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File Code: 1570-1

Date: February 17, 2004

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 Deadstream McLellan Vegetation Management Project Environmental Assessment, Kenton Ranger District, Ottawa National Forest, Appeal 04-09-0012 A215

Dear Appellants:

Pursuant to 36 CFR 215.18, I have reviewed the appeal record for District Ranger Ralph E. Miller's Decision Notice and Finding of No Significant Impact signed on November 21, 2003. I have also considered the recommendation of the Appeal Reviewing Officer (ARO) Jenny Farenbaugh, regarding the disposition of your appeal. The Appeal Reviewing Officer's review focused on the decision documentation developed by the Responsible Official, District Ranger Ralph Miller, and the issues raised in your appeal filed on January 5, 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. She 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, she 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 Ralph Miller's Decision Notice and Finding of No Significant Impact for the Deadstream McLellan Vegetation Management Project Environmental Assessment, 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
Forest Supervisor

cc: Robert Lueckel, Ralph E Miller, Jenny Farenbaugh, Karen E Dunlap, Marlanea L French-Pombier, Lee Breth



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File Code: 1570-1

Date: February 11, 2004

Route To:

Subject: Appeal of the Decision Notice and Finding of No Significant Impact and Environmental Assessment for the Deadstream McLellan Vegetation Management Project, Kenton Ranger District, Ottawa NF, Appeal 04-09-0012 A215 (ARO)

To: Appeal Deciding Officer

This letter constitutes my recommendation for the subject appeal filed by Mark Donham representing Heartwood, Douglas Cornett representing Northwoods Wilderness Recovery and Frank J. Verito, on the Decision Notice and Finding of No Significant Impact and Environmental Assessment for the Deadstream McLellan Vegetation Management Project on the Kenton Ranger District, Ottawa National Forest. District Ranger Ralph E. Miller was the Responsible Official for this decision. His Decision Notice was signed on November 21, 2003 and published November 24, 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 Ottawa 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, Environmental Assessment (EA), Decision Notice (DN) and Finding of No Significant Impact (FONSI).

The Appellants raised 12 issues in this appeal of the Deadstream McLellan Vegetative Management Project Decision. These appeal points will be addressed in the order presented in the appeal.

Appeal Issues

Issue 1: “*Violation of the Ottawa Forest Plan and EIS From Over Cutting Northern Hardwoods*” (NOA, p. 3).

The Appellants allege:

- “*The Deadstream/McClellan [McLellan] Decision Notice and Finding of No Significant Impact, both based on the scoping notice and environmental assessment, are fatally flawed because they fail to acknowledge that the proposed sale does not comply with the 1986 Land and Resource Management Plan...Nor does a couple of paragraphs added to the M&E Report satisfy NEPA’s requirement for an EIS, or the 6th Court of Appeals findings that the 1986 EIS must be supplemented.*” (NOA, p. 3).



- *“Nothing in the EA/DN/FONSI documents any cumulative impact analysis of how the excessive logging in the first decade of the plan was supposed to average 2800 acres affects the proposed logging of the second decade.”* (NOA, p. 3).
- *“Nothing in the EA/DN/FONSI documents any indirect impact analysis of how the excessive logging in the first decade of the plan affects the second decade.”* (NOA, p. 3).
- *“Nothing in the EA/DN/FONSI documents how you can ensure that you are cutting at sustainable levels pursuant to the Multiple Use-Sustained Yield Act,”* (NOA, p. 3).
- *“Any purpose and need statement concerning a 2.1 area is invalid because the Forest Service has failed to supplement the Plan with an EIS concerning logging of the first decade”* (NOA, p. 3).

Response: The Responsible Official clearly indicated in his decision (selection of “Modified Alternative C”) the project complies with the 1986 Ottawa National Forest (ONF) Land & Resource Management Plan (Forest Plan) as amended (DN, p. 15). Analysis provided in the Forest Plan EIS, the ONF 2001 Monitoring & Evaluation Report (Revised, 2003), and the site-specific Deadstream McLellan Vegetative Management Project (VMP) substantiates this determination.

The Appellate Court Opinion (Sixth Circuit), responding to the Rolling Thunder Project, stated, “The Forest Service never demonstrated, by citing to either the Plan or the Environmental Impact Statement, that the environmental impacts of the current level of selection logging ever was analyzed, ...” (p. 5). The ONF has provided the additional analysis required based on results of monitoring 15 years of site-specific project implementation documented in the M&E Report in conjunction with a post-Court Order project-specific study. The ONF determined that all resource effects from implementing site-specific projects associated with selection harvesting in Management Area (MA) 2.1 were within the predicted effects as provided in the Forest Plan EIS (DN, p. 12 & Appendix A, p. 4). Even with the amount of selection harvest proposed under the Modified C Alternative in this Deadstream McLellan Project, the cumulative totals of past and other planned projects are below the Forest Plan twenty-year projections for MA 2.1 (DN, p. 3). Based on analysis completed in 2003 (2001 M&E Report) and this project EA, it’s clear the level of selection harvest and projected harvest is consistent with Forest Plan direction in MA 2.1.

