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File Code: 1570-1
Date: February 4, 2004

CERTIFIED RECEIPT REQUESTED

Mr. Mark Donhan, et al
Heartwood
Box 308, RR 1
Brookport, IL 62910

RE: Appeal of the Decision Notice and Finding of No Significant Impact for the Prospector Vegetation Management Project Environmental Assessment, Watersmeet Ranger District, Ottawa National Forest, Appeal 04-09-0009 A215

Dear Appellants:

Pursuant to 36 CFR 215.18, I have reviewed the appeal record for District Ranger Tracy Tophooven's Decision Notice and Finding of No Significant Impact for the Prospector Vegetation Management Project Environmental Assessment, signed on October 28, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) District Ranger Tracy B. Beck regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Tracy Tophooven, and the issues raised in your appeal filed on December 12, 2003. The Appeal Reviewing Officer's recommendation is enclosed with this decision for your information.

SUMMARY

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 Tracy Tophooven's Decision Notice for the Prospector Vegetation Management Environmental Assessment, Watersmeet Ranger District, Ottawa National Forest. Pursuant to 36 CFR 215.18(c) this decision constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Robert Lueckel
ROBERT LUECKEL
Appeal Deciding Officer

cc: Robert Lueckel, Karen E Dunlap, Tracy Tophooen, Tracy B Beck, Mark Donham
NEPA Coordinator, Karen Dunlap
Responsible Official, Tracy Tophooven
ARO, District Ranger, Tracy B. Beck

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File Code: 1570-1 **Date:** February 3, 2004
Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact for the Prospector Vegetation Management Project Environmental Assessment, Watersmeet Ranger District, Ottawa National Forest, Appeal 04-09-0009 A215 (ARO)

To: Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Heartwood, Mark Donham, Representative, Northwoods Wilderness Recovery, Douglas Cornett, Representative, and Mr. Frank Jeff Verito, for the Decision Notice and Finding of No Significant Impact of the Prospector Vegetation Management Project Environmental Assessment on the Watersmeet Ranger District, Ottawa National Forest. District Ranger Tracy Tophooven was the Responsible Official for this decision. Her Decision Notice was signed on October 28, 2003.

My review was conducted pursuant to 36 CFR 215 (as amended June 4, 2003). 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 Ottawa National Forest. My review recommendation is based upon review of the Project File and Appeal Record, including but not limited to the scoping letter, public comments, Decision Notice and Finding of No Significant Impact (DN/FONSI) and the Environmental Assessment (EA).

The Appellants raised 12 issues in this appeal of the Prospector Vegetative Management Project decision. These appeal points will be addressed in the order in which they were presented in the appeal and have been subdivided to address specific points.

Issue 1: Violation of the Ottawa Forest Plan and Environmental Impact Statement ("EIS") From Overcutting Northern Hardwoods

- *The Appellants contend that the Ottawa has significantly exceeded the acreage of northern hardwoods logging projected in the Forest Plan during the first decade of implementation. The Appellants contend that this makes the Decision Notice and Finding of No Significant Impact ("FONSI") flawed because they fail to acknowledge that the proposed sale does not comply with the 1986 Forest Plan.*

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- *The Appellants contend that nothing in the EA/DN documents how the Forest Service can insure that it is cutting at sustainable levels pursuant to Multiple Use Sustained Yield Act.*

Response: The District addressed most of these appeal points in the Interdisciplinary Team's ("IDT") response to comments that was made available to the Appellants (Administrative Record

(AR), Tab F1, 9-12). The IDT thoroughly addressed all comments brought forward by the Appellants during the 30-day review period of the EA.

The Interdisciplinary Team conducted supplementary analysis to the project file for the Prospector Vegetative Management Project (AR, Tab D244, 2330-2336). This document displays Forest Plan projections for selection harvest in Management Area 2.1 ("MA 2.1"); total acres sold to date of selection harvest in MA 2.1, and estimated selection harvest acres in MA 2.1 through 2004. This analysis determined the Forest would implement selection harvest on 75,500 acres in MA 2.1 over a 20-year period according to the Forest Plan (IV-115, Table 2.1b). Actual 20-year projections documented are 74,401 acres, well within Forest Plan projections over a 20-year implementation period.

The Prospector Decision Notice ("DN") addressed Forest Plan consistency related to selection harvest in MA 2.1 (DN, Page 21, Paragraphs 2-4). This discussion is in the rationale for decision section where the District Ranger considered MA 2.1 management direction (Forest Plan, IV-112), analysis conducted in the 2001 Monitoring and Evaluation ("M&E") Report (revised, June 2003), and the project file to determine the Prospector Decision is consistent with Forest Plan 20-year projections for acres harvested and environmental effects.

