June 22, 2023

Submitted to:
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Reviewing Officer: Jennifer Eberlien
Regional Forester
USDA Forest Service

Subject: Combined Objections by SFK, SC, STF, JMP, TRC, & CBD of the Castle Fire Restoration Project

Sequoia ForestKeeper (SFK) (the Lead Objector), the Kern-Kaweah Chapter of the Sierra Club (SC), the Sequoia Taskforce of the Sierra Club (STF), the John Muir Project of Earth Island Institute (JMP), the Tule River Conservancy (TRC), and the Center for Biological Diversity (CBD) file this objection pursuant to 36 CFR 218, Subparts A and B for the Castle Fire Ecological Restoration Project (Castle Fire Project) in the Giant Sequoia National Monument (GSNM) and the Sequoia National Forests. The Responsible Official for the Sequoia National Forest is Forest Supervisor Teresa Benson. This objection is based on comments submitted by objectors who submitted timely project-specific written comments during the scoping and EA comment periods. Issues raised in this objection are based on the previously submitted comments or are based on new information arising after the designated comment opportunities. 36 CFR 218.8(c).

This objection includes: the 1) name, address and telephone; 2) signature or other verification of authorship; 3) identifies a single lead objector when applicable; 4) project name, Responsible Official name and title, and name of affected National Forests; 5) reasons for, and suggested remedies to resolve, our objections; and, 6) description of the connection between our objections and our prior comments. 36 CFR 218.8(d).

Objection Issues

1. **Failure to Limit Tree Cutting to 20 inches and 6 Inches in Diameter in Tree Removal Areas, as Required in the GSNM Plan**

As we pointed out in our EA comments, “There are no exceptions to restrictions and diameter limits in Table 46 for ecological restoration with regard to burned trees, and those limits must be strictly adhered-to. Given the many owl and goshawk PACs, sequoia groves, and carnivore den sites, the avoidance and six inch diameter limits must be carefully applied, if any tree felling or removal can be justified, at all, given the “clearly needed” standard.” p. 8.
There are no exceptions for “dead” or “dying” trees with regards to the tree diameter limits of 20 inches and 12 inches for giant sequoias, or 6 inches in CSO and goshawk PACs, unless individual trees have been identified as presenting safety hazards.

The National Forest Management Act requires that all projects and activities comply with the respective Forest Plan. 16 U.S.C. § 1604(i) (“Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans.”). For the Castle Fire Project, this means the project must comply and be consistent with the Giant Sequoia National Monument (GSNM) Plan.

The GSNM Plan includes strict diameter limits for tree cutting in Table 46, ranging from “avoid” in carnivore den sites, to 6 inches in Northern goshawk and California spotted owl PACs, and 20 inches, generally, in most other areas of the GSNM. There are no general exceptions provided for dead or dying trees.

There are three specific limited exceptions in the plan that may allow removal greater than these diameter limits: (1) “Incidental removal of trees that present safety hazards may deviate from vegetation management standards and guidelines.” (Vegetation, including Giant Sequoias, Monument-wide S&G #3); (2) hazard tree removal along roads (Vegetation, including Giant Sequoias, Monument-wide S&G #4); or (3) “hazard tree removal within RCAs or CARs if it is clearly needed for public safety.” (Hydrological Resources, Monument-wide S&G #35). These exceptions are limited to mitigating safety hazards from trees that could fall on public users, workers, or Forest Service personnel.

The EA and draft Decision, however, would allow tree cutting and removal of trees that exceed the prescribed diameter limits for reasons other than mitigating safety hazards:

Within the Dead Tree Removal units, the following trees may be cut:

- Hazard trees with a 70 percent probability of mortality and that have a target which threatens human health and safety, except for giant sequoia larger than 12 inches dbh.
- Dead trees up to 35 inches dbh and dead giant sequoia up to 12 inches dbh or oak up to 8 inches dbh.
- Dead Giant sequoia 12 inches dbh or larger that are a human health hazard after an individual tree assessment has been documented.

EA, p. 6 (underline added for emphasis). The first and third bullets are related to safety hazards, and these probably fit the exceptions provided in the plan. But the second bullet would allow dead trees to be felled and removed if they are greater than the 20-inch diameter and up to 35 inches in diameter for other reasons, such as reforestation and preparing areas for prescribed burning, which the diameter limit exceptions do not allow.

