



**File Code:** 1570-1

**Date:** January 23, 2004

Mr. Billy Stern  
Sierra Club - John Muir Ex Com  
Heartwood Council  
1324 Williamson St #1  
Madison, WI 53703

RE: Appeal of the Final Environmental Impact Statement and Record of Decision for the Hoffman-Sailor West Project, Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Appeal 04-09-0010 A215

Dear Appellants:

Pursuant to 36 CFR 215.17, I have reviewed the appeal record for District Ranger Robert Hennes' Record of Decision for the Hoffman Sailor West Project Final Environmental Impact Statement, signed on October 22, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) Jim Saubier, regarding the disposition of your appeal. In accordance with 36 CFR 215.19(b), the Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Robert Hennes, and the issues raised in your appeal filed on December 15, 2003. The Appeal Reviewing Officer's recommendation is enclosed with this decision for your information.

The Appeal Reviewing Officer found no evidence that the Responsible Official's decision violated law, regulation or policy. He found that the decision responded to comments raised during the analysis process and comment period, and adequately assessed the environmental effects of the selected action. In addition, he found that the issues raised in your appeal were addressed, where appropriate, in the decision documentation. Based on his review, the Appeal Reviewing Officer recommended that the decision be affirmed.

After careful review of the Project File and the appeal, I concur with the Appeal Reviewing Officer's analysis and findings regarding your specific appeal issues. To avoid repetition, I adopt his rationale as my own and refer you to the enclosed Appeal Reviewing Officer recommendation for further detail.



DECISION

It is my decision to affirm District Ranger Robert Hennes' Record of Decision for the Hoffman-Sailor West Project, Chequamegon-Nicolet National Forest. Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ DONALD L. MEYER (for)  
RANDY MOORE  
Regional Forester

Enclosure

cc:  
Forest Supervisor, Chequamegon Nicolet NF  
Responsible Official, Robert Hennes  
NEPA Coordinator, Brian Quinn  
Joel Strong



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**Route To:**

**Subject:** Appeal of the Final Environmental Impact Statement and Record of Decision for the Hoffman-Sailor West Project, Medford-Park Falls Ranger District, Chequamegon-Nicolet NF, Appeal 04-09-0010 A215 (ARO)

**To:** Regional Forester

This letter constitutes my recommendation for the subject appeal filed by Heartwood, Inc. and Billy Stern for the Hoffman-Sailor West Project Final Environmental Impact Statement and Record of Decision on the Medford/Park Falls Ranger District, Chequamegon-Nicolet National Forest (CNNF). District Ranger, Bob Hennes was the Responsible Official for this decision. His Record of Decision was signed on October 22, 2003 and published on October 30, 2003.

My review was conducted pursuant to 36 CFR 215.19 and the Chief's memorandum of December 15, 1993, defining the role and scope of the Appeal Reviewing Officer. To ensure the analysis and decision are in compliance with applicable laws, regulations, policies and orders, I have reviewed and considered each of the points raised by the Appellants and the decision documentation submitted by the Chequamegon-Nicolet National Forest. My recommendation is based upon review of the Project File and Appeal Record, including but not limited to the scoping letter, public comments, Final Environmental Impact Statement (FEIS) and the Record of Decision (ROD).

The Appellants raised sixteen major issues in this appeal. These appeal points will be addressed in the order presented in the appeal. Many of the major issues were subdivided to address specific concerns.

At several places within the appeal (e.g., p. 22), the Appellants "incorporate by reference". We are under no obligation and will not consider any material "incorporated by reference" as part of this Appeal Record. All information the Appellants desire considered in an appeal must be attached to the appeal in question.

### **Appeal Issues**

**Issue A** - *"The Forest Service should wait for the current land management planning process to be completed before considering the HSW [Hoffman-Sailor West Project] timber sale."* (NOA, p.5).



The Appellants allege:

- *“Common sense dictates that the Forest Service defer the HSW timber sale decision until the results of the revised forest plan are known.”* (NOA, p. 3).
- *“During the process of revising the 1986 Forest Plan, the Forest Service has acknowledged numerous times that changed conditions and new scientific information required revision to fundamental elements of these plans.”* (NOA, p. 3). *“Additionally, the 2003 Forest Pan draft EIS identifies a number of ‘problems’ with the 1986 Forest Plans.”* (NOA, p. 4).
- *“... The Forest Service will limit the available alternatives that are being considered under the proposed revised Forest Plan.”* (NOA, p. 4-5).

**Response:** This issue was raised during the comment period for the Hoffman-Sailor West Project and subsequently addressed in the Hoffman-Sailor West Project FEIS, Appendix E, “Responses to Public Comments on the Draft EIS” (pp. 125-127).

In brief, the National Forest Management Act (NFMA) states: Forest Plans “shall be revised from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every 15 years....” 16 U.S.C. 1605(f)(5). The current Chequamegon National Forest Plan was approved in 1986.

The Appellants argue the HWS Decision should not be implemented until the Forest Plan revision is complete. Taken to its logical conclusion, the Appellants’ argument would halt management and resource protection activities on the Forest pending completion of an updated planning document. There is no express requirement in NFMA or its regulations to halt management activities if a Forest cannot meet the 15-year target in the statute.

