

University of Colorado Law School

Colorado Law Scholarly Commons

The National Forest Management Act in a Changing Society, 1976-1996: How Well Has It Worked in the Past 20 Years?: Will It Work in the 21st Century? (September 16-18)

1996

9-17-1996

The Need for a New NFMA Planning Rule

Jack Ward Thomas

Follow this and additional works at: <https://scholar.law.colorado.edu/national-forest-management-act-in-changing-society>



Part of the [Administrative Law Commons](#), [Environmental Law Commons](#), [Environmental Policy Commons](#), [Forest Biology Commons](#), [Forest Management Commons](#), [Legislation Commons](#), [Natural Resources and Conservation Commons](#), [Natural Resources Law Commons](#), and the [Natural Resources Management and Policy Commons](#)

Citation Information

Thomas, Jack Ward, "The Need for a New NFMA Planning Rule" (1996). *The National Forest Management Act in a Changing Society, 1976-1996: How Well Has It Worked in the Past 20 Years?: Will It Work in the 21st Century? (September 16-18)*.

<https://scholar.law.colorado.edu/national-forest-management-act-in-changing-society/12>

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.



Jack Ward Thomas, *The Need for a New NFMA Planning Rule, in THE NATIONAL FOREST MANAGEMENT ACT IN A CHANGING SOCIETY, 1976-1996: HOW WELL HAS IT WORKED IN THE PAST 20 YEARS? WILL IT WORK IN THE 21ST CENTURY?* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1996).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

THE NEED FOR A NEW NFMA PLANNING RULE

Jack Ward Thomas
Chief, USDA Forest Service
Washington, D.C.

Challenges to Achieving Sustainable Forests:

Is NFMA up to the Task?

Natural Resources Law Center
University of Colorado
School of Law
Boulder, Colorado

September 16-18, 1996

THE NEED FOR A NEW NFMA PLANNING RULE

I. EXPECTATIONS AND LESSONS LEARNED

- * When NFMA was enacted on October 22, 1976, representatives of both the Sierra Club and the National Forest Products Association returned to their constituents and proclaimed victory. Obviously, both had different expectations of outcomes under the law.

- * Regulations to implement NFMA were first adopted in September of 1979 after much public involvement and discussion. The current NFMA planning rule has been in effect since September of 1982.

- * After a decade of experience in implementing NFMA, the Forest Service initiated a comprehensive review of its land management planning process in 1989 with the help of The Conservation Foundation, Purdue University, and others. The purpose of this Critique was to document what had been learned since passage of NFMA and to determine how best to respond to planning challenges in the future.

- * The Critique involved over 3,500 people both within and outside the Forest Service, and was completed in 1990. The recommendations of the Critique concluded that many opportunities existed to improve the planning process, and that these could be implemented through changes in the planning rule.

- * The three major recommendations of the Critique were to:
 - Clarify the Decision Framework and the Nature of Forest Plan Decisions;
(Our inability to state clearly and explain what decisions were to be made in forest plans, and how we made them, caused confusion and loss of credibility.)
 - Simplify, Clarify, and Shorten the Planning Process; and
(Our approach to planning was so complex that very few fully understood it, and there was too much time between the initiation of the planning process and when decisions were actually made.)
 - Provide for a "Need for Change" based Revision of Forest Plans.
(Focus forest plan revision efforts to help identify those aspects of the plan that need to be changed, and focus the contents of plans on the decisions being made for that individual National Forest.)
- In addition, the Critique concluded that the solutions to some problems with the planning process are not within the scope of the planning rule.
- * Based largely on the result of the Critique, the Forest Service published an Advance Notice of Proposed Rulemaking (ANPR) in February of 1991. The agency conducted intensive public involvement activities on the ANPR and received many comments on this proposal. Due to a regulatory moratorium that began in January of 1992, efforts to finalize a new planning rule were reduced until 1994.
 - * In April of 1995 the agency published the Proposed Planning Rule, again with an extensive public involvement effort. Over 1,000 public responses were received and analyzed in late 1995, and a final planning rule is currently in the review and clearance process.

II. A BIG STEP IN THE RIGHT DIRECTION

- * The current rulemaking effort is the agency's best effort to harmonize and reconcile the competing interests and statutory mandates. It does not address the interplay of the various environmental statutes, nor is it a perfect or complete solution to the serious problems facing land management planning for National Forest System lands.

- * Many of the administrative appeals and legal challenges to decisions made in Forest Plans are related to other statutes such as NEPA and the Endangered Species Act. A new planning rule can not help with these problems.

- * What a new planning rule CAN do, and what our current rulemaking effort is designed to do, is to:
 - Streamline forest planning procedures and forest plans, making the land management planning process simpler, more understandable, and less costly.
 - Incorporate principles of ecosystem management into the forest planning process;
 - Clarify the nature of forest plan decisions in relationship to other planning and decisionmaking processes; and
 - Strengthen relationships with the public and other government entities.

- * Many forests are already beginning the forest plan revision process that is mandated by NFMA, and roughly two-thirds of the existing forest plans will be in some phase of the revision process in the next two years. In today's climate of declining budgets, making the forest planning process more efficient and less time consuming makes a lot of sense, and is in line with current National Performance Review efforts. National Forest personnel are aware that there are better ways of revising their forest plans, and the agency feels that the current rulemaking effort will ultimately translate into better resource management decisions on the land.

- * We heard no surprises from the public in our extensive public involvement efforts in our current rulemaking effort. The Forest Service has a good understanding of the issues.

III. IT'S TIME FOR A COMPREHENSIVE LOOK AT ALL ENVIRONMENTAL LAWS

- * While completing our current rulemaking effort for implementing NFMA is a good incremental step in the right direction, I feel that it's time for us to take a comprehensive look at all our environmental statutes.

- * It is time to acknowledge that this nation has come to a point at which the interacting forces of the myriad of laws and regulations that come to bear on federal land management in connection with the constant upsets in balance that occur with decisions in lawsuit after lawsuit have produced a situation antithetical to predictability and stability of federal land management.

- * Attainment of stability is unlikely given the interactions of environmental laws, and other variables such as insects and disease, fire, climate, the effects of past management practices, budgets, scientific knowledge, technology, the markets for forest products, public opinion, and the political process.

- * Frustrations with public land management have led to the discussion of devolving the ownership or management of the National Forests. These lands are the American public's inheritance and a unique part of our culture. Such an act would be most destabilizing.

- * The debate over the management of federal forest lands is an intense one. The Forest Service can not afford to continue our forest planning efforts under the existing planning rule, nor can we halt all forest planning efforts while the debate rages. We CAN help ensure better decisions on the management of National Forest System lands NOW by completing our current rulemaking efforts and adopting a new planning rule.

IV. PUBLIC LAND CONSERVATION

- * Federal forest land managers have a great responsibility to society today and future generations of Americans as caretakers of an abundant supply of precious natural resources. Federal land management policy and decisions are extremely important issues that deserve our best efforts.

- * The National Forests are still operated with Gifford Pinchot's maxim, "the greatest good for the greatest number in the long run," in mind. All Americans share in the ownership of public lands.

- * I represent over 30,000 dedicated Forest Service employees that are committed to providing the best public land conservation efforts possible given today's political and public opinion climate. We can't do this alone and be successful. You represent a diverse group of interests here today. I'd like to solicit your assistance and invite you and your constituents to be partners with us in our efforts.