

**Attachment 2**

**Kisatchie National Forest Plan Amendment #9  
Prohibiting Dog-Deer Hunting  
Appeal Issue Reviewed and Affirmed without Instructions**

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### **Administrative Procedure Act**

Appellant contends the decision is arbitrary and capricious because it is not grounded in fact and gave overwhelming weight to a few documented complaints of adjacent landowners, while rejecting out-of-hand the social and societal impact of ending this form of deer hunter and ignoring the significantly negative financial impact to the community (NOA #1075, pp. 2 and 7).

The Administrative Procedure Act (APA), which for the Forest Service has no implementing regulations, provides that a reviewing court may “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...” (5 USC 706 (2)(a)). It is therefore a statute more directly applicable at the level of judicial review. Our administrative-level review of this decision addresses compliance with other laws and regulations pertaining to the amendment to the Kisatchie National Forest (KNF) land management plan and therefore will implicitly incorporate a consideration of whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the APA.

### **National Environmental Policy Act**

#### *Scope*

Appellant contends that there is no documentation supporting the statement that “the FS recommendation to eliminate dog-deer hunting on the KNF was strongly and steadfastly supported by relieved Louisiana adjacent landowners.” The appellant contends the statement does not address the adjacent KNF landowners that do support and/or participate in dog-deer hunting (NOA #1076, p. 3). One appellant states that the Responsible Official cites written comments taken by the LDWF that revealed most of the participants support the recommendation to eliminate the dog-deer hunting season, and that this information was used in part of her determination that change was needed. The appellant contends that it is not clear who had the opportunity to comment or how the commenting period was advertised (NOA #1076, p. 3).

In the same portion of the Decision Notice (DN) that provides the statement cited by the appellant, the DN goes on to state that “This recommendation also brought an outcry by dog-deer hunters, who viewed the dog-deer hunting season on the KNF as one of the last opportunities to dog-deer hunt on public lands in Louisiana without paying for a lease (DN, p. 2).” This statement in the DN demonstrates that the Responsible Official did consider both supportive and non-supportive comments. Additionally, Appendix D of the EA, entitled “Response to Public Comments” identifies that there were comments received both for and against the proposal, and that only those comments that opposed the recommendation were considered to be issues used to develop alternatives (p. 19-20). Additionally, the DN (p. 2) references statements from adjacent landowners documenting incidents they have encountered with dog-deer hunters, these incidents are also discussed in the EA (pp. 22-28). There are multiple complaint letters from adjacent landowners included in the appeal record that support the ban on dog-deer hunting on the KNF (Appeal Record Doc. B5). I find that the DN and Environmental Assessment (EA) address both complaints filed by supporters and non-supporters of the proposal, and that there is some

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documentation to support the Responsible Official's claim that adjacent landowners supported the ban on dog-deer hunting.

The comment period that the appellant is referring to is tied to the written comments received by the LDWF in the spring of 2009 during the LDWF regulation process. Documents in the project record indicate that these comments were received during nine public meetings in March 2009 (Appeal Record Doc. May 7, 2009 – LDWF Public Comments). Due to the fact that this comment process was run by the LDWF and not the Forest Service, I find there are no violations of law, regulation, or policy in the way the comments were gathered or used by the Responsible Official.

### *Decision Rationale*

One appellant contends the ruling is based solely on opinion and conjecture rather than facts and statistics (NOA #0939, p. 2). Appellants contend that the decision was based on perception, assumptions, estimates, and skewed statistical data negatively biased toward dog-deer hunters and that much of the information used to make the decision is incorrect and taken out of context (NOAs #0001, p. 1; #1076, pp. 2, 6; #0939 pp. 1-3). One appellant contends the data regarding the numbers of citations and warnings per hunter day are insignificant and do not support the Responsible Official's justification of her decision to implement Alternative 2 (NOA #1076, pp. 6-7). An appellant contends the DN does not meet the requirements of the law and does not discuss how the responsible official weighed the risks and benefits of the alternative (NOA #0175, pp. 10 and 18).

Appellant contends the DN does not address the deficiencies noted in the original appeal decision (NOA #0175, p. 17). This appellant also contends that dog-deer hunting posed no significant adverse on any environmental condition, vegetation, wildlife, or endangered/threatened species; therefore this should not have been a contributing factor in the selection of the decision to prohibit dog-deer hunting (NOA #1075, pp. 2-3).

Forest Service regulations for implementing NEPA specify that when an EA and FONSI have been prepared, the Responsible Official must document a decision to proceed with an action in a decision notice (36 CFR 220.7(c)). The regulation further requires that "[a] decision notice must document the conclusions drawn and the decision(s) made based on the supporting record, including the EA and FONSI" (ibid.) and that the content of the decision notice must include the decision and rationale (36 CFR 220.7(c)(2)).

Agency directives applicable to the content of a decision notice are found at Forest Service Handbook (FSH) 1909.15, section 43.21. This guidance specifies that the decision and rationale section of a decision notice should specifically discuss 1) how issues were considered; 2) factors other than environmental effects considered in making the decision; 3) environmental document(s), by title, considered in making the decision; and 4) how the first three considerations were weighed and balanced in arriving at the decision.

The appeal decision dated, July 11, 2011, found that the original decision to prohibit dog-deer hunting failed to disclose impacts on all of the issues identified in the EA and how factors other than environmental consequences were considered. Additionally, the appeal decision found that

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the original decision failed to disclose the conclusions the responsible official drew from the environmental analysis.

The DN includes sections titled “Decision” and “Reasons for the Decision.” At the end of the first section, the responsible official states that Alternative 2 “strikes the best balance among the critical safety, social, economic and natural resource issues identified and evaluated in the NEPA process” (DN, p. 1). The section titled “Reasons for the Decision” (EA, pp. 3-6), describes the information from the EA that was used by the responsible official to make the decision. Throughout this section, the responsible official identifies the three issues from the EA (public safety, impacts on recreation and other land uses, and social and economic impacts) and describes the most important considerations from the EA that were used in making the decision. The responsible official expanded the section in the new decision notice to discuss factors outside of environmental consequences, and discusses the trade-offs that would occur if Alternative 2 was selected.

Related to two of the appellants’ claims, specific issues related to the number of dog-deer hunters and the social and cultural impacts of the decision are analyzed elsewhere in this attachment.

The Responsible Official provides examples in the DN of the most important considerations in making her decision (DN, pp. 4-6). These considerations do not include vegetation, wildlife, or endangered/threatened species. The EA does appropriately identify the occurrence or possibility of occurrence of federally-listed species within the Kisatchie NF and the determination of effects on those species a management concern for the KNF by default (EA, p. 14). However, this concern was not used to generate alternatives because it was not raised as a public concern during the scoping process.

Forest Service implementing regulations for NEPA require EAs to describe the impacts of the proposed action and any alternatives in terms of context and intensity as described in the definition of “significantly” at 40 CFR 1508.27 (36 CFR 220.7(b)(3)(iii)). One of the factors for considering intensity, as described at 40 CFR 1508.27(b)(9), is the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. This is at least one reason why the EA would include documentation about the potential effects to threatened and endangered species. Although there is no clear reason to have included disclosure of potential effects on general vegetation in the EA, I find no indication that it was a contributing factor in making the decision. I find the factors for which the EA discloses environmental consequences are not a violation of law, regulation, or agency policy.

I find the responsible official seriously considered the three alternatives studied in detail, discussed the effects associated with each of the issues, considered factors other than environmental consequences, and disclosed the conclusions drawn from the environmental analysis. I find no violation of 36 CFR 220.7(c)(2) or FSH 1909.15, section 43.21.

