

Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy

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EXECUTIVE SUMMARY

A variety of groups and individuals — both within and outside the Forest Service — have identified problems and recommended solutions which would change the way the agency functions and our national forests are managed. All of these proposals can be characterized as recommendations for "institutional change." This document is a survey of these change proposals.

The document begins with a very brief overview of the creation of the modern Forest Service and the laws that govern the agency's management of the national forests. The introduction notes the creation of the Forest Service and final transfer of the forest reserves back to the Department of Agriculture in 1905, and the passage of both the Multiple-Use, Sustained-Yield Act of 1960 and the National Forest Management Act of 1976. The introduction concludes with some of the controversies that have set the stage for the multitude of proposals for changing national forest policy and the agency that administers it.

Following this introduction, Parts 2 and 3 provide a survey of a wide range of proposals by a variety of proponents. Part 2 addresses proposals for fundamental changes in the federal public lands and their management; Part 3 proposals address change in the overall framework and strategy within which the Forest Service pursues its mission and operates at the local level.

Part 2 proposals speak to the core organizing concepts embodied by the National Forest System. At this level, the report considers proposals regarding the formal dismantling of the national system through full or partial divestment of public lands and proposals that consider reorientation of the mission of the Forest Service. Following an introduction to the federal estate in Section 2.1, divestment proposals discussed in Section 2.2 range from local divestment of a particular national forest (the Tongass) to partial divestment schemes which would preserve unique lands within the national system, to total divestment of public lands to state or private interests. Section 2.3 balances these proposals with recommendations for increasing or consolidating the federal estate. Section 2.3.1 focuses on land acquisitions through various proposals involving the Land and Water Conservation Fund. Section 2.3.2 discusses proposals for both full and partial consolidation of land management by the Forest Service and Bureau of Land Management.

Section 2.4 turns to proposals that directly address the mission of the Forest Service. The section begins with an overview of the legal structure within which the Forest Service operates. Section 2.4.1 sets the stage for the survey of reform proposals with an array of interpretations of the National Forest Management Act and the recognition that there is lack of agreement on how to resolve conflicts among competing uses of the forests. Proposals in the following sections range from advocating a custodial approach to national forest management with severe restrictions on the multiple-use, sustained yield mandate (Section 2.4.2.1), to proposals that define a mission for the Forest Service in terms of ecological, economic and social sustainability (Section 2.4.2.2), and proposals that recommend allowing the free market to direct national forest management (Section 2.4.2.3). The final discussion of the Forest Service mission (Section 2.4.3) addresses whether mechanisms for implementation of a mission shift would require Congressional action or fit within existing mandates.

Proposals outlined in Part 3 address changes to the Forest Service's overall management framework and strategy and to its management of local forests. Section 3.1 provides a survey of budget and finance related reform recommendations. The reforms range from suggestions for collection of fees for various forest uses (Section 3.1.1); elimination of subsidies and management through independent public forest corporations (Section 3.1.2); and forcing substantive changes in forest management policy through changes in forest management financing (Section 3.1.3); to reform of local compensation mechanisms (Section 3.1.4). The final sections on budget and finance proposals address various recommendations for improving Forest Service financial accountability (Section 3.1.5) and for integrating the Forest Service budget with its planning and management mandates (Section 3.1.6).

Section 3.2, Framework of Planning and Assessment, begins with a short introduction to the Forest Service planning and assessment process. The section continues with recommendations of the Committee of Scientists for improving the process (Section 3.2.1), followed by critiques and recommendations by the General Accounting Office and the Office of Technology Assessment, Congress and private interest groups (Section 3.2.2).

In a similar vein, Section 3.3 discusses proposals which are premised on a Forest Service mission focused on ecosystem health and integrity. Support for adaptive management as a means of attaining ecosystem health is recounted in Section 3.3.1; Section 3.3.2 outlines criticisms and proposals dealing with monitoring and assessment -- the core of any adaptive management program.

Section 3.4, Empowerment and Control With Federal Ownership, compiles proposals for reform, including the institution of pilot projects, for changing the management of national forests which remain in the federal domain. Proposals range from specific recommendations for managing national forests as corporations (Section 3.4.1) or trusts (Section 3.4.2), to proposals calling for increased community and stakeholder involvement in management and planning (Section 3.4.3). Proposals discussed in the latter section range from improving the implementation of the National Environmental Policy Act (Section 3.4.3.1) to pilot projects utilizing a "collaborative board" and legislation proposing establishment of local committees corresponding to federal land planning units (Section 3.4.3.2).

Part 4 concludes the report with a brief consideration of the consequences of the major groups of proposals: Changes in the Federal Estate (Section 4.1), Budgetary Reform (Section 4.2), Collaborative Planning and Adaptive Management (Section 4.3), and Mission and Ecosystem Management (Section 4.4). The conclusion recognizes the tensions that underlie the implementation of many of the proposals and notes that without careful analysis of and reconciliation of the competing consequences, any institutional changes will be ultimately unsatisfying.

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TABLE OF ACRONYMS

AF&PA	Association
AMA	Adaptive Management Area
BLM	Bureau of Land Management
BRPI	First Blue Ribbon Panel
BRPII	Second Blue Ribbon Panel
CEI	Competitive Enterprise Institute
CEQ	Council on Environmental Quality
CAA	Clean Air Act
CWA	Clean Water Act
DFC	Desired Future Condition
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FACA	Federal Advisory Committee Act
FEMAT	Forest Ecosystem Management Assessment Team
FIA	Forest Inventory Analysis Program
FFIS	Foundation Financial Information System
FLPMA	Federal Land Planning and Management Act
FORPLAN	Forest Planning Assessment Software
GAO	General Accounting Office
GIS	Geographic Information System
GPRA	Governmental Performance and Results Act
LWCF	Land and Water Conservation Fund
LRMP	Land and Resource Management Plan
MIS	Management Indicator Species
MUSYA	Multiple Use, Sustained Yield Act of 1960
NAPA	National Academy of Public Administration
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act of 1976
NRCS	Natural Resources Conservation Service
OIG	Office of Inspector General
OTA	United States Office of Technology and Assessment
PERC	Political Economy Research Center
PILT	Payment in Lieu of Taxes Act of 1976
PFC	Public Forest Corporations
QLG	Quincy Library Group
RPA	Forest and Rangeland Renewable Resources Act of 1974
SAF	Society of American Foresters
SUWA	Southern Utah Wilderness Alliance
USDA	United States Department of Agriculture
USFS	United States Forest Service

1. INTRODUCTION

1.1 Institutional Change Project

Nearly everyone — including the U.S. Forest Service (Forest Service) — thinks that the agency could or should do a better job managing the national forests. Unfortunately there is a wide divergence of views on what constitutes better management and how and by whom it might be attained. As one step toward that end, a variety of groups and individuals — both within and outside the Forest Service — have identified problems and recommended solutions which would change the way the agency functions and our national forest lands are managed. Recommendations include new planning approaches being proposed by the Committee of Scientists; pilot projects testing changes in Forest Service financing, governance and planning being proposed by “think tanks” such as the Forest Options Group; congressionally approved pilot projects testing forest stewardship innovations initiated by the Forest Service; and changes in the financial relationships between the Forest Service and forest dependent communities.

All of these proposals can be characterized as recommendations for “institutional change.” If implemented, some of these reforms would involve changes in the structure of the Forest Service, with attendant changes in the law and policy governing the agency. Others may not require changes in law, but would require adjustments, perhaps as fundamental, in the relationships within the Forest Service and between and among the Forest Service and entities such as Congress, environmental groups, forest-dependent communities, the timber industry and others.

While many organizations advocate institutional change, and occasionally critique the proposals of others, there is no synthesis — a survey of reform proposals — or comprehensive analysis of the multitude of recommendations to guide a productive dialogue. This document is a first step in developing that dialogue.

1.2 The Changing Forest Service

The U.S. Forest Service was born of the conflict between Congress and the president over how the nation’s forests should be managed. In 1876, the U.S. Department of Agriculture established a forestry division to promote the development of timber resources. The General Revision Act of 1891 authorized the president to withdraw lands that had been open to homesteading and to designate them as forest reserves.¹ Democratic President Grover Cleveland, in an act of defiance, as Republican William McKinley was about to assume office in 1897, doubled the size of the forest reserves to 40 million acres. Congress quickly responded with the Organic Administration Act of 1897, which placed responsibility for the forest reserves within the Department of Interior, and provided that, “no national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable

¹ 26 Stat. 1103 (codified as amended at 16 U.S.C.A. § 471; repealed 1976). See generally, George C. Coggins, Charles F. Wilkinson and John D. Leshy, Federal Public Land and Resources Law, 106-107 (1993).

conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.”²

In 1905, Congress reversed itself and transferred the forest reserves back to the Department of Agriculture, created the Forest Service to manage the forests, and gave the Forest Service a relatively free hand. President Theodore Roosevelt consolidated some 65 million acres of forest reserves into the National Forest System. Gifford Pinchot, the first chief of the Forest Service, envisioned national forests as tree farms, managed for maximum sustainable yield. Subsequent Forest Service employees, such as Aldo Leopold and Robert Marshall, helped direct the agency toward forest preservation. During the 1930s, the agency designated 13 million acres as wilderness areas within which logging was banned. Following World War II, the demand for timber exploded, and timber sales from national forests increased dramatically throughout the 1940s and 1950s.

The Multiple-Use, Sustained-Yield Act of 1960 (MUSYA) ordered the Secretary of Agriculture to administer the resources of the national forests for "multiple use and sustained yield of the several products and services obtained therefrom." Multiple use was defined as management that "will best meet the needs of the American people...with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output".³ Sustained yield meant "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."⁴

By the 1970s, evidence of environmental damage to the national forests prompted Congress enact the National Forest Management Act of 1976 (NFMA). NFMA amended the planning process to restrict clear-cutting, limit logging on fragile lands,⁵ give more protection to nontimber resources, emphasize multiple use, and maintain a diversity of plants and animals.⁶

NFMA was the first federal law to address biodiversity, as it required the Forest Service to promote biodiversity in forests when establishing plans, even if that limits timber sales. The agency, based on recommendations from independent scientists, was to maintain "viable populations" of existing vertebrate species and provide for "diversity of plant and animal communities . . . in order to meet over-all multiple use objectives . . . to the degree practicable."⁷ NFMA also required the Forest Service to conduct an assessment of public and private renewable resources in national forests every ten years, develop long-range plans for the Forest Service every five years, and create Land and Resource Management Plans for each forest. Other federal

² Organic Administration Act of 1997, 16 U.S.C. § 475 (1999).

³ Multiple-Use, Sustainable-Yield Act of 1960 [hereinafter referred to as MUSYA], 16 U.S.C. § 531(a) (1999).

⁴ MUSYA, 16 U.S.C. § 531(b) (1999).

⁵ National Forest Management Act of 1976 [hereinafter referred to as NFMA], 16 U.S.C. § 1604(k) (1999).

⁶ NFMA, 16 U.S.C. § 1604 (1999).

⁷ NFMA, 16 U.S.C. § 1604(g)(3)(B) (1999). The Forest Service regulation implementing this provision requires forest managers "to maintain viable populations of existing native and desired non-native vertebrate species in the planning area." 36 C.F.R. § 219.19 (1999).

laws, such as the National Environmental Policy Act (NEPA)⁸, the Endangered Species Act (ESA), the Clean Air Act (CAA) and the Clean Water Act (CWA), placed additional constraints on federal land managers.

The goals of the NFMA were largely unrealized during the 1980s as the Forest Service resisted making changes in timber policy. Timber sales increased, peaking at 12.7 billion board feet of timber in 1987, 40 percent of which came from the Pacific Northwest. Forest plans developed in the 1980s called for a doubling of timber production in both Rocky Mountain and Eastern national forests and proposed the construction of more than 100,000 miles of new logging roads potentially opening millions of acres of previously inaccessible forests to logging and other development.

Since the mid 1980s, virtually every aspect of forest service policy has been the subject of criticism.⁹ Below cost timber sales skew prices and resultant decisions about consumption, recycling, and alternative uses of forests.¹⁰ Forest plans often lack complete information about forest resources, minerals, and wildlife even though NFMA requires the inclusion of such information. Values, such as wilderness and wildlife, admittedly difficult to quantify, are routinely ignored. Decisions under the Endangered Species Act require data about species that is often lacking. Studies concerning the cumulative environmental effects of management action are inadequate, making compliance with NEPA problematic. These and other criticisms have become increasingly common.

Forest Service management decisions have been challenged in court as being inconsistent with forest plan provisions, but such challenges are usually rejected by federal judges, who defer to Forest Service judgment and expertise.¹¹ Federal courts have generally given the Forest Service discretion to balance the relevant factors when signing timber contracts and have deferred to agency expertise on harvesting methods, protection of old growth forests, and fostering biodiversity.¹² They have authorized the agency to use cost-benefit analysis in determining which lands should be logged to achieve forest plan goals.¹³ Below-cost timber sales have been judged permissible, since the Forest Service can include non-timber benefits such as access to recreation that come from the construction of logging roads.¹⁴ Occasionally, federal courts invalidate Forest

⁸ National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4361 (1999). *Infra* section 3.4.3.1 of this report.

⁹ For a review and critique of forest service policy and the National Forest Management Act, see David H. Getches, Speech at the Natural Resources Law Center's Conference, *The National Forest Management Act in a Changing Society 1976-1996: How Well Has it Worked in the Past Twenty Years? How Will it Work in the 21st Century?* University of Colorado School of Law (Sept. 16, 1996) (transcript available through the *Natural Resources Law Center*, Campus Box 401, University of Colorado School of Law, Boulder, Colorado 80309).

¹⁰ G. Tyler Miller, Jr., Living in the Environment 620-21 (1996).

¹¹ See Sierra Club v. Robertson, 845 F. Supp. 485 (S.D. Ohio 1994); Sierra Club v. Marita (Chequamegon), 843 F.Supp. 1526 (E.D. Wis. 1994), affirmed, 46 F.3d 606 (7th Cir. 1995).

¹² See Sierra Club v. Espy, 38 F.3d 792 (5th Cir. 1994).

¹³ Sierra Club v. Robertson, 845 F.Supp. 485 (S.D. Ohio 1994).

¹⁴ Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985).

Service decisions, but these decisions typically deal with threatened and endangered species.¹⁵ Forest service timber output declined to one-fourth of the 1980 levels as a result of court rulings that required more protection of wildlife.

In 1993, Jack Ward Thomas, a biologist, became the first non-silviculturalist to head the Forest Service. Many hoped that he would be able to broaden the perspective of the agency beyond its traditional timber harvesting emphasis. His tenure was rocky as he clashed with the timber industry, environmentalists, Western members of Congress, and other members of the Clinton administration. Finally, in October 1996, he resigned. In announcing his resignation, Thomas stated that his agency was "somewhat confused" and he hoped that "after the election there will be time for everyone to sit down and talk about giving the Forest Service a clear mission."¹⁶ The new chief of the Forest Service, Mike Dombeck, has actively engaged in the task of changing the agency's emphasis. In 1998, he proposed a limited, 18-month moratorium on road building in most of the national forests. Dombeck also revitalized the 1897 Organic Act's emphasis on forest health and watershed maintenance and restoration as high priority management principles.¹⁷ In October of 1999, after much study and expert advice, the Forest Service proposed new regulations to guide the planning process. The regulations would establish ecological sustainability as the overriding goal for the management of the national forests.¹⁸

As it had done a century earlier, Congress responded to these Executive Branch initiatives with its own ideas about how to manage national forests. A number of bills were introduced in 1999, including proposals to reform the national forest planning process and to ensure sustainable management of the nation's forests (S. 1320), adjust the payments the Federal government gives to counties in which national forests are located (H.R. 2389), alter the management of forests in the Northwest that are home to the spotted owl (H.R. 3089), prohibit commercial logging on federal public lands (H.R. 1396), and abolish the Forest Service's recreational fee pilot project and increase the fees charged to logging companies (H.R. 2295).

The century-long debate over how to manage our national forests will probably continue unabated well into the future.¹⁹ This report catalogues a wide range of the major proposals introduced by the end of 1999 for reforming Forest Service policy and changing the ways in which we manage national forest lands. The proposals considered are organized into two broad categories:

¹⁵ H. Michael Anderson, *Reforming National-Forest Policy*, *Issues in Science and Technology* 40, 41 (Winter 1993-94).

¹⁶ Associated Press, *After a Rocky Tenure, Chief of Forest Service to Resign*, *N.Y. Times*, October 16, 1996, at A16.

¹⁷ B.J. Bergman, *Change vs. Chainsaws*, *Sierra*, July/August 1998, at 18.

¹⁸ See National Forest System Land and Resource Management Planning; Proposed Rule, *Federal Register*, Vol. 64, No. 192, pp. 54073-54112 (Oct. 5, 1999) [hereinafter USFS Proposed Rule]. Also available at <<http://www.fs.fed.us/forum.nepa.rule>>.

¹⁹ Perry R. Hagenstein, Speech at the Natural Resources Law Center's Conference, *The National Forest Management Act in a Changing Society 1976-1996: How Well Has it Worked in the Past Twenty Years? How Will it Work in the 21st Century?* University of Colorado School of Law (Sept. 16, 1996) (transcript available through the *Natural Resources Law Center*).

- (1) The National Forest System — proposals that speak to the core of the National Forest System, including federal ownership of the land and the Forest Service mission; and
- (2) Management and Planning Reform — proposals that would change the overall framework and strategy within which the Forest Service pursues its broad mission objectives as well as those pertaining to planning, management and resource use within local components of the National Forest System.

2. THE NATIONAL FOREST SYSTEM

The proposals discussed in this section speak to the core organizing concepts embodied by the National Forest System. Of most significance at this level of analysis are proposals that consider the formal dismantling of the national system through divestment and proposals to modify the overall purposes for which the lands have been retained.

2.1 The Federal Estate

Acquisition of land by the United States has a history as long as that of the nation itself. The nation expanded westward by means of purchases, conquest, and treaties with the Indian Tribes, England, France, Spain, Russia, and Mexico.²⁰ The control of these newly acquired lands was vested in Congress by the Property Clause of the Constitution.²¹ In the mid-nineteenth century, Congress embarked on a policy of disposal of the public domain. To this end, it enacted laws which granted land to settlers who could comply with a variety of patenting requirements.²² The purpose of this policy was to promote the settlement of the vast western federal land holdings.

Disposal of the public domain continued at a rapid pace throughout most of the 19th Century, with large portions of the public domain being transferred to the states and patented to private interests. Upon their admission to the union, states received grants of public land to be held in trust to finance public education. Private individuals settled and acquired fee title to public lands through settlement acts including the 1862 Homestead Act and the 1877 Desert Lands Act.²³ Most of the public land transferred to private ownership, however, was granted to the railroads in order to encourage westward expansion of the railroad system.²⁴

²⁰ For a more complete discussion of the acquisition of the public domain, see Douglas Kenney, Values of the Federal Public Lands, (Natural Resources Law Center) (1998).

²¹ U.S. Const. Art IV, §3. “Congress shall have Power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States”. *Id.*

²² Examples of settlement laws include: The 1862 Homestead Act, 43 U.S.C. §§ 161-284; repealed 1976 (1999) and The 1877 Desert Lands Act, 43 U.S.C. §§ 321-339 (1999).

²³ *Id.*

²⁴ Samuel T. Dana & Sally K. Fairfax, Forest & Range Policy 36-38 (1980).

Toward the end of the 19th Century, the federal government shifted away from the policy of land disposal and toward one of retention of public lands in order to exercise control over their natural resources. The policy of retention is evidenced by the creation of Yellowstone as the world's first national park in 1872 and the withdrawals of forest land from entry in 1891.²⁵ Executive withdrawals of land for forest reserves continued, and the 1897 Organic Act outlined the purposes for which these national forests were being established — “to improve and protect the forest within its boundaries, or for the purpose of securing favorable water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.”²⁶ By 1905, the National Forest System encompassed almost 150 million acres, and the United States Forest Service was created to direct its management.²⁷ Today the National Forest System comprises approximately 191 million acres.²⁸

The establishment of a large system of national forests, as well as the vast size of the other federal land holdings, has evoked strong sentiments in certain segments of society. Many westerners, who are dependent on the land, decry the amount of land controlled by the federal government and believe that greater benefits from those federal lands would be realized if they were owned and controlled locally. These feelings underlay the Sagebrush Rebellion, a relatively unsuccessful western movement to localize both ownership and control of the federal lands, while retaining the benefits of federal land use subsidies.

Strong sentiments also run counter to those expressed by the Sagebrush Rebels. Many argue that the federal government should continue to own and manage the federal lands; others call for a greater degree of preservation of the federal estate.²⁹ The latter argue that, despite some difficulties, the federal government is better suited to manage the large land base of the current federal estate than are the states.³⁰ In part, these advocates claim that the federal government should retain ownership of the public lands because they play an important role in the nation's heritage and are a key to its future.³¹ For example, 65 percent of the delegates to the Seventh American Forest Congress (Forest Congress) concluded that : “All federal public lands should be maintained for present and future generations and managed in accordance with national laws...”³²

²⁵ See 30 U.S.C.A §§ 21-22 (West 1999) and 16 U.S.C. § 471 (1999), respectively.

²⁶ 16 U.S.C. § 475 (1999).

²⁷ Charles F. Wilkinson, Crossing the Next Meridian 126 (1992).

²⁸ *Id.* at 119.

²⁹ *America's National Forests in the 21st Century: The Wilderness Society's Vision* at 10 [hereinafter The Wilderness Society]. Available at <<http://www.tws.org/standbylands/forests/specialreports.htm>>.

³⁰ *Id.*

³¹ Charles F. Wilkinson, *The Public Lands and the National Heritage*, 3 *Hastings W.-N.W. J. Envtl. L. & Pol'y* 225 (Winter 1996).

³² William R. Bentley (Executive Director) and William D. Langbein (editor), *Final Report*, Seventh American Forest Congress. Revised Principle 12 at 9. February 20-24, 1996, Washington, D.C. [hereinafter Forest Congress]. A group of citizens from across the political spectrum gathered at the Seventh American Forest Congress to discuss the future of America's forests. The group of 1,100 participants included conservation groups, land owners, citizens affected by forest policies, corporations, foundations, and students. They met for four days and from roundtable discussions produced 13 final vision elements and 21 revised principles representing “a common vision” for forests “and a set of principles to achieve that vision.” An additional 39 draft principles were

The differences in opinion on how the federal estate should be managed has led to a diverse array of proposals from advocates of both sides of the debate.

2.2 Divestment of the Federal Estate

Generally, proponents of divestment propose to transfer all or part of the federal estate to the states or private interests. They generally believe that localized ownership and management is more beneficial for both the land and the resource users. This philosophy is exemplified by the Sagebrush Rebellion, which was based upon the belief that local control and management would produce greater benefits for the resource users of the federal lands. The Sagebrush Rebels argued that the Equal Footing Doctrine prohibits the federal government from owning property. In accordance with this belief, several western state and local governments passed statutes and ordinances claiming the federal land.³³ While the Sagebrush Rebellion was largely unsuccessful, its ideas have not faded away, and many westerners still support local ownership — or at least control — of the federal domain.³⁴

In addition to the calls for divestment made by the Sagebrush Rebels, there have been proposals in Congress to transfer federal lands to the states. One such recent proposal is the Tongass Transfer and Transition Act,³⁵ which would allow the state of Alaska to take over the 17 million acre Tongass National Forest. The bill would also grant Alaska all other Forest Service property in the area as well as gross timber receipts from the year before title is transferred.³⁶ Much of the support for such proposals for transfer of federal land to the states comes from those who believe that, after they receive title to the lands, the states will sell those lands to private interests.³⁷

A private research group, the Competitive Enterprise Institute (CEI) has proposed that, in keeping with America's tradition of private property ownership, there should be a complete divestment of the federal estate to private interests or to the states.³⁸ The CEI proposal is also based on the belief that federal land management is fiscally unsound and environmentally damaging. CEI recommends the creation of a commission to inventory all federal lands, evaluate

created; however, these principles were not fully revised and voted on.

³³ See R. McGregor Cawley, Federal Land, Western Anger: The Sagebrush Rebellion and Environmental Politics (1993).

³⁴ See Charles McCoy, *Catron County, NM, Leads a Nasty Revolt Over Eco-Protection*, Wall St. J., Jan. 3, 1995, at 1, which discusses the “county supremacy” movement, of which Catron County was a leader. The county asserted supremacy by passing ordinances intended to supersede federal law, and claimed that federal ownership of land within the county violated the treaty of Guadalupe Hidalgo. The basis of this “movement” was local discontent with federal management policies of grazing land involving endangered species concerns.

³⁵ H.R. 2413 (104th Congress).

³⁶ Randal O’Toole, *Should Congress Transfer Federal Lands to the States?*, Cato Policy Analysis No. 276, at 3. Available at <www.cato.org/pubs/pas/pa-276.html>.

³⁷ *Id.* at 4.

³⁸ Competitive Enterprise Institute, “Environmental Briefing Book- Issue Brief: Federal Lands” [hereinafter Competitive Enterprise Institute]. Available at <www.cei.org/EBBReader.asp?ID=732>.

what uses are appropriate for each land area, and dispose of the lands accordingly. Lands which are primarily valuable for resource development would be transferred to private ownership, where the lands would be managed for a profit.³⁹

Terry Anderson and coauthors from the Political Economy Research Center (PERC) offer a blueprint disposing of the public lands by auction.⁴⁰ Under their proposal:

Land would be auctioned not for dollars but for public land share certificates (analogous to no par value stock certificates) distributed equally to all Americans. Those certificates could be freely transferred at any time during the divestiture period and would not expire until after the final auction. Land would be partitioned into tracts or primary units, and corresponding to each tract would be a set of distinct, separable, elemental deed rights. Any individual with a documented claim to rights defined by those deeds, however, would be assigned the appropriate deed or deeds. Once divested, tract deed rights would be freely transferable.⁴¹

According to PERC, four criteria should guide public land divestment reform efforts: “land should be allocated to the highest-valued use; transaction costs should be kept to a minimum; there must be broad participation in the divestiture process; and “squatters’ rights” should be protected.”⁴²

Other divestment proposals are less aggressive. Some would even allow the federal government to retain ownership of some environmentally sensitive areas. Alexander Annett in a Heritage Foundation proposal, “The Federal Government’s Poor Management of America’s Land Resources,” advocates a partial divestment of the federal estate.⁴³ The basis of this proposal is that the federal government should privatize or devolve to the states ownership of land that does not meet certain criteria for federal ownership.⁴⁴ This partial divestment of the federal lands would leave in federal control “only public land possessing unique historic, recreational, or biological qualities.”⁴⁵ The purposes of partial divestment proposals are similar to those of complete divestment — to encourage land management at a local level, which is perceived to be more efficient and financially responsible.

In criticizing federal management, the Heritage Foundation report focused on such problems as the backlog of maintenance needs on public lands, estimated by the General Accounting Office to be about \$12 billion, and the overwhelming task facing federal land agencies of trying

³⁹ *Id.* at 1.

⁴⁰ Terry L. Anderson, Vernon L. Smith and Emily Simmons, “How and Why to Privatize Federal Lands”, Cato Policy Analysis No. 363. Available at <<http://www.cato.org/pubs/pas/pa-363es.html>>.

⁴¹ *Id.* at 1.

⁴² *Id.*

⁴³ Alexander F. Annett, “The Federal Government’s Poor Management of America’s Land Resources,” The Heritage Foundation Backgrounder No. 1282, at 3 (May 17, 1999). Available at <www.heritage.org>.

⁴⁴ *Id.*

⁴⁵ *Id.*

to manage 650 million acres.⁴⁶ Privatization would allow private managers to charge activity and land use fees to generate the revenue needed for maintenance and for resource conservation. This approach would ensure that fair market value is obtained when logging, grazing, and other activities take place.⁴⁷ Privatization would also ensure that “free-market principles dictate federal land usage.” Wilderness preservation proponents, ranchers, loggers, miners, and others should all be able to purchase grazing, timber, and mineral rights in wilderness areas.”⁴⁸ Alternatively, federal land managers could give long-term leases, with full land rights, for grazing and logging that could include provisions for public access and recreation.⁴⁹

There are other philosophically related proposals that do not propose the divestment of federal lands. Instead these proposals seek to halt the expansion of the federal estate through a national system of no net loss of private property. No net loss proposals advocate a system under which federal lands would be traded for private land that the federal government wishes to acquire. The Competitive Enterprise Institute has proposed a mechanism whereby the federal government would sell an acre of public land for each acre of private land it acquires.⁵⁰ The “No Net Loss of Private Lands Act,”⁵¹ currently before the Senate, is a similar proposal but it would only require the one-to-one acreage trade-offs in states that have more than 25 percent federal lands.

2.3 Additions To or Consolidation Of the Public Lands

2.3.1 Additions

Recent proposals for additions to or consolidation of the public lands center around the Land and Water Conservation Fund (LWCF), created in 1964 and maintained with revenues from offshore oil and gas receipts.⁵² The LWCF has two components: a federal program that funds the purchase of land and water areas for conservation and recreation purposes; and a state matching-grants program that provides funds to states for purposes similar to those under the federal program. In 1977, Congress increased the amount LWCF funds available to \$900 million per year.

Although the LWCF has been responsible for formal conservation of nearly seven million acres of parkland, water resources, and open space, its full potential has been thwarted by the annual appropriations process. Conservation expenditures from the LWCF over the last decade, for example, have averaged only \$260 million per year. Because funds not appropriated for conservation are available for other uses, the fund has become an important off-budget source for non-conservation expenditures. Although conservationists have for years objected to this misuse

⁴⁶ *Id.* at 6-7.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.*

⁵⁰ Competitive Enterprise Institute, *supra* note 38.

⁵¹ S. 826, 106th Cong. (1999).

⁵² 16 U.S.C. § 4601 (1999).

of the LWCF, only in the past few years have serious proposals been considered to amend and resuscitate the LWCF. These proposals come at a time when the national economy seems to be peaking. Many observers feel that the current intersection of social demand and economic means for conservation represent a critically important opportunity to ensure that the conservation needs of a growing population will continue to be met.

In 1999, at least 18 bills proposing amendment of the LWCF were introduced in Congress.⁵³ Although a few of the bills, such as H.R. 1199 (which would place strict procedural limitations on LWCF expenditure for new National Wildlife Refuges), seek to limit LWCF expenditures, most propose to increase appropriations from the fund. The debate over the competing proposals centers on two issues — the amount of money, if any, that would be available without the need for annual appropriations; and the allocation of funds between the federal and state components of the LWCF.

H.R. 701, the Conservation and Reinvestment Act of 1999, has emerged as the frontrunner among proposals for LWCF reform. On November 10, 1999, the House Committee on Resources, by a 37 to 12 vote, approved a compromise version of the bill. Among other provisions, the committee-approved version would allocate \$450 million per year for federal land acquisition and \$200 million per year to a federal and Indian land restoration program. Expenditures from the \$450 million federal land acquisition program would be subject to the appropriations process.⁵⁴ The Sierra Club, National Wildlife Federation and other environmental organizations have castigated the appropriations requirement as the functional equivalent of the annual appropriations process that has left the LWCF critically underfunded for the past 20 years.

Debate in the coming year will focus on the appropriations requirement, allocation provisions, and on the bill's limitations on the types and locations of acquisitions allowed. An early version of the bill allocated 25 percent of the federal acquisition funds to the Secretary of Agriculture and 75 percent to the Secretary of Interior, further requiring that the moneys be spent on acquisitions solely within the exterior boundaries of existing federal land management systems. The bill also required that at least two-thirds of the moneys be spent on acquisitions of lands east of the 100th meridian.⁵⁵

2.3.2 Consolidations

A number of proposals, dating back to 1911, have been made to consolidate the BLM and the USFS. The Congressional Research Service's 1995 Report entitled, *The Forest Service and Bureau of Land Management: History and Analysis of Merger Proposals*, discusses these

⁵³ All 18 bills may be accessed using <<http://thomas.loc.gov>>.

⁵⁴ HR 701 would amend section 7 of the LWCF (16 U.S.C. § 4601-9 (1999)), by adding the following restriction to the allocation of LWCF funds for Federal purposes: “(d) MAXIMUM FEDERAL COST PER PROJECT: No expenditure shall be made to acquire, construct, operate, or maintain any project under this section, the total Federal cost of which exceeds \$1,000,000 unless the funds for such project have been specifically authorized by a subsequently enacted law.”

⁵⁵ The full text of the committee-approved bill was not available at the time of this draft report.

proposals and the implications that would arise from any such consolidation today.⁵⁶ Proponents point primarily to two perceived benefits of consolidation: fiscal economy and institutional clarification. First, because BLM and Forest Service lands and offices often occur in the same geographic regions, proponents claim that consolidation would reduce duplication of management staff and actions.⁵⁷ Second, because the two agencies have similar management authorities, proponents maintain that consolidation would create a much-needed singular national policy for public lands outside of the National Park and National Wildlife Refuge systems. However, as the Congressional Research Service report notes, the fiscal savings generated by a merger could be offset by the reduction of competition between the two agencies and the efficiency it engenders. And, bringing the agencies under the same policy umbrella would require legislative manipulation of the legal authorities of one or both of the agencies, particularly those authorities covering land use planning and receipt-sharing. This type of legislative task would almost certainly be complicated by jurisdictional wrangling among congressional committees, as traditional subject boundaries would be necessarily altered. Additionally, judicial interpretations of the Federal reserved water rights doctrine would likely be disturbed by a merger. Finally, agency morale of the “subsumed” agency (or agencies, if an entirely new agency were created) might be negatively impacted by a merger.

Other merger proposals, less comprehensive in scope than those considered by the Congressional Research Service, continue to be offered. Representative Cynthia McKinney, for instance, has introduced H.R. 1396, The National Forest Protection Act of 1999. The bill would provide for the creation of a Natural Heritage Restoration Corps, a special unit, to be jointly administered by the BLM and Forest Service and charged with the ecological restoration commercially logged Federal public lands.⁵⁸ Similarly, S. 1320 provides authority to the Secretaries of Interior and Agriculture to arrange for land exchanges between the two agencies when certain criteria of proximity are met.⁵⁹ The Wilderness Society, emphasizing the

⁵⁶ Ross W. Gorte and Betsy A. Cody, 95-117 ENR (Nov. 7, 1995). Perhaps the most serious of these proposals came from the Nixon Administration, which considered the establishment of a Cabinet-level Department of Natural Resources. Variations of the proposal, introduced as bills in the 92nd and 93rd Congresses, centered on the consolidation of the Forest Service and Soil Conservation Service with, among others, all agencies of the Department of Interior.

⁵⁷ “In 1984, the General Accounting Office reported that 64 locations had both BLM and Forest Service offices, and estimated that combining these offices could save \$33.5 million annually.” *Id.* at 9, citing GAO/RCED-85-21 (Dec. 27, 1984).

⁵⁸ National Forest Protection and Restoration Act of 1999, H.R. 1396, 106th Cong. § 7 (1999). H.R. 1396 was introduced by Rep. Cynthia McKinney (D-Ga.) on April 13, 1999 and assigned to the House Committees on Agriculture, Resources, and Education and the Workforce. Using the bill number, H.R. 1396, the text of the bill may be accessed through <<http://www.thomas.loc.gov>>.

⁵⁹ Public Lands Planning and Management Improvement Act of 1999, (S. 1320, 106th Congress), *infra* note 117.

