

September 16, 2020

United States Forest Service
Mr. Jamie Schwartz
National Program Manager
Recreation, Heritage, and Volunteer Resources
201 14th Street SW
Washington, DC 20024

RE: Forest Service Handbook 5309.11, Chapter 30 Law Enforcement: Public Notice and Comment for Closures of National Forest System Lands to Hunting, Fishing, or Recreational Shooting

Dear Mr. Schwartz:

The undersigned organizations thank you for the opportunity to comment on the proposed directive to establish a definition for emergency closures of areas located on national forests or grasslands to hunting, fishing, or recreational shooting pursuant to P.L. 116-9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act.

Our organizations (NGOs) have a long-standing and vested interest in access and opportunities on federal public lands for our members to enjoy these activities. The NGOs are signatories to the Federal Lands Hunting, Fishing and Shooting Sports Roundtable (Roundtable) Memorandum of Understanding (MOU) with the U.S. Forest Service (USFS). The purpose of the MOU is to build a partnership with the signatory organizations, the USFS, and the other signatory federal agencies “for planning and implementing mutually beneficial projects and activities related to hunting, fishing, and the shooting sports conducted on federal lands.”

In general, the undersigned members of the Roundtable appreciate the USFS’s ongoing efforts to implement P.L. 116-9. This process serves as an opportunity to further codify Congress’s intention to ensure that federal lands, including those managed by the USFS, continue to provide access to hunting, fishing, and recreational shooting opportunities on lands and waters managed by the agency. As part of this process, we recommend the following changes to the proposed directive:

34.05 – Definitions

Proposed directive language:

d. Public Safety. When a forest order is needed to prevent potentially imminent harm caused by shooting in the wildland-urban interface, or near developed recreation sites, National Forest System trails, or recreation residences on National Forest System lands.

Recommended directive language:

*d. **Public Safety.** When a forest order is needed to prevent the **high probability** of imminent harm caused by **shooting more than 150 yards from a residence, building, campsite, developed recreation site, or occupied area** on National Forest System lands.*

Justification for recommended directive language:

Given the absence of a statutory or regulatory definition of “wildland-urban interface” (WUI), the reference to the term in the proposed directive fails to provide clarity for both the public and agency employees tasked with implementing directives. As noted in the USFS publication entitled, *Wildfire, Wildlands, and People: Understanding and Preparing for Wildfire in the Wildland-Urban Interface*, the agency itself does not have a standardized definition:

“What is the WUI and where is it located? There are many ways to answer this question (Blonski and others 2010), depending in part on how specifically one defines WUI.”¹

The recommended directive language provides the USFS with the tools needed to address recreational shooting issues on an emergency basis – regardless of their location on National Forest System lands – when a high probability of imminent harm exists. In addition, the recommended directive language is consistent with 36 CFR §261.10 that prohibits discharge of a firearm within 150 yards of a residence, building, campsite, developed recreation site or occupied area.

34.1 - 34.1 – Public Notice and Comment Requirement

USFS proposed directive language:

2. Public notice and comment are not required before issuing a hunting, fishing, or recreational shooting order:

a. In an emergency. The justification for the order shall document the basis for the determination that an emergency exists. The responsible official shall ensure that the local Office of the General Counsel reviews the emergency determination and justification for the order before it is issued.

Recommended directive language:

2. Public notice and comment are not required before issuing a hunting, fishing, or recreational shooting order:

*a. In an emergency. The justification for the order shall document the basis for the determination that an emergency exists **and that the order applies to the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.** The responsible official shall ensure that the local*

¹ <https://www.fs.fed.us/openspace/fote/reports/GTR-299.pdf>

Office of the General Counsel reviews the emergency determination and justification for the order before it is issued.

Justification for recommended directive language:

The recommended directive language ensures compliance with the requirements of Sec. 4103 (a) (2) of P.L. 116-9 that requires emergency closures be limited to “the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.”²

34.31 – Notice of Intent

USFS proposed directive language:

3. Coordination with the Appropriate State Fish and Wildlife Agency. Before or during the period between publication of a notice of intent and the end of the comment period for a proposed hunting, fishing, or recreational shooting order, the responsible official shall seek input from the appropriate state fish and wildlife agency on the proposed order.

