

TES, and SOCC issues

WildEarth Guardians
Washington Cattleman's Association
Sierra Club/Alliance for the Wild Rockies
Stevens County Cattleman's Association
Northeast Washington Forest Coalition

Objectors contend the LMP does not adequately protect ESA-listed species, both by not adopting certain plan elements to conserve species and by including actions that could adversely affect these species.

Response:

The Endangered Species Act of 1973 states that “Federal agencies shall use their authorities to further the purpose of the ESA by carrying out programs for the conservation of endangered and threatened species” (Sect. 7(a)(1)). However, the USFS is not required by the ESA or other laws and regulations to adopt any particular management guidance to achieve that outcome. Conservation measures identified in species recovery plans, conservation assessments or similar documents produced by the USFWS or other federal and state agencies are considered and commonly incorporated directly into LMPs, but the plan need not incorporate all such recommendations. In the case of the revised LMP, many plan components were specifically designed to contribute to the conservation of ESA-listed species. For example, the Canada Lynx Conservation Assessment and Strategy was used to develop management direction in the revised LMP. However, objectors are incorrect that all protective measures from that document or any other management guidance must be followed in the revised LMP to meet ESA Sect. 7(a)(1) requirements.

Several objections expressed disagreement with the inclusion of plan activities or elements that could adversely affect listed species (e.g., timber harvest, recreation in TES species habitat). The ESA requires that federal agencies consult with the USFWS to determine whether “discretionary action authorized or funded by them will result in jeopardy to the species, or in adverse modification of critical habitat” (Sect. 7 (a)(2)). There is no mandate to exclusively avoid or mitigate potential adverse effects to ESA-listed species when implementing otherwise lawful agency actions, and recognition of those effects is part of the NEPA analysis and ESA consultation procedures. The BA recognizes and discloses the potential adverse effects of plan implementation on ESA-listed species. This analysis was based on extensive use of the best available scientific information (BASI). In response, the USFWS concluded (Biological Opinion (BO)) implementing the plan would not jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat.

Remedy: None recommended – the record demonstrates both the substantive and procedural requirements of the ESA and NFMA/NEPA regulations were met.

Objectors contend the level of site-specificity was inconsistent in the FEIS and consultation process with USFWS, particularly in relation to activities that could adversely affect wildlife.

Response:

The BO (p. 354) states the USFWS consulted on the revised LMP as a “framework programmatic action.” As defined in recent regulations amending 50 CFR 402.02, consultation on this type of action “approves a

framework for the development of future action(s) that are authorized, funded, or carried out at a later time and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation” (80 FR 26844). The analysis was sufficiently detailed to support a no jeopardy finding in the BO, but not for quantifying site-specific incidental take associated with particular actions to be authorized to implement the plan (projects). These future projects will be subject to the ESA’s Sect. 7 interagency consultation requirements, including incorporation of site-specific information on the species, spatial extent and quality of habitat and likely effects of the activities.

Remedy: None recommended – the record demonstrates both the substantive and procedural requirements of the ESA and NFMA/NEPA regulations were met.

Objectors contend the FEIS and BA/BO contain inconsistent analysis for species subject to ESA regulations, and that the BO is inadequate.

Response:

Although the FEIS and BA have similar functions with respect to ESA-listed species, these documents serve distinct regulatory functions reflected in their content and role in the forest plan revision process. The purpose of the FEIS is to disclose and compare effects of the alternatives on ESA-listed and other rare or otherwise notable species as required by FS planning regulations (36 CFR 219). The BA serves to provide a detailed analysis of effect of the proposed action (i.e., the preferred alternative) on ESA-listed, proposed, and (at the discretion of the consulting agencies) candidate species, as well as critical habitat and proposed critical habitat. The BA produced by the USFS and the BO received in response from the USFWS meet ESA Sect. 7 requirements, and provide detailed analysis beyond what would be required to compare alternatives. Because this level of analysis was only conducted for the preferred alternative, it is unnecessary and impractical to revise the FEIS analysis to align perfectly with the analysis in the BA and BO.

The BO is not subject to the public comment opportunities required by FS planning regulations. Any changes made to the LMP or analysis based on the BO would be subject to administrative review if they constitute new information not available during earlier opportunities for public comment. The FEIS included revised analysis based on public comments provided on the DEIS, changes made to the LMP and the completion of inter-agency consultation with the USFWS.

Remedy: Note in the ROD (or as an addendum/erratum to the FEIS) that the BA and BO provide definitive analysis of the revised LMP for species subject to ESA consultation.

Objectors contend management direction and effects analysis for Canada lynx do not incorporate the best available scientific information. Objectors referred to several recent scientific studies and suggest how the findings may be inconsistent with plan direction and assumptions in the FEIS and BA analyses.

Response:

A Google Scholar search (Mar. 21, 2019) found over 4,000 references for the term “Canada lynx habitat” published since 2015. Dozens, or perhaps even hundreds, of these references appear to have some relevance to management issues that may be similar to those on the Colville NF. Such an abundance of potential sources of information is common for high-profile species, habitats or management questions.