For example, the EA includes provisions for “Dead tree removal” on up to 4,979 acres, in areas that “overlap reforestation and Rx burn”. EA, p. 5, Table 2, line 1, column 1. Moreover, the proposal states: “As dead trees fall and cover the ground, they will inhibit regeneration and serve as a continuous fuel source for future high severity wildfires.” EA, p. 3. And it states:
Areas that are identified for dead tree removal would leave 4 of the largest dead trees (snags 12-inch dbh or larger) scattered across the area to provide perch and nesting habitat.” EA, p. 6. This latter statement suggests that all but 4 large snags would be left, whereas many or most other large snags (over 20 inches in diameter) would be felled and removed. The EA also suggests that “large diameter trees (greater than 30-inch dbh), may be cut and fuel would be pulled away from the base of large diameter trees.” EA, p. 8. This latter statement does not even distinguish between live or dead trees, but either way this exceeds the 20-inch diameter limit in the GSNM Plan. Finally, the EA allows “Cutting dead trees (less than 35-inch dbh) to create a fuel break, remove a ladder fuel, or reduce fuel loading, …” EA, p. 9. The FONSI even states that the tree removal activities are being done specifically for restoration: “The restoration activities are expected to have short term effects associated with felling and removal of individual trees on the human environment.” EA, p. 35.

These allowances for tree removal over the limits for reasons other than safety are not consistent with the GSNM Plan, and therefore would violate the National Forest Management Act (16 U.S.C. § 1604(i)).

Suggested remedies to resolve, our objection

First, to comply with the GSNM Plan and the NFMA, the second bullet point above must be changed to “Dead trees up to 20 inches dbh ….” Also, the EA on p. 6 regarding leaving large snags must be updated to conform with the 20-inch dbh limit, and the statement on p. 8 that allows large diameter trees over 30-inches to be cut must be changed to only allow trees up to 20 inches dbh to be cut. Finally, the second bullet on p. 9 must be change to read “Cutting dead tree (less than 20-inch dbh) ….”

Second, both the EA and the Decision Notice must specifically reference the tree diameter limits in Table 46 and provide detailed direction regarding where to avoid any tree cutting (known carnivore den sites) and where to limit tree cutting and removal to 6-inch diameter trees (CSO and goshawk PACs) and 20-inch diameter trees, generally, regardless of whether trees are alive, dead, or dying.

2. The Forest Service’s Use of the General Provision for Tree Removal for Safety to Exceed Diameter Limits is Arbitrary and Cannot Be Justified

Related to Issue #1 above, a general justification suggested by Forest Supervisor Teresa Benson to allow tree cutting anywhere for safety reasons (as provided in an e-mail exchange regarding the related Starvation and Freeman Reforestation Project and Decision Memorandum (DM)), is arbitrary and cannot be justified based on the vague language in S&G #3. This issue came up since the Forest Service issued its EA and relates to Issue #1 above and the provision in the GSNM Plan that S&G #3 is too vague. We raised this issue in our GSNM Plan objection after the draft plan was issued in 2012, as discussed below.

Exhibit A hereto includes a general statement by Forest Supervisor Teresa Benson, which relates to an allowance in the Starvation and Freeman Restoration Project Decision Memo (DM) (Exhibit B), that trees up to 30 inches in diameter could be cut “[f]or the safety of forest
workers,” even though such a justification was not included in the DM. As Supervisor Benson explains in her post-hoc explanation about this allowance:

In the Monument Plan on Page 84, Standard and Guideline No. 3 says: “Incidental removal of trees that present safety hazards may deviate from vegetation management standards and guidelines.” This allows for situations such as we face in the Freeman Creek Giant Sequoia Grove where much of the vegetation was burned at high severity. For the safety of the reforestation workers, there had to be a provision for the cutting of some conifers if it was needed. Forest employees visited the grove to determine the locations for the planting sites and felt that a 30” diameter would be applicable if there was a need to cut any of the conifers prior to the planting of the seedlings.

Benson email – Exhibit A, p. 1. The DM, however, made no safety distinction: “The Freeman reforestation unit will include hand felling, piling, and burning. Conifer felling and removal will be limited to dead trees less than 30 inches diameter at breast height, and excluding all giant sequoia.” Exhibit B, p. 2.