The Deadstream McLellan VMP EA is tiered to the Forest Plan EIS and subsequent monitoring reports (DN, p. 1). The 2001 M&E Report (Revised, 2003), in particular, was an important document used as a basis for effects disclosure throughout Chapter 3 of the EA (DN, Appendix A, pp. 4-6). The M&E Report acknowledges, “The acreage of selection cutting has continued at higher levels than estimated due to greater emphasis on uneven-aged management of hardwoods. This emphasis has been based on on-the-ground assessments of stand conditions during project planning activities”. It goes on to state, “The increase in selection harvest reflects a more rapid trend toward management of the hardwood type to reach the Desired Future Condition (DFC) in the Forest Plan [as prescribed for the second decade].” (p. 60). Additional selection cutting of hardwood stands to move MA 2.1 toward desired conditions is specifically identified as an existing need Forest-wide and within the Deadstream McLellan project area (M&E Report,

p. 107; EA, p. 3C-36). The amount of increased selection harvest Forest-wide is clearly supported through analysis conducted in the M&E Report and direction in the Forest Plan. The ONF, in this decision for Deadstream McLellan, acknowledges that selection harvest levels exceeded those planned for the first decade for MA 2.1 (DN, p. 3; 2001 M&E Report, p. 108). However, the Responsible Official has determined the ONF is below Forest-wide selection harvest levels planned for the second decade (DN, p. 3; EA, p. 3C-1; 2001 M&E Report, p. 60). As stated previously, even with the amount of selection harvest proposed under the Modified C Alternative, the cumulative totals of past and other planned projects are below the Forest Plan twenty-year projections for MA 2.1 (DN, p. 3). Based on the analysis completed in 2003 (2001 M&E Report) and this project EA, it is clear the level of selection harvest and projected harvest is consistent with Forest Plan management direction in MA 2.1.

The Deadstream McLellan VMP EA and supporting documents, in conjunction with the 2003 analysis (2001 M&E Report, Revised) provides the District Ranger with adequate information to determine the significance of effects, including those that are cumulative, from additional selection harvesting in MA 2.1 at the site-specific level. For example, implementation of the Forest Plan has provided adequate habitat requirements to either maintain or increase population trends for Forest MIS (M&E, pp. 21-45). This is further supported by the project site-specific analysis for species utilizing hardwood forest habitat such as goshawk and barred owl (EA, p. 3H-7). The M&E also concluded, "The total amount of acres harvested within the MA is close to plan projections." (p. 108). The report then states, "Providing a variety of vegetative conditions (through uneven-aged and even-aged management) will help maintain the diversity of NTMB [neo-tropical migratory bird] species within this MA." Further, "Uneven-aged management in the largest MA is very compatible with Red-shouldered Hawks" (pp. 109 and 110). This is supported by the site-specific analysis for the project (EA, p. 3H-6; BE, pp. 29-32). Thus the 2003 project and Forest-wide monitoring analysis of first and second decades together adequately disclosed the impacts on various resources.

Additionally, the M&E Report considered the combined impacts of the first and second decade harvesting and found the ONF is within acceptable parameters for effects upon soil and water resources anticipated by the Forest Plan (p. 92). This is further supported at the site-specific level in the EA (EA, pp. 3A-1 to 10; and 3F-1 to 20). The M&E Report also shows the ONF is only harvesting approximately 50 percent of net growth. It also disclosed that the long-term sustained yield capacity is approximately 2.4 times the current level of harvest (M&E, p. 50). This is consistent with findings at the site-specific level (EA, p. 3C- 31 & 32, and 48).

As required by NFMA, 16 U.S.C., Section 1604(f)(5), the ONF is preparing a Forest-wide EIS for 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 on the Forest Plan is March 2006. The Forest is revisiting the issue of harvest levels during the revision process.

In summary, it is clear the Responsible Official had all the necessary information to make a reasoned and informed decision for this project. The EA reflects the Forest is within the 20-year selection harvest limits. The 2003 analysis, documented in the M&E Report is thorough and

comprehensive. This Forest-wide analysis and EA documents no significant cumulative effects from this project.

Issue 2: “*FONSI is Arbitrary and Capricious*” (NOA, p. 4).

The Appellants claim, “... *There is no doubt that this [project] is a significant action, which should require an EIS. We therefore, challenge this Finding of No Significant impact as being arbitrary and capricious and not in compliance with NEPA*” (NOA, p. 5).

They further state:

- “*If the project has significant benefits, those should be subject to an EIS in combination with the negative impact [Significant Criteria 1, CEQ Regulations].*” (NOA, p. 4).
- “*These widespread actions, while not specifically in the corridor, are within the watershed and must invoke the criteria of the “proximity” to wild and scenic rivers [Significant Criteria 3].*” (NOA, p. 5).
- “*Past, present, and reasonably foreseeable future actions must be considered in a cumulative impact analysis [Significant Criteria 7].*” (NOA, p.5).
- “*The site specific effects of all of these must be considered.*” (NOA, p. 5).
- “*...This decision threatens a violation of NEPA because the FS is under court order to supplement its forest plan EIS regarding the impact of over cutting in MA 2.1 ... [Significant Criteria 10].*” (NOA, p. 5).

Response: The Responsible Official thoroughly considered all 10 factors under Intensity, within the definition of significance pursuant to 40 CFR 1508.27 (b) (DN, pp. 12-14).

The definition for Significance Criteria 1 is, “Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial” (40 CFR 1508.27(b)(1)). The DN and FONSI take into account both beneficial and adverse effects documented in Chapter 3 of the EA (DN, p. 12). Based on Forest Plan standards and guidelines, Best Management Practices, and design criteria applied to the selected alternative, the Responsible Official found all adverse impacts will be minimized with no significant adverse impacts anticipated (DN, pp. 2 & 14; EA, pp. 2-16 to 21).

