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July 6, 2005

Mr. Leon Blashock, District Ranger
Allegheny National Forest
Marienville Ranger District
HC 2, Box 130
Marienville, PA 16239

RE: USFWS Project #2005-2202

Dear Mr. Blashock:

This responds to your letter of April 12, 2005, requesting Fish and Wildlife Service review of the Herbicide Diversity Study Removal Harvest Biological Assessment (BA). The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of endangered and threatened species.

On June 1, 1999, the Fish and Wildlife Service issued a biological opinion (BO) regarding the impacts of forest management and other activities that would be implemented under the 1986 Land and Resource Management Plan (Forest Plan) for the Allegheny National Forest (ANF). The programmatic BO evaluated the effects of Forest Service management program activities, including timber management, on the bald eagle (*Haliaeetus leucocephalus*), Indiana bat (*Myotis sodalis*), clubshell mussel (*Pleurobema clava*), and northern riffleshell mussel (*Epioblasma torulosa rangiana*).

In the programmatic biological opinion, we determined that implementation of projects predicated upon the Forest Plan is not likely to jeopardize the continued existence of the bald eagle, Indiana bat, or clubshell mussel. We also determined that implementation of the Forest Plan and most projects predicated upon it (with the exception of boating facility operation) are not likely to jeopardize the continued existence of the northern riffleshell. A jeopardy determination was made for the operation of boating facilities with respect to the northern riffleshell mussel, and reasonable and prudent alternatives were identified to avoid jeopardy to this species.

Although the Fish and Wildlife Service has provided a programmatic biological opinion to the Forest Service for the ANF Forest Plan, the Service will review, as they are developed, site-specific projects that the Forest Service determines "may affect" federally listed species. We will determine if any effects will occur as a result of a site-specific project in a manner, or to an extent, not evaluated or previously disclosed and discussed in the programmatic BO. We consider this site-specific project analysis to be "Tier 2" of the consultation process, with the programmatic consultation (and resulting BO) constituting the "Tier 1" consultation. Our

project-specific (Tier 2) consultations will focus on: 1) compliance with the reasonable and prudent measures and associated terms and conditions in the programmatic BO; 2) consistency with the scope and effects previously analyzed in the programmatic BO; 3) project-specific incidental take vs. take estimated in the programmatic BO; and 4) project-specific reasonable and prudent measures and associated terms and conditions (*i.e.*, for non-jeopardy determinations). In the event of a “may affect” but “not likely to adversely affect” determination for a specific project that is consistent with the programmatic BO, no further evaluation is necessary and section 7(a)(2) consultation will be considered complete for that project (*e.g.*, via a concurrence letter documenting the conclusion of informal consultation).

We have reviewed the information contained in the Herbicide Diversity Study Removal Harvest BA, which describes the potential effects of the proposed project on federally listed species. The proposed project types (*e.g.*, timber harvesting, road betterment) and their effects were discussed and evaluated in the Forest Plan BA and programmatic BO. Therefore, this consultation qualifies as a “Tier 2” consultation under the Forest Plan BO.

Forest Service Effect Determinations

The Forest Service initially determined that the federally listed Indiana bat, bald eagle, small-whorled pogonia (*Isotria medeoloides*), clubshell mussel, and northern riffleshell mussel occur or may occur in the project area or supporting watersheds.

Based on species surveys, and a further assessment of the potential effects of this project on listed species, the Forest Service reached a “no effect” determination for the small-whorled pogonia, clubshell, northern riffleshell and bald eagle; and a “may affect, likely to adversely affect” determination for the Indiana bat. You requested our review of, and concurrence with, these effect determinations. Based on our review of the project BA and programmatic BO, our comments on your determinations follow.

Small-whorled Pogonia

The BA (p. 37) indicates that all sites proposed for treatment were surveyed in the summer months (mostly during July) one, two, four, six and eight years after herbicide application. Although the study areas currently contain suitable habitat for the small-whorled pogonia, none were found during any of the surveys over several years. Based on the results of these surveys, the Forest Service reached a “no effect” determination. We concur with that determination.

