

Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850

March 8, 2004

John Schultz, District Ranger
Allegheny National Forest
Bradford Ranger District
Star Route 1, Box 88
Bradford, PA 16701

Dear Mr. Schultz:

This responds to your letter of November 6, 2003, requesting Fish and Wildlife Service review of the Sugar Run 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 Service's 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 the 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 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. The Service 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 Service's 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 by the Service 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 Sugar Run BA, which describes the potential effects of the proposed project on federally listed species. The proposed project types (e.g., timber harvesting, road construction) 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, and northern riffleshell; and a “may affect, likely to adversely affect” determination for the bald eagle and 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. 36) indicates that all sites proposed for treatment were surveyed, but that no small-whorled pogonias were found. Considering the results of these surveys, we concur with the Forest Service’s “no effect” determination.

Clubshell and Northern Riffleshell

The clubshell and northern riffleshell are known to occur in the Allegheny River; however, the Sugar Run project area does not drain into the Allegheny River. Additionally, there are no perennial streams within the Sugar Run 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

The closest known bald eagle nest site is located approximately two miles west of the project area, and no timber harvesting or new road construction will occur within 3.5 miles of this nest

(BA p.30, 31). The western half of the project area, particularly the Hammond Run watershed, provides the best potential eagle nesting habitat due to low road density, close proximity to the Allegheny Reservoir, and the presence of super-canopy white pine trees for nesting (BA, p. 30). In acknowledgement of this, the Forest Service will conduct a spring, leaf-off nest survey in the Hammond Run watershed prior to carrying out any timber harvesting, road construction, or trail re-location (BA, p. 31). If an eagle nest is found in the project area, further consultation on this project would be necessary.

Sugar Bay and the Allegheny Reservoir are adjacent to the project area and provide suitable bald eagle foraging habitat. Bald eagles have also been occasionally observed along lower Sugar Run (in the project area) within 1 mile of the reservoir (BA, p. 30). However, project activities will occur at least 0.25 mile from of the observed foraging areas on Sugar Run, so adverse effects to foraging eagles are not likely to occur.

Based on the information provided in the BA, we do not concur with your determination that implementation of modified alternative 7 is likely to adversely affect the bald eagle. No activities will occur close enough to any known eagle nesting or foraging areas to cause significant adverse effects. Because any effects are anticipated to be insignificant or discountable, we conclude that the implementation of modified alternative 7 is not likely to adversely affect the bald eagle.

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 Service’s programmatic BO, we believe that adverse effects are likely to occur to the Indiana bat from timber harvesting and road construction under the Forest Service’s management program activities. 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 Sugar Run project that will minimize the impact of any incidental take, we have concluded that activities associated with the Sugar Run project will not result in adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the Service’s programmatic BO.

The following biological opinion is based on potential adverse effects to the Indiana bat from new road construction, and the removal of suitable habitat during timber harvesting associated with the Sugar Run project. This Tier 2 BO identifies the incidental take anticipated due to implementation of the Sugar Run project (modified Alternative 7), and the cumulative total of incidental take which has occurred (Table 1).

Description of the Proposed Action

The proposed project involves various timber management activities, reforestation practices, wildlife habitat improvement activities, and transportation/road activities within the Sugar Run Project area (Table 2, pp. 5-6 of the BA) in Corydon, Lafayette, and Bradford Townships,

McKean County, Pennsylvania. The project area is approximately 13,360 acres, of which 88% (11,810 acres) is National Forest System lands, and 12% (1550 acres) is privately owned. Currently, 83% of the project area is mature second-growth forest, and 15% has undergone final harvest treatments in the past 30 years.

Seven alternatives were assessed in the BA for the 2005-2018 planning seasons. The Forest Service has selected modified alternative 7 as the preliminary preferred alternative; therefore, this biological opinion focuses on the effects expected due to implementation of this alternative. The proposed action (modified alternative 7) involves a variety of even-aged timber harvest treatments, wildlife habitat improvement work, and understory treatments, in order to achieve a more balanced age class distribution, improve stand structure and diversity, and enhance wildlife habitat conditions. Specifically, 1478 acres of timber harvesting will occur, including: 288 acres of shelterwood seed cuts, 523 acres of thinning, 105 acres of selection harvest, 555 acres of shelterwood removal, and 7 acres of clearcut.

