



File Code: 1920

Date: October 10, 2014

Route To:

Subject: MIS Frequency Change For American Beaver And Cutthroat Trout

To: Project File

I am authorizing an administrative change to the 2003 Land and Resource Management Plan for the Uinta National Forest (“Uinta Forest Plan”) to modify the frequency of monitoring Bonneville cutthroat trout and Colorado River cutthroat trout. This administrative change reduces the frequency from surveying one third of the populations per year to surveying all populations every five years. I am also authorizing an administrative change to the 2003 Revised Forest Plan [for the] Wasatch-Cache National Forest (“Wasatch-Cache Forest Plan”) to modify the frequency of monitoring American beaver from one to two fourth-level hydrologic units per year to monitoring all beaver survey sections every five years. This will make it consistent with the Uinta Forest Plan.

The administrative changes were proposed to improve the efficiency, consistency, coordination and cost-effectiveness of monitoring management indicator species. The changes also allow the Uinta-Wasatch-Cache National Forest (“UWCNF”) to be more consistent with 36 CFR 219.12(c)(3)(ii) in regards to a coordinated and integrated broad-scale monitoring effort with the State of Utah.

Purpose & Need

The Utah Division of Wildlife Resources (“UDWR”) has requested that the monitoring of cutthroat trout be expanded so that all populations are monitored every five years. As the wildlife regulator agency, the UDWR issues a certificate of registration to the Forest Service each year to sample fish. The UDWR has requested that the sampling frequency be adjusted so that resources and collected information can be more readily shared.

Currently monitoring for beaver is inconsistent between the areas managed under the Uinta Forest Plan and the Wasatch-Cache Forest Plan. Sections in the Wasatch-Cache area are currently surveyed within every seven years, while sections in the Uinta area are surveyed every five years. By modifying the frequency, survey sections for the beaver in both the Uinta and the Wasatch-Cache areas will be monitored every five years making the two forest plans consistent.

Public Scoping

The Forest Service announced the administrative change on the UWCNF home page. The public was given until July 24, 2014 to provide comments on the proposed change. The announcement remained on the webpage until September 30, 2014. Only one comment letter was received.



The issues raised by the commenter included lack of following: the Code of Federal Regulation for making such a change, eliminating partial monitoring each year to full monitoring every five year, the frequency of the monitoring and the concern over consideration of comments made during the development of the forest plans.

My staff, in coordination with staff at the Intermountain Regional Office, has reviewed the specific comment received. Our proposal to modify the frequency of monitoring in regards to American beaver and Bonneville and Colorado River cutthroat trout is consistent with the existing planning regulation. I also recognize that in this coming year the monitoring plan will again be modified to match the 2012 planning rule. I understand the concern over dropping the partial monitoring each year to a full monitoring every five years. This shift does not prevent monitoring some cutthroat populations or beaver monitoring sections each year, but it allows for greater flexibility to share resources with state agencies to provide a more consistent assessment between agencies while reducing duplication of work. The change in monitoring frequency addresses the concern of impacting Forest Service sensitive species through oversampling of these limited populations.

Contact: For further information regarding this decision contact Paul Cowley, project leader and Natural Resources and Planning Staff Officer, 801-999-2177.

I find that this decision to administratively change the sampling frequency for American beaver in the Wasatch-Cache National Forest's monitoring plan and the cutthroat trout monitoring in the Uinta Forest Plan is consistent with 36 CFR 219.13 (c)(1). Public comment was received and has been adequately addressed given the limited scope of the change.



DAVID C. WHITTEKIEND
Forest Supervisor

cc: Traci F Allen

Uinta-Wasatch-Cache National Forest Response to Comments for Administrative Record

Comment

The commenters “appreciates this opportunity to provide comments in response to your solicitation letter received the last week of June concerning the proposed action entitled “MIS Monitoring Frequency Administrative Changes.”” The commenter “is an interested party with concerns recommendations and potential objections specific to the proposed action. Thank you for taking a minute of your time to ensure that” the commenter “is maintained on the contact and interested party lists for this and all other Forest Plan Amendments concerning the 2003 Uinta and/or Wasatch-Cache Revised LRMPs.”

The proposed action would necessitate amendment of two Revised LRMPs. . . .