The context of Significance Criteria 3 is specific to the “proximity” of the project area to segments of the East Branch of the Ontonagon River corridor designated as a Recreational River within the National Wild and Scenic River System. The DN and EA are clear there will be no adverse effects to the values of this resource (DN, p. 12 and 18; EA pp. 3F-1 to 20). Modified Alternative C was selected partly to address this concern by excluding all proposed vegetative management and in-stream projects from this corridor (DN, pp. 9 and 18) (See Issue 12).

The context of Significance Criteria 7 is specific to the cumulative effects of exceeding Forest Plan standards for harvesting in MA 2.1. The Appellants are referred to Issue 1 for further

discussion. Additionally, the cumulative effects associated with wildlife habitat fragmentation are specifically addressed in the site-specific project analysis (EA, pp. 3H-2 & 3, and 11). The DN concludes there are no significant cumulative effects associated with this project (DN, p. 13) based on the effects analysis provided for in the Chapter 3 of the EA (DN, pp. 12 & 13).

The context of Significance Criteria 10 is specific to a violation of NEPA because of an alleged violation of the Appellate Court ruling that renders the ONF Forest Plan invalid. The Court ruling portion of this appeal point is addressed in Issue 1. The DN finds the project is in compliance with all pertinent laws and regulations including NEPA and the National Wild and Scenic River Act (DN, pp. 15 to 18). Further, the EA addresses effects and various mitigations designed to minimize impacts to neo-tropical migratory birds in terms of fragmentation, corridors, biodiversity, old growth, riparian areas, snags, cavities and down woody debris (EA, pp. 2-17, 3H-2 to 6, and Appendix Section III-F).

After review of the EA and supporting documents, I concur with the Finding of No Significant Effect issued by the Responsible Official. His decision is not arbitrary and capricious.

Issue 3: *“The DN/FONSI Resulted in an Alternative Never Presented to the Public”* (NOA, p. 5).

The Appellants claim, *“All that the DN says is that it is a combination of four alternatives, but one has to carefully try to piece together what parts of each alternative connotes the decision. Even more difficult is trying to glean the environmental effects of this menagerie from the EA, which nowhere presents this particular combination of actions together.” “This violates NEPA.”* (NOA, p. 6).

Response: NEPA requires “... an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” (40 CFR 1501.7). The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, and explore alternatives and their probable environmental effects (FSH 1909.15, 11). The ONF followed this requirement in NEPA and used the results of scoping to develop a range of alternatives to address essential issues (Project Record, Vol. A, A-14; DN, p. 8; EA, pp. 2-2 to 2-16). More importantly, the ONF followed a process where the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a Land and Resource Management Plan prior to a decision by the Responsible Official (36 CFR 215). The Appellants received a copy of the EA, were informed that Alternative C was the preferred alternative, and were invited to provide comments (Project Record, Vol. A, A-145).

The description of Modified Alternative C is detailed in the DN (pp. 2-7). The rationale for changes from the original Alternative C is clearly documented. The changes were in direct response to public comments provided during the EA 30-day notice and comment period (DN, Appendix A). Specifically, harvest treatments were deferred on a total of 2,308 acres to address the concerns associated with cutting in MA’s 2.1, 4.1 and 4.2 (DN, pp. 3&4). Fisheries projects were also deferred within the designated Recreational River corridor of the East Branch of the

Ontonagon River because the Responsible Official believed a comprehensive river management plan was necessary before the implementation of any activities in that area (DN, pp. 9 & 18). All other treatments remain as described for Alternative C. No additional treatments from other alternatives were included in the Modified Alternative C.

I find the Responsible Official and IDT followed all pertinent laws, regulations and policy for public involvement associated with this project analysis. Further, all changes in the Modified Alternative C from the original Alternative C reflect a reduction in treatments in direct response to public input during the EA 30-day notice and comment period. These changes result in a reduction in adverse effects as disclosed in the EA for Alternative C and are clearly within the range of effects provided in that analysis (i.e., Alternative A – “No Action” Alternative). The only exception is the deferment of stand treatments for the reduction of fire hazards. These changed effects are also displayed in Alternative A (DN, p. 4).

Issue 4: “Viability Requirements and Monitoring of MIS, Sensitive, and T&E Species”
(NOA, p. 6).

The Appellants allege:

- The Forest Service failed to meet the requirements of 36 CFR 219. “*The EA is totally devoid of any credible information regarding populations of MIS in the Deadstream/McClellan [McLellan] area or anywhere in the Ottawa.*” (NOA, p. 7).
- “*Overcutting in MA 2.1 and other MA’s has now changed the appropriate mix of habitats as identified by the plan and EIS to the extent that it can no longer be relied on to provide for viability or MIS habitat.*” (NOA, p. 7).
- “*In addition, there is no clearly labeled viability analysis... This is a clear violation of NFMA.*” (NOA, p. 7).

Response: The Deadstream McLellan EA is tiered to the 1986 ONF Forest Plan (EA, p. 1-2). The Forest Plan (pp. IV-36 to IV-40), Appendix I (pp. I-2 to I-12), and associated Final Environmental Impact Statement, identifies the (13) Management Indicator Species (MIS) for the ONF. The ONF collects data (as outlined in the Forest Plan) on the thirteen (13) MIS species and periodically presents the results in Monitoring and Evaluation (hereafter, M&E) Reports. The ONF 1997-1998 M&E Report (pp. 4, 23-44), 1987-1996 M&E Report, First Decade and Beyond (pp. 4, 24-42) and most recently the 2001 M&E Report, with 2003 revisions (pp.14-45), all specifically discuss the monitoring and evaluation program for MIS and threatened, endangered, and sensitive species. The analysis of threatened, endangered and sensitive (TES) species conducted for this project concludes, “there is no indication that any alternative would move a TES species towards federal listing or increase its present federal listing.” (EA, p. 3H-6).

