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The National Forest Management Act in a Changing Society, 1976-1996: How Well Has It Worked in the Past 20 Years?: Will It Work in the 21st Century? (September 16-18)

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### The National Forest Management Act in a Changing Society, 1976-1996: How Well Has It Worked in the Past 20 Years? Will It Work in the 21st Century?

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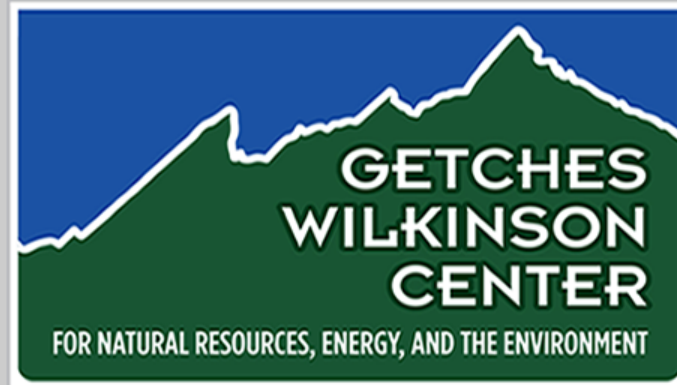
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**THE NATIONAL FOREST MANAGEMENT ACT  
IN A CHANGING SOCIETY**

**1976-1996**

**HOW WELL HAS IT WORKED IN THE PAST 20 YEARS?**

**WILL IT WORK IN THE 21<sup>st</sup> CENTURY?**

Margaret A. Shannon

and

K. Norman Johnson

THE NATIONAL FOREST MANAGEMENT ACT  
IN A CHANGING SOCIETY

1976 - 1996

September 16-18, 1996

Natural Resources Law Center  
University of Colorado  
School of Law  
Boulder, Colorado

## **THE NATIONAL FOREST MANAGEMENT ACT IN A CHANGING SOCIETY**

The idea of undertaking an independent assessment of the National Forest Management Act came from several people actively involved in writing the law. They wondered whether the NFMA was achieving their many expectations. They marveled at the amount and rate of change in society over the past 20 years and wondered whether the mechanisms for flexibility and adaptation they put in the law were sufficient in such a dynamic society. They wondered mostly what others thought of the past 20 years from their perspective and their experience.

A fundamental premise of this project is that there are many avenues through which people develop knowledge and all should be considered equally. Managers gain knowledge through their efforts to address and solve practical problems of resource management. Citizens develop knowledge through their efforts to understand and shape resource management practices and policies to their needs and interests. Scientists gain knowledge by developing ideas for how to achieve management objectives and testing them in everyday settings of management. Policy makers gain knowledge when they attempt to craft institutional frameworks capable of meeting social goals and objectives. While obviously linked and interdependent, few forums bring these different forms of knowledge together so that mutual learning through interaction is possible. That is one of the primary goals of this project.

To achieve the goal of incorporating many forms of knowledge in this assessment, several types of forums for discussion are needed. One forum included small groups of people long active in the development and implementation of NFMA whose discussions framed the questions guiding this conference. Another forum was our classes last winter/spring in which we brought in numerous guest speakers for our students to “interview.” Now, this conference is an opportunity to bring together a larger, more diverse audience to participate in reflecting on the past performance of the NFMA, and most importantly, whether it can meet the future expectations for the management of public lands. Following this conference, there will be policy discussion sessions with those leading the agencies and influencing the policy process.

At this conference, we hope that by bringing together a wide range of people and offering opportunities to hear a diverse array of speakers whose knowledge and experience span many aspects of the development and implementation of NFMA, we can create an opportunity for “policy learning.” To realize this learning potential, we have incorporated an evening of discussion amongst the conference attendees. The purpose of these evening roundtables is to allow for a vibrant and informed discussion of the central questions guiding the conference and from that discussion to develop a set of criteria appropriate for evaluating whether and how NFMA should be reformed. These criteria along with the other information generated in this overall project will be the core of the policy discussions following the conference as we approach the anniversary of the NFMA.

## **HOW WELL HAS THE NFMA WORKED IN THE PAST 20 YEARS?"**

### **Responding to a Crisis**

On October 22, 1996 the National Forest Management Act will be twenty years old. It was created in a most unusual fashion. The ink was barely dry on the Forest and Rangeland Renewable Resources Planning Act (RPA) in August 1974 when the 4th Circuit Appeals Court in West Virginia ruled that the language of the 1897 Organic Act should be read literally. This meant that trees could only be cut on the national forests when they were dead, dying, mature or large growth of trees which had been individually marked and designated. The crisis created by this judicial ruling worried all parties, on all sides, and all across the continent --- especially in Alaska where a similar case was under appeal and a 9th Circuit decision could stop all timber harvesting on national forests.

