



August 22, 2019

NEPA Services Group  
c/o Amy Barker  
USDA Forest Service  
125 South State Street, Suite 1705  
Salt Lake City, UT 84138.

***RE: Comments on the U.S. Forest Service's Proposed Rule to revise its National Environmental Policy Act (NEPA) regulations. (Docket Number FS-2019-0010***

Please accept the follow comments from the Arizona Council of Trout Unlimited (AZTU) regarding the United States Forest Service's proposed rule to revise its National Environmental Policy Act (NEPA) procedures.

Trout Unlimited (TU) is a national conservation organization with more than 300,000 members and supporters who share in a mission to conserve, protect and restore North America's coldwater fisheries and their watersheds. The Arizona Council of Trout Unlimited represents more than 1,700 TU members in Arizona.

Public lands are incredibly valuable to AZTU and our members. Not only do they offer world-class angling opportunities, but seventy percent of the remaining habitat for native trout in the West is found on public lands.

The American Public owns all federal public lands, including National Parks, National forests, Wilderness Areas, Wild and Scenic rivers, and wildlife preserves. Every American has a personal stake and a guaranteed say in how those places are cared for.

NEPA is one of America's bedrock environmental laws, providing meaningful opportunities for the public to be involved in the management of their public lands and ensuring that agency decisions are fully informed and grounded in the best available scientific information. AZTU supports efforts to increase the efficiency of decision-making and environmental review. However, efficiency should not come at the expense of public participation, transparency, or rigorous scientific analysis that ensures fully informed decisions.

The proposed rule is designed to "increase the pace and scale of work accomplished on the ground" by "completing project decision making in a timelier manner." The proposal, however, is much broader than its stated goals, exempting a wide range of forest management activities from environmental analysis or public review by way of new and expanded categorical exclusions (CE) and other mechanisms that fundamentally undermine NEPA's principles of government transparency, accountability, public involvement, and science-based decision-making. We strongly urge that any revisions of the Forest Service's NEPA requirements adhere to these principles.

Following are the AZTU comments on the proposed NEPA Revisions:

### **Categorical Exclusions: Trail Conversion and Infrastructure; Road Conversion**

“Wildcat” roads and trails are made by off-road riders without any concern for consequences, such as stream bank erosion where the road crosses a stream, habitat destruction where the road crosses an area with sensitive or protected plants or animals, and more. Bringing these roads into the existing system would imply acceptance of the illegal roads, and an implied permission to continue the practice. Furthermore, bringing these roads into the existing road system will increase the cost of maintenance, and the USFS cannot keep up with maintenance and upkeep of the road system now in place.

AZTU urges removal of the provision to incorporate existing illegal roads into the USFS road system without any analysis of the potential environmental impacts of said roads.

### **Categorical Exclusions for Certain Restoration Projects**

This CE allows for called “ecosystem restoration and/or resilience activities” on up to 7,300 acres of Forest Service lands. IF timber harvest activities are included, they cannot exceed 4,200 of the 7,300 acres. This CE begs the question: Is the CE primarily for restoration projects, with a timber harvest, of up to 4,200 acres, as a part of the restoration? Or, is this primarily a CE to allow timber harvest of up to 4,200 acres, with a restoration project thrown in so the timber harvest would qualify as a CE? The “restoration projects” listed are more outcomes than activities. What activities would be used to accomplish “hazardous fuel reduction” or “stream restoration”. What is the most needed or beneficial restoration in the 7,300-acre area for the CE? Who decides which restoration project or projects are selected? How would a successful restoration be measured?

AZTU urges that any CE for restoration must truly be restoration first, not an adjunct to a timber harvest, and that the CE must allow for public scoping and a comment period before the CE is started.

### **Determination of NEPA Adequacy (DNA)**

This tool has the potential for time and cost savings but should not be a substitute for NEPA. While it is helpful to have a substantially similar project as a template, public involvement – including scoping, consultation with other Governmental and non-Governmental stakeholders and partner agencies – is necessary to ensure that the DNA is applicable. The deciding official should also explain why the existing analysis is applicable and include supporting documentation.

AZTU urges that DNA should augment, not substitute for, the proper analysis of a proposed project and that scoping and public involvement be required.

