National Forest System Land Management Planning final rule
77 Fed. Reg. 21162 (Apr. 9, 2012).
36 CFR Part 219
(For your reference, page numbers from the rule are in parentheses).

SPECIES OF CONSERVATION CONCERN

Response to the Issue of Diversity of Plant and Animal Communities

Species of conservation concern are those plant and animal species whose long-term persistence within the plan area is of known conservation concern. The rule requires that species of conservation concern must be ''known to occur in the plan area'' and that the regional forester identify the species of conservation concern for which ''the best available scientific information indicates substantial concern about the species' capability to persist over the long term in the plan area.''

The Department has considered the concerns raised by many that the requirement for maintaining viable populations of species of conservation concern on the plan area is an impossible task and that attempting to meet this requirement will come at the cost of all other management of the NFS lands. The Department concludes that Modified Alternative A provides a more holistic, consistent, realistic, and effective approach to maintaining native fish, wildlife, and plant species on national forests and grasslands than provided under the 1982 rule, while meeting restoration goals and the mandate of multiple use.

Modified Alternative A recognizes that there are limits to the Agency's authority and the inherent capability of the land, whereas the 1982 rule required management prescriptions to ''[p]rovide for adequate fish and wildlife habitat to maintain viable populations of [all] existing native vertebrate species,'' (See 1982 rule at § 219.27 (a)(6)) regardless of whether there are circumstances outside of the authority or the control of the Agency. Examples of circumstances that may be outside of the Agency's authority or the inherent capability of the plan area are provided above in the rationale for non-selection of Alternative B.

The Department concludes the management emphasis on species of conservation concern is more focused than the viability provisions under the 1982 rule, which included all vertebrate species whether there was concern about their persistence in the plan area or not. Since these species may be wide ranging or may occur on multiple units, the regional forester, in coordination with the responsible official, will identify species of conservation concern. Requiring that the regional forester identify species of conservation concern will increase consistency across units and build efficiency into the Agency's collective efforts to maintain the diversity of plant and animal communities. (at 21175)

Within paragraph (b)(1), the Department changed the requirement for ecological conditions to maintain ''viable populations of species of conservation concern'' (§ 219.9 (b)(3) of the proposed rule) to ''a viable population of each species of conservation concern'' (emphasis

added). The change reflects the Department's intent from the proposed rule, but provides clarity in response to confusion about whether the proposed rule wording referred to populations of different species or multiple populations of the same species in the plan area, as well as concern that the proposed rule wording could be interpreted to mean that plans did not have to address every species of conservation concern. This clarification is consistent with the preamble of the proposed rule which discusses the agency's obligation in terms of maintaining ''a viable population of a species of conservation concern * * * to maintain the long-term persistence of that species.'' 76 FR 8493 (February 14, 2011).

As in the proposed rule, the ecosystem and species-specific requirements in the final rule are both limited by Forest Service authority and the inherent capability of the plan area. As in the proposed rule, the final rule provides an alternative standard for species of conservation concern if it is beyond the Forest Service's authority or the inherent capability of the plan area to provide ecological conditions to maintain a viable population of a species of conservation concern within the plan area. In such cases, the final rule requires that the responsible official document that determination (new requirement in the final rule) and include plan components, including standards or guidelines, to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range. The words ''to the extent practicable'' following the word ''contribute'' were removed from the final rule because they caused confusion and were unnecessary given other provisions of the rule, including Section 219.1(g). The final rule retains a modified requirement that in providing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands ''relevant to that population,'' to reflect the need for a cross boundary approach to species conservation.

The Department added paragraph (c) to the final rule to modify and clarify the definition of species of conservation concern, formerly in section 219.19. The new wording clarifies that the species of conservation concern must be ''known to occur in the plan area,'' that the regional forester is the line officer who identifies the species of conservation concern, and the standard for that is ''the best available scientific information indicates substantial concern about the species' capability to persist over the long term in the plan area.''

