

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE INFORMATION QUALITY STAFF

Re: Monitoring Techniques and Data used in)
Support of the Forest Service's Proposed)
Limited Timber Catagorical Exclusion)
_____)

Docket No. _____

REQUEST FOR CORRECTION OF INFORMATION CONTAINED
IN THE INITIAL DATA SET FOR TIMBER HARVEST EFFECTS MONITORING

Submitted to:

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March 10, 2003

REQUEST FOR CORRECTION OF INFORMATION CONTAINED
IN THE INITIAL DATA SET FOR “TIMBER HARVEST EFFECTS MONITORING”

1. Request and Petitioners

The following data correction request is made on behalf of petitioners **John Muir Project of Earth Island Institute, Sierra Club, and Heartwood** and constitutes a request for correction of information submitted under USDA's Information Quality Guidelines.

On March 10, 2003, René Voss, on behalf of petitioners, contacted and spoke with Dave Sire of the USDA Forest Service via phone, the listed contact person on the Federal Register Notice for the “National Environmental Policy Act Documentation Needed for Limited Timber Harvest” (see Federal Register on January 8, 2003 at Pages 1026-1030). René Voss informed Mr. Sire that petitioners are requesting the correction of data and information used to monitor timber sales and suggested that the technique of “measurement” must be used instead of “observation” to comply with the USDA Information Quality Guidelines, as the appropriate technique to determine individual or cumulative significant effects for regulatory or influential regulatory information. Since March 10, 2003 is also the deadline for comments on the proposed rule, petitioners are submitting this data correction request concurrently with our comments in response to the Federal Register notice.

2. Requestor Contact Information. Petitioners can be reached as follows:

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René Voss is Public Policy Director for the John Muir Project of Earth Island Institute; Bryan Bird is Appeals and Litigation Coordinator for the Sierra Club's National Forest Campaign; and Jim Bensman is Forestwatch Coordinator for Heartwood.

3. Description of Information to Correct

This request pertains to certain information and data used in support of the proposed Categorical Exclusions (hereafter CEs) published in the Federal Register on January 8, 2003 at Pages 1026-1030 titled “National Environmental Policy Act Documentation Needed for Limited Timber Harvest.”

In an August 3, 2001 letter from Sally Collins to Regional Foresters with Subject: “Information Needed for Creating a New Limited Tree Removal Categorical Exclusion (CE) to Replace Timber Harvest Category Number [4]” (see: <http://www.fs.fed.us/emc/lth/request1.pdf>), the Associate Deputy Chief of the National Forest System provided general protocols for monitoring forest resources in its search for projects that had or could have been CE’d under Category 4 of the Forest Service NEPA Handbook 1909.15, Chapter 31.2, in order to develop new criteria as a result of the monitoring.

The protocol for monitoring was described in an attachment titled “Instructions for Timber Harvest Effects Monitoring” or “Instructions for First Data Request” (see: <http://www.fs.fed.us/emc/lth/instructions1.pdf>) and included the following direction:

“Monitoring must be performed by journey-level specialists who are qualified to examine and draw conclusions on the occurrence of effects that meet or do not meet project standards (i.e. Forest Plan Standards or Guidelines, state water quality standards, the conditions of a Biological Opinion, etc.) for soil, water, air, vegetation, wildlife, fish, cultural and historic resources or other pertinent issue related resources... The specialists must visit the site of the DM [decision memo] to assess the effects of the project on all of the above resources... Based on the specialists’ findings the responsible line officer must give a conclusion in the web-based form about whether the project individually or cumulatively did or did not have a significant effect on the human environment (40 CFR 1508.4). The line officer must consider the context and intensity factors described in the CEQ NEPA implementing regulations, 40 CFR 1508.27, when describing the rationale for their finding.”

The tabulated data from the initial data response is posted on the Forest Service Web Site for a total of 154 projects that were monitored in the various national forests in all 9 of the Nation Forest System Regions. (see: <http://www.fs.fed.us/emc/lth/data1.xls>).

