



**NATIONAL ASSOCIATION OF STATE FORESTERS**  
 444 North Capitol Street, NW, Suite 540, Washington, DC 20001

CQ587

September 23, 2002

2002  
 Executive  
 Committee

NEPA Task Force  
 PO Box 221150  
 Salt Lake City, UT 84122

*President*  
 Larry A. Kotchman  
 North Dakota

Re: Request for Comments on NEPA Process

*Vice President*  
 James L. Sledge  
 Mississippi

To Whom It May Concern:

*Treasurer*  
 Burnell C. Fischer  
 Indiana

On behalf of the National Association of State Foresters (NASF), I appreciate the opportunity to comment on the National Environmental Policy Act (NEPA) process, as requested by the Council on Environmental Quality in the July 9, 2002 edition of the *Federal Register*. NASF is a non-profit organization that represents the directors of the State forestry agencies, eight US territories, and the District of Columbia. State Foresters manage and protect State and non-industrial private forest (NIPF) lands across the US, encompassing two-thirds of the nation's forests.

*Northeastern  
 Representative*  
 James S. Barresi  
 New Jersey

*Western  
 Representative*  
 Raymond G. Aslin  
 Kansas

We appreciate the opportunity to offer our recommendations for enhancing the effectiveness of the NEPA process. There is no doubt that the existing process has put a real burden on our Federal partners and at times their inability to complete NEPA documents in a timely manner has delayed action in implementing joint State and Federal National Fire Plan projects. Project delays on Federal land have also led to the spread of insect and disease outbreaks from untreated Federal land to adjacent non-Federal lands, with the spread of the southern pine beetle in Texas providing just one example. In other cases, lengthy procedures have delayed the salvage of dead or damaged timber until the project was no longer economical.

*Southern  
 Representative*  
 J. Fred Allen  
 Georgia

*Immediate  
 Past President*  
 Conrad M. Motyka  
 Vermont

State Foresters have experience with a wide range of methods for effectively addressing environmental issues and achieving environmental goals. Our following comments respond to the issues and questions raised in the *Federal Register*. They are by no means comprehensive but are intended to suggest some starting points for addressing problems and opportunities to improve the NEPA process.

*Executive Director*  
 Anne E. Heissenbuttel

These comments represent the positions of most State Foresters. However, we do wish to acknowledge that one member State, California, has indicated

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that the current NEPA regulations and processes have not restricted their collaborative work with Federal agencies.

#### **A. Technology, Information Management, and Information Security**

*1. Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses?*

Some State forestry agencies have indicated that they find scientific ecoregional assessments prepared by Federal agencies, such as the work of the Forest Ecosystem Management Assessment Team (FEMAT), Sierra Nevada Ecosystem Project (SNEP) and Interior Columbia Basin Ecosystem Management Project (ICBEMP), to be useful supplements for State data, which they may use in their work. States have provided comments on these documents, and in some cases have requested and been denied joint-lead agency status.

*2. What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?*

We suggest that technological capabilities and data assessment and validation should be better balanced with the need to make good decisions in a timely manner.

In some cases we find that too much emphasis is placed on technological capabilities. The purpose of data collection and analysis can become forgotten in the tendency to explore the limits of a given technological tool.

When assessing and validating the quality and quantity of information needed for NEPA analyses, land managers must consider the degree to which additional information would help address a particular concern or decision. The adequacy of data should be determined by assessing whether the current body of knowledge produces rational and timely decisions. For data collection, it is possible to reach a point of diminishing returns, where the cost (in both money and time) of gathering additional data outweighs the benefits gained in the decision-making process. In addition, the extra data collected may only complicate and add confusion to the process.

In order to better facilitate decision-making in the NEPA process, NASF recommends sampling or modeling when site-specific data is unavailable or difficult and costly to collect. If specifically authorized in the NEPA procedures, appropriate use of sampling methods should meet the "hard look" standard established by the courts. Sampling, combined with professional judgment through observation and analysis by project interdisciplinary teams, followed by implementation and effectiveness monitoring, should result in enough information to sufficiently demonstrate the expected effects and the rationale for a reasonable decision.

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*3. Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific?*

The extent to which State forestry agencies maintain databases and other sources of environmental information varies greatly. Individual States keep both standing and project specific databases, depending on the issue.

*4. What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?*

States use a wide variety of information management and retrieval tools, and we cannot offer any specific suggestions at this time.

