



# Forest Service Initiatives to Address Workplace Misconduct—Interim Report

## Audit Report 08601-0008-41(1)

We reviewed whether FS' actions in response to sexual harassment and sexual misconduct complaints addressed workplace concerns sufficiently.

### OBJECTIVE

Our objectives were to evaluate whether the actions FS took in response to complaints of sexual misconduct and harassment in the workplace were: (1) effectively implemented as outlined in the joint agreement with the Office of the General Counsel (OGC) and OASCR; and (2) sufficiently addressed workplace concerns. This report provides interim results from our audit.

### REVIEWED

We reviewed relevant policies, procedures, laws, regulations, and records pertaining to internal and contract investigators, and interviewed an OGC official, OASCR officials, and FS officials, employees, and former employees.

### RECOMMENDS

We recommend that FS, for a trial period of at least 1 year, use only contract investigators or investigators from other Federal agencies that are not former FS employees to investigate complaints of sexual harassment and sexual misconduct, establish guidelines to ensure FS hires investigators with necessary experience, and stipulate these requirements in writing. At the end of the trial period, we recommend FS assess whether the practice should be made permanent.

### WHAT OIG FOUND

We found that, while the Forest Service (FS) has taken steps to improve its process of handling sexual harassment and sexual misconduct complaints, the process could be further improved. Specifically, while FS updated its sexual harassment policy in July 2017 to require all allegations of sexual harassment and sexual misconduct be investigated, FS primarily uses its own internal investigators to perform these investigations. Although our review to date of the FS' Pacific Southwest Region (Region 5) has not found any direct evidence that FS' internal investigators were unfair or biased, we noted that in fiscal years (FYs) 2014-2016, FS only used internal investigators to investigate sexual harassment and sexual misconduct complaints in Region 5. In FY 2017, FS used internal investigators for 10 of Region 5's 14 sexual harassment and sexual misconduct complaints. Through interviews of 69 current and former FS employees in Region 5, we found that 33 (nearly half) of them expressed some level of mistrust in FS' process for handling sexual harassment and sexual misconduct complaints. These interviews showed a lack of trust for the process, and the practice of using internal investigators may deepen that mistrust.

An official from the Office of the Assistant Secretary for Civil Rights (OASCR) we interviewed strongly believed that FS should be using contract investigators to investigate all of its sexual harassment and sexual misconduct complaints. Another Department level official from the Office of Human Resources Management expressed support for using investigators from other Federal agencies within the Department who were available to perform the investigations, should FS choose to use them.

FS generally agreed with our findings and recommendations, and we accepted management decision on all four recommendations.





United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: March 5, 2018

AUDIT  
NUMBER: 08601-0008-41

TO: Tony Tooke  
Chief  
Forest Service

ATTN: Antoine Dixon  
Chief Financial Officer

FROM: Gil H. Harden  
Assistant Inspector General for Audit

SUBJECT: Forest Service Initiatives to Address Workplace Misconduct - Interim Report

This interim report presents the results of the subject audit. Your written response to the official draft, dated February 15, 2018, is included in its entirety at the end of the report. Your response and the Office of Inspector General's (OIG) position are incorporated into the relevant sections of the report. Based on your written response, we are accepting management decision for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. For agencies other than the Office of the Chief Financial Officer (OCFO), please follow your internal agency procedures in forwarding final action correspondence to OCFO.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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# Background and Objectives

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## Background

The Forest Service (FS) has an ongoing relationship with the Office of the Assistant Secretary for Civil Rights (OASCR) and the Office of the General Counsel (OGC) regarding FS' past consent decrees and class action suits, one of which related specifically to sexual harassment<sup>1</sup> and sexual misconduct.<sup>2</sup> Tensions and mistrust among employees in FS' Pacific Southwest Region (Region 5) have built up over time, dating back to the consent decrees of 1981<sup>3</sup> and 2001.<sup>4</sup> In September 2014, a *New York Times* article about women alleging harassment and abuse from FS firefighting crews prompted a formal collaboration between FS, OASCR, and OGC to improve sexual harassment and sexual misconduct policies.

In December 2014, FS entered into a joint agreement with both OASCR and OGC to strengthen FS' work environment. The joint agreement included action items to increase FS' commitment to create a respectful, equitable, and safe workspace with full accountability. The action items included strengthening and enhancing compliance with FS' sexual harassment and sexual misconduct policies. In August 2016, the joint agreement ultimately led FS to amend its national anti-harassment policy. FS wanted to strengthen the policy to outline clear expectations for employees and supervisors, ensure a prompt and effective process for handling sexual

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<sup>1</sup> FS defines sexual harassment as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; b) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment." Examples of sexual harassment include: graphic verbal commentaries, verbal exchanges, or jokes with a sexual connotation; behavior with sexual overtones that is intimidating or offensive to the recipient, or to one who observes such behavior or other displays; unnecessary or inappropriate touching or grabbing; making lewd gestures; pressuring for sexual activity; offensive sexual flirtation, advances, or propositioning; using sexually degrading words to describe an individual; and/or the display in the workplace of sexually suggestive objects, pictures, computer screen savers, or written materials. Sexual harassment can occur at any time and any location, regardless of whether the acts occur on or off the workplace or federal property, and whether they occur during or after work hours.