### ***Range of Alternatives***

Multiple appellants make contentions regarding the range of alternatives considered by the Responsible Official. Alternatives that appellants contend were not adequately explored include

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increased law enforcement or better enforcement of federal, state, and municipal laws already in place (NOAs #0939, p. 2 and #1076, p. 3), as well as the use of tracking collars (NOA #1076, p. 9) and restricting areas where dog-deer hunting is allowed (NOA #1075 pp. 2-3). One appellant also contends that in general the Responsible Official did not make an attempt to develop a compromise that accommodates all forest users to include dog deer hunters (NOAs #0001, p. 1 and #1076, p. 2). Another appellant generally contends that there was never any real consideration given to the very reasonable alternatives (NOA #1075, pp. 8-9, 16-17, 19). One appellant contends if perceived conflicts between recreation users and dog-deer hunters is of major concern, then the responsible official should have considered eliminating all other user groups during dog-deer season to avoid conflict (NOA #1076, pp. 4-5).

Agency policy for development and analysis of alternatives in an EA is largely the same as that for an Environmental Impact Statement (Forest Service Handbook 1909.15, section 41.22). The Responsible Official must study, develop, and describe appropriate alternatives to proposals involving unresolved conflicts (40 CFR 1501.2(c)). Reasonable alternatives should fulfill the purpose and need and address unresolved conflicts related to the proposed action, but that does not mean an infinite or unreasonable number of alternatives must be analyzed (FSH 1909.15, section 14). The Responsible Official is to “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” (40 CFR 1502.14(a)).

The EA contains a section (2.3) for alternatives eliminated from detailed study (pp. 17-19). The alternatives eliminated from detailed study include different arrangements of dog-deer hunt areas, different controls on hunting method, and prohibit non-dog-deer use during dog-deer season. The discussion of why these alternatives were eliminated from detailed study addresses the contention issues raised by the appellants (EA, pp. 17-19). For those other alternatives the Responsible Official eliminated from detailed study, the rationale given was that they were either a variation of Alternative 3 and the effects were covered within the spectrum of other alternatives; would not satisfy the purpose and need; could create administrative hurdles that could make it unfeasible or delay implementation; and would not adequately address other issues such as conflicts with private landowners, public safety on and near roads, and conflicts with non-hunting around the KNF (EA, p. 17-19).

I find no violation of law, regulation, or policy in regards to the range of alternatives considered in detail.

### ***Environmental Consequences***

As required by the National Environmental Policy Act (NEPA), environmental assessments (EAs) shall include the environmental impacts of the proposed action and alternatives (40 CFR 1508.9). “Effects and impacts used in NEPA regulations are synonymous. Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative” (40 CFR 1508.8).

It is not unusual to not have all the data or information desired for assessing some environmental consequences. For this reason, the NEPA implementing regulations at 40 CFR 1502.22 provide direction for acknowledging incomplete or unavailable information and assessing its relevance to evaluating significant adverse impacts.

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### *Environmental Impacts*

Appellant contends the claims that roads are damaged from an “influx of dog-deer” hunters is irrelevant as an open public road is accessible to everyone, therefore a damaged public road cannot be blamed on a particular user (NOA #1076, pp. 3, 7).

The appeal record contains references to road damage caused by vehicles associated with dog-deer hunters in several complaint letters over a number of years (Appeal Record Doc. B5, Complaint Ltr Feb 2005, p. 3; Complaint Ltr Feb 2003, p. 2; E3, Petition to Alexander, p. 20). One of these complaint letters is from a Forest Service law enforcement officer who provided this information based on professional judgment. These complaints are discussed in the EA (pp. 6 and 55). I find the Responsible Official had evidence to warrant the conclusion that some road damage is being caused by dog-deer hunters.

### *Economic Impacts*

Multiple appellants generally contend the economic data used by the KNF is not based on actual numbers; the use of estimates does not support the rationale that the impact will be small; the KNF’s estimate of the economic impact is too low; and the KNF should have surveyed dog-deer hunters to determine how much they spend (NOAs #1075, pp. 9-10; #0939, p. 3; #1076, p. 8). One appellant contends the DN finds a significant financial impact on the local economy and then ignores it, and that the KNF dismissed data from a Virginia study on the annual cost of keeping fox hounds (NOA #1075, pp. 9-10). This appellant also contends that law requires the KNF to collect the necessary data (40 CFR 1502.22 and 1502.24) (NOA #1075 pp. 9-10).

One appellant contends that there is no measureable value as to what is a “small” economic impact and that there was no mention of any negative impact of businesses that are located in states other than Louisiana (NOA #1076, p. 8). This appellant also contends that without the known estimated income of dog-deer households, it is unreasonable to make a comparison and that the \$4,500/year figure was never used in any of the Forest Service calculations of economic impact (NOA #1076, p. 8).

Social and economic impacts were identified as a significant issue in the EA (pp. 44-59). In conjunction with other significant issues, consideration of these issues resulted in development of Alternative 3 (EA, pp. 58-59).

The DN notes that some economic benefits will be lost (DN, p. 5). The EA states that all hunting and deer hunting contributed to 13,084 and 7,183 jobs respectively and estimates earnings to be \$303,067,276 and \$163,532,250, respectively (EA, p. 45). The EA further provides two economic scenarios estimating trip and annual spending at the lower and higher output ends for dog-deer hunters (EA, p. 51). The analysis also compares the direct and indirect effects of hunters purchasing goods during the period when they are hunting. It examines dog care spending such as veterinary services and the purchase of dog food as direct effects (EA, p. 51). The numbers used by the KNF are based on the software developed by the Minnesota IMPLAN Group that provides a fairly accurate model for economic statistics (EA, p. 50). The EA further states that no predictive study is available to provide insight into how many hunters will choose to travel to other areas to dog-deer hunt or no longer hunt deer (EA, p. 52). This is in adherence to 40 CFR 1502.22 that “the agency shall always make clear that such information is lacking.”

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The EA indicates that there is no known survey that provides dog-deer hunters and dog-deer hunter days directly (EA, p. 50). Thus, the KNF utilized the best available information available through LDWF data and NVUM data to establish a lower and upper scenario for the number of dog-deer hunters on the KNF (EA, p. 50). These scenarios were used to evaluate the economic impacts. Specific contentions related to the data on the number of dog-deer hunters are addressed elsewhere in this decision document.

The EA uses the IMPLAN database to calculate the annual cost of keeping fox hounds (EA, p. 51). This database contains county, state, zip code, and federal economic statistics which are specialized by region and can be used to measure the effect on a regional or local economy of a given change or event in the economy's activity. The Virginia study on the annual cost of keeping fox hounds uses data that is specific to Virginia's economic statistics. The document was referenced to highlight the tradition of dog-deer hunting and not to demonstrate annual costs of keeping fox hounds (EA, p. 32). The information was complete and identified in the footnote according to 40 CFR 1502.22 and 40 CFR 1502.24 (EA, p. 50).

The EA (p. 53) recognizes that North Louisiana is more economically disadvantaged than the State as a whole; therefore costs associated with dog-deer hunting could impact them more severely than hunters statewide. In the discussion of the preferred alternative, the EA does identify the potential negative and beneficial economic impacts (p. 53). Additionally, both the DN and EA discuss the impacts from the loss of license fees. Compared to other hunting and recreation expenditures, license fees paid to the state do not have a large local economic impact that can be traced back to specific parishes (DN, p. 5; EA, p. 49). While all license fees are important to the State, loss of some portion of 660 to 983 license fees, compared to over 200,000 license fees statewide, would not be a large economic impact to the parishes surrounding the KNF (EA, pp. 49, 52). Only 25 percent of license fees are used for local projects on state-owned properties (EA, p. 52).

