



File Code: 1570-1

Date: October 30, 2003

Route To: (1570 - 215)

Subject: ARO Letter - Purdy Post-Fire Salvage DN - Gallatin NF - Appeal #03-01-00-0071
- Native Ecosystems Council, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Sara Jane Johnson, on behalf of Native Ecosystems Council and Alliance for the Wild Rockies, protesting the Purdy Post-Fire Salvage Decision Notice (DN) on the Gallatin National Forest.

The Forest Supervisor's decision adopts Alternative B-Modified, which includes salvaging dead and damaged trees on an estimated 161 acres, constructing of up to 0.5 miles of temporary road, conifer planting on approximately 27 acres, and approving two project-specific amendments to the Gallatin Forest Plan due to the existing conditions for Visual Quality and Elk Effective Cover caused by the Purdy Fire.

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 that were not resolved, and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), Forest and Rangeland Renewable Resources Planning Act (RPA), and the Administrative Procedures Act (APA). The appellants request a remand of the DN. An informal meeting was held, and issues numbered 15, 21, 22, 27, 28, and 48 were resolved (see page 3 of the Transmittal Letter from Forest Supervisor Rebecca Heath to the Appeal Deciding Officer, dated October 14, 2003). The resolved issues will not be considered further. It was agreed the appeal on the remainder of the issues would go forward.

ISSUE REVIEW

Issue 1. Logging Management Area (MA) 11 lands to produce wood products without meeting "vegetative management needs of wildlife" is clearly a violation of the Forest Plan. The proposed salvage in MA 11 lands is not based on any vegetative management or vegetative characteristics needed for featured species.

Response: The Forest Plan states, MA 11 lands "consist of forested big game habitat. They include productive forest lands that are available for timber harvest, provided that big game habitat objectives are met" (Forest Plan, p. III-33). The Forest Plan objectives for wildlife species include emphasizing forage and cover needs on big game winter range and maintaining



or improving habitat conditions (Forest Plan, pp. II-3 to II-4). The management goals for MA 11 lands are to maintain elk habitat effectiveness and to base the vegetative management on the characteristics needed for featured wildlife species, which, in this case are big game species (Forest Plan, p. III-33).

The EA states, “None of the harvest units within the burned area are currently providing either hiding or thermal cover for elk. Therefore, the project would have no direct, indirect or cumulative effects to elk hiding or thermal cover” (EA, p. 3-69). In the short term, the project would impact elk foraging habitat by damaging herbaceous plants and woody shrubs. However, timber practices in the analysis area have generally benefited elk foraging habitat by removing forest canopy and concentrating plant biomass in forage plant species (EA, p. 3-70). The small amount of temporary road construction necessary for the project would have no measurable effect on the elk, and the habitat effectiveness index would remain the same (EA, pp. 3-70 to 3-71). The project “would have no direct, indirect or cumulative effects on elk security and vulnerability in the Purdy analysis area” (EA, p. 3-71). The project is in compliance with NFMA and the Forest Plan concerning management of MA 11 lands and big game habitat.

Issue 2. Salvage logging will harm the Canada lynx. Dead and damaged trees that will be removed through harvest would otherwise contribute to lynx denning habitat once these trees fall over and create coarse woody debris.

Response: The Lynx Conservation Assessment and Strategy (LCAS) (PF, Vol. IV, Doc. 1-19) calls for maintaining at least 10 percent of a lynx analysis unit (LAU) in denning habitat. There are two LAUs in the project area. At this time, the Little Bear LAU has 29 percent denning habitat and the Squaw Creek LAU has 39 percent denning habitat (EA, p. 3-43). The EA concludes, “considering past impact to lynx denning habitat in the Purdy analysis area, both the [LAUs] would still provide adequate denning habitat after completion of the salvage sale. Therefore the LC[A]S standard for maintaining lynx denning habitat would be met with all alternatives” (EA, p. 3-44). In their Biological Opinion, the U.S. Fish and Wildlife Service states, “all aspects of the project are in compliance with the LCAS, and the effects of the action are not anticipated to cause adverse impact to lynx... none of the proposed activities will alter existing lynx denning habitat within either LAU...” (PF, Vol. II, Doc. 3-7, p. 34). The project is in compliance with the ESA, NFMA, and the Forest Plan concerning management of MA 11 lands.

