

## **RESPONSE TO COMMENTS**

The Solo, Borg, Pryor, Straw Devil, and Clark Draft Supplemental Environmental Assessments (dSEA) were published for public comment on February 17, 2004. The comment period ended March 18, 2004.

Several hundred post cards, emails, and letters were received. The vast majority of the comments were the same as or encompassed by those submitted by ONRC, Cascadia Wildlands Project, The Columbia Chapter Sierra Club, BARK, American Forest Resources Council, and two of the timber sale purchasers. Below are agency responses to the comments that were within the scope of the analysis for each of these 5 SEAs.

**The following are comments received from ONRC:**

**Comment:** The Forest Service must realize that the timber was sold prematurely before the NEPA process was complete and must now nullify the contracts so that they can have a clean slate of possibilities before them. The Forest Service initial offer of timber was outside the scope of their authority and is therefore null and void. The Forest Service sold these timber sales based on an illegal and uninformed EA and now feels bound by these illegal contracts and refuses to consider the no action alternative.

1. Response: The court enjoined operation of the timber sales until the agency complies with the court's order, which is to prepare "Environmental Assessments, Supplemental Environmental Assessments or Environmental Impact Statements" if the agency wishes to proceed with the six timber sales. The course chosen by the agency is to proceed with the timber sales after preparing Supplemental EAs, assuming the dSEAs support a finding that the information learned pursuant to survey and manage duties is "not significant."

The agency has made that finding. None of the information learned or changes made pursuant to the agency's survey and manage duties has a significant impact on the quality of the human environment. In this circumstance, the course chosen by the agency is to proceed with the dSEAs, following the court's order, with the expectation that the injunction on these six timber sales will be lifted.

The six timber sales are not null or void. Indeed, the court's order established a timeline considering the operating needs of the purchasers. "I am going to set a timetable that allows this court to make a decision in advance of the time ... that the intervenors could go in and harvest the timber." Transcript of December 12, 2003, hearing, at 34.

The no action alternative was considered in the original EAs and is still a part of the administrative record before decisionmakers. Should it ultimately be decided that the SEAs are not adequate, or that the impacts to the human environment are in fact significant, and this procedure is once again remanded to the agency, the agency will then decide once again which course of action to pursue. Options may include nullifying or voiding the timber sales contracts, or preparing an Environmental Impact Statement.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Changed circumstances have rendered the original EAs out of date and inadequate, and the SEAs do not cure the deficiencies. The agency must consider and disclose all new information and circumstances, not just that arising from its survey and manage duties. The Clark fire burned very near the Clark Timber Sale

2. Response: These dSEAs were prepared under court order, and were specifically scoped to respond explicitly to each and every one of the deficiencies found by the court. “As I told you, I want to tailor an order, an injunction that balances the potential harm and that assures that there is adequate compliance with NEPA requirements, as I determined in my opinion that there was a failure to comply with certain NEPA requirements as set forth in that opinion. I don’t want to go beyond what is necessary in this case ....” Transcript of December 12, 2003, hearing, at 33. “Because I find that the Forest Service has violated NEPA in not preparing NEPA documents disclosing or analyzing its survey and manage duties, the results of surveys, and management decisions based on the results ....” Opinion dated October 9, 2003, at 18.

Thus the scope of these dSEAs was set to specifically remedy the deficiencies found by the court. Plaintiffs are estopped from raising new deficiencies to the original EAs. Plaintiffs are necessarily limited in their objections to whether the agency is complying with the order of this court.

The Clark fire was approximately 2 miles away from the Clark Timber Sale and did not burn any of the Clark Units or affect the survey and manage measures in the Sale. Nothing in the Clark Fire changed the Forest Service’s survey and manage duties.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The Forest Service must disclose not only the fact that certain unprotected species were found but *where* they were found and how they *could* be protected. Several survey and manage species were located in these timber sales and although protection was later dropped for some of these species, the Forest Service must fulfill its NEPA duties by disclosing where these species were located and how the timber sale could be done differently to protect these species. Just because the survey and manage program no longer *requires* protection of these species, the Forest Service still has a duty to consider all reasonable alternatives, including using its discretion to protect these uncommon (though unprotected) old-growth species.

3. Response: Effects on species that are not “survey and manage species” are outside the scope of these dSEAs. The court ordered the Forest Service to analyze the agency’s survey and manage duties based on the survey and manage standards and guidelines that are current at the time the analysis is prepared. Opinion and Order at page 6.

Many species had been removed from survey and manage requirements prior to the award of these six timber sale contracts. Others have been removed between that time and the time the dSEAs were prepared. Species that are not on the survey and manage list are not part of the agency’s survey and manage duties.

Plaintiffs have not made a specific allegation that the agency was not using current standards and guidelines — current as of the time the dSEAs were prepared. Consequently there is no additional analysis for the agency to conduct.

In addition, for any timber sale the list of species that are not survey and manage species, not sensitive species, not species of concern, not species listed as threatened or endangered, etc. — would be a very long list. The agency’s NEPA responsibility toward each of these species is vastly overstated by this comment. The level of detail suggested as necessary by this comment is simply impracticable.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The Supplemental EAs fail to fulfill NEPA or meet the court’s order. Judge King’s order on relief makes clear that the Forest Service must now comply with NEPA and other laws. The narrow scope of the SEAs does not fulfill NEPA. The results of surveys have not been integrated with the information in the original EAs and considered in the context of the other NEPA issues such as connectivity corridors. The logging of old growth forests has significant impacts and requires an EIS. The Forest Service has not considered alternative ways of obtaining timber volume by thinning dense young plantations. Survey protocols and management recommendations have not been subject to NEPA.

4. Response: The SEAs are supplemental to the original EAs, and are part of the administrative record that is now before the decisionmaker.

This comment suggests a complete overhaul of the NEPA process for these six timber sales, starting with an EIS of an entirely new scope. This is far beyond what the court ordered. The course chosen by the agency is to prepare Supplemental EAs with the expectation that the agency’s finding of no significant impact will be upheld.

No NEPA process is necessary for the survey protocols and management recommendations. Moreover, these issues are beyond the scope of these SEAs. “I’m not going to allow the plaintiff to raise inadequate surveys at this stage of the proceeding.” Transcript of December 12, 2003, hearing, at 29. “The issue in this case is solely whether the information and analysis relevant to the Forest Service’s compliance with the 1994 and 2001 RODs and the presence of and management of rare and uncommon species within these timber sales is the type of information that must be considered, analyzed, and disclosed in a NEPA analysis.” Page 15 of Plaintiffs’ combined memorandum, quoted by Stephen Odell; see Transcript of December 12, 2003, hearing, at 32.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should consider, analyze and disclose the impacts of any logging or other ground-disturbing activities. The narrow scope of the SEAs simply does not fully disclose or analyze the impacts of logging and road building.