The 4th Circuit Court ruling on the "Monongehela case" came as a shock to both the Forest Service and the timber industry. Congressional offers to change the language of the Organic Act in the drafting of the RPA had not found a responsive audience. Now in the midst of immediate crisis, a quick solution was needed. The NFMA was this quick solution. The NFMA is a series of amendments to the RPA which repealed the troublesome part of the 1897 Act, set forth new requirements for national forest management in the context of the multiple use - sustained yield policy, and gave a legislative framework to national forest planning.

### **Affirming Multiple Use Principles**

Most attention was given to the new timber management authority for the Forest Service, but the broader purposes of the NFMA were aimed toward reaffirming goals stated in existing laws governing the use and management of the National Forests. Language from the Multiple-Use/Sustained Yield Act of 1960 is recited frequently in NFMA to solidify this policy connection:

*"practicing natural resource conservation to meet the needs of the people"*

*"providing for multiple use and sustained yield of the products and services obtained from the national forests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and, in particular, including coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness."*

Thus, the procedural reforms and prescriptive requirements of the NFMA were expected by the framers to refocus the agency on meeting its existing goals and laws.

The primary sections of the NFMA simultaneously affirm these goals and set forth reforms expected to ensure their achievement. In terms of process, NFMA revised the decision making processes so as to allow managers to keep pace with changing technology and social values, to require them to talk to the public before making decisions, and to respond to local conditions and new knowledge in the development and

implementation of forest land management decisions. NFMA set forth planning mechanisms to allow management to naturally adapt to changes in social values, economic forces, and political demands.

The debates over the proper allocation of resource uses under the principle of multiple use led the drafters to craft language requiring more balanced attention to all resources, including emerging resources. Thus, the NFMA directs that timber could be harvested only on land best suited to that use and with harvest methods which were optimal considering other resource values. So while on the surface the NFMA reads like a timber harvest statute, as noted above, it was at heart an effort to demand greater consideration for the multiple resources on the national forests.

- NFMA required an explicit account of the economics of resource management as well as attention to the social contribution of sustainable resource supply to local economies to ensure more attention to the multiple resource values.
- NFMA set forth several substantive environmental requirements like, for example, the need to protect the diversity of plant and animal communities, to protect streams and riparian areas when harvesting timber, and to ensure the timely regeneration of the forest after harvest.
- NFMA provided mechanisms for broad participation in National Forest management so that management could remain flexible by staying in touch with changing social values.
- NFMA established mechanisms for developing and being accountable to scientific and technical information so that policies and management commitments which were unsustainable or could harm the forest would not continue or be undertaken. These provisions of NFMA were in the broader context of NEPA processes and RPA planning at the national and programmatic level.

For many observers, Chairmen Talmadge (Senate) and Foley (House) crafted a law with their colleagues which aimed to update public land management policies and mechanisms to fit with current science and desired management practices. From the perspective of the Forest Service, in large measure this law put into a legislative framework authorities and mechanisms for modern land management.

### **Providing for Adaptability**

Well beyond solving an immediate problem, the drafters of the NFMA sought to ensure that management of natural resources on the national forests could easily respond to societal changes. Debate among the writers of the NFMA turned on the question of the degree to which the legislative framework governing the national forests should set prescriptive standards or should provide guidance for the exercise of professional judgment and expertise. Given that NFMA includes most of the important parts of the original, key legislative proposals, both approaches can be found in the statute. This debate over the legislative framework for national forest management continues unabated

today. What can be learned from the twenty years of experience in implementing the NFMA that might guide current efforts to reform public land law?

Chief John McGuire attended every session of the Conference Committee drafting NFMA. For many sections of the NFMA, as it was debated in Conference, Senator Talmadge turned to Chief McGuire to ask, “Can you live with that, Chief?” The Conference Committee with the help of Chief McGuire and the Forest Service tried to develop a workable law. After it was written, Chief McGuire responded to questions about whether it would work with the comment that “it was a great experiment -- we would have to wait and see.”

Has NFMA been a “workable law” over the past 20 years in terms of both its original purposes and capacity to adapt to change? What can we learn from the experiences of those who have sought to make it work?

### *“WILL IT WORK IN THE 21st CENTURY?”*

The purpose of this assessment project “NFMA -- 1976-1996” is to assess the law as the vehicle to for public land and resource management. What mix of resources best serves the needs of the American people and how should that mix be provided? We propose to look at the law as a whole in order to assess whether the legislative framework it provides is adequate today and in the future to meet the challenges of addressing this enduring question.

