



United States
Department of
Agriculture

Forest
Service

Hiawatha National Forest
Supervisor's Office

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File Code: 1570-1

Date: March 1, 2004

CERTIFIED RECEIPT REQUESTED

Mr. Mark Donham
Heartwood
RR #1, Box 308
Brookport, IL 62910

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Bay Project Environmental Assessment, Munising Ranger District, Hiawatha National Forest, Appeal 04-09-10-0014 A215

Dear Appellants:

Pursuant to 36 CFR 215.18, I have reviewed the appeal record for District Ranger Teresa Chase's Decision Notice and Finding of No Significant Impact for the Bay Project Environmental Assessment signed on December 5, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) John Serfass, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Teresa Chase, and the issues raised in your appeal filed on January 16, 2004. 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 Teresa Chase's Decision Notice for the Bay Project Environmental Assessment, Hiawatha National Forest. Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Thomas A. Schmidt
THOMAS A SCHMIDT
Appeal Deciding Officer

Enclosure

cc:
Responsible Official, Teresa Chase
Project Leader, Patty Beyer
NEPA Coordinator, Stephen Bateman
ARO, John Serfass (White Mtn. NF)
Regional Office, Patricia R. Rowell



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Date: February 23, 2004

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Bay Project Environmental Assessment, Munising Ranger District, Hiawatha NF, Appeal 04-09-10-0014 A215

To: Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Northwoods Wilderness Recovery, Douglas Cornett, representative, and Heartwood, Mark Donham, representative, for the Decision Notice and Finding of No Significant Impact for the Bay Project Environmental Assessment (EA) on the Munising Ranger District, Hiawatha National Forest. District Ranger Teresa Chase was the Responsible Official for this decision. Her Decision Notice (DN) was signed and published on December 5, 2003.

My review was conducted pursuant to 36 CFR 215 – “Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities.” 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 Hiawatha 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, Decision Notice (DN), Finding of No Significant Impact (FONSI), and Environmental Assessment (EA).

The Appellants raised seven major issues in this appeal of the Bay Project Decision. These appeal points will be addressed in the order presented in the appeal. Where appropriate, issues were subdivided to address specific points.

Appeal Issues

Issue 1: “Forest Service Fails to Adequately Assess Old Growth [OG] Forests and Wilderness Potential” (Notice of Appeal (NOA), p. 3).

Sub-Issue 1.1: Old Growth (Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

Appellants contend, “*Components of biodiversity should be examined at many levels, including genetic, species ecosystem, landscape and regional. Their needs to be disclosure of the size of old-growth blocks present, including the amount of effective interior old-growth, and how these relate to the viability of mature forest and old-growth dependent species. Further, proper management of old growth resources would include making sure old-growth represents all forest types in the proper proportion, size and spatial relationship to maintain viable populations of*



old-growth and mature forest associated species. Again, this has not been done” (NOA, Paragraph 12).

Response: The Appellants’ claim is not substantiated. In the response to comments received during scoping (EA, pp. 124-125), the Forest Service disclosed that “... analysis will review the impacts of this project as it relates to the appropriate levels for each resource area...levels of analysis will vary by resource areas”. CEQ regulations state: “NEPA documents must concentrate on the issues that are truly significant to the action in question....” A Forest-wide old growth reanalysis, as the Appellants allude, does not address the Purpose and Need and is beyond the scope of this project EA (See “Purpose and Need”, pp. 5-15, EA and p. 5, DN/FONSI). However, the Forest did review designated old growth in those stands included within the project area boundaries. A description of existing designated and additional proposed old growth is presented on pages 49 and 50 and in Appendix J of the EA. This information includes size, acres, characteristics, and a map.

The Biological Evaluation (BE) (Appendix I) addresses viability effects for species of concern, including pine marten, red shouldered hawk, and northern goshawk. The contention of a need to analyze effects to species dependent on interior habitat was not identified during project scoping or during the comment period for the EA. However, fragmentation and edge effects, which are related to interior habitat, were addressed in the EA analysis. Fragmentation and edge effect are addressed in Issue 5.

Appellants further claim, “*Clearly, the HNF made a commitment to a minimum of 51,988 acres of old growth. The District Ranger in the Decision Notice does select certain stands along Buck Bay Creek for old growth designation. However, HNF committed to evaluate the current designated old growth system and its suitability for providing habitat for species requiring habitat composed of older forest.*” “*Yet, no comprehensive analysis was used to fulfill this commitment. To the contrary, no site-specific information on any animal species was used to develop the project. Rather, the BE contained numerous gross mischaracterizations of peer-reviewed published papers and local data.*” (NOA, Paragraph 13).

