

Wisconsin Wildlife Federation

November 7, 2008

USDA-Forest Service
ATTN: Appeal Deciding Officer
626 E. Wisconsin Avenue
Suite 700
Milwaukee, WI 53202

Re: Appeal of Decision Notice and Finding of No Significant Impact fro Chequamegon-Nicolet National Forest Travel Management Project---September 22, 2008

Dear Appeal Deciding Officer:

This correspondence is the formal appeal document of the Wisconsin Wildlife Federation filed pursuant to 36 C.F.R. Part 215 objecting to the Decision of the Chequamegon-Nicolet National Forest Supervisor published in the Milwaukee Journal Sentinel on September 25, 2008. The Wisconsin Wildlife Federation is the largest conservation organization in the state and is comprised of 161 hunting, fishing, trapping and forestry related groups located throughout the state. We were established in 1949 and are the state affiliate of the National Wildlife Federation. The organizations belonging to the Federation have over 100,000 members and are actively engaged in a broad range of outdoor activities including hunting, fishing and trapping, with many using the Chequamegon-Nicolet National Forest on a regular basis. The Wisconsin Wildlife Federation filed comments on the Travel Management Plan on August 8, 2008.

The Wisconsin Wildlife Federation has commented on the proposed decision and has reviewed the Decision Record before the Appeal Deciding Officer. Based on this involvement the Federation believes the Decision to close 2363 miles of road to vehicle travel in the Chequamegon-Nicolet National Forest (hereinafter Forest) is arbitrary and capricious, devoid of factual and legal underpinnings justifying the closure, is contrary to law and is based on a seriously inadequate public involvement process. As a result, the Federation is respectfully requesting that the Deciding Officer remand the Decision back to the Forest Supervisor for further public involvement and for the additional opening of substantial road mileage in the forest to vehicular traffic.

Preliminary Comments: The Wisconsin Wildlife Federation has as two of its priorities the protection of fish and wildlife and their habitat and the retention and increase of public access for hunting, fishing and trapping purposes. We are strong supporters of

sound conservation principles and have historically been supportive of federal, state and local land management agencies in the accomplishment of their conservation goals when such management is done in a thoughtful, factual and scientific-based manner. However, we do not believe that the subject Forest Travel Management Decision meets those standards.

We do support the prohibitions on cross country use of motor vehicles and strongly support the closure of any road that causes any significant natural resources damage or has significant adverse impact on fish and wildlife species management. We would also agree that appropriate action would need to take place if there were serious user conflicts because of roads being retained in an open status. However in this situation the great majority of roads proposed to be closed by the Forest's Decision do not pose any such problems. More specifically the Wisconsin Wildlife Federation believes that:

The Forest's Decision is not Factually Based and is Contrary to Controlling Law and Regulations.

1. Inadequate Public Involvement Process. The Forest provided a seriously deficient public involvement process at the beginning and during the development of the Forest Travel Management Plan. The context of this decision is important, the Forest is one of the most important recreational land bases in the State of Wisconsin. It covers major portions of northern Wisconsin and receives hundreds of thousands of recreational users a year. A large number, if not the majority, of individual users of the Forest live in central and southern Wisconsin and outside the state.

The Service held two series of five meetings open to the general public in the immediate area of the forest. Those meetings may have met the need for public involvement in the immediate area but failed to provide public involvement and actual notice and opportunity for the very large number of Forest recreational users living significant distances from the Forest. Mailings of public notices to newspapers of general circulation outside the immediate Forest area did not receive publication. As an example of ineffective public involvement, the Forest's five general public meetings in the spring of 2007 attracted a total of 156 people. That is compared with the 300 people that would attend just one Wisconsin DNR hearing on the American Legion State Forest. Knowing that these public lands recreational issues are a matter of statewide concern, public hearing and involvement needed to be done on a statewide basis. This was true of WDNR and US Fish and Wildlife Service public involvement efforts for the timber wolf management plans, that while being mainly focused on northern Wisconsin, resulted in extensive public involvement and hearings in southern and central Wisconsin. The Forest Service did not meet the standard of public involvement undertaken by other state and federal land management agencies.

