



**File Code:** 1570-1

**Date:** March 13, 2003

**Route To:** (1570 - 215)

**Subject:** ARO Letter - North Lochsa Face Ecosystem Management Project ROD - Clearwater NF - Appeal #03-01-00-0020 - ADVOCATES for the West on behalf of Idaho Conservation League, et al.

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Laird J. Lucas, Executive Director of ADVOCATES for the West, on behalf of the Idaho Conservation League and The Wilderness Society protesting the North Lochsa Face Ecosystem Management Project Record of Decision (ROD) on the Clearwater National Forest.

The Forest Supervisor's decision adopts Alternative 5 as the selected action, with the following modifications: 1) to address public concerns about timber harvest in old growth stands, no old growth would be harvested as part of this decision; and 2) to address concerns about Canada lynx, pre-commercial thinning in lynx habitat was dropped from the selected actions. Alternative 5-modified also includes prescribed fire on approximately 12,530 acres, timber harvest on 4,032 acres, 3.5 miles of temporary roads construction, 66 miles of road obliteration, 54 miles of roads put in long-term maintenance, removal of four sediment traps, and noxious weed treatment.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the Endangered Species Act, the Clearwater Forest Plan, and The Wilderness Society v. Bosworth Settlement Agreement. The appellants' request a reversal and remand of the logging and road construction or reconstruction portions of the ROD. They also request an Independent Review Team be appointed, with their participation, to investigate and correct the alleged old growth management problems on the Clearwater National Forest. An informal meeting was held but no resolution of the issues was reached.

### ISSUE REVIEW

**Issue 1. The Clearwater National Forest violated The Wilderness Society Lawsuit Settlement Agreement and the Forest Plan by failing to adequately analyze effects on old growth habitat. The Clearwater National Forest is planning to log in old growth habitat. The Clearwater National Forest cannot demonstrate compliance with the standard requiring 10 percent of the Forest be old growth habitat Forest-wide. The designation of replacement old growth to bring the analysis areas into compliance with the 5 percent old growth standard is not consistent with Forest Plan requirements and intent.**



**Response:** The Forest analyzed the impact the project would have on old growth forest (DSEIS, pp. 3-47 to 3-52). In response to the public's concern about harvest in old growth forest, the decision maker dropped all timber harvest in old growth habitat (FSEIS, p. 85). The Forest Supervisor stated in the ROD (pp. 5, 6, and 16) this project, as amended, would not harvest any old growth. Approximately 11,680 acres, 9.2 percent of the area, has been identified as old growth forest in the Lochsa Face analysis (DSEIS, p. 3-49, Table 3-20). However, five of the old growth analysis units in the project area are below the Forest Plan standard of 5 percent old growth for each 10,000-acre watershed (Forest Plan, p. II-23). In order to be in compliance with the Forest Plan old growth standards, the Forest identified over 1,700 acres of replacement old growth in 35 stands (FEIS PF, Vol. 11, Doc. 701). Also, the DSEIS (p. 3-49) states, "[a]n additional 700 acres in the project area have been identified through the Clearwater National Forests (sic) stand database as possibly qualifying as old growth forest (but needing field verification to confirm or refute)." In *The Wilderness Society v. Bosworth*, the Court found the use of replacement old growth to satisfy the 5 percent old growth standard was in compliance with the Forest Plan.

Since Alternative 5-modified would not remove any old growth forest and replacement old growth stands have been identified, the project is in compliance with the Forest Plan old growth standards (Forest Plan, p. II-23), the guidelines (Forest Plan, Appendix H), and the Wilderness Society Lawsuit Settlement Agreement.