The Appellants claim is not true. Amendment 5 to the Forest Plan committed to retaining a minimum designation of 51,988 acres of OG across the entire Forest in addition to 313,266 acres of unsuited lands. A Forest-wide May 2003 inventory reported 58,387 acres of existing designated OG (EA, p. 50) and 313,000 acres of unsuited lands (Monitoring report 2000, Project Record, D-30).

A wildlife effects analysis summary is presented in the EA, pages 68 to 79 and in the BE, Appendix I. The discussion includes potential effects to habitat for eastern timber wolf, Canada lynx, bobcat, northern goshawk, red-shouldered hawk, and pine marten. Additional information is included in the Project Record (G-2, 6, 27, 28, 29, 78, 33, 35, 42, 43, 55, 73, 80, 37, 46, 74, 39, 49, 59, 82, 86, 40, 62, 71, 92, 104, 98, 99, 100, 101, 102, and 103). Cerulean Warbler, Fisher, and Moose were not identified as species of concern in the project area. Therefore, potential effects to habitat for these species were not addressed in the project analysis. However, a general discussion about Fisher and its relationship to the goshawk has been documented.

Lastly, the Appellants assert, *“It is common knowledge to Appellants and HNF officials that inappropriate stands were included in the current designated old growth system such wetlands, openings, plantations and young aspen stands. The Forest Service was required to analyze the appropriateness of the current old growth system and this was not done. In this case, 76.5 acres are being added to the system, but hundreds of acres of mature forests will be cut. Nothing has been done to analyze what species exist in the Bay timber sale and how this massive cutting will affect species dependent on old-growth forests, or how the habitat will be fragmented.”* (NOA, Paragraph 14).

Response: The Forest Plan states, *“During implementation, stands within the project area suited for timber production will be evaluated for old growth designation ...”* [emphasis added]. Priority areas include riparian lands and favored species such as *“red pine, yellow birch, red maple, red oak, lowland hardwoods and white spruce”* (Forest Plan, p. IV-46).

In response to concerns identified during scoping, the Forest Service assessed the original OG acres in the project area and new lands recently acquired. This resulted in an adjustment or net gain of 72 acres. The Project Record clearly shows that old growth was reevaluated, as required by Amendment 5, contrary to the Appellants claim (Folder 2, Tab D, D-33). A definition of old growth and the raw results from a database query of old growth stands are included in documents D-24 to D-33 and D-40. Additional maps are integrated into the analysis (O-1, 10, 13).

The Project Record (Folder 2, Tab D, D-30, p. 60) does not support the Appellants’ claims of having inappropriate stands included in the designated old growth system.

Sub-Issue 1.2: Wilderness Potential (Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

Appellants claim, *“No effort has been made by the Hiawatha to assess this area, or any other area, for potential Wilderness designation, despite the fact that the LRMP is undergoing revision....”* *“Many people have commented on planning documents requesting more Wilderness, and the Forest Service has prematurely and arbitrarily decided that there will be no more Wilderness assessment....”* (NOA, Paragraph 14).

Response: The Forest has yet to make any decision regarding the potential for more Wilderness. Potential Wilderness designation is a topic of Forest Plan revision (36 CFR 219.17) and will be addressed at the Forest scale during revision efforts (EA, p. 11, Appendix K).

Issue 2: “Viability Requirements and Monitoring of MIS, Sensitive and T&E Species” (This topic was not brought up by Doug Cornett during the 30-day comment period to the Bay EA.)

The Appellants allege, *“Clearly this project is ‘management planning for the fish and wildlife resource’, and therefore, must meet the requirements of section 219.”* [36 CFR 219.19 (a)(1) through (7)]. (NOA, Paragraph 20).

Response: The Appellants incorrectly reference 26 CFR 219.19 as the regulations requiring monitoring of population trends for Management Indicator Species (NOA, Paragraph 20). The correct reference is 36 CFR 219.19. 36CFR 219 does not require the Forest Service to complete site-specific project level surveys to assess species population trends, as implied. In addition, 36 CFR 219 refers to “management planning for the fish and wildlife resource” at the National Forest level in Land and Resource Management Plans.

The Appellants also claim:

- *“The EA is totally devoid of any credible information regarding populations of MIS, regional sensitive species, and state federally-listed species in the Bay area or anywhere in the Hiawatha”.* (NOA, Paragraph 23).
- *“This is clearly a violation of the NFMA, and any conclusions drawn under NEPA regarding populations of MIS, sensitive, and listed species in the forest and the effects of the Bay cut and all other past, present, and foreseeable future actions are not credible and not in compliance with NEPA.”* (NOA, Paragraph 23).