A review of the Record shows that the public involvement for the Forest Travel Management Plan was very focused on the concerns of local units of government and also on ATV use but not on the many scores of thousands of hunter, anglers and trappers that use the forest. There are over 400 hundred different hunting, fishing and trapping groups in the state, many of whose members hunt, fish and trap in the Forest. Very few such groups received any actual notice of the proposed massive road closures and the Forest's public involvement process. A prime example is that the Wisconsin Wildlife Federation, the state's largest conservation groups comprised of 161 clubs located throughout the state, did not receive any notice and had no actual knowledge of the proposed road closures until an article appeared in the Milwaukee Journal Sentinel on July 17, 2008. . Another prime example is that the Wisconsin Conservation Congress, a statutory advisory body to the Wisconsin Natural Resources Board and the Wisconsin Legislature and comprised of five elected sportsmen and women from every county in the state, also did not receive any actual notice of the massive road closures until the same article was written. This indicates a seriously deficient public involvement process that will lead to the major loss of public opportunities to hunt, fish and trap on the forest.

The inadequacy of the public involvement process for hunters, anglers and trappers is best reflected by lead Forest officials in their public statements that are part of the Record. Deputy Forest Supervisor Tony Erba stated in the July 17, 2008 Milwaukee Journal Sentinel article that "...the sportsmen have not been fully engaging. It might be because they don't come into the forest until fall for hunting, and they live in some other part of the state." At the same time Forest Supervisor Jeanne Higgins stated in the Eagle River News Review that: "I don't know that we ever did a very good job of giving the public (the whole picture)."

The thirty day comment period that resulted from the final decision and that was referenced in these articles was just totally inadequate for the information regarding 2500 hundred miles of road closures to be effectively conveyed to the many scores of thousands of recreational users of the forest and cannot be used as a justification that the initial lack of public involvement has been cured.

The lack of public involvement is also not corrected by the proposed use of Adaptive Management techniques to include later public involvement in the process and thereby open additional roads as citizens file comments years into the future. The result of the September 25, 2008 Travel Management Plan is to make it illegal for hunters, anglers and trappers to travel by vehicle on 2,363 miles of currently open roads on the Forest. The maps supporting this decision are going to be issued in January, 2009 and be in force immediately thereafter. The Forest indicates that education rather than enforcement would be used for individuals traveling by vehicle on those roads. While these statements are encouraging, there is nothing to preclude Service enforcement authorities from enforcing against an individual traveling on closed roads especially if the individual continued to use a road after being "educated". It is not good policy nor is it fair to law enforcement

officers or to members of the general public to be placed in such an ambiguous enforcement situations. In addition there is no assurance that such discretion would ever be exercised beyond 2009. Not everyone that uses the forest in 2009 may be contacted by a Forest representative and “educated” about the road closures, thereby being exposed unknowingly to direct enforcement in 2010 and subsequent years. While Adaptive Management is generally a sound land management practice it does not replace actual upfront involvement with forest users who will see their use of the Forest curtailed by 2363 miles.

The remedy that the Wisconsin Wildlife Federation is seeking because of the inadequate public involvement process is the Decision be remanded back to the Forest to engage all hunters, anglers and trappers that use the forest, advise them of the proposed closures, assist them in evaluating the proposed closures’ impact on their hunting, fishing and trapping practices, review the requests for continued use of the affected roads on fish and wildlife habitat and species management and issue a new Decision which is based on true public involvement and use and the actual resource impacts of the public use.

2. The Forest road maps are in error and don’t accurately depict the roads that are open or closed. The maps that are used by the Forest Service to designate open roads have errors. This has been documented by an article in the September 19, 2008 Wisconsin Outdoor News that is part of the official Record. In addition Forest employees involved in the process have repeatedly stated that the official maps do not accurately depict the existing road system and therefore will not provide actual notice to the public on which roads are open and closed. The inadequacy of the maps is understandable because not each of the roads have been ground verified by Service staff. While the factual errors on the maps are understandable, it is totally unacceptable to place individual Wisconsin citizens in jeopardy of being in violation of Forest regulations. The inadequacy of the maps also places Service officers in an untenable situation.

The remedy that the WWF is seeking in this matter because of the inaccurate maps that are proposed to be used by the Service as their prime method of public education and compliance is that the Decision be remanded back to the Forest for field verification of the maps and the correction of the errors on the maps.

3. The majority of the roads proposed to be closed by the Forest to vehicular traffic are being closed contrary to the provisions of 36 CFR 212.55, the the criteria for designation of roads, trails and areas.