- *The Appellants contend that any purpose and need statement concerning MA 2.1 is invalid because the Forest Service has failed to supplement the Plan with an EIS concerning excessive selection harvest of the first decade.*
- *The Appellants contend that nothing in the Environmental Assessment/DN/FONSI documents any cumulative impact analysis of how the excessive selection harvest in the first decade of the Plan, that was supposed to average 2800 acres, affects the proposed logging in the second decade.*
- *The Appellants contend that nothing in the EA documents any indirect analysis of how the excessive selection harvest in the first decade of the Plan affects the second decade.*

The 2001 Monitoring and Evaluation Report (revised, June 2003) evaluated the effects of selection cutting both forest-wide and in MA 2.1 and determined few negative effects to forest resources from implementation of the Forest Plan. This report includes the period where "excessive" selection harvest occurred. Some examples of the determinations made are the following:

> For wildlife, the M & E Report determined that the Forest was meeting its habitat goals for all species on a forest-wide basis. (Pages 21-45).
>
> For soil and water on a forest-wide basis, the Report concluded that "[T]he Ottawa continues to meet the above stated goals of minimizing detrimental soil disturbance and erosion and designing management activities to minimize impacts on water quality and other riparian values." (Page 92).
>
> For wildlife in MA 2.1, the Report only noted concern for one species in the management area, specifically, the red-shouldered hawk. For that species, the Report stated that

"unevenaged management in the largest MA(MA 2.1) is very compatible with red-shouldered hawks if nest sites are protected." (Page 110).

In summary, the effects of the "increased" level of selection harvesting have been evaluated and analyzed in the M & E Report.

The EA also evaluated the cumulative effects of the selected action for the Prospector Vegetative Management Project. Annual acres harvested by the selection harvest method since 1986 within the cumulative effects analysis area were analyzed (EA, Page 3-24, Table 3-2). There were a number of beneficial effects documented in the EA related to selection harvest and/or the selected alternative (EA, Pages 3-26, 3-27, 3-49, 3-61, 3-91, 3-70, 3-81 to 3-83). Specifically, the selected alternative would have no effect on any Federally listed species, and would not lead to loss of viability of any Regional Forester Sensitive Species (EA, Pages 3-73, 3-81 to 3-83). The fragmentation analysis concluded that, "it is extremely unlikely that there would be negative impacts of fragmentation…" under any of the alternatives (EA, Pages 3-75, 3-76). The EA further states, "Selection cutting and thinning … would generally have a positive effect by hastening other natural processes." (EA, Page 3-79).

The ONF is currently in Forest Plan revision. The Notice of Intent to revise their plan was published in the Federal Register (9/18/03). The projected timeline for completion of the Final Environmental Impact Statement, Forest Plan, and Record of Decision is March 2006. The Forest will revisit the level of harvest for all cutting methods during the revision process.

In summary, I find the District Ranger had all the necessary information available to make an informed decision. The EA reflects that the Forest is within the 20-year selection harvest limits in MA2.1. The 2001 M&E Report (revised, June 2003) clearly documents the effects of selection harvest on a forest-wide and a MA 2.1 basis. The EA documents that the cumulative effects from the project are insignificant.

Issue 2: The FONSI is Arbitrary and Capricious.

The Appellants contend the project "invokes" criteria established in 40 CFR 1508.27 that deal with the determination of significance, and thus it is inappropriate to make a FONSI, and an EIS is required. Specifically, the Appellants refer to criteria 1, 3, 7 and 10, under Intensity, within the definition of significantly. Their specific contentions are:

- *The ONF cannot issue a FONSI for all the negative effects while extolling the benefits of the project (criteria 1).*

- *The DN authorizes actions in proximity of a unique characteristic (the Paint River Wild and Scenic River Corridor – criteria 3).*

- *There are significant cumulative effects, particularly from habitat fragmentation (criteria 7).*

- *There has been a violation of law or requirements, based on a 6th Circuit ruling on the Rolling Thunder project on the Ottawa National Forest (criteria 10).*

Response: All 10 criteria from 40 C.F.R. 1508.27(b) were considered in making this decision and issuing the Finding of No Significant Effect (DN/FONSI, Page 43). The four elements of this appeal issue were addressed in making the finding, and the Deciding Official refers to the analysis in the EA to support her conclusions.