I find the Responsible Official considered a variety of impacts that the decision would have on the community, they examined economic considerations using the best available information, and they discuss incomplete or unavailable information. I find no violation of 40 CFR 1502.22 and 1502.24.

### *Social and Cultural Impacts*

Appellant contends the KNF gave overwhelming weight to a few documented complaints of adjacent landowners, while rejecting out-of-hand the social and societal impact of ending this form of deer hunting (NOA #1075, pp. 2-3). The appellant also contends that in the discussion of alternatives, there is no discussion of the negative social impact on the hunters and their families (NOA #1075, p. 19). One appellant contends the EA fails to adequately address the impacts from displaced KNF hunters traveling to Mississippi National Forests to hunt (NOA #1076, p. 9). An appellant also contends historical and culture characteristics of the area will be affected and large numbers of hunters will be affected, and there was no attempt to measure the impact on hunters on adjacent private lands (NOA #1075, p. 17).

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As required by the NEPA, environmental assessments (EAs) shall include the environmental impacts of the proposed action and alternatives (40 CFR 1508.9). “Effects and impacts used in NEPA regulations are synonymous. Effects include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative” (40 CFR 1508.8).

It is not unusual to not have all the data or information desired for assessing some environmental consequences. For this reason, the NEPA implementing regulations at 40 CFR 1502.22 provide direction for acknowledging incomplete or unavailable information and assessing its relevance to evaluating significant adverse impacts.

The DN acknowledges that dog-deer hunters believe ending dog-deer hunting would put an end to the dog-deer hunting culture on public lands (DN, p. 2). Social and economic impacts were determined to be a significant issue in the EA (pp. 44-59). The Affected Environment for social and cultural impacts includes discussion of dog-deer hunting traditions, the connection to family and social activities, the history behind the tradition, and background on the social conflict surrounding dog-deer hunting (EA, pp. 53-55). Alternative 3 was developed in response to the issues raised during scoping surrounding social and cultural impacts. This section also evaluates the social and cultural consequences for each of the alternatives (EA, pp. 58-59).

The EA also includes an appendix entitled “Appendix E: Social Issues and Effects Matrices” (EA, Appendix E, pp. 23-27). These matrices indicate that the social issues presented by the public were considered. Additionally, the “Social Effects Matrices” examine the outcome expected for each alternative, examining whether prohibiting dog-deer hunting would improve public safety; lessen conflicts with other landowners, hunters, and recreationists; be too restrictive, biased, and displace hunters; and eliminate a desired Louisiana tradition. The EA acknowledges that the dog-deer hunting tradition would not continue and that the dog-deer hunters’ expressed need to maintain traditional lifestyle and values would not be endorsed (EA, p. 58).

Using information from a 2010 LDWF report and 2010 US Census data, the EA states that during the 2009-2010 dog-deer hunting season, .29 percent of the population was estimated to hunt deer with dogs (EA, p. 54). Using the upper and lower scenarios for the number of dog-deer hunters on the KNF of 660 and 983 dog-deer hunters, roughly .0146 percent or .0217 percent of Louisiana’s population hunted deer with dogs on the KNF during the 2009-2010 dog-deer season (EA, p. 54).

In the analysis of Alternative 2, the EA identifies that it is expected that some Louisiana hunters would dog-deer hunt in Mississippi (EA, p. 58). The EA also identifies that the decisions of where dog-deer hunters would go to hunt based on personal convictions, economic situation, and available opportunities have not been predicted in a scientific survey available to the KNF (EA, p. 58).

I find the Responsible Official did analyze the social and cultural impacts of the decision, as well as the other alternatives considered.

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### *Methodology and Scientific Accuracy*

NEPA regulations at 40 CFR 1502.24 state that agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions.<sup>1</sup>

The NEPA implementing regulation at 40 CFR 1502.22 provides direction for acknowledging incomplete or unavailable information and assessing its relevance to evaluating significant adverse impacts.

Demonstrating the use of best available science as required by 36 CFR 219.35 – Appendix B is also accomplished by identifying in the EA the methods used, referencing the scientific resources relied on, discussing responsible opposing views, and disclosing incomplete or unavailable information.

### *Impact of Dog-deer Hunting on Still Hunting*

Appellants contend there is no documented evidence in the DN or EA or science behind the statement: “Therefore, dogs turned loose by dog-deer hunters that run through an area in which a still hunter is set up will scare off any deer that may have been in the area,” and that the statement is contrary to science (NOAs #1075, p. 5; #1076, p. 5). One appellant contends the statement is based on an opinion and not facts (NOA #1076, p. 5).

The statement identified by the appellant appears in the discussion on dog-deer hunting versus still/stalk hunting (EA, pp. 34-35) in section 3.2 “Recreation and Other Land Uses” of the EA (pp. 29-43). I agree that neither the EA (p. 34) nor the DN (p. 3) explain or specifically identify the science used to support the statement identified by the appellants. However, the discussion on dog-deer hunting versus still/stalk hunting (EA, pp. 34-35) references the “2006 Survey of Deer Hunters in North Carolina” by the North Carolina Wildlife Resources Commission (Appeal Record Doc. E3, 2006 Survey of Deer Hunters in NC, pp. iii, v, 18, 25-26) as source of information for “concepts” discussed in this section of the EA. The North Carolina hunting survey indicates, “The use of dogs for hunting deer was controversial among deer hunters, as 39 percent of hunters indicated that too much interference from hunters using dogs to hunt deer was important as a barrier to their deer hunting . . .” (Appeal Record Doc. E3, 2006 Survey of Deer Hunters in NC, pp. iii, v, 18, 25-26; see also EA, p. 35). Further, a review of the analyses and references included in the EA and the appeal record demonstrate that the KNF evaluated relevant scientific literature and findings (e.g., Appeal Record Doc. E3, VDGIF2008; Appeal Record Doc. E3, 2006 Survey of Deer Hunters in NC, pp. iii, v, 18, 25-26; EA, p. 32, 33, 34, and 120-123), considered the range of public comments (e.g., Appeal Record Doc. B4, Comments\_postal+email.02.11.10) and individual complaints (e.g., Appeal Record Doc. B5, Complaint.ltr.Feb.2005) related to dog-deer hunting, and relied on professional expertise to reach the reasonable conclusion that “. . . dogs turned loose by dog-deer hunters that run through an area in which a still hunter is set up will scare off any deer that may have been in the area.”

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<sup>1</sup> Agency directives apply this policy to all types of environmental analysis, per Forest Service Handbook 1909.15, Section 13.

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I find no violation of law, regulation, or policy related to the claims that the statement in the DN and EA is “contrary to science” and is “based on an opinion and not facts.”

### *Data on Serious Conflicts and Victim Statements*

Appellant questions the documentation of the serious conflicts cited in the DN and EA, that only six victim statements are included within the entire submission, and that only one was derived from the 2008-2009 hunting season (NOA #1076, p. 2). Another appellant contends there is no information to support the claims of complaints received and that many of the statements are purely speculation and should not have been used to influence the decision (NOA #1076, p. 4).

Another appellant contends that while it is alleged there was conflict, the only proof attached to the Appendix were statements gathered after the fact, and in an effort to justify the conclusion (#1075, p. 4). This appellant also contends that there are no documented prosecutions of dog-deer hunters for any of the alleged “bad behavior” and that the EA states that investigators could not establish anything other than complaints, most of which were unsubstantiated or could not be attributed as a matter of fact to dog-deer hunters (NOA #1075, p. 4). This appellant further contends that there were no documented complaints until the KNF sent its officers out to try to get something to beef up the decision (NOA #1075, p. 4). This appellant also contends that the statements were taken outside of the KNF jurisdiction (NOA #1075, p. 19).

