This letter constitutes my recommendation for the Notice of Appeal (NOA) filed by Mr. Ryan Talbott for the Allegheny Defense Project on the Salmon West Project, Marienville Ranger District, Allegheny National Forest (ANF). Mr. Bill Bilitskus has been named Lead Appellant for the Allegheny Defense Project. The Responsible Official, District Ranger Robert T. Fallon signed the Decision Notice on September 26, 2013. The legal notice was published in The Kane Republican (Kane, Pennsylvania) September 30, 2013. The Responsible Official met with representatives from the Allegheny Defense Project on December 5, 2013. No resolution was reached.

My review was conducted pursuant to 36 CFR 215 – “Notice, Comment, and Appeal procedures for National Forest System Projects and Activities.” To ensure the analysis and decision are in compliance with applicable laws, regulations, policies, and orders, I have reviewed and considered each of the Appellant’s issues and the decision documentation submitted by the ANF. My recommendation is based upon review of the Project Record (PR) including, but not limited to, the scoping letter, public comments, Environmental Assessment (EA) and the Decision Notice (DN) and Finding of No Significant Impact (FONSI).

**Appeal Issues**

The Appellant raised seven main issues, with several sub-issues in the Salmon West Project decision NOA.

**Issue I:** The Forest Service continues to be in violation of the National Forest Management Act, the 1982 planning rule and the 2007 Forest Plan regarding its mandatory monitoring and evaluation duties.

**Issue I-A:** Monitoring and evaluation is dependent upon timely reporting, which the Forest Service has not done.

**Issue I-A-i:** Monitoring and evaluation has not been timely, has not been published. The Appellant contends reporting is required by 16 U.S.C. §1604(g)(3)(C) to determine whether FP implementation is causing "substantial and permanent impairment of the productivity of the
land.” The Appellant asserts the ANF is out of compliance with both 16 U.S.C. §1604(g)(3)(C) and the FP because it has completed monitoring requirements but has not evaluated or published the results. “By failing to monitor and evaluate forest plan implementation in a national forest such as the Allegheny, the Forest Service cannot ensure compliance with its obligations under either MUSYA or NFMA. (...) The failure to produce timely monitoring and evaluation reports violates the Forest Plan, the 1982 planning rule and NFMA.” (NOA, pp. 1-5)

Response: The Monitoring and Evaluation Reports for 2007 and 2008 are available on the ANF website under the “Maps and Publications” heading. Neither the FP nor the Draft Monitoring Guide identify a required mode or location for publication. The Forest’s chosen method for publishing the Monitoring and Evaluation reports is to provide access on the Forest website.

The full citation for the National Forest Management Act (NFMA) (16 U.S.C. §1604(g)(3)(C)) clause cited by the Appellant is (g) Promulgation of regulations for development and revision of plans; environmental considerations; resource management guidelines; guidelines for land management plans; (3) specifying guidelines for land management plans developed to achieve the goals of the Program which; (c) “insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land.

This pertains to the planning rules developed for Forest Planning in the agency.

The Appellant raised this issue in comments on the EA. The Forest responded to these comments by addressing their data collection and forthcoming monitoring reports(EA, App. D, pp D-7-D-9).

The FP Table 13 “Minimum Legally Required Monitoring Items”, Table 14 “Achievement of Forest Plan Objectives” and Table 15 “Strategic Monitoring Information and Information in the Draft Monitoring Guide” identify whether a particular monitoring item is completed annually or every three to five years.

The monitoring items completed on a 5-year schedule, are not overdue, since the last Monitoring and Evaluation Report was done in 2008.

Neither the FP nor the Draft Monitoring Guide provide a specific due date for items monitored on an annual basis (calendar year vs. fiscal year). While the data has been collected for items monitored annually or every third year, the reports are not yet compiled and are overdue for publication.

The Appellant does not, in this specific issue, explain how the lack of published reports constitutes a flaw in the site-specific analysis the ANF conducted for the Salmon West project. As such, for this issue, I do not find a flaw in the analysis conducted for this site-specific project.
**Issue I-A-ii: Monitoring guide has not been produced or published.** The Appellant claims the “[failure to produce the Monitoring Guide after nearly six years of Forest Plan implementation violates 16 U.S.C. § 1604(f)(1) and is a cognizable failure to act under the APA.” (NOA, pp. 5-6)

**Response:** The Appellant raised this issue during the comment period for the EA. The Forest responded by stating the Guide is in draft form, and is still undergoing revision to comply with the 2012 planning rule. (EA, App. D, p. D-8)

The FP (p. 38) states the monitoring and evaluation program for the FP will consist of several elements. One of those elements is, “A monitoring guide that identifies the specific methods for data collection and how the data is stored, responsibilities for management of monitoring information, and the schedule of monitoring and evaluation activities during the plan period. It will identify cooperators and their specific roles with respect to particular monitoring items.”

