

# National Forest System Management: Overview and Issues for Congress

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The 193 million acres of the National Forest System (NFS) comprise 154 national forests, 20 national grasslands, and several other federal land designations. Management of the NFS is one of the three principal responsibilities of the Forest Service (FS), an agency within the U.S. Department of Agriculture (USDA). Most NFS lands are concentrated in the western United States, although FS administers more federal land in the East than all other federal agencies combined. The Secretary of Agriculture has various authorities to acquire or dispose of NFS lands, although these authorities are often constrained by geography or other factors.

The original forest reserves were established to improve and protect federal forests and watersheds and to provide a source of timber. Today, the NFS's statutory mission is to provide a variety of uses and values without impairing the productivity of the land. Comprehensive land and resource management plans for each NFS unit (also known as *forest plans*) describe the desired resource conditions for the plan area and set a framework for associated land management projects. While preparing forest plans and projects, FS must comply with laws of general applicability that govern federal agency actions, including the National Environmental Policy Act (NEPA; P.L. 91-109). NEPA requires FS to identify the potential environmental impacts of a proposed action (i.e., a forest plan or project) before making a final decision about that action. Congress has sometimes sought to expedite the NEPA process for certain FS actions, such as through passage of the Healthy Forests Restoration Act (HFRA; P.L. 108-148); HFRA authorized activities intended to expedite the NEPA process for certain projects to reduce wildfire risk and restore NFS lands.

NFS lands are administered for sustained yields of multiple uses, including fish and wildlife purposes, outdoor recreation, mineral and energy development, range (livestock grazing), timber production, and watershed protection, and for natural, scenic, scientific, and historical values, including wilderness preservation. Congress did not specify that FS should prioritize one use over any other use, instead specifying that FS is to pursue “harmonious and coordinated management of the various resources, each with the other ... in perpetuity of a high-level annual or regular periodic output ... without impairment of the productivity of the land.” Demand for the various uses and resources provided by the NFS—and the sometimes incompatible nature of those resources and uses—has led to conflicts over the location and timing of activities. Although revenue generation is not a stated statutory purpose of the NFS, FS is authorized to charge fees and otherwise collect revenue from many of the uses and services it provides, such as grazing, recreation, and timber harvesting. This revenue may be used to offset agency costs for specific activities, shared with the communities containing the NFS land, or deposited into the General Treasury, depending on the use, location, and varying statutory requirements. In FY2022, FS generated a total of \$280.0 million; timber harvests were the single largest source of revenue (44%).

Many have concerns regarding the ecological condition of the NFS. Of particular concern is an accumulation of forest biomass (e.g., vegetation), which can fuel and accelerate fires and can facilitate insect or disease transmission; these are known as *hazardous fuels*. Degraded forest ecosystems may be more susceptible to mortality in response to disturbances (e.g., wildfires, wind or ice storms, flooding, insect and disease infestations) or may take longer to recover. Some research indicates that climate variability is reshaping forest landscapes by altering the frequency, intensity, and timing of disturbance events in ways that may modify or permanently impair the NFS's lands and resources. Forest restoration projects aim to improve forest conditions and include activities such as post-disturbance reforestation (e.g., reestablishing forest cover). Forest restoration projects that remove or modify hazardous fuels are sometimes referred to as *treatments* and are generally intended to reduce the risk of uncharacteristic wildfire and facilitate postfire recovery.

FS reports about 63 million acres of NFS lands were at high or very high wildfire hazard potential in FY2022. In the same year, FS reports the agency completed hazardous fuel treatments on 3.2 million acres on NFS and adjacent lands. FS must comply with several statutory reporting requirements on the agency's progress toward various forest restoration metrics. The reporting has varied over time, complicating analysis and Congress's ability to conduct oversight. FS and other stakeholders have identified administrative process barriers and funding as two of many factors impeding progress toward forest restoration goals, and FS has proposed to increase the scale, scope, and implementation of projects to restore the resilience and resistance of NFS lands. There is disagreement, however, about how to achieve those objectives while ensuring compliance with other statutory requirements.

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The National Forest System (NFS) is administered by the Forest Service (FS) in the U.S. Department of Agriculture (USDA).<sup>1</sup> The 193-million-acre NFS comprises national forests, national grasslands, and various other designations across 43 states and Puerto Rico.<sup>2</sup> Although 87% of NFS lands are in the West, FS administers more federal land in the East (26 million acres) than all other federal agencies combined. NFS lands are administered for sustained yields of multiple uses, including outdoor recreation (camping, hiking, hunting, etc.), livestock grazing, timber harvesting, watershed protection, and fish and wildlife habitats.

Ownership and use of the NFS—and federal lands more generally—have stirred controversy for decades. Competing public values concerning the NFS raise many questions and issues: how uses should be balanced and prioritized, whether and where Congress should designate areas for special purposes, and when and how FS should collect and distribute fees or other revenue for land and resource uses, among others. Congress continues to examine these questions through legislative proposals, program oversight, and annual appropriations. The 117<sup>th</sup> Congress, for example, enacted several legislative changes affecting management of the NFS.

This report provides an overview of the history and management of the NFS, including a discussion of the statutory framework for making land management plans and decisions. This report also includes an overview of two laws: the National Environmental Policy Act (NEPA) and the Healthy Forests Restoration Act (HFRA).<sup>3</sup> These laws, among others, establish procedures relevant to FS's decisionmaking processes and authorize specific forest management activities. In addition, the report discusses the multiple uses of the NFS and the revenue generated by those activities and the ecological condition of the NFS. It concludes with a discussion of the overarching issues regarding NFS management that Congress often debates.

### Forest Service and National Forest System Appropriations

The Forest Service (FS) receives both discretionary and mandatory appropriations. Although it is an agency within the U.S. Department of Agriculture, FS receives its discretionary appropriations through Title III of regular Interior, Environment, and Related Agencies appropriations bills. Separately, FS receives mandatory appropriations under multiple authorizing statutes. Laws authorizing mandatory appropriations allow FS to spend money without further action by Congress, and the budget authority for several of these mandatory spending accounts is dependent on revenue generated by activities in the National Forest System (NFS). NFS management is funded primarily through FS's NFS discretionary account, although funding also comes from other discretionary accounts (e.g., Capital Improvement and Maintenance, Wildland Fire Management) and mandatory accounts (e.g., Reforestation Trust Fund, National Parks and Public Land Legacy Restoration Fund).

FS budget requests and Interior Appropriations Subcommittee documents typically allocate monies in each account among various subaccounts and, in some cases, among specific programs and activities. FS further allocates its appropriations—at the account, subaccount, and program activity levels—among the nine FS regions, five research stations, two service centers and laboratories, and national headquarters office in Washington, DC. Once the funds have been allocated to the regions and programs, the money is then further allocated to each NFS unit. This can make analyzing appropriations by region or by forest challenging.

<sup>1</sup> Management of the National Forest System (NFS) is one of the Forest Service's (FS's) three principal responsibilities. The other two principal responsibilities are providing assistance programs to nonfederal forest owners and conducting forestry research programs. FS also provides international forestry assistance.

<sup>2</sup> The NFS is defined at 16 U.S.C. §1609(a). U.S. Department of Agriculture, U.S. Forest Service, *Land Areas Report (LAR)—as of September 30, 2022*, Table 1, at <http://www.fs.usda.gov/land/staff/lar/LAR2022/lar2022index.html>. Hereinafter referred to as FS, *Land Areas Report*, 2022. The LAR includes several additional land designations in the NFS, such as research and experimental forests or areas. This includes a 140-acre experimental forest in the U.S. Virgin Islands.

<sup>3</sup> The National Environmental Policy Act (NEPA): P.L. 91-190, 42 U.S.C. §§4321-4347. The Healthy Forests Restoration Act (HFRA): P.L. 108-148, 16 U.S.C. §§6501 et seq.

## Background

### National Forest System Establishment and Modification

In 1891, Congress granted the President the authority (now repealed) to establish forest reserves from the public domain.<sup>4</sup> Six years later, Congress stated that the forest reserves were

to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.<sup>5</sup>

Initially, the reserves were administered by the Division of Forestry in the Department of the Interior's General Land Office. In 1905, this division was combined with the USDA Bureau of Forestry (renamed the Forest Service), and the administration of the 56 million acres of forest reserves was transferred to the new agency within USDA.<sup>6</sup> In 1907, the reserves were renamed *national forests*.<sup>7</sup>

In 1906 and 1907, President Theodore Roosevelt more than doubled the acreage of the forest reserves. In response, Congress limited the authority of the President to add to the system in certain states in 1907.<sup>8</sup> In 1910, Congress continued the limitation, but then in 1911, Congress passed the Weeks Act to authorize additions to the NFS through the purchase of private lands.<sup>9</sup> Presidential authority to proclaim new national forests was terminated in 1976.<sup>10</sup> Under the Weeks Act and other authorities, the NFS grew from 154 million acres in 1919 to 193 million acres in 2022. The size of the NFS has been over 190 million acres since 1981.

Today, the Secretary of Agriculture has numerous authorities to add lands to the NFS through acquisitions or land exchanges.<sup>11</sup> Often, though, the acquisitions are restricted to land within or contiguous to the proclaimed exterior boundaries of a national forest.<sup>12</sup> The President (and, in some cases, the Secretary of Agriculture or the Chief of the Forest Service) also has the authority to change NFS unit names, combine NFS units for administration purposes, establish new national forests from existing NFS lands, and make mostly minor NFS boundary adjustments.<sup>13</sup> Today, establishing a new national forest (from lands not already in the NFS) or significantly modifying the boundaries of an existing national forest requires an act of Congress.

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<sup>4</sup> Public domain lands consist of lands ceded by the original states or obtained from a foreign sovereign through purchase, treaty, or other means (e.g., the Louisiana Purchase in 1803). Public domain lands may be governed by different laws than acquired federal lands, which were obtained from private entities or states.

<sup>5</sup> Organic Administration Act, Act of June 4, 1897, formerly codified at 16 U.S.C. §471 (now repealed).

<sup>6</sup> The Transfer Act, Act of February 1, 1905 (P.L. 58-33, 16 U.S.C. §475).

<sup>7</sup> Act of March 4, 1907, ch. 2907, 34 Stat. 1269 (P.L. 59-242).

<sup>8</sup> Act of March 4, 1907, ch. 2907, 34 Stat. 1271 (P.L. 59-242), see 16 U.S.C. §471 note. The act limited the presidential authority to establish national forests in Colorado, Idaho, Montana, Oregon, Washington, and Wyoming. Roosevelt proclaimed additional reserves after it was enacted by Congress but before he signed it into law.

<sup>9</sup> Act of March 1, 1911 (P.L. 61-435, 16 U.S.C. §515).

<sup>10</sup> The authority for the President to establish national forests was codified at 16 U.S.C. §471 and was repealed by §704(a) of the Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579).

<sup>11</sup> For more comprehensive information on the authority of FS and the other federal land management agencies to acquire lands, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*.

<sup>12</sup> The proclaimed exterior boundaries of the NFS are the formally identified geographic boundaries around lands that have been set aside and reserved for national forest purposes. These proclaimed exterior boundaries of an NFS unit may encompass areas larger than the actual boundary of an established national forest.

<sup>13</sup> 16 U.S.C. §473.

The Secretary also has numerous authorities to convey NFS land out of federal ownership, all constrained in various ways and seldom used.<sup>14</sup> Often, the authority requires the federal government to dispose of the land at fair market value or, in the case of land exchanges, requires that the lands be in the same state and of equal value (although value may be partially equalized by a cash payment). In addition to these standing authorities for FS to acquire, exchange, or dispose of land, Congress has sometimes enacted laws directing FS to acquire or dispose of particular parcels where no standing authority exists and, in other cases, to direct or facilitate land transactions.

### National Forest System Land Status and Committee Jurisdiction

Lands were added to the National Forest System (NFS) in different ways. The national forests in the western United States were primarily established through a presidential proclamation or order reserving lands from the public domain, whereas the national forests in the eastern United States were primarily acquired under the Weeks Act (P.L. 61-435, 16 U.S.C. §515) authority. The national grasslands were acquired and transferred into the NFS pursuant to the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §§1010 et seq.). Other NFS units were added in other ways, including through acts of Congress. The different origination status of NFS lands has implications regarding congressional jurisdiction. The House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources have jurisdiction over the NFS units established from the public domain, whereas the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry have jurisdiction over the NFS other than those areas created from the public domain.

## Organization of the National Forest System<sup>15</sup>

The NFS includes 154 national forests with 188.5 million acres (98% of the system), 20 national grasslands with 3.8 million acres (2%), and 110 other areas—such as a national grassland prairie, land utilization projects, purchase units, and research and experimental areas—with 0.8 million acres (<1%).<sup>16</sup> FS may combine units for administrative purposes, and each is administered by a forest supervisor. The NFS units are arranged into nine administrative regions, each headed by a regional forester. The nine regional foresters report to the NFS deputy chief, who reports to the chief of the Forest Service. The chief has traditionally been a career employee of the agency. The chief reports to the Secretary of Agriculture through the Under Secretary for Natural Resources and Environment.

The NFS regions are often referred to by number rather than by name. **Table 1** identifies the number, states encompassed, and acreage for each of the regions. NFS lands are concentrated in the seven western FS regions (see **Figure 1**). *Inholdings*, shown in **Table 1**, are nonfederal lands (often private) within the designated boundaries of the national forests (and other NFS units) that are not administered by FS. Inholdings sometimes pose difficulties for FS land management, because the agency does not regulate their development and use, which may be incompatible with desired uses of the federal lands, and constraints on access across inholdings may limit access to some federal lands. Many private landowners, however, object to the idea of possible federal restrictions on the use of their lands and especially to unfettered public access across their lands.

<sup>14</sup> For more comprehensive information on the authority of FS and the other federal land management agencies to dispose of lands, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*.

<sup>15</sup> 36 C.F.R. Part 200.

<sup>16</sup> FS, *Land Areas Report*, 2022.

