



Larch Occasional Paper #25

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The Authority for and Implementation of Forest Service Special Areas

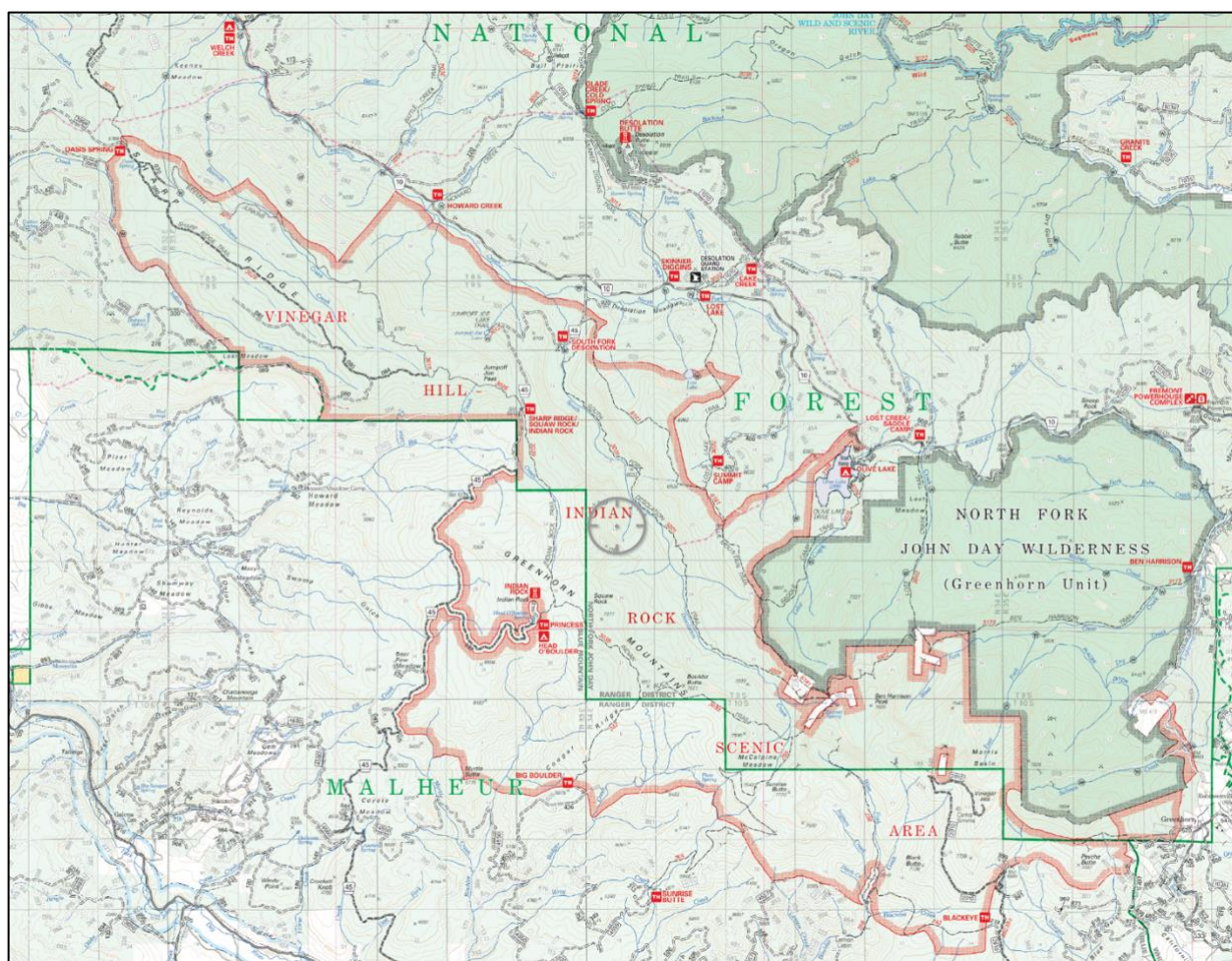
by Andy Kerr

Abstract

The Forest Service administers certain portions of the National Forest System (NFS) as special areas (SAs). “Special area” (a type of “designated area”) is a permanent administrative designation that is far more enduring than a mere land allocation made in a land and resource management plan for a unit of the NFS. SAs, or as more commonly known in agency practice, “special interest areas,” are areas of special interest that have been established under the authority of a Forest Service regulation entitled “Recreation areas.” Such special areas are “managed principally for recreation use substantially in their natural condition.” The Forest Service has used the authority to establish “recreation areas” to protect areas it has found to have special scenic, geological, botanical, zoological, paleontological, historical, and/or recreational resources. SAs are distinct from research natural areas (RNAs), which are authorized under a different provision of the Code of Federal Regulations. Sometimes the official name of the SA includes “special interest area” (for example, Mount Hebo Special Interest Area). Often “special interest” is not in the official name (as is the case for Yankee Mountain Scenic Area, among others). Sometimes an area is called an “unusual interest area,” perhaps with a parenthetical reference, as in Sand Creek Unusual Interest Area (Geological). Sometimes an area is called a “unique interest area” (for instance, Quosatana Butte Unique Interest Area). Whatever the moniker, these areas are special—sometimes unusually or uniquely so. Some Forest Service SAs have been permanently withdrawn from mineral development, others are temporarily withdrawn, while others are open to hard rock mining claims and development. All should be protected from mining. Furthermore, special area designation could be used to elevate and make permanent the conservation status of Forest Service lands that are critical in the conservation of threatened and endangered species.

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Map 1. *The Vinegar Hill–Indian Rock Scenic Area on the Malheur and Umatilla National Forests in northeastern Oregon.* Source: Forest Service.

Introduction

Over the decades, the Forest Service—through the actions of line officers (the chief, regional foresters, and forest supervisors, as well as the secretary of agriculture)—has established a plethora of permanent “special areas” within the National Forest System. The result is a hodgepodge of names, but the intent for all is the same: elevating the protection and management of certain special national forest lands by designating them as administrative areas that are intended to be permanent and not subject to the transience of a mere national forest “management area” (MA) designation. MAs are established (and revoked, shrunk, and/or weakened) in Forest Service land and resource management plans, when can be amended anytime and are to be revised no less than every fifteen years. The Forest Service planning regulations also describe “designated areas” (DAs) in a manner that encompasses special areas.