5. Response: The impacts of logging were considered, analyzed, and disclosed in the original EAs. These SEAs focus on the NEPA deficiencies identified by the court and do discuss changes in the impacts of logging related to changes made as a result of species found. For each of the six timber sales, when species were found in surveys the agency subsequently reduced the size of the timber sale.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should present and analyze a range of alternatives. The narrow scope of the SEAs does not consider a reasonable range of alternatives.

6. Response: The SEA's do consider a range of alternative ways of managing the survey and manage species found (e.g., see Solo dSEA, pages 9-12). The range of alternatives was driven by the direction in the 2001 ROD, the location of survey and manage species, and the availability of habitat within and adjacent to the existing timber sale units.

The court's order with respect to alternatives is that the agency must analyze a range of alternatives "based upon these duties" — referring to survey and manage duties. Opinion and Order dated October 9, 2003, at 16. The agency has done so in these dSEAs. Alternatives that are not based on survey and manage duties are outside the scope of these dSEAs.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should demonstrate that the Forest Service had all of the proper information before it before allowing logging. The Forest Service failed to document the impacts of logging old-growth and making the old-growth deficit worse, nor have the fully considered the survey and manage survey protocols or management recommendations.

7. Response: The effects of logging old growth are discussed in the original EAs and are still part of the administrative record before the agency. The impacts of logging on old growth are reduced by the changes made to these six timber sales as a result of the agency's survey and manage duties (e.g., see Solo dSEA, pages 12-13). See Response 5.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should provide for public influence over the decisions. The narrow scope of the SEAs and refusal to consider the no action alternatives precludes public influence over the projects as a whole.

8. Response: The original EAs do include no-action alternatives. The public had a chance to influence the basic go/no-go decision. These dSEAs have been circulated for public comment and the public again had its chance to influence the outcome.

There were just two decisions that the agency had to make. One was the decision on whether any of the information on its survey and manage duties that had been omitted from the original EAs was "significant," and thus whether the agency should now prepare an EIS. The other was the decision on whether any of the information or any of the alternatives in the dSEAs was of sufficient importance that the agency should now propose to alter its course of conduct — even to the point of proposing new action or a new alternative course of action.

The agency's decision on both questions was negative. None of the survey and manage information was "significant" and thus no further NEPA process is indicated. None of the information or alternatives was important enough for the agency to propose or adopt a new course of action.

The public had a 30-day opportunity to influence the decisions that were being made at this time, just as they had that opportunity when the original go/no-go decision was made. See also Response 1.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should not narrowly construe the judge's order by submitting something like an SIR. The Forest Service has not done legally adequate NEPA analyses.

9. Response: The dSEAs are not SIRs and contain all the elements outlined in the court's Opinion and Order (page 6). The dSEAs disclose survey and manage duties based on current direction, methodology of surveys, results of surveys/management of known sites, alternatives, environmental consequences and an explanation of decisions being made (e.g., Solo dSEA, pages 5-13). Unlike SIRs, these dSEAs have been circulated for public comment.

There are no regulations governing the content or preparation of SEAs. However, these dSEAs have been prepared in good faith, pursuant to the order of the court, and satisfy the agency's legal obligations under NEPA.

As a result of public comment, changes have been made in the final SEAs as described elsewhere in this response.

**Comment:** The agency should properly frame the Forest Service's survey and manage responsibilities. This raises the whole question of whether the 2001 Survey and Manage ROD is legal and whether the annual species reviews done outside of NEPA are valid. We think they are not.

10. Response: The SEA's properly frame the agencies survey and manage duties. The dSEAs are NEPA documents that have been circulated for public comment.

The legality of the 2001 Survey and Manage ROD and annual species reviews are outside the scope of these dSEAs and this lawsuit. See Response 2.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should discuss the methodologies used for the surveys and all results of completed surveys. The Forest Service has not discussed the ineffectiveness of their methodology, such as the value of tree climbing vs. ground transects in searching for red tree voles.

11. Response: The Forest Service discussed the methodologies used for the surveys and all results of completed surveys (e.g., see Solo dSEA, pages 6-7).

To the extent this comment raises a suggestion that the methods used were ineffective, this comment is outside the scope of these dSEAs. See Response 2.

The legality of the survey protocols are outside the scope of the dSEAs. See Response 2.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agency should analyze the effects of the Borg and East Devil timber sales on the Canada lynx. The Forest Service has ignored opposing viewpoints and dismissed even the possibility of lynx habitat in the Cascades.

12. Response: The dSEAs for the Borg and East Devil Timber sales analyze the effects on Canada lynx. Based on the best available science, agency professional wildlife biologists conclude that the sales will have no effect on Canada lynx (Borg SEA pages 10-12, 20-24, and Straw Devil SEA pages 15, 19-21). The Forest Service has not ignored opposing viewpoints, see response 21 and 27 for a more detailed discussion.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Judge King’s order instructed the Forest Service to “comply with NEPA by preparing Environmental Assessments, Supplemental Environmental Assessments or Environmental Impact Statements that consider, analyze and disclose the impacts of any logging or other ground-disturbing activities.” The Supplemental EAs do not do this. The SEAs do not describe the proposed action, the effects of the proposed action, nor consider all reasonable alternatives to the proposed action. The Supplemental EAs do not even have a no-action alternative.

13. Response: The SEAs supplement the original EAs. They do not eliminate or replace the original EAs. The proposed actions have not changed and are described in the original EAs. The original EAs contain no-action alternatives and disclose impacts of logging. See also Response 5.

No statute or regulation requires a no-action alternative in a SEA, and the court did not order a no-action alternative to be included in these dSEAs. Moreover, the course chosen by the Forest Service was not to re-examine the basic question of whether to continue with these timber sales, but instead to prepare Supplemental EAs to examine whether changes were significant. See Response 1, and Response 8.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The SEAs do not show information about units that have not changed due to survey and manage results. But the Forest Service should prepare comprehensive NEPA analysis that shows all the relevant environmental information about the entire project so the decision-maker can review it all in a comprehensive framework. This violates the judge’s instruction to have all the information before making a decision nor does it allow the public to influence the Forest Service’s decision.

14. Response: The dSEAs show information about units that have not changed due to survey and manage results. See, e.g., Solo dSEA, pages 8-9. Survey and manage standards and guidelines do not change timber sales when no survey and manage species are found.

There is a “comprehensive NEPA analysis.” The original EAs plus the dSEAs form a comprehensive picture of the environmental consequences of these timber sales with respect to survey and manage duties.

To the extent this comment suggests an overhaul of the NEPA process, see Response 4. No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Reconsider the FONSI in light of all the facts. The SEAs say that the FONSI is still valid because it’s less logging than in the original EA. This is a grossly oversimplified view of the purpose of a FONSI. The Forest Service must look at the totality of the circumstances and make a finding of significance. The Forest Service never considered in the original FONSI the significant effect of logging known red tree vole habitat and failing to establish 10 acre minimum buffers for these species.

