

INTRODUCTION

This appendix briefly describes some of the major laws, regulations, and policies that govern Forest Planning and resource management on the Boise National Forest, and how this framework provides protection to Forest Resources. Appendix H contains a definition of Forest Plans and information on the following requirements: legal requirements of Forest Plans; National Forest Management Act; Code of Federal Regulations; Forest Service Manual; Statutory, Regulatory, and Policy Authorities on Selected Topics; and Sensitive Species – Key Policies and Requirements. Forest Resources and their additional legal requirements are listed in the same order as they appeared in Chapter 3 of the Forest Plan EIS and Chapter III of the Forest Plan.

FOREST PLAN DEFINITION

A Forest Plan is a document required by Sec. 6 (a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). Forest Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management. [36 CFR §219.1(b)] The six decisions made in a Forest Plan are outlined in Chapter I, Introduction, of this Forest Plan.

LEGAL REQUIREMENTS OF FOREST PLANS

The NFMA and its accompanying regulations (36 CFR §219), along with Forest Service Manual (FSM) 1920, define the legal requirements of Forest Plans. Additional information on planning can be found in the National Environmental Policy Act (NEPA), Case Law, Appeal Decisions, Forest Service Handbook 1909.15, Internal Memos, Informal WO and RO direction, preferences of local managers and planners, and chapters in the Regional Desk Guide.

National Forest Management Act Requirements

The following are requirements for forest plans from the NFMA.

1. Determine forest management systems, harvesting levels, and procedures [16U.S.C. 1604 §6 (e)(2)].
2. Describe proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest. [16 U.S.C.
 - a. 1604 §6 (f)(2)]
3. [The regulations shall] require the identification of the suitability of lands for resource management. [16 U.S.C. 1604 §6 (g)(2)(A)]
4. Even-aged harvest methods will be used only where...there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation. [16 U.S.C. 1604 §6 (g)(3)(F)(iv)]
5. Identify lands within the management area, which are not suited for timber production. [16 U.S.C. 1604 §6 (k)]

Code of Federal Regulations Requirements

Planning regulations set forth a process for developing, adopting, and revising Forest Plans. These regulations prescribe how land and resource management is to be conducted on National Forest system lands. Following is a summary of these regulations.

Scope And Applicability

Additional planning for special areas (wilderness, wild and scenic rivers, national recreation areas, and national trails) shall be met through forest plans. [36 CFR §219.2 (a)]

Public Participation

Public participation activities shall be used early and often throughout the development of plans. [36 CFR §219.6 (c)]

Monitoring And Evaluation

A program of monitoring and evaluation shall be conducted. [36 CFR §219.7(f)]

Forest Plan General Procedures

Revisions are not effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. [36 CFR §219.10(g)]

Draft and Final Environmental Impact Statement

A draft and final environmental impact statement shall be prepared for the proposed plan according to NEPA procedures. [36 CFR §219.10 (b)]

- The draft environmental impact statement shall identify a preferred alternative. [36 CFR §219.10 (b)]
- The interdisciplinary team shall formulate a broad range of reasonable alternatives according to NEPA procedures. [36 CFR §219.12 (f)]
- The physical, biological, economic, and social effects of implementing each alternative considered in detail shall be estimated and compared according to NEPA procedures. [36 CFR §219.12 (g)]
- The interdisciplinary team shall evaluate the significant physical, biological, economic, and social effects of each management alternative that is considered in detail. [36 CFR §219.12 (h)]
- The Forest Supervisor shall recommend to the Regional Forester a preferred alternative to be identified in the draft environmental impact statement and displayed as the proposed plan. [36 CFR §219.12 (i)]

Record of Decision

The Regional Forester shall prepare a concise public Record of Decision, which documents approval and accompanies the plan and final environmental impact statement. [36 CFR §219.10 (c)(1)]

The Record of Decision shall include a summarized comparison of the selected alternative with any other alternative considered that is environmentally preferable to the selected alternative, and any other alternative considered that comes nearer to maximizing present net value. [36 CFR §219.12 (j)]

Forest Plan Content

A forest plan must contain the following items:

1. A brief summary of the Analysis of the Management Situation. [36 CFR§219.11 (a)]
2. Forest multiple-use goals and objectives [36 CFR §219.11 (b)]
3. A description of the desired future condition of the forest or grassland [36CFR §219.11 (b)]
4. An identification of the quantities of goods and services that are expected to be produced [36 CFR §219.11 (b)]
5. Multiple-use prescriptions and associated standards and guidelines for each management area [36 CFR §219.11 (c)]
6. Proposed and probable management practices such as the planned timber sale program [36 CFR §219.11 (c)].
7. Monitoring and evaluation requirements [36 CFR §219.11 (d)]

Analysis of the Management Situation

The analysis of the management situation shall include the following:

- Benchmark analyses to define the range within which alternatives can be constructed [36 CFR §219.12 (e)(1)]
- [Estimates of] the current level of goods and services provided by the unit and the most likely amount of goods and services expected to be provided in the future if current management direction continues [36 CFR §219.12(e)(2)]
- Projections of demand using best available techniques with both price and non-price information [36 CFR §219.12 (e)(3)]
- A determination of the potential to resolve public issues and management concerns [36 CFR §219.12 (e)(4)]
- A determination of the need to establish or change management direction [36 CFR §219.12 (e)(5)]

Timber Resource Land Suitability

Lands that are not suited for timber production shall be identified. [36 CFR§219.14]

Vegetation Management Practices

The vegetation management practices chosen for each vegetation type and circumstance shall be defined in the forest plan with applicable standards and guidelines. [36 CFR 219.15]

Timber Resource Sale Schedule

The selected forest management alternative includes a sale schedule that provides the allowable sale quantity. [36 CFR §219.16]

Evaluation of Roadless Areas

Unless otherwise provided by law, roadless areas within the National Forest System shall be evaluated and considered for recommendation as potential wilderness areas during the forest planning process. [36 CFR §219.17 (a)]

Wilderness Management

Forest planning shall provide direction for the management of designated wilderness and primitive areas. [36 CFR §219.18]

Fish and Wildlife Resources

Each alternative shall establish objectives for the maintenance and improvement of habitat for management indicator species [of fish and wildlife]. [36 CFR§219.19 (a)]

Certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species, and the reasons for their selection will be stated. [36 CFR §219.19 (a)(1)]

Habitat determined to be critical for threatened and endangered species shall be identified, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. [36 CFR §219.19 (a)(7)]

Grazing Resource

The suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for management indicator species shall be determined. [36 CFR §219.20]

- Lands suitable for grazing and browsing shall be identified, and their condition and trend shall be determined. [36 CFR §219.20 (a)]
- The present and potential supply of forage for livestock, wild and free-roaming horses and burros, and the capability of these lands to produce suitable food and cover for selected wildlife species shall be estimated. [36CFR §219.20 (a)]
- The use of forage by grazing and browsing animals will be estimated. [36CFR §219.20 (a)]
- Lands in less than satisfactory condition shall be identified and appropriate action planned for their restoration. [36 CFR §219.20 (a)]

Recreation Resources

Forest planning shall identify:

- The physical and biological characteristics that make land suitable for recreation opportunities [36 CFR §219.21 (a)(1)],
- The recreational preferences of user groups and the settings needed to provide quality recreation opportunities [36 CFR §219.21 (a)(2)],
- Recreation opportunities on the National Forest System lands [36 CFR§219.21 (a)(3)].

