Objection: Flagstaff Watershed Protection Project

Pursuant to 36 C.F.R. § 218, the Center for Biological Diversity (“Center”) objects to the draft Record of Decision (“ROD”) for the Flagstaff Watershed Protection Project (“project”) in the Coconino National Forest. Notice of opportunity to object published in the Arizona Daily Sun newspaper on June 26, 2015, making this objection timely. The Center filed specific written comment throughout the planning process and may object.

Project name: Flagstaff Watershed Protection Project
Deciding official: Scott Russell, Acting Forest Supervisor
Project location: Flagstaff Ranger District, Coconino National Forest
Description: The ROD presents a “blended decision” that includes elements of Alternatives 2, 3 and 4, as described in the final environmental impact statement (“FEIS”). It would implement mechanical fuel treatments using variable logging systems, hand thinning and/or prescribed fire on 8,669 acres, construct 16.95 miles of new temporary road, amend the Coconino Forest Plan, and close selected areas to campfires. See ROD at 5-22, 31.

Objecting party: Center for Biological Diversity
ATTN: Jay Lininger, Senior Scientist
P.O. Box 710
Tucson, AZ 85702-0710
Tel: (928) 853-9929
Email: jlininger@biologicaldiversity.org
Objector's interest

The Center is a non-profit public interest organization representing more than 50,000 members, many of whom reside in Arizona and maintain long-standing interests in management of the Coconino National Forest. Its mission is to conserve and recover imperiled fauna and flora and their habitats through science, education, policy and law. Members of the Center, including the undersigned, regularly use and enjoy, and will continue to use and enjoy the forest and grassland environments in the project area for observation, research, photography, recreation and other means of gaining pleasure from witnessing sensitive and at-risk species and their habitats in the wild. Members of the Center, including the undersigned, will continue these pursuits by seeking protection and recovery of native species associated with natural habitats found in the Flagstaff Ranger District, and the project area in particular, because they derive tangible benefits from the existence of a full complement of biological diversity found in wild places of Arizona. For example, the undersigned visited the project area numerous times as a local resident and on field trips organized by the Forest Service, and has definite plans to revisit the project area on November 11, 2015. Forest Service violations of law and policy in the project may degrade vegetation, soil and elements of critical habitat, including food resources, of species whose viability the agency is obligated to maintain. Direct, indirect and cumulative effects of the project are significant. Moreover, Forest Service violations of law and policy in the project may harm democratic interests of the Center and its members in limiting government action affecting the environment to that which complies with the rule of law.

Resolution

The reviewing official may choose to discuss resolution at her discretion. See 36 C.F.R. § 218.11. The Center welcomes discussion to resolve this objection. As required, we suggest grounds for resolution in context of the reasons stated below.

Reasons

I. Departure from best available science regarding effects to threatened Mexican spotted owl.

The National Environmental Policy Act (“NEPA”) requires federal agencies to account for the best available scientific information in analysis of environmental impacts resulting from major actions. In addition, the Endangered Species Act (“ESA”) requires federal agencies to consider the best available scientific and commercial information in consultation regarding effects of agency action to listed species or designated critical habitat. Case law derived from each statute and their respective implementing regulations further requires that, when agencies render findings or take action that is contrary to the best available information, they must state a reasoned explanation.

Mexican spotted owl (“MSO”) is listed as a threatened species under the ESA. At least ten (10) MSO protected activity centers (“PAC”) will be directly affected by project activities.¹

¹ The FEIS, the ROD, and the FWS biological opinion for the project (USDI 2015) invoke the term “protected activity center,” or “PAC,” but do not define it. The MSO Recovery Plan (USDI 2012a: 317) defines “protected activity center” as, “An area of at least 243 ha (600 acres) surrounding the ‘core area,’
See FEIS at 298. On June 5, 2015, the U.S. Fish and Wildlife Service (“FWS”) stated in a biological opinion (USDI 2015) that the project is likely to adversely affect MSO and designated critical habitat. The FWS also stated (USDI 2015: 36-38) that the project will incidentally take up to six MSO pairs or their offspring with harassment by activities located in close proximity to nest sites in any given year, and may harm (kill) up to two individual MSO over 10 years.

