



**File Code:** 1570-1

**Date:** June 22, 2007

**Route To:**

**Subject:** Appeal Decision of the Huron-Manistee NFs RLRMP Appeals

**To:** Regional Forester, R-9

This is my decision about the appeals of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the Huron-Manistee National Forests (NFs) Land and Resource Management Plan (2006 LRMP or Forest Plan). All appeals of this decision have been consolidated into one set of issues and one decision is being rendered. The issues were sufficiently similar to allow consolidation (36 CFR 217.13(b)). The appeal reference numbers are abbreviated throughout this decision document by the last four digits of the tracking number for the notice of appeal (NOA).

Seven appeals were submitted under 36 CFR 217: Mark R. Patterson (NOA #0107), Kurt Meister (NOA #0108), Heartwood (NOA #0109), Cycle Conservation Club of Michigan (NOA #0110), Michigan United Conservation Clubs (NOA #0111), United Four Wheel Drive Associations (NOA #0112), and Michigan Conservation Foundation (NOA #0113). Four intervenors also submitted comments.<sup>1</sup> Each appellant and intervenor will receive notification of my decision. The final appeal decision is available via the Web at <http://www.fs.fed.us/emc/applit/nhappdec.htm> or in hard copy, upon request.

Appellant United Four Wheel Drive Associations (#0112) participated in informal resolution discussions and subsequently reached an agreement that resulted in the appellant withdrawing one of their appeal issues. That issue was not reviewed as part of this appeal decision.

On March 20, 2006, you signed the ROD for the 2006 Forest Plan, replacing the 1986 Forest Plan. The 2006 Forest Plan and FEIS were prepared in accordance with the 1982 planning regulations at 36 CFR 219 [1982, as amended] (ROD, pp. 23-24). These regulations were last published in the Code of Federal Regulations (CFR) on July 1, 2000. The record for the appeal to the Chief of the Forest Service was transmitted in conformance with the regulations at 36 CFR 217.15(a).

## Huron-Manistee NFs Forest Plan

The 2006 Forest Plan replaces all previous resource management plans for the Huron-Manistee NFs.<sup>2</sup>

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<sup>1</sup> Intervenors submitting comments are Michigan Association of Timbermen, Michigan Forest Products Council, Kurt Meister, and Michigan Department of Natural Resources

<sup>2</sup> The Huron-Manistee NFs 2006 LRMP was prepared under the Multiple-Use Sustained Yield Act (MUSYA) (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 as amended by the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 et seq.), the September 30, 1982



The 2006 Forest Plan provides multiple-use goals and objectives intended to achieve and maintain a suite of desired conditions across the national forest. Standards and guidelines included in the 2006 Forest Plan provide parameters for the development and implementation of projects and activities that will be proposed and considered during the life of the plan. Approval of any project or activity must be consistent with the plan (16 U.S.C. 1604(i)). If a project or activity cannot be implemented consistent with the standards included in the plan, it cannot go forward unless the plan is amended. The 2006 Forest Plan is permissive in that it allows, but does not mandate, certain projects and activities, nor does it mandate any project decisions. Project-level analysis will determine which management techniques and any additional mitigation measures beyond those prescribed by the 2006 Forest Plan are best suited to each individual project (ROD, pp. 2, 30).

The ROD addresses adaptive management and the adaptive nature of the plan (ROD, p. 31). In its descriptions of desired future conditions, the plan provides a foundation for adaptive management and the basis for projects that can be carried out to achieve and maintain those conditions. The Monitoring Framework in Chapter 4 of the 2006 Forest Plan supports the strategic and adaptive nature of the plan. You stated your commitment to a continuing cycle of implementing projects, monitoring results, learning from the new information gained, and adjusting management direction accordingly (ROD, p. 31). In summary, the Huron-Manistee NFs 2006 Forest Plan establishes a framework for decisionmaking and uses programmatic direction to provide for a balanced response to competing interests while providing for ecological, social, and economic sustainability of national forest resources.

## **Issues**

This appeal decision is the outcome of a deliberative and extensive review process. My review of the appellant's concerns provides a response to issues involving complex regulatory and management issues. Although some issues raised in the appeals are not specifically cited in this decision, all appellants' concerns have been considered. My appeal review focused mainly on compliance of the ROD and FEIS with applicable law, regulation, and policy, as cited by appellants.

Appellants raised appeal issues concerning procedural and planning requirements, as well as a wide range of natural resource issues, which included wildlife, fish and plant species, soils and water, recreation, timber management, transportation systems, roadless areas, and wilderness. Appellants contend the decision violates, among others, the National Environmental Policy Act (NEPA) and its implementing regulations, the National Forest Management Act (NFMA) and its implementing regulations, the Endangered Species Act (ESA), the Multiple Use-Sustained Yield Act, and several agency policies.

## **Appeal Decision**

Your decision meets the requirements of applicable federal law, regulations, and policy, except as discussed below. Attachment 1 describes the issues raised by appellants, and where in the record

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implementing regulations of the NFMA (36 CFR 219, as amended September 7, 1983), and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1500-1508).

those issues are addressed. I affirm your decision to select Alternative B from the FEIS and approve the 2006 LRMP for the Huron-Manistee National Forests.

One appellant contends the FEIS fails to adequately consider and disclose the environmental impacts of the decision to open 3,000 miles of unplowed road to snowmobile use (NOA #0108, pp. 7-11). It is not clear from the record whether you intended to make a final agency decision to open these roads to snowmobile use.

The ROD states that “direction for use of OHV will be the same in the 2006 Forest Plan as it was in the 1986 Plan” (ROD, p. 10); and “the 2006 Forest Plan does not make any final agency decision to develop or designate any specific route for either snowmobile or OHV use” (ROD, p. 28). These statements are reinforced in the Need for Change Assessment (Appeal Record (AR), File 611, p. 38), the response to comments on the Draft EIS (FEIS Appendix J, p. J-109), and in descriptions of the nature of the decision made in the 2006 Forest Plan (ROD, pp. 2, 7, 23), all of which indicate that the 2006 Forest Plan does not make final agency decisions or change existing direction with regard to OHV use.

The FEIS, on the other hand, states that Alternatives B and C would open unplowed forest roads to snowmobiles:

“Alternatives B and C would allow snowmobiles to use designated trails and all unplowed forest roads unless otherwise prohibited... . This policy would bring the Forests in alignment with State of Michigan snowmobile regulations pertaining to use of unplowed roads. Opening unplowed roads would increase user satisfaction by increasing the recreation opportunities... .”

(FEIS, p. III-301)

Table III-35 shows that under current direction (Alternative A), 600 miles of designated trail are open to snowmobiles. Under Alternatives B and C, unplowed roads totaling an additional 3,000 miles would also be open. The response to comments for PC #295 states “The revised Forest Plan does not change the miles of snowmobile trails. However, it does open unplowed roads to snowmobile use” (FEIS Appendix J, pp. J-119, 120).

The 2006 LRMP contains the following direction on snowmobile use:

“Restrict Off-Highway Vehicle travel, including snowmobiles, to designated trails or areas... .

“Restrict snowmobile travel to designated trails or open unplowed roads... .

“Relocate or abandon snowmobile trails on roads when concurrence cannot be obtained from local road authorities to eliminate snowplowing.”

(2006 LRMP, p. II-13)

These statements, which do not appear to be entirely consistent, are each identified as “guidelines,” which are described as “preferable limits to management actions that may be followed to achieve desired conditions,” rather than mandatory requirements (2006 LRMP, p. I-3).

The FEIS includes no site-specific evaluation of the environmental impacts of opening 3,000 miles of road to snowmobile use (beyond the statement on page III-301 that doing so would

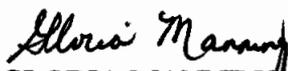
increase user satisfaction). The ROD does not describe this as a component of the decision or a final agency action.

From the record I cannot determine whether you intended to make a final agency decision to open 3,000 miles of unplowed road to snowmobile use in the ROD. In any case, the FEIS and ROD contain insufficient site-specific analysis to support such a final agency decision. Therefore, I am instructing you to refrain from opening these roads to snowmobile use until such a decision has been made and documented at the project level, and supported by appropriate site-specific environmental analysis in accordance with NEPA.

The same appellant contends the data on snowmobile use was inappropriately manipulated (NOA #0108, pp. 8-9). The Huron-Manistee NFs carried out National Visitor Use Monitoring (NVUM) surveys in 2000/2001 – the first year of that program. Based on professional judgment, field experience, and communication with a professor at Michigan State University, the Forest concluded that the NVUM survey significantly underreported recreation use, especially with regard to snowmobiles. The interdisciplinary team adjusted the NVUM figures to better represent their professional estimates of recreation use. See FEIS, pp. III-287 and 337. See also AR, File 733a, Recreation Supply and Demand Analysis, pp. 3, 4, 11, 12, 17, 36, and 37. The adjustments made to NVUM data are documented, disclosed, and explained in the record, along with the rationale and basis used by the interdisciplinary team to make these adjustments. The appellant has not shown how these adjustments violate any provision of law, regulation, or policy.

