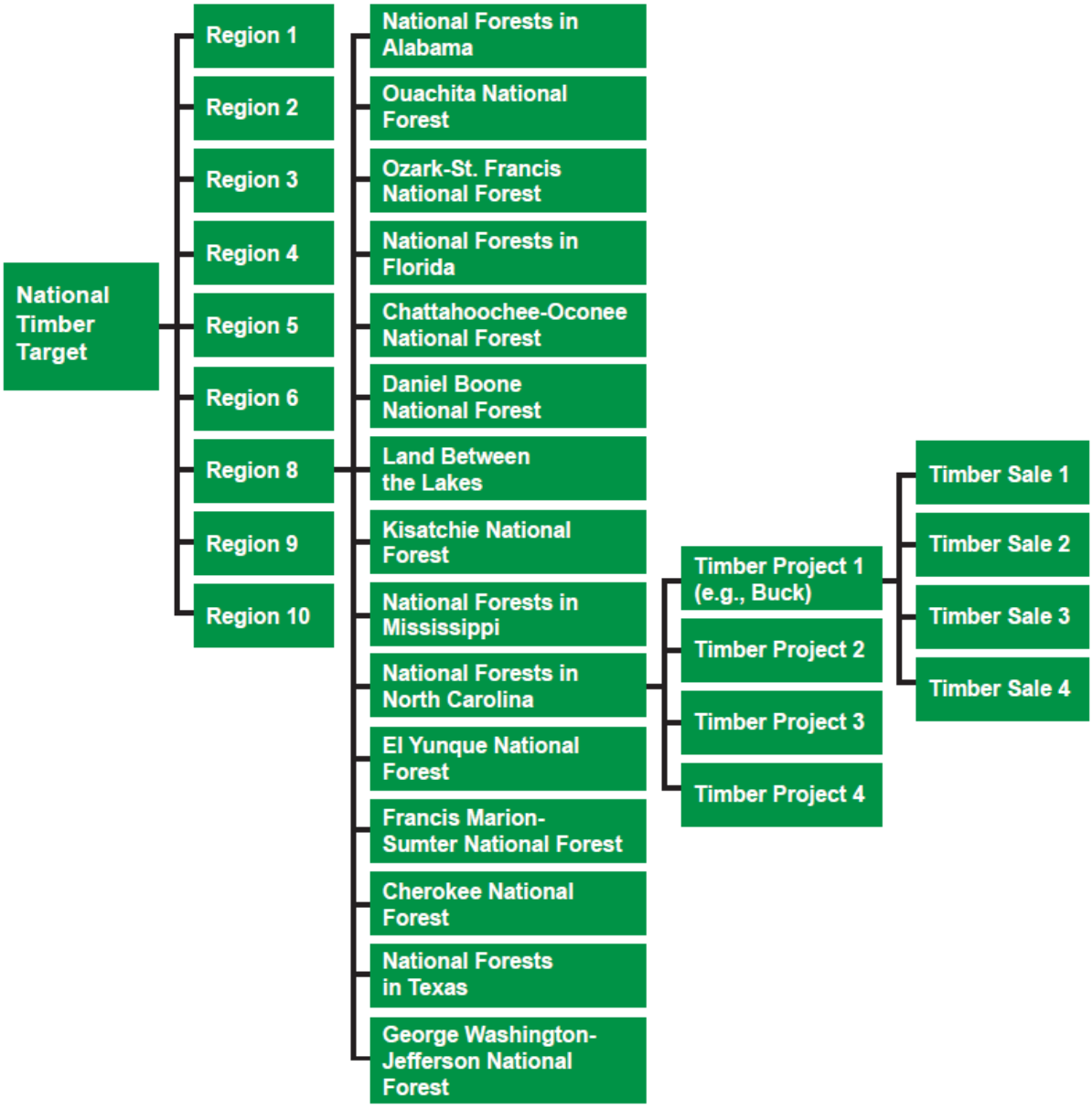

Figure 4: National, regional, and unit-specific timber targets with timber projects and sales.

104. The Department of Agriculture seeks appropriations from Congress to achieve the national timber target and sometimes revises the target based on final appropriations.

105. Congress does not set a numeric annual national timber target for the Forest Service.

106. The Forest Service and Department of Agriculture invest significant resources planning for and developing the annual national timber target. The agencies consider multiple factors throughout this decision-making process.

107. The culmination of that process is a volumetric, national target that is typically measured in "billion board feet." A board foot is equivalent to a volume of lumber twelve inches long, twelve inches wide, and one inch thick.

108. For fiscal years 2019 to 2024, the Forest Service's final national timber targets were 3.7, 3.7, 4.0, 3.4, 3.4, and 3.4 billion board feet, respectively.

109. Pursuit of these targets has resulted in timber volumes "higher than any period in the previous few decades." U.S. Forest Serv., *Fiscal Year 2022 Timber Target Report* at 1, https://www.fs.usda.gov/sites/default/files/fy2022-agency-timber-target-report.pdf (2022 Target Report).

110. Once the national timber target is set, it becomes the responsibility of the Forest Service Chief, Deputy Chiefs, and Chief Financial Officers to meet the assigned target. *See* Forest Service Handbook (FSH) 1909.13, ch. 30.41 (requiring these officers to meet "program targets, as assigned").

111. This directive is binding on Forest Service staff. *See* FSM 1110.8, 1112.03 (describing FSH directives as "mandatory, unless a justifiable reason exists for not taking action"); *see also* Memorandum from John Church, Assistant Director for Forest Products (Dec. 17, 2019) (noting the "Secretary of Agriculture *has directed* the Forest Service to meet FY20 targets of 3.7 billion board feet of timber volume sold" (emphasis added)).

112. In other words, the Forest Service must act to fulfill the national timber target.

113. Forest Service documents agree, describing the target as "mandated" and "required." *See* U.S. Forest Serv., *Views of 'No-Bid' Timber Sales from the National Forest System (NFS), Volume I* at vi, 1 (2023) (describing "targets for timber sales" as "mandated" and noting "pressure to meet targets"); FSH 1909.13, ch. 51.1 (describing national timber targets as "required").

114. Setting timber targets at a specific volume affects the day-to-day business of the Forest Service.

115. Internal Forest Service documents note that achievement of timber targets "is used as a performance element for line officers, [interdisciplinary team] members, and others" within the agency. U.S. Forest Serv., Daniel Boone Nat'l Forest, *Timber Sale Schedule Expectations* (Jan. 10, 2024); *see also* Email from Michael Joyce, Mark Twain Integrated Resources Staff Officer, to John Bryan, Silviculturist (Sept. 27, 2018) (asking for reports on timber accomplishments "for performance reviews").[4]

116. Forest Service staff awards are also based in part on target achievement. *See, e.g.*, Email from Casey Hawes, Mark Twain Timber Program Manager, to Brian Merkel, Mark Twain Supervisory Forester (July 29, 2021) (describing the need to submit timber target achievements "so we can plan out awards for the end of the [fiscal year]").

