

MODEL FOREST POLICY PROGRAM
Southeastern Office
14031 Independence Road
Ashland, Virginia 23005

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John Greis, Co-Chair
Southern Forest Resource Assessment
USDA Forest Service
Southern Region
1720 Peachtree Road, NW
Atlanta, GA 30367

RE: Model Forest Policy Program Comments on the Southern Forest Resource Assessment

Dear John:

The goals of the Model Forest Policy Program (MFPP) are to protect the forest ecosystems of the Southeastern United States through forest policy changes and to make forestry reform a relevant issue in the conservation and political arenas of the Southeast. To do this, we have examined legislative and regulatory forest policy in the Pacific Northwest and Northeast to see what application these programs have for the Southeast. We appreciate very much the opportunity to comment on the draft Southern Forest Resource Assessment (SFRA), and generally focus our comments on the forest policy discussion and analysis in the draft report.

As a starting point, we believe as currently organized the discussions of forest policy in the Executive Summary, Summary Report, and to a lesser extent the Technical Report papers (particularly their Key Findings and Conclusion sections) read largely as justifications for continuing current industrial forestry practices. Based on our research in other regions, we feel that such a one-dimensional approach to evaluating the future of the Southern forest poses significant threats to the ecological sustainability of the Southern forest. Moreover, these threats are amply documented in the Technical Report papers of your study.

Therefore, to be an effective decisionmaking document, the SFRA must more explicitly and thoroughly present the policy options that are implicit from the information already presented in the Technical Report papers. It is in that spirit that we present these comments on the draft study. We have organized our comments into general and specific comments on the Executive Summary, Summary Report, and Technical Report papers. Each is discussed below.

Executive Summary and Summary Report

The Executive Summary and Summary Report are generally well written and contain much useful information. However, both documents understate or mischaracterize some of the major findings of the substantive portions of the Technical Report papers. We believe that it is critical

that these sections be amended in the final report because they are the only sections that will be read by many decisionmakers and members of the public. In particular, the Implications for Ongoing Programs discussions in the Executive Summary and Section 4.3 in the Summary Report need to discuss the implications of the projected increases in timber cutting and the potential for BMP implementation and other environmentally-protective forest practice measures through both *voluntary* and *mandatory* programs.

Moreover, despite the mention of significant environmental problems related to federal and state environmental laws, there is no discussion on how these problems might be addressed that corresponds to the emphasis given to the discussion of how current and projected timber cutting rates can be continued into the future. Finally, the more extensive discussion and analysis of regulatory versus non-regulatory forest practice programs that we suggest be added to the Technical Report papers in our comments below should be summarized and added to the Executive Summary and Summary Report.

Technical Report Papers

In general, the Technical Report papers provide a good overview of existing conditions in the Southern forest. However, the utility of the papers is limited because of the SFRA's merely assuming that current industrial forestry trends will continue unabated into the future. We believe that a more balanced "alternatives" approach to the consideration of regulatory versus nonregulatory approaches, like that employed under the National Environmental Policy Act, would be appropriate from the standpoint of the decisionmakers and stakeholders who will use the SFRA as a point of departure in the coming years. We would encourage you to look at the "alternative regulatory scenarios" approach employed by World Resources Institute (WRI) in its recent report on the pulp and paper industry as a model for expanding the scope of your forecast evaluation (see Attachment).

SOCIO-3: How do current policies, regulations, and laws affect forest resources and their management?

The discussion of State Statutes in Section 8.3.5 would be greatly improved by a comparison of the voluntary, nonregulatory approaches that render the South "unique among regions of the United States in that none of its States has a comprehensive forest management act" with the programs in those states that do have such programs (the Pacific Northwest states of California, Oregon, and Washington and several Northeast States, such as Maine, Massachusetts, and Connecticut). MFPP has done extensive research in these states and we think you will find policy in place in those states that could be useful in the Southeastern states.

Already this year, activists have been working for passage of incremental forest practice bills in the Virginia and West Virginia legislatures. Given the growing public concern over forest declines in the Southeast the SFRA notes, this process will likely continue and gain momentum. Therefore, it is critical for the final SFRA report to discuss this developing, more mandatory policy approach, as well as its potential effect on the health of the Southern forest over the period the study examines.

AQUA-4: What are the implementation rates and effectiveness of BMPs in the South?