- The DN and FONSI take into consideration both negative and beneficial effects, as well as cumulative effects of historic, current and future management activities, as displayed throughout Chapter 3 of the EA, to conclude the effects are not significant.

- Proposed vegetation management and in-stream projects in the Paint Wild and Scenic River have been excluded from the decision (DN/FONSI, Pages 31 and 42).

- Cumulative effects analyses were done in each of the resource sections of the EA, and specifically in a Fragmentation section (EA, Pages 3-75 to 3-79) and are referenced in support of the FONSI.

- The documentation in the EA and BE, along with the supporting project files (administrative record) allowed the Deciding Official to conclude this project was consistent with Forest Plan direction (DN/FONSI Page 38). This documentation constitutes the statutorily-mandated analysis sought by the 6th Circuit Court of Appeals in their ruling on the Rolling Thunder project.

Issue 3: The DN/FONSI resulted in an Alternative Never Presented to the Public, which constitutes a violation of the National Environmental Policy Act ("NEPA").

Response: NEPA does not require agencies to obtain iterative public review of alternatives or effects analysis, once the Deciding Official has gone through the public scoping process and addressed the relevant issues brought up by the public during the scoping period. Extensive public involvement occurred during formulation of this project (AR Vol. 1, Book 2, Tabs 90 and 91). Issues gleaned from that involvement affected both alternative formulation and the analysis of effects. The Appellants' comments during scoping resulted in modification of the proposed action to develop alternatives, and increased the level of analyses. Input from the public led the Deciding Official to select parts of each of the three action alternatives to best address public concerns, while meeting the purpose and need for the project. Because the analysis for each of the three action alternatives was succinct and thorough, combining portions of these alternatives was within the range of alternatives and analysis. The selected actions chosen in the decision were based on public input. Therefore, there was no need to issue this combined alternative for more public scrutiny prior to the decision.

Issue 4. Viability Requirements and Monitoring of Management Indicator Species ("MIS"), Sensitive, and Threatened and Endangered ("T&E) Species.

The Appellants state that actions presented may lead to the "listing" of certain species; that the Prospector Vegetative Management Project does not abide by agency requirements in regard to species habitat viability; that the EA is totally devoid of any credible information regarding populations of MIS and did not disclose information to the public prior to making decisions.

Response: The Prospector Vegetative Management Project Environmental Assessment (Pages 1-2) is tiered to the Ottawa Forest Plan (1986). The Forest Plan (Pages IV-36 to IV-40), Appendix I (pp. I-2 through I-12) and associated Final Environmental Impact Statement, identifies the (13) Management Indicator Species for the Ottawa National Forest. The Ottawa National Forest collects data, on the basis outlined in the Forest Plan, on the thirteen (13) MIS species and periodically presents the results in Monitoring and Evaluation Reports. The Ottawa National Forest 1997-1998 M&E Report (Pages 4, 23-44), 1987-1996 M&E Report, First Decade and Beyond (Pages 4, 24-42) and most recently the 2001 M&E Report, with 2003 revisions (Pages 14-45), all specifically discuss the monitoring and evaluation program for MIS and threatened, endangered, and sensitive species. The specific accusation that this project may lead to the "listing" of certain species is invalid and nullified by the statement "…not expected to cause a trend toward federal listing or loss of viability for these species" (EA, Page 3-73).

In addition, Appendix C of the EA and the Biological Evaluation ("BE") (Administrative Record Vol. 1, Book 8, Tab E12, Pages 232-341; Appendix H) discuss and analyze the identification of habitat and the likelihood of species occurrence, including Federally Listed (TES), MIS, and Regional Forester Sensitive Species ("RFSS") occurrence within the project area. Both documents indicate that neither the proposed action, nor any of the alternatives are expected to affect population viability of any Ottawa National Forest MIS or any listed or sensitive species (BE, Page 335; EA, Page 3-73 and Appendix C). Likewise, this decision "would have no effects on any Federally-listed animals" and is also not expected to cause a trend toward federal listing or loss of viability for any Regional Forester Sensitive species" (Administrative Record Vol. 1, Book 8, Tab E12, Page 335).

Finally, the proposed project has had the appropriate level of public involvement, including information distribution during the initial scoping period, the 30-day comment period on the pre-decisional EA, and at other times during the process as evidenced by letters and responses in the Administrative Record (Decision Notice /Finding of No Significant Impact, Page 18).

