
APPENDIX G – RESPONSE TO COMMENTS**Introduction**

The Forest Service documented, analyzed, and responded to the public comments received on the draft environmental impact statement (EIS) for the planning rule. The EIS analyses and documents effects on the human environment of the Agency proposal to adopt a planning rule that establishes procedures for developing, amending, and revising land management plans (also referred to as plans). This Appendix, “Response to Comments,” describes the substantive comments received on the draft EIS and provides the Agency’s response to those comments.

Background

The comment period began August 23, 2007 and ran through October 22, 2007. The Forest Service received 79,562 responses. Of these, approximately 78,500 were form letters, while the remaining letters consisted of original responses or form letters with additional original text.

Content Analysis

Content analysis is a method developed by a specialized Forest Service unit, the National Environmental Policy Act (NEPA) Services Group (NSG), for analyzing public comment. This method employs both qualitative and quantitative approaches. Content analysis is a systematic method of compiling, categorizing, and capturing the full range of public viewpoints and concerns about the draft EIS. Content analysis helps the interdisciplinary team organize, clarify, analyze, and be responsive to information the public provides to the Agency. The content analysis process is not a vote-counting process. The process is designed to read each response, capture the meaning of each individual comment within that response, and provide that meaning to the interdisciplinary team and decision maker in a clear, understandable form.

Each comment received, was assigned a unique identifier, and the type of respondent identified (individual, agency, elected official, etc.) along with geographic origin. This information was compiled in a database that allowed the Agency to query the comments in a number of ways. Each substantive comment was copied into the database and labeled according to subject area.

Comment Response

In general, the Agency responded to the substantive public comments in the following ways as prescribed in 40 CFR 1503.4:

1. Modifying alternatives including the proposed action.
2. Developing and analyzing an alternative not given detailed consideration in the draft EIS.
3. Supplementing, improving, or modifying the analysis the draft EIS documented.
4. Making factual corrections.
5. Explaining why the comments do not need further Forest Service response.

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Further Information

The NSG summarized the entire content analysis process in the document, *Summary of Public Comment, Proposed Planning Rule* (NSG November, 2007). That document is in the project record.

General Comments about Natural Resource Management

Comment: Guidance for management of individual resources and uses. Some respondents commented on a variety of issues such as access, air, conversion of hardwood stands to pine monoculture, soil and water, carbon storage, climate change, developed recreation, dispersed recreation, eco-tourism, ecosystem services, grazing, habitat for TES, habitat for fish and wildlife, heritage resources, historic range of variability, hunting, late successional reserves, mining, non-Federal lands, off-road vehicle use, oil and gas development, old growth forest conservation, parks and preserves, preservation, recreation, resilience to disturbance, restoration, rural communities, soil conservation, timber harvest, water quality, watersheds, weed-free ecosystems, wilderness, and wildlife. The respondents wanted issues about the management of these resources discussed in the final rule or for the rule to require management toward a particular emphasis, such as protection or conservation of biodiversity, ecosystem integrity, ecosystem sustainability, grizzly bears, heritage resources, national forests, old growth, opportunities for education and scientific research, primitive recreational opportunities, roadless area protection, roadless characteristics, scenery, soils, undisturbed forests, viable populations of wildlife, watershed protection, wilderness, wildlife, or the production of timber, minerals, oil and gas, or other commodities. A respondent suggested the final rule should incorporate specific, enforceable timetables for the processing of right-of-way applications for wireless communications infrastructure and encourage the infrastructure on National Forest System (NFS) lands. The Virginia Department of Environmental Quality supplied suggestions to protect water quality and other resources for national forests in the State of Virginia.

Response: The Agency agrees the issues raised are important. However, the proposed rule is intended to provide direction for how plans are developed, revised, and amended.

Alternative C provides direction for wilderness management, fish and wildlife resources, grazing resources, recreation resources, mineral resources, water and soil resources, cultural and historic resources, and research natural areas. The proposed rule and alternatives B and D do not provide direction for the management of any specific resource. Alternatives E and M provide guidance for timber management. The Agency believes this type of guidance is generally more properly found in the plans themselves or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. All alternative rules provide the processes through which responsible officials conserve and manage resources with regard to the issues relevant in the plan area.

Those communities, groups, or persons interested in these important issues can influence plan components and monitoring programs by becoming involved in planning efforts throughout the process, including the development and monitoring of the plan, as well as the development of proposed projects and activities under the plan.

The Agency is committed to reducing threats to the Nation's forests and grasslands, as discussed in the USDA Forest Service Strategic Plan: FY 2007-2012. These threats include: (1) the risk of loss from catastrophic wildland fire caused by hazardous fuel buildup; (2) the

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introduction and spread of invasive species; (3) the loss of open space and resulting fragmentation of forests and grasslands that impair ecosystem function; and (4) unmanaged recreation, particularly the unmanaged use of off-highway vehicles.

The Agency forwarded comments from the State of Virginia to the staff of the George Washington and Jefferson National Forests for their use during plan revision.

Comment: Climate change. Some respondents felt it was imperative the rule contain specific direction to address the problem of global warming and climate change. They suggested the rule should set forth a strategy and require plans that anticipate and provide for the likely effects of climate change and result in NFS lands being managed to reduce global warming. A number of respondents wanted more detail in the EIS on the relationship between climate change and global warming and the effects of the proposed rule. Some believe the proposed rule would lead to an increase in livestock grazing, oil and gas development, and timber harvest, and these increases would add to problems of global warming. There was also a suggestion that the EIS assess and disclose the potential contribution to global warming of projects and activities that are authorized on national forests and grasslands.

Response: The Agency agrees the problem of climate change is important. The land management planning process is informed by both a comprehensive evaluation and the best available science to evaluate the situation of the individual forest unit with respect to climate change. The proposed rule is intended to guide how plans are developed, revised, and amended. It does not provide direction that is more appropriately addressed in the plans themselves, or in the subsequent decisions about projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. Because the proposed planning rule does not dictate levels of grazing, oil and gas development, and timber harvest that could occur on NFS lands, there is no way to predict these levels nor the effects of such levels under the various alternatives in the EIS. These activities would be guided by land management plans and subsequent and separate decisions made at the project level with appropriate NEPA documents.

Comments about Agency Directives

Comment: Comments on directives. Some respondents commented on the directives for the rule rather than the proposed rule or the alternatives. For example, comments about definitions included in the current directives rather than section 219.16 of the proposed rule.

Response: The comments received about the Forest Service Directive System (Forest Service or Agency directives) will be considered when the Agency amends the existing directives. Once the Department makes the decision on a final rule, the Agency will amend the existing directives to be consistent with the final rule. This amendment process will provide public involvement. The Agency requires that Federal, State, and local governments and the public have adequate notice and opportunity to comments on the formulation of standards, criteria, and guidelines applicable to land management planning when substantial public interest or controversy concerning a directive can be expected.

Comments on the Process for Developing the Rule

Comment: Timeline for developing the rule. Several respondents said the Agency rushed the rulemaking and EIS process. Others requested a rule be developed for the benefit of all citizens and not be unduly influenced by politics and special interests. Other respondents expressed support for the proposed rule and urged the Forest Service to finalize the rule as

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soon as possible, so ongoing plan revisions can be completed.

Response: The process of developing a new planning rule has been ongoing since recommendations for more effective planning were documented in the 1989 “Synthesis of the Critique of Land Management Planning.” The proposed rule was developed considering recommendations of the 1999 Committee of Scientists (COS) and public and internal input on the 2000 (alternative B) and the 2005 (alternative A) rules . Although every effort has been made to promptly complete rulemaking tasks, the Agency believes there has been ample time for public comment, and agency analysis of alternatives. The proposed rule was developed to ensure efficient and effective land use planning procedures and was not unduly influenced by political considerations.

Comment: A respondent suggested the Agency begin rulemaking again, using a facilitated collaborative advisory process to find common ground solutions and suggestions for a planning rule.

Response: The Agency believes the public involvement process for this rulemaking, which builds on input received during rulemaking for the 2000 and 2005 rules, has been effective in exploring common ground solutions and reasonable alternatives.

Comment: Consultation with a committee of scientists. Several respondents were concerned there was no consultation with a committee of scientists in developing the proposed rule. Some said the 1999 Committee of Scientists (COS) should be reconvened, others said previous recommendations of the past COS should be reviewed.

Response: The National Forest Management Act (NFMA) does not require a committee of scientists for revision of the planning rule. Nonetheless, the Agency based the proposed rule on the major recommendations from the 1999 COS report. Sustainability, public participation, adaptive management, monitoring and evaluation, the role of science, and the objection process, all concepts in the proposed rule and alternatives B, D, E, and M, were recommendations of that report. The Agency realizes scientific knowledge will continue to expand. Therefore, the Agency is committed to taking into account the best available science when plans are developed, revised, or amended.

Comment: Compliance with the court decision enjoining the 2005 rule. Some respondents commented that because the proposed rule is identical to the enjoined 2005 rule, it does not comply with the Administrative Procedure Act (APA), NEPA, Endangered Species Act (ESA), and other environmental laws. Some respondents disagreed with the reasoning of the district court in Citizens for Better Forestry v. USDA, 481 F. Supp 2d 1059 (N.D. Cal. 2007) and were concerned that preparation of an EIS to adopt a planning rule may set precedent that, in addition to the environmental analysis underlying the development of a categorical exclusion, a redundant EIS must be prepared to determine the effects of using the categorical exclusion.

Response: On March 30, 2007, the United States District Court for the Northern District of California in Citizens for Better Forestry v. USDA, 481 F. Supp 2d 1059 (N.D. Cal. 2007) enjoined the Agency from carrying out and using the 2005 rule, until the Agency takes certain additional steps concerning the APA, NEPA, and ESA. Without conceding the correctness of the court’s ruling, the Agency has decided to undertake these processes to expedite much needed plan revisions and plan amendments.

The Agency is committed to transparent rulemaking and public participation under the APA.

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In the final 2005 rule, the Agency changed the provisions for timber management requirements, changed the provisions for making changes to the monitoring program, and added provisions for an environmental management system (EMS). The court found that the Forest Service did not provide sufficient notice to the public of these changes to the 2005 rule such that the 2005 rule was not the logical outgrowth of the 2002 proposed rule. Therefore, the Agency provided notice and comment of the 2007 proposed rule (72 FR 48514, August 23, 2007), which included the final 2005 rule's provisions for timber management, monitoring, and EMS.

Regarding NEPA, the court found the 2005 rule did not fit the Agency's categorical exclusion for servicewide administrative procedures. The categorical exclusion for administrative procedures was developed with public participation and the use of categorical exclusions is a recognized method for NEPA compliance. Under the court's order, further environmental analysis under NEPA was required. Accordingly, the Agency prepared a draft EIS on the proposed rule and a final EIS.

Finally, the court found the Agency was required to prepare a biological assessment or to consult on the impact of the 2005 rule under ESA. Based upon an analysis for the 2005 rule, the Agency had concluded that adoption of the 2005 rule alone would have no effect on listed species or critical habitat. The court, however, found that conclusion unlawful absent some type of consultation with the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries or a biological assessment. Accordingly, the Agency has prepared a biological assessment which also documents numerous communications with these agencies to comply with the court's order regarding the ESA

These steps fully address the procedural defects identified by the court. The court did not require any substantive changes in the 2005 rule.

Comments on Compliance with Federal Laws and Policies

Compliance of the Rule with Various Laws Governing the Agency

Comment: *Compliance with the Multiple-Use, Sustained-Yield Act and other laws governing the Forest Service.* Some respondents commented on whether or not the proposed rule complies with laws affecting the Agency, including the Multiple-Use, Sustained-Yield Act (MUSYA), NFMA, NEPA, Federal Land Policy and Management Act (FLPMA), Forest and Rangeland Renewable Resource Planning Act (RPA), ESA, Telecommunication Act of 1996, and applicable State laws, including best management practices, providing environmental safeguards and public involvement.

Response: All alternatives comply with the laws governing the Forest Service, including applicable State laws. NFMA requires the use of the MUSYA to provide the substantive basis for forest planning. As used in the proposed rule, sustainability embodies these congressional mandates including the requirements of FLPMA, RPA, NFMA, and other laws. The interrelated and interdependent elements of sustainability are social, economic, and ecological as described in section 219.10. The proposed rule is intended to set the stage for a planning process that can be responsive to the desires and needs of present and future generations of Americans, for the multiple uses of NFS lands. The proposed rule is not intended to make choices among the multiple uses; it describes the processes by which those choices will be made as a preliminary step during development of plans. The plans developed provide guidance for future projects and activities.

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Moreover, an EIS has been prepared for the proposed rule under the requirements of NEPA, and the Forest Service has reached a “no effect” determination under the ESA after consulting with both USFWS and NOAA Fisheries. Because the proposed rule is procedural only, some environmental laws like the National Historic Preservation Act are not triggered until individual forest and grassland plans or site-specific projects are proposed.

Compliance with the National Forest Management Act (NFMA)

Comment: Placing procedures in directives rather than the rule. Some respondents commented the proposed rule does not meet all requirements of NFMA, such as provisions for determining timber harvest levels, identification of lands not suitable for timber production, use of the clearcutting harvest system, and providing for a diversity of plant and animal communities based on the suitability and capability of the land. They also expressed concerns that carrying out these requirements through the Agency’s directives, rather than the plan rule itself, would not meet NFMA’s mandatory and enforceable requirements, because the requirements would no longer have the force and effect of law. Other respondents said NFMA requirements have the force and effect of law, and if the Agency does not have mandatory requirements in regulations, a responsible official could end up violating NFMA and a lawsuit could shut down the national forest and perhaps the entire NFS. Respondents noted that directives do not require a mandatory public comment and agency response as is required through the regulatory process provided in the APA (5 U.S.C. 551); therefore, changes could be made to the directives without public input.

Response: The Agency is committed to meeting all the requirements of NFMA for all projects. Individual projects must meet NFMA requirements for soil and water protection, restocking, restrictions on the use of clearcutting, esthetic quality, and so forth, regardless of whether those requirements are set out in regulation or agency directives.

The Agency believes the NFMA requirement that the planning regulation “shall include, but not be limited to ... specifying guidelines for land management plans developed to achieve the goals of the Program which” [provide for diversity, ensure timber harvest will only occur if certain conditions are met, etc.] affords the Agency discretion to provide policy guidance either through regulations or directives (16 U.S.C. 1604(g)). Directives are available at <http://www.fs.fed.us/im/directives>.

Some of the required NFMA guidance is set out in the alternative rules. With respect to other required guidance, the proposed rule and alternatives D, E, and M specifically require the Forest Service to develop directives, setting out the guidance. Although most procedural and technical details continue to properly reside in directives, in response to public comment, the preferred alternative (alternative M) now includes timber management requirements of 16 U.S.C. 1604(g) related to timber harvest at section 219.12.

In keeping with strategic and adaptive nature of planning, the Agency is striving to make rulemaking more strategic and adaptive. Therefore, under the proposed rule and alternatives D, E, and M many procedural and technical details have been moved to the Forest Service directives. If the proposed rule or alternatives D, E, or M were selected as the final rule, the Agency would likely carry out those rules using these existing directives. Forest Service directives are the primary basis for the Forest Service’s internal management of all its programs and the primary source of administrative direction to Forest Service employees. The Forest Service Manual (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed, on a continuing basis, by Forest Service

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line officers and primary staff to plan and execute programs and activities. The Forest Service Handbook (FSH) is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities in the FSM.

The Agency requires that Federal, State, and local governments and the public have adequate notice and opportunity to comment on the formulation of standards, criteria, and guidelines applicable to land management planning when substantial public interest or controversy concerning a directive can be expected. For example, in the March 23, 2005, Federal Register (70 FR 14637), the Agency gave notice and requested public comment concerning issuance of interim directives related to carrying out the 2005 rule. The issuance of the final directives and response to comments received was published on January 31, 2006 (71 FR 5124). A similar process will be done for directives carrying out the next planning rule.

Although directives have been held not subject to judicial enforcement, (*Western Radio Services Co., inc. v. Espy*, 79 F 3d 896 (9th Cir. 1996)), they are enforced within the Forest Service. The Agency has a variety of methods for determining whether policy is being put into practice. First, the public involvement process allows for direct input into the planning process and management decisions on the ground. This local collaboration serves as an important check on agency practices. Second, the Agency has administrative appeals and objections processes, through which the public can raise concerns about projects and land management plans. Third, the Forest Service conducts regular management reviews, designed to assess to what degree the Agency is complying with rules and policies.

The Forest Service also understands and respects the view expressed in a number of public comments that if certain requirements are in a rule, they are afforded greater visibility. In response to these comments, the Agency has included the NFMA timber management requirements (16 U.S.C. 1604(g)) in alternatives E and M.

Compliance with the Multiple-Use Sustained-Yield Act (MUSYA)

Comment: Commercial activities. Some respondents asserted the Forest Service should not allow or “subsidize” commercial activities, such as mining and timber harvest.

Response: As directed by Congress, NFS lands are managed under the provisions of the NFMA, the MUSYA, and other laws. Pursuant to these laws, many commercial uses, such as timber harvest, mining, and commercial recreation activities, are recognized as appropriate uses on NFS lands.

Although the MUSYA provides for multiple uses of NFS lands, many acres of NFS lands are not suitable for every use. The proposed rule at sections 219.7(a) and 219.12 provides for identifying areas as generally suitable for various uses. This identification allows management, toward the balance of many potential multiple uses, which is appropriate for a particular plan area, while maintaining and restoring healthy, resilient ecosystems. Identification of areas, as generally suitable for various uses, merely indicates which uses are compatible with desired conditions and objectives for that area. Like the other components of plans developed under the proposed rule, suitability of an area is not a commitment or final decision approving projects and activities.

Compliance with the National Environmental Policy Act (NEPA)

Comment: Environmental effects of a planning rule. A respondent states the position expressed in the draft EIS that the environmental effects of forest planning rules are “inherently unknowable,” has been rejected by the Ninth Circuit. This respondent said in

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Citizens for Better Forestry v. USDA the court recognized that because NFMA regulations control the development of both forest plans and site-specific projects, substantial revision of NFMA regulations will result in actual, physical effects on the environment (see Footnotes 37-39, 341 F.3d at 963). Because the proposed rule eliminates or weakens formerly protective regulatory standards that governed each forest plan and site-specific project, the effects of these changes must be considered and disclosed in an EIS.

Response: In the cited case, the court concluded that plaintiffs had standing to challenge the 2000 rule. The court reasoned, in part, it was reasonably probable the elimination of specific management requirements in the 2000 rule would result in an injury in fact to an environmental plaintiff who alleged sufficient proximity to and use of the areas affected. The court did not quantify or identify the environmental injury with any particularity beyond stating that removing management requirements for specific environmental interests made the probability of an injury involving those interests sufficient to allow standing.

Indeed, the court acknowledged a change in the planning rule "does not result in any direct environmental effects. Its environmental impact is indirect: because the rule controls the development of land and resource management plans (LRMPs) and site-specific plans, it is through these that it poses an actual, physical effect on the environment in the national forests and grasslands." (341 F.3d at 973). The court thus acknowledged a planning rule change itself has no direct effect and the indirect effects of a changed planning rule are contingent upon other events. Thus, while it is possible a change from the current planning rule to an alternative rule may result in effects to specific resources; those effects cannot be known with any degree of certainty until the intervening events occur. The EIS explains how the proposed rule places the timber harvest-related requirements of the previous rule in the Agency's directives and these requirements would still be in effect. A new alternative (alternative M), developed in response to comments, includes the requirements of NFMA section 6(g) (16 U.S.C. 1604(g)). This new alternative M is the Agency's preferred alternative.

Compliance with the Endangered Species Act (ESA)

Comment: Compliance with the ESA. Some respondents raised concerns that the proposed rule, without a strong viability or ecological sustainability requirement, does not ensure protection of federally-listed threatened or endangered species (TES) (such as the Canada lynx), will not help with their recovery, and will not forestall the listing of other species. Some stated that if the needs of these species are not met through a meaningful NFMA process, they will have to be met through an ESA process, thereby requiring greater application of the ESA to future project operations.

Response: The proposed rule and alternatives D, E, and M intend that plans would provide a framework to contribute to sustaining native ecological systems by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. Plan components would establish a framework to provide the characteristics of ecosystem diversity in the plan area. Under the proposed rule alternatives D, E, and M plans would include provisions in plan components that the responsible official determines are needed to provide appropriate ecological conditions or protective measures for specified TES, consistent with limits of agency authorities, the capability of the plan area, and multiple-use objectives (sec. 219.10(b)(2)).

Under the ESA, the Agency has responsibilities to insure its actions do not jeopardize the

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continued existence of TES, or destroy or adversely modify habitat designated as critical habitat for such species. This is done, where applicable, through the use of ESA section 7(a)(2) consultation with the USFWS and NOAA Fisheries on potential effects of agency proposals to such species and to designated critical habitat. The Agency also coordinates with the USFWS and NOAA Fisheries under ESA section 7(a)(1) to carry out programs and activities for the conservation of TES and the ecosystems on which they depend. Moreover, an EIS has been prepared for the proposed rule under the requirements of NEPA, and the Forest Service has reached a “no effect” determination under the ESA after consulting with both USFWS and NOAA Fisheries.

Compliance with the National Historic Preservation Act

Comment: Consultation under the National Historic Preservation Act. Some respondents asserted the planning rule requires the Agency to consult pursuant to section 106 of the National Historic Preservation Act.

Response: The proposed planning rule and alternatives would constitute an undertaking as defined by the National Historic Preservation Act implementing regulations at 36 CFR 800.16(y). However, the Agency determined the proposed planning rule and alternatives do not have the potential to cause effects to historic properties. Accordingly, the Agency has no further obligations under section 106 of the National Historic Preservation Act. See 36 CFR 800.3.

Compliance with the Mining and Minerals Policy Act

Comment: Integration of minerals management. Some respondents raised concerns the proposed rule does not ensure integration of mineral and energy resource development with the management of renewable resources. They believe without specific procedures for integration, the Agency will not meet its obligations under the Mining and Minerals Policy Act, Forest Service Minerals Program Policy, and the Forest Service Energy Implementation Plan.