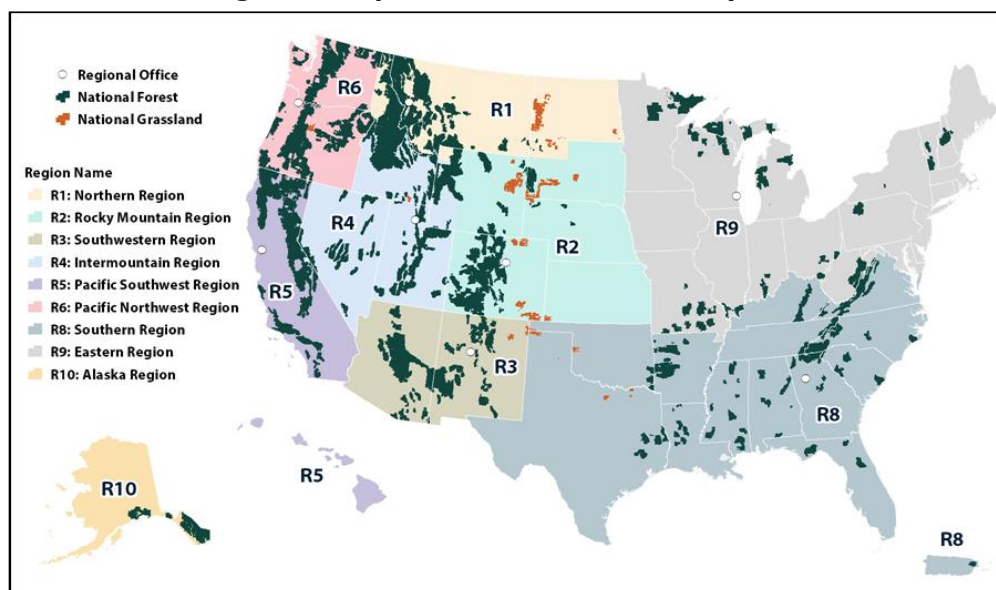
**Table I. The National Forest System (NFS)**

| Forest Service Region         |     | States/Territories<br>Containing NFS Lands                | NFS Acreage <sup>a</sup> |                   |                    |
|-------------------------------|-----|-----------------------------------------------------------|--------------------------|-------------------|--------------------|
| Region Name                   | No. | States                                                    | Federal                  | Inholdings        | Total              |
| Northern                      | 1   | ID, MT, ND, SD                                            | 25,610,100               | 2,541,357         | 28,151,457         |
| Rocky Mountain                | 2   | CO, KS, NE, SD, WY                                        | 22,057,859               | 2,548,962         | 24,606,821         |
| Southwestern                  | 3   | AZ, NM                                                    | 20,531,012               | 1,659,267         | 22,190,279         |
| Intermountain                 | 4   | ID, NV, UT, WY                                            | 31,907,911               | 2,230,224         | 34,138,135         |
| Pacific Southwest             | 5   | CA, HI                                                    | 20,241,198               | 3,404,725         | 23,645,922         |
| Pacific Northwest             | 6   | OR, WA                                                    | 24,977,877               | 3,005,659         | 27,983,535         |
| Southern                      | 8   | AL, AR, FL, GA, KY, LA, MS, NC, OK,<br>PR, SC, TN, TX, VA | 13,442,574               | 13,017,169        | 26,459,743         |
| Eastern                       | 9   | IL, IN, ME, MI, MN, MO, NH, NY, OH,<br>PA, VT, WI, WV     | 12,183,703               | 9,993,137         | 22,176,840         |
| Alaska                        | 10  | AK                                                        | 22,141,063               | 1,803,153         | 23,944,217         |
| <b>National Forest System</b> |     |                                                           | <b>193,093,298</b>       | <b>40,203,654</b> | <b>233,296,950</b> |

**Source:** U.S. Department of Agriculture, U.S. Forest Service (FS), *Land Areas Report (LAR)*—as of September 30, 2022, Tables 1 and 2, at <http://www.fs.usda.gov/land/staff/lar/LAR2022/lar2022index.html>.

**Notes:** In 1966, Region 7 (the Lake States Region) was merged with Region 9 (the Northeastern Region) to form the current Region 9 (Eastern Region). Although this merger left 9 regions, the numbering sequence skips 7 and ends with 10, as shown in the table. Idaho, Wyoming, and South Dakota are each split into two regions. Regions include states that do not contain NFS lands, which are not listed in the table.

a. *Federal* is federally owned land managed by FS. *Inholdings* are private and other government lands within NFS boundaries that are not administered or regulated by FS.

**Figure I. Map of the National Forest System**

**Source:** Prepared by CRS from data available from FS Geodata Clearinghouse, at <http://data.fs.usda.gov/geodata/>.

**Notes:** Alaska, Hawaii, and Puerto Rico are presented in multiple scales.

## Management of the National Forest System

The management goals for the national forests were articulated in Section 1 of the Multiple-Use Sustained-Yield Act of 1960,<sup>17</sup> which states:

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897.... The establishment and maintenance of areas as wilderness are consistent with the purposes and provisions of this Act.

The act directs management of the lands and resources of the national forests to be in the combination of uses that best meets the needs of the American people. Management of the resources is to be coordinated for *multiple use*—considering the relative values of the various resources but not necessarily maximizing dollar returns nor requiring that any one particular area be managed for all or even most uses. The act also calls for *sustained yield*—a high level of resource outputs maintained in perpetuity but without impairing the productivity of the land.

FS planning and management are guided primarily by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) and the National Forest Management Act of 1976 (NFMA).<sup>18</sup> Together, these laws encourage foresight in the use of the nation's forest resources and establish a long-range planning process for the management of the NFS. RPA assessments are published approximately every 10 years, and the assessments report the status and trends of the renewable resources on all forests and rangelands in the United States.<sup>19</sup>

Other laws also govern NFS management, such as the HFRA and the Federal Land Policy and Management Act.<sup>20</sup> Some laws pertain to NFS management in specific areas. For example, NFS management in Alaska (Region 10, which covers over 10% of the NFS), is subject to provisions in the Alaska National Interest Lands Conservation Act and the Alaska Native Claims Settlement Act (ANCSA).<sup>21</sup> FS also must comply with laws of general applicability that govern federal agency actions, such as the Administrative Procedure Act, NEPA, the Endangered Species Act of 1973 (ESA), and the National Historic Preservation Act (NHPA).<sup>22</sup>

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<sup>17</sup> Act of June 12, 1960, P.L. 86-517, 16 U.S.C. §§528-531. Other laws govern the management of some of the other NFS units. For example, the national grasslands are managed pursuant to the provisions in the Bankhead-Jones Farm Tenant Act (7 U.S.C. §§1010-1012).

<sup>18</sup> The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA): P.L. 93-378, 16 U.S.C. §§1600 et seq. The National Forest Management Act of 1976 (NFMA): P.L. 94-588; 16 U.S.C. §1600 et seq.

<sup>19</sup> For more information, see FS's RPA website at <http://www.fs.usda.gov/research/inventory/rpaa>. The following is the most recent publication—as of the date of this report—associated with the decennial RPA assessments, and includes data on a variety of forest resource statistics. Sonja Oswalt, W. Brad Smith, and Patrick Miles, et al., *Forest Resources of the United States, 2017: A Technical Document Supporting the Forest Service Update of the 2020 RPA Assessment*. FS, GTR-WO-97, 2019, at <https://www.fs.usda.gov/treearch/pubs/57903>.

<sup>20</sup> Federal Land Policy and Management Act (FLPMA), P.L. 94-579, 43 U.S.C. §§1701 et seq.

<sup>21</sup> Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. §§3101 et seq.); and Alaska Native Claims and Settlement Act (ANCSA; P.L. 92-203, 43 U.S.C. §§1601 et seq.).

<sup>22</sup> Administrative Procedure Act (P.L. 79-404, 5 U.S.C. §§500 et seq.); NEPA (P.L. 91-190, 42 U.S.C. §§4321-47); Endangered Species Act (ESA; P.L. 93-205, 16 U.S.C. §§1531-1544); National Historic Preservation Act (NHPA; P.L. 89-665, 54 U.S.C. §§300101 et seq.).

## Land and Resources Management Planning

FS engages in two different levels of planning for managing the NFS: unit-level planning and project-level planning.<sup>23</sup> At the unit level, NFMA requires FS to prepare and update comprehensive land and resource management plans (i.e., *forest plans*).<sup>24</sup> These forest plans establish the framework for guiding project-level planning and decisionmaking within the NFS unit.

FS promulgated regulations to implement the statutory planning requirements and establish the procedures to develop, amend, and revise forest plans at 36 C.F.R. Part 219, referred to as the *planning rule*. The planning rule has been revised several times, in part to incorporate new priorities as presidential administrations changed.<sup>25</sup> The Obama Administration promulgated final planning regulations in 2012 (*2012 planning rule*).<sup>26</sup> The 2012 planning rule established an adaptive, three-phase planning framework to emphasize ecological sustainability, landscape-scale restoration, and science-based decisions informed by public values. Plans are to also account for the potential impacts of climate change.

### Forest Plans

Forest plans guide FS's management of the plan area by identifying desired resource conditions on the ground; determining the suitability of lands for various uses; and specifying the objectives, standards, and guidelines for activities and uses in the plan area.<sup>27</sup> Forest plans provide management direction and are programmatic in nature, meaning they "provide a framework for future proposed actions."<sup>28</sup> Specific on-the-ground actions to accomplish those management objectives are referred to as *projects*, discussed in the next section (see "Project Planning").<sup>29</sup>

<sup>23</sup> 36 C.F.R. §219.2.

<sup>24</sup> FS's implementing regulations are promulgated at 36 C.F.R. pt. 219 subpt. A. For more information on FS policies, guidance, and instruction for implementing the forest planning requirements, see FS, *Forest Service Manual* (FSM), ch. 1920, Land Management Planning (2015) (hereinafter FSM\_1920), at [https://www.fs.usda.gov/cgi-bin/Directives/get\\_dirs/fsm?1900!..](https://www.fs.usda.gov/cgi-bin/Directives/get_dirs/fsm?1900!..); and FS, *Land Management Planning Handbook, Forest Service Handbook* (FSH) 1909.12, ch. 20, (2015) (hereinafter FSH 1909.12\_20), at [https://www.fs.usda.gov/cgi-bin/Directives/get\\_dirs/fsh?1909.12!...](https://www.fs.usda.gov/cgi-bin/Directives/get_dirs/fsh?1909.12!...) *Forest plans* is inclusive of plans for all NFS units, including grasslands and others.

<sup>25</sup> The first planning regulations were issued in 1979 and then revised in 1982, 2000, 2005, 2008, and 2012. The Clinton Administration's 2000 regulations (*2000 planning rule*) would have increased emphasis on ecological sustainability during the forest planning process (65 *Federal Register* 67514, November 9, 2000). The George W. Bush Administration delayed implementation of the Clinton regulations three times out of concerns about implementation and the emphasis on biological sustainability, and then replaced the regulations before they went into effect. The Bush Administration promulgated final rules in 2005 (*2005 planning rule*) to balance ecological sustainability with economic and social considerations (70 *Federal Register* 1022, January 5, 2005). The 2005 planning rule also would have exempted forest plans from NEPA and ESA requirements. Interested parties successfully challenged the 2005 planning rule, arguing that the new rules reduced environmental protection without adequate public comment and ESA consideration (*Citizens for Better Forestry v. USDA*, 481 F.Supp. 2d 1059 (N.D.Cal., 2007)). The Bush Administration reissued the 2005 rule as a proposed rule to provide for the court-ordered public comment and issued new final rules in 2008 (*2008 planning rule*, 73 *Federal Register* 21467, April 21, 2008). The court also invalidated the 2008 planning rule for violating NEPA and ESA (*Citizens for Better Forestry v. USDA*, 632 F.Supp. 2d 968 (N.D.Cal., 2009)). In 2009, FS reverted to using 1982 procedures. For more information on the history of the planning regulations as well as the status of the current rule, see <https://www.fs.usda.gov/planningrule>.

<sup>26</sup> 77 *Federal Register* 21260 (April 9, 2012). In 2016, FS amended the rule to clarify the plan amendment process and procedures, among other technical amendments (81 *Federal Register* 90723, December 15, 2016). The regulations are codified at 36 C.F.R. part 219.

<sup>27</sup> 36 C.F.R. §§219.2(b), 219.7(e).

<sup>28</sup> 50 C.F.R. §402.02.

<sup>29</sup> 36 C.F.R. §219.2(b).

Forest plans generally do not authorize individual actions or projects, nor do they commit FS to take any specific action.<sup>30</sup> Forest plans may, however, constrain FS from authorizing future projects or activities in specific areas.<sup>31</sup>

NFMA requires FS to revise forest plans at least every 15 years to address changing conditions, management goals, and public use.<sup>32</sup> However, forest plans may be amended at any time.<sup>33</sup> Amendments can address new information, changed resource conditions, or other altered circumstances. Plan amendments vary in scale and scope; some amendments may apply broadly across the entire NFS unit covered by the plan area, whereas other amendments may apply narrowly to a specific resource or area within the NFS unit.<sup>34</sup> At times, FS has amended several forest plans simultaneously to address changing conditions across larger geographic scales and covering multiple NFS units. The time it takes to complete a plan amendment varies considerably, depending on the scope and nature of the amendment. Although FS guidance documents envision plan developments or revisions being completed within four years,<sup>35</sup> plan revisions take seven years to complete on average.<sup>36</sup> When developing forest plans, FS also must comply with laws of general applicability that govern federal agency actions, such as ESA, NEPA, NHPA, and others.