<sup>2</sup> Inappropriate Conduct of a Sexual Nature (also referred to by FS as sexual misconduct) "can create or be the basis of sexual harassment. It may consist of an isolated incident of behavior with a sexual connotation or could include repeated unwelcomed flirtations; repeated unwanted requests for dates; or repeated suggestive comments about or references to someone's anatomy; or ridicule or teasing regarding an employee's gender identity, gender expression, or sexual orientation."

<sup>3</sup> In 1973, an employee filed a class action suit alleging that FS Region 5 discriminated against females with respect to hiring and promotions. On July 1, 1981, the Court approved a consent decree where FS Region 5 agreed to strive to eliminate under-representation of women in all series and grades for 5 years. The Court extended the consent decree, and after its expiration in 1992, the parties agreed to a 2-year settlement agreement that ended in 1994.

<sup>4</sup> In 1995, two employees filed a class action suit alleging that FS Region 5 retaliated against and created a hostile work environment for women. On February 6, 2001, the Court approved a settlement agreement, which required FS to take specific actions regarding civil rights and personnel programs to ensure a work environment free of sexual harassment and retaliation. In 2003, the parties agreed to extend the duration of the settlement agreement until 2006. Afterwards, the Court determined that FS had substantially complied with the settlement agreement and denied Plaintiffs' requests to extend the duration of the settlement agreement.

harassment and sexual misconduct complaints, and ensure effective support systems for those involved.

The amended policy still required that FS conduct a management inquiry for all sexual harassment and sexual misconduct complaints. Management inquiries were used to determine whether or not alleged sexual harassment and sexual misconduct actually occurred and whether corrective action was warranted. Management inquiries were generally conducted by a management official from a neighboring forest, such as a district ranger or forest supervisor not implicated in the allegation. Management officials can request a misconduct investigation, but only after the completion of the management inquiry.

In July 2017, FS further amended its national anti-harassment policy so management inquiries for sexual harassment and sexual misconduct complaints were no longer required. The amended policy required that all complaints of sexual harassment and sexual misconduct go straight to a misconduct investigation, eliminating the need for management inquiries. FS made the policy change to strengthen its process for handling these types of complaints, which it considers “a particularly egregious form of harassment and a form of sex discrimination prohibited by law and regulation.”<sup>5</sup> The change in policy acknowledged the seriousness with which FS considers these types of complaints that adversely affect their employees and the overall work environment.

Misconduct investigations are systematic reviews that examine, in detail, the circumstances surrounding the complainant’s allegations. The investigator’s primary role is to gather sufficient evidence to either prove or disprove a specific allegation of misconduct. Investigators are authorized to take written statements under oath or affirmation, and interviewed employees are required to furnish a signed sworn or affirmed statement when requested. Using investigators instead of management officials to review the complaints makes the reviews less susceptible to bias or misconceptions.

To complete the investigations, FS has a cadre of its own investigators.<sup>6</sup> These investigators are trained and certified as “personnel misconduct investigators” by the Department’s Office of Human Resource Management.<sup>7</sup> Within agency authority, these investigators can conduct misconduct investigations for various types of employee misconduct, such as sexual harassment

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<sup>5</sup> USDA, FSM, *1700 Civil Rights*, Chapter 1760–Equal Employment Opportunity (Aug. 25, 2016).

<sup>6</sup> FS has a designated investigations unit at its Albuquerque Service Center in Albuquerque, New Mexico, that consists of one supervisor, up to four full-time investigators, and three ad hoc investigators. These investigators report directly to the Employee Relations Branch at the Albuquerque Service Center. The Albuquerque Service Center is an extension of the FS Washington Office.

<sup>7</sup> Misconduct investigations typically involve an agency investigator. The investigator performs a review that includes critical tasks such as developing plans, identifying and collecting evidence, interviewing witnesses, and documenting findings. The investigator will also draft written statements signed by interviewees. The statements are for official purposes and will be used to determine what action should be taken, if any. During the course of a misconduct investigation, federal employees are obligated to cooperate and be truthful and forthcoming with any knowledge they have regarding the allegation.

and sexual misconduct.<sup>8</sup> FS also has contract investigators available, when needed, to ensure that it has an adequate number of investigators available at any given time to complete the investigations.