Issues 3, 25, 26, and 40. When considered collectively, salvage harvest on State, private, and federal lands within the Purdy burn has the potential to remove a measurable amount of black-backed woodpecker nesting habitat. Salvage logging of dead and dying trees will result in the removal of insects from these trees as well, in turn reducing the breeding populations of insects that would provide a prey base for woodpeckers over time. No science or published, peer-reviewed management recommendations for the black-backed woodpecker were cited in support of this agency conclusion. The projected habitat loss for the sensitive woodpecker may actually be considerably higher than what was identified in the EA. Any salvage harvest will target the larger trees in more dense stands, the same habitat that this woodpecker utilizes for nesting and foraging.

Response: The wildlife biologist considered the direct and indirect effects of the project on black-backed woodpeckers and the cumulative effects of other management on federal, State, and private lands. Locally collected data and published, peer-reviewed literature was cited in the black-backed woodpecker analysis, and the analysis addressed tree size and density (EA, pp. 3-49 to 3-56; PF, Vol. II, Doc. 3-9). The wildlife biologist concluded the cumulative effect would “have measurable impacts to black-backed woodpecker habitat. However, there is sufficient habitat remaining in these burned areas to continue to provide reproductive resources necessary to sustain a contribution to the black-backed woodpecker population. Therefore, it has been determined that the proposed action, with prescribed mitigation measures, **may impact individuals or habitat, but would not lead to a trend toward federal listing** of the black-backed woodpecker” (emphasis in original) (EA, p. 3-55). The project is in compliance with NEPA, NFMA, and the Forest Plan concerning management of MA 11 lands.

Issue 4. Salvage logging will reduce habitat for the Northern Goshawk, a management indicator species on the Gallatin Forest. Salvage logging will remove snags that provide nest sites and insect prey for a number of avian wildlife species upon which goshawks feed.

Response: The wildlife biologist considered the direct and indirect effects of the project on northern goshawks and the cumulative effects of other management on federal, State, and private lands (EA, pp. 3-56 to 3-57). She concluded the “project would not remove or alter existing goshawk nesting or foraging habitat, and adequate habitat remains in the analysis area to provide resources for multiple pairs of northern goshawks. The project may have minor disturbance effects, and/or indirect effects on goshawk foraging habitat, therefore it has been determined that the project **may impact individuals or habitat, but would not lead to a trend toward federal listing** of northern goshawks” (emphasis in original) (EA, p. 3-57). The project is in compliance with NEPA, NFMA, and the Forest Plan concerning management of MA 11 lands.

Issues 5 and 10. Disturbance from mechanized equipment and human presence associated with the project could preclude wolverine foraging activities in the burn area. Removal of snags and logs could alter habitat so as to potentially reduce populations of some bird and small mammal species in years following harvest. The project would also reduce cover for wolverines. High open road and trail densities may be negatively affecting the wolverine.

Response: The wildlife biologist considered road densities, the direct and indirect effects of the project on wolverines, and the cumulative effects of other management on federal, State, and private lands (EA, pp. 3-61 to 3-63). She concluded, “Given the known wolverine presence in the analysis area and in the project area, and considering the potential for some disturbance and minor impacts on wolverine foraging habitat associated with the proposed action, it has been determined that the project **may impact individuals or habitat, but would not lead to a trend toward federal listing** of wolverines” (emphasis in original) (EA, p. 3-63). The project is in compliance with NEPA, NFMA, and the Forest Plan concerning management of MA 11 lands.

Issues 6, 14, 16, 17, 18, and 19. Salvage logging will negatively affect marten, a management indicator species on the Gallatin Forest. Coarse woody debris created by dead trees, will be drastically reduced due to salvage logging. Only 38 percent of this area contains mature/older forest habitat that marten depends upon. This limited habitat is

heavily fragmented with openings that discourage marten travel. The high road density has made trapping access for marten very high, with unknown impacts on this local population. There is no specific population data or habitat use data for marten in this Purdy landscape.

Response: Surveys were conducted during the winter of 1999-2000 for lynx, wolverine, and pine marten using remote camera systems and snow tracking transects (EA, pp. 3-33 to 3-34; PF, Vol. II, Doc. 3-12). The wildlife biologist considered the direct and indirect effects of the project on pine marten, and the cumulative effects of other management on federal, State, and private lands (EA, pp. 3-67 to 3-68). The project area is actually above Forest Plan standards for mature timber (EA, Appendix A, p. 19; Forest Plan, pp. II-19 and II-20). The Purdy burn area currently does not provide suitable denning habitat for martens (EA, p. 3-67), and their primary prey tend to avoid recent stand replacement burns (EA, p. 3-68), so harvest in the burned area will not have significant effects on American marten.