Response: Increased production and transmission of energy and mineral resources in a safe and environmentally sound way is essential to the well-being of the American people. Like other agencies, the Forest Service is charged to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy and mineral resources. In most instances, the Agency meets this responsibility by assuring that mineral activities on NFS lands are conducted in a way that minimizes environmental impacts on the renewable surface resources as directed by the MUSYA, NFMA, and various other statutes. Management responsibility for non-renewable, subsurface mineral resources primarily rests with the Secretary of the Interior. Where applicable, plan components will be developed considering the various conditions and uses of each individual unit, including the mineral and energy resource and opportunities for development of that resource. Forest planning is one, but certainly not the only, means to integrate the exploration and development of mineral and energy resources with the use and protection of the various goods and services provided from the NFS.

Compliance with the Appeals Reform Act (ARA)

Comment: Consistency with the intent of Congress as expressed in the ARA. A respondent asserted the use of a pre-decisional objection process for plans rather than a post-decisional appeal process runs counter to the intent of Congress when they legislated the ARA. This

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respondent believes, although the ARA addresses only project-level appeals, Congress intended to leave unaffected the forest plan appeal process that was then in place.

Response: There is nothing in the ARA or its legislative history that would indicate Congress had any intent regarding appeals processes other than those for “proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans.” On the other hand, NFMA only requires “public participation in the development, review, and revision of land management plans” without specifying any post-decision review 16 U.S.C. 1604(d). The Forest Service believes the proposed pre-decisional objection process provides an opportunity for public concerns to be reviewed at a higher administrative level using a process that is more collaborative and less confrontational than a post-decisional appeal process. The pre-decisional objection process provides an opportunity to make necessary or appropriate adjustments to a plan before it is approved. The Agency’s experience with post-plan decision appeals is that it is difficult to make needed changes, often after a plan is approved; an amendment process must be carried out to make the needed changes.

Compliance with Other Laws

Comment: Unique legal requirements. Several respondents commented that various laws have made changes to some legal requirements, which must be addressed in the rule. For example, the Alaska Native Interest Lands Conservation Act requirement under section 1326(b) that “no further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, or for related or similar purposes shall be conducted unless authorized by this Act or by further Act of Congress.”

Response: Wording at section 219.7(a)(6) in the proposed rule accounts for such situations by stating that wilderness recommendations must be considered “unless otherwise prohibited by law.” Although this provision of the proposed rule discusses only wilderness recommendations, no planning actions will be taken if in conflict with Federal law.

Oversight by the Courts

Comment: Court oversight. Some respondents commented the proposed rule makes it more difficult to challenge agency decisions in court.

Response: With respect to concerns that Forest Service discretion may be unchecked, there has always been a tension between providing needed detailed direction in the planning rule and providing discretion for the responsible official. However, the decisions of the responsible official are constrained and guided by a large body of law, regulation, and policy, as well as public participation and oversight. Because every issue cannot be identified and dealt with in advance for every situation, the Forest Service must rely on the judgment of the responsible official to make decisions based on laws, regulation, policy, sound science, public participation, and oversight.

The Agency believes the proposed rule is fully compatible with the nature of forest planning as described by the U.S. Supreme Court in Ohio Forestry Association, Inc., v. Sierra Club et al. 523 U. S. 726 (1998) (Ohio Forestry). The Agency expects that, under the proposed rule and alternatives, public oversight and legal review of planning, as well as an analysis of the environmental impacts of specific projects under NEPA, would occur in accord with *Ohio Forestry*. As a general matter, and consistent with the *Ohio Forestry* decision, a plan by itself

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is not expected to be reviewable by the courts at the time the plan is developed, revised, or amended. The Agency does not believe that the proposed rule or the alternatives make judicial review any harder to obtain than was the case in the *Ohio Forestry*. When the Agency decides on a specific action under the plan, an aggrieved party will be able to challenge that action and, if appropriate, seek review of that part of the plan relevant to that action.

Comments on the Draft Environmental Impact Statement

Comments on Alternative A (Proposed Rule)

Purpose and Applicability – 219.2

Comment: Simpler and efficient planning process. Several respondents supported the effort to simplify the planning process. Some said resources have suffered because of resources wasted on planning-generated gridlock. Others said under the 1982 rule, too much time and money was spent on planning and too little on plan implementation. Some respondents cautioned that efficiency as measured in time and cost is not as important as getting the plan “right.” Another respondent supported the proposed steps toward an efficient and modern planning process, such as the emphasis on adaptive management, monitoring, collaboration, and use of a categorical exclusion.

Response: The Agency agrees the responsible official should use a modern and efficient planning process and believes the proposed rule or alternatives D, E, or M would make significant progress to that end.

Comment: Flexible, adaptive plans. Some respondents supported the proposed rule as a framework that will enable the Agency to better address the needs of a diversity of both game and non-game wildlife, while providing flexibility, so active wildlife management can adapt to changes in on-the-ground conditions and in our understanding of relevant science. A respondent said the planning process should allow the flexibility to make adjustments to plans to better respond to forest health issues.

Response: The Agency agrees and believes the proposed rule’s emphasis on adaptive management and procedures for corrections, amendments, and revisions would allow plans to be kept current with changing conditions.

Comment: Meaningful, definitive plans. Several respondents urged that regulations provide for meaningful plans that give the American people a good idea of how lands will be managed. These respondents stated plans should not be vague, but rather be a contract with the public about how lands and resources will be managed. To be definitive in this regard, the plans must have standards that require or prohibit certain activities, standards and guidelines for management areas, other items required by NFMA, and supported by an EIS. A respondent commended the intent of defining measurable objectives toward desired conditions along with a structure for monitoring and evaluation.

Response: The Agency believes plans would be more effective if they include more detailed descriptions of desired conditions, rather than long lists of prohibitive standards or guidelines developed in an attempt to anticipate and address every possible future project or activity and the potential effects such projects could cause. For example, a plan could include standards that preclude vegetation treatment during certain months or for a buffer for activities near the nest sites of birds sensitive to disturbance during nesting. However, topography, vegetation density, or other factors may render such prohibitions inadequate or unduly restrictive in

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specific situations. A thorough desired condition description of what a species needs is often more useful than a long list of prohibitions.

In reviewing public comments, the Agency concluded that the argument for excluding standards from a planning rule so as not to limit a responsible official's discretion cuts both ways. Just as standards and prohibitions limit a responsible official's discretion not allowing them also limits a responsible official's discretion to include them where appropriate in a land management plan.

Accordingly, the Agency added alternative M which explicitly allows a responsible official the flexibility to include standards and prohibitions in a land management plan. Standards and prohibitions are also allowed in alternatives C and E. Alternative E defines standards as requirements, limitations, or prohibitions. Alternative M defines a standard as a constraint upon decisionmaking. The Agency uses a different definition in alternative M to avoid confusion with the prohibitions for occupancy and use that apply to the public under 36 CFR 261.

Comment: Proposed rule is an improvement. Some respondents said the proposed rule is a vast improvement over the 2000 rule and the 1982 rule. A respondent stated optimism that the rule can work and those parts that do not can be rectified, resulting in NFS lands that are improved and protected, while providing important goods, services, and values for all generations.

Response: The Agency agrees the proposed rule includes important improvements over the 2000 and 1982 rules.

Comment: Desired conditions, modeling parameters, information gaps. Some respondents asked that the final rule identify parameters that would guide the development of vegetation simulation models; clarify how desired conditions guide project level EIS or environmental assessment (EA), and how information gaps would be rectified when existing science is lacking.

Response: As with many other procedures, those that would guide the development of vegetation simulation models are properly discussed in technical guides rather than the planning rule. This allows selected models to change as technology evolves. The proposed rule at section 219.6(a) would define a consistent approach to analysis and evaluation at broad scales and at the local level. The proposed rule at section 219.6(a) would require the responsible official to keep the plan set of documents up to date with evaluation reports to show changing conditions, science, and other relevant information.

Desired conditions under the proposed rule and alternatives D, E, and M are the social, economic, and ecological attributes toward which land management under the plan will aspire. A plan's desired conditions would contribute to the purpose and need for action articulated in a project EA or EIS. Responsible officials propose to carry out various projects and activities designed to meet a particular purpose and need for action, which should move toward or maintain desired conditions and achieve objectives described in the plan. The comprehensive evaluation report required by the proposed rule may describe the risks and uncertainties associated with carrying out management consistent with the plan. At the project stage, if gaps in information are apparent, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA at 40 CFR 1502.22 (incomplete or unavailable information) would be followed, and the Agency would acknowledge when information is lacking and either obtain it or

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the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

Managers prioritize risks and develop strategies to control them. These strategies may include specific monitoring and evaluation to gather additional information.

Levels of Planning and Planning Authority – 219.2

Comment: Addressing statewide issues. A respondent discussed past difficulty resolving statewide issues under the 2005 rule, and expressed concern the proposed rule will have the same problems. Another respondent commented that some planning issues are best answered at the regional level.

Response: The proposed rule (alternative A) has provisions for plan development and or revision to occur at a multiple forest level (sec. 219.2(b)(2)). Under the 1982 rule (alternative C), responsible officials have routinely coordinated planning across unit and regional boundaries and would continue to do so under all alternatives. In addition, the proposed rule and alternatives B, D, E, and M provide the option for higher-level officials to act as the responsible official for a plan, plan amendment, or plan revision across a number of plan areas when needed.

Comment: Levels of authority. Some respondents were concerned the further up the authority ladder a decision is made, the further it is removed from the local level and there is excessive discretion and lack of accountability in the rule, including unrestricted license to amend plans through project decisionmaking in violation of the NFMA.

Response: In compliance with NFMA, the proposed rule (alternative A) and alternatives D, E and M would establish a planning rule as a broad framework where issues specific to a plan area can be identified and resolved in an efficient and reasonable way, where responsible officials and the public can be informed by the latest data and scientific assessments, and where the public participates collaboratively. Like the 2000 rule (alternative B), the responsible official would typically be the forest supervisor under the proposed rule, not the regional forester as under the 1982 rule (alternative C).

Regardless of the administrative level, the responsible official must develop, amend, or revise plans within the framework set out by the planning rule that is selected, and is accountable for compliance with the selected planning rule and the multitude of relevant laws and policies. About project decisionmaking, the NFMA allows plans “be amended in any manner whatsoever after final adoption after public notice”(16 U.S.C. 1604(f)(4)). Furthermore, the Agency has been doing project specific amendments under the 1982 rule

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(alternative C) since the 1980's.

Comment: Inconsistency between responsible officials. Several respondents said the proposed rule would guarantee inconsistent application across the Agency because it leaves virtually all definitional and methodological decisions to the responsible official. Moreover, several respondents said the Agency needs to put an end to inconsistency that occurs between responsible officials.

Response: Responsible officials currently coordinate across unit boundaries and would continue to do so under the proposed rule and alternatives D, E, and M because the areas of analysis for evaluations described in sections 219.6, 219.7, and 219.10 of the proposed rule would often extend beyond the unit's boundaries to adjacent or nearby NFS units. In addition, the proposed rule and alternatives B, D, E, and M provide the option for higher-level officials to act as the responsible official for a plan, plan amendment, or plan revision across a number of plan areas when consistency is needed. The Forest Service already has directives which ensure consistency as needed for Tribal or public consultation or for social, economic, or ecological resource related issues. The proposed rule supplies discretion for the responsible official because the Agency believes that the responsible official is the person most familiar with the resources and the people on the unit and is usually the most appropriate person to make decisions affecting those lands.

Nature of Land Management Planning – 219.3

Comment: Strategic nature of planning. Many respondents were concerned about the strategic nature of plans. Some respondents were concerned that if strategic plans do not create legal rights, then there is no need for projects to be consistent with the plan; a circumstance that would violate NFMA. Other respondents said that if plans do not control on-the-ground activities and are only “aspirational,” the plans become meaningless paper exercises. On the other hand, some respondents were concerned that plans were too restrictive because forest staff would refuse to consider activities not consistent with management zones designated in the plan. Some respondents disagreed that plans do not usually include final decisions approving projects. They cited decisions made in the recently issued plan revisions in the Forest Service's Southern region. Other respondents agree plans are strategic and are not actions that significantly impact the human environment and, therefore, that the preparation of an EIS is not required. Others stated that plans should focus on goals rather than specific prescriptions or prohibitions.

Response: The NFMA (16 U.S.C. 1604(i)) requires that resource plans, permits, contracts, and other instruments for the use and occupancy of NFS lands be consistent with land management plans. The proposed rule and alternatives D, E, and M's approach to the project consistency requirement is consistent with the Supreme Court's observation of the characterization of plans in Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55, 69 (2004), that “land use plans are a preliminary step in the overall process of managing public lands – ‘designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.’”

An “aspirational” plan establishes a long-term management framework for NFS units. A framework is not a meaningless paper exercise. Within the framework, specific projects and activities are proposed, approved, and carried out depending on specific conditions and circumstances at the time of accomplishment. The proposed rule and alternatives D, E, and M are consistent with the Supreme Court's description of plan decisions and the nature of

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plans in Ohio Forestry Association, Inc., v. Sierra Club et al, (523 U.S. 726, 737 (1998)). This ruling explains that plans are “tools for agency planning and management.” The court recognized that the provisions of such plans “do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability: they create no legal rights or obligations” (523 U.S. at 733 (1998)).

However, the use of a framework for identifying suitable uses has evolved. Determining suitable uses was often characterized in plans prepared under the 1982 rule as permanent restrictions on uses or permanent determinations as to which uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 rule, Forest Service staff realized these identifications were never permanent, unless they were a statutory designation by Congress. Section 219.8 of the proposed rule lists actions that must be taken if an existing or proposed project or activity is found to be inconsistent with the applicable plan.

Recent plan revisions for the Forest Service’s Southern Region did include project and activity decisions, but those revisions were done under the 1982 rule. The plan revisions recently prepared in the Southern Region followed the procedures of the 1982 rule (see EIS alternative C), which reflects a view of the nature of plans that is different from the proposed rule. Project and activity decisions can be in a plan but would likely be rare exceptions under the strategic approach used for the proposed rule and alternatives D, E, and M.

Comment: Final decisions in plans. Some respondents do not agree that typically a plan does not include final decision approving projects or activities. They cited decisions made in plan revisions recently issued in the Southern Region of the Forest Service Region 8, as making final decisions. Some respondents stated pushing final agency decisions to the project level rather than making decisions based on through environmental review at the plan level violates the NFMA.

Response: The preamble to the proposed rule explains the strategic nature of plans. Plans under either of the alternative rules would establish a long-term management framework for the NFS unit. Within that framework, specific projects would be proposed, planned, approved, and carried out depending on specific conditions and circumstances at the time of accomplishment. Project and activity decisions can be included in a plan but are exceptions under the strategic approach. The proposed rule and alternatives D, E, or M are consistent with the Supreme Court’s description of plan decisions and the nature of plans in Ohio Forestry Association, Inc., v. Sierra Club et al, (523 U.S. 726, 737 (1998)). This ruling explains that plans are “tools for agency planning and management.” The court recognized the provisions of such plans ‘do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil or criminal liability: they create no legal rights or obligations’ (523 U.S. at 733 (1998)). Recent plan revisions for the Forest Service’s Southern region did include project and activity decisions, but those revisions were done under the 1982 rule. The plan revisions recently prepared in the Southern Region followed the procedures of the 1982 rule (alternative C), which reflects a view of the nature of plans that is different from the proposed rule.

Comment: The aspirational nature of plans makes them meaningless. Some respondents contend the Forest Service is trying to dismiss the reality that forest plans might have significant effects by saying the plans are “aspirational” and do not control on-the-ground

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activities; they, in effect, become meaningless paper exercises.

Response: As described in the preamble to the proposed rule, land management plans are strategic in nature. A plan establishes a long-term management framework for NFS units. Within that framework, specific projects and activities would be proposed, approved, and carried out depending on specific conditions and circumstances at the time of accomplishment.

Comment: Revisiting plan allocations during project development. Some respondents support the strategic approach to planning but believe that some plan decisions such as the designation of management areas or management zones have unintended restrictive effects because forest staff refuse to consider revisiting the applicable issue during the more focused analysis that occurs during project-level planning. Respondents recommend that the rule should be edited to read “Plans do not approve or execute projects and activities, nor do they restrict, prohibit or otherwise constrain the discretion of Forest Service officers and employees in analyzing and selecting from a full range of viable alternatives in project-level planning.”

Response: Although the Agency agrees with the suggested words, a planning rule is not the place to explain project and activity decisionmaking. Under the proposed rule or alternatives D, E, or M, plans would continue to be strategic in nature, as described by the Supreme Court in *Ohio Forestry* and *Southern Utah Wilderness Alliance (SUWA)*. The components of a plan under the proposed rule does not authorize project and activity decisions, but rather characterize general desired future conditions and provide guidance for project and activity decisions. Suitability of areas is the identification of the general suitability of an area in an NFS unit for a variety of uses. Areas may be identified as generally suitable for uses that are compatible with desired conditions and objectives for that area. The identification of an area as generally suitable for a use or uses is neither a commitment nor a decision approving activities and uses. The suitability of an area for a specific use or activity is authorized through project and activity decisionmaking. Suitable use identification has evolved over time. Suitable use determination was often characterized in plans prepared under the 1982 rule as permanent restrictions on uses or permanent determinations as to which uses would be suitable in particular areas of the unit over the life of the plan. However, even under the 1982 rule, these identifications were never truly permanent, unless they were statutory designation by Congress. It became apparent early in carrying out management consistent with plans developed in accord with the 1982 rule that plan suitability identifications, like environmental analysis itself, always necessitated site-specific review when projects or activities are proposed.

National Environmental Policy Act Compliance – 219.4

Comment: Plans as a major federal action. Although some respondents supported categorically excluding land management plans from documentation in an EIS or EA, other respondents believed land management plans significantly affect the environment and are therefore, major Federal actions triggering the NEPA requirements for an EIS (40 CFR 1508.18). Some stated NEPA requirements for an EIS are triggered because land management plans are in the category of Federal actions that are described as “formal plans” in the Council on Environmental Quality(CEQ) regulations at 40 CFR 1508.18 (b)(2). Some respondents expressed the view that by determining the types of land uses that will occur in areas of a national forest, the Forest Service makes decisions in its land management plans that ultimately can result in significant effects even though the plans themselves may not

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approve specific projects or activities. Other respondents believed extraordinary circumstances in the plan area would always preclude the use of a categorical exclusion.

Response: CEQ regulations define “major Federal action” as including “actions with effects that may be major” and state, “major reinforces but does not have a meaning independent of significantly” (40 CFR 1508.18). The CEQ regulations state that Federal actions fall within several categories, one of which is the “[a]doption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources” (40 CFR 1508.18). However, not all Federal actions are major Federal actions significantly affecting the quality of the human environment. Plans developed under the proposed rule or alternatives D, E, or M would typically not approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments. Such plans have no independent environmental effects. Plan components would guide the design of projects and activities in the plan area. The environmental effects of proposed projects and activities would be analyzed under NEPA once they are proposed. Furthermore, the proposed rule or alternatives D, E, or M would not preclude preparation of an EA or EIS for a land management plan where appropriate to the decisions being made in a plan approval.

The Forest Service conducted an analysis for categorically excluding land management plan decisions and published a proposed category for public comment in 2005 (70 FR 1062). The Agency’s final category was published in the Federal Register on December 15, 2006, (71 FR 75481). The land management planning categorical exclusion states that a decision approving projects and activities, or that would command anyone to refrain from undertaking projects and activities, or that would grant, withhold, or modify contracts, permits or other formal legal instruments are outside the scope of this category. Proposals outside the scope of the categorical exclusion must be documented in an environmental assessment or environmental impact statement. Accordingly, land management plans, depending on their content, can be subject to various levels of NEPA documentation.

The Agency acknowledges that extraordinary circumstances can preclude the use of a categorical exclusion, but believes that, absent plan decisions with on the ground effects, extraordinary circumstances are not likely. Forest Service NEPA procedures provide that a responsible official, when considering whether to rely upon a categorical exclusion must determine whether there are extraordinary circumstances, which would preclude the use of a categorical exclusion. The procedures describe resource conditions to be considered when determining whether there are extraordinary circumstances. The procedures make clear that “The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and (2) if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.” Although the responsible official must consider whether there are extraordinary circumstances precluding use of a categorical exclusion for a plan, the Agency expects that typically the nature of the plan would be such that its potential effects on the resource conditions would not involve extraordinary circumstances.

Comment: Desired conditions as a final agency decision. Some respondents believe that the establishment in plans of desired conditions and general suitability determinations (sec. 219.7(a)(2)(iv)) for management areas are final agency actions that will preclude certain uses

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from occurring. They also note the preamble for the 2005 rule (70 FR 1031 (January 5, 2005)) admits the approval of a forest plan is a final agency decision.

Response: The Forest Service agrees that the approval of a plan, plan amendment, or plan revision is a final agency action under CEQ regulations, and that such actions may have environmental effects in some extraordinary circumstances, such as when a plan amendment or revision includes final decision approving projects or activities that may have environmental effects.

As discussed at section 219.12 of the proposed rule, NFS lands are generally suitable for a variety of multiple uses, such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes, and a plan could designate the same area as suitable for multiple uses which, when any one is authorized, precludes other uses. Suitable use identification is guidance for project and activity decisionmaking, is not a permanent land designation, and is subject to change through plan amendment or plan revision. Actual uses of specific areas are approved through project and activity decisionmaking. At the time of plan approval, the Forest Service does not typically have detailed information about what projects and activities will be proposed and approved over the life of the a plan, where they will be located, or how they will be designed. Under the proposed rule and alternatives D, E, and M, plans would be strategic rather than prescriptive in nature, absent rare circumstances. Plans would describe the desired social, economic, and ecological conditions for a national forest, grassland, prairie, or other comparable administrative unit. Plan objectives, guidelines, suitable uses, and special area identifications would be designed to help achieve the desired conditions. None of the plan components are intended to directly dictate an on-the-ground decision that has impacts on the environment. Rather, they state guidance and goals to be considered in project and activity decisions.

Comment: Desired condition and suitability determinations as irretrievable and irreversible decisions. A respondent commented that plans make irretrievable and irreversible decisions because desired future conditions require certain management and identifying a timber base assures that certain actions will occur and impacts will result. Another respondent commented that the zoning of certain forest lands in the plan has a direct impact on how national forests will be managed and what impacts will be acceptable.