The DN states that from approximately 1992 to 2008 when the dog deer season was 14 days, the use of dogs to hunt deer became very contentious among adjacent forest landowners, recreationists, and some hunters (DN, p. 2). The DN also states that the conflict reached an untenable level that resulted in the KNF Forest Supervisor, starting in 2003, to recommend a 7-day season to the LWFC (DN, p. 2). These recommendations were not adopted, and the situation on the ground continued to deteriorate. The DN also describes that serious conflict continued in the 2008/2009 season, and during the 2009 LWFC hearings, the KNF indicated their desire to eliminate the dog-deer hunting season beginning in the 2009/2010 season (DN, p. 2).

Both the DN and the EA refer to victim statements to support the allegations of serious conflict surrounding dog-deer hunting. As recounted in their statements to Forest Service managers, many of these adjacent landowners had for years experienced personal property vandalism, personal confrontations, livestock harassment, reckless driving, fear for personal and family safety due to shooting from and across roads, shooting near homes, road damage from influx of dog-deer hunters, and reprisal by some dog-deer hunters for voicing their opinions critical of dog-deer hunters (DN, p. 2; EA p. 6)). The DN also cites feelings of frustration and conflict by still hunters when dogs turned loose by dog-deer hunters run through an area where a still hunter is set up and scares off any deer that may have been in the area (DN, p. 3). Recreationists have experienced a variety of nuisances, including noise, blocked roads, littering, and speeding on forest roads due to the presence of dog-deer hunters (DN, p. 3; EA, p. 6).

The DN also states that some KNF users and neighboring landowners have said that dog-deer hunting is increasing user conflicts on the forest (DN, p. 5). The DN identifies that there is a long history of controversy and conflict surrounding dog-deer hunting, and that the KNF analysis has confirmed that tensions are likely to increase as the population in central Louisiana grows and changes (DN, p. 6).

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The EA states that in addition to instances where violation notices were issued, USFS law enforcement personnel were often called upon to investigate suspicious or illegal activity (EA, p. 26). During the 2006 to 2012 dog-deer seasons, law enforcement personnel responded to calls for service from private landowners to investigate or resolve incidents where deer dogs and dog-deer hunters had trespassed onto their property (EA, p. 26). In many of these occurrences, by the time law enforcement officials had arrived, the dog owners had already retrieved the dogs and left the area or the dogs had moved on from the private property, and therefore no citations could be issued (EA, p. 26).

The EA also states that numerous specific complaints involving dog-deer hunting consistently disclose the serious nature of the conflict between landowners/forest users and dog deer hunters and lists six examples of victim statements taken by USFS law enforcement (EA, p. 27). Appendix H of the EA includes the full statements, which range from January 2009 through November 2011. Four of these statements were recorded prior to the issuance of the original December 2010 decision, and two were recorded after the appeal decision and reversal from July 2011. Five of the statements are actually about incidents that occurred in the years prior to the date of the statement; with only statement number six having been recorded in the same year as the incident (EA, pp. 27-28 and Appendix H). Statement number one, recorded in October 2011 covers incidents that occurred between December 2005 and December 2010 (EA, p. 27 and Appendix H).

While not directly referenced in the DN or EA, the appeal record also contains six copies of letters submitted between 1995 and 2008 that document complaints related to dog-deer hunting (Appeal Record Doc. B5). The majority of these letters are from dog-deer hunters, and one was signed by 41 residents. The majority of the complaints listed in these letters relate to dog-deer hunters shooting near houses and from roads; threatening to physically assault or engaging in fighting with the landowner; roads being blocked by dog-deer hunters; dogs running across private property; being harassed by dog-deer hunters, dog-deer hunters speeding and causing resource damage; and trespassing.

I find there are no violations of law, regulation, or policy regarding the victim statements. The fact that some of the complaints are dated after the initial decision does not preclude them from being considered in evaluation of the 2012 DN because the responsible official issued a new decision and was instructed to further document complaints in the July 2011 appeal decision and reversal. While some of the complaints were recorded after a significant amount of time after the incident first occurred, there is no way to discount the credibility of those statements.

### *Impacts on Recreationists*

Appellant contends the statement from the EA (p. 55) “have experienced a variety of nuisances, including noise, blocked roads, littering, and speeding on forest roads, due to the presence of dog-deer hunters” is based on speculation and not facts (NOA #1076, p. 4). This appellant contends that dog-deer hunters are being singled out for making noise and that there isn’t any other emphasis place on other recreation users making noise.

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There is documentation in the scoping comments and complaints that identify dog-deer hunters as the root cause of blocked roads, littering, and speeding (Appeal Record Doc B.5 Complaint Ltr Feb 2005; B.5 Complaint Ltr Feb 2003; E.3 Petition to Alexander 2009). The victim statements documented in Appendix H of the EA also provide evidence of these issues, including noise. Additionally, the scoping comments make vague references to noise issues related to dog-deer hunters (Appeal Record Doc. B5, comments.database.export.txt).

### *References*

Appellant contends that the EA relies on blogs and that information from a blog does not meet the standards of 40 CFR 1502.24 (NOA #1075, p. 8).

NEPA requirements at 40 CFR 1502.24 state that agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. The EA uses blogs to show the ongoing debate between dog-deer hunters and still hunter (EA, p. 35). The EA does not solely rely on blogs but includes references to numerous publications throughout the document. I find no violation of 40 CFR 1502.24.

## **National Forest Management Act**

### *Recreation*

Appellant contends the KNF failed to meet its obligations to weigh competing recreational activities under 36 CFR 219.21(a)(2) (NOA #1075, pp. 14-15).

36 CFR 219.21(a)(2) (1982 regulations) state that forest planning shall identify the recreational preferences of user groups and the settings needed to provide quality recreation opportunities. The EA provides historical and general background information about hunting and dog-deer hunting on the KNF. The EA identifies the type of setting desired by dog-deer hunters and describes dog-deer hunting. A number of places in the EA refer to dog-deer hunting as a traditional activity. The responsible official did consider the information regarding demographic trends, lifestyle preferences, and social and cultural opportunities provided by the KNF.

Recreation issues are identified in the EA (pp. 32-35) and the consequences are also provided (pp. 36-39). The DN (p. 6) states that the conflicts between hunters and other recreationists were considered foremost in the responsible official's mind. The DN also states that efforts to manage the situation by shortening the season have not worked, and proposals to reduce the land area available were found to be unfeasible (DN, p. 6). The EA documents these efforts at providing opportunities for the activity to continue and why these actions were not successful (EA, pp. 17-18, 38).

I find no violation of 36 CFR 219.21(a)(2) (1982 regulations).

### *Coordination with Fish and Wildlife*

Appellant contends the decision was not made in coordination with the LDWF, as required by 36 CFR 219.21(e) (NOA #1075, p. 15).

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Planning regulations at 36 CFR 219.21(e) (1982 regulations) state that: (a) Forest planning shall identify—and (e) states that formulation and evaluation of alternatives shall be coordinated to the extent feasible with present and proposed recreation activities of local and State land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan (SCORP), and recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands. This paragraph requires coordination with local and State plans addressing recreation activities, and with recreation opportunities already present on other public and private lands, for the purpose of reducing duplication in meeting recreation demands.