15. Response: This comment requires a clarification of the current decisionmaking position of the agency. The agency is not currently reconsidering past decisions, such as the basic go/no-go decision, or the decision to prepare the original EAs, or the original FONSI. At this time the agency is on a course of action to consider whether the information learned in the discharge of its survey and manage duties is significant, and whether the new information would warrant a new course of action. See Response 8.

Thus the agency will not reconsider the original FONSI at this time, and has properly limited the scope of the dSEAs to those deficiencies in the original EAs pointed out by plaintiffs in their lawsuit, and found by this court to exist.

The original EAs and FONSI are still part of the agency record. The agency has reviewed the analysis in the dSEAs and determined this information would not invalidate the original FONSI. This information includes the red tree vole habitat and the management decisions being made consistent with agency direction that was current at the time the analysis was prepared.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** These projects also need EISs because the SEAs set precedent for future projects that will need to have new NEPA analyses prepared. Many projects were rushed through in 1997 and 1998 to avoid doing required wildlife surveys. These other projects also relied on the illegal survey and manage memos from 1996 and therefore failed to conduct valid NEPA analyses that properly framed the agencies survey and manage duties.

16. Response: The purpose of the SEA’s was to address the agency’s survey and manage duties for the Solo, Borg, Clark, Straw Devil, and Pryor timber sales. Other projects that were prepared in 1997 and 1998 are outside the scope of these documents.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The draft supplemental EAs for the subject timber sales all consider various ways of altering the sales at the margin. The EAs all fail to openly consider the no action alternative in

light of the totality of the agency's information (including survey and manage information). Judge King ruled that the original decision was flawed. The original decision is the "go-no go" (or action/no-action) decision, not just the question of survey and manage buffers. By narrowly construing the scope of the supplemental EAs the Forest Service has avoided the most crucial decision of all, whether these magnificent old-growth forest should be logged in light of all the information that the Forest Service has in front of it today. That question must be informed by the totality of information, including information from the original EA and all relevant subsequent information. The best way to present this information to the decision-maker is in the form of a new and comprehensive EA or EIS, not a disjointed mess of separate documents, including outdated EAs, SIRs, and supplemental EAs.

17. Response: The court found that the underlying EAs were legally deficient because they did not disclose and analyze the agency's survey and manage duties. The agency has now reviewed its survey and manage duties in the proper framework and has made appropriate modifications to the timber sales as a result. The agency has complied with the survey and manage duties and therefore there is no need to change or invalidate the decision to log these sales. See Response 1, Response 15.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Both Borg and Straw Devil contain probable lynx habitat. However, the Forest Service is pretending that Canada lynx is a non-issue, while ignoring the fact that the Cascade Range is an expanse of conifer forest large enough to support a viable population of lynx. If we are going to bring the lynx back from the edge of extinction, which the Forest Service is legally required to manage forests to achieve, the agency must manage potential lynx habitat in the Cascades for lynx.

18. Response: According to the best available science Forest Service biologists have determined the Borg and Straw Devil Timber Sales do not contain Canada lynx habitat and that these sales would have no effect on this species. A large expanse of conifer forest is only one of the considerations of Canada lynx habitat.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The Lynx analysis in the SEA is biased and unsupported by peer-reviewed, published literature. The SEAs assert that lynx rely heavily on a single prey species (snowshoe hare) but they fail to acknowledge that lynx rely on a diverse prey base in the southern part of their range.

19. Response: The Borg and Straw Devil dSEAs use the Lynx Conservation Assessment and Strategy (LCAS) as directed by the Standards and Guidelines in the 2001 S&M ROD. The LCAS is based on the best available science.

The action plan to prepare the LCAS was approved by the Regional Foresters of the Forest Service, State Directors of the BLM, and Regional Directors of the USFWS. An interagency Steering Committee was established to provide overall guidance. The Steering



Committee appointed an interagency Lynx Biology Team to prepare the conservation strategy, and a Science Team to assemble the best available scientific information. The LCAS received extensive internal and external review as well as an independent scientific peer review. The science assembled by the Science Team was also peer reviewed. The LCAS represents the best available science on the Canada lynx.

The LCAS stated that snowshoe hare was the primary prey species of lynx but also recognized and discussed alternate prey species that make up the lynx diet. It also recognized that southern populations (research done in Eastern Washington Forests) may prey on a wider diversity of species than northern populations (LCAS page 1-1, 1-2). There is no evidence of an Oregon Cascades population of Canada lynx. More recently the USFWS has stated that there is no evidence that a resident lynx population ever occurred in Oregon (Federal Register Volume 68, 40076, 40089-90, July 3, 2003).

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The SEA relies on the national lynx survey protocol to support the assertion that lynx are not located here, but the SEA fails to acknowledge that the national lynx protocol has been criticized for being poorly designed to accurately determine the presence of a rare species like lynx.

20. Response: As stated in the response to the previous comment, the LCAS represents the best available science on the Canada lynx. The dSEAs do not rely solely on the national lynx survey protocol. The Forest Service had prepared Biological Evaluations (BEs) for the two original EAs that covered Borg and Straw Devil. As part of the process of preparing these dSEAs, the agency prepared amendments to these BEs. The amendments to the BEs considered published research, historical records, and winter tracking surveys.

In addition to surveys implementing the National Survey Protocol (McKelvey et al. 1999), Oregon Department of Fish and Wildlife conducted aerial detection flights and snow tracking surveys covering approximately 800 miles in the Cascade region between the early 1970s and mid-1990s, and monitored 160 baited camera sites on national forest system lands in the mid-1990s to detect carnivores. No lynx were reported from any of these survey efforts although other species including wolverine have been detected. (See also Attachment C pages 14, 23-25). All of this information supports the conclusion that lynx are not present in these sale areas.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The SEA fails to point out the historical evidence of lynx presence in the Cascades as reported in the April 2001 FWS White Paper and elsewhere.

21. Response: The dSEAs for Borg and Straw Devil did consider the historic evidence of lynx presence in the cascades (Borg SEA pages 11-12 and 20-25, Straw Devil SEA pages 15, 19-21). The evidence supports the conclusion that lynx are not present in these timber sale areas.

The White Paper that is referred to was prepared anonymously in the Region 1 Office of the USFWS. The paper was delivered to the lynx steering committee, biology team, and science

team (these were the groups involved in the preparation of the LCAS, see response 19), for their consideration. According to the White Paper's issue statement, "This paper provides a summary of information on lynx in the Cascades and large portions of Oregon, and poses a series of questions that can be used to resolve these concerns. We would appreciate your review of the following issues and background information. Resolving these issues as quickly as possible is important so that clear and consistent guidance can be provided." (White Paper page 1).

In a response to the April 2001 White paper, Dr. Kevin McKelvey and Dr. Keith Aubry (two eminent researchers on lynx, part authors of the Ecology and Conservation of Lynx in the United States, and members of the science team) refute the methodology and conclusions in the White paper (attached as Appendix A to this document). In their cover letter they state:

"As we noted in Chapter 8, and again in our review of the White Paper, lynx data obtained from Oregon were both few in number and low in reliability. Although we drew no conclusions in Chapter 8 about the residency status of lynx anywhere in the contiguous U.S., neither the information we considered in Chapter 8, nor the new occurrence records presented in the White Paper, provide an empirical basis for contradicting the conclusion drawn by Verts and Carraway (1998) in their species account for lynx in Oregon, which reads: "Published reports...of the need to preserve certain regions of Oregon for lynxes notwithstanding, no evidence of self-maintaining populations of lynxes in the state exists."