Response: For all alternatives, the identification of desired conditions in a plan will not require any activities to actually occur or describe the precise activities to be undertaken to bring a forest or grassland to those conditions. Although a statement of desired conditions will typically influence the choice and design of future proposed projects and activities in the plan area it does not by itself have any effects on the environment. Likewise, identifying a particular area as suitable for timber production does not require or approve any projects or activities, command anyone to refrain from undertaking projects and activities, or grant, withhold, or modify contracts, permits, or other formal legal instruments. Nor does it mean that a particular set of management prescriptions will be the only set considered when future projects are proposed in that area.

Comment: Standards and guidelines as final agency decisions. A respondent stated that standards and guidelines ensure that protective or impacting activities will occur.

Response: For all alternatives, standards and guidelines provide constraints, information, and guidance that will be applied to future proposed projects or activities to contribute to achieving or maintaining desired conditions. Standards and guidelines may even determine

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whether a potential project is feasible at all. Furthermore, standards and guidelines will typically influence the design of proposals for future projects and activities in the plan area. The influence standards and guidelines have on the direct, indirect, and cumulative effects of future projects or activities are not known and cannot be meaningfully analyzed until such projects or activities are proposed by the Agency. If a plan standard or guideline were to approve projects and activities, or command anyone to refrain from undertaking projects and activities, or grant, withhold or modify contracts, permits or other formal legal instruments, such a plan component would be subject to appropriate NEPA analysis and documentation.

Comment: Roadless inventory, wilderness or wild and scenic rivers recommendations, and oil and gas leasing as final agency decisions. Some respondents did not agree that plans do not typically make final decisions subject to NEPA, citing the determination of roadless areas, recommendations for wilderness or wild and scenic rivers, and the decisions to open areas to oil and gas leasing. Other respondents agree with the Forest Service that plans do not approve or execute any particular action; that management is more dynamic when it is closest to the ground.

Response: In all alternatives, the planning process includes inventories and analysis that provide information but this information is not a decision. Inventories identifying areas meeting certain criteria for potential wilderness are an example. Only the Congress can make the decision to designate wilderness or wild and scenic rivers. Unless otherwise provided by law, based on inventories and analysis, the responsible official will consider all NFS lands possessing wilderness characteristics for recommendation as potential wilderness areas during plan development or revision. Congress may consider recommendations in the plan, but has no obligation to designate wilderness consistent with the plan's recommendations. All alternatives ensure that NEPA analysis would coincide with those stages in agency planning and decisionmaking likely to have a measurable effect on the human environment. If the Chief decides to forward preliminary recommendations of the forest supervisor to the Secretary, an applicable NEPA document shall accompany these recommendations.

For all alternatives, if the responsible official proposes to determine what oil and gas lands are administratively available for oil and gas under 36 CFR 228.102(d), this would be a separate decision, which the plan may cross-reference. However, this is an activity decision under 36 CFR 228.102(d), this is not a plan decision nor a plan component.

Comment: NEPA requirements for removing special areas designations. A respondent commented that the proposed rule and the draft EIS allow the plans to designate or remove designation from certain types of special areas. In the past, this type of action would require environmental review under NEPA, but that under the proposed plan, these changes could be made without environmental review.

Response: The responsible official may designate a special area during plan development, amendment, or revision. The types of special areas the responsible official may designate are identified as those with the following characteristics: scenic, geological, botanical, zoological, paleontological, historical, and recreational, as discussed in FSM 2372. Designating a special area that simply identifies one or more of these characteristics, and also includes a plan component developed for that particular area, may occur without further NEPA analysis and documentation. Some special area designations may include a prohibition on projects or activities in those areas. If the proposed designation includes a prohibition that commands anyone to refrain from undertaking projects and activities in the areas, or that grants withholds or modifies contracts, permits or other formal legal instruments, that

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proposed designation would be considered separately from the plan under the proposed rule and alternatives D, E, and M and follow appropriate agency NEPA procedures.

Comment: Disclosure of the environmental effects of a plan. Many respondents were concerned that using a categorical exclusion instead of an EIS for land management planning eliminates disclosure of environmental effects of a land management plan. Some were concerned that without disclosure of environmental effects, scientists and the public would not have a basis for providing meaningful comments. Some respondents believed the proposed categorical exclusion would eliminate cumulative effects analysis of management activities across the NFS in violation of NEPA.

Response: A categorical exclusion is one method of complying with NEPA. A categorical exclusion represents a Forest Service determination that the actions encompassed by the category “do not individually or cumulatively have a significant effect on the human environment” (40 CFR 1508.4). Plans developed under the proposed rule or alternatives D, E, or M would typically not include a decision approving projects and activities, nor that command anyone to refrain from undertaking projects and activities, nor that grant, withhold or modify contracts, permits or other formal legal instruments. Plan components would provide guidance and a strategic framework – they would not compel changes to the existing environment. Achieving desired conditions depends on future management decisions. Thus, without a decision approving projects and activities, or that commands anyone to refrain from undertaking projects and activities, or that grants, withholds or modifies contracts, permits, or other formal legal instruments, the plan components would not be linked in a cause-effect relationship over time and within the geographic area to any resource. Therefore, such a plan would not have a significant effect on the quality of the human environment.

The proposed rule and alternatives D, E, or M would provide for extensive analysis, as set out in section 219.6 and section 219.7. A comprehensive evaluation of current conditions and trends would be done for plan development and revision and updated at least every 5 years (sec. 219.6(a)(1)). This evaluation, along with information from annual evaluations and other sources, would be part of the continually updated plan documents or set of documents that would be considered in project analysis. These up-to-date plan documents or set of documents would provide a better context for project cumulative effects disclosures than previously provided by programmatic plan EISs under the 1982 rule; therefore, the Forest Service would make better informed management decisions whenever it decides to undertake projects. However, the comprehensive evaluation report would not have a cumulative effects disclosure like the EISs under the 1982 rule had.

The Forest Service is required to examine carefully the cumulative effects of projects and activities. Those cumulative effects will be analyzed and disclosed at the time the projects and activities are proposed, which is the time when the Forest Service has a goal, is actively preparing to make a decision about one or more alternatives to achieve that goal, and the effects can be meaningfully evaluated (40 CFR 1508.23).

Comment: Plan alternatives. Several respondents commented that by not using an EIS for land management planning, no alternatives will be considered other than the one proposed by the Forest Service. They were concerned this would preclude the consideration of alternatives proposed by the public. Some suggested that alternatives play an important role in educating the public about the possible outcomes for national forests and grasslands. Others believed evaluating alternatives allows Forest Service managers to make decisions that are more informed.

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Response: With the 1982 rule, the Forest Service believed the most efficient planning approach was to integrate the rule's regulatory requirement to formulate alternatives to maximize net public benefit with the NEPA alternative requirement (i.e., 40 CFR 1502.14); therefore, the Forest Service placed in the 1982 rule the requirement for responsible officials to use the EIS process to formulate these alternatives. However, the proposed rule and alternatives D, E, or M would not require alternatives because they envision an iterative approach to plan development, in a way that plan options are developed and narrowed successively (sec. 219.7(a)(7)). The Agency recognizes that people have many different ideas about how NFS lands should be managed and agrees that the public should be involved in determining what the plan components should provide. Therefore, the proposed rule and alternatives D, E, or M would provide for participation and collaboration with the public at all stages of plan development, plan amendment, or plan revision. The Agency anticipates that under the proposed rule and alternatives D, E, and M, the responsible official and the public may iteratively develop and review various options for plan components, including options offered by the public. Responsible officials and the public would work collaboratively to narrow the options for a proposed plan instead of focusing on distinct alternatives that would be carried through the entire process. The Forest Service developed this iterative option approach under the proposed rule and alternatives D, E, and M to encourage people to work together, understand each other's values and interests, and find common solutions to the important and critical planning issues.

Comment: Efficiency of future project and activity decisionmaking. Some respondents believed categorically excluding land management plans will increase the analysis needed for project or activity decisions and therefore, reduce efficiency gained during the planning process. Some stated that without a plan EIS, cumulative effects and impacts to forest-wide resources would now have to be evaluated in each project decision.

Response: Inherent in these comments is the assumption that programmatic land management plan EISs consistently provided useful and up-to-date information for project or activity analysis including sufficient cumulative effects analysis for reasonably foreseeable projects and activities. After 28 years of NFMA planning experience, the Forest Service has determined that in fact, plan EIS cumulative and landscape-level effects analyses are mostly speculative and quickly became out of date. Landscape conditions, social values, and budgets change between when a plan's effects analysis occurs and when most project and activity decisions are made. Large-scale disturbances, such as drought, insects and disease, fires, and hurricanes can dramatically and unexpectedly change conditions on hundreds to thousands of acres. Use of a plan area can change dramatically in a relatively short time, as has occurred with increased numbers of off-highway vehicles in some areas or the listing of a species under ESA. Most notably, the projects that are actually authorized are often far fewer and different than those predicted in the EIS. Hence, the Forest Service has found that a plan EIS typically does not provide useful, current information about potential direct, indirect, and cumulative impacts of project or activity proposals. Such effects will be better analyzed and disclosed when the Forest Service knows the proposal design and the environmental conditions of the specific location.

Comment: Required documentation for a categorical exclusion decision. A respondent stated it is not clear what kind of decision documentation would be prepared for a categorically excluded land management plan decision.

Response: Agency NEPA procedures related to categorical exclusions state, "If the proposed

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action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by section 219.7(c) satisfies the decision memo requirements of this section.” Accordingly, instead of a decision memo, a plan approval document would be shared with the public. See section 219.7(c) for specific content requirements for a plan approval document.

For additional discussion concerning the categorical exclusion for land management plan decisions, see the Agency’s December 15, 2006, Federal Register notice *National Environmental Policy Act Documentation Needed for Developing, Revising, or Amending Land Management Plans; Categorical Exclusion* (71 FR 75481).

Comment: Supreme Court decisions cited to support use of a categorical exclusion. Some respondents took issue with reliance on Ohio Forestry Association, Inc., v. Sierra Club et al, 523 U.S. 726 (1988), and Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55 (2004) (SUWA). They asserted *Ohio Forestry* was simply a ripeness case and the Supreme Court did not hold that land management plans are inherently not reviewable and noted plans that incorporate final decisions have immediate effects and are reviewable.

Response: As noted in the preamble to the proposed categorical exclusion for planning, plan development, amendment, and revision is generally not the stage at which actions are proposed to accomplish the goals contained in land management plans (70 FR 1064; Jan. 5, 2005). That preamble further pointed out that this view of land management plans was supported by the previously cited Supreme Court decisions, *Ohio Forestry* and *SUWA*. Although the respondents believed that *Ohio Forestry* is simply a ripeness case, its implications are in fact quite broad. As the Supreme Court has noted repeatedly, ripeness is “peculiarly a matter of timing” (*Regional Rail Reorganization Act cases*, 419 U.S. 102, 140 (1974)). In deciding that judicial review of a plan was not ripe, the Supreme Court acknowledged the nature of land management plan as simply an initial step in a series of steps before on-the-ground action occurs. In *Ohio Forestry*, the Supreme Court held the portion of the land management plan at issue, which identified logging areas and goals, did “not command anyone to do anything or to refrain from doing anything” (523 U.S. 733). The plan therefore, was not ripe for review because the Forest Service had not yet made decisions that approved actions. However, the court did acknowledge that plans, or portions of plans, which include decisions having immediate effects were in a different category (523 U.S. at 738-39). The Supreme Court repeated this view in *SUWA*, stating that “a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at least in the usual case) prescribe them” (542 U.S. 55 at 71 (2004)). *Ohio Forestry* and *SUWA* are, therefore, significant because they acknowledge the fundamentally strategic nature of planning. In the specific context of those cases, the strategic nature of planning, contrasted against the more concrete nature of project-level activity, led the court to determine that judicial review of plans was inappropriate.

The consideration of timing, as well as the contrast between planning and projects, supports a categorical exclusion for land management planning. To a greater extent than before, plans under the proposed rule or alternatives D, E, or M would be strategic and aspirational in nature, setting desired conditions and objectives and guidance for subsequent on-the-ground projects or activities. At the point of a proposed project or activity, the agency can meaningfully evaluate the project or activity’s environmental effects (40 CFR 1508.23). Under all the alternatives, where a project or activity is approved in connection with plan development, amendment, or revision, that approval will be analyzed in an appropriate

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NEPA document.

Thus, *Ohio Forestry* and *SUWA* both acknowledge the fundamental nature of land management plans as tools to guide later decisionmaking that generally will not have a significant effect on the environment.

Environmental Management Systems (EMS) – 219.5

Comment: Contribution of EMS to the planning process. Several respondents questioned the value of including EMS in the proposed rule. A respondent expressed the belief that, although EMS is voluntary for industry and not enforceable; however, incorporating it in the planning rule would give it the force of law against the Agency. A respondent noted that although the effectiveness of monitoring should be tightly integrated into each forest plan, it can be done without a burdensome and impractical EMS. Other respondents said that the existing planning process has adequate requirements for adaptive management, and the requirement to develop an EMS is redundant. Another respondent found requiring EMS to be inconsistent with the proposed rule's intent to be strategic rather than prescriptive. Another respondent suggested the requirement for EMS be moved to the directives and expanded to provide guidance on their scope and use. Conversely, some respondents expressed support for including EMS in the rule. Several respondents expressed the opinion that a strategic forest plan accompanied by an EMS was preferable to a prescriptive forest plan.

Response: EMS is based on a national standard and the procedures for enforcing it will be established in the EMS. The standard lays out management system elements. EMS applies to whatever organization wants to use it, not just industry. Under all alternatives the detailed procedures and requirements for a Forest Service would be developed in a national technical guide and the Forest Service Directives System. The Forest Service is committed to carrying out the direction in Executive Order (EO) 13423 that every Federal agency has an EMS. Different approaches to EMS guidance were evaluated by the proposed rule and alternative M. The proposed rule and the new alternative M include requirements for EMS in the rule. Implicit to the other alternatives is inclusion of EMS guidance in the Directives System instead of the rule.

Regardless of the alternative selected the Forest Service would carry out a national EMS by a letter of direction from the Chief and through Forest Service Directives System. Under all alternatives, the Agency would carry out a national EMS applicable to all administrative units of the Forest Service. Accomplishment of the EMS will be governed by the Forest Service directives. Furthermore, a technical handbook is being prepared for use by national and regional EMS managers and an EMS handbook is being developed for use in the field. The scope of the EMS will include the goals of EO 13423, nationally identified land management environment aspects, and as appropriate, local significant environmental aspects. The EMS will be designed to conform to the ISO 14001 standard. Audit procedures would be established in the technical handbook or directives. Conformance will be determined by the procedures detailed in the directives for the EMS.

A “non-conformity” identified by a management review or audit under these EMS procedures would not a failure to conform to the ISO 14001 standard as described in the proposed rule and alternative M, but part of *the Plan-Do-Check-Act* cycle of continuous improvement that makes up the ISO conformant EMS. A non-conformity would be followed up with preventive or corrective action which leads to continuous improvement in environmental performance. Such “non-conformity” is a normal part of the *EMS Plan-Do-*

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Check-Act process and does not constitute a failure to conform to the ISO 14001 standard as required by the proposed rule or alternative M. *Comment: EMS design and purpose.* Several respondents felt that the Agency needs to clarify the purpose and contents of its EMS. A respondent specifically asked for clarification on the sustainable consumption component of the national EMS framework and how the public can be involved in the development of a unit's EMS.

Response: As stated in the preamble of the proposed rule, the Forest Service would use EMS as a national framework for adaptive management. Details on the requirements of EMS, including procedures for public involvement, would be placed in Forest Service directives. The sustainable consumption focus area of the national EMS framework discusses the goals outlined in Executive Order 13423 “Strengthening Federal Environmental, Energy and Transportation Management.”

Comment: Applicability of International Organization of Standardization (ISO) 14001. Some respondents expressed the view that the ISO 14001 was designed for businesses, corporations, and facilities that cause pollution and that it would be an awkward fit to natural resource management agencies.

Response: The ISO 14001 standard simply lays out management system elements. EMS applies to whatever organization wants to use it, not just industry. The Forest Service is committed to carrying out EO 13423 on EMS under any alternative. Some alternatives would carry out EO 13423 solely under Forest Service directives. The proposed rule and alternative M would place the Agency commitment in the planning rule itself.

For all alternatives, the Forest Service will use the ISO 14001 elements as the framework for EMS development for two reasons. It is the most commonly used EMS model in the United States and around the world. This will make it easier to carry out and understand (internally and externally) because there is a significant knowledge base about ISO 14001. Second, the National Technology and Advancement Act of 1995 (NTAA) (Pub. L. 104-113) requires that Federal agencies use or adopt applicable national or international consensus standards wherever possible, in lieu of creating proprietary or unique standards. The NTAA's policy of encouraging Federal agencies to adopt tested and well-accepted standards, rather than reinventing-the-wheel, clearly applies to this situation where there is a ready-made international and national EMS consensus standard (through the American National Standards Institute) that has already been successfully carried out in the field.

The Agency's approach to EMS under any alternative would incorporate lessons learned from the fiscal year (FY) 2006 EMS pilots. These pilots involved all Forest Service regions and 18 national forests and grasslands. The pilots revealed that a forest-by-forest approach to EMS: (1) creates many redundancies, (2) burdens field units with unnecessarily duplicative work, (3) introduces inconsistencies, and (4) makes it difficult to assess regional and national trends emerging from EMS efforts because there is no standardization between units. Because of these problems, the Forest Service under any alternative would develop a single, national EMS framework that will serve as the basis for environmental improvement on each unit of the NFS and as the basis for the EMS to be established on each unit. The national EMS framework will include three focus areas: *sustainable consumption, land management, and local concerns*. The sustainable consumption focus area concentrates on the consumption of resources and related environmental impacts associated with the internal operations of the Forest Service. This focus area is the Agency's way to achieve the goals of Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.”

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The sustainable consumption focus area will apply to items such as increasing energy efficiency, reducing the use of petroleum in fleets, and improving waste prevention and recycling programs. The land management focus area will apply to three land management activities applicable to all national forests and grasslands. A review of the 2006 EMS pilot program and review of the Agency's Strategic Plan found each local unit EMS should at a minimum include: (1) vegetation management, (2) wildland fire management, and (3) transportation system management as significant aspects. The activities covered under the sustainable consumption and the land management focus areas include aspects and components that will be discussed in a national level EMS. The uniform approach to sustainable consumption and land management aspects and components in the national EMS would enable the Forest Service to track progress in achieving the objectives of the Forest Service Strategic Plan and unit land management plans and supply a feedback loop that will help improve the Agency's response when goals and objectives are not being met. The local focus area allows local unit EMSs to include aspects and components specific to an individual unit's environmental conditions and programs. Each Forest Service unit's EMS will likely differ with respect to the local focus area as opposed to the nationally standardized sustainable consumption and land management focus areas.

Several administrative units established EMSs as a part of the pilot effort before the Forest Service has adopted a consistent national approach. Those administrative units' EMSs include locally unique environmental aspects and components as well as the environmental aspects and components they have in common with other units. Those common environmental aspects and components are similar to the environmental aspects and components that will be developed under the sustainable consumption and land management focus areas of the national EMS. Because an EMS must include procedures to upload new requirements, these administrative units have procedures to transition to the requirements developed under the national EMS focus areas and they will subsequently conform to the national EMS.

Comment: Availability of ISO 14001. Some respondents expressed the concern that the ISO 14001 standard is copyrighted and only available for a fee which would provide a barrier to public participation in the planning process. Some respondents asserted the ISO standard would complicate FOIA requests. They also suggested that the government should put ISO 14001 in public domain before relying on it.

Response: The standard is copyrighted. The standards are made available to the Forest Service via a license from the American National Standards Institute. However, the Forest Service is prohibited by copyright laws from providing access to the Licensed Standards by any third party.. The copyrighted status of ISO should not be a barrier to public participation in the planning process or application of EMS. A paraphrase of the requirements of each element of the ISO is posted on the Forest Service web site at http://www.fs.fed.us/ems/includes/sum_ems_elements.pdf. Although the ISO 14001 standard itself would not be releasable under FOIA, Forest Service developed EMS materials will be posted on a publicly accessible website.

Comment: EMS as substitute for NEPA or NFMA requirements. Some respondents expressed the opinion that EMS appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the national forests. Another respondent expressed the opinion that EMS should not be a replacement for the standards and limits required by NFMA

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Response: EMS is not a substitute for NEPA or NFMA requirements under the proposed rule and alternative M. The legal responsibility for NEPA and NFMA applies under all alternatives. The proposed rule and alternatives D, E, and M require the responsible official to select the appropriate level of NEPA analysis. Alternatives B and C require an EIS for plan development and plan revision. The proposed rule and alternative M apply EMS as a tool for monitoring and effective adaptive management. EMS is not an environmental “analysis” system and is not a substitute for appropriate NEPA analysis.

Comment: EMS and the transition period. A respondent expressed an interpretation of the transition language as requiring each and every national forest to have its EMS in place within 3 years after plan revision.

Response: Different EMS requirements are included under the proposed rule and alternative M in the EIS. The proposed rule requires establishment of an EMS for plans developed, revised, or amended under the proposed rule. Under the proposed rule, some units could choose to establish an EMS beyond the transition period, if there is no immediate need to develop, revise, or amend their plan. Alternative M provides for multi-unit, regional, or national level EMS, requiring EMS requirements be met before projects or activities approved under a plan developed, amended, or revised under this rule can be carried out. There are no EMS requirements in the transition language, section 219.14, under alternative M.

Comment: Keep EMS simple. A respondent encouraged the Forest Service to keep the EMS as simple as possible. They also suggested that administratively combined units be allowed to establish a single EMS.

Response: Because of E. O. 13423, the Forest Service would carry out an EMS under all alternatives. The Forest Service EMS will begin with a focused set of environmental aspects identified at the national level and adapt the EMS as experience is gained with the new process. The Forest Service intends to develop an EMS framework to avoid duplication of efforts, complement the land management planning process, and facilitate adaptive management.

Comment: Review Environmental Protection Agency (EPA) EMS guidelines. A respondent suggested the Forest Service review EMS guidelines in ISO 14001 and the EPA recommendations for organizational use of EMS.

Response: Forest Service staff has studied ISO 140001 and *Annex A Guidance on use of this International Standard*. They have also consulted the numerous EMS guides posted on the Environmental Protection Agency (EPA) EMS website. Development of EMS in the Forest Service has proceeded with the assistance of ISO 14001 experts provided by international EMS consulting firms.

Comment: EMS absence from alternatives. A respondent questions the Forest Service’s authority to exclude EMS from any of the planning rule draft EIS alternatives because it is required by EO 13148.