John Muir Project, on behalf of petitioners Earth Island Institute, Sierra Club and Heartwood has analyzed this data and has summarized the monitoring techniques used for each resources in Appedix A of this data correction request. The monitoring data is brokend down by the following resources for:

- Soil Monitoring
- Water Monitoring
- Air Monitoring
- Listed and Sensitive Plants Monitoring
- Listed and Sensitive Wildlife Monitoring
- Listed and Sensitive Fish Monitoring
- Other Vegetation Monitoring
- Other Wildlife Monitoring
- Other Fish Monitoring
- Cultural and Historic Monitoring
- Other Resources Monitoring

We have summarized the techniques used IN TOTAL, by all data monitoring points for all resources, and provide the following as our results:

Total Monitoring Data Points	1611	100%
<u>Technique Used</u>		
Observation	1367	85%
Photopoint	5	<1%
Measurement	46	3%
Other	118	7%
Not Answered	75	5%

JMP is concerned by the fact that FS “journey-level” specialists have relied overwhelmingly on personal observation to determine environmental effects on certain resources. We are also disturbed by the fact that 5 % of the monitoring point requirements were not even answered by these specialists, a number that exceeds the total number of “measurement” points of the survey.

Observation is considered the least reliable monitoring technique by the science community and is usually not acceptable because it is not replicable, a major requirement in the scientific process.

SOILS

For soils, 92% of the projects were monitored by observation alone rather than using normally accepted measurement techniques for porosity, compaction, displacement, or cumulative soil impacts. Soil compaction or porosity standards are written into most National Forest Land and Resources Management Plans¹ (Forest Plans), and the National Forest Management Act² and its regulations have strict requirements that timber sales not irreversibly damage soil resources.

Of the 11 projects for which the Forest Service actually measured some soil characteristics or damage³, either no data was provided or other measurements besides compaction were presented (such as ground cover). Two projects with measurements did not meet soil compaction standards. Only 2 other projects actually presented soil compaction or displacement data.

Without the appropriate measurements for soil compaction or displacement on 91% of the projects monitored, it is impossible to determine whether significant adverse effects to soils have occurred or whether cumulative soil damage is significant. And, since the Forest Service has demonstrated that it can measure soil porosity, compaction, and displacement as it presented this data for at least 2 projects, the best available techniques should be used on all other projects to

¹ NFMA, 16 USC 1604 and NFMA Regulations 36 CFR 219

² 16 USC 1604(g)(3)(E) “...insure that timber will be harvested from National Forest System lands only where (i) soil, slope, or other watershed conditions will not be irreversibly damaged;”

³ see: <http://www.fs.fed.us/emc/lth/data1.xls>, projects in row 3, 30, 33, 35, 36, 91, 96, 104, 109, 127, and 132

provide influential information to make a determination of significance for such an important rulemaking.

WATER QUALITY

Baseline measurements before and after implementation of projects that contain streams or wetlands are needed to determine if any degradation of water quality occurred. This has not occurred on the vast majority of the projects monitored.

WILDLIFE, FISH AND VEGETATION

It's hard to imagine how observation alone could determine the effects on listed, sensitive or other wildlife and fish in a project area without a longer-term effort to determine the effect on the species' population. Not only is instant data (or lack thereof) used to determine non-significance, the data requirement for listed, sensitive, or "management indicator species" is also a legal requirement under the NFMA regulations,⁴ which requires measurements and a trend analysis. Again, the vast majority data points used to monitor and plants were done only by observation.

4. Explanation of Noncompliance with OMB and/or USDA Information Quality Guidelines

The tabulated data does not provide petitioners with specifics as to the kinds of observation or measurement techniques that were used to monitor the projects' effects. It also relies heavily on a technique that is not objective or can't be validated independently.

Using the technique of "observation" is hardly useful for another specialist or a skeptical public that is already very distrustful of the Forest Service as it pertains to logging. The technique of "observation" in this analysis is fatally flawed in that it is impossible to duplicate its conclusion and provide a verifiable, objective opinion. Therefore it is conclusory to the point of being arbitrary and cannot be relied on to determine significance for a new set of CEs.