Clubshell and Northern Riffleshell

The clubshell and northern riffleshell are known to occur in the Allegheny River; however, the project area does not drain into the Allegheny River. Additionally, there are no perennial streams within the Herbicide Diversity Study Removal Harvest project area that would provide suitable habitat for these species; therefore the Forest Service reached a “no effect” determination. We concur with this determination.

Bald Eagle

Based on available information and project reconnaissance, no bald eagle nest sites are located in the proposed project area. The closest known bald eagle nest is located over 6.5 miles away from any of the timber harvest units (BA, p. 45), and there is no documented bald eagle use of the project area. In addition, due to the distance from large perennial streams or other water bodies with a substantial fishery, it is not likely that potential foraging habitat is located within the project area. Based on these considerations, the Forest Service reached a “no effect” determination. We concur with this determination.

Indiana Bat

The Forest Service determined that implementation of this project “may affect, is likely to adversely affect” the Indiana bat. Given the nature of activities associated with the proposed project, we concur with your determination that incidental take of Indiana bats is possible within the analysis areas. As described in the programmatic BO, we believe that adverse effects on the Indiana bat are likely to occur from timber harvesting, and gravel pit construction/expansion carried out under the Forest Service’s management program. However, based on the implementation of reasonable and prudent measures, and associated terms and conditions from the programmatic BO, and the conservation measures proposed with the Herbicide Diversity Study Removal Harvest project that will minimize the impact of any incidental take, we have concluded that activities associated with the Herbicide Diversity Study Removal Harvest project will not result in adverse effects on the Indiana bat beyond those that were previously disclosed and discussed in the programmatic BO.

The following biological opinion is based on potential adverse effects on the Indiana bat from new gravel pit construction/expansion, and the removal of suitable habitat during timber harvesting associated with the Herbicide Diversity Study Removal Harvest project. This Tier 2 BO identifies the incidental take anticipated due to implementation of the Herbicide Diversity Study Removal Harvest (Alternative 2), and the cumulative total of incidental take that has occurred (Table 2).

Description of the Proposed Action

The proposed project involves commercial timber management activities and forest research study activities within the Herbicide Diversity Study Removal Harvest project area (Table 1, p. 2 of the BA) in Lafayette, Wetmore, and Hamlin Townships in McKean County, Jones Township in Elk County, and Howe and Jenks Townships in Forest County, Pennsylvania. The project area is comprised of 10 sites, 16-19 acres each, all of which is National Forest System land. Currently, the project areas are mature second growth hardwood forest, which underwent shelterwood cuts in 1995-1996. Several of the project areas are near roads, oil and gas wells, rights-of-way and other openings (BA, p. 2).

Three alternatives were assessed in the BA. The Forest Service has selected Alternative 2 as the preliminary preferred alternative; therefore, this biological opinion focuses on the effects expected due to implementation of this alternative. The preferred alternative involves timber

harvest treatments, with a goal of completing the timber management onsite to fully determine the effects of herbicide application (glyphosate and sulfometuron methyl) in controlling understory vegetation. Table 1 (summarized from Table 2 in the BA, p. 5) includes those activities proposed under the preferred alternative that will affect potential Indiana bat habitat.

Table 1. Forest impacts resulting from the preferred alternative.

Activity	Acres	Type of Harvest	Category of Take	Estimated Completion
Shelterwood Removal	176	Green Final	Shelterwood Removal	2005-2007
Pit Expansion	1	Green Final	Road Betterment/ Clearcut	2005-2007
Total	177			

Specifically, 176 acres of timber harvesting will occur, all of which are shelterwood removal cuts. In addition to timber management activities, one acre of forested habitat will be affected by gravel pit construction and expansion for road betterment projects.