The visual resource shall be inventoried and evaluated as an integrated part of evaluating alternatives in the forest planning process. [36 CFR §219.21(f)]

Forest planning shall evaluate the potential effects of vehicle use off roads, and classify areas and trails of National Forest System lands as to whether or not off-road vehicle use may be permitted. [36 CFR §219.21(g)]

Diversity

Inventories shall include quantitative data making possible the evaluation of diversity [of plant and animal communities and tree species] in terms of its prior and present condition. [36 CFR §219.26]

Research

Research needs for management of the National Forest System shall be identified during planning. [36 CFR §219.28]

Cultural and Historic Resources

Forest planning shall:

- Provide an overview of known data relevant to history, ethnography, and prehistory of the area under consideration, including known cultural resource sites,
- Identify areas requiring more intensive inventory,
- Identify the need for maintenance of historic sites on, or eligible for inclusion in, the National Register of Historic Places,
- Identify opportunities for interpretation of cultural resources for the education and enjoyment of the American public. [36 CFR §219.24].

Research Natural Areas

Planning shall make provision for the identification of examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special or unique characteristics of scientific interest and importance and that are needed to complete the national network of RNAs. [36 CFR §219.25]

Forest Service Manual Requirements

1. The forest plan consists of both forest-wide and area specific standards and guidelines that provide for land uses with anticipated resource outputs under the given set of management constraints. (FSM 1922)
2. Minimum results required of forest planning are:
 - a) Identification of resource management issues and concerns and management opportunities [FSM 1922.11 (1)]
 - b) Development of a set of criteria to guide the formulation and evaluation of alternatives [FSM 1922.11 (2)]
 - c) Analysis of the management situation including all items required in 36 CFR219.12 (e) [FSM 1922.11 (3)]
 - d) Formulation of a set of alternatives in accordance with 36 CFR 219.12 (f) [FSM 1922.11 (4)]

- e) Evaluation of alternatives, and identification of a preferred alternative in accordance with NEPA, CEQ regulations, and Forest Service environmental policies and procedures [FSM 1922.11 (5)]
 - f) A forest plan that achieves the 14 principles described in 36 CFR 219.1 [FSM 1922.11 (6)]
 - g) A monitoring program to evaluate progress toward achieving the goals, objectives, and standards of the plan and the validity of assumptions and coefficients used to estimate outputs and effects [FSM 1922.11 (7)]
3. In addition, the forest planning process must:
- a) Provide management direction for wilderness, wild and scenic rivers, national recreation areas, national trails, national monuments, national scenic areas, research natural areas, national management emphasis areas, and other identified special interest areas [FSM 1922.15 (1)]
 - b) Determine the silvicultural systems and practices to be applied to suitable land [FSM 1922.15 (3)]
 - c) Determine output levels for fuelwood and other non-industrial wood products where sustained demand is anticipated [FSM 1922.15 (5)]
 - d) Determine the annual net growth on lands suitable for timber production for the fifth decade of the forest plan for at least the preferred alternative [FSM 1922.15 (8)]
 - e) Identify the desired landownership pattern and develop guidelines for landownership adjustments [FSM 1922.15 (15)]
 - f) Identify the specific access requirements and travel management options available to meet the objectives for each management prescription [FSM 1922.15 (17)].
 - g) Determine watershed condition class and include objectives or prescriptions for improving watershed conditions when necessary [FSM 1922.15 (20)]
 - h) Identify groundwater aquifers and provide management direction for their protection [FSM 1922.15 (22)]
4. 36 CFR §219.11 establishes minimum requirements for content of the forest plan. (FSM 1922.2)
5. To revise a forest plan, follow procedures set forth in 36 CFR §219.12 after obtaining approval of the Chief to schedule a revision. (FSM 1922.6)
6. Consideration of wilderness suitability is inherent in land and resource management planning. Planning for potential wilderness designation may occur in development of a forest plan or may require a separate study. (FSM 1923)
7. Consideration of potential wild and scenic rivers is an inherent part of the ongoing land and resource management planning process. (FSM 1924)

Statutory, Regulatory and Policy Authorities on Selected Topics

Specific direction concerning diversity is given in both the 1976 NFMA statute and implementing regulations of 1982. The NFMA provides statutory direction for managing the National Forest System to provide for diversity of plant and animal communities. Section 6(g)(3)(B) of the NFMA states:

The [planning] regulations shall include, but not be limited to . . . (3) specifying guidelines for land management plans developed to achieve the goals of the [RPA] Program which . . . (B) 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, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan.

To ensure an adequate consideration of diversity, the NFMA planning regulations (36 CFR 219) address diversity at several points. First, the regulations provide a definition of diversity to guide land and resource management planning:

36 CFR 219.3 Definitions and Terminology. “Diversity: The distribution and abundance of different plant and animal communities and species within the area covered by a land and resource management plan.”

Other sections of the NFMA regulations that specifically use the term “diversity” are:

36 CFR 219.26 Diversity. “Forest planning shall provide for diversity of plant and animal communities and tree species consistent with the overall multiple-use objectives of the planning area. Such diversity shall be considered throughout the planning process. Inventories shall include quantitative data making possible the evaluation of diversity in terms of its prior and present condition. For each planning alternative, the interdisciplinary team shall consider how diversity will be affected by various mixes of resource outputs and uses, including proposed management practices.”

36 CFR 219.27 Management Requirements. “(a) Resource Protection. All management prescriptions shall-- . . . (5) Provide for and maintain diversity of plant and animal communities to meet overall multiple use objectives, as provided in paragraph (g) of this section; . . .(g) Diversity. Management prescriptions, where appropriate and to the extent practicable, shall preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that it is at least as great as that which would be expected in a natural forest and the diversity of tree species similar to that existing in the planning area. Reduction in diversity of plant and animal communities and tree species from that which would be expected in a natural forest, or from that similar to the existing diversity in the planning area, may be prescribed only where needed to meet overall multiple use objectives . . .”

FSM 2620 includes direction regarding habitat planning and evaluation, including specific forest planning direction for meeting biological diversity requirements:

"A forest plan must address biological diversity through consideration of the distribution and abundance of plant and animal species, and communities to meet overall multiple-use objectives." (FSM 2622.01)

Specific direction concerning viability is provided in the 1982 NFMA implementing regulations at 36 CFR 219.19:

“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.” (36 CFR 219.19)

The 1983 USDA Departmental Regulation 9500-4 provides further direction to the Forest Service, expanding the viability requirements to include plant species:

“Habitats for all existing native and desired non-native plants, fish, and wildlife species will be managed to maintain at least viable populations of such species. In achieving this objective, habitat must be provided for the number and distribution of reproductive individuals to ensure the continued existence of a species throughout its geographic range . . . Monitoring activities will be conducted to determine results in meeting population and habitat goals.”