In this requirement, the FP does not provide a specific time for the monitoring guide to be finalized or published.

The NFMA clause cited by the Appellant reads: “(f) Required provisions: Plans developed in accordance with this section shall— (1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section.”

This section of the NFMA does not require a published monitoring guide. As such, I find no violation of law, regulation or policy on this issue for this site-specific project.

**Issue I-B: Specific problems with the FY 2008 Monitoring and Evaluation Report.**

**Issue I-B-i: FY 2008 information is not “recent” for this analysis.** (NOA, p. 6)

**Response:** The Appellant is correct in saying the FY 2008 report was not published until 2013. However, there is evidence throughout the PR in the analysis and specialist reports that the ANF used more recent data for the site-specific analysis for this project. Also refer to response to Issue I-A-i.

The Responsible Official explains his use of the best available science in the DN/FONSI (pp. 10-11). The 1920/1950 letter to Regional Planning Directors from Director, Ecosystem Management Coordination, June 21, 2007, gives guidance on the use of best available science. It is recognized that best available science might vary over time and across scientific disciplines, but through its consideration, the scientific integrity of project development and analysis is ensured. Documentation of best available science in planning and project-level development includes: identifying methods used, referencing scientific sources relied on, and discussing responsible opposing views.

While this appeal point is not on “best available science” per se, the Appellant seems to imply that the age of the data or report is automatically cause for concern about the validity of the
analysis. There is discussion in the PR that more recent data for the monitoring and evaluation reports has been collected, and was available for this site-specific analysis.

Based on this, I find no violation of law, regulation or policy for this site-specific project on this issue.

**Issue I-B-ii: Demonstrates substantive problems with the monitoring and evaluation.** The Appellant is concerned about how the ANF is conducting monitoring and evaluation activities. “For example, one of the monitoring questions the Forest Service is supposed to answer is “how many and what type of terrestrial habitat enhancements have been implemented.” The report, however, only identifies the number of acres of habitat enhancement without any description of “how many and what types” of enhancements were completed. The monitoring and evaluation reports must identify “how many” and “what types” of habitat enhancement projects were completed. Failure to do so is a violation of the Forest Plan.” (NOA, p. 6)

**Response:** While the 2008 Monitoring and Evaluation Report was not published until April, 2013, it did meet the conditions of 36 CFR 219 by providing the Minimum Legal Required Monitoring Items as defined at 36 CFR 219.

In terms of “substantive problems” the Appellant asserts the FP’s Monitoring Strategy directs the ANF to address the FP Objective: “Enhance terrestrial wildlife habitat to provide desired cover and forage conditions on 1,200 to 1,600 acres, annually”, would be accomplished by answering the two-part monitoring question: “How many and what type of terrestrial habitat enhancements have been implemented?”.

Instead, the 2008 Monitoring and Evaluation Report addresses the question by providing the number of acres of habitat improvement (Table 29. FY2008 Monitoring Results and Recommendations Summary, p. 73). In this report on page 36, the protocol also states more information would be available in the individual project records “acres of habitat enhancements are completed by District wildlife staff and recorded in the Wildlife Work Plans by the Forest Wildlife Biologist”. The 2008 report does lack some of the detail in the monitoring question, but there is evidence more detail is available and was used as the basis for the report.

There is no evidence this summarization of information compromises the site-specific analysis done for this project. As such I find no violation of law, regulation or policy for this analysis on this issue for this site-specific project.

**Issue I-B-iii: Indiana bat issues.** The Appellant contends the Forest Service improperly selected units to monitor for snag retention. By selecting stands affected by windthrow, the analysis does not give an accurate picture of the effectiveness of retaining snags, which is an important component of Indiana bat habitat. (NOA, pp. 6-7)
Response: The Standard from the 2007 ANF FP the Appellant refers to states, “In all harvest units where available, retain at least 9 snags per acre greater than 10 inches DBH” (FP, p. 81). The authors of the 2008 Monitoring and Evaluation Report evaluated the snag retention compliance data and concluded that, due to a windthrow event, snags were not present in the five stands they surveyed. There were simply no snags available to retain at the time management activities took place in these stands. As such, this is not evidence of a FP Standards violation.

