



March 16, 2020

Mr. Michael Migliori, Program Analyst,
Office of Regulatory and Management Services,
201 14th Street SW,
Washington, DC 20024

Comments were submitted electronically to:

<https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2016>

RE: FSH 1109.12 Directive System Ch. 30 Providing Notice and Opportunity to Comment on Directives (FR Doc. [2020-00668](#))

Dear Mr. Migliori:

The Arizona Game and Fish Department (Department) appreciates the opportunity to provide the U.S. Forest Service (FS) input on the new FS handbook (FSH) 1109.12 Directive System, Chapter 30 - Providing Notice and Opportunity to Comment on Directives. This chapter is meant to comply with the final rule 36 Code of Federal Regulations (C.F.R.) 216 - Public Notice and Comment for FS Directives effective January 16, 2020. "Specifically this chapter is meant to provide direction for determining whether a directive requires public notice and opportunity for comment, procedures for providing public notice and opportunity to comment on directives, strategies for engaging the public in development of FS directives, interagency and intergovernmental communication, tribal consultation, consideration of public comments, and finalizing directives." (85 Fed. Reg. 11, 2865).

FS lands comprise approximately 28% of Arizona's land area. Under Title 17 of the Arizona Revised Statutes, the Department, by and through the Arizona Game and Fish Commission, has jurisdictional authority and public trust responsibilities for the management of state fish and wildlife resources, and works closely with the FS regarding land management. In addition, the Department manages threatened and endangered species through Section 6 authorities and the Department's 10(a)1(A) permit. It is the mission of the Department to conserve Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations. Thus, it is important for the Department and the public who recreate on forest lands or derive income from forest lands have the opportunity to participate in the development of directives that may impact use or management of FS lands. The Department highlights within this letter our topics of concern, while our specific comments are in the attached comment matrix.

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Coordination with State Wildlife Agencies

The Department requests state wildlife agencies, as a matter of their legislated state authorities, be considered as designees of state government in proposed 34.1 and 33.1(5). Procedures should include implementation of state/federal coordination, in both the pre-planning stage and early in the planning process, to identify and address areas of mutual interest, statutory/management authority, state trust responsibility, and state planning. Including early coordination, not just during opportunities for public comment, will ultimately streamline project implementation and wildlife conservation on public lands.

Further, the FSH should provide a specific designated timeline and process for:

- Multiple insertion points for FS and state wildlife agencies to collaborate on the preliminary development of all planning guidance that identifies state jurisdictional or Forest Service sensitive species (e.g., species nomenclature, grouping, lists, direction on assessing impacts to species or species management guidance); and
- Collaboration and conflict resolution between FS and state wildlife agencies before the release of any final planning documents with the potential to impact state jurisdictional authorities and ability to manage wildlife on public lands, see proposed Table 1: Summary of Public Notice and Comment Procedures for Directives.

Notification Procedures

The Department acknowledges the FS's attempt to provide clarity to its new public notification processes. While Table 1: Summary of Public Notice and Comment Procedures for Directives is a good start, the Department request further development of procedures in proposed 32. For example, procedures should clarify exactly what notifications will be received via a subscription to the Forest Service's Directives and Policies webpage (e.g., notice notification of the availability of supporting documents, project status, changes to outreach methods, response to comments, etc.). The Department requests notification should be required for the availability of supporting documents, and specifically documents designed to assist the public with their review be provided in a reasonable amount of time, including changes to outreach methods.

Finally, the Department urges the FS to publish all directives, including finalized directives in the Federal Register (FR; see Step 4 of Table 1) to maintain consistency with the notification procedures in Step 1 of Table 1- to further simplify the process. The Department has experienced challenges when it has not been made aware of finalized actions. For example, the Department was not notified of a final action that required our law enforcement personnel to enforce even though the Department had been a cooperating agency. Codifying the use of the FR as the standard notification method for directives, environmental assessments, and environmental impact statements will simplify the NEPA process, provide transparency to the public, and facilitate state/federal coordination.

Response to Comments

The Department requests the inclusion of procedures and timelines for the "consideration of comments" in Step 3 of Table 1. It is important to provide transparency to the public on how their comments will be considered and the methods that will be used. 32.3 states "written response to comment must be provided...", but is unclear how that will be accomplished. The

Department also requests procedures provide multiple insertion points for conflict resolution to avoid costly and unnecessary administrative and legal appeals.