Response: EO 13148 was superseded by 13423 in January 2007. EO 13423 also requires Federal agencies to manage the goals of the executive order through the development of an EMS. There is no requirement in the executive order that EMS be codified in agency regulations. Forest Service would be developing an EMS regardless of the planning rule alternative selected.

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Evaluation and Monitoring – 219.6

Comment: Guidance or requirements for monitoring. A respondent commented that the proposed rule failed to provide any guidance on what or how to monitor and evaluate. The respondent said that adaptive management requires compatible or standardized information to allow managers to learn from current management and make appropriate modifications, but that the proposed rule does not require such a system or provide guidance in how to set up a successful monitoring system. The proposed rule does not require monitoring of any specific resources or actions such as monitoring wildlife or fuels reduction projects. With no system in place, a forest manager could selectively monitor some resources and activities and ignore others.

Response: The Agency agrees standardized information collection through monitoring is an important part of adaptive management. The proposed rule and alternatives D, E, and M includes a core set of requirements for establishing a monitoring system. These include that monitoring must provide for determining whether management systems are producing substantial and permanent impairment of the productivity of the land, and the extent to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives of the plan under the proposed rule and alternatives D, E, and M (sec. 219.6(b)(2)). There is further guidance that monitoring must be prepared with public participation and take into account key social, economic and ecological performance measures, and best available science. The Forest Service Directives System and other technical guidance provide information on how to design and conduct a monitoring program.

Rather than impose through a planning rule a standardized list of resources or activities for monitoring, the Agency believes that monitoring needs are best determined for each individual unit. Requiring a standard set of information to be collected on fuels may be a critical element to fire-prone forests, but it is not to wet forests where fire is a less important ecological process. The reality of limited financial and technical capabilities make it particularly important that forest managers be allowed to develop a monitoring program appropriate for the information needs of each forest without the additional burden of providing standardized information of limited utility to some forests.

Comment: Budgeting for evaluation and monitoring. Several respondents said adaptive management is meaningless without monitoring and evaluation to inform adaptation, and without disclosure through reporting. Several respondents were concerned about the ability of the Forest Service to fund and complete monitoring work. One suggestion was that the EIS and the planning rule include requirements for completing annual monitoring work including the identification of a monitoring budget.

Response: The Agency emphasizes monitoring and evaluation under the proposed rule and alternatives B, D, E, and M, because they are such an integral piece of the adaptive management process. The monitoring program would be included in the plan set of documents. The proposed rule and alternatives B, D, E, and M at section 219.6(b)(1) requires the plan monitoring program to take into account financial and technical capabilities; furthermore, funding available for monitoring and evaluation is determined through the Congressional appropriation process rather than the plan.

Comment: Wildlife population monitoring. Several respondents commented there should be mandatory requirements for the monitoring of wildlife populations. Some respondents wanted specific requirements for monitoring populations of important species, declining

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species, or retaining requirements for monitoring populations of management indicator species as in the 1982 rule. They believe such information would be important in determining the effects of management and natural events on wildlife.

Response: Requirements for species population monitoring are not included in the proposed rule and alternatives D, E, and M. Wildlife monitoring by the Forest Service is driven by the need to address specific questions. Some species are relatively easy to monitor although others require considerable effort and expense. The Forest Service has developed and uses a range of monitoring protocols for collecting wildlife population and habitat information. In some cases the Agency conducts very precise population monitoring (e.g., for red-cockaded woodpecker). In other cases a broad, habitat-based approach to monitoring is most appropriate (e.g., for elk). If needed, under the proposed rule or alternatives D, E, or M provisions for specific TES, species-of-concern (SOC), and species-of-interest (SOI) ecological diversity must be included in the plan (sec. 219.10(b)(2)). As appropriate, monitoring of either habitats or populations of such species may be included in the monitoring program under any alternative. Alternatives B and C provide for population monitoring.

Comment: Need for wildlife monitoring. Several respondents stated wildlife monitoring must be done to ascertain the effects of projects on wildlife.

Response: Monitoring of either habitat or populations of wildlife may be included in a plan's monitoring program. In the proposed rule and alternatives D, E, or M if the responsible official determines that provisions in plan components in addition to those required for ecosystem diversity are needed to provide appropriate ecological conditions for specific TES, SOC, and SOI, then the plan must include additional provisions for these species. These alternatives also require plans to include monitoring of the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Accordingly, a forest plan's monitoring program would include monitoring of effects on wildlife where appropriate. In contrast, alternative B would require for identification of focal species and their monitoring, and alternative C would require for identification of management indicator species and their population trends.

Comment: Management Indicator Species (MIS) population monitoring. Some respondents expressed concern that monitoring of habitat conditions may not reflect population trends in a timely enough manner and stated that baseline data is needed if sampling programs are to be used for trend analysis. Other respondents stated that provisions of the proposed rule allowing monitoring of habitat rather than populations, utilizing a range of methods, and specifying that MIS monitoring is not required for individual projects conflicts with the MIS case law developed under the 1982 rule and may not survive legal challenge. Other respondents urged that wildlife monitoring requirements not be optional (as was proposed in sec. 219.14(f)), otherwise the forest managers and public would have no way of knowing whether wildlife goals have been met.

Response: Alternative C (1982 rule) would require monitoring of MIS. Under alternative B (The 2000 rule), the MIS duty of the 1982 rule is not in effect.

Under the proposed rule and alternatives D, E, and M, the Agency deals with the previous uncertainty about the application of provisions of the 1982 rule. The proposed rule and alternatives D and E deal with this uncertainty by clarifying that responsible official may use information on habitat unless the plan specifically requires population monitoring or

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population surveys in meeting MIS monitoring obligations. The proposed rule and alternatives D and E also clarify that site-specific monitoring or surveying of a proposed project or activity area would not be required. Any monitoring would likely be carried out at the scale most appropriate to the species within the national forest, grassland, prairie, or other administratively comparable unit.

Under alternative M, the Agency would use different wording to explain that the 1982 rule has no effect on projects developed under plans developed, amended, or revised using the provisions of the 1982 rule. Under alternative M, the Agency would not explicitly identify the MIS issue in the rule but would say that that rule is without effect. And, no obligations remain from that regulation, except on a unit where the plan specifically includes the concept of MIS and direction concerning MIS.

Under the proposed rule and alternatives D, E, and M the Agency does not dictate a specific approach to species monitoring. Rather, the responsible official is allowed flexibility to carry out monitoring approaches which may include either habitat or population monitoring and a variety of sampling programs to estimate or approximate population trends for species. The need for timely feedback on trends and the existence of baseline data may be a consideration as the responsible official adopts a specific monitoring protocol.

Comment: Difficulty of obtaining wildlife population data. Several respondents commented the Agency is exaggerating the difficulty of obtaining wildlife population data. They stated there are protocols for monitoring species and with scientific help the Forest Service could develop a reasonable list of species for population monitoring.

Response: Wildlife monitoring by the Forest Service is driven by the need to address specific questions. Some species are relatively easy to monitor although others require considerable effort and expense. The Forest Service has developed and uses a range of monitoring protocols for collecting wildlife population and habitat information. In some cases the agency conducts very precise population monitoring (e.g., for red cockaded woodpecker). In other cases a broad, habitat-based approach to monitoring is most appropriate (e.g., for elk). If needed under the proposed rule or alternatives D, E, or M provisions for specific TES, SOC, and SOI ecological diversity must be included in the plan (sec. 219.10(b)(2)). As appropriate, monitoring of either habitats or populations of such species may be included in the monitoring program under any alternative.

Comment: Monitoring detail in the rule. Some respondents were concerned that the proposed rule did not include requirements for detailed monitoring of objectives and standards.

Response: The monitoring program is a central element of adaptive management planning, because monitoring is the key to discovering what ultimately may need to be changed in a plan. Each unit's monitoring program must be readily adaptable to respond to changed conditions and evolving knowledge about the effectiveness of various monitoring procedures. To that end, the proposed rule or alternatives D, E, or M would require a plan's monitoring program to take into account financial and technical capabilities, key social, economic, and ecological performance measures relevant to the plan area, and best available science in monitoring the degree to which on-the-ground management is maintaining or making progress toward the desired conditions and objectives for the plan. Because plan components such as desired conditions, objectives, and standards (if a plan includes them) would reflect management specific to a particular unit of the NFS, the plan's monitoring program would need to be tailored to that unit as well. By requiring a plan's monitoring

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program to focus on the achievement of desired conditions and objectives, the proposed rule and alternatives D, E, and M seek a balance between providing needed detailed direction and providing discretion for the responsible official.

Comment: Potential monitoring partners: A respondent asked that section 219.6(b)(3) be changed to include Alaska Native Corporation in the list of potential monitoring partners.

Response: Alaska Native Corporations have been added to the list of potential monitoring partners for the proposed rule and alternatives D, E, and M in the EIS.

Comment: Collecting relevant and necessary information. Some respondents noted there is no process for assuring the Agency will collect relevant and necessary information

Permitting merely the use of available information (especially if no information is available) gives the Agency an excuse for not collecting the right monitoring information. A respondent said that the proposed rule abdicates the Forest Service's responsibility to monitor species and perform population assessments, shifting that burden to the public, which will have little or no record of data from the Agency on which to rely.

Response: As described in section 219.6(b)(1) in the proposed rule and alternatives D, E, and M, the monitoring program would be developed with public participation and would take into account the best available science. Section 219.6(a)(3) of the proposed rule requires an annual evaluation of monitoring information. These steps would help assure that the monitoring program gets the right information.

Comment: Need for evaluation of current conditions. Respondents stated it is imperative the Forest Service evaluate current conditions that resulted from past management decisions before making changes in management direction.

Response: Under the proposed rule and alternatives D, E, and M, baseline information would be collected as needed to establish trends for social, economic, and ecological sustainability. Additionally, section 219.6(a) of the proposed rule and these alternatives would propose three types of evaluations. These include comprehensive evaluations for plan revision that must be updated every 5 years (sec. 219.6(a)(1)), evaluation for a plan amendment (sec. 219.6(a)(2)), and annual evaluations of the monitoring information (sec. 219.6(a)(3)).

Comment: Monitoring of goals and objectives. Some respondents stated the lack of any requirements in the planning rule for meeting forest plan goals and objectives assures that any monitoring plan will be meaningless.

Response: The proposed rule and alternatives D, E, and M provide for monitoring the degree to which management is making progress toward the desired conditions and objectives for the plan (sec. 219.6(b)). Section 219.6(a)(3) of the proposed rule and alternatives D, E, and M call for an annual evaluation to be made of this monitoring information. If plan objectives are not realized due to budget constraints, changed conditions, or other reasons, the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives or desired conditions are not achievable, the responsible official would consider the need for a plan amendment or revision or may consider stepping up on-the-ground management to actually improve progress toward desired conditions and objectives.

Comment: Availability of evaluation reports. A respondent asked for evaluation reports to be available to public upon request in both electronic and hard copy format.

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Response: Section 219.6a of the proposed rule requires that evaluation reports be made available to the public. Under the proposed action and alternatives D, E, and M reports would be available in both electronic or hard copy formats, unless the nature of the information does not readily lend itself to both formats.

Comment: Substantial changes in evaluation reports. A respondent was concerned that the term ‘substantial changes in conditions and trends’ as described in section 219.6(a)(1) was not defined and thus did not allow the public to review and understand what is expected in the updated comprehensive evaluation.

Response: Section 219.9(a) of the proposed rule and alternatives D, E, and M specifically require public involvement in the updating of the comprehensive evaluation report. It is expected that the update of the comprehensive evaluation would involve a general review of all conditions and trends with emphasis on those changes that are considered substantial. Accordingly, the public would have an opportunity to tell the responsible official what they believe are substantial changes in conditions and trends.

Comment: Analysis for a project or activity should not be sufficient for a plan amendment. A respondent disagreed with the proposed rule at section 219.6(b)(2) which states that the analysis prepared for a project or activity satisfied requirements for an evaluation for an amendment. The concern was that there would be no analysis to evaluate how an exception made for the project or activity will affect the plan.

Response: The project or activity analysis that satisfies the requirements for an evaluation report for a plan amendment that only applies to the project or activity decision must also meet the requirements in section 219.6(a) and section 219.6(a)(2). These include an evaluation commensurate to the levels of risk or benefit associated with the nature and level of expected management in the plan area and an analysis of the issues relevant to the purposes of the amendment.

Developing, Amending, or Revision a Plan – 219.7

Comment: Triggering an amendment or revision. Some respondents stated concerns about how the rule describes the manner in which plan revisions will be triggered. One concern is the perception that the responsible official will have unfettered discretion to amend or revise the plan without any guidance as to what types of events would be rational for changing the plan. These respondents urge that the rule include a representative list of the general types of events that might trigger a plan amendment or revision. Some respondents urge that an EIS and public involvement be required when forest plans are changed.

Response: The proposed rule and alternatives B, D, E, and M would provide the responsible official discretion about whether to initiate a plan revision, subject to the NFMA requirement that the plan be revised at least every 15 years. The periodic evaluations required by the proposed rule and alternatives D, E, and M would document current conditions and trends for social, economic, and ecological systems within the area of analysis (sec. 219.6(a)) and aid the responsible official in determining if a plan amendment or plan revision is needed and which issues need to be considered. The responsible official would be able to amend or revise the plan based on information obtained by monitoring and evaluation, as well as other factors. The Agency believes that the efficiencies of the proposed rule would be reduced if the planning rule attempted to identify every specific event that must occur before a plan revision or plan amendment can be initiated.

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Plan amendments prepared under the procedures described in the proposed rule and alternatives D, E, and M would have a 90-day comment period and would have a 30-day objection opportunity. If a NEPA document is part of a plan development, plan amendment, or plan revision the NEPA document will be prepared in accord with Forest Service NEPA procedures.

Plan Components – Desired Conditions - 219.7(a)(2)(i)

Comment: Addressing elements of sustainability in desired conditions. Some respondents urged that the elements of sustainability (social, economic, ecological) be given equal footing in the descriptions of desired conditions. They stated that very specific detail descriptions are needed to establish meaningful objectives and without detailed desired condition descriptions, objectives will not be met.

Response: Under the proposed rule and alternatives B, D, E, and M, desired conditions would be the social, economic, and ecological elements toward which management of the land and resources of the plan area are to be directed. However the footing or status of treatment of the elements would depend upon the issues considered during plan development, plan amendment, or plan revision. The Agency agrees that well defined desired condition descriptions are useful, because they provide a clear basis for project or activity design and are needed to effectively establish objectives.

Plan Components – Objectives - 219.7(a)(2)(ii)

Comment: Nature of objectives. A respondent expressed concern that objectives are described as aspirational rather than being defined as concrete, measurable, and time specific as in previous rules.

Response: Under the proposed rule and alternatives B, D, E, and M, the objectives are stated as measurable time specific intended outcomes and are a means for measuring progress toward reaching desired conditions (sec. 219.7(a)(2)(ii)). These objectives can be thought of as a prospectus of anticipated outcomes, based on past performance and estimates of future trends. These objectives must be measurable, so progress toward attainment of desired conditions can be determined. Variation in accomplishing objectives would be expected due to changes in environmental conditions, available budgets, and other factors.

Comment: Timber production objectives. Some respondents are concerned that if the Timber Sale Program Quantity (TSPQ) and the acres and volumes of projected management practices are objectives and the basis for achieving the desired conditions, then if the Agency does not meet these objectives the desired condition will never be achieved.

Response: The Agency agrees. Under the proposed rule and alternatives B, D, E, and M, if plan objectives are not realized due to budget constraints, changed conditions, or other reasons, then the desired conditions may not be realized. If monitoring and evaluation indicates that certain objectives or desired conditions are not achievable, then the responsible official may consider the need for a plan amendment or revision.

Plan Components – Guidelines - 219.7(a)(2)(iii)

Comment: Mandatory protections. Several respondents said they did not support the proposed rule, because it removes mandatory protections for resources such as water and wildlife and removes the restraints on clearcutting that have been in place for over 25 years. Most of these respondents requested the final planning rule provide at least the minimum

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protections from the 1982 rule and these protections and those required by the NFMA not be weakened. Other respondents said the flexibility incorporated within the 2007 proposed rule better allows the Agency to carry out its mission and adapt to changing conditions. Other respondents are pleased the proposed rule featured the use of guidelines as opposed to standards.

Response: Statutory requirements cannot be weakened by placing them in a regulation or not placing them in a regulation. All alternatives allow standards as a plan component. The preferred alternative (Alternative M) provides for inclusion of standards as a plan component at section 219.7(a)(3). Standards are constraints on project and activity decisionmaking and may be established to help achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency decisions. When a plan contains standards, a project or activity must be designed in accord with the applicable standard(s) to be consistent with the plan. If a proposed project would be inconsistent with the plan, the responsible official must modify the proposal, reject the proposal, or amend the plan.

For alternatives B, C, E, and M, the NFMA requirements concerning guidelines for timber harvest are included explicitly in the rule text and include provisions for protection of soil, watershed, and other resources during timber harvest. All the alternatives depend on the Forest Service directives to further specify how to meet the NFMA requirements. Existing directives are available at <http://www.fs.fed.us/im/directives>. These directives will be revised as necessary to be consistent with a final rule.

Current guidance for timber harvest is provided in the 1920 section of the FSM and in FSH 1909.12, chapter 60 for even-aged harvest, reforestation, and stocking requirements, suitability determinations, calculation of long-term sustained yield, and calculation of timber sale program quantities. Detailed direction on watershed protection and management may be found in FSM 2520.

About the comments on removing the protections from the 1982 rule for wildlife, all alternatives will conserve habitat for the biodiversity of species. The 2005 rule and existing directives were explicitly designed to work together and provide for ecological sustainability through the combination of ecosystem diversity and species diversity approaches. If the proposed rule or alternatives D, E, or M were selected as the final rule, the Agency would likely carry out those rules using these existing directives. These directives would still be valid under the proposed rule and alternatives D, E, and M. Under the existing directives SOC would be identified based on NatureServe rankings (FSH 1909.12, section 43.22b). Under the existing directives SOI would be identified considering many sources including those listed by states as TES and those identified in state comprehensive plans as species of conservation concern (FSH 1909.12, section 43.22c). Under the proposed rule and alternatives D, E and M, the primary purpose for identifying SOC is to put in place provisions that would supply appropriate ecological conditions to keep those species from being listed as TES. Appropriate ecological conditions may include habitats that are an appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. The combined criteria for SOC and SOI currently in the Forest Service directives would lead to identification of all species for which there are conservation concerns. Particularly, criterion five for SOI (FSH 1909.12, sec.

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43.22(c)), which directs identifying “additional species that valid, existing information indicates are of regional or local conservation concern due to factors that may include significant threats to populations or habitat, declining trends in populations or habitat, rarity, or restricted ranges.”

Comment: Benefit of Plans repeating laws: A respondent commented that there is a benefit in repeating laws and regulations in each plan in that the unit would be aware of the relevant requirements and not forget to comply.

Response: The Agency is mindful of its duties to comply with all laws and regulations. Although none of the alternative rules requires that plans repeat laws, regulation, or policy (which are readily available through the Internet and libraries), they do not preclude including them.

Comment: Retaining standards from current plans. A respondent was concerned the elimination of standards is directly related to administration of the Appalachian National Scenic Trail. Appalachian Trail Conservancy staff and volunteers worked with the Forest Service to the development of consistent standards and guidelines that apply over the entire length of the trail for a consistent approach to management. Respondents take the position that the management direction currently in place must be incorporated into forest plans revised under the proposed rule, if it becomes final.

Response: Current plan wording for the management of the Appalachian Trail may be retained in revised plans, as discussed in the preamble for the proposed rule (72 FR 48529). Alternatives B, C, E, and M have standards explicitly identified as an allowable plan component.

Plan Components – Suitability of Areas - 219.7(a)(2)(iv)

Comment: Applicability of suitability and other plan components in restricting or prohibiting projects or activities. Some respondents recommended the description of objectives, guidelines, suitability of areas, and special areas be modified so it is clear that decisions on these components do not constitute a final commitments *restricting or prohibiting* projects or activities. Other respondents said the plan must make a clear decision on priority land use if the plan is to be of use in guiding management. Still others agreed general suitability determinations are appropriate for a strategic forest plan.

Response: Under the proposed rule and alternatives D, E, and M (see sec. 219.7(a)(2)) plan objectives, guidelines, suitability of uses, and special areas designations are not commitments or final decisions approving projects and activities. Because the Agency believes the intent is clear, that under the proposed rule, that decisions on these components would not constitute a final commitments *restricting or prohibiting* projects or activities; the Agency did not modify the wording in the proposed rule. Under all alternatives plan components provide guidance for future project and activity decisionmaking. The response to comment section on section 219.8 has more discussion about how projects and activities must be consistent with the plan.

When proposed projects or activities are not consistent with the plan, the responsible official can either reject or modify the proposal, or can amend the plan.

Also see responses under Nature of Land Management Planning – 219.3 in this appendix.

Plan Components – Special Areas - 219.7(a)(2)(v)

Comment: Nature of special designations. Some respondents stated special designations and

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final decisions should not be made without some kind of analysis to support that designation. Others suggested that the Appalachian National Scenic Trail, as well as other congressionally designated national scenic and historic trails be in the list of special designations and that management direction for special areas be in forest plans.

Response: Under the proposed rule and alternatives B, D, E, and M special areas are areas within the NFS designated for their unique or special characteristics. These areas include wilderness, wild and scenic river corridors, and research natural areas. Some of these areas are statutorily designated. Other areas (such as national scenic and historic trails) may be designated through plan development, amendment, revision, or through a separate administrative process with an appropriate level of NEPA analysis.

Further guidance about special area designation is in FSH 1909.12, section 11.15. Exhibit 01 of FSH 1909.12, section 11.15 is a listing of special areas, which includes national trails. Under all alternatives, the level of NEPA analysis needed to support designations would be consistent with agency NEPA procedures. Special area designations under the proposed rule and alternatives B, D, E, and M typically would not be final decisions approving projects and activities.

Plan Process - Consideration and recommendation for wilderness

Comment: Roadless inventory procedures. Some respondents stated the wilderness review required by the proposed rule should require that the roadless areas inventory include those areas that do not include maintained roads and that may have been missed in past reviews.