## Objectives

The objectives of our ongoing audit are to determine whether the actions FS took in response to complaints of sexual misconduct and harassment in the workplace were: (1) effectively implemented as outlined in the joint agreement with OGC and OASCR; and (2) sufficiently addressed workplace concerns. This report provides interim results from our audit on whether the actions FS took in response to complaints of sexual harassment and sexual misconduct in the workplace sufficiently addressed workplace concerns.

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<sup>8</sup> USDA, Chapter 751-Discipline, Subchapter 3–Agency Investigations of Employee Misconduct <https://www.dm.usda.gov/employ/employeerelations/misconduct.htm><https://www.dm.usda.gov/employ/employeerelations/misconduct.htm> (last visited Oct. 12, 2017).

## Section 1: Investigative Process

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### **Finding 1: FS Needs to Further Strengthen its Process for Investigating Sexual Harassment and Sexual Misconduct Complaints**

FS made a significant change to its existing National Anti-Harassment Policy to require all allegations of sexual harassment and sexual misconduct be investigated. However, FS primarily uses its own internal investigators to perform the investigations, which may not fully alleviate the potential for mistrust and bias in the investigative process. Without additional steps to combat mistrust and potential bias, FS employees may not have confidence in their agency's ability to handle their complaints of sexual harassment and sexual misconduct in a fair and unbiased manner. Furthermore, FS' process for handling complaints of sexual harassment and sexual misconduct may be subject to further criticism and litigation.

Equal Employment Opportunity Commission (EEOC) Management Directive 110, Chapter 6 states, "An agency is prohibited, in some situations, from using its own immediate investigative resources, even though the investigation of discrimination complaints in the federal service is primarily an agency function and responsibility. In such cases the agency shall use alternatives, such as contract investigators or other outside sources."<sup>9</sup> Such situations include potential conflicts of interest. Guidance from the EEOC and Federal case law also require an agency to "establish an anti-harassment policy which assures that their complaint process will provide a prompt, thorough, and impartial investigation."<sup>10</sup>

Prior to July 2017, all reports of sexual harassment and sexual misconduct were handled through a management inquiry before an investigation could be requested.<sup>11</sup> A management inquiry required an inquiry official to research facts surrounding the allegation to either prove or disprove that the alleged misconduct actually occurred. However, the inquiry official was generally a line officer from a neighboring unit who may have not been completely objective in the matter. For example, the line officers from neighboring units may have known the individuals involved in the complaint, or had a tendency to protect other managers. As a result, a possible perception from FS employees is that the process could have been unfair and biased.

On July 3, 2017, FS' Deputy Chief for Business Operations issued a formal letter notifying management officials at all levels of the agency of a policy change associated with handling reports of sexual harassment and sexual misconduct. The policy change now requires formal misconduct investigations for all reports of sexual harassment and sexual misconduct. This change in policy serves as acknowledgment by FS leadership of the serious effect these types of

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<sup>9</sup> Equal Employment Opportunity Commission, Management Directive 110, Chapter 6–Development of Impartial and Appropriate Factual Records: [https://www.eeoc.gov/federal/directives/md-110\\_chapter\\_6.cfm](https://www.eeoc.gov/federal/directives/md-110_chapter_6.cfm) (last visited Oct. 5, 2017).

<sup>10</sup> Equal Employment Opportunity Commission, *Model EEO Programs Must Have an Effective Anti-Harassment Program*: [https://www.eeoc.gov/federal/model\\_eeo\\_programs.cfm](https://www.eeoc.gov/federal/model_eeo_programs.cfm) (last visited Oct. 3, 2017).

<sup>11</sup> The policy was effective in January 2017; however, the FS Washington Office did not provide official written notification and guidance to the field level units until July 3, 2017.

complaints have on their employees and the overall work environment.<sup>12</sup> With this change in policy, all sexual harassment and sexual misconduct complaints bypass the management inquiry process and go directly to a misconduct investigation. FS' policy change is a significant step in improving its process for handling sexual harassment and sexual misconduct complaints.

In fiscal years (FYs) 2014-2016, FS used only internal investigators to investigate sexual harassment and sexual misconduct complaints in Region 5. In FY 2017, FS used internal investigators to investigate 10 of Region 5's 14 sexual harassment and sexual misconduct complaints.<sup>13</sup> The practice of using internal investigators may lead to further mistrust among FS employees. For example, OIG interviewed 69 current and former FS employees in Region 5 and found that 33 (nearly half) of them expressed some level of mistrust in FS' process for handling sexual harassment and sexual misconduct complaints. Many expressed a fear of reprisal and a lack of accountability from those employees that allegedly engaged in the sexual harassment and sexual misconduct. Our interviews already showed a lack of trust for the process, and the lack of using outside investigators for employee complaints may deepen that mistrust.