The Biological Evaluation (BE) conducted for this project analysis discusses and analyzes the identification of habitat and the likelihood of species, including Federally listed threatened and endangered species, and Regional Forester sensitive species (RFSS) occurrence within the project area. The determination found in the BE indicates the project would not affect population viability of any federally listed or sensitive species (BE, pp. 67 & 68, DN, p.18).

Included in this extensive analysis are the northern goshawk, timber wolf, red-shouldered hawk, and blunt-lobed grape fern specifically identified by the appellants as species not adequately analyzed for this project (BE, pp. 24-28, 15-20, 29-32, and 64 & 65).

The project analysis has extensive discussion of MIS in the EA and the supporting Wildlife Report including the direct, indirect and cumulative effects (EA, pp. 3H-7 to 9). No alternative threatens the viability of any wildlife species population, and at the cumulative effects scale would have little effect on population trends (EA, p. 3H-9 to 11).

Finally, the proposed project had the appropriate level of public involvement, including information distribution during the initial scoping period, and the 30-day notice/comment period for the EA (Project Record, Vol. A, A-14; Vol. A, A-145). Based on my review of all project documents, I find the Decision Notice is consistent with agency requirements for identifying and managing species habitat viability and adequately implements the Forest-wide MIS program. I also find 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 NFMA”* (NOA, p. 7).

The Appellants contend:

- *“There is absolutely no indication that the Ottawa monitored for Bitterns in the Deadstream/McClellan [McLellan] area, as required by the NFMA.* (NOA, p. 8).
- *“Ottawa relies solely on Breeding Bird Surveys and incidental observations. This analysis does not comply with NFMA regulation or NEPA regulations in that the findings are not based upon the best science available, and it cannot guarantee that there is a viable population of Bitterns in the Ottawa.”* (NOA, p. 8).

Response: The American bittern was selected and analyzed as a Management Indicator Species representing wetland associated species (EA, p. 3 H-8) for the Deadstream McLellan EA. Contrary to the Appellants’ claims, surveys were conducted within the project area for bittern (Wildlife Report – Project Record, Vol. C, C-433, pp. 79-82). Additionally, US Fish and Wildlife Service (USFWS) breeding bird surveys (BBS) were conducted for many species including American bittern (2001 M&E Report, pp. 26-28). The ONF does not solely rely on breed bird census (BBC) surveys and observations in their project effects analysis. The Forest indicated the numbers of American bittern are stable to increasing based on data collected, even though they acknowledge that regionally, numbers of bittern appear to be declining (Project Record, Vol. C, C-433, pp. 79-82). Analysis conducted for the bittern found more than 50,000 acres of wetland habitat on the ONF (Project Record, Vol. C, C-433, p. 80). Within the project area, no harvest treatments would occur in any wetlands. Where harvest treatments occur adjacent to wetland habitat, design features are in place to protect these riparian areas (EA, Appendix III-F, Table F-1).

My review of the EA and supporting documentation indicates neither NFMA nor NEPA regulations were violated. The documentation of effects on this sensitive species is adequate with regard to the treatments proposed.

Issue 6: “Cumulative Effects of Over-cutting Aspen and Northern Hardwoods is Threatening Viability of Goshawk and Other Species” (NOA. P. 8)

The Appellants claim:

- *“The EA does not describe the existing environment in any detail, and in that regard is inadequate.”* (NOA. P.8)
- *“...The EA does not focus on the habitat alternation’s affects on the Goshawk, and as previously stated, does not give a hard look at the species.”* (NOA, p. 9).
- *“The EA fails to reference the work of Beier and Drennam.” Failure to consider the implication of this peer-reviewed scientific article is hardly considered a ‘hard look’ at science and impacts, as mandated by NEPA.”* (NOA, p. 9).
- *“...The EA does not mention the serious predation problems which are currently the biggest threat to the species.”* (NOA, p. 9).
- *“...The EA is devoid of any [cumulative effects] analysis...”* [Only mentions past sales, fails to go into details of the impacts, no maps of past cuttings] (NOA, p. 9).
- *“Without the required in-the-field monitoring of the MIS Goshawk, how can the agency even estimate the effects on the Sharp Shinned and Cooper’s Hawk?”* (NOA, p.10).
- *“The [Goshawk] guidelines were not included in the final forest plan, and were never subject to public scrutiny. NFMA guidelines require that such forest plan amendments be subject to public comment and NEPA analysis.”* (NOA, p. 10).

Response: The Appellants expressed a concern for the northern goshawk during the 30-day comment period. However, their comments only addressed the issue of inadequate population assessments for this and other MIS and RFSS. They did not mention any of the specific issues now raised in this appeal.

Contrary to the Appellants’ claims, the existing environment and alterations proposed by the selected alternative were addressed in considerable detail. The EA (p. 3H-1) describes the existing vegetative conditions within the analysis area. This is further detailed in the Wildlife Report (Project Record, Vol. C, C-433, pp. 9-12). Maps depicting early seral, mature closed canopy, and mature open canopy conditions are found within this same document. Habitat needs for the northern goshawk are also explained in the Wildlife Report (pp. 93-95) and the BE (Project Record, Vol. C, C-434, p. 24). The effects of implementing this project are also discussed at length in the BE (pp. 24-28) and summarized in the EA (3H-1-11).