Upon further review of the PR for this site-specific project, no Indiana Bat has been caught within the project area, and only one male was captured since 1999, despite 1,725 net nights at nearly 400 sites across the ANF (Salmon West EA Appendix C – Biological Assessment of Threatened and Endangered Species, pp. 7). It should also be noted according to the BA, while no Indiana Bats are found on the ANF, presently 82 percent of the project area is classified as being Suitable or Optimum roosting and foraging habitat.

Based upon the review of the record, it appears that the FP was not violated as the Appellant contend. I find no violation of law, regulation or policy for this site-specific project on this issue.

Issue I-B-iv: Mussels issues. The Appellant contends the Forest does not comply with the US Fish and Wildlife’s conservation measures for the FP based on the monitoring protocol for Conservation Measure (CM) 6, which concerns protecting existing aquatic uses…when water is drafted from a stream. (NOA, pp. 7-8)

Response: For this site-specific project, the ANF did not identify any drafting activities within the Purpose and Needs, nor were drafting activities included in the Proposed Action (EA, pp. 4, 5-11). However, drafting activities were analyzed in the Cumulative Effects section of the EA (PR Specialist Input/Oil and Gas). The Forest determined there would be no adverse effects from proposed activities. In addition, FP Standards and Guidelines provide direction on protecting aquatic habitat of mussels (FP, pp.74–79).

As the Appellant state, the ANF’s protocol for addressing CM 6 is “The drafting of water is not monitored continuously, but when Forest personnel see a concern with maintaining existing uses, DEP is notified.”. The 2008 Monitoring Report discusses the monitoring results on pages 51-52 and 57. The CM is also stated on these pages as “Existing aquatic uses are protected when water is drafted from a stream.” Given the information provided by the Appellant and also information contained in the PR, the protocol is adequate and appropriate as it pertains to this project area.

I find no violation of law, regulation or policy on this issue for this site-specific project.

Issue I-B-v: Water issues. The Appellant contend the ANF, as riparian owners and Federal land managers, should not be allowing any water drafting from streams and rivers on the Forest. (NOA, pp. 8-10)
**Response:** Drafting of surface water from streams is not part of the Purpose and Need for this site-specific project. The Proposed Action does not include any oil and gas proposals. Therefore, use of surface waters by private oil and gas operators is beyond the scope of this project. The use of surface waters is administered and permitted by the State of Pennsylvania Department of Environmental Protection. Cumulative effects of the proposed activities, including effects on water quality, were analyzed within the context of past, present, and projected private oil and gas activities, and were disclosed in the EA (Hydrology Section). FP Standards and Guidelines ensure protection of water resources from drafting (FP, p.76).

In addition, the project does not preclude the ANF from taking actions under applicable State and Federal laws to address such withdrawals, if appropriate.

I find no violation of law, regulation or policy on this issue for this site-specific project.

**Issue I-B-vi: Non-compliance with newly listed species.** The Appellant contend the 2007 FP does not consider the impact of shale-gas development on the species newly listed by the US Fish and Wildlife Service in 2012. "The Forest Service must reinitiate consultation with USFWS to determine whether changes need to be made at the project or planning level, particularly since shale gas drilling was not considered in the Forest Plan and is cited by USFWS as a reason for adding rayed bean, snuffbox, and sheepnose mussels to the endangered species list.” (NOA, pp. 10-11)

**Response:** “Since completion of the Forest Biological Evaluation in 2007, the US Fish and Wildlife Service has designated the raybean and snuffbox as endangered under the Endangered Species Act on February 14, 2012 and the sheepnose was designated as endangered on March 13, 2012. A summary of the determinations for these species are shown in Table 18” (EA, p. 56). The newly listed mussel species were also analyzed in the EA (Table 18 p. 67). The ANF and was determined the project area had no suitable habitat. Consultation with the USFWS agreed with the “No Effect” determination from proposed activities (07Appendix C Biological Assessment). Section 7 consultation with the USFWS is not required with a “no effect” determination (Endangered Species Act, Section 7).

I find no violation of law, regulation or policy on this issue for this site-specific project.

**Issue I-B-vii: Monitoring of oil and gas drilling.** The Appellant contends the ANF is in violation of its Forest Plan if it has not done monitoring of oil and gas compliance or sent notifications to oil and gas companies about federally listed species in a development area. (NOA, pp. 11-12)

**Response:** The Appellant contends that according to the FP, the “Forest Service committed itself to establishing and maintaining an inventory of all oil and gas development on the ANF and to identify areas of resource concerns associated with oil and gas development”. However,
the statement the Appellant refers to is contained within the FP Objectives section of the FP (FP, pp. 17-18). According to the FP, “plan objectives provide a more specific framework and focus for management activities to implement the Forest Plan. Forest Plan objectives are short, concise statements of either planned actions or desired conditions for accomplishment over a specific time frame, usually the plan period. The objectives are measurable statements. As measurable statements, it will be possible to determine at any point during or at the conclusion of the plan period, the extent to which the objective has been met.”

