



USDA Forest Service

USDA

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Before the East Asia Ministerial Conference  
On  
Forest Law Enforcement and Governance

**The U.S. Forest Service Approach to Forest Law Enforcement**

September 12, 2001  
Denpasar, Indonesia



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## **Introduction**

The U.S. has large areas of forests under the protection and management of our federal government, the governments of the fifty states, local county or city governments, and of private industrial and non-industrial private landowners. A large number of national, state, and local governmental agencies are involved in the management of those lands. Likewise, a wide variety of law enforcement organizations provide enforcement services to these lands. This paper discusses the National Forest System of the U.S., the U.S. Forest Service (FS) agency that manages those lands, and the FS law enforcement program.

The National Forest System consists of around 195 different administrative units totalling over seventy seven million hectares of land spread throughout the United States and its territories. These units represent a tremendous variety of ecosystems from the tropical forests of Puerto Rico to the mangroves of Florida to the high elevation boreal and bristlecone pine forests of our mountain west and Alaska. Many hundreds of types of forest products are harvested every year from FS lands for personal and commercial use, including foods and flavorings, medicinal herbs and pharmaceuticals, decoratives, floral greenery and dyes, specialty wood items, landscaping plants, fuelwood, wood pulp and sawtimber products and by-products. The public demand for forest products changes rapidly, reflecting changes in the market place, shifts in technology, consumerism and social climate, new ways forest resources are valued, and shifts in the economy. The FS manages the National Forest System's natural resources with a commitment to long term ecosystem sustainability, multiple use, local community involvement and economic stability, interaction of social and cultural values with forest resource management, and the use of management practices based on the best science available. This paper will focus on the management of sawtimber products, however, we apply similar concepts and programs to other forest resources.

## **Background**

The birth of America's national forest system and the U.S. Forest Service as an agency occurred in the late 1890's. Early day settlement of the U.S. in the late 1800's led to tremendous use of the country's timber resources for railroads, mining, homesteading, and other commercial uses. Timber companies, after they exhausted the virgin forests of the east coast, quickly moved to forests in other parts of the country further west. Quick exploitation, with little regard for the ethics of conservation or the needs of the future, were the spirit of the times. These uses, combined with rampant fires and heavy grazing demands, created growing concern. The reaction to the abuses of the U.S. natural resources during this period gave rise to America's forestry and conservation movements, and to the establishment of the nation's national park, monument, and national forest systems. An Act of Congress in 1897 provided for the care, protection, and management of new timber reserves, and created an organization to manage them and to enforce newly created regulatory laws. Since 1905, the FS has managed these lands, now referred to as National Forests.

Unlike America's National Parks system, Congress provided a "multiple-use" mandate for the National Forest System. The FS manages these lands to ensure sustainable ecosystems while providing recreation, water, timber, minerals, fish and wildlife, wilderness, and aesthetic values on these lands for current and future generations. From the late 1800's to the present day, the

Congress of the United States has enacted numerous laws governing the management of the country's natural resources. They have also passed necessary legislation to provide authority for the agency tasked with managing lands and resources the ability to do so, and also to establish their own regulations that provide for the detailed procedural programs and requirements needed for day-to-day management. The agency currently employs about 35,000 people in the full range of professional and technical specialties to meet this goal. It also maintains an international program, a state and private forestry and community assistance program, and a large research organization to provide scientific support to the agency's programs.

Our Law Enforcement and Investigations (LEI) program is comprised of around 700 law enforcement officers and criminal investigators. We have two primary divisions – uniformed patrol and investigations. The number of incidents we deal with increases each year nationally – last year approximately 270,000 criminal and civil incidents were reported, and over 64,000 written warnings and citations were issued. Last year, LEI employees made or assisted in over 5,000 arrests, and made almost 834,000 contacts. We conducted nearly 2,000 serious misdemeanor and felony investigations, and conducted or oversaw 172 internal investigations and complaints. Our mission also includes enforcement of America's drug laws on FS lands. Last year we eradicated over 730,000 marijuana plants, seized over 9,000 pounds of smuggled processed marijuana, and seized over 450 drug labs and dumps. Each year, we investigate around 10,000 incidents of forest product crimes. Most are resolved through petty offense citation or civil restitution, however approximately 100 serious misdemeanor or felony cases a year are investigated.

Our total sale program for sawlog products has been declining over the last decade. In 1992, nearly 1.5 million cubic feet were sold from FS lands. This declined steadily to our most recent year of 2000, in which just over 195,000 cubic feet were sold.