In addition to timber management activities, modified alternative 7 includes 1.4 miles of new road construction, as well as gravel pit construction and expansion to support road construction and maintenance activities. Road-related activities will affect 10.3 acres of forested habitat.

All the above activities will affect a total of 1488.3 forested acres, and are therefore counted toward the cumulative annual incidental take as 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, pp. 18, 23), based on the presence of suitable Indiana bat habitat in the project area, and the assumption that the habitat is occupied by this species.

- 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 in a variety of sizes 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%.
- 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.

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 through consultation with FWS, during the time period when the bats are likely to be in hibernation (November 15 through March 15). Trees identified as immediate threats to public safety may, however, be removed at any time following consultation with the FWS. Such removal, however, will be a last resort, after other alternatives (such as fencing the area, etc.) have been considered and deemed unacceptable.

Activities within a 1.5-mile radius of Indiana bat maternity sites shall be subject to further consultation. Such activities include those which 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 FWS to determine/develop standards and guidelines and/or a conservation plan to protect and manage the site.

Other proposed activities associated with modified alternative 7 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 wildlife habitat improvement projects, invasive weed treatments, reforestation activities, road improvement and decommissioning projects, and stream bank planting.

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.

A biennial survey was conducted on Indiana bat Priority I hibernacula since the issuance of the Service's programmatic BO. Approximately 102,870 Indiana bats were counted during surveys

conducted in 2000 and 2001. This compares to 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 2003, 236 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 on private land adjacent to the ANF in 2001.

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 of 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, the Service does 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% increase in trees in the 90-109 year-old age class, and an increase of 9.6% in trees 110 years and older. Conversely, trees in the 60-89 year age class have decreased by 4.3%. Additionally, there has been a decrease of 9.9% in trees in the 20-59 year age class and a 2.1% decrease in understocked savannahs and openings. Stands in the 0-19 year age class have increased slightly (0.2%). Other changes relate to a decrease in timber harvest between 1998 and 2001. The average timber harvest on the ANF has decreased from an average annual harvest of 7556 acres between 1986 and 1997, to 2557 acres between 1998 and 2001. This represents a 66% reduction in timber harvest since 1997.

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%) involves thinning and salvage treatments, 175 acres (7%) includes uneven-aged management (i.e., group and individual tree selection), and 902 acres (62%) 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% 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% 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

Mist-netting surveys were conducted at 11 locations within the project area between 1998 and 2002. At one of these locations, potential Indiana bat vocalizations were identified (in 2000) using Anabat detectors. In addition, a fall swarming survey was conducted in 2002 at a cave located in the project area. Although no Indiana bats were captured, three other bats species were captured. Due to the potential detection of Indiana bats, as well as the presence of suitable

roosting and foraging habitat in the project area, the Forest Service has assumed that Indiana bats are present.

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 87% of the project area (BA, p. 15).

Effects of the Action

Service analysis of the preliminary preferred alternative (modified alternative 7) for the Sugar Run Project includes consideration of the assumed presence of Indiana bats and their habitat in the project area.

The Service anticipates that the proposed actions associated with the Sugar Run 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: 1478 acres of commercial timber harvesting, and 10.3 acres of forest removal due to road-related activities. In total, 1488.3 acres of forest are proposed to be cut or harvested between 2005 and 2018. Within the project area, timber harvesting and new road construction will result in a decrease of the total available suitable roosting and foraging habitat for Indiana bats by 4.5%. The amount of optimum roosting and foraging habitat will be approximately the same under modified alternative 7 as it is under the present condition (BA, p. 23).

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 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 Service's programmatic BO, we believe that adverse effects to 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 study sites. However, we have concluded that activities associated with the Sugar Run Project will not result in adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the Service's 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, but the degree of development can not be accurately projected at this time. Most subsurface rights on the Allegheny National Forest are not held by the Forest Service. Development of oil and gas resources depends on market conditions, and the economic status of the companies that develop these resources.