FS has developed 128 plans to guide the management of 110 NFS administrative units, with some plans covering multiple NFS units. As of March 2023, FS reports that 99 plans require revision (meaning they are older than 15 years).<sup>37</sup>

## Project Planning

Projects are the on-the-ground actions that implement the forest plan prepared for a particular unit. *Projects* are defined in regulation as “an organized effort to achieve an outcome on NFS lands identified by location, tasks, outputs, effects, times, and responsibilities for execution.”<sup>38</sup> Projects may include activities such as timber harvests, trail maintenance, or the issuance of special use authorizations for pipelines across NFS lands, among many others. Projects must comport with the resource objectives established in the forest plans.<sup>39</sup>

Projects must be planned, evaluated, and implemented in accordance with FS procedures that prescribe how to comply with applicable statutory requirements, such as those regarding NEPA implementation. The timing and scope of review for a given project may vary based on the

<sup>30</sup> Forest plans must include a list of projects that may be proposed within three to five years after the plan is adopted, but the plan must explicitly state that the inclusion of those possible projects is not a commitment to those actions. 36 C.F.R. §§219.7(f)(1), FSH 1909.12\_20, *supra* note 9. See specifically §22.34 – Proposed and Possible Actions. It is possible for a project to be approved concurrently with a forest plan, but the project is not considered a plan component or part of the plan. FSH 1909.12\_20, *supra* note 9, at 28.

<sup>31</sup> FSH 1909.12\_20, *supra* note 9. See specifically §22.13 – Standards and §22.14 – Guidelines.

<sup>32</sup> 16 U.S.C. §1604(f)(5)(A). Annual appropriations laws have included a provision specifying that the Secretary of Agriculture is not considered to violate the requirements of RPA/NFMA solely because a forest plan has not been revised within 15 years, if the Secretary acts in good faith to update such plans. See, e.g., Further Consolidated Appropriations Act, 2020, P.L. 116-94, div. D, §407, 133 Stat. 2534 (2019) (codified at 16 U.S.C. §1604 note).

<sup>33</sup> 16 U.S.C. §1604(f)(4). For more information on plan amendments, see FSH 1909.12\_20, *supra* note 9, at 18.

<sup>34</sup> 36 C.F.R. §219.13.

<sup>35</sup> FSH 1909.12\_20, *supra* note 9, at 5.

<sup>36</sup> FS, *FY2024 Budget Justification*, March 2023, p. 30a-104, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>37</sup> FS, *FY2024 Budget Justification*, March 2023, p. 30a-104, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>38</sup> 36 C.F.R. §219.19.

<sup>39</sup> 50 C.F.R. §219.15.

specific statutory authority underpinning each project's implementation, the types of resources at the site that could be affected, and the level of those potential effects. In some circumstances, a project may be planned concurrently with a plan amendment to ensure compliance.

## National Environmental Policy Act

Broadly, NEPA requires federal agencies to identify the environmental impacts of a proposed action before making a final decision about that action.<sup>40</sup> How a federal agency demonstrates compliance with NEPA depends on the level of the proposal's impacts.<sup>41</sup>

- A proposed action that would significantly affect the “quality of the human environment” requires the preparation of an *environmental impact statement* (EIS) leading to a record of decision.<sup>42</sup>
- If the impacts are uncertain, an agency may prepare an *environmental assessment* (EA) to determine whether an EIS is necessary or whether a *finding of no significant impact* (FONSI) may be issued through a decision notice.
- Under NEPA implementing regulations, *categorical exclusions* (CEs) refer broadly to categories of actions that do not individually or cumulatively have a significant effect on the environment and hence are excluded from the requirement to prepare an EIS or an EA.<sup>43</sup>

For actions that require an EA or EIS, an agency generally must evaluate the impacts of the proposed action and reasonable alternatives to it, including the alternative of taking no action (i.e., a *no-action alternative*). The analysis included in the EIS or EA/FONSI is used to inform the agency's decisionmaking process regarding the proposal. In its agency-specific procedures implementing NEPA, each federal agency has identified and listed actions it is authorized to approve that normally require an EIS (or an EA resulting in a FONSI) or that can be approved using a CE.<sup>44</sup>

FS identified CEs based on past experience with similar actions, referred to as *administrative CEs* for purposes of this report.<sup>45</sup> Some CEs have been explicitly established in statute by Congress, as discussed in the “NEPA Categorical Exclusions Established in HFRA” section of this report. Since these CEs were established in statute, they do not necessarily reflect actions that have been shown to have no environmental effects, individually or cumulatively. FS regulations also provide for and identify the resource conditions in which a normally excluded action may have the potential for a significant environmental effect and may warrant further analysis in an EA or EIS.<sup>46</sup> The presence of these resource conditions is termed *extraordinary circumstances*. For example, FS has identified the presence of flood plains, municipal watersheds, endangered

<sup>40</sup> P.L. 91-109, 42 U.S.C. §§4321-4347.

<sup>41</sup> NEPA established the Council on Environmental Quality (CEQ) in the Executive Office of the President, and CEQ issued broad, generic regulations regarding NEPA implementation. These regulations include requiring all federal agencies to adopt and supplement the CEQ regulations as necessary to include detail relevant to actions *that* agency is authorized to approve (see CEQ, “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,” in 40 C.F.R. Parts 1500-1508 (43 *Federal Register* 55990, November 28, 1978).

<sup>42</sup> 42 U.S.C. §4332(2)(C).

<sup>43</sup> See 40 C.F.R. §1508.4.

<sup>44</sup> FS regulations implementing NEPA are codified at 36 C.F.R. Part 220 and supplement both the CEQ regulations and Department of Agriculture (USDA) regulations implementing NEPA at 7 C.F.R. Part 1b. For more information on FS NEPA implementation, see also FSM 1950 and FSH 1909.15, at <https://www.fs.usda.gov/im/directives/>.

<sup>45</sup> For more information on FS categorical exclusions (CEs), see FSH 1909.15\_30 (2023).

<sup>46</sup> 36 C.F.R. §220.6(b).

species or their habitat, wilderness areas, inventoried roadless areas, and archaeological sites, among others, as potential extraordinary circumstances that may preclude the use of a CE for an otherwise eligible project.<sup>47</sup>

An agency's procedures to implement NEPA may serve as an umbrella compliance process. For example, within the framework of determining the resources affected and the level of effects of a given proposal, the agency's NEPA process would identify project impacts that may trigger additional environmental review and consultation requirements under ESA and NHPA, among other laws. If compliance with NEPA was waived for a given category of action, the requirements triggered by impacts to those resources under other federal laws would still apply.

## Healthy Forests Restoration Act

HFRA, among other purposes, was intended to expedite the planning and review process for hazardous fuel reduction and forest restoration projects on NFS lands.<sup>48</sup> Hazardous fuel reduction projects are intended to reduce the risk of catastrophic wildfire by removing or modifying the availability of vegetation, or biomass (e.g., trees, shrubs, grasses, needles, leaves, and twigs), that fuels a wildland fire through various methods and measures (this vegetation is often referred to as *hazardous fuels*).

HFRA defined *hazardous fuel reduction projects (HFRA projects)* as methods and measures for reducing hazardous fuels, including prescribed fire, wildland fire use, and various mechanical (e.g., pruning or thinning, which is the removal of small-diameter trees) or other methods.<sup>49</sup> HFRA has been amended several times, in many cases defining a certain activity as an HFRA project. For example, the definition of an HFRA project was expanded in 2018 to include the installation of fuel breaks (e.g., measures that change fuel characteristics in an attempt to modify the potential behavior of future wildfires) and fire breaks (e.g., natural or constructed barriers to stop, or establish an area to work to stop, the spread of a wildfire).<sup>50</sup> More recently, the Infrastructure Investment and Jobs Act (IIJA) specified that certain forest management activities implemented using IIJA funds are to be considered HFRA projects.<sup>51</sup>

HFRA projects can be developed and implemented using a potentially expedited planning and review process, in specified areas. This includes HFRA projects conducted in the *wildland-urban interface* (WUI).<sup>52</sup> HFRA projects also may be conducted on specified areas within a municipal

<sup>47</sup> 36 C.F.R. §220.6.

<sup>48</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Healthy Forests Restoration Act of 2003*, report to accompany H.R. 1904, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., 2003, S.Rept. 108-121; and U.S. Congress, House Committee on the Judiciary, *Healthy Forests Restoration Act of 2003*, report to accompany H.R. 1904, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., 2003, H.Rept. 108-96.

<sup>49</sup> In 16 U.S.C. §6511(2), HFRA defines authorized hazardous fuel reduction projects by referencing the definition of *appropriate tools* in USDA and Department of the Interior, *A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment: 10-Year Comprehensive Strategy Implementation Plan*, May 2002, p. 18, at <http://www.forestsandrangelands.gov/resources/plan/documents/11-23-en.pdf>. HFRA further defines authorized hazardous fuels reduction projects and requirements in 65 U.S.C. §6512.

<sup>50</sup> The Stephen Sepp Wildfire Suppression Funding and Forest Management Activities Act (P.L. 115-141, Division O, §203). Hereinafter referred to as the *FY2018 omnibus*.

<sup>51</sup> The Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) specified in §40803(k) that mechanical thinning, timber harvesting, thinning, prescribed fire, and fuel break installation projects conducted using funds authorized and appropriated from IIJA shall be considered authorized hazardous fuels reduction projects pursuant to HFRA (16 U.S.C. §6592k). Some may refer to IIJA as the *Bipartisan Infrastructure Law*, or *BIL*.

<sup>52</sup> HFRA defines the *wildland urban interface* (WUI) in 16 U.S.C. §6511(16) as an area within or adjacent to an *at-risk community* (as defined in 16 U.S.C. §6511(1)) with a community wildfire protection plan (CWPP), or an area within a (continued...)

watershed and with moderate or significant departure from the historical fire regimes (see shaded text box); on wind-, ice-, insect-, or disease-damaged land, or land at risk of insect or disease damage; or on lands with threatened and endangered species habitat threatened by wildfire.<sup>53</sup> HFRA explicitly excluded projects that would occur on designated wilderness areas, wilderness study areas, or areas that otherwise prohibit vegetation removal by an act of Congress or presidential proclamation.<sup>54</sup>

HFRA projects must be consistent with the land and resource management plan in place for the area. Certain *covered projects*—basically, any HFRA project except those in response to or anticipation of wind, ice, insect, or disease damage—must focus on thinning, prescribed fire, or removing small-diameter trees to modify fire behavior, while maximizing large or old-growth tree retention (if retention promotes fire resiliency).<sup>55</sup> The HFRA authorities are available for projects covering up to a cumulative total of 20 million acres of federal land.<sup>56</sup>

### Fire Regime Condition Class

*Fire regime condition class* is a classification that describes the relative change between the historical (prior to modern human intervention) frequency and intensity of fire patterns across a vegetated landscape and the current fire patterns. More specifically,

- *fire regime* describes fire's relative frequency and severity in an ecosystem, and
- *condition class* describes the degree of departure from reference historical conditions.

Fires in landscapes classified into Fire Regime I occur every 0-35 years, and the fires are of low to mixed severity. Fire Regime II also has a frequency of 0-35 years, but the fires are severe, resulting in stand replacement of over 75% of the dominant overstory vegetation. Fire Regime III has a frequency of fire that ranges from 35 to 200 years, and the fires are of low to mixed severity. Fire Regime IV also has a frequency ranging from 35 to 200 years, but the fires are severe. Fire Regime V has a frequency of more than 200 years and includes fires of any severity. With respect to departure from reference historical conditions, Condition Class 1 represents no or minimal departure; Condition Class 2 represents a moderate departure and declining ecological integrity; Condition Class 3 describes a high departure and poor ecological integrity. For more information, see S. Barrett et al., *Interagency Fire Regime Condition Class (FRCC) Guidebook Version 3.0*, 2010, at [http://www.landfire.gov/frcc/frcc\\_guidebooks.php](http://www.landfire.gov/frcc/frcc_guidebooks.php).

The Healthy Forest Restoration Act (HFRA) authorizes certain activities in areas classified as Condition Class 2 or 3 in Fire Regimes I, II, and III. HFRA's definition of these terms (see 16 U.S.C. §6511) is largely consistent with the above descriptions, except that HFRA defines Fire Regime III as mixed severity fires with a return frequency of 35-100 years instead of 35-200 years. At the time of enactment, the return frequency for Fire Regime III was defined as 35-100+ years and the classification scale has been refined as data availability, data reliability, and modeling capacity have improved.

HFRA also directed FS to establish a specific administrative review process (sometimes referred to as a *pre-decisional objection process*) and set forth requirements for judicial review for HFRA projects.<sup>57</sup> Congress later directed FS to apply the administrative review procedures for HFRA

specified distance to an at-risk community without a CWPP and with specified characteristics (e.g., steep slopes). In other sources, the WUI is more generally defined as the area where structures and other human development meet or intermingle with undeveloped wildland vegetation. For more information on the WUI, see FS, *The 2010 Wildland-Urban Interface of the Conterminous United States*, 2015, at <https://www.fs.usda.gov/research/treesearch/48642>; V. C. Radeloff et al., "The Wildland-Urban Interface in the United States," *Ecological Applications*, vol. 15, no. 3 (2005), pp. 799-805; 66 *Federal Register* 751-777; and CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*.

<sup>53</sup> 16 U.S.C. §6512(a).

<sup>54</sup> 16 U.S.C. §6512(d).

<sup>55</sup> 16 U.S.C. §6512(e)(1)(B).

<sup>56</sup> 16 U.S.C. §6512(c).

<sup>57</sup> FS's procedures for administrative review of HFRA projects are promulgated at 36 C.F.R. §218 Subpart C and for judicial review are at 36 C.F.R. §218.14.

projects to non-HFRA projects.<sup>58</sup> As a result, all FS projects fall under the same pre-decisional objection process, although there are some differences between HFRA and non-HFRA projects. For example, the Chief of the Forest Service may declare a non-HFRA project an emergency situation and proceed directly to implementation after the publication of the decision document.

