



December 15, 2016

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Dan McKeague
District Ranger
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c/o Russ MacFarlane
George Washington and Jefferson National Forests
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Sent Via Email

Re: Gypsy Moth Suppression Project, Bland County - Response to Scoping Notice

Board of Directors: Dear Ranger McKeague:

Devon Callan

Bette Dzamba

Howard Evergreen

Jennifer Lewis

Laurie Miller

Ernie Reed

David Sellers

Deirdre Skogen

Elizabeth Williams

I am submitting these comments on behalf of Wild Virginia in response to the referenced Scoping Notice (Notice) . We have both procedural and substantive concerns, as described briefly below:

Public Notice

The public must have timely and effective notice of proposed actions, under the National Environmental Policy Act (NEPA) and Forest Service regulations. Wild Virginia is vigilant in checking the project notices on the George Washington and Jefferson National Forest (GW&JNF) web site and is a frequent commenter on proposals but we find the timing and methods of noticing projects to be flawed, in this and in other cases.

In this instance, as in others, the 30-day period for comments and official intervention is set in your scoping letter to begin on the date of newspaper publication. Your letter is dated November 10, 2016 and the GW&JNF web site lists the “Date Published” as 11-15-16. Neither Wild Virginia nor any other member of the public can know from this information when the official comment period began and when it is to end. Therefore, although we hope that these comments fall within the period that would allow us to preserve our rights to future actions, we realize that this may not be the case. If, in reliance on the web site listing, we have missed the prescribed 30-day period, we object to this proposal and insist that a new notice must be issued.

We realize that the publication of a legal notice in a local newspaper is often considered to be the “official” notice for legal purposes. However, it is widely acknowledged that this method of notice alone is insufficient to satisfy the needs of the public to protect its rights and interests. Indeed, the U.S. Supreme Court made this clear, implying that newspaper advertisements alone would constitute “a mere gesture” towards due process, and stating:

[i]t would be idle to pretend that publication alone as prescribed here, is a reliable means of acquainting interested parties of the fact that their rights are before the courts. . . . Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed.

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Mullane v. Central Hanover Bank & Trust Co. et al., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, 1950. Of course, though the quote refers to notice of court action, the same requirements and factors exist for agency regulatory actions.

The fact that the GW&JNF maintains a web site and a mailing list to provide notice to parties with an interest in projects is an acknowledgement of the need to supplement newspaper notices. We believe Forest Service personnel make genuine and honest attempts to give the public adequate notice and avoid any confusion. Given this belief, we have been hesitant to raise this issue in such a forceful way as we do in this letter. There are two factors, though, that compel us to do so.

First, the exact timing of comment periods would not be so crucial if not for the already rather limited period provided for the public to review the scoping notice, research the issues involved, and make useful comments. This short time is especially limiting, given that we often try to make field visits to see the project areas and better understand the proposals. And the fact that we have significant experience in reviewing projects and identifying issues and concerns but still find the comment period constraining, means that members of the public, who often have no prior knowledge of Forest Service processes, NEPA, or the technical issues involved, must be disadvantaged to a very great degree.

Second, the system the Forest Service has adopted, in which tentative case decisions are generally issued with the draft Environmental Assessment (EA) and must be challenged, if at all, through “pre-decisional” objections, places additional and undue weight on any scoping comments citizens might offer. This is another reason the public must have notice that gives them the full 30-day period in which to make effective comments.

Under a more traditional approach to implementing NEPA, members of the public would merely be required to help delineate the major issues that should be addressed through the EA; what we would assert is the proper role of “scoping comments.” Then, when a DEA was issued, commenters could submit more specific and detailed information and analyses to explain what they saw as flaws or deficiencies in the DEA and the rationales supporting any tentative decisions. The responsible official could then consider the DEA and *all* comments and make a final decision, in combination with publication of the final EA. This gave members of the public two chances to contribute to the record before having to decide whether it was necessary to formally object to a project to vindicate their rights and interests.

Of course, even with this current system, the decision-maker may allow a period for comments on the draft EA before issuing a tentative decision. We encourage you to do so in this case and would generally favor this approach in project reviews for the GW&JNF.

We are confident that the Forest Service staff can resolve these concerns for the future and we are more than willing to discuss any options that might be considered. We prefer that our time and efforts be devoted to substantive issues that directly affect the health of the Forest.

Gypsy Moth Treatments

The overall rationales for gypsy moth suppression efforts and the methods to be used should be continually re-examined in light of the most current research. We provide a small sampling of technical references below but recognize that these represent a very limited and sporadic review of the multitudes of papers produced in recent years. It is necessary for the EA to include a more comprehensive review of the literature as it relates to this project.

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We recognize, as the Notice states at page 4, that gypsy moth control efforts are broadly authorized by the JNF Land and Resource Management Plan (Forest Plan) and other Forest Service regulations. When the Forest Plan was adopted, this general approach to gypsy moth control was the subject of NEPA review. That NEPA review and the Forest Plan's provisions are, of course, not adequate to assess and govern specific actions, such as that proposed here. It is important that up-to-date information be incorporated into this project-specific review and that the proper range of alternatives be assessed.

Some of our concerns about this proposed project are discussed below. We renew the request stated above - that the DEA for this project be noticed and comments allowed before the tentative decision is issued and before the necessity of filing a pre-decisional objection is triggered.

