

Indicator 7.53:

U.S. Forest Sustainability Indicators <https://www.fs.fed.us/research/sustain/>

Public participation and conflict resolution in forest-related decision making

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What is the indicator and why is it important?

The ability of people to participate in the decisions that affect their lives is a central tenet of democratic governance. Forests may be managed more sustainably if citizens have input on or responsibility for their use, management, and protection. Processes that promote public participation in forest-related decision making can foster practical and political support for sustainable forest management. When conflicts arise, open and transparent processes for their resolution can lead to decisions that are more widely accepted and that reduce the propensity for litigation.

What does the indicator show?

Public participation. Administrative, environmental, and forest-specific legislation requiring public participation activities involving forests and other natural resources has developed over the past 70 years or more (table 53-1). The Administrative Procedures Act (APA) of 1946, the first act of its kind, requires Federal agencies to keep the public informed of their organization, procedures, and rules. The APA also requires Federal agencies to provide the public with opportunities to participate in the rulemaking process. Later, the Federal Government enacted the Freedom of Information Act (FOIA) of 1966 to ensure the public's "right to know" about Federal rulemaking and implementation. Over time, the APA and FOIA, along with their State counterparts, have opened up the policy process to the public. While these laws reflect society's desire for transparency in decision making and restraints on governmental authoritarianism, they do not guarantee compliance. For instance, government agencies still make decisions without public involvement or prior

informed consent and frequently oppose requests for related information.

Table 53-1—Major statutory rules with public participation requirements affecting forests

Administrative Procedures Act of 1946
Freedom of Information Act of 1966
National Environmental Policy Act of 1969
Federal Advisory Committee Act of 1972
Forest and Rangelands Renewable Resources Planning Act of 1974
Federal Land Policy Management Act of 1976
Government in the Sunshine Act of 1976
National Forest Management Act of 1976
Negotiated Rulemaking Act of 1990
Healthy Forests Restoration Act of 2003
National Forest System Land Management Planning Rule of 2012

Public lands in the United States are subject to various requirements for public participation in forest management decisions. Land owners are largely responsible for decisions about private land use, but these decisions are subject to the rights of land tenure and regulations that may limit those rights. The National Environmental Policy Act (NEPA) of 1969 mandates environmental impact assessments for Federal projects or actions that have potentially significant impacts on environmental quality. NEPA plays a major role in forest and other natural resource decisions at the Federal level and requires public participation through public review and comment. The National Forest Management Act (NFMA) of 1976 created an even larger role for the public in forest-related decisions by establishing a participatory planning process for resource-allocation decisions within national forests. The NFMA provides opportunities for citizens to comment on multiyear national forest management plans and creates an appeals procedure for concerns or complaints regarding administrative decisions.

The Healthy Forest Restoration Act (HFRA) of 2003 amends the NFMA. The intent of the HFRA is to enhance the protection of communities, watersheds, and other lands at risk from catastrophic fires through ecological restoration, forest disease and pest management, and biomass harvest and utilization. HFRA requires a collaborative process of planning, prioritizing, and implementing hazardous fuel reduction projects. It prioritizes related funding to communities with Community Wildfire Protection Plans (CWPPs). Communities must collaborate with all relevant levels of government, tribes, and interested members of the public to develop a CWPP. According to the National Association of State Foresters, 14,755 at-risk communities were covered by CWPPs in 2013, accounting for nearly 20 percent of the more than 72,000 communities at risk of wildfire impacts across the country, and up from 9,389 communities (13 percent) covered by CWPPs in 2011. Overall, between 2003 and 2013, the U.S. Departments of Agriculture and the Interior and their community partners treated to reduce the risk of wildfire on nearly 50 million acres of Federal lands in danger of wildfire risk—more than half of which occurred in the wildland-urban interface.

At the subnational level, all States have open-record laws, 49 States have open-meeting laws, and most States have laws, rules, and administrative directives that specifically require public participation in forest resource decisions and authorize citizen access to government information about forests. Local governments often follow the lead of their State counterparts on matters of public access to government decision making, yet few have specifically prescribed measures for public input to forest planning or management. As of early 2016, 19 national forests were in the process of revising their land management plans to align with the new planning rule and its directives.

