

Decision Notice and Finding of No Significant Impact For the Exhaust Fire KW Project

USDA Forest Service
Huron-Manistee National Forests
Huron Shores Ranger Station
Iosco County, Michigan

DECISION AND REASONS FOR THE DECISION

This Decision Notice (DN) documents my decision and Finding of No Significant Impact (FONSI) to implement the proposed activities described in the Exhaust Fire KW Project Environmental Assessment (EA). The Huron-Manistee National Forests' Land and Resource Management Plan (Forests' Plan, March 2006) provides the basis for the Exhaust Fire KW Project. The project is designed to move the project area from the existing condition to the desired future condition set forth in the Forests' Plan.

The Exhaust Fire KW Project Area is located on the Tawas Ranger District of the Huron-Manistee National Forests. The Exhaust Fire KW Project Area is approximately 341 acres in size and is located approximately 12 miles northwest of the city of Oscoda in Township 24 North, Range 7 East, Section 11 of Iosco County, Michigan. Management activities are proposed for implementation between the years 2010 and 2013.

I have reviewed the analysis presented in the Exhaust Fire KW Project EA and the supporting documentation. I am satisfied that the Interdisciplinary Team (IDT) conducted a thorough analysis of the proposed action. The IDT applied standards and guidelines from the Forests' Plan, and carefully considered and applied project design features for the project. I am satisfied the IDT effectively involved the public and carefully considered and responded to their comments. This document describes the reason for my decisions and my findings for not preparing an Environmental Impact Statement. This finding is in accordance with the National Environmental Policy Act (NEPA).

Decision

Based on the EA and in accordance with direction provided in the Forests' Plan and the Final Environmental Impact Statement for the Forests' Plan (2006) **it is my decision to implement Alternative 3** which includes portions of Alternative 1 and portions of Alternative 2. Alternative 3: (The Selected Alternative) proposes treatment to the 260 acres of the Kobs KW Block burned in the Exhaust Fire. This decision is within the scope of the original intent of the EA, meets the purpose and need for the project, is consistent with the Forests' Plan, and is responsive to issues raised during scoping, data collection, and resource assessment.

The following is a description of the activities to be implemented under the Selected Alternative:

- Site prep approximately 260 acres of burned jack pine with mechanical methods.
- Regenerate by planting 260 acres of jack pine back to densities required for KW nesting habitat.

The following project objectives are based on the purpose and need of the project and objectives of Management Area 4.2 KW and the Strategy for Kirtland's Warbler Habitat Management.

- Maintain and regenerate essential nesting habitat for the Kirtland's warbler in compliance with the Kirtland's Warbler Recovery Plan.
- Reduce the potential for intense wildfires by reducing hazardous fuels.

Table 1; Selected Alternative - Vegetative Management Proposals by Compartment, Stand, and Forest Type
 *(All acreages are approximate)

Compartment	Stands	Acres	Forest Type	Prescription
333	08	255 of 336 acres*	Jack Pine	Site prep, plant
333	17	5 of 27*	Jack Pine	Site prep, plant

Project design criteria:

Management requirements, mitigation measures, and monitoring, as detailed in the Forest Plan, are features that will be incorporated into the Selected Alternative. The following design criteria will be applied;

Restrict mechanical equipment for site-prep, within ¼ mile of occupied habitat from May 1 through August 15, to minimize disturbances to Kirtland’s warbler during their breeding season.

Within ¼ mile of occupiable habitat planting operations should be designed to begin nearest to the occupiable habitat as early in the spring as practical and then proceed away from the occupiable habitat. The desired effect of planting in this manner is to treat the adjacent areas before Kirtland’s warblers return to occupiable habitat (May 15) in order to minimize disturbance.

Retain all snags and dead and downed woody debris >8 inch dbh, and retain at least two mast trees per five acres.

Any cultural resource sites found during implementation of project actions would be protected in accordance with standard timber sale contract clause BT6.4.