Although the S&G #3 for incidental removal of hazard trees can be justified for individually-identified trees, it should not be used to allow the wide application of tree felling and removal as proposed in Issue #1 above. In our GSNM Plan Appeal we cautioned the Forest Service that this S&G is overly vague and could be abused:

4. Standards and Guidelines for Hazard Tree Felling or Removal Fail to Comply with the GSNM Proclamation

With regard to hazard trees, the Forest Service provides a huge loophole, allowing the felling and removal of any size hazard tree to deviate from all vegetation management standards and guidelines. See GSNM Plan, p. 82, S&G 3. (“Incidental removal of trees that present safety hazards may deviate from vegetation management standards and guidelines.”). This is unconscionable and violates the GSNM Proclamations’ stricture under the “clearly needed” strictures because it appears to discard all the previous criteria for tree felling and removal.

Exhibit C – GSNM Plan Appeal, p. 21; see also p. 46 (“The S&Gs allow, “Incidental removal of trees that present safety hazards may deviate from vegetation management standards and guidelines.” GSNM Plan, p. 82, S&G 3.). This provision appears to allow managers to ignore all S&Gs, as well as the tree felling and removal criteria, and the decision tree. This S&G should be eliminated.”).

Even though not specifically-addressing S&G #3 in response to our Plan Appeal, Regional Forester Moore provided instructions with regard to roadside hazard treatments for S&G #4, which should apply equally to S&G #3:

Although the standard is not necessarily inconsistent with the Monument Proclamation, the appellants are correct that it is inconsistent with the criterion
provided in the Monument Plan for determining a clear need for tree removal, as the Proclamation requires.

You are instructed to correct the Monument Plan to provide consistency between the clear need criteria and the standards and guidelines as they pertain to removal of hazard trees that are a threat to public safety.

Exhibit D – R5 Appeal Decision, p. 4.

Suggested remedies to resolve, our objection

S&G #3 is clearly implicated in the Castle Fire Project, since it would allow tree felling and removal for the safety of reforestation workers on a broad scale in areas where dead tree removal is proposed. However, this provision should only be applied to individual trees after a “clear need” analysis has been conducted on one or more individual trees.

We request an instruction to the Sequoia National Forest that any individual trees that pose imminent safety hazards to forest workers be analyzed under the “clear need” requirements of the plan and clearly marked for felling rather than allowing broad scale tree cutting for safety, since most trees do not pose a safety hazard, even when dead, and these large snags will remain standing and serve as important wildlife habitat for many decades and even centuries.

3. Failure to Consider a Reasonable Range of Alternatives

We raised the need to and suggested alternatives to the proposed action during scoping and in our EA comments, but instead “the Forest Service is proposing to use the same logging that it is supposed to ‘counteract’ with the needed restoration to justify its approach. It is therefore failing to understand or apply different approaches that are available for ecological restoration. In fact, the proclamation’s statement here almost mandates that the Forest Service at least consider an alternative that approaches restoration without logging, which the EA fails to even consider. See EA, p. 8 (‘no specific alternatives were developed and carried forward for analysis….’).” EA Comments at 11.

Moreover, we raised this issue in several other sections of our EA and scoping comments. See EA Comments, p. 2 (“Not much has changed from the original proposal. Even though we suggested consideration of alternatives to removal of dead trees or fuel reduction that would remove trees, the Forest Service preferred alternative still proposes to fall and remove dead or dying trees using mechanical ground-based equipment over almost 8,000 acres.”); see also EA, p. 13 (“the Forest Service must prepare an EIS and consider a full range of alternatives that minimize adverse effects, something the EA has failed to do so far.”); Scoping Comments, p. 8 (“the Forest Service must prepare an EIS and consider a full range of alternatives that minimize adverse effects.”); JMP & CBD EA Comments (“The EA fails to consider a reasonable range of alternatives, including alternatives that could better accomplish stated objectives, based on the evidence presented above, including natural post-fire regeneration for giant sequoias, roadside hazard tree felling without removal of large, downed logs, and prescribed fire or wildland fire use instead of commercial thinning.”).
Instead, the Forest Service made a front-end “policy choice” that it could only fulfill the project’s purpose and need through tree cutting and removal, using mechanical treatments, even though the GSNM Plan specifically includes a requirement to “assess risk, effectiveness, and feasibility” and consider mechanical removal without tree removal “alone or in combination with other tools.” See GSNM Plan, Figure 4 “Decision Tree for Site-Specific Projects in the Monument.” The determination of narrowing the alternatives can only be made at the back end, after consideration of a range of alternatives. Moreover, the Forest Service’s dismissal of alternatives is based on a black/white dichotomy—either we do everything exactly as we propose, or we do nothing at all. By dismissing from detailed consideration every alternative other than the proposed alternative, the Forest Service has thwarted NEPA’s policies.