Furthermore, we believe there are numerous flaws in logic and deductive reasoning contained in the White Paper. In a deductive process, is it inappropriate to draw conclusions before collecting and evaluating the data. If one does, it is inevitable that data will be collected selectively to support the pre-conceived conclusion. Apparently, the authors of the White Paper are convinced that resident populations of lynx have occupied a broad array of coniferous forest habitats throughout Oregon and Washington, both historically and currently, even though there is no compelling body of empirical evidence to support such assertions. Accordingly, the authors seem to have gathered information primarily for the purpose of supporting these beliefs, while ignoring the body of empirical evidence that strongly indicates otherwise. As Verts and Carraway (1998) concluded, and as our assessment of available lynx occurrence data presented in both Chapter 8 and the White Paper indicate, there is no compelling body of verifiable evidence to suggest that resident populations of lynx have ever occurred in Oregon or western Washington."

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The SEAs describe habitat conditions for high populations of snowshoe hare (as a way of saying "not around here") but the SEAs do not describe the habitat conditions for the diverse prey base that lynx would likely use in the southern part of its range (around here).

22. Response: As discussed in the responses above, the dSEAs and amendments to the BEs used the LCAS to determine the effects on Canada lynx. LCAS, which is included in the administrative record to this lawsuit (AR 411), considered the habitat conditions and prey base of lynx -- including those in the southern part of its range. LCAS must be used when determining

effects on Canada lynx, according to applicable Forest Plan standards and guidelines (2001 ROD, page 36). The Forest Service's wildlife biologists, who assessed the possibility of effects to Canada lynx, used LCAS when determining that Borg and Straw Devil would have no effect on Canada lynx. There is no evidence that the Borg and Straw Devil timber sale areas are within the southern range of Canada lynx. As stated above Forest Wildlife Biologists using the best available science have concluded that these timber sales do not contain lynx habitat.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The Supplemental BEs describe primary lynx habitat as subalpine fir plant association groups. This narrow view of lynx habitat is not supported by the science and the courts have already cast doubt on this as well. ONRC and HCPC v. Forsgren, March 2003.

23. Response: The LCAS identified subalpine fir, lodgepole pine, and Engelmann spruce as the primary vegetation that contributes to lynx habitat in the Western United States. The LCAS also discusses numerous other primary vegetation types that contribute to lynx habitat in other portions of the lynx range. The LCAS identified subalpine fir as the primary vegetation that may contribute to lynx habitat in the Cascade Mountains Geographic Area (LCAS 4-2, 4-3). The LCAS, including the habitat criteria, was peer reviewed by scientists.

This is not a narrow view of lynx habitat. It is the definition of primary lynx habitat in the Cascade Mountains Geographic Area in LCAS, which is the best scientific evidence available for lynx. Plaintiffs have not provided any credible science to invalidate the LCAS habitat criteria.

The case of *ONRC v. Forsgren*, 252 F.Supp.2d 1088, 1103 (D. Ore., March 11, 2003) ("Here Plaintiffs challenge the lynx viability standards set forth in the Revised LCAS and the new mapping direction on procedural grounds under NFMA and NEPA"), focuses on Forest Plan amendment procedures and does not cast doubt on the agency's description of primary lynx habitat.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The agencies narrow view of lynx habitat as represented only by large areas of subalpine fir is not supported by the available science:

Primary habitat for lynx is found in subalpine and montane forests that are cold or moist forest types (vol. 3, appendix 1, table 1; McKelvey and others 1999). Within the montane forest community, source habitats are provided by all vegetation types except Pacific silver fir-mountain hemlock, red fir, and Sierra Nevada mixed conifer. Within the subalpine forest community, only Engelmann spruce-subalpine fir provides source habitat. Lynx habitat includes various structural stages (Koehler and Aubry 1994, Ruggiero and others 1999).

Lynx forage primarily in early-seral forests and in some mid-seral forests that support high numbers of prey; lynx also use late-seral forests for denning and rearing young as well as for hunting alternative sources of prey (Ruggiero and others 1999). Consequently, source habitats for lynx are provided by most of the coniferous forest structural stages

with the exception of old-forest single-storied stands (vol. 3, appendix 1, table 1). Riparian woodlands and shrublands are also source habitats.

Michael J. Wisdom, Richard S. Holthausen, et al. Source Habitats for Terrestrial Vertebrates of Focus in the Interior Columbia Basin: Broad-Scale Trends and Management Implications, PNW-GTR-485; May 2000. Volume 2 page 78. <http://www.fs.fed.us/pnw/pubs/gtr485/gtr485v2a.pdf> (emphasis added). The agency has an obligation to respond to credible opposing views such as this.

24. Response: See response to previous comment. The primary habitat types for lynx including those referenced above are discussed in the LCAS. Indeed, several of the authors cited above were part of the Science Team that reviewed the LCAS. The Technical Report referred to in this comment pertains to lynx habitat in the Interior Columbia Basin – which does not include the Cascades in Oregon. This report, prepared by the Forest Service, is not an opposing view. The report does not identify any lynx habitat for the Oregon Cascades. See also Attachment C pages 3-6, 25-27.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The lynx habitat maps that the Forest Service has developed inappropriately exclude areas that have historically been used by lynx and are likely to be used by lynx today. The Forest Service has not offered a reasonable justification for excluding large areas of suitable habitat from the lynx habitat maps and for refusing to formally consult on projects in these areas. Limiting lynx habitat in the Cascades to large areas of subalpine fir effectively excludes all of the Oregon Cascades from consultation. In Washington the FWS consulted on projects in subalpine fir, mountain hemlock and the cool/cold Pacific silver fir habitats (FWS Reference number 1-3-00-I-1618, 10/3/00). There is no justification for refusing to treat similar habitat in the Oregon Cascades as lynx habitat and consult on projects in those areas.

25. Response: In July 2003 the USFWS stated that there is no evidence that a resident lynx population ever occurred in Oregon (Federal Register Volume 68, 40076, 40089-90, July 3, 2003). See also responses 18-24.

The essential fact overlooked by this comment is that there are no lynx in the Cascades of Oregon. If there were a viable Canada lynx population, if lynx were to exist in the project areas for Borg and Straw Devil, the Forest Service would certainly have considered this when determining whether these projects had any effect on lynx and the Forest Service would certainly consult with US FWS on any such effect.