Based on my review of all project documents, I find that the Decision Notice issued on the Prospector Vegetation Management Project is consistent with agency requirements for identifying and managing species habitat viability and adequately implements the forest-wide MIS program. I also find that there was open disclosure of information to the public during the NEPA process prior to making the decision.

Issue 5. The EA's Failure to Survey American Bittern Habitat is a Violation of NEPA and National Forest Management Act.

The Appellants state that there is wetland habitat for the species scattered throughout the Prospector Project Area, population data shows a declining population across its range, and that activities proposed may affect behavioral aspects including nesting of the species.

Response: The American Bittern is a MIS for the Ottawa National Forest and was discussed and analyzed in the Prospector Vegetation Management Project EA (Pages C-4 through C-5; Appendix C). In the EA for this project area, it is noted that although there is potential suitable habitat in the project area, Table C-1 concludes no effects on this species for any alternative considered for this project area. Furthermore, no proposed activity will alter wetland function and any activities will have little effect overall aquatically (Hydrologist's Specialist Report, Administrative Record Vol. 1, Book 5, Tab D129, Pages 1077-1106).

In regard to population data, it is noted that American bittern population monitoring, and, therefore, habitat monitoring, is conducted on the Forest through four (4) methods: U.S. Fish and Wildlife Service Breeding Bird Counts (BBC), in association with grouse surveys, incidental observations, and via three (3) permanent survey transects, specifically established for the American Bittern in 2002, which traverse the Forest. Although the American Bittern may appear to be declining across its range as depicted by BBC data, all means, including Breeding Bird Census and Breeding Bird Survey data from the Forest, indicate stable local populations within the project area (2001 M&E Report, Revised June 2003; Administrative Record Vol. 1, Book 8, Tab E12, Page 132).

In regard to behavioral modification, the Appellants cite examples through personal communications with an ornithologist pertaining to an example located in the northeast United States. This said individual did not work on the Prospector Project area leading me to believe that these observations are generalized and may not be relevant to the project area in Michigan.

Therefore, I conclude that the collections of survey information and mitigation measures in the Decision Notice issued on the Prospector Vegetation Management Project are consistent with directions set forth in agency guidelines. Therefore, I agree with the conclusions reached in the analysis which are displayed in the documentation.

Issue 6. Cumulative Effects of Over-cutting Aspen and Northern Hardwoods is Threatening The Viability of Goshawk and Other Species.

The Appellants contend that the EA does not: describe the existing environment in detail; reference certain publications; address the effects of increased deer and fisher populations or address the effects on the Sharp-shinned or Cooper's hawk. The Appellants also state: that the cumulative impacts of accelerated aspen and hardwood harvest on goshawk is "significant" under 40 CFR 1508.27(b)(7), that the habitat modifications do not comply with 36 CFR 219.19; failure to provide agency direction regarding standards and guidelines for managing the goshawk in the Forest Plan.

Response: The Ottawa National Forest recognizes the northern goshawk as a RFSS and a MIS. This species was present in the project area from May to July of 2002 when nests were located in Compartment 75, Stand 6 and Compartment 85, Stand 28.

Existing environment, therefore, general habitat conditions and associated effects of activities were discussed in the EA (Pages 3-74 through 3-79) while detailed habitat conditions, both current and desirable, for the northern goshawk were also discussed and analyzed (Pages C-7

through C-9; Appendix C). In addition, the project BE (Administrative Record Vol. 1, Book 8, Tab E12, Page 289-290) examines existing and potential habitats for the northern goshawk among other species. Table C-1 of the EA not only concludes no effect on this species relevant to any alternative considered for this project area; it indicates a positive effect associated with Alternatives B, C, and D. In addition, the EA, BE, and the 2001 Ottawa National Forest M&E Report indicate that 427,000 acres of suitable goshawk habitat exists on the Forest, well beyond the Forest Plan objective of 240,000 acres.