The FP also states, “Forest Plan objectives express an aspiration for accomplishment and form the basis for projects, activities, and use during the plan period. Achievement of these objectives is not entirely within the control of the ANF. A variety of circumstances, such as budget constraints, unanticipated events (e.g. insect infestation, fires, etc.), litigation, and other events outside the forest boundary may inhibit or prevent the ANF from accomplishing these objectives.” (FP, pp. 17-18). FP Objectives convey no level of commitment to monitoring and evaluation of oil and gas drilling nor is it required to provide an inventory of oil and gas development on the ANF to the public.

In reviewing the monitoring reports (2007 Monitoring and Evaluation Report, p. 46; 2008 Monitoring and Evaluation Report, p. 49), the oil and gas conservation measures cited by the Appellant here pertain to the 13 percent area, which drains into the Allegheny River.

However, according to the Salmon West Biological Assessment (BA) Final, “The waterways found in the SWP project area are not included in the 13 percent of the Forest that drains directly into the Allegheny River below the Allegheny Reservoir” (Salmon West BA Final p. 28). Therefore, Conservation Measures 15-17 cited by the Appellant do not apply to Salmon West EA and DN.

Based upon my review of the project record, I find no violation of law, regulation or policy on this issue for this site-specific project.

**Issue I-B-viii: Goshawk monitoring issues.** The Appellant questions whether the additional surveys mentioned in the 2008 Monitoring and Evaluation Report have been completed. The Appellant also asserts that the decline in active Goshawk territories and successfully fledged young demonstrate why the current five-year interval for monitoring is insufficient. (NOA, p. 12)

**Response:** The evaluation frequency for Goshawk monitoring is outside the scope of the Salmon West Project. Monitoring type and frequency were both determined during FP Revision.

The Salmon West Project Biological Evaluation and Wildlife Report (PR, Folder 5, Subfolder 6, Document 3a, pp.97-99) analyzes the effects of the proposed project on Northern goshawk. The BE and Wildlife Report discusses the *Habitat and Current occurrences on the ANF and Project area* on page 97. It states:
“Of the known territories on the ANF, since 2000, 14 territories have been documented as active on the Forest. Because the SWP is predominantly forested (97 percent) and includes a diverse mix of forested age classes and small openings, the entire project area is considered suitable goshawk habitat. Based on the ‘5-year’ rule which classifies nests/territories as active if the nests were used in the last 5 years, existing data plus new discoveries as recent as 2012 indicates there are ten active nest territories on the ANF. However, GIS data indicates none of these nests or territories are in the project area. The mature forest in the SWP area provides suitable nesting and foraging conditions including hardwoods mixed with conifer which is considered to be preferred habitat. Up to 4 percent of the project area supports pure conifer stands or conifer inclusions. Most recent field surveys found no active nests in the project area.

Conifer was the most important landscape variable and Kimmel and Yahner (1994) suspected that the amount of conifer related to foraging habitat and the availability of foraging habitat may influence nest site selection at the site and landscape scales. Because this species utilizes extensive and contiguous mature hardwood forest, any activity that results in fragmentation of mature forest habitat could adversely affect this species.”

This analysis section says that the most recent surveys found no active nests in the project area. A Biological Survey Needs document (PR, Folder 5, Subfolder 6, Document 55) lists the surveys that are needed for the project and who would be doing them.

However, the effects analysis for Northern goshawk (BE, pp. 97-99) focuses on the effects to the habitat for this species: “In Alternatives 1 and 3 and considering that; a) the project area has no historic documentation of active territories or nests, b) the proposed SWP harvests would alter up to 17 percent of the potential nesting and foraging habitat in the project area but continue to maintain mature forest habitat on 68 percent of the cumulative impacts analysis area, c) an additional six percent of the CI area would be affected by a permanent loss of forest habitat due to future OGD, road construction and pit expansion, and d) active nesting habitat and breeding pairs are protected by the Forest Plan S&G whenever discovered during a project, a ‘may impact individuals, but will not cause a trend toward federal listing of the species or loss of viability’ determination is reached under these alternatives.” (BE and Wildlife Report, p.99).

The effects analysis and determination are adequate given the design features of the project (EA, p. 17-19) and application of FP Standards and Guidelines. I find no violation of law, regulation or policy on this site-specific project.