At the same time, the record also reflects some confusion with regard to recreation use data presented in the FEIS. Table III-32 is entitled “National Visitor Use Monitoring Summary (Annual RVDs).” However, the numbers in the table in fact reflect the professional judgment of the interdisciplinary team, and have been increased by a factor of three or more and converted to a different set of units from the original NVUM data. The adjustments are disclosed in footnotes and explanatory text, but the results of these adjustments cannot fairly be described as reflecting the NVUM survey. See FEIS, p. III-287. Other references to recreation use figures reference the NVUM in association with adjusted figures without such disclaimers. See FEIS, p. III-300.

I am instructing you to correct the description of the adjusted estimates of recreation use, where appropriate, so that it is not described as NVUM data. The NVUM survey data should only be presented in its original form. Data from other sources may also be used in local analysis, but should not be described as NVUM data.

  
GLORIA MANNING  
Reviewing Officer for the Chief

cc: Region 9 Appeals. R9 Planning, Forest Supervisor, Huron-Manistee NFs

# Attachment 1: Issues Reviewed and Decision Affirmed

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## National Environmental Policy Act (NEPA)

### Alternatives

Appellant contends the range of alternatives described in the FEIS is inadequate because none include a prohibition of firearm hunting in areas of Primitive, Semi-primitive Nonmotorized, and Roaded Natural recreation opportunities (NOA #0108, p. 14). A similar concern, that the forest plan should close semi-primitive management areas to hunting, was noted and responded to in the response to comments on the Draft EIS. See FEIS Appendix J, p. J-93. The response explained that the State of Michigan has the authority for management of game species and that Forest Service policy provides for limited exceptions when the agency would impose restrictions. It is also important to understand that regulations require consideration be given to a reasonable range of alternatives that provide different ways of responding to the purpose and need. See 40 CFR 1502.13. For an LRMP, the alternatives encompass different overall management strategies, but not necessarily different individual components of those strategies.

The FEIS explains that one of the significant changes in public demand since the previous LRMP was completed is demand for semi-primitive recreation. See FEIS, p. I-1. The alternatives reflect an appropriate strategic response to this change by incorporating a range of acres allocated to management for semi-primitive recreation opportunities. See FEIS, p. II-15. Corresponding desired future condition descriptions, goals, and objectives were developed as part of the management prescription for these areas (2006 LRMP, pp. 6.1-2 to 5, 6.2-2 to 3). The extent to which any management activity or use (e.g. hunting) is consistent with or in conflict with meeting the goals and objectives for these areas “will be monitored to see if the desired effect is occurring, and if not, a modified or new strategy will be developed and implemented” (ROD, p. 31). I find the range of alternatives for management of recreation opportunities complies with NEPA regulations.

Appellant contends the alternatives failed to include a specific trail system as access routes to state trail systems (NOA #0110, p. 8). The 2006 LRMP does not make any final agency decision to develop or designate any specific trails (ROD, p. 28). Likewise, the 2006 Plan does not preclude the addition of new trails or propose to eliminate any trails. See FEIS, pp. J-67 and 68. Final agency decisions with respect to the specific approval, location, and management of particular trails are properly left to project-level decision-making, with appropriate site-specific environmental analysis and public involvement. See 2006 LRMP, pp. I-10, II-13. See also FEIS Appendix J, pp. J-67, 68, and 109. Contrary to appellant’s contention, the FEIS need not include detailed site-specific evaluation of potential trail corridors.

Appellant contends the range of alternatives was insufficient because none of the alternatives provide for an increase in the number of acres to be managed as semi-primitive areas. The appellant further contends the failure to increase the number of acres designated as semi-primitive areas is a violation of unnamed “applicable laws” (NOA #0108, pp. 2-6). NEPA regulations state that “the alternatives including the proposed action” are designed to respond to “the underlying purpose and need” for the project (40 CFR 1502.13). Alternatives may also be developed to address in different ways the key planning issues. The Huron-Manistee NFs evaluated additional areas for possible semi-primitive management and took into consideration such factors as Recreation Opportunity Spectrum criteria, road densities, old growth, and the management of adjacent private lands before concluding there were no new areas to be considered as semi-primitive management areas. See FEIS, p. III-313. In describing the full range of alternatives considered, the Huron-Manistee’s FEIS discloses consideration of a “passive management” alternative that would have emphasized non-motorized recreation, but the alternative was dropped from detailed consideration because it would fail to realize several important accomplishments: provide habitat required for species viability, manage fuels to reduce hazardous conditions, and effectively respond to issues or public comments received. See FEIS, p. II-3; ROD, p. 18. The range of alternatives as it pertains to areas allocated to semi-primitive management complies with NEPA regulations.

I find no violation of the NEPA regulations in the consideration of a range of alternatives.

### **Data Quality and Availability**

Appellant contends the alternative and management area maps contain insufficient information in violation of disclosure requirements (NOA #0110, pp. 5-6). The NEPA regulations generally require only the amount of information and level of detail necessary to understand the effects of the alternatives (40 CFR 1502.15). I find the information displayed in the FEIS and 2006 LRMP maps meets this requirement. The details requested by appellant would be more appropriate for project-level analysis. FEIS Appendix J-Response to Comments contains a comprehensive response to this concern (see Response to Comment #217, pp. J-88 to 89; also responses on pp. J-77 and J-81 to 82).

## Scientific Accuracy

Appellant contends the species viability evaluation process required independent scientific review for errors and bias (NOA #0113, p. 2). The Species Viability Evaluation (SVE) for the Huron-Manistee NFs incorporates current scientific information on species, description of ecological context, evaluation criteria, and habitats. See FEIS, pp. 3-71 to 111, 170. See also FEIS Appendix B, pp. B-1 to 22; Appeal Record (AR) 030610, SVE Review and Evaluation Meeting, pp. 90-123; AR 030610, SVE Species Viability Evaluation, pp. 124-137. Consistent with NEPA regulation at 40 CFR 1502.24, the record demonstrates the viability evaluation incorporates the review of external and internal experts (see AR 020701, Species Viability Evaluation Contact List, pp. 345-363), including direct recommendations by external experts (see AR, Document 030310, National Forests in Michigan Species Evaluation List, pp. 110-118). In addition, historical range and population information was provided by expert sources including the U.S. Fish and Wildlife Service, Michigan Natural Heritage Program, and Natureserve. See FEIS Appendix B, pp. B-1 to 3. An abundance of analysis and scientific review is evident in the viability evaluation process conducted by the Huron-Manistee NFs, and is in compliance with NEPA.

## Environmental Consequences

- *Carbon storage and climate change*

Appellant contends the FEIS fails to disclose environmental effects related to carbon storage and climate change (NOA #109, pp. 12-13). This issue is discussed in FEIS Appendix J, Response to Comments (p. J-49). As the response notes, possible climate effects resulting from LRMP alternatives are uncertain, and any attempts to estimate such effects at this time would be unreliable. I agree that this issue is not ripe for consideration.

- *Herbicides and pesticides*

Appellant contends the disclosure of environmental consequences associated with use of herbicides and pesticides is inadequate (NOA #0109, p. 13). As noted elsewhere in this appeal decision, the 2006 Forest Plan is programmatic and makes no project-level decisions. See 2006 LRMP, p. I-7. See also ROD, p. 30. Consistent with this approach, the 2006 LRMP includes guidelines to use chemical treatment as one of several available methods for, controlling the spread of non-native invasive species (p. II-10), maintaining managed wildlife openings (p. II-34), and for timber management site preparation and intermediate treatments (pp. III-2.1-4 to 5, 4.2-5 to 6, 4.3-7 to 8, 4.4-4 to 5, 6.1-7, 6.2-4, and 8.3-3). As projects are proposed that include the use of any or all of the available treatment methods they will be subject to site-specific environmental analysis. The disclosure of environmental effects in the FEIS is appropriate and adequate for the programmatic level of decisions being made.

- *Soil*

Appellant contends the FEIS fails to adequately disclose the effects, including cumulative effects, of the 2006 LRMP on soils (NOA #0109, pp. 15-17). I have reviewed the soils effects analyses (direct, indirect, and cumulative) in light of the concerns raised by the appellant and find the disclosure of impacts of proposed management activities on soils are adequate for a programmatic LRMP. See FEIS, pp. III-9 to 17. The analysis identifies effects of activities on soil productivity and compaction (e.g., see FEIS, prescribed fire and timber harvest activities, pp. III-12 to 15; wetlands, pp. III-210 to 211; effects on old growth, pp. III-251 to 252; and other disclosures, p. III-360) and concludes long-term site productivity would be maintained under all alternatives (FEIS, p. III-12).