- A major focus of GW&JNF management activity is on the creation of early-successional habitat conditions and open canopies. While we believe these efforts are often contrary to the ecological needs of the Forest as a whole, we acknowledge that this goal exists in the Forest Plan. Given that fact, it must then be acknowledged in this action that defoliation and tree mortality caused by gypsy moths is a disturbance that can advance this goal, though we would never advocate the promotion of any non-native invasive species as a tool. Gypsy moth suppression must be analyzed in a cumulative impacts analysis, on local and region-wide scales, in combination with other natural and human-caused disturbances that produce open canopy and create early successional conditions, such as windthrow, wildfire, ice storm, prescribed burns, and timber cutting.
- Both the long-term and short-term impacts of gypsy moth infestations and defoliation must be assessed. In one paper the authors characterized insect defoliation as a “[p]rominent ephemeral disturbances” and state that “[e]phemeral forest disturbances are short lived perturbations from which forests often recover quickly, either within the same year or in the following year.” de Beurs, K.M. and P.A. Townsend, *Estimating the effect of gypsy moth defoliation using MODIS*, Remote Sensing of Environment 112, 2008, 3983-3990. The authors also caution though that “[w]hile forests often recover after such disturbances with little mortality, long term effects might still be detectable multiple subsequent disturbances can be fatal.” Id.
- While detrimental impacts of gypsy moth infestations are widely acknowledged, there could be some positive impacts on forest health as well. “Although poorly documented, alien insects may induce positive feedback effects, on ecological processes and interactions. For example, effects of herbivory on foliar chemistry may indirectly alter tri-trophic interactions of indigenous herbivores on their shared hosts, slow rates of terrestrial nutrient cycling, and decrease productivity of aquatic habitats based on allochthonous inputs.” Gandhi, Jamal J.K. and Daniel A. Herms, *Direct and indirect effects of alien insect herbivores on ecological processes and interactions in forests of eastern North America*, Biol. Invasions, 2010, 12:389-405.
- The implications of this project in relation to climate change must be assessed under NEPA regulations and especially in view of final guidance issued by the Council on Environmental Quality (CEQ) applicable to all federal agency actions. Any negative effects on the Forest's capacity as a carbon sink must be discussed, as must the vulnerability of the forests of the central Appalachian region to predicted climate changes and the role this action may play in alleviating or exacerbating that vulnerability. We have reviewed one study that bears on this issue: Logan, Jesse A., Jacques Régnière, and James A. Powell, *Assessing the impacts of global warming on forest pest dynamics*, Frontiers in Ecology and the Environment, Volume 1, Issue 3, April 2003, Pages 130-137) but assume there are other recent papers that should be included in your review. Primary conclusions by Logan et al. are:

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- Forest insects and pathogens, which have a considerable effect on the forests of North America, are particularly vulnerable to disruption by climate change.
 - Current data and models suggest that global warming will result in the redistribution of insect pests, resulting in the invasion of new habitats and forest types.
 - Unusually hot, dry weather patterns are already responsible for increased insect outbreaks in forests from the US Southwest to Canada and Alaska.
 - The necessary tools are in place to assess the impacts of climate change on forest pests and their host trees. The visual impacts and consequent impacts on recreation and aesthetic enjoyment of the Forest are certainly present. The potential and scope of such impacts on these particular tracts must be assessed. In addition, these types of visual impacts must be compared with those from forest management activities such as timber cutting and prescribed burns.
- As with all Forest Service proposals, the use of agency resources in carrying out this proposed project must be discussed in relation to the competing needs of the Forest and mandates of the Forest Plan. What priority ranking should this project receive in relation to other projects to address invasive species, to repair roads and trails, etc.? Are the resources in money, equipment, and personnel time currently available for this project, if approved, and will the allocation of those resources to this purpose prevent other planned activities from being completed?
 - We believe any possible effects on water quality that may be caused by the aerial application of the bacterial insecticide must be analyzed in the DEA. Despite the fact that Btk is a naturally-occurring bacterium, will its introduction in the amounts and with the methods proposed increase its presence in waterbodies and are the implications of any such increases known? We are also concerned that other ingredients in this insecticide, which the Notice characterizes as “inert (non-active) ingredients” could also cause problems in the environment. As one source notes: “[d]espite their name, inert ingredients may be biologically or chemically active and are labeled inert only because of their function in the formulated product. Most of the tests required to register a pesticide are performed with the active ingredient alone, not the full pesticide formulation. Inert ingredients are generally not identified on product labels and are often claimed to be confidential business information.” Cox, Caroline and Michael Surgen, *Unidentified Inert Ingredients in Pesticides: Implications for Human and Environmental Health*, Environmental Health Perspectives, Volume 114, Number 12, December 2006, pages 1803-1806.
 - If aerial spraying introduces this biological agent and/or its non-active ingredients into streams in the area, this may be deemed a point-source discharge of a pollutant and would require permitting under the Clean Water Act’s National Pollutant Discharge Elimination System (NPDES) program. There may be a “general” NPDES permit that would cover such discharges but we have not investigated this possibility. If not, an individual NPDES permit could be required.

Thank you for the chance to comment on this project and for your consideration of the issues we have raised.

Sincerely,

/s/ David Sligh
David Sligh
Conservation Director

cc: Karen Overcash, GW&J NF