In addition, Congress stated (Consolidated Appropriations Resolution, 2003):

“Sec.320. REVISION OF FOREST PLANS. Prior to October 1, 2003, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided*, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise the plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.”

A Forest Plan does not simply expire. The schedule for Forest Plan revision in no way affects the applicability of the current Forest Plan. I find the Forest is acting expeditiously and in good faith in revising the Forest Plan.

The Appellants also argue the Forest Service will limit the available alternatives being considered under the proposed revised Forest Plan. The ID team considered this possibility in

their analysis (FEIS, p. 57) and recognized the relationship of the project to the Forest Plan revision process (FEIS, p. 76). The ID team utilized new relevant information from the revision process. The Hoffman-Sailor West Project FEIS concluded, “Although this analysis is based on existing Forest Plan direction, it also incorporates new information obtained since 1986. New information included: new Federally listed species (Appendix A); new Regional Forester Sensitive Species (Appendix A); Landscape Analysis and Design Areas (LAD) (Chapter 3, Section 3.1.2.); potential roadless inventory areas (Chapter 1, Section 1.2.3); Forest Plan revision vegetation objectives (Chapter 4, Section 4.2.4); and Forest Plan revision road density objectives (Project Record, F4, p.1). The scope and scale of vegetation treatments and road access management for this project area are within all of the goals, objectives, standards, and guidelines found in the range of all alternatives considered for the revision (proposed Forest Plan). There are some vegetation treatments that result in small trade-offs, but have no impact on limiting the range of options for decision-making and alternative choices for the Forest Plan revision (Chapter 4, section 4.2.4).” (FEIS, Appendix B2, Loss of Potential Forest Plan Revision Options, p. 76).

I find the ROD, FEIS, and Project Record adequately address this issue of compatibility with the alternatives being considered in the revised Forest Plan.

**Issue B** – *“The Forest Service has failed to meet the minimum analysis requirements under NEPA.* (NOA, p. 5).

**Sub-Issue B1**: *“The Forest Service has failed to consider the “cumulative impacts” as required by NEPA.”* (NOA, p. 5).

The Appellants allege, *“The HSW FEIS fails to properly address cumulative impacts of past, present and future logging in the project area and the CNNF on goshawk, red-shouldered hawk, lynx, and other species”.* (NOA, p. 5).

**Response:** The FEIS describes the past, present and future actions in Section 4.1. Extensive management activities that occurred within the last several decades are mentioned. Existing and expected activities on private land, including development of recreation cabins are also discussed. Reasonably foreseeable actions by the Forest Service are limited, since no timber harvest and regeneration activities are planned for the project area, other than those in this project. “Most of the cumulative effects from this project result from past actions in combination with the current actions being considered in this analysis.” (FEIS, p. 51).

Past, present and future logging in the project area are further discussed in the FEIS related to Forest Vegetation Composition, and Landscape Pattern. Section 4.2.4 indicates that past actions within the project area resulted in the existing forest vegetation, and as such the past actions are incorporated into the analysis. There are no ongoing timber harvest projects, within the project area. Cumulative Forest type changes are shown, combined with two other projects planned in other parts of the Chequamegon-Nicolet National Forest. Cumulative effects within the project

area on interior habitat are discussed, based on the HARVEST model, over 10 and 40 year time frames, assuming similar management and/or logging patterns (FEIS, p. 59-60).

The Canada lynx was not analyzed in detail in the HSW analysis, based on the “Lynx Habitat Suitability Assessment for the Chequamegon-Nicolet National Forest”, which determines there is no suitable lynx habitat on the Forest based on “snow-depth analysis, bobcat distribution and density, lack of hair samples from surveys, lack of confirmed lynx sightings or tracks, and lack of accidental trapping or shooting, among other listed reasons”. (FEIS, p. 70). The United States Fish and Wildlife Service (USFWS) responded to informal scoping, with a letter on June 5, 2001. The letter indicates the lynx will not be affected because of the nature and location of proposed activities (Project Record, C71, p. 2).

The goshawk and red-shouldered hawk were analyzed as part of the Regional Forester Sensitive Species (RFSS). Both species have habitat present in the project area and have a moderate to high probability of occurrence (FEIS, p. 73). The Project Record indicates completion of site-specific surveys for these species (1999 BE, Project Record I125, p. 4). Analysis shows vegetation management would impact no high quality habitat for either of these species. Mitigation measures will maintain stand density in one stand containing a stick nest, although it is not known which large raptor had used the nest in the last 5 years. (Project Record, I148, pp. 8-11 of 18). The Forest conducted a review (Cayuga Vegetation Management Project) of new information relating to the Northern goshawk and red-shouldered hawk in August, 2003 (Project Record, BER63). These reviews evaluated the cumulative effects of three planned timber sales: Hoffman Sailor West, Sunken Moose, and Cayuga. Analysis indicates, “Impacts would be limited to a broad population measure relating to overall abundance of habitat”, since the distances are greater than 240 kilometers between projects (Project Record, BER63, p. 2 of 6).

My Review of the FEIS and Project Record indicate that cumulative effects were properly addressed. I find the Appellants’ claims unfounded.

