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Kisatchie National Forest Plan Amendment #9 Prohibiting Dog-Deer Hunting Appeal Issue Responses with Instructions

National Environmental Policy Act (NEPA)

Finding of No Significant Impact (FONSI)

Appellant contends that the decision has a significant impact (NOA #1075, p. 17). This appellant contends that the beneficial and adverse effects were not given equal weight and that there was really no measure of the financial impact of the decision on the local area, so one cannot draw the conclusion that they are insignificant (NOA #1075, p. 17). The impact on dog-deer hunting is much larger than described in the Decision Notice (DN), as the impact extends far beyond the boundaries of the KNF (NOA #1075, p. 17).

A FONSI is a document briefly presenting the reasons why an action will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared (40 CFR 1508.13). Agency policy for a FONSI is found at Forest Service Handbook (FSH) 1909.15, section 43.1. A FONSI must address the criteria described at 40 CFR 1508.27 of the NEPA implementing regulations and the conclusions should be supported by references to the relevant sections of the Environmental Assessment (EA) (FSH 1909.15, section 43.1). The criteria include context and ten factors related to intensity of the action.

The FONSI for the Kisatchie National Forest (KNF) plan amendment is found on pages 8-9 of the DN and FONSI. The ten factors related to intensity of the action are discussed and conclusions given with supporting references to the EA. However, there is no discussion of the context of the action. Such a discussion would address the significance of an action in several contexts, such as society as a whole, the affected region, the affected interests, and the locality. See 40 CFR 1508.27.

I find that the FONSI in the new decision fails to meet the content requirements of 40 CFR 1508.27 and FSH 1909.15 section 43.1 by not disclosing consideration of context in making the finding. I instruct the Responsible Official to correct the DN and FONSI so that it meets the regulations.

Methodology and Scientific Accuracy

A number of contentions were raised related to 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.¹

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

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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 Other Users

Appellant contends that there is no data to support the conclusions that with tracking devices, hunters are more mobile and are able to track dogs during the chase and better position themselves for shooting deer, which can lead to interference with others (NOA #1076, p.5). This appellant also claims that there are no studies presented to compare dog-deer hunting “before modern technology” versus “modern technology” included in the EA or DN to justify the assumptions regarding tracking devices (NOA #1076, pp. 5-6).

The DN (p. 4) states that with new technology, dog-deer hunters are more mobile and are able to track the dogs during the chase and better position themselves for shooting deer, which can lead to more interference with other users.

Upon review of the appeal record, I find no evidence to support the conclusions in the DN that use of modern technology in dog-deer hunting can lead to more interference with other users, in violation of 40 CFR 1502.24. The environmental analysis should provide information to support the conclusion, or this conclusion should be removed from the DN.

Data on Dog-Deer Violations

One appellant contends that the KNF did not follow instructions from the original appeal decision to provide information regarding violations committed directly by dog-deer hunters or fulfill the requirements of 40 CFR 1502.22 (NOA #1075, pp. 6, 7, 18). Additionally, this appellant contends that appellants have a difficult time challenging the “violations during dog-deer hunting season” because it is not clear where the KNF got its data (NOA #1075, p. 7).

A second appellant alleges that if information on violations that specifically differentiate dog-deer hunters from other forest users is unavailable, then the statement that “a disproportionate number are issued to deer hunters during the dog deer season” is contradicted (NOA #1076, p. 6). The appellant also alleges that if a means to accurately identify the type of Forest user that actually committed each violation is not known then the statistics do little to support the implication that dog-deer hunters are being issued these citations and are causing problems (NOA #1076, p. 6). This appellant also alleges that a means to accurately compare the number of user man-hours and law enforcement man-hours during the dog-deer season versus the rest of the year was not included within the DN or EA (NOA #1076, p. 6).

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The EA does include information regarding incident reports, warnings, notice, and violation notices that were issued during the dog-deer hunting seasons in 2006-2010; however, outside of six investigative reports it is unclear whether these violations were committed directly by dog-deer hunters (EA, pp. 22-28). The EA states that a comparison of the number of violations written during the dog-deer seasons from 2006-2010 with the total violations written for these years shows that an average of 37.5 percent of the violations that occurred during five years of hunting seasons on the KNF occurred during the dog-deer seasons, while the dog-deer season days accounted for 12.7 percent of the total hunting-season days during those years (EA, pp. 23-24). Total violations written by US Forest Service law enforcement during the dog-deer hunting season days averaged 3.43 violations per day, whereas the violations written for all the deer hunting season days averaged 1.16 violations per day (EA, p. 24). Safety-related violations account for approximately two percent of the total KNF violations and five percent of the KNF dog-deer season violations (EA, p. 24).

The EA also discusses citations issued on the KNF from the Louisiana Department of Wildlife and Fisheries (LDWF) during the dog-deer hunting seasons from December 2007-2010. The average number of citations and warnings written by the LDWF during the dog-deer hunting seasons was 3.85, with 1.65 per day being safety-related (EA, p. 25). Safety-related citations and warnings accounted for approximately 43 percent of the total issued by the LDWF (EA, p. 25).