§ 402. INTERAGENCY TRANSFER AND INTERCHANGE AUTHORITY

(a) TRANSFER AND INTERCHANGE AUTHORITY- To facilitate land management or achieve other authorized public purposes, the Secretary of the Interior, with respect to Federal lands described in section 3(a)(4)(A) which are within or adjacent to Federal lands described in section 3(a)(4)(B), and the Secretary of Agriculture, with respect to Federal lands described in section 3(a)(4)(B) which are within or adjacent to Federal lands described in section 3(a)(4)(A), are authorized to transfer to the other Secretary jurisdiction over lands not

differences rather than the similarities between the agencies' management authorities and policies, opposes consolidation. However, the Society's report recommends that jurisdiction over mining activities on the National Forests –which currently lies with the BLM-- be returned to the Forest Service.⁶⁰

2.4 The Forest Service Mission

The legal structure under which the Forest Service now functions was legislatively and judicially developed beginning in the mid 1970s.⁶¹ Until that time, the Forest Service had been governed by the Organic Administration Act of 1897 (Organic Act)⁶² and the Multiple-Use, Sustained-Yield Act of 1960 (MUSYA).⁶³ Under the terms of the Organic Act, national forests were established to “improve and protect the forest within the boundaries, or for the purpose of securing favorable water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.”⁶⁴ MUSYA expanded the purposes for which national forests are established to include a variety of purposes: “outdoor recreation, range, timber, and wildlife and fish.”⁶⁵ MUSYA was intended to supplement, not to abrogate the purposes defined in the Organic Act.⁶⁶ In addition to broadening the purposes for which national forests could be established, MUSYA laid down the management principles that still govern the forests. These principles are codified in the statutory definitions of “multiple use”⁶⁷ and “sustained yield”⁶⁸. MUSYA was viewed as a broad grant of discretion to the Forest Service, and deference to Forest Service expertise was the general practice of both Congress and the

exceeding 5,000 acres in size or to interchange jurisdiction over lands not exceeding an aggregate of 10,000 acres per transaction.

(b) CONDITIONS- (1) Transfers or interchanges made pursuant to subsection (a) shall be without reimbursement or transfer of funds.

⁶⁰ The Wilderness Society, *supra* note 29.

⁶¹ For a concise review of the legal framework within which the Forest Service operates, see U.S. Congress, Office of Technology Assessment, *Forest Service Planning: Accommodating Uses, Outputs, and Sustaining Ecosystems, OTA-F-505*, 59-73 (February 1992) [hereinafter Office of Technology Assessment].

⁶² Organic Act, 16 U.S.C. §§ 473-475, 477-482, 551 (1999).

⁶³ MUYSA, 16 U.S.C. §§ 528 (note), 528-531 (1999).

⁶⁴ Organic Act, 16 U.S.C. § 475 (1999).

⁶⁵ MUYSA, 16 U.S.C. § 528 (1999).

⁶⁶ *Id.*

⁶⁷ “Multiple use means the management of all the various renewable resources of the National Forests so that they are utilized in a combination that will best meet the needs of the American people; making the most judicious use of the land; . . . with periodic adjustments in use to conform to changing needs and conditions; . . . [with] harmonious and coordinated management of the various resources, . . . without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.” 16 U.S.C. § 531 (1999).

⁶⁸ “Sustained yield . . . means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of the National Forests without impairment of the productivity of the land.” *Id.*

judiciary.⁶⁹

However, by the mid 1970s, a perceived system-wide lack of balance in the Forest Service's application of MUSYA principles, favoring consumptive over other uses, led to the legislative and judicial actions that govern Forest Service management and planning activities today. In 1975, the 4th Circuit Court of Appeals *Monongahela*⁷⁰ decision declared that some Forest Service timber management techniques were illegal under the Organic Act and MUSYA.⁷¹ This decision, and the public opinion uproar that preceded it, led Congress to craft legislation that would retain the basic principles of MUSYA, insure that the Forest Service maintains a balance in on-the-ground management activities, and reduce the frequency of litigation by incorporating public input into the planning process — all this while retaining MUSYA's broad grant of discretion to the Forest Service.

2.4.1 Prioritizing Among Multiple Uses

The resulting legislation, the National Forest Management Act of 1976 (NFMA),⁷² established detailed procedural and substantive requirements for the development of Land and Resource Management Plans (LRMPs). It broadened the agency's discretion with respect to timber harvesting practices and narrowed its discretion in interpreting MUSYA's sustained yield mandate. NFMA did not, however, set specific priorities, either as to quantities of goods and services produced or as to the mix of management activities permitted. Because of its breadth, NFMA is open to a variety of interpretations as to its primary emphasis. For example:

NFMA reiterated congressional commitment to the MUSYA, directing the Forest Service to assure that management plans provide for multiple use and sustained yield of National Forest products and services in accordance with the MUSYA. However, Congress also recognized the shortcomings of MUSYA's broad [grant of] discretion and sought to insure that timber production would not take priority over other uses and resources. The Wilderness Society (1999).⁷³

[NFMA] was based on two key assumptions. The first was that the planning process, by explicitly requiring public participation would contribute substantially to the development of a national "shared vision," which would define and clarify the objectives of the National Forest System, . . . [and would] force a more comprehensive approach to managing the forests and rangelands. . . . Second was the assumption that the land- and resource-

⁶⁹ See, for example, *Sierra Club v. Hardin*, 325 F.Supp. 99 (D. Alaska 1971).

⁷⁰ *West Virginia Division of the Isaac Walton League of America, Inc. v. Butz (Monongahela)*, 522 F.2d 945 (4th Cir. 1975).

⁷¹ *Id.* at 947. The court found that the original 1897 Organic Act had requirements, such as the age at which trees could be harvested and how trees were to be marked for harvest, that precluded the use of clearcutting on the national forests. NFMA, enacted partly in response to *Monongahela*, specifically repealed these requirements and set specific standards that would allow clearcutting to be used by the Forest Service as a silvicultural tool.

⁷² 16 U.S.C. §§ 472(a), 476, 476 (note), 500, 503-516, 518, 521(b), 528 (note), 576(b), 594(2)(note), 1600 (note), 1601 (note), 1600-1602, 1604, 1606, 1608-1614 (1999).

⁷³ The Wilderness Society, *supra* note 29.

management plans would be viewed by Congress as a guideline for Congressional budgeting. Committee of Scientists Report (1999).⁷⁴

The 1974 Forest and Rangeland Renewable Resources Act (RPA) and NFMA in 1976 added significant planning and public participation requirements to National Forest management. . . . Neither act changed management philosophy in a significant way. Nonetheless, the fact that NFMA was largely a timber regulation law, inspired by timber issues, probably contributed significantly to the Forest Service's management emphasis on timber outputs. Society of American Foresters (1999).⁷⁵

These assessments reflect a spectrum of interests.⁷⁶ Each proponent would argue that NFMA encompasses its particular approach to forest management. In spite of differences in interpreting the primary emphasis of NFMA, such groups generally agree with the General Accounting Office (GAO) in its assessment of the Act's major weakness:⁷⁷

[A]greement does not exist on the Forest Service's long-term strategic goals. This lack of agreement is the result of a more fundamental disagreement, both inside and outside the Forest Service, over which uses to emphasize under the agency's broad multiple-use and sustained-yield mandate and how best to insure the long-term sustainability of these uses.⁷⁸ [In sum, it is] the lack of agreement, both inside and outside the agency, on how to resolve conflicts among competing uses on its lands.⁷⁹

2.4.2 Substantive Reform of the Forest Service Mission

Recognition of this fundamental problem has led to several proposals aimed at clarifying or reformulating the basic mission of the Forest Service.⁸⁰ These proposals differ both in substance and in the mechanism whereby a change in mission would be achieved. Substantive proposals for a change of mission originate from the Forest Service itself, from a variety of private groups and individuals, and from Congress. The proposals range from a focus on custodial management

⁷⁴ Committee of Scientists, *Sustaining the People's Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century*, 1 (U. S. Dept. of Agriculture, March 1999) [hereinafter Committee of Scientists]. Available at <<http://www.fs.fed.us/news/science>>.

⁷⁵ Society of American Foresters, *Forests of Discord: Options for Governing Our National Forests and Federal Public Lands*, 5 (1999) [hereinafter Society of American Foresters]. Available at <<http://www.safnet.org>>.

⁷⁶ Actually, these groups represent the middle range of the spectrum of interests that interpret NFMA and attempt to influence Forest Service policy.

⁷⁷ United States General Accounting Office, *Forest Service Decision-Making: A Framework for Improving Performance*, GAO/RCED-97-71 (1997) [hereinafter General Accounting Office]. Available at <<http://www.cnie.org/nle/gao/1for.html>>.

⁷⁸ *Id.* at 28.

⁷⁹ *Id.* at 1.

⁸⁰ Throughout this section of the report, the terms "mission", "management emphasis", and "strategic goals" are used synonymously. A later section will deal with proposed changes to the Forest Service planning and decision-making processes.

to an emphasis on ecosystem management to a market-driven “laissez-faire” approach to management.

2.4.2.1 Custodial Management

Advocates of a custodial⁸¹ approach to national forest management generally propose severe limitations on the multiple-use, sustained-yield mandate. They propose that the national forests should be managed to protect and restore natural ecosystems and that the production of goods and services should be minimized or eliminated. Representative of the custodial approach are the Wildlands Project and the proposed legislation, The National Forest Protection and Restoration Act of 1999.

The Wildlands Project⁸² proposes a complete reorganization of national forests and other public lands into wilderness reserves. A buffer zone of private land managed to promote biodiversity would surround each reserve. To allow the free movement of wildlife, the buffered reserves would be connected by broad corridors of public/private land. These corridors would also be managed to enhance biodiversity. This proposal would require the repeal or amendment of the Organic Act, MUSYA, and NFMA and would affect land ownership patterns and land use regulation nationwide.

The National Forest Protection and Restoration Act of 1999 (H.R. 1396)⁸³ would prohibit commercial logging on federal public lands.⁸⁴ The bill provides for the immediate suspension of all existing logging contracts in roadless areas and of all logging contracts authorized under 16 U.S.C. § 1611, popularly known as the “Salvage Rider.”⁸⁵ It provides for a two year phase out of all other existing logging contracts⁸⁶ and instructs the Secretaries of Agriculture and Interior to exercise termination and payment provisions in existing contracts.⁸⁷ To deal with the past effects of timber harvesting, the bill creates a Natural Heritage Restoration Corps charged with restoring “such lands to their natural condition as they existed prior to the occurrence of commercial logging.”⁸⁸ Standards, guidelines and procedures for developing Natural Heritage

⁸¹ The term “custodial” management was originally used in a pejorative sense by Representatives Don Young (R-Ak.) and Helen Chenoweth (R-Id.) and Senators Frank Murkowski (R-Ak.) and Larry Craig (R-Id.), all congressional committee chairs, in a press conference on February 25, 1998. In this statement, the group threatened to reduce Forest Service budget and management activities to “maintenance and fire management.” Public Lands News, V.23, p. 2 (February 27, 1998).

⁸² The prime mover of The Wildlands Project is Earth First! founder, David Foreman. The proposal and its current list of research projects is available at <<http://www.twp.org>>. A veiled critique of the project by the group, Citizens with Common Sense, is available at <<http://www.wildlandsproject.org>>.

⁸³ National Forest Protection and Restoration Act, H.R. 1396, 106th Cong. was introduced on April 13, 1999 by Rep. Cynthia McKinney (D-Ga.) and 47 co-sponsors. It was referred to the House Committees on Agriculture, Resources, and Education and the Workforce.

⁸⁴ The bill defines federal public lands to include the National Forest System, the National Wildlife Refuge System, the National Park System, and all lands under the jurisdiction of the Bureau of Land Management. H.R. 1396, 106th Cong. § 2(3) (1999).

⁸⁵ This section is popularly known as the “Salvage Rider” of 1997. 16 U.S.C. § 1611 (1999).

⁸⁶ H.R. 1396, 106th Cong. § 5(c) (1999).

⁸⁷ H.R. 1396, 106th Cong. § 5(d) (1999).

⁸⁸ H.R. 1396, 106th Cong. § 7 (1999).

Restoration plans are mandated for the Forest Service as well as for the BLM and the Fish and Wildlife Service.⁸⁹ Funds to carry out the bill's proposals would be reallocated from existing Forest Service funds⁹⁰ and revenues.⁹¹

Advocates of the custodial approach were among those who participated in the Forest Congress. Although the Forest Congress did not directly address reshaping the mission of the Forest Service, its participants hoped to find a broad vision for US forests among the diverse interests represented. The resulting points of agreement could then “form a foundation to develop decisions” on key issues in forestry on both the national and local level.⁹² Several draft principles proposed at the Forest Congress are in line with the custodial approach of H.R. 1396, however, these proposed principles received little support from the delegates. Four percent of the participants believed that there should be no logging on public lands⁹³; while five percent of the participants agreed that no road construction or reconstruction should be made on public lands⁹⁴. Revised Principle 20 explicitly rejected the “Salvage Rider,” stating, “consistent with sound democratic principles and responsible forest management, the Emergency Rider to the Rescissions Bill should be repealed.”⁹⁵ This statement received more support than the two mentioned above, but only 23 percent of the participants were in complete agreement with it.

At the very least, adoption of H.R. 1396 or any similar proposal would necessitate the repeal of all references in existing land management statutes to timber production as a legitimate purpose and use of the national forests. The multiple-use sustained-yield mission of the Forest Service as delineated in the Organic Act⁹⁶ and in MUSYA⁹⁷ would shift to one emphasizing preservation and restoration. NFMA, which contains extensive provisions governing the planning and conduct of timber sales,⁹⁸ would require major revision. Custodial proposals, such as those described, are premised upon the perceived inadequacy of existing land management laws to appropriately define the purposes of the National Forest System. Other proposals, described in the following sections, would shift the emphasis of the Forest Service mission, but remain within the multiple-use sustained-yield parameters of existing law.

2.4.2.2 Tweaking MUSYA?

⁸⁹ H.R. 1396, 106th Cong. § 7(c)-(d) (1999).

⁹⁰ Existing funds designated for reallocation include: the Timber Salvage Fund established under NFMA, 16 U.S.C. § 472(a)(h) (1999); the Knutson-Vandenberg Fund established under 16 U.S.C. § 576(b) (1999); and the Forest Roads Funds established under 16 U.S.C. § 537 (1999).

⁹¹ H.R. 1396, 106th Cong. § 9 (1999). In this section, the bill specifies certain payment schedules that are to be retained or established. These include a continuation and gradual phase-out of the current revenue-sharing payments (16 U.S.C. § 500 (1999)), the introduction of a timber worker retraining program, and the funding of studies to identify “wood alternatives”. *See also* section 3.1.4 of this report.

⁹² Forest Congress *supra* note 32 at 3.

⁹³ *Id.* at 16. Draft Principle 38. 5% agreement, 5% reluctant agreement, and 90% disagreement.

⁹⁴ *Id.* Draft Principle 39. 4% agreement, 5% reluctant agreement, and 91% disagreement.

⁹⁵ *Id.* at 10. Revised Principle 20. 23% complete agreement, 11% reluctant agreement, 66% disagreement.

⁹⁶ Organic Act, 16 U.S.C. § 475 (1999).

⁹⁷ MUSYA, 16 U.S.C. § 528 (1999); *see also* section 1.4 of this report, *supra*.

⁹⁸ *See, for example*, NFMA, 16 U.S.C. §§ 1604 and 1611 (1999).

The proposals discussed in this section define a “new” mission for the Forest Service in terms of ecological, economic, and social sustainability. These proposals would integrate the production of goods and services by recognizing sustainability, defined as “meeting the needs of the present generation without compromising the ability of future generations to meet their needs,”⁹⁹ to be a governing principle of national forest management. Variations on this theme of sustainability are found in several major proposals.

The first priority for management is to retain and restore the ecological sustainability of these watersheds, forests, and grasslands for present and future generations. . . . Sustainability is broadly recognized to be composed of interdependent elements, ecological, economic, and social. Committee of Scientists (1999).¹⁰⁰

The modern adaptation of the sustained yield concept is that forests should sustain healthy ecosystems, not just timber production. The assumption of sustainable forestry is that if ecological processes remain intact, the products of the forests, deserts, and grasslands will remain available for human consumption. Society of American Foresters (1999).¹⁰¹

Continued emphasis on using the National Forests mainly for commodity exploitation is justified neither socially, economically, nor environmentally. . . . The Wilderness Society believes no new management regime or policy will be complete without embracing a land ethic that reflects a sense of responsibility to future generations. The Wilderness Society (1999).¹⁰²

Other proposals address the need for sustainable use of all American forests, both federal and non-federal as well.

Concepts of sustainability encourage strategic thinking about the long-term effects of decisions and guide the design of policies and programs that will result in the better use and management of America’s nonfederal¹⁰³ forests. Sustainable management of America’s nonfederal forests means caring for these forests in a manner that will allow them to continue contributing to the future well-being of the nation. National Research Council (1998).¹⁰⁴

⁹⁹ United Nations Commission on Environment and Development, *Our Common Future (The Brundtland Commission Report)*, 43-46 (1987).

¹⁰⁰ Committee of Scientists, *supra* note 74, at xiv.

¹⁰¹ Society of American Foresters, *supra* note 75, at 11.

¹⁰² The Wilderness Society, *supra* note 29, at 15.

¹⁰³ The National Research Council report quoted *infra* is focused on the federal role in the management of nonfederal forests. Those of its proposals that affect national forest management will be discussed later in this report. Its discussion of the principles of sustainable forestry are generally applicable to both federal and nonfederal forests.

¹⁰⁴ National Research Council, *Forested Landscapes in Perspective: Prospects and Opportunities for Sustainable Management of America’s Nonfederal Forests*, National Academy Press, 17 (Washington, DC 1998) [hereinafter, National Research Council].

In the future, our forests...

...will be maintained and enhanced across the landscape, expanding reforestation and restoration where ecologically, economically, and culturally appropriate, in order to meet the needs of an expanding human population.

... will be sustainable; support biological diversity; maintain ecological and evolutionary processes; and be highly productive.

... will sustainably provide a range of goods, services, experiences and values that contribute to community well being, economic opportunity, social and personal satisfaction, spiritual and cultural fulfillment, and recreational enjoyment. Seventh American Forest Congress, 1996.¹⁰⁵

Such concepts clearly broaden the MUSYA definition of sustainability.¹⁰⁶ Several comprehensive proposals would redefine the mission of the Forest Service to better reflect these modern concepts. The Wilderness Society recommends that the mission of the Forest Service be revised so that

. . . the integrity, health, and sustainability of wildland ecosystems shall be the goal of all management. Management shall focus on providing pure water and air, back country recreation, biological diversity, and other ecosystem services not reliably provided by private lands. Management for timber, livestock forage, and other commodities is appropriate only where consistent with this overarching goal.¹⁰⁷

This revised mission statement would subordinate the production, even on a sustained-yield basis, of commodities to the maintenance of ecological, recreational, and aesthetic values. The Society believes that such a focus is appropriate because the national forests should supplement, not duplicate, the values and services provided by nonfederal forest lands.¹⁰⁸

A more comprehensive view of the Forest Service mission is proposed in the Committee of Scientists report. The committee was appointed by the Secretary of Agriculture on December 12, 1997, to recommend changes in the regulations governing Forest Service planning.¹⁰⁹ The composition of the committee included specialists in forest and range management, hydrology, economics, sociology, ecology, dispute resolution and law.¹¹⁰ Following a 16-month study of

¹⁰⁵ Forest Congress, *supra* note 32, at 39. These visions received more than 90% agreement. They were then reconfigured by a smaller committee representing all the roundtables after the full Congress had made two sets of revisions. The redrafted vision elements were then voted on by the Congress and printed on pages 5-7. All three of these vision elements remained, and received 75% or greater support.

¹⁰⁶ MUSYA, 16 U.S.C. § 531 (1999).

¹⁰⁷ The Wilderness Society, *supra* note 29, at 10.

¹⁰⁸ *Id.* at 21-22.

¹⁰⁹ The current planning regulations are located at 36 C.F.R. § 219 (1999).

¹¹⁰ The members of the Committee of Scientists are: Dr. K. Norman Johnson, Oregon State University, College of Forestry, Chair of the Committee; Dr. James Agee, University of Washington, College of Forest Resources; Dr. Robert Beschta, Oregon State University, College of Forestry; Dr. Virginia Dale, Oak Ridge National Laboratory, Environmental Sciences Division; Dr. Linda Hardesty, Washington State University, Department of Natural Resources Science; Dr. James Long, Utah State University, Department of Forest Resources; Dr. Larry Nielsen,

the present state of the Forest Service, its past history, and the many options available for its future, the committee issued its recommendations in the report, *Sustaining the People's Lands*, in March 1999.¹¹¹ The committee recommends “that the two guiding stars of stewardship in the national forests and grasslands are sustainability and the recognition that these are the people’s lands.”¹¹²

This recommendation may appear to be a straightforward rewording of the Forest Service mission as articulated by the agency itself: “Caring for the land; serving people.”¹¹³ The committee report, however, traces the gradual development of the concept of sustainability through the history and successive legislative mandates of the Forest Service.¹¹⁴ The Committee of Scientists’ articulation of the mission of the Forest Service encompasses broad, societal principles that reach beyond the traditional constructs of sustained-yield and multiple-use:

... sustainability in this modern sense has three aspects: ecological, economic, and social. These different aspects of sustainability are interrelated: the sustainability of ecological systems is a necessary prerequisite for strong, productive economies; enduring human communities; and the values people seek from wildlands. Most basically, we compromise human welfare if we fail to sustain vital, functioning ecological systems. It is also true that strong economies and communities are often a prerequisite to societies possessing the will and patience needed to sustain ecological systems.¹¹⁵

The Committee of Scientists’ formulation of the Forest Service mission attempts to balance the ecological, economic, and social elements of sustainability without giving primary emphasis to any one element. Likewise, the essential interdependence of ecological, economic, and social values was also acknowledged by at the Forest Congress. Revised Principle 19 states:

Interdependence of people and forests [should be] recognized and respected, including the important contribution forests make to social, economic, and community well-being, and the responsibility of communities to support balanced stewardship of all forest values.¹¹⁶

On the other hand, the Wilderness Society proposal may be viewed as emphasizing the

Pennsylvania State University, School of Forest Resources; Dr. Barry Noon, Colorado State University, Department of Fishery and Wildlife; Dr. Roger Sedjo, Resources for the Future, Forest Economic and Policy Program; Dr. Margaret Shannon, Buffalo School of Law; Dr. Ronald Trosper, Northern Arizona University, College of Ecosystem Science and Management; Professor Charles Wilkinson, University of Colorado, School of Law; and Dr. Julia Wondolleck, University of Michigan, School of Natural Resources and the Environment.

¹¹¹ See K. Norman Johnson, *Sustaining the People's Lands*, *Journal of Forestry*, May 1999, at 6, for a brief history of the committee and its task. This issue of the *Journal* is devoted to commentary on the committee’s report by representatives of a variety of perspectives.

¹¹² Committee of Scientists, *supra* note 74, at 18.

¹¹³ This is a familiar motto found in any Forest Service publications. See, for example, <<http://www.fs.fed.us>>.

¹¹⁴ Committee of Scientists, *supra* note 74, at 14-17.

¹¹⁵ *Id.* at 13.

¹¹⁶ Forest Congress, *supra* note 32, at 10. Revised Principle 19. 4% agreement, 25% reluctant agreement, and 31% disagreement.

ecological element of sustainability while subordinating its economic and social elements. Legislation currently pending in Congress would reformulate the mission of the Forest Service with a nearly opposite balance of the three elements.

On July 1, 1999, Senator Larry Craig (R-Id.) introduced the Public Lands Planning and Management Improvement bill (S.1320).¹¹⁷ The proposed legislation is a comprehensive revision of the legislation proposed in the previous session by Senator Craig¹¹⁸ and has among its purposes:

. . . to establish a mission for the Agencies in the management of the Federal lands; to provide Congressional direction, and eliminate fundamental flaws in, the conducting and implementing of planning for the Federal lands; to avoid the environmental, economic, and social injuries that result from those flaws and the past absence of direction; and to achieve predictability in the management of, and timely and cost-effective accomplishment of management activities on, the Federal lands.¹¹⁹

The mission statement for both the Forest Service and the BLM¹²⁰ in this legislative proposal is:

. . . to manage the Federal lands under their respective jurisdictions to assure the health, sustainability, and productivity of the lands' ecosystems; consistent with this objective, to furnish a sustainable flow of multiple goods, services, and amenities; to preserve or establish a full range and diversity of natural habitats of native species in a dynamic manner over the landscape; and, where necessary or appropriate, to designate discrete areas to conserve certain resources or allow certain uses.¹²¹

The purpose of this restatement of mission is "to accord priority to ecosystem concerns and to clarify and ensure that agencies are to deliver amenities as well as goods and services."¹²² The General Accounting Office¹²³ determined, however, that although the S.1320 mission statement itself is consistent with the emphasis on ecological sustainability evidenced in the Committee of

¹¹⁷ The Public Lands Planning and Management Improvement Act of 1999, S. 1320, 106th Congress (1999) [hereinafter S. 1320] has been referred to the Senate Committee on Energy and Natural Resources. See 145 Cong. Rec. S8093-8102 (July 1, 1999) for a section-by section description of the bill [hereinafter Congressional Record]. The text of S. 1320 is available at <<http://thomas.loc.gov>> (search under "current session" and "s1320").

¹¹⁸ See S. 1253, 105th Congress (1998). The proposed legislation was referred to the Senate Committee on Energy and Natural Resources. The bill was not reported out of committee. According to Senator Craig, the current legislation, S. 1320, "is significantly different from, and reflects a much broader array of views and ideas than did [S. 1253]." See Congressional Record, *supra* note 118.

¹¹⁹ Congressional Record, *supra* note 118, at § 101.

¹²⁰ Many sections of S. 1320 apply to both the Forest Service and the BLM. The bill does not, however, propose any merger or change in the organizational status of either agency.

¹²¹ S. 1320, *supra* note 118, at § 102.

¹²² Congressional Record, *supra* note 118, at § 102.

¹²³ General Accounting Office, *Comments on Selected Provisions of S.1320 - A Bill to Revise Federal Land Management Planning*, GAO/T-RCED-99-270, at 6 (1999).

Scientists report and the Forest Service Draft Regulations¹²⁴, other parts of the proposed legislation belie that emphasis. For example, forest plans developed under S.1320 would be required to “accord equal consequence to [certain] elements, including the production of goods and services and desired future conditions.”¹²⁵ GAO points out that if the “desired future condition” element is a reflection of the overriding goal of ecological health, then that element must not have priority over other planning considerations.¹²⁶

Falling on either side of these major proposals for a restatement of mission are suggestions from the Southern Utah Wilderness Alliance (SUWA), the Sierra Club, and the American Forest and Paper Association (AF&PA). The first two organizations would focus Forest Service strategy on ecosystem management with an explicit subordination, even elimination, of traditional goods and services production. The AF&PA approach would emphasize traditional multiple-use, sustained-yield activities and recognize ecosystem maintenance as a mechanism for insuring sustained yields of goods and services.

SUWA recommends that the Forest Service focus its management efforts on the NFMA requirement of the maintenance and restoration of biodiversity on the national forests.¹²⁷

It is becoming clear that the relative importance of multiple-use and biodiversity should be reversed. . . . [An] appropriate approach would place priority on ecosystem management and the enhancement of biodiversity, making the system sustainable for all uses. Furthermore, such an approach would only permit multiple-use activities to the extent that they do not interfere with the achievement of ecosystem and biodiversity goals.¹²⁸

In a similar call for a restatement of the Forest Service mission, the Sierra Club recommends a recognition that, as a guiding principle:

The public forests provide us with invaluable sources of recreation, wildlife, biological diversity, high water quality, peace and quiet and numerous other values found nowhere else. . . . Forest management shall incorporate natural processes and shall be based on the fullest possible knowledge of such forest resources. . . .¹²⁹ The Sierra Club supports protecting all federal publicly owned lands in the United States and advocates an end to all commercial

¹²⁴ The Forest Service released a proposed revision of their planning regulations on October 5, 1999. The proposed regulations closely parallel the recommendations of the Committee of Scientists (*supra* note 74). The public comment period for the proposed regulations closed on February 7, 2000. See USFS Proposed Rule, *supra* note 18.

¹²⁵ General Accounting Office, *supra* note 115, at 6. Cf. S. 1320, *supra* note 108, at § 105.

¹²⁶ Other sections of S.1320 that shift the management emphasis more toward the multiple-use sustained-yield model will be discussed in the section on Planning.

¹²⁷ NFMA, 16 U.S.C. § 1604(g)(3)(B).

¹²⁸ H. J. McIntosh, *National Forest Management: A New Approach Based on Biodiversity*, 16 J. Energy Nat. Resources & Envtl. L. 257, 276 (1996).

¹²⁹ Sierra Club, *Forest Management Policy*, adopted by the Board of Directors, March 14, 1992. Available at <<http://www.sierraclub.org/policy/conservation/forest.html>>.

logging on these lands.¹³⁰

The opposite end of the MUSYA/ecosystem-sustainability scale is represented by the view of the AF&PA.¹³¹ The Association's policy guidelines recommend that

AF&PA members support a national goal of sustainable forestry which seeks to increase growth and timber quality of all forests, [both private and public,] so that the volume and quality of domestic timber resources available are adequate to meet public needs now and in the future. AF&PA members will work with Congress and public agencies to appropriately define and implement active ecosystem management on all [public] lands. This will improve the consistency of land management decision-making and help to accomplish land management goals.¹³²

The policy of retaining the primacy of traditional MUSYA practices can be seen in AF&PA's public response to proposals, particularly the Committee of Scientists report¹³³ and the resulting draft Forest Service planning regulation revision.¹³⁴

The [Committee of Scientists] report recommends what is clearly a new mission for the Forest Service that is in conflict with much of its statutory mission. It stresses a sharp shift towards ecosystem preservation with ecosystem sustainability being paramount, ignoring the Forest Service's statutory mandate of multiple-use management. . . [Such an approach] would have the effect of operating the National Forests as biological reserves.¹³⁵

If adopted, these regulations would take the Forest Service in a completely new direction - one in conflict with much of its statutory mission of "Multiple-use Sustained-yield". It would minimize many activities on public lands, including recreation, wildlife habitat improvement, and active management to restore forest health and prevent wildfires.¹³⁶

The final proposal to reform the mission of the Forest Service is the mission as restated by the Forest Service itself:

¹³⁰ *Id.*, adopted by the general membership, April 20, 1996.

¹³¹ AF&PA is the major forest industry association in the United States. Its forestry principles (mandatory for member companies) are embodied in the Sustainable Forestry Initiative. Details of the association and its programs are available at <<http://www.afandpa.org>>.

¹³² AF&PA, *Public Policy Goals for Sustainable Forestry on all Private and Public Land in the United States* (1996). Available at <<http://www.afandpa.org/Forestry/guidelines.html>>.

¹³³ Committee of Scientists, *supra* note 74.

¹³⁴ *See generally*, USFS Proposed Rule, *supra* note 18.

¹³⁵ Robert W. Bierer, AF&PA Director of Forest Management, Testimony, House Subcommittee on Forests and Forest Health (Mar. 16, 1999). Find at <<http://www.house.gov/resources/106cong/forests/99mar16/bierer.htm>>.

¹³⁶ AF&PA, *New Forest Planning Regulations Flawed*, press release (Oct. 1, 1999). Available at <http://www.afandpa.org/news/PressReleases/For_plan_rel.html>.

Let us recommit ourselves to an invigorated national land ethic.

- An ethic that recognizes that we cannot meet the needs of people without first securing the health, diversity, and productivity of our lands and waters.
- An ethic that understands the need to reconnect our communities - both urban and rural - to the lands and waters that sustain them.
- An ethic that respects that the choices we make today influence the legacy that we bequeath to our children and their children's children.¹³⁷

Several issues emerge from the discussion of the Forest Service mission and its potential restatement. First, what is the appropriate balance/priority to be assigned to traditional MUSYA concepts and the potentially broader ecosystem management approach? Second, does the definition of sustainability that includes ecological, economic and social elements properly implement this balance? Third, is such a restatement of mission be encompassed within the existing legislative mandate of the Forest Service, or is new legislation required? The first and second of these issues are delineated in the nuanced differences in the proposed mission statements considered above. The final issue requires elaboration and will be discussed in section 2.4.3 of this report.

2.4.2.3 *Let Market Forces Dictate Uses*

Another variation on the theme of changing the mission of the Forest Service are proposals which suggest allowing the free market to dominate national forest management. In seeking to allow the market to control forest management, proponents generally suggest that monetary values should be placed on resources, and the user willing to assign the greatest dollar value to that resource may control the disposition of that resource.¹³⁸ These proposals vary in their specificity and their origin, but all suggest that a market based system is the solution to many of the current problems associated with managing the national forests.

Two market-based proposals support use of the free market to sell parcels of federal land to

¹³⁷ USDA Forest Service Chief Mike Dombeck, *Protecting and Restoring a Nation's Land Health Legacy*, Speech in Missoula, Montana (Feb. 3, 1999). Available at <<http://www.fs.fed.us/intro/speech/19990203a.html>>; see also, Mike Dombeck, *A Gradual Unfolding of a National Purpose: A Natural Resource Agenda for the 21st Century*, [hereinafter *Natural Resource Agenda*], available at <<http://www.fs.fed.us/news/agenda/sp30298.html>>, which outlines four priorities for the Forest Service: maintain and restore the health of watersheds and ecosystems; fully fund forestry inventory and monitoring programs and take other steps to ensure the sustainability of forest ecosystems; eliminate unneeded roads, upgrade needed ones, and more carefully consider the building of new roads; and increase funding for recreation management and opportunities for fishing, hunting, wildlife viewing, and conservation education.

¹³⁸ See, for example, Mark Muro, *'Un-logging' the national forests? It might just happen*, *High Country News*, v. 24, No. 4 (Mar. 3, 1997). [hereinafter referred to as *High Country News*]. This article contains a free market proposal for dealing with timber sales which allows the highest bidder to use the sale quantity as he sees fit; for example- an environmental group could out-bid all others for a timber sale, and leave the trees standing. This has been tried by the Northwest Ecosystem Alliance, Southwest Center for Biological Diversity, and Oregon Natural Resources Council, all of whom have had their efforts stymied by the Forest Service's diligence requirement, which requires that timber purchasers cut- or forfeit the sale.

the highest bidder. Proposals from the Competitive Enterprise Institute¹³⁹ and the Heritage Foundation¹⁴⁰ both advocate sale of federal land to private enterprises based on the belief that privately owned lands have been managed more efficiently and profitably than have federal lands. These proposals would use the free market to divest the federal government of its landholdings. Other free market proposals would affect resource allocation, but do not call for a transfer of ownership away from the federal government.

One proposal that seeks to implement a market based system for resource allocation on national forest lands comes from Donald Leal of the Political Economy Research Center (PERC). “Making Money on Timber Sales: A Federal and State Comparison”¹⁴¹ contains suggestions that would eliminate below-cost timber sales, a source of major financial loss for the Forest Service. The proposal compares the national forests in Montana to the forest lands run by the Montana Department of State Lands, which, by law, must manage the state-owned forests for maximum profit.¹⁴² The comparison shows that the state lands had higher revenues, lower expenditures, and greater harvest volumes than the national forests. Leal found that Montana’s timber program produced higher net gains than occurred on national forests in the same state; during FYs 1988-92, the state made a total of nearly \$14 million on timber sales, while the national forests within the state lost \$42 million.¹⁴³ Leal also concluded that the state did a better job than the Forest Service in protecting watersheds from the effects of logging.¹⁴⁴

Leal suggests that the Forest Service could manage its lands for a greater profit if it expanded the rights of the timber purchaser to use the resource for purposes other than logging.¹⁴⁵ He also suggests removing the diligence requirement that forces the purchaser to harvest timber or lose the permit.¹⁴⁶ Removal of the diligence requirement would create a free market in which the highest bidder could determine the fate of the timber. Some environmental groups have already attempted to use market forces to protect timber by purchasing timber sales, but they have been subjected to the diligence requirement.¹⁴⁷ In another proposal, Leal recommends “commercializing” the Forest Service so that managers would depend on receipts from all forest uses to continue operations.¹⁴⁸ This would force federal land managers to respond to the bottom line, resulting in fiscal accountability.