These effects discussions comply with NEPA requirements (see 40 CFR parts 1502.16, 1508.7 and 1508.8). The FEIS contains a Forest-wide level of analysis; actual effects of site-specific projects on soils will depend on the extent of each project, environmental conditions at the site, site-specific mitigation measures, and their effectiveness. As the Regional Forester explains, additional site-specific NEPA analysis will occur as projects are proposed and evaluated. See ROD, pp. 2, 23, and 30. I find no violation of NEPA or NEPA regulations in the disclosure of effects to soils.

- *Connectivity*

Appellant contends the FEIS fails to adequately disclose the amounts of forested and non-forested habitats, and the connectedness of forested blocks and its effects on genetic diversity. The appellant further contends this information is necessary to insure the viability of “sensitive forest interior species” (NOA #0109, p. 19). Acres of forested and non-forested habitat are discussed in the FEIS. See FEIS, pp. III-39 to 40 and III-43 to 45. The effects of the alternatives on forest interior species viability are evaluated in the FEIS. See FEIS, pp. III-92 to 106 (Riparian/ Lowland Hardwood/Floodplain and Lowland Conifer/Boreal Habitat Groups); III-108 to 109; and III-111 to 113 (Mixed Hardwood (late) Habitat Group). The analysis also identifies existing acres and projected acres of habitat for threatened and endangered species under the different alternatives. See FEIS, pp. III-58 to 68, III-117, and III-149 to 167. Finally, the impact of fragmentation on habitats, communities and species, including Regional Forester’s Sensitive Species, is acknowledged in the FEIS. See FEIS Appendix F, pp. F1 to 5. See also FEIS, pp. III-79, 80, 85, 87, 89, 90 to 155. I find the FEIS adequately discloses information about different habitats, provides an effects analysis of species associated with those habitats, and complies with NEPA and NEPA regulations.

- *Deer population*

Appellant contends the 2006 LRMP will lead to an overabundance of deer and the FEIS does not adequately disclose the effects of this population increase (NOA #0109, p. 21). One of the changes proposed under the notice of intent to revise the 1986 Huron-Manistee NFs LRMP, was to “decrease deer and wildlife emphasis areas” (FEIS, p. I-4; Appeal Record (AR), Document 030918, “Huron Manistee Analysis of the Management Situation”, p. 29), and one of the criteria used in comparing alternatives in the species viability analysis is “acres of deer, grouse, and wildlife emphasis areas” (FEIS, p. I-10). The selected alternative (B) is designed to “decrease deer emphasis areas by approximately 13,500 acres” (FEIS, p. II-7). The environmental consequences of the 2006 LRMP on deer populations are adequately disclosed in the FEIS (e.g., pp. III-151, 153, 159, 160, 163, 165, 166, 167, 169, 170, 172, 174, 176, 198 to 201, 207, 210, 212, 252, 256; AR, File Code 1210, Document 151, USDA-Forest\_Service.\_2005: Biological Evaluation for Huron-Manistee National Forests Draft Environmental Impact Statement and Proposed Forest Plan, pp. 188-196, 204-208, 214-234, 241-245, 269-283) and comply with NEPA requirements at 40 CFR 1502.16. The appeal record indicates that forest management can influence deer populations locally through the creation of browse production; however, the importance of forest management as a limiting factor in the statewide deer population is considered outside the Forest Service’s jurisdiction (AR, File Code 611, Document 030918, Huron Manistee Need For Change, p. 36; AR, File Code 611, Document 030918, Huron Manistee Analysis of the Management Situation, p. 29). The Huron-Manistee NFs have adequately analyzed and disclosed the effects of the 2006 LRMP on deer populations in compliance with NEPA.

- *Species of interest*

Appellant contends the description of effects the 1986 Plan has on species of interest is flawed because none of them have been federally listed during the life of that plan (NOA #0107, p. 4). The intent of providing a list composed of species of interest in forest plan revision documents is to identify those species which may be at risk due to a variety of factors, any of which may change over time. Management recommendations may be proposed to preclude the loss of more populations, which could possibly trigger a proposal for federal listing. Federal listing of a species is under the regulatory authority of the United States Fish and Wildlife Service, not the Forest Service. Thus, the appellant's claim is outside the scope of this appeal review. There is no violation of law, regulation, or policy.

- *Listed species*

Appellant contends the FEIS fails to disclose the current status of listed species or to detail specific impacts to those species, even though the Biological Assessment (BA) and Biological Opinion (BO) describe a likelihood of harm to the Indiana bat (NOA #0109, pp. 30-31). Impacts to federally listed species are disclosed. See FEIS, pp. III-52 to 70. These effects analyses comply with NEPA (40 CFR 1502.16). The current status of listed species impacted by the 2006 LRMP, as well as detailed effects to those species, are disclosed in the BA: Indiana bat (BA, pp. 21-45), bald eagle (BA, pp. 46-65), Kirtland's warbler (pp. 66-82), Great Lakes piping plover (pp. 83-94), Karner blue butterfly (pp. 95-114), and Pitcher's thistle (115-131). I find that the FEIS and associated planning documents, such as the BA, adequately disclose the status of federally listed species and impacts to those species. I find no violation of NEPA.

## **Cumulative Effects**

Appellant contends the analysis of cumulative effects fails to assess all impacts at once, doesn't adequately account for past or future actions, and ignores actions on adjacent non-federal lands (NOA #109, pp. 17-18). Cumulative effects analyses are part of the overall analysis of environmental consequences in the Huron-Manistee NFs 2006 LRMP FEIS, Chapter 3. I have reviewed these cumulative effects discussions in light of appellant's contentions and NEPA requirements (in particular, 40 CFR 1508.7 and 1508.8). I do not agree with appellant; rather, I find the analyses are quite adequate for a programmatic LRMP. Past, current and anticipated future actions from all sources, including adjacent lands as appropriate, are discussed and considered (e.g., the cumulative effects discussions found throughout the sections on threatened and endangered species (pp. 3-52 to 70), species of concern (pp. 3-70 to 148), and riparian areas and wetlands (pp. 3-203 to 213)). As the Regional Forester explains, additional site-specific NEPA analysis will occur as projects are proposed and evaluated (ROD, p. 30). I find no violation of NEPA regulations.

- *Bird populations*

Appellant contends the FEIS fails to adequately disclose the cumulative effects of the 2006 LRMP on bird populations in areas outside the Huron-Manistee NFs (NOA #0109, pp. 19). A key factor in determining cumulative effects is defining the geographical bounds of the area or resource to be analyzed. This boundary will logically differ for different resources, but in the case of wildlife species it should take into account such items as habitat, range, life history requirements, etc. The boundary should consider the full extent of habitat that could be impacted through federal and non-federal management actions (Considering Cumulative Effects Under NEPA, CEQ 1997, pp. 12-15).

Cumulative effects analyses are described for numerous bird species within Chapter 3 of the FEIS (Terrestrial Habitats and Species of Concern, pp. III-77 to 138). The analysis includes lands both within and outside the proclamation boundary of the Huron-Manistee NFs. The effects analysis discloses, by habitat community, the expected direct, indirect and cumulative effects of each alternative. See FEIS, p. III-77. Impacts on surrogate or representative species, which includes numerous birds and groups of birds, are analyzed for each habitat community (FEIS, e.g., pp. III-82 to 83 (common loon, trumpeter swan, black-crowned night heron, bald eagle, and black tern), III-86 to 87 (American bittern, northern harrier, king rail, yellow rail, black-crowned night heron, and black tern), III-88 to 89 (olive-sided flycatcher), III-92 to 97 (bald eagle, cerulean warbler, Canada warbler, red-shouldered hawk), III-90 to 91, III-99 to 102 (golden-winged warbler), III-104 to 106 (northern goshawk, spruce grouse, and black-backed woodpecker), and III-107 to 108 (cerulean warbler and red-headed woodpecker)). The direct and indirect and cumulative effects on federally listed bird species are also disclosed in the FEIS (pp. III-56 to 62, and II-77). These analyses comply with NEPA requirements at 40 CFR 1508.7. Additionally, several species of birds are analyzed for cumulative effects solely within the proclamation boundary of the Forests because that geographic boundary encompasses the full extent of habitat that could be impacted through federal and non-federal management actions (FEIS, pp. III-91, 132, 135, 141, and 144). Information on range-wide habitat trends for certain bird species can be found in the Biological Evaluation (pp. 62, 82-89, 103, 284-286, 295-300, and 308-448). Based upon the above information, the analysis in the FEIS complies with NEPA by adequately disclosing the cumulative effects of the 2006 LRMP on bird populations, including areas outside the Huron Manistee NFs.

