

**Statement of  
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United States Department of Agriculture  
Before the  
United States House of Representatives  
Committee on Resources  
Subcommittee on Fisheries Conservation, Wildlife, and Oceans  
Concerning  
H.R. 1472 Don't Feed the Bears  
June 12, 2003**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to meet with you today regarding H.R. 1472, the "Don't Feed the Bears" Act. Accompanying me today is Jim Gladen, Director of Watershed, Fish, Wildlife, Air, and Rare Plants for the National Forest System.

**H.R. 1472 "Don't Feed the Bears" Act**

H.R. 1472 would require the adoption, where necessary, and enforcement of regulations to prohibit the intentional feeding of bears on federal public lands in order to end the hunting practice known as "bear baiting." The Administration opposes the bill.

**Bear Baiting on National Forests**

Historically, State fish and wildlife agencies have maintained the primary responsibility for protection and management of wildlife populations on National Forest System lands, particularly with respect to hunting and fishing. This responsibility includes adoption of State fish and wildlife laws and regulations affecting the taking of resident game animals. The Forest Service enters into a Memorandum of Understanding with each State in order to lay out a framework for cooperation. These agreements emphasize the traditional role of the States to administer State hunting regulations such as season, harvest levels, and methods of harvest, with respect to hunting of resident game on National Forest System lands. The States issue regulations regarding hunting licenses, methods, seasons, locations, and bag limits for resident game and have the primary responsibility for enforcement of the state's fish and wildlife laws and regulations on National Forest System lands.

Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife. These include the National Forest System Organic Administration Act (16 U.S.C. 480), the Multiple-Use Sustained-Yield Act (16 U.S.C. 528), the Sikes Act (16 U.S.C. 1732), the Wilderness Act (16 U.S.C. 1133 (d)(8)), and the Federal Land Policy and Management Act (43 U.S.C. 1732). Because of consistent Congressional direction to defer fish and wildlife management to the States, the Forest Service is generally reluctant to override State regulations except where federal interests, such as the protection of forest land, resources, and users, requires federal intervention.

An exception to this general policy of deferring to the States, is the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111-16) whereby Congress determined that federal control should supersede that of the state, with federal control of fish and wildlife subsistence in Alaska.

The practice of placing bait (food or scent to attract wildlife) is a hunting activity subject to State laws and regulations. State fish and wildlife agencies that permit the baiting of black bear (*Urus americanus*) as a hunting activity on federal lands are: Alaska, Idaho, Maine, Michigan, Minnesota, New Hampshire, Utah, Wisconsin, and Wyoming.

In 1995, the Forest Service published its policy on baiting for the purpose of hunting on National Forest System lands. The policy retains the longstanding reliance on State hunting regulations including state regulation of baiting resident game. Where state law and regulation permit baiting, the practice is permitted on National Forest System lands unless the authorized officer determines on a site specific basis that the practice conflicts with federal laws or regulations, or forest plan direction, or would adversely affect other forest uses or users.

The 1995 policy clarifies the Forest Service role with regard to regulation of baiting as a hunting method that is authorized and regulated by the states. It spells out the procedures to be used by the Forest Service when State regulations conflict with Federal laws, regulations, and policies. It relies on existing relations with each State and prevents the duplication of regulations by both levels of government and provides for case-by-case safeguards where needed. It also provides a consistent federal approach to baiting throughout the National Forest System. Although various States may

annually vary their policies, the Forest Service's will remain consistent while ensuring protection of Federal resources.

In the 1996 case of the Fund for Animals, Inc. v. Thomas, 932 F. Supp. 368 (D.D.C. 1996), the U.S. District Court for the District of Columbia upheld the Forest Service policy of “leav[ing] the decision to prohibit baiting, or to allow but regulate it as a ‘hunting practice’ or technique, to the individual states in which a particular national forest is situated.” Id. at 369. And as the Thomas court observed, “[t]he common law has always regarded the power to regulate the taking of animals *ferae naturae* to be vested in the states to the extent ‘their exercise of that power may not be inconsistent with, or restrained by, the rights conveyed to the Federal government by the Constitution.’” Id. at 369-370 (quoting *Geer v. Connecticut*, 161 U.S. 519 (1896)). The U.S. Court of Appeals for the D.C. Circuit subsequently affirmed the judgment of the District Court. See *Fund for Animals, Inc. v. Thomas*, 127 F.3d 80 (D.C. Cir. 1997).

Currently, in North America, black bear populations – specifically mentioned in H.R. 1472 – are robust and generally increasing. We believe that H.R. 1472 would unnecessarily both preempt state authority over management of resident wildlife populations and reduce the flexibility of state and local wildlife managers to manage bears on federal lands.

### **Conclusion**

That concludes my remarks, Mr. Chairman, I would be happy to answer your questions.