The “touchstone” of a lawful alternative’s analysis is whether the agency’s “selection and discussion of alternatives fosters informed decisionmaking and informed public participation.” Westlands Water Dist. v. U.S. Dept. of Interior, 376 F.3d 853, 872 (9th Cir. 2004). Federal agencies must “[r]igorously explore and objectively evaluate all reasonable alternatives to a proposed project.” Center for Biological Diversity v. Nat’l Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008).

And as has occurred here, “[o]ne obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose and need so slender as to define competing reasonable alternatives out of consideration.” Muckleshoot Indian Tribe v. U.S. Forest Serv., 177 F.3d 800, 814 n.7 (9th Cir. 1999). Here, the purpose and need is defined in such a way that only the proposed action can meet it. For example, an alternative that cannot “Remove excess fuels created by fire-killed trees …” interpreted to only include mechanical treatments with tree removal therefore cannot be met by any alternative which does not remove fire-killed trees. The premise in the “purpose and need” that “[a]s dead trees fall and cover the ground, they will inhibit regeneration” invokes an unreasonable rationale for limiting alternatives.

But what about an alternative with different treatment options that recognize the need to retain a greater number of dead trees to provide wildlife habitat and provide shade for natural regeneration or planted seedling without the removing as many of the trees. Or, what about an alternative that only treats some fraction (half or a quarter) of the proposed removal areas burned at high severity, or an alternative that only treats areas for fuel reduction in the WUI areas by felling smaller trees to prepare the areas for prescribed fire?

For example, the Forest Service refused to give full consideration to an alternative that would “break up the abundant and extensive fuels without tree removal [and] would involve machine piling and burning thousands of piles on almost 5,000 acres” even though that could be accomplished, but “would require mechanical equipment to drive all over the site to pile the material and result in at least as much of an impact as dead tree removal.” EA, pp. 12-13. In other words, the justification for using tree removal as the only alternative appears to be driven partially by economic reasons rather than the consideration of an alternative that is required by the GSNM Plan’s Decision Tree, since the trees that retain value could be sold.
Alternatives to the proposed action would dramatically reduce adverse impacts of post-disturbance logging on imperiled, threatened, and endangered wildlife species, including Pacific fishers, spotted owls, goshawks, and black-backed woodpeckers, and should have been considered to comply with NEPA obligations.

Suggested remedies to resolve, our objection

We ask that the Forest Service re-issue its EA and fully consider an alternative that plants trees in high burn-severity areas but does not include dead tree removal, and also only prepares lower-severity burn areas with minimal small tree treatments to prepare the area for prescribed fire.

Moreover, we ask for a second alternative that considers tree planting without felling any trees and prepares the area for prescribed burning in the future when the planted trees have grown large enough to survive prescribed burning.

4. The Forest Service Must Prepare EIS

We have consistently raised the issue of the need to prepare an EIS in scoping and our EA comments.

The size of the proposal, the large number of trees proposed to be removed from the project area, as well as the many adverse climate, soil, stream, and wildlife habitat effects, are on a scale that is much larger than any vegetation management operations implemented in the Giant Sequoia National Monument since the plan decision in 2012. Because of its size, scope, and novel issue with regard to dead tree removal for reforestation in the Monument, the project is a major federal action that would require analysis in an Environmental Impact Statement (EIS) because the effects are significant and a FONSI cannot be justified.

Ironically, the FONSI points to a decision made with an EIS, but provides no evidence, that, “Regarding the potential for significant effects, the Sequoia National Forest has implemented such practices for many years (e.g., TRRP ROD 2015, …).” The Tule River Reservation Protection Project (or TRRP) had a much smaller footprint than the Castle Fire Project, yet the Sequoia National Forest determined that a full EIS and accompanying analysis were required. Moreover, the assertion that implementation of the TRRP did not result in significant effects is not supported by the project record, and is arbitrary and capricious without evidence of non-significant effects.