The original authority for the establishment of special areas within the National Forest System was the U-3 regulation of 1939 that authorized the Forest Service to recognize and protect recreation areas. This later evolved into a provision in the Code of Federal Regulations a bit misleadingly entitled “Recreation areas” (36 CFR §294.1). The Forest Service has elaborated and interpreted the §294.1 regulation in a chapter of the Forest Service Manual entitled “Special Recreation Designations” (Chapter 2370) and has further interpreted and operationalized the regulation in a section entitled “Designated Areas” in one of the Forest Service Handbooks, the Land Management Planning Handbook (FSH 1909.12, Chapter 20, section 24).

A Hierarchy of Law and Policy

In examining Forest Service designation and administration of SAs, it is useful to keep in mind the hierarchy of law and policy that the Forest Service follows.

The **US Constitution** places full and complete authority over the public lands with Congress: “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States” ([Article IV, Section 3, Clause 2](#)). The executive branch has no inherent authority over federal public lands.

Congress, through **statutes** (also known as Acts of Congress), has delegated many powers to the executive branch. Sometimes, some powers over the National Forest System are delegated to the president (for instance, the proclamation of national monuments under the Antiquities Act of 1906, [54 USC §320301](#)). Most often powers over the National Forest System are granted by Congress to the secretary of agriculture, who further delegates to the chief of the Forest Service, who may further delegate to regional foresters and forest supervisors (for example, the national forest planning requirements, [16 USC Subchapter I—Planning](#)). Congress has granted some powers over the National Forest System to the secretary of the interior (such as administrative withdrawals from mining, [43 USC §1714](#)).

Pursuant to these statutes, the secretary of agriculture (or sometimes the interior) may issue **regulations** or rules, which are codified in the *Code of Federal Regulations* (for instance, one entitled “Recreation areas,” [36 CFR §294.1](#)).

The chief of the Forest Service issues further management direction to field officials via the **Forest Service Manual** (FSM).

The [Forest Service Manual](#) (FSM) contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities.

The Forest Service goes even more granular in management direction in the **Forest Service Handbooks** (FSH).

[Forest Service Handbooks](#) (FSH) are the principal source of specialized guidance and instruction for carrying out the direction issued in the FSM. Specialists and technicians are the primary audience of Handbook direction. Handbooks may also incorporate external directives with related USDA and Forest Service directive supplements.