117. Agency staff understand that they "have to figure [out] a way to hit" the national target and work toward fulfilling it over the course of the year. Email from David Wilson, Acting Deputy Director, to Regional Directors (Dec. 14, 2021). When funding is inadequate to fulfill the national target, staff "look under every cushion for any available dollars to achieve" the target. Email from John Church, Assistant Director for Forest Products (Nov. 12, 2019). When that too

[4] All communications cited are between Forest Service employees unless otherwise noted.

is "not enough," staff must "shift everything [they] possibly can" from other program areas where the agency "can accept risk" so that they can "fully fund those targets." *Id.*; Memorandum from U.S. Forest Serv. Region 1 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

118. To track progress toward fulfillment of its target, Deputy Chief staff "enter the required national . . . target[]" into the agency's metrics management database, which is "used to manage and document agency performance measures and targets." FSH 1909.13, ch. 51.1, ch. 50.5.

119. Upon information and belief, the Forest Service's Washington Office demands frequent status reports on timber target achievement.

120. The Department of Agriculture's decision to set one specific national timber target instead of another results in different amounts of carbon emissions and different effects on the human environment.

121. At the most general level, a higher national timber target leads to more timber harvesting which—as explained above—results in more carbon emissions. Conversely, setting the target at a lower level leads to less carbon emissions. Apart from the COVID-19-affected years of 2020 to 2022, year-to-year increases in national timber targets have consistently driven

increases in timber volume sold since at least 2010, while year-to-year decreases have generally resulted in decreased sales. *See* Figure 5.[5]

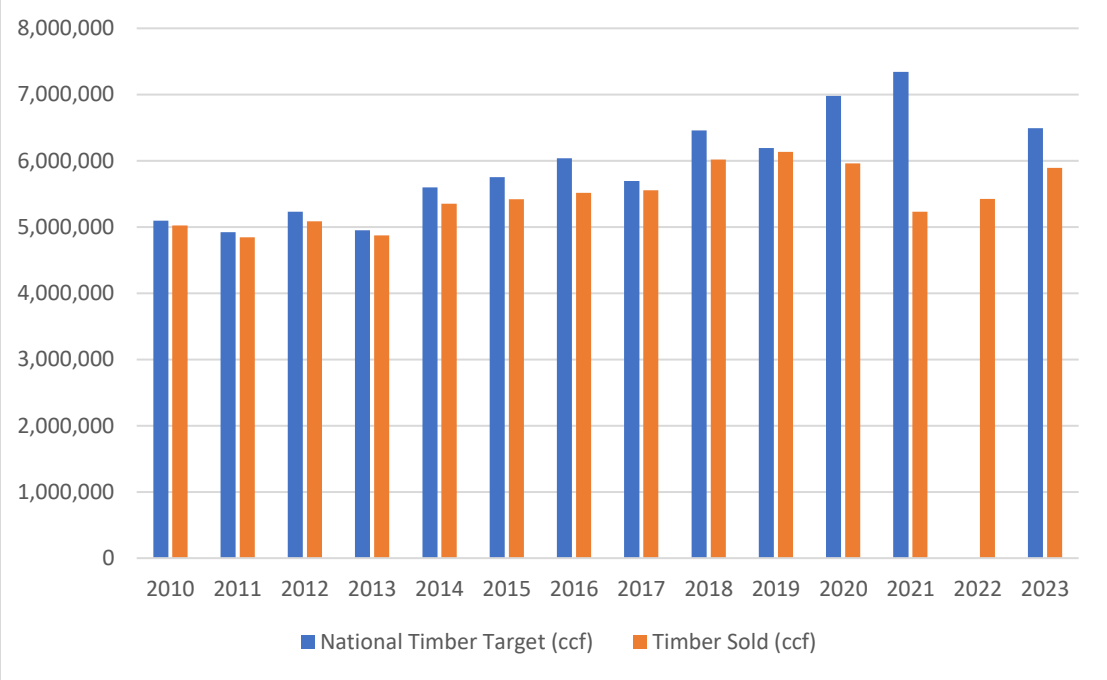

Figure 5. National timber targets versus timber sold in hundred cubic feet (ccf). The Forest Service uses a set of conversion factors to convert its billion board foot target into hundred cubic feet. The 2022 target is not displayed because the Forest Service did not report it in its Periodic Timber Sale Accomplishment Reports (PTSAR) database.

122. Higher or lower levels of carbon emissions are reasonably foreseeable effects of setting a specific national timber target.

123. Setting a specific national timber target also affects the Forest Service's ability to achieve non-timber objectives valued by Forest Advocates and the public. For instance, the agency has explained that the decrease in the national timber target between fiscal years 2021 and 2022 allowed it to prioritize different actions: it could "focus on areas in the country

[5] Data used to make this figure were sourced from the Forest Service's Periodic Timber Sale Accomplishment Reports database. *See* U.S. Forest Serv., *Periodic Timber Sale Accomplishment Reports*, https://perma.cc/G3XZ-F8JK (PTSAR).

conducting restoration, rehabilitation, reforestation, and inventory activities on landscapes impacted by the 2021 wildfires" instead of spending agency resources pursuing a higher timber target. U.S. Dep't of Agric., *FY 2023 Performance Plan* at 11, https://perma.cc/VC5P-V48F.

124. Conversely, the Forest Service has explained that "[p]reparing additional projects for sale to meet increasing timber sale targets . . . requires additional time and prioritization of available staff resources" and that as "Forest Service employees diligently work to develop, implement, and administer more timber sales to attain an increased target, a reallocation of agency support staff for administrative, human resources, finance, information technology, and related functions must also be prioritized to support this effort." 2022 Target Report at 1–2.

125. At times, working to meet timber targets can diminish the agency's ability to provide basic services. Forest Service Region 1, for example, has noted that the "need to re-prioritize our work" to focus on timber targets has impacted its ability to provide "basic customer service for health and safety," conduct "basic maintenance," "keep trails opened and maintained," and "respond to needs resulting from catastrophic events (e.g. fire) in a timely manner." Memorandum from U.S. Forest Serv. Region 1 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

126. In a similar vein, staff on the Cumberland Ranger District of the Daniel Boone National Forest in Kentucky had to "divert time and resources away" from "small-almost-no volume time wasting" projects like the Rebel Trace project—a project that appears to have entailed removing trees to allow workers to access and repair a dam's failing infrastructure—to "more commercially viable and worthwhile" timber projects so they could meet timber targets. Email from Travis Pruitt, Deputy District Ranger, to Brian Emerson, Daniel Boone Nat. Res. Staff Officer (May 25, 2023).

