

# Natural Resource Conservation Policy: Definition, Creation, Change and Implementation

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Experienced trail riders are usually somewhat knowledgeable of the lands on which they ride. However, they are typically unfamiliar with the bureaucracies, legislative process, and court rooms that develop the policies governing the use of those lands. This paper will discuss the fundamental elements of natural resource conservation policy in an effort to prepare trail riders for meaningful engagement in analysis and discussion of the development and implementation of land management policies. These fundamentals include explanations of what policy basically is, how it is developed through the legislative (Congress), administrative (agencies), and judicial (courts) branches of government, and implemented by the agencies to which land management responsibilities have been delegated.

## What is policy?

To begin our Natural Resource Conservation Policy (NRCP) series for trail riders, we need to first define policy and then the meaning of policy in a natural resource context. **Policy** can be defined as *a statement of goals and objectives, and the guidelines and limitations on how those goals and objectives will be pursued*. **Goals**, which are dictated by broad policy decisions, may be considered as *broadly written descriptions of what we ultimately expect to achieve*. Although detailed schedules and timelines may or may not be associated with goals, there is usually some sort of timeframe so as to encourage movement toward those goals. For example, we might say that our goal for a given management area is to have 100 miles of recreational horse trail certified as user-safe, ecologically sound, and economically sustainable by

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the year 2025. We may have the job done before that time, but we hope we will not get to 2025 and not have achieved the goal.

**Objectives** can be considered as the *intermediate steps to achieving the goal*.

Objectives are almost always highly specific “action items” of both exactly what is to be achieved and the timelines for those achievements. Using the trail system example above, we can say that various sections of the trail or sectors of the trail system will be built to certain specifications or, if it already exists, be modified to certain specifications during specified work periods or within specified fiscal years. Goals are set at the highest levels in the policy making hierarchy. Typically, they are then refined by objectives as the process descends through the administrative hierarchy to the level of the land manager.

**Guidelines** are the *parameters and direction given to those that will ultimately implement policies*. Guidelines can range from rather specific directions that allow the person implementing policies, such as a park ranger or forester, little flexibility in making decisions, to broader mandates that allow ample flexibility to make situation specific decisions. More specific guidelines that provide little flexibility can be mandated by politicians, courts, or citizen groups that desire specific decisions and actions.

As an example of guidelines, the policymakers may state that the trail system must be compatible with all preexisting uses of the management area. In this case, the policymakers are not saying how compatibility will be achieved, but that they do not want any preexisting uses preempted, replaced, displaced or otherwise aggravated by use and management of the trail system. Using a specific example, and one that is not rare, if a management area has one or more listed species<sup>3</sup> the policymakers have said that the managers are to make the trail system compatible with the well-

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<sup>3</sup> A **listed species** is any species listed by the federal government as in need of protection under the Endangered Species Act of 1973, or one that is listed by the state in which the management area occurs as one in need of special protection due to its rare or endangered status in that state. The latter situation for a species is referred to as “state-listed.”

being of such species, i. e., the construction, maintenance and use of the trail system can not interfere with the natural breeding, feeding, and sheltering of members of such species.

For managers, high specificity is a double-edged sword. On the one hand, it totally preempts his/her capacity to make situation specific management decisions. On the other hand, it relieves the manager of the burden of decision making as the decision is already made in policy, and whether right or wrong for a specific situation, he/she needs only to meet their responsibility to implement policy. Unfortunately, in our opinion, managers have been increasingly relieved of responsibilities for the art and science of land management and concomitantly have been expected to be highly skilled in the art of responding to the dictates of political and litigative entities seeking their own, often narrow goals in policy.

Limitations set specific limits, or sideboards, that confine the implementing management entity to what is to be done, how it is to be done, timeframes, and financial expenditures. For example, the policymakers will tell the implementing entity how much money will be allocated to the project. They may also restrict where the trails may be on the landscape, direct the implementing entity on how it must collaborate with other entities including local, state and federal entities as well as citizens, and other things.