To summarize, the hierarchy looks like this:

Constitution of the United States
 Acts of Congress
 Code of Federal Regulations
 Forest Service Manual
 Forest Service Handbooks

The US Constitution can be amended, but only with the approval of three-quarters of the states. Congress can amend or repeal previous Acts of Congress. A cabinet secretary can generally revise or repeal a provision in the Code of Federal Regulations after public notice and comment. (However, there are two kinds regulations: those that are required to carry out an Act of Congress and those that may be issued by the secretary to further an Act of Congress). The chief of the Forest Service—without public notice or comment—can unilaterally repeal or revise provisions of the Forest Service Manual and the Forest Service Handbooks.

In terms of enduring conservation, a constitutional amendment protecting nature would be the ideal. The only thing harder to do than to enact an Act of Congress is to repeal an Act of Congress. A regulation is the strongest administrative protection possible for nature but is subject to revision, though history has shown it to be rare. (The Forest Service special area regulation has endured since 1939.) Protection afforded by manual or handbook issuances is the least durable.

The Original U-3 Regulation of 1939

In 1939, Secretary of Agriculture Henry A. Wallace issued the “U Regulations,” pertaining to the designation of wilderness areas (U-1), wild areas (U-2), primitive areas (U-2A), recreation areas (U-3), and experiment and natural areas (U-4) within the National Forest System.¹ The

¹ Blumm, Michael C., and Andrew B. Erickson. “[Federal Wild Lands Policy in the Twenty-First Century: What a Long, Strange Trip It’s Been.](#)” *Colorado Natural Resources, Energy and Environmental Law Review* 25:1 (2014).

regulations were authored by legendary public lands conservationist Bob Marshall, who at the time worked for the Forest Service (and was a cofounder of the Wilderness Society).²

The Current Code of Federal Regulations Provision

In the current Code of Federal Regulations, [36 CFR §294.1](#) authorizes two kinds of “recreation” areas: natural “recreation” areas and public recreation areas. Only the former are Forest Service special areas.

§294.1 Recreation areas.

Suitable areas of national forest land, other than wilderness or wild areas, which should be managed principally for recreation use may be given special classification as follows: [emphasis and double emphasis added]

(a) Areas which should be **managed principally for recreation use substantially in their natural condition** and on which, in the discretion of the officer making the classification, certain other uses may or may not be permitted may be approved and classified by the Chief of the Forest Service or by such officers as he may designate if the particular area is less than 100,000 acres. Areas of 100,000 acres or more will be approved and classified by the Secretary of Agriculture.

(b) Areas which should be **managed for public recreation requiring development and substantial improvements** may be given special classification as **public recreation areas**. Areas in single tracts of not more than 160 acres may be approved and classified by the Chief of the Forest Service or by such officers as he may designate. Areas in excess of 160 acres will be classified by the Secretary of Agriculture. Classification hereunder may include **areas used or selected to be used for the development and maintenance as camp grounds, picnic grounds, organization camps, resorts, public service sites (such as for restaurants, filling stations, stores, horse and boat liveries, garages, and similar types of public service accommodations), bathing beaches, winter sports areas, lodges, and similar facilities and appurtenant structures needed by the public to enjoy the recreation resources of the national forests**. The boundaries of all areas so classified shall be clearly marked on the ground and notices of such classification shall be posted at conspicuous places thereon. **Areas classified under this section shall thereby be set apart and reserved for public recreation use and such classification shall constitute a formal closing of the area to any use or occupancy inconsistent with the classification.**

Paragraph (a) addresses areas to be “managed principally for recreation use substantially in their natural condition.” These areas all generally have a formal name to identify the area that starts with a place name and ends with “Area.” Also known as special areas or designated areas, and ranging in size from a few to more than 100,000 acres in size, these kinds of recreation areas are the focus of the remainder of this paper. (See discussions below about Forest Service Manual and Forest Service Handbooks provisions.)

Paragraph (b) addresses areas to be “managed for public recreation requiring development and substantial improvements” that “may be given special classification as a public recreation area.”

² Forest History Society. 2019. [1939: Forest Service U-Regulations for Wilderness and Wild Areas](#) (webpage). The Authority for and Implementation of Forest Service Special Areas

Public recreation areas are generally less than 160 acres in size if for no other reason than that larger public recreation areas must be approved by the secretary of agriculture. Public recreation areas are highly developed with recreational facilities and infrastructure.