**Issue I-B-ix: Timber rattlesnake monitoring issues.** (NOA, pp. 12-13)

**Response:** Timber rattlesnakes and their habitat is protected through implementation of FP standards and guidelines (FP, pp. 84 and 87). A **may impact individuals, but not likely to cause a trend toward federal listing determination or loss of species viability** was reached for the timber rattlesnake for this project. The Wildlife Biological Evaluation (BE) provides a detailed description of the distribution and abundance, forest surveys, trends, preferred habitat,
threats to the species or habitat, and standards and guidelines for the timber rattlesnake (Forest BE, USDA-FS 2007c, pp. 274-285). The EA discloses effects from proposed activities in the Cumulative Effects Section (EA pp. 61-62). Monitoring of den sites and collection and telemetry efforts were listed in FY 2010-2012 programs as high and medium priorities (Specialists Input, Misc., FY2010,2011,2012 Monitoring Proposals). It states “Observations have confirmed rattlesnake occupation within the project boundary as recently as late summer 2011” indicates that surveys did occur (BE and Wildlife Analysis Report). The analysis for this project is adequate to support the “May Impact” determination.

I find no violation of law, regulation or policy for this site-specific project.

**Issue II: The length of the EA “indicates that an EIS is needed”. (NOA, p. 13)**

**Response:** According to the Council on Environmental Quality’s Regulations for Implementing The Procedural Provisions of the NEPA, “Environmental assessment”: (a) Means a concise public document for which a federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. (2) Aid an agency’s compliance with the Act when no environmental impact statement is necessary. (3) Facilitate preparation of a statement when one is necessary. (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2) (E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. (40 CFR 1508.9)

The Responsible Official does recognize that the Council on Environmental Quality has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages. (CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations) The length of the EA in this case was deemed necessary to include all of the components required by 36 CFR 220.7, which are the Forest Service NEPA compliance regulations. The effects analysis incorporated in the EA assisted the Responsible Official in determining that an EIS was not required for this project.

If the agency proposes a “*major Federal action [that] significantly affect[s] the quality of the human environment,*” NEPA requires the agency prepare an EIS that, among other things, details “*the environmental impact of the proposed action.*” An EIS is not required if the agency first prepares an environmental assessment (EA) providing “sufficient evidence and analysis” that an EIS is not necessary because the proposed action will not significantly affect the quality of the human environment (40 CFR 1508.9). The responsible official prepared a FONSI disclosing that an EIS was not necessary based on the effects analysis documented in the EA and project record. The factors listed in 40 CFR 1508.27 were used to determine the FONSI. (DN, pp. 7-10)

I find no violation of law, regulation or policy on this issue for this site-specific project.

*Salmon West Project*
**Issue III: Forest Plan Research Questions.** The Appellant states, “*In our comments on the EA, we specifically asked for an update on the research questions identified in Table 16 of the Forest Plan. In the response to comments, however, the Forest Service only responds to the research question regarding beech trees. This is unresponsive to the other Forest Plan research question we asked about.*” (NOA, p. 14)

**Response:** The EA response to comments did not address the Appellant’s question regarding progress on the other eleven research questions in Table 16 of the FP. However, the 2007 and 2008 Monitoring and Evaluation Reports address the following research questions:

- Vegetation Research question #1 What integrated pest management activities, including silviculture treatments, will help sustain healthy hemlock in the face of the expected hemlock wooly adelgid infestation.
- Vegetation Research question #2 How can greater success be achieved in developing sugar maple seedlings or retaining existing healthy sugar maples in order to sustain this species on appropriate sites on the ANF?
- Vegetation Research question #5 What preventative/remedial strategies are available to respond to gypsy moth, cherry scallopshellmoth, and emerald ash borer outbreaks and cherry red rot, ash die-back and sudden oak death disease.
- Wildlife Research question #5 has two parts. It was partially answered for deer densities.

The PR contains the Draft ANF Monitoring and Evaluation Guide. It is an undated planning document used to identify monitoring topics into four categories (Minimum Legally Required Monitoring Items, Achievement of FP Objectives, Strategic Monitoring and Research Needs). Costs were estimated, protocols identified and responsible individuals were listed for each item with the exception of Research Needs. Because it is a draft document, the monitoring items and timeframes listed in the FP in Tables 13-15 are those the Forest has agreed to produce. Table 16 of the FP lists Research Needs. There are no monitoring or evaluation frequencies associated with these monitoring issues. The Draft ANF Monitoring and Evaluation Guide does not have protocols, costs or responsible individual identified for Research Questions with the exception of the soil question, which appears to fit under SMO-08 Soil Acid Deposition Monitoring.

I would recommend the Responsible Official respond to the rest of the research paper questions. However, the lack of response on research questions does not have a direct tie to this site-specific project as it is described in the Appellant’s issue statement.