### **The Sawlog Enforcement Program**

The FS general protection and enforcement program related to timber products changed significantly in the late 1980's and early 1990's. As the sale of our timber to commercial purchasers peaked, the occurrence of contract administration problems, theft, and fraud continued to climb. As the Agency's law enforcement program continued to grow and improve professionally, it also experienced increasing difficulties with the agency structure. Law enforcement officers and investigators worked under the supervision of the administrative heads of National Forests, who were not law enforcement officers. Law enforcement officials were increasingly investigating offenses in many program areas of the agency where the investigation turned inward – to policies and practices of the agency, or acts or omissions of agency officials. This problem was especially acute in the area of timber theft, where investigations exposed problems with agency contracts or procedures themselves, contract administration procedures or employees, and in a few cases, outright collusion of agency employees in criminal acts. Unfortunately, many investigators received their program budgets and their performance evaluations from the same supervisors whose programs they were investigating. In addition, an agency focus on timber production and contract accomplishment overshadowed a greater responsibility for accountability and crime prevention, sometimes resulting in interference with investigations and/or a low emphasis on crime detection and prevention.

As a result of Congressional pressure and internal recognition of increasing problems, the FS separated its law enforcement personnel from the supervisory structure of National Forest managers and created a separate agency budget for law enforcement in 1994. All law enforcement personnel now work for law enforcement personnel in an organization that mirrors that of the National Forests, up to a Director of LEI, who works directly for the Chief of the FS. Law enforcement personnel are assigned at all levels of the agency and work directly with their counterpart resource managers at that level.

During and following this time, the agency also completely overhauled its timber theft program and developed a fully integrated approach that placed personal responsibility for timber accountability on every employee and manager of the FS, not just on law enforcement personnel. This program has continued to grow and develop to this day. The goals of the program were to take aggressive action to reduce timber theft and fraud, to make clear to all employees an unequivocal standard of professionalism, trust, and public accountability, to develop internal audit systems that discover problems early and discourage employee malfeasance, to develop agency systems that minimize opportunities for wrongdoing, and to develop a more seamless team approach among all agency personnel. The general areas of focus included:

- Planning and responsibility of agency supervisors
- Mutual training, respect and support between law enforcement and forest management personnel
- On-site vigilance and documentation by both forest management and law enforcement to detect and respond to theft indicators
- Revision of timber sale program procedures and contracts
- A cohesive and understood range of remedies for timber losses and crimes that is clearly understood and aggressively implemented
- Improvement of timber theft investigation and prosecution practices

Let me cover each area in a little more detail:

**Planning and responsibility:** The Chief of the FS places personal accountability and responsibility on every manager of every agency unit for timber accountability. Each manager at the National Forest and Regional level prepares and updates a written plan annually that describes that unit's program, specific requirements, and how it will ensure that national policies for theft prevention and accountability are being followed. These plans must be prepared with and approved by the law enforcement official in charge of that unit. Line and staff officers at all levels also continue to state their strong support and high priority on theft prevention and program accountability.

**Mutual training, respect and support between law enforcement and forest management:** The Chief of the FS and program leaders established clearly, that it was a priority of all employees of the FS, not just law enforcement, to continue to seek out, identify, and correct any timber theft or fraud, and that timber accountability was a higher priority to forest managers and contract administrators than meeting production targets. Secondly, that the best end result was achieved by early involvement of, and communication with, law enforcement in all aspects of planning, development and implementation of the timber sales program. This cooperative

involvement helps ensure that areas of vulnerability, and loss detection, could occur before sales occur, or at early stages when losses are most minor. Thirdly, that misconduct or criminal acts involving FS employees related to timber thefts or financial losses would be dealt with severely, and that such findings by law enforcement officials shall not create an adversarial relationship with agency employees or the forest management program, but a positive one, as the results increase the trust and accountability of the program. And lastly, the agency implemented cross-training of law enforcement personnel in the timber sale and contract administration, and timber administrators in law enforcement and timber theft crimes – within joint training classes. This vastly improved understanding, awareness and communication between these two functions in the field. Although this increased involvement is an impact on LEI, representing over 8,000 person-days of work last year, the payoff to crime detection and prevention have been enormous.

**On-site vigilance, audits and documentation:** Training provided to employees identify in detail lengthy lists and discussions of “theft indicators” related to all aspects of the sale program. A system of inspections, audits and documentation was implemented to monitor sales and watch for these indicators nationally and is further tailored in each region to local problems. Documentation requirements were increased, especially in the area of inspection, to decrease opportunities for thefts based on “misunderstandings” with contractors, to provide audit records to ensure agency policies are being met, and to improve communications between enforcement and forest management personnel. Clear standards were implemented nationally regarding the frequency and nature of inspections of sales. Checkers and auditors are designated from senior experienced forest management personnel, and are used to conduct unannounced checks of active sales to ensure the accuracy of agency or third party contract measurement and financial systems. Requirements and tracking systems for timber sale financial accounting were overhauled and check systems put in place for approval or oversight of payment discrepancies. Forest managers are required to work jointly with law enforcement officials at all levels to conduct regular field audits of the timber accountability and enforcement programs to ensure compliance with policies and plans and seek out areas needing improvement.