Regarding the sentence at the end of the regulation that starts, “Areas classified under this section”: though it is unartfully placed at the end of *subsection (b)*, the sentence applies to the *entire* section, which also includes *subsection (a)*. In any case, being “set apart and reserved” and formally closed “to any uses or occupancy inconsistent with the classification” doesn’t trump the Mining Law of 1872. In fact but not law (unless withdrawn via a separate administrative process), hardrock mining is incompatible in either kind of recreation area.



Map 2. The Mount Hebo Special Interest Area on the Siuslaw National Forest in northwestern Oregon.
Source: Forest Service.

The Current Forest Service Manual Provision

[Chapter 2370](#) of the Forest Service Manual, “Special Recreation Designations,” addresses three kinds of areas:

- Areas Designated by Law (FSM 2371)
- Areas Designed [sic] Administratively (FSM 2372) [The chapter later uses the term “designated” in the same context, so this is probably a typo.]
- National Registry of National [sic] Landmarks (FSM 2373) [“Natural” is correct and later correctly used in the provision.]

Areas designated by law (meaning in this case by Congress) are not further discussed here. The focus is administratively “designed” areas. National natural landmarks are also discussed.

FSM 2370 begins (emphasis and double emphasis added):

The Authority for and Implementation of Forest Service Special Areas

Certain limited areas of National Forest System lands not designated as wilderness and **containing outstanding examples of plant and animal communities, geological features, scenic grandeur, or other special attributes merit special management.** These areas are designated by law, or **may be designated administratively, as special areas.** Areas so designated are **managed to emphasize recreational and other specific related values.** Other uses are permitted in the areas to the extent that these uses are in harmony with the purpose for which the area was designated. The law or order designating each area provides specific objectives and guidelines for management of each area.

Though the authority comes from the Code of Federal Regulations provision entitled “Recreation areas,” the term “special areas” is introduced here along with non-recreation values worthy of “special management.”

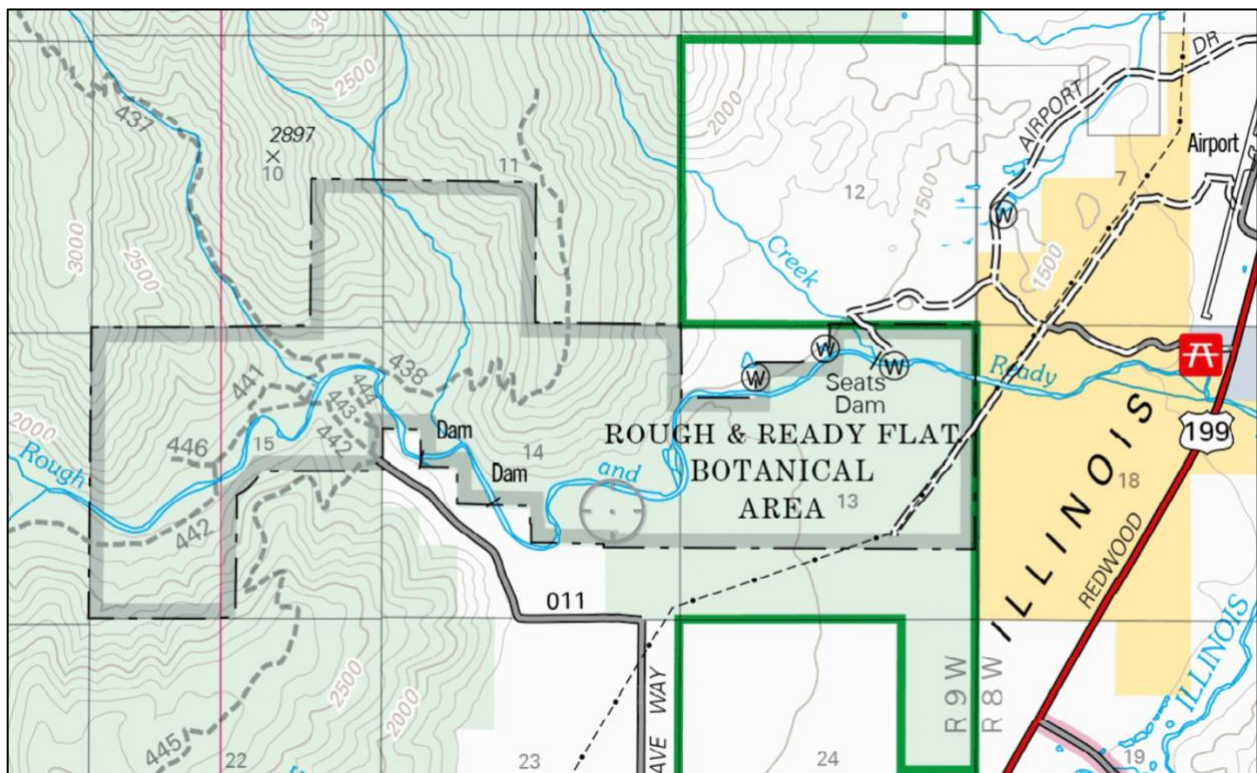
The authority to administratively designate national forest special areas “is found in the principal acts [of Congress] from 1897 to the present that authorize multiple-use management (FSM 1021), in each act designating a special area, and in 36 CFR 219 and 261” (FSM 2370.01).