Trapping marten is a legal activity regulated by the State of Montana. Trapping was not brought up during scoping or the comment period on the EA, so the Forest did not analyze this issue in detail. However, the marten trapping season is during the winter, when the project area is generally not accessible except by snowmobile. The project is in compliance with NEPA, NFMA, and the Forest Plan concerning management of MA 11 lands.

Issue 7. In order to salvage log this burned habitat, the Gallatin Forest is “deleting” a Forest Plan standard that limits the density of open roads because the existing open road density exceeds the Forest Plan standard.

Response: The Forest is not deleting the Forest Plan standard for open road density. However, in recognition of the existing amount of open road in the project area despite the recent decommissioning of 75 miles of road, the Forest made a project-specific Forest Plan amendment to exempt this area from the Standard (EA, p. 1-13; DN, p. 1). A cumulative effects analysis of the Forest Plan amendments was conducted (EA, Appendix C, pp. 1 to 15). After considering this analysis, the Forest Supervisor concluded the amendments were of minor consequence when considered in the context of the Forest Plan and do not constitute a significant change to the Forest Plan (DN, p. 25). The site-specific Forest Plan amendments are in compliance with NEPA and NFMA.

Issues 8, 9, 42, 43, 44, and 45. The current road density in the Little Bear-Wilson timber compartment 601 also currently exceeds the maximum recommended level identified in elk management guidelines (Christensen, et al., 1993). No big game security areas were identified as mitigation for this project, as required by the Gallatin Plan. Significant impacts likely already exist due to bull elk vulnerability even prior to the massive salvage activities.

Response: Christensen, et al. (1993) is a general technical report (INT-303) published by the Intermountain Research Station, intended to be used when updating or revising Forest Plans. The report covers the main issues, including roads, which Forest managers need to consider

during Forest planning. The Gallatin National Forest has not updated or revised their Forest Plan since the report was published, and so, the information in the report is not Forest Plan guidance at this time.

The wildlife biologist analyzed the impact the project would have on elk and elk security (EA, pp. 3-70 and 3-71; PF, Vol. II, Doc. 11-6). The project would not have any direct, indirect, or cumulative effect on elk security or vulnerability in the Purdy analysis area (EA, p. 3-71).

According to Montana Fish, Wildlife, and Parks (PF, Vol. IV, Doc. 1-7), the Gallatin elk management unit is above its objective, the hunting season was liberalized in 2002, and the bull/cow ratio and calf recruitment levels are satisfactory. The Purdy analysis was partly based on previous analyses for the Little Bear-Wilson Project, which was dropped after the Purdy Fire (EA, p. 3-33). The Little Bear-Wilson Timber Sale Draft EIS (DEIS) conducted an elk security/vulnerability analysis and discussed identification of big game security areas (PF, Vol. II, Doc. 3-13). The DEIS stated, "Montana Fish Wildlife and Parks has indicated that bull elk security is considered high throughout the Gallatin Elk Management Unit...and that bull harvest objectives are being met in hunting district 301..." Since security is high in the management unit, identifying security areas as the Forest Plan guidelines allow for, but do not require (Forest Plan, pp. III-34 to III-35), are unnecessary. The project is in compliance with NEPA, NFMA, and the Forest Plan.

Issue 11. The Gallatin Forest Plan Amendment No. 15 requires that three snags greater than 18 feet tall and at least 10 inches diameter be provided per acre. No actual inventory of snag habitat in the Purdy fire area was completed. The Gallatin Forest clearly has not looked at the massive impact past logging has had on snags and attainment of the Forest Plan standard. Undoubtedly a massive shortage of snags exists within large portions of this landscape. The problem will be exacerbated with the proposed federal salvage program.

Response: Amendment 15 actually states the retention standards for snags as "an average of 30 trees per 10 acres in forested areas" (Amendment 15, p. 1). This language was used in the amendment to reinforce averaging snag retention over the landscape, and to avoid a strict, per acre interpretation. If there are not sufficient snags in the size class of 18 feet tall and at least 10 inches diameter, the amendment requires the largest available will be left.

As discussed in the EA (pp. 3-32) field surveys were conducted to document special features that might need protection. The notes in the project file indicate that one of the items inventoried were snags (PF, Vol. II, Doc. 3-11). The wildlife biologist did consider the impact that past logging has had on snags, the landscape, and wildlife (EA, p. 3-35). The detailed silvicultural prescription summary (PF, Vol. II, Doc. 7-20) specifies that 10 to 15 percent of each stand will be left in clumps scattered throughout the stand. These clumps will consist of mixed sizes of burned trees, and where Douglas-fir trees exist in the stand, the clump would include them. The project is in compliance with NFMA and the Forest Plan.