The Bay Project EA identifies federally threatened or endangered, regionally sensitive, state listed, and Management Indicator Species that might occur in the project area based on habitat and/or site-specific surveys. (EA, existing conditions for vegetation, flora, wildlife, and fish, pp. 45-79; Biological Evaluation, Appendix I, pp. 188-245). The Bay Project EA also contains examples of the types of site-specific surveys conducted in the project area, including rare plant surveys, winter track surveys and woodland raptor surveys (EA, Biological Evaluation, Appendix I, p. 198).

The Forest Service, in partnership with other agencies including the US Fish and Wildlife Service (USFWS) and the Michigan Department of Natural Resources (MDNR), collected credible inventory and monitoring data for species occurring or have suitable habitat in the project area. Examples of population data referenced include surveys for fish, marten, bear, loons, ruffed grouse, deer, warblers, goshawks, eagles, wolves and rare plants (Project File, Folders 2, 3, and 4, Tabs E, G, and H).

The analysis for the Bay Project also relied on data from research projects, conservation assessments and the Michigan Natural Features Inventory. Direct, indirect, and cumulative effects to threatened, endangered and sensitive species were determined for each alternative based on population data referenced above, and expected changes to habitat. These effects can be found in the vegetation, flora, fisheries, and wildlife environmental consequences sections of the EA (EA pp. 50-79) and the Bay Project Biological Evaluation (EA, Appendix I, pp.188-245). For federally-listed threatened and endangered species, the Hiawatha NF requested consultation with the USFWS, who concluded the selected Alternative (3) will have no effect on piping plovers or bald eagles, and is not likely to adversely effect gray wolves (DN, p. 15; Project Record, Folder 6, U-23).

I find an ample amount of credible population information on MIS, regional sensitive species, and state and federally listed species for the Bay project area, as well as other portions of the

Hiawatha NF. The conclusions drawn in the analysis are based on this information and procedures used to reach these conclusions are in compliance with NEPA.

The Appellants further claim, *“In the case of the Northern Goshawk, the species is on the threshold of being listed, and therefore, the duty is on the Forest Service to avoid actions which may cause it to become listed, and which would jeopardize its viability.”* (NOA, Paragraph 19).

The Biological Evaluation (pp. 231-234) analyzes the direct, indirect and cumulative impacts to the goshawk. The Biological Evaluation for this project (p. 231) states: “A determination of may impact individuals but is not likely to cause a trend to federal listing or loss of viability has been made for northern goshawk.” The Forest recognized a concern with raptor populations in the FY 95 Monitoring and Evaluation Report, initiating a monitoring program. The FY 2000 Monitoring and Evaluation Report (Folder 3, Tag G, G-83 pp. 75-76) summarizes five years of data on raptor nests. From this information, the EA (p. 233) concludes that overall, goshawk populations appear to be stable with fluctuations largely following cyclic patterns. The goshawk has been on the threshold of being listed since 1986.

In summary, based on a review of the DN/FONSI, EA, and Project Record for the Bay Project, I find all the assertions claiming the Forest Service does not meet viability requirements, including not monitoring of MIS, sensitive and T&E Species, as unsubstantiated.

Issue 3: *“Cumulative Effects of Northern Hardwoods Cutting is Threatening Viability of Goshawk and Other Species”* (Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

The Appellants claim:

- *“The EA does not describe the existing environment in any detail.”* (NOA, Paragraph 25).
- *“Considering the species is already regionally sensitive, this widespread adverse habitat modification cannot be said to be in compliance with 36 CFR 219.19.”* (NOA, Paragraph 26).

The EA (pp. 70 and 231) describes suitable goshawk habitat. The amount of suitable habitat is listed in the BE (Table 1.1 pp. 192-193). The EA also discusses the amount of northern hardwood habitat in the project area on page 47 (which is suitable habitat as described on page 70). Table 9 in the BE (pp. 214-215) lists previous management activities in the project area. I find the existing environment for the goshawk has been documented in detail. The Appellants’ claim is not true.