Specific FSM direction, from 1986, concerning viability of plant and animal species includes:

“Management of habitat provides for the maintenance of viable populations of existing native and desired non-native wildlife, fish, and plant species, generally well-distributed throughout their current geographic range” [FSM 2622.01(2)]

“Maintain viable populations of all native and desired non-native wildlife, fish and plant species in habitats distributed throughout their geographic range on National Forest System lands.” [FSM 2670.22(2)]

Specific management requirements and direction concerning management indicator species is provided in the 1982 NMFA implementing regulations at 36 CFR 219.19, and in the Forest Service Manual 2600:

“In order to estimate the effects of each alternative on fish and wildlife populations, certain vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to indicate the effects of management activities. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality . . .” [36CFR 219.19(a)(1)]

“Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat and of animal population trends of the management indicator species.” [36 CFR 219.19(a)(2)]

“Population trends of the management indicator species will be monitored and relationships to habitat changes determined . . .” [36 CFR 219.19(a)(6)]

“Habitat determined to be critical for threatened and endangered species shall be identified, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. Objectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species.” [36 CFR 219.19(a)(7)]

Forest Service Manual direction concerning habitat planning is contained in 2620.

“Management Indicators: Plant and animal species, communities, or special habitats selected for emphasis in planning, and which are monitored during forest plan implementation in order to assess the effects of management activities on their populations and the populations of other species with similar habitat needs which they may represent.” (FSM 2620.5)

“Select management indicators for a forest plan or project that best represent the issues, concerns, and opportunities to support recovery of Federally-listed species, provide continued viability of sensitive species, and enhance management of wildlife and fish for commercial, recreational, scientific, subsistence, or aesthetic values or uses. Management indicators representing overall objectives for wildlife, fish, and plants may include species, groups of species with similar habitat relationships, or habitats that are of high concern.” (FSM 2621.1)

“Select ecological indicators (species or groups) only if scientific evidence exists confirming that measurable changes in these species or groups would indicate trends in the abundance of other species or conditions of biological communities they are selected to represent.” [FSM 2621.1(3)].

“Document, in the permanent planning records for a forest plan, the rationale, assumptions, and procedures used in selecting management indicators.” [FSM 2621.1(4)]

“Document, within the forest or project plan, how management indicators collectively address issues, concerns, and opportunities for meeting overall wildlife and fish, including endangered, threatened, and sensitive species goals for the plan or project area.” [FSM 2621.1(5)]

“To preclude trends toward endangerment that would result in the need for Federal listing, units must develop conservation strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project. To devise conservation strategies, first conduct biological assessments of identified sensitive species. In each assessment, meet these requirements:

1. Base the assessment on the current geographic range of the species and the area affected by the plan or project. If the entire range of the species is contained within the plan or project area, limit the area of analysis to the immediate plan or project area. If the geographic range of the species is beyond the plan or project area, expand the area of analysis accordingly.
2. Identify and consider, as appropriate for the species and area, factors that may affect the continued downward trend of the population, including such factors as: distribution of habitats, genetics, demographics, habitat fragmentation, and risk associated with catastrophic events.”
3. Display findings under the various management alternatives considered in the plan or project (including the no-action alternative).

“Biological assessments may also be needed for endangered or threatened species for which recovery plans are not available. See FSM 2670 for direction on biological assessments for endangered and threatened species.” (FSM 2621.2)

“In analyzing the effects of proposed actions, conduct habitat analyses to determine the cumulative effects of each alternative on management indicators selected in the plan or project area . . .” (FSM 2621.3)

“The forest plan must identify habitat components required by management indicators; determine goals and objectives for management indicators; specify standards, guidelines, and prescriptions needed to meet management requirements, goals, and objectives for management indicators; prescribe mitigation measures, as appropriate, to ensure that requirements, goals, and objectives for each management indicator will be sufficiently met during plan implementation at the project level.” (FSM 2621.4)

“Conduct monitoring of plans and projects to determine whether standards, guidelines, and management prescriptions for management indicators are being met and are effective in achieving expected results. Use monitoring and evaluation to guide adjustments in management and to revise or refine habitat relationships information and analysis tools used in planning.” (FSM2621.5)

Specific direction concerning use of best available data is provided in the 1982 NFMA implementing regulations at 36 CFR 219.12(d):

“Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction. The Supervisor will assure that the interdisciplinary team has access to the best available data. This may require that special inventories or studies be prepared. The interdisciplinary team shall collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made.”

Specific direction concerning use of information and scientific data is also provided in the NEPA implementing regulations at 40 CFR 1502.24:

“Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.”

LEGAL AND ADMINISTRATIVE FRAMEWORK BY RESOURCE

Air Quality and Smoke Management

The *Clean Air Act and Amendments* were established to protect public health and welfare. This Act has been strengthened by several amendments, the latest coming in 1990. The Clean Air Act requires that the federal agencies comply with all federal, state, tribal, interstate, and local air quality standards and requirements, including the following:

- Air Quality Related Values for Class I airsheds,
- Ambient Air Quality Standards for six pollutants known to harm human health,

- Visibility Protection and Regional Haze standards related to fine particulate matter,
- Conformity provisions related to federal activities occurring within non-attainment areas.

Additionally, EPA's Interim Air Quality Policy on Wildland Fire and Prescribed Fires was developed to integrate the goals of allowing fire to function in its ecological role while protecting public health and welfare by mitigating the impacts of smoke. Federal agencies are expected to incorporate the requirements of the interim policy into their planning and operations.

The *Forest and Rangeland Renewable Resources Act* (1974), *Federal Land Management Policy Act* (1976), and *National Forest Management Act* (1976) and subsequent rules provide a mandate to:

- Protect and improve the quality of the air resource on National Forests,
- Manage public lands in a manner that protects air quality and atmospheric values,
- Comply with requirements imposed by federal, state, interstate or local authorities or courts.

The *Wilderness Act* (1964) and subsequent Acts designating individual Wilderness Areas were enacted to preserve wilderness resources and character. Although air quality and its effects are not directly mentioned in the Wilderness Act, the Act requires the Forest Service to minimize the effects of human use or influence on natural ecological processes, and preserve natural conditions.

Individual State Rules for Smoke Management Programs, Open Burning and Emergency Air Pollution Episodes. *Idaho Administrative Code IDAPA58.01.01: Rules for the Control of Air Pollution in Idaho* and *Utah Administrative Code Rule R307-202, 204 and 105*. These state laws described rules for fire use, and processes (permits, reporting and other requirements) for the coordinated burning operations of the smoke management programs (MT/ID Airshed Group and the Utah Interagency Smoke Management Program). The state rules for emergency air pollution episodes describe levels for stages and actions required to abate pollution levels such as delaying fire use operations.

Soil, Water, Riparian, and Aquatic Resources

The *Organic Act of 1897* recognizes watersheds as systems that need to be managed to sustain their hydrologic function. One of the primary reasons for establishing the National Forests was to provide for "favorable conditions of water flow".

The *Clean Water Act* (1948-->1987) includes a series of acts designed to restore and maintain the chemical, physical, and biological integrity of the nation's water by complying with state and federal pollution controls.

National Forest Management Act of 1976 includes direction to prevent watershed conditions from being irreversibly damaged and to protect streams and wetlands from detrimental impacts.