The USDA's Information Quality Guidelines, under "Regulatory Information Disseminated" require that "Environmental assessments, environmental impact statements, and associated documents prepared under the National Environmental Policy Act (NEPA)" are subject to the guidelines.

Regulatory and Influential Regulatory Information must be objective:

"Objectivity of Regulatory Information

To ensure the objectivity of information disseminated by USDA agencies and offices in conjunction with their rulemaking activities, the agencies and offices will:

⁴ NFMA Regulations 36 CFR 219.12, 219.19, and 219.26

- Use sound analytical methods in carrying out scientific and economic analyses and in preparing risk assessments.
- Use reasonably reliable and reasonably timely data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion).
- When using the best available data obtained from or provided by third parties, ensure transparency in its dissemination by identifying known sources of error and limitations in the data.
- Evaluate data quality and, where practicable, validate the data against other information when using or combining data from different sources.
- Ensure transparency of the analysis, to the extent possible, consistent with confidentiality protections, by:
 - Presenting a clear explanation of the analysis to the intended audience.
 - Providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints.
 - Explaining the rationale for using certain data over other data in the analysis.
 - Presenting the model or analysis logically so that the conclusions and recommendations are well supported.
- Clearly identify sources of uncertainty affecting data quality.
- For quantitative assessments, clearly state the uncertainty of final estimates to the extent practicable. Data and data collection systems should, as far as possible, be of sufficient quality and precision that uncertainty in the final estimates is appropriately characterized.
- For qualitative assessments, provide an explanation of the nature of the uncertainty in the analysis.
- Where appropriate, subject the analysis to formal, independent, external peer review to ensure its objectivity. If analytic results have been subjected to such a review, the information may generally be presumed to be of acceptable objectivity. However, in accordance with the OMB standard, this presumption is rebuttable based on a persuasive showing by a petitioner in a particular instance, although the burden of proof is on the complainant.
- If agency-sponsored peer review of the analysis is employed to help satisfy the objectivity standard, the review process should, where appropriate, meet the general criteria for competent and credible peer review recommended by OMB. OMB recommends that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.

Objectivity of *Influential* Regulatory Information

With respect to *influential* scientific information disseminated by USDA regarding analysis of risks to human health, safety, and the environment, USDA agencies and offices will ensure, to the extent practicable, the objectivity of this information by adapting the quality principles found in the Safe Drinking Water Act Amendments of 1996. The agencies and offices will:

- Use the best science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed science and studies where available.
- Use data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies the use of the data).
- In the dissemination of *influential* scientific information about risks, ensure that the presentation of information is comprehensive, informative, and understandable. In a document made available to the public, specify, to the extent practicable:
 - Each population addressed by any estimate of applicable effects.
 - The expected risk or central estimate of risk for the specific populations affected
 - Each appropriate upper bound or lower-bound estimate of risk.
 - Each significant uncertainty identified in the process of the risk assessment and studies that would assist in reducing the uncertainty.
 - Any additional studies, including peer-reviewed studies, known to the agency that support, are directly relevant to, or fail to support the findings of the assessment and the methodology used to reconcile inconsistencies in the scientific data. “

Petitioners alledge that the Forest Service’s data disseminated in this rule-making and monitoring techniques violate many of the “Regulatory” or “Influential Regulatory” standards. Specifically, the lack of adequate data and monitoring techniques violate the following standards.

For Regulatory Information:

- They do not “use sound analytical methods in carrying out scientific and economic analyses” since the method of “observation” is not verifiable;
- They do not “use reasonably reliable ... data and information (e.g., collected data such as from surveys, compiled information, and/or expert opinion) since the method of “observation” is inherently unreliable;
- The technique of “observation” and data presented does not “ensure transparency of the analysis, to the extent possible by ... Providing transparent documentation of data sources, methodology, assumptions, limitations, uncertainty, computations, and constraints” and “Explaining the rationale for using certain data over other data in the analysis,” as well as “Presenting the model or analysis logically so that the conclusions and recommendations are well supported.”

- The analysis and does not “Clearly identify sources of uncertainty affecting data quality.