The Mt. Hood and Willamette National Forests mapped lynx habitat, pursuant to the mapping direction in LCAS, which is incorporated into Forest Plan standards and guidelines. This comment makes no allegation that the Forests are not following their Forest Plans. There is justification for the habitat maps on the Mt. Hood and Willamette National Forests. It is the justification of LCAS and the science that supports LCAS. LCAS requires that “Lynx habitat will be mapped using criteria specific to each geographic area to identify appropriate vegetation and environmental conditions.” LCAS at 7-3. The Forests followed the LCAS mapping direction.

The Forests did not exclude large areas of suitable lynx habitat. The Forests did not exclude areas that had been historically used by lynx. The Forests followed the explicit mapping directions in the Forest Plans and this comment does not allege that they did not. The Forests have lynx habitat maps; the maps show that there is insufficient lynx habitat necessary to support reproduction and survival. See also Attachment C pg. 14, 15.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Figure 5 of the 1999 Nationwide Plan-Level Lynx BA also clearly identified the Oregon Cascades as an area with moderate to high likelihood of supporting lynx conservation due to the extensive coverage of conifer forest (“landscape capabilities to provide areas of at least 1800 km<sup>2</sup> (695 mi<sup>2</sup>) of contiguous suitable habitat” “In summary, Plan direction continues to support lynx conservation in much of the Cascades and provides a foundation for a connected network of primary habitat along the length of the Cascades. However, compared to historical times, the Plans have contributed to a reduction of the total area in which natural ecological processes are emphasized.”) <http://www.fs.fed.us/r1/planning/lynx/reports/ba/ba.pdf>  
<http://www.fs.fed.us/r1/planning/lynx/reports/ba/figure5.jpg>

**26. Response:** The Biological Assessment completed in 1999 took an inclusive view of “potential habitat” for lynx in this broad scale assessment (BA page 28). More recently however, based on the best available science, these agencies (USFWS, Forest Service) have concluded that there is no evidence that resident populations of lynx ever occurred in Oregon. See also response to comments on lynx above and Attachment C pages 3-6.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Several agency biologists recently recommended special management of certain areas of Oregon where lynx are likely to occur:

In Oregon, areas that warrant management as “Evaluation Areas” include: 1) the high elevation flats starting just west of the Mount Jefferson Wilderness area and extending south to the Sky Lakes Wilderness Area. This zone contains a number of reliable recent lynx reports and trapping records, as well as the topography, vegetation, prey, and climatic conditions favorable for lynx; 2) the habitat and connectivity corridor joining the Cascades and Blue Mountains on the Deschutes, Ochoco and Malheur National Forests. Because the I-84 corridor and dams on the Columbia are considered to be a movement barrier, this is the only way for genetic exchange to occur to the southern Cascades; 3) the area around Mt. Hood and Bennett Pass due to a cluster of 14 lynx sightings in the area and proposed ski area developments; and 4) previously mapped habitat on the Winema and Fremont National Forests due to clusters of recent reliable sightings, confirmed specimens in/or south of these clusters, and past records indicating a presence.

### **Conclusion**

Current and historical sighting records, historical documents, and anecdotal evidence suggest that lynx occurred on both sides of the Cascade Mountains in Oregon and Washington. These records show that lynx may have been more wide-spread and

abundant than was previously considered and indicate that it is likely that both resident as well as transient animals occurred in both states. While there is insufficient data to ascertain population size or trends in Oregon or Washington, this is also true of all of the other geographic regions where lynx occur. It is important to recognize that the Endangered Species Act (ESA) does not differentiate between resident and transient individuals nor does it require “resident, reproductive populations” as the threshold for consideration during consultation. Thus the obligation to minimize effects and the potential for incidental take applies where the species is documented or suspected to occur. This is particularly important in areas where the vegetation types, prey availability, and climatic conditions resemble those conditions found in areas where lynx are known to occur.

**Management of Canada Lynx in the Cascades Geographic Areas of Oregon and Washington**, A White Paper Prepared by the Offices of Region 1 of the Fish and Wildlife Service, April 10, 2001. [http://www.peer.org/Lynx/April\\_10\\_01\\_FWS\\_whitepaper.pdf](http://www.peer.org/Lynx/April_10_01_FWS_whitepaper.pdf)  
[http://www.peer.org/Lynx/FWS\\_whitepaper\\_appendices.pdf](http://www.peer.org/Lynx/FWS_whitepaper_appendices.pdf)

27. Response: The comment quotes from and relies upon the White Paper discussed previously. As stated previously in response to other comments, the methodologies and conclusions in this paper have been discredited. The White Paper does not represent a responsible opposing scientific viewpoint. The White Paper was not peer reviewed, was not published, and does not even identify who authored the paper. It is not an authoritative statement of a scientific viewpoint.

It was prepared for the purpose of posing “a series of questions” to the Steering Committee, Science Team, and Biology Team involved in the preparation of the LCAS (White Paper, page 1). Each responded to the White Paper (Attachments A-C). Drs. McKelvey and Aubry (Attachment A, Science Team Response) (“numerous flaws in logic and deductive reasoning in the White Paper”); McAllister (Attachment B, Steering Committee Response) (“the ‘white paper’ did not provide evidence that lynx were more widespread and abundant in Oregon and Washington than previously thought”); and Claar (Attachment C, Biology Team Response) (“The ‘white paper’ does not present substantive evidence, data or biological interpretations that provides a basis for the Biology Team to recommend any change in the current direction to mapping lynx habitat”).

The White Paper does not represent the position of the US FWS as it pertains to lynx habitat in Oregon. That position was published in the Federal Register as previously discussed. The SEA’s relied upon the best available science when concluding the Borg and Straw Devil timber sales would have no effect on the Canada lynx. Therefore consultation with the US FWS is not required.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Neither the lynx conservation agreement or the lynx conservation assessment and strategy (LCAS) have been subject to NEPA analysis. The project NEPA document gives merely cursory attention to lynx and relies too heavily on conservation measures in the LCAS to protect lynx without project specific design and analysis. The agency must follow NEPA and NFMA

procedures to amend its forest plan to conserve lynx. ONRC and HCPC v. Forsgren, March 2003.

28. Response: The Forests did follow NEPA and NFMA procedures to amend the Willamette and Mt. Hood Forest Plans to conserve lynx.

All Forests within the range of the northern spotted owl — including the Mt. Hood and Willamette National Forests — had their Forest Plans amended by the 2001 S&M ROD. The 2001 ROD included standards and guidelines for lynx, whether or not an individual Forest has lynx.

The 2001 ROD that amended these Forest Plans was adopted following NEPA (an EIS) and NFMA (Forest Plan amendment) procedures.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The SEAs do not adequately describe the methodology. Whether, where, and how the Forest Service used ground transects vs. tree climbing is not disclosed. The SEAs do not disclose whether where or how the Forest Service met the requirement to exhaustively search 100 meters around single RTV nest to determine the true extent of the occupied site.

29. Response: The dSEAs describe the methodologies used for the surveys. This comment does not allege that the Forests have not complied with survey protocols. Nor does this comment allege that the Forests have not complied with the management recommendations that were used to protect known sites, including sites found as a result of the surveys. The RTV survey protocols do not require exhaustive 100-meter searches around each RTV nest, and thus the dSEAs need not describe such a search. The RTV protocol does not anticipate finding all nest sites.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The EA and SEA for Solo does not address the threats to cold water corydalis (*Corydalis aqua-gelidae*).