Issue 12. The agency has no conservation strategy or habitat standards in place for the marten, with the exception of maintaining 10 percent old growth habitat.

Response: The Forest Service Manual (FSM) at 2621.2 states, “units must develop conservations strategies for those **sensitive species** whose continued existence may be negatively affected by the forest plan or a proposed project” (emphasis added). American marten is a management indicator species, not a sensitive species, and the project will not have a significant effect on the American marten (see Issue 6 above). A conservation strategy is, therefore, not required. The project is in compliance with the FSM.

Issues 13 and 46. Old growth is currently below the 10 percent required by the Forest Plan in the Purdy fire area.

Response: Old growth was analyzed in the EA (Appendix A, pp. 19 to 23). The Forest Plan requires that old growth be maintained on at least 10 percent of a timber compartment containing suitable timber (Forest Plan, p. II-20). Currently the Forest database indicates that 8.8 percent of compartment 601, and 15 percent of compartment 602 is in an old growth condition. Compartment 602 is presently in compliance with the Forest Plan standard, and 601 will likely reach compliance levels in the foreseeable future (EA, Appendix A, p. 21). The project will not have direct, indirect, or cumulative effects on old growth habitat because no old growth is proposed for cutting.

Issue 20. The Forest Plan and NFMA require annual economic monitoring of the timber sale program, and that the logging program be cost effective. The Gallatin Forest has not met these requirements.

Response: The Decision Notice (Appendix B, pp. 6 to 8) discusses the economics of the project and the reporting requirements for the Forest. The Gallatin National Forest continues economic monitoring of timber sales. Financial information for each timber sale is entered into the Timber Sale Accounting System, a nation-wide database. This information is used to provide Congress and the public with a clear understanding of what is accomplished with appropriated funds and the revenues generated. The EA and DN are in compliance with NFMA, NEPA, and the Forest Plan.

Issue 23. The cumulative effects that salvage will have on wildlife were never addressed in the EA, and the conclusions appear to have been developed to support the agency decision to log rather than to protect wildlife habitat.

Response: The cumulative effects on wildlife of activities on private and State lands were clearly taken into account in the wildlife biologist’s analysis (EA, pp. 3-38 to 3-39, 3-51, 3-53, 3-55, 3-57, 3-59 to 3-60, 3-62, 3-63, 3-68, 3-70, 3-74, and 3-75). The wildlife biologist’s conclusions are based on the effects analysis.

Issue 29. The impact of the proposed salvage logging on cavity-nesting species was never evaluated in the Purdy analysis. In response to questions about the Agency’s failure to address this issue, the Gallatin Forest replied that “enough” (38 percent) mature forest will remain to be adequate for cavity-nesting species. This conflicts with other conclusions made in the EA that 60 percent habitat is enough for the black-backed woodpecker. Why

is 60 percent okay for this woodpecker, but only 40 percent is needed for other cavity-nesting species? No science or monitoring was provided to demonstrate how this conclusion was reached.

Response: Cavity-nesting and snag-using birds were considered in the analysis of migratory bird species (EA, pp. 3-72 to 3-75). The appellant is mixing two different situations here: the percent of the burned area left for black-backed woodpeckers and the percent of mature forest (including the burned area) in the analysis area for other cavity/snag-nesting birds. As the Response to Comments clearly points out, 38 percent of compartment 601, and 56 percent of compartment 602 are in mature or old growth (DN, Appendix B, p. 16) for an average across the analysis area of 51 percent (EA, p. 3-74). As discussed in the EA (p. 3-50), black-backed woodpeckers are more restricted to burned areas than any other forest bird species in the Northern Rockies, and recently burned areas are less common than mature forest. Depending on the site-specific situation in the project area, leaving 60 percent of the burned area for the woodpeckers while maintaining 50 percent of the mature forest would be sufficient for birds that are less habitat specialists than black-backed woodpeckers. The project is in compliance with NEPA and NFMA.

Issues 30 and 31: This cursory analysis is even more questionable given that remaining unlogged forests in this landscape will consist of the poorest trees left, or otherwise they would have already been logged. Many of the remaining mature stands are likely comprised of very small trees or are located at higher elevations that are unsuitable for forest birds.

