



# **Moose Post-Fire Project**

## ***Amended Record of Decision***

### **SUMMARY OF AMENDED DECISION**

The Ninth Circuit Court of Appeals in *Swan View Coalition Inc. v. Barbouletos* (No. 07-35065 (January 6, 2009)) issued a decision requiring the United States District Court for the District of Montana to remand the Moose Post-Fire Record of Decision (ROD) to the Forest Service to "establish and apply a standard for evaluating when land use values 'compete' with grizzly bears' needs within the meaning of the Forest Plan" for the Flathead National Forest. This amended Record of Decision responds to the court's decision and addresses information demonstrating that the Moose Project complies with the applicable Forest Plan requirements. Based on information in this amended Record of Decision, I have decided to continue to implement the travel management actions associated with the original Moose ROD (2002).

### **BACKGROUND**

In November of 2002, Forest Supervisor Cathy Barbouletos signed the Record of Decision (ROD) for the Moose Post-Fire Project. The decision selected vegetation treatments from Alternative 3 with some changes (See 2002 ROD VII. Decision). The decision included:

- Salvage of trees on 2015 acres.
- Fuels reduction on 141 acres.
- Planting trees on 1065 acres.
- Beetle funnel traps, pheromones, and trap/baited trees.
- Implement the road strategy identified in Alternative 3 with some modifications. This includes decommissioning of 56 miles of road and wheeled motorized restrictions on 11 miles of open road.
- Implement project-specific design criteria and monitoring actions detailed in the FEIS on pages 2-9 through 2-14 and pages 2-65 through 2-67, respectively.
- Implement Appendix A, Salvage Units Lists
- Implement Appendix B, FEIS – Post Mortality Analysis and Guidelines
- Implement Appendix C, FEIS – Best Management Practices
- Implement Appendix E, FEIS – Monitoring Plan for Fish, Soil, and Water

Subsequent to the ROD, several environmental organizations filed a lawsuit challenging only certain access management components of the decision. During the intervening years from 2002 to present, most of the access management actions which included implementing wheeled motorized restrictions on 11 miles of open road and decommissioning of 56 miles of road have been completed. The only authorized access management actions remaining to be implemented are the resizing of the 10 culverts that are remaining in place and re-opening Road 316. The seasonal restrictions on Hallowat Road 315 and Kletomus Creek Road 5207 have also not yet been implemented.

### **RECENT COURT DECISION**

On January 6, 2009, in an unpublished opinion, the 9th Circuit Court of Appeals reversed and remanded District Court Judge Molloy's ruling that the Moose Post-Fire Project Record explained consistency with the IGBC Guidelines, incorporated into the Forest Plan.

The court's remand order was based upon whether the Forest Service specifically addressed one section of the IGBC Guidelines which require that management decisions in Management Situation 1 habitats

“will favor the needs of the grizzly bear when grizzly bear habitat and other land use values compete. Land uses which can affect grizzly needs and/or their habitat will be made compatible with grizzly needs or such uses will be disallowed or eliminated.”

I have reviewed the Moose Post-Fire Project decision in light of the recent court decision. The review examined the analysis and documentation for the Moose Post-Fire Project, discussions with Flathead National Forest Biologists, review of IGBC Guidelines and the Grizzly Bear Recovery Plan, and discussions with U.S. Fish and Wildlife Service (USFWS).

## **STANDARD FOR EVALUATING LAND USES**

The relevant language from the IGBC Guidelines states:

Management decisions will favor the needs of the grizzly bear when grizzly habitat and other land use values compete. Land uses which can affect grizzlies and/or their habitat will be made compatible with grizzly needs or such uses will be disallowed or eliminated. (IGBC Guidelines p. 3)

The IGBC guidelines do not provide a specific definition of “compete” or “compatible” however the intent of these provisions is made clear by the discussion in the IGBC guidelines regarding Forest Service Grizzly Bear management policy:

The FS will manage habitats essential to bear recovery for multiple land use benefits, to the extent these land uses are compatible with the goal of grizzly recovery.

Land uses which cannot be made compatible with the goal of grizzly recovery, and are under FS control, will be redirected or discontinued. Management guidelines and objectives, the cumulative effects process, and goals for habitat capability and mortality will be used to guide activities which are compatible with grizzly bear recovery. It is also the policy of the Forest Service to facilitate recreation use in occupied grizzly habitat to the extent such levels or use are compatible with both human safety and grizzly recovery objectives (IGBC Guidelines p. 2).