The Forest Service has arbitrarily concluded there is no potential significant impact from removing dead trees from thousands of acres and thinning several thousand more, using heavy equipment on fragile post-fire soil in habitat for the endangered Pacific fisher, the California spotted owl, proposed for listing as threatened, and habitat for the Northern goshawk, a sensitive species.

As the project map illustrates, however, the cumulative impacts will not only be expansive, but also concentrated, due to the close proximity of the treatment area, as well as adjacent project proposals for the Windy Fire Restoration Project, just to the south. In combination, with that
project, the number of acres treated post-fire will result in a significant amount of damage to wildlife habitat with both short- and long-term impacts. The trees that would be removed would otherwise be used by many species in the years ahead, for nesting and foraging (e.g., by woodpeckers), for nesting/perching/resting (e.g., by owls), or for denning or cover (e.g., by Pacific fishers).

The Forest Service’s failure to produce an EIS for its proposed action violates NEPA for several reasons, including the potential for significant environmental effects caused by the size and intensity of logging and the cumulative effects of the actions, as discussed above. Instead, the Forest Service chose to prepare an EA that fails to take a hard look at site-specific impacts and fails to consider a reasonable range of alternatives.

NEPA provides that environmental impact statements must be prepared by federal agencies on “proposals for … major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Major federal actions include the “[a]doption of programs, such as a group of concerted actions to implement a specific policy or plan; ... [or] [a]pproval of specific projects, such as construction or management activities located in a defined geographic area.” 40 C.F.R. § 1508.1(q)(3)(iii)-(iv).

An EIS must be prepared if “substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor.” Greenpeace Action v. Franklin, 14 F.3d 1324, 1332 (9th Cir. 1992) (citation omitted); Sierra Club v. United States Forest Serv., 843 F.2d 1190, 1193 (9th Cir. 1988). To trigger this requirement a “plaintiff need not show that significant effects will in fact occur”; raising “substantial questions whether a project may have a significant effect” is sufficient. Greenpeace, 14 F.3d at 1332 (emphasis added); see Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (accord).

If an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project’s impacts are insignificant. The statement of reasons is crucial to determining whether the agency took a “hard look” at the potential environmental impact of a project. See Blue Mt. Biodiversity Proj. v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal citations omitted). The four-page draft Finding of No Significant Impact (FONSI) fails to objectively provide a convincing statement of reasons. See EA & FONSI at 35-38. For example, while there are clearly both short- and long-term effects, as well as beneficial- and adverse effects, the FONSI simply references sections in the EA and project design features, but it never provides any convincing reasons or even conclusions why the effects may be insignificant. Id.

Moreover, the FONSI falsely asserts that “Scoping surfaced no controversy regarding the magnitude or nature of effects of the action alternative.” EA, p. 35. But we did raise concerns that the size and types of effects from dead tree removal and thinning would cause significant effects. See EA Comments, p. 16 (“The size of the proposed actions and the likely large number of trees proposed to be removed from the project area are on a similar scale as the largest timber sale operations implemented on the Sequoia National Forest in decades. Hence, the project likely constitutes a major federal action that would require analysis in an Environmental Impact
Statement (EIS).”); p. 16-17 (“The proposal is highly controversial, scientifically, because, as discussed above, the area is likely to recover naturally and does not need human intervention with actions associated with replanting. See Hanson & Chi (2021) (Exhibit [D of Scoping Comments]). Moreover, the proposed fuel reduction treatments in WUI defense zones are highly controversial, scientifically, as discuss above, and likely to adversely affect public safety and increase rather than reduce fuels and associated wildfire risk.”).

An agency “cannot avoid preparing an EIS by making conclusory assertions that an activity will have only an insignificant impact on the environment.” Ocean Advocates v. U.S. Army Corps of Eng’rs, 402 F.3d 846, 864 (9th Cir. 2004). Nor can an agency minimize an activities’ environmental impact by adopting a broad scale analysis and marginalizing the activity’s site-specific impact. See, e.g., Pac. Coast Fed’n of Fishermen’s Ass’n v. Nat’l Marine Fisheries Serv., 265 F.3d 1028, 1036 (9th Cir. 2001).