HFRA's planning procedures have been amended several times since enactment. For example, IIJA authorized the Secretary of Agriculture to issue an Emergency Situation Determination for NFS lands and to take specified emergency actions to mitigate and provide relief from threats to natural resources and human health and safety.<sup>59</sup> The authorized emergency actions include timber salvage harvests, removal of hazard trees, hazardous fuel reduction projects, and reforestation activities, among others. IIJA also established procedures related to the planning and implementation of those actions, including limiting environmental reviews to the action and no-action alternatives for activities planned using an EA or EIS. Secretary of Agriculture Tom Vilsack invoked this authority in January 2023.<sup>60</sup>

## HFRA Insect and Disease Designation Areas

The Agricultural Act of 2014 (the 2014 farm bill) added Section 602 to HFRA and authorized the establishment of landscape-scale insect and disease treatment areas within the NFS, by state, as requested by the state governor and then designated by the Chief of the Forest Service.<sup>61</sup> To be eligible for this insect and disease treatment area designation, the NFS area must be experiencing declining forest health based on annual forest health surveys, at risk of experiencing substantial tree mortality over the next 15 years, or in an area in which hazard trees pose an imminent risk to public safety. In total, FS has designated approximately 75 million acres nationwide.<sup>62</sup> (Hereinafter this report refers to these designated areas as *I&D areas*.)

Congress further authorized FS to prioritize projects in the designated I&D areas and plan and implement those projects through a potentially expedited process. In some states, all eligible lands were designated. In those states, the expedited project planning procedures are thus broadly available, but any prioritization benefit is effectively nullified.

<sup>58</sup> Consolidated Appropriations Act, 2012, P.L. 112-74 §428.

<sup>59</sup> IIJA §40807(a)-(f), 16 U.S.C. §6592c. The authority to issue an Emergency Situation Determination was previously established (see 36 C.F.R. §218.21). IIJA expanded the authority in part by defining specific authorized emergency actions.

<sup>60</sup> FS, "Using Emergency Authorities to Support the Wildfire Crisis Strategy," press release, February 10, 2023, at <https://www.fs.usda.gov/inside-fs/leadership/using-emergency-authorities-support-wildfire-crisis-strategy> and FS, *Summary of Inflation Reduction Act provisions and Authorized Emergency Actions*, Briefing Paper, January 2023.

<sup>61</sup> Agricultural Act of 2014 (the 2014 farm bill), P.L. 113-79 §8204, 16 U.S.C. §6591a. Some may refer to this as the *HFRA Section 602 Authority*. The term "landscape-scale" is not specifically defined, but the law references subwatersheds as an example, and further defines subwatersheds as the sixth-level of the System of Hydrologic Unit Codes of the United States Geological Survey.

<sup>62</sup> The 2014 farm bill required FS to make the initial designations within 60 days of enactment (April 8, 2014) and authorized FS to designate additional areas as needed. FS evaluated state requests against eligibility criteria and generally designated areas that met at least one of the criteria. The 75.3 million acres of designated areas include state requests and additional designations made as of April 2023 (From FS, *Report to Congress on Section 8204 of the Agricultural Act of 2014*, provided to CRS from FS legislative affairs on April 21, 2023). For more information, including state designation maps, see the Forest Service web page on Insect and Disease Area Designations at <http://www.fs.usda.gov/managing-land/farm-nill/area-designations>.

## NEPA Categorical Exclusions Established in HFRA

Several amendments have expanded HFRA's project planning authorities. In particular, several laws have amended HFRA to establish statutory CEs for certain projects. Selected examples include the following:<sup>63</sup>

- **Insect and Disease CE** (this may also be referred to as the *Section 603 CE* or the *Farm Bill CE*):<sup>64</sup> This CE can be used for certain hazardous fuel reduction projects or projects that are intended to reduce the risk or extent of insect or disease infestations. Projects must be located in I&D areas within the WUI or outside of the WUI in specified areas.<sup>65</sup> The authority to initiate projects using this CE is set to expire at the end of FY2023.<sup>66</sup>
- **Wildfire Resilience CE** (this may also be referred to as the *Section 605 CE*):<sup>67</sup> This CE can be used for certain hazardous fuel reduction projects located in I&D areas within the WUI or outside of the WUI in specified areas.<sup>68</sup> This CE is similar to the Insect and Disease CE, except the Wildfire Resilience CE directs FS to prioritize projects located within the WUI and limits projects outside of the WUI to areas that contain very high wildfire hazard potential.<sup>69</sup>
- **Greater Sage-Grouse and Mule Deer Habitat CE**:<sup>70</sup> This CE can be used for vegetation management projects that protect, restore, or improve habitat for the greater sage-grouse and/or mule deer in designated I&D areas within a sagebrush steppe ecosystem.
- **Fuel Breaks CE**:<sup>71</sup> This CE is for forest management projects with a primary purpose of establishing or maintaining linear fuel breaks up to 1,000 feet in width contiguous with or incorporating existing linear features, such as roads, water infrastructure, transmission and distribution lines, and pipelines on federal land.

These CEs contain other similar statutory requirements. For example, projects using the CE generally have project size limitations (ranging from 3,000-4,500 acres), road construction

<sup>63</sup> For more information on FS's CEs, see FSH 1909.15-30 (2023).

<sup>64</sup> The 2014 farm bill (P.L. 113-79 §8204) added a new section 603 to HFRA and established the Insect and Disease CE; the 2018 farm bill (P.L. 115-334 §8407b) amended the CE to include hazardous fuel reduction projects, 16 U.S.C. §6591b.

<sup>65</sup> The Insect and Disease CE may apply to projects outside the WUI but in fire regime groups I, II, or III and condition classes 2 or 3.

<sup>66</sup> 16 U.S.C. §6591a(d)(2).

<sup>67</sup> The FY2018 omnibus (P.L. 115-141, Division O, §202) added a new Section 605 to HFRA and established the Wildfire Resilience CE, 16 U.S.C. §6591d.

<sup>68</sup> The Wildfire Resilience CE may apply to projects outside the WUI but in fire regime groups I, II, or III and condition classes 2 or 3 that contain very high wildfire hazard potential.

<sup>69</sup> Wildfire Hazard Potential (WHP) is an index that reflects the relative potential for a wildfire to occur that would then be difficult to suppress or contain. WHP was originally developed by Dillon, G.K.; J. Menakis; and F. Fay, 2015, "Wildland Fire Potential: A Tool for Assessing Wildfire Risk and Fuels Management Needs," pp 60-76, In Keane, R. E.; Jolly, M.; Parsons, R.; and Riley, K. Proceedings of the large wildland fires conference; May 19-23, 2014; Missoula, MT. Proc. RMRS-P-73. Fort Collins, CO: USDA, Forest Service, Rocky Mountain Research Station, at <http://firelab.org/project/wildfire-hazard-potential>. The FY2018 omnibus directed FS to scale the WHP for community use; see <http://www.wildfirerisk.org>.

<sup>70</sup> The 2018 farm bill (P.L. 115-334 §8611) added a new Section 606 to HFRA and established the Sage-Grouse/Mule Deer CE, 16 U.S.C. §6591e.

<sup>71</sup> IJA (P.L. 117-58, §40806) established the Fuel Breaks CE. The legislation did not directly amend HFRA but was codified under HFRA at 16 U.S.C. §6592b(b).

requirements (generally prohibiting construction of new permanent roads and specifying decommissioning of temporary roads within a specified time frame), and geographic constraints (e.g., prohibited from occurring in designated wilderness areas). The planning process for projects using the CEs must consider best available science, maximize the retention of old-growth and large trees, and be developed through a collaborative process. In addition, projects using the CEs must be consistent with the underlying forest plan.

In addition to these HFRA CEs, FS has other statutory CEs. Some pertain to specific activities, such as issuing certain types of oil and gas leases, grazing permits, or special use authorizations.<sup>72</sup> Other laws have established statutory CEs for specific geographic areas. For example, there are two statutory CEs pertaining to activities located within the Lake Tahoe Basin area.<sup>73</sup>

Notwithstanding the establishment of these statutory CEs, FS's *administrative CEs* remain viable options for FS planning and decisionmaking.<sup>74</sup>

## National Forest System Uses

As noted above, NFS lands are administered for sustained yields of multiple uses, including fish and wildlife purposes; outdoor recreation; mineral and energy development; range (livestock grazing); timber production; watershed protection; and for natural, scenic, scientific, and historical values, including wilderness preservation.<sup>75</sup> Congress did not specify that FS should prioritize one use over any other use; reportedly, Congress specifically listed the uses in alphabetical order to avoid conferring any implied prioritization for management of the NFS.<sup>76</sup> The various uses of NFS lands are to be balanced in the “combination that will best meet the needs of the American people” with the “harmonious and coordinated management of the various resources, each with the other ... in perpetuity of a high-level annual or regular periodic output ... without impairment of the productivity of the land.”<sup>77</sup> These uses are discussed in more detail in the following sections.

Although revenue generation is not a stated statutory purpose of the NFS, FS is authorized to charge fees for many of the uses and services it provides. This revenue may be used to offset agency costs for specific activities, shared with the communities containing the NFS land, or

<sup>72</sup> For more information, see FSH 1909.15-30 (2023), pp. 19-27, 30-31.

<sup>73</sup> The Lake Tahoe Basin Hazardous Fuels Reduction Project CE was established by the FY2009 Omnibus Appropriations Act (P.L. 111-8), see FSH 1909.15-30 (2023), p.27. The Lake Tahoe Basin Forest Management Activities CE was established by the Water Infrastructure Improvements for the Nation Act (WIIN, P.L. 114-322), see FSH 1909.15-30 (2023), p.31.

<sup>74</sup> *Administrative CEs* refer to the category of actions FS has previously identified as not having an individual or cumulative effect on the environment as listed in FSH 1909.15\_30 (2023).

<sup>75</sup> The management mission for the national forests was established pursuant to the Multiple-Use Sustained Yield Act of 1960 (MUSY; Act of June 12, 1960; P.L. 86-517, 16 U.S.C. §§528-531). Other laws govern the management of some other NFS units. The uses specified for the NFS in MUSY (16 U.S.C. §528) did not specifically include energy and mineral or natural scenic, scientific, or historical values, though other statutes authorized those uses for the NFS. For example, The Wilderness Act of 1964, P.L. 88-577, §4; 16 U.S.C. §529, added wilderness preservation as a use for designated areas within the NFS.

<sup>76</sup> MUSY listed the multiple uses as “outdoor recreation, range, timber, watershed, and wildlife and fish purposes” (16 U.S.C. §528). Con H. Schallau and Richard M. Alston, “The Commitment to Community Stability: A Policy or Shibboleth?,” *Environmental Law*, vol. 17, no. 3 (1987), p. 469, at <https://www.jstor.org/stable/43265802>.

<sup>77</sup> 16 U.S.C. §531.

deposited into the General Treasury, depending on the use, location, and varying statutory requirements.<sup>78</sup> See the text box below for further background on NFS revenue considerations.

In FY2022, FS generated a total of \$280.0 million.<sup>79</sup> Over the past 10 years, FS revenue has ranged from a low of \$220.2 million in FY2020 to a high of \$293.9 million in FY2021. **Table 2** lists the revenue generated by type for the previous five years (FY2018-FY2022). The single largest source of revenue for FS over FY2018-FY2022 was the sale of timber. The next largest source of revenue was recreation, followed by fees associated with the use or occupancy of NFS lands.

**Table 2. FS Revenue, FY2018-FY2022**

(nominal dollars in millions)

|              | FY2018         | FY2019         | FY2020         | FY2021         | FY2022         |
|--------------|----------------|----------------|----------------|----------------|----------------|
| Timber       | 160.2          | 147.5          | 124.1          | 138.7          | 123.4          |
| Recreation   | 84.7           | 90.3           | 55.3           | 110.7          | 106.2          |
| Land Use     | 32.4           | 31.3           | 34.6           | 38.4           | 44.3           |
| Grazing      | 5.8            | 5.4            | 5.6            | 5.1            | 5.3            |
| Minerals     | 0.3            | 1.0            | 0.6            | 1.0            | 0.9            |
| <b>Total</b> | <b>\$283.4</b> | <b>\$275.5</b> | <b>\$220.2</b> | <b>\$293.9</b> | <b>\$280.0</b> |

**Source:** U.S. Department of Agriculture, Forest Service, *All Service Receipts (ASR), Final Receipts Summary Report (ASR-04)*, at <https://www.fs.usda.gov/main/pts/securepayments/projectedpayments>.

**Notes:** Data are provided in nominal dollars and totals may not add due to rounding. *Timber* revenue is amounts collected under several different authorities for the sale of timber and certain other forest products and also reflects deposits or credits to several different special funds or accounts. *Recreation* revenue is amounts collected for all types of recreation, including user fees collected under the Federal Lands Recreation Enhancement Act (P.L. 108-447, as amended). *Land use* revenue is amounts collected for the use or occupancy of NFS lands, such as for communication or energy transmission lines, but excludes collections associated with minerals or recreational uses. *Grazing* revenue is amounts collected for grazing fees in the NFS, with both the eastern and western grazing fees combined. *Minerals* revenue is amounts collected from the sale of minerals (including quartz crystals) and permit fees. It includes mineral lease and permit fees collected by DOI on acquired lands having NFS status but does not include any mineral revenue derived from NFS land that was established from the public domain.

### National Forest System Management: Financial Considerations

Management decisions for national forests are not based on financial optimization for the federal government. In the 1960s, Congress debated adding profitability as a goal for national forest management but ultimately defined *multiple use* to mean considering “the relative values of the various resources, [but] not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output” (16 U.S.C. §531(a)). Although the Forest Service (FS) considers management costs and efficiencies during the development of forest plans and projects, it considers these financial factors relative to other ecological and social factors. More specifically, FS regulations stipulate that forest plans “guide management of [National Forest System] lands so that they are ecologically sustainable and contribute to social and economic sustainability ... and have the capacity to provide people and communities ... a range of social, economic, and ecological benefits for the present and into the future” (36 C.F.R. §217.1(c)).