I find no violation of law, regulation or policy for this site-specific project on this issue.

**Issue IV:** The Forest Service must include the “in depth” analysis of habitat fragmentation in the EA rather than in other documents that are only available “in the project file.” The Appellant contends detailed information should be included in the EA, and not just refer to documents in the PR. “It is arbitrary and capricious to compile this information and then not make it available to the public other than “in the project file,” which makes it much more
difficult for the public to access the information in a timely manner for purposes of commenting. The Forest Service, therefore, should reopen the comment period on the EA and release the BA, BE and wildlife analysis report to the public.” (NOA, p. 14)

Response: There is no requirement that the Forest Service have all project analysis information in the EA. In fact, the NEPA regulations encourage incorporation by reference.

The PR is available for public review. The habitat fragmentation analysis performed for the Salmon West Project is summarized in the EA (pp. 56-62) and explained in detail in the Project BE and Wildlife Report (PR, Folder 5, Subfolder 6, Document 3a, pp.31-53). The EA Appendix D – Response to 30-Day Comments (PR, Folder 6, Subfolder 2, Document 8) thoroughly addresses how the habitat fragmentation analysis was conducted and provides additional information on the analysis process (Responses to comments 3-4a, 3-4b, 3-4c, 3-4d, 3-4e, 3-4f, 3-4g, 3-4h, 3-4i, 3-4j, 3-4k, and 3-4l, pp. D-12 – D-20).

The habitat fragmentation analysis included modeling using Patch Analyst. The model, assumptions, and modifications for Patch Analyst are discussed in the project Biological Evaluation and Wildlife Analysis Report (pp. 31–35). The assumptions are reasonable for the analysis being conducted. The variables used to analyze fragmentation effects for the project are found in the EA (p. 56):

- Total core area – total of all the patches (acres) and includes mature forest, young forest, and open patches.
- Total core area of mature and young forest – total of all patches of mature and young forest (acres)
- Number of patches – the number of patches on the landscape.
- Mean patch size – calculation of the average patch size (in acres).
- Total edge – perimeter of all the patches (miles).

These variables are appropriate for analyzing habitat fragmentation for the project and are summarized in the EA (Table 15, p. 58; Table 16, p. 62). The cumulative effects analysis for the project includes habitat fragmentation and is documented in the project file, including a Data Development and Process Sheet for Cumulative Effects (PR, Folder 5, Subfolder 6, Document 43a).

After reviewing the PR, I find that the habitat fragmentation analysis for the Salmon West Project was thorough and well-documented, and supports the Responsible Official’s DN and FONSI.

I find no violation of law, regulation or policy for this site-specific project on this issue.
**Issue V:** The discovery of synchronous fireflies requires the Forest Service to either revise the EA or prepare an EIS. The Appellant contends the Forest Service must not disturb The Branch habitat where the most dense populations were observed until additional studies are completed. They also contend, similar to Issue IV, that more of the information on synchronous fireflies should be in the EA, and not just referenced. (NOA, pp. 14-15)

**Response:** There is no requirement that the Forest Service have all project analysis information in the EA. The PR is available for public review. Also see response to Issue IV.

The Project BE and Wildlife Report lists the 2012 ANF June 2012 Firefly Survey for Forest and Warren Counties (p.6) and notes that “In 2011 and 2012 the synchronous firefly *Photinus carolinus* was documented in the project area near The Branch near Kelletsville. Studies show that this and other areas on the ANF provide habitat utilized by this unique species and surveying for this firefly on the ANF is ongoing.” (p. 12). The PR includes copies of the 2012 ANF June 2012 Firefly Survey for Forest and Warren Counties, PA (PR, Folder 2, Subfolder 2, Document 15) and the publication by Faust (2010) in the Florida Entomologist 93(2), titled *Natural History And Flash Repertoire of the Synchronous Firefly Photinus carolinus* (*Coleoptera: Lampyridae*) in the Great Smoky Mountains National Park (PR, Folder 2, Subfolder 2, Document 16).

