



Colorado Timber Industry Association

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Director, Ecosystem Management Coordination
201 14th Street SW, Mailstop 1108
Washington, DC 20250-1124

Attn: Jennifer McCrae, Forest Service Team Leader

Re: Comments to the Draft Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System and Environmental Impact Statement (89 FR 52039, June 21, 2024)

Dear Ms. McCrae:

Thank you for the opportunity to submit comments on behalf of the Colorado Timber Industry Association (“CTIA”) and its’ members regarding the above referenced Notice of Availability, also referred to as the National Old-Growth Amendment (“NOGA”).

STATEMENT OF INTEREST

Colorado Timber Industry Association is a non-profit, non-partisan, local member-based trade association. The CTIA is the voice for Colorado’s forest products companies. We advocate for healthy forests and healthy communities, including actively promoting sound forest management that provides a stable and sustainable supply of timber from public and private forestlands. CTIA’s members engage in many aspects of forest management and are an important stakeholder partner to the United States Forest Service (“USFS”). CTIA’s members presently (and plan in the future) to engage in timber removal in some capacity on National Forest System lands.

As described below, CTIA is extremely concerned due to the significant impact the proposed revisions contained in the draft amendment and DEIS will have on the Land Use Plans within the National Forest System (“NFS”), and specifically the limitations it will impose on vegetation management in the future. CTIA supports the No Action alternative described in the NOGA. We contend that the action alternatives as drafted violates the National Forest Management Act (16 U.S.C. § 1604 *et seq.* “NFMA”), the 2012 Planning Rule

(36 C.F.R. § 219 *et seq.* “2012 Rule”), and the Multiple-Use and Sustained Yield Act of 1960 (16 U.S.C. §528 *et seq.*, “MUSYA”). We further contend that the Draft Environmental Impact Statement (“DEIS”) fails to evaluate a reasonable range of alternatives or take a “hard look” in contravention of the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*, “NEPA”).

Comments

USFS Must Ensure Compliance with NFMA, the 2012 Planning Rule, and MUSYA

The existence of old-growth forests on the National Forest System (“NFS”) are considerable, currently comprising approximately 17 percent (over 24.7 million acres) of the total forested acres of the NFS. Currently, 13.6 million acres of National Forest old-growth — more than 55 percent – and 25.3 million acres of mature forest are already located in areas with passive management status, such as Inventoried Roadless Areas, designated Wilderness Areas, or National Monuments (“protected areas”). As such, over 38.9 million acres of mature and old growth forests – more than a quarter of the total NFS forested acres are already in protected areas *without making any changes to current forest plans*. When combined with the 22 million acres of younger forested acres located within protected areas the total reaches over 60 million acres or **42 percent** of the NFS with little to no management,¹ and where commercial timber harvest is already excluded.

In enacting NFMA in 1976, Congress directs the Secretary of Agriculture to consider a broad range of resource issues, land characteristics, and public needs and values in determining how public lands should be managed within the context of multiple use and sustained yield. 16 U.S.C. §1604(e). In defining the term “multiple use” the implementing regulations at 36 C.F.R. §219.1(b) directs USFS to:

Manage(s) the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

Under the MUSYA the Secretary is “directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the national forests due consideration shall be given to the relative values of the various resources in particular

¹*See*, Mature and Old-growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management in Fulfillment of Section 2(b) of Executive Order 14072, FS-1215a, April 2024 Revised) at 7.

areas...” This balancing requirement puts conservation and timber utilization (as well as the other listed resource values) on equal footing.

Consequently, USFS must strike an appropriate balance between potentially competing interests and land management objectives. This balance is achieved through Section 219 *et seq.* of the 2012 Planning Rule. NFMA nor its implementing regulations i.e. 2012 Planning Rule authorize the subordination of any of the various uses in preference for a single land use such as old-growth preservation. CTIA contends that applying an emphasis on one resource across the entire NFS is inconsistent with NFMA and its mandate under MUSYA.

Further, additional restrictions placed on timber production as described under Alternatives 2 and 3 creates *de facto* wilderness or “set asides” across the entire National Forest System, which violates §529 of MUSYA, which clearly establishes that the renewable resources be managed *in combination* of the relative values including the several products obtained from the national forests. The fact that 42 percent of the NFS is already in protected areas raises serious questions regarding the additional plan components under the action alternatives, such as standards 2.a and 3 which would only allow vegetation management for the purpose of “proactive stewardship,” and prohibits actions for purposes of “timber production.” While standards 2.b and 2.c appear to provide exceptions or deviations to management in old-growth, it will not reduce the chilling effect and reluctance of those implementing the plan to utilize the deviations/exceptions which we have seen occur in designated Wilderness and Roadless Areas. USFS must explain how creating *de facto* wilderness will achieve the required balance in managing the public lands.

Additionally, the administration of a timber program is not discretionary, rather it is a mandate under NFMA Section 6(e)(2), (g)(3)(e). As such, USFS must explain how the action alternatives, especially Alternatives 2 and 3 provide for a sustainable timber program across the NFS in light of the plethora of inventoried mature and old-growth.