This project selectively harvests approximately 1,443 acres of northern hardwoods (DN, p. 3). It’s unlikely there will be any direct impacts to the goshawk from any proposed activity since there were no goshawks found adjacent to any proposed action (EA, BE, p. 232). Thinning and selection harvest will indirectly benefit goshawks as they are designed to improve nesting habitat

in the long-term (EA, BE, p. 232). Goshawk foraging may improve in the short term (EA, BE, p. 233) by an increase in prey species related to the change in stand structure. However, harvest areas may not support goshawk territories in the short term (EA, BE, p. 233) due to a reduction in canopy closure. There are approximately 8,339 acres of suitable habitat in the project area (EA, Table 1.1 pp. 192-193). The harvest of 1,443 acres is approximately 17 percent of the suitable habitat. The amount of cutting and potential impacts does not appear to be the “widespread adverse habitat modification” as the Appellants claim.

The Appellants also contend:

- *“The EA does not focus on the habitat alteration’s effects on the goshawk and does not give a hard look at the species (NOA, Paragraph 27).”*
- *“In fact, it makes erroneous conclusions that selective cutting and thinning will benefit the species or will not harm it when the overwhelming scientific evidence shows that selective cutting and thinning does harm the species.” (NOA, Paragraph 27).*
- *“The viability of the goshawk is in serious question in Michigan and in the Hiawatha.” (NOA, Paragraph 27).*

The direct, indirect and cumulative effects to suitable habitat are discussed on pages 73-74 of the EA. The direct, indirect and cumulative effects to the goshawk are discussed on pages 231-234 (See response to paragraph 26, above). Contrary to the assertions, the Responsible Official did focus on habitat alterations and their effects on goshawk.

In answer to the issue of overwhelming scientific evidence, the Appellants do not state what scientific information they think proves the Forest Service conclusions are erroneous. The scientific statements mentioned in paragraphs 25 and 26 do not talk about thinning or selection harvest affecting goshawk habitat.

Likewise, the Appellants do not state what information makes them believe goshawk viability is in serious question. The Forest recognized a concern with raptor populations in the FY 95 Monitoring and Evaluation Report and started a monitoring program. The FY 2000 Monitoring and Evaluation Report (Folder 3, Tag G, G-83 pp. 75-76) summarizes five years of data on raptor nests. From this information the EA (p. 233) concludes that overall, goshawk populations appear to be stable with fluctuations largely following cyclic patterns. I find there is adequate support in the Project Record for the Forest Service conclusions.

Appellants further allege:

- *“The Forest Service should have considered the work of Bier and Drennan (1997).” (NOA, Paragraph 28).*
- *“The EA does not consider the effects of predation on the species viability.” (NOA, Paragraph 29 and 30).*
- *“The EA does not consider the cumulative effects of low population numbers, widespread habitat alteration and increase in Fisher populations.” (NOA, Paragraph 31).*

- *“The EA is devoid of any cumulative effects analysis and only mentions sales that have occurred over the last 15 years.”* (NOA, Paragraph 32)

While the Heartwood Group (though not Mark Donham of Heartwood) did comment during the initial scoping, neither surfaced the work of Bier and Drennan. Doug Cornett did comment during the 30-day comment period, but did not mention this research. The EA did cite three scientific publications (R.T. Reynolds and R. H Hamre, 1996; Lapinski, 2000; Reynolds, 1989), which discuss prey availability and limiting factors. The article referenced by the Appellants is from the Southwestern United States and discusses prey availability and limiting factors in ponderosa pine and juniper, habitats not found in the Lake States.

The claims made by the Appellants concerning lack of predation and cumulative effects analyses are untrue. The EA (p. 233) discusses the effects of competition and predation on the goshawk population from great horned owls, red-tailed hawks and fishers. Likewise, the EA (pp. 232-234) discusses the direct, indirect and cumulative effects on goshawks. This discussion covers population numbers, habitat alteration and predation at the project level and for the Upper Peninsula of Michigan. There were no significant cumulative impacts noted for the goshawk (EA, p. 233). This is also documented on pages 12 and 15 of the Decision Notice. In addition, Table 9 (EA pp. 214-215) addresses sales for the last 44 years.

Lastly, the Appellants claim:

- *“Without the ‘in-field’ monitoring of goshawk, how can the agency estimate the effects on the sharp-shinned and Cooper’s hawk?”* (NOA, Paragraph 33).
- *“The agency has allegedly developed standards and guidelines for managing for the goshawk and that these guidelines were not included in the final Forest Plan and never subject to public scrutiny.”* (NOA, Paragraph 34).