- *Air quality*

Appellant contends the FEIS fails to adequately disclose the cumulative effects to air quality from prescribed burning on “all the forests in the region (NOA #0109, p. 20).” The National Environmental Policy Act (NEPA) states that “Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).”

In reviewing the record, I found that the FEIS appropriately disclosed the cumulative effects of prescribed burning on air quality. The FEIS disclosed that the burning of forest fuels does produce “smoke emissions that have potential health and safety effects . . . . Smoke decreases visibility and could potentially be a health hazard for people susceptible to breathing difficulties” (FEIS, Chapter III, p.-26). An analysis of the northern Lower Peninsula of Michigan area considered the direct, indirect, and cumulative effects. It is acknowledged that “(T)he dispersal of air pollutants is complicated and dependent on many factors. However, even locally, dispersal of any air pollutants originating from activities on the Huron-Manistee national Forests is unlikely to have discernable effects. At distances greater than the airshed including Northern Lower Michigan, these effects would be negligible” (FEIS, p. III-25).

The FEIS states that “(S)moke management plans for prescribed burning are equivalent to Best Management Practices for air quality. Prior to burning, site-specific plans analyze site conditions and identify mitigation to protect public health and safety. Best management practices will be applied in all prescribed burning efforts under all alternatives” (FEIS, p. III-24). The FEIS further states that “(S)moke management plans consist of policies and practices implemented by natural resource managers and air specialists to minimize public health and welfare impacts of smoke from fires that are managed for resource benefits” (FEIS, p. III-24).

I affirm that the record did adequately assess the cumulative effects of prescribed burning on air quality. The Forest Service “will participate in the formulation of a State of Michigan Smoke Management Plan and will comply with the final plan. Smoke management plans consist of policies and practices implemented by natural resource managers and air specialists to minimize public health and welfare impacts of smoke from fires that are managed for resource benefits” (FEIS, p. III-24).

## **Mitigation**

Appellant contends the FEIS fails to consider measures that would mitigate impacts to listed species, in violation of 40 CFR 1502.16(h) (NOA #0109, p. 32). Discussion in the FEIS acknowledges that standards and guidelines and conservation measures are expected to avoid or minimize the potential for direct or indirect impacts to federally listed species (e.g. pp. III-52, 53 to 55 (Indiana bat), III-56 to 57 (bald eagle), and III-61 (piping plover)). Additional analysis is referenced in the FEIS: “A review of current conditions and current management direction(s) for these species are discussed in detail in the Forest Plan biological evaluation and biological assessment [BA]. They discuss species description, life history, habitats, threats, status of the species, factors effecting [sic] the species, effects of the alternatives, cumulative effects and makes [sic] determinations for each alternative. This detailed information has not been carried forward in the Final Environmental Impact Statement section” (FEIS, p. III-52). As mentioned, the BA discusses in detail how federally listed species will be impacted by the proposed action and specifies protective measures for each species. See BA, pp. 1-131. See also FEIS, pp. III-52 to 70. Examples of management direction meant to avoid or minimize the potential impacts to federally listed species are found throughout the Forest-wide (e.g., pp. II-13, 17, 23 to 29, 37) and Management Area (e.g., pp. III-4.2-7 to 8, 4.3-9 to 10) standards and guidelines included in the 2006 LRMP. The Huron-Manistee NFs FEIS adequately considers 2006 LRMP management direction intended to mitigate impacts on federally listed species and is in compliance with NEPA.

## **National Forest Management Act (NFMA)**

### **Management Direction**

- *Revision*

Appellant contends that management direction from the previous (1986) LRMP was inappropriately carried forward to the 2006 LRMP (NOA #0110, p. 1). The FEIS explains the scope of the LRMP revision, and the “need for change” concept (pp. I-1 to 3). The entire 1986 LRMP was evaluated along with alternatives to it (see FEIS Chapter 2); where management direction was still applicable, it was not changed. This complies with the NFMA regulations.

- *Barrens habitat*

Appellant contends the 2006 LRMP lacks adequate support for the decision to manage for more acreage of barrens habitat than is required for the Karner blue butterfly (NOA #0113, pp. 2-3). NFMA regulations require the Forest Service to manage fish and wildlife “to maintain viable populations of existing native and desired non-native vertebrate species in the planning area” (36 CFR 219.19). The planning regulations also require that forest plans, to the extent practicable, implement management prescriptions that “shall preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that

it is at least as great as that which would be expected in a natural forest and the diversity of tree species similar to that existing in the planning area” (36 CFR 219.27(g)).

The Karner Blue Butterfly is a federally listed species. See FEIS, pp. 3-62 to 69; Biological Assessment (BA), p. 7; and BO, p. 4. Restoration goals were proposed by agency biologists (FEIS Appendix B, pp. B-10 to 22; BA, pp. 18-19; AR, Document 020601, SVE Management Area Forest Type ACRES, Barrens and savannahs, pp. 394-442) and approved in conjunction with external scientific experts and U.S. Fish and Wildlife Service (Biological Opinion (BO), p. 3, see Consultation History). Management recommendations were proposed using the current scientific information, and are reinforced by U.S. Fish and Wildlife Service reasonable and prudent measures (BA, pp. 18-19, 95-114; BO, pp. 21-26, 117-140; AR, Document 040401, Barrens Restoration White Paper, pp. 1-2). The Huron-Manistee NFs 2006 LRMP contains adequate support for the Karner Blue Butterfly Habitat restoration. I find no violation of NFMA.

- *OHV management*

Appellant contends the 2006 LRMP violates NFMA by not including the amount of proposed and probable management practices by management prescription or area, and because the use of guidelines rather than standards means that the direction will not be enforceable (NOA #0109, pp. 5-8). The NFMA regulations require that LRMPs contain “[m]ultiple-use prescriptions and associated standards and guidelines for each management area including proposed and probable management practices such as the planned timber sale program” (36 CFR 219.11(c)). There is no requirement to quantify practices by management area. The FEIS includes estimates of practices by alternative, including timber outputs, in Chapter 2 (pp. II-12 to 16), with more detail included throughout Chapter 3.

The NFMA regulations define management direction as: “A statement of multiple-use and other goals and objectives, the associated management prescriptions, and standards and guidelines for attaining them” (36 CFR 219.3). Management requirements for LRMP implementation, based on those specified in 36 CFR 219.27, are usually given the names standard or guideline, however the regulations do not define these terms. The Huron-Manistee NFs 2006 LRMP provides definitions (Appendix F-Glossary) and discusses their differences (p. I-7). As stated: “Guidelines are preferable limits to management actions that may be followed . . . . Guidelines are generally expected to be carried out” (2006 LRMP, p. I-7). Deviations from guidelines must be analyzed and documented in project decision documents. This flexibility is a key part of adaptive management, and the process will be monitored (ROD, pp. 30-31). I find this approach consistent with the NFMA regulations.

- *MA 6.2 Management direction*

Appellant contends a desired condition and guideline for the closing of low use roads to motor vehicles are inconsistent with the goals and objectives of Management Area 6.2 Semi-Primitive Motorized areas and the decision to include them as part of the management direction is therefore arbitrary and capricious (NOA #0112, pp. 7-8). Contrary to appellant’s assertion, the guidelines for Management Area 6.2 are appropriate and consistent with maintenance of a Semi-Primitive Motorized Recreation experience.

Management Area 6.2 is managed to provide semi-primitive motorized recreation experiences. See 2006 LRMP, p. III-6.2-1. Goals and objectives include the following:

- Provide roads and trails for a semi-primitive motorized recreation experience.

- Provide habitat suitable for species requiring an old growth environment.
- Provide high amounts of dispersed recreational activities such as hunting, fishing, viewing scenery, bird watching, and canoeing...
- Designated areas, roads, and trails may be limited to specific kinds of uses.

(2006 LRMP, p. III-6.2-2)

The desired future condition includes the following descriptions:

Low use roads are closed but evident. Some roads are converted to Off-Highway Vehicle trails. Roads needed for administrative purposes are gated. Other public agency roads may be present. Improvements on these roads are infrequent, and roads are maintained to minimal standards necessary for health and safety needs.

(2006 LRMP, p. III-6.2-3)

Finally, the Revised Plan includes the following guideline:

Forest Service roads may be closed to motorized vehicles to retain the semi-primitive character of the area or for emergency conditions, seasonal closures, resource protection or public safety.

(2006 LRMP, p. III-6.2-7)

Contrary to appellant's assertions, the management direction for Management Area 6.2 forms an integrated whole, in which some road closures or conversion of roads to trails might be used as tools to achieve a semi-primitive motorized recreation experience. As acknowledged in the FEIS, the Forest contains more than 3,000 miles of road, more than 90% of the Forest is within ¼ mile of a road, and opportunities for semi-primitive recreation are limited (FEIS, p. III-321).