A. Road construction in PAC is contrary to best available science.

The ROD approves construction of 4.7 miles of new road in PAC, the maximum considered among all of the action alternatives. See ROD at 31, 34 (Table 12). The FWS expects take of MSO resulting from “direct fatality due to vehicular collisions” (USDI 2015: 38; also see id. 28 (“[T]here is potential risk from implementation of this project due to the level of truck traffic that will occur in Mexican spotted owl habitat”)).

In comment, the Center proposed a reasonable alternative that would avoid construction of any new road in PAC. It cited the recommendation of the MSO Recovery Plan that “no new roads or construction occur in PACs” (USDI 2012a: 261). The Forest Service considered but eliminated from study an action alternative that would forego road construction in PAC. See ROD at 43 (Alternative 5). In doing so, it framed the alternative as, “No Temporary Road Use or Forest Plan Amendments & Hand Thinning Only.” Id. According to the Forest Service,

Under this alternative achieving the desired conditions of reduced high-severity wildfire and achieving a sustainable forest structure would not be possible due to: the preponderance of trees greater than 9 inches dbh, (the standard limit for hand thinning treatments), the safety concerns and feasibility of hand felling and piling larger trees on steep rocky slopes, the inability to remove cut material which would leave an overabundance of fuels on the ground, and the subsequent need for extensive hand piling and burning on steep slopes.

Id. In its dismissal of the reasonable alternative to avoid new road construction in PAC, the Forest Service never stated a reason why road building is essential to the purpose and need, or in the alternative, why failure to build new roads would undermine the purpose and need. Rather, it mentioned operational limitations of hand thinning and asserted a need to amend the Forest Plan. In effect, the agency constructed a straw man and dismissed it without addressing specific comment about effects of road construction to MSO.²

which is the nest site, a roost grove commonly used during the breeding season in absence of a verified nest site, or the best roosting/nesting habitat if both nesting and roosting information are lacking. The 243 ha (600 acres) (minimum size) is delineated around the activity center using boundaries of known habitat polygons and/or topographic boundaries, such as ridgelines, as appropriate. The boundary should enclose the best possible Mexican spotted owl habitat, configured into as compact a unit as possible, with the nest or activity center located near the center. This should include as much roost/nest habitat as is reasonable, supplemented by foraging habitat where appropriate … All PACs should be retained until this subspecies is delisted, even if Mexican spotted owls are not located there in subsequent years.”

² Mirriam-Webster defines “straw man” as “a weak or imaginary argument … set up to be easily defeated.” http://www.merriam-webster.com/dictionary/straw%20man
The Center highlighted in comment some of the significant direct, indirect and cumulative effects of road construction in PAC. In particular,

Significant portions of the project area feature steep slopes where new roads and ground-based logging activities may cause significant losses of soil productivity (Gucinski et al. 2001: 21) (“Losses of productivity associated with road-caused, accelerated erosion are site specific and variable in extent, but they are commonly reported for all steep-slope landscapes”) ... New roads can permanently impair soil productivity even if their use is temporary (Trombulak and Frissell 2000).

Those concerns directly relate to conservation of primary constituent elements of MSO critical habitat. We stated, “The extent and location road construction and its effects to soil erosion, runoff channelization and suspended sediment loads merit a hard look in the environmental analysis. This should include detailed study (rather than mere mention and cursory dismissal) of an action alternative that foregoes road building on steep slopes and sensitive soils where it may increase erosion or impair productivity.” We further commented that “Project design features may fail to mitigate significant cumulative effects,” citing Endicott (2008: 93) (“[A] lack of science to validate [Best Management Practices] effectiveness has been noted as a shortcoming of many BMPs related to forest roads”). New roads remove and cumulatively fragment wildlife habitat (Gucinski et al. 2001). Cumulative effects of road construction may be significant because similar activity is foreseeable in the adjacent Four Forest Restoration Initiative (“4FRI”), the nearby Hart Prairie project, the Upper Beaver project currently under implementation as part of the 4FRI, and other projects located near the project area in the Coconino National Forest.