The goshawk was properly assessed as indicated above, contrary to the Appellants’ claims. The sharp-shinned hawk and Cooper’s hawk use similar habitat, therefore, the effects are similar to the goshawk. The Forest Service is not required to analyze impacts to every species within a project area. Rather, they evaluate federally listed threatened and endangered species, Regional Forester sensitive species and Management Indicator Species. Species in these three categories were reviewed in the Biological Evaluation (EA, pp. 188-245) and the Environmental Assessment (EA, pp. 68-79) and no significant impacts were found. The Forest conducted field surveys for goshawks, sharp-shinned hawks, Cooper’s hawk, and red-shouldered hawks (EA, p. 232; Folder 4, Tab G, G-93 through G-96).

In response to the comments from the Appellants concerning goshawk standards, I find no reference to standards and guidelines for managing goshawk mentioned in the EA, BE or Project Record.

Overall, the claims made by the Appellants concerning the viability of the northern goshawk and other species are not substantiated. My review of the Project Record indicates an adequate

analysis. The Responsible Official had sufficient information to make an informed decision on this project.

Issue 4: *“The Project Will Adversely Affect the Red-shouldered Hawk and Threaten its Viability”* (Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

The Appellants claim:

- *“The habitat for the species will continue to be degraded throughout the area, due to a decrease in canopy closure.”* (NOA, Paragraph 36).
- *“Bryant finds that ‘inclusions by Red-shouldered Hawks, were strongly associated with reductions in mean tree density and tree-crown diameter.’ “Yet, this information is not discussed at all in the EA.”* (NOA, Paragraph 38).
- *“The sloppy, conclusory assertions that there would be no significant impact on Red-shouldered Hawk is not supported by any evidence and is counter to the heavy body of evidence that indicates that the impacts to the species would be severe from the proposal.”* (NOA, Paragraph 39).
- *“In spite of the fact that the project again targets prime habitat, and that this habitat has been the subject of adverse alteration at accelerated rates across the Hiawatha National Forest and Michigan, the agency, without providing any baseline data as to the populations of the species in the region, the project area, or even in the forest as a whole, brushes off the possibility of any impacts.”* (NOA, Paragraph 40).
- *“Failure to collect and maintain baseline data also constitutes a violation of the Forest Plan and of the ROD for the Forest Plan, thus a violation of NFMA in that regard.”* (NOA, Paragraph 40).

Response: The Appellants’ claims are not substantiated. There are no planned activities proposed in red-shouldered hawk suitable habitat (EA p. 236). If there is no logging in suitable habitat, the EA does not need to discuss the impacts of timber harvest to that species.

In response to the Appellants’ concerns about not having baseline data for the Forest Plan Record of Decision (ROD), the claim is not clear. Nowhere in the Forest Plan or ROD do I find requirements for the collection and maintenance of baseline data for a Regional Forester’s sensitive species. I find no violation of NFMA. The Forest did complete surveys for the red-shouldered hawk (EA, pp. 235-236). Raptor nest data is also summarized in the FY 2000 Monitoring and Evaluation Report (Folder 3, Tag G, G-83 pp. 75-76).

Issue 5: “The Effects of Forest Fragmentation on Forest Interior Birds is Inadequately Addressed” (Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

The Appellants allege:

- *“Assertions in the EA that the project will have no significant adverse effects, including cumulative effects, on MIS, sensitive, and other species, is not supported by credible scientific information, and therefore does not comply with NEPA or NFMA.”* (NOA, Paragraph 45).
- *“The EA is devoid of any site-specific information about where these [neo-tropical] birds have territories, and what the impacts will be if those territories are displaced and made unsuitable.”* (NOA, Paragraph 44).
- *“The cumulative effects analysis in regard to forest fragmentation is completely inadequate and inaccurate.”* (NOA, Paragraph 45). *“The EA fails to identify what contiguous forest blocks remain after the logging, how logging has isolated areas of the forest, and what the populations of birds in those areas were before and after logging.”* (NOA, Paragraph 45).

Response: Concerns about forest fragmentation and forest interior birds were submitted as comments during the **Initial Scoping** for the Bay Project. (EA Appendix B, pp. 119, 120, 123 and 125; Comments C.2, C.3, C.4, C.5, C.8, C.10, C.14, D.4, D.17, and D.21). The Forest responded to each of these comments, addressed the concern and/or provided a reference in the EA where the concern was addressed.

Comments received during the **30-day Comment Period** raised concerns about the effects of timber sales on the northern goshawk and red-shouldered hawk, but did not specifically mention forest fragmentation effects or other forest interior birds. (EA, Appendix K, p. 8, Comments D-6 and D-7). The Appellants should refer to Issue 3 and Issue 4 for discussions on the northern goshawk and red-shouldered hawk.