Because the data is used to create entirely new Categorical Exclusions for logging, the information and monitoring techniques used to determine significance must be considered “influential.” As such, the rulemaking, the data, and the reliance on the monitoring technique of “observation” violates the standards of “Influential Regulatory Information”:

- It does not “use the best science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed science and studies where available;”
- It does not “use data collected by accepted methods or best available methods.”

5. Explanation of the Effect of the Alleged Error

The effects of the alleged errors are that petitioners:

- Cannot adequately assess the significance of effects of these types of CEs or projects to determine whether they should be categorically excluded;
- Cannot provide accurate comments in the rulemaking;
- We cannot provide advice to our members or constituents as to how they should comment on the proposed rulemaking;
- As a result, we cannot fulfill our roles as stewards of the environment and of good government;
- We will be harmed by the creation of new CEs using faulty reasoning that will abridge our ability to petition our government for redress of grievances because these projects are proposed to be excluded from administrative appeal;
- We will be harmed directly by the destruction of the environment if these CEs are implemented, which reduces our ability to study, recreate and enjoy our national forests.

6. Recommendation and Justification for How the Information Should Be Corrected

Petitioners request that the Forest Service correct its reliance on “observation” as a monitoring technique and instead rely on the use of “measurement” on all parameters and data points for monitoring soils (compaction, displacement, and ground cover), fish and wildlife (populations and trends), water quality (baseline and after implementation) and measurable data for other resources, where appropriate, as the best available and scientifically supportable methods for this rulemaking. We request that the Forest Service present the specific measurement techniques used and present the entire data set, including all project records that include the data to the public as part of the rule-making on the Forest Service’s web site. We also request that the Forest Service require their managers to re-evaluate their conclusions based on this data set. Subsequently, the Forest Service should start the rulemaking over.

Respectfully submitted for Petitioners by: René Voss



APPENDIX A – John Muir Project Summary of Resources Data Techniques

Total Timber sales Monitored: 154

Soil Monitoring Technique by:

- Observation	140	91%
- Measurement:	11	7%
- Other	2	1%
- Not Answered	1	0%

Water Monitoring Technique by:

- Observation	140	91%
- Photopoint	3	2%
- Measurement:	3	2%
- Other	5	3%
- Not Answered	3	2%

Air Monitoring Technique by:

- Observation	122	79%
- Photopoint	0	0%
- Measurement:	0	0%
- Other	19	12%
- Not Answered	13	8%

Listed and Sensitive Plants Monitoring Technique by:

- Observation	127	82%
- Photopoint	0	0%
- Measurement:	4	3%
- Other	16	10%
- Not Answered	7	5%

Listed and Sensitive Wildlife Monitoring Technique by:

- Observation	135	88%
- Photopoint	0	0%
- Measurement:	4	3%
- Other	8	5%
- Not Answered	7	5%

Listed and Sensitive Fish Monitoring Technique by:

- Observation	127	82%
- Photopoint	0	0%
- Measurement:	1	1%
- Other	13	8%
- Not Answered	14	9%

Other Vegetation Monitoring Technique by:

- Observation	131	85%
- Photopoint	2	1%
- Measurement:	13	8%
- Other	4	3%
- Not Answered	4	3%

Other Wildlife Monitoring Technique by:

- Observation	140	91%
- Photopoint	0	0%
- Measurement:	2	1%
- Other	5	3%
- Not Answered	7	5%

Other Fish Monitoring Technique by:

- Observation	127	82%
- Photopoint	0	0%
- Measurement:	0	0%
- Other	14	9%
- Not Answered	13	8%

Cultural and Historic Monitoring Technique by:

- Observation	123	80%
- Photopoint	0	0%
- Measurement:	4	3%
- Other	21	14%
- Not Answered	6	4%

Other Resources Monitoring Technique* by:

- Observation	55	79%
- Photopoint	0	0%
- Measurement:	4	6%
- Other	11	16%

* Cummulative of “Other Resources Monitoring 1-3”

Total Monitoring Data Points	1611	100%
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Technique Used

Observation	1367	85%
Photopoint	5	<1%
Measurement	46	3%
Other	118	7%
Not Answered	75	5%