BUREAU: National Park Service UNIT: NRSS, NRPC, BRMD

DATE: May 2007

TITLE: Management of Overabundant Wildlife in National Parks

Key Issues:

- Overabundant animal populations, particularly deer and elk, have led some organizations and segments of the public to request that NPS seek changes in legislation to allow hunting in NPS units or involve the general public in reduction activities.
- The NPS Organic Act and longstanding NPS policy prohibit hunting in units of the National Park System unless specifically authorized by Congress.
- The use of volunteers to assist in management activities to reduce overabundant ungulate populations is not contrary to law, regulations, or NPS Policy.

Background: Managing overabundant wildlife species, especially ungulates such as deer and elk, is a challenging resource management issue. Hunting is employed by state wildlife management agencies as the principle management tool for controlling ungulates. Hunting, however, is not appropriate in all situations, for example on national park lands where not explicitly authorized by Congress.

Congress has authorized hunting in as many as 69 of the 390 NPS units. Ungulate hunting occurs in at least 50 of the units that allow hunting. The units in which hunting is authorized are designated primarily as National Rivers, Lakeshores, Seashores, Recreation Areas, Preserves, and Monuments. Outside of Alaska, Grand Teton National Park is the only national park in which hunting is allowed. Congress passed specific legislation in 1950 authorizing control of elk through hunting (by licensed hunters deputized as park rangers) in portions of Grand Teton National Park, in part because elk were being fed on adjacent US Fish and Wildlife Service lands.

NPS interpretation of the Organic Act to provide authority over management of wildlife in NPS units is supported by case law (New Mexico State Game Commission v. Udall). Legal authority and policy related to hunting includes:

- The NPS Organic Act (1916) has generally been interpreted as prohibiting hunting unless specifically authorized by Congress; however, the Act provides authority to allow the destruction of animals that are detrimental to the use of NPS units.
- In 1918, Secretary of the Interior Lane stated in a memo to the NPS Director that hunting would not be permitted in any park.
- In 1963, a report issued by the Advisory Board on Wildlife Management appointed by Secretary of the Interior Udall (i.e., the Leopold Report) concluded that lethal removal by shooting should only be conducted for the sole purpose of animal removal and not recreational hunting. The report also states "it could not endorse the view that responsibility for removing excess game animals be shared with state fish and game departments, whose primary interest would be to capitalize on the recreational value of public hunting that could be thus supplied. Such a proposal imputes a multiple use concept of park management which was not intended, which is not legally permitted, nor for which can we find any impelling justification today."
- In 1984, the NPS enacted regulations stating that hunting shall be allowed in park areas where such activity is specifically mandated by Federal law. In a challenge of this regulation (NRA v. Potter), the court ruled that NPS' interpretation of the Organic Act, that the primary management function with respect to wildlife is its preservation unless Congress declares otherwise, was reasonable.

In managing the National Park System, the NPS must consider the impact of uses on park resources, including cultural and natural in addition to the visitor experience. The NPS must determine appropriate uses in fulfilling its obligation to provide for the enjoyment of the parks by the public. An "appropriate

use" has been defined as a use that is suitable, proper, or fitting for a particular park or portion of a park. Providing enjoyment to the public is a critical component of the Organic Act. This enjoyment is for all citizens whether they visit the parks or appreciate them from afar. The types of enjoyment that NPS units provide are "uniquely suited and appropriate to the superlative natural and cultural resources found in the parks." NPS policy also states that "high quality opportunities for visitors to enjoy the parks, and maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society." Each of these mandates or policies may be impacted by hunting. Therefore, Congress has provided for hunting only in those units in which it is an appropriate use.

Status:

- The Western Association of Fish and Wildlife Agencies (WAFWA) passed an internal resolution dated July 26, 2006 that promotes hunting in national parks and "encourages the National Park Service to seek whatever legislative or regulatory authority is required to support use of public hunters to reduce ungulate populations in national parks." The resolution was endorsed by the Association of Fish and Wildlife Agencies (AFWA) at their September 2006 meeting in Snowmass, Colorado.
- In November 2007, The Congressional Sportsman Foundation sent a letter to Secretary Kempthorne advocating the use of hunting to manage overabundant ungulate populations within the National Park Service
- Bills have been introduced by Representative Udall (CO), Senator Allard (CO), and Senator Dorgan (ND) to permit authorized individuals (i.e., volunteer sportsmen) to use lethal means to remove elk from Rocky Mountain National Park and Theodore Roosevelt National Park, respectively, to assist with implementation of elk management plans. While NPS possesses such authority, no precedent exists to use volunteers in this capacity. Donation of meat from elk in chronic wasting disease affected areas would be managed similarly under NPS Office of Public Health guidelines whether agency or volunteer sharpshooters culled elk.
- The NPS policy and interpretation of its Organic Act on hunting is clear and has been applied consistently and upheld by the courts. Hunting is not allowed unless specifically authorized by Congress in the unit's enabling legislation or other federal statute.
- In considering alternatives for management under the National Environmental Policy Act (NEPA), a line of court cases have held that an alternative is not deemed unreasonable merely because it would require a change in legislation or policy. However, an alternative may be dismissed from consideration if its implementation would be remote and speculative. This is especially true if the alternative is inconsistent with long-standing regulations or agency policies and unlikely to be modified. Allowing recreational hunting in national parks would conflict with legal authority and long-standing policy; however, lethal removal of ungulates (e.g., by sharpshooters) may not be contrary to authority and policy.
- Use of public hunters would likely *not* significantly reduce the costs associated with the removal of excess ungulates. If Congress did determine that hunting was an appropriate use in a national park, the hunt would likely need to be highly regulated to protect park resources and visitor safety and implemented as a special or managed hunt. The cost of special/managed hunts in dollars is similar to that of sharpshooting and sharpshooting is more effective in meeting management goals and reducing indirect impacts. Further, effectiveness of public hunters may decline if a trend toward decreased hunter participation continues.
- The principle difference in using public hunters and sharpshooters is recreational opportunity. Rewriting a park's enabling legislation to specifically allow for one particular use would be precedent setting. While it is not uncommon to allow uses in which only few members of the public are engaged, that use should not have serious implications on the enjoyment of park resources by the larger public.
- A cost /benefits analysis for using volunteers (authorized agents) has not been completed although the NPS anticipates doing such an analysis in future ungulate management plans where overabundant ungulate populations persist.

Contact: Dr. Margaret Wild, Wildlife Health Program Manager, Biological Resource Management Division, (970) 225-3595.