The adverse effects of forest fragmentation on interior bird species, documented in current scientific literature, refers primarily to the results of converting forested land to non-forest, or from even-aged timber cutting (Project File, Folder 5, Tab L, L-5, L-9). These activities can leave blocks of forest isolated from each other, and of a size that is unsuitable for many interior species (L-9). The proposed activities in the Bay Project do not include even-aged regeneration cutting. Clearing is limited to short spur roads. This will not create isolated blocks of forest.

Single-tree selection does not contribute to fragmentation of the project area, since this is an uneven-aged silvicultural system and only small breaks are created in the canopy. Thinning is a step in even-aged management, but large openings or edge will not be created unless a final harvest occurs as part of a future proposal. Alternative 3 also includes small cuttings of a tenth acre or less where aspen clones will be regenerated in both selectively cut areas and thinnings. Openings in the canopy from cutting are expected to persist 3-5 years, until regeneration or

growth from adjacent trees closes the openings. Both types of treatments are expected to accelerate the development of mature forest characteristics (EA, p. 73).

The EA addresses fragmentation of the project area as it relates to timber harvesting and transportation as well as clearing and development on private land (EA p. 18). Analysis on National Forest land within the project area indicates the percent fragmentation will be reduced from 6.7 percent under existing conditions, to 6.2 percent under the selected alternative (Project File, Folder 5, L-11 through 15 and L-18). Road construction and obliteration are the only factors producing changes in fragmentation. This analysis is based on methods described by Baskent (Project File, Folder 5, L-5). Fragmentation effects to overstory vegetation are limited to a 22-acre clearcut included in Alternative 2 (EA, p. 54). Alternative 2 was not selected for implementation. The cumulative effects of the proposed timber harvest on closed canopy hardwood habitat are described as being beneficial to the maintenance of future habitat, based on the success of previous selective harvesting (EA, p.74).

Regarding the Appellants' contention that the analysis lacks any site-specific information about forest interior birds' territories or populations, the Forest Service is not obligated to complete site-specific surveys for each project. CFR 219.19 does not require site-specific surveys. However, the Responsible Official did use survey information gathered as part of Forest and regional bird monitoring to estimate populations and trends for forest interior bird species. An analysis of 11 years of breeding bird studies in the 2000 Hiawatha Monitoring and Evaluation Report showed no decline in interior habitat (Project File, Folder 3, Tab G, G-83, p. 71).

As a measure of effects on forest interior birds, the Bay Project analysis uses the Black-throated Green Warbler as an indicator. This Management Indicator Species is one of the most commonly observed birds on the Hiawatha NF, with 378 observations recorded in the Bay Project area from 1991-2002 (Project File, Folder 2, Tab G-6, p. 8). This warbler, and the other interior species it represents, would benefit from activities and conditions (mature, uneven-aged forest and conifer understory) created as part of the Project. The USFWS Breeding Bird Survey shows a significant population increase for the species in Michigan between 1966 and 2002 (Project File, Folder 2, G-7, and EA, p. 78). With over 60 different timber sales in the Bay Project area since the 1950s (EA, Appendix I, pp. 214-216), forest management has not resulted in the direct or cumulative adverse effects to forest interior birds claimed by the Appellants. Reasonably foreseeable future actions are similar to the proposed actions and are expected to result in similar effects.

I find the analysis of effects to be adequate, accurate, and appropriate for the actions proposed in the Bay Project. The Appellants provided no specific data showing the site-specific analysis of fragmentation effects on forest interior birds to be inaccurate.

Issue 6: “The [Soil] Mitigation Measures Have Inadequate Support in the Record” (NOA, p. 12)

(Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

Sub-Issue 6.1: Documentation regarding mitigation measures is inadequate

The Appellants assert:

- *“The documentation in the EA as to how the agency is going to comply with these sections [Sections a, e, f, of 36 CFR 219.27 regarding mitigation measures] is totally inadequate.”* (NOA, Paragraphs 47, 48, 49).
- *“There doesn’t seem to be anything specific about mitigation in the DN.” “Yet, there is no reference to extraordinary measures, or any studies, reports, or past monitoring that indicates that these mitigation measures function to completely eliminate all potential for significant impact.”* (NOA, Paragraph 48).
- *“These vague measures, which aren’t even identified in detail, do not meet the standards required under NEPA and the Administrative Procedures Act (APA). There is no information in the EA as to where these activities will occur. Skid trails, log landings, and temporary roads ...soil ... slope ... contours... consulting with soil experts from the Natural Resource Conservation Service ... mulching...operating ...what the restrictions are, or where specifically they will be applied.”* (NOA, Paragraph 49).
- *“There is no data cited about how much of the ground would be covered vs. bare after the logging and heavy equipment use of the area.... How many of the skid trails will be across fragile soils...”* (NOA, Paragraph 50).