The Forest Service does not explain in the FEIS or ROD why it chooses to disregard the recommendation of the FWS in the Revised MSO Recovery Plan (USDI 2012a: 261) to avoid road construction in PAC, or in the alternative, state reasons why road construction in PAC is needed to advance MSO recovery. Therefore, the ROD is arbitrary and capricious, and violates NEPA and the Administrative Procedure Act (“APA”), because it does not state why scientific recommendations of the FWS regarding construction of roads in PAC should be ignored.

Moreover, the FWS biological opinion regarding the project is arbitrary and capricious, and violates the APA, because that agency never reconciled its own recommendation to avoid road construction in PAC (USDI 2012a: 261) with its acceptance of that activity, and its occurrence in the breeding season (USDI 2015: 27) (“Some temporary road construction and maintenance may occur during the Mexican spotted owl breeding season within PACs”).

**Remedy:** Defer construction of 4.7 miles of new road in PAC.

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3 The FWS recommendation in the Revised MSO Recovery Plan (USDI 2012a: 261) to avoid road construction in PAC pre-dated the Forest Service statement of purpose and need for the project by more than one year. Therefore, it is only relevant to MSO recovery, and the project purpose is not relevant.
B. PAC management in MSO breeding season disregards available science.

The MSO breeding season generally occurs in March through August. See Forest Plan at 65-1; also see USDI (2012a: 218-219) (reproductive biology). The FWS biological opinion regarding the project stated (USDI 2015: 16),

Fuels reduction treatments, though critical to reducing the risk of severe wildland fire, can have short-term adverse effects to owls through habitat modification and disturbance. As the human population grows in the southwestern United States, small communities within and adjacent to wildlands are being developed. This trend may have detrimental effects to spotted owls by further fragmenting habitat and increasing disturbance during the breeding season.

The Coconino Forest Plan requires the Forest Service to “Limit human activity in protected activity centers during the breeding season.” Forest Plan at 65. That limitation is intended to avoid jeopardy to the species because “MSOs experiencing short-term harassment may fail to successfully rear young in one or more breeding seasons, but will not desert the area because of a short-term disturbance” (USDI 2015: 37).4 The FWS anticipated that incidental take resulting from implementation of the Coconino Forest Plan may include harassment of MSO in up to nine PAC for up to three breeding seasons without jeopardizing the species (USDI 2012b: 27).

The ROD would amend the Coconino Forest Plan to “remove timing restrictions on treatments within ten MSO PACs for two breeding seasons,” with a caveat that “[t]iming restrictions will still apply for activities in nest cores...” ROD at 50.5 The stated need for the plan amendment is to “more quickly accomplish implementation and to limit the duration of effects on MSO.” Id.

“Amendment 1” to the Coconino Forest Plan advanced by the ROD is inconsistent with the MSO Recovery Plan (USDI 2012a). “No mechanical or prescribed fire treatments should

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4 The FWS stated in its biological opinion regarding implementation of the Coconino Forest Plan (USDI 2012b: 24), “In 1996, the USFS amended the Coconino NF’s LRMP to incorporate recommendations from the 1995 Recovery Plan (USDI Fish and Wildlife Service 1995) through an EIS pursuant to NEPA. Since then, the USFS has incorporated 1995 Recovery Plan recommendations into individual projects consulted on under the 2005 LRMP BO and provided project implementation monitoring information to the FWS indicating that these projects were implemented as proposed.” And, “Implementation of fuels reduction and forest restoration projects that follow 1995 Recovery Plan recommendations will have long-term beneficial effects to MSO’s survival and ultimately recovery...” (USDI 2012b: 25). Clearly, the FWS maintains that recommendations of its original MSO Recovery Plan (USDI 1995) supports MSO recovery and avoids jeopardy to the species and adverse modification of critical habitat, insofar as they are incorporated into the Forest Plan by a NEPA decision.