Comment Periods

32.21 states "The Agency has discretion to determine the comment period that is appropriate for each proposed or interim directive,.." The Department requests clarification on who's responsibility this would be, and procedures to request extension, should outside reviewers deem necessary due to the complexity of the project.

Interim Directives

The now final § 216.4 C.F.R. and section 31.4 on Interim Directives, reads "Upon a finding of good cause that an exigency exists, an interim directive may be effective in advance of providing notice and an opportunity for public comment." As described in 31.4 an "...opportunity will be given for public comment before the interim directive is made final. The basis for the determination that good cause exists for the issuance of an interim directive shall be published at the time the directive is issued." The Department understands the need for issuance of interim directives in certain circumstances; however, the Department requests the FSH provide a process and timelines for coordination with State agencies and other partners and concurrence on the exigency prior to the issuance of interim directives.

The Department is supportive of clearly defined procedures for public notification, and seeks to diligently and fully include the public and state wildlife agencies in the development of directives that affect FS land use and management. The Department looks forward to continued coordination on the development of the FSH. Please contact Tracy C. Bazelman at 623-236-7513 or tbazelman@azgfd.gov to answer potential questions.

Sincerely,

A handwritten signature in blue ink that reads "Clay Crowder ABC for".

Clay Crowder
Habitat, Evaluation, and Lands Program Branch Chief

Attachments: AGFD comment matrix

AGFD# M20-011173912

AGFD Comment Matrix dtd 3/16/2020

USFS Handbook 1109.12; Directive System Handbook; Providing Notice and Opportunity To Comment on FS Directives - Jan 2020 (AZGFD # M20-011173912)

Page	Paragraph/Section	Issue/Topic	Comment/Observation	Action Requested
2	31.1	Directives subject to public notice	References are provided in some sections but needs to be consistent throughout.	Action: To improve readability of the document include a references to the sections where topics are discussed in greater detail. For example, 31.1 in 1. (reference 31.11) and 2. (reference 31.12).
4	31.2	Part of Directive	Although the directive itself may not go through public comment, at a minimum the appropriate reference, summary, etc. needs to be presented with the components open to the review for consistency and transparency in the process and overall directive.	Action: Provide the appropriate reference, summary, etc. needed to review the directive for consistency and transparency in the process.
4	31.4	Interim Directives	Interim Directives states that "Upon a showing of good cause, the Agency may issue a directive that is subject to public notice and comment as an interim directive, which goes into effect immediately upon publication.," and goes on to state "...The interim directive will serve as the public notice for the final directive, and timely comments received on the interim directive will be considered in developing the final directive.," and "...The final directive will be published no later than 36 months after the interim directive is published, unless an extension is granted by the appropriate Deputy Chief."	Action: Define "timely" throughout the document. The Department requests the FSH provide a process and timelines for coordination with State agencies and other partners and concurrence on the exigency prior to the issuance of interim directives. In addition, the final directives should be published within 24 months, as 36 months is too long from interim directive and less likely to be consistent as well as actionable for the FS to implement. 31.4 generally states the agency comment period will be consistent with this chapter - include a reference to the comment period section to improve readability.
7	32.21	Comment Period	Proposed 32.21 states "3. The comment period for all other directives subject to public notice and comment is at least 30 days. The Agency may provide a longer comment period, if needed."	Action: Specify who at the Agency has the discretion to approve a longer comment period. Specify if extensions are permitted by outside reviewers.
10	33.2	Changes to Planned Public Outreach Methods	This section seems to give the Agency a lot of freedom in its outreach methods, "the Agency may make changes to planned public outreach methods at any time". Does this keep with the intent and purpose of the Directive System?	Action: Clarify the bounds by which the Agency is required to adhere to the Directives.
General	Website	Public Notice	Per commenting instructions posted to the Forest Service (FS) websites - "A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's webpage." at https://www.fs.usda.gov/about-agency/regulations-policies/comment-on-directives	Action: Publish all directives, including finalized directives, in the FR. The use of modern methods should be in addition to the FR, not in lieu. Also include a link to where the final directive will be posted on the FS website to provide transparency of the action and avoid confusion.
General	Website	No option to mail in comments	There was no address posted to mail comments to on the FS website. This is not consistent with the FS's intent to provide broader access to the public to comment on actions.	Action: All methods to submit comments that were presented in the FR must be posted on the website to adequately involve the public.
General	Handbook/Manual website	Handbook Manual website	References to other sections of the FSH outside of this chapter provided needed context and improved the executability of the FSH. However, the FSH references are not readily searchable.	Action: Improve online searchability of the FSH and Manuals to provide transparency of the process to the public. It is unclear how the FSH is organized and how the sections operate with each other.