Despite a mandate to use the BASI in forest management planning (36 CFR 219.3), and similar language for the NEPA process (40 CFR 1502.24), it is not possible or required to review every potential reference. Instead, agencies often identify scientific synthesis papers or legally definitive documents such as recovery plans, conservation assessments or similar literature reviews as constituting BASI. These documents represent comprehensive assessments of results usually produced by many individual scientific studies; the publication of contradictory results at a later date does not invalidate use of previously selected documents as BASI.

The FEIS (Vol. II, p. 462, 483) identifies the Lynx Conservation Assessment and Strategy (ILBT 2013) and the USFWS Recovery Outline (USFWS 2005) as the best science for lynx habitat use and conservation measures. The BA (p. 145) also identifies these documents as BASI, and cites many more studies as background (i.e., species baseline) and to support assumptions of the effects analysis. The USFWS BO includes many of the same references, as well as others related to lynx biology, habitat use and effects of management. It is not sufficient to simply state what references constitute BASI – the responsible official must also “explain the basis for that determination, and explain how the information was applied to the issues considered” (36 CFR 219.3). Based on my review of the publicly available documents in the planning record, this has not been done for Canada lynx

Remedy: These related issues warrant consideration by the responsible official and wildlife specialists. The planning record documents BASI for Canada lynx was identified; however the explanation for how those documents and other information sources were considered, selected and incorporated is not clear. Objectors identified apparent differences between LCAS recommendations and plan components as problematic. Explanation of why BASI was not incorporated verbatim into plan elements may be appropriate.

The new studies referenced by objectors (i.e., Kosterman 2014, Holbrook et al. 2018, Vianbianchi et al. 2017) should be reviewed to determine if they constitute sufficiently important new information indicating the analysis should be revised or consultation reinitiated. If they are not sufficiently relevant or convincing, then the rationale should be explained.

Objectors contend the lack of USFWS consultation for the gray wolf violates the ESA.

Response:

The USFWS finalized a rule delisting the Northern Rocky Mountain gray wolf distinct population segment in 2008 (73 FR 63926-63932). This change has since been upheld in court rulings. Therefore, no interagency consultation under the ESA is required for gray wolves for the Colville NF LMP.

Remedy: None recommended.

Objectors contend the LMP standard FW-STD-VEG-02 is for endangered, threatened and sensitive plants and their habitat is “unattainable.”

FW-STD-VEG-02. Threatened, Endangered and Sensitive Plant Species – Surveys

Surveys for threatened, endangered, and sensitive plant species shall be conducted in suitable habitat on National Forest System lands before habitat-disturbing activities to identify and protect vulnerable populations. All existing sites are identified and managed to

support rare species recovery on National Forest System lands. Suitable habitat shall be managed to enhance or maintain rare species occurrences on the Forest.

Response:

This standard was identified by objectors as impractical due to the time and expense associated with surveys for every species across the forest that could be affected by habitat-disturbing activities. The wording also suggests if rare plant species are found, the habitat-disturbing activity may not be allowed unless it contributes to conservation of rare species. Neither the NFMA nor the ESA require such surveys, nor do they forbid actions that may adversely affect rare species or rare habitats. Furthermore, without defining what activities would require surveys and the location of suitable habitat (beyond the very broad list on page 33, revised LMP), it is easy to understand the objectors' concerns that this standard could be exceptionally disruptive to both agency management activities and otherwise allowable forest uses. No analysis in the FEIS appears to require site-level surveys for every habitat-disturbing activity that could occur in suitable rare plant habitat.

Remedy: The definition of suitable habitat and habitat-disturbing activities should be clarified or this standard (FW-STD-VEG-02) could be removed or incorporate it (without the survey and protection requirements) into guideline *FW-GDL-VEG-01*.

Objectors contend Canada lynx management direction would constrain grazing, including existing permits.

Response:

The standards this objection refers to are applicable in the Kettle-Wedge lynx core area and were developed to contribute to habitat improvement for Canada lynx. The revised LMP (p. 136) clearly states grazing is an acceptable use in the management area, and the standards do not refer to any specific restrictions on grazing. The location, area and current habitat quality of lynx analysis units are in the Biological Assessment (p. 148-149).

The objectors believe without analysis of how these standards will affect livestock forage, "It is not proper for the Forest to stipulate hugely restrictive STANDARDS, across a broad landscape without delineating where these restrictions will be implemented and without providing corresponding acreage figures for each limitation at each location" (Stevens County Cattlemen's Association). The effects of the alternatives on grazing were considered and disclosed in the FEIS (Vol. II, p. 644-669), "There is nothing specifically in alternative P for wildlife that would affect livestock or allotment management" (p. 664). The objectors claim lynx standards FW-STD-WL-02 to FW-STD-WL-06 would indirectly affect their ability to conduct permitted grazing due to changes in vegetation patterns (the extent of which were not quantified) and access.

Remedy: This objection appears to represent a disagreement with elements of the plan based on perceived impacts to a forest use (grazing) rather than a claim the plan violates law, regulation or policy. The objectors substantiate disagreement by linking it to a lack of information provided on how the lynx habitat standards could affect grazing, and the FEIS analysis does not appear to address this issue. Since most of the wildlife-oriented plan elements are related to habitat management, and grazing conditions are affected by the distribution and quality of forage on the landscape, it seems difficult to understand how wildlife management would not affect range resources. The responsible official and specialists (wildlife

and range) may wish to clarify these connections and supplement the analysis to support the current conclusion that the wildlife elements of the LMP will not affect grazing.