

The Forest Service has now finalized the new planning rule it [proposed a year ago](#). The [final rule](#) with preamble runs more than 240 pages. I haven't yet plowed through it. The blog [A New Century of Forest Planning](#) is reporting reactions from a variety of sources. So far, there seem to be a lot of general statements of support, with the unsurprising proviso that the devil will be in the implementation details.

The thing that pops out at me about the new rule is the extent to which it brings to life what I view as the key dilemma of modern conservation policy: the tension between desires for management flexibility and demands for management accountability. Consider the most negative public commentary on the rule so far, and the one threat I've seen of litigation. It comes from the Center for Biological Diversity, which [notes that](#):

The new rule significantly weakens longstanding protections for fish and wildlife species on national forests. While the Forest Service was previously required to ensure the viability of those populations, the new rule largely defers to local Forest Service officials.

What CBD is referring to is that the 1982 rule which this one replaces included the following provision:

Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.

That regulatory provision, popularly known as the "viability rule," was the source of considerable successful litigation against the Forest Service. Groups like CBD correctly saw it as one of the few sources of strong accountability in a regime that gives the Forest Service a great deal of management discretion.

The new rule eliminates the viability rule, which the Forest Service now describes as

inconsistent with “the most current science” and insensitive to “limitations on the Agency’s authority.” No wonder the Forest Service is worried about committing itself to maintaining the viability of particular species in every planning unit, given the realities of climate change.

The new planning rule focuses instead on ecological integrity and ecosystem diversity, which are admittedly fuzzy concepts. It also calls for additional species-specific conservation measures as needed to conserve ESA-listed and proposed species and other species of conservation concern. The regional forester is given discretion to decide which species are of conservation concern, and to determine that it is beyond Forest Service authority or the capability of the planning area to maintain a viable population of a species of conservation concern. That determination doesn’t mean the plan doesn’t have to deal with the species at all. It must still include provisions designed to “maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range.”

I’m sympathetic to CBD’s concerns about loss of oversight. The Forest Service has hardly been a reliable champion of the public interest on national forest lands in the past. It often seems to be highly sensitive to local economic interests, at the expense of long-term conservation.

But in this case, I’m not sure I could craft a better rule. It looks to me like the new language meets the relevant statutory requirement of NFMA, which mandates that the planning rule specify guidelines for plans “to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.” I agree with the Forest Service that the old viability rule is too rigid for the current situation. The Service will need some flexibility to respond to a changing climate, and it is right that many species that live part of their life on national forests are also strongly affected by the actions of other landowners.

The key, of course, is to provide the Service with the discretion to respond to legitimate conservation challenges without allowing it to disregard conservation in favor of extractive industry interests. This is just one example of a far more general problem — if we need to adaptively manage lands and resources in order to be able to adjust to new conditions and new understanding, we have no choice but to give managers some discretion. The documented history of putting conservation well behind economic uses makes it difficult for environmentalists to feel comfortable about that, and it’s hard to create effective accountability and oversight measures for a necessarily discretionary regime.

At first glance, it looks to me like the new rule makes a credible stab at striking that difficult balance. It requires an explicit determination that species of conservation concern can't be fully protected within the planning area, and the adoption of provisions to at least contribute to conservation. But I agree with CBD that there doesn't seem to be as much limit on the ability of local forest officials to simply read species out of the list of concern, and it will surely be more difficult under the new rule to force reluctant forests to make robust conservation efforts. Still, I'd like to see a clearer explanation from CBD of what language they would like to have seen in place of what's been adopted. If there isn't a better option, than this one might have to do even though it's clearly imperfect.