In this regard, while our focus is on the NFMA we must keep sight of its location as a set of amendments to the RPA. We are also mindful of the effect that other laws have had on the success of NFMA. In particular, the Endangered Species Act and amendments and the National Environmental Policy Act affected the implementation of NFMA in ways unanticipated at the time. Thus, this issue of the interaction of laws is an important element in an assessment of NFMA.

**Two primary questions are before this conference.**

- Is there a problem with the statutory framework created by NFMA in light of changes in society, science, resource management and other laws?
- If there is a problem, what kinds of remedies are appropriate given expectations regarding the role and purposes of the public lands in the future and the likely changes in management and science in achieving these purposes?

### **Is there a problem?**

This conference begins with the expectations and hopes of the policy makers who crafted the legislation and the scientists involved in developing the initial implementing regulations. Yet the real “test” of the workability of the law is its performance in a time of unprecedented societal change combined with a dramatic change in ecological science. The first task of an assessment is to determine if there is a problem to be solved.

The first two days of this conference are aimed at the question: Is there a problem and if so, what kind? To address this question, we look first to how citizens view the goals of resource management today and into the future. Then we ask managers and scientists to consider the challenges of achieving these goals. From these discussions, we will attempt to look into the future. Our “crystal ball” will be the ideas of the people at this conference during the roundtable sessions. These roundtable discussions will provide an exciting opportunity to consider the question of “what criteria are appropriate in weighing the workability of NFMA.”

### **If there is a problem, what is the remedy?**

Serious proposals for radically changing the ownership, jurisdiction, and management of the national forests are under consideration again today. Many of these proposals assume the failure of the NFMA to achieve the hopes of the authors -- “get national forest management out of the courts and back on the ground.” However, these proposals for revision of NFMA are in the context of the other major public land management laws passed at the same time as NFMA -- the Federal Land Policy and Management Act, the Magnuson Fisheries Management Act, and a host of federal environmental laws passed in the 1970s. From the standpoint of this conference, what is especially important is how these proposals affect the primary purposes of the public lands and resources and what kinds of mechanisms they propose to achieve these purposes within a dynamic societal context.

NFMA and the other public land and resource management statutes rely on management mechanisms popular in the 1970s -- rational comprehensive planning and economic analysis. These mechanisms were viewed as ways to ascertain what the objectives of management should be as well as how to achieve them. The overriding goal was to provide a balanced mix of resources to the many constituencies concerned with and affected by federal forest management. The NFMA provides a window into how well these ideas have worked, in that there is a fairly well-documented history of attempts to translate these ideas into practice. Simply put, the NFMA most clearly put the ideas about how a public administrative agency should do business into statutory language. It demanded new relationships between the Forest Service and the localities surrounding the national forests, and sought to ensure that these new ideas would be incorporated into the regulations implementing the NFMA by setting up a review committee of scientists. Unexpected by anyone, this Committee of Scientists wrote the implementing regulations and scientists have participated each time the regulations have been changed or amended.



The third day of the conference is devoted to learning about current proposals for revision from legislative and executive branches of the federal government as well as from the states. However, these proposals will be considered in light of the primary purposes of the public lands as well as the experiences of past efforts to reform NFMA. This approach continues our commitment to incorporate a variety of perspectives and forms of knowledge as we ask the question: If the NFMA is inadequate, how is it inadequate and what should be done about it?

## AN INDEPENDENT ASSESSMENT OF THE NFMA

In order to enhance the learning within this assessment process, we have organized a variety of forums in which people with diverse perspectives reflecting many forms of knowledge come together to collectively consider how well NFMA has worked in the past and whether it will still work in the future. To meet our objective of taking an integrative look at the whole law with a view towards developing a “scholarly” assessment, we have sought to look at the law from a variety of perspectives. Bringing these perspectives together requires several forums, each with its own contribution to the larger project.

### **Small group “focus sessions” -- Fall 1995**

In the Fall of 1995, we held several small meetings with people involved in the writing of the NFMA and with experience in implementing it and evaluating the effectiveness of some of its mechanisms. In these small sessions, we asked them to discuss their hopes and expectations for the law and its aftermath. From these discussions, we identified several key questions which have served to guide the next steps of project. These questions include:

- What were the original purposes as conceived by the framers of the law and those working to influence it?
- How does NFMA fit within a broad context of other federal public land and environmental laws and policies?
- How have the changes in society, technology and the economy affected the usefulness of the law?
- What have been the actual experiences of the managers and management agencies who have worked to implement the NFMA?
- How well is NFMA working with emerging theories and concepts of science?
- Can we gain greater understanding of the effectiveness of the NFMA by bringing together people with many diverse viewpoints and experiences to mutually engage questions of what the goals of public land management should be and how well current legal frameworks further those goals?