## What Are Natural Resources?

Natural resources consist of renewable resources and non-renewable resources. The former consist of living species of plants, animals and microbes. Non-renewable resources are minerals, including oil and natural gas. Paleontological resources, fossils of plants and animals, are a non-renewable natural resource and one for which there is currently great conservation concern on some federal lands.<sup>4</sup>

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<sup>4</sup> Archeological resources, artifacts of historic and prehistoric human cultures, are not considered as natural resources although they are protected for preservation on all federal lands. Archeological resource preservation is jointly considered with natural resource protection when agencies are evaluating management or other land disturbance impacts.

**Clean air and clean water are theoretically renewable resources as the planet has mechanisms for cleansing these resources in the recycling process. In the case of air, we have seen airsheds notorious for their pollutants a few decades ago returned to high levels of air quality when the sources of the pollutants were either eliminated or neutralized by new engineering. Similarly, many freshwater streams that were once heavily polluted have been returned to good levels of water quality.**

**Soils also might be considered a renewable resource as soils that have not been totally devastated by erosion or high levels of long-lasting pollutants can be rebuilt to levels of potential to support plant life that might approach their virgin capabilities. The highly productive terra prada soils of the Amazon owe their capabilities to cultural practices carried out by Stone Age people. Thus poor soil conditions can be improved upon by human efforts and by natural processes alone if given sufficient time that would be measured in centuries or millennia.**

**Natural resources are also divided into surface and subsurface resources. On all federal lands, the Bureau of Land Management (BLM) has authority over all subsurface resources including all minerals, all ground waters, and sources of geothermal energy. The surface resources are managed by the agency with authority and responsibility for the lands on which those resources occur, such as the U.S. Park Service or the U.S. Forest Service. Certain regulatory agencies (both state and federal) also exist that may have additional authority over how the agencies charged with managing federal lands are allowed to manage those lands. The federal regulatory agencies consist of: a) the U. S. Fish and Wildlife Service for migratory fish and birds, federally listed species and species federally listed as species of concern, b) state wildlife agencies for resident wildlife, c) Army Corps of Engineers for jurisdictional waters of the United States and jurisdictional wetlands, d) state environmental agencies that have authority for water quality protection (including non-jurisdictional wetlands), clean air standards, solid waste management, and cleanup of contaminated lands, most of which is actually directed by the federal government, and e) the United States Environmental Protection**

Agency (EPA) which (except for non-jurisdictional wetlands and some aspects of solid waste management referenced above) has authority over many of the same programs generally implemented by state agencies. Clean air issues in natural resource management on federal lands usually have to do with smoke from prescribed burning practices or vehicle emissions in areas that experience large numbers of tourists.

In our NRCP series for trail riders, we will deal entirely with surface resources including soil, water, plants and wildlife. We will deal with concerns for these resources in both quantitative and qualitative contexts, the latter to include ecosystem and landscape aesthetics.

### **What is Natural Resource Conservation Policy?**

Natural Resource Conservation Policy (NRCP) is a subset of the nation's environmental policy. Most fundamentally defined, environmental policy is *primarily concerned with the protection of the health of the nation's citizens, although for the last several decades that concern has been expressed as protection of the health of the planet, as in the global climate change context and the health of the planet's waters.* Today's view of environmental policy, and the strengthened efforts to address pollution of the planet's air and water resources began in earnest over a half-century ago in the late 1960's.<sup>5</sup>

Although a subset of environmental policy, natural resource conservation policy is not easily categorized or defined, and at times may actually seem broader than what one typically considers to be environmental policy. Natural resource conservation policy is more focused on the overarching health of ecological systems and human interactions with those systems as well as general use of the planet's resources by humans. Pollutant levels in the air or water may be a part of this analysis, but natural resource conservation policy is not focused on pollutant levels within

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<sup>5</sup> Rachel Carson's book *Silent Spring*, first published in 1961, brought the nation's, and then the world's, attention to this problem with widely used pesticides and ignited the environmental movement.

streams or the air as an end in and of itself. The zenith for such policy concerns is approached in wilderness protection and likely is reached in protection of designated natural areas.

