

documentation of APHIS-sponsored ADM activities on NFS lands, APHIS will also be responsible for completion of all Endangered Species Act-mandated interagency consultations (16 U.S.C. 1536.7; FSM 2671.4). Presently, APHIS operates under the programmatic biological opinion issued by the U.S. Fish and Wildlife Service for the Animal Damage Control Program on July 28, 1992 and will consult with the U.S. Fish and Wildlife Service both formally and informally, as appropriate, under Section 7 of the Endangered Species Act, on future actions including those on NFS lands.

As to consistency of approaches to ensure Endangered Species Act (ESA) compliance, under the MOU, the FS and APHIS will cooperate in ESA compliance. In addition to changes based on public comment, the Forest Service, after consideration of the potential for joint responsibility under the ESA, developed additional policy to assure consistent application of protection for threatened and endangered species.

In the final amendment this language appears in section 2650.3, paragraph (5) and reads as follows:

Additionally, the lead agency responsible for completing environmental documentation is responsible for completion of all Endangered Species Act-mandated interagency consultations. However, the Forest Service will be a cooperating agency with APHIS during consultation under the Endangered Species Act where actions involve National Forest System resources or authorities.

Nothing in the Forest Service policy relieves APHIS of any of its current responsibilities to consult with the FWS nor does it violate any Forest Service policies.

#### 9. Clarification of Each Agency's Roles

*Comment:* Another government agency asserted that "the Forest Service and APHIS must clarify their precise roles in preparation of environmental impact analyses and documentation for animal damage management activities on National Forest System lands \* \* \*."

*Response:* The roles have been clarified in the 1993 MOU and proposed FSM 2650.6. The Forest Service and APHIS have agreed that APHIS will ensure NEPA compliance and be the lead agency for all actions that APHIS initiates and carries out on NFS lands. Predator control to reduce livestock loss is an example of an action carried out by APHIS. If the Forest Service carries out the action, such as reducing bear or beaver damage to tree regeneration, the

Forest Service will be the lead agency for NEPA compliance.

APHIS has not and will not work on any Forest Service administered land without proper NEPA compliance. The Forest Service will cooperate in each effort by APHIS. Disagreements on any specific points are handled through annual meetings or during the development of work plans or NEPA documents, as appropriate. The MOU describes the specific framework for meetings and states that disagreements will be elevated to appropriate levels for resolution.

*Comment:* Twenty-five reviewers noted their view that APHIS "cannot comply with forest plans;" and ten others questioned whether APHIS "fails to comply with the Endangered Species Act, National Environmental Policy Act, National Forest Management Act, Wilderness Act, Administrative Procedures Act, and numerous other State and Federal laws".

*Response:* The Department does not agree. The statement that APHIS "cannot comply with forest plans" reflects a misunderstanding of law and authority. Under the 1993 MOU, APHIS consults with the Forest Service to assure that any ADC plans and actions are consistent with the standards and guidelines in the applicable forest plan. As already stated under comments on "Forest Service Abdication of Responsibility", the Forest Service retains the ability to assure that ADM plans and actions are consistent with forest plan requirements.

#### 10. NEPA Analysis and Disclosure on Proposed Policy

*Comment:* Seventeen respondents asserted that the Forest Service must "complete an Environmental Impact Statement (EIS) to analyze the impact of this transfer." Six stated that an Environmental Assessment (EA) is needed.

*Response:* The Forest Service disagrees. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received on the proposed policy, and the nature and scope of the proposed policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

#### 11. Use of Pesticides in Animal Damage Management

*Comment:* Two respondents were concerned about the use of pesticides on NFS lands stating that the Forest Service does not "understand the public's biological concerns about the use of pesticides and the effects on wildlife" and "that no one is responsible for overseeing of tracking sodium cyanide in M-44s".

*Response:* By law and regulation, both APHIS and the Forest Service allow only certified individuals to administer pesticides being used on NFS lands for animal damage management activities. APHIS reports their use of pesticides annually to the Environmental Protection Agency (EPA). The Forest Service also annually reports pesticide use. Use of sodium cyanide present in M-44s would appear in APHIS reports.

#### Conclusion

Having carefully considered the comments received in response to the June 13, 1994, notice of proposed policy and having reconsidered the 1993 Animal Damage Management MOU between the Forest Service and APHIS, the Forest Service is adopting the revised Animal Damage Management policy as proposed, except for the revisions noted in the response to public comments and several minor technical revisions. The agency believes the policy is fully responsive to the agency's legal and management obligations. The policy implements the 1993 Memorandum of Understanding which recognizes APHIS as the lead for NEPA compliance where APHIS is the action proposing agency. APHIS has entered into a similar agreement with the Bureau of Land Management of the U.S. Department of Interior, thus providing a fully coordinated, streamlined and consistent approach to NEPA compliance across all land ownerships on federally-funded animal damage management activities to be undertaken by APHIS. This partnership with APHIS will achieve efficiencies through both economies of scale and integrated NEPA documentation. The full text of the directive as it will appear in the Forest Service Manual is set out at the end of this notice.

#### Environmental Impact

This policy provides administrative instructions to Forest Service field offices on the procedures and processes to follow in order to coordinate with APHIS on animal damage management activities and implements the terms of the 1993 Memorandum of Understanding between the Forest