The *Endangered Species Act of 1973* requires federal agencies to conserve threatened and endangered species and the ecosystems they depend upon, including riparian and aquatic ecosystems, and to contribute to recovery of listed species.

The *Safe Drinking Water Amendments of 1977* necessitate federal agencies with jurisdiction over federally owned or maintained public water systems to comply with all authorities respecting the provision of safe drinking water.

Pacfish (1995) is the Interim strategy for USFS and BLM management of anadromous fish-producing watersheds within eastern Washington and Oregon, Idaho, and portions of California. Designed to offset impacts of all proposed or new projects, and those ongoing activities that pose unacceptable risks to anadromous fish habitat. Amended the 1990 Forest Plan and is being replaced by the revised Forest Plan.

Infish (1995) is the Interim strategy for USFS management of all stream systems not covered by *Pacfish* that support inland native fish species within eastern Washington and Oregon, Idaho, western Montana, and portions of Nevada. Designed to offset impacts of all proposed or new projects, and those ongoing activities that pose unacceptable risks to inland native fish habitat. Amended the 1990 Forest Plan and is being replaced by the revised Forest Plan.

Executive Orders 11988 and 11990 direct federal agencies to avoid, where possible, impacts associated with the destruction or modification of floodplains and wetlands.

Governor's Bull Trout Conservation Plan (1996) requires strengthening water quality protection within Idaho and improving compliance with the Federal Clean Water Act in order to protect bull trout habitat within State of Idaho.

Forest Service Manuals 2500 and 2600 pertain to the protection of watershed and fish and wildlife resources from natural resource management activities on Forest Service administered lands.

The *Regional Forester's Sensitive Species Program* is an internal listing process with direction, designed as an attempt to prevent additional imperiled fish, wildlife, and plants from being listed under the Endangered Species Act (ESA).

The *Forest Service Chief's Properly Functioning Condition Memo* (1997) directs USFS to adopt the BLM policy to use the Wetland and Riparian Initiative for the 1990s to evaluate and pursue achieving properly functioning condition of riparian resources.

The *Forest Service and Bureau of Land Management Protocol for Addressing Clean Water Act Section 303(d) Listed Waters* (1999) provides a consistent mechanism for the Forest Service to collaborate with the State of Idaho in the assessment and where appropriate, development of a TMDL and water quality restoration plan for impaired water bodies.

The *Clean Water Action Plan* resulted from the recent listings of the salmon, steelhead, and bull trout and their associated Biological Opinions, and more recently, the *Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management*, which strongly direct the need to prioritize and restore degraded watersheds and improve the aquatic habitat for these species.

Wildlife Resources

National Environmental Policy Act– Requires analysis and public disclosure of effects to wildlife species and habitats from proposed federal actions.

The *Endangered Species Act* requires the Forest Service to maintain or improve habitat conditions for threatened, endangered, and proposed wildlife species.

National Forest Management Act - Provides direction for managing terrestrial wildlife species and habitats on National Forest System lands. Includes direction for Management Indicator Species and biological diversity.

Forest Service Manuals 2500 and 2600 pertain to the protection of watershed and fish and wildlife resources from natural resource management activities on Forest Service administered lands.

Regional Forester's Sensitive Species Program - Provides administrative direction to maintain or improve conditions for species on the Regional Forester's Sensitive Species List.

Forest Service Policy - Recognizes the Idaho State wildlife and fish agencies as responsible for the management of animals and National Forests as responsible for the management of habitat.

Vegetation

The *Organic Act of 1897* (16 U.S.C. 473 - 475) authorizes the Secretary of Agriculture to establish regulations governing the occupancy and use of National Forests and to protect the forests from destruction.

The *Multiple-Use, Sustained Yield Act of 1960* (U.S.C 528-531) recognizes timber and range as major resources for which the National Forests are to be managed. It further directs the Secretary to develop and administer the renewable surface resources of the National Forests for multiple-use and sustained yield of the many products and services obtained from these resources.

The *Forest and Rangeland Renewable Resources Planning Act of 1974* (RPA) (16 U.S.C. 1600-1614, as amended by the *National Forest Management Act of 1976*) directs the Secretary to periodically assess the forest and rangeland resources of the nation, and to submit to Congress at regular intervals, recommendations for long-range Forest Service programs essential to meet future resource needs.

The *National Forest Management Act (NFMA) of 1976* (16 U.S.C. 472a) provides for balanced consideration of all resources in land management planning and establishes requirements for Land and Resource Management Plans, particularly for forested lands. It specifically addresses most aspects of timber management and how it is related to other resources. It also stresses the maintenance of productivity and the need to protect and improve the quality of biological and physical resources.

The *Endangered Species Act 1973 as amended 1978, 1979, 1982 and 1988* (16 U.S.C. 1531 et seq.) sets forth the requirements for all agencies to conserve endangered and threatened species. Section 7 directs agencies to ensure that actions do not result in destruction or adverse modification of critical habitats for endangered and threatened species.

36 CFR 219.15 Vegetation Management Practices set forth a requirement where multiple management practices are used in a vegetation type, conditions for use and evaluation need to be based upon technical and scientific literature and practical experience. *Section 219.26 Diversity* states that forest planning shall provide for diversity of plant and animal communities and tree species consistent with the overall multiple use objectives of the planning area. *Section 219.27 Management Requirements* sets minimum requirements for resource protection, vegetative manipulation, silvicultural practices, even-aged management, riparian areas, and diversity.

Botanical Resources (TEPCS Plants)

The *National Forest Management Act (NFMA) of 1976* (16 U.S.C. 472a) provides for balanced consideration of all resources in land management planning and establishes requirements for Land and Resource Management Plans, particularly for forested lands. The accompanying regulations (36 CFR 219.27 (g) require that "...management prescriptions ...shall preserve and enhance the diversity of plant and animal communities, including endemic, and desirable naturalized plant species...Reductions in

diversity of plant and animal communities and tree species...may be prescribed only where needed to meet overall multiple use objectives.” The regulations state that habitat is to be “managed to maintain viable populations of existing and desired vertebrate species in the planning area.”

The *Endangered Species Act 1973 as amended 1978, 1979, 1982 and 1988* (16 U.S.C. 1531 et seq.) sets forth the requirements for all agencies to conserve endangered and threatened species. Section 5 directs the Secretary of Agriculture to establish and implement a program to conserve fish wildlife and plants, including federally listed species. Section 7 directs agencies to “ensure that actions...do not result in destruction or adverse modification of their critical habitats”. The act also requires conferencing whenever an action is likely to jeopardize the continued existence or when adverse modification of critical habitat may occur for any proposed for listing as threatened or endangered.

USDA, Departmental Regulation 9500-4 provides direction that expands viability requirements to include plant species. The Secretary of Agriculture’s policy on wildlife, fish, and plant habitat directs the Forest Service to “manage habitats for all existing native and desired non-native plants in order to maintain at least viable populations of such species”. It requires that habitat goals for threatened or endangered plants, or species with special habitat needs, be established in the forest planning process. It also states that monitoring activities will be conducted to determine results in meeting population and habitat goals, and directs “activities and programs to assist in the identification and recovery of threatened and endangered plant species, and to avoid actions which may cause a species to become threatened or endangered.”