Rationale for the Decision

My decision to implement the Selected Alternative is based on its effectiveness in meeting the purpose and need identified in the EA and represents site-specific application of the goals of Management Direction listed in the EA. In evaluating the effects of the proposed activities, as described in Chapter 3 of the EA, it is my judgment that the Selected Alternative achieves the stated purpose and need, and brings the Exhaust Fire KW project area closer to the desired condition.

Based on information provided by the U.S. Fish and Wildlife Service (USFWS) and discussions with the Forest Service IDT, I felt that further consideration needed to be given to leaving the 76 acres of unburned Kirtland’s warbler (KW) habitat untreated. A new action alternative (Alternative 3—The Modified Proposed Action) was developed that incorporated portions of Alternative 1 (No Action) and Alternative 2 (The Proposed Action). Alternative 3, the Selected Alternative, only proposes treatment on the 260 acres of the Kobs Block that was burned in the Exhaust Fire leaving the 76 acres of unburned KW habitat intact.

My rationale in choosing the Selected Alternative includes using the most conservative approach to Threatened and Endangered Species management. The potential impact to the five singing males found during the 2010 census was enough for me to decide to leave the 76 acre unburned portion of the Kobs Block untreated. Although the Selected Alternative may cause habitat fragmentation in the future and not produce as high a density of nesting birds when the adjacent 260 acres is planted, it would protect known occupied habitat.

The Selected Alternative will site prep and regenerate jack pine to Kirtland warbler densities on 260 acres and move the project areas from the existing condition to the desired future condition within the burned area only. The project is working towards the enhancement of the federally listed endangered Kirtland Warbler (*Dendroica kirtlandii*).

In making my decision, I took into account the interests and values of the public, and carefully considered the appropriate type and level of treatment needed to achieve Forests’ Plan goals and project objectives. The Selected Alternative provides adequate benefits to the public within the framework of existing laws, regulations, policies, public needs, and capabilities of the land, while meeting the stated purpose and need for this project. Based on all factors, including commodity and non-commodity considerations, it is my judgment that the selected alternative best

provides for the greatest net benefit to the public.

The management actions in the Selected Alternative are routine and have been analyzed by the IDT. Based on analysis of the current project and other similar previous projects, it is my decision to implement the Selected Alternative to achieve the stated objectives of the project.

This project is planned under National Environmental Policy Act procedures at 36 CFR Part 220.7 (July 2008). I have considered the best available science in making this decision. I recognize that less than complete knowledge exists about many relationships and conditions of wildlife, forests, fire, jobs, and communities. The ecology, inventory, and management of a large forest area are a complex and constantly developing science. Perfect knowledge and absolute guarantees are not attainable in this dynamic environment. My decision is based on a review of the record that shows consideration of relevant scientific information, including responsible opposing views, and as appropriate, the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk. My decision implements the Huron-Manistee National Forests Plan. As required by NFMA Section 1604(i), I find this project to be consistent with the Plan.

Other Alternatives Considered

Three alternatives were considered in detail, Alternative 1; (The No Action Alternative), Alternative 2 (The Proposed Action), and Alternative 3 (The Selected Alternative). The No Action Alternative contrasts the impacts of the proposed action with the current condition and expected future condition if the proposed action were not implemented (36 CFR 220.7(b)(2)(ii)). Alternative 2, The Proposed Action, follows management direction established in the Forests' Plan and proposed to return the entire Kobs KW Block (341 acres) to its pre-fire condition. Alternative 3 (The Selected Alternative) also follows direction established in the Forests' Plan. It proposes to treat only the 260 acres of the Kobs Block that was burned.

Public Involvement

The Forest Service uses public involvement and an interdisciplinary team (ID Team) of resource specialists to determine issues of concern and develop possible solutions. Scoping is a process for gathering comments about a site-specific proposed federal action to determine the scope of issues to be addressed and for identifying unresolved issues related to the proposed action (40 CFR 1501.7). Opportunities for comments enable concerned citizens, resource specialists from other agencies, and local governments to express their ideas and views.