Private-sector actions to seek public input and participation in land management decisions are not subject to extensive regulatory requirements. Nonetheless, public participation in forest management on private lands is increasing in response to market signals and as a result of growing engagement in partnerships (see Indicator 7.52), forest management and product certification, and other processes. Most certification systems, including the American Tree Farm System (ATFS), the Forest Stewardship Council (FSC), and the Sustainable Forestry Initiative (SFI), require consultation with external stakeholders, measures to redress complaints, and public reporting on progress towards forest sustainability. In 2016, the ATFS, FSC, and SFI certified more than 100 million acres of forest in the United States.

Appeals and litigation. Despite increasing support for and development of stakeholder involvement in public decision making, specifically as it pertains to public land management, some places and issues generate conflicting interests and policy and program impasses that routinely result in appeals and litigation. When conflicts emerge over public land management decisions, stakeholders have gained increasing access to the judicial system to address their concerns. Similarly, at the State and local level, stakeholders may contest land use plans and zoning rules affecting forests in the public arena and in the judicial system. Private-sector land use decisions are not as subject to public opposition because they are more difficult to demonstrate standing in order to challenge actions through the courts.

Litigation has had a prominent role in public land use decision making in the United States over the past several decades. From 2001 to 2010, about one of every three environmental impact statements (EISs) prepared by the Bureau of Land Management (BLM) and the U.S.

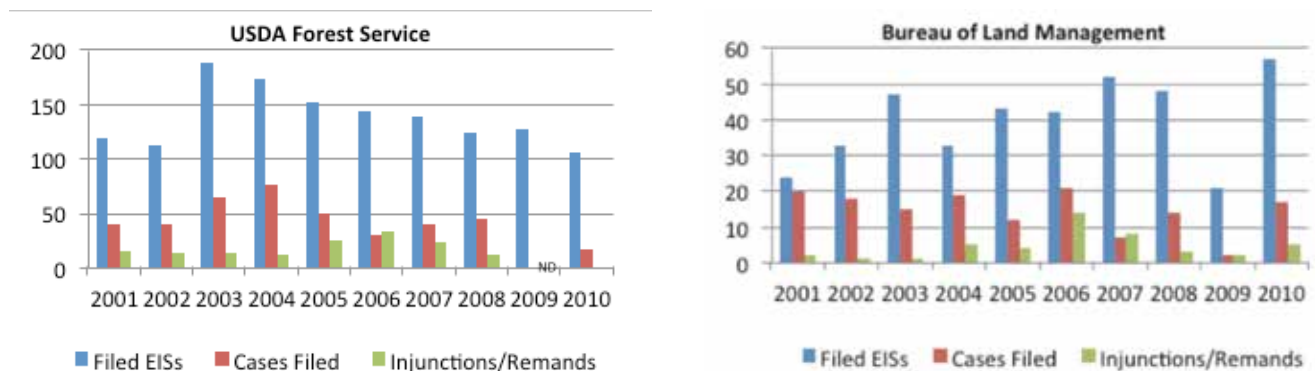


Figure 53-1—Environmental impact statements (EIS) filed, cases filed against filed EISs, and injunctions or remands set against filed EISs for the Forest Service and the Bureau of Land Management, 2001–2010.

Department of Agriculture, Forest Service under NEPA were challenged in court and about 1 in 10 EISs had an injunction or remand associated with it as a result of a court case (fig. 53-1). A 2014 study of the lawsuits challenging a land management decision by the Forest Service between 1989 and 2008 identified more than 1,125 cases in which the lawsuit named the Forest Service as the defendant. The majority of these cases pertained to vegetative management projects (e.g., logging) and alleged violations of NEPA or the NFMA. Overall, the agency won slightly more (53.8 percent) than it lost (23.3 percent) and settled (22.9 percent). There were fluctuations, however, in the number of cases filed each year and between the ratio of agency wins, losses, and settlements over time, with proportionately more wins in the earlier years and slightly more settlement of cases out of court toward the end of the study period.

Conflict resolution. Complex environmental disputes and controversies in high-conflict, low-trust settings require new ways for finding common ground and reaching resolution. Collaborative approaches and conflict resolution processes can be useful in building relationships; enhancing public engagement; avoiding or minimizing deepening antagonism and hostility; and reducing protracted litigation,

lengthy resource planning processes, and costly delays in project implementation. Multiple authorities and guidance influence the prevention and resolution of forest-related and other environmental conflicts around Federal lands and decision making.