**Sub Issue B1 (a): “Failure to consider impacts outside the project area”** (NOA, p. 6).

The Appellants allege, “*The Forest Service failed to provide the maps requested through public comment that show the extreme extent of logging impacts within the project area over the last few decades. The FEIS removes information about the age of each stand that was provided with the initial proposal ...*” (NOA, p. 6).

The Appellants surfaced this issue in their response to the DEIS. The Responsible Official addressed these concerns (FEIS, Appendix E, p. 131) by indicating that results of spatial analysis showing landscape patterns and forest edge were displayed in tabular form (Section 4.2.5. p. 58-60). He further made it clear this same information was also available in map format, if requested (part of the Project Record). In response to the Appellants’ concern on the removal of stand age information, it can be found in the Proposed Action. The Project Record further shows of the 395 patches of different forested land in this analysis, 35 patches are in the 0-10 year age class, presumable as a result of harvest within the last 10 years (Project Record, B11, pp. 19-21).

The Appellants also allege, *“The Forest Service refuses to look at the impact of any timber harvest activities in the Forest outside the project area and narrow buffer around it. The FEIS actually fails to specify the “cumulative effects analysis area.”* (NOA, p. 6).

Contrary to the Appellants’ claims, cumulative impacts were discussed (e.g., Refer to Issue B1 for discussion on the goshawk and red-shouldered hawk analysis.) Similarly, the FEIS shows an effects area boundary. Each resource area specified an appropriate analysis area (i.e., FEIS, Visual Quality, p. 53). Further, the analysis indicates that effects are limited in geographic scale to the site itself or to within the project area (FEIS, p. 61).

The Appellants further allege, *“The FEIS fails to consider the cumulative impacts of (the) project on any Regional Forester Sensitive Species”.* (NOA, p. 6).

As discussed in Issue B1, the Forest analyzed cumulative effects on northern goshawk and red-shouldered hawk. The 2002 BE also evaluated the black tern, trumpeter swan, black-backed woodpecker, Connecticut warbler, and American elm (Project Record, I148, pp. 11-13).

My review of the Project Record indicates the Appellants’ claims are unfounded. The Responsible Official conducted a cumulative effects analysis.

**Sub Issue B2:** – *“The Forest Service failed to rigorously explore and objectively evaluate all reasonable alternatives”* (NOA, p.7).

The Appellants allege:

- *“The Forest Service ... did not seriously consider a management option that uses other than commercial harvests, meaning that it really has only two alternatives under consideration: the no action alternative and three minor variations of an alternative that involves extensive timber harvest covering very similar sets of stands.”* (NOA, p. 7). *“In the FEIS, the action alternatives only consider these areas through the lens of a “commercial harvest” objective.”* (NOA, p. 8).
- *“The Forest Service also fails to consider the request for an “Active Restoration” alternative requested in early comments...”* (NOA, p.8).
- *“The agency is still required to provide a true range of alternatives, with clear variations in where and how much timber is harvested, and includes considerations other than economic/timber harvest maximization. It has failed to do so for the HSW Project”.* (NOA, p.8).

**Response:** Alternatives were designed to meet the purpose and need for the proposed action as well as management prescription emphasis. The FEIS states, “The primary purpose of the proposed land management activities is to implement the actions consistent with direction in the Forest Plan and respond to other specific needs in the project area [Management Prescription 1 – Produce aspen pulpwood through even-aged management and to emphasize habitat for wildlife

species associated with pioneer vegetation.]. Differences between the desired condition of the area and the existing condition are the basis for developing project proposals.” (FEIS, p. 3).

NEPA does not prescribe any particular range of alternatives, but gives the Forest Service discretion to determine an appropriate range based on the purpose of the proposal. The consideration of alternatives that reflect a full range of management options, is not required. An EIS need only present a range of alternatives sufficient to permit the Deciding Official a reasoned choice. Courts have found the range of alternatives may be limited to those meeting the purpose of the proposed action, (See *Krichbaum v. Kelly*, 844 F. Supp. 1107, 1109 (W.E. Va. 1994)). NEPA also does not require the Forest Service to examine all conceivable alternatives. There are no requirements to consider alternatives that are impractical, infeasible, or do not meet the purpose of the project. Therefore alternatives that do not meet or move the area towards these objectives (except for Alternative A, “No Action”) were not developed in detail.

In total, four alternatives were considered in detail including the No Action alternative (Alternative A), and four others were considered, but eliminated from further analysis (FEIS, Chapter 2, Section 2.8, p. 41-43). Alternative A, the “No Action” Alternative (as required by 40 CFR 1502.14(d)) provides a basis for comparing alternatives and serves as the basis for evaluating the effects of no timber harvesting or other proposed activities in the project area. Alternative B is the original proposed action. It was designed by the ID Team to meet desired conditions outlined in the Chequamegon Forest Plan. The ID Team designed “Alternative C to use as a direct comparison to Alternative B for the issue of landscape pattern. Alternative C was developed to increase patch size of vegetation type and age classes over those in Alternative B” (FEIS, p. 27-28). Likewise, Alternative D addressed similar concerns, but has more clearcut harvest and “is more aggressive in treating the older age classes of birch and aspen.” (FEIS, p. 28).