Policies that contribute to economic stability or provide economic benefits to communities surrounding the national forests may not be financial optimal for the federal government. At various times, goals of contributing to community stability or otherwise supporting timber-dependent communities have shaped FS policies and

<sup>78</sup> For information on the requirements to share certain revenues with the states and counties containing NFS lands, see CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

<sup>79</sup> FS, *All Service Receipts: Receipts Summary Report, FY2022*, ASR-04.

decisions. At times, these considerations have led FS to make decisions that would not be financially optimal for the federal government, such as below-cost timber sales. This decisionmaking model can appear inefficient in comparison to the models of some private actors, especially those that manage their lands to optimize timber production or financial returns.

**Sources:** Con H. Schallau and Richard M. Alston, “The Commitment to Community Stability: A Policy or Shibboleth?,” *Environmental Law*, vol. 17, no. 3 (1987), pp. 429-481, at <https://www.jstor.org/stable/43265802>; David Wear, “Chapter 12: Public Timber Supply Under Multiple-Use Management,” in *Forests in a Market Economy*, eds. Erin Sills and Karen Abt (Boston: Kluwer Academic Publishers, 2003), pp. 203-220; Robert W. Wolf, “National Forest Timber Sales and the Legacy of Gifford Pinchot: Managing a Forest and Making it Pay,” *University of Colorado Law Review*, vol. 60, no. 4 (1989), pp. 1063-1064.

## Fish and Wildlife Habitat

The NFS contains important fish and wildlife habitats as well as botanically significant resources, which contribute ecological, recreational, economic, and cultural benefits to the nation. These resources include fishable streams, lakes, wetlands, and wildlife—such as elk, bighorn sheep, and wild turkey—which are enjoyed by a variety of recreational users. The NFS provides habitat for commercial species (e.g., salmon) and opportunities for subsistence uses. In addition, the NFS contains over 400 species of plants and animals listed as threatened or endangered and 3,500 that have been designated as sensitive and require special management.

## Outdoor Recreation

Recreational activities on NFS lands include camping, fishing, hiking, horseback riding, hunting, skiing, snowboarding, wildlife viewing, and more.<sup>80</sup> Private companies also provide additional recreational opportunities on the NFS through recreation special use authorizations for downhill ski resorts, campgrounds, resorts, marinas, recreational events, outfitters, and guides. FS reports more than 156 million annual recreational visits to the NFS in FY2021.<sup>81</sup>

Some recreation uses, such as the use of off-highway vehicles and snowmobiles in the NFS, have generated controversy.<sup>82</sup> FS travel management regulations established a planning process for each NFS unit and designated which roads and trails were available for motorized use.<sup>83</sup> These *motor vehicle use maps* are generally updated annually.<sup>84</sup>

Recreation on NFS lands also generates significant revenue for FS. In FY2022, recreation receipts totaled \$106.2 million (38% of the total revenue generated).<sup>85</sup> In 2004, the Federal Lands Recreation Enhancement Act established a recreation fee program for FS (and the other federal land management agencies).<sup>86</sup> The program was set to expire in FY2014 but has been reauthorized several times, and was most recently extended through the end of FY2024.<sup>87</sup> The act authorizes different kinds of fees, outlines criteria for establishing fees, prohibits certain fees, and

<sup>80</sup> FS, *FY2020 Budget Justification*, p. 58, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>81</sup> FS, *FY2024 Budget Justification*, p. 30a-90.

<sup>82</sup> See CRS Report R42920, *Motorized Recreation on Bureau of Land Management and Forest Service Lands*.

<sup>83</sup> 70 *Federal Register* 68264, November 9, 2005, and 73 *Federal Register* 74689, December 9, 2008. The regulations are available at 36 C.F.R. Part 212. For more information, see <https://www.fs.usda.gov/recreation/programs/ohv/>.

<sup>84</sup> A motor vehicle use map is generally available in the “maps and publications” section of the website for each NFS unit.

<sup>85</sup> FS, *All Service Receipts: Receipts Summary Report, FY2022*, ASR-04.

<sup>86</sup> P.L. 108-447.

<sup>87</sup> P.L. 117-328, Division G, Title IV, §421 extended the program to October 1, 2024.

allows FS to use collections without further appropriation. While Congress sought to make the actual users pay fees, some users object, arguing that the fees amount to paying twice (once through taxation) to support the agency. Congress may consider allowing the recreation fee program to sunset or may consider extending the program again, with or without modifications.<sup>88</sup>

## Mineral and Energy Development

Much of the NFS is open to mineral and energy resource exploration and development. Oil, natural gas, and coal exploration and production is governed by the Mineral Leasing Act of 1920, which also requires the Bureau of Land Management (BLM) to manage the subsurface rights to virtually all federal lands, including NFS lands.<sup>89</sup> Development of other minerals from FS lands, such as hardrock minerals (e.g., gold, silver, copper) and other salable minerals (e.g., sand, gravel, clay) are governed by the General Mining Law of 1872 and the Materials Act of 1947, respectively.<sup>90</sup> FS reports approximately 4.2 million acres underlying NFS lands were leased for oil, gas, coal, and other mineral operations in 2022.<sup>91</sup> NFS lands contain an estimated 4,000 federal oil and gas wells and approximately 75,000 mining claims. Receipts and royalties generated for energy and mineral activities are collected by the Office of Natural Resources Revenue in the Department of the Interior and are distributed for a variety of purposes.<sup>92</sup>

Renewable energy projects—such as solar and wind projects—are also allowed on NFS lands, generally through a special use authorization (SUA, discussed in the “Other Uses” section). FS approved a utility-scale wind power facility SUA in 2012, which began operation in 2017.<sup>93</sup>

## Range and Grazing Management

Range management includes the use of NFS rangelands for livestock grazing as well as for the management of wild horses and burros, which are protected under the Wild Free-Roaming Horses and Burros Act of 1971.<sup>94</sup> Management of wild horses and burros on NFS (and BLM) lands has generated controversy, and issues for Congress have included concerns regarding management of their population, among others. FS estimates there were approximately 8,900 wild horses and 1,200 burros on NFS lands in 2022, approximately four times the appropriate management level.<sup>95</sup>

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<sup>88</sup> For further information on the Federal Lands Recreation Enhancement Act, see CRS In Focus IF10151, *Federal Lands Recreation Enhancement Act: Overview and Issues* and CRS Report RL33730, *Recreation Fees Under the Federal Lands Recreation Enhancement Act*.

<sup>89</sup> 30 U.S.C. §§181 et seq. CRS Report R46278, *Policy Topics and Background Related to Mining on Federal Lands*.

<sup>90</sup> General Mining Law of 1872 (17 Stat. 91); Materials Act of 1947: P.L. 80-281.

<sup>91</sup> FS, *FY2024 Budget Justification*, p. 30a-95.

<sup>92</sup> For more information, see CRS Report R46537, *Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands*.

<sup>93</sup> See, for example, “Deerfield Wind Begins Operation,” *Vermont Business Magazine*, December 2017, at <https://vermontbiz.com/news/2017/december/29/deerfield-wind-begins-operation>.

<sup>94</sup> 16 U.S.C. §§1331 et seq. For more information on wild horses and burros, see CRS In Focus IF11060, *Wild Horse and Burro Management: Overview of Costs*.

<sup>95</sup> These estimates are taken from “USDA Forest Service Wild Horse and Burro Program,” at <https://www.blm.gov/sites/default/files/docs/2022-09/USFS%20Update.pdf>. This document is posted on the BLM website for the National Wild Horse and Burro Advisory Board, under “Materials from Past Advisory Board Meetings, USDA Forest Service Update.”

In FY2022, approximately 74 million acres of the NFS were under permit for livestock grazing in FY2022.<sup>96</sup> Permits generally cover a 10-year period and may be renewed automatically while the agency processes a backlog of grazing allotments and permits needing evaluation.<sup>97</sup> Fees for grazing on federal lands—FS and BLM—are generally charged under a formula established by law in 1978.<sup>98</sup> For 2023, the federal grazing fee is \$1.35 per head month, the minimum fee allowed under the law.<sup>99</sup>

## Timber<sup>100</sup>

One of the first uses of the early forest reserves was to “furnish a continuous supply of timber.”<sup>101</sup> The first chief of FS, Gifford Pinchot, initially believed the agency could eventually become self-supporting through the production of timber, although he eventually abandoned the idea.<sup>102</sup> FS timber sales and revenue generation were negligible until the 1950s, when the post-World War II housing boom, combined with declining competition from private timber sales, led to increasing NFS timber sales (see **Figure 2**). For many years after, FS was a major provider of timber for the wood products industry, generally selling between 10 billion and 12 billion board feet of timber annually.<sup>103</sup> Since the 1990s, FS timber production has decreased to levels similar to the era before the 1950s.<sup>104</sup> The decline is attributable to a multitude of factors, including (but not limited to) changing legislative directives and related forest management policies and practices—such as increased planning and procedural requirements—as well as changing market dynamics for wood products, public preferences, and litigation.

For the last 15 years, timber harvest volume has remained relatively constant between 2.0 and 3.0 billion board feet harvested annually, with a value between approximately \$100 and \$250 million. In FY2022, approximately 2.6 billion board feet were harvested from FS lands, at a value of approximately \$142.2 million.<sup>105</sup>

<sup>96</sup> FS, *FY2024 Budget Justification*, p. 30a-91.

<sup>97</sup> In FY2022, FS reports a backlog of 12% of active grazing permits require evaluation for renewal (FS, *FY2024 Budget Justification*, p. 30a-91). The authority to automatically renew leases was granted in P.L. 108-108, §325 and has been extended in annual appropriations law. See, for example, P.L. 117-328, Division G, §415.

<sup>98</sup> Public Rangelands Improvement Act of 1978, P.L. 95-514, 43 U.S.C. §§1901, 1905. The formula has been continued indefinitely through an executive order issued by President Reagan in 1986 (Executive Order 12548, 51 *Federal Register* 5985, February 19, 1986).

<sup>99</sup> The 2023 grazing fee is in effect from March 1, 2023, through February 29, 2024. This is the same fee as charged by the agencies for 2022 (in effect through February 28, 2023). Head month is defined as one month’s use and occupancy of the range by one animal, except for sheep and goats (36 C.F.R. §222.50). For more information on fees, see CRS Report RS21232, *Grazing Fees: Overview and Issues*.

<sup>100</sup> For more information on timber harvesting on federal lands, see CRS Report R45688, *Timber Harvesting on Federal Lands*.

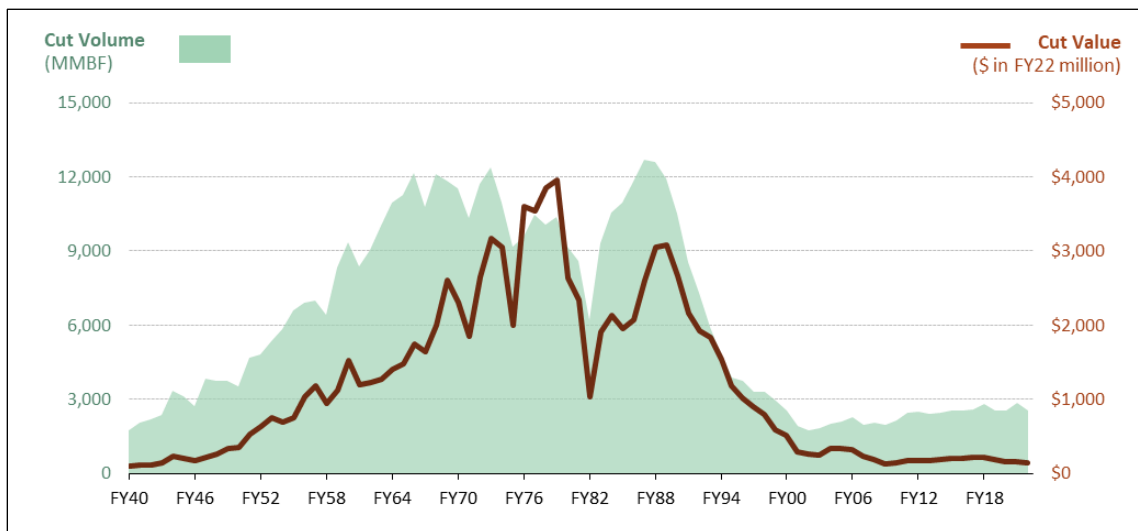
<sup>101</sup> Organic Administration Act, Act of June 4, 1897, 16 U.S.C. §473.

<sup>102</sup> Harold K. Steen, *The U.S. Forest Service: A History* (University of Washington Press, 1976), p. 91.

<sup>103</sup> A board foot is a volume measurement, representing a unit of wood measuring 12 inches by 12 inches by 1 inch. Harvest volume is also sometimes reported as cubic feet. During the period when FS was harvesting 10 billion to 12 billion board feet annually, the revenue was less than the total cost of NFS management.

<sup>104</sup> The decrease in timber production, and revenue generation, also led to a decrease in the revenue-sharing payments made to counties containing NFS land. Congress enacted an alternative payment system in response. For more information, see CRS Report R41303, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues*.

<sup>105</sup> Data reflect the cut volume and value (FS, *Forest Cut and Sold Reports*, at <https://www.fs.usda.gov/forestmanagement/products/cut-sold/index.shtml>). *Cut value* refers to the appraised value of the timber after it is (continued...)

**Figure 2. FS Harvest Volume and Value, FY1940-FY2022**

**Source:** CRS. FY1977-FY2022 data: Forest Service, *Forest Products Cut and Sold Reports*, at <https://www.fs.usda.gov/forestmanagement/products/cut-sold/index.shtml>. FY1940-FY1976 data: Forest Service Legislative Affairs Office.

**Notes:** MMBF stands for million board feet. 1,000 million board feet equals 1 billion board feet. A board foot is a unit of wood measuring 12 inches by 12 inches by 1 inch. Cut value has been converted to FY2022 dollars using Bureau of Labor Statistics Historical Consumer Price Index, All Urban Customers, fiscal year averages.