Response: Wording is provided in all the alternatives that would direct the responsible official to ensure that, unless otherwise provided by law, all NFS lands possessing wilderness characteristics be considered for recommendation as potential wilderness areas during plan development or revision. Policy and guidance contained in agency directives (FSH 1909.12, chapter 70) provides the detailed guidance for identifying and evaluating potential wilderness areas.

Comment: Wilderness recommendation. Some respondents are concerned that section 219.7(a)(5)(ii) of the proposed rule requires a vast expansion of areas to be considered for wilderness because the language is overly broad and does not specify what constitutes wilderness characteristics or to what degree such characteristics must be present to merit evaluation. These respondents were concerned this wording will lead to expansion of wilderness without considering other multiple uses. Other respondents believed this section of the rule is in conflict with the nature of plans as strategic and not a final agency decision and recommend the removal of section 219.7 from the final rule. Some respondents suggested this section of the rule exclude national forests in Alaska from further wilderness review and recommendation.

Response: Identification of potential wilderness areas and wilderness recommendations has always been an integral part of the NFS planning process. The process for wilderness evaluation has not changed from the requirements in the 1982 rule. All alternatives direct responsible officials to ensure that, unless otherwise provided by law, all NFS lands possessing wilderness characteristics be considered for recommendation as potential wilderness areas during plan development or revision. The Forest Service directives (FSH 1909.12, chapter 70) provide the detailed direction for the identification of potential wilderness areas and the wilderness evaluation process to follow when considering making recommendations on wilderness. The alternative planning rules do not predetermine the plan

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decision a responsible official may make concerning the future management of areas meeting potential wilderness criteria. A variety of options may be considered. Final decisions on designation of wilderness are made only by Congress, and those designations may or may not follow agency recommendations.

Developing Options

Comment: Developing a forest plan requires the consideration of alternatives. A respondent commented that one of the most valuable elements of the existing planning process is the consideration of alternatives. This has yielded new ways of reconciling issues, often through ideas and alternatives submitted by scientists and other reviewers. Not having alternatives to consider puts the Forest Service in the unenviable position of making decisions without having alternatives and their effects at their disposal.

Response: Section 219.7(a) under the proposed rule and alternatives D, E, and M would carry out a collaborative and participatory process for land management planning. The responsible official may use an iterative approach in which plan options are developed and narrowed successively. Alternatives under NEPA may also be developed if agency NEPA procedures require the preparation of an EIS or EA for a specific plan development, plan amendment, or plan revision.

Application of a New Plan, Plan Amendment, or Plan Revision – 219.8

Comment: Plan versus project-scale decisions. A respondent noted that land use planning deals with land allocation and land use issues at a scale larger than the individual project, so the proposed rule appropriately addresses allocation and use rather than project implementation.

Response: The Agency agrees decisions on strategic guidance are best made at the planning level and generally final project decisions must be informed by an analysis at the project-specific scale.

Comment: Site specific applicability of the plan. A respondent commented that the proposed rule removed any applicability of the plan to site specific projects and violated NFMA by allowing project-specific amendments rather than requiring that all projects be consistent with plan direction.

Response: The proposed rule and all alternatives require that decisions approving projects and activities be consistent with the plan. To respond effectively to new information or changed circumstances it is essential for planning rules to include provisions for amending the plan when it is needed. Project-specific plan amendments are a valid method of achieving plan consistency. Provisions at section 219.8(e)(3) are consistent with the NFMA provisions for plan amendments found at 16 U.S.C. 1604(f)(4), NEPA regulatory requirements relevant to new information and changed circumstances at 40 CFR 1502.9(c), and Forest Service practice to allow project-specific amendments since the 1982 rule.

Comment: It is too easy to amend a plan. Several respondents expressed concern the procedures in section 219.8(e) make it too easy to amend a plan at any time for any reason.

Response: The NFMA at 16 U.S.C. 1604(f)(4) allows plan to be amended in any manner whatsoever. The NFMA at 16 U.S.C. 1604(i) requires that resource plans, permits, contracts, and other instruments for the use and occupancy of NFS lands be consistent with land management plans. Experience with previous plans has shown that it is essential to be able to

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amend plans to respond to new information, changed circumstances, or project-specific situations that were not anticipated at the time of plan development. All alternatives require the responsible official to provide opportunities for participation by interested officials and organizations, State and local governments, Federal agencies and Tribal governments in plan development and amendment.

Comment: Consistency of projects and activities with the plan. Several respondents said the proposed rule at section 219.8 is not consistent with the rule preamble in describing consistency of projects and activities with plan guidelines. The preamble indicates that “a project or activity design may vary from the guideline only if the design is an effective means of meeting the purpose of the guideline, to maintain or contribute to the attainment of relevant desired conditions and objectives.” The preamble allows variation from plan guidelines without a plan amendment, but that option is not reflected in the proposed rule at section 219.8 (e). These respondents were concerned that retaining this text from the proposed rule would override the statements in the preamble about plan flexibility and the nonbinding nature. Another respondent stated that the proposed rule and preamble do not explain or define what it means to be “consistent” with the plan.

Response: Current directives developed for the 2005 rule (alternative A) at FSH 1909.12 section 11.4 require wording to be included in all land management plans providing the flexibility that was described in the preamble for the proposed rule. This wording states that a project or activity design may vary from a guideline if the design is an effective means of meeting the purpose of the guideline, to maintain or contribute to the attainment of relevant desired conditions and objectives. The intent of this wording is to explain how a project or activity is consistent with plan guidelines. If the responsible official varies from plan guidelines, the rationale must be documented, but a plan amendment is not required.

Comment: Protecting valid existing rights. Several respondents expressed the view that all existing uses authorized by the Forest Service include valid existing rights and should be allowed to continue for the term of their existing authorizations. Others indicated existing authorizations should only be modified if they conflict with applicable laws.

Response: The NFMA at 16 U.S.C. 1604(i) states, “When land management plans are revised, resource plans and permits, contracts and other instruments, when necessary, shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.” All alternatives are consistent with this requirement.

Comment: Requiring formal analysis of options when projects or activities are inconsistent with the plan. A respondent suggested modifying section 219.8(e) of the proposed rule to require that if an existing or proposed project or activity is inconsistent with the plan, the responsible official must formally analyze the choices of whether to modify or reject the project or amend the plan.

Response: The responsible official must ensure that projects and activities are consistent with the applicable plan components. A requirement to ‘formally analyze’ each option would require a level of analysis that may not be justified in every project-specific circumstance.

Public Participation, Collaboration, and Notification – 219.9

Comment: Public participation in the planning process. Several respondents commented that the proposed rule unfairly limits public participation in the planning process. They were

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concerned because specific public involvement requirements in the CEQ regulations that apply to environmental impact statements do not apply to categorical exclusions. Many respondents stressed how public comment and review periods are an important part of land management planning. Many others believe that by not preparing an environmental impact statement, meaningful public involvement would be eliminated.

Response: The proposed rule, along with alternatives D, E, and M include public involvement procedures and requirements for formal public comment opportunities that go well beyond the NEPA requirements for an EIS. Specifically, the proposed rule and alternatives D, E, and M require three public comment opportunities in the planning process (sec. 219.9):

1. After a Forest Service unit provides the public the required notice that it is initiating a plan, plan amendment, or plan revision and invites the public to comment on the need for change in a plan;
2. During the 90-day comment period for a proposed plan, plan amendment, or plan revision; and
3. During the 30-day objection period prior to approving a plan, plan amendment, or plan revision.

In addition, under the proposed rule and alternatives D, E, and M, the responsible official is specifically required to involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan, and designing the monitoring program.

Considering all the opportunities to participate under these rules, people would not only continue to have access to the land management planning process, they would have the opportunity to participate more meaningfully in bringing each plan to life. Moreover, the shorter planning timeframes envisioned under the proposed action and alternatives D, E, and M would make it possible for more people to stay involved throughout the planning process.

Comment: Community based approaches to planning. A respondent supported the proposed rule as it is consistent with community based approach to planning supported by the nation's leading conservation organizations.

Response: The Agency agrees the collaborative nature of planning under the proposed rule would help facilitate community based approaches to planning. It should be noted that the collaborative approach to planning in the proposed action also extends to Alternatives D, E, and M.

Comment: Access to information if an EIS is not prepared. Some respondents were concerned that people will have less access to timely information about environmental impacts and the comparative advantages of various alternatives if an EIS is not prepared for plans. Some were concerned that there will not be legal recourse for submitting citizen alternatives. Some were concerned that the rule eliminates a “scoping” phase, such as the 30-day period at the beginning of a NEPA process, and that the rule's 90-day comment period for proposed plans will be too late to have changes made.

Response: Under the proposed rule and alternatives D, E, and M section 219.9(a) would require public involvement at early stages of the planning process when the comprehensive evaluation report would be developed and updated. The comprehensive evaluation would

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supply information about the effectiveness of current forest management in achieving desired conditions. This can provide useful information to managers and the public for collaboratively developing a plan or identifying needed changes to discuss during plan revision. Formal public notification of the initiation of development of a plan is similar in timing to scoping under NEPA. Under the proposed rule and alternatives D, E, and M, opportunity for public involvement would be required in developing the components of the plan and designing the monitoring program. A 90-day comment period on a proposed plan is an NFMA requirement. Under the 1982 rule, the comment period was completed at the proposed plan/draft EIS review stage. However, under all alternatives public involvement in the planning process is not intended to be limited to discrete 30-day or 90-day periods, but may occur throughout the transparent planning process. Under the proposed rule and alternatives D, E, and M, options may be considered as an iterative approach to developing plan components in collaboration with the public.

Comment: Balancing discretion and consistency in conducting public participation processes. Some respondents were concerned about the discretion given line officers in conducting the planning process, leading to inconsistent participation processes from one forest to another. There were concerns about significant variations in the methods and timing of public involvement opportunities. Others feared that public participation could be severely reduced. A respondent said that the rule should require public notifications to be put on the web and emailed to all participants. Other respondents were pleased with the emphasis in the rule on public participation, and agreed that a wide range of techniques could be used. A respondent recognized the difficulty inherent in describing all of the possible collaboration approaches in an administrative rule. A respondent requested the rule require public participation opportunities to be arranged to occur at nights and weekends when most people have time to participate. There were also concerns that the rule does not assure that information will be available in a timely manner.

Response: Under all alternatives a variety of public participation methods are encouraged, as long as basic requirements are met. Although particular techniques are not enumerated, the proposed rule and alternatives D, E, and M outline the basic requirements and would require a collaborative and participatory approach. These alternatives provide an assurance that the end result would be met, although the specifics may vary dependent upon local needs. Additional guidance and procedures for collaboration are supplied through agency directives located in FSM 1921.6 and FSH 1909.12, chapter 30.

Comment: Difference between public participation and collaboration is unclear. Some respondents stated the rule and directives confuse and interweave the terms “public participation” and “collaboration,” making it difficult to understand how the planning process will be conducted. Several respondents mentioned that collaboration is not something new. The respondents stated that the Forest Service used various forms of collaboration in the past, which did not resolve the problems, nor did participants feel that the Forest Service fully listened to them.

Response: Under the proposed rule and alternatives D, E, and M, public participation is defined in section 219.16 as all of the activities such as public meetings, open houses, workshops, and comment periods, to provide for meaningful opportunities for the public to engage in the planning process. The definition of public participation includes opportunity for the public to collaborate. Collaboration is defined in the FSH 1909.12, section 30.5. Collaboration is people working together to share knowledge and resources to describe and

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achieve desired conditions for NFS lands and for associated social, ecological, and economic systems in a plan area. Collaboration applies throughout the planning process, encompasses a wide range of external and internal relationships, and entails formal and informal processes. Public participation is a broader term than collaboration. To summarize the difference between the two terms, public participation comprises the activities that provide opportunities for engagement in the process, while collaboration refers to the goals of working together and sharing knowledge and resources. The Agency believes collaboration can work to resolve concerns with land management. The Agency is committed to fully listen to citizens about their concerns.

Comment: Importance of government relationships. Some respondents reiterated the importance of collaborative relationships with other government entities that manage surrounding lands. Some respondents wanted the rule to provide an equivalent to the cooperating agency provision of NEPA.

Response: The responsible official would likely collaborate with other government entities under any alternative. Under the proposed rule and alternatives D, E, and M the responsible official must coordinate planning efforts with those of other resource management agencies. These alternatives also require the responsible official to provide opportunities for other government agencies to be involved, collaborate, and participate in planning for NFS lands.

Comment: Comparison with public participation in 1982 regulations. Some respondents disagreed with the Agency's conclusions that the proposed rule would improve public participation, because the 1982 rule already had extensive participation requirements. A respondent said that plans begun under the 2005 rule (similar to the 2007 proposed rule) were less tangible and more confusing to the public, thus unintentionally discouraging public involvement.

Response: Under the proposed rule and alternatives D, E, and M the responsible official is required to use a collaborative and participatory approach. The Agency believes that a 2-3 year planning period expected under the proposed rule as opposed to a 5-7 year period that was typical in the past under the 1982 rule would make it possible for more people to stay involved throughout the planning process. For many reviewers, planning documents were lengthy, complex, and difficult to read. Also, the Forest Service has found that the traditional approach (1982 rule) of developing and choosing among discrete alternatives that are carried throughout the entire planning process can be divisive, because it maintains adversarial positions, rather than helping people seek common ground. When using the 2005 rule, responsible officials did provide more public involvement opportunities. For example during plan revision process for the Bitterroot National Forest, Idaho Panhandle National Forest, Kootenai National Forest, and Lolo National Forest workgroups met weekly and bi-monthly, generally over a 2-year period and during specific points of the process to assist in development of the plan components (that is desired conditions, starting option, and so on). For the most part, local county commissioners, other federal and state agency members, tribal representatives, and staffers for state senators and representatives participated in the workgroup meetings. This collaboration effort resulted in proposed plans that were widely supported by the local communities.

Comment: Publishing notices for amendments in the newspaper of record but not the Federal Register. A respondent said that not requiring notices to be published in the Federal Register is an attempt to limit involvement from nationally interested parties.

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Response: This is not an attempt to limit involvement from nationally interested parties. The Agency expects forest supervisors to collaborate with and involve all interested parties. The proposed rule requires notifications associated with a plan amendment of a single plan to be published in the newspaper(s) of record. However, if such notifications are associated with more than one plan, the notification must be published in the Federal Register. In addition, each national forest and grassland maintains a schedule of proposed actions on the World Wide Web at <http://www.fs.fed.us/sopa/>. The schedule is updated quarterly and contains a list of proposed actions that will soon begin or are currently undergoing environmental analysis and documentation. It provides information so that all interested parties can become aware of and indicate their interest in specific proposals. If national interests need to keep up to date on plan amendments for a specific national forest we encourage them to contact the appropriate forest supervisor and request to be placed on mailing lists for future amendments.

Comment: Public notices via e-mail. Some respondents were concerned that few citizens review legal notices in newspapers or the Federal Register, and notices should be e-mailed to interested publics.

Response: Under any alternative, a variety of public notification techniques may be used, including mail and e-mail. Public notification is essential in meeting the public participation requirements of any planning rule. But, a responsible official need not take extraordinary efforts.

Comment: Public involvement in plan evaluation and monitoring. Some respondents commented wanting to have mandatory requirements for public involvement in changing the monitoring program. A respondent suggested that some changes could have environmental effects and that these should only be done through a plan amendment rather than simply required notification of change.

Response: The Agency agrees that the public should be involved throughout the planning process. Under the proposed rule and alternatives D, E, and M the responsible official would notify the public of changes in the monitoring program, and can involve the public in a variety of ways when considering changes in the program. Under the proposed rule and alternatives D, E, and M the responsible official would involve the public in developing and updating the comprehensive evaluation, establishing the components of the plan, and designing the monitoring program (sec. 219.9(a)).

Comment: Public involvement for administrative corrections. A respondent said administrative corrections might be significant, and should require public notice before they are made. The respondent believes that changes such as to logging projections and monitoring procedures constitute significant changes with environmental effects.

Response: Administrative corrections are intended for non-substantive changes to plan components and for changes in explanatory material. Long-term sustained-yield capacity (LTSYC) is a statutory limit on timber sale amount. The timber sale program quantity is an objective. Administrative corrections would not be appropriate for LTSYC or for the TSPQ. Timber harvest projections are not LTSYC or TSPQ, but are estimates of the amount of harvest by cutting method, management emphasis, or product type. Administrative correction may be appropriate, however, for timber harvest projections which are for information purposes only, and are not binding. The directives will require administrative corrections to be made available to the public through the unit's website or by other means.

Comment: Extending Tribal consultation to Alaska Native Corporations. Several Alaska

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Native Corporations requested inclusion of language at section 219.9(a)(3) that would ensure consultation with Alaska Native Corporations as required by the 2004 and 2005 Consolidated Appropriations Acts.

Response: Under the proposed rule and alternatives D, E, and M, Alaska Native Corporations has been added to the engaging Tribal governments provision at section 219.9(a)(3) as well as to the section 219.6(b)(3) on collaborative monitoring. Furthermore the definition of “Alaska Native Corporations” provided by the Alaska Native Corporations is in section 219.16.

Comment: Consultation requirements when identifying species-of-interest (SOI). Some respondents recommended the final rule specifically require consultation with the USFWS, state heritage, or natural resource agencies in the identification of SOI.

Response: All alternatives require the responsible official to coordinate and engage with Federal agencies, local governments, States, and tribal governments. The proposed rule and alternatives D, E, and M speak specifically to engaging State and local governments and Federal agencies in the planning process (sec. 219.9(2)). Under these alternatives the responsible official would provide opportunities for the coordination of Forest Service planning efforts with those of other resource management agencies. The responsible official also would meet with and provide early opportunities for other government agencies to be involved, collaborate, and participate in planning for NFS lands. The proposed rule and alternatives D, E, and M also say that the responsible official should seek assistance, where appropriate, from other State and local governments, Federal agencies, and scientific institutions to help address management issues or opportunities. The word consultation is a term of art associated with communications between the action agency and USFWS or NOAA Fisheries Service about TES.

Comment: Using public input in plan implementation. Some respondents were unclear as to how the products created during forest planning under the 2005 rule, such as those generated by a focus group, would be used, and implemented in the final plans.

Response: Under all alternatives, the Agency expects to use the information generated during public involvement in the development of plan components. All alternatives require the responsible official to involve the public, but allow discretion for the particular type of public involvement process used. This discretion under all alternatives would allow the responsible official to use information from past planning efforts in future planning efforts.

Comment: Incorporating different approaches to public involvement. A respondent offered a different approach to public involvement called “civic republicanism,” which encourages private citizens to subordinate their private interests and work on decisions in the public interest through a deliberative process. The respondent suggests a number of participation processes to accommodate this approach.

Response: All alternatives incorporate meaningful public participation as an essential aspect of a planning process. However, the Agency disagrees with any prescriptive approach, including the approach of civic republicanism. Collapsing on a single, prescriptive answer to such a complex need is at odds with contemporary thinking regarding collaborative public land management planning. The Agency preferred strategy is diagnostic, not prescriptive, and reflective of local needs, contemporary methods, and emergent characteristics. The wording in the proposed rule and alternatives B, D, E, and M allows for locally determined strategies, protects the discretion of local responsible officials, and would establish

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substantive procedural requirements that every selected method must meet.

Sustainability – 219.10

Comment: Elements of sustainability. Some respondents commended the Agency for continuing to define sustainability in terms of social, economic, and ecological elements, none of which trumps the others. It was felt this more accurately reflects the tenets of ecosystem management with its explicit recognition of the human dimension of natural systems and national forest management, and that the three types of sustainability are tightly linked. Moreover, respondents commented that although ecological sustainability is unarguably important, it needs to be balanced with the Agency's charge to "provide a continuous flow of goods and services to the nation in perpetuity" as well as other obligations, such as with the Mining and Minerals Policy Act.

Others believe that ecological sustainability should be the primary goal because ecological sustainability provides the needed assurance that social and economic benefits can be produced at sustainable levels. There was also the comment that the highest priority for forest management must be the maintenance of as complete a component of its species and natural processes as possible.

Another respondent commented that sustaining social and economic systems may conflict with sustaining ecological systems, and asked what will be done to ensure that these goals do not conflict. Lastly, a respondent noted that the "overview" to the proposed rule states that plans "should" guide sustainable management, which implies that sustainable management is optional.

Response: All alternatives are faithful to NFMA, which requires the use of the MUSYA to provide the substantive basis for forest planning and the development of one integrated plan for the unit. Alternative C (1982 rule) does not discuss the concept of sustainability. Under the proposed rule and alternatives D, E, and M, the Agency would treat economic and social elements as interrelated and interdependent with ecological elements of sustainability, rather than as secondary considerations. Under these alternatives sustainability is viewed as a single objective with interdependent social, economic, and ecological components. This does not downplay the importance of ecological sustainability, as the MUSYA provides for multiple use and sustained use in perpetuity without impairment to the productivity of the land. The proposed rule and alternatives B, D, E, and M recognize the interconnection between the ecological, social, and economic components of sustainability and requires consideration of each in the planning process. However, under alternative B the first priority is ecological sustainability.

All alternatives would establish a planning process that can be responsive to the desires and needs of present and future generations of Americans for the multiple uses of NFS lands. None of the alternatives would make choices among the multiple uses; they set up the processes by which those choices would be made during the development of a plan for each NFS unit.

Comment: Principles of intergenerational equity. A respondent suggested the planning rule should apply three principles of intergenerational equity: conservation of options, conservation of quality, and conservation of access. The respondent cited Weiss, Edith Brown, ed. 1992. Environmental change and international law: New challenges and dimensions. Tokyo: The United Nations University Press, available at <http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee00.htm>.

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Response: The Multiple-Use Sustained-Yield Act (MUSYA) of 1960 (16 U.S.C. 528-531) requires NFS lands be managed to provide a continuous flow of goods and services to the nation. The concept of intergenerational equity is similar to the requirements of MUSYA. The Agency has adopted sustainability as a principle under the existing rule (alternative B). Under the proposed rule, plans must focus on providing a sustainable framework—based on social, economic, and ecological systems—that guide on-the-ground management of projects and activities.

Comment: Time frames for sustainability. Some respondents stated that ecological sustainability is measured in decades and centuries while economic sustainability is usually measured in a 5-year time frame. They recommended that sustainability be measured only by ecological sustainability time frames.

Response: The Agency recognizes that time frames for ecological sustainability and economic sustainability will rarely match. The NFMA requires consideration of both the economic and environmental aspects of various systems of renewable resource management when developing a plan.