The above activities will affect a total of 177 forested acres, all of which are counted toward the cumulative annual incidental take outlined in Table 6 (p. 67) of the programmatic BO. The types of timber harvest activities proposed were described on pages 7-8 of the programmatic BO, and the effects of timber harvesting on the Indiana bat were discussed on pages 46 and 65 of the programmatic BO. Road construction activities were described on page 9 of the programmatic BO, and were analyzed on pages 47-48 of the programmatic BO.

The Forest Service has proposed to implement the following project conservation measures (summarized from the BA, p. 21), based on the presence of suitable Indiana bat habitat in the project area, and the assumption that the habitat is occupied by this species.

- A mist-net survey for the Indiana bat will be conducted at Study Site 1 during the next available field season.
- Retain all shagbark and shellbark hickories (live, dead and dying), regardless of size, in partial and final harvest cutting units (green and salvage units).
- Retain 4-6 live den trees per acre. Where an inadequate number of live trees occur, retain older, larger trees, especially those with old wounds and broken limbs.
- Mark for retention a clump approximately 0.25 acre in size for every 5 acres harvested. Where possible, clumps of trees should contain any or all of the following: den trees, snags, oak/hickory, conifers, minority, and/or mast species and a variety of tree sizes. The Forest Service will protect these clumps and note the clumps on the sale area map.

- For both partial and final harvests in green units, retain all snags. Retain at least 8-15 live trees \geq 9 inches d.b.h. per acre in final harvest units, and at least 16 live trees \geq 9 inches d.b.h. per acre in partial harvest units.
- Live residual trees to be retained will be Class 1 or Class 2 trees (Romme *et al.* 1995), or other trees exhibiting or likely to develop characteristics preferred by Indiana bats (*e.g.*, exfoliating bark).
- For partial/intermediate harvests in healthy stands, reduce canopy closure to >54 percent.
- Designate and retain living residual trees in the vicinity of one third of all large diameter snags with exfoliating bark to provide them with partial shade in summer.
- If a new roost is identified during implementation of the selected alternative, the following mitigation measures will be implemented:
 1. In order to minimize incidental take of roosting bats, all known roost trees on the ANF will be protected until such time as they no longer serve as a roost (*e.g.*, loss of exfoliating bark or cavities, blown down or decay). In the event that it becomes absolutely necessary to remove a known Indiana bat roost tree, such a removal will be conducted during the time period when the bats are likely to be in hibernation (November 15 through March 15), in consultation with the Fish and Wildlife Service. Trees identified as immediate threats to public safety may be removed at any time following consultation. Such removal, however, will be a last resort, after other alternatives (such as fencing the area, etc.) have been considered and deemed unacceptable.
 2. Activities within a 1.5-mile radius of Indiana bat maternity sites will be subject to further consultation. Such activities include those that may affect the Indiana bat or alter its habitat (*e.g.*, by removing potential roost trees or altering percent canopy closure), such as timber harvesting, road construction, trail construction, and federal oil and gas development. In addition, if an Indiana bat maternity site is found on the ANF, the Forest Service shall consult with the Fish and Wildlife Service to determine/develop standards and guidelines and/or a conservation plan to protect and manage the site.

Other proposed activities associated with the preferred alternative are not expected to remove suitable Indiana bat habitat, or result in direct or indirect effects on, or take of, the Indiana bat. These activities include herbicide treatments, reforestation activities, and road improvement projects.

Status of the Species

Species description, life history, population dynamics, status and distribution of the Indiana bat are fully described on pages 21 to 36 of the programmatic BO, and are hereby incorporated by

reference. New information on the status of the Indiana bat obtained since the Forest Plan and programmatic BO follow.

Based on the 2001 winter census, the total known Indiana bat population was estimated to be 380,000, down from approximately 880,000 bats in 1960. Approximately half of the population hibernated in eight Priority 1 hibernacula in Indiana, Kentucky and Missouri (Clawson 2002). The 2001 winter count at Priority 1 hibernacula was 102,870 bats, down from the 115,885 Indiana bats that were estimated in 1999 at the same locations (Richard Clawson, Missouri Department of Conservation, *in litt.* 2001 – as presented at the Indiana Bat Symposium held in Lexington, Kentucky, March 29-31, 2001).