The KNF advised the LDWF of its proposal to ban dog-deer hunting on three separate occasions (Appeal Record Supplemental Doc. LWFC 2009 February Minutes, p. 6; LWFC 2010 March Minutes, pp. 8-9; LWFC 2011 February Minutes, pp. 21, 23). The project record contains documentation that indicates these discussions have been ongoing since 2003 (Appeal Record Doc. B5, KNF-LDWF Prior Correspondence) and accommodations being made on the part of the KNF in 2008 (Appeal Record Supplemental Doc. Ltr to LDWF Barham, June 2008). The DN and EA also contain documentation of coordination with the LDWF (DN, p. 2; EA, pp. 18, 83; EA, Appendix B, p. 5). The KNF and LDWF have also been working under a Memorandum of Understanding since 1985 with the common purpose of promoting an effective wildlife management program on the KNF (EA, p. 67; Appeal Record Supplemental Doc. KNF-LDWF 1985 MOU).

The appellant cites the SCORP, which is included in the appeal record (Appeal Record Doc. C1, LA SCORP 2009). The SCORP indicates that increased pressure on national forests for recreation opportunities is expected to create future management challenges resulting in problems with overcrowding and adverse resource problems (Appeal Record Doc. C1 LA SCORP 2009, p. 23). The SCORP also indicates another management concern face by land managers is dealing with conflicts between different types of recreation users competing for use of the same areas (Appeal Record Doc. C1, LA SCORP 2009, p. 23). By removing the source of one of the recreation activities on the KNF, dog-deer hunting, the Regional Forester is addressing a concern that was raised in the SCORP. Further, a 2008 Residents Survey regarding recreation importance and participation indicates that Louisiana residents place greater importance on visiting natural places (60 percent) than all forms of hunting (41.3 percent) (Appeal Record Doc. C1, LA SCORP 2009, p. 62).

I find no violation of 36 CFR 219.21(e) (1982 regulations).

### **36 CFR 241.2 – Fish and Wildlife**

The appellant contends that the decision fails to follow FSM. Specifically they state, “The decision is contrary to Louisiana law, and was not made in coordination with the Louisiana Department of Wildlife and Fisheries, as it completely prohibits a form of hunting that is allowed under State law. Hunting of deer is supposed to be regulated by state law, not federal law.36 CFR 241.2,” (NOA #1075, p. 12).

The appellant claims broadly the decision violates Forest Service Manual (FSM) direction, but does not identify a specific FSM violation. Rather, they contend a violation of 36 CFR 241.2.

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Therefore, I will base my review of the appellant's concern on compliance with 36 CFR 241.2 and with applicable Forest Service policy.

Both the regulation at 36 CFR 241.2 and direction in FSM 2610.1, item 5b, establish the Forest Service's responsibilities for determining the extent of wildlife and fish use on National Forest System land along with the consideration of other uses and values. The regulation at 36 CFR 241.2 directs cooperation in wildlife management and states, "The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands."

FSM section 2610.1 establishes the authority for cooperative relations in wildlife, fish and sensitive plant habitat. FSM 2610.1, item 5b relates to Forest Service wildlife regulations and states, "The regulation at 36 CFR 241.2 emphasizes Forest Service responsibility for determining the extent of wildlife and fish use on the National Forest System lands, directs forest officers to cooperate with the States in both the planning and action stages of management, and stipulates that the harvesting of wildlife and fish must conform with State laws" (see also EA, p. 67).

The appellant claims that the decision is "contrary to Louisiana state law" because the decision prohibits a form of hunting that is allowed under State law (NOA #1075, p. 12). Another appellant contends, "This amendment violates the Louisiana Department of Wildlife and Fisheries regulations pertaining to the legal means of harvesting deer in Louisiana" (NOA #0939, p. 3). The KNF Amendment addresses the need ". . . to reduce recurring conflicts between recreation users, promote visitor safety, and reduce impacts on neighboring landowners . . ." (EA, p. 7). Discussion in the EA acknowledges (p. 68) the Louisiana Department of Wildlife and Fisheries (LDWF) is the "agency primarily responsible for determining the means by which the wildlife resource shall be regulated (MOU)." However, analysis in the EA and language in the 1985 MOU between the KNF and the LDWF identify the Forest Service's responsibilities for determining the extent of wildlife and fish use on National Forest System land along with the consideration of other uses and values. For example, analysis in the EA (p. 68) explains that none of the alternatives regulate the wildlife resource; they address ". . . the impacts associated with a recreational activity on the Kisatchie National Forest and attempt to balance Forest Service responsibilities for controlling use and occupancy of federal land with the desire to work cooperatively with the State on wildlife management issues." The MOU recognizes "the Forest Service as the agency primarily responsible for determining the extent of wildlife and fish use proper use of the National Forest land in coordination with other uses and values and for the management of wildlife habitat in full consideration of the recommendations of the Department" (Appeal Record Supplemental Doc. KNF-LDWF 1985 MOU, p.2).

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I find the decision to prohibit dog-deer hunting on the KNF is within the authority of the Forest Service as it relates to determining “the extent to which national forests or portions thereof may be devoted to wildlife protection in combination with other uses and services of the national forests. . .” (36 CFR 241.2), is not contrary to State law, and complies with direction in the FSM.

I disagree with the appellant’s contention that the decision was not made in coordination with the LDWF as required at 36 CFR 241.2. The DN and appeal record adequately document the ongoing efforts made by the KNF to work with the LDWF and Louisiana Wildlife and Fisheries Commission (LWFC) to resolve dog-deer hunting issues (e.g., DN, p. 2, 3; Appeal Record Doc. B5, KNF-LDWF prior.correspondence.pdf; Appeal Record Doc. B5, 2006.TaskForce.compliants.pdf; Appeal Record Supplemental Doc. Ltr.to.LDWF.Barnham.June2008.pdf). Documentation in the DN, EA, and appeal record demonstrate the KNF coordinated with the LWFC and LDWF on several occasions prior to issuing the decision to prohibit dog-deer hunting on the Forest (e.g., DN, p. 2; EA, pp. 18 and 83; EA, Appendix B, p. 5; Appeal Record Supplemental Docs. LWFC.2009.February.minutes.pdf, LWFC.2010.march.minutes.pdf, LWFC.2011.February.minutes.pdf, and LWFC.2012.February.minutes.pdf ; Appeal Record Doc. E2, 8/23/11 Record of Events). The LWFC determines the hunting regulations within the State of Louisiana and requests that the KNF and other Federal and State entities “propose recommendations to be given to the public for review” during the Commission’s annual comment period and public hearings (DN, pp. 1-2). During the 2009 LWFC annual hearing, “the Forest indicated their desire to eliminate the dog-deer hunting season on the KNF beginning with the 2009/2010 season” (DN, p. 2). Discussion in the EA also demonstrates that “input received by the Louisiana Department of Wildlife and Fisheries during its last round of public meetings for the 2009 hunting regulations” informed the environmental consequences (p. 58). I find the KNF coordinated with the LDWF, and find no violation of 36 CFR 241.2 or direction in the FSM.

### **40 CFR 1508.8 and 1508.9**

Appellant contends the DN is in violation of 40 CFR 1508.8 and 1508.9 because it does not discuss the impact of the ban on the historical form of hunting (NOA #1075, p. 18).

40 CFR 1508 lists the terminology for the NEPA regulations found at 40 CFR 1500 to 1508. 40 CFR 1508.8 defines the term “effects” in NEPA analysis includes and defines direct and indirect effects. Historic effects/impacts are included in the listing of effects. 40 CFR 1508.9 describes what an environmental assessment is.

The EA states (p. 70) that the proposal will have the potential to negate a traditional cultural expression as dog-deer hunting is entrenched in Louisiana’s history. The EA does address effects to historical traditions as stated at 40 CFR 1508.8. Discussions of the tradition of dog-deer hunting are located throughout the EA. I find that there are no violations of 40 CFR 1508.8 or 1508.9.

### **Travel Management Rule**

Appellant contends that the conflicts between dog-deer hunters and the adjacent property owners is the result of implementing the travel management rule (NOA #1076, p. 9).