A similar commercialization proposal appears in “A Public Forest Corporation Model for

¹³⁹ Competitive Enterprise Institute, *supra* note 38, at 2.

¹⁴⁰ Alexander F. Annett, “The Federal Government’s Poor Management of America’s Land Resources”, *supra* note 43, at 12.

¹⁴¹ Donald R. Leal, *Making Money on Timber Sales: A Federal and State Comparison, in Multiple Conflicts Over Multiple Uses* (Terry Anderson, ed.). Bozeman, Montana: Political Economy Research Center, 1994, at 17.

¹⁴² *Id.* at 19.

¹⁴³ *Id.* at 17-34.

¹⁴⁴ *Id.* at 26.

¹⁴⁵ *Id.* at 22, 26, 29.

¹⁴⁶ *Id.* at 29.

¹⁴⁷ High Country News, *supra* note 138.

¹⁴⁸ Leal, *supra* note 141, at 30.

Federal Forest Land Management,”¹⁴⁹ which proposes to establish independent public forest corporations (PFC), similar to public utilities, to manage federal forest resources. Each national forest unit would be chartered as a PFC. Its operations would be financed through sales of products, services and land use leases. Investment capital would be raised through the sale of securities and the reinvestment of earnings.¹⁵⁰ Other agencies or private parties could contract with the PFC for specific services or for the designation of an area for a specific use.¹⁵¹ For example, if an environmental group wanted a wilderness area preserved, they would have to contract with the PFC at a higher cost than other groups looking to see the area given a different use designation.

Randal O’Toole of the Thoreau Institute has also advocated using market based systems to manage the Forest Service in a more financially and environmentally efficient manner. In one proposal, O’Toole suggests that Congress revise the budgetary structure of the Forest Service so that the agency is run like a business.¹⁵² This proposal specifically suggests that Congress allow land managers to charge fair market value for all uses and resources, and that the individual forests be funded exclusively with a fixed share of their net annual income.¹⁵³ Funding individual forests based on a percentage of net profit gives managers an incentive to make money and emphasize combinations of uses that are most valuable.¹⁵⁴ O’Toole also proposes to protect resources through a market system. If implemented, conservation easements would be sold to protect some special areas, and Congress would dedicate a fixed share of public land receipts for the creation of environmental trust funds for the protection of other resources.¹⁵⁵

The Thoreau Institute and the Forest Options Group also sponsor a consensus group of industry, environmental, and Forest Service leaders who believe that the Forest Service needs true alternatives: governance systems that promote cooperation rather than polarization and decentralized budgeting instead of micro-management by Congress.¹⁵⁶ The Forest Options Group has suggested a series of such alternatives in its “Second Century Report.”¹⁵⁷ The report sees the Forest Service as an agency in trouble. It recognizes that one of the main causes of this trouble is the agency’s budgetary process, which rewards managers for losing money on certain resources while penalizing them for earning a profit or emphasizing other resources.¹⁵⁸ The report suggests four alternatives to the current budgeting process and four alternatives for changing the governing

¹⁴⁹ Dennis Teeguarden and David Thomas, *A Public Corporation Model for Federal Forest Land Management*, 25 Nat. Resources J. 373, 374 (Apr. 1985).

¹⁵⁰ *Id.* at 375.

¹⁵¹ *Id.*

¹⁵² The Thoreau Institute, *Run Them Like Businesses*. Available at <<http://www.ti.org/business.html>>.

¹⁵³ *Id.* at 4.

¹⁵⁴ *Id.* at 6.

¹⁵⁵ *Id.* at 5.

¹⁵⁶ Randal O’Toole, *Reforming the Forest Soviet*, *Journal of American Forestry* (May 1999).

¹⁵⁷ The Forest Options Group, *Options for the Forest Service 2nd Century* [hereinafter *The Second Century Report*], is available at <<http://www.ti.org>>.

¹⁵⁸ *Id.* at 2.

structure of the Forest Service.¹⁵⁹ The budget alternatives are:

- open bucket — would fund forests out of appropriations, but allows local managers, rather than Congress or higher agency officials, to decide where to spend the money;
- gross receipts — would allow forests to charge greater user fees for more uses, and to fund the forests from those receipts instead of from tax dollar appropriations;
- net receipts — would work in a similar way to gross receipts, but only allows managers to keep the net receipts, which should discourage the cross-subsidization of unprofitable uses; and
- special funds — funds that are perhaps created from receipts to pay for conservation, forest restoration, or other public goods.¹⁶⁰

The Forest Options Group proposes testing combinations of these alternatives through pilot projects on several forests. The pilots are focused on changing either the budgeting or governance structures, or both.¹⁶¹ One of the proposed pilots is “entrepreneurial budgeting,” in which the forest will get funding based on the net receipts budgetary alternative, with 20 percent of gross receipts going into a fund for non-market stewardship activities. Another example of a pilot is the “gross receipts/rate board,” in which the forest is funded out of seventy-five percent of its gross receipts, and a rate board sets user fees to insure against monopolistic pricing.¹⁶²

2.4.3 Mechanisms for Changing the Mission

The means by which a change in the mission of the Forest Service can be accomplished depend on whether the statutory mandate¹⁶³ of the Forest Service is considered broad enough to accommodate the proposed restatement. If the legislative mandate is viewed broadly, then a restatement of mission can be viewed as a change in internal Forest Service policy addressable by regulatory reform or even by less formal changes in policy and procedure. The Wilderness Society, for example, takes this view and states, “Taken together, these three laws¹⁶⁴ lay out a broad, pliable mission that allows the Forest Service to adopt an innovative and up-to-date articulation of its mission.”¹⁶⁵ The view that the Forest Service has broad discretion to establish priorities within the aegis of its legislative mandate is recognized by the federal courts. For example,

¹⁵⁹ *Id.* These alternatives are: a forest trust-- similar to state land trusts, has a trustee responsible for producing revenue and preserving the corpus of the trust; a board of directors-- either elected by national forest permit holders or appointed by the Secretary of Agriculture, but the board members must include a broad range of interests; a collaborative board — which is made up of representatives of a broad range of interests and appointed en bloc by the Secretary of Agriculture, and; a non-profit group could manage the forests.

¹⁶⁰ *Id.* at 3.

¹⁶¹ *Id.* at 4.

¹⁶² *Id.*

¹⁶³ See discussion of the current Forest Service statutory framework in section 2.4, *supra*. See also, Office of Technology Assessment, *supra* note 61.

¹⁶⁴ The “three laws” referred to are the Organic Act of 1897, MUSYA, and NFMA.

¹⁶⁵ The Wilderness Society, note 29, at 15.

Congress has given no indication as to the weight to be assigned each value, and it must be assumed that the decision as to the proper mix of uses within any particular area is left to the sound discretion and expertise of the Forest Service.¹⁶⁶

A narrower view of the legislative mandate would suggest that any change in the mission statement of the Forest Service requires new legislation, either comprehensive or narrowly targeted. The Society of American Foresters recommends a comprehensive legislative approach to the redefinition of mission.

But the laws and regulations intended to determine the highest and best use of the land, to react to changes in public sentiment, to resolve conflicting values - these arbiters have in many respects failed. The accretion of laws is like a leaky roof, and each law is like new shingles - of variable quality and longevity - nailed on top of the old; still the patched roof leaks. It is time to tear off all the shingles and lay a new roof.¹⁶⁷

An additional consideration is whether the fact that there is a wide range of opinion about the proper assignment of management priorities itself necessitates legislative clarification. Again, the Society of American Foresters:

Congress has the constitutional responsibility to set policy for the national forests and public lands and should act decisively to establish clear priorities for their management. The new legislation must clarify which of the many legitimate public values are now most important.¹⁶⁸

The Forest Service maintains the view that ecosystem sustainability merely represents a shift in management emphasis rather than a new mission requiring legislative or regulatory enactment. The shift in administrative emphasis from commodity production to ecosystem management began in the early 1990's. Since that time there has been a sharp reduction in timber harvesting and road construction and a conscious attempt on the part of the agency to increase inter-agency cooperation and to work collaboratively with local communities.¹⁶⁹ In recent speeches, Forest Service Chief, Mike Dombeck, has made it clear that the agency views ecosystem sustainability as integral to its existing statutory mandate.

. . . too often we find ourselves waiting for someone else to resolve our issues for us . . . [when] our obligation is to exercise leadership . . . providing international examples of ecologically sustainable forest and grassland management. . . .History is replete with agencies and businesses that could not, or would not, adjust to changing times and consequently became obsolete. [We must help] communities develop a more harmonious relationship with the land and water that sustain us. . . . Our challenge today is to ensure

¹⁶⁶ Sierra Club v. Hardin, 325 F.Supp. 99 (D.Alaska 1971).

¹⁶⁷ Society of American Foresters, *supra* note 75, at 1 (Executive Summary).

¹⁶⁸ *Id.* at 2.

¹⁶⁹ The Wilderness Society, *supra* note 29, at 19.

that the incentives that drive all aspects of our programs promote ecological sustainability.¹⁷⁰

An example of the way the Forest Service integrates this shift in mission/management emphasis may be found in the series of four white papers issued by the agency on various aspects of resource management: watersheds, roads, recreation, and forest ecosystem management. Dombeck highlights the dual purposes for the National Forests as expressed in the Organic Act of 1897.¹⁷¹ He then reasons:

In recent years, the focus has been on the Organic Act's provision for timber production. Less well understood is the Act's strong focus on watershed protection. In fact, the need to protect water supplies and to control floods was the driving force behind the Organic Act and other early forest legislation. . . . Our natural resource agenda builds on this historical and legal foundation. Our first priority is to maintain and restore the health of our ecosystems and watersheds.¹⁷²

In this way, the shift to an ecosystem management emphasis is justified as being within the original legislative mandate of the Forest Service itself. The "traditional outputs of goods and services" will not be abandoned, Dombeck says, "but they will be accomplished within the ecological sideboards imposed by land health."¹⁷³

Randal O'Toole traces the roots of this shift in emphasis within the Forest Service in a paper detailing the influence of three "revolutions" within the Forest Service during the 1970s and 1980s.¹⁷⁴ The revolutions were 1) the refusal of many line officers to comply with the Congressionally imposed high timber harvest levels; 2) the introduction of computer technology, particularly e-mail, into normal Forest Service operating routines; and 3) the emergence of scientists, other than foresters, to prominence within the agency, this latter culminating in the appointment of Jack Ward Thomas, a biologist, as chief in 1993.¹⁷⁵ These three sets of events coincided in the late 1980s and began the trend to the lower timber harvests and different management emphases with which we are familiar today. They represent what O'Toole refers to as "the revolt of the 1980s [which] transformed the agency far more than [any governmental] reinvention process is likely to do, mainly because it came, not from the top down, but up from the ground."¹⁷⁶

Typical of more recent critics who would encourage the Forest Service to reformulate its

¹⁷⁰ USDA Forest Service Chief Mike Dombeck, *Protecting and Restoring a Nation's Land Health Legacy*, Speech in Missoula, *supra* note 137.

¹⁷¹ Organic Act, 16 U.S.C. § 475 (1999).

¹⁷² Mike Dombeck, *A Gradual Unfolding of a National Purpose: A Natural Resource Agenda for the 21st Century* (March, 1998)[hereinafter *Natural Resource Agenda*]. Available at <<http://www.fs.fed.us/agenda>>.

¹⁷³ *Id.*

¹⁷⁴ Randal O'Toole, *Memo to President Clinton: The Forest Service Has Already Been Reinvented - and You Fired the Man Who Oversaw It*, *The Electronic Drummer*, special issue on Reinventing the Forest Service [hereinafter O'Toole]. Available at <<http://www.ti.org/reinventfs.html>>.

¹⁷⁵ *Id.* at 19.

¹⁷⁶ *Id.* at 20.

own mission and management strategies is the Lubrecht Group.¹⁷⁷ The Northern Lights Institute convened the group for a series of conversations on new directions for the Forest Service.¹⁷⁸ The membership of the group was diverse, although primarily from the geographic area around Missoula, Montana.¹⁷⁹ Among its recommendations, the Group suggests that rather than “grand” changes in policy or law initiated at the national level, what is needed is an evolution from local consensus and decision-making, aggregating up to regional or watershed levels, eventually developing into policy changes, which in turn inform the making of new legislation¹⁸⁰ - a process suggestive of the history described by O’Toole.¹⁸¹

The Lubrecht Group recommends the establishment, within the Forest Service and not as a result of legislation, of a non-geographic “Region 7.” Selected on the basis of proposals by the Forest Service, districts and forests in Region 7 would be relieved of current regulatory, but not of legal, constraints on their decision-making and management activities. The Forest Service would set a non-itemized budget for these entities and then step back. The goal of the experiment would be to develop practical collaborative decision-making processes at the local/regional level, which might eventually evolve into a national restatement of basic mission, planning, and management policy.¹⁸²

A parallel movement within the Forest Service would situate a restatement of mission within the formal regulatory reform of the planning process. In 1997, the Secretary of Agriculture appointed an interdisciplinary committee of 13 scientists to review and evaluate the agency’s management planning process.¹⁸³ The recommendations of the Committee of Scientists form the

¹⁷⁷ See *Chronicle of Community* (Autumn 1998). The group takes its name from its meeting place, The Lubrecht Experimental Forest of the University of Montana at Missoula.

¹⁷⁸ The group met several times in early 1998 under the auspices of the Northern Lights Institute, Missoula, Montana. Supporting the meetings were the Bolle Center for People and Forestry and the Center for the Rocky Mountain West, both of the University of Montana, Missoula.

¹⁷⁹ Participants were: Jim Burchfield, director of the Bolle Center; Orville Daniels, former supervisor of the Lolo National Forest; Gloria Flora, supervisor of the Lewis & Clark National Forest; Daniel Kemmis, director of the Center for the Rocky Mountain West; Mary Mitsos, Pinchot Institute; Doug Mood, owner of Pyramid Lumber Company and state representative in the Montana Legislature; Gerald Mueller, Northern Lights Institute; Art Noonan, former legislative aide to Pat Williams; Thomas Power, chair of the Economics Department, University of Montana; Donald Snow, director of Northern Lights Institute; Jack Ward Thomas, former chief of the Forest Service; and Pat Williams, senior fellow at the Center for the Rocky Mountain West and former member of the United States Congress.

¹⁸⁰ *Chronicle of Community*, *supra* note 177, at 19-20.

¹⁸¹ O’Toole, *supra* note 174.

¹⁸² The Region 7 concept has not yet developed into a formal proposal to the Forest Service. The group suspended its conversations while several members explored the development of a joint proposal with the Forest Options Group, sponsored by the Thoreau Institute. The Forest Options Group proposals were more narrowly tailored than the Region 7 concept. The Lubrecht Group will, therefore, reconvene to further develop its proposal. A specific schedule has not yet been determined. Donald Snow, Northern Lights Institute, *personal communication*, October 4, 1999. The Forest Options Group report, *Options for the Forest Service 2nd Century*, is available at <http://www.ti.org/2c.html>. For example of collaborative decision making see *infra* note 483.

¹⁸³ The Forestry Source, Society of American Foresters, *USDA Committee of Scientists Calls for Sustainability*, (Apr. 1999). Available at <<http://www.safnet.org/archive/usdacos499.htm>>.

basis for a revision of the codified regulations governing Forest Service planning.¹⁸⁴ Among other tasks, the committee was asked to “recommend how best to accomplish sound resource planning within the established framework of environmental laws and within the statutory mission of the Forest Service.”¹⁸⁵ One of the Committee of Scientists’ first proposals was a reformulation of the basic mission and purpose of the Forest Service. The committee stated that their reformulation of mission is well within the boundaries of the legislative mandate and can be formalized in the context of regulatory reform:¹⁸⁶

Looking back across the century, a suite of laws, starting with the Organic Act of 1897, call for federal agencies to pursue sustainability.. Thus, for the past 100 years, we, as a nation, have been attempting to define what we mean by sustainability, in part through our grand experiment in public land ownership. In the process, we have broadened our focus from that of sustaining commodity outputs to that of sustaining ecological processes and a wide variety of goods, services, conditions, and values. The concept of sustainability is old; its interpretation and redefinition in this report should be viewed as a continuation of the attempt by Gifford Pinchot¹⁸⁷ and others to articulate the meaning of “conservation” and “conservative use” . . .¹⁸⁸

Many, however, believe that internal policy or regulatory changes are insufficient to appropriately clarify and legitimize the shift in Forest Service emphasis from traditional MUSYA outputs to ecosystem management. Disagreements over the proper management priorities for the National Forest System are viewed as matters of national, not agency, policy. As such, the proper source of such policy reformulation is Congress, not the agency.

One fundamental problem is that the purposes of the national forests and public lands are no longer clear. Changing public values, court decisions, administrative agendas, and federal environmental laws have combined to emphasize biodiversity, ecosystem functions, and forest health. The land management statutes - last revised more than 20 years ago - no longer adequately convey the public purposes or the priorities for which these lands should be managed.

No management planning process for the public lands and national forests can resolve basic differences in values. . . . In short, the problems that exist are both serious and complex, and it is unlikely that regulatory reform can resolve them. Rather, new legislation is warranted. Society of American Foresters (1999).¹⁸⁹

¹⁸⁴ See generally USFS Proposed Rule, *supra* note 18.

¹⁸⁵ *Id.*

¹⁸⁶ Committee of Scientists, *supra* note 74, at 5-7.

¹⁸⁷ Gifford Pinchot was the first Chief of the Forest Service. He served from its inception in 1905 until he was relieved of his position by President Taft in 1910.

¹⁸⁸ K. Norman Johnson, Chair, Committee of Scientists, Testimony before the House Subcommittee on Forest Health, Committee on Resources, (March 16, 1999). Find at <http://www.fs.fed.us/intro/testimony/19990316c.html>.

¹⁸⁹ Society of American Foresters, Executive Summary, *supra* note 75, at 2-3.

Even the Committee of Scientists minority view¹⁹⁰ was that the committee's proposed reformulation of the Forest Service mission constituted a true change in public policy, thus requiring statutory enactment.

. . . the report recommends what can best be described as mission shift. Its recommendation that "sustainability should be the guiding star for the stewardship of the national forests" is fundamentally different from the concept of management for the "sustainable production of multiple outputs." The latter was the objective of . . . the current statutory legislation governing the management of the National Forest System. Although I personally do not have a fundamental problem with a new mandate for the Forest Service, I believe such a change should come through a process that reflects the judgement and desires of the American people, rather than the values of the members of the committee.¹⁹¹

Other advocates of statutory, rather than regulatory, reform simply contend that the existing legislative mandate of the Forest Service does not represent good law. For that reason, if no other, the laws should be rewritten. Representative of this view is the comment of George Cameron Coggins,¹⁹²

The multiple-use, sustained-yield statutes are not very good laws. They represent congressional buck-passing, and they allow bureaucratic lawmaking. They give managers a latitude that would be deemed undue in other, more visible areas of the law.¹⁹³

Legislation proposing comprehensive statutory reform of the Forest Service is currently before Congress. H.R. 1396 would change the mission of the Forest Service well beyond the limits imposed by the "multiple-use sustained-yield/ecosystem sustainability" model.¹⁹⁴ Clearly, such a departure from the existing statutory mandate would require legislative action. S.1320, on the other hand, would reformulate the basic mission statement of the Forest Service in terms not unlike those espoused by the agency in its recent policy statements.¹⁹⁵ In his statement introducing the bill, Senator Craig describes the rationale for using a legislative mechanism to enact his restatement of the Forest Service mission.

This bill is the result of 15 oversight hearings . . . The overwhelming conclusion from all [the] witnesses - developers and environmentalists alike, public and private sector employees alike - was that the statutes governing federal land management - the 1976 Federal Land and

¹⁹⁰ Committee of Scientists, *supra* note 75, at 183.

¹⁹¹ Roger Sedjo, *Mission Impossible*, *Journal of Forestry*, V.97, No. 5 (May 1999).

¹⁹² George Cameron Coggins is the Frank Edwards Tyler Professor of Law at the University of Kansas. He specializes in Natural Resources Law and has written, lectured, and consulted extensively on federal land management law and policy.

¹⁹³ The Wilderness Society, *supra* note 29, at 20.

¹⁹⁴ Details of H.R. 1396 were discussed in section 2.4.2.1, *supra*.

¹⁹⁵ The proposed mission restatement in S. 1320 is discussed in section 2.4.2.2, *supra*.

Policy Management Act and the 1976 National Forest Management Act - are antiquated and in need of updating. These statutes were passed by Congress in the mid-1970s to help solve land management problems. Today, they are a large part of the problem.

I look at laws as ‘tools’ for use by professional land managers . . . that help establish priorities and make management decisions. These two tools are as antiquated as the slide-rule and computer punch cards that were the tools used by land managers at the time that these statutes were passed.

. . . many, if not most, of the problems that plague federal land management today can be resolved only through a cooperative effort between the Administration and Congress to produce a revised legislative charter for the land management agencies . . . It is clear to us that the kinds of changes the Committee (of Scientists) seek cannot be accomplished through regulation. They must involve fundamental statutory changes to the agencies’ missions. .

We also move forward knowing that legislative change in this area is both inevitable and vital . . . [and that] this area of public discourse vitally needs a vibrant legislative debate and a new legislative charter so that our federal land managers can be provided with tools a little more modern than the slide-rule and mainframe computer punch cards.¹⁹⁶

With variations in emphasis, the proposed mission restatements based on ecosystem sustainability arguably fall within the broad outlines defined in the Organic Act of 1897 and the MUSYA of 1960. At this time, all three approaches to enacting a reformulation of the Forest Service mission — internal policy change (Forest Service), regulatory reform (Committee of Scientists), and legislation (S. 1320) — are proceeding simultaneously, perhaps independently, and apparently convergently.

3. MANAGEMENT AND PLANNING REFORM

Reform proposals listed in this section pertain to the overall management framework and strategy within which the Forest Service pursues its broad mission objectives, as well as proposals directed to management of local components of the National Forest System.

3.1 Budget and Finance

Several studies have criticized the current process of financing national forest management. For example, the U.S. Office of Technology Assessment’s (OTA) study of the Forest Service examines the role of economic considerations in forest service planning and management. The

¹⁹⁶ Congressional Record, *Statements on Introduced Bills: Public Lands Planning and Management Improvement Act of 1999*, Vol. 145, No. 96, pp. S8093-94 (July 1, 1999). Find at <http://www.thomas.loc.gov> (search under “current session” and “s1320”).

OTA report argues that Congress requires the Forest Service to make two primary kinds of economic judgments: (1) determine the balance among competing resource values, and (2) identify the impacts of forest management decisions on adjacent communities. The report identifies a number of shortcomings in each area.¹⁹⁷ First, despite Congress' intent that economic efficiency be only one of several factors in forest planning, efficiency has become the principal consideration in national forest planning. Not only is the emphasis on efficiency itself problematic, but the actual assessments and projections used in planning are plagued by difficulties in comparing market prices and other values, in balancing consumptive and nonconsumptive activities in national forests, and in obtaining accurate cost and value data. Second, the Forest Service faces numerous challenges in identifying the impact of payments to counties on the stability of local economies because of fluctuations in demand for timber products and the level of logging, differences in the economic conditions of communities within counties, the lack of measures of stability, and differences in comparing resource and recreation sectors.¹⁹⁸

The OTA study also examines the budgeting process and the interaction of Congress and the Forest Service in funding the agency's activities. According to OTA, several problems plague the budget process. Different forest plans are based on differing budget assumptions, making comparisons of different forests difficult and complicating the aggregation of budget data.¹⁹⁹ The Forest Service budget and appropriations are delineated in terms of resource, but the budgets for forest plans are organized by integrated resource projects, and the interpretations and extrapolations from one classification scheme to the other are imprecise. Some goals, such as timber production, are easily quantified, while noncommodity values are difficult to measure. The budget process is further complicated by the existence of fourteen different trust funds, the six largest of which are related to timber harvests; the OTA report found little oversight or control over these special accounts.²⁰⁰

The Society of American Foresters' *Forest of Discord* study also highlights major problems related to the process of financing national forest management. First, the Society notes that there are a number of different values to be pursued in national forests, including timber production, recreation, biodiversity protection, and ecosystem functioning, and that planning processes cannot resolve the fundamental differences among these values. Further, they note, the Forest Service's budget is not directly linked to forest plans and management activities.²⁰¹

A 1999 Competitive Enterprise Institute paper also charges that federal land policy wastes taxpayer dollars and contributes to environmental degradation. It argues that federal lands are "routinely mismanaged" because political, rather than economic or environmental considerations dominate the decision-making process; that "one-size-fits-all" federal policy development is inefficient; and that the several federal land management agencies are duplicative,

¹⁹⁷ Office of Technology Assessment, *supra* note 61, at 7.

¹⁹⁸ *Id.* at 7-8.

¹⁹⁹ See USFS Proposed Rule, *supra* note 18, §§ 219.2(c)(2)(vi) and 219.30(f).

²⁰⁰ Office of Technology Assessment, *supra* note 61, at 8.

²⁰¹ Society of American Foresters, *supra* note 75.

uncoordinated, and “often work at cross purposes.”²⁰²

3.1.1 Business Oriented Reforms: Fees

A number of proposals have been put forth to address perceived economic problems in forest management. These include bills before Congress to change various elements of the Forest Service’s income structure. S. 1320, introduced by Senator Larry Craig (R-ID) in 1999, would make a number of changes in Forest Service policy related to fees and expenses. For example, section 403 would authorize the agency to require bonding and charge both reimbursement and social use fees for commercial film and photography production activity on federal public lands. Such fees would cover both direct and administrative costs of the filming projects. Reimbursement fees would be retained by the Secretary; special use fees would be divided between the local and regional management units in which the fee was collected.

Section 405 of S. 1320 would authorize the Forest Service to charge and collect fees for linear rights of way for power and communication lines, ditches and canals, roads, trails, and pipelines. Fees would be based on the fair market value of the rights and privileges provided. Section 406 would limit agency authority to waive or reduce fees required for the processing of requests for records under the Freedom of Information Act.

Addressing the problem of “below cost” timber sales, section 411 of S. 1320 would authorize the Forest Service to establish a pilot program for the collection of fees at the time timber contracts are awarded; the fees would cover the direct cost to the agency of the preparation and administration of the timber sale, but would not include the preparation of environmental analyses, and could be waived if the fee would “adversely affect the marketability of the timber sale, or the ability of small businesses ... to bid competitively on the timber sale. Similarly, the Green Scissors Report recommended that fees collected from timber sales be sufficient to cover all of the costs involved in managing the sales and restoring landscapes and watersheds; the report projects that such a change would save \$111 million a year.²⁰³

Other groups and legislation also address user fees. The Forest Appropriations Initiative recommended abolishing the user fee demonstration project.²⁰⁴ H.R. 2295, introduced by Rep. Lois Capps (D-CA), would abolish the Forest Service’s Recreational Fee Demonstration Project and require the agency to include in the fees it charges timber companies the cost of engineering support for planning, designing, and administering road work for timber sales.²⁰⁵ In contrast, a 1998 General Accounting Office report found that the Forest Service and the other federal agencies that experimented with increasing the fees they charge visitors were able to substantially increase their revenues without adversely affecting the overall number of visitors to the sites affected. The report recommends that the agencies look for other ways to experiment with fees and to coordinate their fee-collection activities.²⁰⁶ Critics of the fee demonstration

²⁰² Competitive Enterprise Institute, *supra* note 38.

²⁰³ Green Scissors ‘99, “Public Lands, The Price Isn’t Right,” at 42. This report is available at <http://www.foe.org/eco/scissors99/welcome.html>.

²⁰⁴ Forest Appropriations Initiative (FY 2000), at <http://www.americanlands.org/forestweb/appropri.htm>.

²⁰⁵ *Forest Access Immediate Relief Act of 1999*; H.R. 2295, 106th Congress (1999).

²⁰⁶ U.S. General Accounting Office, *Recreation Fees: Demonstration Fee Program Successful in Raising Revenues but Could Be Improved*, (November 1998).

initiative fear that user fees move the Forest Service towards the privatization and commercialization of public lands, and that ecological values will be sacrificed.²⁰⁷

Terry Anderson has also recommended that all recreational users of public lands be charged a fee, that local management units be allowed to keep 80 percent of the fees they collect with the remaining 20 percent to be distributed to units in which collection costs are prohibitive. He recommends that fee proceeds or private parties be allowed to purchase and retire grazing permits where there is a conflict with recreation. A portion of the fee receipts would go into a biodiversity trust fund that would offer grants to private groups for conservation projects on public and private lands.²⁰⁸

As an alternative to a transfer of public lands from the federal government to the states or to private landowners, the CEI proposes that Congress should at least require each federal land unit used for resource development or recreation be financially self-sufficient through either cutting expenses or increasing user fees.²⁰⁹

The Fiscal Year 2000 appropriations bill for Interior and Related Agencies contains a section creating a “Pilot Program of Charges and Fees for Harvest of Forest Botanical Products,”²¹⁰ a program that will experiment with charging fees for harvest of non-timber forest resources, similar to the Recreation Fee Demo program which charges fees for recreational use of public lands. This program requires the Forest Service to charge and collect the fair market value for forest botanical products harvested on National Forest System lands.²¹¹ The pilot program requires that such harvests be conducted on a sustainable basis, and that the fees collected be expended proportionally in the national forest where they were collected.²¹²

3.1.2 Business Oriented Reforms: Other

Terry Anderson has argued that not only are subsidies for timber sales harmful environmentally, but subsidies for recreation on federal lands also threaten the health of these lands.²¹³ He examined net receipts from recreational and timber activities on Forest Service lands in Montana and Idaho between 1988 and 1992 and found that the Forest Service made money on logging in one year, but lost money on recreation-related activities every year.²¹⁴ Anderson also identified examples of private land owners who offer recreation and other amenity values on their lands by selling hunting, fishing and other permits, and argues that public land owners can do the same.²¹⁵

²⁰⁷ Forest Appropriations Initiative (FY 2000), *supra* note 204, at 24-26.

²⁰⁸ Terry Anderson, *To Fee or Not to Fee: The Economics of Below-Cost Recreation*, Multiple Conflicts Over Multiple Uses (Terry L. Anderson, ed.). Bozeman, Montana: Political Economy Research Center, 1994, at 14-15.

²⁰⁹ Competitive Enterprise Institute, *supra* note 38.

²¹⁰ “Pilot Program of Charges and Fees for Harvest of Forest Botanical Products,” H.R. 2466 § 339 (1999).

²¹¹ *Id.* at § 339(b).

²¹² *Id.* at §§339(d), 339(f)(3).

²¹³ Terry L. Anderson, *supra* note 208.

²¹⁴ *Id.* at 2.

²¹⁵ *Id.* at 6.

Two draft principles of the Forest Congress addressed the need for full cost pricing was a topic addressed at the Forest Congress, but neither principle was supported by a majority of delegates. Twenty-one percent of the participants agreed that “the full cost of timber sale and harvest on public lands [should] “be borne by those deriving economic benefit.”²¹⁶ Another 17 percent agreed that the “full cost of maintenance, monitoring and waste management” should be reflected in “forest product prices.”²¹⁷ A large majority of participants, however, supported a more general vision that included private investment in forest. Eighty-nine percent of the participants agreed that the forests would be “enhanced by policies that encourage both public and private investment in long-term sustainable forest management.”²¹⁸

A 1985 study by Teeguarden and Thomas presents the idea of creating independent public forest corporations (PFCs) to manage national forests, much like other public corporations that have been established for public communications, transportation, and electricity generation.²¹⁹ A PFC would be chartered for each national forest to operate as a government-owned, autonomous corporation, with a board of directors and managers. PFCs would be given the discretion to establish their own timber production and other resource extraction goals and to finance their own operations through the sale of products and services and through the issuance of securities. Services that might not be funded adequately by free markets but that have significant public value could be funded through grants from federal and state governments. A Public Corporations Board would regulate the structure, operations, financial management, pricing decisions, and stewardship over natural resources of the forest corporations. Charters would be issued for specific periods of time, such as 10 or 15 years; corporations that functioned well could have their charters renewed indefinitely; those that failed to meet established standards would be merged with other units or dissolved, and the land would revert to a federal land agency.²²⁰ In order to test the idea of PFCs, Teeguarden and Thomas suggest that a fraction of forest lands be managed as corporations. Their performance would be compared to forests operating under the traditional management structure. This would provide a way to test the advantages and disadvantages of PFCs and to encourage other innovations in federal land management.²²¹

²¹⁶ Forest Congress, *supra* note 32. Draft Principle 32 at 15. 21% full agreement, 20% reluctant agreement, and 59% disagreement.

²¹⁷ *Id.* At 15. Draft Principle 35. 17% full agreement, 19% reluctant agreement, and 64% disagreement.

²¹⁸ *Id.* At 6. Final Vision Element 2. 89% of participants agreed with the statement, 6% reluctantly agreed, and only 5% disagreed.

²¹⁹ Dennis E. Teeguarden and David Thomas, “A Public Corporation Model for Federal Forest Land Management,” *supra* note 149. Their analysis of the shortcomings of the current management of national forests focused on several problems: resource planning, largely a local forest function, is separate from budget planning, largely a national effort, with Congress and the Forest Service vying for control. The Forest Service fails to maintain balance sheets that show the financial status of forests, making it impossible to know whether logging and other activities are subsidized or making money. Professional resource managers typically remain in the same forest for only three or four years, and are frequently transferred from one location to another, limiting the accumulation of experience and expertise. The diversity of forests, the lack of agreement over goals and measures of performance, and the hierarchical structure combine to impede efficient management.

²²⁰ *Id.* at 375-76.

²²¹ *Id.* at 386-87.

In a similar vein, Section 404 of S. 1320 would authorize the creation of up to 15 public/private venture demonstration projects to assess the feasibility of using nonfederal funds to construct, rehabilitate, and operate visitor facilities. The Forest Service would be authorized to sell existing facilities to private concessionaires if it is determined that the sale “is in the best interest of the Federal government” and if construction and renovation are consistent with applicable resource management plans and laws.²²² The Forest Service would collect from concessioners a percentage of their gross revenues; the specific percentage would be established by bids. Section 407 of the same bill would authorize a study of the feasibility and likely effects of permitting the Forest Service (and BLM) to retain all of the revenues collected within their jurisdiction.

3.1.3 Public Interest Oriented Reforms

Several recommendations have been made for substantive changes in forest management through changes in appropriations. The Green Scissors ‘99 report, sponsored by the Friends of the Earth, a number of other environmental groups, and Taxpayers for Common Sense, calls for changes in Forest Service policy including a halt to funding for the construction, planning, and design of new logging roads. The report argues that 95 percent of roads in National Forests are constructed for logging and only five percent for recreation; logging roads are a major cause of the decline in grizzly bear populations and threaten other species; they cause soil erosion and stream sedimentation; and they cost the taxpayers \$387 million between FY 1992 and FY 1997.²²³ The Forest Appropriations Initiative recommends major revisions to the Forest Service budget to reduce environmental damage in national forests and to increase land acquisition. Among the substantive recommendations are the following: prohibit the construction of new roads in National Forests, prohibit logging in roadless areas and old growth forests, end subsidies for timber sales, abolish off-budget funds, increase funding for fire ecology research and fire management planning, increase spending on invasive species problems, establish a pilot project for retiring grazing permits, focus recreation appropriations on stabilizing and improving recreational infrastructure, increase spending on monitoring and inventory of forest resources, and increase spending on watershed improvements.²²⁴

The Green Scissors report also recommends that the Forest Service abolish the Salvage Fund. Critics charge that this fund, which was established to facilitate the removal of insect-infested, dead, and damaged timber, allows the agency to retain revenue from sales without deducting expenses and encourages agency officials to favor logging over other land uses.²²⁵ The report also urges that the Forest Service no longer spend money from the Replanting Fund, established by Congress to pay for the restoration of logged lands, to meet general overhead expenses.²²⁶ The Society of American Foresters has also called for a review of trust funds and

²²² S. 1320, *supra* note 118, at § 404(d)(1).