Some changes in travel management direction, including specific road closures, may be considered in particular areas to provide a semi-primitive experience. The 2006 LRMP does not contain a final agency decision to close any road or trail (ROD, p. 2; FEIS, pp. J-67, 68), nor does it mandate any future road closures. Roads will only be closed within Management Area 6.2 following appropriate project-level analysis and decision-making.

- *MA 6.1 allocations*

Appellant contends the allocation of the White River, Whalen Lake, and Condon Lakes West areas to Management Area 6.1 did not take into consideration the current OHV demand, future demand, and the current use of those areas for motorized recreation, and that decision was therefore arbitrary and capricious (NOA #0112, p. 7). These three areas were allocated as Semi-Primitive Non-Motorized Management Areas in the 1986 Forest Plan, as amended. The revised 2006 Forest Plan did not change these allocations, though it did make a variety of boundary changes to individual areas (FEIS, p. III-314).

As documented in the FEIS (pp. III-313 to 318) and response to comments (FEIS Appendix J, pp. J-94 to 96), opportunities for primitive and semi-primitive recreation are limited in the Lower Peninsula of Michigan. While the Huron-Manistee is heavily influenced by historic logging and road-building, it remains one of the few land bases large enough and contiguous enough to have the potential for semi-primitive recreation experiences. See FEIS, p. III-312. As recreation pressures have increased, the Huron-Manistee NFs has found it necessary to manage recreation uses to

provide desired experiences and reduce environmental impacts. After consideration of social and environmental impacts and public comment, the Regional Forester selected an alternative that continues to emphasize semi-primitive recreation on certain portions of the Huron-Manistee NFs. See ROD, p. 10.

The FEIS recognizes that portions of the areas allocated to semi-primitive management do not currently provide a semi-primitive experience due to historic uses and developments. See FEIS, pp. III-313 and J-95). The 2006 LRMP describes a desired condition that will be achieved through site-specific actions taken over time to bring the forest toward the desired conditions. See FEIS Appendix J, p. J-95. Contrary to appellant's assertions, the 2006 LRMP strikes an appropriate balance among recreation uses, based on a thorough consideration of social and environmental impacts.

- *Road density*

Appellant contends that because of road jurisdictions, it is impossible for the Huron-Manistee NFs to comply with the road density guidelines (NOA #0112, pp. 3-4). The appellant is incorrect because the appeal erroneously states that the density is calculated using all road miles within the proclaimed boundary. The Forest-wide guideline for road density states that "Maximum average of road miles per square mile in all three road classes and average miles of roads per square mile by local, collector and arterial roads are shown in Table II-13. This does not include roads in densely developed areas such as towns, villages, and residential development" (2006 LRMP, p. II-40). The existing road density of 3.2 miles per square mile does include the roads within the proclaimed boundaries that are in densely developed areas such as towns, villages, and residential development – the guidelines do not.

- *Snowmobile use*

Appellant contends the rationale for prohibiting cross-country use by snowmobiles is not explained and that certain standards and guidelines are not consistent with state rules (NOA #0110, pp. 9-10). The 1986 Forest Plan restricted all motor vehicles, including snowmobiles, to designated trails. The 2006 Forest Plan simply preserved that existing direction. See ROD, p. 10. Prior to preparing the Forest Plan revision, the Huron-Manistee conducted a thorough Need for Change Assessment (ROD, p. 5) to identify proposed changes in the plan for further evaluation. That assessment concluded that there was no need to propose changes to Forest direction on OHVs at this time. See AR, File 611, Need for Change Assessment, p. 38. The 2006 LRMP provides for monitoring and evaluation (2006 LRMP, Chapter IV), including public involvement (2006 LRMP, p. IV-6), and coordination with state and local government (2006 LRMP, p. I-9), so management direction can be adjusted in the future if needed. Contrary to appellant's contention, there was no new decision to make and no need for extensive documentation, since the 2006 LRMP simply retained existing direction.

Appellant may be correct that policy on where snowmobiles may be used differs among federal, state, and private landowners, and even from one national forest to another. Such differences can result from different mandates, legal frameworks, public demands, histories of use, and environmental conditions. Appellant has not demonstrated any violation of law or policy in this regard.

## **Management Indicator Species (MIS)**

Appellant contends the list of management indicator species is inadequate, that it violates 36 CFR 219.19 because there are only 4 MIS, and that monitoring [presumably the four MIS] will not be able to insure ecology of the forest is functioning well (NOA #0109, pp. 11-12); however, in making the contention the appellants name a list of species that have not been designated as MIS by the Huron-Manistee NFs. Consequently I am unable to respond further to this contention.

## **Special Area Designations**

Appellant contends the need for designating RNAs was not adequately disclosed, and that existing Michigan natural areas were not considered (NOA #0110, pp. 10-11). The NFMA regulations provide for the identification and establishment of RNAs (36 CFR 219.25). The 2006 LRMP “need for change” identified new information and evaluations as a reason to evaluate the current pool of RNAs. See FEIS, p. I-3. As explained in FEIS Appendix J, RNAs are designated to form a network of ecological areas on National Forest lands (p. J-58). All of this is consistent with NFMA regulations.

## **Recreation Resource**

Appellant contends the FEIS fails to adequately disclose the impacts firearm hunting and the noise it generates have on other recreation activities, in violation of 36 CFR 219.21(d) (NOA #0108, p. 13). This section of the planning regulations states that forest planning shall identify “interactions among recreation opportunities and other multiple uses” and “consider the impacts of the proposed recreation activities on other uses and values.” As part of a description of the affected environment for recreation, economic, and social resources, the FEIS has a discussion of noise, including sources and extent of travel. See FEIS , p. III-275. Firearm use during hunting season is one of the sources listed. In its description of effects to semi-primitive areas under alternatives B and C, the FEIS explains that hunting is one of the activities that is popular in semi-primitive areas of the Huron-Manistee NFs and that hunters and other recreational users looking for a greater physical challenge, less interaction between people, and some separation from motorized vehicles would find more opportunities under alternatives B and C. See FEIS, pp. III-316 to 318. The analysis concludes with a determination that under all the alternatives the quality of the semi-primitive experience is expected to improve. See FEIS, p. III-318. I find this disclosure sufficient to demonstrate compliance with the requirements of 36 CFR 219.21(d) as it pertains to firearm hunting.

## **Management Requirements**

Appellant contends the 2006 LRMP fails to adequately protect soils, as required by 36 CFR 219.27(a) (NOA #0109, pp. 15-17). As explained in the FEIS (p. III-361), minimum resource standards are incorporated into all management prescriptions in the Huron-Manistee 2006 LRMP. The 2006 LRMP includes Forest-wide management direction in the form of numerous standards and guidelines for soil resource protection (e.g., 1900 Planning, Standard II.A.2., p. II-9; 2500 Watershed Management, Guideline I.A.1.b, pp. II-17 to 21; Standards and Guidelines A-I, pp. II-21 to 22; 2600 Wildlife, Fish and Sensitive Plant Habitat Management, pp. II-30 to 31; 5100 Fire Management, I.D and I.E, II.E, and III.A, pp. II-37 to 38). The LRMP also incorporates by reference the State of Michigan Department of Natural Resources “Water Quality Management Practices on Forest Land” (1994). The Huron-Manistee 2006 LRMP management direction complies with NFMA and NFMA requirements at 36 CFR 219.27(a).

The appellant further contends the efficacy of Best Management Practices (BMPs) is not adequately supported by relevant evidence (NOA #0109, pp. 15-17). The effectiveness of BMPs is discussed in the FEIS. See FEIS, p. III-19; FEIS Appendix J, p. J-11. The discussion documents that BMPs are “designated as the most effective, practicable means of preventing or reducing the amount of pollution generated by non-point sources to a level compatible with water quality goals” (p. III-19, reference omitted). See also FEIS Appendix K, p. K-11. I find no violation of NFMA or NFMA regulations.

- *Silvicultural practices*

Appellant contends the maximum treatment size for Kirtland’s warbler habitat of 550 acres, and the large sizes planned for barrens, savannas, and prairies are not consistent with the 40 acre size limitation on regeneration harvests imposed by NFMA (NOA #0113, p. 3). I disagree with the appellant. The openings proposed for Kirtland’s warbler and for the reestablishment of barrens, savannas, and prairies conform to the guidance in 36 CFR 219.27(d)(2). The NFMA (16 USC 1604 (g)(3)(F)(iv)) requires the responsible official to establish maximum size limits for areas to be cut in one even-aged regeneration harvest operation according to geographic areas, forest types, or other suitable classifications. NFMA regulation at 36 CFR 219.27(d)(2) outlines the opening size limitations for forest types and the subsequent paragraphs discuss the permissible exceptions. The habitat management requirements for Kirtland’s warbler, including an opening size of 550 acres to maintain early seral stage habitat for this endangered species, have been in place for over 20 years. These requirements are part of the Recovery Plan for Kirtland’s warbler (1985) established under the Endangered Species Act. The rationale for the establishment of barrens, savannas, and other early successional habitats is discussed at length in FEIS Appendix J (pp. J-20 to 28) and in FEIS Appendix B – Species Viability Evaluations. I find no violation of NFMA.