Response: The Appellants’ claims are not correct. Documentation of site-specific soil information, specific actions and effectiveness is included in the EA, appendices and Project Record. Project design included applicable guidelines from the Forest Plan, FS manuals and handbooks, and from the Michigan Department of Natural Resource guidelines.

A list of applicable Best Management Practices (BMPs) common to all alternatives is presented on pages 24-27 of the EA. Site-specific information regarding soil types, skid trails, log landings, temporary roads, mitigations, operating seasons and slope restrictions is listed in Appendix C, Appendix E, Appendix F and Appendix G of the EA. Appendix K discusses potential funding sources for mitigation measures. The Road Analysis Framework (Project Record, Folder 5, Tab K, K-8) was also used to identify transportation-related needs including opportunities for restoration. Specific water quality mitigations are listed in Document M-1 (Project Record, Folder 5, Tab M).

Additional site-specific soil information and maps are included in the Project Record (Folder 4, Tab J, J-1 to J-17, and in the Soils and Wetland Resource Report for the Bay Project Area, Project Record, Folder 4, Tab J, J-23). Erosion-prone slopes were identified during project-level reconnaissance. Site-specific slope analysis is included in J-19 of the Project Record. A Supplement to the Soil Survey of Delta County and the HNF was also consulted (Project Record, Folder 4, Tab J, J-35). Site-specific mitigation and restoration opportunities for the project are documented in more detail in the report for the Bay Project and ID Team notes (Project Record, Folder 4, Tab J, J-18 and Project File, Folder 6, Tab Q, Q-7, respectively). Furthermore,

monitoring will evaluate effectiveness of implementing soil and water mitigation measures (pp. 27-28 of the EA). While local staff for the Natural Resource Conservation Service received notification and project information, they provided no comments.

Sub-Issue 6.2: The EA lacks site-specific information about soil types and potential effects of proposed action, including effects of compaction, rutting/groundwater interaction, and potential nutrient loss and effects to mychorrhiza.

The Appellants claim:

- *“The EA has some general information about soils within the project area but has no site-specific information about the specific soil types on a particular location...”* (NOA, Paragraph 48).
- *“The same is true about compaction. While the EA does acknowledge some impacts from compaction it ultimately downplays impacts.... There are no citations to any studies or papers or any data to support any of this.”* (NOA, Paragraph 51).
- *“In some of these areas, it is near wetlands, and the water table could be very high. If the water table is high and there is rutting, tree roots will stand in water. What are the impacts of this? This is an impact not discussed in the EA... the lack of documentation of the effectiveness of so-called protective, or mitigation measures, is important here.”* (NOA, Paragraph 54).
- *“Another impact on soils of timber harvesting is removing nutrients. The EA minimizes these impacts...”* (Site Kelting, Elliot) (NOA, Paragraph 56).
- *“It is important to document the importance of mychorrhizal associations to the long-term productivity of the forest, something that the EA completely fails to do....”* (NOA, Paragraph 57).

Response: I find the Appellants’ contentions unfounded. A summary of the effects analysis is presented in the EA in Chapter 3 with citations supported by the Project Record. The EA analysis and Project Record contain site-specific information on soils and potential effects sufficient for an informed decision on this project. These are referenced in the Decision Notice and FONSI (See Issue 6.1). It is not the intent of project analysis to establish scientific baseline information or analyze every component of the ecosystem as the Appellants allude (i.e., mychorirrizal associations or water table studies).

The EA characterizes soils, climate, topography, vegetation, and talks about soil productivity and erosion potential at the stand level on pages 36 and 37. Site-specific concerns are discussed on page 36.

Mitigations and BMPs for this project represent the best scientific techniques currently available, and have been successful in past projects at reducing or eliminating potential adverse effects of

management activities. Several relevant studies regarding potential effects were consulted and are documented in the Project Record. Relevant research included:

- Compaction by Forestry Equipment by Corns (Project File, Folder 4, Tab J, J-22 and J-24)
- Qualitative Analysis of Newer Harvest Technology in Upper Peninsula of Michigan by Landwehr (Project File, Folder 4, Tab J, J-26)
- Potential nutrient loss is discussed on page 38 of the EA with additional reference in a study of effects of harvest on water quality and nutrients by Nicolson, Foster, Morrison (Project File, Folder 4, Tab J, J-28)
- Statistical Analysis of Site Productivity Effects of Management Practices; Powers, et al (Project File, Folder 4, Tab J, J-29)
- Site Damage and Economics of Partial Cuts in Hardwood Stands in Northern Wisconsin; Stiros, et al (Project File, Folder 4, Tab J, J-33)
- Studies regarding aspen productivity on sandy soils by Stone, et al (Project File, Folder 4, Tab J, J-30, J-31, J-32)

Issue 7: “To Undertake the Bay Project When the Hiawatha Plan is Expiring and FEIS Outdated is Not in Compliance with Applicable Laws and is Arbitrary and Capricious”
(Doug Cornet addressed this general topic during the 30-day comment period to the Bay EA.)