²²³ Green Scissors ‘99, “Public Lands, The Great Tree Robbery,” *supra* note 203, at 41.

²²⁴ Forest Appropriations Initiative, *supra* note 199.

²²⁵ Green Scissors ‘99, “Public Lands, Freeze the Slush,” *supra* note 203, at 49.

²²⁶ Green Scissors ‘99, “Public Lands, K-V Calamity,” *supra* note 203, at 48.

special accounts to ensure they are consistent with congressional intent.²²⁷

3.1.4 Local Compensation Reform

Unlike privately owned lands, the federal public lands are not subject to taxation by counties. In order to provide the counties containing national forests with a supplementary source of revenue, Congress, in 1908, created the “Twenty-Five Percent Fund.” This fund is essentially a revenue-sharing device, which provides that “twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid . . . to the State . . . in which such forest is situated . . . for the benefit of the public schools and public roads of the county or counties in which such national forest is situated.”²²⁸ When the U.S. public lands policy shifted from one of disposal to one of retention, Congress again decided that it was also necessary to compensate local governments for lands that would not be subject to taxation.²²⁹ With this in mind, Congress passed the Payment in Lieu of Taxes (PILT) Act of 1976,²³⁰ which created a complex formula for compensating local governments containing certain types of federal land. Passage of PILT also served to guarantee some degree of payment to counties that were not heavily involved in resource extraction by basing compensation on a formula that takes public land acreage and county population into account. Under the PILT formula, a payment to a county will be reduced by the amount of any payment that may have been received under a different land compensation program in the previous year.²³¹ For example, counties receiving payments from the Twenty-five percent Fund will have their PILT payments in the following year reduced by the amount of the Twenty-five Percent Fund payments from the current year.

These two laws, each providing compensation to local governments for the national forest lands within their boundaries, have been the subject of much scrutiny and debate. Of chief concern has been the failure of Congress to appropriate sufficient funds to fully compensate counties under PILT²³², and the concern that the Twenty-Five Percent Fund has led counties to rely on unsustainable, resource-extractive uses of the national forests for their revenue²³³. Removing the link between county payments and commodity uses of the national forests is known

²²⁷ Society of American Foresters, *supra* note 75, at 49-62. The other two recommendations are as follows: First, it recommended a fundamental rewriting of natural resource law and policies to establish priorities for management of national forests, provide for flexibility in devising management plans that are tailored to specific forests, and give Forest Service officials broad authority and responsibility to concluded that the purposes of national forests are no longer clear and called for a fundamental rewriting of natural resource law and policies. Second, it proposed that resource management plans identify and quantify, wherever possible, goals and outcomes and expected economic and environmental consequences, and ensure that monitoring and evaluation of progress in achieving those goals occurs. Public participation should strengthen and not paralyze implementation, and federal agencies should identify clearly what analyses and decisions are to be made at each level of planning.

²²⁸ “Twenty-Five Percent Fund,” 16 U.S.C. § 500 (1999).

²²⁹ *Payment in Lieu of Taxes: Somewhat Simplified*, Congressional Research Service Report 98-574, at 2.

²³⁰ Chief Financial Officer’s Act, 31 U.S.C. §§ 6901-6907 (1999).

²³¹ *Id.* 31 U.S.C. § 6902(c) (1999).

²³² *Id.*

²³³ American Lands, “Federal Revenue Sharing: Decoupling Timber Receipts from County Payments.” Available at <<http://www.americanlands.org/forestweb/county.htm>>.

as “decoupling.” A wide range of interest groups have proposed various alternatives emphasizing decoupling for stabilizing federal payments through various mechanisms that can be categorized based on acreage, historic payments, and property taxes. The Office of Technology Assessment report also recommended that Congress and the Forest Service find a way to ensure fair and consistent compensation to counties in which national forests are located. The Society of American Foresters has also called for a review of the payments in lieu of taxes program in order to ensure that states and counties are fairly compensated.²³⁴

3.1.4.1 Local Compensation Reform based on Acreage

Rather than compensate counties for the federal land within their boundaries based on complex formulae or commodity extraction, a simple revenue-sharing solution has been proposed. The Wilderness Society has suggested that payments to counties be fully funded by Congress and be based on the number of acres of national forest within the specific county.²³⁵ In its Forest Management Policy, the Sierra Club also advocates moving local compensation away from commercial uses and toward a land based program.²³⁶

3.1.4.2 Local Compensation Reform based on Historic Payments

In order to lessen the dependence of communities on compensation based on resource extraction, critics have also proposed that the current system be changed to one that compensates counties based on past payments. By decoupling payments from commodity receipts, these proposals attempt to stabilize the payments made to the counties, and to decrease dependence on extractive uses. Such uses historically have strong support in local communities who received the greatest benefit from those uses. In his speech outlining the Forest Service’s Natural Resource Agenda for the 21st Century, Chief Michael Dombeck stressed that the decline of timber harvesting has resulted in decreased payments to counties, and he proposed that Congress and the Forest Service work together to provide stable and predictable county payments capable of providing support for local public schools and roads.²³⁷

The Forest Appropriations Initiative also proposes to eliminate the linkage between receipts and county payments because it sees that link as leading to support for excessive logging levels.²³⁸ The Forest Appropriations Initiative suggests that payments to counties be stabilized and assured annually by basing them on an average of payments during a prior period.²³⁹ In both 1998 and 1999, the Clinton administration proposed that the 25 percent payment to counties be permanently authorized and separated from timber sales revenues. Counties would be given 25 percent of FY 1998 payments or 76 percent of the average of the three highest payments

²³⁴ Society of American Foresters, *supra* note 75.

²³⁵ The Wilderness Society, *supra* note 29, at 14.

²³⁶ Sierra Club, “Forest Management Policy.” Available at <http://sierraclub.org/policy/conservation/forest.asp>

²³⁷ U.S. Forest Service Chief Michael Dombeck, *A Gradual Unfolding of a National Purpose: A Natural Resource Agenda for the 21st Century*, Speech in Mizzoula, *supra* note 170.

²³⁸ Forest Appropriations Initiative, *supra* note 204, at 3.

²³⁹ *Id.*

between FY 1986 and 1995, whichever was higher.²⁴⁰

Representative Peter DeFazio of Oregon has proposed a bill to modify the requirements for paying federal timber sale receipts. The “Timber Dependent Counties Stabilization Act of 1999”²⁴¹ would give states the option of continuing to receive the 25 percent of receipts that are currently paid, or to receive a special annual payment to be individually determined for each state. The special payment amount would be 76 percent of the total amount of the three highest 25 percent payments made to the state between 1985 and 1995 and would result in stable annual payments to the states. The choice between the regular 25 percent payment and the special payment belongs to the governor of the eligible state, and if the governor does not choose a payment option, the state would receive the special payment.

On November 3, 1999, the House of Representatives passed H.R. 2389, the “Secure Rural Schools and Community Self Determination Act,” a bill which stabilizes payments to counties from timber sales. H.R. 2389 guarantees to counties stable payments through 2006, by paying to the states an amount equal to the average of the three highest 25 percent payments from the fiscal years 1984 to 1999.²⁴²

The bill also contains provisions that will increase the involvement of the local community in the management of forest resources by earmarking twenty percent of any annual payment greater than \$100,000 as “project funds,” and by authorizing the creation of “a local advisory committee to review projects proposed by participating counties and to recommend projects to participating counties.”²⁴³ The local advisory committee is to be comprised of fifteen geographically diverse members, and each committee is required to have at least one member representing each of the following: local resource users, environmental interests, forest workers, organized labor representatives, elected county officials, and school officials or teachers.²⁴⁴

These project funds are to be spent on projects “that the Secretary concerned (Secretary of Interior for BLM timber lands, Secretary of Agriculture for Forest Service lands) may otherwise carry out on the Federal lands,” provided that “the project has been reviewed and approved by the relevant local advisory committee.”²⁴⁵ These projects are subject to all applicable federal laws, the existing resource management plans for the Federal land involved, local advisory committee approval, any environmental review required by the National Environmental Policy Act (42 U.S.C. 321 et seq) or consultation and biological assessment required by the Endangered Species Act (16 U.S.C. 1531 et seq), and final approval by the Secretary concerned.²⁴⁶ The revenues generated by projects funded by the annual payment are to be used to fund additional projects that may be proposed by the counties.²⁴⁷ The bill also calls for the establishment of a “Forest

²⁴⁰ Larisa Epatko, *Bill to Brace County Timber Payments Set for Markup*, Environment & Energy Weekly (Sept. 13, 1999), at 16-17.

²⁴¹ Timber Dependent Counties Stabilization Act of 1999, H.R. 1185, 106th Cong. (1999).

²⁴² Secure Rural Schools and Community Self Determination Act, H.R. 2389, 106th Cong. § 101 (1999).

²⁴³ *Id.* H.R. 2389, 106th Cong. § 102(d)(1)(b) (1999) and H.R. 2389, 106th Cong. § 205 (1999).

²⁴⁴ *Id.* H.R. 2389, 106th Cong. § 205 (1999).

²⁴⁵ *Id.* H.R. 2389, 106th Cong. §§ 203(c),(d) (1999).

²⁴⁶ *Id.* H.R. 2389, 106th Cong. § 204 (1999).

²⁴⁷ *Id.* H.R. 2389, 106th Cong. § 208 (1999).

Counties Payments Committee,” with a mission to “develop recommendations, consistent with sustainable forestry, regarding methods to ensure that States and counties in which Federal lands are situated receive adequate Federal payments to be used for the benefit of public education and other public purposes.”²⁴⁸

Randal O’Toole of the Thoreau Institute criticizes H.R. 2389 in “Forest Service Reform in the Works,” and suggests changes to remedy its flaws.²⁴⁹ O’Toole calls H.R. 2389 “the most revolutionary public land law since the creation of the Forest Service in 1905,” and sees the creation of county funds to hold the revenues from activities on the national forests that counties invest in as “the biggest pyramid sales scheme since social security, and through it counties could end up controlling half of national forest budgets.”²⁵⁰ O’Toole does not agree with the environmental community’s criticism that the bill will increase logging on national forests. According to O’Toole:

[T]he bill itself won’t increase timber sales. Instead, H.R. 2389’s real effect will be to completely change the Forest Service’s structure and lines of authority. The bill would give counties and advisory committees authority to spend money without responsibility for the results. The Forest Service will be left with responsibility for the forests without the authority over much of its own budget.²⁵¹

This separation of budgetary authority and land management responsibility will have negative consequences, in part because counties will not get monetary returns from their projects and will favor “high-profile, money losing activities that please local constituents rather than actions that improve national forest values.”²⁵² According to O’Toole, there will be many clear losers, including county commissioners, resource users, national environmental groups and the forests themselves, and no clear winners.²⁵³

After discussing the flaws of H.R. 2389, O’Toole suggests some possible remedies modeled on the Forest Options Group’s “Second Century Report.” First, O’Toole suggests that the concepts in H.R. 2389 be applied to some national forests in a “test” situation like the proposed pilot projects of the Second Century Report.²⁵⁴ The article also advocates using the trust model recommended by the Forest Options Group. Applying the trust model to county involvement in forest management would place responsibility for sound management decisions on the trustee — here, the counties.²⁵⁵ O’Toole makes three other suggestions for fixing the problems in H.R. 2389: 1) Add conservation biologists and taxpayer advocacy group representatives to the list of interest groups that must be on advisory committees; 2) Appoint the advisory committees en bloc

²⁴⁸ *Id.* H.R. 2389, 106th Cong. § 302 (1999).

²⁴⁹ Randall O’Toole, “Forest Service Reform in the Works,” available at <www.ti.org>.

²⁵⁰ *Id.* at 1-2.

²⁵¹ *Id.* at 2.

²⁵² *Id.* at 3.

²⁵³ *Id.* at 4.

²⁵⁴ *Id.* at 5.

²⁵⁵ *Id.*

from a competition of committees claiming to represent the widest range of interests (this will result in advisory committees that will be able to get along and won't be subject to gridlock); and 3) Split the revenues from county funded projects in three, with a share going directly to the counties, a share going to the Forest Service, and a share going to a non-market stewardship fund.²⁵⁶ According to O'Toole, these changes should result in balanced management decisions, and should create some winners out of a situation filled with losers.

3.1.4.3 Local Compensation Reform based on Property Taxes

Another alternative proposed for reforming county payments is to base the payments on a property tax regime. Under this system, federal lands would be subject to property taxes like all private lands located within the county. Donald Leal of the Political Economy Research Center has suggested that payments from timber receipts and the Payment in Lieu of Taxes program be replaced and that each national forest unit pay the same taxes that corporations are subject to.²⁵⁷ The Thoreau Institute advocates a change from the current system to one which insures that counties will receive payments at least equivalent to property taxes, which should eliminate many complex formulas and provide counties with compensation equal to or greater than historic receipts.²⁵⁸

One additional proposal for local compensation reform, quite different from the ones seeking to stabilize federal payments, is the corporate receipts model put forth in Dennis Teeguarden and David Thomas' "A Public Corporation Model For Federal Forest Land Management." Under this proposal, the national forests would be managed by a corporate system, and a portion of income would be distributed to local governments.²⁵⁹ In this system, payments to local governments would most likely decline, because the payment amount would be based on a floating percentage of net profits, rather than a fixed percentage of gross income.²⁶⁰ It is further suggested that to offset the decrease in payment amounts, the corporations make payments to the local governments in lieu of local property taxes.²⁶¹

3.1.5 Improving Financial Accountability

In February 1999, the Office of the Inspector General (OIG) issued an audit report for the Forest Service's fiscal year 1998 financial statements.²⁶² The OIG found that the Forest Service's books and records were in poor shape with several discrepancies within financial

²⁵⁶ *Id.* at 11.

²⁵⁷ Leal, *supra* note 141, at 33.

²⁵⁸ The Thoreau Institute, *supra* note 152, at 10-11.

²⁵⁹ Dennis A. Teeguarden and David Thomas, "A Public Corporation Model for Federal Forest Land Management", *supra* note 149, at 383.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² USDA Office of Inspector General, *Forest Service Audit of Fiscal Year 1998 Financial Statements* (1999). Available at <<http://www.usda.gov/oig/>>.

records and denied the Forest Service a clean audit.²⁶³ In particular, OIG denied the Forest Service a clean audit because of: (1) inaccurate valuation of real property; (2) lack of a general ledger system for recording accounts receivable and accounts payable; and (3) adjustments made to counteract discrepancies instead of addressing the root problem.

Without correcting weaknesses in accountability, Forest Service managers' ability to effectively manage operations, monitor revenue and spending levels, and make informed decisions about future funding needs will continue to be hampered. Forest Service's financial management and accountability has been materially deficient for many years, and correction remains a long-term venture needing continued emphasis and discipline to stay on course.²⁶⁴

Since the 1999 audit, the Forest Service has converted to a new general ledger system, Foundation Financial Information System (FFIS), which may solve many accountability problems by allowing the agency to track assets, revenues, liabilities and costs.²⁶⁵ The agency faced initial difficulties implementing the FFIS system, and may continue to struggle with problems of transferring data to the new system. The Forest Service has agreed to adopt the OIG's recommendation to develop a long-range plan to consolidate, integrate and reengineer systems of gathering data to feed into the FFIS.²⁶⁶

In response to the OIG audit, GAO designated the Forest Service's accounting and financial reporting as a new area at high-risk for waste, fraud, abuse, and mismanagement.²⁶⁷ In order to have the high-risk designation removed, the Forest Service must show sustained financial accountability by a minimum of two consecutive unqualified opinions on its financial statements from the OIG.²⁶⁸

The GAO has also recommended changes to the system for evaluating success. The GAO critiqued the current budget allocation system, based on formulae which measure quantity of facilities or projects rather than quality, as working counter to the agency's commitment to providing superior customer service.²⁶⁹ Instead, the GAO has suggested holding the Forest Service accountable for progress toward the Forest Service mission in future budget allocations.

²⁶³ Viadero, Roger C. Inspector General USDA, Testimony, House Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, Committee on Agriculture (March 11, 1999). Available at <<http://www.usda.gov/oig/igttestimony/htm>>. The Inspector General noted that there has been a pattern of poor financial records for the Forest Service, since 1990 when 31 U.S.C. § 3125 was adopted, requiring of annual audit of financial statements.

²⁶⁴ *Id.*

²⁶⁵ Barry T. Hill, Associate Director, Energy, Resources, and Science Issues General Accounting Office, Testimony, House Subcommittee on Interior and Related Agencies, Committee on Appropriations *Forest Service: Status of Efforts to Improve Accountability*, GAO/T-RCED/AIMD-00-93 (Feb. 16, 2000) [hereinafter *Status of Efforts*]. Available at <<http://www.gao.gov>>.

²⁶⁶ *Id.*

²⁶⁷ United States General Accounting Office. *High-Risk Series: An Update*. GAO/HR-99-1 (January 1999). Available at <<http://www.gao.gov>>.

²⁶⁸ United States General Accounting Office, *Forest Service: A Framework for Improving Accountability*. GAO/RCED/AIMD-00-2 at 25 (1999) [hereinafter *GAO Framework*]. Available at <<http://www.gao.gov>>.

²⁶⁹ *Id.* at 39.

Also, the GAO has recommended integrating human resource management activities into the organizational mission by tying individual pay and promotions to agency goals and objectives through quantifiable performance indicators rather than volume based performance measures.²⁷⁰

The Forest Service has traditionally had an autonomous organizational structure with individual units operating independently. While the structure may be helpful for natural resource management, it is inefficient for budget accounting.²⁷¹ Coopers and Lybrand, L.L.P. was contracted by the Forest Service to propose changes to the agency structure.²⁷² Coopers and Lybrand recommended: (1) establishing a Chief Financial Officer's Office; (2) increasing leverage of FFIS; (3) simplifying budget and accounting structures; (4) providing a financial operating plan; and (5) increasing the use of corporate information.²⁷³

The National Academy of Public Administration (NAPA) has produced a detailed proposal for additional structural changes in order to: (1) strengthen internal management; (2) integrate multiple use organization; (3) increase the role of regional foresters in Chief decision-making; (4) establish clear lines of authority; and (5) improve program analytic capacity.²⁷⁴ NAPA has specifically recommended adding a Deputy Chief of Internal Operations, replacing the Chief Operating Officer position with a Director of Administration, forming integrated groups, and increasing the responsibility and authority of the Chief Financial Officer.²⁷⁵ NAPA has proposed that the Chief Financial Officer be responsible for both budgeting and program analysis.²⁷⁶

The Forest Service is committed to achieving financial accountability. Objective 4.a in the USDA Forest Service Strategic Plan is to improve financial management to achieve fiscal accountability.²⁷⁷ The Forest Service's strategies to achieve the objective include: (1) providing leadership in financial management to promote effective and efficient management of resources and assets; (2) delivering quality, cost-effective customer service by creating customer partnerships and streamlining processes and organization; (3) establishing a knowledgeable, skilled workforce and empowering employees to manage their work and make responsible decisions; and (4) creating a framework of secure, integrated, user-friendly financial systems using cross-functional system design teams that include customers and users. The agency has set the goals of a clean audit opinion by FY 2000 and removal of GAO high-risk area designation for financial management in FY 2003.²⁷⁸ Based on the recommendations by Cooper and

²⁷⁰ *Id.* at 40.

²⁷¹ *Id.* at 21.

²⁷² Coopers & Lybrand L.L.P., *Modernizing Financial Management at the Forest Service - Financial Management and Organizational Analysis*, (1998).

²⁷³ National Academy of Public Administration, *Restoring Managerial Accountability to the United States Forest Service* (1999) at 10 [hereinafter National Academy of Public Administration]. Available at <<http://www.napawash.org/napa/index.html>>, search under List of Publications.

²⁷⁴ *Id.* at 27-30.

²⁷⁵ *Id.* at 30-32.

²⁷⁶ *Id.* at 32-34.

²⁷⁷ USDA Forest Service Strategic Plan (2000 Revision), *Draft*. USDA, FS-652, (November 1999) at 30. Available at <<http://www.fs.fed.us/plan>>.

²⁷⁸ *Id.*

Lybrand, the Forest Service has created three new fiscal and business management positions, including a Chief Financial Officer responsible for FFIS implementation.²⁷⁹

The Forest Service Financial Accountability Restoration Act of 1999, introduced by Representative Bob Goodlatte, will provide additional incentives for the Forest Service to improve accountability. The bill caps discretionary appropriations at the 1999 level until the Forest Service is no longer designated high risk or for a maximum of five years.²⁸⁰

3.1.6 Integrating Budgets with Planning

The budgetary process has the potential to affect both strategic and forest-level planning. One of the most common criticisms of the Forest Service planning process is that, as a result of a weak link between the planning process and the budget, many plans are never implemented.²⁸¹ There are two primary reasons for the existence of discrepancies between budgets and plans. First, Congress typically provides a budget that is insufficient to meet that which is required for planning.²⁸² Second, “the congressional budget is allocated by programs and bears little relationship to the configurations of individual forest plans”.²⁸³

Since Forest Service employees are responsible for assuring that money is spent as Congress directs, appropriations by resource activity — not the forest plans — essentially control the management activities in the forests.²⁸⁴ However, appropriation by resource activity limits the flexibility and availability of funds for large integrated projects. To compensate, foresters have redistributed funds among categories in order to implement their forest plans without adequately recording the redistributions. “‘Charging as budgeted’ and not ‘as worked’ was sometimes a more acceptable option than either not doing the project or requesting a time-consuming and possibly uncertain brokering or reprogramming of funds”.²⁸⁵ This practice has, however, exacerbated accountability problems. If the forest plans are to be implemented as financial accountability improves, the planning process must be better integrated with the budget and appropriations process.

It is in this context that alternative approaches to budgeting are being proposed. For example, the Committee of Scientists has suggested that the Forest Service use a budgetary structure like that of the National Park Service, where Congress funds each individual park.²⁸⁶

²⁷⁹ *Id.* at 13.

²⁸⁰ Forest Service Financial Accountability Restoration Act of 1999, H. R. 2996. On 10/12/99 the bill was referred to the House Subcommittee on Operations, Oversight, Nutrition, and Forestry which requested an executive comment from the USDA. Available at <<http://thomas.loc.gov>>.

²⁸¹ Committee of Scientists, *supra* note 74, at 169.

²⁸² *Id.*

²⁸³ *Id.* For example, the budget passed by the Congress may allow funding of 110% of the total timber called for in the plan, but only 30% of the planned recreation. *Id.*

²⁸⁴ Office of Technology Assessment, *supra* note 61, at 23.

²⁸⁵ United States General Accounting Office, *Forest Service Management: Little has Changed as a Result of the Fiscal Year 1995 Budget Reform*, GAO/RCED-99-2, (1998) at 29. Available at <<http://www.gao.gov>>

²⁸⁶ Committee of Scientists, *supra* note 74, at 170.

The use of a line-item, forest-by-forest funding approach might improve the correspondence between budgets and forest plans.²⁸⁷

Instead of undertaking a complete overhaul of its budgetary process, changes within the current structure have been proposed as well. The Committee of Scientists argues that forest planning should focus on long-term goals that consider a number of different budgetary levels, in addition to expected budgets, and to estimate how these budgets would affect progress.²⁸⁸ Annual reporting on agency performance can then compare and contrast the goals and targets of the plan with the requested budgets and actual appropriations.²⁸⁹

The Public Lands Planning and Management Improvement Act of 1999 (S.1320), as introduced by Senator Larry Craig, would require the Forest Service to do just this. In the analysis of its management plan, the Forest Service would evaluate its goals and objectives across a range of possible levels of funding, with at least one level which provides less funds annually, and one level which provides more funds annually, than the level of funding for the current fiscal year.²⁹⁰ The Office of Technology Assessment has also recommended this approach to Congress.²⁹¹

According to the Committee of Scientists, uncertainty in budgeting can be further mitigated by funding activities out of a share of net returns from user fees.²⁹² This approach would be especially effective in managing the forests for recreational purposes. Under this regime, dependence by the Forest Service on the current budgetary process would be reduced, managers would be encouraged to be more efficient in their expenditures, and the agency would have some input from the public as to which goods and services have a high value.²⁹³

The Office of Technology Assessment provided Congress with several options for integrating and balancing the planning and budgeting processes. These options seek to retain appropriate control over the Forest Service, while allowing it to have the necessary flexibility and funding it needs for effective management. One such proposal, which would require realistic budgets in forest plans, is discussed above. Alternatively, Congress could appropriate funds by management activity, rather than by resource line items, and direct the Forest Service to develop its budget accordingly, based on the activities needed for implementing the forest plans. Under this approach, Congress would make appropriations for planning, implementing, and monitoring, with further subdivisions as it saw fit.

NAPA has recommended reducing the budget allocations to five budget line items in order to give the Forest Service increased flexibility to carry out the agency's strategic plan and to pursue multiple use projects in forest plans.²⁹⁴ NAPA proposes that appropriations be

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 171. These budgetary issues are not fully addressed in the USFS Proposed Rule. The budgetary guidelines for forest plans are found at § 219.30(f) of the USDA Proposed Rule, *supra* note 18.

²⁸⁹ Society of American Foresters, *supra* note 75, at 62.

²⁹⁰ S. 1320, *supra* note 118, at § 113.

²⁹¹ Office of Technology Assessment, *supra* note 61, at 25.

²⁹² Committee of Scientists, *supra* note 74, at 172.

²⁹³ *Id.*

²⁹⁴ National Academy of Public Administration, *supra* note 272, at 22.

subdivided only to the Budget Line Item level. Under each Budget Line Item, the Forest Service would establish programs based on long-term priorities of the agency and organized in a hierarchy. Each program would contain many forest and regional level projects, funded from one line item only.²⁹⁵ Further, NAPA recommends that Congress replace specific appropriations with requirements for increased reporting of budget uses, requiring the Forest Service to submit detailed operating plans and provide semi-annual updates.²⁹⁶ Budget allocations would be developed based on the Forest Service's strategic plan with guidance from major field units.

The Forest Service has made a similar proposal for the fiscal year 2001 budget structure, recommending that budget allocations be reduced to three budget line items: ecosystem assessment and planning, ecosystem conservation, and public service and uses. This simplified budget structure would link the budget to strategic goals of ecosystem health and multiple benefits to people and support integrated projects by the Forest Service which involve several resource areas.²⁹⁷ Future budget appropriations would be based on measurements of performance goals and objectives in the strategic plan and annual performance plans.²⁹⁸

The current budget structure does not support the integrated work necessary to restore and maintain land health while promoting ecological sustainability . . . We need to have flexibility without legislated limitations which could prevent us from being successful.²⁹⁹

GAO has noted, however, that the Forest Service's performance-related data, measurement, and reporting has not improved since the Appropriations Committees gave the agency more flexibility to manage its budget in 1987 and 1995.³⁰⁰ Thus, GAO has recommended continued oversight by Congress to ensure that the Forest Service continues to make progress on its financial management and follows through on strategies to improve its performance accountability.³⁰¹

Finally, Congress could assert more control over the special accounts and trust funds managed by the Forest Service, and clarify the purposes for which these funds could be used.³⁰² In the past, the special accounts and trust funds provided about a third of the annual Forest Service budget, but due to a lack of available information, Congress has been limited in its control and oversight of their use.³⁰³

²⁹⁵ *Id.* at 39.

²⁹⁶ *Id.* at 22.

²⁹⁷ Status of Efforts, *supra* note 265.

²⁹⁸ As required by the Government Performance and Results Act of 1993. 31 USCS § 1551 (2000).

²⁹⁹ Dombeck, Mike. Chief USDA Forest Service, Testimony, Senate Committee on Energy and Natural Resources, *Forest Service Fiscal Year 2000 Budget*, (Feb. 25, 1999). Available at <<http://www.fs.fed.us/congress/19990225.html>>.

³⁰⁰ Status of Efforts, *supra* note 265.

³⁰¹ *Id.*

³⁰² For example, such permanent appropriations include the Knutsen-Vandenburg Fund, the Timber Salvage Fund, the Working Capital Fund, and the Brush Disposal Fund. *Id.*

³⁰³ *Id.*

3.2 Framework of Planning and Assessment

Existing Forest Service planning is a complex, multi-tiered process³⁰⁴ that attempts to coordinate national, regional, forest-level and local decision-making. The process is iterative - with decisions made at each level informing, and being informed by, plans and decisions appropriate to other levels. In theory, this should lead to a system in which continuous monitoring, evaluation and adjustment occur at all levels. In practice, however, the planning system is relatively rigid.

Strategic planning at the national level is governed by the Forest and Rangeland Renewable Resources Planning Act (RPA).³⁰⁵ Under RPA, the Forest Service must engage in a comprehensive assessment of renewable resources. This assessment is used as a baseline to project resource conditions out over a 40 year period.³⁰⁶ The results of this assessment are to be maintained and updated in the form of a detailed inventory of national forest lands and resources.³⁰⁷ Every five years, the Forest Service proposes a program to respond to the needs identified in the assessment.³⁰⁸ This program establishes appropriate future output levels and estimates associated costs.³⁰⁹ The plan is submitted to Congress by the President. Congress, in theory, accepts or modifies the plan and uses it as a basis for annual appropriations.³¹⁰

The link between the RPA Strategic Plan and the forest-level plans is the regional guide. Mandated by Forest Service regulations,³¹¹ not by statute, each regional plan incorporates a portion of the future outputs and costs identified by the RPA process, and in turn, provides guidelines for individual forests. At the forest level, the planning process is governed by the National Forest Management Act (NFMA). NFMA requires the preparation of an environmental impact statement for each forest plan.³¹² It also mandates extensive outside participation in the development of each forest plan, both by other governmental agencies and by the general public.³¹³ Each forest plan must describe the desired future condition of a forest and

³⁰⁴ For extended discussions of the current USFS planning system, *see*, GAO, note 77, at 58-62, and The Wilderness Society, *supra* note 29, at 30-34.

³⁰⁵ NFMA, 16 U.S.C. §§ 1601-1603 (1999). Sections of the original RPA were amended by the passage of NFMA. The strategic planning sections of RPA remain in force.

³⁰⁶ *Id.* 16 U.S.C. § 1602 (1999).

³⁰⁷ *Id.* 16 U.S.C. § 1603 (1999).

³⁰⁸ *Id.*

³⁰⁹ *Id.* 16 U.S.C. § 1602(1-5) (1999).

³¹⁰ *See* Draft USDA Forest Service Strategic Plan (2000 Revision), USDA, FS-652, November 1999. Also available at <<http://www.fs.fed.us/plan>>.

³¹¹ The USFS Proposed Rule removes the requirement of a Regional Plan. The concept of regional planning is replaced by a requirement for cooperative inter-forest planning. *See* USFS Proposed Rule, *supra* note 18, at § 219.3(b), which states, “When planning is required for more than one national forest or grassland, two or more Forest or Grassland Supervisors may combine their planning activities. A topic, such as the recovery of an endangered species may require one or more Regional Foresters or the Chief of the Forest Service to undertake planning . . .”

³¹² (NFMA), 16 U.S.C. § 1604 (g)(1) (1999).

³¹³ *Id.* 16 U.S.C. § 1604 (d) (1999) and 16 U.S.C § 1612 (1999).

establish goals, objectives, and management strategies designed to reach the desired conditions.³¹⁴ The forest plan is then used by the districts within each forest as a guide to the planning and preparation of specific, on-the-ground projects. Plans at the regional, forest, and district levels can be challenged both administratively and in court under the provisions of the Administrative Procedures Act.³¹⁵ Individual forest plans must be revised every 15 years.

A variety of statutes constrain and inform Forest Service planning. Among these are the CAA,³¹⁶ the CWA,³¹⁷ the National Historic Preservation Act,³¹⁸ the Archeological Resources Protection Act,³¹⁹ the Migratory Bird Treaty Act,³²⁰ and, most notably, the National Environmental Policy Act (NEPA)³²¹ and ESA.³²² Overall, the planning process has become a major focus of Forest Service activity and a major consumer of its budgetary and personnel resources. This focus has led to a “cycle of studying and restudying issues without . . . a clear sequence of steps for resolving them.”³²³

3.2.1 Committee of Scientists Recommendations

In an effort to break the “cycle of studying”, the Committee of Scientists report³²⁴ proposes, in place of the current hierarchical planning structure, a four phase functional approach. The four integral planning functions are: assessment and information integration, designation of desired future conditions, strategic and operational planning, and on-going monitoring.³²⁵ The Committee recommended that each of these functions be applied on bioregional and smaller-scale (watershed/local) levels.

Assessments³²⁶ should be on-going and should lay the foundation for determining the desired future conditions of ecologically coherent areas:

Independent information that is an objective and realistic portrayal of conditions is required for policies, strategies, and decisions to be built, evaluated, and changed in a scientifically credible manner. . . . Assessment should be organized as a separate task. Most critically, assessments do not produce decisions and, therefore, should not be made to function under the NEPA processes associated with decision-making. When assembling information is

³¹⁴ *Id.* 16 U.S.C. § 1604 (g)(2) (1999).

³¹⁵ Administrative Procedures Act, 5 U.S.C. §§ 554, 557, 701-706 (1999).

³¹⁶ CAA, 42 U.S.C. §§ 7401-7671 (1999).

³¹⁷ CWA, 33 U.S.C. §§ 1251-1387 (1999).

³¹⁸ Archeological Resources Protection Act, 16 U.S.C. §§ 470(f), 470 (h)(2) (1999).

³¹⁹ National Historic Preservation Act, 16 U.S.C. §§ 470(aa)-470(ll) (1999).

³²⁰ Administrative Procedures Act, 16 U.S.C. §§ 703-712 (1999).

³²¹ NEPA, 42 U.S.C. §§ 4321-4361 (1999).

³²² ESA, 16 U.S.C. §§ 1531-1543 (1999).

³²³ General Accounting Office, *supra* note 77, Appendix III:1 (9), at 70.

³²⁴ *See generally*, Committee of Scientists Report, *supra* note 74, at 95-119. Background material on the Committee and its mandate are found in section 2.4.2.2, *supra*.

³²⁵ Committee of Scientists, *supra* note 74, at 100. The flow-chart on p. 100 illustrates the relationship among these planning functions. *See also* USFS Proposed Rule, *supra* note 18, at §§ 219.3-4.

³²⁶ *See* USFS Proposed Rule, *supra* note 18, at § 219.5.

distinct from decision making, everyone involved focuses more easily on conditions, trends, problems, and risks. . . .

Since sustainability demands an integrated understanding of ecological, economic, and social conditions and prospective changes, collaborative planning will also require integrated information.³²⁷

The Committee recommends that on-going assessments be conducted at the bioregional and local levels.³²⁸ In the case of very large, complex bioregions, the Committee recommends a sub-regional assessment.³²⁹ These assessments are to extend across ownership boundaries and should include extensive public participation.³³⁰ Public participation is viewed as an important means of accessing information on the historic, economic, demographic, and cultural aspects of each region.³³¹ These regional characteristics are to be considered as important in preparing an assessment as are physical and biological data.

Bioregional assessments should include:³³² 1) a detailed analysis of the biodiversity status of the region; 2) procedures for estimating the integrity of the ecosystems in the region; 3) a definition of the elements for developing conservation strategies during decision-making processes; 4) an historical analysis of forest, range, and watershed conditions, and an estimate of the range of natural variability of elements of the relevant ecosystems; 5) analysis of area demographic changes, economic patterns, social organization, and the stewardship capacity of local institutions; 6) an identification of the uses, products, and services derived from the national forests that are of significance to the bioregion; and 7) documentation, through an analysis of public input, that the assessment is sufficiently comprehensive to encompass the people's concerns.