## **Who Makes Policy?**

In the democratic republic of the United States, policy making begins at some level of representative government elected by the citizens. These levels are usually referred to as local, state and federal. Local governments are the creations of state law and must act consistently with the powers and authorities allowed or delegated to those local governments by the state. State and federal levels are organized following the guidelines and dictates of state constitutions and the Constitution of the United States for the federal level. As our NRCP series will be restricted almost entirely to federal policy, we will describe here the basic aspects of only the federal organization.

As we all know from grade school, the federal government of the United States is organized into three branches: a) administrative branch, also referred to as the executive branch, (President and agencies); b) legislative branch (Congress); and c) judicial branch (courts). As it turns out, all three branches may make policy. The constitution seems to be clear that the founding fathers intended that the legislative branch (Congress), the branch that is theoretically closest to and most responsive to the citizenry, be the primary maker of policy. Congress enacts statutes (laws) as to how natural resources over which the federal government has authority will be protected and managed.

Although historically that was primarily how conservation policy was made, since the 1980's, significantly less policy is made by Congress and increasingly seems to be made by the administrative and judicial branches. Some of this shift is arguably due to the fact that members of Congress are unwilling to tackle certain issues for fear of voter backlash and also the fact that partisan politics have prevented Congress from actually being able to make policy decisions on these issues. As a

result, Congress may enact very general requirements or simply continue to rely on older legislation, leaving the agencies to actually develop the policies. Courts may also rely on these general mandates and the flexibility afforded the agencies to react to changing conditions and demands and order an even greater decision making role on the part of the agencies.

Natural resource policy making responsibility may be delegated by the Congress to the administrative branch of the government in two ways. First, a given statute may authorize the president of the United States to make policy decisions. As we shall see later in the NRCP series, the first such major natural resource protection statute was the Forest Reserve Act of 1891 when the president was authorized to set aside public domain lands as Forest Reserves which would be managed by administrative branch entities. Fifteen years later the president was authorized by the Antiquities Act of 1906 to designate national monuments on existing federal lands. In 1933, President Franklin Roosevelt, within his constitutional authority to reorganize certain aspects of the administrative branch, placed all national monuments existing at that time, under the management authority of the National Park Service, thus imposing the management philosophy and policies of the Park Service on all of those lands set aside by congressionally granted authority.

The second way the administrative branch makes policy is the process of “rule making.” Congress enacts statutes in which it instructs cabinet secretaries and agency administrators (administrative branch) in charge of natural resources, primarily the secretaries of Interior and Agriculture and the EPA Administrator, on policies it wants implemented.<sup>6</sup> The secretaries/administrators may then make rules (which are called regulations) consistent with the governing statutes that they feel are necessary to implement the laws Congress has enacted. Regulations are not

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<sup>6</sup> While the secretaries of Interior and Agriculture (administers the USDA-Forest Service) bear most of the federal responsibility for natural resources, the Secretary of Commerce (administers the National Marine Fisheries Service) and the Secretary of Defense (administers the Army Corps of Engineers which shares Clean Water Act protection of wetlands and jurisdictional waters of the United States with the U. S. Fish and Wildlife Service in the Dept. of Interior) may be directed by the Congress to implement natural resource policy.