**Issue 2. The Clearwater National Forest violated the Endangered Species Act by failing to adequately analyze effects on lynx and lynx habitat. The Clearwater National Forest is planning to log in designated lynx foraging and denning habitat. Project activities will have direct effects on lynx and lynx habitat. The Forest Service failed to complete consultation with the Fish and Wildlife Service for lynx as required by the Endangered Species Act.**

**Response:** The Biological Assessment for Canada lynx (FSEIS, Appendix F, pp. 8 to 32) discusses the impact timber harvest would have on lynx (pp. 13 to 14). The wildlife biologist determined the timber harvest would improve foraging habitat on approximately 435 acres and decrease denning habitat in the Upper Fish Creek LAU by approximately 2 percent, but that sufficient denning habitat would be retained in the LAU. The project adequately analyzed the impacts of the project on lynx and is in compliance with the Lynx Conservation Assessment and Strategy (DSEIS, pp. 3-124 to 132).

In the Biological Assessment (BA) the wildlife biologist determined the project is not likely to adversely affect Canada lynx (FSEIS, Appendix F, p. 32). The Forest mailed this BA, including the discussion of harvest in lynx habitat, to the United States Department of Interior Fish and Wildlife Service (USFWS) and requested their concurrence. It is clear USFWS understood there would be harvest in lynx habitat (SEIS PF, Vol. 1, Doc. 74A, p. 3). In their concurrence letter (dated March 1, 2002) USFWS stated, "[o]ur concurrence with your determination of effects of the original proposed action were documented in our letter to the Forest dated February 10, 1999. This letter is intended to respond to the last two revised Assessments for the Forest," dated October 17, 2001, and November 21, 2001 (p. 1). In the next to last paragraph USFWS stated, "[t]his concludes information consultation under Section 7 of the Act for the North Lochsa Face Final Environmental Impact Statement. If the project proposals addressed in this letter are modified, or environmental conditions change, you should verify that your determinations are

still valid. Please contact the Service regarding the subject actions if: 1) future surveys find species present where they have not been previously observed; 2) the proposal is changed or new information reveals effects of the actions to a listed species or critical habitat to an extent not considered in the Assessments; or 3) a new species is listed or critical habitat is designated that may be affected by the proposal” (p. 4).

Likewise, the National Marine Fisheries Service (NMFS) in their letter to the Forest, dated February 12, 2002, explained that reinitiation of consultation is not required when the amount or extent of take is the same or less than the original amount or extent evaluated, the change does not affect listed species in a manner or extent beyond those originally considered, and there are no new effects not previously considered (SFEIS PF, Vol. 1, Doc. 74). The modification of Alternative 5-modified lessened the impacts to lynx by dropping the precommercial thinning in lynx habitat and not harvesting in old growth (ROD, pp. 5, 6, and 16). After discussions with the Forest wildlife biologist and fisheries biologist, and in light of the reinitiation instructions in the letters from USFWS and NMFS, the Forest Supervisor determined additional consultation with the regulatory agencies would not be necessary. He informed the public of this determination in the ROD errata, dated January 6, 2003, and stated he would inform the regulatory agencies of the determination. The Forest completed consultation as required with both NMFS and USFWS, and is in compliance with the Endangered Species Act.

#### RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants.

I also found the FSEIS does not contain a summary as recommended at 40 CFR 1502.10(b) and 1502.12. The summary would help the public understand the EIS by touching on the major conclusions, areas of controversy, issues to be resolved, and the choice the Deciding Official made among alternatives.

I recommend the Forest Supervisor’s decision be affirmed, with the instructions to write a summary of the EIS. I also recommend the team pull together the information presented in the FEIS, DSEIS, FSEIS, the August 10, 1998, Biological Assessment for steelhead trout, fall Chinook salmon, and bull trout, and whatever other information is located in the project files concerning grazing in the project area, and document in the project file the cumulative impacts of grazing to water quality, fish, and wildlife when combined with this project and all other past, present, and reasonably foreseeable future activities. I further recommend the appellants’ requested relief be denied.

/s/ Michael J. Burnside  
MICHAEL J. BURNSIDE  
Appeal Reviewing Officer  
Regional Mining Geologist

