

Center  
for  
Biological  
Diversity



California  
Native  
Plant  
Society



# Native Plant Conservation Campaign

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Survey and Manage  
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To Whom It May Concern:

The following are the comments of the Native Plant Conservation Campaign (NPCC) and the California Native Plant Society (CNPS) on the proposal to remove or modify the survey and manage mitigation measure standards and guidelines and its supporting draft supplemental environmental impact statement (DSEIS).

The Native Plant Conservation Campaign (NPCC) is a project of the California Native Plant Society (CNPS) and the Center for Biological Diversity. It is a coalition of native plant societies and other native plant science conservation organizations, representing more than 57,000 laypersons and professional botanists in 28 states, including California, Oregon and Washington. The mission of the NPCC is to promote appreciation and conservation of native plant species and communities through collaboration, education, law, policy, land use and management. NPCC affiliate organizations and their members work closely with state and federal agencies to manage and conserve the native plants and ecosystems throughout the United States. We also extensively use National Forests and other public lands for research, education, and recreation.

The California Native Plant Society (CNPS) is a non profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to conserve them and their natural habitats, through education, science, advocacy, horticulture and land stewardship. Our members and chapters have collaborated closely with the U.S. Forest Service and other State and Federal agencies to manage and conserve rare and common botanical resources in California, and adjacent states, for almost 4 decades. Our members also use National Forests extensively for research, education and recreation.

We are very concerned by the preferred alternative proposed in this DSEIS. We are also disappointed by the poor quality and lack of coherence or specificity in the DSEIS analysis. We are particularly concerned about effects of the Proposal on two groups of species covered by the Survey and Manage program (Program): the species which would be at "high risk of extirpation due to actions" under the proposed action

(Alternative 2) and the species for which there is “insufficient information to determine risk” under Alternative 2 (DSEIS Summary p. iii). In these comments, these groups collectively will be referred to as “species of concern”.

## **DSEIS FAILS TO MEET NEPA REQUIREMENTS**

Our primary concern is the lack of specificity in the proposed action. The proposed action makes no explicit commitment to any management strategy for the survey and manage species in general, or for the species of concern in particular. This deficiency makes it completely impossible for the public or decisionmakers to evaluate the probable impacts of the proposed action. Several faulty assumptions and analysis flaws contribute to this concern.

First, the description of the proposed action states that the DSEIS environmental consequences analysis

“*assumes* that the Regional Foresters and State Directors will make decisions under their existing procedures for modifying their Special Status Species Program lists, to add the appropriate species as displayed on Table 2-8 (located at end of this chapter). Those decisions *are expected* to apply to all future NEPA decisions except those projects that have met all requirements for the Survey and Manage mitigation measure prior to signing of the Record of Decision for this SEIS” (DSEIS, p 25, emphasis added).

This statement carefully avoids making a commitment that *any species will actually be added* to Special Status Species lists. Without an explicit and enforceable commitment, there is no way to know which, if any, species will be managed as sensitive by the agencies under the proposed action. Without such knowledge, it is impossible for the public or decisionmakers to make reliable predictions about how species will be managed or judge their risk of extirpation.

Second, even if many or all of the “high risk” species are in fact added to Special Status Species lists, the DSEIS itself reveals that this does not guarantee management or monitoring that is adequate to maintain viability. The section discussing environmental consequences for Van Dyke’s Salamander states:

“[d]iscretion in survey methodology and in the management of known sites under the Special Status Species Programs results in uncertainty whether all sites would be detected and managed. This in turn, creates some *uncertainty in the analysis of environmental consequences* because the inadvertent loss of undetected sites may affect the maintenance of stable, well distributed, populations. .... *Alternative 2 does not have a specified process to improve knowledge of the species that would facilitate adaptive management*” (DSEIS p. 139, emphasis added).

The problem of differences among agency Special Status Species Programs, and the consequent uncertainty regarding the fates of the various high risk species under Alternative 2, is certainly not confined to Van Dyke’s Salamander. Further, our decades of collaboration with the BLM and Forest Service have revealed considerable differences

in program implementation at the ranger district and BLM field office level as well as the agency and region level. This flaw in the analysis applies to all species for which the DSEIS assumes that Special Status Species Programs will provide adequate mitigation under Alternative 2, and further undermines the DSEIS assertions regarding viability outcomes for high risk species under the proposed action.

Third, mysteriously the DSEIS does not make clear exactly how many species fall into the group designated as “high risk” under the proposed action. Summary Table S-2 (DSEIS p. v) shows that under Alternative 2, 47 species would be at “high risk of extirpation due to actions under the alternative”. However, the environmental consequences discussion is not consistent with this summary. For fungi, 42 species are identified as high risk (DSEIS, p. 97). For plants, one species is at high risk in a portion of its range (DSEIS, p. 123). For mollusks, nine species are at risk of extirpation from “significant portions of the species range” in the planning area (DSEIS p. 135). For others, such as the four affected Salamander species, there appears to be uncertainty regarding risk level (DSEIS, p. 141). Thus, there are at least 56 species that actually fall would be at risk of extirpation under the proposed action in at least part of their range. These kinds of numerical inconsistencies may be found in the “insufficient information” group as well. We did not verify the data in Table S-2 for this group.