USFS asserts in the DEIS that the need for the proposed action is to demonstrate compliance with Executive Order 14072 to institutionalize climate smart management and conservation strategies that address **threats** to mature and old-growth forests on Federal lands. Throughout EO 14072 it is stated that wildfire and insect disease are major threats to mature and old-growth forests which has been confirmed through the Threat Assessment² prepared to inform this planning process. Unfortunately, USFS has failed to achieve this through the action alternatives as described, and instead increases the potential for catastrophic wildfire by limiting management within these stands through various standards and guidelines that target timber removal. For example, NOGA-FW-GDL-01 “The intent of this guideline is to support the recruitment and development of future old-growth forests by **constraining vegetation management projects...**” (DEIS at 33).

² Mature and Old-Growth Forests: Analysis of the Threats on Lands Managed by the Forest Service and Bureau of Land Management Report. June 2024.

USFS Must Ensure Compliance with NEPA

In addition to being inconsistent with NFMA, the 2012 Planning Rule, and MUSYA, we also assert that all of the action alternatives in the DEIS inappropriately jettison USFS' existing mechanisms to protect old-growth and represents a pre-determined decision to implement strict and overly passive vegetation management without due consideration of the primary threats to old-growth. The Threat Assessment included valuable information that could have informed the purpose and need and develop alternatives. However, that assessment was not completed in time to inform not only the public, but also USFS, which led to the development of alternatives that fail to address the primary threats to old-growth.

The Council on Environmental Quality ("CEQ") regulation at 40 C.F.R. § 1502.16(5) requires USFS to include discussion of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned..." CTIA contends that the vegetation management restrictions that will be placed upon the NFS under Alternatives 2 and 3, and to a lesser degree Alternative 4 conflict with existing plan components directing management in old growth. In the Threat Assessment the authors found that "[n]o region demonstrated a significant (at 95 percent confidence level) reduction in the extent of old growth forest in forests that experienced tree cutting during the remeasurement period. *This likely reflects the influence of LMP components on old-growth forest management*"³ (emphasis added). Moreover, the action alternatives fail to address the direction under EO 14072 to reduce the primary threats to old-growth.

Furthermore, the principle of informed decision-making is the primary purpose of NEPA and is intended to be used as a tool during the planning and decision-making process. As such, an EIS should not be used to justify decisions that have already been made and "[a]gencies shall not commit resources prejudicing selection of alternatives before making a final decision" (40 C.F.R. §§1502.2(f)). Unfortunately, that is exactly what the USFS has done by developing and analyzing alternatives prior to the issuance of the Threat Assessment.

The Threat Assessment found that natural disturbance – exacerbated by climate change and the buildup of fuels after decades of fire suppression and *inactive* management – accounted for nearly 100 times more old-growth loss over the last two decades than all "tree cutting" on NFS and BLM lands, stating:

Current data show that the leading cause for losses on forestlands managed by the Forest Service and BLM is from wildfires. Second to wildfire is the loss of mature and old-growth forests from insects and disease.... recent losses from

³ *Id.* at 41.

tree cutting are third, accounting for *less than one percent* of net losses this century”⁴ (emphasis added).

The Threat Assessment also found that tree cutting, and timber harvest do not necessarily change the old-growth character of forested lands. Two thirds of the acres of older forests that experienced tree cutting saw only “low severity” impacts from timber harvest.⁵

For these reasons CTIA contends that USFS acted prematurely in the development of its preferred alternative (Alternative 2), where severe limitations are placed on vegetation management tools, and fails to address the primary threats to old-growth. CTIA further contends that USFS failed to develop an alternative that supports responsible resource stewardship on the NFS. As a result, this entire planning process represents a pre-determined decision by USFS to implement overly restrictive management on the use of timber harvest without giving proper and detailed analysis to alternative measures which may produce equal or better results for old-growth conservation, while complying with EO 14072, NFMA and the 2012 Planning Rule, and MUSYA.

1. *Evaluate a Reasonable Range of Alternatives*

The “alternatives” portion of an EIS is considered the “heart” of the NEPA process and requires an agency to rigorously explore and objectively evaluate all reasonable alternatives so that decision-makers and the public are fully informed. 40 C.F.R. §1502.14(a). “Reasonable alternatives” are defined as: “a reasonable range of alternatives that are *technically* and *economically* feasible, and meet the *purpose and need* for the proposed action.” 40 C.F.R. §1508.1(hh), emphasis added. CTIA contends that in order for an alternative to be “technically feasible” it cannot conflict with law. Both Alternatives 2 and 3 are not reasonable because they conflict with multiple statutes including the NFMA, the 2012 Rule, and MUSYA.

CTIA further contends that in order for an alternative to be considered “reasonable” the alternative must be implementable. Alternatives 2 and 3 fail to comply with MUSYA, the 2012 Rule, and NFMA and therefore cannot be implemented and should have been removed from detailed analysis, rather than elevated as viable options. Additionally, the action alternatives fail to meet the purpose and need (address the primary threats to old-growth) because as discussed throughout the DEIS, eliminating or severely restricting commercial timber harvest on 24.7 million acres of lands designated as old-growth would preclude other management tools such as prescribed fire, which would increase the risk of wildfire and insect infestation, the primary threats to old-growth.