Non-native Plants

The *Federal Noxious Weed Act of 1974* delegates authority to the Secretary of Agriculture for noxious weed management. It also addresses eradication and control of certain foreign weeds within the United States, as does current Forest Service policy. Direction is to "...control the establishment, spread, or invasion of non-indigenous plant species in otherwise healthy native vegetative ecosystems." The 1990 Forest Plan for the Boise National Forest addressed noxious weeds minimally and broadly. Recent direction that is in accordance with the 1990 Farm Bill amendment of the 1974 Noxious Weed Act requires the use of Integrated Weed Management (IWM), the determination of factors favoring the establishment and spread of noxious weeds, and the design of prescriptions that reduce the risks. The first priority of IWM is to prevent the introduction of new invaders or noxious weed species. The amendment also provides direction for cooperation and cost sharing with State and local governments.

On February 3, 1999, the President issued an Executive Order (EO) (Clinton 1999) "to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause". The EO further states that, "Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law...use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

In Idaho, it is unlawful for any individual to allow noxious weeds to propagate or go to seed on their land, unless they are complying with an approved weed management plan. This law directs the counties to develop weed control districts to plan and implement weed control efforts. The law also directs district (county) weed boards to "make all reasonable efforts to develop and implement a noxious weed program covering all land within the district owned or administered by a federal agency". Accordingly, the Forest Service now requires that all hay, straw, or other feeds brought upon Forest System lands be certified weed seed free.

The State of Idaho has finalized a *Strategic Plan* for managing noxious weeds. The purpose of the strategic plan is two-fold: (1) to heighten the awareness among all citizens of the degradation brought to Idaho lands and waters by the explosive spread of non-native weeds and, (2) to bring about greater statewide coordination, cooperation, prioritization, and action that will successfully halt the spread of such weeds and restore infested lands and waters to a healthy and productive condition. The Strategic Plan recommends the statewide formation of “Cooperative Weed Management Areas” and application of “Integrated Weed Management” prevention and control measures. Such a coordinated effort is operating within the Payette River Weed Management Area, established with a Memorandum of Understanding in 1998. Similar opportunities for coordination exist within the three Forests, particularly within the large river corridors and basins.

Fire Management

The *Organic Administration Act* (1897) authorizes the Secretary of Agriculture to provide for protection of national forest lands from destruction by fire.

The *Bankhead-Jones Farm Tenant Act* (1937) authorizes and directs the Secretary of Agriculture to develop a program of land conservation and utilization that protects public lands.

The *Reciprocal Fire Protection Act* (1955) authorizes reciprocal agreements with federal, state, and other wildland fire protection organizations.

The *Wilderness Act* (1964) authorizes the Secretary of Agriculture to take such measures as may be necessary to control fire within designated wilderness.

The *National Forest Management Act* (1976) directs the Secretary of Agriculture to specify guidelines for land management plans to ensure protection of forest resources.

The *Clean Air Act* (as amended 1977 and 1990) provides for the protection and enhancement of the nation's air resources.

The *Federal Wildland Fire Management Policy*, adopted December 18, 1995 by the Secretaries of Agriculture and Interior, directs agencies to implement the principles, policies, and recommendations found in the Final Report of the Federal Wildland Fire Management Policy and Program Review.

Rangeland Resources

The *Forest and Rangeland Renewable Resources Planning Act of 1974* specifies that the Secretary of Agriculture is to promulgate regulations that set out the process for the development and revision of land management plans. This process requires the identification of the suitability of lands for resource management. As result, the Secretary's regulation *36 CFR 219.20 "Grazing Resource"* specifies that, "In forest planning, suitability and potential capability of National Forest System lands for producing forage for grazing animals and for providing habitat for indicator species shall be determined as provided in paragraphs (a) and (b) of this section. Lands so identified shall be managed in accordance with direction established in forest plans."

To comply with regulations in planning and to be consistent with recent court decisions, the Chief of the Forest Service gave general guidance in 4/97 (Forest Service, 1997), regarding the evaluation of capable and suitable grazing lands during forest plan revision. The guidance removes inconsistent direction in Forest Service Manual and Handbook, and defines the difference between rangeland capability and

suitability. Grazing capacity determination, which is different from capability/suitability assessments, is conducted during project level analysis. *Forest Service Handbook 2209.21* provides guidance for this type of determination (Range Technical Report #2, 1999).

Pursuant to regulations issued by the Secretary of Agriculture, the Chief of the Forest Service is authorized to develop, administer, and protect range resources. He is to permit and regulate grazing use of all kinds and classes of livestock on all National Forest System lands and/or other lands under Forest Service control. This authority originates from many acts (10), from the *Organic Administration Act of 1897* through the *Public Rangelands Improvement Act of 1978* (FSM 2201.1, 1990).

Forest Service policy authorizes all livestock grazing and other livestock use on lands under Forest Service administration or control by written grazing permit or agreement. On the Boise National Forest, a term grazing permit is the document used to authorize individuals, partnerships, or corporations to graze livestock. The permit may be issued up to a period of ten years. Forest plan standards and guidelines relating to grazing are incorporated into the term grazing permits as terms and conditions.

Timberland Resources

The *Organic Act of 1897* (16 U.S.C. 473 - 475) authorizes the Secretary of Agriculture to establish regulations governing the occupancy and use of National Forests and to protect the forests from destruction.

The *Knutson-Vandenberg Act of 1930* (16 U.S.C. 576-576b), as amended by the *National Forest Management Act of 1976* (16 U.S.C. 528-531) directs the Secretary to provide for improvement of the productivity of the renewable resources within the National Forest timber sales areas. It authorizes the collection and use of timber receipts for these purposes.

The *Multiple-Use, Sustained Yield Act of 1960* (U.S.C 528-531) recognizes timber as one of the five major resources for which the National Forests are to be managed. It further directs the Secretary to develop and administer the renewable surface resources of the National Forests for multiple-use and sustained yield of the many products and services obtained from these resources.

The *Small Business Act* (15 U.S.C. 644, as amended 1958) provides for federal agencies to participate in programs with the Small Business Administration. This is the authority for the Small Business Timber Sale Set-aside Program.

The *National Environmental Policy Act (NEPA) of 1969* (16 U.S.C. 4321) requires federal agencies to analyze the physical, social, and economic effects associated with proposed plans and decisions, to consider alternatives to the proposed actions, and to document the results of the analysis.

The *Forest and Rangeland Renewable Resources Planning Act of 1974* (RPA) (16 U.S.C. 1600-1614, as amended by the *National Forest Management Act of 1976*) directs the Secretary to periodically assess the forest and rangeland resources of the nation, and to submit to Congress at regular intervals, recommendations for long-range Forest Service programs essential to meet future resource needs.

The *National Forest Management Act (NFMA) of 1976* (16 U.S.C. 472a) sets forth requirements for Land and Resource Management Plans for the National Forest System. It also amends several acts applicable to timber management. It specifically addresses most aspects of timber management and how it is related to other resources. NFMA is the primary authority governing the management and use of timber resources on the national forests.

The *Forest Resources Conservation and Shortage Relief Act of 1990* (16 U.S.C. 620) sets forth restrictions on export of unprocessed timber originating from federal lands. It addresses certain exceptions to export restrictions and establishes reporting requirements.