In Pennsylvania, an Indiana bat hibernaculum was located in January of 2000 in an abandoned limestone mine in Armstrong County, approximately 50 miles southwest of the ANF. During a survey of the mine, 67 Indiana bats were located; however, additional surveys of this extensive mine system are needed to determine the extent of this wintering Indiana bat population. Another Indiana bat hibernaculum was recently located in Lawrence County (southwest of the ANF). A survey of this abandoned limestone mine in 2001 revealed the presence of 21 Indiana bats. In February of 2003, the Pennsylvania Game Commission documented the presence of 765 Indiana bats at the Canoe Creek mine in Blair County, approximately 75 miles southeast of the ANF. In February of 2001, the Indiana bat count at the Canoe Creek mine was 604 bats.

Terms and conditions from the programmatic BO (p. 73-75, item 5), describe monitoring procedures for the Forest Service to use to determine use of the ANF by Indiana bats. Between 1998 and 2004, 282 sites were surveyed (*i.e.*, mist-netted) for bats on the ANF. In addition, 123 of these sites were also sampled using Anabat detectors. The mist net survey protocol from the draft Indiana Bat Recovery Plan has been used, and in some cases, sampling efforts exceeded those outlined in the protocol. One male Indiana bat was captured on the ANF in 1998, and another male Indiana bat was captured in 2001 on private land adjacent to the ANF.

Between 1998 and 2001, potential Indiana bat vocalizations were detected at 16 of 123 Anabat sampling sites. Positive detection of bats with this equipment could form the basis for a presumption of Indiana bat presence. Recent studies indicate that the echo-location calls of Indiana bats can be distinguished from other *Myotis* bats. While the system definitely shows promise, it still requires substantial development before it can reliably determine whether Indiana bat vocalizations were detected. At this time, we do not believe that this technique alone (*i.e.*, without positive mist-net survey results) is sufficient to determine whether Indiana bats are present in a project's action area.

Other mist-netting efforts in and near the ANF included a survey conducted in 2001 in association with a proposed natural gas pipeline project. During that survey effort, mist-netting was conducted at 100 sites along the proposed pipeline right-of-way, which extends from the Pennsylvania-Ohio State line in Lawrence County (near the North Fork Little Beaver Creek) east to Clinton County, Pennsylvania (near the town of Tamarack). The pipeline goes through portions of Lawrence, Butler, Armstrong, Clarion, Jefferson, Elk, Forest, McKean, Cameron, Potter, and Clinton Counties, Pennsylvania. Portions of McKean, Forest, and Elk Counties occur

within the ANF proclamation boundary. Out of the 100 sites surveyed, 12 survey sites were located within the ANF. No Indiana bats were captured at any of the survey sites.

Environmental Baseline

The environmental baseline for the ANF was established and described on pages 7-12 and 42-44 in the programmatic BO. Since issuance of the BO, the environmental baseline on the ANF has changed as follows.

Factors Affecting the Species' Environment (on the ANF)

The percentage of trees in the 90 years and older age classes has increased, and includes a 6.8 percent increase in trees in the 90-109 year-old age class, and an increase of 9.6 percent in trees 110 years and older. Conversely, trees in the 60-89 year age class have decreased by 4.3 percent. Additionally, there has been a decrease of 9.9 percent in trees in the 20-59 year age class and a 2.1 percent decrease in under-stocked savannahs and openings. Stands in the 0-19 year age class have increased slightly (0.2 percent). Other changes relate to a decrease in timber harvest between 1998 and 2001. The timber harvest on the ANF has decreased from an average annual harvest of 7556 acres between 1986 and 1997, to 2253 acres between 1998 and 2004. This represents a 70 percent reduction in average annual timber harvest levels.