Although our review to date has not found any direct evidence that FS' internal investigators were unfair or biased, we question whether FS' internal investigators can be perceived as fair and unbiased, particularly when they are stationed at the FS units they investigate. For instance, FS' internal investigators may interact with the staff on the units where they reside or know them personally, which leads to the potential for conflicts of interest.

When questioned on February 8, 2017, the Acting Deputy Assistant Secretary for Civil Rights felt strongly that FS should be using contract investigators to investigate all of its sexual harassment and sexual misconduct complaints. She further added that an investigation should be an independent and unbiased assessment of the complaint. The Personnel Misconduct Investigations Program Manager from the Department's Office of Human Resources Management, when questioned on September 11, 2017, stated that investigators from other Federal agencies within the Department were available to perform the investigations, should FS choose to use them.

When questioned on September 25, 2017, the FS Deputy Chief for Business Operations stated that FS is not opposed to the idea of using contract investigators or investigators from other Federal agencies if the FS employees' perception of bias towards FS' process for handling sexual harassment and sexual misconduct complaints is strong and OIG finds that FS' combination of internal and contract investigators is not eliminating the perceived bias. We concluded, based on our interviews with current and former FS employees noted above, that the perceived bias towards FS' process for handling sexual harassment and sexual misconduct complaints may still be strong among FS employees.

Considering the sensitivity of the subject matter and the need to ensure that the investigative process is fair and unbiased, we agree with Department level officials that FS should be using

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<sup>12</sup> USDA FS, *Formal Misconduct Investigations Required for Reports of Sexual Harassment* (July 3, 2017).

<sup>13</sup> Nationwide, FS used its own internal investigators to investigate 22 of its 40 sexual harassment and sexual misconduct complaints in FY 2017.

outside investigators exclusively to investigate their complaints of sexual harassment and sexual misconduct. In addition, we noted that FS' current contract for outside investigators does not stipulate that the contractor's investigators have prior experience working on sexual harassment and sexual misconduct cases and that some of the contractor's investigators previously worked for FS. FS should use outside investigators that have experience investigating these types of cases, and they should not be former FS employees to ensure their impartiality. Both of these conditions should be stipulated in the contract or agreement when hiring outside investigators for these types of cases.

It is essential that FS employees have complete confidence and trust in their agency's ability to handle their complaints of sexual harassment and sexual misconduct in a fair and impartial manner. Therefore, to more effectively combat the mistrust and perceived bias that currently exists, FS may need to exceed the expectations of an agency when dealing with these types of complaints.

## **Recommendation 1**

For a trial period of at least 1 year, require that FS only use contract investigators or investigators from other Federal agencies to investigate complaints of sexual harassment and sexual misconduct. To avoid the potential for conflicts of interest or bias towards FS, exclude those contract investigators or investigators from other Federal agencies that were former FS employees.

## **Agency Response**

In its February 15, 2018, response, FS stated:

The Forest Service generally agrees with this recommendation. The Agency is uncertain that only utilizing outside contractors or investigators from other federal agencies will lead to improving employee trust in handling sexual harassment and sexual misconduct complaints. There are other factors that must also be considered together including, how employees are educated about the process, how the investigation is conducted, the quality of that investigation, as well as how people are treated and communicated with during the course of that investigation and overall anti-harassment program.

The Forest Service will take the following actions in response to Recommendation 1:

1. For a trial period of one year, the Forest Service will only use contract investigators and/or investigators from other Federal agencies to investigate complaints of sexual harassment and associated sexual misconduct arising from the Pacific Southwest Region (Region 5). The trial period for utilizing a contract investigator or other federal agency for all sexual harassment and associated sexual misconduct allegations in Region 5 will begin March 1, 2018.
2. The Forest Service will ensure that any contracting documents require that former Forest Service employees may not serve as investigators for complaints of sexual harassment and related sexual misconduct arising from Region 5.

FS provided an estimated completion date of March 30, 2019, for this action.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 2**

Establish guidelines to ensure that FS hires only those contract investigators or investigators from other Federal agencies that have the necessary experience in investigating sexual harassment and sexual misconduct cases.

### **Agency Response**

In its February 15, 2018, response, FS stated:

The Forest Service agrees with this recommendation. The Agency will stipulate in the appropriate contract documents or agreements, when hiring contract investigators or investigators from other Federal agencies, that they have the necessary experience investigating sexual harassment and sexual misconduct cases.

FS provided an estimated completion date of February 14, 2019, for this action.

### **OIG Position**

We accept FS' management decision on this recommendation.

### **Recommendation 3**

Stipulate in the contract or agreement, when hiring contract investigators or investigators from other Federal agencies, that they have the necessary experience investigating sexual harassment and sexual misconduct cases and that they are not former FS employees.