Key Finding 3 states: “Silvicultural Best Management Practices (BMPs) are designed to reduce nonpoint source pollution and maintain stream channel integrity so that State water quality standards are met. *Where their effectiveness has been evaluated, they have achieved that goal*” (emphasis added). As we note below, the analysis of voluntary BMP implementation by various environmental groups, as well as that of the Missouri and North Carolina chip mill studies, tends to dispute the contention that the effectiveness of BMPs achieving the goal of water quality protection has been *widely* evaluated. Simply accepting state reports at face value diminishes the credibility of the SFRA. More analysis of this issue is required in the final study.

The assertion in Section 5.4 on BMP Implementation in Southern States on very flimsy evidence that “State *reports* indicate broad application of BMPs during forestry operations in the South” (emphasis added) justifies the conclusion that their *implementation* is widespread in the South is a major error in the report. The major problem with forestry BMP programs in the Southeast is the fact that with several exceptions they are *voluntary*. The SFRA commissioned review of federal and state water quality law in the South as it pertains to forestry concluded:

In sum, water law as it affects silviculture, though driven by the mandates of the federal Clean Water Act, is primarily a matter of state enforcement and technical assistance activity, supported by federal grants under the §319 program. . . . State water pollution laws are the backdrop for regulation, but silviculture is exempt from the permit requirements of those laws in every state studied. (Spier, Jerry. 2001. *State Water Quality Laws Relating to Silviculture: A Status Update for the South*, Research Agreement No. SRS 00-CR-11330133-236. The Tulane Institute for Environmental Law and Policy, January 5, 2001.)

Importantly, the SFRA legal review goes on to point out that BMPs, the primary methods by which forestry attempts to protect water quality, are “voluntary” in all Southern states, except Kentucky (in Virginia, the State Forester has authority to enforce BMPs to protect water quality, but has no mechanism with which to carry out his mandate).

The lack of regulatory authority to protect water quality in the southeast raises the question: can voluntary BMPs effectively protect water quality? The question is particularly germane with the rise of “industrial forestry” in the Southeast, which attempts to substitute agricultural efficiency for biodiversity and views forests essentially as fiber farms.

Industrial forestry advocates have asserted that voluntary guidelines alone are adequate to ensure water quality protection. But, in almost all of the Southern states, forestry regulators can only step in *after* the damage has already been done. Another problem is that the state agencies typically responsible for overseeing loggers are typically the same agencies responsible for promoting the growth of the wood products industry.

Moreover, compliance is difficult to measure precisely and many observers have criticized both the sampling methodologies employed and the conclusions reached from that sampling (as you

yourself have noted in this paper). Numerous environmental groups have criticized the effectiveness of voluntary BMP implementation in the Southeast. Several state government supported studies of BMP implementation have reached the same conclusion. For example, the study of BMP implementation in the North Carolina Chip Mill Study concluded:

Based on at least two BMP surveys in North Carolina, BMPs appear to be more widely implemented in forests under professional management than forests that are not (Henson 1995, 1996). A similar result was recently observed in West Virginia (Egan 1999). This is not a small concern since a relatively large (but not well quantified) fraction of the owners of North Carolina's forestland have little or no contact with professional resources managers and no formal management plans. . .

During the course of this investigation in North Carolina, it became evident that the current system of BMPs is not widely understood. Landowners, foresters, loggers, and the general public appear to have different ideas about what FPGs and BMPs are, about what is required and what is voluntary, and about what consequences there will be if either FPGs or BMPs are not followed. In West Virginia, a state with BMPs that are arguably as well developed as in North Carolina, a recent survey of non-industrial private forest landowners indicated that 62% had no or only cursory knowledge about BMPs or best management practices (Egan 1999). A stratified random survey of North Carolinians involved with forests might well be designed to determine the level of understanding of FPGs, BMPs, and forest planning and to evaluate how to better promote owner stewardship and professional resource management on NC's private non-industrial forest land. (Richter, Daniel D. 2001. Soil and Water Effects of Modern Forest Harvest Practices in North Carolina, in *Economic and Ecologic Impacts Associated with Wood Chip Production in North Carolina*, available at <http://www.env.duke.edu/scsf/>)

Similarly, the study of BMP implementation in the Missouri Chip Mill Study concluded:

Surveys indicate that 12% to 16% of the timber harvest activities in Missouri are done following a plan developed by a professional forester using BMPs. It is not known to what extent BMPs are being effectively applied on the remaining harvested areas. However, it is reasonable to assume that BMPs are not being effectively applied on a significant number of timber sales. Efforts to ensure their use on all sales needs to become a priority. (see Conley, Jerry and John Smith. 2000. *Draft Report on the Chip Mill Issue*, <http://www.conservation.state.mo.us/forest/chipmills/draft.htm>)

Analysis of regulatory versus nonregulatory approaches in Section 5.5 contains several broad observations that are misleading without additional fine detail on the problematic nature of compliance with nonregulatory BMP approach:

1. "The nonregulatory approach . . . is . . . still evolving. Its dependence on practitioner education, direct landowner assistance, and systematic monitoring of program effectiveness has gained momentum and widespread acceptance in the forestry community." We agree that the forestry community has certainly accepted the voluntary, nonregulatory approach. Our

concern is over how well the approach is “evolving” toward actually protecting water quality at the stream reach and subwatershed level. Numerous environmental groups who have followed this issue have concluded that it is ineffective. This statement should be qualified to reflect this concern, which is widespread in the environmental community.