Although the amount of timber harvest has been reduced in the last five years, the mix of timber harvest practices has remained relatively unchanged. Of the 2557 acres harvested annually on the ANF between 1998 and 2001, an annual average of 789 acres (31 percent) involves thinning and salvage treatments, 175 acres (7 percent) includes uneven-aged management (*i.e.*, group and individual tree selection), and 902 acres (62 percent) were associated with even-aged regeneration harvest techniques (*e.g.*, shelterwood seedtree harvest, removal cutting and clear-cutting). Although the amount of timber harvest has been reduced since 1997, reforestation treatments have not changed appreciably. Since 1998, the average annual amount of reforestation (herbicide application, site preparation, TSI, fencing, planting, fertilization, release) that has occurred on ANF has been 4818 acres. The average annual amount was 4469 acres between 1986 and 1997.

Activities that benefit wildlife such as prescribed fire, tree and shrub planting, opening construction, and shrub and tree release have decreased from an average annual amount of approximately 2200 acres between 1986 and 1997, to an average annual amount of approximately 1600 acres since 1998. This represents a 30 percent reduction in the total amount of wildlife and fish habitat improvement work that has been completed annually across the ANF since the programmatic BO was issued.

There has also been a reduction in the amount of road work completed on the ANF. New road construction has dropped from an annual average of 13.7 miles between 1986 and 1997, to an annual average of 0.1 mile of new road construction since 1998. Road reconstruction has had a similar reduction, and road betterment has dropped from an average annual of 10.1 miles from 1986 to 1997, to an annual amount of 0.1 mile between 1998 and 2000. Since 1998, the average annual amount of road restoration has been 36.9 miles, which represents a 22 percent reduction

in annual road restoration over what was completed between 1986 and 1997 (46.8 miles per year).

Status of the Species within the Action Area

Between 1998 and 2004, mist-netting surveys were conducted at eight sites within the project area, and at an additional 30 sites within two miles of the project area. Several different species of bats were captured, the majority being northern long-eared myotis; however, no Indiana bats were captured. Only Site 1 within the project area has had no mist-net surveys within or near it; therefore, the Forest Service has proposed conducting a mist-net survey at Site 1 during the next field season.

The project area was evaluated to determine the amount and distribution of Indiana bat habitat. This is the area that would be expected to receive use if an Indiana bat roost site occurred in a treatment stand. Based on this analysis, suitable habitat occurs on approximately 100 percent of the project area (BA, p. 19).

Effects of the Action

Forest Service analysis of the preliminary preferred alternative for the Herbicide Diversity Study Removal Harvest project includes consideration of the assumed presence of Indiana bats and their habitat in the project area. The Fish and Wildlife Service anticipates that the proposed actions associated with the project could result in the incidental take of Indiana bats through harm or harassment, especially if those activities occur when bats may be present (*i.e.*, between April 1 and September 30).

Activities associated with this project that may result in incidental take of the Indiana bat include: 176 acres of timber harvesting and one acre of forest removal for gravel pit expansion/construction. In total, 177 acres of forest will be cut or harvested between 2005 and 2007. Within the project area, these activities will result in a 100 percent reduction in the total available suitable roosting and foraging habitat for Indiana bats on the 177 acres to be harvested (BA, p. 26). However, the habitat loss will be distributed over 10 sites of 16 to 19 acres each, rather than over a single 177-acre parcel. This may increase the suitability of the habitat surrounding these 10 sites by providing open foraging areas, and increasing sun exposure to trees.

The types of timber harvest activities proposed were described on pages 7-8 of the programmatic BO. The potential direct and indirect effects to the Indiana bat from harvest or removal of trees due to timber harvesting and road construction are consistent with those identified and evaluated in the programmatic BO (pp. 46-48, 51, 65-66), and are hereby incorporated by reference. The types of road construction and maintenance activities were described on page 9 of the programmatic BO. The potential direct and indirect effects to the Indiana bat from these types of activities are consistent with those identified and evaluated in the programmatic BO (pp. 47-48), and are hereby incorporated by reference. Minimization of adverse effects will be addressed by implementation of the project-specific conservation measures, as described in the "Proposed Action" section of this opinion.