### **Agency Response**

In its February 15, 2018, response, FS stated:

The Forest Service agrees with this recommendation. The Agency will stipulate in the appropriate contract documents or agreements, when hiring contract investigators or investigators from other Federal agencies that they have the necessary experience investigating sexual harassment and sexual misconduct cases and during the trial period and that they are not former Forest Service employees.

FS provided an estimated completion date of February 14, 2019, for this action.

## **OIG Position**

We accept FS' management decision on this recommendation.

## **Recommendation 4**

At the end of the trial period, assess the overall effectiveness of using only contract investigators or investigators from other Federal agencies to investigate sexual harassment and sexual misconduct cases and whether the practice should be made permanent.

## **Agency Response**

In its February 15, 2018, response, FS stated:

The Forest Service agrees and at the end of the one year trial period, the Agency will assess the overall effectiveness of using only contract investigators or investigators from other Federal agencies to investigate sexual harassment and related sexual misconduct cases which arose in Region 5. That assessment will identify whether the practice should be made permanent and/or implemented Agency-wide. The Forest Service will conduct an assessment following the trial period.

FS provided an estimated completion date of October 30, 2019, for this action.

## **OIG Position**

We accept FS' management decision on this recommendation.

## Scope and Methodology

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The scope of our work covered the actions FS took in response to complaints of sexual harassment and sexual misconduct in the workplace. To accomplish our audit objectives, we performed fieldwork at FS' Washington Office in Washington, D.C.; FS' Pacific Southwest Regional Office in Vallejo, CA; at two national forests within the Pacific Southwest Region, and in two ranger districts—one within each national forest (for specific locations visited, see Exhibit A). We non-statistically selected the two national forests and two ranger districts based primarily on their high number of sexual harassment and sexual misconduct cases and the number of employees that requested interviews with OIG. Our audit covered FY 2014 to the present. This is an interim report and our audit is ongoing.

In developing the finding for this report, we performed the following steps and procedures:

- Reviewed applicable laws, regulations, and agency policies and procedures concerning sexual harassment and sexual misconduct in the workplace;
- Interviewed FS officials, including the Deputy Chief for Business Operations, at the sites we visited to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed officials from OASCR, including its Acting Deputy Assistant Secretary for Civil Rights, to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed an official from OGC to determine its roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Reviewed records pertaining to the training and qualifications of FS' internal and contract investigators, as well as the contract for the contract investigators;
- Interviewed the Personnel Misconduct Investigations Program Manager from the Department's Office of Human Resources Management regarding FS' use of its own investigators to investigate sexual harassment and sexual misconduct complaints;
- Interviewed 34 FS Pacific Southwest Region employees that requested interviews with OIG regarding FS' actions to address sexual harassment and sexual misconduct in the workplace;<sup>14</sup> and

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<sup>14</sup> OIG offered all employees in Region 5 the opportunity to be interviewed regarding FS' actions to address sexual harassment and sexual misconduct in the workplace. On March 28, 2017, the Regional Forester sent out an email to all Region 5 employees notifying them of the opportunity to be interviewed. Of the 34 employees interviewed, 3 were former Region 5 employees.

- Interviewed 35 randomly selected FS Pacific Southwest Region employees from the sites we visited regarding FS' actions to address sexual harassment and sexual misconduct in the workplace.<sup>15</sup>

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We have not completed our information technology work at this time; therefore, we will include our conclusions on this area in our final report.

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<sup>15</sup> We used a simple random sampling technique to select employees from the sites we visited. We selected the employees from a listing FS provided us of all its full-time, part-time, temporary, and seasonal employees that were on board at the sites we visited at the time of our request.

## Abbreviations

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EEOC .....	Equal Employment Opportunity Commission
FS .....	Forest Service
FY .....	fiscal year
OASCR .....	Office of the Assistant Secretary for Civil Rights
OGC .....	Office of the General Counsel
OIG .....	Office of Inspector General
USDA.....	Department of Agriculture

## Exhibit A: Audit Sites Visited

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This exhibit shows the name and location of all FS sites visited.

AUDIT SITE	LOCATION
FS Washington Office	Washington, D.C.
FS Pacific Southwest Region (Region 5) <u>National Forests</u> Lassen National Forest Sequoia National Forest <u>Ranger Districts</u> Eagle Lake Ranger District Kern River Ranger District	Vallejo, CA  Susanville, CA Porterville, CA  Susanville, CA Kernville, CA

**AGENCY'S  
RESPONSE TO AUDIT REPORT**





**File Code:** 1430  
**Route To:**

**Date:** February 15, 2018

**Subject:** USDA Forest Service Response to Reach Management Decision on Office of Inspector General Report No. 08601-0008-41 (1) Forest Service Initiatives to Address Workplace Misconduct (Interim Report)

**To:** Gil H. Harden, Assistant Inspector General for Audit, Office of Inspector General

Thank you for the opportunity to review and comment on Office of Inspector General (OIG) Interim Draft Report Number 08601-0008-41 (1). The U.S. Department of Agriculture's Forest Service generally concurs with the findings and recommendations and appreciates the time and effort that went into the report. The Agency's response to the audit recommendations is enclosed. Please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429 or [aldixon@fs.fed.us](mailto:aldixon@fs.fed.us) with any questions.