Comment: Approach to maintaining diversity. Some respondents believe the proposed rule’s reference to an “overall goal” of providing a framework and narrowing the focus to TES, SOC, and SOI is not sufficient. Other respondents commented that following the coarse filter/fine filter approach is a major improvement, because scarce resources can be focused on communities rather than trying to devote the same attention to a myriad of species that are not in danger of ESA listing. Other respondents said that the proposed rule does little to specify how the “framework” will be crafted, how it will “contribute to” sustaining native ecological systems, or how plans will “provide for” TES, SOC, or SOI.

Response: The proposed rule and alternatives D, E, and M would set forth the goal for the ecological element of sustainability to contribute to sustaining native ecological systems by sustaining healthy, diverse, and productive ecological systems as well as by providing appropriate ecological conditions to support diversity of native plant and animal species in the plan area. To carry out this goal, the proposed rule, along with alternatives D, E, and M adopts a hierarchical and iterative approach to sustaining ecological systems: ecosystem diversity and species diversity. The intent of this hierarchical approach is to contribute to ecological conditions appropriate for biological communities and species by developing effective plan components (desired conditions, objectives) for ecosystem diversity and supplementing it with species-specific plan components as needed, thus improving planning efficiency. The proposed action leaves the specific procedures on how the framework would be crafted for the Forest Service directives. The Agency believes it is more appropriate to put specific procedural analytical requirements in the Forest Service directives rather than in a planning rule so that the analytical procedures can be changed more rapidly if new and better techniques emerge. If the proposed rule or alternatives D, E, or M were selected as the final rule, the Agency would likely carry out those rules using these existing directives. As specified in agency directives, the responsible official will develop plan components for ecosystem diversity to establish desired conditions, objectives and other plan components, where feasible, for biological communities, associated physical features, and natural disturbance processes that are the desired components of native ecosystems. The directives specify how to deal with local conditions. Ecosystem characteristics include the structure, composition, and processes of the biological and physical resources in the plan area. The primary approach the Agency envisions for evaluation of characteristics of ecosystem

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diversity is estimating the range of variation that existed under historic disturbance regimes and comparing that range to current and projected future conditions. For specific detail procedures see FSM 1920 and FSH 1909.12, chapter 40.

As part of the hierarchical and iterative approach, the plan area would be assessed for species diversity needs after plan components are developed for ecosystem diversity. The responsible official would evaluate whether the framework established by the plan components meets the needs of specific federally-listed TES, SOC, and selected SOI. If needed, the responsible official would develop additional provisions for these species to maintain a framework for providing appropriate ecological conditions in the plan area that contribute to the conservation of these species.

Under the proposed rule and alternatives D, E, and M, the Agency proposed to select federally-listed TES, SOC, and SOI for evaluation and conservation because: (1) these species are not secure within their range (TES or SOC), or (2) management actions may be necessary or desirable to achieve ecological or other multiple-use objectives (SOI). Species-of-interest may have two elements: (1) species that may not be secure within the plan area and, therefore, in need of consideration for additional protection, or (2) additional species-of-public-interest including hunted, fished, and other species identified cooperatively with State fish and wildlife agencies.

Under the proposed rule and alternatives D, E, and M, additional guidance is provided in the Forest Service directives. For example at FSM 1971.76c, plan components for federally-listed species must comply with the requirements and procedures of the ESA and should, as appropriate, carry out approved recovery plans or deal with threats identified in listing decisions. Plan components for SOC should provide the appropriate desired ecological conditions and objectives to help avoid the need to list the species under the ESA. Appropriate desired ecological conditions may include habitats of appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. (A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations.) For SOI, if a plan component would not contribute appropriate ecological conditions to maintain a desired or desirable SOI, the responsible official must document the reasons and multiple-use tradeoffs for this decision.

Comment: Meeting the NFMA diversity requirements. Some respondents stated that the proposed rule's sustainability provisions contain no clear mandates, no concrete obligations, and are unenforceable; so they do not meet the NFMA's diversity requirement. Others noted the proposed rule at section 219.10 only mentions the diversity of native plant and animal communities, but this section does not require plans to provide for that diversity or ensure that there will be a diversity of plant and animal communities, as required by NFMA. Another respondent challenged the wording at section 219.10(b) of the proposed rule that appears to make providing ecosystem and species diversity subservient to meeting multiple-use objectives, although the NFMA states that providing for diversity is a necessary component of meeting multiple-use objectives.

Response: The NFMA requires guidelines for land management plans that "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives." (16 U.S.C. 1604

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(g)(3)(B)). The wording at section 219.10(b) of the proposed rule is consistent with this wording from NFMA. The NFMA does not mandate a specific degree of diversity, nor does it mandate viability. The NFMA affords the Agency discretion to provide policy guidance to provide for diversity. The proposed rule and alternatives D, E, and M provisions for diversity of plant and animal communities are based on five concepts of diversity. As discussed the preamble to the 2005 rule (70 FR 1023, 1028, (January 5, 2005)) Agency developed five concepts to design the proposed planning rule provisions for plant and animal diversity: (1) managing ecosystems; (2) providing for a diversity of species; (3) concentrating management efforts where the Agency has authority and capability; (4) determining with flexibility the degree of conservation needed for species not in danger of being listed; and (5) tracking progress of ecosystem and species diversity using a planning framework. (See also the response to the following comments about approaches to providing ecosystem sustainability).

Comment: Approach to providing ecosystem sustainability. Some respondents do not believe that the emphasis on ecosystem diversity will protect rare and declining species. They expressed concern that there are no clear mandates, concrete obligations, measurable objectives, or mandatory requirements to provide for diversity and that simply having a “framework” will not provide adequate protection to the species. The question was raised as to why plans would only “contribute to” sustaining ecological systems and said the rule should require plans to “sustain ecological systems.” Some observed that under the proposed rule at section 219.10 (b)(2), forest plans will no longer have to specifically address wildlife needs unless the Forest Service determines that the “ecosystem diversity” provisions of the plan need to be supplemented for a particular species. They also noted that FSH 1909.12, section 43.21, states that a species approach is not required. Some respondents were concerned that a responsible official could decide that the very coarse filter of ecosystem diversity is sufficient for protecting all resident fish, wildlife, and plants, and some respondents said that no program of protecting species can be complete without a requirement for ensuring individual species’ viability. A respondent noted that the definition of self-sustaining populations in the FSM is not clear, because the following terms are not defined: sufficiently abundant, appropriate population characteristics, and persistence over many generations.

Response: Under the proposed rule and Agency directives, the responsible official would identify federally-listed TES, SOC, and SOI whose ranges include the plan area. The federally-listed TES are those species that are listed as TES by the Department of the Interior, USFWS or the Department of Commerce, NOAA Fisheries Service. Under the Agency directives, SOC are those identified as proposed and candidate species pursuant to the ESA or those species ranked by NatureServe as needing action to prevent listing under ESA. Under the Agency directives, SOI are identified by working cooperatively with state fish and wildlife agencies, the USFWS, NatureServe, and other collaborators.

The responsible official would then determine if the ecological conditions to support TES, SOC, and SOI would be provided by the plan components for ecosystem diversity. If not, then additional species-specific plan components would be included. Under the Agency directives, as part of an iterative process of developing plan components for ecosystem diversity and species diversity, several examinations, or analysis steps may be carried out. An initial analysis based on the current plan and species status may set the stage for the development of plan components for the revised plan. Such an evaluation helps identify the key risk factors that should be dealt with in plan components. Additionally, the evaluation

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would help determine what combinations of plan component would best contribute to sustaining species diversity. This additional evaluation would focus on the (1) Amount, quality, and distribution of habitat; (2) The dynamics of habitat over time; (3) Species distribution; (4) Known species locations; (5) Information on species population trends and dynamics, if available; (6) Key biological interactions; (7) Other threats and limiting factors, such as wildland fire and other natural disturbances, roads, trails, off-road use, hunting, poaching, and other human disturbances. FSM 1920 and FSH 1909.12, chapter 40 contain further guidance on how to provide for ecological and species diversity and how to evaluate whether ecological conditions would provide for “self-sustaining populations” of SOC. Standards to maintain or improve ecological conditions, and to maintain or improve ecological conditions for specific species may be included in a land management plan under all alternatives.

Comment: Species-of-Concern (SOC) and Species-of-Interest (SOI). Some respondents commented that previous Forest Service planning rules had extended protection to species proposed for listing under the ESA, “candidate species” under the ESA, State-listed species, and Forest Service “sensitive species.” Other respondents made the comment they found the SOC and SOI system to be confusing and that the criteria for inclusion did not address species needs adequately. Concerns were expressed about the time needed for State fish and wildlife agencies to interact with responsible officials to ensure that all wildlife management concerns and issues are adequately addressed. Others recommended that a return to a modified management indicator species (MIS) system.

Others commented that the Agency needs to clarify how it will determine the accuracy of SOC and SOI, use scientifically credible third parties in these determinations, and address how species-specific provisions for those species that do not meet the SOC and SOI criteria will be provided. They stated that the SOC criteria need to be reconsidered to be more proactive in managing wildlife populations to prevent ESA listing.

Response: The concept of MIS was not included in the proposed rule or alternatives D, E, or M because recent scientific evidence identified flaws in the MIS concept. The concept of MIS was that population trends for certain species that were monitored could represent trends for other species. Through time, this was found not to be the case. The Agency defined SOC and SOI clearly. As identified in the Agency directives, SOC are those identified as proposed and candidate species under the ESA or those species ranked by NatureServe as needing action to prevent listing under the ESA. Under the proposed rule and alternative D, E, and M, the Forest Service directives identify the criteria for determining the SOC and SOI lists. The criteria include working with lists of species developed by objective and scientifically credible third parties, such as the USFWS, the National Marine Fisheries Service, and NatureServe. These lists of species are also to be determined by working collaboratively with the State fish and wildlife agencies and using some of their sources of information such as their State Wildlife Conservation Strategies (see FSH 1909.12, chapter 40.) The primary purpose for identifying SOC is to put in place provisions that will contribute to keeping those species from being listed as TES. The combined criteria for SOC and SOI should lead to identification of all species for which there are legitimate conservation concerns (FSH 1909.12, section 43.22). Species for which there are no conservation concerns should be adequately conserved through the ecosystem diversity approach.

Comment: Retain the 2000 rule provisions for species viability. Some respondents preferred the explicit, mandatory provisions for species viability in the 2000 rule at section 219.20,

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because they believed it would help the Forest Service keep the wildlife that now exists, while the proposed language would lead to the disappearance of more species from the national forests.

Response: The 2000 rule established a “high likelihood of viability” criterion. Although the 2000 rule provisions at section 219.20 provided for considerations based on the suitability and capability of the specific land area, the provisions would establish more intensive analysis requirements over either the 1982 rule or the proposed planning rule. The 2000 rule analysis requirements for ecosystem diversity and species diversity were estimated to be very costly and neither straightforward nor easy to carry out.

Comment: Invertebrates. A respondent commented that the Forest Service must not ignore the valuable ecological services provided by invertebrate species, services such as pollination and nutrient cycling; and that the way to protect these species is to have them on the same footing as other species in management decisions.

Response: Invertebrates are an integral part of a forest ecosystem. Under the proposed rule, and alternatives D, E, and M, the responsible official would consider the needs of invertebrate species by analyzing the composition, structure, and processes of the various ecosystem types, and providing the plan components needed to deal with ecosystem diversity. Invertebrate species could be identified as SOC or SOI under the proposed rule, and alternatives D, E, and M. Under Alternative C (1982 rule) invertebrate species are not discussed.

Comment: Coordination with State fish and game agencies. Some respondents requested the Forest Service work with the State fish and game agencies in developing the SOC and SOI lists, considering the threats and stressors identified in State Wildlife Conservation Strategies, and in identifying new monitoring and funding priorities.

Response: Under the proposed rule and alternatives D, E, and M, such collaboration and coordination is required by Forest Service directives.

Comment: Wildlife needs to be specifically included. A respondent stated that although the “characteristics of ecosystem diversity” noted in section 219.10 are correct, it would seem appropriate to include “wildlife” in this section, because wildlife may be the first to reflect changing conditions and act as the “canary in the mine” for early detection of ecosystem damage related to sustainability. Other respondents had similar comments related to the definition of “characteristics of ecosystem diversity” in FSM 1905 and said that wildlife resources should be included as a component of ecosystem diversity.

Response: Under the proposed rule and alternatives D, E, and M, the word “wildlife” does not appear in section 219.10; however, TES, SOC, and SOI are identified as part of the framework to analyze and develop plan components to provide for ecological sustainability.

Comment: Retain the 1982 rule provisions for species viability. Some respondents commented that given the high level of importance of national forest lands for wildlife, planning regulations should ensure that plans focus on maintaining the viability of native fish, wildlife, and plants; and that the section 219.19 provisions from the 1982 planning regulations should be retained. Conversely, other respondents agreed with the move away from the viability language in the 1982 rule, stating that it was never realistic to provide for viability for all species on all lands given the many factors that influence viability, and that the focus should be on managing habitat as defined by desired conditions rather than on

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counting populations of each species. Some respondents commented that the viability requirement is a pillar of wildlife conservation in the United States. They provided many examples of the importance of wildlife habitat and the many local and international threats to wildlife.

Some respondents noted that one of the reasons stated by the Forest Service for not including the species viability requirement in the proposed rule is that it is not always possible to maintain viability due to factors outside the Agency's control. However, some have responded that the Agency should still do everything it can to maintain viability for species on NFS lands. It was suggested that although the Forest Service should give a considerable amount of attention to those species that spend most of their time on NFS lands, perhaps the Agency could give relatively little attention to those species that spend a small amount of time on NFS lands.

Response: As noted earlier, the NFMA requires guidelines that provide for diversity. It does not mandate viability. The Agency has learned that the requirement to maintain viable native fish and wildlife species populations without recognizing the capability of the land is not practicable due to influences on many populations that are beyond agency control. The Forest Service is dedicated to the principle that biological diversity is an essential and critical facet of our multiple use land management mandate. Therefore, the proposed rule, along with alternatives D, E, and M require a framework using the concepts of ecosystem diversity and species diversity. The issue of self-sustaining populations is dealt with in the current Forest Service directives (FSM 1921.76(c)). The directives are not as prescriptive as the viability requirement under the 1982 rule; however, the enhancement of conditions for fish and wildlife populations is the expected outcome of carrying out management consistent with plans developed in accord with the plans that would be developed under the proposed rule or alternatives D, E, or M. The suggestion to give considerable attention to those species that spend most of their time on NFS lands and to give less attention to those species that spend most of their time elsewhere is similar to the direction in the Forest Service directives developed to carry out the 2005 rule. Under the proposed rule or alternatives D, E, or M the rule wording for sustainability is identical to that of the 2005 rule, therefore, if any of these alternatives were selected as the final rule, the final rule would likely be carried out using the current directives. About self-sustaining populations FSM 1921.76c says:

Plan components for species-of-concern should provide appropriate ecological conditions to help avoid the need to list the species under the Endangered Species Act. Appropriate ecological conditions may include habitats that are an appropriate quality, distribution, and abundance to allow self-sustaining populations of the species to be well distributed and interactive, within the bounds of the life history, distribution, and natural population fluctuations of the species within the capability of the landscape and consistent with multiple-use objectives. A self-sustaining population is one that is sufficiently abundant and has appropriate population characteristics to provide for its persistence over many generations. The following points describe appropriate considerations for plan components based on the portion of the range of a species-of-concern that overlaps a plan area. When a plan area encompasses:

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1. The entire range of a species, the plan components should contribute appropriate ecological conditions for the species throughout that range.
2. One or more naturally disjunct populations of a species, the plan should contribute appropriate ecological conditions that contribute to supporting each population over time.
3. Only a part of a population, the plan should contribute appropriate ecological conditions to support that population.

Where environmental conditions needed to support a species-of-concern have been significantly altered on NFS lands so that it is technically infeasible to provide appropriate ecological conditions that would contribute to supporting self-sustaining populations, the plan should contribute to the ecological conditions needed for self-sustaining populations to the degree practicable.

The 1982 rule at section 219.19 says:

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area

Furthermore, the 1982 rule at section 219.19 contains the words “shall be managed to maintain” and the stringent “ensure.” These words have been interpreted by some people to be a 100 percent certainty that all species must remain viable at all times. The 100 percent certainty interpretation is a technical impossibility given that the cause of some species decline is beyond the Forest Service’s authority.

For example, viability of some species on NFS lands might not be achievable because of species-specific distribution patterns (such as a species on the extreme and fluctuating edge of its natural range), because the reasons for species decline are due to factors outside the control of the Agency (such as habitat alteration in South America causing decline of some neotropical migrant birds), or because the land lacks the capacity to support species (such as drought affecting fish habitat).

Comment: Reasons for not retaining a viability requirement. Several respondents disagreed with the reasons for not establishing a viability requirement cited in the preamble for the proposed rule. Although they recognized that the number of species having habitat or potential habitat is very large, they disagreed with this justification to not include a viability requirement. It was suggested that the Agency could focus on species whose overall viability might be questionable, and refine the list of species to those whose populations and habitat are most affected by changes occurring on NFS lands. Another respondent stated that as a minimum, the viable populations of proposed, endangered, threatened, and sensitive species

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and MIS should be managed for viability. Still another respondent suggested that instead of abandoning the viability requirement because it does not make sense to apply it to small National Forests such as the Finger Lakes National Forest, those national forests should just be exempt from the requirement.

Respondents also disagreed with the statement in the preamble to the proposed rule that focusing on viability would divert attention from an ecosystem approach. They responded that an understanding of both ecosystems and species is needed to understand the functioning of ecosystems. A focus on viability could help maintain the existence of certain species that, if under an ecosystem approach, could be missed and might disappear from the area or not receive the attention needed to arrest population decline in that area. Further, some contended that providing for species viability maintains ecosystems by maintaining its parts.

Response: Under the proposed rule and alternatives D, E, and M the Agency developed directives that focus on those species where changes in plan components may be necessary to prevent listing under ESA and refine the list of species to focus on the species whose populations are most affected by changes in habitat on NFS lands. This focus is essentially in the criteria for selecting the federally-listed TES, the SOC, and the SOI supplied by the existing Forest Service directives (FSM 1921.7 and FSH 1909.12, chapter 40). Similarly, the Agency directives under the proposed rule and alternatives D, E, and M deal with the concern expressed that some species “might disappear from the area or not receive the attention needed to arrest population decline in that area.” Under the proposed rule and alternatives D, E, and M, following the analysis of the plan components for ecosystem diversity, if the needs of these species are not addressed, additional species-specific plan components would be developed. Under the proposed rule and alternatives D, E, and M, the term “self-sustaining populations” is used instead of the term viability in the current Forest Service directives (FSM 1921.76(c)). Under the proposed rule and alternatives D, E, and M the Agency directive deals with the suggestion to just “exempt” certain national forests from a viability requirement by including direction in the Agency directives to take into account capability of NFS lands (FSM 1921.76c).

The Agency believes that providing appropriate ecological conditions for specific TES, SOC, and SOI is superior to managing for federally proposed, threatened, and endangered species and regionally sensitive species and management indicator species. Under the proposed rule, along with alternatives D, E, and M, TES, SOC, and SOI replace federally proposed, threatened, and endangered species and regionally sensitive species and MIS. The MIS concept from the 1982 rule has not been useful to the Agency as a framework for understanding the relationship of changes in wildlife habitat and population trends, because of the lack of ability to predict future trends.

Comment: Committee of Scientists recommendations. The comment was made that the proposed rule’s sustainability provision represents a departure from the 1999 COS recommendations on how to implement the NFMA’s diversity mandate. The COS recommended a three-tier approach, with the first prong involving an assessment of the composition, structure, and processes of the ecosystems; the second prong involving focusing on the viability of native species through the use of “focal species”; and the third prong involving species-level monitoring.

Response: The report and recommendations from the 1999 COS was considered in the development of the proposed rule. The basic concepts developed by the COS on ecological sustainability have been carried forward. The procedures from the proposed rule and the

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Forest Service directives include looking at the composition, structure, and processes of the ecosystems; considering and evaluating the composition, structure, and processes needed by a subset of the plant and animal kingdom (TES, SOC, and SOI), and the development of a monitoring program.

Comment: Proposed rule ignores scientific data concerning sustainability. A respondent stated the proposed rule ignores scientific data concerning what uses are sustainable, thereby setting the stage for long-term destabilization of ecosystems.

Response: Neither the proposed rule nor any alternative rules determine what uses are suitable for any specific area of land. Under the proposed rule and alternatives D, E, and M, the responsible official would identify in the plan areas of land as generally suitable for a variety of uses. Moreover, under the proposed rule and alternatives D, E, and M, the final decisions on uses of specific areas would not be made until project and activity decisions (sec. 219.7(2)(iv)). Under the proposed rule and alternatives D, E, and M, the responsible official would take into account the best available science and document that science was appropriately interpreted and applied in making plan decisions (sec. 219.11). Various means such as independent peer review, science advisory boards, or other review methods may be used to evaluate the consideration of science under any alternative. The Agency believes that these requirements of the proposed rule, along with the collaborative process, would assure that scientific knowledge is appropriately considered throughout the planning process.

Role of Science in Planning – 219.11

Comment: Consistency with best available science. Some respondents wanted the rule to retain 2000 rule language requiring responsible officials to make decisions that are consistent with the best available science. They felt that the proposed rule would allow scientific knowledge or recommendations to be overridden. Other respondents agreed with language requiring that the responsible official take into account the best available science, as science itself is constantly changing and subject to controversy. They stated that a requirement for consistency would be unwieldy, ambiguous, and lead to increased litigation.

Response: Under the proposed rule and alternatives D, E, and M, the responsible official would take into account the best available science and document that science was considered, correctly interpreted, appropriately applied. Although a significant source of information for the responsible official, science would be only one aspect of decisionmaking. When making decisions, the responsible official must also consider public input, competing use demands, budget projections and many other factors. Various means such as independent peer review, science advisory boards, or other review methods may be used to evaluate the consideration of science. The Agency believes these requirements of the proposed rule and alternatives D, E and M, along with the collaborative process, would assure that the best available scientific knowledge is appropriately considered throughout the planning process.

Comment: Consideration of traditional knowledge. A respondent was concerned about the strong focus on science. Although acknowledging that science is essential for Forest Service planning, traditional ecological knowledge also has much to offer and is not included in the rule.