In the EA, the Forest Service did not take the requisite “hard look” at the project’s environmental impacts. Moreover, the Forest Service, in its EA and FONSI, has failed to provide convincing statements of reasons to explain why the projects’ impacts are insignificant.

On Sept. 2, 2022, the Sequoia National Forest has also proposed the Windy Fire Ecological Restoration Project, which is adjacent and just to the south of the proposed action. Exhibit E hereto. That proposal would treat and log over 16,000 additional acres, similar and just south of the Castle Fire Project. Id. (map on p. 5).

In another example, the Sequoia National Forest prepared an EIS for the Tobias Ecosystem Restoration Project in the Sequoia National Forest, which would have thinned and reduced fuels on roughly 4,900 acres, which is a fraction of the size and the combined impacts of the current proposal and the proposed Windy Fire Restoration Project. Similarly, the Tule River Reservation Protection Project (TRRP) was much smaller than Tobias and significantly smaller than the current project, yet the Forest Service prepared and EIS for the TRRP.

Therefore, an EIS is required to consider the potential significant effects from the proposal, from dead tree removal and other thinning and fuel reduction treatments, as well as other planned logging and/or vegetation management projects that or adjacent or overlap the project area. We refer you to our scoping and EA Comments for further reasons why the Castle Fire Project would have significant effects and requires an EIS.

Suggested remedies to resolve, our objection

Because the Forest Service’s proposal is a major federal action that would have significant effects on the environment, we request direct to the Sequoia National Forest to prepare an EIS to comply with NEPA.
5. **The Proposal is Likely to Adversely Affect Threatened and Endangered Species, Including the SSN Pacific Fisher, its Proposed Critical Habitat, as well as Other Listed Species, as well as the California Spotted Owl, now proposed for listing as threatened, and so the Forest Service Must Prepare and EIS.**

   a. **Pacific Fisher**

   While normal operating guidelines may restrict noise within 0.25-miles of den sites from March 15 to June 15, scientific studies of the SSN fisher confirm that fishers use post-fire burned forest habitats\(^1\) and female fishers may even return to their natal and maternal dens with their kits into late September, so the Forest Service should not remove post-fire snag habitats\(^2\) or take the chance of harming / taking / killing the endangered SSN Pacific Fisher kits by allowing tree removal activities before the end of September. The limited operating periods from March to the end of June are not sufficient to fully protect younger fishers from the adverse disturbance of their habitat from logging activities and should be extended to the end of September.

   We are concerned about the direct, indirect, and cumulative effects from this project and other projects in the SSN Fisher Conservation Area (and now, the fisher’s proposed critical habitat) and how the Forest Service has analyzed the effects, as discussed above. Fishers use large areas of primarily coniferous forests with fairly dense canopies and large trees, snags, and down logs. A vegetated understory and large woody debris are important for their prey species.

   The proposed logging would result in removal of thousands of acres of tree cover or critical habitat as well as substantial volumes of biomass from the project area. The project would also cause significant additional fragmentation of already-fragmented habitats for not only fishers, but also in California spotted owl and goshawk protected activity centers. The acres of logged areas would likely be replanted with a closely-spaced trees, potentially causing further long-term degradation of habitat for these old-growth-dependent wildlife species.

   **Suggested remedies to resolve, our objection**

   We request that the EIS include strict applications of wildlife restrictions and sufficiently analyze potential adverse effects on fishers, owls, goshawks, and other species. Because the effects from this and other hazard tree proposals along roads combined with the changed baseline environmental effects from the 2020 and 2021 fires are significant, we ask the Forest Service to prepare an EIS and consider a full range of alternatives to minimize adverse effects, including closing roads and felling and leaving larger felled trees.

   Moreover, we request that the final plan include standards to inspect trees as possible dens for fishers. Prior to marking trees for removal in denning habitat of the SSN fisher, a qualified biologist should first inspect locate / verify / document all large hazard trees, danger trees, or

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\(^2\) See: https://www.fs.usda.gov/research/treeresearch/63137
defective trees that contain cavities and make sure those trees are clearly marked and protected so these trees will not be felled or removed.

b. The Forest Service should not proceed with the project until it conducts an analysis of impacts to the revised acreage of proposed critical habitat for the SSN fisher.