As described in the programmatic BO, we believe that adverse effects on the Indiana bat are likely to occur from timber harvesting and other tree-cutting activities under the Forest Service's management program activities. Therefore, given the nature of activities associated with the proposed project, we believe that incidental take of Indiana bats is possible within the project area. However, we have concluded that activities associated with the Herbicide Diversity Study Removal Harvest project will not result in adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the programmatic BO.

Cumulative Effects

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. The action area is the area where the direct and indirect effects of the federal action are anticipated to occur. Oil and gas development is likely to continue to occur within the action area. Although no oil and gas wells occur within the project area, moderate to heavy lease development is anticipated in the future on four of 10 sites. The Forest Service does not hold most subsurface rights on the Allegheny National Forest. Development of oil and gas resources depends on market conditions, and the economic status of the companies that develop these resources. Approximately 191 oil and gas wells are likely to be developed over the next decade, based on current development levels, well density and distribution.

Conclusion

The actions and effects associated with the proposed Herbicide Diversity Study Removal Harvest project are consistent with those identified and discussed in the Service's programmatic BO. After reviewing the size and scope of the project, the environmental baseline, the overall status of the Indiana bat, the effects of the action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the Indiana bat.

This project has not resulted in a jeopardy determination because: 1) the project's impacts are consistent with those identified and discussed in the programmatic BO; and 2) the Forest Service has proposed to implement project conservation measures to minimize take, including Forest Plan standards and guidelines, and the terms and conditions from the programmatic BO.

Incidental Take Statement

This biological opinion is based on likely adverse effects on the Indiana bat due to the removal of suitable foraging and roosting habitat during timber harvesting and other activities within the Herbicide Diversity Study Removal Harvest project area. This Tier 2 BO identifies the incidental take anticipated due to implementation of the Herbicide Diversity Study Removal Harvest project (Alternative 2), and the cumulative total of incidental take that has occurred (Table 2).

Table 2. Actual vs. authorized incidental take (as measured indirectly by acreage) due to the removal or disturbance of potential Indiana bat habitat on the Allegheny National Forest.

Activity	Acres Actually vs. (Authorized to be) Removed/Disturbed							Total ²
	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY ¹ 2004	
Trail Construction								
• Pedestrian	.3 (0)	7.8 (8)	.3 (2)	.2 (2)	0 (2)	0 (2)	0 (2)	8.6 (16)
• Motorized - winter	.3 (4)	3.6 (0)	0 (4)	.6 (4)	0 (4)	0 (4)	0 (4)	4.5 (20)
• Motorized - summer	6 (0)	1.2 (0)	3.2 (4)	2.14 (4)	0 (4)	0.42 (4)	0 (4)	12.96 (16)
Timber Management								
• Clearcut	191 (220)	222 (220)	0 (420)	59 (220)	6 (220)	0 (220)	15 (220)	493 (1520)
• Shelterwood seed/ prep	1558 (1640)	521 (1640)	299 (4000)	395 (2000)	575 (2000)	518 (2000)	288 (2000)	4211 (13,280)
• Shelterwood Removal	1203 (1864)	573 (1864)	488 (1864)	843 (1864)	381 (1864)	617 (1864)	621 (1864)	4829 (11,184)
• Thinning	1526 (3225)	732 (3225)	240 (7000)	659 (3225)	988 (3225)	692 (3225)	707 (3225)	5579 (23,125)
• Selection cut	458 (334)	184 (334)	17 (700)	40 (800)	63 (800)	0 (800)	90 (800)	942 (3768)
Wildlife Habitat Management	10 (10)	7 (10)	4 (10)	0 (10)	0 (10)	5 (10)	8 (10)	34 (60)
Prescribed Burning	0 (40)	10 (40)	3 (40)	0 (40)	0 (40)	0 (40)	0 (40)	13 (240)
Roads								
• Construction	0 (1)	0 (0)	0 (73)	1 (55)	2 (55)	0 (55)	0 (55)	3 (239)
• Reconstruction/ Betterment	0 (0)	0 (0)	0 (55)	4.44 (55)	2 (55)	0 (55)	0 (55)	7 (220)
• Restoration	2 (2)	3 (3)	4 (3)	2 (3)	1 (3)	3 (3)	3 (3)	18 (17)
Oil and Gas Development	149 (149)	206 (112)	259 (112)	236 (112)	194 (112)	152 (112)	165.33 (112)	1361 (709)
TOTALS	5104 (7489)	2471 (7456)	1318 (14,287)	2244 (8394)	2212 (8394)	1987 (8394)	1897 (8394)	17,516 (54,414)