The Department believes these revisions more clearly describe the application of the coarse-filter/fine-filter strategy for maintaining biological diversity as discussed in scientific literature and the PEIS. As plan components designed to meet these requirements are created and complied with, the broad spectrum of habitat and other ecological conditions necessary to support the diversity of plant and animal communities and the persistence of native plant and animal species would be expected through this complementary strategy. (at 21214)

Comment: Authority for viability.
Some respondents felt the proposed rule's concept of species viability may be outside the Agency's authority to implement; they take the position that managing for species diversity and viability is the responsibility of State agencies, the National Marine Fisheries Service, and the

U.S. Fish and Wildlife Service. (at 21215)

Response: The requirement, to ''provide for diversity of plant and animal communities'' as set forth under § 1604(g)(3)(B) of the NFMA, does not specifically reference the diversity or viability of particular species. It is a statutory requirement that there be a planning rule that provides for diversity. However, it is within the Department's authority to require that plans provide ecological conditions to maintain viable populations of species of conservation concern. The Department's ability to maintain the diversity of plant and animal communities is dependent on protecting the plant and animal species and the interactions and processes the species perform. The Department developed the final rule in recognition that many Agency plans, programs, and activities are important influences on providing the desired ecological conditions for plant and animal communities and native species on NFS lands. In accordance with the MUSYA, plans must also provide for multiple uses including wildlife and fish. (at 21215–21216)

The provisions in this final rule are focused on providing the ecological conditions necessary to support the diversity and persistence of native plant and animal species. The final rule maintains and provides additional direction to work with State fish and wildlife agencies, other Federal agencies, as well as others, to conserve fish, wildlife, and plant habitats and populations on NFS lands and to contribute to shared goals, such as those provided in state wildlife action plans or in threatened or endangered species recovery plans. Requirements in §§ 219.4, 219.6, 219.10, and 219.12 of this final rule complement and support interagency collaboration on habitat and species conservation.

Comment: Species of Conservation Concern (SCC) and Viability.
Some respondents felt the rule should include the following wording from § 219.19 of the 1982 rule: ''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.'' Some felt this standard should be extended to plants and invertebrates as well as vertebrates, and not only to SCC. Some respondents felt the proposed rule weakens current protections for plant and animal species therefore, the rule needs inclusion of clear, strong requirements focused on protecting and maintaining all native species within a plan area. On the other hand several respondents felt the proposed requirement to maintain viability of SCC is too expensive and cumbersome to implement. They felt this requirement is unattainable and procedurally impossible to demonstrate. Some respondents were opposed to providing protections for species other than vertebrates as it could lead to the possibility of maintaining viable populations of invertebrates, fungi, microorganisms, and other life forms, which these respondents suggest is inappropriate and beyond the Agency's authority.

Response: The Department concludes that managing ecological conditions for species protection is well within the authority of the Forest Service to manage the NFS for multiple use, and that the requirements of this section are more strategic and implementable than the 1982 rule while providing strong requirements focused on maintaining diversity and the persistence of native species within the plan area. The 1982 rule required that ''habitat shall be managed to

maintain viable populations of existing native and desired nonnative vertebrate species in the planning area.'' There may be hundreds of vertebrate species on a particular plan area. For some vertebrate species there may be little scientific information about their life requirements and habitat relationships, even though they may be considered common and secure within habitats provided on a NFS unit. For other vertebrate species, the requirement to maintain viable populations in the planning area may be unattainable, for reasons outside of the Agency's control.

The final rule instead relies on current scientific literature to adopt the complementary ecosystem and species specific approach described above in the introduction to this section, and to focus species-specific management attention on those species that are vulnerable. Ecosystem (coarse-filter) plan components are expected to provide the necessary ecological conditions for species that are common, with viable populations in the plan area and no reason for concern about their ability to persist in the plan area over the long term. For species that are known to be imperiled (threatened, endangered, proposed and candidate species), the final rule requires coarsefilter, and where necessary, fine-filter plan components to provide ecological conditions that contribute to recovery or conservation of the species, recognizing that there is likely not a viable population of such species in the plan area at the time of plan approval.