127. Raising timber targets also forces the agency to prioritize target achievement over ecological outcomes, such as creating quality wildlife habitat. For example, staff on the Chattahoochee National Forest in Georgia have admitted internally that a project paid for with Forest Service funds allocated to improving wildlife habitat had "no benefit to wildlife" but was instead implemented "to meet timber targets." Email from Michael Joyce, Biologist, to Brian Jackson, Silviculturist (Nov. 13, 2014).

128. Likewise, staff on the Daniel Boone National Forest have acknowledged that harvests crafted to meet timber targets "hinder[] the reforestation process" because they leave so much pulpwood and detritus behind. Email from Jacob Royse, Silviculturist, to Ricardo Suarez, Sales Forester (Oct. 11, 2023).

129. Region 1 staff have also noted that the "need to lean into" timber harvests to meet targets has depleted their "ability to treat invasive infestations" and forced the agency to defer monitoring required by Forest Service regulations for years at a time. Memorandum from U.S. Forest Serv. Region 1 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

130. Focus on fulfilling timber targets also "reduces work on aquatic organism passages and other transportation system improvement needs not associated with timber management activities," negatively impacting water quality and aquatic connectivity. Memorandum from U.S. Forest Serv. Region 9 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

131. Timber targets also drive the Forest Service to select more ecologically harmful harvesting methods. For instance, Forest Service staff have observed that "managing for healthier forests and woodland conditions"—by conducting forest "thinning" instead of heavier "Regen[eration]" harvests like clearcuts, for example—means staff have "a harder and harder time meeting [the timber] target" because thinning harvests generally produce lower timber

volumes per acre than regeneration harvests. Email from Troy Heithecker, Ouachita National Forest Supervisor, to Jose Castro, Region 8 Director of Forest and Timber Management (Oct. 26, 2020).

132. Consequently, staff choose to "prioritize ecological restoration projects that result in timber volume sold" over projects with potentially more critical restoration needs but lower timber volume to "ensure they meet" the timber target. Email from Alyson Warren, Region 6 Assistant Director of Natural Resources, to Jose Castro, Region 8 Director of Forest and Timber Management (Nov. 15, 2019).

133. Forest Service staff have also raised concerns about tension between pursuing mandatory timber targets and hazardous-fuels work intended to reduce wildfire risk. *See* 2022 Target Report at 2 (observing that "wildfire mitigation" efforts are a "barrier[]" to increasing "total timber volume sold"); U.S. Forest Serv., *Key Points from Early December 2018 Regional Calls* (2018) (noting Region 2 is "[u]sing [its] fuels [budget] for timber causing tension on [the] use of funds," and also reporting that Region 9's "[t]imber and hazardous fuels targets are competing and they cannot raise both with funding cuts").

134. At times, the agency has been forced to shift "engagement on critical post fire" projects "to ensure" timber target accomplishment. Memorandum from U.S. Forest Serv. Region 4 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

135. Setting timber targets at specific levels also has economic consequences. As explained by agency staff, by "continuously reducing stumpage prices on timber just to achieve a volume target for a specific year, we are getting less value per the tax payer dollar . . . . We are also competing with industry and non-industrial private landowners and potentially driving their values down in already challenging markets." Email from Daniel Wagner, Forest Silviculturist, to

Kelly Russell, National Forests in Florida Forest Supervisor (June 10, 2020); *see also* Memorandum from John Church, Assistant Director for Forest Products (Dec. 17, 2019) (noting that the push to meet timber targets at the end of the fiscal year leads "to a large amount of volume offered late in the fiscal year," "flooding the market" and driving prices and demand down).

136. The Department of Agriculture plans to increase the Forest Service's national timber target over the next several years. The Forest Service recently acknowledged that it plans to "continue the expansion of the timber program," expecting "additional increases [in timber volume sold] planned for the upcoming years," in order "to attain an increased target." 2022 Target Report at 1–2.

137. The "Pacific Northwest, Eastern, and Southern Regions should have the greatest increase in total timber volume sold" over the next several years in part because they do not face the same pressures in terms of "wildfire mitigation." *Id.* at 2.

138. These three regions also have the most carbon-dense forests in the country.

139. The Department of Agriculture did not consider carbon effects under NEPA when setting the national timber target for fiscal years 2019–2024.

140. Upon information and belief, the Department of Agriculture has no plans to consider carbon effects under NEPA in connection with future national timber targets.

Regional Timber Targets

141. After the national timber target is set, this number is partitioned among the Forest Service's nine regions by staff in the Forest Service's Washington Office.

142. Congress does not set regional timber targets.

143. When assigning regional timber targets, Forest Service staff use an equation to convert billion board feet to hundred cubic feet. From fiscal year 2019 to 2023, the Forest Service's Washington Office assigned Region 8 timber targets of 1,131,354, 1,379,700, 1,471,698, 1,307,500, and 1,285,200 hundred cubic feet, respectively. U.S. Forest Serv., *Periodic Timber Sale Accomplishment Reports*, https://perma.cc/G3XZ-F8JK (PTSAR). Upon information and belief, the Washington Office has assigned a fiscal year 2024 timber target for Region 8 of 1,278,500 hundred cubic feet. U.S. Forest Serv., Region 8, *FY 2024 Base Program Direction* at 50 (July 2023).

144. From fiscal year 2019 to 2023, the Forest Service's Washington Office assigned Region 9 timber targets of 983,726, 1,062,600, 1,129,032, 1,064,306.6, and 1,094,800 hundred cubic feet, respectively. *See* PTSAR. Upon information and belief, the Washington Office has assigned a fiscal year 2024 timber target for Region 9 of 1,066,625 hundred cubic feet. *See* U.S. Forest Serv., Region 9, *FY 2024 Program Direction* at 51 (Oct. 13, 2023).

145. Once the regional targets are assigned, it becomes the "responsibility" of the Regional Foresters to meet those assigned targets. FSH 1909.13, ch. 30.44.

146. In other words, Regional Foresters must act to achieve their assigned targets.

147. Achieving regional timber targets is a top priority of regional Forest Service staff.

148. According to Region 8 staff, timber volume "is always at the forefront of the decision makers thought process," U.S. Forest Serv., Region 8, *FY2020 Budget Request* (2019), and achieving timber targets is the region's "#1 priority," U.S. Forest Serv., Region 8, *Forest Management and Timber Staff Unit Expertise and Priorities* (May 3, 2019).

149. Likewise, within Region 9, timber volume targets must "take priority" over other agency activities. *See* U.S. Forest Serv., Ottawa Nat'l Forest, *Integrated Unit Program Development Narrative* at 9 (2019).