**Revision of timber sale procedures and contracts:** Law enforcement and forest management personnel worked jointly to exhaustively identify policies, practices, or procedures of the forest management program that were contributing to timber theft of any kind. Timber purchasers and industry associations also contributed to this effort as most operators were honest, and understood that contract fraud and theft allowed unfair advantages in the industry to unscrupulous operators. Major changes were made in the standard timber sale contracts - for example in movement from scaled sales, to tree measurement sales, and in nationally consistent standards for sale preparation and administration to ensure uniformity and decrease confusion. Scaled sales are now used in limited areas with log branding and other special controls. Export of logs from National Forest System lands is prohibited west of the 100<sup>th</sup> meridian (central U.S.). Strict controls such as branding and surveillance are used to control exports that do occur. U.S. Government criminal prosecutors and agency counsel also assisted in this process by examining and eliminating agency practices that created challenges to successful prosecutions, contract actions, or civil recoveries. This process continues every day as any new patterns or problems are identified. As new sale designs or contract types are proposed, forest management works jointly with law enforcement to determine and reduce all possible theft or loss problems, and to

ensure that such risks are taken into consideration when alternative designs are chosen. Requirements of the contracts extend where needed from stump to market to ensure controls over all areas of potential theft, including landings, transfer sites, transportation routes, scaling or other measurement locations, mills, and export dock locations. These inspections are conducted by both forest management and law enforcement personnel. For example, under our current commercial sawlog sales, unannounced random checks of a designated minimum percentage of haul trucks or barges are done over the life of the sale, including random checks by auditors to watch for abnormalities.

**A cohesive range of remedies:** Agency regulations and policy were revised to proscribe clear procedures when timber accountability or theft problems are discovered, and to clearly delineate the roles and responsibilities of both forest managers and law enforcement personnel to protect both contractual and prosecutorial interests. Policies were clarified for timber sale administrators on procedures for handling contract non-compliance, that include immediate notification of law enforcement officials so that a coordinated investigation of the loss and decision of the remedy can be made, with the priority on protection of criminal prosecutorial interests until they are satisfied. Guidelines were developed to assist in determination of when contractual remedies were appropriate, when criminal warnings or prosecution were appropriate, and/or when civil cost recoveries were appropriate. Greater flexibility was added for law enforcement to correct negligent or illegal behavior by contractors or their employees through immediate criminal citations and fines to responsible workers, in addition to any contractual actions. Where losses to the Government occur, the full range of appropriate and available remedies were applied, including adverse contract action, collection of civil costs and damages, and criminal charges and restitution. Where willful theft is suspected or investigations require, law enforcement personnel may direct that contract operations be suspended and that any information vital to the investigation be protected to ensure that further losses do not occur and to ensure investigations and evidence collection may proceed unencumbered. Finally, U.S. Government-wide regulations were revised that provide a detailed, objective process of referral, review and action at a national level of contractors that commit proscribed violations, that allow for the suspension or debarment of a contractor. All actions resulting from timber crimes or contract violations are reviewed and compared against existing and potential future contractors and are submitted to a national reviewing officer. In order to protect the agency's interests in only dealing with responsible, professional contractors, contractors may receive suspensions of existing contracts, or debarment for defined future periods from bidding on Government contracts of any kind. To date in calendar year 2001, debarment action has been taken against over 50 contractors.

**Improved sale design and implementation, employee certifications:** Detailed evaluations were also made of factors in sale design, implementation, and employee qualifications that contributed to timber theft. A variety of new policies and standards were put in place to reduce these "causal factors" to theft. Examples include boundary location and marking guidelines, tighter control of agency timber marking paint that contained a proprietary "tracer" element so that agency paint can be clearly differentiated from paint applied by timber thieves, better control of the opening and closing of active cutting units, increased enforcement of requirements for training and certification of scalers, sale administrators, markers, and contract officers to ensure qualified personnel are used, closer oversight by managers to ensure sufficient administration

personnel are assigned to active sales, and increased responsibilities of sale administrators for theft detection such as the use of “surveillance plots” in areas of sales with high value trees. Law enforcement personnel working on the unit actively participate in pre-sale meetings with contractors, work with sale administrators during sale operations, and conduct independent site visits to operating sales.