The final rule provides direction for a third category of species: species that are vulnerable within the plan area, but not federally recognized for purposes of the ESA. These are species known to occur in the plan area, for which the best available scientific information indicates a substantial concern about the species' capability to persist in the plan area over the long term. The Department called this category ''species of conservation concern.''

For this category of species, the final rule requires coarse-filter, and where necessary, fine-filter plan components to provide ecological conditions to maintain a viable population of such species within the plan area, where it is within Forest Service authority and the inherent capability of the land to do so. If providing the ecological conditions to maintain a viable population within the plan area is beyond Forest Service authority or the inherent capability of the land, then the final rule requires coarse-filter, and where necessary, finefilter plan components to provide ecological conditions to contribute to maintaining a viable population of the species within its range. For example, if a unit is incapable of providing a sufficient amount of the ecological conditions necessary to maintain a viable population of a species of conservation concern within the plan area, then the responsible official must include plan components that provide the ecological conditions in the plan area necessary to contribute to a viable population of that species in the broader landscape. The rule requires the responsible official to work in coordination with other relevant land managers when developing such plan components. (at 21216)

Species of conservation concern, like the categories of common species and imperiled species, is not limited to native and desired non-native vertebrates (as in the 1982 rule); it may include any native plant or animal species that meets the definition. The Department has the authority

to include requirements for species other than vertebrate species under the NFMA and the MUSYA. Non-vertebrate species can be federally recognized as threatened or endangered. In addition, in each NFS region, the regional forester has developed and maintained a list of regional forester sensitive species (RFSS) for over two decades. The RFSS list can include any native plant or animal species. RFSS are those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by: significant current or predicted downward trends in population numbers or density; or significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. RFSS are similar to SCC. The conservation and management of many RFSS has been a part of many land management plans and projects and activities for decades. (at 21216–21217)

The projected costs of carrying out the rule are found in the Regulatory Planning and Review section of the preamble and in the final PEIS supporting this final rule. These costs are not expected to be too expensive or cumbersome to be carried out by the Agency. Because these requirements adopt a scientifically supported approach, acknowledge that there are limits to Agency control, and focus management attention more strategically on ecosystem plan components that will provide for most species and where necessary on additional species-specific plan components for species that are vulnerable, the Department believes that the requirements of this section, combined with the requirements in other sections of the rule for public participation, assessment and monitoring, will result in a strong, more effective, efficient, and implementable framework for providing for species diversity and persistence.

Comment: Distribution of species or habitat.
Some respondents raised concerns that the definition of a viable population and the requirements for species of conservation concern do not include the requirement that these species or habitats be ''well-distributed'' as is required in the 1982 rule and they feel that this omission results in a lessening of protection for species between the 1982 rule and this final planning rule.

Response: NFMA does not require that species or habitats be well distributed within the plan area. The 1982 rule stated at § 219.19 that: ''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.''

This final rule includes requirements to restore or maintain ecological conditions to support viable populations of species of conservation concern. It requires that the responsible official determine whether or not the plan components required by paragraph (a) ''provide the ecological conditions necessary to * * * maintain a viable population of each species of

conservation concern within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area'' (§ 219.9(b)(1)). The rule defines a viable population as: ''A population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments'' (§ 219.19) (emphasis added).

The intent behind both the 1982 provisions and the final rule provisions is the same: To provide habitat to maintain viable populations. However, there are a number of reasons for the Department's decision not to include the term ''well-distributed'' in the final rule and instead used the phrase ''with sufficient distribution to be resilient and adaptable.'' The term is not defined in the 1982 rule, has been inconsistently interpreted in plans, and has been applied in many different ways.

Importantly, the term ''well distributed'' on its own is not clearly biological: Many people have interpreted the term in a geographical context as opposed to a biological context. This geographic interpretation has proven problematic at times, because the plan area is not an ecological boundary; it is an administrative boundary that may overlap completely or only partially with a species' natural ecological range. In addition, for some species, those areas of overlap may be changing in response to changing conditions.

