

Policy Challenges for Collaborative Forestry

A Summary of Previous Findings and Suggestions

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After several years of effort, many collaborative and community-based forestry groups that formed in the 1990s are still struggling to implement their land management projects. The combined impact of several factors, including legal challenges, funding problems, agency history, bureaucratic processes, and poor internal communication, seems to conspire against collaborative solutions for today's land management challenges.

Several efforts have been made in recent years to identify barriers to collaboration and to identify various solutions to these complicated public resource issues. As part of this chain of examinations, the Ecological Restoration Institute, in cooperation with the Pinchot Institute, the Society of American Foresters, and American Forests, has organized a 2-day workshop to clarify policy and procedural factors that hinder collaborative forestry efforts and suggest policy changes to address those factors. This document, which summarizes the findings and suggestions from previous workshops and policy analyses, has been prepared for participants in the September 2003 workshop. In order to facilitate discussion, this document is divided into three sections. The first section reviews legal and regulatory problems faced by collaborative forestry groups. The second lists various funding challenges faced by agency partners and collaborators. The third section summarizes barriers to collaboration that have been attributed to Forest Service culture and practices. Each problem statement is followed by an explanatory discussion from the literature, and, where available, suggestions for policy changes that could alleviate the problem.

Laws and Policies

The complex array of laws and policies governing Forest Service actions has created confusing and in some cases conflicting guidance on when, where, and how collaborative efforts can be undertaken. As a result, some agency personnel have grown reluctant to collaborate for fear of legal and professional repercussions. Examples of inconsistent interpretation and application of federal laws affecting collaboration are listed below.

***Problem:* Many agency personnel are unwilling to participate in a group that is not Federal Advisory Committee Act (FACA)-chartered.¹**

Discussion: Vague language within the Act has led to differing legal interpretations and inconsistent rulings of when FACA applies and when it does not.² The Forest Service, in particular, has expressed confusion about whether or not their participation in a collaborative forestry group makes that group subject to FACA.³ Because of this, some in the agency refuse to participate in any group which does not comply with FACA.⁴

Suggestions:

- Provide a single, clear interpretation of where FACA applies and where it does not. For example, develop a manual or guidelines and seminars that help FS employees to better understand the law.⁵

***Problem:* Compliance with FACA is a problem for collaborative forestry groups because the Act's requirements are onerous.⁶**

Discussion: Under FACA, federal advisory committees must be chartered, and their charters must include a description of duties, the estimated number and frequency of meetings, and other details. The chartering process often takes several months to complete, with final approval based upon a balanced membership and the nature of work conducted. Once a group is chartered, it must comply with the following requirements for every meeting it holds: publish the meeting time, date, place, and agenda in the Federal Register 15 days in advance of holding it; provide public access; keep detailed minutes; and have a designated federal employee in attendance.⁷

***Problem:* Some federal laws have been found to discourage private landowners and businesses from collaborating with the Forest Service.⁸**

Discussion: NEPA and the Endangered Species Act (ESA) sometimes discourage private landowners from partnering with federal agencies on cross-jurisdictional projects because they do not want to become subject to federal environmental regulatory processes.⁹ The Freedom of Information Act sometimes discourages private entities from sharing sensitive information with federal agencies.¹⁰ The Sherman Antitrust Act may limit private companies from collaborating in collective landscape planning.¹¹

***Problem:* Environmental laws such as the National Environmental Policy Act, the Endangered Species Act, and the National Forest Management Act pose cumbersome and time-consuming procedural requirements.¹²**

Discussion: Agency policies tend to manifest themselves in rigid and complex processes. The associated “red tape,” paperwork and required meetings can easily scare off potential collaborators, intimidate agency staff, and drain energy and support from collaborative projects. The NEPA process in particular has been questioned because of “1) the amount of time it takes to complete NEPA; 2) the costs of NEPA relative to project size and impact; 3) the process of NEPA and its usefulness in improving projects; 4) quality of NEPA analysis and agency capacity; 5) concern for litigation prevention over doing what is right for the land; and 6) problems with consultation.”¹³