Response: Although a significant source of information for the responsible official, science is only one aspect of decisionmaking. Other factors including traditional ecological knowledge need to be considered in the comprehensive evaluations and the formulation of plan components.

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Comment: Consideration of a broad spectrum of science. A respondent was concerned that the views of a broad spectrum of science should be considered rather than a selection of scientific views supporting an action.

Response: The responsible official is required to take into account best available science and document that it has been correctly interpreted and applied. Existing agency directives (FSM 1921.81) specify procedures to accomplish this. The first step is a timely and comprehensive gathering of peer-reviewed and other quality-controlled literature, studies or reports related to the planning issues.

Comment: Term “best available science.” A respondent was concerned about the term ‘best available science’ and urged adoption of another term or defining this term in the definitions section of the rule.

Response: There is no firm, established definition on what is best available science in any of the alternatives. The current Forest Service directives at FSM 1921.8 and FSH 1909.12 chapter 40 use this term. It is also important to realize there can be more than one source for science or more than one interpretation of the science. What constitutes the best available science might vary over time and across scientific disciplines. The Agency believes the best available science is a suite of information and the suite of information does not dictate that something can only be done one way. Furthermore, under any alternative the responsible official should take this suite of information into account in a way that appropriately interprets and applies the information applicable to the specific situation. A four step process is described in the existing directives FSM 1921.81. This process includes gathering quality science information, assessing the information for pertinence, synthesizing the information for application to planning, and applying the synthesis in developing the plan components. When the four step process is followed and an appropriate review is conducted, the best available science should be taken into account and properly influence the plan components.

Comment: Reduced emphasis on science. Several respondents were concerned about a reduced emphasis on science, citing the absence of a requirement to use peer reviewed science or science advisory boards.

Response: Alternative B requires regional science advisory boards to be available for each national forest and grassland. Under the proposed rule and alternatives B, D, E, and M, the responsible official may use independent peer reviews, science advisory boards, or other review methods to evaluate science used in the planning process. Forest Service directives specify specific procedures for conducting science reviews at FSM 1921.8 and FSH 1909.12, chapter 40. The proposed rule and alternatives D, E, and M focuses on the use of science, rather than on scientists, in the planning process. The proposed rule lets the responsible official determine when the scope of the scientific issues would need to use peer reviewed science or science advisory boards. A requirement to always use peer reviewed science would not be practical. Often, issues must be resolved when there is no suitable peer reviewed science. Although science is a significant source of information for the responsible official, science would be only one aspect of decisionmaking. When making decisions, the responsible official must also consider public input, competing use demands, budget projections and many other factors. A mandatory requirement to use science advisory boards does not recognize the limits of budgets for use of science, nor does it recognize the limitations on the availability of scientists.

Comment: Best available science and projects. A respondent said there should be a

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requirement that all project level decisions be consistent with the best available science.

Another respondent urged that the rule require forest plans to identify scientifically valid restoration programs that would be peer reviewed by an interdisciplinary team of scientists. The approved restoration programs would provide a streamlined site-specific implementation process for restoration projects.

Response: The Agency is committed to taking into account the best available science. None of the alternative rules specifically require project decisions to be consistent with the best available science. All alternatives were developed to set up a process to develop, amend, and revise plans. The Agency establishes requirements for project or activity planning in the Forest Service directives; therefore, project plans (including restoration programs) are not discussed in the alternatives. All alternative rules require the responsible official to consider science in preparing plans. All alternative rules require project level decisions to be consistent with the plan.

Under the proposed rule and alternatives D, E, and M, the purpose (sec. 219.1(a)), is to provide the process for developing, amending, and revising land management plans. Under the proposed rule and alternatives D, E, and M, the requirements for project level decisionmaking are governed by the regulations for carrying out the procedural provisions of the NEPA (40CFR Parts 1500-1508), Agency procedures for carrying out of the NEPA, and other Agency directives. Although it provides a basis for further project decisions, the plan does not change any requirements for making project-specific decisions. Although the wording varies across alternatives, under all alternative rules the best available science would be taken into account when developing plan components such as desired conditions and objectives for ecological restoration. This consideration may include peer or science review.

Comment: Public input into the use of scientific information. A respondent was concerned that scientists consider input from the public and that the Forest Service provide scientific information to the public so that all the facts and information is available during decisionmaking. Another respondent was concerned the rule needed to provide mechanisms for the consideration and incorporation of sound science at all levels and stages of the planning process. Another stated the rule leaves out the voice of scientists in making plan decisions.

Response: Under all alternatives, the Agency expects the responsible official to share scientific information with the public throughout the process. Under the proposed rule and alternatives D, E, and M, responsible official would involve the public in developing and updating the comprehensive evaluation report, establishing the components of the plan and designing the monitoring program (sec. 219.9(a)). Under all alternatives, any interested scientists can be involved at any phase of public involvement. It is also expected that responsible officials would seek out quality science information applicable to the issues being analyzed. Under the proposed rule and alternatives D, E, and M, the responsible official would document how best available science was taken into account and that science was appropriately interpreted and applied (sec. 219.11). This could be done with the use of independent peer review, a science advisory board, or other methods.

Comment: Consideration of science based on risk to public values. A respondent suggested the Agency should seek out and incorporate the science that least supports logging. Where research suggests caution, the Agency should not proceed without substantial evidence that its policy choice can be adequately defended based on the public values at risk. In this case

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the Forest Service should adopt a version of the precautionary principle.

Response: All alternatives require science to be considered. Under the proposed rule and alternatives D, E, and M, the responsible official would take into account and appropriately interpret and apply the best available science (sec. 219.11(a)). If the issue is about timber harvest, this would include applicable science that identifies the different effects of timber harvest on vegetation, fuels, soils, wildlife, water, and other environmental concerns. Under the proposed rule and alternatives D, E, and M, the responsible official would document the rationale for the plan decision and these requirements with respect to science (sec. 219.7(c)).

Suitable Uses and Provisions Required by NFMA – 219.12

Comments: General suitability of National Forest System land for multiple uses. A respondent noted that the statement in the proposed rule that National Forests are generally suitable for a variety of multiple uses (sec. 219.12(a)(1)) appeared to represent a substantial change in forest policy that would open all lands to all uses unless a forest manager specifically limits uses in certain areas. The respondent was concerned that this policy would jeopardize existing closures where certain uses are prohibited unless designated open.

Response: The intent of the proposed rule is to allow a responsible official to identify lands that are generally suitable for various uses. National Forest System lands are generally open to uses if consistent with the land management plan, subject to consideration under appropriate NEPA procedures and other applicable laws, regulations, and policies. This approach is not a change in agency policy and would not affect existing closures that prohibit a use for specific areas.

Comment: Protection of soil and water resources during timber harvest should be addressed. A number of respondents suggested that more guidance limiting harvest activities should be in the rule, specifically that land should be identified as unsuited for timber harvest where soil and watershed condition would be irreversibly damaged. It was also suggested that specific soil and water protection requirements from the 1982 rule or the 2000 rule should be included in the proposed rule.

Response: All alternatives require responsible officials to meet the requirements of NFMA timber management requirements of 16 U.S.C. 1604(g) either in directives or in the alternative rule wording itself. For alternatives B, C, E, and M, NFMA requirements concerning guidelines for timber harvest are included explicitly in the rule text. These alternatives explicitly require responsible officials to identify as not suitable for timber production lands where the technology is not available for conducting timber harvest without causing irreversible damage to soil, slope or watershed conditions or substantial and permanent impairment of the productivity of the land. Furthermore, these alternatives also require that lands be identified as not suitable for timber production if there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest.

Comment: Limitation on timber harvest. Several respondents suggested that the rule include limitations on timber harvest like those prior rules. One suggestion was to limit harvest to the estimated amount of timber that can be sold annually in perpetuity on a sustained-yield basis, with exceptions for situations where areas have been substantially affected by fire, wind or other events, or there is imminent threat from insect or disease. Additional suggestions were made that this section should reflect harvest limitations based on ecological, social, and economic sustainability requirements from the 2000 rule. It was also suggested that the

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timber resource land suitability requirements include the considerations from section 219.14 of the 1982 rule. These would address such things as economic costs and benefits and other multiple use objectives.

Response: Under all alternatives responsible officials must limit the sale of timber from each national forest to a quantity equal to or less than a quantity that can be removed for such forest annually in perpetuity on a sustained-yield basis (16 U.S.C. 1611). However, the proposed rule and, alternatives D and M rely completely on the Forest Service directives for provisions on this issue although alternatives B, C, and E supply provisions in rule text with additional guidelines to be supplied in directives.

For social and economic sustainability, the alternatives use different words, but under all alternatives the responsible official should take into account all elements of sustainability (social, economic, and ecological) and involve the public in analysis regarding timber suitability and timber harvest limitations during the planning process. Under alternative C (the 1982 rule) the responsible official would stratify land in accord with costs and returns and evaluate whether lands are cost-efficient in meeting plan objectives. Under alternative B (the 2000 rule) the responsible official would discuss economic trends and the net benefit of uses, values, products, or services from NFS lands. Furthermore under alternative B the responsible official would analyze as appropriate costs of market and non-market goods and services. Under the proposed rule and alternatives D, E, and M, the responsible official would evaluate relevant economic and social conditions and trends as appropriate during the planning process. Additional detail for economics is provided in Forest Service directives. Processes for conducting social and economic analysis are already in the Agency's directives.

Comment: Force and effect of determinations that lands are unsuitable for uses. A determination of lands unsuitable for logging or other development should have the force of a standard, not a guideline.

Response: Under all alternatives, a project with the primary purpose of timber production may only occur in an area identified as suitable for that use (16 U.S.C. 1604(k)). However, timber harvest may be used on lands not suitable for timber production as a tool to achieve other multiple-use purposes. Examples of the reasons may include, but are not limited to: (1) maintaining or recruiting mature forest characteristics in areas where final regeneration of a stand is not planned, (2) experimental forests, (3) restoring meadow or rangeland ecosystems being replaced by forest succession, (4) cutting trees to promote the safety of forest users, and (5) removal of understory trees to reduce hazardous ladder fuels in frequent fire return interval forests.

Under the proposed rule and alternatives D, E and M for suitability of areas except for timber production, consistency of a project or activity should be evaluated in one of two ways: (1) the project or activity is a use identified in the plan as suitable for the location where the project or activity is to occur, or (2) the project or activity is not a use identified in the plan as suitable for the location, but the responsible official documents the reasons the use is nonetheless appropriate for that location. For alternatives B and C, if the project or activity is a use identified in the plan as not suitable for the location, the use may proceed only after approval of a project-specific or other plan amendment allowing such use.

Comment: Provisions for timber harvest on land classified as unsuitable for timber production. Some respondents stated that salvage sales or other harvest needed for multiple

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use objectives other than timber production should not be allowed on lands unsuitable for timber production, because no sideboards have been set in regulation that constrain how this would be done or what trade-offs would or would not be acceptable.

Response: Timber harvest for salvage sales or sales necessitated to protect other multiple-uses is authorized by NFMA at 16 U.S.C. 1604(k). The NFMA sets forth sideboards that apply to timber harvest whatever its purpose (16 U.S.C. 1604(g)(3)). Under all alternatives the responsible official may only authorize timber harvest to achieve other multiple-use purposes if such project is consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources. The proposed rule and alternative D would require that these provisions of the NFMA be placed in the directives. Alternatives B, C, E, and M would include these procedures in the rule itself.

Comment: Noncommercial harvest on lands identified as unsuitable for timber production. A respondent said that harvest of timber from lands not suited for timber production should be limited to noncommercial projects in which no sale or goods-for-services exchange of trees occurs.

Response: Under all alternatives establishing or maintaining plan desired conditions and objectives, such as those associated with wildlife habitat or hazardous fuels reduction may require removal of trees from lands identified as unsuitable for timber production. Completing such necessary and appropriate work without selling the material could be so expensive that the Agency could not make meaningful progress toward desired conditions and objectives.

Comment: Timber sale program detail: A respondent commented that the rule did not contain provisions related to NFMA requirements that plans set forth the planned timber sale program and the probable methods of harvest. The respondent objected to placing this direction in the directives.

Response: The NFMA requires that plans include material that reflect proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan (16 USC 1604(f)(2). Although this is cited in alternative C, for all alternatives (including Alternative C), procedures for displaying proposed and probable actions are appropriately set in the directives (FSH 1909.12, chapter 10) and those for displaying required timber management projections are addressed in the FSH 1909.12, chapter 60. Regardless of where procedures are set, under all alternative rules the plan is required by NFMA to contain timber sale program information as required by NFMA.

Objections to Plans, Plan Amendments, or Plan Revisions – 219.13

Comment: Inherent benefits of a post-decisional appeal process. A respondent said the Forest Service failed to consider the inherent value of a post-decisional appeal process. One value is that it addresses a need for citizens to air legitimate objections to final decisions in forest plans so that litigation remains a last option. The respondent cited studies of the Agency's appeal process for projects that concluded "most appeals appear to be justified," and that the program has been "an internal mechanism for clarifying the legal requirements and for testing the soundness of decisions and the appropriateness of current policies and procedures." Another respondent noted that only a post-decisional appeal process provides the public a way of objecting based on a review of the actual decision that has been made. A respondent said the current appeals process has a proven track record of resolving conflicts,

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encouraging collaboration and preventing unnecessary litigation. A respondent noted there is nothing that prevents a deciding officer from seeking objections before issuing a decision, then also receiving post-decisional appeals. The appeal and objection processes are compatible, and it is essential and efficient to keep the appeal process, because the review of contentious decisions by higher level officials before contention leads to litigation. A respondent recommended the administrative appeals process (36 CFR part 217) should be retained rather than replaced with the pre-decisional objection process, because the appeals process provides a thorough review of decision by peers and experts and results in a higher level of public trust as compared with the objection process.

Response: The EIS includes alternatives with a pre-decisional objections process (all alternatives except C) and a post-decisional appeals process (alternative C). The Agency believes as shown in the proposed action and preferred alternative in the EIS that a pre-decisional objections process would be a natural continuation of the collaborative planning process in a way that participants have opportunities to discuss the proposed decision, consider options, and air concerns and opinions throughout the process. The Agency believes objections are a more effective mechanism for testing soundness of decisions. In contrast to the appeals process, the objections process provides an avenue for Agency decision makers to seek collaborative solutions throughout the process. Consistency with law and policy can still be tested, contentious issues discussed, and litigation avoided. The Agency believes that having both a pre-decisional objection process and a post-decisional appeals process would be redundant and did not prepare another alternative to examine this. The pre-decisional objection process provides an opportunity to make necessary or appropriate adjustments to a plan before it is approved. The Agency's experience with post-plan decision appeals is that it is difficult to make needed changes, often after a plan is approved; an amendment process must be carried out to make the needed changes.

Comment: Rationale for an objection process; Committee of Scientist (COS) recommendations. A respondent stated that the only explanation for choosing to follow the Bureau of Land Management (BLM) model of pre-decisional objections was that the COS recommended harmonizing the Forest Service appeal process with those of other Federal agencies. This respondent said that the COS did not recommend elimination of the Forest Service post-decisional process or adoption of the BLM process. Rather they recommended that a multi-agency task group consider the development of a process that would be consistent across agencies. This respondent stated that the Agency should get recommendations from such a task group before making sweeping changes in the appeal process for planning.

Response: In their 1999 report, the COS identified potential problems associated with the post-decisional appeals process. These problems included isolating agency decisionmakers from one another just at the time when internal discussion about the upcoming plan decision might be useful, inhibiting multi-agency collaboration, and giving mixed and inconsistent incentives for involvement of interest groups. The COS recommended that in line with a collaborative planning process, the Agency should consider an approach that minimizes incentives to appeal plan decisions. The COS recommended that if the appeals process proves problematic, influencing parties to disregard their agreements or to leave the table before agreements are reached, then the Agency might consider shifting to a pre-decisional process similar to that used by the BLM.

Comment: Time allowed for filing objections and responding to objections. Several

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respondents commented that the 30-day period for filing objections is not adequate to review the plan and supporting documentation and prepare an objection. Some respondents recommended that the rule allow at least 60 days for filing objections. Some also recommended that the rule include a specific time frame for making decisions on objections. A respondent noted that it is a double standard for having a time limit for filing objections, but none for responding to them. Another respondent had the impression that the 30-day objection period replaced the 3-month public review and comment period required by the NFMA.

Response: All alternatives have procedures by which the public can challenge plan development, plan amendment, or plan revision. Under alternative C (1982 rule) the Agency would continue the 36 CFR part 217 appeal process. Under the proposed action and alternatives B, C, D, E, and M the Agency would use the objection process to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved. The 30-day objection period specified in these alternatives is the same amount of time provide in the BLM protest process. Under the proposed action and alternatives B, C, D, E, and M the Agency does not specify a time limit for agency responses. Under these alternatives it is in the interest of all parties for the reviewing officer to promptly render a decision on the objection, but a specific time limit could potentially shortcut joint discussions among the parties aimed at resolving issues raised in the objections. The Agency believes that 30 days is adequate for developing and filing an objection, considering that objections would follow a collaborative public participation process including a 90-day comment period on the proposed plan, plan amendment or plan revision (sec. 219.9(b)(1)(ii)).

Comment: Directives guidance for review of issues raised in objections. Several respondents referred to Forest Service Handbook guidance for responding to objections (FSH 1909.12, section 51.31). Handbook guidance includes advice that a reviewing officer's response to objections "does not need to be a point by point review of the issues..." These respondents requested that this language be removed from the directives, as it gives license to avoid dealing with the hard issues raised in the objections.

Response: The Agency would like to clarify that the text of FSH 1909.12, section 51.31 is meant to allow the reviewing officer to combine and summarize issues or individual elements of broad issues, rather than to allow the reviewing officer to avoid dealing with the hard issues. The handbook requires that the reviewing officer respond to all issues except those that were withdrawn by the objector(s), including the basis of the response. This requirement ensures that the reviewing official deals with the issues, but does not require that the response to the issues be exhaustive to make prompt resolution of objections easier.

Comment: Designating a lead objector and content of objections. A respondent said the objection process is too burdensome, because it requires someone be designated the lead objector, who is the only person the Forest Service will contact or talk with. The process limits opportunities for resolution because it does not require a notice of all objections received and limits who can request meetings. The process places too stringent requirements on the content of objections, mere disagreement with the decisions should be adequate basis for an objection.

Response: The Agency agrees that a person should be able to object to a plan, plan amendment, or plan revision even if the plan is consistent with law, regulation, or policy. Therefore, under the proposed rule and alternatives B, D, E, and M, a person may object if they believe a policy has been violated, but a person is free to object simply because they

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disagree with the decision. The requirements of section 219.13(b) allow the reviewing officer to know why an objector objects as well as what the objector recommends for change. About the lead objector, the proposed rule says “The reviewing officer may communicate directly with the lead objector and is not required to notify the other listed objectors of the objection response or any other written correspondence related to the single objection.” The procedures for communication through the designated lead objector are a reasonable accommodation to effectively work with a multi-party objection and quickly resolve issues. However, the reviewing officer may meet with all objectors if the reviewing officer desires. The reviewing officer has the discretion to manage the process.

Comment: Participation in objections by interested parties. Some respondents recommended that the rule include provisions for participation in the objections process by parties who did not file an objection, but who participated in the planning process and may be affected by the response to objections filed by others.

Response: Under the proposed rule and alternatives B, D, E, and M the reviewing officer would not be precluded from involving parties in addition to the objector(s) and the responsible official when making a response to the objection. Interested individuals and organizations could also object to plans, plan amendments, or plan revisions, subject to the conditions of these alternatives. Alternative B requires the reviewing official to allow other interested persons to participate if the interested person filed a request to participate within 10 days after a notice of the objection is published.

Comment: Decisions by responsible officials at a higher level than the Chief. Per section 219.13(a)(2) of the proposed rule, there is no opportunity for administrative review (objections) if the plan decision is made by a Department official at a level higher than the Chief of the Forest Service. A respondent recommended that officials higher than the Chief should not be allowed to make plan decisions, because the objection process should be available to allow for resolution of disagreements at the local level rather than through the courts.

Response: This exception is provided under the proposed rule and alternatives D, E, and M. This exception at section 219.13(a)(2) to opportunities for objecting to a plan merely spells out that there is no higher level to object to when the plan approval is made at a level higher than the Forest Service Chief. Alternative B provides an exception for an amendment or revision proposed by the Chief. It is anticipated that plan decisions are rarely made at a level above the regional forester.

Comment: Cost reimbursement. A respondent commented that the rule should require that any organization that appeals a management plan and loses that appeal should pay all court costs and cost of any delay in projects.

Response: The agency does not have the authority to collect payment for costs of objections or appeals.

Effective Dates and Transition – 219.14

Comment: Transition - when existing plans come under the new rule. A respondent did not support allowing forests to come under the new rule as soon as they established an EMS. This respondent said that a plan should conform to the rule it was developed under until a new plan had been prepared and approved.

Response: The proposed planning rules supplies a process for developing, revising, or

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amending plans only. The proposed rule procedures do not apply to projects. Because all current plans were developed under the 1982 rule, the Agency believes the respondent is actually recommending that the 1982 rule remain in effect until a plan is revised under the proposed rule. However, the 1982 rule is not in effect. It is the Agency position that requirements for project or activity planning should be set in the Forest Service directives, not in a rule.

Comment: Continuing plan revisions initiated under the 2005 rule. A respondent urged that the rule include a specific provision allowing units that had begun revision under the 2005 rule to use the work and material prepared to date, because forcing these units to start the process over again would be a significant waste of agency resources and would frustrate the local community because their past efforts would be ignored.

Response: There are a number of generic planning activities that are common across all alternatives including the proposed rule which is the 2005 rule and would not have to start over under any alternative such as: public participation, science consideration, analysis of existing conditions and trends, identification of issues, monitoring and evaluation, social and economic sustainability, potential wilderness evaluation, and timber analysis. Alternatives B and C do not discuss transitioning from 2005 rule. Alternative M requires that to resume planning from the point it stopped due to the injunction of the 2005 rule, the responsible official must first make a finding that the plan, plan amendment, or plan revision process conforms to the requirements of the planning rule. The proposed rule and alternatives D and E discuss the transition for plan development, amendments, or revisions previously initiated, and allows for these planning processes to build on the work done to date rather than requiring that the responsible official start over. The Agency believes that, although some adjustments may be needed, the public involvement, analysis and documentation developed thus far through planning efforts conducted under the 2005 rule can and should be used as these plans are completed under whichever rule is finally selected.