Conclusion

The actions and effects associated with the proposed Sugar Run 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 the Service's 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 to the Indiana bat from the removal of suitable foraging and roosting habitat during timber harvesting and road construction within the Sugar Run Project area. This Tier 2 BO identifies the incidental take anticipated due to implementation of the Sugar Run Project (modified alternative 7), and the cumulative total of incidental take, which has occurred (Table 1).

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 1. Thus, implementation of modified alternative 7 will result in the take of Indiana bats, as measured by the loss/alteration of 1488.3 acres of forested habitat between 2005 and 2018. 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 2003), has consistently been far below the annual levels estimated (authorized) in the programmatic BO (see Table 1). Therefore, we do not anticipate that implementation of this project will cause the take levels in the programmatic BO to be exceeded.

Table 1. 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, Pennsylvania

Activity	Acres Actually vs. (Authorized to be) Removed/Disturbed						
	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	Total ¹
Trail Construction							
• Pedestrian	.3 (0)	7.8 (8)	.3 (2)	.2 (2)	0 (2)	0 (2)	8.6 (16)
• Motorized - winter	.3 (4)	3.6 (0)	0 (4)	.6 (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)	12.96 (16)
Timber management							
• Clearcut	191 (220)	222 (220)	0 (420)	59 (220)	6 (220)	0 (220)	478 (1520)
• Shelterwood seed/prep	1558 (1640)	521 (1640)	299 (4000)	395 (2000)	575 (2000)	518 (2000)	3866 (13,280)
• Shelterwood removal	1203 (1864)	573 (1864)	488 (1864)	843 (1864)	381 (1864)	617 (1864)	4105 (11,184)
• Thinning	1526 (3225)	732 (3225)	240 (7000)	659 (3225)	988 (3225)	692 (3225)	4837 (23,125)
• Selection cut	458 (334)	184 (334)	17 (700)	40 (800)	63 (800)	0 (800)	762 (3768)
Wildlife Habitat Management	10 (10)	7 (10)	4 (10)	0 (10)	0 (10)	5 (10)	26 (60)
Prescribed burning	0 (40)	10 (40)	3 (40)	0 (40)	0 (40)	0 (40)	13 (240)
Roads							
• Construction	0 (1)	0 (0)	0 (73)	1.44 (55)	1.8 (55)	0 (55)	3.24 (239)
• Reconstruction/betterment	0 (0)	0 (0)	0 (55)	4.44 (55)	2.28 (55)	0 (55)	6.72 (220)
• Restoration	2 (2)	3 (3)	4.14 (3)	1.99 (3)	1.01 (3)	2.83 (3)	14.97 (17)
Oil and Gas Development	149 (149)	206 (112)	258.75 (112)	236.25 (112)	194.25 (112)	151.5 (112)	1195.75 (709)
TOTALS	5103.6 (7489)	2470.6 (7456)	1317.39 (14,287)	2243.0 (8394)	2212.3 (8394)	1986.7 (8394)	15,333.7 (54,414)

¹ Total actual take (FY 1998-2003) vs. authorized take (total estimated in programmatic BO)

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of the Indiana bat.

- Ensure that suitable Indiana bat foraging and roosting habitat is retained within the project analysis areas.
- Determine whether Indiana bat hibernacula occur in the project area.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the 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.

- Implement project conservation measures (as detailed on pages 18 and 19 of the BA; and pages 4-5 of this BO).
- Conduct a fall swarming survey of caves within the project area. In addition, conduct spring harp-trapping of caves in the project area. Submit survey results to the Fish and Wildlife Service for review.
- Continue to report incidental take to the Fish and Wildlife Service quarterly.

Reinitiation Notice

We would like to remind you that, 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 Forest, 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 1 is exceeded, reinitiation of formal consultation as outlined in 50 CFR 402.16 is required.

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

LITERATURE CITED

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.

cc:
Project file
Readers file
ES file: ANF - Mini-BO
ES:PAFO:Jdombroskie:ckc:3/5/04
Filename: Sugar Run MBO_030804.doc