**statutory law but they have the force of law, thus they become administratively made policy. By law, enactment of regulations is a formal rulemaking process that allows for public review and appeal.**

**Agencies may also use less formal documents such as guidance documents or decisions, management plans, and policies to implement what Congress has directed through its statutes. As with regulations, these documents and decisions must be consistent with the overarching law enacted by Congress. They have not, however, gone through the formal rulemaking process and cannot be binding on the agency. In other words, the agency cannot make a decision simply because of a guidance document without reviewing the individual circumstances at issue, but such documents and decisions still carry significant weight and in effect often act as de facto regulations.**

**In addition to making policy as described above, the administration may influence the legislative process by first having its supporters in Congress introduce legislation it wants to see passed and throwing the influential weight of the White House behind that legislation. A second way in which the administration influences legislative policy making is when congressional committees are considering various bills, they may call for testimony and advice from a secretary or administrator who is usually represented by his/her subordinates, normally undersecretaries and heads of agencies, almost all of which are politically appointed by the administration.**

**Finally, the judicial branch of the federal government makes policy when it interprets federal statutes and what the Congress intended when it enacted those statutes. The most famous example of how the courts have made such policy is how they shaped the requirements of the National Environmental Policy Act of 1969 (NEPA). As we shall see later in the NRCP series, NEPA was so broadly written that the federal agencies turned to the courts to determine what they were required to do and how they were required to do it. NEPA is arguably the nation's most sweeping**

**environmental legislation as it pertains to every action of the federal government that might affect the human environment.**

**Furthermore, judicial interpretations and case histories related to the Endangered Species Act of 1973 (ESA), as well as legal opinions from the Department of Justice, have shaped some of the most far reaching impacts of the ESA, both for federal and nonfederal lands. One of the greatest impacts of the courts on ESA policy occurred when the Supreme Court found that the requirement of the federal government to recover all listed species to a status where they were no longer in need of protection by the Act was without economic constraint.**

**More recently, in the face of EPA's assertion that the Clean Air Act was not intended to address global climate change, the courts have ordered EPA to enact climate control regulations. The courts have also ordered governmental entities to consider climate change through the NEPA process.**

**Federal policy making has an interesting twist in interactions between the administrative and judicial branches. The administrative branch appoints all federal judges, and of course, as these appointments are heavily politically influenced, the administration will tend to appoint those judges who tend to agree with its philosophy. Thus, once again, the administrative branch makes or tends to heavily influence federal policy. Of course, as the Congress must approve all such appointments, it has the opportunity to modify the magnitude of this specific avenue of administrative influence.**

### **Changing Policy**

**Like everything else in life, policy changes with time and changing conditions. The first way that policy changes is for the Congress to repeal existing legislation. The earliest example of such a move in natural resource policy was in 1908 when Congress repealed the Forest Reserve Act of 1891 after it became upset with the extent to which President Theodore Roosevelt had converted public domain lands in**

**the West to Forest Reserves, a move that had brought those lands under greater protection from over-exploitation, but also one that had significant economic impacts on ranchers and miners.**

**Congress can change policy by expanding on or amending existing statutes. For example, Congress supplemented the Forest Management Act of 1897 with the Multiple Use, Sustained Yield Act of 1960. The former stated that the purpose of the Forest Reserves, the forerunners of the National Forest System (NFS), was to prevent timber famine and for watershed protection, but the latter instructed the Secretary to manage the NFS for a broad array of resources commensurate with the array of values held by the American people for the NFS. The Forest and Rangeland Renewable Resources Planning Act of 1974 supplemented the Forest Management Act of 1897 and Multiple Use, Sustained Yield Act of 1960. However, it was so thoroughly rewritten in the amendment entitled the National Forest Management Act of 1976 (NFMA) that it is this amendment that stands as the fundamental frame of reference for management of the NFS today. In NFMA, the Congress became more specific than ever in its policy for the NFS with substantial focus on eliminating even-aged timber management (principally clearcutting) on the National Forests and required management planning with citizen involvement in the planning process which supplemented such requirements already existing in NEPA.**

**Efforts to change policy by repeal or amendment, while perennially present in the Congress, are not always successful. For example, strong differences in opinion between significant portions of Congress and the administration have on several occasions led to attempts to amend the Antiquities Act of 1906 and remove the authority of the president to designate national monuments on federal lands. These differences reached very high levels of contention under the Carter and Clinton administrations when these presidents set aside vast acreages for the purposes of higher levels of resource protection and at the expense of local economic impacts. However, the administration's authority under the Act remains intact.**