The Responsible Official took the discovery of synchronous fireflies (*Photinus carolinus*) into account in the DN/FONSI for the Salmon West Project: “I have made this decision will full consideration of the discovery of synchronous fireflies (*Photinus carolinus*) within and around the project area. I have reviewed the Allegheny National Forest June 2012 Firefly Survey and the supporting information provided by Lynn Faust, and I afforded Ms. Faust and others the opportunity to identify specific concerns related to the activities proposed for this project. *Photinus carolinus* is not a federally listed threatened or endangered species, a Regional Forester Sensitive Species, a Management Indicator Species, or a species of special concern. Effects to the range of habitats that the firefly utilizes are discussed in the project wildlife analysis report. I appreciate the “amenity value” that *Photinus carolinus* may represent, particularly with the success of a local festival celebrating fireflies in June of 2013, and I do not believe that any of the activities approved in this decision are inconsistent with promoting that amenity value.” (p. 4)

The EA (Appendix D – Response to 30-day Comments) addresses why *P. carolinus* is not analyzed in more detail in the project; “The ANF June 2012 Firefly Survey for Forest and Warren Counties was reviewed as listed on page 6 of the project biological evaluation and wildlife analysis report located in the project file. Effects to the range of habitats that the firefly utilizes are discussed in the project wildlife analysis report. *Photinus carolinus* is not a federally listed threatened or endangered species, a RFSS, a MIS, or a species of special concern. Additional monitoring of synchronous fireflies in the area of The Branch is ongoing. Much of the wildlife habitat in The Branch area consists of a mix of age classes as a result of vegetation management in MA 3.0, the 1985 tornado, natural openings, and riparian corridors, which are used predominately for recreation. Proposed treatments that occur in this area would follow Forest Plan standards and guidelines to protect wildlife and riparian corridor habitat values.
while meeting the goals and objectives of Management Areas 2.2 and 3.0.” (EA, App. D, pp. D-20–D-21).

As a note of clarification, the Appellant claims the reason this species is not an RFSS is the populations were not known at the time of FP revision. The RFSS list is updated periodically, but not necessarily at the same time as the FP revisions.

In summary, without designation as a federally listed threatened or endangered species, a RFSS, a MIS, or a species of special concern, there is no requirement to further examine the effects of the Salmon West Project on the synchronous firefly, *P. carolinus*.

I find no violation of law, regulation or policy for this site-specific project on this issue.

**Issue VI:** The Forest Service’s reliance on outdated information is arbitrary and capricious. The Appellant contends the scenery/visual information used is out of date and not valid to be used in this analysis. They again claim on this issue that the five-year report on this should have been published by now. (NOA, p. 15)

**Response:** The Appellant claims that use of monitoring data from 1997 is arbitrary and capricious. Even though the data was collected in 1997, it is still be valid and applicable for the purposes of this project. The response to the similar 30-day comment follows below:

As stated in the Salmon West EA (p. 80) and referenced by this comment, the ANF last conducted monitoring of Visual Quality Objectives (VQO) in 1997. Under the 1986 Forest Plan, VQO monitoring was a 5-year monitoring and evaluation item. In the Monitoring and Evaluation Report for Fiscal Year 1997, the Forest Service (ANF) stated that they would transition to a new system called the Scenery Management System (SMS) when they revised their Forest Plan. The 2007 Forest Plan indicates Scenic Integrity Level (SIL) monitoring is a 5-year monitoring and evaluation item (USDA-FS 2007a, p. 44); however, SIL monitoring has not occurred under the 2007 Forest Plan.

The following indicator measure was used to in the Salmon West EA to analyze the effects of the proposed actions on scenery: IM-8: Effects of proposed activities on Landscape Character and Effects of proposed activities that would cause Scenic Integrity Levels to not be met (EA, pp. 79–80). The standard practice on the ANF is to meet or exceed SILs by design, modification, or mitigation. Application of the project design features on pages 18 and 19 of the EA would ensure that the effects of the proposed activities meet or exceed the Forest Plan SILs (USDA-FS 2007a, pp. 62–64). Project design features will be included in timber sale and other contracts during implementation and administered by the Forest Service for proper implementation. (EA, App. D, p. D-21)

The design features listed on pages 18 and 19 of the EA list restrictions on cutting, skidding, slash, log landings and stumps, while also requiring buffer areas. These design features are listed
In the Allegheny National Forest Scenery Implementation Guide (Stubbe, 2009) and are tiered to the FP Standards and Guidelines for maintaining Scenic Integrity Levels.

In addition, more recent monitoring of recreation sites within the Salmon West project area has occurred, as stated in the Recreation Specialist’s Input to the EA. The following excerpt is taken from that document.