The objective of special areas is “to protect and manage for public use and enjoyment, special recreation areas with scenic, geological, botanical, zoological, paleontological, archaeological, or other special characteristics or unique values” (FSM 2372.02).

Seven specific kinds of special areas are defined in FSM 2372.05:

1. Scenic Area. A scenic area is a unit of land with outstanding natural beauty that requires special management to preserve this beauty.
2. Geological Area. A geological area is a unit of land with outstanding formations or unique geological features of the earth’s development such as caves, fossils, dikes, cliffs, or faults.
3. Botanical Area. A botanical area is a unit of land that contains plant specimens, plant groups, or plant communities that are significant because of their form, color, occurrence, habitat, location, life history, arrangement, ecology, rarity, or other features.
4. Zoological Area. A zoological area is a unit of land that contains animal specimens, animal groups, or animal communities that are significant because of their occurrence, habitat, location, life history, ecology, rarity, or other features.
5. Paleontological Areas. A paleontological area is a unit of land that contains fossils of plants and animals, shellfish, early vertebrates, coal swamp forests, early reptiles, dinosaurs, and other prehistoric plants or animals.
6. Historical Area. A historical area is a unit of land possessing a significant site or a concentration of sites, buildings, structures, or objects united historically or prehistorically by plan or physical development. Memorial areas are included in this definition.

7. Recreational Area. A recreational area is a unit of land that has been administratively designated for particular recreation opportunities or activities such as hiking, rock hounding, recreational mining, photography, or other special activity.



Map 3. The Rough and Ready Flat Botanical Area on the Rogue River–Siskiyou National Forest in southwestern Oregon. Source: Forest Service.

The Current Forest Service Handbooks Provision

One of the Forest Service Handbooks, the Land Management Planning Handbook (FSH 1909.12), provides guidance for developing national forest land management plans. This handbook refers to “designated areas,” which include the special areas being discussed here. “Designated area” is defined in the Code of Federal Regulations that pertains to Forest Service planning and repeated in the Forest Service Manual.

As originally defined in the Forest Service planning regulations in the CFR ([36 CFR §219.19](#), emphasis added):

Designated area. An area or feature identified and managed to maintain its **unique special character or purpose**. Some categories of designated areas may be designated only by statute and **some categories may be established administratively in the land management planning process or by other administrative processes** of the Federal executive branch. Examples of statutorily designated areas are national heritage areas, national recreational areas, national scenic trails, wild and scenic rivers, wilderness areas, and wilderness study areas. **Examples of administratively designated areas are experimental**

forests, research natural areas, scenic byways, botanical areas, and significant caves.

As elaborated on in the Forest Service Land Management Planning Handbook ([FSH 1909.12, Chapter 10, section 14](#), emphasis added):

Designated areas are specific areas or features within the plan area that have been given a **permanent** designation to maintain its **unique special** character or purpose. Some categories of designated areas may be established only by statute (statutorily designated areas are often called Congressionally designated areas) and other administrative processes of the Federal executive branch may establish some categories administratively (administratively designated areas). Certain purposes and restrictions are usually established for designated areas, which greatly influence management needs and opportunities associated with them.