FS may harvest timber for a number of reasons, including as a tool to achieve various land and resource management objectives (i.e., hazardous fuels reduction, watershed management, and many others), commercial timber production, or a combination of objectives. Some special timber harvest authorities address NFS timber harvesting under specified circumstances related to forest restoration. For example, FS may combine contracts for restoration activities with timber harvesting to offset some of the restoration costs (*stewardship contracting*) or may authorize states, counties, and federally recognized Indian tribes to sell NFS timber as part of forest restoration projects (the Good Neighbor authority).<sup>106</sup> FS also may harvest trees damaged or killed in fires or other disturbance events, called salvage harvesting. Salvage harvesting may capture some of the economic value of the federal resources and generate revenue to fund other restoration activities, and in some cases may facilitate forest restoration and recovery.

## Watersheds

Protecting watershed health was one of the original purposes of the national forests. This includes the management of surface water and groundwater resources as well as water uses and rights on NFS lands. Nearly one-fifth of the nation's water originates on NFS lands.<sup>107</sup> In addition, watersheds support ecological services such as productive soils, biological diversity, and fish and wildlife habitat, including spawning and rearing habitat for sport and commercial fish species. Watersheds also provide flood control benefits.

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harvested. The cut value reported in any given fiscal year may not be reflected in the collection of timber revenue for that same fiscal year for various reasons (e.g., because revenue may be collected at various times throughout a timber sale contract, which may be executed over several years).

<sup>106</sup> For more information, see CRS In Focus IF11179, *Stewardship End Result Contracting: Forest Service and Bureau of Land Management*, by Anne A. Riddle and CRS In Focus IF11658, *The Good Neighbor Authority on Federal Lands*.

<sup>107</sup> FS, "Watershed," at <http://www.fs.usda.gov/naturalresources/watershed/index.shtml>.

FS established the Watershed Condition Framework (WCF) in 2011 to assess, classify, and prioritize the conditions of the watersheds containing significant portions of NFS lands. The 115<sup>th</sup> Congress codified the WCF program in statute.<sup>108</sup> The initial assessment—completed in FY2011—classified conditions on approximately 15,000 watersheds based on 12 biophysical and ecological indicators indicating the degree of watershed functionality or integrity.<sup>109</sup> Watersheds that were in good condition were classified as *functioning* (52% in the initial 2011 assessment), watersheds in fair condition were classified as *functioning at risk* (43%), and watersheds in poor condition were classified as having *impaired function* (3%).<sup>110</sup> FS reports that, in FY2022, 54% of the watersheds were in functioning condition, 44% were functioning at risk, and 3% had impaired function.<sup>111</sup> FS reports that, in FY2021, FS completed work across 287,600 acres in 10 priority watersheds and restored more than 21,000 acres of lakes and 2,390 miles of stream habitat.<sup>112</sup>

In FY2012, FS began developing watershed restoration action plans to identify projects and activities to improve the condition of priority watersheds. Watershed restoration activities may include a range of forestry or land management practices, such as decommissioning roads, reforestation, or restoring or enhancing stream habitat, among others. Under the WCF, FS is expected to actively monitor and track progress on watershed condition improvements.

## Wilderness and Other Special Land Designations

Congress has also provided management direction within the NFS by creating special designations for certain areas. Some of these designations—wilderness areas, wild and scenic rivers, and national trails—are part of larger management systems affecting several federal land management agencies.<sup>113</sup>

The NFS also includes several other types of land designations. The NFS contains many national game refuges and wildlife preserves, national recreation areas and scenic areas, national monuments, and other congressionally designated areas.<sup>114</sup> Resource development and use is generally more restricted in these specially designated areas than on general NFS lands, and specific guidance is typically provided with each designation.

Questions persist over the extent to which FS should protect the approximately 58.2 million acres of FS *inventoried roadless areas* (IRAs): areas where roads and timber harvesting are restricted

<sup>108</sup> P.L. 115-334, Title VIII, §8405. The 115<sup>th</sup> Congress also established a water source protection program (§8404). For more information on these changes, see CRS Report R45696, *Forest Management Provisions Enacted in the 115th Congress*, pp. 30-31.

<sup>109</sup> For more information on the classification process, see FS, *Watershed Condition Classification Technical Guide*, FS-978, 2011, at [https://www.fs.usda.gov/naturalresources/watershed/condition\\_framework.shtml](https://www.fs.usda.gov/naturalresources/watershed/condition_framework.shtml).

<sup>110</sup> Figures as reported do not add to 100%. FS, *FY2015 Budget Justification*, p. 5-9, at <https://www.fs.usda.gov/about-agency/budget-performance>. FS may also reports these categories as condition class I (functioning), condition class II (functioning at risk), and condition class III (impaired function). For more information on the watershed condition framework, see Forest Service, *Watershed Condition Framework*, FS-977, 2011, at [https://www.fs.usda.gov/sites/default/files/Watershed\\_Condition\\_Framework.pdf](https://www.fs.usda.gov/sites/default/files/Watershed_Condition_Framework.pdf).

<sup>111</sup> Figures do not add to 100% due to rounding. Data provided by FS on March 31, 2023.

<sup>112</sup> FS, FY2023 Budget Justification, p. 85, at <https://www.fs.usda.gov/about-agency/budget-performance>.

<sup>113</sup> For more information on wilderness, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics* and CRS Report R41610, *Wilderness: Issues and Legislation*. For more information on wild and scenic rivers, see CRS Report R45890, *Wild and Scenic Rivers: Designation, Management, and Funding* and CRS Report R42614, *The National Wild and Scenic Rivers System: A Brief Overview*. For more information on national trails, see CRS Report R43868, *The National Trails System: A Brief Overview*. For more information on other federal land designations, see CRS Report R43429, *Federal Lands and Related Resources: Overview and Selected Issues for the 118th Congress*.

<sup>114</sup> FS, *Land Areas Report*, 2018. For more information, see CRS Report R41285, *Congressionally Designated Special Management Areas in the National Forest System*.

by certain FS regulations.<sup>115</sup> Controversy over the designation and protection of such areas has resulted in multiple FS rulemakings on the topic, many of which were litigated, over more than two decades. The IRA designation originated in 2001 (*2001 rule*), through a rulemaking initiated by the Clinton Administration, although the George W. Bush Administration delayed implementation of the Clinton rule and issued an alternative policy. After both were litigated, the 2001 rule remained largely in place.<sup>116</sup> In 2020, FS, under the Trump Administration, issued a rule exempting the Tongass National Forest in Alaska from the 2001 rule.<sup>117</sup> In 2023, the Biden Administration rescinded the Trump Administration rule, restoring the applicability of the 2001 rule to the Tongass.<sup>118</sup>

## Other Uses

NFS lands are also used for other purposes and services supporting national policies and federal land laws. These uses or activities may be permitted on NFS lands under various authorities, collectively referred to as *special use authorizations* (SUAs), as noted earlier. SUAs allow uses of NFS lands for various purposes, ranging from commercial filming to ski resort operation, among others. For example, the Secretary of Agriculture is authorized to issue a type of SUA called rights-of-way (ROW) for the use and occupancy of NFS lands.<sup>119</sup> The ROW allow for the specific use of NFS lands for: various types of water infrastructure; infrastructure for the storage, transportation, or distribution of liquids, gases (with specified exceptions), and solid materials; electricity generation, transmission, and distribution infrastructure; communications systems infrastructure; roads, trails, highways, canals, tunnels and other means of transportation in general; and other “necessary” systems and facilities which are in the public interest.<sup>120</sup>

## Forest Health Conditions on the National Forest System

Forest health generally refers to the ability of forest ecosystems to respond to disturbance events (e.g., wildfires, ice or wind storms, insect and disease infestations, timber harvests).<sup>121</sup> Forest ecosystems have inherent characteristics that enhance their capability to survive such events (resistance) or facilitate recovery after disturbance (resilience). Some ecosystems are adapted to specific disturbances occurring at regular intervals (e.g., different fire regimes). For example, some forest ecosystems are adapted to relatively frequent (e.g., up to every 35 years) but low-intensity wildfires to burn surface fuels (e.g., needles, leaves), reduce competition, and return

<sup>115</sup> For more information, see CRS Report R46504, *Forest Service Inventoried Roadless Areas (IRAs)*.

<sup>116</sup> During the period the 2001 rule was being litigated, FS issued state-specific rules for the states of Colorado and Idaho, which supersede the 2001 rule in those states.

<sup>117</sup> Forest Service, “Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska,” 85 *Federal Register* 68688, October 29, 2020. For more information, see CRS Report R46505, *The Alaska Roadless Rule: Eliminating Inventoried Roadless Areas (IRAs) in the Tongass National Forest*.

<sup>118</sup> Forest Service, “Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska,” 88 *Federal Register* 5252, January 27, 2023.

<sup>119</sup> FLPMA (P.L. 94-579, Title V, 43 U.S.C. §§1761 et seq.) and the regulations are codified at 36 C.F.R. §251 Subpart B. For more information on FS ROWs and special use authorizations, see <https://www.fs.usda.gov/specialuses/>.

<sup>120</sup> These purposes are summarized from 43 U.S.C. §1761(a).

<sup>121</sup> *Disturbance* is defined as “any relatively discrete event in time that disrupts ecosystems, community, or population structure and changes resources, substrate availability, or the physical environment.” Steward T. A. Pickett and P. S. White, *The Ecology of Natural Disturbance and Patch Dynamics* (Orlando: Academic Press, 1985). Disturbance events may be unplanned (e.g., precipitation events) or planned (e.g., harvest, prescribed fire).

nutrients to the soil, among other benefits. Other forest ecosystems are adapted to infrequent but high intensity wildfires.

Degraded forest ecosystems, however, may be more susceptible to mortality in response to disturbances or may take longer to recover. Different disturbances may also interact and exacerbate the effects of other events in a feedback loop. For example, a prolonged drought may impair a tree's resistance to an insect or disease infestation, or may make a tree more susceptible to damage during a wildfire. In addition, some research indicates that climate variability is reshaping forest landscapes by altering the frequency, intensity, and timing of disturbance events in ways that may exceed the resistance and resilience capacity of many forests.<sup>122</sup> Many are concerned that degraded forest ecological conditions in the NFS are increasing the risk of insect or disease infestation or uncharacteristic wildfires, among other forest health concerns.

Forest restoration projects generally aim to improve forest conditions, such as improving watershed functioning or otherwise facilitating ecological resilience and resistance. Other forest restoration activities also include post-disturbance reforestation (i.e., reestablishing forest cover).<sup>123</sup> FS estimated around 1.5 million acres of NFS lands were in need of reforestation at the end of FY2020.<sup>124</sup> Wildfires were the largest driver of this reforestation backlog (81%); timber harvests were the second-largest driver (10%).<sup>125</sup>

FS reports forest health conditions on the NFS using several interrelated metrics.<sup>126</sup> For example, FS developed and uses the WCF to assess the agency's status and progress toward improving watershed functionality or integrity across the NFS. FS increased the number of NFS watersheds functioning properly by 1% (180 watersheds) from FY2011 to FY2022, decreased the number of watersheds functioning at risk by 1% (161 watersheds), and decreased the number of impaired watersheds by less than <1% (18 watersheds).<sup>127</sup> FS also reports the NFS acreage at risk for fire or insect, disease, or pest infestation. In 2023, FS published an inventory of old-growth and mature forests on NFS and BLM lands.<sup>128</sup> The rest of this section discusses forest health issues and challenges, such as those related to implementing, reporting, and assessing forest restoration activities.

<sup>122</sup> James M. Vose, David L. Peterson, and Toral Patel-Weynard, *Effects of Climate Variability and Change on Forest Ecosystems: A Comprehensive Science Synthesis for the U.S.*, FS, PNW-GTR-870, 2012, at <http://www.treeseearch.fs.usda.gov/research/treeseearch/42610>.

<sup>123</sup> The Repairing Existing Public Lands by Adding Necessary Trees (REPLANT) Act, enacted as IJIA, Division G, Title III, §§70301 et seq; 16 U.S.C. §1600 note, requires FS to conduct reforestation on NFS lands impacted by unplanned disturbance events (e.g., wildfire), directs FS to prioritize reforestation needs, and requires annual reports to Congress on reforestation needs and accomplishments.

<sup>124</sup> FS, *NFS Reforestation Strategy*, FS-1198, July 2022, p. 30, at <https://www.fs.usda.gov/managing-land/forest-management/vegetation-management/reforestation>.

<sup>125</sup> Other events such as windstorms, hurricanes, and insect and disease infestation contribute to 8% of the reforestation backlog. *NFS Reforestation Strategy*, p. 9.

<sup>126</sup> Forest health is difficult to measure. See, for example, D. J. Rapport, R. Costanza, and A. J. McMichael, "Assessing Ecosystem Health," *Trends in Ecology and Evolution*, vol. 13, no. 10 (October 1998), pp. 397-402.

<sup>127</sup> Calculations done by CRS using: FY2011 data downloaded from FS's Watershed Condition Framework website (at [http://www.fs.usda.gov/naturalresources/watershed/condition\\_framework.shtml](http://www.fs.usda.gov/naturalresources/watershed/condition_framework.shtml)) and FY2022 data provided by FS legislative affairs on March 31, 2023.

<sup>128</sup> Forest Service, *Mature and Old-Growth Forests: Definition, Identification, and Initial Inventory on Lands Managed by the Forest Service and Bureau of Land Management*, FS-1215a, April 2023. The report fulfills requirements established in a Biden administration executive order. Executive Office of the President, "Strengthening the Nation's Forests, Communities, and Local Economies," 87 *Federal Register* 24851, April 27, 2023.

### Forest Health: Federal vs. Nonfederal Forests

Forest health is often perceived by some as a larger problem for federal forests relative to other forests. Although this perception may be true—particularly across some measures, such as mortality or biomass density—it also may be an example of information availability bias: more information is available on forest health measures across federal forests due to greater levels of public access, availability for research, and scrutiny. Some studies have identified examples where forest health outcomes appear to be better on federal forests relative to private forests, however, or on public forests (federal, state, or local) relative to private forests. For example, watersheds with higher concentrations of federal compared to private forests had improved watershed conditions, and streams flowing through federal forests had higher water quality than streams flowing through nonfederal forests. Other studies have found that public forests tend to be more structurally complex than the more production-style forests on private lands; presumably, this complexity provides public forests with the interrelated benefits of biodiversity and resiliency. However, more research on the influence of ownership trends on various forest management objectives is needed to draw definitive conclusions.