In summary, the FEIS presents what I consider to be an appropriate range of alternatives, addresses the purpose and need for action, responds to major public issues, and meets legal requirements of NEPA.

**Sub Issue B3:** “*The Forest Service failed to employ high quality and accurate scientific information as demonstrated in the following areas.*” (NOA, p. 9).

**Sub Issue B3 (a):** “*Inadequate science regarding coarse woody debris habitat*” (NOA, p 9).

The Appellants allege, “*The DEIS fails to reflect the importance of standing and down woody debris and fails to recognize the loss of critical stand characteristics following logging.*” (NOA, p. 9). Further, “*The BE and DEIS fail to provide any data whatsoever on the levels of coarse woody debris in proposed cutting units and the amount of coarse woody debris ... that remains across previously treated stands.*” (NOA, p. 9).

These concerns were discussed in Appendix E (FEIS, p. 154), where the importance of coarse woody debris was reiterated. The “Specialist Report for Response to Comments” (Project

Record, I193) also discusses the relationship between mitigation measures 75 and 76 and pine marten habitat (Project Record, I193, p. 6).

Down woody debris, including other stand characteristics such as conifer components, is discussed in Section 2.3.4 of the FEIS (Minor Issues). Mitigation measures 75 and 76 are very specific in regard to the amount and size of snags and mature forest that should be left in specific types of harvest. Project Record I197 also discusses the effectiveness of such reserve trees and islands in providing ecological benefits. In addition, “Silvicultural Prescription/Mitigation Measures” (Project Record, G14) gives site-specific information about critical stand characteristics such as understory and species composition, including small components of conifer or mature trees.

The incorporation of mitigation measures 75 and 76 reflects the importance of standing and down woody debris. Since the Appellants do not state what other critical stand characteristics would be lost following logging, it is not possible to respond to that part of the issue.

The Appellants further allege, *“The Forest Service is, in essence, trying to gloss over with convoluted logic and non-science the inescapable fact – expressly conceded in the FEIS and hardly complex biology – that logging necessarily reduces the amount of biomass that exists in the cutting units.”* (NOA, p. 10).

The FEIS (p. 80) acknowledges the reduction of on-site biomass by logging. However, not all biomass is removed, even in clearcuts, since mitigation measures require leave trees and leave islands, as discussed above.

Overall, after reviewing the Project Record, Decision and FEIS, I find the Responsible Official adequately addressed the issue of coarse woody debris, contrary to the Appellants’ claim.

**Sub Issue B3 (b):** – *“Inadequate science regarding goshawks”* (NOA, p. 10).

The Appellants allege:

- *“Older northern stands within the project area [were] dismissed quickly as potential habitat for the goshawk.”* (NOA, p. 11).
- *“The Forest Service “does not provide a scientific basis that connects its thinning and selection of mature hardwoods with maintaining “the area as medium to good potential nesting habitat for goshawks and red-shouldered hawks.”* (NOA, p. 11).
- *The Forest Service is ... dismissing the goshawk for detailed consideration in this project analysis. This is a violation of both NFMA and NEPA”.* (NOA, p. 12).
- *“Conclusions by Erdman and Doolittle ... are not mentioned in the FEIS.”* (NOA, p. 12).

**Response:** The Appellants did not raise these specific issues during the 45-day comment period on the DEIS, however, they did express a general concern about goshawks.

There are no known active goshawk territories in the project area. Additional discussion on habitat is provided in Project Record, BER63, “A Review of New Information Relating to Cumulative Effects on Northern Goshawk from the Cayuga Vegetation Management Project”. Here, Tom Doolittle and Dr. Tom Erdman (local experts with over 30 years experience) provide details about active nest locations and actual habitat use for the Forest. BER63 also concludes, “The [Hoffman Sailor West] project [does not] contain any meaningful amount of suitable habitat” and “the [Hoffman Sailor West] project actions [are] focused on non-habitat components [aspen].

It was not the intent of the FEIS to include a summary of all statements or research made by Erdman, Doolittle or others. Nevertheless, it is clear from the Project Record this material was available to the ID team in reaching its conclusions. The FEIS (p. 16) further states, “Only one thinning harvest treatment in the project area has been identified as having medium/good potential nesting habitat for goshawks. Project prescriptions, design and mitigation measures 17 and 39 (see Table 2-2,) prescribe enhancing the hardwood component in this area and prevent formation of large holes in the canopy. These measures provide for some additional sunlight to reach the forest floor to allow for limited regeneration of intolerant tree species, while not opening up the canopy to the point where there is greatly increased chance of predation by fisher or great horned owls or competition by red-tailed hawks. This will maintain the area as medium to good potential nesting habitat for goshawks.” (FEIS, p. 16).

The Appellants further allege, “*The Service thus entirely fails to comply with the NEPA requirement that it detail and explain the effectiveness of its proposed mitigation measures.*” (NOA, p. 12).

This issue was raised by the Appellants and others during the 45 day comment period for the DEIS and subsequently addressed in the FEIS, Appendix E, “Responses to Public Comments on the Draft EIS” (p. 142).