*/s/ Tony Tooke*  
TONY TOOKE  
Chief

Enclosure



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U.S. Department of Agriculture's Forest Service

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Office of Inspector General (OIG) Audit Report No. 08601-0008-41 (1)

Forest Service Initiatives to Address Workplace Misconduct (Interim Report)

Official Draft Issued February 1, 2018

Response to the Official Interim Draft Report / Management Decision Request

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Recommendation 1: For a trial period of at least one year, require that Forest Service only use contract investigators or investigators from other Federal agencies to investigate complaints of sexual harassment and sexual misconduct. To avoid the potential for conflicts of interest or bias toward Forest Service, exclude those contract investigators or investigators from other Federal agencies that were former Forest Service employees.

Forest Service Response (2/08/2018): The Forest Service generally agrees with this recommendation. The Agency is uncertain that only utilizing outside contractors or investigators from other federal agencies will lead to improving employee trust in handling sexual harassment and sexual misconduct complaints. There are other factors that must also be considered together including, how employees are educated about the process, how the investigation is conducted, the quality of that investigation, as well as how people are treated and communicated with during the course of that investigation and overall anti-harassment program.

The Forest Service will take the following actions in response to Recommendation 1:

1. For a trial period of one year, the Forest Service will only use contract investigators and/or investigators from other Federal agencies to investigate complaints of sexual harassment and associated sexual misconduct arising from the Pacific Southwest Region (Region 5). The trial period for utilizing a contract investigator or other federal agency for all sexual harassment and associated sexual misconduct allegations in Region 5 will begin March 1, 2018.
2. The Forest Service will ensure that any contracting documents require that former Forest Service employees may not serve as investigators for complaints of sexual harassment and related sexual misconduct arising from Region 5.

The Forest Service also agrees with the Office of Inspector General that it has taken steps to improve its process of handling sexual harassment and sexual misconduct complaints. Transparency regarding those steps to improve the handling of sexual harassment and sexual misconduct is an important part of building greater trust from our workforce. A list of some of the key actions taken are:

1. Published National, Anti-Harassment Policy in September 2016. It is among the strictest anti-harassment policies in government. The updated policy provides clear definitions of all forms/types of harassment, details reporting requirements and procedures, requires that

every report of harassment be appropriately addressed, and establishes processes which ensure accountability while promoting confidentiality and protection from retaliation.

2. Added Misconduct Investigations Capacity. Sexual harassment is a particularly egregious form of harassment. The Forest Service takes reports of sexual harassment seriously and has committed to conducting a formal misconduct investigation, by a credentialed/certified investigator, for every reported incident. In order to meet our commitment, we previously added more capacity through a contract for these critical services.
3. Opened the Harassment Reporting Center in November of 2017. The Forest Service Harassment Reporting Center is a single office dedicated to receiving all reports of any types of harassment. The Harassment Reporting Center is open 7-days a week from 7:00 a.m. to 11:00 p.m. Eastern. Representatives can be reached by calling a toll-free phone number. It is operated by skilled and trained, contracted representatives who are available to confidentially take reports of harassment from employees, supervisors, and anyone who does business with the Forest Service.
4. Launched the Anti-Harassment Program Intranet Web Page in January 2018. The Forest Service has created a new intranet page committed to the Anti-Harassment Program. The intranet page was created to provide a single, dedicated resource for all employees and contractors to receive current and accurate information regarding the Anti-Harassment Policy and Program. The new page will answer frequently asked questions (FAQ) such as, what is harassment, how to report it, what to expect once reported, and what to expect regarding the inquiry or investigation.
5. Applied Accountability and Continuous Learning. Since the establishment of our new anti-harassment policy in September 2016, the Forest Service has implemented corrective actions in all of the cases where misconduct was identified. The corrective actions taken when misconduct was identified range from letters of warning all the way to termination/removal depending on the severity and the facts gathered in each case. Moreover, when looking at the cases where no misconduct/harassment occurred, those cases suggest the need to provide a better understanding of what harassment is along with quicker assistance to overcome workplace conflicts or communication barriers that are not harassment or misconduct. In these cases, the Forest Service has implemented a process to quickly provide opportunities to resolve conflict and communication issues by offering the services of our Conflict Management and Prevention Program.