Definitions – 219.16

Comment: Adaptive management. A respondent suggested that the definition of “adaptive management” be either that from the Dictionary of Forestry (Helms 1998), or the definition proposed by the Forest Service in the ongoing NEPA rule-making (72 Federal Register 45998-46009 – 2007).

Response: The Agency has changed the definition under the proposed rule and alternatives D, E, and M to be consistent with the definition of the ongoing NEPA rulemaking. Alternative B has a definition similar to the proposed rule. The Alternative C does not discuss adaptive management.

Comment: Alaska Native Corporation. A respondent suggested a definition of “Alaska Native Corporation” be included in the rule and provided that definition.

Response: A definition of “Alaska Native Corporation” has been added to the proposed rule and alternatives D, E, and M.

Comment: Ecological Condition. A respondent said that this definition in the proposed rule does not make sense because an ecological condition is not an action that causes stress like a road, but is how well a landscape or ecosystem functions and exists in a natural manner. The elements needed to determine this are different than “abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive,

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exotic species.” Terms like “ecological resiliency and stability” are what come to mind as defining elements of ecological condition.

Response: Ecological conditions include those conditions that may be causing stress as well as those that are not. As used in the proposed rule, there is no value judgment as to whether a specific element is detrimental or beneficial. Ecological resiliency and stability would be characteristics of ecosystems that can affect diversity and the productive capacity of the ecosystem.

Comment: Productivity. A respondent said that “productivity” is called an ecological term, and not an economic term, yet the Forest Service assumes that recreation is a renewable resource. But recreation is not ecological, can be economic in nature, and can be non-renewable.

Response: Land can be economically productive: but, as used in the proposed rule, the term must be ecological to be consistent with the NFMA requirement that management not produce substantial and permanent impairment of the productivity of the land. This capacity is the inherent productivity of the land rather than the productivity of the infrastructure to support multiple uses such as recreation.

Comment: Species-of-concern (SOC). A respondent said that the definition uses the phrase “may be necessary to prevent listing under ESA” but instead should use the phrase “is needed.”

Response: The definition recognizes the fact that there may be uncertainty as to whether or not management action is necessary for a species, but enough is known to list as a “species-of-concern” to receive attention under the sustainability requirements of the proposed rule.

Comment: Timber production. The proposed rule’s definition is: “The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees.” A respondent said that they disagree that trees in national forests are crops. The trees in national forests are part of forest ecosystems and should not be looked upon as simply “crops” to be turned into money.

Response: The use of the word “crops” in this definition is not meant to imply that portions of the National Forests are managed as tree farms. Rather, this definition is needed to respond to specific NFMA requirements related to timber production, such as the requirement to identify lands that are not suitable for timber production (16 U.S.C. 1604(k)).

Comment: Forest land. A respondent was concerned about the origin and meaning of the definition of ‘forest land’ and its relationship to the discussion of suitable lands in the planning rule. The respondent was also concerned about a lack of clarity about the definition (that is over what spatial area it applies: a forest unit or forest site where projects are proposed).

Response: The Forest Service developed this definition of forest land in 1967 for use in the national inventory of soil and water conservation needs. The definition is generally accepted and was part of the 1982 rule. In terms of suitability determinations, lands that do not meet the definition of forest land would not be considered suitable for timber production. The general spatial application is generally on a stand by stand scale, but may be linear, such as with roads, trails and streams (see FSH 1909.12, chapter 60).

Comments on Range of Alternatives

Comment: Inadequate range of alternatives. Many comments said the Agency failed to

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consider the entire range of reasonable alternatives. A respondent commented that because the Agency is determined to use an EMS, then those alternatives that eliminate EMS (alternatives D and E) cannot be seriously considered. Other respondents commented that the range of alternatives is not adequate, because the Agency considered the 1982 and 2000 rules only as reference points representing rigid and complex planning and the three alternatives that modified the 2005 rule all lead to the same result of purely strategic and unenforceable planning rules. These respondents said that the Agency should have considered alternatives with enforceable standards. A respondent said all alternatives should include the requirement to maintain viable populations of native fish and wildlife species. Another respondent stated the Agency should fully consider the “refuge alternative” (alternative I).

Response: The draft EIS documents the examination of 13 alternatives, 7 of which were not studied in detail, because they did not meet the purpose and need for action. The alternatives studied in detail lead to the same result in that they do not have environmental effects. They do, however, differ in how they meet the purpose and need for action and how each addresses the issues raised in scoping.

As one respondent noted, the Agency is committed to an EMS. The alternatives provided a choice between direction for EMS residing in the planning rule or in the Agency’s directives.

Although the 1982 and 2000 rules do not fully meet the purpose and need for action, these rules are not without merit. The Agency believes including these two rules benefits the analysis for comparison purposes. The Agency has determined that due to the injunction of the 2005 rule, the 2000 rule is now in effect and is therefore the “no action” alternative. Others have filed litigation to force the 1982 rule into effect. To these persons, the 1982 rule is the “no action” alternative. By including both the 1982 and 2000 rules in the analysis, either interpretation of what constitutes the “no action” alternative has been considered. Alternatives B, C, E, and M explicitly include the option of enforceable standards. Enforceable standards are allowed under any alternative, even where not explicitly mentioned.

The requirement to maintain viable native fish and wildlife species populations was not included in all alternatives because the Agency has learned that the requirement to maintain viable native fish and wildlife species populations without recognizing the capability of the land is not practicable due to influences on many populations that are beyond agency control. The purpose and need includes the NFMA requirement to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area (16 U.S.C. 1604(g)(3)(B)). The NFMA requires guidelines that provide for diversity. It does not mandate viability. The proposed rule and alternatives D, E, and M require a framework using the concepts of ecosystem diversity and species diversity. The term “self-sustaining populations” is used instead of the term viability in the current Forest Service directives (FSM 1921.76(c)). The Agency developed FSM 1921.76 to carry out the 2005 rule. If the proposed rule or alternatives D, E, or M were selected as the final rule, the Agency would likely carry out those rules using these existing directives. The directives are not as prescriptive as the viability requirement under the 1982 rule; however, the enhancement of conditions for fish and wildlife populations is the expected outcome of carrying out management consistent with plans developed in accord with these rules and directives.

The refuge alternative, Alternative I, was eliminated from detailed study for reasons described in the EIS.

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Comment: Specific alternatives recommended. A respondent recommended that a reasonable alternative for the planning rule would make binding landscape level decisions while still providing the Agency with the discretion necessary to carry out project level decisions. Another respondent suggested the Agency consider alternative approaches to each of several key components of forest planning rule, such as zoning, standards and guidelines, monitoring, and public participation. For instance, a respondent said zoning decisions are a critical component of forest planning, so one alternative could be to have management prescriptions defined on an independent area-by-area basis, another option would be to use species overlays to inform decisions about management prescriptions, and a third option would be to make zoning decisions based on landscape ecology. Other respondents proposed that a “restoration” alternative be considered. This alternative would have restoration as the prime directive and commodities as a byproduct, natural or historic range of conditions would be the template for restoration, areas that already provide high-quality habitat and watershed conditions would be protected, sources of degradation would be controlled, restoration priorities would be those that derive relatively large gains from relatively small investments, practices with low impacts and high effectiveness would be favored, the importance of natural processes would be recognized, and maintenance costs would be reduced.

Response: The Agency examined a range of reasonable alternatives to address the purpose and need for action. Alternatives include various approaches to zoning-type decisions such as suitability of lands for resource management, different requirements for standards and guidelines as plan components, different approaches to monitoring, and various levels of public involvement.

Binding landscape-level decisions in a planning rule is a contradiction in terms as the planning rule is national in scope and “landscape-level” implies a more localized scale such as a national forest or grassland. Binding decisions that apply on all NFS land, such as those required by NFMA section 6(g), are included in all alternatives. In some alternatives these requirements are detailed in the alternative rule wording although other alternatives reference agency directives. Binding landscape-level decisions in land management plans, such as standards, are explicitly included in alternatives B, C, E, and M. Enforceable standards are allowed under any alternative.

The suggested approaches to zoning-type decisions—management prescriptions based on management areas, species overlays, or landscape ecology—all have merit. However, these alternative approaches would have different utility depending upon where they were applied. Requiring any particular method in a planning rule removes flexibility at the unit level to employ the appropriate method. Any and all of the suggested approaches are allowed under all of the alternative rules.

A restoration alternative was suggested during scoping and considered in the draft EIS. The alternative was not carried through the analysis because it would require Congressional action to redefine the purpose of the national forest system and, therefore does not meet the purpose and need to comply with applicable laws. None of the alternative rules would preclude a land management plan being developed with plan components that would place a priority on restoration.

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General Comments Supporting or Opposing Specific Alternatives

Comment: Support/opposition for the alternatives. Many respondents provided comments in support or opposition to the various alternatives presented in the draft EIS. Some respondents supported alternative A (2005 Rule) as a scientifically and administratively reasonable approach to the difficult question of planning for the management of public lands. Furthermore, respondents supported alternative A (2005 Rule) because it allows the flexibility to adapt the process to changes in social, economic and environmental conditions, strengthens collaboration, and makes plans easier to develop, amend, and revise. Some respondents opposed alternative A because more prescriptive rules are needed to ensure that the law is followed. A respondent also supported the inclusion of the EMS process in the rule as a means to insure plans are fluid and responsive and that the precepts of adaptive management are firmly ensconced within the Agency.

Some respondents supported alternative B (2000 rule) because it ranks ecosystem health over economic concerns, maintains the requirement to prepare an EIS with plan revisions, keeps mandatory standards, and has meaningful public participation. Others opposed alternative B because the 2000 planning regulations are ambiguous, unclear, have unnecessary detailed procedural requirements, would be expensive, and would impose an overly arduous implementation process. In addition, the 2000 planning regulations were seen as improperly mixing programmatic and project-level decisions throughout the planning process.

Some respondents commented that alternative C (1982 rule) should be reinstated because it contains standards that protect the national forests, which are needed to follow Congress' specific instructions contained in the NFMA. Others were opposed to reinstating the 1982 rule because of the inherent weaknesses and flaws of using MIS and MIS monitoring requirements. They said the 1982 rule does not adequately provide the benefits associated with adaptive management, and its emphasis on species viability is unreasonable because the Forest Service cannot assume responsibility for viability when many of the impacts to species occur outside of the Agency's control. Rather the Forest Service should be expected to, whenever possible, ensure a variety of healthy, functioning habitat types and linkages.

Some respondents supported alternative D, because although they believed EMS can be a valuable tool, the procedures to establish an EMS should be instituted in the Forest Service directives and not through a planning rule.

A respondent supported alternative E as the most reasonable and because it addressed some of the problems associated with other alternatives. Another respondent supported alternative E because it removed the EMS requirements from the planning rule. While another recommended a modified version of alternative E that would include an EMS and require that plans include standards. Some respondents did not support alternative E because they did not support the addition of standards. These respondents said that removing standards as a required plan component better reflects the strategic nature of plans. Other respondents supported the addition of standards and adding to the rule direction on identifying lands suitable for timber production and timber harvest, along with the addition of the timber management requirements from NFMA. A respondent stated that it was extremely important to be able to include standards that the Agency is responsible for meeting, particularly for addressing resources such as old growth and wildlife habitat. Another respondent liked the changes to the proposed alternative that are reflected in alternative E, but would like alternative E to include the wildlife viability provisions.

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Response: The Agency considered these views in developing the EIS and added an alternative M. Alternative M is a modification of the proposed action (alternative A) in response to a host of public comments on the draft EIS.

This alternative is the preferred alternative in the final EIS. Alternative M is the same as alternative E except that the EMS requirements are included and places requirements for long-term sustained-yield capacity and culmination of mean annual increment in Agency directives. Alternative M directs the Chief to establish direction for EMS in the Forest Service directives. Under Alternative M the responsible official is the person authorized to identify and establish the scope and environmental aspects of the EMS, based on the national EMS and ISO 14001, with consideration of the unit's capability, needs, and suitability. Alternative M allows a responsible official to conform to a multi-unit, regional, or national level EMS as an alternative to establishing an EMS for a specific unit of the NFS. Alternative M also requires the responsible official to establish an EMS or conform to a multi-unit, regional, or national level EMS before approving any project or activity under a plan developed, amended, or revised under the this alternative. This alternative also has several other minor changes described in the final EIS.

Comments on need for analysis of effects of changes in agency procedures

Comment: Regional guides and assessments: A respondent commented on the lack of discussion in the EIS on the requirements for regional guides in alternative C and assessments in alternative B and the lack of any requirements for any kind of regional planning in the other alternatives.

Response: Additional discussion comparing the alternatives in terms of requirements for regional guides and assessments has been added to the EIS.

Comment: The draft EIS must analyze EMS impacts. One commenter asserted that EMS has never been used at a government agency wide scale and because it is unexplored territory, potential impacts of applying EMS agency wide should be analyzed in the draft EIS.

Response: EMS is a tool to manage and improve environmental performance but will have no direct, indirect, or cumulative impacts on the environment that could be analyzed in a NEPA document. The thrust of EMS will be to help the Forest Service manage many existing procedures, such as monitoring, and feedback to management, more effectively.

Comments on Analysis of Environmental Effects

Comment: Effects of alternative plan rules. Some respondents commented the draft EIS provides essentially no analysis of the environmental effects of the alternatives, but there are significant differences between the alternative approaches to land and resources management planning. Respondents disagreed with the conclusions of the draft EIS about effects. Specific deficiencies cited include that the draft EIS did not adequately address potential impacts to cultural and historic resources; potential impacts to and from climate change; effects on species, as the proposed regulations would require few, if any, protections for wildlife, potentially resulting in more species becoming threatened or endangered; impact to mineral resources; potential effects of weakening timber management and harvesting standards; and potential impacts of the change in monitoring requirements. Some respondents commented that it is difficult to understand how the proposed planning rule could not have any environmental impacts. Other respondents agreed with the conclusion in the draft EIS that a forest planning rule does not have any discernible direct, indirect, or cumulative effects on

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the human environment.

Response: For an effect to occur there must be a causal agent. The EIS examines the cause and effect relationships of the various alternative planning rules and explains the chain of causation that must occur to cause environmental effects. Additional effects discussion has been added to the EIS.

Comment: Effects of the 1982 rule. A respondent questioned how there could be no effects of the proposed rule, because the 1982 rule had effects on the human environment through the allocation of forest resources to various uses and intensities of use.

Response: The EIS for the 1979 rule, later amended in 1982, explicitly states, “The regulations do not commit land or resources.” Similarly, the proposed planning rule does not dictate how administrative units of the NFS are to be managed, rather it dictates the process by which land management plans are to be developed, revised, and amended. The EIS includes further discussion on why the Agency has concluded that the rule does not have direct, indirect, or cumulative effects.

Comment: Inherent bias in the draft EIS. A respondent commented that there is an inherent bias of the Agency in favoring the proposed alternative, and that the EIS should be rewritten so that it is objective and detailed in explaining the impacts of the alternatives. An example of the bias is in Table 1 (draft EIS, p. 28) where the Agency passes judgment on alternatives rather than displaying objective information.

Response: The Agency modified some of the wording in Table 1 that compares how each alternative responds to the purpose and need for action described in Chapter 1. It has also added more material in Chapter 3 that discusses the differences in the alternatives with respect to the components of the purpose and need. These changes have removed wording that might be regarded as judgmental and replaced it with comparative information about the alternatives.

Comment: Failure to provide a meaningful analysis and comparison of the alternatives. Some respondents made the comment that one of the purposes of NEPA is to provide a meaningful analysis and comparison of effects of each of the different alternatives, to ensure that officials, Congress, and the public can evaluate the environmental consequences independently, and to assure that federal agencies are fully aware of the present and future environmental effects of their decisions. The draft EIS for the proposed planning rule fails to provide such an analysis and comparison between alternatives. The draft EIS only mentions the generalized framework of each planning rule, and instead it should take a hard look at the specific substantive provisions of the rules and the positive and negative effects of each provision. The alternatives have markedly different approaches toward resource protection which would have significantly different impacts on forest resources, and the EIS needs to explore these different impacts. For instance, the draft EIS does not contain any analysis of the varying degrees of species diversity protection, timber management requirements, or monitoring requirements in the different alternatives.

Response: The EIS explains in detail why the proposed action and alternatives do not have environmental effects. The EIS identifies every provision of each alternative. The complete text of the alternative rules is provided in the EIS appendices. Although there are no environmental effects to form the basis of a decision, the alternatives are compared in terms of their response to issues raised by the public during scoping and in terms of how well each fulfills the purpose and need for action.

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The EIS concludes that changes to the species viability or diversity requirements in the 1982 and 2000 rules would have no effect on plant and animal species through subsequent development of land management plans and the successive design and execution of particular management activities. Such effects cannot be known with any degree of certainty until the subsequent events occur.

The EIS explains how timber management requirements of NFMA would be in effect, either through the planning rule or through the agency's directives system, depending on the alternative. Consequently, all alternatives effectively have the same timber requirements.

The EIS explains how the monitoring requirements of the 2000 rule (alternative B) are prescriptive and do not allow the responsible official sufficient discretion to determine how much information is needed, how the 1982 rule (alternative C) requires the monitoring of management indicator species trends, and how the proposed action and alternatives D, E and M specifically require public involvement in developing a monitoring strategy and provide the responsible official discretion to determine how much information is needed.

Comment: Biological assessment (BA). A respondent commented that the draft EIS says no BA was needed, but that an analysis was conducted. The draft EIS reports on the conclusion, but the analysis could not be found anywhere in the draft EIS. The preamble also states that consultation will be done, but there is no indication of what information will be used for this consultation.

Response: A discussion of the analysis and consultation related to the ESA was added to the EIS. The BA is available at: http://www.fs.fed.us/emc/nfma/2008_planning_rule.html.

Comment: Use a sound ecological framework. A respondent requested the use of a sound ecological framework to disclose environmental consequences. Suggestions included disclosing whether rule would: move ecosystems toward or away from the historic range of variability; mimic natural processes; increase or decrease water pollution, soil disturbance, canopy cover; increase or decrease species population viability; increase or decrease the evidentiary record to support decisions; increase or decrease the appropriate use of science; and increase or decrease informed decisionmaking.

Response: As described in the EIS, the proposed planning and alternative planning rules would establish administrative procedures to follow in developing, amending, and revising these plans. These rules do not dictate how administrative units of the NFS are to be managed. The Agency does not expect that any of these rules would dictate the uses that could occur on any or all units of the NFS. Therefore, neither the proposed rule nor alternative rules have consequences in the ecological terms suggested. In terms of the evidentiary record to support and inform decisions, the environmental impact statement describes the various types of documentation required for land management plan analyses and decisions. All alternatives are intended to consider science. How that use is articulated varies by alternative and is described in Chapter 2 of the EIS.

Comment: Historic range of variability. A respondent stated that historic range of variability is a necessary guide for national forest management.

Response: The alternatives differ in their approach to this question. Alternative C does not contain this concept in the planning rule. Alternative B contains a substantial set of requirements for documenting an estimation of the range of variability of the characteristics of the ecosystem and using that range of variability to make plan decisions. The range of

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variation that existed under historic disturbance regimes is also envisioned as the primary approach for evaluation of characteristics of ecosystem diversity under the proposed rule and alternatives D, E, and M. These alternatives place direction regarding the range of variation in the Agency directives (FSH 1909.12, section 43.13) rather than in the alternative rule wording.

Comment: Cumulative effects for combination of all the various agency proposals in addition to the planning rule. Respondents commented that with all of the administrative proposals and directives relating to national forest management (e.g., the categorical exclusion for hazardous fuel reduction projects, the categorical exclusion of timber sales up to 70 acres and salvage sales up to 250 acres, the CEQ guidance on EAs for fuel reduction projects, the guidance from USFWS and NOAA Fisheries concerning endangered species consultations on fuel reduction projects, and the interim direction on categorical exclusions and extraordinary circumstances) a comprehensive analysis of the cumulative impacts of these efforts is required by NEPA before any of the planning regulation proposals can be finalized. Another respondent indicated that the cumulative effects analysis needs to include a catalog of past actions.

Response: The Agency considered these other actions and concluded that there are no direct or indirect effects from the proposed action to accumulate with any impacts of these other actions. Additional discussion of cumulative effects has been added to the EIS.

Comment: Effect of rule monitoring requirements. A respondent commented that the changes in the monitoring approaches from those currently used by national forest units is substantively weakening environmental requirements by undermining the ability of forest managers to evaluate implementation of a plan as well as the impacts of plans and projects. Another respondent was concerned the type of monitoring sets the stage for discovery of environmental impacts and this bears on the level of impact itself.

Response: The proposed planning rule contains limited requirements for specific monitoring items allowing the responsible official to focus the monitoring program on collecting the information most needed to evaluate the forest's situation. In contrast the 1982 rule (alternative C) and to a lesser extent the 2000 rule (alternative B) contain specific required monitoring needs that may not be the most important information needs for decisionmaking. Although the purpose of monitoring programs is often to collect information about environmental impacts, the monitoring choices as identified in different planning rules or forest plan monitoring programs do not create an impact by themselves. A choice to either monitor or not monitor a particular environmental effect by itself does not influence the level of the effect.

Comment: Cost effectiveness and ability to implement. A respondent stated that the EIS must disclose more information on the cost of each alternative and about the agency's ability to implement each alternative.

Response: Additional narrative concerning the cost and ability to carrying out each alternative was added for the EIS.

Comment: Cost of 2000 rule is speculative. A respondent stated that because the 2000 regulations were withdrawn before they could be implemented; there is no empirical basis for assessing their costs, so any potential savings claimed for the proposed rule are merely speculative.

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Response: The Agency assessed the costs of the 2000 rule in a report entitled “A *Business Evaluation of the 2000 and Proposed NFMA Planning Rules*” (April 2002), produced by the Inventory and Monitoring Institute of the Forest Service, with the assistance of Business Genetics, a consulting firm in Englewood, CO that specializes in business modeling. This study is available from the following Web site:

http://www.fs.fed.us/emc/nfma/2007_pr_eis_references.html. A recognized means was used in the study. The report documents the methods used to estimate costs. A business model of the 2000 rule and of the 2002 proposed rule was developed. All costs were based on estimates using the empirical knowledge of Forest Service subject matter experts experienced with planning and the planning regulations.