

A "Cradle to Grave" Evaluation of Projects and Appeals on the Green Mountain and White Mountain National Forests

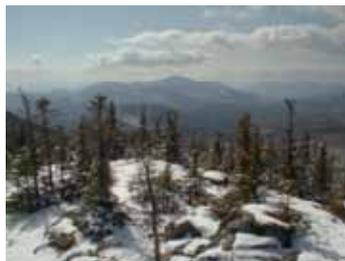


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Introduction

The administrative appeals process has become a prominent tool for diverse groups to further their own management goals and objectives for the National Forests. In the *Process Predicament*, the USDA Forest Service cites increases in administrative appeals as a principle cause of delays in the implementation of management projects. In response, a debate has arisen about the value of administrative appeals and the larger public participation process. However, the evidence informing these debates has been largely descriptive and focused on appeals of forest plans rather than individual forest management projects. This study attempts to examine some of these factors as well as gain further insight into the participation process.



Administrative Appeals Process

The USDA Forest Service uses a common, multi-step process (see Table 1) that includes public participation to develop forest management projects. By participating in steps 2 or 4 of a projects' development, individuals gain standing to file an administrative appeal if they are dissatisfied with the outcome of the process. An appeal temporarily halts the implementation of the project while it gets reviewed, which can lead to significant delays and difficulty meeting long term management objectives.

While the administrative appeals process has been studied by a number of authors (Jones and Taylor 1995; Germain et al, 2001; Manning 2004) there have been few studies which attempt to empirically validate the factors identified in the literature as possible sources of administrative appeals. Our study uses a mixed-methods approach, including interviews with project participants, (both appellants and non-appellants) as well as an analysis of projects and project participants' characteristics; to develop indicators (red flags) signaling an appeal is likely. Our analysis examines 35 projects from the Green Mountain National Forest, the Finger Lakes National Forest, and the White Mountain National Forest from their inception to their completion of the NEPA process.

Our objective is to gain new insight into the public participation process and to better understand the factors that lead project participants to appeal. We will use the results to develop an assessment tool that managers may use to better allocate resources to manage future administrative appeals and litigation.

Research Questions

- What factors affect participants' decisions to file appeals?
- Why do participants file appeals on one project but not on other projects?

Variables

• **Timing of Involvement:** Participants in the pre-decision scoping processes (Table 1; Step 2) are less likely to appeal Forest Service management decisions than participants who only participate in NEPA process (Table 1; Step 4)

• **Project Type:** Some types of projects (non-timber) are less likely to result in appeals than other types of projects (timber management)

• **Project Modification:** Projects that have been significantly modified during the public participation process are less likely to get appealed than projects that have not been significantly modified during the public participation process

Table 2: Five Mileposts in the Project Development Process

1	Scoping
2	Draft NEPA Document
3	Project decision
4	Appeal
5	Disposition

Table1: Steps in the Public Participation Process

Step 1.	Project Conceived
Step 2	Pre-decision Scoping
Step 3	Project Proposed
Step 4	NEPA Process
Step 5	Project Decision

Preliminary Results: How long does the NEPA process take?

While the Code of Federal Regulation mandates time for public comment on Forest Service actions, there is no legally mandated length of time for the Forest Service to develop a project. To quantify this length of time we identified five mileposts in the project development process (Table 2). We measured the interval (in days) between these mile posts (see example Figure 1) to come up with average time intervals for each of the projects in our population. Our analysis illustrates that:

- Scoping is the longest phase of the NEPA planning process
- Appeals are typically received toward the end of the appeal period
- Disposition of an appeal takes a month to a month and half

Figure 1: Sample Time Intervals For Attitash Bear Peak Project:

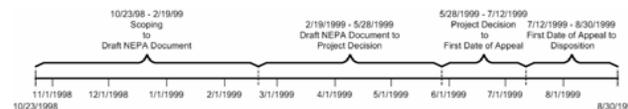


Table 3: Length of Time in Days of Forest Service Management Projects

Interval from:	Mean	Standard Deviation	Median
Scoping to Draft	633.3	480.08	467
Draft to decision	161.7	162.94	93.5
Decision to Appeal*	46.25	8.7	46
Appeal to Disposition	51.42	60.1	41

*The Code of Federal Regulation mandates a 45 day appeal period on any NEPA project decision (36CFR 215.2). However our mean and median times are longer than 45 days. This is because we collected our time data from Forest Service documents, while the regulation mandates 45 days from date of publication in a newspaper. Some of the documents we collected were dated before the notice was published in a newspaper.

Conclusion

These preliminary results scratch the surface of the administrative appeals research that could be done. The results of this work, and others like it, will provide decision makers with insight into the administrative appeals process. There is still a much to learn about the efficiency, equity and effectiveness of the appeals process. We believe that by using mixed methods and testing multiple hypotheses, we will be able to classify and compare the importance of the diverse factors that affect Forest Service project planning. Our ultimate goal is to develop a set of tools that managers can use to improve forest planning and management.

Literature Cited

Jones, E.S. and Taylor, C.P. 1995. Litigating Agency Change: The Impact of the Courts and Administrative Appeals process on the Forest Service. *Policy Studies Journal*. 23(2) :310-336.
 Germain, R.H., Floyd D. and S. Stehman. 2001. Participant perceptions of the Forest Service's public participation process. *Journal of Forest Policy and Economics*. (3) 113-124.
 Manning, N.J. 2004. Locking the Back Door : The Implications of Eliminating Postdecisional Appeals in National Forest Planning. *Society and Natural Resources*. 17:235-245.
 USDA Forest Service. 2002. The Process Predicament: How Statutory, regulatory and administrative factors affect national forest management. Washington, D.C.



All photographs by White Mountain National Forest Staff