**Sources:** Kirsten Gallo et al., *Northwest Forest Plan—the First 10 Years: Preliminary Assessment of the Condition of Watersheds*, FS, PNW-GTR-647, 2005, at [https://www.fs.fed.us/pnw/pubs/pnw\\_gtr647.pdf](https://www.fs.fed.us/pnw/pubs/pnw_gtr647.pdf); Shannon Hubler, *High Level Indicators of Oregon's Forested Streams*, Oregon Department of Environmental Quality, DEQ09-LAB-0041-TR, 2009, at <https://www.oregon.gov/deq/FilterDocs/10-LAB-003.pdf>; Vivian Griffey et al., “Ownership Patterns Drive Multi-Scale Forest Structure Patterns across a Forested Region in Southern Coastal Oregon, USA,” *Forests*, vol. 12, no. 1 (2021).

## Hazardous Fuels and Forest Restoration

In addition to general concerns about overall ecological conditions and fire, insect, and disease risk across the NFS, many have particular concerns regarding an accumulation of forest biomass resulting from a century of aggressive wildfire suppression and other land management practices. This biomass—dead and dying trees, heavy undergrowth, and dense stands of small trees—is often referred to as *hazardous fuels*. Hazardous fuels can significantly affect wildfire behavior, and contribute to wildfires becoming more intense, severe, and difficult to contain. Dense stands of trees may also facilitate the transmission of insect and disease infestations.

Projects that remove or modify these fuels are called *treatments*, and are intended to reduce the risk of catastrophic wildfire and facilitate post-fire recovery (see the HFRA section for more information on treatments and related authorities). Treatments include removing small-diameter trees (called *thinning*) or the deliberate use of fire in specific areas within prescribed conditions (called *prescribed burning*) to reduce fuel loads. Treatments may have broader forest restoration benefits as well.

For FY2022, FS reported about 63 million acres of NFS lands were at high or very high wildfire hazard potential—or, in other words, at high or very high risk for wildfires that would be difficult to contain.<sup>129</sup> FS reported that hazardous fuels reduction projects, or treatments, were completed on 3.2 million acres of NFS lands in FY2022, a decrease relative to the 3.7 million acres treated in FY2021.<sup>130</sup> At that pace, it would take nearly 20 years to eliminate the backlog of treatment needs, not accounting for maintaining treated areas to the desired resource conditions. In addition, some estimate that hazardous fuels are accumulating three times faster than the rate of treatment.<sup>131</sup>

<sup>129</sup> FS, *FY2024 Budget Justification*, p. 30a-192.

<sup>130</sup> FS, *FY2024 Budget Justification*, pp. 30a-155 and 30-232a.

<sup>131</sup> USDA, Office of the Inspector General (OIG), *FS Wildland Fire Activities - Hazardous Fuels Reduction*, 08601-004-41, July 2016, hereinafter referred to as *OIG, FS Hazardous Fuels*.

### Mitigating Wildfire Risk

Wildfire is an ecological process, and wildfires will occur in forests—and other vegetated landscapes—regardless of their ecological conditions. Some wildfires cannot be prevented or mitigated in certain ecosystems. For example, some ecosystems (e.g., lodgepole pines in the Rocky Mountain region) are adapted to high-severity, stand-replacing fires, and these fires are crucial to ecosystem functioning (e.g., the high temperatures from fires release the seeds to facilitate propagation). In forests adapted to low-severity fires, however, a high-severity fire could have damaging ecological impacts. Degraded forest ecosystems may contribute and benefit from fire, whereas some functioning ecosystems may be severely damaged by fires. Because of this, the overarching forest health concern related to wildfire is the extent to which the pattern of fire frequency and severity deviates from the historical fire regime. Therefore, a forest health objective of many forest managers and scientists is to reduce the risk of *uncharacteristic* fire rather than to reduce the risk of fire generally. Relatedly, another forest health objective is to facilitate the return of historic fire patterns specific to the forest type or, in some cases, to facilitate adaptation to a different fire regime based on changing climatic conditions. An interrelated objective is to reduce the potential for damaging impacts to the areas and communities surrounding forests when fires do occur.

## FS Goals and Strategies for Forest Restoration

IIJA directed FS (and DOI) to conduct forest restoration treatments to improve the fire regime condition class on 10 million acres of federal and Indian land identified as having a very high wildfire hazard potential by September 30, 2027 (five years after enactment).<sup>132</sup> In January 2022, Secretary Vilsack announced a 10-year strategy for wildfire risk mitigation (referred to as the *Wildfire Crisis Strategy* in this report).<sup>133</sup> According to the strategy, FS intends to treat up to an additional 20 million acres of NFS lands over the 10-year period.<sup>134</sup> Because the acreage goal is expressed as an “additional” amount, it is not clear if there is a more concrete acreage goal. At FS’s current pace of treatment (3.2 million acres treated in FY2022), FS could presumably complete treatments on 32 million acres over 10 years. In any case, it is not clear if achieving treatments on 20-30 million acres over the next 10 years would result in meaningful progress toward eliminating the backlog of 63 million acres of NFS lands in need of treatment.

As part of the Wildfire Crisis Strategy, FS intends to increase the scale, scope, and implementation of forest management projects generally, and forest restoration treatments specifically, in part by using HFRA planning authorities. For example, FS intends to use Secretary Vilsack’s Western Fire Emergency Action Determination to expedite project planning and environmental analysis across 28 million acres of high-risk and post-fire recovery areas in several western states.<sup>135</sup> FS also identified the need for a “paradigm shift” in land management across FS and other partners to facilitate increasing and sustaining fuel treatment accomplishments.<sup>136</sup>

<sup>132</sup> IIJA, §40803(b).

<sup>133</sup> USDA, “Secretary Vilsack Announces New 10 Year Strategy to Confront the Wildfire Crisis,” press release, January 18, 2022, at <https://www.fs.usda.gov/news/releases/secretary-vilsack-announces-new-10-year-strategy-confront-wildfire-crisis>. See also FS, *Wildfire Crisis Strategy*, FS-1187a, January 2022. For more information, including links to the strategy documents and implementation plans and press announcements, see FS’s Confronting the Wildfire Crisis website at <https://www.fs.usda.gov/managing-land/wildfire-crisis>.

<sup>134</sup> The Wildfire Crisis Strategy also identifies a goal of FS supporting treatment on up to an additional 30 million acres of non-NFS lands. FS, *Wildfire Crisis Strategy*, FS-1187a, January 2022 and FS, *Wildfire Crisis Implementation Plan*, FS-1187b, January 2022.

<sup>135</sup> FS, “Using Emergency Authorities to Support the Wildfire Crisis Strategy,” press release, February 10, 2023, at <https://www.fs.usda.gov/inside-fs/leadership/using-emergency-authorities-support-wildfire-crisis-strategy> and FS, *Summary of Inflation Reduction Act provisions and Authorized Emergency Actions*, Briefing Paper, January 2023.

<sup>136</sup> FS, *Wildfire Crisis Strategy*, FS-1187a, January 2022, p.4.

The underlying goals and strategies for increasing project implementation are not necessarily new. For example, in 2018, FS outlined a “shared stewardship” approach to address land management concerns at a landscape-scale and across ownership boundaries.<sup>137</sup> The Wildfire Crisis Strategy appears to build upon the shared stewardship approach by expanding the scale of existing agreements to “execute priority projects quickly and efficiently while we grow FS institutional capacity.”<sup>138</sup>

## Issues

Many forest health issues have been ongoing for decades. For example, concerns about deteriorating forest conditions and high fuel levels across all federal lands were raised after wildfires in Yellowstone National Park in 1988. In the 1990s, several reviews—including those by congressionally chartered commissions and the Government Accountability Office (GAO)—recommended that the federal land management agencies create long-term strategies for addressing forest health and reducing hazardous fuels. In the 2000s, GAO and the USDA Office of the Inspector General (OIG), among others, raised concerns with FS’s strategies for addressing forest health and implementation of the hazardous fuels reduction program. Some of these reports are listed below.

- In 1994, the congressionally chartered National Commission on Wildfire Disasters recommended federal land management agencies invest more in reducing hazardous fuels in high-risk ecosystems and observed that “the question is no longer if policy-makers will face disastrous wildfires and their enormous costs, but when.”<sup>139</sup>
- In 1995, a FS study recommended the agency increase hazardous fuel treatments to up to 3 million acres per year by 2005.<sup>140</sup>
- In 1999, GAO recommended FS develop a strategy to identify long-term options for reducing fuels to address forest health issues and mitigate wildfire risk.<sup>141</sup>
- In 2002, GAO recommended FS—and the other land management agencies—improve processes for identifying lands, resources, and communities at high wildfire risk.<sup>142</sup>
- In 2006, the USDA OIG raised concerns with FS’s hazardous fuels reduction program and recommended FS develop guidance and controls to identify,

<sup>137</sup> FS, *Toward Shared Stewardship Across Landscapes: An Outcome-Based Investment Strategy*, FS-118, 2018, at <https://www.fs.usda.gov/sites/default/files/toward-shared-stewardship.pdf> (hereinafter referred to as FS, *Shared Stewardship*). For more information, see FS’s Shared Stewardship website at <https://www.fs.usda.gov/working-with-us/shared-stewardship>.

<sup>138</sup> FS, “Achieving Our Mission Through Keystone Agreements,” press release, March 27, 2023, at <https://www.fs.usda.gov/inside-fs/leadership/achieving-our-mission-through-keystone-agreements>.

<sup>139</sup> The commission was established by the Wildfire Disaster Recovery Act of 1989 (P.L. 101-286) after the 1988 wildfires in Yellowstone. R. Neil Sampson, chair, *Report of the National Commission on Wildfire Disasters*, Washington, DC, 1994.

<sup>140</sup> FS, *Course to the Future: Positioning Fire and Aviation Management*, May 1995.

<sup>141</sup> U.S. Government Accountability Office (GAO), *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*, RCED-99-65, April 2, 1999, at <https://www.gao.gov/products/RCED-99-65>.

<sup>142</sup> GAO, *Severe Wildland Fires: Leadership and Accountability Needed to Reduce Risks to Communities and Resources*, GAO-02-259, January 31, 2002.

prioritize, implement, monitor, and report on hazardous fuels reduction projects and funding.<sup>143</sup>

- A 2016 OIG report assessed FS's progress toward implementing the recommendations from that 2006 report and found continued issues with FS prioritizing, tracking, and reporting of hazardous fuels reduction projects.<sup>144</sup>
- A 2019 GAO report examined FS's and DOI's fuel reduction methods and progress and identified several factors affecting agency efforts to implement fuel reduction projects, including the existing backlog of treatment needs.<sup>145</sup>

Concerns about NFS ecological health raise several issues about FS's management. Two specific issues—FS reporting and the pace and scale of project implementation—are discussed in more depth below.

## Pace and Scale of Project Implementation

Concerns about FS project implementation have been ongoing since at least 2001.<sup>146</sup> FS and others identify administrative process barriers as one of many factors impeding progress toward their forest restoration goals.<sup>147</sup> More specifically, some identify federal agency decisionmaking processes as preventing FS from implementing projects at their desired pace and scale, particularly related to NEPA compliance, public involvement, and administrative and judicial challenges to agency decisions.<sup>148</sup> For some, these administrative process barriers include concerns about the time and costs associated with NEPA compliance, public involvement, and litigation. For others, the administrative process barriers include concerns about FS's administrative capacities (e.g., funding, staffing, and training) for both completing NEPA requirements and for implementing projects.

Several studies have examined FS's NEPA compliance, public involvement, and litigation rates, though many studies date back decades and may not represent current conditions.<sup>149</sup> Examining

<sup>143</sup> USDA Office of Inspector General (OIG), *Implementation of the Healthy Forests Initiative*, 08601-6-AT, September 2006.

<sup>144</sup> OIG, *FS Hazardous Fuels*.

<sup>145</sup> GAO, *Wildland Fire: Federal Agencies' Efforts to Reduce Wildland Fuels and Lower Risk to Communities and Ecosystems*, GAO-20-52, December, 2019, at <https://www.gao.gov/products/gao-20-52>. Hereinafter referred to as GAO-20-52.

<sup>146</sup> For example, in 2001 Congress asked GAO to evaluate the extent to which administrative or judicial challenges impeded FS's implementation of fuel management projects. The 2003 report found that approximately 24% of the fuel reduction decisions signed in FY2001 and FY2002 were appealed (GAO, *Forest Service: Information on Appeals and Litigation Involving Fuels Reduction Activities*, GAO-04-52, October, 2003, at <https://www.gao.gov/assets/250/240305.pdf>). A later GAO analysis found that 20% of the fuel management projects identified for implementation in FY2006 through FY2008 were challenged through appeals or objections (GAO, *Forest Service: Information on Appeals, Objections, and Litigation Involving Fuel Reduction Activities, Fiscal Years 2006 through 2008*, GAO-10-337, March 4, 2010, at <https://www.gao.gov/products/GAO-10-337>).

<sup>147</sup> See, for example, House Committee on Natural Resources, *Resilient Federal Forests Act of 2017*, House Report, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2017, H.Rept. 115-370 (hereinafter referred to as H.Rept. 115-370), FS, *The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management*, 2002, at <https://www.fs.usda.gov/projects-policies/documents/Process-Predicament.pdf>, and FS, "National Environmental Policy Act Compliance," 84 *Federal Register* 114, June 13, 2019.

<sup>148</sup> See, for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *Exploring Solutions to Reduce Risks of Catastrophic Wildfire and Improve Resiliency of National Forests*, Oversight hearing, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., September 27, 2017, H.Hrg. 115-23 or S. Hrg. 115-112.

