

18 January 2000

Director  
Lands Staff  
2720  
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Sidney R. Yates Federal Building  
Forest Service  
U.S. Dept. of Agriculture  
P.O. Box 06090  
Washington, D.C. 20090-6090

Dear Mr. Director,

The Ornithological Council appreciates the opportunity to comment on the Forest Service's proposal to assess application and monitoring fees for special use authorizations (*64 FR 66341*). The Ornithological Council consists of ten leading scientific ornithological societies in North America that together have a membership of nearly 6,500 ornithologists. It is our mission to provide scientific information about birds to legislators, regulatory agencies, industry decision makers, conservation organizations and others, and to promote the use of scientific information in the making of policies that affect birds. We also represent the concerns of ornithologists to the regulatory agencies and other organizations that authorize research activities involving wild birds.

*Exemption for scientific research.*

We recognize that, as a practical matter, it may be necessary for the Forest Service to recover the costs of issuing authorizations and monitoring authorized activities. We hope the Forest Service will recognize that, as a practical matter, the imposition of fees can deter scientific research on Forest Service properties. The Forest Service should recognize the role and value of biological research in achieving proper management of Forest Service land and natural resources. Effective conservation, management, and restoration all rest on a foundation of science. Maintenance of biological integrity, diversity, and environmental health require biological research. With insufficient research budgets making it impossible for government scientists to meet the research needs of the Forest Service, the research of non-government scientists is of even greater value to a forest or grassland where the research is conducted and to the Forest Service as a whole. In fact, if the proposed forest management planning regulations are made final and implemented in a form substantially similar to the proposed regulations, science will be a critical component of forest management planning. A great deal of the scientific data and literature on which implementation of those regulations will depend will come from nongovernmental biologists conducting research on Forest Service property.

Scientific research should be treated in the same manner as other noncommercial activities, such as noncommercial recreational activities, with regard to fees. We are not suggesting that there need not be an authorization system for scientific research, but only that there should be no fee assessed for either the application or for monitoring. Section 250.50(c) specifically exempts certain kinds of noncommercial activities from the special use authorization requirement. Because these uses and activities do not require authorizations, there would be no fee associated with these activities. The regulations (36 CFR 251.51) define “noncommercial use or activity” as “any use or activity that does not involve a commercial use or activity as defined in this section.” Commercial uses are defined as those that involve an entry or participation fee, or where the primary purpose is the sale of a good or service, and is intended to produce a profit.

In particular, in those instances when scientific research consists only of observation, it is essentially the same as recreational wildlife watching, insofar as the impact on the resource and the need for Forest Service monitoring are concerned. In theory, if a researcher stayed on existing forest roads and trails and did nothing more than observe wildlife, no special authorization would be required.

For these reasons, we request that the Forest Service exempt scientific research from the cost recovery regulation.

#### *Fee levels*

Should the Forest Service decline to exempt scientific research from the cost recovery regulation, we suggest that scientific research be assessed at the lowest rate. We believe the proposed rate schedule will deter non-government biologists from conducting research on Forest Service properties. Even the fee for Category A (\$75.00) is substantially higher than the fees charged by the U.S. Fish and Wildlife Service for permits required to study, import, and export wildlife (\$25). The National Wildlife Refuge System assesses fees for permits for scientific research, but the fees vary from one refuge to another. Some refuges do charge as much as \$100 to process an application, but refuge directors may waive the fees entirely, and do so more often than not for scientific research permits. The refuges also regularly waive cost recovery for monitoring the permitted use or activity in the case of scientific research. The Forest Service's proposed regulations do not allow a forest manager to waive these fees, except if the applicant is a nonprofit organization, corporation or association and the studies are undertaken in connection with the application have a public benefit or the proposed project will provide a free service to the public or a program of the Secretary of Agriculture. If this provision [251.58(f)(vi)] is changed to include individuals, then the forest manager will have the authority to waive fees for scientific research. The National Park Service charges no fees for processing applications for scientific research permits or for monitoring scientific research activity.

We thank you for considering these comments.

Sincerely,

Ellen Paul  
Executive Director