The following regulations also apply: The rules governing the sale and disposal of timber are set forth at *36 CFR 223, Subparts A and B*. Subpart C governs suspension and debarment of timber purchasers, and Subpart D covers timber export and substitutions restrictions. The Chief's authority to manage and dispose of timber is delegated from the Secretary at *7 CFR 2.42* and described at *36 CFR 223.1*. The text of these rules is set forth in *Forest Service Manual 1010*.

Mineral Resources

Federal laws and regulations chiefly guide the management of mineral resources on National Forest System lands. Mineral resources are separated into three categories, whose exploration and development is guided by different statutes:

- **Locatable Minerals** are those valuable deposits subject to exploration and development under the *General Mining Law of 1872* and its amendments. Commonly, these minerals are referred to as "hard rock" minerals, and include gold, silver, molybdenum, iron, copper, and lead. The mining law as amended, gives citizens the right to enter public lands to locate and claim valuable minerals. Valuable mineral discovery conveys a property right to the mineral and, through the patent process, also to the surface. The 1872 *Surface Use Act* regulations provide for federal land management that minimizes mining-related adverse environmental impacts to surface resources. The *Organic Act of 1897* specifies that these mining regulations apply to National Forests. These laws authorize the present surface management program for mining claims, which requires written operating plans, reasonable environmental protection measures, reclamation plans, and bonds.
- **Leasable Minerals.** Federally owned leasable minerals may include such minerals as fossil fuels (oil, gas, coal, oil shale, etc.), geothermal resources, phosphates, and sulfur. The *Mineral Leasing Act of 1920* and its amendments authorize the Secretary of the Interior to lease land for these minerals. The Bureau of Land Management has considerable discretion whether or not to lease, and whether to attach special stipulations that are recommended by the Forest Service to ensure resource protection. On a federal mineral lease, the lessee has a vested right to develop the mineral resource after the lease and associated stipulations have been issued. The Forest Service reviews, approves, and administers the surface activities on the Forest, and the BLM manages the exploration and development program.
- **Mineral Materials or Saleables.** Saleable mineral materials, or common varieties, are generally deposits of sand, clay, gravel, and stone that are used for road surfacing and building materials. The *Minerals Materials Act of 1947* states that common variety minerals on National Forest are subject to disposal by the Secretary of Agriculture, and are not subject to mining and leasing laws. The Forests have the discretion of whether and how common variety mineral materials should be developed. Use of these materials is by special use authorization.

For those acquired National Forest System lands in which the mineral rights are under federal ownership, mineral rights can be leased but mining claims cannot be staked. For those acquired lands in which the mineral rights are not under federal ownership, mineral rights can be exercised with the consent of the subsurface owner. Leasing on acquired lands is generally subject to Secretary of Agriculture rules and regulations. The *Acquired Lands Leasing Act* authorizes the Secretary of Interior to issue leases and prospecting permits for hard rock minerals on acquired lands with consent of the surface managing agency. The BLM issues leases and permits with attached special stipulations following a joint agency review and analysis of a proposal. The Forest Service makes recommendations on issuance of leases and

permits subject to sufficient bonding by the proposed operator to ensure proper protection of other natural resources, and reclamation of disturbed areas.

Public Law 167, The Surface Resources Act (July 23, 1955), recognizes vested surface rights. In these cases, the claimant manages the surface under an approved Plan of Operations.

Special legislation has determined some areas to be unsuitable for mineral production. The Salmon River and the Middle Fork and its tributaries have been closed to dredge and placer mining. Under provisions of the Mining Claim Rights Restoration Act (PL 84-359), the Forest Service may, on a case-by-case basis, request a hearing before any mining activity is permitted on a placer mining claim in a power site withdrawal.

Several State laws are specific to mining, and apply to all lands in Idaho, including National Forests. For example, The *Idaho Dredge and Placer Mining Protection Act of 1955* requires reclamation of disturbed areas and adherence to water quality standards. The *Idaho Surface Mining Act of 1971* provides measures to reclaim the lands disturbed by surface mining operations. The State of Idaho Department of Lands administers these laws with State Land Board direction. The Idaho State Department of Health and Welfare administers state water quality laws.

Recreation Resources

The *Organic Administration Act* of 1897 authorized annual permits for land occupied by ski runs as well as undeveloped portions of ski areas.

The *Occupancy Permits Act* of 1915, as amended in 1956, authorized the issuance of term permits for structures or facilities on Nation Forest System lands on up to 80 acres for up to 30 years.

The *Multiple-Use Sustained Yield Act* of 1960 supplements the purposes for which national forests were established and administered including outdoor recreation.

The *Land and Water Conservation Fund Act* of 1964 "assists in preserving, developing, and assuring accessibility to all citizens of the United States of America ... such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable ... by ... providing funds for the federal acquisition and development of certain lands and other areas." The law also provides for the collection of daily recreation use fees for each federal agency developing, administering, providing or furnishing, at federal expense, specialized outdoor recreation sites, facilities, equipment, or services.

The *Architectural Barriers Act* of 1968 states "Standards for design, construction, and alteration of buildings ... will be prescribed to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings."

The *National Trails System Act* of 1968 establishes a National Trail System containing national recreation, scenic, historic, and connecting or side trails for the purpose of providing trail recreation opportunities. It prescribes administrative and development matters and encourages the use of volunteers in the trail program. It also established provisions for agreements to carry out the purpose of the Act.

The *National Forest Ski Area Permit Act* of 1986 allows the Forest Service to issue special use permits to the private sector to construct and operate ski areas on an unlimited number of acres of National Forest System lands for a period of up to 40 years.

The *Federal Cave Resources Protection Act* of 1988 provides specific authority to protect cave resources on federal lands. The policy of this Act establishes that "... Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves."

The *Americans with Disabilities Act* of 1990 establishes additional requirements to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

Executive Order 11644 and *CFR 295.2 – 295.6* provide direction on the management of off-highway vehicles to protect resources, promote safety, and minimize conflict among users.

Executive Order 11989 requires land managing agencies to close areas to use when they determine that use causes, or will cause, considerable adverse effects on the soil, vegetation, wildlife, habitat, or cultural or historic resources.

Scenic Environment

A number of federal laws require all federal land management agencies to consider scenic and aesthetic resources in land and resource management planning, project design, project implementation, and monitoring. The more important authorities for management of the National Forest System's scenic resources lie in the following statutes:

- *The Multiple-Use Sustained Yield Act of June 12, 1960*
- *The Wilderness Act of 1964*
- *The Wild and Scenic Rivers Act of 1968*
- *The Nation Trail System Act of 1969*
- *The National Environmental Policy Act of 1969*
- *The Environmental Quality Act of 1970*
- *The Forest and Rangeland Renewable Resources Planning Act of 1974*
- *The National Forest Management Act of 1976*
- *The Surface Mining Control and Reclamation Act of 1977*

Forest Service policy and regulations are defined in the Forest Service Manual (FSM) Chapter 2300 - Recreation, Wilderness, and Related Resource Management; and Chapter 2380 - Landscape Management. The Forest Service has responded to the above legislation by developing a Landscape Management program with the objective to "manage all National Forest System lands so as to attain the highest possible visual quality commensurate with other appropriate public uses and benefits" (FSM 2380.3).