*5. What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents?*

State forestry agencies use a number of methods to convey and receive information, including Internet- and email-based documents, CD ROM, material published in the press (such as legal notices printed in local newspapers), and mailed notices of projects or project summaries. For large documents, many prefer to read and review printed copies, while electronic copies can facilitate searches for specific issues or words.

Geographic Information System technologies also have utility and are helpful for mapping resource attributes, such as recent mapping efforts in the Blue Mountains Demonstration area in eastern Oregon. Maps can help land managers and the public visually understand management objectives and associated issues, particularly when the scale of analysis is not so large that it becomes hard to comprehend ecosystem interconnections, nor so small that it is difficult to separately evaluate numerous individual project decisions.

*6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision making? What objections or concerns have been raised concerning the use of tools?*

In terms of communicating with stakeholders, web-based information is promising, but it limits involvement to those who have the access and capability to use the Internet. Information also needs to be distributed through traditional media in order to reach the broadest number of stakeholders. The key is to have a variety of communication modes, including print material made available through mailing lists and publications, as well as Internet and email technologies.

Email technology has introduced a new challenge to agency managers seeking public input. Methods must be developed to distinguish between computer-generated mass

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emails and that which comes from individuals and organizations offering substantive comments.

*7. What factors should be considered in balancing public involvement and information security?*

Information security needs to receive priority. While the Internet and other technologies have enhanced State public involvement processes, particularly for strategic planning, there will always be risks. Effort must be taken to minimize risk.

**B. Federal and Inter-governmental Collaboration**

Federal agencies should recognize the value that State and local government agencies can bring to the table through a joint-lead or cooperating agency relationship. In such a process, each agency must bring a commitment to make the process work. They must also recognize and respect the legal differences that may govern what each party can or cannot do in such a process.

*1. What are the characteristics of an effective joint-lead or cooperating agency relationship/process?*

Watershed-level projects such as hazardous fuel reduction treatments demonstrate how regulatory differences may impact restorative treatments across the landscape. In these situations, where both public and private lands are involved, land managers need to remain respectful and cognizant of the regulatory requirements of the different landowners. Private landowners, who are typically required to manage according to best management practices required by the State, can proceed from a proposed management action to implementation relatively quickly. Across the fence, however, the NEPA analysis required of Federal lands frequently slows implementation through complicated analyses and consultation, followed by appeals and litigation. This difference in the length of time it takes to implement management activities often hinders the completion of mutual goals. Streamlining the NEPA processes while protecting the law's intent should help to encourage cross-boundary work and improve achievement of land management goals.

*2. What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?*

Any factors that discourage stakeholder participation or in other ways impact the quality of a relationship may hinder the ability to enter into an effective collaborative agreement. Barriers are typically context specific and may include legal requirements, personal agendas taking precedent over the common goal, and the inability or unwillingness to see issues from other perspectives. By definition, collaboration requires the willingness to cooperate or work together while remaining principled about individual agendas.

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The concern that Federal rules may become applicable on cooperator or partnering lands due to collaboration also presents a challenge. There is a sense of concern among many private landowners, for example, that Federal delays may preclude implementation on neighboring lands or that Federal rules must apply on cooperators' lands due to a contractual relationship.

*3. What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?*

Training should emphasize the value of joint-lead and cooperating agency status when multiple ownerships are affected by or involved in proposed projects. In addition, agency personnel need to be made aware of the current direction regarding the use of joint-lead agencies and encouraged to include States as joint-lead or cooperating agencies when proposed decisions have cross-boundary effects, such as in the Roadless Area Conservation Environmental Impact Statement.

### **C. Programmatic Analysis and Tiering**

*1. What types of issues best lend themselves to programmatic review and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent tiered analysis?*

NEPA regulations should more clearly spell out the type, scale, and scope of decisions that should be addressed in programmatic analyses. These could include land management allocation decisions such as those made in Land and Resource Management Plans (forest plans). To address broader geographic issues, ecoregion assessments like the FEMAT, SNEP and ICBEMP have proven useful as scientific assessments, but many believe they are less useful and too broad in scope to support most decisions at such a broad scale. If an analysis at the broader decision level (i.e., forest plan) cannot effectively disclose the impacts of a proposed action, then the issue should instead be analyzed and addressed at the next lower (project) level of decision-making.

To be effective, regulations should also specify that decisions made in the programmatic document should not be revisited at the project level, unless significant new information is available to necessitate the reanalysis. Project analyses tiered to the programmatic level should instead focus on how best to implement the programmatic direction.