Since 1982, we have learned more about what is important for a species to persist on the landscape, with an evolving understanding of important ecological concepts like resilience, connectivity, and adaptability, and of stressors such as climate change. For these reasons, instead of relying on the term ''well-distributed,'' the Department chose instead to include a more ecologically-based definition of a viable population, ''with sufficient distribution to be resilient and adaptable to stressors and likely future environments'' such that the population ''continues to persist over the long term.''

Combined with the requirement in section 219.3 to use the best available scientific information to inform the plan, this definition is intended to focus the development of plan components on providing ecological conditions where they will be most useful and important to the species, which may or may not lead to habitat that is evenly or ''well'' distributed across the plan area for every species. For some species, that may mean having the appropriate ecological conditions throughout the plan area. For others, it may mean focusing on a small portion of the plan area. For others, it may mean working to restore or provide ecological conditions for a species whose range is migrating in response to changing conditions. For still others, it may mean providing a corridor or corridors to connect habitat.

The change from ''well distributed'' to ''sufficient distribution to be resilient and adaptable'' is intended to clarify that we are using ''distribution'' in an ecological context to support species' long term persistence and to help increase consistency in implementation. The Department recognizes that the long-term security of species improves as distribution increases and habitat

and other ecological conditions are maintained or improved. Whether distribution is ''sufficient'' will be evaluated in the context of what a population needs for resilience and adaptability such that it can continue to persist over the long term, considering the species' natural history, the ability of individuals to interact, historical distribution and potential future distribution, and recognizing that habitat and species distribution will be dynamic over time. The responsible official will use the best available scientific information to inform this evaluation. In making this evaluation, it is the Department's expectation that for the purposes of this subpart, the individuals of a species of conservation concern that exist in the plan area will be considered to be members of one population of that species. The responsible official would consider the distribution of individuals or groups that would support a viable population of that species in the plan area. Additional guidance will be included in the directives, which will be available for public notice and comment.

It is important to recognize that the requirements of § 219.9(b)(1) and the definition of viable population support and are part of a broader set of requirements in the final rule that are important for species conservation, including the requirements in §§ 219.8 and 219.9 to maintain or restore ecological integrity, including connectivity of ecosystems in the plan area; and the requirement in § 219.9(a) to provide a diversity of ecosystem types throughout the plan area. (at 21217)

Combined, the requirements in the final rule are expected to provide the conditions that support the persistence of native species in the plan area and maintain the diversity of plant and animal communities. For these reasons, the Department believes that the set of requirements in the final rule is not a lessening of protection from the 1982 rule, and represents a science-based approach to species conservation. (at 21217–21218)

Comment: Identification and definition of species of conservation concern.
Some respondents felt the proposed rule was unclear on who the responsible official for identifying SCC was, what criteria would be used to identify SCC; and whether or not that criteria should be established in the planning rule. Some respondents offered suggested criteria for identifying SCC. Several respondents expressed concern the proposed rule provides too much discretion to the responsible official in deciding which species will receive protection.

Response: In response to these comments, the definition of species of conservation concern was moved from § 219.19 to a new paragraph (c) in this section and was modified. The Department changed the line officer who identifies the SCC for the plan area from the responsible official (normally the forest supervisor) to the regional forester in the final rule. The change was made to provide additional consistency and promote efficiency in identifying species of conservation on and among national forests and grasslands within a region. The broaderscale monitoring strategy will also be developed by the regional forester. The final rule's definition of SCC makes the criterion for identifying such species narrower and more scientific than the definition in the proposed rule. The species must be ''known to occur in the plan area,'' and ''the best available scientific information'' must indicate ''substantial concern'' about the species' capability to persist over the long-term in the plan area. Additional guidance

for the identification of species of conservation concern will be included in the Forest Service Directives System, with an opportunity for public comment. The Department expects that State or Tribal lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the NatureServe conservation status system may be used to inform the identification of SCC. (at 21218)

§ 219.7 New plan development or plan revision.

(3) The regional forester shall identify the species of conservation concern for the plan area in coordination with the responsible official. (at 21264)

§ 219.9 Diversity of plant and animal communities.

(c) Species of conservation concern.
For purposes of this subpart, a species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area. (at 21265)