Response

The proposal to change the monitoring plan in the forest plans does not require amendment. Per Title 36 CFR 219.13(a), “a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area.” Title 36 CFR 219.7(e) identifies plan components, which do not include the monitoring plan; therefore, an amendment is not required to add, modify, or remove the monitoring plan. The regulations at Title 36 CFR 219.13(c) provide for administrative change, which is “any change to a plan that is not a plan amendment or plan revision.”

Comment

“The comment solicitation letter suggests that in order to maintain administrative standing and/or interested party status in the project one must submit comments by the 30th day of the date of the Forest’s letter. In and of itself, we do not believe this is consistent with the 1982 or the 2012 NFMA regulations and rules. The same is so for the 2000 NFMA transition regulation that was in effect at the time of approval of both LRMP Records Of Decision in 2003. The date chosen to put on the top of USFS letterhead is not indicated by any set of NFMA regulations to be of any consequence. The date of publication of legal noticing in Newspapers of Record and/or the Federal Register is relevant for determining formal public comment periods under the 1982, 2000, and 2012 NFMA regulations.”

Response

Because the change to the monitoring program is being done through the administrative change procedure, public notification is per 36 CFR 219.16(c)(6), under which the notification “may be made in any way the responsible official deems appropriate,” except for the requirement that such notice is posted online, which it was on June 23, 2014. There are no requirements regarding length of comment period for administrative changes. The responsible official, Forest Supervisor of the Uinta-Wasatch-Cache National Forest, deemed the notice posted online and the comment solicitation letter with a 30 day comment period were sufficient. Administrative standing and/or interested party status is not relevant to administrative change, because administrative review applies to only plans, plan amendments, or plan revisions, not administrative changes.

Comment

“The proposed action is to change the minimum monitoring duties for the American Beaver, Colorado River Cutthroat Trout (CRCT) and Bonneville Cutthroat Trout (BCT) MIS selected for riparian and aquatic community ecological Management Indicator Species (MIS) in two LRMPs. In each of the three MIS there has been a “minimum” duty to monitor at least some of each of the three MIS populations annually. Typically, this averages out to a “minimum” duty to monitor each population on a staggered rotation where each population is re-monitored no less than once every 5 years. Importantly, under both LRMPs there shall be annual monitoring of all three MIS on each LRMP.”

Response

Currently monitoring for beaver is inconsistent between the Uinta Planning Area (UPA) and the Wasatch-Cache Planning area (WCPA). Survey sections on the WCPA are currently surveyed within every seven years where survey sections on the UPA are surveyed every five years. By modifying the frequency both planning area beaver survey sections will be monitored every five years making the two plans more consistent. The regulations do not require annual monitoring. It is more important to set the management sampling frequency from an ability to detect change as a result of management activities. In this case there is a concern that cutthroat trout population monitoring is occurring more frequently than necessary to detect this change in populations given that a baseline has been established. Prior to 2003 a solid baseline had not been established for these populations.

Comment

“Under the proposed action all minimum requirements to do monitoring of at least some (e.g. at least 20% of the populations annually) would we [sic] entirely amended out of the/two LRMPs. This would be replaced with a “minimum” duty to document 100% of all populations each 5 years. There are some relatively minor variants on this theme but this is it in a nutshell; staggered annual monitoring of 3 MIS in 2 LRMPs would generally be amended to a once every 5 year plan, everywhere, and possibly only so long as Utah does this for lands in both Forests in both states (Utah and Wyoming).”

“The justification? It explicitly has nothing to do with application or even consideration of the best available science, which is a duty imposed under the substantive provisions of the 2000 and 2012 NFMA regulations. (The comment solicitation letter explicitly invokes only substantive provision of the 2012 NFMA regulation, which is a notable first instance of such for dealing with either of the two LRMPs to be amended.) The only justification for doing such is because that is what state of Utah is doing. These National Forests are governed by the laws and policies, however, of the American government, not of one state. These National Forests, also, span two local states. It is wise and it is encouraged under the NFMA regulations to “save a buck” when possible when fulfilling the duty to gather and maintain quantitative population data for the MIS each National Forest LRMP selects. However under the NFMA and its implementing regulations promulgated since 1999, this shall not be at the expense of considering and applying the best available science. (Arguably, the prior NMFA regulations, which importantly-both National Forests have chosen to explicitly incorporate into both of the 2003 Revised LRMPs, impose a quantitatively and scientifically more challenging bar.) Under the measures for scientific integrity and accuracy for monitoring duties for ecological management indicator species imposed by “any” possibly applicable set of NFMA regulations ... the proposed action and its

justifications are fundamentally inadequate on scientific and technical grounds, and the justifications invoked are even more insufficient.”

