

## The Forest Service's Proposed Forest Rule: A Bad Deal for Wildlife

*The Forest Service's recently proposed forest rule would significantly impair wildlife conservation by weakening the requirements for the plans governing the management of individual national forests. While on its face the proposed rule seems promising, its statements of lofty ambition do not translate into meaningful and binding standards.*



White-tailed Ptarmigan  
Pike-San Isabel National Forest, Denny Bohon

### Fundamentally Flawed Wildlife Protections

A close look reveals a proposal which suffers from a series of fundamental flaws. In total, the flaws render the rule forceless and pose significant risks to wildlife. While the proposal includes *some* requirements and *some* measurable standards for wildlife conservation, the pivotal requirements cannot be measured or enforced, and the key standard that *could* be measured is discretionary. Finally, to add another layer to agency discretion and therefore compounding risks to wildlife, the proposal is littered with loopholes that absolve the Forest Service of its longstanding conservation obligations. Taken together these fundamental flaws serve to maximize agency discretion, while putting wildlife needlessly at risk, and producing severe implementation problems.

### The New Ecosystem Approach to Wildlife Conservation is Discretionary and Cannot be Verified

The Forest Service proposes to replace their longstanding and measurable approach to wildlife conservation with a discretionary and non-verifiable ecosystem approach. Under the current regulations, the agency is required to manage habitat to maintain viable populations of wildlife. The new requirement to manage for ecosystem health and resiliency “to maintain the diversity of native species” is not a duty to maintain wildlife viability. The ecosystem approach to maintaining species diversity is premised on an assumption that “healthy and resilient” ecosystems will protect species diversity. Yet species diversity is a concept which cannot be divorced from viability. The decision to delink the concept of species diversity from the measurable standard of population viability is not supportable and increases risk to species on national forests.

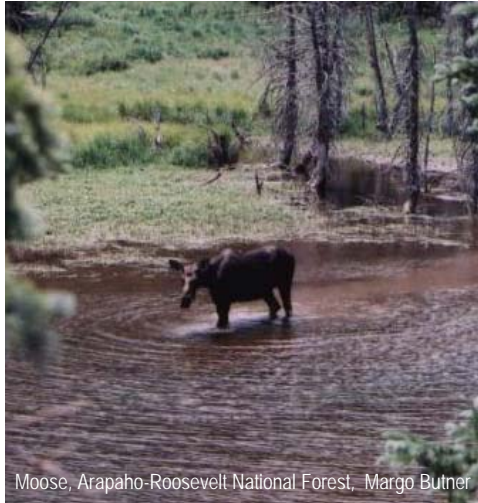
This flaw is amplified because the Forest Service relies on the ecosystem requirement to do most of the wildlife protection work in the regulation. Indeed, under the proposed rule, the ecosystem approach would be the primary mechanism for “keeping common species common,” the only protection the rule affords for species that are not already imperiled. Accordingly, the risk that many wildlife species will fall through the cracks is very real.



Rocky Mountain Bighorn Sheep  
Uncompahgre National Forest, Mark Ball

The protections assumed under the ecosystem requirement cannot be verified through monitoring, provide for little accountability, are largely unenforceable, and are likely to cause significant implementation problems. In practice, the provision provides the agency with the discretion to not only determine the *means* of protection (to define a “healthy and resilient” ecosystem) but also the *outcome* of protection (to conclude without verification that the “diversity of native species” is being maintained). The Forest Service proposal fails to follow science by decoupling the concept of species diversity from the measurement of viability, such as through the assessment and monitoring of the viability of at least some wildlife.

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Moose, Arapaho-Roosevelt National Forest, Margo Butner

## Targeted Species Protections Are Optional

After declaring that the ecosystem approach is sufficient to protect species, the proposed rule only includes an optional requirement to “maintain viable populations of *species of conservation concern*.” This targeted species protection is extended only to particular wildlife species for which the ecosystem protection is “insufficient” and for which the agency determines “there is evidence demonstrating significant concern” over the species’ capability to persist. The proposed rule leaves discretion with the agency itself to determine which species should receive the protection of the previously broadly applicable viability standard, thus making this standard almost entirely optional. The Forest Service could decide that the ecosystem standard is sufficient to protect all species, or that there is no evidence demonstrating significant concern for a particular species; either determination would deprive wildlife of protections.

## The Species Protection Definition is Weak: Just One Population Somewhere in the Forest

The proposed standard of optional species protection is unworkable. Current regulatory requirements prevent the Forest Service from taking management actions that significantly reduce the range of a wildlife population. Under the proposed rule, species which receive the optional viability protection will only be required to be sufficiently distributed to be “resilient and adaptable.” What constitutes “sufficient” distribution is ambiguous and allows for actions that could significantly reduce the range of a wildlife population. One can imagine a scenario in which, for example, the Forest Service decides to maintain wolves on only one of the 1,000 islands that are part of the Tongass National Forest in Alaska to meet the “sufficient” distribution standard.

## The External Factors Escape Clause Removes Virtually All Forest Service Responsibility

If those discretionary elements weren’t enough, the proposed rule includes an additional escape clause that allows the Forest Service to determine that the “inherent capability of the land” frees it from species-specific conservation. It is true that external factors such as climate change or management outside the boundaries of a particular forest sometimes make it difficult or impossible to maintain viable populations of wildlife on the national forests. Yet when external factors come into play, at minimum, the agency should have to explain these factors and do what *is* in their control to mitigate wildlife conservation problems.

## The Proposed Rule Writes Off Science

President Obama has repeatedly affirmed his commitment to science-based decision-making. However, the proposed rule flies in the face of this commitment by making these decisions optional, thereby maximizing agency discretion and allowing the Forest Service to escape being held accountable for inadequately protecting species. Rather than require the agency to *use* the best available science in agency decision-making, the proposal says only that the Forest Service “shall *take into account* the best available science.”

## No Redress for Bad Decisions Impacting Wildlife

Under the proposal, there is very little the public can do to compel the agency to adequately protect wildlife if it does a bad job. Flaws including tight timeframes for administrative objections and inadequate information disclosure requirements undermine effective public participation in agency decision-making. The flaws undermine the ability of citizens to effectively appeal decisions not to protect a particular species and essentially prevent citizens from asking the courts to review bad wildlife conservation decisions.