Response: As discussed in Issue 29 (above) 38 percent of compartment 601 and 56 percent of compartment 602 are in mature or old growth (DN, Appendix B, p. 16) for an average across the analysis area of 51 percent (EA, p. 3-74). The analysis is in compliance with NEPA and NFMA.

Issues 32, 33, and 34. The agency's decision to subsidize the timber industry with "below cost logging" was never explained to the public in regards to how this subsidization of a special interest group is related to other agency programs and the Forest Service budget, or how it represents a net public benefit. NFMA and the Forest and Rangeland Renewable Resources Planning Act (RPA) require management of National Forest Systems lands in a manner that "maximizes long term net public benefits" [36 CFR 219.1(a)]. Long-term public net benefits clearly are not being maximized. The value of untouched forests to water, wildlife, and recreation were not considered in the Purdy analysis of "net public benefits."

Response: The Purpose and Need is to "to provide a flow of wood products to help meet the demand of local communities before the market value is lost and the wood further deteriorates" (EA, p. 1-8). No decision has been made to subsidize the timber industry with below cost timber.

The Decision Notice (Appendix B, pp. 7 and 8) discusses NFMA, RPA, and analyzing the value of "untouched" forests. Maximizing net public benefit refers to Regional or Forest-wide economic analyses, which is not within the scope of this decision. Project-level economic

analyses are not required to address non-commodity economic values. “Weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations” (40 CFR 1502.23). The NEPA process shall be used “...to emphasize real environmental issues and alternatives” [40 CFR 1500.2(b)]. The primary focus at the project-level is to identify socioeconomic implications that are unique to the decisions made at this management level, as was done in the EA (pp. 3-76 to 3-81) and project file (Vol. II, Docs. 12-1 to 12-7). The project and analysis are in compliance with NEPA, NFMA, and RPA.

Issue 35. The EA states, “...environmental documentation severely compromises the public’s opportunity for value recovery in fire killed timber.” This is an arbitrary statement and shows the bias of the authors of the EA. The analysis does not support the statement’s conclusion.

Response: The statement is based on the discussion and data found in the EA (p. 3-79).

Issues 36 and 37: The scope of the action alternatives was limited to those that involved logging. The EA and Decision Notice clearly identified logging as the Purpose and Need for this project. However, this should not require that any action include logging.

Response: The ID team did consider a rehabilitation-only alternative (EA, p. 2-27), but determined it would not meet the Purpose and Need which was “to provide a flow of wood products to help meet the demand of local communalities before the market value is lost and the wood further deteriorates” (DN, pp. 3 and 4).

Establishing the Purpose and Need of a project, and how narrow or all encompassing it is, is up to the discretion of the Responsible Official. The Purpose and Need and the range of alternatives is in compliance with NEPA.

Issue 38. It is not clear why bringing this area into compliance with Forest Plan direction for elk habitat would be outside the scope of the project.

Response: The scope of this project is to deal with the burned timber from the Purdy Fire, not analyze travel management. The team did consider an alternative that would bring the area into compliance with the Forest Plan for Elk Habitat Effectiveness Index (EA, p. 2-28; DN, p. 5). In order to bring the area into Plan compliance, all roads but the Bear Creek Road would have to be closed. The Forest believes this level of road closure would be better addressed in the on-going Gallatin National Forest Travel Plan revision rather than in this very specific salvage project analysis.

Issue 39. It is not clear why management of sensitive species would be outside the scope of this project.

Response: The statement the Forest made was that “development of conservation strategies for species of concern...is beyond the scope of the proposed action” (DN, Appendix B, p. 15). As discussed in Issue 12 (above), the FSM at 2621.2 states, “units must develop conservations

strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project.” This project will not negatively affect the continued existence of any sensitive species. Therefore, conservation strategies are not required.

Issues 41 and 47. The Forest Service needs to complete an environmental impact statement (EIS) to address the ongoing significant impacts that this project will perpetuate on wildlife.

Response: The regulations at 40 CFR 1501.4(c) provide for the preparation of an EA to determine whether or not to prepare an EIS. As documented in the DN (Appendix A), the District Ranger determined that this project is not a major federal action with significant effects on the quality of the human environment. Therefore, preparation of an EIS is unnecessary.

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 recommend the Forest Supervisor’s decision be affirmed and the appellants’ requested relief be denied.

/s/ Cindy S. Swanson
CINDY S. SWANSON
Appeal Reviewing Officer
Director of Watershed, Wildlife, Fisheries and Rare Plants