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December 1, 2008

Honorable Mark Rey, Under Secretary for Natural Resources
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Honorable Bruce Knight, Under Secretary for Regulatory Programs
U.S. Department of Agriculture
1400 Independence Ave., S. W.
Washington, D. C. 20250

Dear Under Secretaries Rey and Knight:

As you are aware, the Western Association of Fish and Wildlife Agencies (WAFWA), founded in 1922, is a quasi-governmental organization representing 23 state, provincial, and territorial fish and wildlife management agencies responsible for the protection and management of fish and wildlife resources in the western United States and Canada. This Association has been a key organization in the promotion of sound resource management principles and the strengthening of federal, state/provincial/territorial, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest. Our mission is, "*Delivering conservation through information exchange and working partnerships*". Nineteen of 23 jurisdictions in WAFWA have, and manage, a wild sheep resource.

Please accept these comments on a draft Memorandum of Understanding (MOU) between the U.S. Forest Service (USFS) and the Animal and Plant Health Inspection Service (APHIS) that just came to our attention on November 19, 2008. We are concerned this MOU was apparently drafted without input from any state wildlife agency, whose statutory authority to manage resident wildlife is clearly established. Because this MOU has only recently been made available for our comment, we have not had adequate time to complete a thorough review and analysis; however, we are offering the following initial observations in order to meet the mandated December 1, 2008, deadline for these comments.

Authority

It appears this MOU was drafted without consideration of the long-standing working relationship and existing agreements between the named federal agencies (i.e., USFS, APHIS) and the state fish and wildlife management agencies. As written, this MOU contravenes existing

law and policy, is unworkable in day-to-day management of the states' wildlife resources, and produces a host of undesirable (and perhaps unintended) consequences.

WAFWA member agencies are unaware of any law or regulation that provides the USFS with the "authority to require disease testing" of bighorn sheep or any other native resident wildlife. States have long been acknowledged as having both ownership and management authority of resident wildlife, including its capture and translocation. The USFS does have authority under the National Forest Management Act (16 U.S.C. 1600) to manage habitat for purposes as defined by Congress, including the maintenance of viable populations of such wildlife, but may neither implement nor require capture and other activities associated with the management of resident fish and wildlife without permission of the state wildlife agency.

The general health monitoring and management of bighorn sheep is the responsibility of state wildlife agencies, except for those bighorn sheep populations protected under the Endangered Species Act (ESA), and even then, Federal authority lies with the U.S. Fish and Wildlife Service, not USDA.

With respect to bighorn sheep, APHIS has no jurisdiction at the state/intra-state level; APHIS may be involved with inter-state/inter-jurisdictional movements of wild sheep, but only if "declared disease emergency" or "Program Disease" conditions have been established, or if APHIS assistance has been requested by the states.

Although the USFS may consult with "federal agencies, states, tribes and others on bighorn reintroduction issues", only the state wildlife management agency has ownership, management authority, and responsibility to determine what does, and does not, constitute "credible [disease testing] protocols." The USFS lacks authority to define an acceptable protocol, and while the USFS may request samples from individual bighorn sheep or other species of resident wildlife within a state, the state is under no requirement to provide such samples prior to translocation.

Collectively, we view this MOU as an attempt to usurp state wildlife agency jurisdiction and authority, and we will actively challenge that interference, if deemed necessary.

Intent

The stated purpose of this MOU is to:

"reduce the risk of disease transmission associated with wild bighorn sheep reintroduction on National Forest System lands. Bighorn sheep populations have declined in much of western North America. Available evidence suggests that respiratory disease has been a substantial factor in this decline. Therefore, it is important to minimize the risks associated with the reintroduction or translocation of wild bighorn sheep, to the maximum extent practicable".

The MOU ignores the long-standing (i.e., decades) disease monitoring strategies and practices of many western fish and wildlife agencies that have collected reams of baseline data on the incidence and prevalence of various pathogens, including respiratory pathogens in bighorn sheep. There certainly has been some history of collaborative efforts involving APHIS labs, but

these relationships have been, and should be, done at the request of the states, not mandated by APHIS. Moreover, much of the expertise regarding pathogens of wild sheep lies outside the realm of APHIS laboratories, and it seems a waste of federal resources to unnecessarily duplicate capacities of state and regional veterinary diagnostic and research laboratories already working on these problems. We acknowledge that involvement and cooperation of federal and state partners is important to investigate, monitor, and manage disease situations, if they occur, but do not believe this expertise lies solely within USDA or any other federal agency.

Many western states not only have *a priori* “herd health histories” for bighorn sheep populations used as source herds for translocation (both intra- and inter-jurisdictional), but also have established protocols for testing bighorn sheep at the time of capture. A suite of laboratories with expertise in these various analyses are utilized, to enhance the likelihood that relocated bighorns are healthy. It is one of the stated goals of the WAFWA Wildlife Health Committee to strengthen even further the baseline wildlife health monitoring/data collection for bighorn sheep in our jurisdictions.