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The travel management regulation at 36 CFR 212 requires the Forest Service to identify roads, trails, and areas for motor vehicle use. The KNF has implemented Subpart B, which required designation of open and closed road systems. The impacts from that analysis are displayed in the EA (pp. 42-43), as re the cumulative impacts as required by 40 CFR 1508.7. I find that the responsible official gave consideration to the cumulative impacts from implementing the Travel Management Rule.

### Forest Service Directives

#### *FSM 2601.2*

The appellant contends the decision fails to follow the FSM because “[i]t is not based on data regarding the number of deer harvested through dog-deer hunting as opposed to fixed hunting, even though the Forest Service Manual requires that such data be gathered through monitoring activities to determine if the FS is meeting population and habitat goals. FSM 2601.2.1” (NOA #1075, p. 13).

FSM section 2601.2 is the USDA policy on wildlife, fish, and plant habitat management pertinent to public lands. The policy states in part, “Monitoring activities will be conducted to determine results in meeting population and habitat goals.” Consistent with FSM 2601.2, analysis in the EA uses monitoring results to estimate deer population levels on the Forest. Specifically, the analysis discloses (EA, p. 60) the deer population on the KNF “. . . is generally stable to slightly decreasing since 2002” and that browse surveys and pellet group transects conducted on the Forest “indicate that deer densities are below the ecological carrying capacity (Chamberlain, M.J., 2005)” (EA, p. 60; see also Appeal Record Doc. E3, KNF\_2009.Final\_ME\_FY09.pdf, pp. 6, 26, 27). I find no violation of FSM 2601.2 regarding the use of monitoring data to evaluate deer population and habitat goals.

A review of the EA and appeal record demonstrates the KNF evaluates the impact to deer population levels by considering relevant scientific literature (EA, p. 61), harvest data from the LDWF (Appeal Record Doc. E3 and C1d, LDWF\_2011.2010-11\_harvest\_report.pdf; Appeal Record E3, LDWF\_2010.pdf; and EA, p. 61), and permit information for the KNF (Appeal Record E3, RABAL ~4A.pdf) on deer harvest levels through dog-deer hunting as opposed to fixed hunting. For example, analysis on page 61 of the EA discloses: “Hunting with dogs accounted for about five percent of the total statewide deer harvest (LDWF, 2010)” (see also Appeal Record Doc. E3, LDWF\_2010.pdf and EA, pp. 49-50). Discussion in the EA (pp. 40, 61) indicates that based on analysis of deer harvest surveys from the 2009-2010 Louisiana hunting season “the number of deer hunters using dogs declined 24% from the previous year and the harvest dropped 51%.” Based on these findings, State biologists concluded that the impact of dog-deer hunters “on the overall deer estimates were negligible” (Appeal Record Doc. E3, LDWF\_2010.pdf; see also EA, p. 62).

I find no violation of law, regulation, or FSM policy regarding the claim that decision is not based on data regarding the number of deer harvested through dog-deer hunting as opposed to fixed hunting.

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### ***FSM 2302, Item 5***

Appellant contends the decision fails to “instill an appreciation of the nation’s history, cultural resources, and traditional values,” as required by FSM 2302, Item 5 (NOA #1075, p. 12).

Section 2302 of the FSM identifies objectives for the recreation and wilderness programs.

Objective 5 is to provide outdoor recreation opportunities and activities that:

- a. Encourage the study and enjoyment of nature;
- b. Highlight the importance of conservation;
- c. Provide scenic and visual enjoyment; and
- d. Instill appreciation of the nation's history, cultural resources, and traditional values.

The EA provides historical and general background information about hunting and dog-deer hunting on the Kisatchie National Forest (EA, pp. 29-36); it also addresses the tradition of dog-deer hunting (EA, pp. 12, 54-55, 13, and 32).

This section of the FSM identifies some characteristics of recreation opportunities and activities the Forest Service desires to provide. It is not intended to be used to judge whether an activity should be allowed on a particular national forest or grassland. Many recreation activities would meet the objective of instilling appreciation of history, cultural resources, and traditional values. In addition, the EA provides an explanation of the history and tradition of dog-deer hunting. I find the decision meets the intent of the objectives listed at FSM 2302, Item 5.

### ***FSM 2303, Item 11***

The appellant contends the decision fails to follow the FSM. They contend, “The KNF plan amendment fails to be part of a coordinated effort with private, state, and local entities relative to the harvest of wildlife. FSM 2303.11.” (NOA #1075, p. 13)

FSM 2303, item 11 states that agency policy is to: “Coordinate, rather than compete, with private, other Federal, State, county, and local entities to provide recreation facilities and programs in forest and rangeland settings, including both harvest and nonconsumptive enjoyment of wildlife. Do not provide facilities that the private sector could provide, but rather openly encourage the private sector. Do not duplicate the role of other levels of government to provide urban and local facilities and programs.”

A review of the appeal record demonstrates that the KNF plan amendment involved coordination with other entities to evaluate dog-deer hunting concerns and impacts (e.g., Appeal Record Doc. E2, 8/23/11 Record of Events; B5, KNF-LDWF.prior.correspondence.pdf; B5, LDWF.2003.mtg.ltr.to.KNF.pdf; Appeal Record Supplemental Docs. LWFC.2009.February.minutes.pdf, LWFC.2010.march.minutes.pdf, LWFC.2011.February.minutes.pdf, and LWFC.2012.February.minutes.pdf ; EA, p. 18, 53, 83).

The FSM section referenced by the appellant is not applicable to their concern that the KNF Amendment gives “. . . no indication of the impacts on hunters should dog-deer hunting be prohibited on this [Kisatchie National Forest] federal land” (NOA #0175, p. 13); further, the appellant does not provide additional detail to explain how the FSM direction applies to their concern. The findings, analysis, and effects of each alternative presented in the EA are the basis

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for the discussions presented in the decision notice. The EA must comply with NEPA (40 CFR 1508.8) and Forest Service guidance (FSH 1909.15) regarding the analysis and disclosure of the environmental effect of each alternative. I reviewed the EA and disagree that the analysis does not disclose the impacts on hunters from prohibiting dog-deer hunting on the Kisatchie NF. The EA analyzes and documents the effects of each alternative (1 through 3) on hunters associated with prohibiting dog-deer hunting on the Kisatchie NF (EA, pp. 58-59, Appendix E, pp. 23-27; see also DN, p. 5, 6).

I find that the decision does not violate FSM 2303, item 11.

### ***FSM 2603, Item 8***

The appellant contends the decision violates FSM 2603.8 because it “fails to involve research and other scientists in the development of strategies to resolve major issues and concerns” (NOA #1075, p. 13).

The Forest Service directive at FSM 2603, item 8 states it is agency policy to: “Involve Research and other scientists in the development of strategies to resolve major issues and concerns and identify management opportunities in order to foster awareness of management needs and gain timely application of new insights and information.”

The list of specialists and contributors for the EA demonstrates that scientists and specialists from different disciplines and organizations (e.g., LDWF) contributed to the preparation of the environmental assessment (EA, p. 83) and efforts to resolve issues and concerns related to dog-deer hunting (e.g., see Appeal Record Doc. B5, KNF-LDWF.prior.correspondence.pdf; Appeal Record Doc. B5, 2006.TaskForce.compliance.pdf; Appeal Record Supplemental Doc. Ltr.to.LDWF.Barnham.June2008.pdf ). Findings presented in the EA and the list of references indicate the KNF reviewed and considered research, relevant to the proposed action, from different scientists (e.g., EA, p. 33, 54, 120-123). The KNF also considered findings and research compiled by agencies and organizations (other than the Forest Service) (e.g., EA, pp. 6, 31, 35, 40, 45, 47, 49, 120-123; Appeal Record Doc. E3, LDWF\_2011.2010-11\_harvest\_report; Appeal Record Doc. E3,VDGIF2008; Appeal Record Doc. E3, Palmer\_2009.2006SurveyofDeerHuntersinNC).