30. Response: Surveys for cold water corydalis were conducted for the Solo Timber Sale and none were found (Solo EA page 25, Solo dSEA page 7).

No change has been made to the dSEA as a consideration of this comment.

**Comment:** Page 9 of the Straw Devil dSEA says that in alternative B unit 2 is “not Buffered as explained above.” However, alt A does not appear to buffer unit 2.

31. Response: This was a typographical error in the draft SEA and has been corrected in the final SEA (Straw Devil Final SEA page 9), to say that Alternative A would now buffer Unit 2.

This change has been made to the Straw Devil SEA as a consideration of this comment.

**Comment:** A Straw Devil Timber Sale changed circumstances memo dated July 8, 2003, and signed by Ranger Rick Scott, clearly states that 24 acres will be dropped from unit 2, leaving only 6 acres. The Forest Service provides no justification for why this decision has been reversed and why the agency is exempted from its requirements to protect this cluster of red tree vole nests.

32. Response: The court invalidated the SIR (changed circumstance memo) for the Straw Devil Timber Sale and ordered the agency to undertake a NEPA process to disclose its survey and manage duties. The agency is not relying on the SIR or its contents.

The original Straw Devil EA described Unit 2. The Forest surveyed for red tree voles following the direction in the 2001 ROD, but did not find any in Unit 2. Subsequently the timber sale contract was awarded. Subsequently citizen surveys over and above the survey protocols found sites for the red tree vole in Unit 2. At the time of the SIR the Ranger proposed to change the timber sale contract for Unit 2 to drop 24 acres in order to protect these additional sites. That change was never made. Upon reconsideration, the Ranger decided instead to follow the then-current direction in the 2001 ROD not to protect these additional sites.

The Forest was never required to protect “this cluster of red tree vole nests.” When the nests were discovered, their protection was not mandatory. Ultimately the Ranger decided not to protect them, following then-current agency direction. The court’s order in this case also directed the agency to use the direction that was current at the time the analysis was prepared.

No change has been made to the dSEA as a consideration of this comment.

**SUMMARY:** No changes were made to the dSEAs as a result of the comments listed above except where specifically mentioned in the response. Many other comments were received from ONRC that detailed many changes that have occurred since the original EAs were published. In general these topics included shifts in the Northwest economy and timber industry, forest fires, declining populations of listed species and new listings, a call to ending all mature and oldgrowth logging, changes in the population of the area, roadless areas, management indicator species, and the legality of the Northwest Forest Plan and 2001 Survey and Manage Record of Decision. These comments have not been responded to because they were outside the scope of the draft SEAs, which disclose the agency’s survey and manage duties for these six timber sales.

**The following comments were received from BARK on the Solo and Borg SEA’s. Joining in these comments was the Columbia Chapter Sierra Club and Cascadia Wildlands Project.**

**Comment:** The dSEAs basically list one alternative, given that the two so-called alternatives described are practically identical: Borg’s alternatives differ by a mere 3.5 acres of logging, Solo’s by 7 acres. Bark has never encountered an alternative in a NEPA document that differs by a mere 7 acres, much less 3.5. There are often greater differences in CCF between the environmental assessment and prospectus of a single project than between these two action alternatives. Although requested, there was no alternative which would focus on rehabilitation



without the associated timber harvest. We request an analysis of all potential alternatives, not ones just focused on the feasibility of cutting trees in the area. Given the public demand to end old growth logging, and the ecological value of isolated old growth stands, it is uncanny that a true restoration alternative was not considered in either dSEA.

33. Response: Similar comments were made by ONRC, above. See Response 6, 8, and 15.  
No change has been made to the dSEAs as a consideration of this comment.

**Comment:** *Lyogyrus* – **Cat. A** This aquatic mollusk was found west of unit 13 near Chief Creek in the Solo project area, and south of units 11 and 12 in the Borg project area. The Solo area is noted in the prospectus as requiring special attention. Despite claims of the dSEA, the riparian buffer at Chief Creek won't be adequate to protect this species. The unit will open up the area to drying and sunlight. Road decommissioning is also planned near this site. While Bark supports road decommissioning, the effects of this activity on this mollusk species must be analyzed, as it can have short term adverse impacts.

34. Response: Wildlife and Fisheries biologists have determined the riparian reserve widths are adequate to provide for the life requirements of this species. See the Borg dSEA at page 7 and Solo dSEA at page 7.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** *Hemphillia malonei* (**Malone jumping slug**) – **Category C** This section in the Solo sSEA is woefully inadequate. Under the *Hemphillia malonei* section, the determination that there will be no impact is unrealistic. The Solo dSEA stated that the pre-disturbance surveys were not intended to find every individual, and therefore it is likely that in addition to the individuals located, there are likely others within the unit. There is a high chance that some of these species will be impacted. To state that there will be no effect is inconsistent.

35. Response: The “no impact” discussion in the Solo dSEA was referring to the impacts to survey and manage species. This is not inconsistent. Individuals could be impacted by management activities but this species is now considered to be common and management of known sites is not required. This species is no longer part of survey and manage, as it was removed from the list in the 2001 Annual Species Review.

Changes have been made in the Solo fSEA to clarify this.

**Comment:** All sites containing Malone jumping slug should be removed. Both Solo and Borg DSEAs say it's common, but it's not. The 2001 Species Review was bogus and is controversial. The 2002 ROD [sic; 2001 ROD] is being litigated and may be found to be illegal. In the meantime, the slug units (Solo 4, 7, 10, 12, 3, 11, & 14) should be removed until adequate scientific information about the slug and other species dropped from the S&M list will be available. The Forest Service should take the cautious approach first. The fact that these slugs were found illustrates the old growth characteristics of the area. The area should not be logged.

36. Response: Through the adaptive management process established in the Northwest Forest Plan, the data from many surveys were examined by taxa experts. This species was removed as a survey and manage species in the 2001 Annual Species Review because experts determined it to be common enough to no longer need additional data or the management of known sites. This species has also been found in many second-growth stands (2001 ASR ). The legality of the 2001 ROD and Annual Species review is outside the scope of the analysis.

No change has been made to the dSEAs as a consideration of this comment.

**Comment: Red Tree Voles** - Even if the legally questionable assertion that you aren't required to do surveys in this watershed, there are other legal and management obligations to ensure viable populations of native species. Surveys should be done to determine level of presence and threat from logging.

37. Response: The dSEAs for Borg and Solo do not assert red tree vole surveys are not required in these watersheds. Surveys for red tree voles in the Solo and Borg project areas were conducted and no red tree voles were found (Solo dSEA page 6, Borg dSEA page 5).

No change has been made to the dSEAs as a consideration of this comment.