In particular, the Office of Management and Budget and the President’s Council on Environmental Quality direct all Federal agencies to utilize environmental collaboration and conflict resolution (ECCR) in land and project planning, implementation, enforcement, monitoring, and other activities and initiatives. Regulatory agencies such as the U.S. Environmental Protection Agency use ECCR mostly in enforcement cases, while land and natural resource management agencies use it most frequently in planning and policy development. The U.S. Department of the Interior (DOI) and the Forest Service used neutral third-party involvement to assist in a collaborative or conflict resolution process in more than 2,700 cases from 2008 to 2013 (fig. 53-1). Documented benefits from ECCR include avoided litigation costs, expedited work on projects, innovative and cost-effective solutions, and improved working relationships among diverse stakeholders.

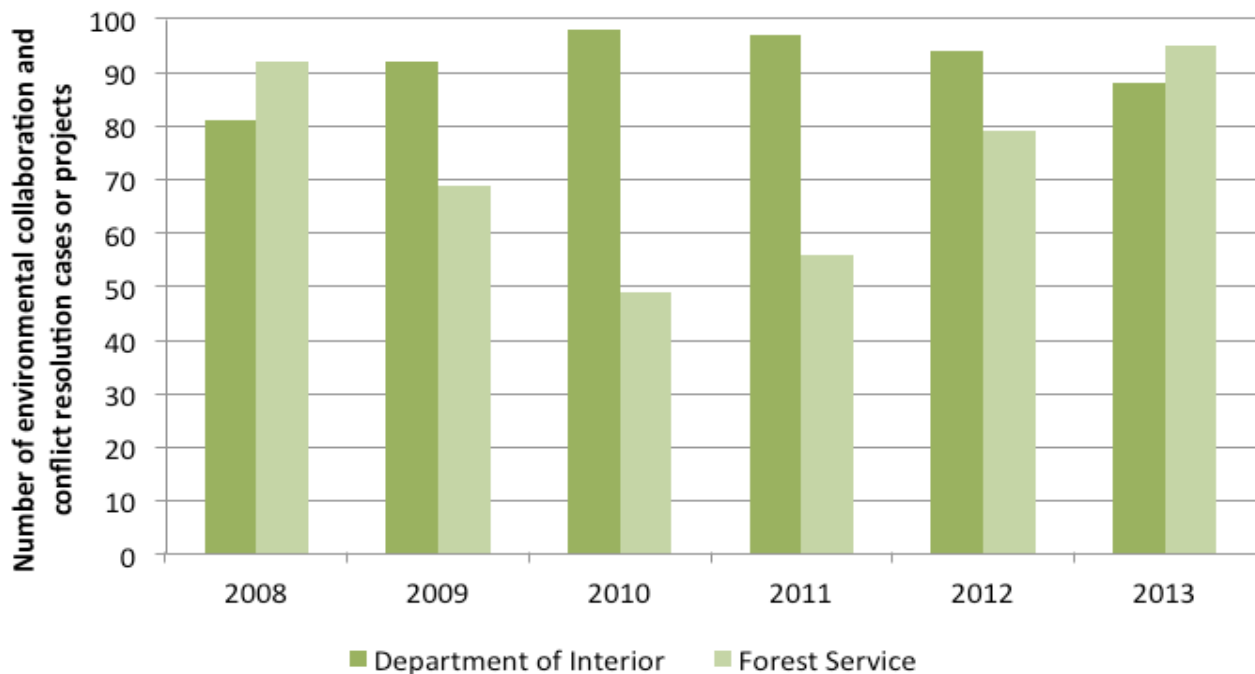


Figure 53-1—Total number of environmental collaboration and conflict resolution “cases or projects” (i.e., instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process) in the U.S. Department of the Interior and Forest Service, 2008–2013.

Source: <https://www.udall.gov/OurPrograms/Institute/ECRRreport.aspx>

What has changed since 2010?

Requirements and opportunities for public participation in forest-related decision making and management have increased since 2010, particularly on public lands through regulatory and administrative direction. For example, the National Forest System Land Management Planning Rule of 2012 further codifies the importance of active public engagement in national forest management. The planning rule provides for public involvement through consultations and collaboration in the planning process, including cooperative development of landscape and land management goals, plans, projects, and monitoring. In 2016, 19 national forests were in the process of revising their land management plans based on this new planning rule. Overall, while government agencies have increased their use of environmental collaboration and conflict resolution processes, controversies over public land use persist in some places, and appeals and litigation in the U.S. court system continue to address them.