**Improvement of timber theft investigation and prosecution practices:** The FS has developed a number of videos and training materials on timber theft that has been used to educate agency law enforcement officials in the details of timber theft, from simple theft to white collar crimes of bid collusion and rigging, tax fraud, export fraud and other more sophisticated crimes. These have also been used to train non-law enforcement agency personnel to increase their awareness of theft and fraud techniques, and of the various indicators they might see that can indicate a crime is occurring. Skilled forest management personnel such as cruisers, scalers, contract administrators, and sale administrators are used on our investigation teams to gather evidence and to help assess how crimes are committed. If warranted, investigators and forest management personnel from off of the affected unit are brought in to ensure objectivity.

Theft during harvest of other lands adjacent to FS lands is an increasing problem. The agency has increased the use of surveillance flights, coordination with state agencies that review private land harvest plans, enforcement of state and FS laws requiring transportation permits for commercial hauling or hauling of forest products on public roads, and agency landline surveys and posting in areas of high risk. We continue to use a wide variety of federal and state criminal and civil laws and courts available to us to achieve the best possible outcome in each case. We have researched and continue to press courts to assign the true value of stolen products at sentencing – to fully value the loss not just at the value at which the thief might have purchased the timber from the agency for, but its true value as an end product, on the black market, and/or its ecosystem, habitat, or aesthetic value as a standing tree. Our agency research branch and law enforcement investigative equipment personnel also continue to develop new technologies that help us to investigate and prosecute theft, such as microtaggants and better marking paints for tree marking and tracking, satellite and mobile technologies for tracking vehicles and loads, tree growth ring and DNA mapping for evidence matching, remote sensing and aerial imagery for investigative mapping and surveillance, wildland field applications for traditional law enforcement tools such as body wires, intrusion devices, and infrared and night vision equipment, and access to and use of white collar crime investigation databases and resources.

### **Summary and Success Stories**

This paper has discussed in a very broad way the many integrated aspects of the U.S. Forest Service forest management and enforcement program. This program has been successful in many ways. Because many actions resulting from it have been very visible to timber thieves and the timber industry, we have observed a noticeable reduction in both timber thefts and associated “white collar” crimes from all causes. However, despite our best efforts, there will be some, who for their own financial gain, will still commit crimes, so below is news about some of our timber thieves that didn’t get the message:

The FS recovered over \$27,000 in civil damages from several men and a company who stole 770 trees from NFS lands and caused nearly \$13,000 in damages to roads and streams in the area, claiming confusion over survey lines of adjacent private mining claims.

A private timber corporation pleaded guilty to federal criminal charges of timber theft after a subcontractor logging their lands removed timber from adjacent areas of NFS lands. The corporation was sentenced to pay a fine of \$86,500 and \$155,014 in restitution to the FS. The subcontractor pleaded guilty and was sentenced to pay a fine of \$1,350, restitution of \$1,024 to the FS, and placed on probation.

A cooperative multi-jurisdictional investigation into the thefts of numerous high value black cherry trees over broad areas of federal, state and private lands led to the indictment on federal charges of nine men on 13 counts of the theft of trees valued at nearly \$270,000. Firearms, illegal drugs and paraphernalia, and explosives were found during the search warrants of their residences during the investigation. In March of 2001, the first conviction and sentencing occurred and one man was found guilty of timber theft and perjury charges. He was sentenced to serve 10 months in prison and pay \$2,616 in restitution to the FS.

A ranch corporation was sentenced following a plea agreement on one felony count of theft of 515 trees from NFS lands from four locations surrounding its private property. The corporation was sentenced to pay restitution to the FS of \$100,000.

An 18-month investigation resulted in a conviction in federal court of a man on two felony counts of theft of timber and two counts of perjury. He was sentenced to serve 18 months in prison, three years probation, and to pay fines and assessments of \$4,400. Due to threats made against FS personnel, he was also prohibited from entering local national forests except on public highways, from having any contact with FS personnel, and from possessing any firearms or explosives during his probation.

A man was convicted on state criminal charges following an FS investigation of attempted theft of old growth trees ranging from 480-727 years of age and up to seven feet in diameter. He was sentenced to serve 90 days in jail, one year probation, to pay \$500 in costs, and to pay \$17,281 in restitution to the FS for the full value of the trees.

The above cohesive, coordinated approach to prevention and enforcement operates to protect our valuable forests from theft and damage and to prevent criminal commercial exploitation of them and of our critical contracting programs. We have continued to build on the mission given to us by the United States Congress in 1905 – to protect our nation’s national forests and to provide for sustainable multiple use of those lands for the benefit of the American people.