Each Regional Forester is delegated the responsibility of establishing a management system for this resource and producing visual quality objectives (FSM 2380.4). These objectives are to be determined from consideration of the physical characteristics and scenic quality of the land, as well as the principles of design and the desires and preferences of the public.

The Heritage Program and Cultural Resources

The *Antiquities Act* of 1906 protects historic or prehistoric remains or any object of antiquity on federal lands and applies to both cultural and paleontological resources.

The *National Historic Preservation Act* of 1966 (*NHPA*), as amended, protects historic and archeological properties during the planning and implementation of federal projects. The law requires the location and identification of cultural resources during the planning phase of a project, a determination of

“significance” (based on scientific archaeological value) for potentially affected resources, and provisions for mitigation of any significant sites that may be affected for any federally funded, permitted, or licensed activities on National Forests. This law also fosters the development of agency Heritage Programs that emphasize a balance between protection of historic properties and public outreach, education, and involvement for the enjoyment of American history.

The *Federal Land Policy and Management Act* of 1976 requires that public lands be managed in a manner that will protect the quality of scientific, historical, archeological, and other values. It also requires federal agencies to preserve and protect lands in their natural condition, where appropriate.

The *Archaeological Resources Protection Act* of 1979 requires each federal agency to develop a plan for inventory, survey, and site protection. It also imposes civil penalties for the unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources.

The *Native American Graves Protection and Repatriation Act* of 1990 and its 1995 implementing regulations protect American Indian burials and sacred items. It requires each federal agency to survey and inventory heritage collections for material related to ceremonial usage. Each act requires public and other agency consultations regarding potential impacts to significant sites.

The *1996 Executive Order 13007* requires federal agencies to protect and make accessible Indian sacred sites on public lands for Indian religious practitioners. This includes consultation with Indian tribes for the identification of sacred sites, and for when federal actions or policies may restrict access to or use of a ceremonial site, or may adversely affect the physical integrity of the site.

The *Uniform Rules and Regulations (16 U.S.C.G. 432-433)* coincide with the *Antiquities Act of 1906*. They give the Secretary of Agriculture jurisdiction over ruins, archaeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interests on National Forest System lands.

36 CFR 261.9 prohibits “excavating, damaging, or removing any vertebrate fossil or removing any paleontological resource for commercial purposes without a special use permit.

Tribal Rights and Interests

The basis of a tribe’s unique status stems from the tribe’s inherent sovereignty. This sovereignty is expressly recognized within the context of U.S. Constitutional provisions for federal government's powers for treaty making with other sovereign nations, including tribes. The treaty-making period between the U.S. Government and American Indian tribes ended in 1871. The federal government thereafter relied upon Agreements (signed by both houses) to legally acquire Indian lands, allow tribes to cede lands, establish reservations, provide federal recognition of tribes, and remove Indian peoples to reservations or rancherias.

A tribe’s sovereign status is also recognized and affirmed by treaties and agreements with the U.S. government; Congressional and Executive Branch recognition of the tribe; and federal court affirmation of tribal sovereignty. Tribes also have constitutions and by-laws, which formalize their governmental organization and state their relationship with the U.S. Government.

Additional sources of legal status may be found in federal statutes and Congressional Acts, which often do not distinguish between federally and non-federally recognized tribes and bands. Examples of these acts and statutes are provided below.

Laws, Executive Orders, and Policies Pertinent to Tribal Interests and Rights

The various laws, treaties, executive orders, and Forest Service policies that have established Reservations/Tribal Sovereignty and reserved on- and off-reservation rights are listed below.

FSM 1563: Tribal Governments - This Forest Service Manual outlines Forest Service responsibilities to American Indian tribes.

National Historic Preservation Act of 1966 (NHPA) (P.L. 89-665, as amended, P.L. 91-423, P.L. 94-422, P.L. 94-458 and P.L. 96-515) - This act pertains only to tangible properties (buildings, structures, sites, or objects) that are important in history and prehistory. It requires agencies to consider the effects of undertakings on properties eligible to or listed in the National Register of Historic Places by following the regulatory process specified in 36CFR800.

The portions of that act that relate specifically to coordination with Indian tribes were added in the 1992 amendments. These additions reflect the increased importance placed on tribal relations. A section of the act directs state and federal governments to assist in the establishment of preservation programs on Indian lands. These sections include:

Section 2 It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the State, local governments, Indian tribes, and private organizations and individuals to-

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program.

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190) - Federal agencies must invite Indian tribes to participate in Forest management projects and activities that may affect them.

National Forest Management Act (NFMA) of 1976 (P.L. 4-588) - Directs consultation and coordination of National Forest System planning with Indian tribes.

American Indian Religious Freedom Act of 1978 (AIRFA) (P.L.95-341 as amended, P.L. 103-344) - AIRFA states that "*...it shall be the policy of the United States to protect and preserve for American Indians their inherent right for freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to site, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites*".

Agencies must make a good faith effort to understand how Indian religious practices may come into conflict with other Forest uses and consider any adverse impacts on these practices in their decision-making practices. The consideration of intangible, religious, ceremonial, or traditional cultural values and concerns that cannot be tied to specific cultural sites/properties could be considered under AIRFA.

Archaeological Resources Protection Act of 1979 (ARPA) P.L. 96-95) - The purpose of this act is to protect irreplaceable archaeological resources on federal and Indian lands. The act and its regulations defer to American Indian tribal self-government and recognize the preservation and importance of traditional native cultures. ARPA recognizes the appropriateness of allowing tribal members a voice in

the permitting of lawful archaeological excavations that might have an impact on areas of tribal religious significance outside of formal Indian lands. It also establishes a permit process for the management of cultural sites on federal lands that provides for consultation with affected tribal governments.

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (P.L. 101-601, 25 U.S.C. 3001-3013) - NAGPRA specifies that an agency must take reasonable steps to determine whether a planned activity may result in the excavation of Native American human remains, funerary objects, and items of cultural patrimony from federal lands. It also provides for repatriation of human remains and various cultural items to Native American individuals or Tribes. NAGPRA has specific requirements for notification of and consultation with Tribes.

Interior Secretarial Order 3175 of 1992 - Establishes responsibility of all agencies to carry out trust responsibilities of the federal government and assess the impacts of their actions on Indian trust resources. Requires consultation with tribes when impacts are identified.

Religious Freedom Restoration Act of 1993 - Establishes a higher standard for justifying government actions that may impact religious liberties.

Executive Order 12866 of 1993, Regulatory Planning and Review - Enhances planning and coordination with respect to both new and existing regulations. Makes process more accessible and open to the public. Agencies shall seek views of tribal officials before imposing regulatory requirements that might affect them.

President Clinton's Memorandum to Department Heads, 1994 - Directs federal agencies to honor trust responsibilities and to consult with tribal governments on decisions and policies that may affect tribal interests

Executive Order 13007 of 1996, Indian Sacred Sites - Acknowledges the role of federal agencies to protect and preserve the religious practices and places of federally recognized tribes and enrolled tribal members. Requires federal agencies to consult with federally recognized tribes to learn of tribal concerns for sacred sites on public lands. Ensures access to religious places and avoidance of adverse effects to sacred sites in accordance with existing legislation.