150. Staff in Region 1 similarly report that "timber" is the region's top priority above even "fuels" reduction work intended to mitigate wildfire risk. *See* Memorandum from U.S. Forest Serv. Region 1 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

151. As with the national target, Deputy Chief staff also "enter the required . . . regional performance targets" into the agency's metrics management database to track progress toward the targets. FSH 1909.13, ch. 51.1. Forest Service Chief Moore recently explained: "I've given each region a [timber] target . . . [and we] are tracking that target every quarter to see how we are doing." Senate Comm. on Energy & Nat. Res., *Manchin, Committee Examine FY 2024 U.S. Forest Service Budget Request* (Apr. 18, 2023), https://perma.cc/828H-VB77.

152. To track progress toward their target, Region 8 staff develop a monthly report on timber volume sold and hold a monthly timber-awarded call. *See* Memorandum from Kenderick Arney, Region 8 Regional Forester, to Forest Supervisors (Oct. 22, 2019).

153. Upon information and belief, Region 9 staff produce a similar monthly report and also host monthly meetings geared toward assessing target achievement.

154. Setting regional targets at specific levels results in different amounts of carbon emissions and different effects on the human environment.

155. Like the national target, setting higher regional targets leads to increases in timber harvests in that region. For example, Figure 6 below illustrates how timber-harvest levels fluctuate with changes in timber targets in Region 9.[6]

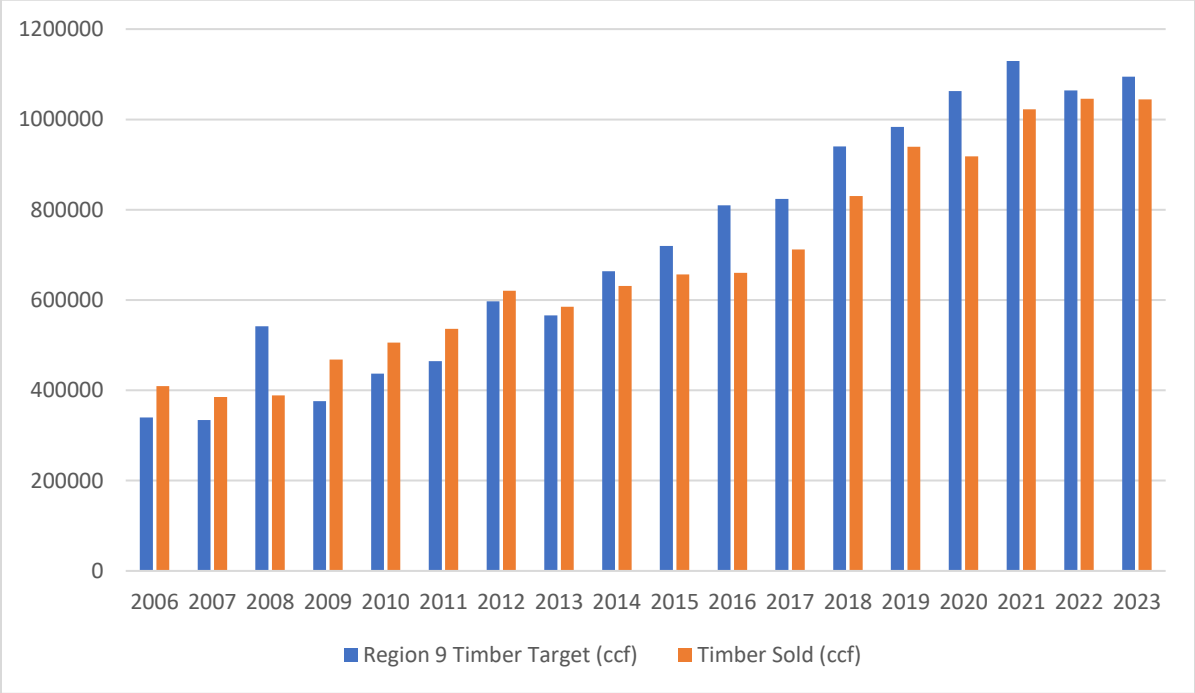

Figure 6: Region 9 timber targets versus timber sold in hundred cubic feet (ccf).

156. The decision about how to partition the national timber target among the nine Forest Service regions affects carbon emissions. For example, focusing harvests in carbon-dense regions has different effects on carbon storage and emissions than harvests in regions that store less carbon.

157. Increasing the timber targets for Regions 8 and 9—regions with some of the wettest, most productive, least wildfire-prone, and most carbon-dense forests—will have

[6] Data used to make this figure were sourced from the Forest Service's Periodic Timber Sale Accomplishment Reports database. *See* PTSAR.

significantly different effects compared to increasing the timber target for Region 4 (Nevada, Utah, and portions of Idaho and Wyoming), for instance.

158. Different regions are also susceptible to different levels of non-harvest disturbances, such as wildfire. Focusing harvests in regions with low wildfire risks but high carbon density—such as Regions 8 and 9—has different effects on long-term carbon storage than focusing harvests in regions with high wildfire risks and lower carbon density.

159. Setting a particular timber target for Regions 8 or 9 thus has reasonably foreseeable effects on carbon emissions and storage within those regions.

160. Setting a particular regional timber target also impacts the Forest Service's ability to achieve non-timber objectives, provide basic services, and promote ecological outcomes as described above.

161. The Forest Service did not consider carbon effects under NEPA when setting timber targets for Regions 8 and 9 in fiscal years 2019–2024.

162. Upon information and belief, the Forest Service has no plans to consider carbon effects under NEPA in connection with future regional timber targets.

Unit-Specific Timber Targets

163. To reach their mandated regional targets, Regional Foresters "allocate[e]" timber targets to Forest Service units in their jurisdiction and "monitor[] their use and management." FSM 1930.44a; FSH 1909.13, ch. 50.42a.

164. Congress does not set unit-specific timber targets.

165. Upon information and belief, Region 8 set numeric timber targets for each unit within Region 8 for fiscal years 2019–2024. The Forest Service's PTSAR database, however, lists unit-specific targets in Region 8 only for fiscal years 2020 and 2022. *See* PTSAR. Other

documents describe unit-specific targets in some of the missing years; for example, the agency's "FY 2024 Base Program Direction" (cited above) discloses the unit-specific targets for fiscal year 2024 as follows:

FY 2024 Timber Target by Unit

Unit	Target - CCF
Alabama	90,000
Daniel Boone	25,000
Chatt-Oconee	36,000
Cherokee	15,000
Florida	90,000
Kisatchie	170,000
Mississippi	180,000
GW & Jefferson	50,000
Ouachita	230,000
Ozark-St. Frances	101,000
North Caroliana	29,000
FM-Sumter	140,000
NFG Texas	121,000
El Yunque	
Savannah River	
Land Between the Lakes	1,500
TOTAL	**1,278,500**

Figure 7: Fiscal year 2024 unit-specific timber targets in Region 8.

166. Forest Service Region 9 also set numeric, unit-specific timber targets for fiscal years 2019–2023. *See* PTSAR. In contrast to Region 8, the Forest Service's PTSAR database lists unit-specific targets in Region 9 for each fiscal year between 2019 and 2023. *Id.* The Forest Service's PTSAR database has not disclosed the fiscal year 2024 Region 9 unit-specific targets yet. *See id.* Upon information and belief, Region 9 set unit-specific targets for fiscal year 2024.