Two comments were received during public scoping of the project. One comment pointed out that there was an error to the contact e-mail address that the Forest Service sent out accompanying the substantially complete EA. A correction letter was sent out September 2, 2010 with the corrected e-mail address. The second comment was received by the USFWS. This comment contained an issue that drove the creation of Alternative 3 (see the Rationale for Decision section above).

An interdisciplinary team (ID team) of resource specialists gathered information from the project area to determine how to best implement Forests' Plan direction. Needs and opportunities were identified that would move the area from the existing condition to the desired future condition outlined in the appropriate Management Area in the Forests' Plan, and proposed actions were developed by the ID team. Comments on the proposed actions were solicited from Forest Service employees, members of the public, adjacent property owners, and public and private agencies and organizations through solicitation in the Oscoda Press on August 25, 2010, and a scoping and comment package mailed to interested publics on August 25, 2010.

Clarification and editorial modifications to the Environmental Assessment

A supplemental information report is being mailed along with this Decision Notice. The supplemental report that discusses Alternative 3 along with several other modifications made to the Exhaust Fire Kirtland's Warbler Environmental Assessment. The supplemental report has been included to clarify changes made to the EA.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

I have reviewed the significance criteria of both context and intensity as defined in the National Environmental Policy Act (NEPA) implementing regulations 40 CFR 1508.27, public comments on the EA, and the environmental consequences of the Selected Alternative. Based on this information and my experiences with similar practices and projects, I have determined that this action will not have a significant effect on the quality of the human

environment. My conclusion is based on a review of the record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk. Therefore, an environmental impact statement will not be prepared. I base my findings on the following:

Context of Effects

This project, and the environmental assessment on which it is based, applies only to the portion of the Tawas Ranger District in which it is located. The context for this Decision Notice is the Exhaust Fire KWProject Area only. Neither the effects analysis nor this Decision Notice apply to decisions that may be made elsewhere, either regionally or nationally. After a thorough review of the effects analysis contained in the EA, I can find no basis for concluding that this project has significance (both short-term and long-term) beyond the bounds of the Huron-Manistee National Forests. The reasons for my conclusions are more specifically described in the paragraphs that follow.

Intensity of Effects

This refers to the severity of impact, as defined by the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.27. The following 10 factors are considered in evaluating intensity:

1. Both beneficial and adverse impacts have been considered in the analysis. The beneficial impacts will outweigh expected short term, adverse impacts.

The Selected Alternative achieves the Purpose and Need objectives. Design criteria will be implemented to minimize or eliminate potential effects of proposed activities (EA, Chapters 1 and 2). The EA demonstrates that the effects of this alternative are relatively minor and impacts generated are not directly, indirectly or cumulatively significant (EA, Chapter 3).

2. Public health and safety are minimally affected by the proposed actions.

The EA (Chapter 2.2) lists project design criteria for the proposed activities. Design criteria are intended to minimize or eliminate potential impacts from proposed activities. Chapter 3 of the EA discusses the direct, indirect and cumulative effects of the proposed actions on the human environment. The EA demonstrates that the effects of this alternative are relatively minor and impacts generated are not directly, indirectly or cumulatively significant.

3. The proposed action is not expected to impact any unique geographic area.

There are no unique geographic areas within or adjacent to the project area. Project design criteria mitigate potential conflicts from project activities (EA, Chapter 2.2).

4. The effects on the quality of the human environment are not likely to be highly controversial.

The project treatments are standard management activities and are not considered technologically controversial. There has been public interest in this project. Based on the level of response to the project by the public and past experiences with similar projects, I have determined that this project is not highly controversial. This does not mean that implementation of the project will be acceptable to all people, because some people will neither agree nor be pleased with the decision. However, the effects of the project are not likely to be a source of substantial controversial disagreement. I have determined that the effects on the quality of the human environment are not likely to be highly controversial (EA Chapter 1.7 and Chapter 3).