<sup>149</sup> See, for example, Elise S. Jones and Cameron P. Taylor, "Litigating Agency Change: The Impact of Courts and Administrative Appeals Process on the Forest Service," *Policy Studies Journal*, vol. 23, no. 2 (1995); Michael J. (continued...)

the costs associated with NEPA compliance is challenging, in part due to data constraints. Similar to many other federal agencies, FS does not routinely track or report the cost or overall personnel time associated with NEPA compliance at the plan or project level. Further, identifying causal factors regarding project implementation, or linking NEPA compliance and project implementation is likewise challenging, partly because FS does not routinely report the time between the issuance of a NEPA decision and project implementation.<sup>150</sup> A multitude of factors could impact project implementation, further complicating any potential causal analysis.

FS, however, does report the time between initiating a NEPA project, the signing of the decision document, and whether the decision was litigated. A 2020 study found that from 2005 through 2018 the median time between FS's initiation of a NEPA project and the signing of the decision document was five months, across all FS regions, project types, and NEPA decision types (though with variation across those variables).<sup>151</sup> The study noted that 82% of all FS decisions over that time were CEs. The authors also found significant decreases in the number of NEPA analyses initiated over the study period—for example, the number of CEs dropped by more than half. The study did not examine potential causes but did identify NEPA decisions covering larger areas as one potential explanation. In conclusion, the authors speculated that “FS is making extensive use of existing authorities to speed the vast majority of projects through NEPA analysis.”<sup>152</sup> That study, and others, point to other administrative barriers—such as inadequate program funding levels, staffing, and training—as potentially contributing to planning delays more than involvement from the public or administrative or judicial challenges.<sup>153</sup> In addition, this study and most academic scholarship to date generally have been unable to directly link or draw conclusions relating NEPA planning timelines to on-the-ground forest management accomplishments (i.e., forest restoration, reducing the risk of uncharacteristic wildfire).

For a 2019 GAO report, FS (and DOI) officials reported several factors affecting fuel treatment implementation. These factors include the scale of the problem, operating under continuing resolutions, balancing fuels projects in new areas with maintaining past treatments, the

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Mortimer et al., “National Forest Litigation in the U.S. Courts of Appeals,” *Journal of Forestry*, vol. 102, no. 2 (2004); William D. Leach, “Public Involvement in USDA Forest Service Policymaking: A Literature Review,” *Journal of Forestry*, vol. 104, no. 1 (2006); and Audrey Bixler et al., *Administrative and Judicial Review of NEPA Decisions: Risk Factors and Risk Minimizing Strategies for the Forest Service*, University of Oregon Ecosystem Workforce Program, Working Paper Number 66, 2016 (hereinafter referred to as Bixler et al. 2016).

<sup>150</sup> In some cases, FS may report that a project associated with a NEPA decision was completed, though this data may not be complete or timely, according to Forrest Fleischman et al., U.S. Forest Service Planning, Appeals, and Litigation Data on NEPA Compliance, 2005-2018. Retrieved from the Data Repository for the University of Minnesota and available at <https://conservancy.umn.edu/handle/11299/211669>.

<sup>151</sup> Forrest Fleischman et al., “U.S. Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining,” *Journal of Forestry*, vol. 118, no. 4 (July 2020), pp. 403-418 (and Forrest Fleischman et al., “Corrigendum to: U.S. Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining,” *Journal of Forestry*, vol. 120, no. 4 (July 2022), providing updated and corrected statistics). Hereinafter referred to as Fleischman et al. 2020. The findings from this article have been further debated, see Todd Morgan et al., “Response to the Journal of Forestry Article: “U.S. Forest Service Implementation of the National Environmental Policy Act: Fast Variable, Rarely Litigated and Declining,”” *Journal of Forestry*, vol. 119, no. 6 (November 2021) pp. 589-604; and Forrest Fleischman et al., “The National Environmental Policy Act and the USDA Forest Service: Where We Agree, Where We Disagree, and Why,” *Journal of Forestry*, vol. 120, no. 4 (July 2022), pp. 392-394.

<sup>152</sup> Fleischman et al. 2020, p. 414.

<sup>153</sup> See, for example, Bixler et al. 2016; Michael J. Mortimer et al., “Environmental and Social Risks: Defensive NEPA in the U.S. Forest Service,” *Journal of Forestry*, vol. 109, no. 1 (2011), pp. 27-33; or Marc J. Stern, “The Meaning of the National Environmental Policy Act Within the U.S. Forest Service,” *Journal of Environmental Management*, vol. 91 (2010), pp. 1371-1379.

availability of staff, the higher cost of treating WUI areas, community acceptance of fuel reduction projects, and the limited economic value of biomass.<sup>154</sup>

### ***Congressional Actions to Support and Accelerate Forest Restoration Projects***

In response to concerns about FS's pace of project implementation, Congress has enacted several provisions aimed at improving agency efficiencies. HFRA, first passed in 2003 and amended several times, includes provisions intended to expedite implementation of hazardous fuels reduction projects. Such provisions include the establishment of statutory CEs and expansion of other HFRA authorities (see "NEPA Categorical Exclusions Established in HFRA"). In addition, the 117<sup>th</sup> Congress provided FS with additional resources aimed at improving project implementation. For example, the IJA provided FS with \$5.4 billion in supplemental appropriations, some of which may be used for specified activities related to wildfire risk reduction and ecosystem restoration.<sup>155</sup> In FY2022, P.L. 117-169, often referred to as the Inflation Reduction Act of 2022, provided FS with \$1.8 billion specifically for hazardous fuels reduction on NFS lands in the WUI and \$100 million for satisfying FS's NEPA obligations, among other funding and activities.<sup>156</sup>

Some contend that expanding the use of HFRA authorities and allowing FS to plan more projects over larger areas under CEs would expedite project implementation and allow FS to achieve progress toward their restoration goals.<sup>157</sup> Despite the authorities provided in HFRA, the extent of NFS areas in need of treatment has continued to increase. These trends may change, however, as FS fully implements and applies some of the more recently enacted provisions and funding.

Others contend that changes made to FS decisionmaking processes—such as through the establishment of statutory CEs—are changing the basic legal framework for federal forest management and making it increasingly difficult for citizens to participate or challenge government decisions.<sup>158</sup> In addition, some stakeholders contend that expanding the use of these authorities could result in environmental impacts that exacerbate forest health concerns.<sup>159</sup>

### **Reporting**

FS reporting on treatment needs and accomplishments has varied over time, complicating analysis and Congress's ability to conduct oversight. At times, FS reports the number of NFS in need of hazardous fuel treatment; other times, FS reports acres at risk for wildfires that would be difficult to contain, and at still other times FS reports NFS acres at risk of fire or insect infestation. These metrics contain subtle differences. In its annual budget justifications, FS reports annual hazardous fuel accomplishments, though sometimes the accomplishments are reported differently. For example, sometimes FS reports NFS hazardous fuel accomplishments and other times FS reports hazardous fuel accomplishments on NFS and adjacent lands, creating uncertainty about how many of those acres were accomplished on NFS lands. In addition, some

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<sup>154</sup> GAO-20-52.

<sup>155</sup> The \$5.4 billion provided by IJA is specified as: \$1.7 billion in FY2022 and \$945.2 million annually in advance appropriations for FY2023-FY2026.

<sup>156</sup> IRA, P.L. 117-169, §23001.

<sup>157</sup> P.L. 108-148, 16 U.S.C. §§6501 et seq. See, for example, H.Rept. 115-370, Dissenting Views.

<sup>158</sup> See, for example, S.Hrg. 115-112 (e.g., letter submitted by Center for Biological Diversity); H.Rept. 115-370, Dissenting Views; or Martin Nie and Peter Metcalf, "National Forest Management: The Contested Use of Collaboration and Litigation," *Environmental Law Reporter*, vol. 46 (2016), pp. 10281-10298.

<sup>159</sup> See, for example, H.Rept. 115-370, Dissenting Views.

have raised concerns about how FS reports hazardous fuels accomplishments, including concerns that FS reports may overcount acreage accomplishments.<sup>160</sup>

In part to address these concerns, Congress has specified various reporting requirements for FS. See **Table 3** for a list of selected requirements related to reporting acres treated or restored.

**Table 3. Selected Forest Service (FS) Statutory Reporting Requirements**

| Citation            | Description                                                                                                                                                                                                                                            | Due Date(s) and Status                                                                                                                                                                                                                                                  |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16 U.S.C. §6591a(4) | Two reports evaluating progress toward project goals and recommended modifications to the HFRA §602 Insect and Disease area designations. Recipients not specified.                                                                                    | The first report was due not earlier than September 30, 2018, and was transmitted to Congress on August 10, 2020. <sup>a</sup> The second report is due not earlier than September 30, 2024.                                                                            |
| 16 U.S.C. §6591b(g) | Annual report on the use of HFRA §603 CE, also referred to as the Farm Bill CE, including a description of all acres treated through projects using this authority. Reports are to be submitted to specified committees of Congress and GAO.           | The first report was due by February 7, 2015, and annually thereafter. FS's FY2018, FY2019, and FY2020 budget justifications each included a special exhibit on farm bill implementation. Subsequent budget justifications have not included a similar special exhibit. |
| 16 U.S.C. §6591d(g) | Annual report on the use of HFRA §605 CE, also referred to as the Wildfire Resilience CE, including a description of all acres treated through projects using this authority. Reports are to be submitted to specified committees of Congress and GAO. | The first report was due by March 23, 2019, and annually thereafter. Two reports have been published to date (in 2019 and 2022). <sup>b</sup>                                                                                                                           |
| 43 U.S.C. §1748d    | Annual report on wildfire, insect infestation, and disease prevention on FS and Department of the Interior lands, including the number of acres treated for wildfire, insect infestation, or disease prevention.                                       | The first report was due by June 20, 2019, and annually thereafter. The first and only report to date was transmitted in October 2019. <sup>c</sup>                                                                                                                     |

**Source:** CRS, using legislative text, FS's annual budget and documents and congressional directives, available from FS's Budget and Performance website at <https://www.fs.usda.gov/about-agency/budget-performance>, and information provided by FS's legislative affairs staff in April, 2023.

**Notes:** CE = categorical exclusion for requirements of the National Environmental Policy Act (P.L. 91-109); GAO = Government Accountability Office; HFRA = Healthy Forests Restoration Act (P.L. 108-148).

- a. FS, *2014 Farm Bill Section 602 Report*, August 10, 2020, at <https://www.fs.usda.gov/sites/default/files/inline-files/Report%20-%20Farm%20Bill.pdf>.
- b. The first report is FS, *Annual Report on the Use of Categorical Exclusions Under Sec. 605, Wildfire Resilience Projects*, April 9, 2019, at <https://www.fs.usda.gov/sites/default/files/2019-11/categorialexclusionsreport.pdf>. The second report is FS, *Annual Report on the Use of Categorical Exclusions Under Sec. 605, Wildfire Resilience Projects*, April 8, 2022, at <https://www.fs.usda.gov/sites/default/files/2022-11/fy2022-wildfire-resilience-projects-report.pdf>.
- c. The report and accompanying transmittal letters were provided to CRS from FS's legislative affairs staff on April 19, 2023.

<sup>160</sup> Adiel Kaplan and Monic Hersher, "The Forest Service is Overstating its Wildfire Prevention to Congress Despite Decades of Warnings Not To," NBC News, August 9, 2022, at <https://www.nbcnews.com/news/investigations/forest-service-overstating-wildfire-prevention-progress-congress-decad-rcna41576>.

## Issues for Congress<sup>161</sup>

Congress considers many issues regarding NFS management. Current debates tend to focus more on particular issues that involve land and resource allocation and valuation, such as balancing increasing demands for commodity and noncommodity uses and services from the NFS. Simultaneously, public interest in how these resource allocation decisions are made and the lands are used has increased. NFS management and administration has thus become more complex and contentious. However, these controversies often derive from questions about the fundamental management principles of multiple use and sustained yield.

The meaning and application of the dual concepts of multiple use and sustained yield have been debated since Congress first authorized the reservation of federal land.<sup>162</sup> The debates generally revolve around questions such as these:

- Is multiple use achieved through adjacent or sequential allowance of single resource uses or by simultaneous application of several uses?
- Is sustained yield management to provide a regular flow of products for human use or to assure the maintenance of the biological productivity of the forest resources?

When these management principles were established, Congress conferred considerable discretion on FS to make those decisions. As concerns arose and persisted about the agency's interpretation of multiple use and sustained yield, Congress began to restrict that discretion by enacting legislation specifying that certain uses occur (or not occur) in specified areas.<sup>163</sup> However, Congress has not enacted legislation directly addressing the concepts of multiple use or sustained yield across the entire NFS.

Conflicts arise as users and land managers attempt to balance multiple uses and services and produce a sustained yield of resources from the NFS. Congress often considers legislation to prioritize various uses over others or to define or specify levels of production. For example, Congress has considered legislation to prioritize timber production over other uses in certain areas or to specify a certain annual output of timber production.<sup>164</sup> As another example, Congress has conferred special management designations in certain parts of the NFS (e.g., wilderness, national recreation area, national scenic area) and, in doing so, directed FS to manage the designated area to emphasize specific values. Sometimes, these designations have included provisions restricting certain activities (e.g., timber harvesting, road construction).

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<sup>161</sup> For a broader discussion on forestry issues, including comparisons between federal and nonfederal forestry, see CRS Report R46976, *U.S. Forest Ownership and Management: Background and Issues for Congress*.

<sup>162</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Multiple Use and Sustained Yield: Changing Philosophies for Federal Land Management*, the proceedings and summary of a workshop convened in March 1992, prepared by Congressional Research Service, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess., December 1992.

<sup>163</sup> For example, Congress has established several Special Management Areas in the NFS with specified uses. See CRS Report R41285, *Congressionally Designated Special Management Areas in the National Forest System*.

<sup>164</sup> See for example, H.R. 2613 from the 115<sup>th</sup> Congress, which would have established forest revenue areas within the NFS and specified an annual timber harvest output level.

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