Fourth, the DSEIS dismisses possible adverse impacts to aquatic species based on the assertion that

“The Aquatic Conservation Strategy provides a high level of protection to aquatic habitats and associated species...” (DSEIS, p. 75).

However, the Aquatic Conservation Strategy is in the process of being modified. In fact, according to the Aquatic Conservation Strategy Supplemental Environmental Impact Statement (SEIS) online Information Center, a new record of decision considerably to modify the ACS is due in September (<http://www.reo.gov/acs/>). The preparers of this survey and manage DSEIS are surely aware that there are significant concerns regarding the continued effectiveness of the ACS after it is modified. In any case, the fact that the ACS program is undergoing revision makes it extremely inappropriate to rely on the ACS program as mitigation for any impacts from removal of the survey and manage program.

Finally, and perhaps most important, the DSEIS descriptions of environmental consequences for each taxonomic group affected by the survey and manage program are startlingly vague. Several conclude with a section entitled “Summary and *Possible Mitigation*” (emphasis added), which discuss steps proposed to mitigate this risk to species at high risk for extirpation under the proposed action. The language of these sections, like their titles, makes it clear that mitigation measures are optional rather than mandatory. Mitigation measures are invariably presented as possibilities: either it is assumed – but not guaranteed - that the species will be designated and protected by the various agencies Special Status Species Programs, as described above; or some ambiguous statement is made about another mitigation scheme that may be considered e.g.

“[m]itigation of these effects under Alternative 2 *could* include ....” emphasis added. (e.g. DSEIS p. 92, 117, 118, 123, 135)

Therefore the predicted environmental consequences are speculative, at best.

The National Environmental Policy Act (NEPA) requires that environmental impact statements

“be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.” (40 CFR § 1502.1)

The NEPA regulations also state that the description of the alternatives:

“is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. “ 40 CFR § 1502.14

Nowhere in NEPA does Congress give agencies the authority to present alternatives, mitigation measures, and environmental consequences discussion that consist wholly or primarily of speculation regarding actions that might be taken.

On the contrary, NEPA requires:

“(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.” (40 CFR §1502.22)

By failing even to present information sufficient to allow readers to understand exactly what mitigation measures would be implemented under Alternative 2, much less evaluate their merits, this document fails to meet the most basic statutory requirements and legislative intent of NEPA.

## **PROPOSED ACTION DOES NOT MEET NFMA OR ENDANGERED SPECIES ACT REQUIREMENTS**

The National Forest Management Act (NFMA) requires

“Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.”  
36 CFR § 219.19

The DSEIS asserts that NFMA requirements may have been exceeded in extending this protection to non-vertebrate species (DSEIS, P. 6). However, the authors may not have been familiar with the following section of the federal regulations:

“Secretary of Agriculture’s Policy on Fish and Wildlife. Departmental Regulation 9500-4 directs the Forest Service to:

1. Manage “habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species.” FSM § 2670.12

As described above, the DSEIS does not present sufficient information to demonstrate that the proposed action will meet these legal requirements for any species of concern. For species at risk, the proposed action presents only speculation and vague descriptions of possible actions that might be taken to avoid extirpation. For the species for which insufficient information is available, the document does not present any plan whatsoever for either managing those species, or for filling information gaps so that viability can be evaluated or maintained.

The DSEIS also claims that legal requirements were exceeded in extending viability protection to BLM lands (DSEIS p. 6). We find this claim, as well as the NFMA statement above, disturbing. Irrespective of USFS’ and BLM’s regulatory requirements, if species viability is not maintained species become eligible for listing under the Endangered Species Act. The federal listing process can be costly and time consuming. It would be fiscally and administratively imprudent to purposefully allow species to decline to the point at which the Endangered Species Act is triggered. More important, federal listing demonstrates that species and habitat management have failed because to be eligible for listing, species must have become so imperiled as to be at risk of extinction. NPCC certainly hopes that neither statement on p. 6 means that the responsible agencies are advocating allowing species viability to decline to the point at which increased listings become necessary.

In summary, our analysis of the DSEIS and the proposed action shows that the information presented insufficient to allow readers to evaluate whether the plan will comply with NFMA viability requirements or preclude the need for federal listing. On the contrary, what little information is presented forces us to conclude that it is unlikely that implementation of the proposed action will maintain the viability of species of concern.

### **MONITORING AND ADAPTIVE MANAGEMENT PLANS INADEQUATE**

Given the lack of specificity in the proposed action and the associated uncertainty regarding its environmental consequences, and given that there are at least 30 species for which there is insufficient information to determine viability risk under the proposed action, it would seem prudent to include a vigorous program of monitoring and adaptive management in order to evaluate success or failure in meeting the requirements of the NFMA, Endangered Species Act, and the Northwest Forest Plan.