Similar integrations of information for smaller, ecologically identifiable geographic units, often single watersheds, are also proposed. These small-scale assessments would form the foundation for the definition of desired future local conditions.

Defining the desired future condition (DFC) of a bioregion or of a more localized area requires a detailed knowledge of current conditions (the result of the assessment process). It also requires an understanding of the nature, frequency, and intensity of natural disturbances.

To ensure [ecosystem] resilience, management practices must not disrupt those energy and material transfers that promote habitat maintenance or recovery. An appropriate goal for management activities would be to mimic, to the extent possible, natural disturbance events in terms of their severity, spatial extent, and recurrence interval.³³³

³²⁷ Committee of Scientists, *supra* note 74, at 95.

³²⁸ *Id.* at 96-97.

³²⁹ *Id.*

³³⁰ See USFS Proposed Rule, *supra* note 18, at §§ 219.2(d), 219.4, and 219.12.

³³¹ *Id.*

³³² Committee of Scientists, *supra* note 74, at 97-98.

³³³ *Id.* at 100.

The Committee's definition of DFC goes beyond the traditional concept of specifying desired physical and biological conditions. In their recommendation, bioregional and local assessments also provide integrated information on the social and economic status of each area. These data form a foundation for the specification of social and economic DFCs.³³⁴ Such specifications complement biological and physical DFCs and are an integral part of the planning process.

In a significant departure from existing practice, the Committee recognized that information developed in the assessment process cannot be translated to DFCs by using a computer system such as FORPLAN³³⁵. Critical to DFC specification is the element of societal choice. The Committee would, therefore, require extensive public participation at the DFC specification step of the planning process.

Information produced by assessments can contribute to our understanding of processes of the natural and social worlds, but it cannot determine which choice is right. Rather, informed expert and public dialogue is essential to guide what should be done. The first step for decision making is to use a public forum for defining desired future conditions.³³⁶

The development of strategic and operational plans, the third planning function, proceeds at both the bioregional and local levels. Strategic plans, which develop integrated ecological, economic, and social strategies for a large, ecologically coherent area, require an identification of the types of actions required to move the bioregion toward its desired future condition. Strategic plans should be broad-based and avoid project-specific considerations, such as commodity output projections or staffing estimates.³³⁷ A determination of the specific projects required to meet strategic goals is appropriate to the local planning level.³³⁸ Project-specific plans should be made in a fairly short time frame, on the order of six months, include intensive public input, specify staffing and budget requirements, develop measurable performance standards, and provide for the adaptation of the plan where necessary.³³⁹ These local plans would terminate upon completion and evaluation of each project.

Project-level planning would vest considerable discretion in local Forest Service managers. To balance and validate this discretion, routine external review of projects would assure that they are designed and implemented in an objective, science-based manner.³⁴⁰ Such review

³³⁴ *Id.* at 101.

³³⁵ Office of Technology Assessment, *supra* note 61, chapter 7 contains a critique of a dependence upon computer technologies, including FORPLAN, in forest planning.

³³⁶ Committee of Scientists, *supra* note 74, at 101.

³³⁷ *Id.* at 106.

³³⁸ See USFS Proposed Rule, *supra* note 18, at §§ 219.6-7 and 219.10.

³³⁹ Committee of Scientists, *supra* note 74, at 106-108. See also USFS Proposed Rule, *supra* note 18, at §§ 219.2(c)-(e).

³⁴⁰ See USFS Proposed Rule, *supra* note 18, at §§ 219.2(a)(2)(ii-iv), 219.22-25.

should encourage collaboration among local managers, the community, scientists and resource specialists during the planning process.³⁴¹

On-going monitoring and adaptive management procedures comprise the fourth planning function envisioned by the Committee of Scientists. The development and proposed implementation of this function is described in section 3.3 (*infra*) of this report.³⁴²

3.2.2 Other Proposals

The Committee of Scientists Report represents, perhaps, the most comprehensive proposal calling for a change in the basic planning framework of the USFS. The General Accounting Office (GAO), in an extensive critique of Forest Service planning, cites inadequate monitoring,³⁴³ inadequate data and information systems,³⁴⁴ and inadequate public participation³⁴⁵ as major flaws in the existing decision-making process. GAO recommends strict adherence to the administrative requirements of current law and enhanced congressional oversight.

Accountability is the price that managers at every organizational level within the Agency must pay for the freedom to make choices. The data and financial controls and systems required by the Chief Financial Officers Act; the performance goals, measures and reports required by GPRA; and the information resources and technology goals, measures and reports required by the Clinger-Cohen Act and the Paperwork Reduction Act are, in essence, the currency of that accountability. However, to ensure the full and effective implementation of these legislative mandates, sustained management attention within the Forest Service and sustained oversight by the Congress will be required.³⁴⁶

The one structural planning change recommended by the GAO is that the Forest Service combine the national-level strategic plans required by RPA and GPRA into a single document.

³⁴¹ Committee of Scientists, *supra* note 74, at 107. See also USFS Proposed Rule, *supra* note 18, at §§ 219.13-18.

³⁴² See, this report, *infra*, section 3.3. See also USFS Proposed Rule, *supra* note 18, at §§ 219.2(e)(2)(v), 219.11, and 219.22.

³⁴³ General Accounting Office, *supra* note 77, at 22-24. GAO criticizes the USFS for not carrying out the monitoring functions required by existing NFMA regulations; for continuing to approve projects that do not have an adequate monitoring component; for failing to carry out wildlife monitoring required by law; and for exposing the agency to increased litigation liability by failing to provide adequate monitoring of projects.

³⁴⁴ General Accounting Office, *supra* note 77, at 24-25. GAO cites the severe overestimation of timber harvest inventory; lack of adequate compliance with the requirements of the Endangered Species Act; and delays and inconsistencies in the reissuing of grazing permits as some of the results of inadequate data handling and modeling systems.

³⁴⁵ General Accounting Office, *supra* note 77, at 25-27. GAO faults the agency's approach to public participation on three levels. First, the agency gives the impression, perhaps correct, that public input is requested only "pro forma". Second, information critical to a complete evaluation of forest plans, such as the criteria for evaluating alternatives, is not released until after the public comment period has closed. Third, the Forest Service views the formation of advisory groups under the Federal Advisory Committee Act as "a barrier to, rather than a tool for, effective public participation.

³⁴⁶ General Accounting Office, *supra* note 77, at 28.

GAO believes that the plans developed by the Forest Service under RPA are “of questionable usefulness” and that the development of two plans would be redundant.³⁴⁷

GAO has also encouraged strengthening the relationship between planning and broad-scale assessments, which analyze ecological and social issues beyond the boundaries of the national forests.³⁴⁸ GAO believes that broad scale assessments should be integrated into forest planning to prevent waste and inefficiencies that arise from duplicate evaluations by two or more forests. GAO has identified key elements which should exist in a successful assessment.³⁴⁹ An ideal assessments should: (1) occur early in the forest plan revision process; (2) be open to all interested parties; (3) have clear objectives and identifiable products; (4) be conducted for appropriate geographic areas and include both federal and non-federal lands; and (5) include data gathering, analyses, and conclusions but not make decisions. GAO has also suggested that the assessment’s costs should be estimated and funding should be secured before the assessment is undertaken.³⁵⁰

On October 5, 1999, the Forest Service proposed new planning regulations that address some of the key elements.³⁵¹ GAO has recommended ways the proposed regulations can be strengthened to better integrate assessments into forest planning.³⁵² GAO has proposed: (1) broad-scale assessments should be required unless the forests can justify not doing an assessment; (2) assessments should occur early in the planning process; (3) assessments should have clear objectives and identifiable products; and (4) regional offices and forests should be required to identify how the public and other governmental entities will participate in assessments and in revising forest plans. The Forest Service has agreed that broad-scale assessments should be better integrated into forests’ planning processes, but disagreed that the proposed regulations need to be modified.³⁵³ The Forest Service also feels that the decision whether to conduct an assessment should be left to the regional foresters and that key elements should be defined by the agency’s manuals and directives, not planning regulations.

³⁴⁷ General Accounting Office, *supra* note 77, at 38-39.

³⁴⁸ United States General Accounting Office, *Forest Service Planning: Better Integration of Broad-Scale Assessments into Forest Plans is Needed*. GAO/RCED-00-56 (February 2000) at 5. Available at <<http://www.gao.gov>>.

³⁴⁹ *Id.* at 10-16.

³⁵⁰ The Great Lakes Ecological assessment was drastically underfunded, forcing local researchers to rely on a variety of independent contributions. The assessment objectives were revised to accommodate the private funding, including research that does not directly support the Lake States national forests in revising their plans. *Id.* at 22-24.

³⁵¹ The proposed regulations state that forest plans must be based on the best available scientific information and analysis from a variety of geographic areas, and assessments should be conducted at appropriate geographic scales and reach conclusions. *Id.* at 28. See also National Forest System Land and Resource Management Planning; Proposed Rule, 36 C.F.R. § 219.22-219.24. “Broad-scale assessments and local analyses, in concert with monitoring and evaluation of large and small landscapes are critical to gaining understanding of the relationships of ecological, social, and economic environments.” 36 C.F.R. § 219.22

³⁵² United States General Accounting Office, *Forest Service Planning: Better Integration of Broad-Scale Assessments into Forest Plans is Needed*, *supra* note 77 at 28-31.

³⁵³ *Id.* at 32-34.

The Office of Technology Assessment has identified several organizational barriers to effective planning reform.³⁵⁴ Among these are (1) the traditional organization of the Forest Service by resource function; (2) an apparent mismatch between individual employee values and official agency policy; (3) the need for the RPA strategic plan to better reflect localized needs and issues rather than to override and dictate local decision-making;³⁵⁵ (4) an inappropriate reliance on nationally-determined commodity output goals with insufficient regard given to local conditions and political realities. These barriers impede planning reform and, according to the Office of Technology Assessment, lead to the necessity for “legislative clarification”.³⁵⁶

The pending Public Lands Planning and Management Improvement Act (S. 1320)³⁵⁷ is based, in large part, upon the Office of Technology Assessment report and proposes quite specific changes in the Forest Service planning framework.³⁵⁸ The legislation would restrict planning to two discrete levels: designated planning units - similar to, but not necessarily coterminous with, today’s national forest designations; and the site-specific, activity-defined local level.³⁵⁹ Overall land use and resource management plans would be developed at the planning unit level and management activities would be planned at the site-specific local level. Resource management plans must include: management objectives, land use designations, commodity output levels, generalized environmental protection guidelines, and descriptions of the desired future conditions of lands within the planning unit.³⁶⁰

The bill restricts the type of decisions that could be made to one or another of the two planning levels.³⁶¹ For example, the site-specific activity planning level would allow decisions relating to: site-specific environmental effects and mitigation procedures, harvesting methods for timber sales, revenue benefits, and monitoring.³⁶² Decisions appropriate to one planning level could not be overridden at the other level. Time frames for the preparation of plans and activities would be shortened to 36 months for the preparation of resource management plans and to 12 months for the development of significant management activities.³⁶³

The bill would also mandate changes in the processes for amending and appealing resource management plans and activities,³⁶⁴ for notice and comment periods,³⁶⁵ and for a variety of forms of collaborative planning.³⁶⁶ These proposals are addressed in other sections of this report.

³⁵⁴ Office of Technology Assessment, *supra* note 61, at 8-10, and Chapters 9 and 10.

³⁵⁵ *See* USFS Proposed Rule, *supra* note 18, at § 219.3(b).

³⁵⁶ Office of Technology Assessment, *supra* note 61, at 10-14.

³⁵⁷ S. 1320, *supra* note 118

³⁵⁸ Most of the changes proposed in S. 1320 are not incorporated into the USFS Proposed Rule.

³⁵⁹ S. 1320, *supra* note 118, at § 104(a).

³⁶⁰ *Id.* at § 105 (a)(1)(A).

³⁶¹ *Id.* at § 105 (b)(1).

³⁶² *Id.* at § 105 (b)(2)(B).

³⁶³ *Id.* at § 106 (a).

³⁶⁴ *Id.* at §§ 107, 111.

³⁶⁵ *Id.* at § 112.

³⁶⁶ *Id.* at § 110.

In addition to the highly specific legislative proposal described above, there are more general proposals, based in part on the Office of Technology Assessment report, recommending changes in the Forest Service planning framework. The Society of American Foresters, for example, does not advocate any specific hierarchy of planning levels. They do, however, strongly recommend that the locus of decision-making be clearly distributed among whatever planning levels are selected.

Once the overall mission of the lands has been identified, perhaps the most important questions about land management planning on the national forests and public lands relate to clarifying which issues are decided at which levels of the decision-making process. We reiterate: no organization or management system can be effective without clearly articulated goals and an unambiguous decision-making process. In the current planning process, neither of these conditions obtains.

Although the number of planning levels should be manageable, our concern is not so much the number of planning levels as it is knowing the who, what, when and where of plans and decisions.³⁶⁷

The Wilderness Society, on the other hand, recommends a change from the current planning system, which is based on existing administrative levels, to one utilizing a scientifically-defensible planning hierarchy based on bioregional and watershed scales. Such planning would incorporate (1) clear, statutorily-defined goals and priorities; (2) spatially-explicit data and models; and (3) enhanced public participation at the data integration and alternatives analysis stages of planning.³⁶⁸ This approach is mirrored by the more comprehensive set of recommendations made by the Committee of Scientists and discussed at the beginning of the section.

The structural framework of the Forest Service planning process is generally perceived as being cumbersome, overly hierarchical, duplicative, and rigid. Most proposals recommend modifying or completely revising the existing set of planning levels to better conform planning functions to actual management activities. The proposals also generally recommend a redefinition of the traditional planning units to better reflect the ecological, social, and economic realities of the land.

3.3 Integration of Adaptive Management Procedures

Whether the context is “ecosystem health and integrity,”³⁶⁹ “ecological sustainability,”³⁷⁰ “ecosystem sustainability,”³⁷¹ or some variant thereof, management of the National Forest System lands will become increasingly dependent on cutting-edge conservation science.

³⁶⁷ Society of American Foresters, *supra* note 75, at 59. *See also*, Society of American Foresters at 43-48.

³⁶⁸ The Wilderness Society, *supra* note 29, at 36.

³⁶⁹ The Wilderness Society, *supra* note 29.

³⁷⁰ Committee of Scientists, *supra* note 74.

³⁷¹ S. 1320, *supra* note 118, at § 102 .

Principles of ecosystem science will provide the overarching frameworks and models that will direct or provide guidance for specific management applications. A theme common to each of the proposals discussed in this report is the acknowledgment that natural systems are dynamic and variable, and that the science of natural systems is a young and growing field.³⁷² This recognition, coupled with the iterative nature of applied sciences, implies a fundamental need for some sophisticated form of monitoring and adaptive management.³⁷³ Land management expertise, in an era in which managers will be held accountable for a wider-than-ever range of economic and ecological variables, will require some level of built-in flexibility, some process by which scientists and managers can *systematically* improve upon their successes and mistakes.³⁷⁴ Or, as the Committee of Scientists articulates the issue, some process is needed by which managers can identify when changes in management techniques are needed because of either lack of effectiveness or changes in external conditions.³⁷⁵

3.3.1 Broad Support for Explicit Protocols

The emphasis on adaptive management in the Committee of Scientists report is based on the presumption that the suite of environmental laws³⁷⁶ passed over the last one hundred years provides both the authority and the charge for protecting ecological sustainability. Essentially, the Committee of Scientists' proposal is for an administratively-promulgated, scientific update of the NFMA mandate to maintain the "diversity of plant and animal communities."³⁷⁷ In this scheme, land management actions are seen as inherently experimental, and adaptive management is characterized as a variety of critical mechanisms by which the development of the underlying scientific theories can be accelerated.³⁷⁸ The Committee of Scientists recognized that it is not logistically possible to cast all management actions as active experiments and to thereby require strict adherence to principles of experimental design. The proposal therefore identified three levels of adaptive management: active adaptive management, which describes the truly experimental version; passive adaptive management, in which existing data are reviewed and

³⁷² Implicit in this common theme is the assumption that the government's role in the development of this scientific field will be substantial, a situation due in part to the comprehensive nature of the science and in part to its relative lack of a commercially-driven component.

³⁷³ See USFS Proposed Rule, *supra* note 18, at § 219.11 (monitoring) and §§ 219.22-25 (science).

³⁷⁴ Adaptive management and monitoring are obviously not confined to the process of evaluating the effectiveness of management techniques in meeting ecological goals. The consensus on the need for their use extends to employee performance reviews, adequacy of budgets and staffing, and other administrative concerns. Even within the ecological context, monitoring is also expected to serve the meta-functions of determining whether standards and guidelines have adequately controlled management actions, and whether initial biological conditions or assumptions have changed. Limiting the discussion to the context of land management and to the dimension of actual-to-expected outcomes is meant to serve simplification.

³⁷⁵ Committee of Scientists, *supra* note 74, at 108.

³⁷⁶ The main, but not exhaustive, list includes: Organic Act of 1897; Multiple-Use-Sustained-Yield Act; NEPA; ESA; CWA; and NFMA.

³⁷⁷ NFMA, 16 U.S.C. § 1604(g)(3)(B) (1999) and the implementing regulation at 36 C.F.R. § 219.3 (1999).

³⁷⁸ See Committee of Scientists, *supra* note 74, at 110. "In a sense, a [forest] plan is a hypothesis of how an ecological system may respond to management actions. . . . [And, one goal of the observation and measurement protocols is to] develop conceptual models that outline the pathways from stressor action to ecological effects."

used to inform decisions within a given management approach; and trial-and-error learning, in which initial management choices are made based on current understanding and successful prescriptions are made routine. The Committee of Scientists report recommends the adoption of a protocol for deciding which version of adaptive management is appropriate for a given management scenario.³⁷⁹

The need for adaptive management policies was a concern acknowledged by a majority of Forest Congress participants. Seventy percent of Congress participants agreed that in order to ensure sustainable management of the forests, “ecosystem structure, functions, and processes” should be addressed at the “appropriate temporal and spatial levels.”³⁸⁰ Similarly, Draft Principle 7 more explicitly calls for using adaptive management in forest policy decision-making. Sixty-three percent of the participants agreed that decision-making should be “based on data obtained using standardized inventory protocols, continuing assessments, monitoring, and adjustments that reflect evolving knowledge.”³⁸¹

The Wilderness Society proposal, similarly, recognizes the importance of scientific feedback. The “third principle” (of five) in their proposal provides that “no management action shall be taken without follow-up monitoring to evaluate the effects of the action.”³⁸² The centrality of the adaptive management principle to the Wilderness Society proposal is evidenced by its link to the other four principles. For instance, adaptive management and the science it serves would be necessary in making determinations of ecosystem “integrity, health, and sustainability” (first principle) and “harm to the forest environment” (second principle). Also, adaptive management would play a role in budgetary reform under the requirement for “adequate and dependable funding for monitoring.” (fourth principle). And, presumably, adaptive management techniques would be subject to the administrative and judicial review provisions of the “fifth principle.”

The 1997 General Accounting Office report attributed the Forest Service’s decline in stature primarily to a “lack of accountability,” and identified poor utilization of adaptive management as a key factor in those accountability shortcomings.³⁸³ In addition to drawing the connection between adaptive management and successful scientific development, the report also emphasized the relationship between the lack of monitoring and the increase in legal actions filed against the

³⁷⁹ Committee of Scientists, *supra* note 74, at 111.

³⁸⁰ Forest Congress, *supra* note 32, Revised Principle 8, at 8. 70% agreement, 20% reluctant agreement, and 10% disagreement.

³⁸¹ *Id.* at 12. Draft Principle. 63 % agreement, 18% reluctant agreement, and 19% disagreement.

³⁸² The Wilderness Society, *supra* note 29, at 12. The five principles comprising the Wilderness Society’s proposal are: “First Principle: The integrity, health, and sustainability of wildland ecosystems shall be the goal of all management.” “Second Principle: Do no harm to the forest environment.” “Third Principle: Planning and management shall be based on the best available information and scientific understanding.” “Fourth Principle: Management activities shall be economically sound and foster growth of natural asset values.” “Fifth Principle: Citizens shall have the opportunity to participate in the decision-making process affecting their public forests.”

³⁸³ General Accounting Office, *supra* note 77, at 5. The General Accounting Office stated that “the Forest Service (1) has historically given low priority to monitoring during the annual competition for scarce resources, (2) continues to approve projects without an adequate monitoring component, and (3) generally does not monitor the implementation of its plans as its regulations require.”

agency.³⁸⁴ As a practical matter, the report noted that Forest Service compliance with the suite of environmental statutes necessitates a comprehensive monitoring protocol, giving as an example the prescribed burning/CAA conflict.³⁸⁵ Finally, the report underscored the importance of the adaptive management process as an antidote to bureaucratic inertia. The adaptive management process -- with results properly documented and made publicly available -- creates more opportunities for external review. "Only an external review," the report concluded, prompts [Forest Service] corrective action."³⁸⁶

3.3.2 Monitoring and Assessment Programs

At the core of any adaptive management scheme is the monitoring and assessment program. Several proposals recommend monitoring and assessment programs.

3.3.2.1 Budgetary Considerations

The General Accounting Office report severely criticized the Forest Service's fiscal accountability, noting that decreasing accountability was particularly disturbing in a period in which Congress has increased the agency's flexibility in fiscal decision-making.³⁸⁷ The report attributed the failure primarily to the refusal (at the individual forest level where budgets first emerge) to prioritize monitoring, giving only brief mention to the issue of chronic congressional under-funding of non-revenue-producing program activities. Given the need for an expanded and strengthened role for monitoring and assessment, the report raised doubts about whether continued fiscal discretion in this area would be wise. The report stopped short of recommending that data gathering, assessment and monitoring be isolated into a stand-alone budgetary program. Instead, it concluded with the vague recommendation for "sustained management attention within the Forest Service and sustained oversight by the Congress"³⁸⁸ Ultimately, the report subsumed the issue of accountability in monitoring and assessment to the larger issue of a need for clearly defined mission priorities and strategic goals.

The Society of American Foresters report echoed the General Accounting Office's heightened concern over fiscal accountability in the areas of monitoring and assessment, but focused its concern not on lack of agency request for, but congressional supply of, monitoring and assessment funds. Anticipating continued appropriations uncertainty, the Society of

³⁸⁴ *Id.* at 23. "The Chief of the Forest Service told us that the agency's failure to monitor represents a potential major future litigation liability to the agency." The report then cited language from Seattle Audubon Soc. V. Lyons, 871 F.Supp. 1291 (W.D. Wash. 1994), in which the judge stated that the court would entertain further litigation based on allegations that the Forest Service had failed to live up to its monitoring requirements.

³⁸⁵ Only through extensive small-scale experimentation and monitoring will the agency be able to 1) predict the circumstances in which prescribed fire will meet management goals and comply with air quality standards, or 2) conclusively identify conflicts between the two objectives.

³⁸⁶ General Accounting Office, *supra* note 77, at 20.

³⁸⁷ *Id.* at 28. "Beginning in fiscal year 1995, Congress (1) simplified the Forest Service's budget structure, reducing the number of main appropriations from 13 to 9 and of funding items from 71 to 44, and (2) expanded the agency's reprogramming authority, giving it greater discretion in shifting funds between line items within each appropriation."

³⁸⁸ *Id.*

American Foresters report made a number of recommendations for maximizing the accountability for monitoring and assessment programs.³⁸⁹ First, they recommended that a distinction be made, both in the resource plans and in the appropriations process, between monitoring conditions and trends of natural resources and monitoring agency performance in meeting its stated goals. Second, monitoring should be given separate funding.³⁹⁰ Third, because monitoring and assessment activities must often be initiated in prompt response to unpredicted disturbance events such as fire, flood, or disease, some use of permanent trust funds should be authorized to avoid the time-intensive processes of reallocating program funds or seeking supplemental appropriations. Use of some trust fund accounts — such as the Knutson-Vandenberg Fund—for monitoring is already authorized, but the SAF recommends legislative action to remove any ambiguity with respect to congressional intent behind trust fund expenditures. Fourth, each area or forest plan should explain how the goals and outcomes would be affected by differing budgets, so that performance reviews can be based on explicit projections, regardless of funding level. Finally, the congressional oversight committees should, in general, increase the scrutiny applied to the monitoring and assessment program.

S. 1320 expanded on the idea of creating permanent, or revolving, funds for the monitoring of resource management plan implementation. These accounts, one under the Department of the Interior and one under the Department of Agriculture, would be maintained by depositing any federal land revenues received in excess of those projected for the BLM and Forest Service, respectively, in the baseline budget of the President in a given fiscal year. This proposal incorporates the dual purposes of 1) introducing incentives for economically sensible management, and 2) creating certainty with respect to the availability of monitoring funds, as the funds would be available without fiscal year limitation or further appropriation. If the monitoring funds were insufficient in any given year, additional funds would need to be appropriated in the traditional manner.

The Committee of Scientists report also mentioned the possibility of a legislative budget fix, suggesting that a forest by forest, line item by line item appropriations process would result in a tighter correspondence between individual forest plans and final budget allocations by Congress. The report also made more realistic recommendations for administrative level changes. The agency should require, within each strategic plan, projections of expected progress toward stated goals under a number of realistic budget allocations. Even more pragmatically, the committee recommended that the goals themselves (e.g. desired future conditions) be evaluated for their compatibility with likely budgets. If, for example, the stated goal for an area of forest is to achieve a certain forest structure and periodicity of fire, projections would be required in the strategic plan for a variety of funding levels for prescribed fire and silvicultural thinning treatments. And, if the desired future condition appears unrealistic, consideration of less-budget-intensive desired future conditions (such as forests with a higher-than-optimum risk of catastrophic fire) should be required.

³⁸⁹ Society of American Foresters, *supra* note 75, at 61-62

³⁹⁰ Presumably, the Society of American Foresters is proposing to elevate monitoring to singular program status, as opposed to treating it as line items within two different programs: Ecosystem Planning and Land Management Planning .

The Wilderness Society Report recommended that a permanent appropriation for monitoring, research, and evaluation be established, but that it not be dependent on receipts from resource extraction. Their recommendation recognized the distinction between the monitoring of resource conditions, on one hand, and the monitoring of management effects and plan implementation, on the other.

3.3.2.2 Data Gathering

All serious Forest Service reform proposals recognize the agency's needs and obligations to generate quality data for the lands it manages. The General Accounting Office report claimed that the Forest Service's data collection system continues to be inadequate—despite years of recommendations and critical reports—to meet its needs and obligations.³⁹¹ The General Accounting Office raised the concern that the “errors” introduced into forest plans by lack of adequate inventories and assessments are compounded when projects implemented pursuant to those plans are themselves based on still-inadequate data. The report argued that the scale of ecological analysis necessitates interagency cooperation in developing a system for data gathering, storage, retrieval, and interpretation. To that end, the General Accounting Office recommended that the Office of Management and Budget exercise its authority under the Paperwork Reduction Act of 1995 to designate a central collection agency (e.g. the Council on Environmental Quality) for the four major land management agencies. Current reliance on interagency agreements to facilitate development of data systems is misplaced, the General Accounting Office concluded, because the agreements are not enforceable by outside parties and because the work proceeds too slowly.

The Office of the Inspector General report focused on methods for improving the internal transfers of information.³⁹² Recommendations generally centered on documentation, and included the following action items: 1) provide better training for the preparers of environmental documents and analyses; 2) increase the sharing of critical information between resource specialists; and 3) assign to individual line officers the responsibility for ensuring that decision documents and their supporting documents contain all the required components and accurately reflect current knowledge about the environment.³⁹³ More substantively, the Inspector General's report identified deficiencies in the cumulative impact analyses and endangered species impact analyses, but these deficiencies, too, triggered recommendations that the agency implement better administrative channels (e.g. checklists) for use of information that already exists.

The First Blue Ribbon Panel (BRPI) convened in 1992 to review the Forest Inventory and Analysis Program (FIA) and to develop a national vision and strategy for meeting the present and future needs of forest inventory information.³⁹⁴ To this end it created a list of eight

³⁹¹ General Accounting Office, *supra* note 77, at 24-25, citing *Changes in Public Land Management Required to Achieve Congressional Expectations*, CED-80-82 (July 16, 1980); *Forest Service: Factors Affecting Timber Sales in Five National Forests*, GAO/RCED-95-12 (Oct. 28, 1994).

³⁹² Office of the Inspector General, Evaluation Report No. 08801-10-At, (January 1999), at 6-8.

³⁹³ *Id.* at 7.

³⁹⁴ AF&PA. *The Report of the Second Blue Ribbon Panel on the Forest Inventory and Analysis Program* at 2. Both the first and second panels were representative of the entire forestry community, including federal and state agencies, industry, academia, and environmental groups. The Forest Inventory Analysis (FIA) program (initially

recommendations. The second panel (BRPII) convened in 1997 and again in 1998 to determine how successful FIA had been in applying these suggestions. First, the original BRPI recommended information on ecosystems and noncommodity values be improved and expanded. BRPII suggested further evaluation of the data currently collected to determine their usefulness, exploration of partnerships with other surveys, and exploration of the demand for ecological data.³⁹⁵ Second, BRPI recommended that the Forest Service recognize and identify ownership, regulatory, and social impacts on forest productivity.³⁹⁶ BRPII found that while progress has been made on identifying ownership,³⁹⁷ there is much information lacking on the availability and productivity of forest-based commodity and noncommodity resources, as well as the extent to which forest management practices, regulations, tax laws, and incentive programs affect productivity. Third, both panels suggested production of the most current resource data possible by reallocating funding within the Forest Service, fully integrating GIS and remote sensing technology into the inventory process, and identifying critical ecological areas that need more frequent attention.³⁹⁸ Fourth, BRPII called for better implementation of BRPI's recommendation of a uniform approach on all ownership by identifying a set of core resources data across all ownerships, certifying all suppliers of plot data, and developing mechanisms to better integrate decision-making between the National Forest System and FIA.³⁹⁹ Fifth, the BRPII found that "significant strides" had been made in increasing consistency and compatibility among FIA units, although detailed field procedures had not yet fully developed.⁴⁰⁰ Sixth, BRPI recommended that coordination between FIA and other public agencies like the Natural Resources Conservation Service (NRCS) and the Bureau of Land Management (BLM) be enhanced. The BRPII found progress in improving efficiency of data distribution, however, it suggested that more improvements could be made with better coordination. Seventh, BRPII reiterated FIA's need to improve service to user groups by knowing the customer base, promoting FIA, and thoroughly documenting all procedures. Similarly, the eighth recommendation calls for better customer service in order to expand the client base.

In addition, the second panel made five key findings and made further suggestions for improvement based on evaluations of nine programmatic categories. The panel found that the Forest Service needs to (1) elevate the priority of FIA; (2) initiate *annual* inventory and supporting analysis; (3) fulfill its mandate of reporting on all forest lands, (this means data collection on both public and forest private land); (4) concentrate on core ecological and timber

known as the Forest Survey) was created nearly 100 years ago to gather information about the supply and condition of the nation's natural resources. Provisions for the inventory and management of forests were initially established by the Organic Act. This mandate has been reiterated in numerous legislation since then, including the Forestry Research Act, the Resources Planning Act, the Forest and Rangeland Renewable Resources Research Act and the National Forest Management Act.

³⁹⁵ *Id.* at 9.

³⁹⁶ *Id.* at 10.

³⁹⁷ See USDA Forest Service, *Private Forestland Owners of the United States, 1994*.

³⁹⁸ AF&PA. *The Report of the Second Blue Ribbon Panel*. See note 394, at 11.

³⁹⁹ *Id.* at 12.

⁴⁰⁰ *Id.*

data, and; (5) develop a strategic plan.⁴⁰¹ The lack of centralization was seen as a major flaw in the structure of FIA. The panel found that a more centralized system would “keep the inventory current, assure the use of consistent methods . . . and move toward implementation of an annual forest inventory system.”⁴⁰² The panel also called for more funding and a merger with the National Forest Health Monitoring Program to improve coordination, avoid funding two independent programs, and provide for a more comprehensive picture of forest conditions. Other proposals from the Blue Ribbon Panel include more thorough analysis of FIA data by the Forest Service, partnerships with universities, continuation of state level reporting and cooperation with states, and inclusion of the FIA in the monitoring process.⁴⁰³

S.1320 does not provide much detail on the types of data to be gathered or the procedures to be used in their collection. It does, however, require the Secretary of Agriculture (and Interior) to use the “best scientific and commercial data available” in the preparation of resource management plans and their supporting environmental analyses.⁴⁰⁴

The Wilderness Society concluded that clear statutory or regulatory definition of the Forest Service’s mission would resolve much of the controversy and confusion surrounding monitoring and assessment methodologies. With or without such clarification, however, they recommended that the information system of the future be based predominantly on spatially-explicit (i.e. map-based) displays and modeling, as opposed to optimization models such as FORPLAN currently in use by the agency. The Wilderness Society maintains that utilization of spatially-explicit information in a GIS (geographic information system) format has been shown to enhance citizen understanding of and participation in decision-making.

3.3.2.3 *Substantive Orientation: Implementation Monitoring*

The monitoring provisions of S. 1320 read primarily as a program for evaluating the consistency between the expected and actual results of resource plan implementation. Ongoing monitoring under S. 1320 would be aimed at answering the following questions: 1) have any of the five basic elements of the resource plan⁴⁰⁵ been changed by management activities? 2) has a conflict arisen between any of the basic elements? 3) do circumstances require an amendment or revision of the plan? Although the bill would require the “type, location, and intensity of measurements [needed for implementation monitoring]” to be specified in the resource management plans, it makes no provision for evaluating their consistency with the “best scientific and commercial” procedures.

⁴⁰¹ *Id.* at 3-4.

⁴⁰² *Id.* at 5.

⁴⁰³ *Id.* at 6-7.

⁴⁰⁴ S. 1320, *supra* note 118.

⁴⁰⁵ S. 1320's five required elements for resource plans are: 1) a statement of goals and objectives; 2) the classification for suitable types of resource management of, or allocation of land uses to, areas of the Federal lands to which the plan applies for the term of the plan; 3) determinations of outputs of goods and services; 4) policies and standards necessary to ensure compliance with the requirements of the Act; 5) a description of the desired future conditions and a statement of the expected durations of time necessary to achieve such conditions consistent with the other elements of the plan.

The Society of American Foresters predicted continuing failure in Forest Service land management and resource planning endeavors unless Congress passes legislation clarifying the agency's mission. With respect to monitoring requirements, the Society recommended that any new legislation place strict requirements on the contents of resource management plans. "[P]lans should identify and quantify (to the extent feasible) appropriate goals and outcomes, including vegetation management goals and commodity and amenity outputs."⁴⁰⁶

The General Accounting Office report took the position that sufficient statutory requirements are already in place to facilitate implementation monitoring. Under the Government Performance and Results Act, each federal agency is required to document its long-term strategic goals (consistent with its mission statement) and identify the methods by which it will achieve those goals. Additionally, beginning in fiscal year 1999, the act requires annual performance plans containing annual performance goals and performance measures for assessing the progress made toward those goals.

3.3.2.4 *Substantive Orientation: Resource Monitoring*

Although the existing statutes and regulations provide for (if not strictly require) resource monitoring, and although the observers discussed herein agree in principle that such monitoring is crucial to carrying out the Forest Service mission, the difficulty in doing so is most definitely in the details. As discussed above in the section on implementation monitoring, monitoring of any type requires identifiable –and preferably quantifiable-- benchmarks, by which to measure progress, and, when necessary, to change the overarching goals. Quantification of ecosystem components, not to mention processes, is an inherently imprecise science, especially at large spatial and temporal scales. The critical issues of resource monitoring center on 1) what to measure? and 2) how much discretion to leave to the agency?