**Another way that Congress can change policy is through the budget process. It is common for various statutes to have goals and objectives that are either far behind intended timelines or that are never achieved due to a lack of funding. Wars and natural events, such as catastrophic storm disasters and fire seasons, as well as major economic downturns can affect availability of funds for full funding of the agency programs. However, simply a change in the political mix in Congress can result in changes in priorities for available funds. Thus, a later Congress can use the budgeting process to have a neutralizing effect on statutes (policies) established by a preceding Congress without going through the more difficult and often politically charged process of repealing or amending a statute.**

**Similarly, differences between successive administrations can have significant impacts on policy direction. In fact, the policies enacted under the authority of one administration may be entirely reversed by a succeeding administration. As we shall see later in the NRCP series, several of the things done under administrative authority of the liberal Clinton Administration were substantially changed by the conservative Bush Administration. One thing to note, however, is that although the cabinet level positions and top management positions may turn over with a new administration, those that are actually doing the day-to-day decision making, i. e., the land managers, typically remain the same. Therefore, changes in administration may have less impact than one would think, unless it is a significant issue for which the new administration directs a change in policy.**

## **Who Implements NRCP?**

### **Administration of Land and Resources<sup>7</sup>**

**While both regulatory and management agencies implement natural resource conservation policy, in the context of this series for trail riders, we will deal primarily with the four main federal land management agencies: USDA-Forest**

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<sup>7</sup> Data used in this section are taken from Vincent, C. H. 2004. Federal land management agencies: background on land and resources management. Congressional Research Service report to Congress. Updated Aug. 2, 2004. Order Code RL32393. 75 pages.

**Service (FS), Bureau of Land Management (BLM), National Park Service (NPS), and U. S. Fish and Wildlife Service (FWS).**

**The total land mass of the United States is 2.27 billion acres. Of this amount, about 29.6% (671.8 million acres) are owned, i. e., held in trust for the nation's citizens, by the federal government. The four primary natural resource management agencies combined implement natural resource conservation policy on 93.4% (628.4 million acres) of federal lands.**

**The Secretary of Interior has administrative authority over 436.9 million acres (69.2%) of the federal lands managed primarily for natural resource conservation. Within the Department of the Interior (DOI), BLM administers 261.5 million acres (41.6%). FWS administers 95.4 million acres (15.2%) primarily through its management of 793 units of the National Wildlife Refuge System. And NPS administers 80.0 million acres (12.6%) of federal lands plus another 4.3 million acres in private ownership. Of this acreage 52.1 million acres are in 58 National Parks plus another 30.8 million acres in various designations that are largely or entirely devoted to natural resource conservation. The remaining acreage is in units established for the preservation of historic and prehistoric cultural resource protection and preservation.**

**The Secretary of Agriculture and the Undersecretary for Natural Resources and Environment administer the FS in the Department of Agriculture (USDA). The FS manages the National Forest System (NFS) which encompasses 192.5 million acres (30.7% of the federal natural resource lands), The NFS includes 188 million acres in 155 National Forest units, 3.8 million acres in 20 National Grassland units, and about 800,000 acres under other designations.**

**In summary, the secretaries of Interior and Agriculture implement natural resource conservation policy on 27.7% of the 2.27 billion-acre land mass that is the United States. The Secretary of Interior administers the BLM, FWS and NPS which**

collectively manage 69.2% of 628.4 million acres of federally owned lands devoted primarily to natural resource conservation. The Secretary of Agriculture administers the FS which manages 30.8% (192.5 million acres) of the federal natural resource conservation lands.

### **Administrative Implementation of Policy**

As already discussed, all three branches of the federal government may make conservation policy. Policy also may be made at the management agency level and at each administrative level within each agency so long as the policy at one level does not contradict that established at any higher level. For example, the Chief of the FS can, and is expected to, make as well as implement policy so long as it does not counter any policy already established in statute by Congress or rules made by the Secretary. Regional foresters have the latitude to make policy appropriate to regional conditions and as needed to carry out policies already established at higher levels. This chain continues through the forest supervisors and the district rangers whom they administer. In each situation, the policy is made as needed to further the already established policies as is appropriate to the prevailing ecological, social, and economic conditions.

