

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1994, the Forest Service published a proposed revision of its animal damage management direction in Forest Service Manual Chapter 2650 [59 FR 30334]. The proposed policy clarified the role of the Forest Service, and Animal and Plant Health Inspection Service (APHIS) in NEPA compliance for animal damage management activities on National Forest System lands.

The Forest Service cooperates with APHIS under the Animal Damage Control Act of 1931, as amended (7 U.S.C. 426-426c), which, in part, authorizes animal damage management activities on National Forest System lands. In cooperation with the Forest Service and States, APHIS carries out animal damage management activities on some National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. Under other authorities (e.g., Multiple-Use, Sustained-Yield Act of 1960 [16 U.S.C. 528(note), 528-531]), the Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as damage to timber stands and roads by beavers.

The Secretary of Agriculture has assigned APHIS the lead responsibility for animal damage management activities (7 CFR 2.51(a)(41)). The principal change proposed to existing Forest Service Manual policy (FSM 2650) is the designation of APHIS as the lead agency for preparing environmental documentation on those animal damage management activities conducted by APHIS that would be carried out on National Forest System lands. The Forest Service will be a cooperating agency in preparing and reviewing environmental analysis and documentation of actions proposed by APHIS that would occur on or affect National Forest System lands. In that role, the Forest Service would provide any mitigation measures needed to ensure that animal damage management activities performed by APHIS are compatible with direction established in the Forest Land and Resource Management Plan.

The proposed policy would bring the Forest Service Manual direction into conformance with the Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed June 18, 1993. Notice of availability of the MOU was published in the **Federal Register** on July 13, 1993 (58 FR 37704).

The 1993 MOU clarified the role of each Forest Supervisor in cooperating with APHIS and the States to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans. The MOU also clarified that APHIS, in cooperation with the Forest Service, develops annual work plans for animal damage management activities on National Forest System lands. These plans address control areas, specific control techniques, emergency control procedures, timeframes, and other limitations and restrictions on the implementation of ADM decisions based on NEPA analysis. The MOU recognizes APHIS annual work plans as establishing the guidelines for predator control actions initiated by APHIS on National Forest System lands.

Response to Public Comments Animal Damage Management Policy

The public comment period on the proposed policy closed August 12, 1994. The Forest Service received 58 letters from individuals, organizations, six State agencies, and one federal agency.

Of the 58 letters submitted, two (2) letters expressed support for the proposed policy. Four (4) letters expressed support if specific changes were made to the policy. Two (2) letters requested that all animal damage management be abolished. One (1) letter expressed support for only non-lethal methods of animal damage management. Forty six (46) letters expressed opposition to the policy changes for a variety of reasons.

The 58 letters were from 11 Western, six Eastern, two Southern and two Midwestern states. Of the 58 letters, 30 were written by individuals who identifies no affiliation with any group or organization. Twenty-one (21) letters represented a variety of organizations, including: animal rights or welfare organizations (11 letters); environmental action organizations (3 letters); organizations concerned with biodiversity (3 letters); wilderness organizations (3 letters); an organization of state agencies (1 letter). Six letters were from State agencies with responsibility for fish and wildlife management. One letter was from a federal agency. A summary of major comments received and the agency response to them follow.

1. Role of States

Comment: Of the 50 States, six responded individually and comments were generally favorable. Six State fish and wildlife agencies and the International Association of Fish and

Wildlife Agencies, representing all the 50 States, generally concurred with the proposed policy. Two State agencies, however, requested (1) that a statement be included that any animal damage management activities on National Forest System (NFS) lands by any individual or agency must be done in accordance with State law; and (2) section 2651.2 be revised to require not only cooperation but also consultation with the State Fish and Wildlife agencies to control damage caused by game animals and furbearers through hunting or trapping, where practical.

Response: While "cooperation" requires "consultation", the Forest Service has no substantive concern with revising section 2651.2 to include "consultation" and has adopted the proposed suggestion.

The Forest Service, historically, has viewed the regulation of hunting and fishing as the responsibility of the States. This is recognized in agency direction and FS cooperative agreements with State fish and wildlife agencies. This policy does not infringe or modify that approach. Since 1897, under the federal statutes governing National Forests, general civil and criminal jurisdiction of States has extended to federal lands reserved as National Forests. 16 U.S.C. 480. Over the years, State wildlife and game laws have therefore controlled hunting and fishing in these reservations. Beginning in 1960, when Congress enacted modern, multiple-use provisions for forest resources, it carefully preserved the States' role in managing the wildlife resources in National Forests:

It is the policy of Congress that the national forests are established and shall be administered for (multiple use). * * * Nothing herein shall be construed as affecting the jurisdiction of the several States with respect to wildlife and fish on the national forests (16 U.S.C. 528). More recently, Congress reiterated the States' role over wildlife, hunting, and fishing on national forest land in the Federal Land Management Policy Act of 1976: (N)othing in this Act shall be construed as authorizing the Secretary concerned to require federal permits to hunt and fish on * * * lands in the National Forest System * * * or as enlarging or diminishing the responsibility or the authority of the States for management of fish and resident wildlife (43 U.S.C. 1732 (b)).

Thus, consistent with the statutory context, the Forest Service is strongly encouraged to rely on State regulation of hunting on National Forest System Lands; and the Forest Service is not expected to intervene, absent some overriding federal concern. See, e.g., *Hunt v. United States*, 278 U.S. 96