Subsection 36 CFR 212.55 (a) provides that in designating Natural Forest System roads and trails for motor vehicle use, the responsible official needs to consider the effects of

the roads based on a series of criteria including natural and cultural resources, public safety provision of recreational opportunities, access needs conflicts with National Forest System lands and the needs for maintenance and administration of roads, trails and areas that would arise if vehicular access is designated. The Forest must also consider the availability of fiscal and staff resources for maintenance and administration for the additional designated roads and trails. Subsection 36 CFR 212.55 (b) further provides that such designation of trails and areas must minimize damage to soils, the watershed, vegetation and forest resources, must minimize harassment of wildlife and significant disruption of wildlife habitat, must minimize conflicts between motor vehicle use and existing or proposed recreational uses of the forest and certain other specific criteria not significantly germane to the road closures on the Forest.

The Wisconsin Wildlife Federation believes that the criteria in 36 CFR 212.55 (a) and (b) are sound and reasonable and support their application. However the Forest has seriously misapplied these criteria to the proposed road closures in the Forest.

A careful review of the Record and the specific documents prepared by the Forest show that the great majority of roads proposed to be closed to vehicular traffic do not cause adverse impacts on cultural and natural resources, cause public safety problems and specific factual conflicts between Forest users. However there were a relatively few road closures whereby the Forest actually documented real wildlife and resource problems that were associated with the continued existence of roads. The Federation supports these closures because they were based on scientific, factual information and were field verified. We will also support future closures that are based on this type of analysis and information.

As far as the remainder of the proposed road closures, which are the great majority of the roads proposed to be closed by the Forest, the detailed information prepared by the Service in the Environmental Assessment, the Soil Resource Report, the Non-Native Invasive Species Report, the Biological Evaluation and Other Wildlife Considerations and the Water Resources Report all specifically report, that except for a very limited number of roads, there is no difference between Alternatives 1, 2 and 3. The reports go on to say that all three alternatives comply with the Forest Plan and Regulatory Decision. The Decision Record is explicit in indicating that except for a small subset of roads proposed to be closed that we agree with, the vast remainder of the proposed roads do not violate any criteria for closure.

Conversely, the Forest's Recreation Report indicates that Alternatives 2 and 3 would result in an approximate 60% reduction in the recreation motorized use opportunities available in the forest." The ultimate decision of the Forest was to reduce road miles 53%, 2363 miles. The Forest clearly failed to comply with the provisions of 36 CFR 212.55 by not recognizing this recreational use. The road closures deprived the public of extensive recreational opportunities and access need that is to be recognized in sub (a) without showing any justification under any of the other closure criteria demonstrated under section 212.55.

Lastly, the Decision is also contrary to the Record since the Forest indicates that the single most significant issue raised by the public in the in the planning process was insufficient motorized access. The Forest further recognized that the demand for public access exceeds what the Forest supplies. A large percentage of comments submitted to the Forest indicated that there was a need to continue existing road access in the Forest. The Forest's response to this Record was an arbitrary and capricious Decision eliminating vehicular access on 2362 miles on the Forest, a 53% reduction.

The remedy being sought by the Federation for the failure of the Forest to accurately apply the Section 36 CFR 212.55 criteria to close 2363 miles of road is that the Decision be remanded back to the Forest to appropriately apply the criteria of section 36 CFR 212.55 to all of the proposed road closures.

4. The Analytical Process used by the Forest in applying the closure criteria of 36 CFR 212.55 is a total misapplication of the intent of that regulation.

The specific criteria of section 36 CFR 212.55 clearly envision an analysis of the Forest's roads to determine whether the roads should be closed to use because of specific harm to the Forest and its use based on the criteria. In the Travel Management Planning process the Forest identified and closed a specific number of roads that violated the criteria. . **However for the vast remainder they placed the burden of retaining roads open on individual recreational users and did so by utilizing a seriously ineffectual public involvement process. This violates the stated purpose of the regulations i.e. continuing to provide recreational opportunities unless other harm to the Forest and its uses are occurring.**

The Forest's analytical process for road closures must be reviewed under the historical and actual day-to-day recreational uses of the Forest. First, a very substantial number of the roads that are going to be closed to recreational use have been open for such use for decades, some for as long as eighty years. These roads were well-established user patterns in the Forest and in fact that is the reason that most of these roads are still physically open for use. They have become the status quo of the Forest and in most situations have resulted in stable environmental situations. Clearly the Forest has had decades to determine and deal with any adverse impacts resulting from these roads.