Increasingly, however, agency partners and policy scholars have found that these laws are not in and of themselves the problem. The problem, many say, lies in the delays associated with their implementation, which are sometimes due to agency regulations but also stem from excessive environmental analyses by agency personnel anxious to cover themselves in the case of potential appeals and litigation.¹⁴

Suggestions:

- Streamline ESA Section 7 consultations for projects carried out under the auspices of the National Fire Plan.¹⁵
- Look at NEPA and ESA together to understand how and if they have become barriers to restoration.¹⁶
- Review NEPA – the law, regulations, and implementation practices – to figure out what’s not working and change it.¹⁷
- Exempt hazardous fuels reduction and forest health projects from analysis of alternatives.¹⁸
- Exclude fuels reduction and forest health projects from the requirements for a full environmental impact statement.¹⁹
- Categorically exclude hazardous fuels treatments, forest health and restoration projects from NEPA analysis.²⁰
- “Any changes to NEPA should be based on on-ground experience and should retain the value NEPA provides to decisions.”²¹
- Limit requests for judicial review of fuels reduction projects to a 15-day period, limit preliminary judicial injunctions to 45 days, and require judicial rulings within 100 days.²²

***Problem:* When federal courts reach different decisions on certain national forest management procedures and standards, they leave forest managers in a quandary as to how to proceed.²³**

Discussion: In some cases, all decisions on all pending projects have been put on hold while the agency waits for clarification on judicial rulings. For example, there are conflicting judicial decisions on the appropriateness of National Environmental Policy Act (NEPA) categorical exclusions for “extraordinary circumstances;” rulings supporting the use of wildlife population data versus habitat to comply with management indicator species monitoring; and whether or not the Migratory Bird Treaty Act applies to federal actions.²⁴

***Problem:* Widespread use of appeals to halt or delay forest management projects has caused significant delays in project planning and implementation.²⁵**

Discussion: There are many stories of collaboratively-designed projects delayed for months or even cancelled due to appeals by outside groups that have not participated in the collaborative process.²⁶ These delays have led to new regulations and proposed legislation that would limit the ability to appeal to those who have participated in earlier planning or comment periods.

On the other hand, those advocating for retaining access to appeals, particularly some environmental interest groups, argue that the appeals process should not be changed, for the following reasons. 1. Appeals are not born in isolation; in most cases there is a long-standing, unresolved conflict around the appealed issue. 2. A lack of involvement by some groups in the pre-decisional process may be a conscious choice. They may not have the time and personnel to participate in lengthy and expensive processes; appeals are a more efficient way of participating. 3. Delays can be a strategic tool. A project delay might enable participants to simultaneously pursue other entry points to the political process to achieve their goals before a final decision forecloses options that are undesirable to the group.²⁷

Suggestion:

- Make legislative and regulatory changes to limit the ability to appeal to those who have been involved in the process of project development and review.²⁸

Funding Issues

Although collaborative resource management is believed to reduce management costs (by reducing later conflict and allowing organizations to pool resources and develop joint management strategies), there are also substantial costs associated with collaborative group processes, most notably extremely large time demands placed on managers and other collaborators.²⁹

***Problem:* There is no source of consistent, long-term, yet flexible funding of the kind needed for collaborative forest efforts.³⁰**

Discussion: Research on collaborative groups has found that stable, long-term, and flexible funding is closely correlated with a group's effectiveness.³¹ Yet the Forest Service, the primary funder of collaborative forestry, is chronically short on funding for collaborative efforts, and what funding is available is inconsistent (long turnaround times for grant approval, findings not distributed in a timely manner, funding limited to one year because of agency budgeting procedures).³²

Suggestion:

- Institutionalize funding for collaborative efforts by creating standing programs.³³
- Invest in forest restoration before fire suppression.³⁴
- Address forestry funding in the National Fire Plan and in Farm Bill's Forestry Title.³⁵
- Improve funding for agency restoration and maintenance activities, contracting personnel, the National Fire Plan, and regulatory agencies.³⁶