I find no violation of FSM 2603, item 8.

### ***FSM 2602, Item 2; 2640.3, Item 2; and 2350.2, Item 2***

The appellant contends “The Decision does not provide ‘diverse’ opportunities for consumptive uses of wildlife in accordance with regional, State, and local demands. FSM 2602.2, 2640.3.2, 2350.2.2. It arbitrarily bans one type of hunting with dogs while allowing others” (NOA #1075, p. 13).

Forest Service Manual section 2602, item 2 states that agency policy is to “Provide diverse opportunities for esthetic, consumptive, and scientific uses of wildlife, fish, and sensitive plant resources in accordance with National, Regional, State and local demands.” Guidance in FSM 2640.3, item 2 states, “Provide a variety of fishing, hunting, trapping, viewing, studying, and photographing opportunities and experiences in cooperation with the State fish and wildlife agencies.” FSM 2350.2, item 2 guidance states, “Provide opportunities for a variety of

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recreational pursuits, with emphasis on activities that harmonize with the natural environment and are consistent with the applicable land management plan.” These sections of the FSM do not specify numbers (amount) of an activity that must be provided to offer “diverse” opportunities.

The KNF determined the Amendment was necessary to reduce recurring conflicts, such as public safety and user conflict, related to dog-deer hunting (DN, pp. 2, 4, 6; EA, p. 7). The EA clearly discloses the public safety and recreation use issues associated with dog-deer hunting (e.g., DN, p. 4; EA, pp. 22-29, 32-35, 36-39; Appeal Record Doc. B4, comments\_postal+email.02.11.10.xlsx; Appeal Record Doc. B5, 2006.TaskForce.compliants.pdf;).

Discussion in the EA concludes that “[e]liminating dog-deer hunting on the KNF would reduce the diversity of the hunting opportunities provided” because it eliminates a particular recreation use and land use (EA, p. 38). The Responsible Official acknowledges that the selected alternative “will not preserve the tradition and culture of dog-deer hunting” but will preserve “still-hunting opportunities, and the opportunity to hunt other types of game with dogs” (DN, p. 5; EA, p. 41). Specifically, the KNF Amendment does not affect the use of dogs for hunting other wildlife such as squirrel, game bird, raccoon, and rabbit (DN, p. 1 and EA, p. 38). I find the amendment does not reduce other opportunities for esthetic, consumptive, or scientific uses of wildlife, fish, and sensitive plant resources (e.g., EA, p. 37, 78, 80, and 81). In fact, analysis in the EA indicates the proposed alternative would reduce conflict or risk to other types of opportunities for uses of wildlife such as viewing wildlife (EA, p. 37), thereby improving diverse opportunities for uses of wildlife. In addition, discussion in the EA concludes that the Amendment is consistent with the goals, objectives, and desired future conditions described in the Forest Plan goals, including forest-wide Goal 4 (Appeal Record Doc. E3, KNF\_1999b.Plan.pdf, p. 2-1) to “Provide for scenic quality and outdoor experiences which respond to the needs of forest users and local communities. Provide access to a wide variety of recreational opportunities and facilities” (EA, p. 6).

I find no violation of FSM 2602, Item 2; 2640.3, Item 2; or 2350.2, Item 2.

### ***FSM 2603.2, 2610.2, 2610.3, 2640.42, 2643, 2643.1***

The appellant contends the decision violates direction contained in FSM 2600. The appellant makes the following claims: the decision violates FSM 2603.2 because it fails to recognize that the “. . . State is responsible for management of wildlife, while the FS is responsible for maintaining the land,” and the decision was not formed in cooperation with dog-deer hunting groups; the decision violates FSM 2610.2, 2610.3 because “[i]t fails to include the State as a ‘partner’ in determining the extent of dog-deer hunting on Federal land;” violates FSM 2640.42.3, 2643 claiming “[w]hen the State would not agree with the FS request that dog-deer hunting be banned, the [Forest] Service implemented its own ban. This is contrary to the role as a ‘recommender;” and violates FSM 26.43.1 (sic) claiming “[t]he FS is subject to State laws on hunting unless there is a safety or conservation issue in the Forest Plan. . . . There are no real safety or conservation issues (based in fact) raised in the decision.” (NOA #1075, p. 13)

FSM 2600 provides guidance related to wildlife, fish, and sensitive plant habitat management. The policy in FSM 2603.2 recognizes the “. . . State wildlife and fisheries agencies as

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responsible for the management of animals and the Forest Service as responsible for the management of habitat” (see also EA, p. 67). Discussion in the EA (p. 68) clearly state that the KNF recognizes the LDWF “. . . as the agency primarily responsible for determining the means by which the wildlife resource shall be regulated (MOU).” I find no violation of FSM 2603.2 regarding the claim that the KNF fails recognizes the State’s role in the management of wildlife.

FSM 2603.2 further directs the Forest Service to “Involve other Federal agencies, concerned conservation groups, and individuals in activities affecting wildlife and fish as appropriate.” FSM 2610.2 contains two objectives that pertain to cooperative relations in wildlife, fish and sensitive plant habitat. FSM 2610.3, items 1 states, “Recognize the role of the States to manage wildlife and fish populations within their jurisdictions and the responsibility of the Fish and Wildlife Service to manage fish and wildlife resources within its authority,” and item 2 states, “Recognize the State fish and wildlife agencies as a public agency with management responsibilities for wildlife on the National Forests and include them as partners in planning and implementation of activities that effect wildlife and fish.”

I disagree with the appellant claims that the decision “was not formed in cooperation with dog-deer hunting groups” and the decision “fails to include the State as a ‘partner’ in determining the extent of dog-deer hunting on the Forest.” The DN and appeal record adequately document the ongoing efforts made by the KNF to work with the LDWF and Louisiana Wildlife and Fisheries Commission (LWFC) to resolve dog-deer hunting issues (e.g., DN, p. 2, 3; Appeal Record Doc. B5, KNF-LDWF prior.correspondence.pdf; Appeal Record Supplemental Doc. Ltr.to.LDWF.Barnham.June2008.pdf); this includes the Forest’s participation on the 2006 Dog/Deer Task Force (Appeal Record Doc. B5, 2006.TaskForce.complaints.pdf). A review of the record also demonstrates the KNF cooperated and consulted with the LDWF (and LWFC) during the planning process for the Amendment (e.g., DN, p. 2; Appeal Record Supplemental Docs. LWFC.2009.February.minutes.pdf, LWFC.2010.march.minutes.pdf, LWFC.2011.February.minutes.pdf, and LWFC.2012.February.minutes.pdf ; Appeal Record E2, 8/23/11 Record of Events; EA, p. 18, 83; EA, Appendix B, p. 5). Additionally, discussion in the EA (pp. 9-10, 118) notes that during the scoping period for the proposed amendment the Kisatchie NF contacted and consulted with “many collaborating agencies and interested citizen groups,” including such groups as the Hunting Dog Association. I find no violation of FSM 2603.2, or FSM 2610.2, 2610.3.

The appellant claims the decision violates FSM 2640.42.3 and 2643 because “[w]hen the State would not agree with the FS request that dog-deer hunting be banned, the [Forest] Service implemented its own ban. This is contrary to the role as a ‘recommender.’” FSM 2640.42 identifies Forest Supervisors’ responsibilities related to stocking and harvesting. FSM 2640.42, item 3 states, “Recommend hunting, fishing, or trapping regulations, as needed, in accordance with memorandums of understanding with the States. . . .” The policy in FSM 2643 pertains to the applicability of State fish and wildlife laws and regulations and states, “The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations . . . Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations, especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.”