Executive Order 13084 of 1998, Consultation and Coordination with Indian Tribal Governments - Provides direction regarding consultation and coordination with Indian tribes relative to fee waivers. Calls upon agencies to use a flexible policy with tribes in cases where proposed waivers are consistent with applicable federal policy objectives. It directs agencies to grant waivers in areas where the agency has the discretion to do so, when a tribal government makes a request. When a request is denied, the agency must respond to the tribe in writing with the rationale for denial.

Forest Service Natural Resource Book on American Indian and Alaska Native Relations (April 1997) provides information on government-to-government relations with the tribes, including research opportunities.

American Indian Treaties

Shoshone–Paiute Tribes - The un-ratified Bruneau and Boise Treaties, and Treaty of Ruby Valley establish various rights (or fail to extinguish various rights) pertaining to the Shoshone-Paiute Tribes.

Shoshone–Bannock Tribes - Under the Fort Bridger Treaty of 1868, the Shoshone–Bannock Tribes retain off-reservation hunting and fishing rights.

Nez Perce Tribe - Under the Nez Perce of 1855, Article 3, the Nez Perce Tribal members retain “the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed (federal) lands.”

Roads

36 *CFR* 219.11 (14-26) provides resource management requirements that cannot be met without putting a viable transportation system in place.

36 *CFR* 212 provides the principal regulations for administration of the forest development transportation system.

FSM 7700 (*Transportation System Manual*) directs the Forest Service to plan, develop, operate, and maintain forest development transportation facilities as a system that is integrated with other public and private transportation facilities while carrying out the objectives and direction established in the Forest Plan. It provides guidance in the form of objectives, policies, responsibilities, and requirements for transportation planning and for documenting system roads.

The *National Forest Roads and Trails Act* of 1964 recognizes that construction and maintenance of an adequate system of roads and trails within and near the National Forest is essential to meeting the increasing demands for timber, recreation, and other uses. It authorizes and establishes procedures related to rights-of-way, easements, construction, and agreements.

The *Surface Transportation Assistance Act* of 1978 establishes criteria for Forest highways and defines Forest roads and Forest development roads and trails.

Wilderness

Public laws that provide wilderness management direction include:

- The *Wilderness Act* of 1964 established a National Wilderness Preservation System to be administered in such a manner as to leave these areas unimpaired for future use and enjoyment as wilderness.
- The *Central Idaho Wilderness Act* of 1980 provides provided more specific management direction for a number of Idaho Wildernesses, including the Frank Church – River of No Return Wilderness on the Boise National Forest.

Forest Service policy and regulations are defined in the *Forest Service Manual (FSM)* that provide wilderness management direction include:

- *Chapter 2320 - Recreation, Wilderness, and Related Resource Management* describes wilderness management policies.
- *Chapter 2580 – Air Resource Management* describes the authority and objectives for protecting Air Quality Related Values in Class I wilderness areas.
- *FSM 2700, Special Uses Management and Forest Service Handbook 2709.11, Special Uses Handbook* provides direction related to special use permit administration, fee determination, and outfitter and guide permits.

The *Frank Church-River of No Return Wilderness Management Plan* was approved in December of 1984 and includes management direction for the entire FC-RONR Wilderness. This plan was incorporated into the Forest Plans for the six national forests administering the FC-RONR Wilderness. The management plan and forest plans were amended in July of 1994 to include terms and conditions regarding outfitter and guide operations. This plan was recently updated to reflect changes in conditions or public demand. The updated plan was approved in December 2002.

Wild and Scenic Rivers

The *National Wild and Scenic Rivers Act of 1968* provides a national policy and program to preserve and protect selected rivers, or segments of rivers, in their free-flowing condition in the National System.

The *Wild and Scenic Rivers Act, as amended December 31, 1992*, and *Forest Service Handbook 1909.12, Chapter 8*, require that rivers identified as potential Wild and Scenic Rivers be evaluated as to their eligibility, with the findings documented in the Forest Plan. Additionally, it is recommended, but not required, to complete the wild and scenic river suitability study during the Forest Plan revision process. If recommendation is deferred on those rivers identified as eligible where the Forest Service has primary responsibility, the Forest Plan must also provide interim management direction for protection of the outstanding features.

Any recommendation in the Forest Plan for a Wild and Scenic River designation is a preliminary administrative recommendation only, which will receive further review and possible modification by the Chief of the Forest Service, the Secretary of Agriculture, and the President of the United States. The Congress has reserved any final decisions to designate rivers to the National Wild and Scenic Rivers System.

Research Natural Areas

The identification and establishment of a national network of Research Natural Areas (RNAs) are Congressionally mandated in the National Forest Management Act (36 CFR Sec. 219.25; 36 CFR 251.23) and states, "Forest planning shall provide for the establishment of RNAs. Planning shall make provision for the identification of examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special and unique characteristics of scientific interest and importance...and that are needed to complete the National network of RNAs."

Social and Economic

The *National Forest Management Act (NFMA)* and its implementing regulations (36 CFR 219.11[a], 36 CFR 219.12 [e] and 36 CFR 219.12[h]), the *National Environmental Policy Act (NEPA)* and its implementing regulations (40 CFR 1502.14 through 40 CFR 1502.16), *Forest Service Manual 1970*, and *Forest Service Handbook 1909.17* require the evaluation of social and economic effects of alternatives during the Forest Planning process.

In addition to the laws and regulations listed above, the Forest Plan revision socio-economic overview is shaped by evolving thinking about the role of socio-economic assessment in ecosystem management and forest planning. The socio-economic overview is particularly framed by two recent works:

- *Guidelines for Conducting Social Assessments Within a Human Dimensions Framework*, developed by National Forest social scientists and researchers, and university social scientists (Bright et al, 1998). The Guidelines report was developed to improve social science information and applications in forest planning and assessments.
- *Sustaining the People's Land: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century*, released by an interdisciplinary Committee of Scientists in March, 1999 (Committee of Scientists 1999). Secretary of Agriculture Dan Glickman convened the Committee in 1997 to review and evaluate the Forest Service planning process and to identify changes that might be needed to planning regulations.

The Committee's report included several recommendations about social assessments. The report noted that a good assessment will examine quantitative demographic, economic, and social information, and it will include a participatory process that engages communities in a learning process about themselves (Committee of Scientists 1999, p. 47).

The Southwest Idaho Ecogroup's socio-economic overview addresses the Human Dimensions Framework and many of the recommendations included in the Committee of Scientists report. The overview includes important demographic, economic, and social information, both quantitative and qualitative, in the Boise National Forest Zone of Influence. This information was gathered from a variety of sources, including but not limited to Interior Columbia Basin Ecosystem Management Project (ICBEMP) reports, Idaho Department of Commerce data, University of Idaho and Boise State University studies, and the 1999 "Affected Economic Environment and Baseline for the No-Action Alternative," developed by Economic Modeling Specialists, Inc. for the Ecogroup's Forest Plan Revision process. Personal interviews, community self-assessment surveys, and public comments on the Forest Plan revision were also critical tools, since they provided key insights from those potentially most interested in and affected by this planning process.

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