The EA discusses predation as it relates to MIS (goshawk is a Forest MIS) on page 3-H7. The analysis concludes, “Management activity would not artificially raise the overall predator

population in the project area.” The 2001 Monitoring and Evaluation Report (Revised, June 2003) (pp. 32-34) also talks about nest predation by great horned owls and fisher as one variable effecting goshawk populations. The M&E report references various research papers (p. 33).

The Appellants also allude to the viability conclusions on goshawk being based on inadequate science because of the failure to reference specific research. My review of the Project Record indicates an adequate analysis for goshawk. Conclusions were based on identification of habitat needs, an examination of potential habitat alterations and their potential effects, and where appropriate, incorporation of mitigation measures (EA, pp. 2-16 to 2-21). Research by Beier and Drennam relates to the American southwest in ponderosa pine and jumper habitats not found in this project area. Professional publications were cited.

The contention by the Appellants of an inadequate cumulative effects analysis is unfounded. The Project Record establishes a cumulative effects boundary (“... large enough to encompass entire home ranges for most species ...”), recognizes past, present and reasonably foreseeable activities, and describes the likely impacts of these actions (Project Record, Vol. C, C-433, pp. 110-124). Furthermore, the impacts are evaluated by vegetative type and composition. All this information is summarized in the EA (pp. 3H-9 to 11). In addition, the BE (Project Record, Vol. C, C-434, p. 26) specifically addresses the northern goshawk. It describes conditions at the turn of the century as a result of past logging practices and includes a quantitative discussion of acres harvested over the last 15 years. Clearly, the impacts of this proposed action were evaluated in detail and the “Finding of No Significant Impact” in the DN/FONSI and the determination of “May impact individuals of a species, but not likely to cause a trend to federal listing or a loss of viability” (Project Record, Vol. C, C-434, p. 67) for northern goshawk is well documented.

Likewise, the allegation of no “in-field” goshawk monitoring is not correct. Goshawk populations were monitored on a regular basis using standard road survey routes. In addition, portions of the project area were surveyed for active nests (Project Record, Vol. C, C-433, p. 93). The number of goshawk responses and survey routes Forest-wide is further detailed on page 33 of the 2001 Monitoring and Evaluation Report (Revised, June 2003). The sharp shinned and Cooper’s hawk use similar habitat resulting in similar impacts, therefore, the Appellants’ claims about these species are also unfounded.

Finally, in answer to the Appellants’ concerns over the Project Design Criteria for goshawk (EA, p., 2-17), these measures were based on habitat needs for the species. Management has the option to pick or choice from this collection of recommended measures. They are not explicit standards, as implied. These measures continue to be reviewed and updated as new scientific information becomes available. It should be noted the Appellants did not question the usefulness of these criteria, nor do they provide evidence that the Ottawa considers them standards.

Overall, I find the Appellants’ claims unsubstantiated. The project does not adversely affect the viability of goshawk or other species. The Decision Notice is consistent with agency requirements.

Issue 7: *“The Project Will Adversely Affect the Red-Shouldered hawk and Threaten its Viability.”* (NOA, p. 10).

The Appellants claim, “*Clearly the EA is grossly inadequate to withstand the overwhelming scientific evidence of an adverse impact, and does not comply with the procedural requirements of NFMA.*” (NOA, p. 11). “*The sloppy, conclusory assertions that there would be no significant impact on Red-shouldered Hawk is not supported by any evidence...*” (NOA, p. 11).

Response: The red-shouldered hawk is identified as an ONF, RFSS species. The species has not been documented as occurring within the project area, although field surveys were conducted (Project Record, Vol. C, C-450, Multiple Survey Reports; Years 1999-2002). Habitat within the project area is identified as only marginally suitable (BE, p. 29). The BE (p. 29) also indicates this is not an abundant bird on the ONF, and the species has been declining in Michigan since the 1900’s with most breeding birds now concentrated in the Lower Peninsula.

With regard to the science, a review of the EA, BE and Project Record shows an analysis of key life requirements with respect to the project area and proposed actions (effects). These key elements include a summary of potentially limiting factors and species habitat needs and preferences. Habitat preferences are defined in the BE, (p. 29) as is the amount of acres of potentially suitable habitat. Species surveys were implemented within the project area and documented in the Wildlife Record (Project Record, Vol. C, C-450, Multiple Survey Reports). Forest-wide surveys were also conducted during 2000-2001 using taped calls resulting in only two responses (2001 M&E Report, p. 19). No nests were located. According to Postupalsky (1980), who located three nests in Michigan’s Upper Peninsula, nesting habitat consisted of closed canopy, northern hardwoods typically with an open understory. Postupalsky (1980) also stated that small ponds or streams were found within 0.3 to one mile of nesting sites (2001 M&E Report, pp. 19-20), indicating an association to forested lowland/wetland habitat. Range-wide factors limiting to red-shouldered hawk include habitat loss, contaminants, competition with red-tailed hawks and other raptors, and human disturbance (BE p. 29). Additionally, the red-shouldered hawk is at the northern extent of its range on the Ottawa NF (2001 M&E Report, p. 19).