Exhibit 01 of this section lists the types of statutorily designated areas and administratively designated areas that may be present or potentially designated in National Forest System plan areas; and the administratively designated areas that the Regional Forester may designate. **This exhibit is not comprehensive, as plan areas may have other types of existing designated areas established by specific legislation or other administrative action that is unique to the plan area.**

Key is the concept of “permanent” administratively designated areas. Designated areas—even those administratively designated—are intended to have a permanence above and beyond a mere “management area” or “geographic area,” which are the terms used for various land allocations established and prescribed in national forest land management plans. A management area is based on a purpose, while a geographic area is based on a place. Management (or geographic) areas are generally intended to last as long as the life of the land management plan ([FSH 1909.12, Chapter 20, section 24](#)). Here is how one national forest explained the differences between special and management areas:

Special Areas

Certain limited areas of National Forest System lands may have outstanding or unique examples of plant and animal communities, geological features, scenic grandeur, or other special attributes that merit special management. These areas are designated by law or may be designated administratively as special areas. Designated areas are managed to emphasize recreational and other specific related values. . . .

Management Areas

Besides special areas, a forest plan identifies separate areas similar to county or city zoning where a distinct set of management guidance is applied. These are called management areas. No set list of management areas exists as for special areas. Rather, management areas are defined and developed in a forest plan. Like special areas, management areas have desired conditions and guidelines specific to those areas. Unlike special areas, those desired conditions and guidelines are not specified by law, statute, or administrative direction. Management area guidance is developed by the particular national forest in response to social, ecological, and economic concerns and conditions.³

In some contexts, the Forest Service refers to “designated areas” as “special areas,” which are intended to be “permanent” (noted above).

The Forest Service Land Management Planning Handbook contains this list of types of designated areas ([FSH 1909.12, Chapter 10, section 14 - Exhibit 01](#)):

Statutorily Designated Areas

- National Heritage Area
- National Monument*
- National Recreation Area
- National Scenic Area
- National Scenic and Historic Trails
- Wild and Scenic River
- Wilderness, or Wilderness Study Areas
- Highway Systems, Interstate and National

Administratively Designated Areas

- Critical Habitat under ESA
- Experimental Forest or Range
- Inventoried Roadless Areas or Roadless Areas designated under state rules in 36 CFR Part 294
- National Natural Landmark
- National Historic Landmark
- National Monument*
- National Recreation Trails
- Research Natural Area
- Scenic Byway – Forest Service
- Scenic Byway – National
- Significant Caves
- Wild Horse and Burro Territories

Regional Forester Administratively Designated Areas

- Botanical Area
- Geological Area
- Scenic Area
- Zoological Area

³ USDA Forest Service. 2008. [Forest Plan Revision for the Colville, and the Okanogan-Wenatchee National Forests: Briefing: Special Areas and Management Areas](#)

Paleontological Area
Historical Area
Recreational Area

* National Monuments may be congressionally or administratively designated.

Variant Names of Special Areas

Brief, and geographically limited, research discovered these unusually named Forest Service special areas:

- Merkel Canyon Unusual Interest Area, Colville National Forest⁴
- Seven Lakes Basin Unusual Interest Area, established on the Rogue River National Forest, Oregon, in 1934⁵
- Sand Creek Unusual Interest Area (Geological), established on the Winema National Forest, Oregon, in 1967⁶
- Olallie Ridge Special Interest Areas, referred to in a 1970 Forest Service document citing a 1967 recreation plan for the Olallie Ridge Unusual Interest Area, that includes five areas: Lamb Butte Scenic Area, Quaking Aspen Swamp Botanical Area, Lower Mountain Geologic Area, Yankee Mountain Scenic Area, and Rebel Rock Geologic Area⁷
- The Vinegar Hill–Indian Rock Unusual Interest Area (Scenic), referred to in a 1976 Forest Service document⁸ and named on the current Forest Service public recreation map as the Vinegar Hill–Indian Rock Scenic Area⁹ with the same boundary but a different name.

A circa 1990 Forest Service plan (still in effect) has a table with the title “Special Interest and Unusual Interest Area Plans,” which lists three “unusual interest” areas, two “scenic” areas, one “geologic” area, and one “geological” area.¹⁰

At least one national forest, the Siskiyou (now administered as part of the Rogue River–Siskiyou National Forest) has established “unique interest areas” (UIAs) that protect “significant cultural

⁴ USDA Forest Service. 1979. [Range Management Plan: C.C. Mountain Allotment](#). Kettle Ranger District, Colville National Forest.

⁵ LaLande, Jeffrey M. 1980. [Prehistory and History of the Rogue River National Forest: A Cultural Resource Overview](#). Rogue River National Forest.

⁶ USDI National Park Service. 1977. [Environmental Assessment: Draft Visitor Use and General Development Plans Parts III and IV of the General Management Plan Crater Lake National Park](#). NPS Denver Service Center.