5. There are no known effects that are highly uncertain or involve unique or unknown risks.

The activities in this project are similar to many past actions on the Huron-Manistee National Forests. Previously implemented projects, and the effects analysis show the effects are not uncertain, and do not involve unique or unknown risk. (EA Chapter 3).

6. The action is not likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.

The decision made is consistent with Forests' Plan standards and guidelines and proposed and probable practices analyzed in the Final Environmental Impact Statement. This decision, applied to specific activities

within the project areas does not commit me to future actions outside of this decision. This decision will not establish a precedent for future actions, nor will it limit future options for management. (EA Chapters 1 and 3).

7. **The action does not cumulatively reach a level of significance, even when combined with past, present and reasonably foreseeable future actions on public and private lands in the area.**

The EA (Chapter 3) describes the anticipated direct, indirect, and cumulative effects on vegetation resources, wildlife resources, federally threatened, endangered, and proposed species, Regional Forester sensitive species, soil and water resources, visual resources, transportation resources, recreation resources, cultural resources, civil rights and environmental justice, and economics and community well being. There are no undisclosed or related actions that would produce cumulative significant effects on the physical or human environment.

8. **The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. The action will also not cause loss or destruction of significant scientific, cultural, or historic resources.**

A cultural resources report was completed for the Project. A rule 4 survey was conducted and no historic properties were known to occur in the the project area. If during implementation historic properties are found, design criteria have been developed to help protect sites from potential adverse impacts. Management activities would be excluded from identified historic cultural sites through sale design or designation of a reserve area that includes a buffer area adequate in size to protect the known site or mitigated to avoid or lessen impacts.

9. **The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act of 1973.**

A Biological Evaluation (BE) was prepared for the Exhaust Fire KWProject (see Project Record). The BE evaluated and documented the effects of this project on federally listed or proposed species, designated critical habitat, and Regional Forester's sensitive species that may inhabit the project area.

10. **The action will not violate Federal, State, and local laws or requirements for the protection of the environment.**

Applicable laws and regulations were incorporated into the Forest Plan Standards and Guidelines (Forest Plan pages I-4 to I-6). The Selected Alternative complies with the Forest Plan (EA Chapter 1). Treatment activities comply with State of Michigan Water Quality Management Practices on Forest Lands (EA Chapter 3). All necessary federal, state, and local permits will be obtained prior to project implementation.

Findings Required by Other Laws and Regulations

This decision is consistent with the intent of the Forests' Plan's long term goals and objectives listed on pages II-2 through II-7. The project was designed in conformance with Land and Resource Management Plan standards and incorporates appropriate Land and Resource Management Plan guidelines (EA Chapter 1).

Other Applicable regulatory requirements and laws are listed below.

o **National Forest Management Act**

The Exhaust Fire KW Project implements the 2006 Huron-Manistee National Forests' Land and Resource management Plan. As required by NFMA Section 1604(i), this project is consistent with the Forests' Plan.

o **Endangered Species Act**

A Biological Evaluation (BE) was prepared for the Exhaust Fire KW Project (see Project Record). The BE evaluated and documented by alternative the effects of this project on federally listed or proposed species, designated critical habitat, and Regional Forester's Sensitive Species that may inhabit the Project Area.

o **Clean Water Act**

This Act is designed to restore and maintain the integrity of water resources. Project activities comply with

Forests' Plan Standards and Guidelines for water resources and State of Michigan Best Management Practices (EA Chapter 3). Any necessary federal, state, and local permits would be obtained prior to implementation.

- **National Historic Preservation Act, Archaeological Resources Protection Act and Native American Graves Protection and Repatriation Act**

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effect of a project on any district site, building, structure, or object that is included in, or eligible for inclusion in the National Register. The Archeological Resources Protection Act covers the discovery and protection of historic properties that are excavated or discovered on federal lands.