*2. Provide examples of how programmatic analyses have been used to develop, maintain and strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses.*

No answer at this time.

### **D. Adaptive Management/Monitoring and Evaluation Plans**

*1. What factors are considered when deciding to use an adaptive management approach?*

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2. *How can environmental impact analyses be structured to consider adaptive management?*
3. *What aspects of adaptive management may, or may not, require subsequent NEPA analysis?*
4. *What factors should be considered when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?*

Adaptive management is a useful scientific tool for evaluating the results of an action and making subsequent adjustments to improve the initial decision. Environmental analyses must be based on the best information available at the time, while allowing for adjustments as new data becomes available. To be effective, land managers must monitor implementation results, with the techniques and level of intensity varying depending on the circumstance. If the monitoring results indicate that a significant change must be made to the decision, additional NEPA analysis should be required before altering the decision.

#### **E. Categorical Exclusions**

1. *What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?*
2. *What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?*
3. *Are improvements needed in the process that agencies use to establish a new categorical exclusion?*

When data and experience warrant, agencies should establish categorical exclusions for those actions that are known to have a low impact. To the extent another agency has experience with a similar categorical exclusion, it would be reasonable and appropriate to include documentation of that agency's experience when determining whether a new categorical exclusion may be established by the first agency.

#### **F. Additional Areas for Consideration**

We would like to offer several additional comments that go beyond the questions asked in the *Federal Register* notice.

NASF agrees with the premise in NEPA that environmental documents should be "concise" as envisioned in the CEQ regulations (see 40 C.F.R. §§ 1500.2, 1500.4, 1500.5). Today, EAs and EISs are often written in an attempt to be litigation proof, encyclopedic analyses for perusal by judges. The current situation leaves the public

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behind, as it is nearly impossible to distill massive amounts of information in order to make meaningful comments.

The number of management alternatives considered in an analysis should be kept to a manageable number. Several national forests have tried to prepare environmental analyses that cover all site-specific actions that may occur in a specific watershed. Considering staffing and budget limitations, this approach may make sense in light of the scope of actions that agencies such as the USFS undertake across large landscapes. Unfortunately, attempting to connect disparate management actions (e.g., timber sales, stream rehabilitation, trail building, and campground repair) can result in a nearly infinite number of potential alternatives, which makes understanding and analyzing the number of potential alternatives nearly impossible. The Pacific Northwest Regional Office of the USFS has made some efforts to address these concerns by directing field offices to avoid such analyses and only combine closely connected actions to avoid analytical difficulties.

NEPA documents could also be simplified by including only the current analyses in the document. It is onerous to require inclusion of all relevant analyses (i.e., resource specialist reports or other analyses) in EAs and EISs. Not only does this add to the length of the document, but it is often impossible for writers and editors to include all relevant information while still writing a concise document as required by CEQ regulations.

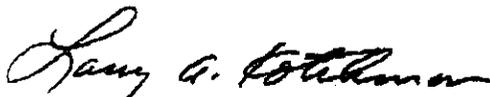
At some point, increasing detail in direct, indirect, or cumulative effects analysis reaches a point of diminishing returns for a management decision. NEPA regulations must limit the amount of analysis so that the decision-maker can make a reasonable, informed decision. The current NEPA regulations offer little guidance on how much information is adequate, leaving forest planners to err on the side of excess and make an educated guess based on inconsistent case law.

### Conclusion

We appreciate your request to help improve and modernize a process that is intended to protect and improve the human and natural environment. A more timely completion of NEPA documents should improve national forest planning and cross-boundary work. For the most part, the courts have given appropriate deference to CEQ's interpretation of the NEPA statute as stated in CEQ regulations and CEQ guidance. However, since Federal judges have interpreted CEQ regulations inconsistently, managers attempting to comply with NEPA face significant interpretation problems in the face of the varied case law.

Thank you for the opportunity to provide comments.

Sincerely,



Larry A. Ketchman  
President

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444 North Capitol Street, NW, Suite 540, Washington, DC 20001

**FAX**

**TO:** NEPA Task Force

**FROM:** Larry Kotchman  
President, NASF

**DATE:** September 23, 2002

**TIME:** 7:09 PM Eastern

**NUMBER OF PAGES TO FOLLOW:** 7

**MESSAGE:**

This NEPA letter was also sent by <sup>regular mail.</sup> ~~email~~. Please contact Stefan Bergmann (202-624-5415) if you have any problems with receiving this document.