Other than incorporating the Endangered Species Act by reference, S. 1320 specifies neither the ecosystem elements to be monitored nor the standards to be used in their measurement. It provides only that resource management plans contain “a schedule and procedure, including the type, location, and intensity of measurements needed, for monitoring the implementation of the plan, the management of the Federal lands subject to the plan, and trends in the conditions and use of resources . . .”⁴⁰⁷ At the project level, the bill provides that site-specific environmental analyses be conducted, “and a schedule and procedures for monitoring the effects of the activity shall be established.”⁴⁰⁸ Policies and standards developed by the agency are to avoid, to the extent feasible, the application of prescriptive requirements of general applicability, and are, instead, to provide guidance at the project level. A broad requirement that the Secretary use the “best scientific and commercial data available” is, therefore, the only guaranteed standard provided.⁴⁰⁹ With respect to discretion, it is crucial to note that many decisions made at the project level would be subject only to “notice and comment,” and not to formal appeal.

⁴⁰⁶ Society of American Foresters, *supra* note 75, at 57.

⁴⁰⁷ S. 1320, *supra* note 118, at § 105(a)(2)(C).

⁴⁰⁸ *Id.* at § 105(b)(2)(B).

⁴⁰⁹ The “best scientific and commercial data” would also be required in endangered species impact analyses conducted by the Agency, and in any Endangered Species Act functions that the agency performs pursuant to certification by the U.S.F.&W., the authority for which is given in S. 1320 § 203.

The Wilderness Society report represents the most scientifically conservative position, recommending legislation that would require plans to 1) be based on the “best available information and scientific understanding, and 2) provide clear environmental standards. The Wilderness Society recommendations include specific and some quantifiable standards. For example, they would require: monitoring of “*all* native plant and animal species” to ensure that healthy populations of each remain well distributed throughout their range in each National Forest; protection of *all* roadless areas larger than 1000 acres; restoration of historic natural patterns of vegetation outside of roadless reserves; compliance with numeric and narrative standards set under the CWA. The Wilderness Society report maintained that the concept of a healthy population, whether defined in terms of population viability⁴¹⁰ or functionality⁴¹¹ is definable and enforceable. In making its recommendations, the Wilderness Society characterizes the current resource monitoring system, which is based on the use of Management Indicator Species (MIS) as surrogates for other *vertebrate* species, as overly lax, poorly implemented, and scientifically questionable.

The Committee of Scientists report also suggested that monitoring for biological diversity be focused on the viability of native species populations, but, acknowledging the impracticality of monitoring all species, recommended the use of a “focal species” concept. The report distinguished the focal species concept from the MIS concept both substantively and procedurally. Substantively, the focal species (and each forest would likely have many) would be chosen not just as a representative of other vertebrate species, but as indicative of the functioning of the larger ecological system. Procedurally, agency discretion would be limited by subjecting the process of choosing focal species and developing measures of their viability to input from and oversight by independent scientific bodies.⁴¹²

3.3.2.5 Substantive Orientation: Geographic Orientation

S. 1320 is not specific as to the geographic scale of the planning units to be administered by the Forest Service. It would allow the Secretary to designate planning units of whatever geographic size, ecological scale, and number he or she deemed appropriate. Monitoring and assessment would be largely limited to the planning unit and individual project units, with larger scale assessments (those that transcend the Federal land boundaries) allowed only when strict criteria are met and only when the Secretary receives the written concurrence of the governor of the state having jurisdiction over the land in question.⁴¹³

The National Research Council took a more expansive approach to Forest Service monitoring by recognizing the need for a strong federal role in the continuing development and

⁴¹⁰ Conservation biologists use the concept of population viability analysis, which is an estimate of the probability of extinction of a given population in a given amount of time. The Wilderness Society conceded that “insuring” the continued existence of a population is not possible, but suggested that a standard such as “very high likelihood of persistence” would suffice. The report left open the possibility of assigning, in some situations, actual probabilities for the agency to maintain.

⁴¹¹ The Wilderness Society, *supra* note 29, at 29. A functional population is large enough to allow the species to perform its role in the ecosystem.

⁴¹² Committee of Scientists, *supra* note 74, at 151. See USFS Proposed Rule, *supra* note 18, at § 219.20.

⁴¹³ S. 1320, *supra* note 118, at § 119.

transfer of ecosystem science. The Council concluded that geographically comprehensive monitoring programs such as the U.S.G.S. National Water Quality Assessment Program, the National Biological Survey Gap Analysis Program, and the National Forest Health Monitoring Program are essential to the successful management of nonfederal forests.⁴¹⁴

The Committee of Scientists report emphasized the ecological fact that national forests and rangelands are open systems and are links in a hierarchy of ecological scales. The report therefore recognized the need for monitoring and assessment to be conducted at a variety of scales, noting that “some characteristics of sustainability are best viewed from a regional perspective while others are more appropriately considered at watershed or local, site-specific scales.”⁴¹⁵ Habitat fragmentation, given as an example in the report, is best analyzed at a landscape or regional level with the aid of remotely sensed data, whereas population viability analyses of focal species should be conducted at the site-specific level. Authorizing assessment and monitoring programs that reach beyond the political boundaries of the National Forest System would encourage the formation of collaborative efforts among government agencies, special-interest groups, and private citizens, and would prevent duplicative studies and expenditures.

3.3.2.6 Substantive Orientation: Success Criteria and Indicators

There is a consensus among observers that Forest Service land management needs to be both science-based and democratically accessible. Designing an adaptive management framework that remains true to both of those potentially conflicting goals is at the heart of Forest Service reform.

From the Committee of Scientists perspective, the two goals are more complementary than contradictory. Their report is premised on the position that effective public participation depends on the assembling of a scientifically credible foundation of ecological sustainability before management plans to meet public needs can be developed.⁴¹⁶ That foundation, in turn, becomes the success criterion by which to measure strategic plans and the management actions they inform. The Committee of Scientists proposal uses the concept of “desired future condition” to represent landscape conditions that are ecologically sustainable. There are no “right” or “wrong” desired future conditions, but there are ecologically acceptable and unacceptable desired future conditions. The democratic process is built into the desired future conditions concept at two levels: first, in the process of choosing from among a range of acceptable desired future conditions, and second, in the process of choosing from among acceptable routes and rates of achieving those conditions. Because ecosystems are dynamic and because ecosystem science is so complex and evolving, the desired future condition on any given forest will be a highly mobile target, subject to frequent and systematic evaluation or re-definition.

S. 1320 would also employ the desired future conditions concept, but would not ascribe paramount importance to it as a success criterion. Instead, S. 1320 would give equal priority to

⁴¹⁴ National Research Council, *supra* note 104, at 136-140.

⁴¹⁵ Committee of Scientists, *supra* note 74, at 28. See USFS Proposed Rule, *supra* note 18, at § 219.5(a).

⁴¹⁶ Committee of Scientists, *supra* note 74, at 148.

all five of the resource plan required elements; namely, the statement of goals and objectives for management; the classification of land by suitable resource or use type; the determinations of outputs of goods and services from the land; and the policies and standards to be used at the project level. Monitoring under S. 1320 would be aimed primarily at determining whether any basic element had been constructively changed through management activities, or had come into conflict with another element.⁴¹⁷

3.4 Empowerment and Control With Federal Ownership

The Forest Service is currently the agency charged with making strategic decisions about how to pursue management objectives, although there may be circumstances which require consultation with outside agencies.⁴¹⁸ The 1897 Organic Act, MUSYA, NEPA, and NFMA require the Forest Service to engage in a strategic planning process for the national forests. The Organic Act and MUSYA establish the basis for maintaining forest ecosystems, while accommodating uses and providing for outputs; additionally, MUSYA recognizes that the needs of the people determine the proper mix of uses and outputs.⁴¹⁹ The passage of NEPA, which requires reporting intended actions and their possible effects to the public, modified the management and planning control vested in the Forest Service. NFMA, which established management considerations and environmental standards and guidelines for the Forest Service, and also requires public involvement in developing and revising management plans, further modified this role.⁴²⁰

The change in the legal framework controlling the Forest Service affected the autonomy of the agency, which had historically been seen as a strong and independent manager of public resources for the public good.⁴²¹ Subject to new laws requiring public involvement, the Forest Service has lost a degree of independence as other parties have become involved in forest planning and management processes. Once an area reserved solely for agents of the Forest Service, the planning and management process is now influenced by other federal agencies, state agencies, private land owners, interest groups, and communities.⁴²² Although the Forest Service still retains control over decisions about how to pursue management objectives, there has been a significant erosion of the autonomy the agency enjoyed in the past. In order to change with the times, the Forest Service has begun “re-inventing” itself, and there are many proposals suggesting how this re-invention should occur.

⁴¹⁷ Because goods and services monitoring is the simplest and cheapest, and because it produces results that are the most discretely quantifiable, it is likely that in actuality, it will be given priority over monitoring the other four elements.

⁴¹⁸ For example, if a Forest Service program has potential to affect a threatened or endangered species, consultation with U.S. Fish and Wildlife Service, as well as state fish and game agencies is usually required.

⁴¹⁹ Office of Technology Assessment, *supra* note 61, at 4.

⁴²⁰ *Id.*

⁴²¹ *Id.* at 8.

⁴²² See USFS Proposed Rule, *supra* note 18, at §§ 219.12-18.

3.4.1 Corporate Management

The principal proposal for corporate management is put forth in Dennis Teeguarden and David Thomas' "A Public Corporation Model For Federal Forest Land Management." Under this proposal, the national forests would be managed by a corporate system, and the income earned would be disposed of in four ways: 1) an amount equal to eight percent of the value of land and timber would be paid to the federal government by the corporation as rent; 2) a fixed percent would be paid into a fund to support wilderness; 3) an amount no greater than 50 percent of the balance would be used for new investments; and 4) the remaining income would be distributed to local governments, based on a floating percentage of net profits and as payments in lieu of taxes.⁴²³

3.4.2 Management as Trusts

The Forest Options Group (the "Group"), which included interest group leaders, agency officials, and policy analysts who met and corresponded in 1997 and 1998, wrote "The Second Century Report" as a proposed guide for the Forest Service's second century. One of the pilot programs the Group proposed was a "Forest Trust" whereby a pilot forest would be managed under legal trust doctrines with trustees and beneficiaries.⁴²⁴ The goal of the Forest Trust, as with the four other proposals made by the Group, is to improve forest stewardship, reduce the burden on taxpayers, restore public respect for national forest managers, and replace polarization with cooperation.⁴²⁵

Similar to trusts presently under state management, the Forest Trust would transform the forest into a legal trust. A board of trustees appointed by the Secretary of Agriculture and the governor of the state in which the forest is located would oversee the trust.⁴²⁶ The trustees would be obligated to preserve the corpus of the trust and to produce revenue for the beneficiaries (i.e. the local counties and schools). These entities, as well as a nonmarket stewardship fund to be managed by an outside agency such as the Nature Conservancy or the state fish and wildlife service, would receive a share of national forest receipts.⁴²⁷ The forest itself would be funded with half of its gross receipts.⁴²⁸

Under the pilot program, utilization of the trust structure would clarify the goals of the Forest Service and would provide the accountability associated with private trust law.⁴²⁹ Furthermore, by providing a budgetary structure that would fund the forests out of their gross

⁴²³ *A Public Corporation Model for Federal Forest Land Management*, *supra* note 149, at 383.

⁴²⁴ The Second Century Report, *supra* note 157, at Introduction. Available at <<http://www.ti.org/2cintro.html>>.

⁴²⁵ *Id.*

⁴²⁶ The Second Century Report, *supra* note 157, at Executive Summary. Find at <<http://www.ti.org/2cfexsum.html>>.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ For example, Forest Service management would be improved by clarifying the mission of the agency; emphasizing the manager's obligation to maintain the productive capacity of the resource in perpetuity; establishing a transparent system of financial management and reporting; and simplifying the process of public accountability. The Second Century Report, *supra* note 157. Available at <<http://www.ti.org/2cfinal.html>>.

receipts, management incentives would be increased. The trust would impose several fundamental obligations on the forest trustee — undivided loyalty⁴³⁰, disclosure to beneficiaries⁴³¹, and preservation of the corpus of the trust.⁴³² These obligations have provided the backbone for successful trust management in state school and institutional land trusts.⁴³³

Unlike the proposal set forth in the Second Century Report, state trust proposals seek to transfer control of the national forests from the federal government to the states. The basic premise behind this divestment proposal is the notion that states have often proven to be better fiscal managers of their lands.⁴³⁴ In the nineteen states that utilize the trust structure to manage timber lands, court decisions have repeatedly overturned efforts by legislatures, governors, and bureaucrats to meet the demands of special interests through subsidization, cross-subsidization, and giveaways.⁴³⁵

The benefits and goals of the state trust proposal are the same as set forth above. Clearly, however, the result from a transfer of the national forests to the states would be subject to the conditions the federal government placed on the transfer. There would be different results if the states were required to manage them to produce income for state schools⁴³⁶, if they had to manage them “for multiple use in trust for the people of the United States”⁴³⁷, or if there were no strings attached at all.⁴³⁸ In fact, the difficulty in formulating these requirements constitutes a major hurdle for these proposals.

3.4.3 Community/Stakeholder Management

⁴³⁰ Undivided loyalty means the trustee is required to serve the interests of the beneficiary and no other. State land trustees, for example, are not allowed to enrich any other public purpose, no matter how meritorious, at the expense of the beneficiary. *Id.*

⁴³¹ Disclosure to beneficiaries obligates the trustee to transmit all information necessary to evaluate trust management to the beneficiary, so that the beneficiary can evaluate the trustee’s investment decisions and assure that the trustee is acting with undivided loyalty. *Id.*

⁴³² In preserving the corpus of the trust, the trustee cannot manage a trust for short-term gains at the expense of long-term productivity. The beneficiary can challenge a trustee if the trustee is acting for the benefit of someone else. *Id.*

⁴³³ For example, most state trusts produce significant revenues for their beneficiaries and many take care to insure against unwarranted cross-subsidization. Beneficiaries have been able to prevent state legislatures or trustees, through easy access to courts, from using trust resources for the particular benefit of a special interest group. Finally, where *beneficiaries* have sought short-term gains at the expense of long-term productivity, *trustees* have had some success in prevention by arguing that they are obligated to preserve the corpus of the trust. *Id.*

⁴³⁴ The Second Century Report, *supra* note 157, at Conclusion. Available at <<http://www.ti.org/Concl.html>>.

⁴³⁵ *Id.*

⁴³⁶ An obligation to produce revenues for schools would reduce below-cost activities and focus managers’ attention on commodity values. *Id.*

⁴³⁷ An obligation to manage for multiple use on behalf of the American people is muddy enough that states could do just about whatever they wanted except sell the land. *Id.*

⁴³⁸ A transfer of lands with no strings attached might lead some states to sell some or all of the lands. The remaining lands would be managed with the same sort of pork barrel goals that now govern federal lands. *Id.*

The involvement of the public in the “development, review, and revision of land management plans” is clearly called for in NFMA and is an idea found in many other environmental statutes, most notably NEPA.⁴³⁹ These statutes, however, involve stakeholders through the widely criticized “review and comment” model of public participation discussed earlier⁴⁴⁰, or raise management issues implemented largely outside of public involvement process.⁴⁴¹ Ironically, public comments in forest planning are often viewed as simply a necessary first step in the pursuit of judicial remedies to problems that arguably could have been addressed through more innovative planning processes.⁴⁴²

A tremendous variety of studies have identified widely felt dissatisfaction with the role of stakeholders and broad “communities of interest” in National Forest System decision-making. While several studies offer reform ideas directed solely at the task of forest-level planning, most observations are equally relevant to higher (strategic level) tiers of administration and planning. Perhaps the most common criticism is that existing processes for public participation and stakeholder input are simply designed to satisfy specific legal requirements, and subsequently, to shield the Forest Service from environmental litigation, rather than being true vehicles for meaningful public involvement. Also problematic is the traditional emphasis on seeking public comments on largely formulated decisions, an approach often viewed by the public as suppressing early and meaningful public input, but viewed by the resource agencies as balancing public input with professional agency decision-making.⁴⁴³ A related consideration is the largely unspecified manner in which stakeholder input is actually used in agency decision-making.⁴⁴⁴ Still other criticisms focus on the content of information sharing and debate, including the bias

⁴³⁹ NFMA, 16 U.S.C. § 1604(d) (1999).

⁴⁴⁰ For example, commenting on forest planning and management, the Society of American Foresters has observed that the models of public participation “used by the agencies seek to inform and educate, on the assumption that if citizens ‘understand’ what the agency is going to do, they will accept those actions. In many cases, public participation has been used to seek public acceptance, rather than to truly involve the public in crafting management options.” Society of American Foresters, *supra* note 75, at 33. However, the USFS Proposed Rule proposes a substantively different model of public participation in the planning process. *See* USFS Proposed Rule, *supra* note 18, at §§ 219.2(c)(1), 219.2(d), 219.12, 219.16-18.

⁴⁴¹ For example, the Endangered Species Act (ESA)—while highly significant in some regions as a basis for public interest litigation—is largely implemented through interagency consultations. Similarly, the CWA has traditionally not been a major consideration in forest management given the program’s historic emphasis on point-source, rather than nonpoint-source, pollution, a situation that is likely to change in coming decades. The Wilderness Society, *supra* note 29, at 58.

⁴⁴² Under Section 322 of the 1993 Interior Appropriations Act, any person who commented on a proposed action may appeal within 45 days after a Forest Supervisor or District Ranger makes a decision. The Regional Forester then has 45 days to issue a decision, with no on-the-ground action being taken until that time unless an emergency situation exists. Appeal of an entire Forest Plan must occur within 90 days, and is ruled on by the Chief of the Forest Service, with a decision required within 160 days. Action does not stop during such appeals (The Wilderness Society, *supra* note 29, at 59). The appeal process is discussed later in more detail.

⁴⁴³ This issue is most directly addressed in the reports of the Committee of Scientists and the Society of American Foresters. For an extensive discussion of public input, *see* USFS Proposed Rule, *supra* note 18, at §§ 219.2(c)(1), 219.2(d), and 219.12-18.

⁴⁴⁴ *See, for example*, the reports of The Wilderness Society (*supra* note 29), Office of Technology Assessment (*supra* note 61), and General Accounting Office (*supra* note 77).

towards resource outputs resulting from the Forest Service's longstanding timber orientation.⁴⁴⁵ These and related deficiencies, cultural as much as structural, combine to disempower many stakeholders.

3.4.3.1 *Improving Implementation of NEPA*

One means for improving stakeholder participation in Forest Service activities and planning may be through reforming the implementation of NEPA.⁴⁴⁶ NEPA declares that:

[I]t is the continuing policy of the federal government, in cooperation with State and local governments and other concerned public and private organizations, to use all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.⁴⁴⁷

NEPA specifically requires that federal agencies prepare detailed environmental analyses, Environmental Impact Statements, (EIS), which assess alternatives and their impacts for federal actions which significantly affect the quality of the human environment.

The President's Council on Environmental Quality (CEQ) has passed regulations for EIS creation requiring public scoping, an open process for determining the scope of issues involved, and public review and comments on alternatives in a draft EIS.⁴⁴⁸ However, there is still significant litigation based on failure to complete an EIS or claims that an EIS is inadequate that could be reduced by increasing stakeholders' involvement in the NEPA process.⁴⁴⁹ In 1997, CEQ issued a report which evaluated the effectiveness of NEPA and recommended improvements in collaborative efforts.⁴⁵⁰ CEQ recommends: (1) better integrating NEPA's goals into internal planning processes; (2) considering the views of surrounding communities and other interested members of the public; (3) developing collaborative processes with other federal agencies to share information and integrate planning responsibilities; (4) focusing knowledge and values from a variety of sources on a specific place; and (5) incorporating science-based and flexible management approaches.⁴⁵¹

⁴⁴⁵ See, for example, Office of Technology Assessment, *supra* note 61. In a related vein, note that some critics of the Forest Service are now lamenting the agency's apparent adoption of a new bias, outdoor recreation, in cooperation with a narrow set of economic interests promoting a style of land management potentially inconsistent with broader public goals. This argument is primarily championed by Wild Wilderness of Bend, Oregon (www.wildwilderness.org).

⁴⁴⁶ NEPA, 42 U.S.C. § 4321.

⁴⁴⁷ *Id.* § 101.

⁴⁴⁸ O'Connor Center for the Rocky Mountain West, The University of Montana. *Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?*, Report from March 1999 workshop on NEPA, (March 2000) at 10, [hereinafter *Reclaiming NEPA's Potential*].

⁴⁴⁹ *Id.* at 11.

⁴⁵⁰ Council on Environmental Quality Executive Office of the President. *Cumulative Effects under NEPA*, (January 1997). [hereinafter CEQ]. Available at <<http://www.whitehouse.gov/CEQ>>.

⁴⁵¹ *Reclaiming NEPA's Potential*, *supra* note 448, at 18, citing CEQ.

The O'Connor Center for the Rocky Mountain West at the University of Montana and the Institute for Environment and Natural Resources at the University of Wyoming cosponsored a workshop in March of 1999 on NEPA. The NEPA review work group found that government agencies often followed the procedural requirements of NEPA without considering its broad vision; however, NEPA could be the basis for increased collaboration and consensus building among agencies, among different levels of government, and between agencies and communities.⁴⁵²

The work group identified barriers to integrating collaborative decision making into NEPA as: (1) political barriers, including lack of leadership from the president, CEQ, and agencies, reluctance to engage state, local, and tribal governments, and perceived lack of integrity in collaborative approaches; (2) administrative barriers, including failure to use NEPA strategically, lack of clear procedures for use of collaborative approaches, lack of internal agency incentives to be innovative, lack of genuine public involvement strategies, and confusion among agencies; (3) legal barriers, including perceived conflict with FACA and uncertainty about legal authority for decision making; and (4) financial barriers, including lack of agency resources to carry out innovative NEPA implementation and to enable equal participation in collaborative groups.⁴⁵³

The work group proposed new strategies to address these barriers. First, the work group suggested addressing political barriers by: (1) gaining leadership from the White House, CEQ and agency heads; (2) exploring potential use of Western Governor's Association Enlibra Principles for citizen involvement; (3) learning from and building on existing agency programs, (4) educating and training current and future agency managers and citizens; (4) encouraging agencies to initiate cooperating agency agreements and cooperation without cooperating agency status; (5) ensuring participant understanding of processes; and (6) promoting communication among parties and honest exchange of information.⁴⁵⁴ Second, the work group recommended addressing administrative barriers by: (1) recognizing and rewarding managers who strive to meet NEPA visionary goals and enact innovative policies; (2) highlighting and building on approaches that use NEPA strategically; (3) training agency managers to identify appropriate applications; (4) seeking CEQ guidance on opportunities for public participation; (5) using technology to facilitate communication; (6) improving integration of agency analysis; and (7) conducting inventories of agency assessments, plans, and NEPA analysis.⁴⁵⁵ Third, the work group recommended addressing legal barriers by clarifying the role of FACA and exploring options for giving consensus-based recommendations special status.⁴⁵⁶ Fourth, the work group recommended addressing financial barriers by providing more financial support at all levels and structuring processes to facilitate participation.⁴⁵⁷

In addition the workshop participants recommended supporting pilot projects which test the possibilities and limits of collaboration.⁴⁵⁸ Prior to pilot program selection, researchers would

⁴⁵² Reclaiming NEPA's Potential, *supra* note 448, at 4.

⁴⁵³ *Id.* at 40.

⁴⁵⁴ *Id.* at 41-48.

⁴⁵⁵ *Id.* at 48-54.

⁴⁵⁶ *Id.* at 54-56.

⁴⁵⁷ *Id.* at 56-57.

⁴⁵⁸ *Id.* at 58-60

compile and evaluate previous collaborative efforts to help frame questions. Findings could be used to support future changes to national NEPA implementation. Workshop participants drafted pilot program legislation, but also suggested that similar results could be achieved through an executive order, appropriation bills language, or through bottom-up processes.⁴⁵⁹

SAF has also made recommendations for revising the NEPA decision making process.⁴⁶⁰ SAF proposes that the government first publish a scoping document that lists alternatives but does not propose a preferred option for a proposed plan or action. After gathering comments from other agencies and the public, the Forest Service can propose a resource management plan or management action based on the scoping document and the comments. The proposed plan would then be subject to public comment and review before a final decision is made. SAF recommends that the decision could be challenged in court, but could not be subject to administrative appeal.

The Public Lands Planning and Management Improvement Act of 1999, (S. 1320), seeks to encourage collaborative planning. First, the Act encourages independent committees of local interests, which include at least one representative of a non-commodity interest and one representative of a commodity interest, to propose recommendations by requiring agencies to include those recommendations as alternatives in EISs.⁴⁶¹ If there are more than two independent committee recommendations, the agency may consolidate them. The Act authorizes the Forest Service to provide sufficient funds to a committee to monitor implementation if its alternative is adopted.

3.4.3.2 Other Proposals for Collaborative Decision-Making

A variety of proposals express a need for reforms that better involve and empower stakeholders in decision-making in the National Forest system. Many call for new models of public participation that cast stakeholders in permanent, long-term learning-oriented collaborations rather than isolated, plan-specific “review and comment” exercises.⁴⁶² The intent is not merely to encourage improved public involvement in forest planning exercises—although that is a major focus of many proposals—but to extend and integrate meaningful public involvement throughout the full spectrum of administrative functions, presumably from regional assessments to field-level monitoring. This vision is often presented as one of the fundamental tenets at which comprehensive, long-term reforms should be directed, rather than as a discrete set of proposals awaiting adoption and implementation.⁴⁶³

⁴⁵⁹ *Id.* at 58. The proposed legislation directs the chair of CEQ to “encourage and support innovative collaborative efforts between and among federal agencies, states, Indian tribes, regional and local governments, and the public to implement and advance the purposes of NEPA.”

⁴⁶⁰ Society of American Foresters, *supra* note 75, at 58.

⁴⁶¹ S. 1320 § 110 (a), *supra* note 118.

⁴⁶² *See, for example*, Office of Technology Assessment (*supra* note 61), Committee of Scientists (*supra* note 74), The Wilderness Society (*supra* note 29), and Sierra Club (*supra* note 129).

⁴⁶³ The proposals are generally consistent in advocating these reforms through internal means rather than through new legislation.

Several principles produced at the Seventh American Forest Congress addressed the need for community participation in forest management decision-making. Two revised principles, which both received fifty percent or greater agreement among the participants, call for management decisions that reflect the “interdependence”⁴⁶⁴ and “concerns”⁴⁶⁵ of diverse urban, suburban, and rural communities. Two draft proposals created at the Congress go even farther in emphasizing the importance of including the human community in forest management. Draft Principle 28 advocates “full public participation in *all* decision-making processes,”⁴⁶⁶ and Draft Principle 29 asserts that “humans of this and future generations deserve *top priority*” in management policies⁴⁶⁷ (emphasis added). However, these two draft principles received less than fifty percent agreement at the Congress.

More specifically, several studies call for the public role in forest planning to be expanded beyond one of “input” to include an ongoing guidance and consultation. For example, the Western Governors’ Association calls for processes that:

provide for high quality early public participation opportunities; promote process incentives for cooperative and collaborative participation among stakeholders; provide specific points for the involvement of state, tribal and local officials; restore the original intent of the Federal Advisory Committee Act (FACA) to provide equality of opportunity for public participation and reduce impediments to land managers’ interaction with constituencies; and maintain an effective appeal process . . .⁴⁶⁸

The Office of Technology Assessment calls for “open decision making,” or “decision building,” processes, in which the public and agencies engage in “dialogue and mutual deliberation”.⁴⁶⁹ Along similar lines, the Committee of Scientists conclude that “NFMA planning should be collaborative in nature, fostering the communication, coordination, and problem-solving across the diverse spectrum of individuals, organizations, agencies, and governments whose concurrence, involvement, and action are essential to the success of the NFMA planning process”.⁴⁷⁰

Many proposals for more collaborative planning processes contain relatively few details about actual reform strategies, in part due to the practical difficulty in delineating the appropriate balance between private and public roles, and more specifically, accommodating the desire for

⁴⁶⁴ Forest Congress, *supra* note 32, Revised Principle 9 at 9. 69% agreement, 17% reluctant agreement, and 14% disagreement.

⁴⁶⁵ *Id.* Revised Principle 15. 50% agreement, 25% reluctant agreement, and 24% disagreement.

⁴⁶⁶ *Id.* at 14. Draft Principle 28. Only 27% complete agreement, 24% reluctant agreement, and 49% disagreement.

⁴⁶⁷ *Id.* at 15. Draft Principle 29 (emphasis added). 26% agreement, 19% reluctant agreement, and 55% disagreement.

⁴⁶⁸ Western Governors’ Association. Available at <<http://www.westgov.org>>

⁴⁶⁹ Office of Technology Assessment, *supra* note 61, at 102.

⁴⁷⁰ Committee of Scientists, *supra* note 74, at 84.

greater stakeholder involvement without unduly subordinating professional autonomy.⁴⁷¹ “At the time NFMA was passed,” according to the Society of American Foresters, “one of the most important issues to foresters was preserving professional autonomy”.⁴⁷² That concern still exists,⁴⁷³ and has been noticeably heightened by the experience of the Quincy Library Group (QLG), an ad hoc stakeholder group in central California that went outside of normal NFMA planning processes to craft new management strategies for 2.5 million acres of public lands.⁴⁷⁴ The QLG eventually succeeding in gaining congressional approval of its plan for a 1.6 million acre pilot region. The Quincy Library Group is one of a rapidly growing number of largely *ad hoc* bodies seeking to transform forest planning, and is one of the efforts that prompted the establishment of the ten Adaptive Management Areas (AMAs) within the Northwest Forest Plan.⁴⁷⁵ In AMAs, federal land managers retain decision-making authorities, but are strongly encouraged to collaborate with stakeholders, using “Provincial Advisory Committees” to advise federal officials on creative approaches to plan implementation.⁴⁷⁶

More specific ideas have also been asserted for implementing collaborative decision-making into the management process. One strategy is to employ multi-party monitoring teams to evaluate Forest Service programs. Such a framework for multi-party monitoring is currently being developed as part of the Stewardship End Result Contracting Demonstration Project.⁴⁷⁷ Stewardship project contracts are intended to provide a means for pilot-testing an array of potential new authorities for giving national forest managers greater administrative flexibility to improve forest conditions and potentially help meet the needs of local communities. The demonstration project was created with the requirement that the Forest Service institute a process for multiparty monitoring and evaluation of the stewardship contracts.⁴⁷⁸ Besides the Forest Service, participants in the multi-party monitoring process may include “any cooperating governmental agencies, including tribal governments, and any interested groups or individuals.”⁴⁷⁹

⁴⁷¹ For example, the Western Governors’ Association calls for a greater use of “public/private” partnerships, but offers few ideas about the appropriate terms and boundaries of such arrangements.

⁴⁷² Society of American Foresters, *supra* note 75, at 25.

⁴⁷³ Consequently, the Society of American Foresters explicitly recommends that “New legislation—and the regulatory language that implements it—should explicitly acknowledge that both professional resource managers and the public have roles in the planning and management process” Society of American Foresters, *supra* note 75, at 57.

⁴⁷⁴ This area includes parts of the Plumas National Forest, Lassen National Forest, and the Sierraville Ranger District of the Tahoe National Forest.

⁴⁷⁵ As described in Forest Ecosystem Management Assessment Team (FEMAT) *Forest Ecosystem Management: An Ecological, Economic, and Social Assessment*. U.S. Government Printing Office, 1993, at III-24, in the AMAs it “is hoped that localized, idiosyncratic approaches that may achieve the conservation objectives of this plan can be pursued. These approaches rely on the experience and ingenuity of resource managers and communities rather than traditionally derived and tightly prescriptive approaches that are generally applied in the management of forests.”

⁴⁷⁶ The Wilderness Society, *supra* note 29.

⁴⁷⁷ Stewardship End Result Contracting Demonstration Project, 16 U.S.C.A. § 2104 NOTE (West Supp. 1999).

⁴⁷⁸ 64 Fed. Reg. 44,686 (Aug. 17th, 1999); *see also* 16 U.S.C.A. §§ 2104 NOTE, § 347(g) (West Supp. 1999).

⁴⁷⁹ *Id.*

The Forest Service must report annually to Congress on the progress of the demonstration project, including the role of local communities in development of contract plans.⁴⁸⁰

There are a handful of other current proposals offering different strategies for building upon the growing experience in stakeholder driven forest planning. Some, like the proposal of Dan Kemmis articulated in the Lubrecht Conversations, retains the pilot project model of the QLG and the AMAs by arguing for establishment of a so-called “Region 7” of experimental forests.⁴⁸¹ The experimental forests would be a vehicle for testing the limits of collaborative forestry. As Kemmis explains, “I’d like to tell [a local collaborative] how much they have to work with but allow them the maximum amount of governing authority to use that money”.⁴⁸² An example of a collaborative board model highlighted by Dan Kemmis is the “Three Sovereigns” proposal in the Columbia Basin.⁴⁸³ In this proposal initiated by Oregon’s Governor John Kitzhaber, the basin’s four governors, one leader from each of the thirteen tribes in the area, and one representative from the federal government would work together to coordinate salmon recovery from the Rocky Mountains to the Pacific Ocean. Kemmis argues that natural resource managers must “fashion new ways of governing” that include the people who live in the area in the decision-making processes instead of creating more antagonism through the hierarchical authoritative structures which have been traditionally relied on by the federal government.⁴⁸⁴ Pilot projects are also the basis for exploring the ideas of the Forest Options Group. In their “Second Century” report, the group suggests 5 different types of (forest level) pilot projects, distinguished by different budget/finance arrangements and by different governance strategies. One of the proposed models would utilize a “collaborative board” model in which a cross-section of interest group representatives, appointed by the Secretary of Agriculture, would have primary responsibility for forest planning and management.

Perhaps the most ambitious of the current proposals is found in Part C of S. 1320, which encourages collaborative planning. S. 1320 would empower department Secretaries to establish local committees, broadly representative of interests corresponding to the federal land planning units. The agencies would then have to seek advice from the committee prior to adopting or revising a resource management plan and provide the committee with funding to monitor plan implementation.⁴⁸⁵ Of particular note is Section 110(a) which provides that any plan “developed by an independent committee of local interests” must be formally considered in planning

⁴⁸⁰ *Id.*

⁴⁸¹ Currently, the Forest Service is organized into geographic regions, but does not include a region 7. The region proposed by Kemmis would be comprised of specially-designated participating forests drawn from existing regions, in which existing administrative procedures would largely be waived in the interest of promoting locally-driven experimentation.

⁴⁸² Lubrecht Conservation, at 15

⁴⁸³ Daniel Kemmis, *Rethinking Public Land Governance for the New Century*, Pinchot Institute Distinguished Lecture, February 11, 2000 at 10. Kemmis was a member of the Lubrecht Group and is Director of the Center for the Rocky Mountain West at the University of Montana. For more information on the “Three Sovereigns Forum” go to <<http://www.newsdata.com/enermet/xpan/sov/sovfl.html>> For criticism from four Northwestern lawmakers go to <<http://www.house.gov/agriculture/105/pr80227.htm>>.