***Problem:* Rigid budget structures limit the agency's ability to fund collaborative efforts.³⁷**

Discussion: In some cases, the agency has funds but is unable to allocate them to collaborative activities. Forest Service budgets are driven by line items, and no lines exist for collaborative efforts or agency activities like public involvement and collaborative stewardship.³⁸ As a result, managers have little flexibility to redirect appropriations, leaving many collaborative partnerships or projects unfunded because they don't fit within the agency's budgeting structure.³⁹

Suggestion:

- Create a line item for collaboration or identify specific line item(s) from which collaboration will be funded. (e.g., Funds for collaboration in identifying and developing hazardous fuels reduction project under the Healthy Forests Restoration Act shall be derived from the Wildland Fire Management Program, line items for Preparedness and/or Hazardous Fuel).⁴⁰

***Problem:* Much of the funding available for collaborative efforts is only available in large amounts; funding needs to be scaled to the needs of rural communities and institutionalized into standing programs.⁴¹**

Suggestion:

- Reinststate and maintain funding for the Economic Action Programs, which “provide the planning, capacity building, and creation of social capital necessary to build a consistent program of work for restoration.”⁴²
- Ensure county payment funding gets to the ground.⁴³
- Create new fuels reduction funding program for local and tribal governments.⁴⁴

***Problem:* Agency fiscal procedures, such as the match requirements for cost-share grants and borrowing funds for fire fighting, can undermine collaboration forestry efforts.⁴⁵**

Discussion: Many community groups and small non-profit organizations report difficulty meeting the funding match required for Forest Service cost-share agreements. Although the law authorizing collaborative cost-share grants does not specify what percentage of the match must be provided by cooperators, the Forest Service manual instructs agency personnel to negotiate a dollar-for-dollar match.

Forest Service rules generally do not allow managers to contribute funds to a project prior to its implementation. The Forest Service generally reimburses for work after it is completed. But agency partners, especially small rural governments and organizations, are not likely to be able to carry large project costs.⁴⁶

Recent trends in American governance, emphasize “nonhierarchical, place-based networks in which government, citizens, and organized stakeholders cooperate and negotiate” land management issues.⁴⁷ The public has come to expect that agency managers will be “accountable” to the groups with whom they collaborate; and to many, accountability has come to mean “the ability of government to actually deliver on promises.”⁴⁸ This new definition of accountability is not widely accepted within the agency, however, and the persistence of traditional attitudes and practices presents a significant barrier to collaboration.

Problem: Agency personnel are exclusionary and do not respond to input from non-agency partners.⁴⁹

Discussion: Would-be collaborators sometimes complain that agency employees have not always taken the time necessary to answer invitations or build relationships, leaving the impression that their work is somehow ‘above’ community relations and collaboration. This behavior may be due to several factors, including heavy workloads, lack of collaboration/facilitation skills, funding and budget constraints, and agency priorities. This sense of indifference towards collaboration is exacerbated by negative experiences with past public participation. Interest groups and individuals report participating in scoping meetings, hearings, and public comment periods only to see the agency make management decisions that they believe went against the expressed interests of the public and the best interest of the environment.⁵⁰ The Forest Service’s ‘we are the experts’ attitude also leads to dismissal of critics who seem ill informed or extreme in their views.⁵¹ Others have observed damage to collaborative efforts due to turf battles among agencies.⁵²

Problem: The agency is unwilling to commit to collaborative group rules or decisions.⁵³

Discussion: Policy analysts also report a continuing trend in the agency’s reluctance to yield significant control within a collaborative setting. While it may acknowledge an understanding of how partnerships should work, the philosophy of the agency appears to favor top-down delivery of programs and control at all times.⁵⁴ Non-federal participants in collaborative groups complain that the Forest Service officials are unnecessarily protective of their discretion, to the point that they give their partners no guarantee that what is planned will actually be accomplished.⁵⁵