### **Extraordinary Circumstances Determination**

An important check to ensure that CE’s are properly used and do not unwittingly result in significant impacts to important resources is the extraordinary circumstances review. The proposed rule rightly notes that it is not just the presence of a resource condition that creates an extraordinary circumstance (thereby preventing the use of a CE) it is the cause and effect relationship.

However, the proposed rule would greatly increase the threshold in which a cause and effect relationship triggers an extraordinary circumstance. Under the 2008 regulations, a CE may not

be used if, based on scoping, there is uncertainty whether the proposed action may have a significant effect on the environment.

Under the proposal, an extraordinary circumstance only exists when the responsible official determines that there is “a likelihood of substantial adverse effects”, meaning that uncertainty will no longer require an environmental analysis. The resulting quandary is that an environmental analysis would clear up uncertainty as to the adverse effects of a proposed action, but this analysis would not be required. This would set the stage for CEs to be used even when substantial questions remain, leading to decisions that are not fully informed.

AZTU urges keeping the existing language in the NEPA that states, “If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.”

### **Scoping**

The proposed rule would substantially curtail public scoping from being required “for all Forest Service proposed actions, including those that would appear to be categorically excluded”, to “scoping is required for all Forest Service environmental impact statements”, with scoping optional for other actions, such as EAs and categorical exclusions. While there is a need to provide deciding officials with flexibility and that it is important to right-size the public process, scoping is a fundamental component of any public process. Providing for early and often engagement with the public leads to transparency, builds trust and provides the agency with valuable input that can lead to better-informed decisions.

While we appreciate that Schedule of Proposed Actions (SOPA) will continue to be used to help inform the public, SOPA are not the equivalent of scoping notices and do not provide the level of detail necessary for the public to provide the Agency with constructive input. By continuing to require scoping for all proposed actions, the Forest Service will ensure that public involvement is consistent across the Agency and maintain a high level of coordination and collaboration with the public.

Lastly, note that eliminating scoping requirements for certain actions that have no other public comment requirements, such as categorical exclusions and determinations of NEPA adequacy would mean that these actions would likely not be subject to the project-level pre-decisional administrative review process pursuant to 36 CFR part 218. This is concerning and could very well lead to more litigation, not less.

AZTU urges keeping the existing requirement, that public scoping be required for all Forest Service proposed actions, including those that would appear to be categorically excluded.

### **Collaboration**

Collaboration is one of the most important tools for fostering efficient land management. When projects are conceived, developed and implement in a collaborative manner, the result is not only increased efficiency, but also more durable decisions less prone to legal challenges. Strengthening opportunities for collaboration should be a primary objective of the revised regulations.

On the USFS web site, at “What We Believe”, is the following statement: The mission (of the USFS) is to achieve quality land management under the sustainable multiple-use management

*Our mission is to conserve, protect, and restore coldwater fisheries and their watersheds*

concept to meet the needs of the people. It includes (among many other bullet items)

“Listening to people and responding to their diverse needs in making decisions.”

And, under “Guiding Principles”

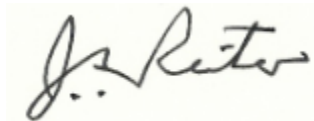
“We form partnerships to achieve shared goals”, and “We promote grassroots participation in our decisions and activities.”

The need for public comment, a means of sharing important concerns about aspects of any significant plans that require a NEPA, and a way to record and document those concerns is too important to be shortchanged by a reduction in compliance requirements.

AZTU understands your perception of the apparent reduction in time that streamlining the NEPA process would deliver. AZTU strongly believes, however that this is shortsighted and minimizes the importance and value of the NEPA process. The USFS and the public at-large are frustrated with the amount of time it seems to take regarding USFS actions to protect and restore our forests and watersheds to healthy conditions. AZTU believes that there are ways to modify internal process of the USFS such as, but not limited to, minimizing movement of key leadership personnel managing these projects that requires new leaders to spend several months or years becoming acquainted with the complexities of the projects. Efforts like this would restore greater confidence in the management capabilities of the USFS by the public, and not jeopardize the protections afforded by the current NEPA compliance processes.

AZTU also refers you to the comments submitted by Trout Unlimited (National Organization) and the Arizona Game and Fish Department. AZTU fully shares and supports their comments and concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Reiter", is placed on a light yellow rectangular background.

Steve Reiter, Chairman  
Arizona Council of Trout Unlimited