5 The FEIS, the ROD, and the FWS biological opinion for the project (USDI 2015) invoke the term “nest core,” but do not define it. The MSO Recovery Plan (USDI 2012a: 317) defines “core area” as, “A 40-ha (100-acre) area within designated protected activity centers (PACs) circumscribed around the nest or roost site. The nest or roost area should include habitat that resembles the structural and floristic characteristics of the nest site. These 100-acre areas will be deferred from mechanical treatment.”
occur within PACs during the breeding season unless non-breeding is inferred or confirmed that year per the accepted protocol…” (USDI 2012a: 261). “Road or trail maintenance, repair, and building in PACs should be undertaken during the non-breeding season (1 Sep - 28 Feb) to minimize disturbance to owls unless non-breeding is inferred or confirmed that year per the accepted survey protocol…” Id. “Within all PACs, light burning of surface and low-lying fuels may be allowed following careful review by biologists and fuel-management specialists. Generally, burns should be done during the non-breeding season (1 Sep - 28 Feb) unless non-breeding is inferred or confirmed that year per the accepted protocol…” Id. at 261-262.

The MSO Recovery Plan (USDI 2012a) does not anticipate disturbance of breeding owls or fledging juveniles “to limit the duration of effects,” as claimed by the Forest Service. ROD at 50. Rather, it plainly recommends against taking action that could disturb breeding MSO. The only reason supplied by the FWS to justify an exception to its recommendation is, “unless non-breeding is inferred or confirmed that year per the accepted protocol” (USDI 2012a: 261-262). In other words, the MSO Recovery Plan (USDI 2012a) does not contemplate the multi-year exception that the Forest Service wants to apply in the project. In fact, it anticipates that annual survey for presence or absence of MSO will determine site-specific facts meriting an exception or not.

The ROD is arbitrary and capricious, and it violates the NEPA and the APA, because it does not explain why it is necessary to implement project activities in PAC during the MSO breeding season, other than to say that doing so would “limit the duration of effects” to the species. It makes no explicit provision for MSO surveys during project implementation, and it does not condition PAC activities on the completion of surveys. Moreover, it fails to reconcile proposed logging and road construction in PAC during the MSO breeding season with contrary recommendations of the FWS (2012a: 261-262). Those recommendations presume that harassment of MSO during the breeding season may cause nest failure and take (USDI 2012b: 26). The ROD ignores the best available science.6

Furthermore, the FWS biological opinion regarding the project is arbitrary and capricious, and violates the APA, because it accepts that, “Treatments would be designed so that thinning activities within each PAC would be completed in one to two breeding seasons. Treatments within PACs may occur during the breeding season for no more than two years; if implementation is not completed at the end of two years, timing restrictions would apply (March 1 - August 31)” (USDI 2015: 11); also see id. at 37 (“The disturbance and short-term habitat modification generated by activities associated with FWPP is likely to interrupt, impede, or disrupt normal behavior patterns to the point that breeding and feeding activities are impacted over the course of one to three breeding seasons”). The FWS fails to reconcile the “conservation measure” with contrary recommendations in the MSO Recovery Plan to confine PAC activities outside of MSO breeding season “unless non-breeding is inferred or confirmed that year per the accepted protocol” (USDI 2012a: 261-262).

6 According to the FWS (USDI 2015: 10), the Revised MSO Recovery Plan (USDI 2012a) is the best available science relevant to project effects on MSO and critical habitat.
Remedies:  
(1) Defer “Amendment 1” of the Coconino Forest Plan. See ROD at 50-56.

(2) Replace “Amendment 1” with an amendment of the Coconino Forest Plan that only waives seasonal limits affecting prescribed firing activities on 3,954 acres in PAC and MSO nest cores, as approved by the ROD.²

II. Project exceeds limit on incidental take of Mexican spotted owl established by consultation regarding implementation of the Coconino Forest Plan.

The FWS (USDI 2012b: 27) authorized incidental take of MSO resulting from implementation of the Coconino Forest Plan as follows:

- Harassment of MSOs associated with up to nine PACs per year (5 percent) of the 186 PACs due to a single or short-term disturbance. MSOs associated with an individual PAC may not be harassed over the course of more than three breeding seasons.

- Harm and/or harassment of MSOs associated with two PACs due to long-term or chronic disturbance, or habitat degradation or loss over the life of the project. We expect that actions that could result in this type of harm or harassment would be very rare under the existing LRMP due to the protective S&Gs and other conservation measures included in the forest plan for the MSO.