In 2005, the Marienville recreation staff did a survey of existing sites and took gps locations on 38 sites on River Road between Irwin Run Canoe Launch, where River Road meets the Clarion River, and where Dark Hollow Run flows into the Clarion River. Another 8 sites were located up Millstone Creek from Clarion River. These 46 sites were evaluated for location and condition and the decision was made to close based on the following criteria:

- Sites on private land
- Sites too close to private land
- Sites without adequate room for parking off the road
- Sites between the river and the road where erosion is occurring
- Sites where camping activities could damage known archeological resources

Since then, the District has continued to evaluate dispersed campsites based on David Cole’s research on campsites in designated wilderness areas (April and September 1989). This research measures site indicators such as amount of barren ground, amount of area that has changed from sensitive to resilient species, number of user-created improvements, amount of tree damage, amount of trash, and amount of human waste sites. However, research by Leung and Marion suggests that managing based on individual site indicators does not provide an adequate picture of campsite impacts (Leung and Marion 1999). Therefore, this evaluation, combined with similar criteria to the above, is what drives the decision to keep, close, or modify a dispersed campsite in an attempt to create sustainable sites across the district.

Scenic resources are measured based on two indicators: the degree of change to the existing landscape character and the ability to meet or exceed Forest Plan Scenic Integrity Levels (SIL) within the project area (USDA-FS 1995). Landscape character includes the existing vegetation, such as hardwood species and native and non-native conifers, as well as the forested plateau topography bisected by small streams and large rivers. Land use, including areas developed for oil and gas, is also a part of the existing landscape character. Forest Plan SILs are the classification system used to define the scenic resource objectives across the ANF in terms of minimally acceptable levels with the intent to achieve the highest integrity possible.

The SIL objectives within the Salmon West project area are represented by a range of high, moderate, and low concern for scenic integrity with a majority of the project area falling into a moderate SIL. Two sections of high SIL are within the project area. One section is located along the North Country National Scenic Trail, while the other section is located along the lower parts of FR 145, from approximately Fourmile Run to Tionesta.
Creek, and FR 127 where it traverses National Forest land. Other travel ways with a secondary concern for scenery generally have a moderate to low SIL. This includes the Allegheny Snowmobile Loop and its two connectors, and State Road 3004 (Muzette Road).

Table 3 on p 29 of the Recreation Specialist’s Input describes existing recreation activities and use patterns in the project area.

The PR demonstrates there was sufficient data to support the effects analysis and to provide the Responsible Official with the information needed to make a decision that complies with FP direction.

I find no violation of law, regulation or policy for this site-specific project on this issue.

**Issue VII:** The Forest Plan and Salmon West Project violate NFMA by selecting even-aged management “primarily” because it provides the greatest dollar return. The Appellant contends the even age management is being used in violation of NFMA. They state, “(...) the Forest Service has often cited deer as a leading factor for selecting even-aged management. The substantial decline in deer densities, therefore, requires the Forest Service to reconsider its use of even-aged management. To continue relying predominantly on even-aged management when deer densities have been substantially reduced indicates that the Forest Service is selecting even-aged management to promote Allegheny Hardwoods generally and black cherry specifically because it provides the greatest dollar return. This violates 16 U.S.C. §1604(g) (3) (E) (iv). Therefore, the Salmon West Project should not be implemented in its current form.” (NOA, pp. 15-19)

**Response**

The Responsible Official describes in the DN the appropriateness of the vegetation management proposals of the Salmon West Project:

“Appropriateness: Pursuant to the NFMA Section 1604(g)(3)(F)(i), the appropriateness of even-aged management was given careful consideration by the ID team. The determination to use even-aged management is based on field evaluation and recommendations from local resource experts and science-based application of the Forest Plan, past experience with implementing even-aged management systems on the district and ANF, and the best available science. The silvicultural and resource management objectives determined the choice of harvest method, as described in the record. Further, the even-aged harvesting system selected in Alternative 1 were not chosen primarily because it will give the greatest dollar return or the greatest unit of output of timber (NFMA Section 1604(g)(3)(E)(iv)).” (DN/FONSI, p. 10)

The EA discusses in depth the rationale and appropriateness of the proposed timber and regeneration prescriptions to meet FP desired conditions in the executive summary (pp. v-vi) and the Purpose and Need (pp. 1-12). The proposed harvest and regeneration prescriptions are...
consistent with those identified in the FP (FP, App. A–Rationale for Choice of Vegetation Management Practices). This supports and affirms the Responsible Official’s claim of appropriateness of even-aged management pursuant to NFMA Section 1604(g)(3)(F)(i).

I find no violation of law, regulation or policy for this site-specific project on this issue.

**Recommendation**

After reviewing the materials available in the PR for the Salmon West Project and after reviewing and considering the concerns raised by the Appellant, I find the site-specific Salmon West Project does not violate any law, policy or regulation. I recommend the decision for this project be affirmed.

/s/ Charles R. Marsh  
CHARLES R. MARSH  
Appeal Reviewing Officer  
District Ranger

cc: Patricia R Rowell  
Brenda Quale