Within the NFS, district rangers have always had the primary responsibility for implementing and making local policy in order to further goals and objectives set by national policy or at higher levels within the agency. It appears that this latitude at the district level has increased in recent times as the FS has attempted to transition from a more or less militaristic, top-down management approach to one of maximizing latitude at the local level. The rationale for this shift has been that the district rangers and staffs knew far more intimately the conditions and needs of their respective districts than the supervisor's office (SO), regional office (RO) , and Washington Office (WO) administrators and staffs possibly could. This approach also has opened the door to increased opportunities for personal biases in management decision making. And as previously mentioned, although presidential

**administrations change every four to eight years, the field level personnel that make day-to-day management decisions are generally stable.**

**As every National Park has individual legislation that established it and articulated the purposes for which it was founded, possibly none of the federal management units have the latitude to establish policy at the unit level as do the National Parks, and therefore, probably no other unit manager has authority for policy making at the unit level as does a park superintendent. No other management agency deals with such a diverse array of units for which it must implement statutory policy as well as make policy as does the NPS. This is due to the individuality of each NPS unit as set forth in legislation.**

**The National Wildlife Refuge System seems to be somewhat of a hybrid between the NFS and NPS. Refuges have been established by authority of the president, by action of Congress, and by decisions made by the agency itself using either congressionally appropriated funds, funds available exclusively to it from the Migratory Bird Conservation Act of 1935, or funds from the Land and Water Conservation Fund of 1965. Thus policies for individual refuges are in part set by the method and source of funding by which the unit was established but also by FWS policies in general for the National Wildlife Refuge System.**

**Finally, policy for and as implemented by BLM for the lands it administers has changed greatly in recent year as we shall see later in this NRCP series. Whereas BLM policies prior to enactment of the Federal Land Policy Management Act of 1976 had been almost entirely aimed at commodity resource management, primarily grazing and mining, it has become more natural resource conservation oriented. The culmination of this policy change is in responsibility for the National Landscape Conservation System encompassing 26 million acres of BLM lands with national monuments, national scenic and historical trails, forest reserves, wild and scenic rivers, wilderness and areas for wilderness study, cooperative management and**

protection, national conservation, national recreation, and outstanding natural areas. Changes in BLM policy have been a top-down process.

## **Summary**

Natural resource conservation policy can be defined as a statement of goals and objectives for natural resources, and the guidelines and limitations on how those goals and objectives will be pursued. At the federal level policy is made by all three branches of government, but in more recent times, the administrative and judicial branches have played significantly greater roles in creating and shaping conservation and environmental policy.

At the land management level, natural resource conservation policy is implemented almost entirely by the secretaries of Interior and Agriculture who collectively administer 628.4 million acres of land managed primarily for natural resource protection and conservation. This acreage accounts for 27.7% of the land mass of the United States and 93.5% of all federal lands. Four agencies manage the nation's natural resource conservation lands. Within the Department of Interior, BLM, FWS, and NPS each manage 41.6%, 15.0% and 12.6%, respectively. The FS manages the remaining 30.8% in the NFS.

It is important to understand the process by which natural resource conservation policies are enacted and implemented along the hierarchal administrative chain of command. Changes in Congress, the administration and in ground level management personnel may all result in certain policy changes. On the other hand, while the highest hierarchal levels in policy making may change frequently, the field levels are usually fairly stable. At all levels of policy creation and implementation there are opportunities for public input that might ultimately shape on-the-ground management.

Further, the courts provide an additional tool for shaping policy. This approach has been effectively used by environmental groups for the past several decades.

**However, the litigative approach has usually resulted in a win for the best attorneys or the side that is most persistent which is often not the best decision making process for intelligent and informed land management.**