¹ Although carry-over of un-used incidental take from previous fiscal years has been authorized, incidental take cannot exceed the activity-specific levels for FY 2003, or the activity-specific total.

² Total actual take (FY 1998-FY 2004) vs. authorized take (total estimated in Forest Plan BO)

Consistent with the approach taken in the programmatic BO, incidental take for this species is measured indirectly as loss or alteration of forested habitat (in acres), as outlined in Table 2. Thus, implementation of the preferred alternative will result in the take of Indiana bats, as measured by the loss/alteration of 177 acres of forested habitat between 2005 and 2007. This take is counted toward the cumulative annual incidental take as outlined in the programmatic BO (Table 6, p. 67).

The actual incidental take reported by the Forest Service (fiscal years 1998 through 2004), has consistently been far below the annual levels estimated (authorized) in the programmatic BO (see Table 2). Therefore, we do not anticipate that implementation of this project will cause the take levels in the programmatic BO to be exceeded.

Reasonable and Prudent Measures

We believe the following reasonable and prudent measure is necessary and appropriate to minimize take of the Indiana bat:

1. Ensure that conservation measures are implemented to minimize adverse effects on federally listed species.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the Endangered Species Act, the Forest Service must comply with the following terms and conditions, which implement the reasonable and prudent measures described above, and outline reporting and monitoring requirements. These terms and conditions are non-discretionary:

1. Implement project conservation measures (as detailed on pages 19 and 23 of the BA; and pages 4-5 of this BO).
2. Continue to report incidental take to the Fish and Wildlife Service quarterly.
3. Provide a copy of the results of the Herbicide Diversity Study to the Pennsylvania Field Office, when completed.

Reinitiation Notice

In accordance with our June 1, 1999, biological opinion, and the June 1, 2000, amendment to that opinion, incidental take that occurs as a result of this and other projects on the ANF cannot exceed the annual or cumulative incidental take levels established in the programmatic biological opinion. If implementation of any project or projects is anticipated to exceed these take levels, further consultation will be necessary. To ensure that incidental take is not exceeded, quarterly reports should continue to be provided to this office tabulating the amount of incidental take (as it occurs) on projects being implemented throughout the ANF, as indirectly measured by acres affected. In addition, you should be aware that this project may be subject to further consultation pending the outcome of future consultations on the Forest Plan or Forest Plan amendments.

Should new information reveal that the agency action may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; or the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or a new species is listed or critical habitat is designated that may be affected by the action; or the amount or extent of take as identified in Table 2 is exceeded, reinitiation of formal consultation as outlined in 50 CFR 402.16 is required.

To avoid potential delays in reviewing your project, please use the above-referenced USFWS project tracking number in any future correspondence regarding this project.

If you have any questions regarding our response, or if you need additional information, please contact Jennifer Dombroskie of my staff at 814-234-4090.

Sincerely,

David Densmore
Supervisor

cc:

ES file - archive

Readers file

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filename: Herbicide Diversity Study Removal Harvest MBO_070605

LITERATURE CITED

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- Romme, R.C., K. Tyrell and V. Brack, Jr. 1995. Literature summary and habitat suitability index model: components of summer habitat for the Indiana bat, *Myotis sodalis*. Report submitted to the Indiana Department of Natural Resources, Division of Wildlife, Bloomington, Indiana by 3D/Environmental, Cincinnati, Ohio. Federal Aid Project E-1-7, Study No. 8, 38 pp.