No such plan is presented. The Survey and Manage program as originally constituted mandated annual status reports and included a strong and scientifically rigorous adaptive management program (DSEIS p. 24-5; Appx. 1). That program was developed specifically to fill information gaps and provide a mechanism for evaluating changes in habitat quality and species viability under the Program. Inexplicably, these valuable plans would be eliminated under the proposed action. The DSEIS description of the proposed action states:

“Formal reviews or reports regarding special status species are not required” (DSEIS, p. 33).

Without monitoring, reporting, and adaptive management, there will be no way for either the public or the agencies to determine the outcomes of the proposed action.

### **OTHER PROBLEMS**

The Biological Evaluation presented with the DSEIS presents almost no substantive information about the status and trends of the survey and manage species, including species of concern. Numerous species of concern are not even mentioned. It is missing many of the elements required of at BE by the Forest Service Manual.

It also appears that the BE was not even reviewed by at least one of the specialists whose names appear on the signature lines of the document. NPCC contacted Scott Woltering to ask questions regarding the information that was missing from the BE and the DSEIS. Mr. Woltering stated that not only had he not contributed to the BE, he had not even been asked to read the DSEIS.

We are also concerned that the BE development team did not include a botanist. Most of the survey and manage species fall within the responsibilities of the botany programs of the responsible agencies.

### **SUMMARY**

Our analysis of the DSEIS shows that

1. the proposed action would place at least 47 species at “high risk” of extirpation throughout all or part of the planning area
2. there are at least 30 species which may be at high risk of extirpation under the proposed action, but for which there is insufficient information to make a viability determination
3. the proposed action makes no commitment to take any specific action to mitigate the impacts of the alternative to reduce risk to the high risk group
4. the proposed action presents no plan whatsoever, even speculative, for maintaining or determining viability for the group of species for which there is insufficient information to make a viability determination
5. the proposed action would removed all requirements for monitoring and adaptive management present in the existing survey and manage program, making it difficult or impossible for the agencies to evaluate the impacts of

- management to species of concern and adjust management to maintain viability and prevent listings.
6. the DSEIS analysis contains numerous flaws and omissions and does not present sufficient information to allow evaluation of the probable impacts of the alternatives.

## **RECOMMENDATIONS**

We see no reason to discard the Survey And Manage Program. Based on the information in the DSEIS, any decision to do so would be both arbitrary and capricious. In fact, selection of any alternative other than Alternative 1 would violate NEPA because of the inadequacy of the DSEIS and accompanying Biological Evaluation. Of course the no action alternative received full NEPA analysis when the Northwest Forest Plan was adopted.

Reliance on Special Status Species Programs to provide adequate management of the survey and manage species seems overly optimistic. As noted above, Special Status Species Programs vary too widely among offices and agencies to be reliable mechanisms for providing consistent management and preventing species extirpations, particularly for high risk species. Moreover, the proposed action proposes no mechanism – at all – for monitoring or conserving the 30 species in the “insufficient information” group.

The DSEIS purpose and need section states that the costs of the existing program are excessive and that it diverts funds from other agency activities (DSEIS p. 3). However, the DSEIS shows a difference in annual cost between the no action alternative and the proposed action of only \$7 – 8 million (DSEIS Table 3&4-5, p. 155). This amount is the equivalent of approximately 0.2% of the total Forest Service 2003 budget of \$4.7 billion ([http://www.fs.fed.us/budget\\_2004/overview.shtml](http://www.fs.fed.us/budget_2004/overview.shtml)). It is well documented that the Forest Service and BLM are unjustifiably understaffed in the resource management specialties, including in botany (Roberson, 2002). Many, perhaps most, of the survey and manage duties fall on botanists.

Rather than discarding the survey and manage program, we recommend that the agencies augment their budget requests by the modest amounts that would be necessary to implement the program expeditiously without diverting funds from other functions. Costs are in fact likely to decrease over time, because the adaptive management portion of the existing program allows species to be removed when evidence shows that they do not require special management.

We are aware that there are some administrative procedures within the survey and manage program that sometimes delay important resource management projects, such as prescribed natural fire. Alternative 3 addresses this problem, but it would also remove critical components of the survey and manage program. We are concerned by the proposal in Alternative 3 to eliminate surveys in non-old-growth/late successional stands (DSEIS p. 34). Surveys outside of core habitat areas are essential to gaining a full understanding of the range and habitat requirements of species of concern.

We recommend adoption of Alternative 1. The agencies should mitigate any adverse effects of Alternative 1 by requesting adequate funding from Congress as described above. Such a budget augmentation would have the added benefit of increasing the agencies' resource management staff and expertise, improving their ability to serve the public and implement other programs. Alternative 1 would create somewhat greater costs than the other two alternatives; however it would return greater benefits. It would also have the tremendous advantage of being legally defensible under the NFMA, the Endangered Species Act, NEPA, and other laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily B. Roberson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily B. Roberson, Ph.D.  
Director  
Native Plant Conservation Campaign

#### REFERENCE

Roberson, E.B. 2002. Barriers to Native Plant Conservation in the United States: funding, staffing, law. Native Plant Conservation Campaign, California Native Plant Society, Sacramento, CA and Center for Biological Diversity, Tucson, AZ