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The KNF clearly acknowledges the LDWF is the “agency primarily responsible for determining the means by which the wildlife resource shall be regulated (MOU)” (EA, p. 68), and as stated previously the appeal record demonstrates a history of the Forest’s involvement and efforts to work with the LDWF and Louisiana Wildlife and Fisheries Commission to resolve issues related to dog-deer hunting. Both the EA (p. 68) and language in the 1985 MOU between the KNF and the LDWF identify the Forest Service’s responsibilities for determining the extent of wildlife and fish use on National Forest System land along with the consideration of other uses and values. For example, analysis in the EA explains (p. 68) that the alternatives address “. . . the impacts associated with a recreational activity on the KNF and attempt to balance Forest Service responsibilities for controlling use and occupancy of federal land with the desire to work cooperatively with the State on wildlife management issues.” The MOU recognizes “the Forest Service as the agency primarily responsible for determining the extent of wildlife and fish use proper use of the National Forest land in coordination with other uses and values and for the management of wildlife habitat in full consideration of the recommendations of the Department” (Appeal Record Supplemental Doc. KNF-LDWF 1985 MOU.pdf, p. 2). The MOU also states (p. 3) that nothing contained in the agreement “shall be construed as limiting or affecting in any way the authority of the Forest Supervisor in connection with the proper administration and protection of the Kisatchie National Forest in accordance with the purpose for which the lands therein were acquired and reserved.” I find no violation of FSM 2640.42, item 3 or FSM 2643.

The appellant also contends the decision violates FSM 2643.1 because there are no real safety or conservation issues raised in the decision (NOA #1075, p. 13). FSM section 2643.1 states the following:

Hunting, fishing, and trapping of fish and wildlife and associated practices on National Forest System lands are subject to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with Federal laws; or
2. State laws and regulations would permit activities that conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with direction in forest plans.

The DN and EA state clearly that the KNF amendment was necessary to reduce recurring conflicts, such as public safety and user conflict, related to dog-deer hunting (DN, pp. 2, 4, 6; EA, p. 7). Specifically, the Amendment addresses the need “. . . to reduce recurring conflicts between recreation users, promote visitor safety, and reduce impacts on neighboring landowners . . .” (EA, p. 7). The Regional Forester does not identify conservation (natural resource) issues as a “core” reason for selecting Alternative 2 (selected alternative) (DN, pp. 3-6), and natural resource issues are not identified as a significant issue for the Amendment (pp. 12-13). However, analysis in the EA identifies the biological needs of deer as a “related concern” (DN, p. 8; EA, p. 14); these concerns were used “. . . to help prescribe management requirements, or analyze environmental effects” (EA, pp. 14, 59-62; see also DN, p. 8). I find the EA and record adequately document the public safety and user-conflict issues and concerns related to dog-deer

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hunting (e.g., EA, pp. 6, 9, 22, 27-28, 32-35; EA, Appendix H; DN, p. 2, 4; Appeal Record Doc. B4, DD2\_EA\_review\_e-comments\_01\_20\_2012; Appeal Record Doc. B4 comments\_postal+email.02.11.10.xlsx; Appeal Record Doc. B5, 2006.TaskForce.compliants.pdf; Appeal Record B5, Complaint.ltr.Sept.2008). I find no violation of FSM 2643.1.

I find no violation of law, regulation, or FSM 2600 policy.

### Fact

#### *Public Involvement*

Appellants contend that the public overwhelmingly supports dog deer hunting in Louisiana (NOA #0939, p. 3) and that the majority of the interested public that participated during scoping did not want the proposal (NOA #1076, p. 3). An appellant also contends that the opposition grossly outweighed the support, but that this did not play a role in the 2010 decision or the 2012 decision (NOA #1076, pp. 3, 9). Another appellant contends that comments during both comment periods indicated the public primarily opposed the ban, but this is not disclosed in the decision (NOA #1075, pp. 3-4). This appellant also contends that the bulk of comments in opposition of the ban were from local residents, while a much larger number of those favoring the ban were from outside the area or from out of state (NOA #1075, p. 18). This appellant also contends that in violation of 40 CFR 1508.27 there is no consideration given to the public comments that 86 percent were opposed to the ban (NOA #1075, p. 18).

In the first round of scoping prior to the 2010 decision, the KNF received 1,237 responses to the proposal, of which 917 opposed the proposed prohibition while 320 supported it (EA, p. 11). New scoping was completed in 2011 ahead of the 2012 decision, and the KNF received over 1,300 more comments, of which only 16 supported the dog-deer hunting ban and the majority of which were form letters (EA, p. 11). While more comments may have been submitted in opposition, the KNF followed NEPA procedures by conducting an analysis based on substantive issues presented in comments from all perspectives. Generally, more comments are received from those who have concerns about a decision than those who have no issues with a decision. Decisions made during the NEPA process are not made based solely on which alternative receives more support or opposition during the public scoping process; they are made by evaluating the issues raised from all of the public during the process and examining the impacts of each alternative.

The appeal record demonstrates that comments opposed to the ban were considered during development of alternatives. The EA states three significant issues that are points of disagreement or dispute with the proposal (EA, p. 11). Only those comments that opposed the elimination of dog-deer hunting on the KNF were considered to be significant issues with the proposal and were used to generate alternatives, prescribe management requirements, or analyze environmental effects (EA, p. 12-13). The three significant issues identified were public safety, impacts on recreation and other land uses, and social and economic impacts (EA, p. 13). Additionally, two related concerns (biological and disparity with State or private land use policies) were identified that were used to help prescribe management requirements of analyze

## Attachment 2

environmental effects (EA, p. 14). To address the significant issues, Alternative 3 was developed (EA, p. 16), which demonstrates that comments from opponents were considered in the process.

I find the Responsible Official did consider and acknowledge the comments that were received, including the comments that were opposed to the decision. While the DN does not specifically cite the number of comments received or the total of pro or con comments, the EA and the appeal record demonstrate that all of the comments were considered and that letters in opposition were used to develop the alternatives to be analyzed. I find no violation of law, regulation, or policy regarding public involvement in the decision.

### *National Visitor Use Survey*

Appellant contends that the data used from the NVUM survey is incorrect and that the number of hunters on the KNF is higher than indicated (NOA #0939, pp. 1-2).

The sampling protocol is provided in the NVUM, as well as the limits on the data (Appeal Record Doc. E3 USDA NVUM 2011, pp. 5, 7-10). The scale defined for the data is the Forest, Regional, or National levels and the KNF has used the information correctly. I find that the data in the NVUM survey is correct.

### **User Groups**

Appellant contends the decision has completely discriminated against individuals who wish to legally pursue deer with dogs on the KNF, and that it has eliminated them as a user group from the forest (NOA #1076, p. 1).

The NFMA provides authority to revise resource plans and permits, contracts, and other such instruments currently used in order to be made consistent with land management plans (16 USC 1600). Additionally, under FSM 2600, Chapter 2640, hunting, fishing, and trapping of fish and wildlife and associated practices on NFS lands are subject to State fish and wildlife laws and regulations unless state laws and regulations would permit activities that conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with Forest Plans. Thus, the Regional Forester has the authority to prohibit or alter a specific use on a forest. However, the Decision Notice does not clearly indicate what policy or regulation gives the Regional Forester the authority to prohibit dog-deer hunting. I find the Regional Forester, who is the Responsible Official for this amendment, has the authority to constrain or prohibit uses and activities on the KNF and the decision does not discriminate against individuals.