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11	34.1	Engagement with States and Local Governments	34.1 – Engagement with States and Local Governments states: "The Agency may engage with elected officials of state, local, and tribal governments or their designees to exchange views, information, or advice on proposed or interim directives without being required to charter a FACA committee. Examples of elected officials of state and local governments in this context may include the Governor or Mayor. Any designations of authority by elected officials must be made in writing and must be provided to the Agency."	Action: 34.1 Include language that recognizes State agencies (state wildlife agencies, for example) that have legislated state authorities as part of state and local governments that should be coordinated with, and encourage the FS to engage with state and local governments when such entities may be impacted.
11	33.3	Relevant legislation to include	This proposal is setting direction on providing public notice and the opportunity to comment on Forest Service directives.	Action: Consider the inclusion of National Forest Management Act of 1976 and National Forest System Resource Planning, Sec. 6 (d) - "The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions."
General	General	Departures from existing procedures	It is unclear how procedures in this chapter differ from existing procedures. When compared to the current FSH 1109.12 posted on the FS website, it did not appear to be the same information as presented in this chapter. (See FSH 1109.12 is at FS websites at https://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsh?1109.12)	Action: Provide a copy of the current procedures to compare and contrast with this chapter. Clarify in the FSH what triggered the new chapter, and clarify areas of the FSH that are departures from what current procedures are to improve transparency.
5	31.5	Determining Whether a Directive Must be Made Available for Public Comment	"31.5 – Determining Whether a Directive Must be Made Available for Public Comment The Deputy Chief with authority over the program to which a directive or directive supplement applies will determine whether that directive or directive supplement must be made available for public comment pursuant to 36 CFR Part 216 (sec. 31.12 of this chapter) and whether there is good cause that an exigency exists to support publication of an interim directive (sec. 31.3)."	Action: Clarify if it is the Deputy Chief or the OIRA that determine if a directive will be made public.
5	32	Procedures for Providing Notice and Opportunity for the Public to Comment on Proposed and Interim Directives is unclear	"The Agency's procedure for providing notice and opportunity to comment is to provide notice of directives that will be published in the next 3 months, inform the public when a proposed or interim directive is available for comment, consider timely public comments in developing a final directive, and publish a final directive." This sentence is unclear.	Action: Add a colon after "to" as follows "The Agency's procedure for providing notice and opportunity to comment is to [:] provide notice of directives that will be published in the next 3 months, inform the public when a proposed or interim directive is available for comment, consider timely public comments in developing a final directive, and publish a final directive."