The DN states that analysis of the data on citations and violation notices written by USFS LEI and Louisiana LDWF agents shows that a disproportionate number are issued to deer hunters during dog-deer season (DN, p. 4). The number of LDWF citations and warnings for safety-related violations makes up almost half the total issued by that agency over a four-year period during dog-deer season (DN, p. 4).

The EA also states that the information regarding the Forest Service law enforcement citations, as well as the LDWF information, is based upon the best available information available at the time of the decision (EA, pp. 24 and 26). Incident reports, warnings, notices, and violation notices that specifically differentiate dog-deer hunters from other forest users during the KNF dog-deer season is unavailable (EA, p. 24). The EA also states that a means to accurately identify the type of forest user (dog-deer or non-dog-deer) that actually committed each violation is unknown (EA, pp. 24 and 26). The LDWF information displayed in the EA is taken from the best information available at the time the decision was written (p. 26). The EA states that while data suggests that violations were influenced by the additional presence of dog-deer hunters in the area, citations and warnings that specifically differentiate dog-deer hunters from other Forest users during the KNF dog-deer season is unavailable (EA, p. 26). Also, only five percent of the violations during dog-deer hunting season were safety-related, which is one of the main reasons for the amendment (EA, pp. 13, 24; DN, p. 4)

I find the EA violates 40 CFR 1502.24 because the information in the EA and appeal record does not support the conclusions in the DN and the EA related to dog-deer hunters and violations, particularly those related to public safety. The Responsible Official follows the requirements of 40 CFR 1502.22 for unavailable information. However, in addition to stating that such information is incomplete or unavailable, the EA must also include a statement of the relevance

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of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment. I instruct the Responsible Official to include in the environmental analysis document information regarding violations that were committed directly by dog-deer hunters during the dog-deer hunting season or to fully fulfill the requirements of 40 CFR 1502.22 and explain the relevance of the unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment.

Number of Dog-Deer Hunters

Appellant contends that the analysis of the number of dog-deer hunters is flawed and that the variance in numbers of dog-deer hunters of +/- 50 percent would not be acceptable in a scientific community. The appellant also contends that the LDWF reported that 983 hunters hunted deer with dogs on the KNF in 2010, but that instead of just using the reported number, the KNF uses that number to make a lower estimate of dog-deer hunters. The appellant contends that according to 40 CFR 1502.22, the KNF should have taken a survey of Louisiana hunters and conducted a study to determine the exact number of dog-deer hunters on the KNF. (NOA #1075, pp. 7-8)

The EA states that the LDWF provided a summary of information obtained by requiring a permit and return of hunt information for deer hunting during the “with or without dogs” season on the KNF in 2010 (EA, p. 49). Of permits returned, 59.8 percent actually hunted. Of those, 983 hunters reported deer hunting 5,603 days with dogs on the KNF. An average of 5.7 days per hunter was hunted with dogs on the KNF (EA, pp. 49-50). Using the 2010 NVUM survey, 3,760 hunter days with dogs is estimated (EA, p. 50). The KNF divided this value by Rabalais’ 5.7 days hunting with dogs per hunter, yielding 660 individual hunters (EA, p. 50). Since the NVUM surveys all hunters, not limited to licensed hunters, youth and senior members of the party who may not be licensed are counted. The EA states that since there is no known survey that provides dog-deer hunters and dog-deer hunter days directly, a lower and upper scenario was created based on the LDWF data and NVUM data (EA, p. 50).

The EA and the appeal record demonstrate that the KNF used the best available information to identify the number of dog-deer hunters on the KNF. In accordance with 40 CFR 15022.22, the forest acknowledges that a known survey providing dog-deer hunters and dog-deer hunter days directly does not exist, but provides data for the numbers it used to make the decision. However, it is unclear why the Responsible Official chose to conduct an analysis using both the LDWF and NVUM data to create an upper (983 dog-deer hunters on KNF) and lower scenario (660 dog-deer hunters on KNF), versus just using one set of data. I find the Responsible Official should explain the rationale for why the two sets of data were used to conduct the analysis.

Fact

Maps

Appellant contends the map in Figure 7 referenced on page 56 of the EA depicting Forest Service areas where dog-deer hunting is allowed in Mississippi is incorrect (NOAs #1076, pp. 9-10). A “Crosswalk: Appeal Issues and Project Record Document References” document was provided to the public on the KNF website (<http://www.fs.usda.gov/main/kisatchie/landmanagement/planning>) and the appeal reviewing

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officer. The crosswalk information for NOA #1076 includes a note stating “areas in Figure 7 are incorrect as stated. Some of the state DD season areas are incorrectly shown as being closed to DD hunting.” I find the map of land depicting where dog-deer hunting is allowed in Mississippi as depicted in Figure 7 should be verified and corrected.