167. Once Regional Forester staff assign a target to a Forest Service unit, the Forest Supervisor for that unit becomes responsible for "accomplish[ing] the approved targets." FSM 1930.44b.

168. The Regional Forester is "responsible for holding each Forest Supervisor accountable" if the region does not fulfill its target. Email from Scott Smith, Region 8 Sale Administrator, to Jose Castro, Region 8 Director of Forest and Timber Management (May 6, 2020).

169. Forest Supervisors cannot ignore the unit-specific target set by Forest Service staff in regional offices; Forest Supervisors must act to fulfill their unit-specific target.

170. To accomplish their unit-specific targets, Forest Supervisors sometimes allocate their target among parts of the unit, such as specific Ranger Districts. Binding Forest Service directives require District Rangers to "[m]eet the time schedules involved to accomplish annual targets" set by the Forest Supervisor. FSM 2404.17b.

171. To track progress toward their targets, some units, like the Daniel Boone National Forest in Forest Service Region 8, hold monthly "timber target" meetings to "understand where we are at in obtaining our target for the year" and to "shift resources around to help a [ranger] district that is struggling with getting [its] sales finished" in time. Email from Kevin Beck, Daniel Boone Contracting Officer, to District Rangers (Feb. 14, 2023). This information is then shared with the regional office. *Id.*

172. Setting one particular unit-specific timber target instead of another results in different amounts of carbon emissions and different effects on the human environment.

173. Like national and regional targets, setting higher unit-specific targets leads to higher timber-harvest levels in that unit with reasonably foreseeable effects on carbon storage and emissions.

174. For example, Figure 8 below illustrates how timber-harvest levels fluctuate with changes in timber targets in the Francis Marion–Sumter National Forest unit in South Carolina.[7]

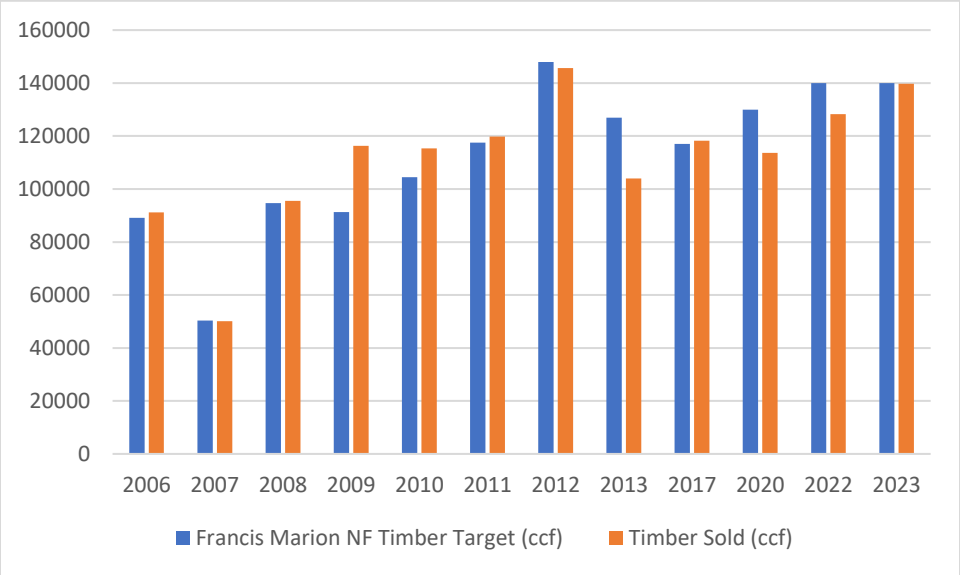

Figure 8: Francis Marion–Sumter National Forest timber targets compared to volume sold (ccf). Fiscal years 2014–16, 2018–19, and 2021 are excluded because the Forest Service neglected to record its unit-specific target in PTSAR.

175. Increases in unit-specific timber targets, combined with the mandate to achieve those targets, also leads units to pursue harvests that can contribute more volume toward the timber target, as compared to harvests that contribute less volume toward the target even if those harvests are more ecologically beneficial.

176. Setting higher unit-specific targets also forces the agency to prioritize target achievement over other outcomes. For example, one unit in Region 9 noted that increased

[7] Data used to make this figure were sourced from the Forest Service's Periodic Timber Sale Accomplishment Reports database. *See* PTSAR.

"timber volume" targets require "employees who have traditionally been very involved with recreation and trails management to shift their focus [to] project work that supports [timber] targets," resulting in "less support for areas such as recreation." U.S. Forest Serv., Wayne Nat'l Forest, *Integrated Unit Program Development Narrative* at 7 (2018).

177. Another unit echoed this concern, noting that its engineers "had to turn away a number of recreation based projects . . . to allow for their time supporting the [timber] target accomplishments." U.S. Forest Serv., Green Mtn. & Finger Lakes Nat'l Forests, *Integrated Unit Program Development Narrative* at 8 (2018).

178. Units "had to say no to [recreation] projects proposed by partners even when they have matching funds" due to focus on meeting timber targets. U.S. Forest Serv., White Mtn. Nat'l Forest, *Integrated Unit Program Development Narrative* at 12 (2018).

179. Other units have had to cut corners with their project-specific NEPA reviews due to timber targets. For example, one unit chose to begin "sale prep . . . *prior* to many NEPA decisions to enable [it] to meet targets" on time. *Id.* at 11 (emphasis added).

180. Others had no choice but to hire contractors to complete NEPA reviews, knowing the contractors would have "minimal oversight from agency personnel as [agency personnel] would be diverted to priority vegetation and fuels work" like meeting timber targets. Memorandum from U.S. Forest Serv. Region 5 to the U.S. Forest Serv. Chief (Feb. 28, 2019).

181. The Forest Service did not consider carbon effects under NEPA when setting timber targets for individual units in Regions 8 and 9 in fiscal years 2019–2024. This specifically includes timber targets set for the Francis Marion–Sumter, National Forests in North Carolina, and Mark Twain units.

182. Upon information and belief, the Forest Service has no plans to consider carbon effects under NEPA in connection with future unit-specific timber targets.

Individual Timber Projects

183. The Forest Service fulfills its national, regional, and unit-specific timber targets by authorizing timber-harvest projects and timber sales.

184. The Forest Service authorizes a timber project after completing an EIS, EA, or CE. The timber volume authorized in that project is then divided into individual sales potentially over multiple years. For example, the Buck Project EA and Decision Notice described below authorized approximately 800 acres of regeneration harvest in the Nantahala National Forest, which is part of the National Forests in North Carolina unit. The Forest Service intends to offer timber from that project in six separate timber sales over fiscal years 2020–2024. The volume sold in a specific fiscal year is then credited to that unit's yearly timber target.