Secondly the process established by the Service to get public involvement by requiring individual recreational users to "petition" for continued road use was a potentially workable process for certain types of recreational users, with the caveat that they had received actual notice of the proposed road closures. Examples of these recreational users are an angler that consistently uses a specified road to reach a particular stream or a deer hunter that uses a particular road to reach the deer stand that he or she traditionally hunts from. For those individuals, if they would have had actual knowledge of the potential

closure of the road that they repeatedly use they could readily petitioned the Forest for the road to continue being open. In fact, in those situations, the Forest has responded to the “petition” and kept the roads open based on the 36 CFR 212.55 criteria.

However this “petition” system was totally unworkable for other types of recreational pursuits especially the free ranging type of hunting associated with bear, raccoon, bobcat, coyote and fox. Hunting for these species is prevalent over the great majority of the Forest. There are literally thousands of such hunters using the Forest in any one year. In this type of hunting, the hunter or hunting party cannot specifically identify in advance where the hunted animal will go. The area involved in such hunts may be several sections of a township. Clearly these groups cannot identify to any degree of certainty which set of roads will need to be used for the hunt

Ironically if these hunters present a set of roads to the Forest to be opened, based on the past practice of the Forest to-date, the great majority of such roads will eventually be designated to be opened. However, in the meantime, there will be a chaotic situation where hunting groups come in on an ad hoc basis to petition the Forest for road openings in large blocks land. Under the proposed Adaptive Management process there will be a minimum year of delay in having those roads being reviewed and reopened with the resulting major loss of recreational opportunity. This ad hoc process will result in an unpredictable and unbalanced workload for the Forest staff for years to come. This will result in a substantial increased administration for the Forest contrary to the criteria of 36 CFR 212.55.

The Forest did not fully evaluate and quantify the impacts of the loss of this recreational opportunity despite recognizing that “Northern Wisconsin communities rely heavily on the economic, as well as social benefits derived from this motorized recreational tourism.” In addition, the Service has recognized the damage done to the Forest biota as a result of the-over goal population of white-tailed deer. The Record also does not contain a detailed analysis of effect on deer damaged biota as a result of closing 2363 miles of roads to deer hunters in the Forest.

The bottom line of the Forest’s misapplication of the 36 CFR 212.55 road closure designation process is that, without any identification of harm to the Forest, there will be a major loss of recreational opportunity for hunting, fishing and trapping and there will be an unbalanced and chaotic workload for Forest staff to evaluate the continued petitions they will receive to reopen the great majority of the 2363 miles of roads closed by the Decision

The remedy sought by the Federation because of the failure of the Forest to use an appropriate process to apply the designation criteria of 36 CFR 212.55 is that the Decision be remanded with direction to the Forest to systematically review the 2363 miles of road proposed to be closed in order to determine whether the closures meet the criteria in 36 CFR 212.55.

5. The Decision does not provide a process for the use of the proposed closed roads for disabled individuals.

The Travel Management Decision does not establish any process by which disabled recreational users will be able to use the 2363 roads closed pursuant to the Decision. The Wisconsin Wildlife Federation represents many disabled hunter, anglers and trappers who will be adversely impacted by this failure of the Decision.

The remedy sought by the Federation for the failure of the Forest to establish a workable process to allow disabled individuals to use the 2363 miles of proposed closed roads is that the Decision be remanded to the Forest for the establishment of such a process.

This completes the appeal of the Wisconsin Wildlife Federation of the Decision for the Chequamegon-Nicolet National Forest. The Federation requests that the Decision's implementation be stayed if it is remanded to the Forest for further action. The Federation also formally requests the opportunity for informal disposition of the matter and the opportunity for additional briefing, consultation and oral presentation if deemed appropriate by the Appeal Deciding Officer.

Any communications relative to this matter should be directed to George Meyer, Executive Director, Wisconsin Wildlife Federation, 201 Randolph Drive, Madison, WI 53717-1615. The contact email is georgemeyer@tds.net and the phone number is 608-516-5545.

Sincerely yours,

/s/

George Meyer
Executive Director
Wisconsin Wildlife Federation