Appellants claim, “*There is no legally adequate RPA Program or land and resource management plan to which the Bay project can be tiered. Until the Forest Service develops a new RPA Program and does an updated assessment and new LRMP for the Hiawatha National Forest, implementation of individual actions, including the Bay project must be suspended.*” (NOA, Paragraph 60).

Response: The Resource Planning Act (RPA) requires the Secretary of Agriculture to conduct an assessment of the Nation’s renewable resources every 10 years. The first assessment was completed in 1979. At that time the Forest Service chose to publish 5-year updates. Assessments were completed in 1984, 1989, 1993 and 2000. The last assessment is within the 10-year period required by RPA.

A Forest Plan does not simply expire. There are no expressed requirements in NFMA or its regulations to halt management activities if a Forest cannot meet the 15-year target in the statute. Also, the President of the United States on November 10, 2003 signed the Department of the Interior and Related Agencies FY 04 Appropriations Act, H.R. 2691, P.L. 108-108. Section 320 states as follows:

“Prior to October 1, 2004 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 Renewable Resources Planning Act (16 U.S.C. 1604 et seq.) or any other law”.

Appellants further contend, *“The suspension of the Bay project is necessary because the goals, objectives, standards, and guidelines contained in the 1986 Hiawatha National Forest LRMP are no longer relevant or defensible in light of significantly changed resource demands by the public, significantly changed environmental and economic conditions, and significant changes in Forest Service management direction.”* *“Despite these changes, the Hiawatha National Forest has not corrected, amended, revised, or supplemented the LRMP's FEIS and, 15 years later, continues to tier project level decisions to this irrelevant FEIS.”* (NOA, Paragraphs 61, 62 and 63).

The Hiawatha National Forest has completed monitoring and evaluation reports and assessed changing conditions (Project File, Folder 5, Tab N, N-30). The Forest is currently assessing this information along with new input from concerned citizens in preparation for its Plan revision (scheduled for completion in 2005). Likewise, the Hiawatha National Forest has maintained its existing Forest Plan through adoption of 23 separate amendments, many which incorporate new direction to reflect changing resource demands (e.g., Visual Quality Objectives; Wilderness; Research Natural Areas; Wild and Scenic Rivers; Threatened, Endangered and Sensitive Species; Semi-Primitive Areas; Roads; Below Cost Sales; First Decade Harvest; Second through Fifth Decade Harvest; Aspen Management; Even Age Versus Uneven Age Management of Northern Hardwoods; and Old Growth from the Original Forest Plan). The Appellants present no specific claim that the existing plan direction used in the development of this project was inadequate, except for generic statements. Evidence in the Project Record supports the fact the Forest Plan has not remained stagnant.

Lastly, the Appellants assert, *“The Forest Service has failed to complete adequate five year reviews of the LRMP as required by 36 C.F.R. §219.10 (g) and failed to implement relevant portions of its monitoring and evaluation plan.”* (NOA, Paragraph 61).

The Hiawatha National Forest has completed Monitoring and Evaluation Reports for 1991, 1992, 1993, 1994, 1995, 1996, 1997/1998 and 2000 (Project File, Folder 5, Tab N, N-30). The Appellants give no specific instances of what relevant portions of the monitoring and evaluation reports have not been implemented so this claim cannot be addressed. Overall, it is clear the Forest Plan is viable and does not expire as Appellants contend. The schedule for Forest Plan revision in no way affects the applicability of the existing Forest Plan. I find the Forest is acting in good faith to expeditiously revise the current Forest Plan.

Recommendation

After reviewing the Project Record for the Bay Timber Sale and considering each issue raised by the Appellants, I recommend that District Ranger Teresa Chase's Decision Notice signed on December 5, 2003, be affirmed.

/s/John J. Serfass
JOHN J. SERFASS
Appeal Reviewing Officer

cc: Thomas J Eiseman, Patricia R Rowell