⁴⁸⁴ *Id.*

⁴⁸⁵ S. 1320 § 110 (b), *supra* note 118.

activities, including specifically, the NEPA review of alternatives.⁴⁸⁶ These local committees would not be established or funded by the Secretary and would not be subject to FACA, although the bill does call for the establishment of formal FACA committees in other situations (§ 110(b)). In addition, S. 1320 also allows a citizen to challenge a management plan by petitioning for plan revision or amendment within a certain deadline.⁴⁸⁷ The agency's decision whether to accept or deny a petition would not be subject to ESA or NEPA requirements. If the petition is denied, the citizen could file suit. Any citizen could file an administrative appeal of any management plan or activity if the appellant has first submitted written comments.⁴⁸⁸

Similar proposals featured in the work of the Committee of Scientists, Office of Technology Assessment, the Council on Environmental Quality, and others—would likely not require new legislation. In fact, the RPA/NFMA already calls upon the Forest Service to utilize FACA-chartered advisory boards “representative of a cross section of groups interested in the planning for and management of the National Forest System.”⁴⁸⁹ These boards are one strategy for ensuring “Federal, State and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.”⁴⁹⁰ As the Committee of Scientists observes:

The specifically named elements, standards, criteria, and guidelines, are key decision points in that they are the basis for making choices. For the public, including other governments, to effectively and wisely participate in these key decisions, the public-participation process needs to be explicitly organized as a learning process, not merely a ‘review and comment’ process.”⁴⁹¹

The problem of the timber bias, and its effect on limiting participation, is also the target of several public collaboration proposals. The Office of Technology Assessment and The Wilderness Society both identify opportunities for the greater use of computer models for integrating economic, social, and environmental data (and expertise) in existing decision processes historically geared to timber outputs. Similarly, the General Accounting Office⁴⁹² suggests that the public input requirements of the Governmental Performance Results Act

⁴⁸⁶ To the contrary, the USFS Proposed Rule, *supra* note 18, at §219.12(a) gives “[t]he responsible official . . . full discretion to determine how and to what extent to use the collaborative processes outlined in §§ 219.12 through 219.18.”

⁴⁸⁷ *Id.* at § 111.

⁴⁸⁸ *Id.* at § 122.

⁴⁸⁹ Federal Advisory Committee Act, 16 U.S.C. § 1612(b) (1999). The use of advisory committees was once a common practice in the Forest Service, but decreased dramatically in the 1970s, largely in response to FACA and efforts to downsize government. Committee of Scientists, *supra* note 74, at 80. *See* USFS Proposed Rule, *supra* note 18, at § 219.18. In recent decades, the Forest Service has chosen to utilize FACA as an excuse not to collaborate. General Accounting Office, *supra* note 77, at 26. Partly for this reason, some proposals—such as S. 1320 (*supra* note 118, at § 110)- specifically exempt some collaborative exercises from the requirements of FACA.

⁴⁹⁰ *Id.* 16 U.S.C. § 1612(a) (1999).

⁴⁹¹ Committee of Scientists, *supra* note 74, at 80.

⁴⁹² General Accounting Office, *supra* note 77, at 37-38.

(GPRA) can be an effective tool for the public to temper the agency's historic commodity bias, and suggests that GPRA planning even be considered as a replacement for RPA/NMFA mandated long-term strategic planning.⁴⁹³ Other suggestions include the related idea of utilizing additional "Committee of Scientists" for a more comprehensive examination of forest issues.⁴⁹⁴ Presumably, all of these strategies can play in role in redirecting the focus of the agency away from substantively narrow and internalized decisions on key strategic issues, opening up the agency, and the National Forest System, to a greater variety of interests and viewpoints.

3.4.3.3 Reforms Promoting Social and Economic Stability

While the Forest Service has never had a statutory mandate to maintain the economic well-being of communities, there has been a recent movement in the agency to assist these communities to diversify their economies and become more resilient to change.⁴⁹⁵ In some communities, changing technology combined with reduced timber cuts have caused a decline in employment. Participants in the Forest Congress developed several draft principles addressing compensation for communities affected by forest policies.⁴⁹⁶ Forty-six percent of the participants supported re-investment through tax systems, incentive programs, and credit access.⁴⁹⁷ Thirty-nine percent of the participants supported holding corporations in the forestry industry accountable to their neighboring communities.⁴⁹⁸ And 45 percent of participants agreed on a principle that would allow communities to profit from resources removed from their neighboring forests by bringing any resulting manufacturing to that community.⁴⁹⁹

Under the proposed Public Land Management Improvement Act of 1997, which was not adopted by Congress, the Forest Service would have been required to maintain community stability and assess the economic impacts on communities through detailed analysis.⁵⁰⁰ The Forest Service would have also been required to consider whether its plan maintained, to the maximum degree feasible, the stability of any community that had become economically dependent on the resources of federal lands.

The Forest Service does not need a statutory mandate, however, in order to integrate these interests into the planning and management process. The Wilderness Society sees a void in the decision-making process that communities and states can fill.⁵⁰¹ Furthermore, local residents

⁴⁹³ The Committee of Scientists report recommends amending the large-scale assessments required under RPA to focus on resource health and to emphasize adaptive management strategies.

⁴⁹⁴ S. 1368, Act to Save America's Forests, 106th Congress (1999). Find on-line at <<http://thomas.loc.gov>>.

⁴⁹⁵ The Wilderness Society, *supra* note 29, at 53. See also USFS Proposed Rule, *supra* note 18, at §§ 219.2(b), and 219.21.

⁴⁹⁶ Forest Congress, *supra* note 32. These draft proposals did not go through the entire Congress revision process due to time constraints.

⁴⁹⁷ *Id.* at 13. Draft Principle 16. 46% agreement, 23% reluctant agreement, and 31% disagreement.

⁴⁹⁸ *Id.* at 13. Draft Principle 20. 39% agreement, 24% reluctant agreement, and 37% disagreement.

⁴⁹⁹ *Id.* Draft Principle 17. 45% agreement, 23% reluctant agreement, and 32% disagreement.

⁵⁰⁰ The Wilderness Society, *supra* note 29, at 53. See also USFS Proposed Rule, *supra* note 18, at §§ 219.2(b), and 219.21.

⁵⁰¹ *Id.* at 56: "Local communities next to large National Forests should be considered as part of the ecosystem and can be made active partners. There is a need for closer natural working relationships between local forest

could also be involved more directly in stewardship, which would give them more educational and economic opportunities.⁵⁰² Finally, the Forest Service's State and Private Forestry division could have its role expanded to assist the integration between these entities, given its expertise in rural development with local communities.⁵⁰³

In addition to assisting local communities, the Forest Service may have an increasingly important role in the management of nonfederal forests as well. The United States contains over nine million nonfederal forests.⁵⁰⁴ Important social and environmental benefits provided by sustainable nonfederal forests are challenged by the complexity of the ecosystems, ownership patterns and institutions associated with them. Furthermore, information needed for the management and protection of these forests is often different from that needed for the management of federal public lands.⁵⁰⁵

In response, complex assessment and monitoring systems have been developed by federal, state, and nonprofit organizations that evaluate the status of forest resources and the progress of implementing programs on them.⁵⁰⁶ These programs (and others) provide resource users and managers of the nonfederal forests with information needed to focus, discard, or expand programs. Unfortunately, the very scope and complexity of these efforts create obstacles to the collection and dissemination of relevant, or even timely, information. The Forest Service, with its expertise and sheer size, would be an invaluable asset as a cooperative partner in the improving the transfer of information about nonfederal forests to state and local interests, and in strengthening programs for the monitoring the conditions and uses of the nonfederal forests.⁵⁰⁷

As proposed in the Senate, the Public Lands Planning and Management Improvement Act of 1999 would allow the Forest Service to produce assessments of "environmental, economic, and social issues and conditions" that encompass all federal lands and nonfederal lands.⁵⁰⁸ The proposed statute does, however, limit the Forest Service's ability to make decisions concerning resource management planning or management activities on federal lands, for example, lands managed by the Bureau of Land Management, but it is silent concerning the nonfederal lands.⁵⁰⁹

Nevertheless, as the Wilderness Society's "Visions for a 21st Century" asserts, planning for federal forests should emphasize values not readily available on private lands, including a large number of nonfederal lands touched upon above. These values -- clear water, clean air, wildlife habitat, biological diversity, open spaces, and access to outdoor recreation -- should be protected and enhanced as they are increasingly absent, or unavailable, from nonfederal lands.⁵¹⁰

rangers and local residents."

⁵⁰² For example, people could be trained to monitor national forest conditions. *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ Nonfederal forests include tribal forests, industrial forests, state-owned forests, and privately-owned forests.

⁵⁰⁵ National Research Council, Forested Landscapes in Perspective, at 133-35 (1998).

⁵⁰⁶ Examples include the Forest Inventory and Analysis Program; the U.S. Geological Survey's National Water Quality Assessment Program; U.S. Environmental Protection Agency's Environmental Monitoring and Assessment Program; and the National Forest Health Monitoring Program. *Id.*

⁵⁰⁷ *Id.* at 140.

⁵⁰⁸ S. 1320, *supra* note 118, at § 119. See USFS Proposed Rule, *supra* note 18, at § 219.5(a).

⁵⁰⁹ S. 1320, *supra* note 118, at §120.

⁵¹⁰ The Wilderness Society, *supra* note 29, at 9.

4. CONSEQUENCES

This report lists and describes a wide variety of proposals that should, according to their proponents, improve national forest management. Some of the proposals focus on the financial aspects of agency activity; others focus on forest planning and management. All of them have consequences for the way in which the Forest Service is structured, conducts business, and relates to its multiple constituencies. Some proposals would require changes in governing legislation; others would require changes in internal agency priorities and procedures. This concluding part reviews the major groups of proposals and suggests some of the principal foreseeable consequences of their implementation. Clearly, these consequences may be positive or negative.

4.1 Changes in the Federal Estate

One group of proposals recommends the total or partial divestment of federal public lands, i.e., those lands currently managed by the Forest Service under NFMA and by the Bureau of Land Management under FLPMA. These proposals range from those advocating a complete divestment of this federal estate to less ambitious proposals that would transfer only specific federal public lands. A few proposals recommend the acquisition or consolidation of federal lands.

Total divestment proposals rely on the purported superiority of state and private land management capabilities and focus on the economic return to be realized from the development of forest resources. The nationwide implementation of such proposals would result in the dissolution of the Forest Service since there would no longer be any federal public land to manage. The level and adequacy of active management of divested lands for non-economic resource values would vary from state to state and from private owner to private owner. Furthermore, safeguards of many of the general environmental laws may be lost: NEPA does not apply to private or state land management actions, and enforcement of others would be left entirely to other federal agencies and private or state land managers. The CAA and CWA already contain mechanisms for state-implemented enforcement. Enforcement of the ESA, however, is more problematic. Current Fish and Wildlife Service enforcement philosophy regards federal lands as the primary source of habitat for endangered species. Complete divestment of federal lands would require a significant revision of the current enforcement emphasis of the Act. A reevaluation of the Habitat Conservation Plan program and associated concepts, such as incidental take, would be required. Such a reevaluation could conceivably result in a greater, rather than lesser, degree of federal involvement in the management of private land.

The implementation of comprehensive divestment proposals could also affect the functioning of agencies such as the Park Service and the Fish and Wildlife Service by shifting public recreational demand to lands, not subject to divestment, managed by these agencies. Increased recreational pressure has already been identified as a major problem in both the National Parks and the National Wildlife Refuges. The divestment of national forest lands would add to this pressure and require significant additional personnel and budgetary resource allocation to these agencies. Additionally, the transfer of lands with resource development potential to state or private hands would require a shifting of resource management professionals into the state or private sector.

Less comprehensive divestment proposals involving, for example, federal retention of those lands having special historic, recreational or ecological qualities, would result in a significant reduction in the scope and mission of the Forest Service. Multiple-use, sustained yield concepts embodied in MUSYA, NFMA, and FLPMA would no longer be applicable to the management of these remnant federal lands.

At the other end of the spectrum are proposals that would encourage a rapid expansion of the federal estate by an aggressive program of land acquisition. The agencies responsible for federal land management already experience resource and personnel shortages that hamper their ability to adequately manage existing federal lands. Rapid acquisition of new lands would require significant additions to the management capabilities of the Forest Service. A successful program of federal land acquisition would also require funding stability sufficient to allow for long-range acquisition planning. Making the funding of land acquisitions subject to the annual appropriation process would result in the same uncertainties and planning difficulties currently experienced by the Forest Service in attempting to implement its existing forest plans. On the other hand, a continuously funded land acquisition program would allow flexibility to take advantage of opportunities to add desirable land to the federal estate.

In summary, implementation of divestment-oriented proposals would result in the termination or severe restriction of the Forest Service and its scope of activity while adding to the burden on the resources and personnel of other federal agencies. Proposals advocating the rapid expansion of the federal estate would require additional resources, management personnel and planning capability within the Forest Service itself.

4.2 Budgetary Reform Proposals

Budget-oriented reform proposals can be subdivided into two categories: those calling for a market-oriented approach to fiscal management and those demanding a higher level of fiscal accountability from the agency. Most of the proposals falling within the first category would require that each national forest become, to at least some degree, self-supporting — charging fair market value for products and services and operating with the funds generated. Such reforms would necessitate a legislative revision of the Forest Service budgeting and planning processes. Under these proposals, both budgeting and planning would likely become localized functions, fashioned to meet the specific needs and resources of each forest. This degree of decentralization of decision-making would represent a major change for the Forest Service. Such a shift could exacerbate existing conflicts between local and national management priorities and policies. Proposals that recommend the reform of local compensation mechanisms

would have financial impacts, primarily on the recipient localities. These proposals would affect Forest Service structure and management activities only to the extent that a direct link to management activity is incorporated into the reform legislation.

The recommendations of the General Accounting Office, the Office of the Inspector General and other oversight groups, on the other hand, point out Forest Service lack of fiscal accountability and demand an elevated level of compliance with existing budgetary law and regulations. These recommendations call for structural changes within the Forest Service to increase the emphasis on accounting and centralized record-keeping. Compliance with these recommendations could result, and in some instances has already resulted, in a concentration of decision-making authority at the regional and national levels. Such a concentration of decision-making authority has led to many of the perceived weaknesses in agency function that other proposals in this report attempt to redress. Alternatively, failure to improve fiscal accountability brings with it the prospect of a significant reduction in appropriations.

Overall, the adoption of proposals in either category would require a comprehensive legislative revision of the budgetary process in order to reconcile local decision-making with national policy goals. Such a reconciliation of priorities may be found in proposals that directly address the current lack of correspondence between the budgeting process and on-the-ground management activity. These proposals would systematically revise the appropriations process to give each national forest more authority to allocate resources to the appropriate mix of management activities identified in individual forest plans. The reports of the Committee of Scientists and the Office of Technology Assessment reflect this approach.

4.3 Collaborative Planning and Adaptive Management

Several major proposals discuss the locus of decision-making within the planning process. Some proposals would focus planning assessments on a landscape scale. The adoption of this approach could result in a strengthening of the regional structure of the Forest Service and reduce the role of the individual national forests in planning. Landscape-scale planning would also encourage the Forest Service to implement local management activities on a collaborative basis that crosses ownership boundaries more easily than is currently possible. Collaborative planning would require the broader use of outside data and advisors. The efficient operation of such a planning effort would require several adaptations: first, the incorporation of outside input at each stage of the planning process; second, an agency appreciation of the latitude allowed by FACA in working with local interest groups; and third, a significant change in the professional expertise of local level Forest Service staff with less emphasis on technical knowledge and more emphasis on collaborative and managerial skills.

The incorporation of local values, needs and priorities into the planning process could easily result in an inversion of the current planning structure in which local forest plans evolve from strategic policies and goals established at the national level. Local land use and economic planning could dominate National Forest planning to such an extent that the national purposes of forest management are lost. On the other hand, collaborative planning at the local level can foster a more efficient, if not less costly, use of financial and personnel resources.

Proposals to improve Forest Service planning cannot be separated from those which would incorporate a system of adaptive management. True adaptive management would require an

experimental attitude among Forest Service officers at all levels. Carefully laid plans would always be subject to revision. This would increase the need for continuing collection and analysis of data. Data from a variety of sources would have to be integrated into a coherent whole; this would increase the agency's need for trained analytic personnel and for financial resources for data collection and analysis. Adequate staffing with these technical skills as well as with the collaborative management skills described above may be difficult.

Adaptive management would also require a climate of budgetary flexibility that may require legislative change to implement. Particularly at the local level, detailed budgetary categories would necessarily lose their control over management activities. This approach to management would also result in less predictability for forest contractors and users. Contracting procedures and content may need to change to incorporate the required flexibility.

In summary, the adoption of collaborative planning and adaptive management into the everyday operation of the Forest Service should result in an agency with extraordinary flexibility with respect to budgetary, priority-setting, and even policy matters. The coordination of this flexibility with existing national land management goals, such as those contained in the long-term strategic plan, would be a significant challenge.

4.4 Mission and Ecosystem Management

Many of the proposals discussed in this report advocate or recognize a fundamental shift in Forest Service mission from a focus on resource management and utilization to a focus on the establishment and maintenance of healthy ecosystems, which can, among other things, provide a sustained yield of multiple resource uses. This new emphasis on ecosystem management would give increasing importance to regional and national strategic plans. Congressionally-mandated resource output requirements, such as national timber harvest goals, would become obsolete under a system that prioritizes ecosystem health. Closer cooperation among federal and state agencies responsible for the implementation of other environmental laws would be required. The requirements of the general environmental laws and NFMA are sometimes conflicting, and legislative or regulatory adjustments may be necessary to reconcile them. If ecosystem management is to be truly realized, it may be necessary to acquire new water rights and to negotiate water use agreements, particularly with western states. It may also be necessary to change the hardrock mining laws or regulations.

Since ecosystems do not respect property lines, procedures for efficient management across ownership boundaries would have to be developed. Many of the proposals recommending the fiscal independence of each national forest are incompatible with ecosystem management — activities that enhance ecological health of degraded landscapes often are not financially self-supporting. Hence, contracting procedures and policies that reflect stewardship outcomes as well as resource outputs may need to be developed. On the administrative side, Forest Service internal policies regarding reward and promotion would need to be revised to reflect stewardship accomplishments rather than resource outputs.

A focus on ecosystem health could result in conflict with local economic traditions and needs. Forest Service officers and local interests will need to cooperate at all levels of planning and project implementation to avoid these conflicts and to quell locally-focused congressional action that might override collaboratively developed management decisions.

In spite of the difficulties in implementing an ecosystem-based management approach, the overriding foreseeable consequence of such an approach will be an enhanced resilience and productivity of the forests — both in the broad sense of the ecosystem services it provides and in the narrower sense of the multiple-use, sustained yield of goods and services that is currently the law of the land.

4.5 Looking to the Future

In conclusion, the proposals recommending institutional change are as varied as their proponents. This report does not attempt to evaluate the merits of each recommendation. However, even this admittedly cursory examination of the foreseeable consequences of major groups of proposals for change illuminates a set of tensions that underlie the implementation of such proposals. For any program of change to be successful, these consequential tensions must be examined carefully. These tensions include: first, the reconciliation of local needs, customs and priorities with national goals and policies; second, the increasing need for personnel with highly technical skill levels and the equally increasing need for personal, collaborative, and managerial skills; and third, the local/regional budgetary flexibility required for the implementation of truly adaptive management and the increasing demand for fiscal accountability.

Without careful attention to, serious analysis of, and reconciliation of these competing consequences of institutional change, any changes adopted will be ultimately unsatisfying and conflict-producing — to the Forest Service, to its multiple constituencies, and to the land itself.

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TABLE OF REFORM PROPOSALS

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
The Federal Estate: Divestment			
<p>Maintain all federal public lands for present and future generations and manage in accordance with national laws. Changes in those laws should be pursued through an open legislative process that allows the airing of views by the public.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Revised Principle 12 at 9 [Final Report] (Feb. 20-24, 1996)</p>	<p>2.1</p>
<p>Allow the state of Alaska to take over the 17 million acre Tongass National Forest; bill would grant Alaska all other Forest Service property in the area and gross timber receipts from the year before title is transferred.</p>	<p>Representative Don Young (R-AK)</p>	<p>Tongass Transfer and Transition Act; H.R. 2413 (104th Congress); <http://www.thomas.loc.gov></p>	<p>2.2</p>
<p>Completely divest federal estate to private interests or to the states; create a commission to inventory all federal lands, evaluate what uses are appropriate for each land area, and dispose of the lands accordingly; transfer lands used primarily for resource development to private ownership.</p>	<p>Competitive Enterprise Institute</p>	<p>CEI Environmental Briefing Book- Issue Brief: Federal Lands; <http://www.cei.org/EBBRead.er.asp?ID=732></p>	<p>2.2</p>
<p>Auction off public lands over the next two to four decades; land would be auctioned not for dollars but for public land share certificates (analogous to no par value stock certificates) distributed equally to all Americans.</p>	<p>Terry L. Anderson, Political Economy Research Center</p>	<p>How and Why to Privatize Federal Lands, Cato Policy Analysis No. 363; <http://www.cato.org/pubs/pas/pa-363es.html></p>	<p>2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Privatize or devolve to the states ownership of land that does not meet certain criteria for federal ownership; leave in federal control “only public land possessing unique historic, recreational, or biological qualities.”</p>	<p>Alexander Annett, Heritage Foundation</p>	<p>The Federal Government’s Poor Management of America’s Land Resources; <http://www.heritage.org></p>	<p>2.2</p>
<p>Give long-term leases, with full land rights, for grazing and logging that could include provisions for public access and recreation.</p>	<p>Alexander Annett, Heritage Foundation</p>	<p>The Federal Government’s Poor Management of America’s Land Resources</p>	<p>2.2</p>
<p>No net loss: require the federal government to sell off acreage of public land equal to the acreage of a desired land acquisition.</p>	<p>Competitive Enterprise Institute</p>	<p>CEI Environmental Briefing Book- Issue Brief: Federal Lands; <http://www.cei.org/EBBRead er.asp?ID=732></p>	<p>2.2</p>
<p>Limit the growth of the federal estate, but only require the one-to-one acreage trade-offs in states that have greater than 25% federal land ownership.</p>	<p>Senator Craig Thomas (R-WY)</p>	<p>No Net Loss of Private Lands Act; S. 826 (106th Cong.); <http://www.thomas.loc.gov></p>	<p>2.2</p>
<p>The Federal Estate: Addition/Consolidation</p>			
<p>Place strict procedural limitations on Land and Water Conservation Fund expenditure for new National Wildlife Refuges.</p>	<p>Representative Richard Pombo (R-CA)</p>	<p>New Wildlife Refuge Authorization Act; H.R. 1199 (106th Cong.); <http://www.thomas.loc.gov></p>	<p>2.3</p>
<p>Allocate \$450 million per year for federal land acquisition and \$200 million per year to a federal and Indian land restoration programs for the Land and Water Conservation Fund, with expenditures from the federal land acquisition program subject to the appropriations process.</p>	<p>Representative Don Young (R-AK)</p>	<p>The Conservation and Reinvestment Act of 1999; H.R. 701 (106th Cong.); <http://www.thomas.loc.gov></p>	<p>2.3</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
The Forest Service Mission: Custodial Management			
<p>Completely reorganize National Forests and other public lands into wilderness reserves; buffer zone of private land managed to promote biodiversity would surround each reserve to allow the free movement of wildlife; buffered reserves would be connected by broad corridors of public/private land; these corridors would also be managed to enhance biodiversity.</p>	<p>David Forman, The Wetlands Project</p>	<p><http://www.twp.org></p>	<p>2.4.2.1</p>
<p>Prohibit commercial logging on federal public lands; immediately suspend all existing logging contracts in roadless areas and all logging contracts authorized under 16 U.S.C. § 1611; phase out all other existing logging contracts over two years and instruct the Secretaries of Agriculture and Interior to exercise termination and payment provisions in existing contracts; funds to carry out the bill's proposals would be reallocated from existing Forest Service funds and revenues.</p>	<p>Representative Cynthia McKinney (D-GA)</p>	<p>The National Forest Protection and Restoration Act of 1999; H.R. 1396 (106th Cong.); <http://www.thomas.loc.gov></p>	<p>2.4.2.1</p>
<p>Deal with the past effects of timber harvesting by creating a Natural Heritage Restoration Corps; standards, guidelines and procedures for developing Natural Heritage Restoration plans are mandated for Forest Service as well as for the BLM and the Fish and Wildlife Service; funds to carry out the bill's proposals would be reallocated from existing Forest Service funds and revenues.</p>	<p>Representative Cynthia McKinney (D-GA)</p>	<p>The National Forest Protection and Restoration Act of 1999; H.R. 1396 (106th Cong.); <http://www.thomas.loc.gov></p>	<p>2.4.2.1</p>
<p>No logging on public lands.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Draft Principle 38 at 16</p>	<p>2.4.2.1</p>
<p>No roading on public lands.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Draft Principle 39 at 16</p>	<p>2.4.2.1</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Repeal Public Law 104-19, Section 20001 (The Emergency Salvage Rider to the Rescissions Bill), consistent with sound democratic principles and responsible forest management.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Draft Principle 20 at 10</p>	<p>2.4.2.1</p>
<p>The Forest Service Mission: Tweaking MUSYA</p>			
<p>Maintain and enhance forests across the landscape, expanding through reforestation and restoration where ecologically, economically, and culturally appropriate, in order to meet needs of an expanding human population.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Vision Element 4 at 6</p>	<p>2.4.2.2</p>
<p>Forests should be sustainable; support biological diversity; maintain ecological and evolutionary processes; and be highly productive.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Vision Element 7 at 6</p>	<p>2.4.2.2</p>
<p>Forests should sustainably provide a range of goods, services, experiences, and values that contribute to community well being, economic opportunity, social and personal satisfaction, spiritual and cultural fulfillment, and recreational enjoyment.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Vision Element 3 at 6</p>	<p>2.4.2.2</p>
<p>Revise the mission of the Forest Service so that the integrity, health, and sustainability of wildland ecosystems becomes the goal of all management; management shall focus on providing pure water and air, back country recreation, biological diversity, and other ecosystem services not reliably provided by private lands; management for timber, livestock forage, and other commodities is appropriate only where consistent with this overarching goal.</p>	<p>The Wilderness Society</p>	<p>America's National Forests in the 21st Century: The Wilderness Vision [The Wilderness Vision]; <http://www.tws.org/standbylands/forests/specialreports.htm></p>	<p>2.4.2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>The two guiding stars of stewardship in the national forests and grasslands should be sustainability and the recognition that these are the peoples' lands.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands: Recommendations for Stewardship of the National Forests and Grasslands into the Next Century [Sustaining the Peoples' Lands]; <http://www.fs.fed.us/news/science></p>	<p>2.4.2.2</p>
<p>Recognize and respect the interdependence of people and forests, including the important contribution forests make to social, economic, and community well being, and the responsibility of communities to support balanced stewardship of all forest values.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Revised Principle 19 at 10</p>	<p>2.4.2.2</p>
<p>The mission statement for the Forest Service should be to manage the Federal lands under their respective jurisdictions to assure the health, sustainability, and productivity of the lands' ecosystems; to furnish a sustainable flow of multiple goods, services, and amenities; to preserve or establish a full range and diversity of natural habitats of native species in a dynamic manner over the landscape; and, where necessary or appropriate, to designate discrete areas to conserve certain resources or allow certain uses.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 (106th Cong.); <http://thomas.loc.gov></p>	<p>2.4.2.2</p>
<p>The Forest Service should focus its management efforts on the NFMA requirement of the maintenance and restoration of biodiversity on the national forests.</p>	<p>H.J. McIntosh, Southern Utah Wilderness Alliance</p>	<p>National Forest Management: A New Approach Based on Biodiversity, 16 J. Energy Nat. Resources and Env'tl. L. 257 (1996)</p>	<p>2.4.2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>The Forest Service mission should incorporate natural processes and be based on the fullest possible knowledge of such forest resources; protect all federal publicly owned lands in the United States and end all commercial logging on these lands.</p>	<p>The Sierra Club</p>	<p>Forest Management Policy; <http://www.sierraclub.org/policy/conservation/forest.html></p>	<p>2.4.2.2</p>
<p>Establish a national goal of sustainable forestry to increase growth and timber quality of all forests, so the volume and quality of domestic timber resources available are adequate to meet public needs now and in the future.</p>	<p>American Forestry & Paper Association</p>	<p><http://www.afandpa.org/Forestry/guidelines.html></p>	<p>2.4.2.2</p>
<p>Recommit the Forest Service to an invigorated national land ethic; secure the health, diversity, and productivity of our lands and waters; reconnect our communities - both urban and rural - to the lands and waters that sustain them; respect that the choices we make today influence the legacy that we bequeath to our children and their children's children.</p>	<p>USDA Forest Service, Mike Dombeck, Chief</p>	<p><http://www.fs.fed.us/intro/speech/19990203a.html></p>	<p>2.4.2.2</p>
<p>The Forest Service Mission: Let Market Forces Dictate Uses</p>			
<p>Use free market to sell federal land to private enterprises based on the belief that privately owned lands have been managed more efficiently and profitably than have federal lands.</p>	<p>Competitive Enterprise Institute</p>	<p>CEI, Environmental Briefing Book- Issue Brief: Federal Lands at 2; <http://www.cei.org/EBBReader.asp?ID=732></p>	<p>2.4.2.3</p>
<p>Use free market to sell federal land to private enterprises based on the belief that privately owned lands have been managed more efficiently and profitably than have federal lands.</p>	<p>Annett, Heritage Foundation</p>	<p>The Federal Government's Poor Management of America's Land Resources at 12</p>	<p>2.4.2.3</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Expand the rights of the timber purchaser to use the resource for purposes other than logging in order to manage its lands for a greater profit; remove the diligence requirement on timber sales, which forces the purchaser to harvest timber or lose the permit, in order to create a free market in which the highest bidder could determine the fate of the timber.</p>	<p>Donald R. Leal, Political Economy Research Center</p>	<p>Making Money on Timber Sales: A Federal and State Comparison at 17-34.</p>	<p>2.4.2.3</p>
<p>“Commercialize” the Forest Service so that managers would depend on receipts from all forest uses to continue operations.</p>	<p>Donald R. Leal, Political Economy Research Center</p>	<p>“Making Money on Timber Sales: A Federal and State Comparison,” at 17-34.</p>	<p>2.4.2.3</p>
<p>Establish independent public forest corporations (PFC) to manage federal forest resources, similar to public utilities. Each national forest unit would be chartered as a PFC; its operations would be financed through sales of products, services and land use leases, and investment capital would be raised through the sale of securities and retained earnings.</p>	<p>Dennis Teeguarden and David Thomas</p>	<p>“A Public Corporation Model for Federal Forest Land Management,” 25 Natural Resources Journal 373, 374 April 1985</p>	<p>2.4.2.3</p>
<p>Congress should revise the budgetary structure of the Forest Service to result in the agency being run like a business; Congress should allow land managers to charge fair market value for all uses and resources, and the individual forests should be funded exclusively out of a fixed share of the net income they earn annually.</p>	<p>The Thoreau Institute</p>	<p>Run Them Like Businesses, at 1; <http://www.ti.org/business.html></p>	<p>2.4.2.3</p>
<p>Test alternative changes to the current budgeting process through pilot programs (open bucket, gross receipts, net receipts, and special funds).</p>	<p>The Forest Options Group</p>	<p>The Second Century Report; <http://www.ti.org></p>	<p>2.4.2.3</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Mechanisms for Changing the Mission			
The shift to an ecosystem management emphasis is within the original legislative mandate of the Forest Service.	USDA Forest Service, Mike Dombek, Chief	"A Gradual Unfolding of a National Purpose: A Natural Resource Agenda for the 21 st Century", (March 1998); < http://www.fs.fed.us/agenda >	2.4.3
Congress should take a comprehensive legislative approach to the redefinition of mission; new legislation must clarify which of the many legitimate public values are now most important.	The Society of American Foresters	Forests of Discord: Options for Governing Our National Forests and Federal Public Lands; [Forests of Discord] < http://www.safnet.org/policy/forestofdiscord.html >	2.4.3
Evolve from local consensus and decision-making to regional or watershed level decision-making; develop policy changes, which in turn inform the making of new legislation. The Forest Service should establish (not as a result of legislation) a non-geographic "Region 7".	The Lubrecht Group	Chronicles of Community, Vol. 3, No. 1 (Autumn 1998)	2.4.3
Budget and Finance: General and Fees			
Change Forest Service policy related to fees and expenses; authorize the agency to charge reimbursement fees for any use of forest service lands for commercial film and photography, to charge and collect fees for linear rights of way for power and communication lines, ditches and canals, roads, trails, and pipelines based on the fair market value of the rights and privileges provided, to collect fees for processing records, and to establish a pilot program for the collection of fees when timber contracts are awarded.	Senator Larry Craig (R-ID)	Public Lands Planning and Management Improvement Act; S. 1320, § 403-411 (106 th Cong.); < http://thomas.loc.gov >	3.1.1

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Abolish the user fee demonstration project.	The Forest Appropriations Initiative	Forest Appropriations Initiative (FY 2000)	3.1.1
Abolish the user fee demonstration project.	Representative Lois Capps (D-CA)	Forest Access Immediate Relief Act; H.R 2295 (106 th Cong.); < http://thomas.loc.gov >	3.1.1
Charge all recreational users of public lands a fee; allow national parks to keep 80 percent of the fees they collect and allow the remaining 20 percent to be used where collection costs are prohibitive; use fees to purchase grazing permits where there is a conflict with recreation and also allow preservationists to purchase and retire such permits; place part of the proceeds of fees into a biodiversity trust fund that would offer grants to private groups for conservation projects on public and private lands.	The Forest Appropriations Initiative	Forest Appropriations Initiative (FY 2000)	3.1.1
Require the Forest Service to include in the fees it charges timber companies the cost of engineering support for planning, designing, and administering road work for timber sales.	Representative Lois Capps (D-CA)	Forest Access Immediate Relief Act; H.R 2295 (106 th Cong.)	3.1.1
Congress should require each federal land unit used for resource development or recreation to be financially self-sufficient through either cutting expenses or increasing user fees.	Competitive Enterprise Institute	CEI Environmental Briefing Book- Issue Brief: Federal Lands; < http://www.cei.org/EBBReader.asp?ID=732 >	3.1.1
Create a "Pilot Program of Charges and Fees for Harvest of Forest Botanical Products" to experiment with charging fees for harvest of non-timber forest resources.	Senator Slade Gorton (R-WA)	Fiscal Year 2000 Appropriations Bill for Interior and Related Agencies; H.R. 2466 §339 (106 th Cong.)	3.1.2

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Place the full cost of timber sale preparation and harvest on public lands on those deriving economic benefit.	Seventh American Forest Congress	Final Report, Draft Principle 32 at 15	3.1.2
Forest product prices should reflect the full cost of maintenance, monitoring and waste management.	Seventh American Forest Congress	Final Report, Draft Principle 35 at 15	3.1.2
Enhance forests by policies that encourage both public and private investment in long-term sustainable forest management.	Seventh American Forest Congress	Final Report, Vision Element 2 at 6	3.1.2
Authorize the creation of up to 15 public/private venture demonstration projects to assess the feasibility of using nonfederal funds to construct, rehabilitate, and operate visitor facilities; the Forest Service would be authorized to sell existing facilities to private concessionaires if it is determined that the sale “is in the best interest of the Federal government” and if construction and renovation are consistent with applicable resource management plans and laws; the Service would collect from concessioners a percentage of their gross revenues.	Senator Larry Craig (R-ID)	Public Lands Planning and Management Improvement Act; S. 1320, § 404; (106 th Cong.); < http://thomas.loc.gov >	3.1.2
Budget and Finance: Public Interest			
Halt funding for the construction, planning, and design of new logging roads.	The Green Scissors Report	Green Scissors '99, “Public Lands, The Great Tree Robbery,” at 41	3.1.3
Abolish the Salvage Fund, established to facilitate the removal of insect-infested, dead, and damaged timber.	The Green Scissors Report	Green Scissors '99, “Public Lands, The Great Tree Robbery,” at 49	3.1.3