185. The Forest Service completes NEPA in connection with timber *projects,* like the Buck Project, but not timber *sales*, including the six sales coming out of the Buck Project; the agency uses the project-level analysis to assess the environmental effects associated with the subsequent sales.

186. Because the process of authorizing timber sales takes time, regions and units are given preliminary timber targets years in advance so they can begin developing projects to fulfill specific volumes. "Any shortfall[s]" in satisfying timber targets based on the projections are then "addressed as annual targets are set." U.S. Forest Serv., *Summary of Five Year Availability of Regional Projects* (May 17, 2018). In other words, if the final timber target is higher than what the agency planned for, it has to make up the difference by offering more timber for sale than it had planned.

187. This planning process forces the agency to design timber sales to achieve a specific timber volume before projects are analyzed under NEPA.

188. For example, internal Forest Service documents show that the National Forests in North Carolina unit is relying on a specific timber volume from the "GAP Project" to achieve timber targets in fiscal years 2025–2027. U.S. Forest Serv., Nat'l Forests in N.C., *Pisgah Zone Five Year Timber Sale Plan* (2023). The GAP Project is still in the early stages of development. Plaintiff MountainTrue has been heavily involved in project development and advocated that the Forest Service avoid logging certain areas to protect sensitive resources. It is more difficult for the agency to respond positively to those requests by abandoning preliminary plans to log a specific area because the agency is already depending on harvesting a specific volume as part of that project at a specific time. The agency has not disclosed as part of GAP Project development that it is depending on timber volume from the project to satisfy timber targets.

189. As explained above, the Department of Agriculture and the Forest Service make no effort to comply with NEPA when setting national, regional, and unit-specific timber targets. When working to fulfill those targets, the Forest Service attempts to comply with NEPA only when authorizing specific timber *projects*.

190. Carbon emissions and changes to carbon storage are reasonably foreseeable effects of Forest Service timber projects.

191. However, when the Forest Service prepares an EA or EIS for a specific project, it consistently declines to consider aggregate carbon impacts and instead weighs project-level emissions against national and global emissions.

192. When the Forest Service authorizes projects using a CE, it frequently does not analyze carbon impacts at all. Nor does the agency generally consider the aggregate effects of its CE timber projects with its EA and EIS timber projects.

193. Multiple CE projects have been or are currently being implemented, in part, to meet timber targets for fiscal years 2019–2024 with no analysis of the carbon effects from the project.

194. At no point did the Forest Service consider under NEPA the combined carbon effects of the numerous projects authorized to fulfill for fiscal years 2019–2024: (1) its national timber target, (2) the timber targets for Regions 8 and 9, or (3) unit-specific timber targets, including for the Francis Marion–Sumter, National Forests in North Carolina, or Mark Twain units.

195. The Forest Service's consistent failure to analyze the carbon impacts of its projects in the aggregate is illustrated by three recent projects: the Sumter National Forest's White Pine Management Project, Nantahala National Forest's Buck Project, and Mark Twain National Forest's Forest Health Initiative Project.

White Pine Management Project

196. The White Pine Management Project involves 1,952 acres of commercial logging—most of which is regeneration harvest—in the Francis Marion–Sumter National Forest unit (South Carolina) in Forest Service Region 8. Regeneration harvest is similar to clearcutting because it involves clearing most of the trees from a specific area. The project will fragment forest habitat, result in widespread herbicide application, and increase sediment loading in local waterways. The Forest Service approved the White Pine Management Project in June 2021, after

conducting an EA that determined the project would not have a significant impact on the environment. Sumter National Forest, White Pine Management Project FONSI.

197. During project design, Forest Service staff requested an exemption from 36 C.F.R. § 219.11(d)(4). That provision states that forest openings from certain regeneration harvests cannot exceed 40 contiguous acres. *Id.* Local conservation groups, including Chattooga Conservancy, opposed this exemption but it was nonetheless granted, in part because the Sumter National Forest's "timber targets hinge on it." Email from Janet Hinchee, Regional Silviculturist, to Jose Castro, Region 8 Director of Forest and Timber Management (July 24, 2020).

198. The project EA disclosed that authorized logging "might temporarily contribute an extremely small quantity of greenhouse gas (GHG) emissions relative to national and global emissions." White Pine Management Project EA at 25. The analysis concluded that "any carbon initially emitted from the proposed action [would] have a temporary influence on atmospheric GHG concentrations, because carbon would be removed from the atmosphere over time as the forest regrows." *Id.* The EA provided no information regarding the amount of time necessary to "remove" from the atmosphere carbon that would be emitted through the timber harvest.

199. Plaintiff Chattooga Conservancy submitted comments on the project EA that criticized the Forest Service's dismissal of climate and carbon impacts. Chattooga Conservancy Comments at 2. The comment letter also argued the EA failed to take a "hard look" at the "potential cumulative impacts" of concurrent projects in the Andrew Pickens Ranger District of the Sumter National Forest "that could be simultaneously [affecting] thousands of acres." *Id.* at 7.

200. After the Forest Service declined to make substantive changes to the project, Chattooga Conservancy filed a formal objection pursuant to the Forest Service's pre-decisional

administrative review process. *See* 36 C.F.R. § 218. That objection argued that the project EA "eschews a contemporary landscape ecology perspective that would acknowledge and prioritize acting upon the compelling need to address climate change." Chattooga Conservancy Objection at 3. Specifically, the objection argued the EA erred by comparing the project's carbon emissions "to the entire country or world, as a tactic to dismiss this critical issue." *Id.* In addition, the objection criticized the Forest Service's EA for "discount[ing] any significant cumulative impacts of concurrent projects on the [Andrew Pickens Ranger District]." *Id.* at 5.

201. In its response to objections, the Forest Service defended the EA's climate-change analysis by explaining it "consider[ed] the proposed action in the broader context of actions on the Sumter National Forest," and that regardless of the project, the Sumter National Forest would continue to be a carbon sink—an area that sequesters more carbon than it emits—for "decades to come." White Pine Management Project Response to Objections at 3.

202. The Forest Service made no attempt to assess the carbon effects of the White Pine Management Project cumulatively with any other Forest Service project.

203. The White Pine Management Project will be divided into separate timber sales. The volume from those timber sales will contribute to the Francis Marion–Sumter National Forest unit, Region 8, and nationwide timber targets for fiscal years 2021–2024. Upon information and belief, the Forest Service also plans to offer timber sales from the White Pine Management Project to satisfy timber targets in fiscal year 2025 and beyond.

204. Portions of the White Pine Management Project that were sold, or will be sold, to satisfy timber targets for fiscal years 2021–2024 have not yet been implemented.