Site specific surveys identified no historic or prehistoric sites within the project area. If during implementation, historic properties are encountered, design criteria have been developed to protect sites from potential adverse impacts. Management activities would be excluded from identified historic cultural sites through site design or designation of a reserve area that includes a buffer area adequate in size to protect the site or mitigated to avoid or lessen impacts (refer to Cultural Resources Survey Records in the project file).

- **National Environmental Policy Act**

This Act requires public involvement and consideration of environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 215 by those who supplied comments or otherwise expressed interest in this proposal before the close of the 30-day comment period. The appeal must be filed in writing with the Responsible Official and at a minimum, must include the following:

1. State whether the document is an appeal filed pursuant to 36 CFR 215 or under 36 CFR 251, subpart C;
2. List the name and address of the appellant and, if possible, a telephone number. When multiple names are listed, identify the lead appellant. Signature or other verification of authorship must be provided upon request (a scanned signature for electronic mail may be filed with the appeal);
3. Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;
4. Identify the specific change(s) in the decision that the appellant seeks and rationale for those changes or portion of the decision to which the appellant objects and an explanation for the disagreement;
5. State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

A written notice of appeal must be submitted within 45 calendar days after the Legal Notice is published in the Oscoda Press; however, when the 45-day filing period ends on a Saturday, Sunday, or Federal holiday, then filing time is extended to the end of the next Federal working day. The date of the publication of the Legal Notice is the only means for calculating the date by which appeals must be submitted. The Notice of Appeal must be sent to: Attn: Appeal Deciding Officer, USDA, Forest Service, Gaslight Building, Suite 700, 626 East Wisconsin Avenue, Milwaukee, WI 53202. The Notice of Appeal may also be faxed to: 414-944-3963, Attn: Appeals Deciding Officer, USDA, Forest Service, Eastern Regional Office. Office hours for those submitting hand-delivered appeals are: 7:30 to 4:00 pm CT Monday through Friday, except on Federal holidays.

Those wishing to submit appeals by email may do so to:

appeals-eastern-regional-office@fs.fed.us. Acceptable formats for electronic comments are text or html email, Adobe

portable document format, and formats viewable in Microsoft word applications. Appeals must meet the content requirements of 36 CFR 215.14 and will only be accepted from those who have standing to appeal as outlined at 36 CFR 215.13.

It is the responsibility of appellants to ensure that their appeal is received in a timely manner. The 45-day time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. When the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next federal working day. The day after the publication of the legal notice of the decision in the Oscoda Press is the first day of the appeal-filing period. The publication of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file and appeal. Appellants should not rely on dates or time frame information provided from any other source.

When there is a question about timely filing of an appeal, timeliness shall be determined by:

1. The date of the postmark, e-mail, fax or other means of filing an appeal and any attachments; or
2. The time and date imprint at the correct Appeal Deciding Officer's office on a hand delivered appeal and any attachments;
3. When an appeal is electronically mailed, the appellant should normally receive an automated electronic acknowledgement form the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgment of receipt of the appeal, it is the appellant's responsibility to ensure timely receipt by other means.

PROJECT IMPLEMENTATION

When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before the fifth business day following the close of the appeal-filing period (36 CFR 215.15). Except for emergency situations, when an appeal is filed, implementation may occur on, but not before the 15th business day following the date of appeal disposition (35 CFR 215.2). All activities authorized by this Decision Notice will be monitored to ensure they are implemented as planned and described in the EA.

Contact

For additional information about specific activities authorized with this decision, or to request a copy of the Environmental Assessment, contact Paul Thompson, Wildlife Biologist, Huron Shores Ranger Station, 5761 N. Skeel Ave., Oscoda, MI 48750; Telephone (989) 739-0728 ext. 3028; or email: pthompson@fs.fed.us.

Responsible Official

/s/ Susan M. Kocis

SUSAN M. KOCIS
District Ranger
Huron Shores Ranger Station

October 25, 2010

Date

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