In its biological opinion on the project, the FWS (USDI 2015: 37) admits that incidental take of MSO will exceed what was authorized in the prior Forest Plan biological opinion (USDI 2012b):

We anticipate the take of one pair of Mexican spotted owls and/or associated eggs/juveniles in the form of harassment in up to six PACs per year due to a single (one breeding season) or short-term (one to three breeding seasons) disturbance (non-habitat altering action that disrupts or is likely to disrupt owl behavior within the PACs) or habitat alteration (e.g., short-term loss of key habitat components) associated with implementation of the proposed action. We do not expect that each year owls associated with six PACs may be taken as a result of short-term disturbance and/or habitat alteration; however, we think the potential is there in any given year. The disturbance and short-term habitat modification generated by activities associated with FWPP is likely to interrupt, impede, or disrupt normal behavior patterns to the point that breeding and feeding activities are impacted over the course of one to three breeding seasons. Incidental take is exceeded if owls associated within an individual PAC are harassed over

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7 Annual fire regimes of pine-oak and mixed conifer forest types in northern Arizona include a natural burning season that generally occurs between April and July. Prescribed firing activities in PAC, as approved by the ROD, are consistent with MSO adaptations to fire (Jenness et al. 2004), and will not jeopardize the species or adversely modify critical habitat (USDI 2012a, USDI 2012b). The replacement amendment to the Coconino Forest Plan suggested here is within the scope of environmental effects disclosed in the FEIS. It would implement prescribed fire on the same PAC and MSO nest core acres as in the ROD.
the course of more than three breeding seasons or if owls associated with more than six PACs are harassed in one year as a result of this project. Under the 2012 LRMP BO we anticipated harassment of Mexican spotted owls associated with up to nine PACs per year (5 percent) of the 186 PACs on the NF due to a single or short-term disturbance. The only other incidental take we have anticipated under the LRMP BO is for the 4FRI Project (up to four PACs per year due to a single or short-term disturbance). Although cumulatively this allows for incidental take of up to 10 PACs per year, based upon the project implementation schedules, incidental take will not exceed nine PACs per year while the 2012 LRMP BO is in effect.

The FWS states an assumption that different “project implementation schedules” for the instant project and the adjacent Four Forest Restoration Initiative (“4FRI”) will not exceed incidental take authorized by the Forest Plan biological opinion (USDI 2012b). That statement lacks basis in fact. It is arbitrary and capricious, and the biological opinion for the project violates the APA.

On April 17, 2015, supervisors of the Coconino and Kaibab national forests, respectively, signed a Record of Decision implementing the 4FRI project on 586,110 acres of national forest land, including 355,707 acres on the Flagstaff, Mogollon and Red Rock Ranger Districts of the Coconino National Forest. In its biological opinion regarding the 4FRI project (USDI 2014: 35), the FWS stated, “We do not expect that each year owls associated with four PACs may be taken as a result of short-term disturbance and/or habitat alteration; however, we think the potential is there in any given year” [emph. added]. Compare that statement to the agency’s finding of incidental take in the instant project: “We do not expect that each year owls associated with six PACs may be taken as a result of short-term disturbance and/or habitat alteration; however, we think the potential is there in any given year” (USDI 2015: 37) [emph. added]. In other words, the FWS admits that MSO associated with up to 10 PAC may be taken by the instant project and the 4FRI project combined “in any given year.”

Incidental take authorized by the FWS biological opinion regarding implementation of the Coconino Forest Plan (USDI 2012b) will have been exceeded on the date when the responsible official signs the ROD for this project. Other projects at various stages of implementation also contribute incidental take of MSO on the Coconino National Forest. See USDI (2012b: 17) (“This biological opinion is now covering the projects that were covered by prior opinions but have yet to be implemented. These projects include Victorine Wildland Urban Interface, East Clear Creek Watershed Health Project, Elk Park Fuels Reduction, Arizona Forests Utility Corridor Management Phase II, Upper Beaver Watershed Fuels Reduction, Mormon Mountain Communication Site project, and Inner Basin Pipeline Reconstruction project”). The FWS did not account for those projects when it claimed in the biological opinion for this one

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8 According to the FWS biological opinion (USDI 2015: 22), “There is overlap between the 4FRI DEIS and FWPP DEIS analysis area.”