Buck Project

205. The Buck Project involves approximately 800 acres of regeneration harvest on the National Forests in North Carolina unit (specifically, the Nantahala National Forest) in Forest Service Region 8. The authorized logging will fragment intact forests, introduce non-native species, push roads into backcountry areas, cause stream sedimentation, harm rare species' habitats, and destroy biologically complex older forests. The Forest Service approved the Buck Project in May 2020 after preparing an EA that determined the project would not have a significant impact on the environment. Buck Project FONSI at 1.

206. The Final EA for this project limited its assessment of carbon effects to the approximately 20,000-acre project analysis area designated by the Forest Service. Buck EA at 115. The EA acknowledges that the project would convert the harvested forest from a carbon sink—sequestering more carbon than it emits—to a source of carbon emissions. *Id.* Ultimately, however, the EA concludes that the "impacts of the action alternatives on global carbon sequestration and atmospheric concentrations of CO2 are miniscule," noting that they are "imperceptibly small on global and national scales." *Id.* at 116. Regarding cumulative effects, the EA provides that "the carbon from this and past projects in the [20,000-acre] analysis area has a minimal cumulative effect not only at the local level, but at the larger level" and that there "are no ongoing projects within the analysis area that would appreciably contribute to climate change." *Id.* at 117.

207. The Forest Service made no attempt to assess the carbon effects of the Buck Project cumulatively with any other Forest Service project outside the Project's limited analysis area.

208. Plaintiff MountainTrue submitted comments and ultimately filed a formal objection to the Buck Project. That objection argued that "the EA's assumptions about the carbon sequestration benefits of the project are questionable and a matter of scientific controversy related to addressing climate change." Buck Objection at 51. More specifically, the objection claimed that the "EA's discussion reflects a lack of critical examination of the best available science when it comes to carbon sequestration and the Buck Project and . . . casts serious doubt on the adequacy of the agency's analysis of climate change." *Id.* at 51–52. The objection also noted that there are "substantial scientific questions" regarding whether "logging old forests" in fact improves "forest resiliency"—as the Forest Service asserted—and argued that the Forest Service must consider this question in an EIS that considers "the cumulative impacts of such an approach across the Nantahala National Forest." *Id.* at 53.

209. In its response to objections, the Forest Service failed to address MountainTrue's carbon sequestration and climate concerns. It also ignored the objection's request to consider the cumulative impacts of logging carbon-rich forests across the Nantahala National Forest (part of the National Forests in North Carolina unit).

210. The Buck Project will be divided into separate timber sales. The volume from those timber sales has or will contribute to the National Forests in North Carolina unit, Region 8, and nationwide timber targets for fiscal years 2020–2024. Upon information and belief, the Forest Service also plans to offer timber sales from the Buck Project to satisfy timber targets in fiscal year 2025 and beyond.

211. Portions of the Buck Project that were sold, or will be sold, to satisfy timber targets for fiscal years 2020–2024 have not yet been implemented.

Forest Health Initiative Project

212. The Forest Health Initiative Project involves 45,885 acres of commercial timber harvest in the Mark Twain National Forest unit (Missouri) in Forest Service Region 9. This includes over 21,000 acres of salvage harvest (harvest of potentially damaged trees), nearly 10,000 acres of regeneration harvest, and more than 10,000 acres of commercial thinning. The project will destroy biologically complex forest habitats, adversely affect rare species, alter forest scenery, and result in increased sedimentation of streams, including the Eleven Point River, which Plaintiff Debbie Kruzen visits. The Forest Service approved the Forest Health Initiative Project in March 2018, after conducting an EA that determined the project would not have a significant impact on the environment. Forest Health Initiative FONSI at 1.

213. The project EA included no discussion of climate change or carbon storage.

214. Ms. Kruzen submitted comments and filed a formal objection that noted this failure. That objection also explained that NEPA required the Forest Service to "examine the significant cumulative effects of greenhouse gas emissions . . . from logging before proceeding on this project." Debbie Kruzen Forest Health Initiative Objection at 5.

215. In response, the agency added some discussion of climate change to an updated FONSI. In that discussion, the Forest Service concluded the "short-term reduction in carbon stocks and sequestration rates resulting from the proposed project are imperceptibly small on global and national scales, as are the potential long-term benefits in terms of carbon storage." Forest Health Initiative FONSI at 5.

216. The agency further claimed that an assessment of carbon effects would be "statistically nonviable at the project level" yet the agency made no attempt to assess the carbon effects of its actions at higher levels of decision-making (such as when setting the Mark Twain

unit-specific timber target). *Id.* The agency ultimately estimated that "any emissions from this project in a given year are expected to be equivalent to less than one percent of the fossil fuel emissions released from the state of Missouri in one year." *Id.* at 6.

217. The Forest Service made no attempt to assess the carbon effects of the Forest Health Initiative Project cumulatively with any other Forest Service project.

218. The Forest Health Initiative Project will be divided into separate timber sales. The volume from those timber sales will contribute to the Mark Twain National Forest unit, Region 9, and nationwide timber targets for fiscal years 2019–2024. Upon information and belief, the Forest Service also plans to offer timber sales from the Forest Health Initiative Project to satisfy timber targets in fiscal year 2025 and beyond.

219. Portions of the Forest Health Initiative Project that were sold, or will be sold, to satisfy timber targets for fiscal years 2019–2024 have not yet been implemented.

CLAIMS FOR RELIEF

Count 1: The Department of Agriculture Violated NEPA and the APA by Failing to Account for the Carbon Impacts of Its National Timber Targets

220. Forest Advocates incorporate by reference all preceding paragraphs.

221. The Department of Agriculture's promulgation of national timber targets in fiscal years 2019–2024 were major federal actions that require compliance with NEPA. 42 U.S.C. § 4332.

222. The Department of Agriculture's promulgation of these targets were final agency actions for purposes of APA review.

223. The Department of Agriculture's national timber targets have reasonably foreseeable effects on the environment, including on carbon storage and emissions.

224. These effects are significant, or, at the very least, uncertain. Therefore, the Department of Agriculture should have prepared an EIS or EA to assess the environmental impacts of its national timber targets. *Id.* § 4332(2)(C); 40 C.F.R. § 1501.5.

225. Logging operations are yet to be completed for timber sales planned or executed, in part, to fulfill national timber targets for fiscal years 2019–2024.

226. Because the Department of Agriculture did not conduct a NEPA study of its national timber targets, it violated the APA by acting "without observance of procedure required by law." 5 U.S.C. § 706(2)(D); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508. Alternatively, the Department of Agriculture's continuing failure to conduct a NEPA study for its national targets constitutes "agency action unlawfully withheld or unreasonably delayed," in violation of the APA. 5 U.S.C. § 706(1); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

Count 2: The Forest Service Violated NEPA and the APA by Failing to Account for the Carbon Impacts of Its Timber Targets for Regions 8 and 9

227. Forest Advocates incorporate by reference all preceding paragraphs.

228. The Forest Service's promulgation of regional timber targets in fiscal years 2019–2024 for Regions 8 and 9 were major federal actions that require compliance with NEPA. 42 U.S.C. § 4332.