Problem: Lack of communication between different agency branches and departments and among district, forest, regional, and national offices further impedes collaboration.⁵⁶

Discussion: National Forest System staff are often unaware of existing networks of collaboration between Cooperative Forestry staff and local communities – even when staff from both units work out of the same office.⁵⁷ In addition, there are wide gaps in

understanding between line officers and contracting officers with regard to partnerships and collaboration. For example, many timber sale contracting officers and service contracting officers rarely work together, despite the need for an understanding of both sets of procedures under new legislation.⁵⁸ In other instances, the agency's leadership has expressed support of collaboration, but there has been general inconsistency in their interpretation at the local/regional level.⁵⁹

***Problem:* Agency employees are reluctant to use contracting authorities to their full potential, often due to misunderstanding the true intent and applicability of such authorities.⁶⁰**

Discussion: The Forest Service's erratic interpretation of its own contracting authorities is a common problem for collaborative forestry groups. Contracting officers in particular are resistant to using new authorities that raise ethical concerns (e.g., collaboration may be a violation of anti-trust law) and may become problematic in internal audits.⁶¹ As a result, some "collaboratives are experiencing the enormously frustrating experience of spending months or years carefully developing consensus-based solutions with diverse interests only to be told as they prepare to implement these that there are no vehicles to accomplish the tasks other than traditional timber sales, cost-share agreements, or cooperative agreements. Contracting officers consistently refuse to attempt more creative solutions because they believe they will be held personally liable should these projects fail."⁶²

Suggestions:

- Promote internal training sessions and seminars on how to make the best use of all contracting mechanisms and make contracting officers familiar with the use of new authorities. Any new authority passed in Congress should include adequately funding for training of FS employees so they can make the best use out of them.⁶³
- Support stewardship contracting authorities and monitoring.⁶⁴
- Support increased hires in procurement.⁶⁵
- Support Service Contract Act enforcement and accountability.⁶⁶
- Develop leadership within the agencies to better use existing authorities.⁶⁷

***Problem:* The agency's practice of transferring line officers every few years is problematic, because institutional knowledge about and commitment to collaborative efforts tends to leave with the individual.⁶⁸**

Discussion: When key agency partners are transferred, non-agency partners find that they must inform new personnel of existing agreements, or even renegotiate them. One study that tracked 35 collaborative processes over a three-to-five year period found that personnel changes affected 42% of the original cases.⁶⁹ In some cases, replacement or transfer of key agency personnel has caused the entire collaborative effort to fail.⁷⁰

Problem: There is a lack of internal support and incentives for agency staff to collaborate.⁷¹

Discussion: Research on collaborative resource management groups has found that the most successful efforts are those which agencies have amply dedicated staff time.⁷² Researchers have also found that decentralized agencies that delegate decision-making authority to their field staff are more effective collaborators than those from centralized, hierarchical agencies.⁷³ Unfortunately, as Forest Service managers know, staff time and decision-making authority are in short supply in Forest Service field work. In the Forest Service, employees who attempt to collaborate and implement innovative ideas are unlikely to be rewarded or recognized for their efforts. The agency's employee performance evaluation criteria do not include collaboration or partnership activities, so line officers who want to get ahead in the agency have little incentive to risk spending their time on new collaborative. In some cases, risk-takers have been actively censured for engaging in collaborative activities.⁷⁴

Suggestions:

- Develop and utilize performance evaluation criteria that specifically measure the ability and willingness to work with communities and other external interests.⁷⁵
- Ask Congress to authorize the creation of regional training teams comprised of representatives from federal agencies, community-based collaborative groups, contractors/workers, and academic institutions to provide training on local level collaboration.⁷⁶
- Ask Congress to authorize the creation of local and state advisory councils to assist the federal agencies in their efforts to develop meaningful collaborative processes at the local level.⁷⁷