An effects analysis and risk assessment appears in the BE, with respect to harvest treatments, road construction, reconstruction, opening maintenance and road decommissioning (BE, pp. 29-32 and p. 61). Negative impacts were disclosed as a potential loss of nesting trees, and a minor temporary disturbance to the mature tree canopy. Notwithstanding, the selection and thinning harvests could improve foraging conditions and the prey base (BE, p. 30). Effects from harvests in and near wetlands/streams are reduced as a result of wetland protection measures (BE, p. 30). Clearcutting of the aspen type was also analyzed. The BE (p. 30) indicates aspen habitat is not utilized to any great degree. Impacts from the creation of openings were identified as mostly beneficial. Work would be done during the non-nesting season (BE, p. 31). The effects analysis for roadwork concludes that roads are not typically constructed through riparian areas. Effects would be limited to impacts on prey species while continuing to provide red-shouldered hawk foraging habitat. The Responsible Official concluded that implementation of the selected alternative may impact individuals, but would not cause a trend to federal listing or a loss of viability (BE, p. 68).

My review of the Project Record finds the analysis for red-shouldered hawk adequate, contrary to the Appellants claims.

Issue 8: *“The EA’s Consideration of the Effects on Wood Turtle is Inadequate”* (NOA, p. 11).

The Appellants assert, *“The EA doesn’t even mention the Wood Turtle.”* (NOA, p. 11). *“Without any baseline data from in-the-field studies any conclusions of no impact based upon a finding that they are not present, when clearly their habitat is, does not comply with NFMA or NEPA.”* (NOA, p.11).

Response: The wood turtle is identified in the Project Record as a “proposed” RFSS species and is also represented by the MIS brook trout. Contrary to the Appellants claim, this species is mentioned specifically in the EA on page 3H-8 (MIS Species Guild Tables). The guild consists of a suite of species that occur in similar habitats and grouped for project effects analysis purposes. The wood turtle was analyzed as part of this suite of species and the MIS summary of effects (EA, p. 3H-8) indicates that selection of any of the action alternatives would have a minor positive effect, while Alternative A, the “No Action” Alternative, would have a minor negative effect (with regard to Forest-wide trend). Further, the Wildlife Report, (Project Record, Vol. C, C-433, p. 77) clearly indicates the wood turtle has been documented within the project area and that suitable habitat is present for wood turtle both within and outside the project area. An effects analysis was completed on the brook trout (MIS), which acknowledges some short-term disturbance effects. However, for the action alternatives, the long-term impacts would be beneficial (Project Record, Vol. C, C-433, p. 102). The 2001 Monitoring and Evaluation Report (pp. 38-39) provides a general summary of the population status for brook trout, supplemented by some very site-specific data for a stream located outside the project area, but within habitat suitable for wood turtle. The same report also provides a summary of potential impacts to wood turtle and their habitat (pp. 20-21).

I find the analysis conducted on the representative MIS species meets the requirements of both NEPA and NFMA.

Issue 9: *“The Effects of Forest Fragmentation on Forest Interior Birds is Inadequately Addressed”* (NOA, p. 11).

The Appellants claim, *“The conclusory assertions in the EA that the project will have no significant adverse effects, including cumulative effects, on these species is not supported by credible scientific information, and therefore does not comply with NEPA.”* (NOA, p. 13).

More specifically, the Appellants contend:

- *“The EA completely discounts any possibility that there will be any fragmentation effects ...”* (NOA, p. 12).
- *“Fragmenting this large forested area could have impacts that go beyond the actual project area. However, this potential impact isn’t even mentioned in the EA.”* (NOA, p. 13).

- “... The EA does not do a site-specific analysis of how the past, present and reasonably foreseeable future logging ... is going to affect any and all large unfragmented forest blocks, which may be present in the project area.” (NOA, p. 13).
- “Without any population data, the EA concludes these would be no adverse impact on the species, although this is not backed up by any empirical data.” (NOA, p. 13).
- “...The EA attempts to meet its viability requirements by listing general habitat acres, without any information that those habitat estimates were ever ground-truthed.” (NOA, p. 13).

Response: The EA provides a summary of the analysis of fragmentation, biodiversity, and old growth with respect to neo-tropical migratory birds (NTMB), and MIS (EA, pgs. 3 H-1 to 3 H-11.) A more detailed analysis is provided in the Wildlife Report, (Project Record, Vol. C, C-433, pp. 1-124), including numerous habitat maps. I find the Appellants’ claim that the Forest Service found no fragmentation effects as unfounded. Page 32 of the Wildlife Report (Project Record, Vol. C, C-433, pp. 32-33) for Alternative C clearly displays this information. For example:

- “Selection harvest in hardwoods and hemlock (2,300 plus acres) would remove scattered individual trees and would not substantially open the canopy, in the long term. Fragmentation and edge would increase in these stands in the short term, ...” (p. 32).
- “Permanent and temporary road construction would impact fragmentation.” (p. 33).
- “Alternative C would reduce the interior forest species habitat to 36 percent of the Federal land in the project area.” (p. 36).

Likewise, the EA indicates that all action alternatives would result in a reduction in interior forest habitat (EA, p. 3H-3).

Contrary to the Appellants’ claim, the Project Record documents a cumulative effects analysis that includes the discussion of fragmentation beyond the project area boundary (Project Record, Vol. C, C-433, p. 113). In fact, the boundary for this analysis encompassed approximately 120,000 acres. The analysis concludes, “Because of the distribution across the landscape, forest management has increased fragmentation, but has not made enough habitat unsuitable for mature forest species to affect their viability, ...” (p. 113). Plainly, the cumulative effects analysis did evaluate past, present and reasonably foreseeable activities and considers effects within the project area and in lands adjacent to the project area as defined by the cumulative analysis boundary.