⁷ USDA Forest Service. 1970. [Environmental Statement: Management of French Pete Creek, Willamette National Forest, Oregon](#).

⁸ USDA Forest Service. 1976. [Final Environmental Statement, John Day Planning Unit, Malheur National Forest](#).

⁹ USDA Forest Service and USDI Bureau of Land Management. 2010. Southern Blue Mountains (North Half).

¹⁰ USDA Forest Service. 1990 (ca.). [Proposed Land and Resource Management Plan, Mt. Hood National Forest](#).

or exceptional geologic sites” where “development or vegetation manipulation for commodity protection” are not allowed. Cultural sites include historic structures or locations of historically significant sites. Such geologic areas “consist of prominent or unusual rock buttes or waterfalls.”¹¹ On the Siskiyou, the fifteen areas total 2,105 acres.¹² The 1990 final forest plan (still in effect) says [emphasis added]:

Unique Interest areas are classified under 36 CFR 294.1 and managed to protect, and where appropriate, foster public use and enjoyment of significant cultural or exceptional geologic sites on the Forest (FSM 2360 Special Interest Areas). Cultural sites include prehistoric or historic sites, buildings, or objects of historical significance. Geologic sites consist of prominent or unusual rock buttes or waterfalls.¹³

Under “Standards and Guidelines: Minerals” in the forest plan, guideline MA5-5 states:

Strong mitigation to protect Unique Interest Management Area values is essential. Operators of valid claims shall be required to have an operating plan providing the least amount of impact. Unique Interest areas may be recommended for withdrawal from mineral entry in situations where mitigation measures do not adequately protect management area values. The mineral potential of the area shall be assessed before withdrawal is recommended. Rock quarries shall not be permitted.¹⁴

This language seeks to accommodate the Mining Law of 1872, but hardrock mining is inherently incompatible with the purposes of the unique interest area.

That same Siskiyou National Forest Land and Resource Management Plan designates, approves, and/or proposes unusual interest areas, botanical areas, scenic areas, and recreation areas, as well as unique interest areas.

Conclusion and Recommendations

Forest Service–established special areas (aka special interest areas, unusual interest areas, unique interest areas, and so on) are granted some of the strongest administrative protections possible for portions of the National Forest System.

While special areas can be disestablished, weakened, and/or shrunk, such is very rare. It is far more difficult for the Forest Service to degrade special areas than agency management areas, the latter of which can be modified by a mere amendment to a national forest land and resource management plan. Once a special area has been designated, it tends to remain recognized as special.

¹¹ USDA Forest Service. 1990. [Land and Resource Management Plan, Siskiyou National Forest.](#)

¹² USDA Forest Service. 1989. [Final Environmental Impact Statement, Land and Resource Management Plan, Siskiyou National Forest.](#)

¹³ USDA Forest Service. 1990. [Land and Resource Management Plan, Siskiyou National Forest.](#)

¹⁴ Ibid.



Map 4. The Sutton Recreation Area on the Siuslaw National Forest on the central Oregon Coast. Source: Forest Service.

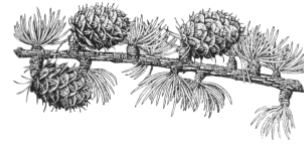
However, special areas are not generally protected from the filing of hardrock mining claims under the Mining Law of 1872. All should be. Permanent protection against mining can only be established by an Act of Congress. Twenty-year (and renewable) protection against mining is possible by order of the secretary of the interior (at the request of the secretary of agriculture or the chief of the Forest Service).

Additional and expanded Forest Service special areas could affirmatively and permanently conserve the habitat of threatened and listed species: botanical areas for plant species and zoological areas for animal species. In addition, there are numerous other areas of special scenic, geological, botanical, zoological, paleontological, historical, and/or recreational interest that deserve formal special area status.

If Forest Service special areas are comprehensively withdrawn from mineral entry, I believe they would qualify for United States Geological Survey's "GAP 2" protected area status and, collectively, could make a significant contribution toward President Biden's goal of protecting 30% of the land and water area of the United States by 2030 (30x30).

Noticeably missing in this analysis is any discussion on the number, size, and location of Forest Service special areas. Remarkably, no centralized database of such areas exists. It is beyond the scope of this paper to review land and resource management plans for 154 national forests, 20 national grasslands.

Larch Occasional Papers



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