## **Viability**

One appellant alleges an incomplete disclosure of the viability analysis process and insufficient management direction to insure the viability of aquatic species. In both instances I find no violation of law, regulation, or policy. My response to these contentions follows.

Appellant contends the documentation of the process used for viability analysis is incomplete in that it lacks a description of the results for each step; descriptions of size, location, and characteristics of large habitat blocks and habitat corridors; and information about species territorial needs (NOA #0109, pp. 8-9). The Huron-Manistee NFs are required to manage viable populations of existing native and desired non-native vertebrate species (36 CFR 219.19). There is no specific procedure required by law, regulation, or policy for conducting a species viability evaluation, either for comparing the effects of LRMP alternatives or for providing for species viability within an LRMP. The process used must comply with the viability direction of the NFMA regulations (36 CFR 219.19), use the best available information, and be scientifically sound. The SVE for the Huron-Manistee NFs 2006 LRMP is well documented and analyzes several factors including parameters such as the range of natural variability, historical range, current scientific information on species, and occurrence information. See FEIS, pp. III-71 to 111, and 170; FEIS Appendix B, pp. B-1 to 22. See also Biological Assessment (BA), pp. 21-115; AR, File 732n, Book 1, Document #030610, SVE\_Review\_and\_Evaluation\_Meeting\_June\_10\_and\_11, pp. 90-123; AR, File 732n, Book 1, Document #030610, SVE\_Species\_Viability\_Evaluation, pp. 124-137. The viability evaluation incorporates the review of external and internal experts (AR, File 732n, Book 2, Document#020701, Species\_Viability\_Evaluation\_Contact\_List, pp. 345-363), including the United States Fish and Wildlife Service, Michigan Natural Heritage Program, and Natureserve (FEIS Appendix B, pp. B-1

to 3; Biological Opinion, pp. 11-164). See also AR, File 732n, Book 2, Document #030310, National\_Forests\_in\_Michigan\_Species\_Evaluation\_List, pp. 110-118. The record demonstrates the viability analyses used the most relevant information and are in compliance with NFMA requirements.

The appellant also contends management direction in the Huron-Manistee NFs 2006 LRMP is insufficient to insure viability of aquatic species (NOA #0109, pp. 13-14). Chapter 2 and Chapter 3 of the 2006 LRMP contain Forest-wide (pp. II-4 to 6, 17 to 22, 33 to 35, 37 to 38, 40) and Management Area (MA) (e.g., MA 8.1 (Wild and Scenic Rivers), p. III-8.1-4, and MA 9.2 (Study Wild and Scenic Rivers), p. III-9.2-4) direction for watershed management (including water and soils direction) and wildlife, fish, and sensitive plant habitat management that complies with NFMA planning requirements (36 CFR 219.19 and 219.27). For example, goals and objectives for Natural Resources include direction to manage wildlife and fisheries habitats and plant communities to maintain viable populations of existing native and desired non-native species and “[m]anage vegetation within the Streamside Management Zone for late seral stages through natural successional processes emphasizing the retention of a sufficient number of trees to protect water quality and provide a source of recruitment for large wood to the adjacent aquatic system” (2006 LRMP, pp. II-4 and 5). The appellant incorrectly states the 2006 LRMP designates no fish or aquatic species as MIS (NOA #0109, p. 14); mottled sculpin and brook trout are designated as an MIS (2006 LRMP, Appendix G, p. G-1 to 3). Chapter 4 of the 2006 LRMP contains required monitoring items for: Wildlife and Management Indicator Species (p. IV-10); Wildlife and Vegetation Management (p. IV-11); and Wildlife and Watershed (p. IV-12) to meet legal requirements of the 1982 NFMA planning regulations. I find the management direction in the 2006 LRMP is adequate and complies with NFMA requirements to manage for aquatic species viability.

Appellant contends the 2006 LRMP fails to provide for early successional and young forest habitat in sufficient amounts to sustain wildlife dependant on it (NOA #0111, p. 2). Management direction for Natural Resources in Chapter II of the 2006 LRMP focuses on managing fish and wildlife habitat to maintain viable populations of existing native and desired non-native vertebrate species (1982 NFMA regulation at 36 CFR 219.19). See 2006 LRMP, p. II-4. While the appellant is concerned the 2006 LRMP does not provide adequate levels of early successional and young forest habitat, the Forest Service’s response to public comment states “The Selected Alternative provides for a mix of forest types and age classes within a variety of habitat types, including aspen, while maintaining species viability. ... [A] decrease in aspen acreage is expected to have a small impact on the population of deer and grouse; however, species viability for both deer and grouse is not expected to be adversely impacted” (FEIS Appendix J, p. J-18). See also FEIS, pp. III-178 to 192. The 2006 LRMP identifies management areas (MA) that emphasize managing grouse and deer habitat, wildlife emphasis areas, and fish habitat (e.g., MA 2.1, p. III-2.1-2). See also 2006 LRMP, p. II-1. In addition, the Regional Forester notes that management area designations will “provide for a mix of young forest habitat as well as older forest habitat important to both game and non-game wildlife species” (ROD, p. 12). The FEIS analyzes early successional communities, which include permanent open habitats, temporary early successional habitat and associated wildlife species. See FEIS, pp. III-143 to 153, 175 to 192, 233 to 237, 252, and 255. The viability evaluation includes early successional habitat and species; this analysis includes an evaluation of open-land principle habitats found on the Forests, including representative species and ecological processes. See FEIS Appendix B, pp. B-1 to 22. I find that the Huron-Manistee NFs 2006 LRMP is in compliance with NFMA and adequately considers and provides for a mix of habitat types including early successional habitat, to support a variety of wildlife species.

## Monitoring

Appellant contends the 2006 LRMP fails to include discussion of the Biological Opinion (BO) terms and conditions as part of the monitoring strategy and therefore violates several laws (NOA #0109, p. 34). Appellants also claim that at “no point will the Forest monitor the population of listed or PETS species” (NOA #0109, p. 34). There is no NFMA regulatory requirement for monitoring proposed, endangered, threatened, and sensitive (PETS) species. The regulations only require that “[p]opulation trends of the management indicator species will be monitored and relationships to habitat changes determined” (36 CFR 219.19(a)(6)).

The 2006 LRMP includes monitoring requirements for management indicator species (MIS), listed threatened and endangered species, and Regional Forester Sensitive species (Forest-wide Goals and Objectives, Natural Resources, pp. II-4 and 31 to 34). For example, monitoring questions associated with forest-wide goals and objectives ask, “What are the population trends of management indicator species? What are the relationships of the population trends to habitat changes?” and “What are the amounts, distribution, and types of available habitats?” (2006 LRMP, pp. IV-8 to 12). Species-specific conservation measures, including monitoring and evaluation requirements, are included in the Biological Assessment (BA) (Biological Assessment for Huron-Manistee National Forests Environmental Impact Statement and Forest Plan, February 2006, pp. 10-20), and are summarized again in the Biological Opinion (BO) (Formal Section 7 Consultation for the Programmatic Biological Opinion for the Revised Huron-Manistee National Forests Land and Resource Management Plan, March 2006, pp. 51-54, 76 (piping plover), 116 (Indiana bat), 139 (Karner blue butterfly), 171 (bald eagle), and 191-192 (Kirtland's warbler)). Finally, the Forest Service is obligated to follow terms and conditions (identified in the BO) during forest plan implementation but does not need to incorporate these into an LRMP. Under the Huron-Manistee 2006 LRMP, populations and habitat trends will be monitored; this complies with NFMA.

## Endangered Species Act (ESA)

- *5-Year Status Review*

Appellant contends the 2006 LRMP is based on incomplete or erroneous information because the non-jeopardy opinion of the USFWS was made in the absence of their required 5-year Status Review (NOA#0110, p. 4). The United States Fish and Wildlife Service (USFWS) conducts 5-year status reviews not the Forest Service. The appellant is challenging information produced by the USFWS, which is not subject to Forest Service appeal regulations at 36 CFR 217. Therefore, this is not an issue considered within the scope of this appeal review.

- *Biological Assessment*

Appellant contends the Biological Assessment is inadequate for several reasons:

- It does not address the effects of the oil and gas lease availability decision, the riparian prescription, cumulative effects of other activities, and the cumulative effects on Indiana bat of increased burning on other national forests in the bat's range.
- It fails to disclose the impact of harming or killing Indiana bats on the survival and recovery of the species.
- It does not demonstrate consideration of the Indiana bat's loyalty to habitat.