9 The April 17, 2015, Record of Decision implementing the 4FRI project is attached for convenience. It demonstrates a number of planning and management issues that are common with the instant project, including effects to MSO and critical habitat. On page 47, that document states, “Implementation may begin immediately following the date of this final decision.”
(USDI 2015: 37) that “project implementation schedules” would avoid exceeding incidental take limits authorized for implementation of the Coconino Forest Plan.

Adoption of a ROD for this project by the deciding official will instantly require the Forest Service to reinitiate consultation with the FWS regarding the implementation of the Coconino Forest Plan. See USDI (2012b) (reinitiation notice). As provided in 50 C.F.R. § 402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over an action is retained (or is authorized by law), and if the amount or extent of incidental take authorized in prior consultation is exceeded, or if new information reveals that effects of agency action that may affect listed species or critical habitat in a manner or to an extent not previously considered by the FWS in formal consultation. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending initiation of formal consultation.

**Remedies:**
(1) Defer construction of 4.7 miles of new road in PAC.

(2) Defer mechanical vegetation treatments in PAC.

(3) Defer “Amendment 1” of the Coconino Forest Plan.

**III. Failure to disclose significant cumulative effects of Forest Plan amendment.**

The ROD includes “Amendment 1” to the Coconino Forest Plan, which speaks for itself. See ROD at 50-55 (Table 14). The Forest Service casts it as a “specific, one-time variance,” and claims that, “The language proposed does not apply to any other forest project.” Id. at 50.

The Center noted in comments that the Forest Service also has amended, and currently proposes to amend, the Coconino Forest Plan in other forest projects with the same language. The undisclosed cumulative effect of many “specific, one-time” plan amendments is to unravel management direction for MSO that supports FWS no-jeopardy biological opinions (USDI 2012b: 24) (“[O]ur reasoning for determining that the continued implementation of the LRMP for the Coconino NF will not jeopardize the MSO and will not adversely modify designated CH for the species is based on the following: In 1996, the USFS amended the Coconino NF’s LRMP to incorporate recommendations from the 1995 Recovery Plan (USDI Fish and Wildlife Service 1995) through an EIS pursuant to NEPA. Since then, the USFS has incorporated 1995 Recovery Plan recommendations into individual projects consulted on under the 2005 LRMP BO and provided project implementation monitoring information to the FWS indicating that these projects were implemented as proposed”).

“Amendment 1,” as presented in the ROD, is identical to others advanced in recent and concurrent forest management projects. It evidences a coordinated effort by the Regional Office to significantly revise forest plans in the Southwestern Region without announcing the revision, accepting public comment, or more importantly, consulting with the FWS about the change.
In the April 17, 2015, 4FRI Record of Decision, on pages 16-17, the Forest Service amended the Coconino Forest Plan as follows:

**Amendment 1**: The purpose of amendment 1 is to bring the selected alternative in alignment with the revised Mexican spotted owl Recovery Plan and defer monitoring to the U.S. Fish and Wildlife Service biological opinion that is specific to this project.

Amendment 1 will allow mechanical treatments up to 17.9 inches d.b.h. to improve habitat structure (nesting and roosting habitat) in 18 Mexican spotted owl protected activity centers (PACs). Trees up to 17.9 inches d.b.h. may be cut; however, trees over 14 inches d.b.h. will not be removed. These select trees between 14-17.9 d.b.h. may be felled and left onsite as logs, converted into snags, or burned. Coarse woody debris and surface fuels in treated PACs will be retained at levels compliant with forest plans. These PACs will be managed for a minimum basal area of 110.

These PACs will be managed for a minimum basal area of 110. Low-intensity prescribed fire will be allowed within 54 Mexican spotted owl PAC core areas. The amendment removes language that limits PAC treatments in the recovery unit to 10 percent increments, and the selection of an equal number of untreated PACs as controls. Language referencing pre- and post-treatment population and habitat monitoring will be removed. The language has been removed because it is direction from the former (1995) Mexican Spotted Owl Recovery Plan and is not consistent with the 2012 revised Recovery Plan. Monitoring requirements from the U.S. Fish and Wildlife Service biological opinion that is specific to this project is in Appendix E of the FEIS. Definitions of target and threshold habitat will be added, and approximately 6,299 acres of restricted target and threshold habitat will be managed for a minimum range of 110 to 150 basal area for the purposes of being in alignment with the revised Mexican Spotted Owl Recovery Plan (USDI FWS 2012), and to improve Mexican spotted owl habitat.