Information on mitigation effectiveness is detailed in the Project Record, J10, “Issues Addressed by Mitigation, Project Design, or Alternative Development, Sept. 2002” and is summarized in Chapter 2, Section 2.3 of the EIS.

After reviewing all of the Appellants’ issues and the Project Record, I find the Responsible Officials decision was based on sound science regarding the northern goshawk. The Appellants’ claims are untrue.

**Sub Issue B3 (c):** “*Inadequate science regarding red shouldered hawks*” (NOA, p. 13)

The Appellants allege, “*Concerning red shouldered hawks, the Forest Service follows the same pattern of basing its conclusions on selective science – or no science at all.*” (NOA, p. 13). “*The*

*Forest Service fails to cite or acknowledge ...” “other well-respected red shouldered hawk biologists who have studied the impacts of logging closely and concluded that it has severely detrimental impact on the birds.” (NOA, p. 13).*

While the Appellants did not raise this specific issue during the 45-day comment period on the DEIS, they did make general comments of concern about red-shouldered hawks.

Using the scientific literature cited and experts at the site-specific level (researchers with more than 30 years experience surveying populations, trends, habitat and productivity in northern Wisconsin), I find the Responsible Official incorporated the most pertinent information available on red-shouldered hawks. The analysis is further documented in the HSW Biological Evaluation (2002, pp. 10-11) and CNNF Biological Evaluation Reference Document for HSW (2002, pp. 10-11, Project Record, I149). Additional discussion on habitat is provided in Project Record, BER63, “A Review of New Information Relating to cumulative effects on Red Shouldered Hawk from the Cayuga Vegetation Management Project”. As mentioned previously, this document provides new details about active nest locations and actual Forest habitat use. Also stated in BER63, “The [Hoffman Sailor West] project contains only widely scattered red-shoulder hawk habitat” and “the [Hoffman Sailor West] project does not affect any hawk habitat as [its] action are focused on non-habitat stands [aspen].

**Sub Issue B3 (d): “Inadequate science regarding neo-tropical migratory warblers”** (NOA, p. 14).

The Appellants allege:

- *“Alternative B, like all action alternatives proposed in the DEIS, will add to the fragmentation of forests in the project area. Habitat for neo-tropical migratory warblers will be degraded, despite the assertions made in the DEIS.” (NOA, p. 14).*
- *“The agency fails to provide actual data as to the populations of these species in the project area.” (NOA, p. 14).*

The assertions made by the Appellants, claiming the DEIS did not disclose possible impacts to neo-tropical migratory warblers are untrue. On the contrary, The FEIS refers to effects on neotropical migrant birds, as a result of Landscape Pattern, in Section 2.2.2. “In the type of landscape in the project area, effects from edge and forest fragmentation due to timber harvest and other management activities on the reproductive success of NTMB’s [Neo-Tropical Migratory Birds] could occur.” (FEIS, section 3.2.5, p. 49).

Effects on NTMB species were also included in comments on the DEIS. The response on page 160, Appendix E (FEIS), includes details about habitats for certain NTMB species. Similarly, the “Management Indicator Species Analysis” provides data on the proportions of available habitat that would be affected by proposed harvest activities for specific NTMB species (Project Record, I152, p.6). Where MIS species are birds, population estimates are included (Project Record, I155, p. 1).

Furthermore, the Forest developed Alternatives C and D to determine if the amount of interior forest could be increased to benefit wildlife and NTMB given the management direction for the area (early successional habitat), the existing patchiness of the landscape, and the actual landscape pattern of upland mixed with lowland grass and brush vegetation (FEIS, p. 58). Last but not least, the Forest used the “HARVEST” model (Gustafson and Rasmussen, 2002) to evaluate the effects on fragmentation and forest interior species, with the results displayed on page 60 of the FEIS. These figures show that the degree of fragmentation is similar, and will vary over time, even under the no action alternative. Background documentation on this model is included in the Project Record (I36), and the tie between landscape Pattern and NTMB is included in document I31.

References incorporate publications from 1991 to 1996, including an analysis of NTMB populations in Northern Wisconsin using data from annual bird monitoring on the Nicolet National Forest (McRae, 1995).

I find the Project Record and FEIS clearly shows the Responsible Official considered the impacts of this project on neo-tropical migratory birds.

**Sub Issue B3 (e):** “*Inadequate science regarding deer populations limits and trends*” (NOA, p.14).

The Appellants allege, “*The HSW FEIS provides the public with contradictory and poorly based conclusions regarding the impacts of the project on deer populations and herbivory.*” [e.g., no clear evidence that suggests clearcutting and related forage levels do not affect deer populations] (NOA, p. 14).

Deer herbivory and overpopulation are discussed in Minor Issue B17, on page 81 of the FEIS, Appendix B, “Non-Relevant Issues”, and with more detail in “Specialist Report for Response to Comments”, Project Record, I193. Conclusions about deer populations within the area are based on estimates of populations provided by the Wisconsin Department of Natural Resources (WDNR). Conclusions are also based on recent research results published by the WDNR, on the Winter Severity Index and its relationship to deer populations. (Kubisiak et al, 2001). The presented material shows no trend of increasing deer populations compared to acres clearcut, and does discuss the complexity of the issue, including other factors playing a role in deer density. Impacts on ground flora and woody vegetation as a result of herbivory are also discussed in relation to this recent research (Project Record, I193).