**Comment: Pseudocyphellaria raineirensis (Old Growth Specklebelly) – Category C.**

The lichen found in Solo unit 14 is buffered, but not adequately. It is important to note that the area has a high number of pacific yews, which are understory trees. When exposed to the elements, they will dry out and not function as adequate habitat for the lichen. Given the rarity of this species, the entire unit should be deleted.

38. Response: The Forest Botanist visited the site and made site-specific management recommendation for the lichen based on the conditions at the site, the habitat requirements of the species, and professional judgment (Solo dSEA Appendix A). The buffer was established for reasons stated by the Forest Botanist. This comment presents no evidence that the management recommendations are not adequate.

No change has been made to the dSEA as a consideration of this comment.

**Comment:** In 2002, Bark found another specimen of this lichen in Solo unit 12 and reported it to the Forest Service, but the dSEA ignores this information by not noting it and not buffering this found site. Bark clearly marked a path to the site with flagging tape. The lichen was found on the ground, which means it fell from the canopy, a common phenomenon for lichen generally found high in the canopy. Although the exact tree host was not located, this lichen obviously came from a tree near by, certainly not from adjacent plantations. An adequate buffer should be placed around this site or the entire unit dropped.

39. Response: This reported specimen does not meet the requirements for a “known site” in the 2001 Survey and Manage ROD (Standards and Guidelines page 76). A letter from Mt. Hood

Forest Supervisor Gary Larsen to Bark dated February 26, 2003 (Appendix B of the Solo fSEA), discussed the reasoning for this. Because this is not a “known site,” no further management action is required.

Discussion about this reported specimen has been added in the final Solo SEA.

**Comment:** The Borg dSEA completely omits all discussion of the Old Growth Specklebelly, even though the range of this species is acknowledged as overlapping the project area. Borg dSEA, 6. Considering the Forest Service’s demonstrated inability to find this species, and its central place in the problems arising under the nearby Solo sale, it is inconceivable that so little attention is paid to this rare species.

40. Response: The Borg Supplemental EA disclosed surveys were conducted for this species (page 6) and that none were found (dSEA pages 7 and 8).

No change has been made to the dSEA as a consideration of this comment.

**SUMMARY:** No changes were made to the Borg and Solo dSEAs as a result of the comments from BARK except where specifically mentioned in the response. Many other comments were received from BARK that presented a wide variety of topics. These topics are listed below. These comments have not been responded to because they were outside the scope of the draft SEAs, which disclose the agency’s survey and manage duties for these six timber sales.

- Changed wildlife conditions - analysis is more than 5 years old.
- Changed economic conditions – community no longer is timber dependent.
- West Linn and Lake Oswego have asked for greater protection to water supply.
- Road miles have increased since 1998.
- Road closures are not effective.
- ATV use has increased.
- Increase in Invasive Plants.
- Increased Fire Risk.
- Logging since 1998 has removed isolated old-growth patches and affected connectivity.
- Barred owls are increasing.
- There is new science about snags.
- NFP has eliminated timber emphasis.
- Logging will not prevent the spread of disease.
- There were no surveys for T&E or sensitive species.
- The Forest has not adequately monitored MIS species.
- There will be impacts to deer and elk, fish, migratory birds, mychorrhizae, soils.
- Opening size in Solo violates Forest Plan.
- Violates ACS objectives.
- ARP model is faulty.
- EAs do not include a monitoring requirement.
- Mitigations are inadequate.
- Reliance on BMPs.

Road construction will degrade water quality.  
All Pacific yew should be protected.  
Economic analysis is inadequate. Timber sales do not capture the highest value.  
Timber sales violate Global Climate Change Prevention Act.

### **The following comments were received from Cascadia Wildlands Project on the Straw Devil, Pryor, and Clark SEA's**

**Comment:** The Forest Service did not develop an adequate range of alternatives based upon its survey and manage duties in these supplemental EAs. There is no explanation as to how these alternatives respond to the Forest Service's survey and manage duties. There is no *comparative analysis* of the different effects of alternatives for any of these sales.

41. Response: Similar comments were made by ONRC, above. See Response 6, 8, and 15 — which also apply to these dSEAs.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Throughout the supplemental EA, it is impossible for the reader to make a judgment about environmental impacts because there is no baseline established by which to measure these impacts, as required by NEPA.

42. Response: The original EAs presented the no action alternative and the baseline for environmental effects. The SEA alternatives compared alternative ways to implement the survey and manage requirements. The no action alternative, not harvesting the timber sale, would remain the same as disclosed in the original EA.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Resource specialists should have contributed to the preparation of these supplements. There is no indication that they did.

43. Response: An interdisciplinary team of resource planners, wildlife biologists, and botanists participated in the preparation of the dSEAs. Additionally, consultation was made with wildlife biologists that specialized in red tree vole as well as silviculturists, hydrologists, soil scientists, and sale administrators.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** NEPA requires the Forest Service to take a “hard look” at the environmental consequences of proposed actions. The Forest Service in the Straw Devil supplemental EA provides only assertions that there will be, for instance, “less potential for sediment” and “less potential compaction and displacement.”

44. Response: The impacts of logging have been analyzed and disclosed in the original EAs. The dSEAs focus on compliance with the court's order and provide a hard look at the agency's survey and manage duties. See Response 2.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** With the supplemental EA, the Forest Service appears to be proposing entirely new alternatives to implementing the purpose and need for this project. The Forest Service cannot simply propose a different plan of action for this sale without disclosing the environmental consequences of the proposed actions.

45. Response: The dSEAs are focused on the agency's survey and manage duties for these sales, including the application of management recommendation to the survey and manage species found in the Straw Devil and East Devil Timber Sales area. The dSEAs supplement the original EAs. They do not replace or eliminate the original EAs. The proposed actions have not changed and are described in the original EAs.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** It is worth noting that the Forest Service's assertion on page 9 that buffers would not be applied because Straw Devil was being operated on is simply untrue. That information was before the Forest Service long before the sale was operating.

46. Response: The Straw Devil Timber Sale was awarded to Engle Investors on March 5, 2002. Red tree vole nest samples and information about where the samples were collected was presented to agency biologists in the summer of 2002 after the sale had been awarded. Buffers were not applied because the sale had already been awarded when the samples were submitted, and the agency was following then-current direction.

The statement in the Straw Devil dSEA has been changed in the final SEA to clarify the sale award date was prior to submittal of nest samples.

**Comment:** There is no consideration whatsoever to the cumulative effects of the proposed action on red tree voles or other survey and manage species. The supplement similarly fails to disclose any information about what will happen to red tree vole populations or the populations of other species as a result of implementing either of the proposed alternatives.

47. Response: The management recommendations for the survey and manage species were developed by taxa teams that considered the viability and sustainability of the S&M species over time. Regarding red tree voles, information about species distribution and viability in the areas affected by the Clark, Straw Devil, and Pryor projects is supplemented by the 2003 Annual Species Review, which indicates population distribution and density is sufficient and special classification is no longer necessary.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** Since the purpose and need for the East Devil timber sale has been changed, the Straw Devil EA is inadequate since it does not acknowledge that the purpose and need for one part of the sale has changed.