Note that the 4FRI Record of Decision affected 355,707 acres of the Coconino National Forest on three ranger districts, including the Flagstaff Ranger District. Specific points of similarity with “Amendment 1” in the ROD now at objection include:

- Purpose to agree with Revised MSO Recovery Plan (USDI 2012a).
- Cut trees up to 18-inches diameter at breast height in PAC.
- Manage MSO habitat for minimum 110 ft²/acre basal area.
- Repeal plan standard for MSO population and habitat monitoring.
- Defer to FWS biological opinion for MSO monitoring plan.
- Amendment is “project-specific.”

Also, the September 21, 2012, proposed action for the Mahan-Landmark forest project included amendments of the Coconino Forest Plan as follows:

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10 According to the FWS biological opinion (USDI 2015: 22), “There is overlap between the 4FRI DEIS and FWPP DEIS analysis area.” The Forest Service stated on page 8 of the 4FRI Record of Decision that its “Amendment 1” affected 18 percent of MSO PAC in the Coconino National Forest.
• Adopt terminology and objectives of the Revised MSO Recovery Plan (USDI 2012a).
• Repeal plan standard for MSO population and habitat monitoring.
• Introduce “habitat structure improvement” as a new exception to the Forest Plan’s general prohibition on timber harvest in PAC.
• Increase the maximum size of tree that may be cut within 10 distinct PAC from 9-inches diameter to 16-inches diameter.

The Forest Service must account for and disclose cumulative effects of its coordinated but piecemeal efforts to change management affecting the MSO. The Forest Service is required by NEPA to take a hard look at the overall cumulative effect of numerous plan amendments to MSO viability and recovery. The Center raised this issue in comment, but the Forest Service failed to address cumulative effects to MSO, let alone controversy, uncertainty, risk or precedent. NEPA forbids this uninformed approach to the sea-change in management of MSO habitat contemplated by “Amendment 1” in the ROD. See 40 C.F.R. §§ 1502.16; 1508.27.

Further, if the Forest Service wishes to eliminate certain requirements of the Forest Plan, such as monitoring of habitat and populations, it may only do so in accordance with mandatory NFMA and NEPA procedures. A Forest Plan may be amended “in any manner whatsoever after final adoption after public notice,” and, if such amendment would result in a significant change, the Forest Service must follow comparable procedures as required for initial development of the Plan. 16 U.S.C. § 1604(f)(4). Eliminating the MSO monitoring requirement in the Forest Plan without amending the plan through the required procedures would violate NFMA. See 16 U.S.C. § 1604(f)(4); 36 C.F.R. § 219.10(f) (1982); 36 C.F.R. § 219.5(a)(2)(ii) (2012).

Remedy: Defer “Amendment 1” of the Coconino Forest Plan.

Thank you for considering this objection. Please contact me regarding your decision at the addresses or phone listed below.

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11 The Forest Service is in the transition period for the 2012 NFMA regulations. 36 C.F.R. § 219.17(b)(2) (2012). However, under either the prior 1982 or the new 2012 regulations, public participation and NEPA compliance are required for Forest Plan amendments. See 36 C.F.R. § 219.10(f) (1982) (stating that even if the proposed amendment is not significant, the Forest Service must follow “appropriate public notification and satisfactory completion of NEPA procedures.”); 36 C.F.R. § 219.5(a)(2)(ii) (2012) (stating that the process for amending a Forest Plan must include consideration of the proposed amendment’s environmental effects, providing an opportunity to comment, and providing an opportunity to object before it is approved).
Sincerely,

[Signature]

Jay Lininger, Senior Scientist
P.O. Box 710
Tucson, AZ 85702-0710
Tel: (928) 853-9929
Email: jlininger@biologicaldiversity.org

Att.

REFERENCES