This issue arose recently after the previous comment periods and constitutes new information, which we could not have raised during previous comment periods. See 36 CFR 218.8(c).

On November 4, 2022, the U.S. Fish and Wildlife Service announced the release of a revised version of the 2021 critical habitat proposal for the southern Sierra Nevada distinct population segment (DPS) of fisher. The revision proposes to designate approximately 595,495 acres of critical habitat in portions of Fresno, Kern, Madera, Mariposa, Tulare and Tuolumne counties in California, an increase of 41,041 acres from the initial proposal. The revision identifies areas essential to the conservation of the species, which is currently listed as endangered under the Endangered Species Act.

More than 90 percent of the revised proposed critical habitat falls on federal lands managed by the U.S. Forest Service (USFS), National Park Service (NPS) and Bureau of Land Management. During the public comment period, the USFS, NPS and a species expert from a research institute recommended additional areas for inclusion as critical habitat, mostly consisting of public lands. After reviewing the information, the Service agreed that those areas serve as important reproductive habitat for the fisher.

The revised proposed critical habitat rule was published in the Federal Register on November 7, 2022. The proposal, legal boundaries, GIS shapefiles and information can be found on www.regulations.gov by searching under docket number FWS-R8-ES-2021-0060.

According to the notice,

Threats identified within [the various] unit[s of critical habitat] include wildfire and wildfire suppression; climate change; tree mortality from drought, disease, and insect infestation; vegetation management; exposure to toxicants; and vehicle collisions.


Moreover, maps for all units of the proposed critical habitat clearly indicate an overlap with the project area. Id. (see Figures 2-7). These “threats” from the project, therefore, require the U.S. Forest Service to analyze the potential adverse effects on the fisher’s critical habitat.

Suggested remedies to resolve, our objection

We request that the Forest Service re-issue a new draft environmental analysis with a new comment after analyzing the potential effects from the project on the revised version of the fisher’s critical habitat, including the analysis of cumulative effects from the proposed actions in
the Sierra, Stanislaus, and Sequoia National Forests as well as other actions within the fisher’s revised critical habitat.

c. The Forest Service should not proceed until it has conferred with U.S. Fish and Wildlife Service regarding the California spotted owl, now proposed for listing under the ESA as threatened.

We raised this issue in our EA Comments at p. 11-12.

Since the EA was released, the U.S. Fish and Wildlife Service proposed listing the California Spotted Owl (CSO) as threatened under the Endangered Species Act in the Sierra Nevada Mountains. See 88 Fed. Reg. 11600 (February 23, 2023). And because the project is likely to adversely affect habitat for the CSO, the action is significant and must be further analyzed with an EIS, for the same reason it would significantly and adversely affect the endangered Pacific fisher. Moreover, the proposed listing of the CSO requires that the Forest Service confer with the U.S. Fish and Wildlife Service for this project prior to the final decision.

According to an email from Barbara Johnston on behalf of the Forest Service, “We are aware of the need for Section 7 consultation for the California spotted owl. This will be completed prior to formal listing of the California spotted owl in 2024. All project implementation prior to that will follow the California spotted owl conservation measures from the 2019 California Spotted Owl Conservation Strategy.” Exhibit F.

The current EA continues to analyze the CSO as a sensitive species, even though its status as a species proposed for listing is the current designation, which requires the Forest Service to confer with the U.S. Fish and Wildlife Service before issuing its final decision. There is nothing in the record about a conference with USFWS, and the Forest Service should not be allowed to issued a decision for the project prior to such conference.

Suggested remedies to resolve, our objection

We request that the Forest Service provide evidence of conference with USFWS and their correspondence with the Forest Service prior to issuing a final decision for the project.

For Sequoia ForestKeeper, the Kern-Kaweah Chapter of the Sierra Club, the Sequoia Taskforce of the Sierra Club, the John Muir Project of Earth Island Institute, the Tule River Conservancy, and the Center for Biological Diversity,

René Voss – Attorney at Law

cc: Ara Marderosian – Sequoia ForestKeeper & Kern-Kaweah Chapter of Sierra Club
Carla Cloer – Sequoia Task Force of the Sierra Club & Tule River Conservancy
Justin Augustine – Center for Biological Diversity
Dr. Chad Hanson – John Muir Project of Earth Island Institute
Laura Hierholzer – U.S. Forest Service