In regard to predation, the Appellants cite species productivity of 0.82 young per occupied breeding area which is much less than the 1.7 required to maintain a stable population. The EA cites numerous Ottawa National Forest Monitoring and Evaluation publications which address the fisher predation issue and do not deny that in northern Wisconsin and the Eastern UP fisher predation may be affecting northern goshawk populations regionally. It does, however, go on to mention that many outside factors may be influencing goshawk populations more than management direction. The BE also states that "overall risk to this species under this [proposed] alternative is low; there may be impacts to individual goshawks using the area, but this alternative is not expected to cause a trend toward federal listing or loss of viability of this species" (Administrative Record Vol. 1, Book 8, Tab E12, Page 330) or "for any Regional Forester Sensitive Species" (Administrative Record Vol. 1, Book 8, Tab E12, Page 335). The issue of deer overabundance is affected by a variety of factors including state hunting regulations and the severity of winters. Management of deer populations is beyond the scope of this project. Given that the agency is not required to address each and every species potentially found in the project area but usually does when it is deemed reasonable and relevant in the context of the project and situation; concerns regarding the Sharp-shinned and Cooper's hawk concerns are adequately addressed in the project BE (Administrative Record Vol. 1, Book 8, Tab E12, Appendix H).

Although the EA for this project area does not mention certain sources noted by the Appellants (Beier and Drennan, Mannan and Meslow); these studies relate to the American Southwest and the Pacific Northwest respectively, and may not be relevant to the project area in Michigan. In addition, numerous other references of professionally peered publications have been cited which may be more relevant to the project area (Administrative Record Vol. 2).

The Appellants' concern that harvest is significant under 40 CFR 1508.27(b) (7) is not valid since as stated in the DN/FONSI (Page 42), "Provisions of 40 CFR 1508.27(b)" were considered and evaluated. Furthermore, any "actions to be implemented under this decision do not threaten a violation of federal, state, or local environmental protection laws. Project design criteria listed in Appendix C of [this] Decision Notice will assure compliance with these laws" (Page 44). Design Criteria Common to All Action Alternatives takes into account and includes reference to specific methods preferred for the monitoring of goshawks on the Ottawa National Forest (Administrative Record Vol. 2, Book 4, Tab A210). This document defines the responsibilities to the species under the current Forest Plan direction; furthermore, this reference is not intended to change any goals, objectives or management direction in the Forest Plan.

Therefore, based on my review of all project documents, I find that the Decision Notice issued on the Prospector Vegetation Management Project is consistent with agency requirements, did

consider the relevant factors related to this and other species, and did adequately address concerns of goshawk protection and viability.

Issue # 7 The Project will adversely Affect the Red-Shouldered Hawk and threaten its Viability.

The Appellants allege that red-shouldered hawk habitat is present and that activities presented could open habitats to competition by red-tailed hawks and that the failure to collect and maintain baseline data violates the Forest Plan and NFMA.

Response: The BE (Administrative Record Vol. 1, Book 8, Tab E12, p. 290) indicates that the red-shouldered hawk has not been documented in the project area and that potential habitat is present. Specifics regarding species viability and vegetative treatments taken from the BE include:

- areas of clearcutting may serve as foraging openings for red-shouldered hawks for up to two years (Administrative Record Vol. 1, Book 8, Tab E12, Page 291)
- "riparian areas and wet inclusions within managed stands would be marked and buffered (EA, Pages 2-4), thus retaining perch trees and canopy cover in portions of harvest units, creating ideal foraging habitat for red-shouldered hawks" (Administrative Record Vol. 1, Book 8, Tab E12, Page 291)
- "old growth classification would provide for long-term development of high quality nesting and foraging habitat for goshawks and red-shouldered hawks" (Administrative Record Vol. 1, Book 8, Tab E12, Page 292) and resulting conditions would sustain "… hardwoods intermingled with patches of uneven-aged conifers, alder and other lowland brush, and riparian habitats (ideal for goshawks and red-shouldered hawks)" (Administrative Record Vol. 1, Book 8, Tab E12, Page 292).

In summary, under any alternative, the consequences of impact would be low because there would be minimal impacts on nesting or prey habitat and impacts to suitable nesting habitat would be neutral or beneficial (Administrative Record Vol. 1, Book 8, Tab E12, Page 330). Foraging habitat would not be affected (Administrative Record Vol. 1, Book 8, Tab E12, p. 330). In specific response to competition by red-tailed hawks; the literature referenced by the Appellants deals specifically with "woodlots" in an agricultural landscape and not to forest ecosystems, nor does the appellant provide reference to this documentation or the documentation itself during the comment process. The fragmentation analysis in the EA (Page 3-75) also addresses this issue.