- It does not address the impact of competition with the Indiana bat for insects by other species of bats and birds that may be attracted to openings created by logging.
- It does not include analysis of the availability of suitable Indiana bat roost trees.
- It does not describe the methodology used to monitor for dead Indiana bats.
- It does not include discussion of expert opinion regarding the potential harm of removing Indiana bat roost trees.

(NOA#0109, pp. 24-28)

The implementing regulations of Endangered Species Act (ESA) provide direction to agencies on the consultation procedures to follow when dealing with listed or proposed species and designated or proposed critical habitat (50 CFR 402). Consultation procedures are described under 50 CFR 402 Subpart B, with the requirements for biological assessments listed in 50 CFR 402.12. Informal consultation and formal consultation are discussed in 50 CFR 402.13 and 50 CFR 402.14.

The Huron-Manistee NFs conducted formal consultation with the USFWS as part of the 2006 LRMP planning process. A Biological Assessment (BA) was prepared. See Biological Assessment for Huron-Manistee National Forests Environmental Impact Statement and Forest Plan, February 2006. The contents of a BA are at the discretion of the federal agency (50 CFR 402.12f). The BA evaluates in detail (pp. 21-45) the potential effects of the action on the Indiana bat and designated and proposed critical habitat, and makes determinations on whether the bat is affected by the proposed action (50 CFR 402.12a) (pp. 21-23 (life history of the Indiana bat); 23-27 (habitat use and requirements); 28-30 (threats to the species in general); 36-38 (range-wide status and distribution and local distribution, as well as the factors affecting the species in the action area); and 39-45 (summary of and a determination of effects, this includes an evaluation of cumulative effects)). The USFWS concurred with the determinations of effects and found that no species were in jeopardy. See Formal Section 7 Consultation for the Programmatic Biological Opinion (BO) for the Revised Huron-Manistee National Forests Land and Resource Management Plan, March 2006, pp. 71-72, 112, 135, 152, 168, 187-188. I find the BA for the 2006 LRMP is adequate and is in compliance with ESA.

- *Conservation*

Appellant contends the 2006 LRMP violates the ESA conservation requirements because it resulted in an “adversely affect” determination on five listed species (NOA #0109, p. 24). Appellant also contends the conservation requirements of the ESA cannot be met by increasing the level of disturbance to Indiana bat habitat and individuals from prescribed burning (NOA #0109, pp. 36-37). It is apparent from my review that the Huron-Manistee NFs have fulfilled Section 7(a)(1) conservation requirements through the consultation process. Species specific conservation measures are summarized in the BA (pp. 10-20). The “adversely affect” determinations mentioned by appellants were made for the Section 7(a)(2) portion of the consultation process conducted by the Huron-Manistee NFs. The USFWS concurred in their Biological Opinion (BO) with the determinations of “likely to adversely affect” the Pitcher’s thistle, piping plover, bald eagle, Kirtland’s warbler, and Karner blue butterfly and with the Forest Service’s determination that the proposed action is “not likely to adversely affect” piping plover critical habitat (p. 1). Additionally, the USFWS concluded that no federally listed species would be jeopardized (BO, pp. 71-72, 112, 135, 152, 168, 187-188), and determined that the Forest Service fulfilled its Section 7(a)(1) conservation requirements (BO, pp. 77, 116-117, 140, 153, 172, 188).

Regarding the effect of prescribed burning on Indiana bat conservation, discussion in the BA clearly states that activities such as vegetation management and prescribed burning can occur within the potential Indiana bat range on the Forest; however, these activities will be modified by proposed standards and guidelines. See BA, pp. 11, 38, 41. “Prescribed burning may occur in the area around known hibernacula. Prescribed burning would only be implemented in a manner that minimizes or eliminates the potential for smoke to enter known hibernacula, therefore not adversely affecting hibernating populations” (BA, p. 41). Analysis in the BA concludes that many activities implemented under the 2006 LRMP may benefit the Indiana bat “by producing openings in foraging areas, by opening the canopy and allowing solar warming of roosts, and by providing travel corridors where bats are relatively free of aerial predation and can fly unobstructed. Creation of upland waterholes should also benefit the bat” (p. 45). In the BO, the USFWS concludes that the proposed action is not likely to jeopardize the continued existence of the Indiana bat or destroy or adversely modify its critical habitat (pp. 112, 115).

I find no violation of ESA as it pertains to conservation requirements.

- *Incidental take*

Appellant contends a forest plan cannot directly lead to a take of a listed species and, therefore, it was inappropriate for the USFWS to issue an incidental take authorization for the forest plan (NOA #0109, pp. 32-33). The appellant is challenging information and disclosures prepared by another federal agency, not the Forest Service. Furthermore, the Forest Service does not evaluate or make a determination regarding the adequacy of USFWS biological opinions. This issue is outside the scope of the appeal review.

- *Jeopardy*

Appellant contends that because the BA discloses a likelihood of take for Indiana bat, a non-jeopardy opinion by the USFWS cannot be supported (NOA #0109, pp. 34-36). The appellant is challenging information and disclosures prepared by another federal agency, not the Forest Service. Further, the Forest Service does not evaluate or make a determination regarding the adequacy of USFWS biological opinions. This issue is outside the scope of the appeal review.

The same appellant contends that by failing to include standards and guidelines for conducting surveys in areas to be logged or burned, the ESA requirement to ensure that actions will not jeopardize the continued existence of a listed species is not being met (NOA #0109, p. 38). The BA discusses in detail how federally listed species will be impacted by the proposed action and specifies protective measures for each species (pp. 1-131). Standards and guidelines in the 2006 LRMP require that surveys be conducted for the Indiana bat and Karner blue butterfly prior to project-level activities such as tree removal (p. II-23 (Indiana bat) and prescribed burning (p. II-28 (Karner blue butterfly)). See additional survey requirements in 2006 LRMP for Indiana bat (p. II-24) and for Karner blue butterfly (pp. II-26 to 27). See also BA, p. 18. Additionally, monitoring and evaluation requirements for the Indiana bat will involve, as appropriate, periodic surveys. See BA, p. 11.

The appellant also very generally states the Huron Manistee “provides a riparian corridor of only 100 feet” and does not provide further detail, other than to state that this width “does not meet minimum standards necessary to protect riparian habitat for the gray bat and other terrestrial threatened and endangered species potentially present on the HMNF” (NOA #0109, p. 37). The FEIS analysis indicates Forest-wide watershed management direction (see 2006 LRMP, pp. II-17 to 22) will benefit the Indiana bat (p. II-53) and bald eagle (p. II-56). See also BO, Appendix B

(Indiana bat Effects Analysis Table) and Appendix E, (Bald eagle Effects Analysis Table). The USFWS concurred with the Forest Service's species' determinations (BO, p. 1) and issued a "non-jeopardy" decision for federally listed species (BO, pp. 71-72, 112, 135, 152, 168, 187-188). Finally, for future project-level activities the Forest Service must identify if the proposed action will have effects on the listed species and decide whether consultation is required under Section 7 of the ESA. Project-level consultations are required by Section 7(a)(2) of the ESA and its implementing regulations (50 CFR 402) whenever a federal activity "may affect" a listed species.

I find the Huron-Manistee 2006 LRMP is in compliance with ESA requirements pertaining to jeopardy to the continued existence of listed species.

- *Take*

Appellant contends "no evidence is present in the Forest Plan, FEIS, or ROD to support a guideline prohibiting motor vehicles in essential habitats for endangered, threatened, and sensitive species," making the guideline arbitrary and capricious and in excess of what Section 9 of the ESA requires (NOA #0112, pp. 8-10). The BA identifies vehicular traffic as a threat to the survival of federally listed species found on the Huron-Manistee NFs. See BA, pp. 61-62, 71, 84, 94, 102, 109, and 121. To fulfill its Section 7 and Section 9 ESA requirements for federally listed species, the Huron-Manistee NFs include management direction in the 2006 LRMP to protect and conserve essential habitat for endangered species. Legal and regulatory requirements to manage species and their habitat are also identified in the 1982 NFMA regulations at 36 CFR 219.19. The NFs are maintaining populations of federally listed species by restricting vehicular traffic in certain areas. I find no violation of law or regulation regarding the 2006 LRMP guideline to restrict vehicular traffic.

- *Recovery*

Appellant contends the 2006 LRMP fails to provide adequate management direction that will lead to recovery of listed species (NOA #0109, pp. 37-38). Section 7(a)(1) of the Endangered Species Act requires that "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species... ."