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6	32	Table 1: Summary of Public Notice and Comment Procedures for Directives	<p>Step 1 in Table 1 states "Publish Advance Notice. The intent to propose a directive, or to issue an interim directive, with a brief description, will be set out in the Forest Service Directive Publication Notice, published quarterly in the Federal Register, and posted on the Forest Service's Directives and Policies webpage (sec. 32.1)."</p> <p>The table and the narrative do not seem to match. For example it appears Step 1 should include the 3 months timeline.</p>	Action: Ensure the narrative and the table match. Timelines should be added to the table. Specify if the public will be required to subscribe to the "FS Directive Publication Notice" in the Federal Register or if a subscription to FS FR notifications will suffice. Specify all the steps the public must do to ensure they are notified through out the notification process (e.g., subscriptions etc.). Consideration should also be given to reduce the amount of steps and places the public needs to go through to find directives they wish to comment on. Website should be user-friendly and provide an update on where the directive is at in the process.
6	32	Table 1: Summary of Public Notice and Comment Procedures for Directives	<p>"Step 4. Finalize Directive. The final directive will be published in the Directive System and on the Forest Service's Regulations and Policies webpage and will be listed in the quarterly Directive Publication Notice, which will be published in the Federal Register. The Agency's response to comments received on the proposed or interim directive will also be posted on the Agency's Regulations and Policies webpage (sec 32.4)."</p> <p>FSH lacks detail on how the FS will respond to comments.</p>	Actions: Specify how often the FS's Regulations and Policies webpage will be updated. Specify if the public will be notified of supporting documents (e.g., a redline version) that are made available after the FR Notice of Availability. At minimum, the public should be notified of the availability of documents that are designed to assist the public with their review. Further, specify the response process.
6	32.1	Forest Service's Regulations and Policies webpage should be all encompassing	"2. A link to the description of public outreach methods planned for each proposed or interim directive to let the public know what to expect regarding the public notice and comment process, and so that members of the public may recommend changes that could improve the effectiveness of planned communication strategies."	Action: Ensure all links and information provided in the FR and on the Forest Service's Regulations and Policies webpage mirror each other. Include a link to provide feedback on how to improve communication strategies at both locations.
7	32.1	Consistency across notification methods	Number 6. "under Directive Publication Notice states "The name, e-mail address, and telephone number of a Forest Service employee to contact for more information or to whom to provide feedback on the Public Engagement Plan."	Action: Specify what the "Public Engagement Plan" is and how it relates to procedures in this chapter? Who is responsible for developing the Plan?
7	32.1	Directive Publication Notice Procedures		Action: Add a procedure that states "Any additional information/supporting documents that are designed to assist the public with their review be posted to both the quarterly Forest Service Directive Publication Notice in the FR and on the Regulations and Policies webpage.
7	33.2	Public notice	Number 2. for the Notice of Interim Directive states "The Agency may issue an interim directive prior to inclusion in a Directive Publication Notice, but must include the interim directive in the next Directive Publication Notice."	Action: At minimum, include notify the public via a subscription or other.
7	32.21	Comment Period Extension	Chap 30 lacks procedures for the public or reviewing agencies to request an extension to the comment period.	Action: Include procedures to request an extension to the comment period.

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8	32.22	Required Information to be Provided	It appears the FS will no longer accept comments via mail.	Action: Add mailing address to #3 as required information to be provided. The FSH needs to clearly state all acceptable methods to submit comments. It also needs to specify unacceptable methods and provide justification and alternatives to ensure all members of the public have the opportunity to comment.
9	32.4	References to Congressional Review Act		Action: Include a reference to the section where this is discussed in this chapter and a reference to the U.S. Code and section.
9	33	Public Notice Methods	States "...provide a framework for consistent, effective, appropriate and transparent engagement (sec. 32.1(2))."	Action: Table 1 is a good start to outlining the framework but further clarification of procedures and the over all framework are needed.
10	33	Public Notice Methods	"Including a description of public outreach methods in the quarterly Directive Publication provides an opportunity for the Agency to obtain feedback on outreach methods and to understand which proposed and interim directives are of particular interest to the public, states, local governments, and tribes, and facilitate effective public and intergovernmental communication."	Action: Specify if the public or Agencies can request supporting documents to assist with their review, and how.
10	33	Public Notice Methods	This chapter lacks a framework to facilitate coordination with state and local interest such as a State Agency on directives that may affect their judicial authority or directives required to comment on.	Action: Include framework to coordinate with state agencies.
10	33	Public Notice Methods	The table of contents states 33 is titled Public Engagement Plan, but the header in the document states 33 is Public Notice Methods.	Action: Ensure the table of contents matches headers in the text and consolidate areas of duplication to simplify the Chapter.
10	33.2	Changes to Planned Public Outreach Methods		Action: Specify how the public will be notified of changes to planned public outreach.
11	33.3	Define "Consensus advice"	"Generally, the goal of public notice and comment on proposed and interim directives is not to obtain consensus advice. A carefully developed Public Engagement Plan is a good resource for ensuring that public engagement is designed so that consensus advice is not sought and Federal Advisory Committee Act (FACA) requirements are not triggered."	Action: Define "consensus advice." Include a reference to the Federal Advisory Committee Act (FACA) statute. Provide context for the FACA section and mentioned triggers.
11	34.1	Agencies with judicial authority	"Any designations of authority by elected officials must be made in writing and must be provided to the Agency."	Action: State agencies (like state wildlife agencies) with judicial authority should not be required to provide a letter of authority.