The FEIS concludes, “For these reasons, the Hoffman-Sailor West clearcutting activities are expected to maintain quality deer habitat within the project area, but will not cause deer densities to be above the WDNR target level of 15 deer/square mile.” (FEIS, p. 83). The specific cause of existing deer populations above 15 per square mile is not specified, but research and analysis presented is strong evidence for the important part played by weather.

Considering the thorough discussion of factors that appear to be causing higher deer densities, I find that recent, authoritative, and relevant science was used in evaluating the question of deer populations and herbivory.

**Sub Issue B3 (f): “Inadequate information regarding economic impacts and effects** (NOA, p. 14).

The Appellants allege:

- “... *the economic analysis presented violates NEPA.*” (NOA, p. 16).
- “... *this analysis adopts economics as a major issue. As such NEPA requires the information provided to be of high quality and scientifically sound. This analysis is neither.*” (NOA, p. 16). “*Part of the confusions is due to limiting the economic analysis to the timber harvest component.* (NOA, p. 16).
- “*The ... response makes it clear that nearly half the costs of the project ... are hidden from the public in the main portion of the DEIS and FEIS, but presented in the detailed analysis hidden away in the project files.*” (NOA, p. 16).
- “*Non-monetary benefits ... should also be clearly presented in the analysis.* (NOA, p. 16).
- “*Road construction and re-construction costs were not included in the analysis. “... to not include these hidden costs in the analysis skews the analysis.”* (NOA, p.16).

**Response:** Although the Appellants raised the subject of economic analysis during the DEIS comment period (FEIS, Appendix E, p. 143), these appeal issues address: 1) The assertion the Forest Service has not conducted a complete analysis of all economic factors and 2) An attempt by the Forest Service to conceal the analysis from the public.

The Appellants believe our laws; regulations and policies call for an analysis of “non-monetary” costs. My review of existing laws and regulations clearly shows different requirements. The Multiple Use Sustained Yield Act (MUSYA) does not dictate any specific economic analysis technique. Likewise, the National Forest Management Act, Forest Rangeland Renewable Resources Planning Act, and the National Environmental Policy Act do not mandate any particular economic analysis techniques. In any event, to the extent that NEPA requires a type of economic analysis, the Forest Service included one in the FEIS (FEIS, p. 64-65).

The FEIS, Chapter 4, Section 4.2.8, recognizes there could be some project specific effects related to the revenue and costs of the proposed timber harvest. The recreational and associated economic benefit of early successional wildlife species for consumptive and non-consumptive purposes is acknowledged in the purpose and need (FEIS, Chapter 1, Section 1.4.3, p. 6). As stated in the FEIS, “Associated with early successional wildlife habitat is a variety of consumptive and non-consumptive recreation uses of the Forest including wildlife viewing and hunting (FEIS, p 6).

The Appellants are correct that the economic analysis only looks at the timber component, however the larger issue of non-monetary benefits was considered, especially during development of the Forest Plan. As stated below Table 4-13 in the FEIS (FEIS, p 64), costs such as running Forest offices, utilities, and other overhead costs (including the costs of conducting the environmental analysis - NEPA) were not included in the economic analysis. To do so without including an estimate of non-monetary benefits from other improvements to the project area would skew the analysis.

The purpose of the economic analysis for this project was to determine if there were any substantial differences in the economic efficiency of timber harvest by alternative. To make that determination the Forest utilized a simple, direct cost and revenue process. Road construction and re-construction costs were not included in the analysis. These costs are generally accrued by the timber sale purchaser and the bid prices or revenues received already reflect these costs.

I find the Responsible Official did the appropriate level of economic analysis for this project. The Forest Plan FEIS already considered the broader “non-monetary” and “externalized” costs as part of its expected effects. I also find no evidence that the Responsible Official violated any law, regulation, or policy due to his decision on the economic analysis for this project.

**Sub-Issue B3 (g): “Failure to analyze effects on a roadless area”** (NOA, p. 17).

The Appellants claim, “*Despite concerns raised in our comments and by the EPA over impacts to roadless areas, the Forest Service chose not to consider them in detail*” (NOA, p. 17). “*Such a whole-scale dismissal of possible impacts is arbitrary and capricious and a violation of NEPA.*” (NOA, p. 17).

Comments about roadless areas were included in the FEIS, p. 151, under “Response to Comments”, which referred to the Forest Plan (1986), and the Draft Forest Plan (2003), as follows:

“The area described in the second paragraph of this comment (*the Sailor Creek roadless area*) is not now a ‘roadless area’, nor is it under consideration to be managed as a ‘roadless area’. See Appendix C, FEIS for the Chequamegon National Forest Land and Resource Management Plan (1986) and Appendix C, DEIS for the Chequamegon-Nicolet National Forest Proposed Land and Resource Management Plan (2003).” (FEIS, p. 151).

The ROD (p. 12) and the DEIS (p. 2) indicate that “potential, non-designated roadless areas” were removed from the project area, and that no specific impacts to areas outside the project area were identified.