2. “Where tested, BMPs have proven effective at maintaining State water quality within applicable standards. Additional scientific validation of BMP design will serve to refine their application to fit site-specific conditions.” This statement should be qualified to note that “where tested” is a very small percentage of the situations in which BMPs are “voluntarily” called for. Moreover, citizen ForestWatch monitoring of actual logging jobs suggests that there is very little effective agency enforcement follow-up on voluntary BMPs, and only citizen complaints actually have much effect on launching enforcement actions when they are necessary to protect water quality.
3. “Success of the nonregulatory approach requires continual education efforts targeted at the ever-changing groups and individuals who own and treat the South’s forests.” We do not believe that “education” has much real chance of success here because the lesson most individuals are likely to learn about voluntary BMP programs is that compliance is not required. Clearly education can encourage many people to try to comply, but experience shows that there is a sizeable group that will not comply unless threatened with some sanction if they do not.

Moreover, this section omits any substantive discussion of silvicultural regulatory programs, such as those of California, Oregon, and Washington. Those programs should be described in order that there is some standard of comparison of the advantages and disadvantages of both types of programs. MFPP has done extensive research on these programs. Incremental forest practice legislation currently is progressing toward passage in the Virginia and West Virginia general assembly sessions. For the reasons we have noted above, this trend is likely to continue. We would be pleased to share our findings with you, which indicate that many of the forest practice measures that have been implemented in that region have application in the Southeast.

Section 6 notes: “Resource benefits provided by BMPs other than water-quality protection should be studied and documented. This information would be useful for encouraging landowner acceptance and could identify needed modifications in BMPs” This is a critical need for additional synthesis because of the large number of threatened riparian and aquatic ecosystems. Such a synthesis could lead to “biodiversity protective” as well as water quality protective BMPs. Additional synthesis in this area, combined with a second need for additional research identified in Section 6, which notes “Reasons that landowners comply or do not comply with BMPs are not well understood. Additional information of this kind would be useful for targeting outreach efforts and adjusting state programs.” This statement is not forceful enough; this information is “critical” if water quality and biodiversity are going to be protected in the areas of the Southern forest identified as *stressed, threatened, and endangered*.

To summarize: As a result of the significant threats to the Southern forest documented by the SFRA, and the problematic nature of existing voluntary state forest practice programs

(particularly BMP implementation) in alleviating these threats, we believe that the SFRA must include a more robust examination of the nonregulatory *and* regulatory forest practice programs we have identified in these comments. We appreciate the opportunity to make these comments, which we hope will assist you in making the SFRA more useful to the many stakeholders interested in the sustainability of the Southern forest.

Please feel free to give me a call at (804) 798-0988 or e-mail me at Bmwatson3@aol.com if you have any immediate questions about the MFPP, these comments, or if I can be of further assistance at this time in any way. We look forward to continuing to work with you on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Bud Watson".

Bud Watson
Assistant Director
Model Forest Policy Program

Attachment

ATTACHMENT

The World Resources Institute report “Pure Profit: The Financial Implications of Environmental Performance” (World Resources Institute, Washington, DC, pages 12 through 16, see <http://www.wristore.com/pureprofit.html>) notes in its section on state and local forestry regulations:

State and Local Forestry Regulations: Timber harvesting can cause erosion, sediment runoff, and degradation of receiving waters and aquatic ecosystems. As suburbanization, prosperity, and vacation homes have spread, the number of state and local regulations affecting private timberlands have increased, aimed at safeguarding water quality, wetlands and endangered species, protecting abutting property, or minimizing site degradation. Requirements under these laws include best management practices (to minimize erosion and sedimentation), buffer zones along riparian areas, forest management plans, improved slash management, and limits on clearcutting.