In addition, Appendix C of the EA and the BE (Administrative Record Vol. 1, Book 8, Tab E12, Pages 232-341; Appendix H) discuss and analyze the identification of habitat and the likelihood of species, including Federally Listed (T&E), MIS, and RFSS occurrence within the project area. Both documents indicate that neither the proposed action, nor any of the alternatives are expected to affect population viability of any Ottawa National Forest indicator species or any listed or sensitive species (Administrative Record Vol. 1, Book 8, Tab E12, Page 335; EA, Page 3-73 and Appendix C). Likewise, this decision "would have no effects on any Federally-listed animals" and is also not expected to cause a trend toward federal listing or loss of viability for

any Regional Forester Sensitive Species" (Administrative Record Vol. 1, Book 8, Tab E12, Page 335).

Regarding the collection of baseline data; the project area was specifically surveyed for red-shouldered hawks from May to July of 2002 (Administrative Record Vol. 1, Book 8, Tab E12, Page 289). Correspondingly, "Protocol for Goshawk and Red-Shouldered Hawk Surveys in Timber Sales" is referenced in the Administrative Record (Administrative Record Vol. 1, Book 3, Tab D30, Page 196). Additionally, Timber Sale Contract Provision (WO-CT6.25#) accounts for site-specific measures regarding TES. The BE (Administrative Record Vol. 1, Book 8, Tab E12, Page 290), expounds and points out that "many thousands of acres were surveyed for red-shouldered hawks" from 2000-2002 with only two positive responses obtained (east of Frost Junction, Houghton County and in the Narrows project area). Actual nests were not located in either instance. The Design Criteria found in the DN (Page C-4) includes reference to standard protocol set forth for surveying and monitoring "other raptor species designated as Threatened, Endangered or Sensitive Species", which includes the red-shouldered hawk. Should red-shouldered hawks be found within the project area during implementation, design criteria would apply.

I agree with the conclusion that the Decision Notice issued on the Prospector Vegetation Management Project will not adversely affect the red-shouldered hawk or its viability, nor has data collection for this species been compromised.

Issue # 8 The EA's Consideration of the Effects on Wood Turtle is Inadequate.

The Appellants state that the wood turtle is not addressed adequately in the EA and activities could negatively impact the species.

Response: The wood turtle is a RFSS for the Eastern Region, but is not an Ottawa National Forest MIS. While the concern for wood turtles is recognized, it is noted that the Appellants did not mention a concern for this species in the predecisional comments.

The EA recognizes that the BE analyzed impacts of each alternative on Threatened, Endangered…and those species currently included on the RFSS, such as the wood turtle. The BE (Administrative Record Vol. 1, Book 8, Tab E12, Page 296) states, "potential impacts to wood turtles from all action alternatives…would only affect a very small portion of the suitable habitat in the project area. Cumulative effects would be reduced over time, and though they may affect individuals, they are not expected to result in a long-term decline of the local population". It goes on to state that under any alternative the consequences of impacts are low because habitat would continue to be available on the Forest and in the project area (Administrative Record Vol. 1, Book 8, Tab E12, Page 331) more specifically, "none of the harvest treatments are expected to have direct effects on habitat suitability or quality because none of the wetlands would be manipulated via treatments" (Administrative Record Vol. 1, Book 8, Tab E12, Page 294)

Even though no species specific surveys have been conducted; the BE states that the wood turtle has been frequently observed throughout the Forest, and the Forest remains one of the few secure areas for this species. This document goes on to state that suitable breeding habitat does occur

throughout the project area in various sized stands (Administrative Record Vol. 1, Book 8, Tab E12, Page 294).

The EA is tiered to the Forest Plan. (EA, Page 1-1). In the MIS Evaluation of the FEIS for the Forest Plan (Appendix I, Pages 1-12), the wood turtle is included in a guild represented by the brook trout. The brook trout is included as a MIS in the EA, and all possible alternatives would have a positive impact on brook trout habitat, consequently wood turtle habitat (EA, Page C-12).

In regard to the Appellants' claim that by facilitating the use of stream crossings and cross country travel, there will be increased ORV and ATV use; this is thoroughly addressed in the hydrologist's specialist report (Administrative Record Vol. 1, Book 5, Tab D129, Pages 1077-1106) where it is stated that no proposed activity will alter wetland function nor will any activities have a major overall effect aquatically.

In addition to the above listed facts, in the EA (Page 3-73), it is determined that none of the alternatives would affect this species. I find that in my review that the wood turtle was adequately addressed in the analysis for the Decision Notice issued on the Prospector Vegetation Management Project.

Issue # 9 The Effects of Forest Fragmentation of Forest Interior Birds is inadequately Addressed.

The Appellants express concern over long-term population declines resulting from decreased nesting success due to increased parasitism, predation and habitat alteration and contend that: surveys methods and cumulative effects are inadequate, and actions are not in accordance with the Forest Plan.