Problem: There is minimal agency support for monitoring and evaluation.⁷⁸

Discussion: Literature specific to collaborative forestry resounds with calls for monitoring and evaluation of collaborative group processes and outcomes as a way to provide accountability among different parties.⁷⁹ In addition to providing a measure of accountability, monitoring and evaluation offer a means of documenting and learning from prior experiences in collaboration, reducing the risk that mistakes will be repeated.⁸⁰ Yet monitoring and evaluation are the most under-funded, least often implemented aspect of agency management.⁸¹

Suggestions:

- Improve agency commitment to monitoring and evaluation, including use of standardized protocols.⁸²
- Establish a "National Advisory Council on Hazardous Fuels Reduction;" a commitment to engaging local communities and ensuring access to data; an annual reporting requirement and structure; and a funding commitment similar to the one for collaboration.⁸³

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Endnotes

¹ Loucks and Kostishack 2001.

² The confusion stems from the term “utilized” – there are different interpretations of when an advisory committee is utilized by a federal agency (NRLC 2000, Norris-York 1996).

³ “At times, the agency’s interpretation of FACA is so strict as it lead partners to believe that it is being used by federal agencies to thwart collaborative activities that they wish to avoid for other reasons” Loucks and Kostishack 2001 p.8).

⁴ Loucks and Kostishack 2001.

⁵ Loucks 2002.

⁶ Norris-York 1996. NRLC 2000.

⁷ Norris-York 1996. NRLC 2000.

⁸ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000.

⁹ Loucks and Kostishack 2001.

¹⁰ Loucks and Kostishack 2001.

¹¹ Wondolleck and Yaffee 2000.

¹² “The environmental laws [of the 1960s and 1970s] spawned thousands of pages of regulations and administrative rules... These requirements included a stream of predecisional consultations and analyses, often followed by postdecisional appeals and litigation” USDA Forest Service 2002, p.12.

¹³ Sustainable Northwest et al. 2001, p.9.

¹⁴ USDA Forest Service 2002, Loucks and Kostishack 2001, Sustainable Northwest et al., 2001, KenCairn 2000.

¹⁵ Department of Interior and Department of Commerce regulations proposed June 5, 2003 (Federal Register).

¹⁶ Sustainable Northwest et al. 2001.

¹⁷ Sustainable Northwest et al. 2001.

¹⁸McInnis bill would require expedite environmental analysis of hazardous fuels reduction projects by requiring the Forest Service or BLM to study only the proposed action and not other management alternatives (Healthy Forests Restoration Act of 2003 (HR 1904) Section 104).

¹⁹ HR 1904.

²⁰ Healthy Forests Initiative; Also see new regulations effective 6/5/03 and 7/29/03.

²¹ Sustainable Northwest et al. 2001.

²² H.R.1904, Sec.106.

²³ NRLC 2000.

²⁴ NRLC 2000.

²⁵ USDA FS 2002.

²⁶ USDA FS 2002.

²⁷ Cortner et al. 2003.

²⁸ McInnis bill would restrict appeals to those who had “submitted specific and substantive written comments during the preparation stage” of the project (Sec.105). Also see new USDA FS and BLM regulations effective June 4, 2003.

²⁹ Arganoff and McGuire 1999, Wondolleck and Yaffee 2000.

³⁰ Loucks and Kostishack 2001, Sustainable Northwest et al. 2001.

³¹ Born and Genskow 2000, Wondolleck and Yaffee 2000, Yaffee et al. 1996.

³² Loucks and Kostishack 2001, Sustainable Northwest et al. 2001.

³³ Sustainable Northwest et al. 2001.

³⁴ Sustainable Northwest et al. 2001.

³⁵ Sustainable Northwest et al. 2001.

³⁶ Sustainable Northwest et al. 2001.

³⁷ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000.

³⁸ Loucks and Kostishack 2001.

³⁹ Wondolleck and Yaffee 2000.

⁴⁰ American Forests 2003.

⁴¹ Sustainable Northwest et al. 2001.

⁴² Sustainable Northwest et al. 2001, p.11.