6. Created Separate Unit to Address Conflict at the Earliest Stages. Established a stand-alone Conflict Management and Prevention Center specializing in providing proactive support and service to the Forest Service employees to increase their workplace conflict competencies in resolving their own conflict issues. The Center specializes in:
  - a. One-on-one conflict coaching for employees, supervisors and managers;
  - b. Boss Whispering coaching, which helps supervisors quickly gain insight into the impact of their words and actions and develop non-destructive management strategies;
  - c. Group Intervention with groups of concerned parties to resolve questions or issues of mutual concern; and
  - d. Conflict Management Training which involves formal or informal training that focuses on communication and conflict resolution skills which builds conflict management competencies and confidence in resolving their own conflict independently.
  
7. Improving Employee Competencies around Work Environment Issues. The Forest Service supports a fully inclusive workplace that inspires each person to belong, contribute and succeed. In support of that effort, Office of the General Counsel, Civil Rights, Labor and Employment Law Division, and the Forest Service developed twenty nine (29) easy to view short learning modules to address a variety of work environment issues. Topics were developed in consultation with subject matter experts from Region, Station and Area managers and employees. Real examples were used in module scenarios taken from actual case law. The individual training modules are intended to supplement the Agency annual mandatory learning objectives and serve as a developmental resource for supervisory and non-supervisory employees. The goal of this project is to: 1) promote greater awareness and increase knowledge, 2) create a common understanding among all participants, and 3) encourage dialogue.
  
8. Greater Transparency around Work Environment Data including Actions Taken. The Forest Service wants to ensure that employees are aware of key indicators in the work environment, including actions taken to hold employees accountable for misconduct like harassment. The Forest Service publishes Human Resources Management and Civil Rights Consolidated Work Environment Indicators Report for all Forest Service employees. This report covers data around disciplinary actions and discrimination complaint activity.
  
9. Created a Senior Advisor in the Chief's Office to integrate agency efforts that improve the work environment. This position aims to reinforce the Forest Service's ongoing commitment to create a harassment-free workplace where every employee feels valued and respected.

The Forest Service also agrees that continuing to build greater trust of its employees is an important aspect of improving how the Agency handles sexual harassment and sexual misconduct claims. Due to the particularly intimate and sometimes intrusive nature of sexual harassment, or sexual misconduct issues, the interview process may be difficult for the parties involved, including the investigator. It is important to recognize the significance the alleged victim's initial contact with first responders or investigators will have on his or her trust in the Forest Service's anti-harassment program. The treatment the alleged victim, the accused, and witnesses receive during the interview and the entire process will impact their decision to go forward with the case

and the quality of the evidence collected. First responders or investigators need to have sufficient knowledge and skills to conduct fair and balanced investigations in sexual harassment and misconduct cases. According to many experts in the field, at a minimum, they should have an understanding of the dynamics of sexual harassment/sexual misconduct in order to manage their own personal biases. They should also know how to gather memory-based evidence (without contaminating it) since this is the type of evidence on which many cases rest. Furthermore, they should know how to weigh the reliability of the evidence collected, both from the alleged victim and from the alleged abuser. Effectively dealing with trauma in an investigative scenario, including the impact of trauma and how this affects an individual's behavior, is also important.<sup>i</sup> These skills are not required in most federal government investigators or outside contractors who specialize in Equal Employment Opportunity (EEO) or sexual harassment investigations. While the Office of Inspector General interim report does not provide any information about the skills an investigator should maintain, the Forest Service believes that increasing these attributes will lead to better results in attaining the desired outcome(s).

As the existing Forest Service contract to provide these services concludes in or around April 30, 2018, the Forest Service will need to seek a qualified contractor with expertise to support these services. The Forest Service will begin that process by April 2018, with the goal of selecting a contractor by the end of fiscal year 2018.

Estimated Completion Date: March 30, 2019.

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Recommendation 2: Establish guidelines to ensure the Forest Service hires only those contract investigators or investigators from other Federal agencies that have the necessary experience in investigating sexual harassment and sexual misconduct cases.

Forest Service Response (2/08/2018): The Forest Service agrees with this recommendation. The Agency will stipulate in the appropriate contract documents or agreements, when hiring contract investigators or investigators from other Federal agencies, that they have the necessary experience investigating sexual harassment and sexual misconduct cases.

Estimated Completion Date: February 14, 2019.

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Recommendation 3: Stipulate in the contract or agreement, when hiring contract investigators or investigators from other Federal agencies, that they have the necessary experience investigating sexual harassment and sexual misconduct cases and that they are not former Forest Service employees.

Forest Service Response (2/08/2018): The Forest Service agrees with this recommendation. The Agency will stipulate in the appropriate contract documents or agreements, when hiring contract investigators or investigators from other Federal agencies that they have the necessary experience investigating sexual harassment and sexual misconduct cases and during the trial period and that they are not former Forest Service employees.

