

Biodiversity in U.S. Federal Lands and Federal Actions: NFMA, FLMPA & NEPA

Outline

1. Primary laws that affect public/scientific input into federal decisions about managing U.S. terrestrial biodiversity.
2. Factors limiting the ability of outside scientists to influence agency biodiversity-related decisions, particularly in an age of climate disruption.
3. Strategies for making input by outside scientists more influential on agency land management decisions.

Objective

Enhance SCB ability to safeguard federal land biodiversity.

National Forest Management Act

National Forest System.

Explicit – and unique – diversity mandate in the statute (regulations shall guide how plans “provide for diversity of plant and animal communities”).

Regulations protect populations that do not qualify for ESA listing (not yet imperiled or not listable taxon).

Functions as an anti-extirpation law, keeping viable populations in plan areas.

New regulations articulate ecological ideas and require use of the best available science, but reduce assurance about outcomes with numerous loopholes.

Federal Land Policy and Management Act

Governs primarily BLM lands.

Articulates federal policy that management decisions will “provide food and habitat for fish and wildlife.”

Consideration of wildlife is required in land exchanges, grazing management, and some other decisions.

No specific diversity or wildlife rules for management plans.

A fish or wildlife resource of “substantial significance” may be protected by designation in management plan process as an Area of Critical Environmental Concern.

National Environmental Policy Act

Environmental review for federal actions, approvals, and funding.

Agencies must “insure the ... scientific integrity” of reviews, identify the methodologies relied on, and respond to responsible scientific opinion in opposition to their proposals.

No specific requirement to study biodiversity impacts, but courts have found them to be significant effects that require review in NEPA documents.

Functions as an anti-BS rule, providing accountability if agencies hide the reasons for, impacts of, or alternatives to their proposals.

Limiting Factors

Judicial Deference: Courts give strong benefit of the doubt to agency decisionmakers, especially in areas of technical expertise. Agencies know their advantage.

Weak Rules: Both NFMA and FLMPA allow agencies to degrade biodiversity intentionally. NEPA has no substantive requirements, not even completion of promised mitigation. The strongest biodiversity protection in federal law, the old NFMA regulation requiring that all native vertebrate populations be “well distributed,” was eliminated last year.

Huge Uncertainty About Climate: Lack of empirical evidence means “professional judgment” will prevail.

Strategies for Making Outside Scientific Input More Effective

Scientists outside agencies can successfully support conservation-minded agency staff and create disincentives for decisions that ignore science, by:

Using comment and appeal opportunities to put scientific studies in the record, propose science-based alternative proposals that meet the agency's asserted purpose, and uncovering unjustified assumptions (like reliance on monitoring that was never funded);

Producing joint reports, reviews, and comments with other scientists, ideally representing multiple societies;

Filing well-supported petitions for management change.