Thus, it is apparent that the IGBC Guidelines recognize the multiple use nature of National Forest management. Furthermore, it is apparent that land uses which are, or can be made, compatible with grizzly bear recovery do not “compete” even if there is an impact on individual bears. The IGBC Guidelines provide a detailed process for determining compatibility between land uses and grizzly bear recovery which utilizes the consultation process to assist in determining compatibility between proposed land uses and grizzly bear recovery (IGBC Guidelines p. 6)

The determination of compatibility is based on the proposed federal action, not on individual components of such action. This is apparent from the IGBC guidelines which utilize the consultation process to assist in determining the compatibility of proposed land uses with grizzly bear recovery goals. Thus, the relevant consideration in the present case is whether the Moose Project, as consulted on with the USFWS, is compatible with grizzly bear recovery goals and objectives. If it is, or can be made compatible, then the land uses encompassed by this ROD do not “compete” within the meaning of the IGBC guidelines.

## **ANALYSIS AND DECISION**

As discussed in more detail below, the Moose Post Fire Project, as modified through consultation with the USFWS, is fully compatible with recovery of the grizzly bear and therefore with the IGBC guidelines and Flathead Land and Resource Management Plan. In making this determination we consider the project as a whole and the overall impact on grizzly bears rather than parsing out the impacts of individual aspects of the project. This is the same approach used by the USFWS in their Biological Opinion regarding the project and is the approach specified by the IGBC Guidelines. The compatibility of the project with

Grizzly Bear recovery is further supported by recent estimates of grizzly bear populations in the Northern Continental Divide Ecosystem (NCDE).

We acknowledge the Moose Post-Fire Project may affect individual bears. The USFWS confirmed this in their Biological Opinion. The USFWS also noted, "However, the long term effects of the proposed action includes significant long term improvements in grizzly bear habitat due to decreased open and total motorized access density and increased core area." .... "The resulting motorized conditions would maintain local grizzly bear populations." (p. 37, Biological Opinion, USFWS 11/14/2002) In reaching this determination the cumulative effects of the Moose Project, including the effects of reopening road 316 and retaining 10 culverts in otherwise reclaimed roads were fully considered along with the other aspects of the Project.

Since the decision on the Moose Post-Fire Project was signed in 2002, even more information on grizzly bear populations within the NCDE has been made available (preliminary information from this study was available during the planning of the project). In 2004 the USGS conducted a population survey based on DNA hair snagging at sites throughout the NCDE. The results of this research have been published in a peer reviewed journal( Kendall, K., J. Stetz, J. Boulanger, A. Macleod, D. Paetkau, G. White, Demography and Genetic Structure of a Recovering Grizzly Bear Population (Journal of Wildlife Management 73(1):3-17; 2009). This research indicates there are a minimum of 765 bears in the Northern Continental Divide Ecosystem. Most importantly, this is a substantial increase from previous estimates and indicates that the population is growing in terms of abundance, occupied habitat, and connectivity. Their population estimate was more than double the existing estimate. This same study also concluded:

- 1) Female grizzly bears were present in all 23 BMUs.
- 2) The number and distribution of female grizzly bears indicated good reproductive potential.
- 3) The occupied range of NCDE grizzly bears now extends 2.6 million acres beyond the 1993 recovery zone.
- 4) The genetic health of NCDE grizzly bears is good, with diversity approaching levels seen in undisturbed populations in Canada and Alaska.
- 5) The genetic structure of the NCDE population suggests there has been population growth between 1976 and 2007.
- 6) Human development is just beginning to inhibit interbreeding between bears living north and south of the U.S. Highway 2 corridor, west of the Continental Divide.

At the scale of the action area, the actions authorized in the Moose Post-Fire Project were designed to be made compatible with grizzly bear needs. The motorized access decisions within the Moose Post-Fire Project significantly improve habitat over pre-project conditions. Specifically, the decision included decommissioning 56 miles of road and closing 11 miles of road yearlong to wheeled motorized vehicles. In addition, the decision closed two trails (Elelehum Trail 194 and Deadhorse Trail 255) to motorized use during the non-denning season. Also, on roads that were closed to motorized use that were needed to access salvage units, public access was restricted. Page 63 of the 2002 ROD (Appendix D, 1-8) provides additional description of the terms and conditions found in the Biological Opinion that the Forest abided by in ensuring its activities favored the needs of grizzly bear and/or the land uses were made compatible with grizzly bear needs.

The Forest has reviewed the Moose Project access management decisions in light of their compliance with the applicable IGBC Guidelines. Even if only the actions of re-opening Road 316 and maintaining culverts on otherwise decommissioned roads is reviewed against applicable IGBC Guidelines, these activities have been made compatible with grizzly needs as described and comply with the guidelines.