Response: The effect of habitat fragmentation is discussed in detail on Page 3-75 of the EA. In regard to population declines resulting from parasitism and predation; while some studies indicate increased nest predation and/or parasitism near openings created by timber harvest, other studies have discounted this resulting activity. Wildlife species composition in the area, including predators and parasites, is equivalent to natural forest systems and predation rates are expected to be at or near natural levels (EA, Page 3-75, Ottawa National Forest M&E reports).

Documentation indicating locations of permanent "wildlife" openings can be found in Appendix A, Map K of the EA indicating 12 openings at approximately 4 acres per site. Additional documentation is provided ensuring that creation of these openings will not result in landscape modification with no connecting areas of mature forested habitats, therefore not compounding the effects of fragmentation. The vast majority of treatments proposed in the three (3) action alternatives would only remove a small portion of the existing trees and leave a crown canopy closure after treatment of approximately 90% or greater (EA, Page 3-75). Ottawa National Forest M&E reports indicate that precautions will be taken to protect areas providing "linkages connectivity to large habitat patches and maintaining a more continuous forest canopy" (1987-1996 M&E Report, Page 18).

During field reviews conducted by an interdisciplinary team to determine actions taken to move the area towards the desired future condition described in the Forest Plan, they addressed the need to "maintain and enhance wildlife habitat conditions to support a diverse mix of game and non-game wildlife species" which includes the creation of permanent openings (EA, p. 1-4). Creation of the proposed 53 acres of permanent forest openings will benefit wildlife species that utilize early successional habitats (EA, Page 3-71)

Survey methods concerning interior forest bird species appear to be adequately addressed throughout Ottawa National Forest M&E reports, in addition to species specific surveys noted in the project record.

The Appellants' claim that the EA does not provide specific information regarding the location of clearcutting is invalid since maps showing vegetative treatments can be found in Appendix A of the EA. Likewise, a record of past and present logging is documented in the project record (Administrative Record Vol. 1, Book 6, Tab D208; Administrative Record Vol. 1, Book 7, Tabs 238, 239, 240, 244).

I conclude that documentation provided adequately addresses any issues the Appellants may have in regard to habitat fragmentation and find the effects analysis to be sufficient and accurate for the actions proposed in the Decision Notice issued on the Prospector Vegetation Management Project.

Issue 10: Mitigation measures have inadequate support in the record. *The Appellants contend there is only general and vague information in the EA as to the site-specific application and effectiveness of prescribed soil and water protection measures.*

Response: The Project File and Appendix B of the EA discuss design criteria and standard practices common to all actions in this decision. There is detailed evidence in the Project File (Administrative Record) that the design criteria to protect soil and aquatic resources, which are attached to the management activities by this decision (EA Appendix B), are well-tested locally and have been monitored for effectiveness at various times, and by several agencies (Soil Specialist Report, AR Vol. 1, Book 6, Tab 179).

The handbooks, which contain direction on application and effectiveness of these measures, are referenced in the specialist report, as well as the names of projects on the Ottawa National Forest where these measures have been tested. Appendix B (Table B12) details the aerial extent of particular riparian protection measures, to be applied dependent upon the specific situation found on the ground. Protection measures within the soils specialist report have been successfully employed on similar past vegetative management activities on the Ottawa National Forest, and have been shown through monitoring of these local projects to be effective (Forest Monitoring and Evaluation reports).

The scientific studies and published conclusions referenced by Appellants under this issue were not previously brought to the attention of the Deciding Official during the comment periods, although Mr. Cornett, in his comments on the EA, mentions providing "numerous citations of scientific information in the past" to the ONF (Vol. 1, Book 8, Tab 46). It is unreasonable to

expect the EA to include this specific information, nor to expect the Deciding Official to take a "hard look" at information that was not provided in a timely manner.

Issue 11: To Undertake the Prospector Project When the Ottawa Plan is Expiring and FEIS Outdated is not in compliance with applicable laws and is arbitrary and capricious.

- *The Appellants contend that the Ottawa Plan expired last year. Thus, there is no legally adequate RPA program or LRMP to which the Prospector project can be tiered. Until the Forest Service develops a new RPA Program and does an updated assessment and new LRMP for the Ottawa, implementation of individual actions, including Prospector Project must be suspended.*
- *The Appellants contend that the suspension of the Prospector Project is necessary because the goals, objectives, standards and guidelines contained in the 1986 LRMP are no longer relevant or defensible in light of changed resource demands by the public, significantly changed environmental and economic conditions, and significant changes in Forest Service management direction.*

Response: 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. 1604(f)(5). The current Ottawa National Forest Plan was approved in 1986.