Table 2. Environmental Influences on U.S. Virgin fiber Supply

Regulations on Private Lands	Stricter state and local forest regulations may limit harvests from private timberlands.
Actions under the Endangered Species Act (ESA)	A reauthorized ESA may limit harvests in specific regions, especially if extended to subspecies and vigorously enforces.
Carbon Sequestration	Incentives to sequester carbon in forests for climate purposes would encourage increases in standing stock.
Harvest on Public Lands	Harvests from public lands have declined dramatically and may not recover.
Environmental conflict over intensive silviculture, plantations, “fiber farms” and bioengineering	Environmental opposition may create barriers to intensive silvicultural practices and arboreal bioengineering.
Nonpoint source permitting for water quality protection	TMDL restrictions on nonpoint sources may raise forest management costs near impaired waterways.
Forestry Certification and Product Eco-labeling	Certification and eco-labeling schemes could raise fiber costs and reduce virgin fiber supply.
Tax treatment of private lands	Changes in estate, land, and capital gains taxes could affect fiber supplies from private non-industrial lands.

Southern watersheds have become the latest focus for environmental groups pressing for increased environmental regulation. Such regulation could lower anticipated timber harvest by 10 percent over the next five years (Greene and Siegel, 1994). Elsewhere, endangered species and forest protection regulations in the Pacific NW could particularly affect softwood supplies held on non-industrial private lands, while in the North,

hardwood stocks are most likely to be restricted by water quality regulations. Overall, future regulations could lead to a 12 percent reduction in private harvest of hardwoods and an 8 percent reduction for softwoods in the next 10 years (Haynes et al., 1995).

However, more stringent regulation may not be inevitable. Industry may prefer comprehensive state regulations that would be more predictable and might avoid the excesses of local regulations. As an alternative to further regulations, the AF&PA has promoted its own Sustainable Forestry Initiative (SFI), under which firms commit to certain practices and standards, though not to third party certification. It is estimated that the SFI will raise delivered wood costs by about 7 percent.

Scenario A: (Deemed less likely) *Few new local regulations are passed and state forestry codes largely conform to the industry's sustainable forestry initiative. Overall, fiber prices continue their modest upward trend, rising at a rate of 3 percent per year in nominal terms in most areas of the U.S. and at 3.5 percent in the South.*

Scenario B: (Deemed more likely) *Many new state and local regulations are enacted, raising the costs of timber operations and reducing timber supply from private forest lands. Prices rise by as much as 5.2 percent per year in the South and over 4 percent per year elsewhere. Companies face significant harvesting restrictions on their timberlands.*

Endangered Species Act: Future private timber harvests could be further affected by the Endangered Species Act (ESA), especially if the reauthorized Act afforded protection to sub-species and specific populations. Areas of potential conflict between timber operations and species protection include Florida, the Southern Appalachians, and the Pacific Northwest. Congress has been trying unsuccessfully to reauthorize the ESA since it came up for renewal in 1992, but legislators have been caught between environmental groups eager to see changes to improve implementation and to hasten species recovery, and landowners and industry groups concerned about land use restrictions.

The official pending list for species includes 109 proposed and 164 candidate species (compared to over 1,100 species already listed as endangered or threatened). Adding these species would probably reinforce land use restrictions on existing "hot spots" rather than create new protected areas, and would have relatively small additional effects on timber supply (Flather, 1998). However, were future listings to be extended to sub-species, distinct populations, or to individual salmon stocks, then new areas would be affected, most likely in the Pacific Northwest and Southeast. Developments on this scale are unlikely over the next 10 years.

Another key issue in ESA reauthorization is the extent to which landowners will be protected from economic losses. The Clinton Administration has sought to cooperate with private landowners in developing Habitat Conservation Plans (HCPs) incorporating "No Surprises" policies. Under these collaborations, landowners can agree on a long-term land management plan with state authorities and are then exempt from future new conservation obligations. The "No Surprises" policy has popularized HCPs among

industrial landowners, but environmentalists fear they will be insufficient to protect certain species and may inhibit future species recovery steps, should such steps be necessary.

Scenario A: (Deemed more likely) *The ESA reauthorization is further delayed, during which time landowners can continue to draw up HCPs with “No Surprises” provisions. Eventual reauthorization mandates “No Surprises” elements. Few species are added to the lists of endangered or threatened species. Overall, the impacts on timber-supply are relatively small.*

Scenario B: (Deemed less likely) *The ESA is reauthorized and administered more stringently, listing some sub-species and populations in important timber areas, particularly in the Southeast and Northwest. The effect is to limit timber harvests or raise timber management n costs on some private lands.*

References

Flather, Curtis, Rocky Mountain Forest and Range Experiment Station, USDA Forest Service, personal communication, 1998.

Greene, John L., and William C. Siegel. 1994. The Status and Impact of State and Local Regulation on Private Timber Supply. General Technical Report RM-255. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Forest and Range Experiment Station.