Proper authority notwithstanding, the MOU is vague with respect to what the proponents are actually seeking to monitor or control. Presumably, the focus is on respiratory pathogens, but that is never clearly stated. Because “disease testing” is not defined in the MOU, it is unclear what set of criteria will be used to assess the “likelihood of disease transmission”. And, without specifying which pathogens are being examined, it is impossible to certify “disease-free” status for translocated bighorn sheep.

Similarly, whether the purpose of the MOU is to protect wild sheep health or livestock (i.e., domestic sheep) health is unclear. Again, the MOU states:

“...part of its [APHIS] mission is to protect livestock by reducing disease transmission between animal populations associated with animals moving across state lines”.

Over the past few decades, bighorn sheep translocated between jurisdictions have been transported under the same regulations (i.e., USDA Health Certificate issued by a USDA-accredited veterinarian) as required for livestock. To our collective knowledge, there are no known published or peer-reviewed scientific papers suggesting that translocated bighorn sheep are, or have been, a source of respiratory diseases that cause morbidity or mortality in domestic sheep. Without evidence that domestic animal health is in jeopardy, the use of APHIS labs and resources in this endeavor seems questionable.

In contrast, there is ample evidence that respiratory diseases of domestic sheep and goats can cause mortality in bighorn sheep. The mechanisms of this interaction are imperfectly understood, but several peer-reviewed research papers show bighorn sheep are more vulnerable to some pathogenic bacteria (e.g., *Pasteurellaceae*, *Mycoplasma* spp.) than are domestic sheep. Consequently, it is unclear why this well-established relationship is not acknowledged in the context of reducing the risk of disease transmission on lands managed by the USFS.

If there were to be a federally-mandated disease surveillance program for wild sheep on USFS lands, we would anticipate a parallel, commensurate disease surveillance program for domestic sheep and goats, prior to turnout on USFS grazing allotments. In light of the foregoing, it is unclear why USFS and APHIS now believe additional health testing should be required for wild sheep, but (apparently) not domestic sheep and goats.

Application

From a logistics standpoint, it has been demonstrated that minimizing the time bighorn sheep are held in captivity (e.g., in a trailer, fenced paddock) prior to release improves the success of translocation efforts. As proposed in the MOU, an unnecessarily duplicative and time-consuming process would be required, whereby biomedical samples would have to be collected from bighorn sheep, then provided to the USFS, which would then provide those samples to APHIS' National Veterinary Services Laboratory (NVSL); NVSL would test the samples and provide results to the USFS, and the USFS would have to review the NVSL results, analyze other relevant information, then determine that the reintroduction poses a low likelihood of disease transmission. Since some samples must be submitted within a limited timeframe, the quality and integrity of some samples would be compromised given a protracted sample-submission protocol.

This process, as outlined, is cumbersome and unworkable, requiring state agencies to capture and then hold wild animals for an indeterminate amount of time while testing proceeds. The approach advocated in the MOU could effectively preclude future inter-state translocations of wild sheep for release onto USFS lands because it would be infeasible, impractical, and/or inhumane to hold individual wild sheep in captivity for an unspecified period of time, awaiting results from an unspecified number of "tests", conducted over an unspecified timeframe.

Undesirable Consequences

If approved, this MOU would produce a host of undesirable consequences. First, it would most likely be immediately challenged in the courts. It appears likely that the agreement will be found lacking any support in law - but if it should be upheld, the USFS will then assume legal authority for actions taken or denied under these provisions.

Second, the MOU will further restrict the ability of state wildlife management agencies to translocate wildlife where there is a very low likelihood of interaction with domestic livestock. Instead, the wildlife management agencies will be forced to translocate wildlife onto state and private lands, regardless of whether these lands provide the best assurances of separation between wild and domestic animals, where that is a desirable objective.

Third, this MOU sets a precedent that might at any time be extended to other resident wildlife, extending USFS authority and reducing state ability to manage resident wildlife.

Fourth, wild sheep advocates likely would seek to extend these same rules to domestic sheep and goat grazing on National Forest System lands, which could prove costly and cumbersome for that industry.

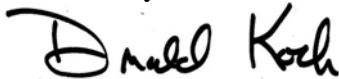
Conclusion

WAFWA member agencies are committed to properly managing wild sheep and other wildlife resources within their respective jurisdictions. Although we appreciate the apparent interest of USFS and APHIS to assist us with our programs to monitor and manage wild sheep health, this MOU does not appear to continue or foster the spirit of state-federal cooperation that will be critical for the long-term success of WAFWA's wild sheep conservation programs.

In general, WAFWA does not support this MOU. This document fails to recognize the states' authority and roles with regard to wildlife management, as well as established state expertise in properly monitoring wild sheep health. Even with that recognition, this MOU will create an additional, unnecessary layer of bureaucracy by federal agencies that have not adequately demonstrated a clear need for testing of apparently healthy wild sheep bring translocated for conservation purposes.

We look forward to your reply as to the future of this proposed MOU. If you have any further questions or need assistance from WAFWA, please don't hesitate to contact me directly at 916-653-7667 or dkoch@dfg.ca.gov.

Sincerely,



Donald Koch
President

DK/LLK/kh

cc: WAFWA Directors
Matt Hogan, Executive Director, AFWA
Abigail Kimbell, Chief, USFS
Cindy Smith, APHIS Administrator