The “Hoffman-Sailor West Roads Analysis”, July 11, 2001, Revised, March 20, 2002 and October, 2002 considered the issue of unroaded recreation, and determined there were no unroaded, nor proposed unroaded areas within the project area (Project Record F19, p. 25 of 64). The FEIS analysis did indicate existing road density for the project area, and for areas classified as semi-primitive motorized (i.e., 3.1 miles/square mile) (FEIS, p. 40, Table 2-3).

I find the FEIS clearly addressed the issue of “roadless areas”. Further, possible impacts to areas that are currently classified as semi-primitive were considered.

**Sub-Issue B3 (h): “Other scientific shortcomings”(NOA, p. 18).**

The Appellants allege, “*The FEIS documents are severely deficient in the ways described above and others, relying for the most part on conclusory [conclusive] statements coupled with highly selective scientific citation – where there is any scientific citation at all.*” (NOA, p. 18).

**Response:** This issue was never raised during the comment period for the Hoffman-Sailor West Project nor has it been documented in the Hoffman-Sailor West Project FEIS Appendix E, “Responses to Public Comments on the Draft EIS” (FEIS, p. 110).

I find it is not possible to answer this charge without site-specific information of where we are deficient or where law, regulation, or policies were violated.

**Issue C: “The Forest Service has violated NFMA”** (NOA, p. 18).

**Sub-Issue C1: “Failure to establish the required population objectives”** (NOA, p. 18).

The Appellants contend, “*There are no sensitive species population objectives for this District and Forest presented or referred to in the HSW FEIS documents.*” (NOA, p. 18). “*Specifically, the Forest Service must amend the Forest Plan to provide population objectives for these species.*” (NOA, p. 19).

**Response:** The Appellants did not raise these specific issues during the 45-day comment period on the DEIS. However, they did express general concerns about sensitive species.

Forest Service Manual (FSM) 2672.1 states, “(s)ensitive species of native plant and animal species must receive special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for federal listing. There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making **decisions that would significantly reduce sensitive species numbers** [emphasis added]”.

The Hoffman/Sailor West BE (2002) addresses the requirements of FSM 2672.1, by concluding there would be no effect on RFSS species in any alternative (FEIS, Appendix A, p. 73). Therefore, since the Hoffman/Sailor West decision would not “significantly reduce sensitive species numbers,” there is no requirement to establish population viability objectives.

The Chequamegon Forest Plan provides several goals/objectives pertaining to viable populations and threatened and endangered species (pp. IV-2 and IV-87).

In summary, I find the agency complied with the requirements of the FSM.

**Sub-Issue C2:** *“Failure to maintain viable population of goshawk”* (NOA, p. 19).

The Appellants assert, *“Low reproduction rates, high mortality rates (particularly females), insufficient protective mechanisms for territories on private and non-federal governmental lands, increasing timber harvest on federal lands, increasing ORV use, high fisher populations and increasing edge and fragmentation leading to red-tailed hawk and great horned owl encroachment and result in a cumulative impact that will push the goshawk towards extinction across the region.”* (NOA, p. 19). *“Unfortunately, not one of the critical items listed above has been addressed by the CNNF or the HSW FEIS.”* (NOA, p. 20).

**Response:** The Appellants did not raise these specific issues during the 45-day comment period on the DEIS. However, they did express general concerns about the goshawk.

The Appellants’ assertions are untrue. This information is included in the “CNNF Biological Evaluation Reference Document for HSW” (2002, pp. 10-11, Project Record, I149) and the “Population Viability Assessment in Forest Plan Revision: National Forest of Wisconsin and Minnesota” (Project file: BER24, Northern Goshawk section). Both documents were “reviewed for the HSW analysis area and found no new information that would change any recommended mitigation or prompt any new recommendations” (Project file document: I138). The Appellants are referred to Sub-Issue B1 for further discussion on the goshawk.

I find the Project Record and FEIS contained the best available information on the goshawk. The Responsible Official considered potential cumulative impacts resulting from other ongoing projects and reviewed appropriate research. Contrary to the Appellants’ claims, this decision does not degrade the viability of the northern goshawk.

**Sub-Issue C3:** *“Failure to maintain viable population of red shouldered hawk”* (NOA, p. 20).

The Appellants claim, *“All potential red-shouldered hawk habitats in the project area should be reserved from timber harvest until full population assessments can be undertaken for goshawk and red-shouldered hawk in the CNNF.”* (NOA, p. 21).

**Response:** The Appellants did not raise this specific issue during the 45-day comment period on the DEIS. However, others did express general concerns about the red-shouldered hawk.

The FEIS and supporting Project Record are clear there is no known red-shouldered hawk nests located within the Hoffman-Sailor West project area. Additional discussion on habitat is provided in, “A Review of New Information Relating to Cumulative Effects on Red Shouldered Hawk from the Cayuga Vegetation Management Project” (BER63). In this document, researcher John Jacobs provides new details about active nest locations and actual habitat use. Also stated in BER63, “The [Hoffman Sailor West] project contains only widely scattered red-shoulder hawk habitat” and “the [Hoffman Sailor West] project does not affect any hawk habitat as [its] actions are focused on non-habitat stands [aspen].”