Estimated Completion Date: February 14, 2019.

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Recommendation 4: At the end of the trial period, assess the overall effectiveness of using only contract investigators or investigators from other Federal agencies to investigate sexual harassment and sexual misconduct cases and whether the practice should be made permanent.

Forest Service Response (2/08/2018): The Forest Service agrees and at the end of the one year trial period, the Agency will assess the overall effectiveness of using only contract investigators or investigators from other Federal agencies to investigate sexual harassment and related sexual misconduct cases which arose in Region 5. That assessment will identify whether the practice should be made permanent and/or implemented Agency-wide. The Forest Service will conduct an assessment following the trial period.

Estimated Completion Date: October 30, 2019.

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<sup>i</sup> See, “*Sexual Assault Incident Report, Investigative Strategies*” International Association of Chief of Police. See Also, “*Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*”, Department of Justice, 2016.

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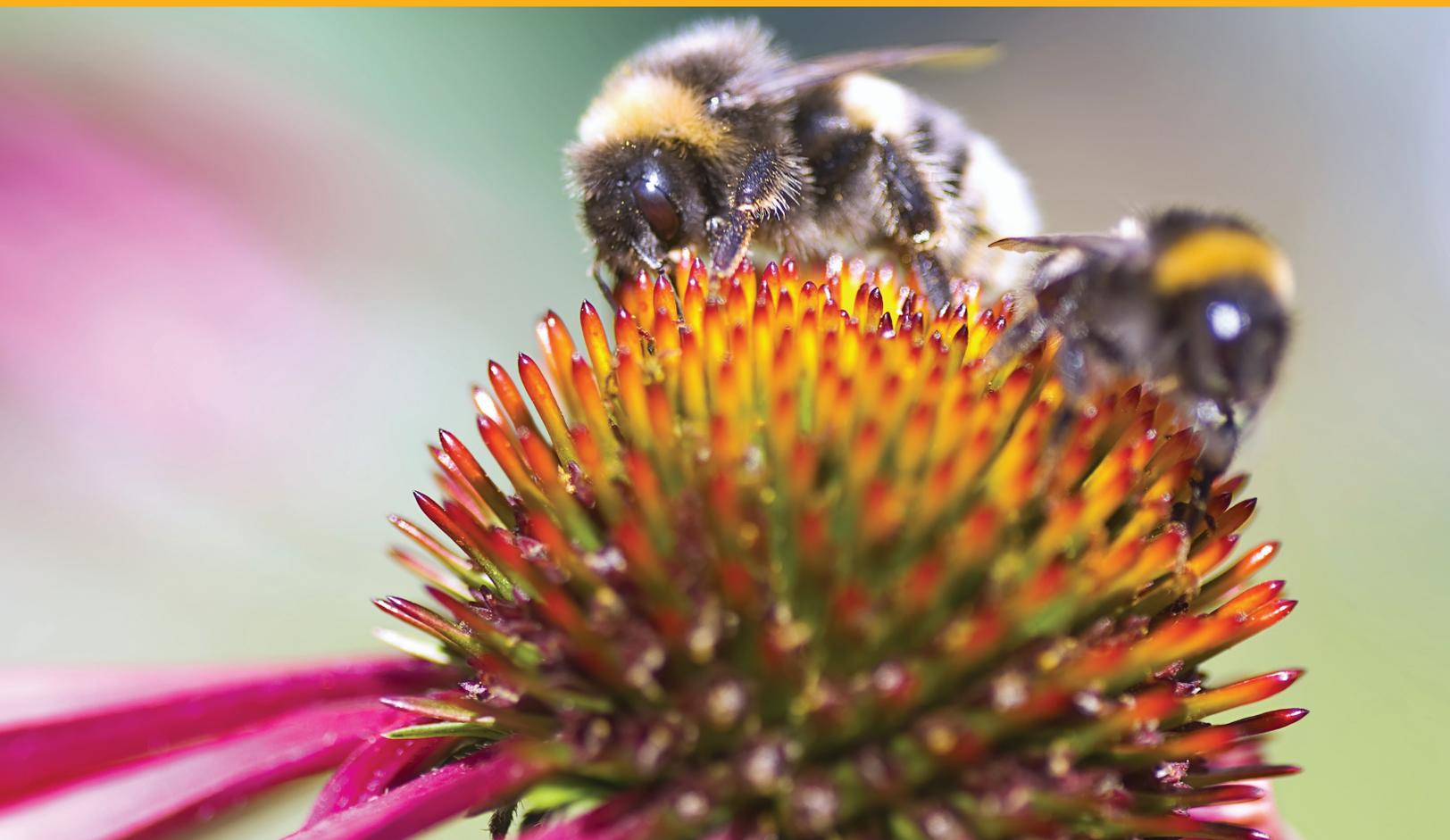
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