In addition, the action alternatives fail to adequately address the primary threats to old-growth which is fire, and insect and disease exacerbated by climate change and fire suppression activities and instead focuses its attention on restricting vegetation management without giving regard to the degree to which these activities impact old-

⁴ *Id.* at 63.

⁵ *Id.*

growth. The Threat Assessment found that areas where commercial timber harvest occurred old-growth characteristics were maintained and *more* resilient to the primary threats identified. The ongoing threat of fire and insect and disease cannot be ignored. It does not make sense to limit the tools available to USFS in managing these dynamic forests for resilience to these primary threats.

If protection of mature and old-growth is to be achieved then properly addressing the primary threats should be the focus. USFS should have eliminated Alternatives 2 and 3 from detailed analysis rather than elevate them as viable options that could be selected.

Finally, the action alternatives fail to meet the “economic feasibility” test. Chief Randy more has repeatedly made statements indicating that USFS is under-resourced, and staff overworked.⁶ Most recently, on August 29, 2024, Chief Moore issued a memo to the agency staff stating that the current budget environment “pose(s) enormous challenges” and that steps must be taken to “[e]nsure fiscal solvency...or stability,” which the agency will do “by using all available funding sources to pay for our employees. That means we will be asking employees to be taking on the highest priority work that matches our funding sources.”⁷

When considering other high priority and costly work, such as the Wildfire Crisis Strategy (“WCS”), the magnitude of the work facing the agency under WCS, and the budgetary issues it is clear that implementing the action alternatives is not economically feasible. USFS must demonstrate how the action alternatives, especially Alternatives 2 and 3 are economically feasible, without this the DEIS is fatally flawed, and USFS must prepare a new DEIS which only includes alternatives that 1) meet the purpose and need, 2) are economically feasible, and 3) technically feasible.

2. Inadequate Scope and Analysis of Impacts

The purpose of the NEPA analysis is to publicly disclose the potential impacts of various management strategies under consideration by the agency. Under §102(2)(C) of NEPA, an agency is required to prepare a detailed statement on the various effects or impacts associated with a major federal action.

USFS may have presented impacts (i.e. environmental consequences) by resource and alternative in the DEIS and the supporting Ecological Impact Analysis (“EIA”); however, USFS failed to include any detailed or meaningful analysis of those ecological and economic impacts instead making conclusions without any supporting evidence. Moreover, the scale at which impacts were evaluated is inappropriate and should have included individual unit impacts and the impacts to wood markets and infrastructure on an individual forest scale.

⁶ House Natural Resources Committee, Budget Oversight Hearing on the Forest Service’s FY 2025 Budget Request, June 4, 2024. <https://www.youtube.com/watch?v=IVN1PB5nkpU&t=1s>. “If you doubled our budget right now...we would certainly make that work, but it wouldn't be enough to do everything that's being asked.”

⁷ Fiscal Year 2025 Budget Updates, FS Memo from Chief Randy Moore, Posted August 29, 2024. <https://www.fs.usda.gov/inside-fs/leadership/fy25-budget-updates>.

This information, had it been provided, would be far more meaningful than that provided in the DEIS and supporting EIA.

USFS Must Comply with Small Business Regulatory Flexibility Act

The draft amendment and DEIS do not list the need to comply with the Small Business Regulatory Enforcement Fairness Act (“SBREFA”). CTIA encourages USFS to comply with the Regulatory Flexibility Act (“RFA”), as amended by SBREFA, which requires federal agencies to adequately analyze the impacts of its proposals on small entities and tailor their rules to minimize impact to such entities. Importantly, SBREFA requires federal agencies to publish their analysis in the Federal Register. In order to certify “no significant adverse impact” they must supply a factual basis for that conclusion in the analysis. The socioeconomic analysis in an EIS does not satisfy this requirement. In *Northwest Mining Association v. Babbitt*, 5 F.Supp.2d 9 (D.D.C. 1998), the court held that failure to comply with the RFA and SBREFA will invalidate a rulemaking.

Conclusion

CTIA appreciates the opportunity to offer these comments. CTIA also recognizes that the intent of NOGA is rooted in a desire to improve old-growth forest health and resilience, and that USFS acknowledged the benefits of active forest management. However, CTIA believes that the increased restrictions on timber harvest will result in continued overstocking and the loss of old growth by fire and insect and disease infestations. CTIA also believes that the entire NOGA process is fraught with substantial procedural, legal and scientific flaws, including those associated with NFMA, the 2012 Planning Rule, MUSYA, and NEPA. We incorporate by reference as though fully setout herein the comments of the Federal Forest Resource Coalition and Intermountain Forest Association.

Sincerely,

Megan Maxwell

Megan Maxwell
Executive Director
Colorado Timber Industry Association