Likewise, the Appellants are incorrect in their statement asserting the Forest had no population data and thus cannot make estimates of species viability. CFR 219.19 requires the Forest Service to look at population trends. This information was assessed for MIS species and is discussed on pages 79-124 of the Wildlife Report. Where appropriate, the analysis indicates “on-site” data

sampling and monitoring information (e.g., Blackburnian warbler – Census sightings of species from 1992-97 using the Ottawa BBC; Ruffed grouse population monitoring using standard drumming survey routes; Barred owl population estimates using standard road survey routes). The analysis of MIS also represents all other species that rely on similar habitats. This information is displayed on pages 103 to 110 of the Wildlife Report (Project Record, Vol. C, C-433).

Finally, the Appellants claim no “ground-truthing” was done to support the analysis. As in other allegations, this is also an untrue statement. The Project Record is “rich” in its documentation for field survey work. Examples include numerous field notes with individual stand discussions (existing conditions), and wildlife observations (Project Record, Vol. C, C-452 to 464).

In summary, I find the Responsible Official did have adequate information on fragmentation for an informed decision. This data included known population trends of representative species (MIS), habitat needs, and the resulting effects due to proposed management actions. The Appellants claims are not substantiated. The analysis meets NEPA requirements.

Issue 10. *“The Mitigation Measures Have Inadequate Support in the Record.”* (NOA, p. 13)

The Appellants contend, *“...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.”* Furthermore, *“These vague measures...do not meet the standards required under NEPA and the Administrative Procedures Act. (APA).”*

More specifically the Appellants claim:

- *“There is no information in the EA where these activities will occur [nor when].”* (NOA, p.14).
- *“The public is not properly informed about the meaning of these requirements.”* (NOA, p. 14).
- *“There is no requirement in the protective measures to keep a certain percent of the ground covered by litter on skid trails....”* (NOA, p. 14).
- *“There are no citations to studies or papers or any data to support [compaction claims].”* (NOA, p. 15).
- *“The EA does not mention how the compaction effects might last [Research contradicts findings in EA].”* (NOA, p. 15).
- *“Another impact on soils of timber harvesting is removing the nutrients. The EA brushes off these impacts....”* (NOA, P. 16).
- *“...Mychorrhizal associations and the impacts from logging...[are] not addressed in the EA.”* (NOA, p. 16).

Response: The Appellants did not provide these specific comments to the Responsible Official during the 30-day comment period. The public, including local clubs, cooperating agencies, and the Tribe, were provided opportunities to participate, review, and comment on the Deadstream

McLellan VMP project via legal notices, scoping letters, and in the Forest Schedule of Proposed Actions (SOPA). This includes a description of the project area and how the planning process works as directed by NEPA and APA (Project Record, Vol. A, A-1, A-8, A-14, A-17, A-151).

The Deadstream McLellan VMP EA, pages 2-16 to 2-21 contains a summary of design criteria used to reduce or eliminate potential impacts associated with this project. This summary refers to additional supporting documents detailing where, when and how these criteria will be used (Example: EA, Appendix III-F, Section F.1, Table F.1). Furthermore, the Project Record documents the effectiveness of these measures. For example, criteria to protect soil and aquatic resources are well tested locally. Forest resource specialists and several agencies such as the Michigan Department of Environmental Quality and Michigan Department of Natural Resources monitor these criteria for effectiveness (Project Record, Vol. C, C-1, C-12, C-286, FY 2001 Monitoring and Evaluation Report, pp. 91-95, EA, Appendix III-A). In addition, Forest Service handbooks, containing direction on application and effectiveness of these measures, are referenced in the specialist reports as well as names of projects on the Ottawa NF where these measures have been tested (Project Record, Vol. C, C-12, C-394). The FY 2001 Monitoring and Evaluation Report (pp. 91-95) documents the effectiveness of soil protection measures on similar past vegetative Forest projects. Likewise, it is evident the Responsible Official analyzed the need for ground protection measures to include nutrient retention through out the project area (Project Record, Vol. C, C-410, C-412, C-415, C416), contrary to the Appellants' assertions.

My review of the Project Record finds the Responsible Official clearly addressed soil and water issues, followed management standards and guidelines, applied design criteria and Best Management Practices, and demonstrated through documentation the effectiveness of these criteria; many of which were the same ones of interest to the Appellants (Project Record, FY 2001 Monitoring and Evaluation Report and Supplemental Report (M&E Report June 2003, Volume B-Book 2, B-58, B-60). I also find that scientific studies and published papers/reports are referenced to support the resulting conclusions (i.e., compaction concerns) (EA, p. 3A-2, Project Record, Vol. C, C-13 to C-17). It's not the intent of the analysis to establish scientific baseline information or analyze every component of the ecosystem as the Appellants allude (i.e., mychorrhizal associations or water table studies).

Issue 11: "To Undertake the Deadstream/McLellan Project When the Ottawa Plan is Expiring and the FEIS Outdated is Not in Compliance with Applicable Laws and is Arbitrary and Capricious." (NOA, p. 16).

The Appellants contend: "*The Deadstream/McClellan project must be suspended until the Ottawa National Forest publishes a new Final Environmental Impact Statement supporting a revised LRMP. Continued implementation of the 1986 Ottawa National Forest LRMP not only violates the RPA and the NFMA, but violates the National Environmental Policy Act ("NEPA").*" (NOA, p. 17).