## **7th American Forest Congress -- February 1996**

In February, the 7th American Forest Congress was held in Washington, D.C. with nearly 2000 attendees representing an unprecedented array of viewpoints to consider the future of America's forests and forest policies. As part of this project, we organized one of the topic discussion sessions on the NFMA and its theory of legislation -- prescriptive or discretionary. An extraordinary audience participated which included numerous individuals with long association with the Forest Service and the NFMA. Their comments were invaluable in focusing and shaping the questions articulated above and in identifying the key issues for this conference.

In addition, the Forest Congress produced a vision and set of key principles which have broad support and which reflect not only the views of those at the Congress, but also those who participated in a year-long series of Roundtable discussions around the entire country. These principles contribute to identifying criteria for considering how well NFMA meets the expectations of those looking toward the future.

### Principles from the 7th American Forest Congress

- Forests are sustained and their integrity is maintained with respect, reverence and humility.
- Land area covered by forests is maintained and potentially increased.
- Biological diversity is maintained and promoted.
- Forest ecosystem structure, functions and processes are maintained at all spatial levels.
- A broad range of social, environmental, economic, and cultural values are provided by forests.
- Urban woodlands and trees are enhanced and perpetuated.
- Interdependence of people and forests is recognized and respected, including the important contribution forests make to social and community well-being.
- A variety of policies and programs are available to forest owners and managers to sustain forests.
- Forests' global role is recognized, the impacts of population and consumption patterns are acknowledged, and countries may learn from one another's experience.
- At least as many forest-related options that are available today are maintained for future generations.
- Differences in goals and objectives of public and private forest owners are recognized. Forest owners recognize and embrace both the rights and responsibilities of ownership, acknowledging that public interests exist on private lands and private interests exist on public lands.
- Open and continuous dialogue is maintained among all parties interested in forests.
- Cooperation and coordination among and between landowners, agencies, and organizations is encouraged to achieve broad ecosystem goals.
- Science-based information is available to all interested users and contributes to forest management.

- Research programs are substantial, integrated, and well-organized, and respond to the needs of forest users. Research results are widely disseminated.
- Education and information concerning forests is continuously available to all interested parties.

### **Teaching Integrated Classes at OSU and Maxwell -- Winter/Spring 1996**

Working on the questions posed in these settings and in our many conversations with people in the process of organizing them, led naturally to more questions. Our classes provided a natural forum for inquiry. During the winter/spring terms an OSU class on forest policy and a Maxwell class on administration, jointly “interviewed” over a dozen guests who represented the range of experience, perspectives and knowledge present at this conference. Our purposes were several: better understand what changes in management and policy were underway and who was involved in making these changes; what changes in science and management were most especially affecting the workability of the general framework of the NFMA; what changes in societal values and forms of relationships between people, communities and federal land management were leading to the emergence of new ways of administering public land and resources. The OSU students produced papers on a range of topics and their mid-term was to develop a list of guiding principles for public land management. The Maxwell students probed a theory of public administration which has been gestating for nearly 20 years in a variety of environmental and natural resource agencies and is now taking clearer shape.

Together these classes provided the opportunity to engage speakers in a wide-ranging set of discussions and to contribute to the development of this conference.

### **Western Governor’s Public Land Law Review -- Spring 1996**

Separate, but simultaneous with these efforts, the Western Governor’s Association undertook a comprehensive effort to assess the effectiveness of the current body of federal public land law. This effort utilized a Delphi process which engaged a wide spectrum of people across a broad range of views and interests in a process which worked to focus their ideas in a common set of questions and principles. The Western Governor’s adopted a resolution in June of 1996 which is based upon this work and presents a set of principles for federal public land law.

#### Vision and Principles from the Western Governor’s Association:

The Governor’s see the public lands as a vital component of our rich natural heritage, both of today and in the future. The Governor’s support the broad objectives of the public land laws as well as their intent to provide meaningful public participation, sound resource planning for the public lands, the opportunity to appeal decisions, administrative efficiency and accountability, resource use from the federal lands consistent with their long-term sustainability, and the recognition of the diversity and uniqueness of natural resources.

Given the experience that public land laws are not working as intended, the Governor's offer the following principles to move beyond the existing gridlock, and to guide public land management into the 21st century.