48. Response: The purpose and need in the Straw Devil EA has not changed. The type, duration, and intensity of activities on the East Devil timber sale are identical to those described in the original EA. The environmental impacts of those activities are disclosed in the original Straw Devil EA and the effects of implementing the survey and manage duties are disclosed in the Straw Devil SEA. While the East Devil timber sale was used to replace commercial timber of a canceled timber sale contract on another National Forest, the ultimate disposition of the timber does not change the purpose of or the need for the project described in the original Straw Devil EA.

No change has been made to the dSEA as a consideration of this comment.

**Comment:** The Forest Service still refuses to incorporate available information into the design of these timber sales and analyze all impacts to sensitive species that are present.

49. Response: The agency's red tree vole surveys in the Straw Devil timber sale units identified and protected 11 active red tree vole sites (Straw Devil SEA, page 8). The new information submitted after award of the sale, regarding the presence of additional possible nest sites in the Straw Devil units, was reviewed by agency biologists. Because survey protocols were not designed to identify all nests and the intent of the management recommendations was not to protect all nest sites, no action was taken to confirm additional nests. The exception was in Straw Devil Unit #2. The original agency red tree vole surveys did not locate any active nests in Unit 2. Acting on the citizen group survey information, the agency did confirm 11 red tree vole nest sites in 2003. Nine trees in Unit 2 were climbed and confirmed to have active nests. The presence of these nests is disclosed in the Straw Devil SEA on page 8. However, since the new information regarding these nests was presented to the agency after the sale was awarded, no protection measures are required. 2001 ROD, Standards and Guidelines, page 24. The Straw Devil SEA on page 15 explains the rationale for the decision not to protect the red tree vole sites in Straw Devil Unit 2.

No change has been made to the dSEAs as a consideration of this comment.

**Comment:** The Forest Service should buffer the 24 acres in unit 2 as the July 8 memo promised, and should buffer the acres in other units of the sale where citizen surveyors found active and inactive red tree vole nests. Kirk Lunstrum's memo explicitly states where and how many vole nests were discovered and turned in by citizen groups. This is not the same information presented in the supplemental EA for this sale at page 8. Because the supplement relies on unreliable information (that is refuted by the Forest Service's own public memos), the EA is deficient.

50. Response: The court invalidated the SIR (changed circumstance memo) for the Straw Devil Timber Sale and ordered the agency to undertake a NEPA process to disclose its survey and manage duties. The agency is not relying on the SIR or its contents.

This comment is similar to one made above. See Response 32.

No change has been made to the dSEA as a consideration of this comment.

**Comment:** Straw Devil - The original NEPA document—which was written in 1997—is too dated to inform the public of environmental consequences.

51. Response: This comment is similar to one above. See Response 2.

No change has been made to the dSEA as a consideration of this comment.

**Comment:** The Forest Service refuses to incorporate scientific research or the best available information to support its unsupported conclusions about lynx. See the ONRC’s comments for more details.

52. Response: See Responses 12 and 18 through 28.

No change has been made to the dSEAs as a consideration of this comment.

### **The following comments were received from Engle Investors (purchaser of Straw Devil timber sale).**

**Comment:** We believe an alternative should be considered that does not establish no-cut reserve buffers for any active or inactive red tree vole nests. In the central part of its range, the red tree vole is no longer considered an uncommon species needing protection. The Straw Devil timber sale supplemental EA should more clearly explain why the red tree vole is no longer considered a survey and manage species in the central portion of its range and should incorporate documents supporting this conclusion.

53. Response: The court’s order was to provide NEPA analyses to disclose and analyze the agency’s survey and manage duties based on the survey and manage standards and guidelines that are current at the time the analyses are prepared. The survey and manage direction in effect at the time the Straw Devil dSEA was prepared is the 2001 S&M ROD which directs protection measures for red tree vole as per the management recommendations. The information about population numbers and distribution presented in the 2003 Annual Species Review pertaining to the red tree vole was considered (Straw Devil dSEA, page 15) in determining what to do with the additional red tree vole information that became known after the sale was awarded. The no-cut buffer areas that were not included in the timber sale contract as a result of the red tree vole sites are not necessarily permanent reserves. If the status of the red tree vole changes in the future those buffer areas could be available for other management activities consistent with Forest Plan direction. However adding these areas into existing timber sale contracts would be problematic because they were not part of the Contract that was offered and awarded to the purchaser.

No change has been made to the dSEA as a consideration of this comment.

**Comment:** Consider an alternative that would eliminate the red tree vole reserves would be consistent with the final supplemental EIS for the survey and manage program which was published December 2003.

54. Response: The court's order was to use the survey and manage direction current at the time the dSEAs were prepared which was the 2001 S&M ROD. The ROD for the December 2003 final supplemental S&M EIS was not signed until March 22, 2004, and is not effective until April 21, 2004. As mentioned in response to the previous comment, if the status of the red tree vole changes the existing red tree vole buffers would not be permanent reserves.

No change has been made to the dSEAs as a consideration of this comment.

### **The following comments were received from the American Forest Resource Council and Freres Lumber Company.**

**Comment:** In the original Solo sale there were multiple reserves established for the Malone jumping slug. Consistent with the ROD, the Forest Service conducted annual species reviews and found that the Malone jumping slug was more common and removed it from the survey and manage program. Unfortunately, the Forest Service has chosen to ignore the latest information about the Malone jumping slug and selected Alternative A which makes no change to the Timber Sale and essentially leaves the Malone jumping slug buffers in place, which is contrary to current planning direction. We strongly support Alternative B that would eliminate the protection buffers for the Malone jumping slug.

55. Response: Numerous sites of Malone jumping slug were discovered during surveys and the agency was preparing to manage these known sites consistent with the recommendations in the 2001 ROD. This entailed removing approximately 89 acres from the proposed Solo Timber Sale. However, prior to offering this timber sale the Malone jumping slug was removed from the survey and manage program and no longer required management of known sites. The agency did not ignore this information. All but seven of the 89 acres that had been removed were added back into the timber sale contract that was offered and subsequently awarded. The reason these seven acres were not included was because of administrative costs the agency would have incurred. Administrative costs were minimal in the acres added back in because in those areas entire timber sale units had been removed. Adding these entire units back in did not require any additional fieldwork or changes on the ground. In contrast, the seven acres not added back, were part of two units where a portion of the units were modified. To reconfigure these units back to the original proposed sale would have required additional fieldwork, time, and dollars. The decision maker decided these additional investments were not warranted for the small amount of timber involved (Solo dSEA page 10).

It would be problematic to now add these acres into the timber sale contract because they were never part of the contract that was offered and awarded to the purchaser. Also these acres are not permanent protection buffers because managing these known sites for protection is no



longer required. This is consistent with management direction, which does not require the expenditure of dollars to reconfigure awarded timber sales.

No change has been made to the SEA as a consideration of this comment.

**END**