They further state:

- "*The suspension of the Deadstream/McLellan project is necessary because the goals, objectives, standards, and guidelines contained in the 1986 Ottawa 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 management direction.” (NOA, p. 17).

- *“The Ottawa 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....,” and “Not least of all, the Ottawa has been ordered by the 6th circuit court of appeals to supplement their Forest plan EIS.”* (NOA, p. 18).

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 1605(f)(5)(A). The current Ottawa National Forest Plan was approved in 1986.

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

In addition, the President on November 10, 2003 signed the Department of the Interior and Related Agencies FY04 Appropriations Act, H.R. 2691, P.L. 108-108. Section 320 of the Appropriations Act states as follows:

“Prior to October 1, 2004, the Secretary of Agriculture shall not be considered 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 Rangeland Renewable 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 a 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.”

The Appellants provide no credible evidence the standards and guidelines and other information used in the development of the Deadstream McLellan Vegetative Management Project fails to protect forest resources. The 1986 National Forest Land and Resource Management Plan (Forest Plan), 1986 Final Environmental Impact Statement (FEIS), the 2001 Ottawa National Forest Monitoring and Evaluation (M&E) Report (Revised, June 2003) and use of Michigan Forestry Best Management Practices (BMP’s) demonstrate the standards and guidelines used in project development are effective in providing resource protection and mitigate potential adverse environmental effects. The Appellants present no evidence the existing plan direction used in the development of this project was inadequate. The Deadstream McLellan VMP is tiered to the Ottawa National Forest Plan, FEIS, and Record of Decision approved in 1986, as amended, but

does not rely solely on these documents for the Deadstream McLellan VMP effects analysis (EA, p. 2-16 to 2-21, and EA, Chapter 3).

The Ottawa National Forest has recognized and responded to requirements as set forth in Forest Service Handbooks, NEPA, NFMA, and the Forest Rangeland Renewable Resources Planning Act. Specifically, the Forest has amended the Ottawa Forest Plan six times since approved in 1986. The Appellants commentary that the Ottawa has been ordered by the 6th Circuit Court of Appeals to supplement their Forest Plan EIS is addressed in Issue 1.

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.

Issue 12. *“Violation of the National Wild and Scenic River Act From Logging in the Wild and Scenic River Watershed.”* (NOA, p. 18).

The Appellants assert, *“The EA is clearly in violation of the NEPA and the substantive requirements of the WSRA. We do not believe that this project meets the ‘enhance and protect’ which the WSRA imposes on federal agencies. We believe that a detailed EIS would prove this out.”* (NOA, p. 18).

The Appellants further claim:

- *There is no indication on the record that the agency cooperated with the EPA or any other agency for the purpose of eliminating or diminishing pollution into the Paint River.”* (NOA, p. 19).
- *“The decision notice indicates that some of the authorized actions are adjacent to the Ontonagon and Sturgeon Wild and Scenic River Corridors. Logging, sediment trap construction and other activities are adjacent to the Wild and Scenic River Corridors and could therefore affect the outstandingly remarkable values for which the Sturgeon and Ontonagon Rivers were designated.”* (NOA, P. 18).

Response: The Appellants did comment on this issue during the 30-day comment period. The Responsible Official addressed this concern in the Decision Notice (p. 2).

The intent of the Wild and Scenic Rivers Act, Section 1(b), is to preserve selected rivers or portions thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes. The Responsible Official identified early in the scoping process, and within the analysis, the need to address and adhere to management guidelines as established within Management Area 8.1 (Project Record, Vol. A; A-14) and Amendment #4 (Ottawa Forest Plan, IV-187.4) (See EA, p. 1-4, p. 2-12) relevant to the East Branch of the Ontonagon River Wild and Scenic River (WSR) corridors. Additionally, he was forthright in explaining there is no current WSR comprehensive management plan for the East

Branch of the Ontonagon River. “This section of the East Branch ... is classified as a ‘Recreational Segment’ and Amendment #4 describes the desired vegetation conditions and silvicultural practices permitted in the interim ...” (DN, p. 2). In so doing, the Responsible Official eliminated activities within the designated “Recreational River” segment (EA, p. 2-12, p. 3C-20, p. 3D-3). Further he documents compliance with NFMA, NEPA, WSRA, Clean Water Act, and state water quality standards, within the Decision Notice (EA, Vol. A, A-170, p. 4, p. 14 and p. 17). Implementation of the Clean Water Act (by the EPA) is delegated to state agencies and tribal governments, in this case the Michigan Department of Environmental Quality (MDEQ). MDEQ developed Forestry Best Management Practices to protect water quality. These practices are used on this project. Thus, the Forest has coordinated its efforts to ensure protection of this vital resource.

I find the claims by the Appellants unsubstantiated. The Responsible Official has not violated NEPA or the WSRA. It should be noted; in two incidences the Appellants referenced the Paint River. The Paint River is not part of the Deadstream McLellan VMP Decision. Therefore, this statement is not relevant to the project. Additionally, The Decision Notice (DN) specifically addresses the East Branch of the Ontonagon River and does not site the Sturgeon River. The Sturgeon River is outside of the project area (EA, p. 3F-2) therefore, this statement is not relevant to this project.

Recommendation

After reviewing the project file for the Deadstream McLellan Vegetation Management Project and considering each issue raised by the Appellants, I recommend that District Ranger Ralph E. Miller’s Decision Notice of November 21, 2003 be affirmed.

/s/ Jenny Farenbaugh

JENNY FARENBAUGH
Appeal Reviewing Officer