Response

As per 36 CFR 219.1(g), the responsible official is required to ensure that the “planning process, plan components, and other plan content are within . . . the fiscal capability of the unit.” The monitoring plan is considered “other plan content.” As explained in the notice, the combining of the Uinta National Forest and the Wasatch-Cache National Forest into one administrative unit with responsibility for implementing two forest plans necessitated review of opportunities to improve efficiency to meet this requirement. Aligning monitoring schedules across the two planning areas (Uinta and Wasatch-Cache) and taking advantage of opportunities to align monitoring with other agencies and partners are two ways to do this.

In making this change for efficiency’s sake, the responsible official also considered the need to meet the purpose of the monitoring program with such changes in place. Specifically, he considered if changing the monitoring frequency would result in insufficient information to answer the monitoring questions, which are as follows:

Changing the frequency of cutthroat trout monitoring in the Uinta Planning Area from three years to five years reduces the likelihood of resampling the same individuals within the population and increases the potential for sampling new fish as cutthroat trout live approximately four to six years of age.

There are approximately 15 fourth-order HUCs on the Wasatch-Cache planning area, so by following this schedule, all beaver monitoring sections are surveyed every 7.5 years across the Wasatch-Cache planning area. The Uinta Forest Plan requires at least 20 percent of the identified beaver monitoring sections be surveyed annually. By following this schedule, all beaver monitoring sections are surveyed every five years across the Uinta planning area. By aligning monitoring schedules, the administrative change would improve efficiency and consistency of forest plan monitoring for beaver across the entire Uinta-Wasatch-Cache NF.

Comment

The commentor “recommends revamping the scoping effort for the project and being more deliberate and explicit in application of the NFMA regulations and policies that govern this process. Consistent with commitments made in two LRMPs and the (legal commitments made in the) corresponding Records Of Decision (and FEIS) documents . . .” “the commentor” believes that the Forest Service needs to proceed with preparation of an EA after the scoping process is corrected and reset.”

Response

The regulations at 36 CFR 219 provide for changes to a forest plan after any decision of its approval through revision, amendment, or administrative change, as appropriate. The administrative change procedure is appropriate for this change to the monitoring program. The administrative change procedure is found in 36 CFR 219.13(c) and has been followed.

Comment

“Finally, we comment that the specific issues central to this proposal were of central material concern to” commenter’s ““administrative appeals of both of the LRMPs concerned as well as the Washington Offices response to these specific MIS selection and monitoring concerns (2003 to 2005). To disregard that material now in the manner being proposed by the Forest Service letter would seem to make such claims freshly ripe for review. As such, the two 2003 Revised LRMP project records are incorporated into these comments.”

Response

The Forest has reviewed the comments made by commenter and submitted during the planning process and appealing the decision on the selected MIS species. The Forest has also reviewed the appeal decision for the Uinta and the Wasatch-Cache appeals. As noted in the appeal decisions, both plan decisions were affirmed for the selection of management indicator species. The Wasatch-Cache decision was affirmed with direction to document the decision. In response to this direction, a white paper titled “The Wasatch-Cache National Forest in Response to the Washington Office Instruction On Appeal Points in the Revised Forest Plan” details the selection process for MIS in the revised forest plan, including how the selected MIS meet the stated criteria used for selection including sensitivity to habitat change and if they are representative of the species in the habitat type was developed and submitted to the Washington Office fulfilling this direction. MIS are discussed in the FEIS, pages 3-169 through 3-171 and Appendix J of the FEIS.

The findings on the appeal decision for the Uinta NF Revised LRMP and EIS was the record provided sufficient documentation of a deliberative process for selecting MIS, including the basis for selection and non-selection, and linkage to probable management activities.

Comment

“We look forward to learning how the NFMA and NEPA analyses for the two proposed LRMP amendments proceeds. Please let” the commenter “. . .know what the next steps will be. Please also let” the commenter “know what NFMA and NEPA regulations are ultimately to be applied to the NFMA and NEPA analyses associated with the proposal(s).”

Response

See the above responses that address this question.