The FEIS indicates that site-specific surveys were conducted on approximately 800 acres within the project area, with no birds or active nests located. “Most of the habitat was determined to be of low or medium quality for goshawk and red-shouldered hawks.” “Only one stand was determined to be of high quality habitat, primarily due to the presence of a large stick nest. This nest has not been found active, despite subsequent monitoring. Additionally, much of the Park Falls land unit in Price County has had pro-active road surveys for red-shouldered hawks conducted, with 270 points surveyed during 2002 and 2003 combined. There were no responses for red-shouldered hawks at any of these survey points.” (FEIS, p. 159). To ensure the protection of high quality habitat the Responsible Official also incorporated mitigation measures (Table 2.2, p. 34, No. 39)

I find the Project Record and FEIS contain adequate information on the red-shouldered hawk. The Responsible Official incorporated new research finding and considered the cumulative effects from other projects on this species. The claim that the Forest Service is failing to maintain viable populations of red-shouldered hawk are not substantiated.

**Sub-Issue C4:** *“Failure to maintain viable habitat for lynx”* (NOA, p. 21).

The Appellants contend, *“The Forest Service writes off lynx in the HSW area. We strongly believe that a substantial, verified population is not required in the project area to trigger consideration of the impacts to lynx, and that potential habitat in this area has been dismissed in an arbitrary and capricious manner in violation of the Administrative Procedures Act”* (NOA, p. 22). *“Forest Service must assess the impacts of this project on lynx, viability and potential habitat in the HSW Project Area. To not have done so is a violation of NEPA, NFMA, and the ESA.”* (NOA, p. 22).

**Response:** This issue was raised by the Appellants during the 45 day comment period for the DEIS and subsequently addressed in the FEIS, Appendix E, “Responses to Public Comments on the Draft EIS” (p. 122).

None of the alternatives will impact Canada lynx (FEIS, Appendix A, p. 70). A Biological Assessment was prepared for the Hoffman-Sailor West project and sent to the US Fish and Wildlife Service for their review and comment concerning federally listed species. The U.S. Fish and Wildlife Service had no concerns regarding impacts to lynx or other federally listed species (Comment ID 89, FEIS, Appendix E, p. 116). Additionally, the U.S. Fish and Wildlife Service recently published in the Federal Register (July 3, 2003; 50 CFR Part 17) a notice of remanded determination of status for the lynx, clarification of findings, and final rule. It states, “Because Wisconsin always has had a limited amount of boreal forest habitat, marginal snow conditions for lynx, and no evidence of reproduction, we concur with Thiel (1987) that, historically, Wisconsin has not supported a permanent, self-sustaining lynx population; rather, lynx presence is associated with cyclic lynx population fluctuations in Canada. We conclude that any lynx found in Wisconsin are dispersers, not residents.”

An analysis of snowfall and potential effects on lynx habitat with respect to suitability, are discussed in the document “Lynx Habitat Suitability Assessment for the Chequamegon-Nicolet

National Forest”, (Project Record, BER49). Weiland looked at lynx habitat on the Forest using local data. According to Weiland’s assessment, there is no suitable lynx habitat on the Forest based on snow-depth analysis, bobcat distribution and density data, lack of hair samples from surveys, lack of confirmed lynx sightings or tracks, and lack of accidental trapping or shooting, among other listed reasons (FEIS, Appendix A, p. 70).

I find the Hoffman/Sailor West project has followed the correct protocol provided by the USFWS in regards to Canada lynx. The project will have no effect on this species. The Responsible Official, contrary to the Appellants claims, did not dismiss habitat concerns for the lynx in an arbitrary and capricious manner.

**Sub-Issue C5:** *“Failure to survey populations of management indicator species”* (NOA, p. 22).

The Appellants assert, “... *the Forest Service has failed to adequately survey populations of the MIS for the HSW project and the project should not proceed without them.*” (NOA, p. 23).

**Response:** The Appellants did not raise this specific issue during the 45-day comment period on the DEIS. Others did express general concerns about management indicator species.

CFR 219.19 does not require site-specific surveys; rather the direction is to access population trends. The Responsible Official did use survey information, where available, to estimate effects. For the Hoffman Sailor Project, 14 species were assessed; four species were analyzed in detail. Population information came from a number of sources: University of Minnesota Natural Resources Research Institute (NRRI), US Fish and Wildlife Breeding Bird Surveys, and the Wisconsin Department of Natural Resources. Some of this survey data is site-specific to the project area (i.e., NRRI bird surveys). The “Management Indicator Species Report for Hoffman-Sailor West EIS” (Project Record, I157), provides a summary of monitoring methods, population and trend data available for MIS in the Hoffman-Sailor West Project area.

I find the Appellants’ claims are incorrect. The discussion on impacts of this project on MIS is clearly documented using population trend data and/or survey information.

**Recommendation:**

After reviewing the Project Record for the Hoffman-Sailor Project and considering each issue raised by the Appellants, I recommend that District Ranger Bob Hennes Record of Decision of October 22, 2003 be affirmed.

/S/ JAMES A. SAURBIER

JAMES SAURBIER  
Appeal Reviewing Officer

cc:  
Forest Supervisor, Chequamegon-Nicolet NF  
NEPA Coordinator, Brian Quinn  
District Ranger Bob Hennes