With respect to reopening a portion of Road 316 to wheeled motorized use between July 15 and September 14 the decision includes the following design criteria (intended to compensate for the loss of grizzly bear security by reopening the road; refer to 2002 ROD on p. 23 and BA on p. 32):

- Werner Divide Road 1658 would be closed to wheeled motorized vehicles between October 15 and July 14
- Road 316 (the portions between Hallowat Road 315 to the junction with the Werner Divide Road 1658) would be closed to wheeled motorized vehicles between December 1 and July 14.
- Reopening the closed portion of Road 316 would not occur until all salvage activities occurred.
- Reopening the closed portion of Road 316 would not occur until 63% is met in the Werner Creek Grizzly Bear Subunit (in other words, the road decommissioning in that subunit needed to be finalized)

With respect to leaving 10 culverts in otherwise decommissioned roads (9 total miles) the decision includes the following design criteria:

- Culverts left intact will be appropriately sized; also included measures to remove most of the fill over the intact culverts, armoring the intake and outtake areas of the culvert, etc.
- Wheeled motorized access will be restricted by a berm and closure orders

The culverts that remain in place will facilitate the ongoing over-the-snow motor vehicle use on these un-groomed routes only during the denning season. The over-the-snow vehicle use on these roads is prohibited during the non-denning season (after March 31st).

The USFWS evaluated the effects of the proposed land use and determined that it would not jeopardize the continued existence of the grizzly bear. This finding means that the proposed action would not be expected to reduce appreciably the likelihood of both the survival and *recovery* of the grizzly bear. It supports the conclusion that the action is compatible with, and does not compete with the recovery needs of the grizzly bear. Not only did the USFWS determine the action would not jeopardize the grizzly bear but that the long term effects of the project includes significant long term improvements in grizzly bear habitat.

The USFWS biological opinion reviewed each of the individual motorized access management proposals in the context of the entirety of the motorized assess management strategy. They made the following conclusions regarding the reopening of Road 316:

“The proposed action would modify the 1995 Big Mountain Ski Area Expansion decision by reopening road 316 seasonally to motorized access reducing summer and fall habitat effectiveness along the road way (see Appendix E), and increasing the risk of displacement of grizzly bear into adjacent areas and potentially increasing the risk of illegal mortality. However considering all changes in access management in the Werner Creek Subunit (Table 7), seasonal restrictions would improve spring and fall habitat availability and provide some security during spring black bear hunting season and fall big game hunting season.”

Additionally, USFWS referenced a statement from Montana Fish, Wildlife and Parks (in litt. 2002): “Although the Werner Creek Subunit would not meet the original Amendment 19 objectives for core or open motorized access density largely due to the reopening of Road 316, keeping road 316 closed may have more of a negative impact on the local grizzly bear population than would reopening this section of road on a summer seasonal basis.”

The USFWS also made the following conclusions regarding the retention of the ten culverts. “Grizzly bears may be affected by allowing culverts on decommissioned routes and bermed roads by the potential for disturbance caused by monitoring, maintenance, and repair activities needed to protect water quality and fish habitat. This situation is most significant to grizzly bears when the culverts remain in core habitat.” However, they agreed with a Forest Service evaluation of estimating a need to use equipment

for critical culvert repair about once every 10 years “it is doubtful that permanent grizzly bear displacement would occur as a result of once-per-decade motorized use of bermed roads in grizzly bear security core habitat.”

As clearly indicated above, implementation of the Moose Post-Fire Project decision, including application of project design criteria, avoided or minimized potential impacts or effects of resource competition between bears and humans during the life of the project, and as implemented, will improve habitat conditions for grizzly bears. Thus, management decisions for this project favor, and make this project compatible with, the needs of the grizzly bear conservation and recovery. In addition, the best available science indicates that there are a minimum of 765 bears in the Northern Continental Divide Ecosystem. This is a substantial increase from previous estimates and the best available science indicates that the NCDE population is growing in terms of abundance, occupied habitat, and connectivity. The Moose ROD restricts access compared to what has historically been available in MS-1 habitat. Given that there is no evidence the previous access management retarded or restricted the growth of grizzly populations, the implementation of the Moose ROD is fully compatible with the goal of recovery found in the IGBC Guidelines and Flathead Forest Plan.

## **APPEAL PROVISIONS AND IMPLEMENTATION**

Copies of the Moose Post-Fire Project FEIS, ROD and Amended ROD are available for review at the Hungry Horse Ranger Station in Hungry Horse, Montana, and at the Forest Supervisor's Office in Kalispell, Montana.

In accordance with 36 CFR 215.11(b) this reaffirmation of my November 2002 decision for the Moose Post-Fire Project is not subject to administrative appeal. This direction specifies that only the portions of a decision that are changed are subject to appeal. I have thoroughly reviewed the original decision for the Moose project in conjunction with information provided in this Amended ROD, and have determined that my original decision will remain in effect and unchanged. The analysis and determination in this amended ROD do not alter the environmental impacts assessed in the EIS, and therefore additional or supplemental NEPA analysis is not necessary or required.

For further information on this decision, contact Jimmy DeHerrera, District Ranger, at 387-3800 or Michele Draggoo, Project Leader, at 387-3827.

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**CATHY BARBOULETOS**  
Forest Supervisor

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**Date**