Determinations of effects to federally listed species are identified in the Biological Assessment (BA) at, for example, pp. 21-45 (Indiana bat), 46-65 (bald eagle), 66-82 (Kirtland's warbler), 83-94 (Great Lakes piping plover), 95-114 (Karner blue butterfly), and 115-131 (Pitcher's thistle). The U.S. Fish and Wildlife Service concurs with those determinations and concludes the Forests have fulfilled Section 7(a)(1) conservation requirements. See BO, pp. 1, 77, 116-117, 140, 153, 172, 188. Species-specific conservation measures listed in the BA include requirements to adhere to recovery and management plans for listed species (pp. 10-20). In addition, the 2006 LRMP provides direction in the form of goals, objectives, and desired future conditions (pp. II-4, 5, 6), numerous standards and guidelines (e.g., p. II-13, 17, 23 to 29, 37; III-4.2- 7 to 8, III-4.3-9 to 10), and monitoring requirements (pp. II-31 to 33; IV-8 to 12) to ensure listed species persistence and conservation. This direction complies with ESA. Finally, "the Forest Service must continue to review all future individual projects to determine if they may affect a listed species or designated critical habitat" (BO, p. 2). I find that the Huron-Manistee NFs 2006 LRMP management direction

provides for habitat requirements for federally listed species and is in compliance with ESA species conservation requirements.

## **Data Quality Act**

Appellant contends a violation of the Data Quality Act due to “the Nature Conservancy writing policy directives for the Eastern Regions [sic] establishment of RNA’s and candidate/or defacto RNA’s on the forests” (NOA #0110, p. 10). The Data Quality Act (DQA) requires government agencies to adopt guidelines “ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency” (Treasury and General Government Appropriation Act for Fiscal Year 2001, P.L. 106-554, section 515.b.2.A). The USDA Information Quality guidelines have been implemented by the Forest Service to address requests for correction. The issue raised by the appellant is insufficient to constitute a challenge under the DQA. The appellant may file a request for correction online at: <http://www.fs.fed.us/qoi/>.

## **Migratory Bird Treaty Act (MBTA)**

Appellant contends the 2006 LRMP lacks any direction for eradicating potential migratory bird vectors of avian flu (NOA #0110, p. 4). Currently, the U.S. Department of Agriculture along with other federal and state agencies are in the process of developing measures for dealing with avian flu. Guidelines to handle potential avian flu detection and control are under development, and the latest information on this subject can be found at the federal government website [www.pandemicflu.gov](http://www.pandemicflu.gov). At this time, because there are no legal, regulatory, or policy requirements for land and resource management planning to include direction or measures related to avian flu, I find that the appellant’s contention is beyond the scope of this appeal review. Finally, as stated in the ROD, “the management direction in the 2006 Forest Plan is in compliance with the Migratory Bird Treaty Act and was developed with full consideration of the broad objectives and intent of Executive Order 13186” (p. 28). I find no violation of the MBTA or Executive Order 13186.

## **Multiple Use-Sustained Yield Act (MUSYA)**

Appellant contends the “relative value” analysis required by MUSYA was not included (NOA #0109, pp. 9-11). MUSYA defines multiple use as “the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American People; making the most judicious use of the land for some or all of these resources ... that some land will be used for less than all of the resources ... with consideration being given to the relative values of the various resources” (16 U.S.C. 531(a)). Multiple-use includes outdoor recreation, range, timber, watershed, wildlife, and fish (16 U.S.C. 528) and the establishment and maintenance of wilderness (16 U.S.C. 529). The so-called relative value analysis mentioned by the first appellant is simply the balancing of the uses and management of “the various renewable surface resources” of a National Forest, and this balancing is fully described by the Regional Forester in the ROD (pp. 7-12). I find no violation of MUSYA.

## **36 CFR 212 – Travel Management**

Appellant contends the ROD contains no indication of interim management actions to be taken pending completion of motor vehicle use maps (NOA #0110, p. 9). To the contrary, the record of decision indicates that current travel management direction will remain in place until modified through site-specific project analysis and public involvement. See ROD, p. 28. Direction for use of

OHVs was not changed by the 2006 Forest Plan revision (ROD, p. 10) – both the 1986 and 2006 forest plans provide that motor vehicles are restricted to designated routes. As stated in the ROD, the 2006 Forest Plan does not authorize any actions or site-specific activities or designate any specific route for motor vehicle use. See ROD, pp. 2, 7, 28. Contrary to appellant’s contention, the ROD indicates that current travel management direction will remain in place pending site-specific travel planning.

## **FSH 1909.12, Chapter 70, Wilderness Evaluation<sup>1</sup>**

Appellant contends the Regional Forester erroneously eliminated roadless areas from the inventory of potential wilderness because he did not follow proper procedures. Specifically, the appellant asserts that roadless areas should have been placed on the inventory if they were RARE II areas; met the criteria in FSH 1909.12, section 7.11 (71.1) – Inventory Criteria; or met the criteria in FSH 1909.12, section 7.11b (71.12) – Criteria for Potential Wilderness Areas East of the 100<sup>th</sup> Meridian (NOA #0109, pp. 3-5). Consistent with Forest Service policy found in FSH 1909.12, Chapter 70- Wilderness Evaluation, roadless areas east of the 100<sup>th</sup> meridian must meet the statutory definition of wilderness, the criteria in section 71.1, and the criteria in section 71.12 in order to be eligible for the inventory of potential wilderness, and evaluated further for availability, capability, and need as wilderness. In applying these criteria, the Regional Forester found that none of the areas being considered were suitable for the inventory of potential wilderness. See FEIS Appendix D, pp. D-1 to 5. In reviewing the appeal record, I find the Regional Forester appropriately applied the criteria as required by Forest Service policy in his analysis of roadless areas.

## **Fact**

Appellant contends the lack of regeneration harvest of the aspen/birch forest type in designated old growth areas will result in losses due to type conversion over time. The appellant’s overriding concern is that the selected alternative will reduce vegetative diversity for aspen. The appellant further asserts that the aspen treatment acres projected for the selected alternative are incorrect because the current inventory of aspen acres is wrong and, therefore, the treatment projections are also wrong. The appellant also contends the treatment objective is unrealistic because of expected budget shortfalls (NOA #0107, pp. 6-7).

I disagree with the appellant on these points. Aspen/birch forest types are highly valued ecosystem components for both people and wildlife in the Lake States region. The appellant believes that the Huron-Manistee 2006 LRMP has not given appropriate and balanced consideration to needs of the aspen/birch forest type. The record shows that ample consideration has been given to the appropriate balance of vegetation types, including aspen/birch (see FEIS, pp. III-39, 43, 184-192,

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<sup>1</sup> Forest Service directives covering inventory and evaluation of potential wilderness are found in Forest Service Handbook (FSH) 1909.12. The appeal record and some appellants reference this direction as being at Chapter 7 of the handbook; however, interim directives issued in March and July 2005 changed the designation to Chapter 70 and a two-digit coding system. These interim directives, which were in effect at the time the ROD for the Huron-Manistee NFs 2006 Forest Plan was signed, also made changes to some terminology and phrasing, but the overall process for inventory and evaluation is not materially different. Responses to appeal contentions relevant to the direction in this chapter of the handbook will reference the directives in effect at the time of the decision. Where the appellants’ contention statement references the previous version of the handbook, the corresponding reference for the current version will be shown in parentheses or, where the appellant is being quoted, in square brackets.

233-237, 356, 357) and responded to public comments on the issue (see FEIS Appendix J, pp. J-17 to 19 and 113). The appellant is correct that aspen and birch are early seral species that will not be favored in areas where late seral species management is prescribed by the plan; however, as documented in “Ecology and Management of Aspen: A Lake States Perspective” (AR, 732d), the aspen/birch forest type is over-represented in the Lake States region because of 19<sup>th</sup> century abusive logging practices and the resulting catastrophic fires that favored aspen/birch. These stands are now giving way to the processes of natural succession in some areas. By managing for the full range of vegetative types the Huron-Manistee NFs are complying with the forest diversity requirements set forth in 36 CFR 219.27(g).

The Huron-Manistee NFs reviewed the growth and yield tables developed for the 1986 LRMP for each vegetation type. They also reviewed the most current inventory information available from the Forest Inventory and Analysis program as part of the development of the Combined Data Systems stand polygon data. During this review it was determined that the 1986 growth and yield tables were still valid except for the aspen/birch type. The 1986 yield coefficients were underestimated and were subsequently adjusted for accuracy. See FEIS Appendix A, p. A-8. The data used are adequate for the modeling projections used in LRMPs. The appellant argues that current and projected forest budgets are inadequate to achieve the treatment objectives in forest plans; however, it is generally not appropriate to set or constrain treatment objectives based on hypothetical annual appropriations from Congress. The Regional Forester has explained the adaptive nature of the LRMP, including the fact that the Huron-Manistee NFs will “track progress toward reaching the desired conditions identified in the Forest Plan, and modify or reformulate management actions in response to that progress” (ROD, p. 31).