Recommended directive language:

*3. Coordination with the Appropriate State Fish and Wildlife Agency. **Before publication** of a notice of intent for a proposed hunting, fishing, or recreational shooting order, the responsible official shall seek input from the appropriate state fish and wildlife agency on the proposed order.*

Justification for recommended directive language:

Given that the closure of federal lands to hunting, fishing, and recreational shooting has a direct impact on state fish and wildlife agency revenue as well as their ability to achieve independently defined fish and wildlife management objectives, it is appropriate for federal agencies, including the USFS, to coordinate with these entities prior to publishing a notice of intent to close federal lands to these activities. As cooperating or participating agencies, state fish and wildlife agencies often possess special expertise with respect to the management of hunting, fishing, and recreational shooting. In certain cases, state fish and wildlife agencies may have the ability to assist the USFS in defining the need for closure, defining the necessary size and scope of a proposed closure, or recommending alternative management strategies that preclude the need for closure altogether. To promote meaningful partnerships related to the management of fish and wildlife resources, state fish and wildlife agencies should not be informed of a notice of intent to close federal lands at the same time as the general public, something that would be allowable under the proposed directive.

USFS proposed directive language:

² <https://www.congress.gov/116/plaws/publ9/PLAW-116publ9.pdf>

6. Posting of Documentation. When a notice of intent is published, the responsible official shall ensure that the following is posted on the website of the affected administrative unit:

a. A copy of the proposed hunting, fishing, or recreational shooting order. The responsible official shall ensure that:

(1) The area of National Forest System lands that would be subject to the proposed order be no larger than necessary to meet its purpose; and

(2) The duration of the proposed order be no longer than necessary to meet its purpose.

b. A detailed justification for the proposed hunting, fishing, or recreational shooting order, including but not limited to the basis for determining that the order needs to be permanent or temporary or the basis for determining that the order is necessary to address an emergency, and any accompanying exhibits; and

c. As appropriate, a map of the area of National Forest System lands that would be closed.

Recommended directive language:

6. Posting of Documentation. When a notice of intent is published, the responsible official shall ensure that the following is posted on the website of the affected administrative unit:

a. A copy of the proposed hunting, fishing, or recreational shooting order. The responsible official shall ensure that:

(1) The area of National Forest System lands that would be subject to the proposed order be no larger than necessary to meet its purpose; and

(2) The duration of the proposed order be no longer than necessary to meet its purpose.

b. A detailed justification for the proposed hunting, fishing, or recreational shooting order, including but not limited to the basis for determining that the order needs to be permanent or temporary or the basis for determining that the order is necessary to address an emergency, **the basis for determining that the area proposed for closure in the order is no larger than necessary to meet its purpose, the basis for determining that the duration of the proposed order is no longer than necessary to meet its purpose**, and any accompanying exhibits; and

c. **A map of the area** of National Forest System lands that would be closed.

Justification for recommended directive language:

The recommended directive language ensures compliance with the requirements of Sec. 4103 (a) (2) of P.L. 116-9 that requires closures be limited to “the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.”³ In addition, the recommended directive language increases transparency by providing the public with insight into the agency’s analysis of the size, scope and duration of a proposed closure, increasing the public’s ability to provide detailed comments consistent with the intent of P.L. 116-9. As currently written, the proposed directive is unclear as to whether responsible officials would be required to include a justification for the size, scope and duration of proposed closures in a notice of intent. The public would also be well served by removing responsible officials’ discretion to include or not include a map of proposed closures along with any notice of intent.

Thank you again for the opportunity to comment on comment on the proposed directive to establish a definition for emergency closures of areas located on national forests or grasslands to hunting, fishing, or recreational shooting pursuant to P.L. 116-9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act. Should you have any questions, please contact Andy Treharne at atreharne@congressionalsportsmen.org.

Sincerely,

Archery Trade Association
Association of Fish and Wildlife Agencies
Backcountry Hunters and Anglers
Boone & Crockett Club
Congressional Sportsmen’s Foundation
Conservation Force
Council to Advance Hunting and the Shooting Sports
Dallas Safari Club
Delta Waterfowl
Houston Safari Club
National Rifle Association
National Shooting Sports Foundation
National Wild Turkey Federation
North American Bear Foundation
Quality Deer Management Association
Rocky Mountain Elk Foundation
Ruffed Grouse Society / American Woodcock Society
Safari Club International
Wildlife Forever
Wildlife Management Institute

³ <https://www.congress.gov/116/plaws/publ9/PLAW-116publ9.pdf>