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Discontinue using money from the Replanting Fund to meet general overhead expenses.	The Green Scissors Report	Green Scissors '99, "Public Lands, Freeze the Slush," at 48	3.1.3
Make major revisions in the Forest Service budget to reduce environmental damage in forests and to increase land acquisition; prohibit the construction of new roads in National Forests; prohibit logging in roadless areas and old growth forests; end subsidies for timber sales; abolish off-budget funds; increase funding for fire ecology research and fire management planning; increase spending on invasive species problems; establish a pilot project for retiring grazing permits; focus recreation appropriations on stabilizing and improving recreational infrastructure; increase spending on monitoring and inventory of forest resources; and increase spending on watershed improvements.	The Forest Appropriations Initiative	Forest Appropriations Initiative (FY 2000)	3.1.3
Review trust funds and special accounts to ensure they are consistent with congressional intent.	Society of American Foresters	Forests of Discord; < http://www.safnet.org/policy/forestofdiscord.htm >	3.1.3
Budget and Finance: Local Compensation Reform			
Replace county payments based on National Forest revenues with a fully funded payment system based on the number of national forest acres within the specific county.	The Wilderness Society	The Wilderness Society's Vision at 14; < http://www.tws.org/standbylands/forests/specialreports.htm >	3.1.4.1
Move local compensation away from commercial uses and toward a land based program.	The Sierra Club	Forest Management Policy; < http://www.sierraclub.org/policy/conservation/forest.html >	3.1.4.1

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Congress and the Forest Service should work together to provide stable and predictable county payments that support public schools and roads.</p>	<p>USDA Forest Service, Mike Dombeck, Chief</p>	<p>“A Gradual Unfolding of a National Purpose: A Natural Resource Agenda for the 21st Century”</p>	<p>3.1.4.2</p>
<p>Stabilize and annualize payments to counties by basing them on an average of payments during a prior period.</p>	<p>The Forest Appropriations Initiative</p>	<p>Forest Appropriations Initiative (FY 2000)</p>	<p>3.1.4.2</p>
<p>Separate 25 percent payment to counties from timber sales revenues, and permanently authorize them; give counties 25 percent of FY 1998 payments or 76 percent of the average of the three highest payments between FY 1986 and 1995, whichever was higher.</p>	<p>Larisa Epatko, The Clinton Administration</p>	<p>“Bill to brace county timber payments set for markup,” ENVIRONMENT & ENERGY WEEKLY (September 13, 1999) at 16-17</p>	<p>3.1.4.2</p>
<p>Modify the requirements for paying federal timber sale receipts; give states the option of continuing to receive the 25% of receipts that are currently paid, or to receive the special payment amount to be determined for the individual state; special payment amount would be 76% of the total amount of the three highest 25% payments made to the state between 1985 and 1995, and it would result in a stable annual payment to the states; choice between the regular 25% payment and the special payment would belong to the governor of the eligible state, and if the governor does not choose a payment option, the state would receive the special payment.</p>	<p>Representative Peter Defazio (D-OR)</p>	<p>Timber-Dependent Counties Stabilization Act; H.R. 1185; (106th Cong.); <http://thomas.loc.gov></p>	<p>3.1.4.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Guarantee counties stable payments for the next five years, based on the average of the three highest payments from fiscal years 1984 to 1999; earmark twenty percent of any annual payment greater than \$100,000 as “project funds,” to be spent on projects reviewed and approved by relevant local advisory committees.</p>	<p>Representative Nathan Deal (R-GA); Senator Ron Wyden (D-OR)</p>	<p>Secure Rural Schools and Community Self-Determination Act of 1999; H.R. 2389, S. 1608; (106th Cong.); <http://thomas.loc.gov></p>	<p>3.1.4.2</p>
<p>Revise HR 2389 to incorporate pilot project and trust models proposed by Forest Options Group</p>	<p>Randal O’Toole, Thoreau Institute</p>	<p>Forest Service Reform in the Works; <http://www.ti.org></p>	<p>3.1.4.2</p>
<p>Replace payments from timber receipts and the Payment in Lieu of Taxes program with the requirement that each national forest unit pay the same taxes as a corporation.</p>	<p>Donald R. Leal, Political Economy Research Center</p>	<p>Making Money on Timber Sales: A Federal and State Comparison at 33.</p>	<p>3.1.4.3</p>
<p>Change from the current county payment system to one that insures counties will receive payments at least equivalent to property taxes, thus should eliminate many complex formulas and provide counties with compensation equal to or greater than historic receipts.</p>	<p>The Thoreau Institute</p>	<p>Run Them Like Businesses at 1; <http://www.ti.org/business.html></p>	<p>3.1.4.3</p>
<p>Manage National Forests with a corporate system, distributing a portion of income to local governments based on a floating percentage of net profits and make payments to the local governments in lieu of local property.</p>	<p>Dennis Teeguarden and Davis Thomas</p>	<p>“A Public Corporation Model for Federal Forest Land Management”, 25 Natural Resources Journal 373, 374 (April 1985)</p>	<p>3.1.4.3</p>
<p>Budget and Finance: Improving Financial Accountability</p>			
<p>Measure progress toward agency mission statement rather than only quantity of activities.</p>	<p>General Accounting Office</p>	<p>Forest Service: A Framework for Improving Accountability, GAO/RCED/AIMD-00-2 (1999) at 39; <http://www.gao.gov></p>	<p>3.1.5</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Forest Service should give employees incentives to achieve agency goals and objectives.	General Accounting Office	Forest Service: A Framework for Improving Accountability at 40	3.1.5
Change the structure of the Forest Service to increase accountability, including: establishing a Chief Financial Officer's Office, increasing leverage of FFIS, simplifying budget and accounting structures, providing a financial operating plan, and increasing the use of corporate information.	Coopers and Lybrand, L.L.P.	Modernizing Financial Management at the Forest Service - Financial Management and Organizational Analysis (1998)	3.1.5
Strengthen internal management of the Forest Service; integrate multiple use organization; increase the role of regional foresters in Chief decision-making; establish clear lines of authority; and improve program analytic capacity.	National Academy of Public Administration	Restoring Managerial Accountability to the United States Forest Service (1999); at 27-30 [Restoring Managerial Accountability]; < http://www.napawash.org/napa/index.html >	3.1.5
Change the structure of the Forest Service to increase accountability by adding a Deputy Chief of Internal Operations; replacing the Chief Operating Officer position with a director of Administration; and forming integrated groups.	National Academy of Public Administration	Restoring Managerial Accountability at 30-32.	3.1.5
Make the Chief Financial Officer responsible for both budgeting and program analysis.	National Academy of Public Administration	Restoring Managerial Accountability at 32-34.	3.1.5
Congress should cap discretionary appropriations for the Forest Service at 1999 levels until agency accounting and financial reporting is no longer designated at high risk for waste by the OIG or for a maximum of five years.	Representative Bob Goodlatte (R-VA)	Forest Service Accountability Restoration Act of 1999; H.R. 2996; (106 th Cong.); < http://thomas.loc.gov >	3.1.5
Budget and Finance: Planning			

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Make the Forest Service budgetary structure like the National Park Service, where Congress funds each individual park in order to improve the correspondence between budgets and forest plans.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands at 170-172</p>	<p>3.1.6</p>
<p>A forest by forest, line item by line item appropriations process would result in a tighter correspondence between individual forest plans and final budget allocations by Congress.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands</p>	<p>3.1.6, 4.3.2.1</p>
<p>Mitigate the uncertainty of budgeting by funding activities out of a share of net returns from user fees.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands at 170-172</p>	<p>3.1.6</p>
<p>Forest Service should evaluate management plan goals and objectives across a range of possible levels of funding, with at least one level which provides less funds annually, and one level which provides more funds annually, than the level of funding for the current fiscal year.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320, § 113 (106th Cong.); <http://thomas.loc.gov></p>	<p>3.1.6</p>
<p>Forest Service should evaluate management plan goals and objectives across a range of possible levels of funding, with at least one level which provides less funds annually, and one level which provides more funds annually, than the level of funding for the current fiscal year.</p>	<p>Office of Technology Assessment</p>	<p>Forest Service Planning: Accommodating Uses, Producing Outputs, and Sustaining Ecosystems, OTA-F-505 at 23 [OTA Report]</p>	<p>3.1.6</p>
<p>Congress should appropriate funds by management activity, rather than by resource line items and direct the Forest Service to develop its budget accordingly, based on the activities needed for implementing the forest plans.</p>	<p>Office of Technology Assessment</p>	<p>OTA Report at 23</p>	<p>3.1.6</p>
<p>Congress should assert more control over the special accounts and trust funds managed by the Forest Service and clarify the purposes for which the funds could be used.</p>	<p>Office of Technology Assessment</p>	<p>OTA Report at 23</p>	<p>3.1.6</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Congress should reduce Forest Service budget allocations to five Budget Line Items. Appropriations should be subdivided only to the Budget Line Item level. Forest Service should establish broad programs under each Line Item which fund local and regional projects.	National Academy of Public Administration	Restoring Managerial Accountability at 22, 39	3.1.6
Congress should require increased reporting of budget uses, including a detailed operating plan and semi-annual updates.	National Academy of Public Administration	Restoring Managerial Accountability at 22	3.1.6
Develop budget allocations based on the Forest Service's strategic plan.	National Academy of Public Administration	Restoring Managerial Accountability at 22	3.1.6
Congress should reduce Forest Service budget allocations to three Budget Line Items. Future budget appropriations should be based on performance goals and objectives in the strategic plan and annual performance plans.	USDA Forest Service	USDA Forest Service Fiscal Year 2001 Budget Proposal.	3.1.6
Congress should maintain strict oversight of the Forest Service.	Barry T. Hill, Associate Director, Energy, Resources, and Science Issues General Accounting Office	Forest Service: Status of Efforts to Improve Accountability, <i>GAO/T-RCED/AIMD-00-93</i> (Feb. 16, 2000); < http://www.gao.gov >	3.1.6
Framework of Planning and Assessment			
In place of the current hierarchical planning structure, the Forest Service should institute a four phase functional planning approach: assessment and information integration, designation of desired future conditions, strategic and operational planning, and on-going monitoring.	Committee of Scientists	Sustaining the Peoples' Lands at 100	3.2.1

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Apply each of the four functions on bioregional and smaller-scale (watershed/local) levels.	Committee of Scientists	Sustaining the Peoples' Lands at 96-97	3.2.1
Conduct on-going assessments that lay the foundation for determining the desired future conditions of ecologically coherent areas.	Committee of Scientists	Sustaining the Peoples' Lands at 95	3.2.1
Extend assessment across ownership boundaries; include extensive public participation.	Committee of Scientists	Sustaining the Peoples' Lands at 96-97	3.2.1
Employ small-scale assessments on ecologically identifiable geographic units, often single watershed, to form the foundation for the definition of desired future local conditions.	Committee of Scientists	Sustaining the Peoples' Lands at 100	3.2.1
Integrate data from bioregional and local assessments on social and economic status of each area, which forms a foundation for the specification of social and economic desired future conditions (DFC), into the planning process.	Committee of Scientists	Sustaining the Peoples' Lands at 101	3.2.1
Require extensive public participation in DFC specification to increase societal choice.	Committee of Scientists	Sustaining the Peoples' Lands at 101	3.2.1
Conduct strategic planning at the bioregional level to develop integrated ecological, economic, and social strategies for a large, ecologically coherent area; identify the types of actions required to move the bioregion toward its desired future condition strategic plans; broaden strategic plans and avoid project-specific considerations.	Committee of Scientists	Sustaining the Peoples' Lands at 106	3.2.1
Make project-specific plans at the local level and terminate the plans on completion and evaluation of each project.	Committee of Scientists	Sustaining the Peoples' Lands at 106-108	3.2.1

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Adhere strictly to the administrative requirements of current law and enhance congressional oversight.</p>	<p>General Accounting Office</p>	<p>Forest Service Decision-Making: A Framework for Improving Performance, GAO/RCED-97-71 (Washington, DC, 1997) at 28; [GAO Report] <http://www.cnie.org/nle/gao/1for.html>.</p>	<p>3.2.2</p>
<p>Combine the national-level strategic plans required by RPA and GPRA into a single document</p>	<p>General Accounting Office</p>	<p>GAO Report at 38-39; <http://www.cnie.org/nle/gao/1for.html></p>	<p>3.2.2</p>
<p>Conduct broad-scale assessments of ecological and social issues beyond forest boundaries and integrate them into forest planning.</p>	<p>General Accounting Office</p>	<p>Forest Service Planning: Better Integration of Broad-Scale Assessments into Forest Plans is Needed, GAO/RCED-00-56 (February 2000) at 5 [Integration of Broad/Scale Assessments]; <http://www.gao.gov></p>	<p>3.2.2</p>
<p>The Forest Service's new planning regulations should require broad-scale assessments unless the forests can justify not doing an assessment.</p>	<p>General Accounting Office</p>	<p>Integration of Broad-Scale Assessments at 29-30</p>	<p>3.2.2</p>
<p>The Forest Service's new planning regulations should indicate that assessment should occur early in the planning process and have clear objectives and identifiable products.</p>	<p>General Accounting Office</p>	<p>Integration of Broad-Scale Assessments at 30</p>	<p>3.2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>The Forest Service's new planning regulations should require regional offices and forests to identify how the public and other governmental entities will participate in assessments and revising forest plans.</p>	<p>General Accounting Office</p>	<p>Integration of Broad-Scale Assessments at 30-31</p>	<p>3.2.2</p>
<p>Restrict Forest Service to planning at two discrete levels: designated planning units - similar to, but not necessarily coterminous with, today's national forest designations; and the site-specific, activity-defined local level.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act, S. 1320, § 104 (106th Cong.); <http://thomas.loc.gov></p>	<p>3.2.2</p>
<p>Develop overall land use and resource management plans the planning unit level; plan management activities at the site-specific local level; do not override decisions appropriate to another planning level.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act, S. 1320, § 105-106 (106th Cong.); <http://thomas.loc.gov></p>	<p>3.2.2</p>
<p>The Society of American Foresters does not advocate any specific hierarchy of planning levels, but strongly recommends that the locus of decision-making be clearly distributed among whatever planning levels are selected.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord; <http://www.safnet.org/policy/forestdiscord.htm></p>	<p>3.2.2</p>
<p>Change the current planning system, based on existing administrative levels, to one utilizing a scientifically-defensible planning hierarchy based on bioregional and watershed scales; such planning would incorporate (1) clear, statutorily-defined goals and priorities; (2) spatially-explicit data and models; and (3) enhanced public participation at the data integration and alternatives analysis stages of planning.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision at 36; <http://www.tws.org/standbylands/specialreports.htm></p>	<p>3.2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Adaptive Management: Broad Support			
Ensure that the management of forests sustains ecosystem structure, functions, and processes at the appropriate temporal and spatial levels.	Seventh American Forest Congress	Final Report, Revised Principle 8 at 8	3.3.1
Manage forests through adaptive decision-making processes based on data obtained using standardized inventory protocols, continuing assessments, monitoring, and adjustments that reflect evolving knowledge.	Seventh American Forest Congress	Final Report, Draft Principle 7 at 12	3.3.1
Recognize the importance of scientific feedback; no management action shall be taken without follow-up monitoring to evaluate the effects of the action.	The Wilderness Society	The Wilderness Vision at 12; < http://www.tws.org/standbylands/forests/specialreports.html >	3.3.1
Forest Service compliance with the suite of environmental statutes necessitates a comprehensive monitoring protocol and an adaptive management process creates more opportunities for the external review which will prompt Forest Service corrective action.	General Accounting Office	GAO Report at 20-28; < http://www.cniec.org/nle/gao/1for.html >	3.3.1
Adaptive Management: Monitoring and Assessment Programs			
Make a distinction, both in the resource plans and in the appropriations process, between monitoring conditions and trends of natural resources and monitoring agency performance in meeting its stated goals.	Society of American Foresters	Forests of Discord; < http://www.safnet.org/policy/forestdiscord.html >	3.3.2.1

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Give monitoring separate funding; because monitoring and assessment activities must often be initiated in prompt response to unpredicted disturbance events such as fire, flood, or disease; authorize some use of permanent trust funds to avoid the time-intensive processes of reallocating program funds or seeking supplemental appropriations.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord; <http://www.safnet.org/policy/forestofdiscord.html></p>	<p>3.3.2.1</p>
<p>Explain how the goals and outcomes would be affected by differing budgets, in each area or forest plan, so that performance reviews can be based on explicit projections, regardless of funding level.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord; <http://www.safnet.org/policy/forestofdiscord.html></p>	<p>3.3.2.1</p>
<p>The congressional oversight committees should increase the scrutiny applied to the monitoring and assessment program.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord; <http://www.safnet.org/policy/forestofdiscord.html></p>	<p>3.3.2.1</p>
<p>Create permanent, or revolving, funds for the monitoring of resource management plan implementation. Maintain these accounts, one under the Department of the Interior and one under the Department of Agriculture, by depositing any federal land revenues received in excess of those projected for the BLM and Forest Service, respectively, in the baseline budget of the President in a given fiscal year.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320, (106th Cong.); <http://thomas.loc.gov></p>	<p>3.3.2.1</p>
<p>The agency should require projections of expected progress toward stated goals under a number of realistic budget allocations; the goals themselves (e.g. desired future conditions) should be evaluated for their compatibility with likely budgets; if the desired future condition appears unrealistic, consideration of less-budget-intensive desired future conditions (such as forests with a higher-than-optimum risk of catastrophic fire) should be required.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands</p>	<p>3.3.2.1</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Establish a permanent appropriation for monitoring, research, and evaluation that is not dependent on receipts from resource extraction.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision at 55; <http://www.tws.org/standbylands/specialreports.html></p>	<p>3.3.2.1</p>
<p>The scale of ecological analysis necessitates interagency cooperation in developing a system for data gathering, storage, retrieval, and interpretation; the Office of Management and Budget should exercise its authority under the Paperwork Reduction Act of 1995 to designate a central collection agency (e.g. the Council on Environmental Quality) for the four major land management agencies.</p>	<p>General Accounting Office</p>	<p>GAO Report at 50; <http://www.cnie.org/nle/gao/1for.html></p>	<p>3.3.2.2</p>
<p>Provide better training for the preparers of environmental documents and analyses; increase the sharing of critical information between resource specialists; assign to individual line officers the responsibility for ensuring that a decision documents and their supporting documents contain all the required components and accurately reflect current knowledge about the environment.</p>	<p>Office of the Inspector General</p>	<p>Office of Inspector General Evaluation Report No. 08801-10-At Jan. 1999 at 7</p>	<p>3.3.2.2</p>
<p>The FIA should improve and expand information on ecosystems and noncommodity values. This can be achieved with further evaluation of data currently collected to determine usefulness, exploration of partnerships with other surveys, and exploration of the demand for ecological data.</p>	<p>First and Second Blue Ribbon Panel, AF&PA</p>	<p>The Report of the Second Blue Ribbon Panel (1998)</p>	<p>3.3.2.2</p>
<p>Recognize and identify ownership, regulatory, and social impacts on forest productivity.</p>	<p>First Blue Ribbon Panel, AF&PA</p>	<p>The Report of the Second Blue Ribbon Panel</p>	<p>3.3.2.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Produce the most current resource data possible by reallocating funding within the Forest Service, fully integrating GIS and remote sensing technology into the inventory process, and identifying critical ecological areas that need more frequent attention.	First Blue Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
Implement a uniform approach on all ownership by identifying a set of core resources data across all ownerships, certifying all suppliers of plot data, and developing mechanisms to better integrate decision-making between the Forest System and FIA.	First and Second Blue Ribbon Panels, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
Develop more fully detailed field procedures to increase consistency and compatibility among FIA units.	Second Blue Panel Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
The Forest Service should enhance coordination between FIA and other public agencies like the NRCS and BLM.	First Blue Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
FIA should improve service to user groups by knowing the customer base, promoting FIA, and thoroughly documenting all procedures.	First Blue Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
FIA should expand its client base through better customer service.	First Blue Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2
The Forest Service should elevate the priority of FIA; initiate annual inventory and supporting analysis; fulfill its mandate of reporting both public and private forest land; concentrate on core ecological and timber data; and develop a strategic plan.	Second Blue Ribbon Panel, AF&PA	The Report of the Second Blue Ribbon Panel	3.3.2.2

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>The Forest Service should use the best scientific and commercial data available in the preparation of resource management plans and their supporting environmental analysis.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320, § 110(a) (106th Cong.); <http://thomas.loc.gov></p>	<p>3.3.2.2</p>
<p>Base the information system of the future predominantly on spatially-explicit (i.e. map-based) displays and modeling, as opposed to optimization models such as FORPLAN currently in use by the agency.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision at 36; <http://www.tws.org/standbylands/forests/specialreports.html></p>	<p>3.3.2.2</p>
<p>With respect to monitoring requirements, any new legislation should place strict requirements on the content of resource management plans; plans should identify and quantify appropriate goals and outcomes, including vegetation management goals and commodity and amenity outputs.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord at 57; <http://www.safnet.org/policy/forestofofdiscord.htm></p>	<p>3.3.2.3</p>
<p>Monitoring should evaluate the consistency between the expected and actual results of resource plan implementation; resource management plans should contain “a schedule and procedure, including the type, location, and intensity of measurements needed, for monitoring the implementation of the plan, the management of the Federal lands subject to the plan, and trends in the conditions and use of resources”; at the project level, site-specific environmental analyses should be conducted, “and a schedule and procedures for monitoring the effects of the activity shall be established.”</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320, § 105 (106th Cong.); <http://thomas.loc.gov></p>	<p>3.3.2.3, 3.3.2.4</p>
<p>Require plans to 1) be based on the “best available information and scientific understanding and 2) provide clear environmental standards.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision; <http://www.tws.org/standbylands/forests/specialreports.html></p>	<p>3.3.2.4</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>The concept of “healthy population” must be definable and enforceable; the current use of Management Indicator Species is not workable.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision at 27; <http://www.tws.org/standbylands/forests/specialreports.html></p>	<p>3.3.2.4</p>
<p>Base monitoring for biological diversity on the use of a “focal species” concept; the focal species (and each forest would likely have many) should be chosen not just as a representative of other vertebrate species, but as indicative of the functioning of the larger ecological system.</p>	<p>The Committee of Scientists</p>	<p>Sustaining the Peoples’ Lands</p>	<p>3.3.2.4</p>
<p>Authorize the Secretary to designate planning units of any geographic size, ecological scale, and number; monitoring and assessment on a larger scale, transcending the Federal land boundaries, should be restricted and allowed only when the Secretary receives the written concurrence of the governor of the state having jurisdiction over the land in question.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 (106th Cong.); < http://thomas.loc.gov></p>	<p>3.3.2.5</p>
<p>Recognize the need for a strong federal role in the continuing development and transfer of ecosystem science; geographically wide monitoring programs such as the U.S.G.S. National Water Quality Assessment Program, the National Biological Survey Gap Analysis Program, and the National Forest Health Monitoring Program are essential to the successful management of nonfederal forests.</p>	<p>The National Research Council</p>	<p>Forested Landscapes in Perspective: Prospects and Opportunities for Sustainable Management of America’s Nonfederal Forests, National Academy Press, at 17 (Washington, DC 1998).</p>	<p>3.3.2.5</p>
<p>Conduct monitoring and assessment at a variety of scales.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples’ Lands</p>	<p>3.3.2.5</p>
<p>Authorize assessment and monitoring programs that reach beyond the political boundaries of the National Forest System.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples’ Lands</p>	<p>3.3.2.5</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>“Desired future condition” should be used to represent landscape conditions that are ecologically sustainable; there are no “right” or “wrong” desired future conditions, only ecologically acceptable and unacceptable ones.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples’ Lands</p>	<p>3.3.2.6</p>
<p>Build the democratic process into the desired future conditions concept at two levels: first, in the process of choosing from among a range of acceptable desired future conditions, and second, in the process of choosing from among acceptable routes and rates of achieving those conditions.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples’ Lands</p>	<p>3.3.2.6</p>
<p>“Desired future condition” should be used, but not as the only success criterion; equal priority should be given to all five of the resource plan required elements.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 (106th Cong.); < http://thomas.loc.gov ></p>	<p>3.3.2.6</p>
<p>Empowerment and Control: Corporate Management</p>			
<p>Manage national forests with a corporate system; income earned would be disposed of by: 1) an amount equal to eight percent of the value of land and timber would be paid to the federal government by the corporation as rent; 2) a fixed percent would be paid into a fund to support wilderness; 3) an amount no greater than 50% of the balance would be used for new investments; and 4) the remaining income would be distributed to local governments, based on a floating percentage of net profits and as payments in lieu of taxes.</p>	<p>Dennis Teeguarden and Davis Thomas</p>	<p>“A Public Corporation Model for Federal Forest Land Management”, 25 Natural Resources Journal 373, 374 (April 1985)</p>	<p>3.4.1</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Empowerment and Control: Management as Trusts			
<p>Transform the forest into a legal trust through a Forest Trust; a board of trustees appointed by the Secretary of Agriculture and the governor of the state in which the forest is located would oversee the trust; trustees would be obligated to preserve the corpus of the trust and to produce revenue for the beneficiaries; the forest would be funded out of half its gross receipts.</p>	<p>The Forest Options Group</p>	<p>http://www.ti.org/2cfexsum.html</p>	<p>3.4.2</p>
<p>Transfer control of the national forests from the federal government to the states through state trusts.</p>	<p>Jon Souder and Sally Fairfax</p>	<p>http://www.ti.org/Concl.html</p>	<p>3.4.2</p>
Empowerment and Control: Community/Stakeholder Management			
<p>Integrate NEPA's goals into internal planning processes, consider the views of surrounding communities and other interested citizens, develop collaborative processes with other federal agencies, focus knowledge and values from a variety of sources, and incorporate science-based and flexible management approaches.</p>	<p>Council on Environmental Quality, Office of the President</p>	<p>Cumulative Effects under NEPA (January 1997); http://www.whitehouse.gov/CEQ.</p>	<p>3.4.3.1</p>
<p>Address political barriers to collaboration by: gaining leadership from the White House, CEQ and agency heads; exploring potential use of Western Governor's Association Enlibra Principles; building on existing agency programs, training current and future agency managers and citizens; encouraging agencies to initiate cooperating agency agreements and other cooperation; ensuring participant understanding of processes; and promoting communication among parties</p>	<p>Workgroup from March 1999 workshop on NEPA sponsored by O'Connor Center for the Rocky Mountain West and the Institute for Environment and Natural Resources</p>	<p>Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making? [Reclaiming NEPA's Potential] (March 2000) at 41-48.</p>	<p>3.4.3.1</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Address administrative barriers by: rewarding managers who strive to meet NEPA visionary goals and enact innovative policies; highlighting approaches that use NEPA strategically; training agency managers to identify appropriate applications; seeking CEQ guidance on opportunities for public participation; using technology to facilitate communication; improving integration of agency analysis; and conducting inventories of agency assessments, plans, and NEPA analysis</p>	<p>Workgroup from March 1999 workshop on NEPA</p>	<p>Reclaiming NEPA's Potential at 48-54</p>	<p>3.4.3.1</p>
<p>Address legal barriers by: clarifying the role of FACA and exploring options for giving consensus-based recommendations special status</p>	<p>Workgroup from March 1999 workshop on NEPA</p>	<p>Reclaiming NEPA's Potential at 54-56</p>	<p>3.4.3.1</p>
<p>Address financial barriers by: providing more financial support at all levels and structuring processes to facilitate participation</p>	<p>Workgroup from March 1999 workshop on NEPA</p>	<p>Reclaiming NEPA's Potential at 56-57</p>	<p>3.4.3.1</p>
<p>Create pilot projects of collaborative efforts to help frame future changes to NEPA implementation</p>	<p>Workgroup from March 1999 workshop on NEPA</p>	<p>Reclaiming NEPA's Potential at 58-60</p>	<p>3.4.3.1</p>
<p>Forest Service should publish a scoping document that lists alternative plans but does not propose a preferred option. The preferred resource management plan or management action should be chosen based on the scoping document and public comments. More comments should be considered before a final decision is made.</p>	<p>Society of American Foresters</p>	<p>Forests of Discord at 58; <http://www.safnet.org/policy/forestdiscord.html></p>	<p>3.4.3.1</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Congress should encourage independent committees of local interests to propose recommendations by requiring agencies to include those recommendations as alternatives in EISs. Congress should authorize the Forest Service to provide sufficient funds to a committee to monitor implementation if its alternative is adopted.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 § 110(a), (106th Cong.); <http://thomas.loc.gov></p>	<p>3.4.3.1</p>
<p>Forest policy and management decisions should reflect the interdependence of diverse urban, suburban, and rural communities.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Revised Principle 9 at 9</p>	<p>3.4.3.2</p>
<p>Consider the concerns of an increasingly diverse U.S. population when making forest decisions, as well as needs of the forests, while linking benefits and responsibilities within the communities.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Revised Principle 15 at 9</p>	<p>3.4.3.2</p>
<p>Assure all people of the right to full public participation in all decision-making processes.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Draft Principle 28 at 14</p>	<p>3.4.3.2</p>
<p>Enhance community well being by recognizing that, though all forms of life are important, humans of this and future generations deserve top priority. People come first.</p>	<p>Seventh American Forest Congress</p>	<p>Final Report, Draft Principle 29 at 15</p>	<p>3.4.3.2</p>
<p>Expand the public role in forest planning beyond one of “input” to include on-going guidance and consultation; provide for high quality early public participation opportunities; promote process incentives for cooperative and collaborative participation among stakeholders; provide specific points for the involvement of state, tribal and local officials.</p>	<p>The Western Governors’ Association</p>	<p><http://westgov.org></p>	<p>3.4.3.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Restore the original intent of the Federal Advisory Committee Act (FACA) to provide equality of opportunity for public participation and reduce impediments to land managers' interaction with constituencies.	The Western Governors' Association	< http://westgov.org >	3.4.3.2
Maintain an effective appeals process.	The Western Governors' Association	< http://westgov.org >	3.4.3.2
Create "open decision making," or "decision building," processes, in which the public and agencies engage in "dialogue and mutual deliberation".	Office of Technology Assessment	OTA Report at 102	3.4.3.2
Make NFMA planning collaborative in nature; foster the communication, coordination, and problem-solving across the diverse spectrum of individuals, organizations, agencies, and governments whose concurrence, involvement, and action are essential to the success of the NFMA planning process.	Committee of Scientists	Sustaining the Peoples' Lands at 84	3.4.3.2
In Adaptive Management Areas of the Northwest Forest Plan, federal land managers should retain decision-making authorities, but are strongly encouraged to collaborate with stakeholders, using "Provincial Advisory Committees" to advise federal officials on creative approaches to plan implementation.	The Wilderness Society	The Wilderness Vision; < http://www.tws.org/standbylands/forests/specialreports.htm >; FEMAT at III-24	3.4.3.2
Employ multi-party monitoring teams to evaluate Forest Service projects, as currently being developed as part of the Stewardship End Result Contracting Demonstration Project.	Community Advocates	Section 347 of the FY 1999 Omnibus Appropriations Act, 16 USCA § 2104 NOTE	3.4.3.2
Retain the pilot project model of the Quincy Library Group and Adaptive Management Areas by establishing a so-called "Region 7" of experimental forests.	Dan Kemmis, Lubrecht Conversations	Chronicles of Community, Vol. 3, No. 1 (Autumn 1998)	3.4.3.2

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Create a forest level pilot project -- a collaborative board model-- in which a cross-section of interest group representatives, appointed by the Secretary of Agriculture, would have primary responsibility for forest planning and management.</p>	<p>The Forest Options Group</p>	<p>The Second Century Report; <http://www.fi.org></p>	<p>3.4.3.2</p>
<p>Empower agency Secretaries to establish local committees corresponding to the federal land planning units. The agencies should seek advice from the committee prior to adopting or revising a resource management plan and provide the committee with funding to monitor plan implementation.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 § 110(b), (106th Cong.); <http://thomas.loc.gov></p>	<p>3.4.3.2</p>
<p>Allow a citizen to challenge a management plan by petitioning for plan revision or amendment. If the petition is denied, the citizen may file suit. Any citizen may file an administrative appeal of any management plan or activity if the appellant had first submitted written comments.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320 §§111,122, (106th Cong.); <http://thomas.loc.gov></p>	<p>3.4.3.2</p>
<p>Increase use of formal multi-stakeholder/government advisory committees and boards to fulfill the public participation requirements of NFMA.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands</p>	<p>3.4.3.2</p>
<p>Increase use of formal multi-stakeholder/government advisory committees and boards to fulfill the public participation requirements of NFMA.</p>	<p>Office of Technology Assessment</p>	<p>OTA Report</p>	<p>3.4.3.2</p>
<p>Increase use of formal multi-stakeholder/government advisory committees and boards to fulfill the public participation requirements of NFMA.</p>	<p>Council on Environmental Quality</p>	<p>GAO Report; <http://www.cnie.org/nle/gao/1for.html></p>	<p>3.4.3.2</p>
<p>Explicitly organize public participation process as a learning process, not merely as a "review and comment" process.</p>	<p>Committee of Scientists</p>	<p>Sustaining the Peoples' Lands at 80</p>	<p>3.4.3.2</p>

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
Use computer models for integrating economic, social and environmental data in existing decision processes.	Office of Technology Assessment	OTA Report	3.4.3.2
Use computer models for integrating economic, social and environmental data in existing decision processes.	The Wilderness Society	The Wilderness Vision; < http://www.tws.org/standbylands/forests/specialreports.htm >	3.4.3.2
Use the public input requirements of the Governmental Performance Results Act (GPRA) as a tool for the public to temper the agency's historic commodity bias; consider GPRA planning as a replacement for RPA/NMFA mandated long-term strategic planning.	General Accounting Office	GAO Report at 37-38; < http://www.cnice.org/nle/gao/1for.html >	3.4.3.2
Utilize additional "committees of scientists" to comprehensively examine forest issues.	Senator Robert Torricelli (D-NJ)	Act to Save America's Forests; S. 1368 (106 th Cong.); < http://thomas.loc.gov >	3.4.3.2
Re-invest in the communities surrounding a forest to establish a healthy forest, though such vehicles as tax systems, incentive programs, and credit access.	Seventh American Forest Congress	Final Report, Draft Principle 16 at 13	3.4.3.3
Require the Forest Service to maintain community stability and assess economic impacts on communities through detailed analyses; require the Forest Service to consider whether its plan maintains, to the maximum amount feasible, the stability of any community that has become economically dependent on the resources of federal lands.	Senator Larry Craig (R-ID)	Public Land Management Improvement Act of 1997 (failed); S. 1253 (105 th Cong.); < http://www.tws.org/standbylands/forests/specialreports.html >	3.4.3.3
Involve local residents more directly in stewardship.	The Wilderness Society	The Wilderness Vision; < http://www.tws.org/standbylands/forests/specialreports.htm >	3.4.3.3

PROPOSAL	PROPONENT	REFERENCE	REPORT SECTION
<p>Use the Forest Service’s State and Private Forestry division to assist the integration between the Forest Service, local communities and states.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision; <http://www.tws.org/standbylands/forests/specialreports.htm></p>	<p>3.4.3.3</p>
<p>The Forest Service should be able to produce assessments of “environmental, economic, and social issues and conditions” that encompass all federal lands and nonfederal lands, but be limited in its ability to make decisions concerning resource management planning or management activities on non-Forest Service federal lands.</p>	<p>Senator Larry Craig (R-ID)</p>	<p>Public Lands Planning and Management Improvement Act; S. 1320, § 119-120 (106th Cong.); <http://thomas.loc.gov></p>	<p>3.4.3.3</p>
<p>Emphasize uses not readily available on private lands, including clear water, clean air, wildlife habitat, biological diversity, open spaces, and access to outdoor recreation, when planning for forests.</p>	<p>The Wilderness Society</p>	<p>The Wilderness Vision at 9; <http://www.tws.org/standbylands/forests/specialreports.htm></p>	<p>3.4.3.3</p>