229. The Forest Service's promulgation of these targets were final agency actions for purposes of APA review.

230. The Forest Service's regional timber targets for Regions 8 and 9 have reasonably foreseeable effects on the environment, including on carbon storage and emissions.

231. These effects are significant, or, at the very least, uncertain. Therefore, the Forest Service should have prepared an EIS or EA to assess the environmental impacts of its regional timber targets. *Id.* § 4332(2)(C); 40 C.F.R. § 1501.5.

232. Logging operations are yet to be completed for timber sales planned or executed, in part, to fulfill timber targets for fiscal years 2019–2024 for Regions 8 and 9.

233. Because the Forest Service did not conduct a NEPA study of its regional timber targets for Regions 8 and 9, it violated the APA by acting "without observance of procedure required by law." 5 U.S.C. § 706(2)(D); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508. Alternatively, the Forest Service's continuing failure to conduct a NEPA study for its Region 8 and 9 targets constitutes "agency action unlawfully withheld or unreasonably delayed," in violation of the APA. 5 U.S.C. § 706(1); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

Count 3: The Forest Service Violated NEPA and the APA by Failing to Account for the Carbon Impacts of Its Unit-Specific Targets

234. Forest Advocates incorporate by reference all preceding paragraphs.

235. The Forest Service's promulgation of unit-specific timber targets in 2019–2024 for the Francis Marion–Sumter, National Forests in North Carolina, and Mark Twain units were major federal actions that require compliance with NEPA. 42 U.S.C. § 4332.

236. The Forest Service's promulgation of these targets were final agency actions for purposes of APA review.

237. The Forest Service's timber targets for these units have reasonably foreseeable effects on the environment, including on carbon storage and emissions.

238. These effects are significant, or, at the very least, uncertain. Therefore, the Forest Service should have prepared an EIS or EA to assess the environmental impacts of its unit-specific timber targets. *Id.* § 4332(2)(C); 40 C.F.R. § 1501.5.

239. Logging operations are yet to be completed for timber sales planned or executed, in part, to fulfill unit-specific timber targets for fiscal years 2019–2024 for the Francis Marion–Sumter, National Forests in North Carolina, and Mark Twain units.

240. Because the Forest Service did not conduct a NEPA study of its unit-specific timber targets, it violated the APA by acting "without observance of procedure required by law." 5 U.S.C. § 706(2)(D); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508. Alternatively, the Forest Service's continuing failure to conduct a NEPA study for its unit-specific targets constitutes "agency action unlawfully withheld or unreasonably delayed," in violation of the APA. 5 U.S.C. § 706(1); *see* 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

Count 4: The Forest Service's Assessment of Carbon Impacts at the Project Level Violated NEPA and the APA

241. Forest Advocates incorporate by reference all preceding paragraphs.

242. The Forest Service's White Pine Management Project, Buck Project, and Forest Health Initiative Project violate the APA because they fail to adequately consider the direct, indirect, and cumulative carbon impacts of each project as required by NEPA.

A) White Pine Management Project

243. The White Pine Management Project is an ongoing major federal action that requires compliance with NEPA and its implementing regulations. 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

244. The Forest Service's approval of the White Pine Management Project was a final agency action for purposes of APA review.

245. At the time the Forest Service issued its Decision Notice for the project, binding NEPA regulations required the agency to consider the White Pine Management Project's effects in its EA. 40 C.F.R. § 1501.5 (2020).

246. This included "effects that occur at the same time and place as the proposed action" as well as "effects that are later in time or farther removed in distance from the proposed action." *Id.* § 1508.1(g).

247. The Forest Service's EA, FONSI, and Decision Notice for the White Pine Management Project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because they (1) fail to account for cumulative carbon impacts from other similarly situated projects and (2) fail to take a "hard look" at the carbon effects of the project as required by NEPA. *See* 5 U.S.C. § 706.

B) Buck Project

248. The Buck Project is an ongoing major federal action that requires compliance with NEPA and its implementing regulations. 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

249. The Forest Service's approval of the Buck Project was a final agency action for purposes of APA review.

250. At the time the Forest Service issued its Decision Notice for the project, binding NEPA regulations required the agency to consider the Buck Project's direct, indirect, and cumulative effects in its EA. 40 C.F.R. § 1508.8 (2019).

251. The Forest Service's EA, FONSI, and Decision Notice for the Buck Project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because they (1) fail to account for cumulative carbon impacts from other similarly situated projects and (2) fail to take a "hard look" at the carbon effects of the project as required by NEPA. *See* 5 U.S.C. § 706.

C) Forest Health Initiative Project

252. The Forest Health Initiative Project is an ongoing major federal action that requires compliance with NEPA and its implementing regulations. 42 U.S.C. § 4332; 40 C.F.R. §§ 1500–1508.

253. The Forest Service's approval of the Forest Health Initiative Project was a final agency action for purposes of APA review.

254. At the time the Forest Service issued its Decision Notice for the project, binding NEPA regulations required the agency to consider the Forest Health Initiative's direct, indirect, and cumulative effects in its EA. 40 C.F.R. § 1508.8 (2018).

255. The Forest Service's EA, FONSI, and Decision Notice for the Forest Health Initiative Project are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law because they (1) fail to account for cumulative carbon impacts from other similarly situated projects and (2) fail to take a "hard look" at the carbon effects of the project as required by NEPA. *See* 5 U.S.C. § 706.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

A. DECLARE that Defendants violated the National Environmental Policy Act and Administrative Procedure Act in the respects set forth above when: (1) setting the national timber target for fiscal years 2019–2024; (2) setting the Region 9 and Mark Twain unit timber targets for fiscal years 2019–2024; (3) setting the Region 8 and National Forests in North Carolina unit timbers target for fiscal years 2020–2024; (4) setting the Francis Marion–Sumter unit timber target for fiscal years 2021–2024; and (5) approving the White Pine Management, Buck, and Forest Health Initiative Projects.

B. ENJOIN Defendants from offering additional timber volume for sale to fulfill their Region 8, Region 9, Francis Marion–Sumter unit, National Forests in North Carolina unit, and Mark Twain unit timber targets for fiscal year 2024—excluding harvests demonstrated to be

necessary to mitigate wildfire risks—until they have complied with the National Environmental Policy Act and the Administrative Procedure Act;

C. ENJOIN Defendants from proceeding with the remaining commercial timber-harvest portions of the White Pine Management, Buck, and Forest Health Initiative Projects until they have complied with the National Environmental Policy Act and the Administrative Procedure Act;

D. AWARD Plaintiffs their reasonable costs, fees, and expenses, including attorney's fees, associated with this litigation; and

E. GRANT Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted, this the 26th day of February, 2024.

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