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- ⁴³ Sustainable Northwest et al. 2001; The PILT and Revenue Refuge Sharing Permanent Funding Act (S. 511, introduced by Sen. Bingaman in 2003) would provide permanent funding for the payment in lieu of taxes program.
- ⁴⁴ HR 1904, Sec. 802.
- ⁴⁵ Baker and Kusel 2003, Loucks and Kostishack 2001.
- ⁴⁶ Baker and Kusel 2003, Loucks and Kostishack 2001.
- ⁴⁷ Weber 1999, p. 456.
- ⁴⁸ Weber 1999, p. 456.
- ⁴⁹ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000, KenCairn 2000.
- ⁵⁰ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000.
- ⁵¹ KenCairn warns that “dismissal ... [of] Zero-cut activists and other questioning commercial uses of public land resources ... fails to recognize how significant and pervasive this distrust of the economy runs in the broader public [and] the legacy of past mis-management of public lands that was in many cases driven by maximizing commercial gain at the expense of ecological integrity” (p. 11). He advises the agency to acknowledge and address “the increasingly pervasive sense of distrust and disempowerment that the broader public feels” toward agency management of the national forests (KenCairn 2000, p. 11).
- ⁵² Wondolleck and Yaffee 2000.
- ⁵³ Loucks and Kostishack, 2001
- ⁵⁴ Loucks and Kostishack, 2001
- ⁵⁵ Loucks and Kostishack, 2001
- ⁵⁶ Baker and Kusel 2003, Frentz et al. 1999, Sustainable Northwest et al., 2001, Loucks, 2002.
- ⁵⁷ Baker and Kusel 2003, Frentz et al. 1999.
- ⁵⁸ Sustainable Northwest et al., 2001
- ⁵⁹ Loucks, 2002.
- ⁶⁰ Sustainable Northwest 2002, Loucks and Kostishack 2001. Sociologists and policy analysts cite cases where Regional and Forest-level line officers says the agency does not have the authority to do something, while the Washington Office simultaneously says it does (Loucks and Kostishack 2001, KenCairn 2000).
- ⁶¹ Loucks and Kostishack 2001.
- ⁶² KenCairn 2000, p.6.
- ⁶³ Pinchot Institute 2003.
- ⁶⁴ Sustainable Northwest et al. 2001.
- ⁶⁵ Sustainable Northwest et al. 2001.
- ⁶⁶ Sustainable Northwest et al. 2001.
- ⁶⁷ Sustainable Northwest et al. 2001.
- ⁶⁸ Loucks and Kostishack 2001.
- ⁶⁹ Wondolleck and Yaffee 2000.
- ⁷⁰ Loucks and Kostishack 2001.
- ⁷¹ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000, KenCairn 2000.
- ⁷² Imperial and Hennessey 2000.
- ⁷³ Thomas 1999, Born and Genskow 2000.
- ⁷⁴ Loucks and Kostishack 2001, Wondolleck and Yaffee 2000, KenCairn 2000.
- ⁷⁵ Sustainable Northwest et al. 2001, American Forests 2003.
- ⁷⁶ American Forests 2003.
- ⁷⁷ American Forests 2003.
- ⁷⁸ Loucks and Kostishack 2001.
- ⁷⁹ Loucks and Kostishack 2001, Sustainable Northwest et al. 2001, KenCairn 2000, Wondolleck and Yaffee 2000.
- ⁸⁰ Increasingly, sociologists and political scientists studying collaboratives are identifying a lack of mechanisms for enforcing group’s standards and agreements to be a major problem (Weber 1999, Mandell 1999, Cigler 1999). Because of these issues of trust, as well as the reality that unscrupulous individuals can misuse collaborative processes, some sociologists advise that collaborative efforts should focus “not just on building trust but rather on establishing predictability and reducing vulnerability” (Mandell 1999, p.13).
- ⁸¹ Loucks and Kostishack 2001.
- ⁸² USDA Forest Service 2002, citing US GAO 1997.
- ⁸³ American Forests 2003.