The Appellants argue the Prospector Decision should not be implemented until the Forest Plan revision is complete. They also argue that the Prospector Decision cannot be implemented until the Forest Service develops a new RPA program. Taken to its logical conclusion, the Appellants' argument would halt management and resource protection activities on the Forest pending completion of updated planning documents. 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 or produce a new RPA program.

In addition, Congress stated in the Department of the Interior and Related Agencies Appropriations Act (2004)(P.L. 108-108):

> "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."

It also stated that no appropriations shall be expended to complete the RPA program.[1] Thus, the law does not require the Forest Service to halt management activities pending completion of Forest Plans and the RPA program.

The Appellants provide no evidence that the standards and guidelines and other information used in the development of the Prospector decision fail to protect forest resources. The FEIS, 2001 M&E Report (revised, June 2003) and use of Michigan Forestry Best Management Practices (BMPs) demonstrate the standards and guidelines used in project development are effective in providing resource protection and mitigating potential adverse environmental effects. The Appellants present no evidence the existing plan direction used in the development of this project was inadequate. The Prospector VMP has tiered to the 1986 Forest Plan, but does not solely rely on that document for the Prospector effects analysis (Chapter 3 of EA, Administrative Record).

The 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.

Issue 12: Violation of the National Wild and Scenic River Act From Logging in the Wild and Scenic River Watershed.

The Aappellants contend there are logging and other activities within and adjacent to the Paint Wild and Scenic River segments, that will affect the outstandingly remarkable values for the river. The contention is that this project does not enhance and protect these values, which is a violation of the Wild and Scenic River Act ("WSRA"). Appellants also contend the Deciding Official failed to cooperate with EPA and other agencies as required under the WSRA.

Response: Early within the process period, the Deciding Official recognized there were public concerns about management activities in the Paint Wild and Scenic River. Purpose and Need statements in the EA recognize work needed to enhance the outstanding resource values in the Paint River. The discussion of Issues (Issue #4, EA, Page 1-15) is keyed into maintaining and enhancing the outstanding resource values for this river system, and Alternative D was developed to address this significant issue (EA, Page 2-8). The analysis of effects, found in the Aquatic/Riparian, and Wild and Scenic River portions of Chapter 3 of the EA, as well as the WSRA Section 7(a) documentation in Appendix D of the EA, took into account effects at the 6th scale of watersheds, thus including all tributaries to the Paint River that potentially could influence the wild and scenic river corridor or waters. All of this led the Deciding Official into selecting **against** timber harvest actions within the wild and scenic river and its designated corridor (DN/FONSI, Pages 16 and 31). The conclusions in Chapter 3 – that "the water quality, free-flowing condition, and outstandingly remarkable values for each river would not be diminished", are forwarded into the decision for this project.

The intent of the Wild and Scenic Rivers Act, Section 1(b) is to protect the water quality of rivers. The Act specifies that the river-administering agencies cooperate with EPA and state

[1] This was due to the fact that the Government Performance and Results Act requires strategic plans and performance measures which should provide the public with sufficient information formerly provided in the RPA program.

water pollution agencies to eliminate or diminish water pollution (Section 12(c)). The EPA administers activities primarily under the Clean Water Act (CWA) and Safe Drinking Water Act, for wild and scenic rivers. The water quality standard requires compliance with the Clean Water Act, or non-degradation of existing quality, whichever is more protective. Implementation of the CWA programs for Wild and Scenic River administration has been delegated to state agencies and tribal governments, in this case to the Michigan Department of Environmental Quality (MDEQ). The primary implementation mechanism is the state Section 319 (CWA) non-point source management program for those entities engaged in agriculture and forestry practices. In this instance, the MDEQ has developed forestry Best Management Practices that are being applied, as designed, to the Prospector VMP. Interagency cooperation occurs at a programmatic level. It is not necessary to mention this cooperation specifically at the project level in the EA.

After reviewing the project file for the Prospector Project and considering each issue raised by the Appellants, I recommend that District Ranger Tracy Tophooven's Decision Notice of October 28, 2003 be affirmed.

/s/ Tracy B. Beck
Appeal Reviewing Officer

cc: Robert Lueckel, Tracy Tophooven, Karen E Dunlap