1. Laws, policies and management decisions must be based upon sound resource stewardship which provides resource sustainability and protection for diverse use by present and future generations.
2. Management of public lands should promote stability and predictability in the production of goods and services from the public lands. At the same time, management must be sufficiently flexible to adapt to changing social, economic and ecologic conditions.
3. Federal administration of the public land laws should provide incentives for sustained management and encourage efficiency.
4. The role of public involvement in the management of public lands should be meaningful, collaborative, and timely.
5. The diversity and significance of natural resources must be acknowledged in land management decisions.
6. When value is created by the use of the public lands and their resources, federal managers should be enabled to recover an appropriate amount of that value.
7. Federal budgets, incentives for federal managers, and incentives for good stewardship to users of the federal lands should support the above goals.

**Policy Statements:**

1. A more efficient and effective public participation process is needed.
2. Managers of public lands should pursue a more efficient and effective land management pattern.
3. The planning process should be strengthened to ensure that the multiple-use goals of resource sustainability and economic viability are met, that plans are timely, and plans, while providing for adaptive management, result in clear decisions that are defended and implemented by the agencies.
4. That the array of public land laws should interact in a meaningful manner to reach mutually agreed to goals.
5. A greater array of incentives to improve management, resource conditions, and environmental restoration by both users and public land managers should be developed and offered.
6. The application of the NEPA process to public land management should be streamlined to reduce cost, duplicative analysis and preparation time and to make NEPA documents more user friendly and pertinent to decision making.
7. Opportunities for creating partnerships in managing public lands should be developed.
8. Incentives and innovative funding approaches should be used as future management tools.

## **NRLC and Western Public Lands:**

The Natural Resources Law Center is focused directly on issues of public land law, policy and management. It brings a unique combination of legal scholarship and practical consideration of topics in public land law and policy. Its research and publication efforts range across a large number of issues in the field of public land law and management. For the past several years, it has organized a wide range of scholarly assessments focused on issues like western water law and policy, sustainability, ownership and management of public lands, and specific statutes like the Endangered Species Act. Because the NRLC is a central actor in any discussion of public land law, they joined in the early focus sessions aimed at identifying how to undertake an assessment of the NFMA.

This ongoing relationship led to the emergence of a unique opportunity. The NRLC organizes an annual conference on western public lands addressing an issue of special timeliness. In the focus sessions the need for a national gathering with a diverse audience which could contribute to this assessment was identified. In the Spring of 1995, the NRLC proposed that the topic of their fall western public lands conference be the assessment of the NFMA. Everyone involved with this project quickly agreed that it was the perfect venue for this event.

To prepare for the conference, the NRLC hosted a two day meeting of a small “steering group” in Boulder, Colorado. While steering committees are generally a part of conference planning, in this instance it was also an opportunity to bring together a very diverse group to consider how to undertake the assessment of the NFMA in the context of a conference.

The focus on how the NFMA has worked in the context of rapid societal change emerged in this meeting as the central question for this conference to address. Was the NFMA actually providing the kinds of flexibility as well as policy direction needed by managers, scientists, and citizens today and in the future? There was a need for an assessment to consider if there was a problem, what kind of a problem it was, and what kinds of remedies should be sought to address it.

The NRLC as host of this conference brings its unique history and perspective to this project, greatly enhancing the ability to connect changes in society with processes of law and implications for national forest management.

## **Next Steps: What criteria should be used to assess the NFMA?**

With all of these ideas and principles in mind, this conference is an opportunity to bring them together and focus attention on one, key statute. Purposely held near the anniversary of the NFMA, this conference brings together scientists, policy makers, managers, scholars, and citizens for a reflective look at the NFMA. Thus, this conference focuses on enduring resource policy and management issues which are the key questions in assessing the effectiveness of the NFMA.

We expect the results of this conference to have a role in the debate over the revision of the NFMA in terms of providing a reasoned assessment of NFMA, its successes and its failures. The co-sponsors of this conference will prepare a set of policy briefing papers based on the ideas presented and discussed at this conference. These papers will be the substance of a policy makers forum in Washington D.C. near the end of this year. The Maxwell School of Citizenship and Public Affairs through its Center for Advanced Public Management and Center for Environmental Policy and Administration will host this event in Washington D.C. at its Greenberg House facility.

Eventually the work of this assessment process may form the basis for a book which will provide both the substantive outcome of this assessment project of the NFMA as well as a discussion of the “policy learning method” used to do this assessment. We view this entire project as a scholarly, learning exercise.

Although we and everyone involved in crafting this assessment project has long experience with the NFMA and even strong views about some of its specifics, no one has a view of the law taken as a whole -- statutory language, implementing rules, administrative process, managerial decisions, production of knowledge, participation of organizations and citizens, and the actual consequences on the land itself. It is the view of the whole that we are all interested in creating, and we have no preconceived ideas as to what we will find in the process.