



United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241

July 6, 2007



FILE COPY

Mr. Clyde N. Thompson
Forest Supervisor
Monongahela National Forest
200 Sycamore Street
Elkins, West Virginia 26241

Re: Cherry River Project Area, Gauley Ranger District

Dear Mr. Thompson:

This letter is in response to your request, dated May 17, 2007, for reinitiation of formal consultation (as outlined in 50 CFR 402.16) for the proposed project in the Cherry River Area of the Gauley Ranger District of the Monongahela National Forest (MNF) in Nicholas County, West Virginia. The previous biological opinion for this project was completed on June 16, 2006. Reinitiation of formal consultation is required because helicopter logging activities cannot be guaranteed to occur during the Indiana bat (*Myotis sodalis*) hibernation period, as was described in the previous formal consultation. This document supplements the previous biological opinion and only addresses impacts associated with the proposed project changes. The following comments are provided pursuant to the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of endangered and threatened species.

On March 26, 2002, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion for the continued implementation of the 1986 (as amended) Monongahela National Forest Land and Resource Management Plan (Forest Plan). In July, 2006 that programmatic opinion was updated and revised to address the proposed 2006 Forest Plan Revision, as well as the most current understanding of Indiana bat biology and life history. While the previous biological opinion for this project was completed under the 2002 programmatic opinion, the action is being finalized and implemented after the Forest Plan Revision is in effect. In order to incorporate the most current information as well as address the timing of the proposed action, this reinitiation references the July 2006 programmatic opinion, rather than the previous March 2002 programmatic opinion.

The programmatic opinion established a two-tiered consultation process for Forest Plan activities, whereby the Service reviews, as they are developed, site-specific projects that may affect federally listed species. The Service determines 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 opinion. We consider this site-specific project analysis for the Cherry River project area to be "Tier 2" of the consultation process, with the programmatic consultation (and resulting biological opinion) constituting the "Tier 1" consultation. Our project-specific (Tier 2) consultation focuses on: 1) compliance with the reasonable and prudent measures and associated terms and conditions in the programmatic opinion; 2) consistency with the scope and effects previously analyzed and disclosed in the programmatic opinion and associated Biological Evaluation; 3) project-specific incidental take vs. take estimated in the programmatic opinion; 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 opinion, 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).

Description of the Proposed Action

The Cherry River project area lies completely within the Cherry River watershed in Nicholas County, and is located north of Richwood, West Virginia. The project area is bounded by the river and State Route 55 on the south and by State Route 15/5 on the north. The project area is almost completely surrounded by private land and encompasses approximately 9,374 acres (6,381 acres of National Forest System land and 2,993 acres of private land). The area is characterized by northern hardwood forest and a dissected high plateau with sharp valleys, many high peaks, and erosive soils. Elevations range from between 1,900 feet at the mouth of the Cherry River to peaks at 4,600 feet and higher.

The proposed action (identified as Alternative C in the Biological Evaluation) involves a variety of timber harvest activities within the next 5 to 7 years on approximately 1,737 acres using conventional and helicopter skidding; 3 miles of new road construction and reconstruction; and 3.2 miles of road maintenance. The description of the proposed action remains the same as described in the previous Tier 2 biological opinion, with the exception that the 1,092 acres of proposed helicopter logging will not occur during the Indiana bat hibernation period (November 14 – March 31), as was originally proposed.

The MNF previously proposed to conduct helicopter assisted timber harvest during the Indiana bat hibernation period. The helicopter season in West Virginia normally starts when leaf-off conditions develop, usually during late October. A felling crew arrives one to two months before the helicopter to fell the designated trees for flying. That typically results in felling operations occurring earlier in the fall (generally early October into early November). A restriction against felling prior to November 15 would mean that the

helicopter would have to wait until mid-December or later to start flying. Since the original consultation was completed, the helicopter contractor has indicated that they prefer to fly areas above 2000 feet before the beginning of December because of the typical weather conditions in the area.

Status of the Indiana Bat

The current status of the Indiana bat, its life history, and continued threats are thoroughly described in pages 27 – 43 of the July 2006 programmatic opinion. No significant new information on the species has become available since the time of that opinion.

Environmental Baseline

The baseline conditions in relation to the Indiana bat and its habitat within the MNF are fully described in the July 2006 programmatic opinion on pages 39-40 and 43-47. These descriptions remain current with the following exceptions. Surveys were conducted during the summer of 2006 at the site of the suspected maternity colony in Pendleton County (as described on page 39 of the July 2006 programmatic opinion). Emergence counts at the previously identified roost tree documented over 30 bats emerging from the tree, however subsequent mist netting in the area suggests that no maternity activity is occurring at the site. Alternatively these surveys indicate that the tree and surrounding area are being used by a bachelor colony of male Indiana bats (B. Douglas, C. Stihler, D. Arling, C. Sanders; personal observations).

Additional surveys were conducted in the summer of 2006 at the previously documented maternity colony on the MNF in Tucker County. While the roost trees used in the previous years have become unsuitable, habitat reviews indicate that this area continues to provide a large number of potentially suitable maternity roost trees. Although numerous male Indiana bats were captured, mist net surveys did not result in the capture of any female Indiana bats. These results indicate that Indiana bats continue to use the areas for roosting and foraging throughout the summer and that a maternity colony could potentially exist in the area.

Mist net surveys are currently being conducted on the MNF for the 2007 season. Full results of those surveys are not yet available.

Status of the Species Within the Action Area

The Status of the Species within the Action Area is described within the June 16, 2006 Tier 2 biological opinion. Additional information specific to this project is as follows:

On June 12, 2007 the MNF's contractor conducting annual mist net monitoring captured an adult male Indiana bat near the Cherry River at one of the monitoring sites near Richwood. The capture site is approximately 2.85 miles from the closest area of activity proposed under the Cherry River project. This is the same site where a juvenile male was

captured in 1999. The contractor attached a radio transmitter to this bat (060) and followed it for two days to identify roost site(s). The tracking effort on this bat is continuing and is being conducted by MNF staff. It appears that this bat may be roosting in a residence in Richwood and further efforts to validate this finding are currently underway.

Additional mist netting was conducted at the capture site on Saturday, June 16 and resulted in the capture of two Indiana bats, one of the bats escaped before its sex was determined, however, the other bat was identified as an adult male and was fitted with a transmitter. This bat (080) was tracked the next day and the following 3 days to various roost sites in the Desert Branch project area (see the March 15, 2005 Tier 2 biological opinion). The roosts that the bat has been using are in areas that were thinned in September 2006 as part of the Desert Branch sale. This bat has chosen to roost in one of the snags left standing in a wildlife opening that was created as part of this sale. Consistent with the findings of the Desert Branch Tier 2 biological opinion and the 2006 Programmatic Opinion, it appears that the thinning activities and creation of wildlife openings for the Desert Branch project have not adversely affected the availability or suitability of roost trees for Indiana bat.

Effects of the Action

The previous Tier 2 biological opinion authorized take of Indiana bats in the form of 624 acres of timber harvest and 21 acres of road construction/maintenance activities. Under this reinitiation, timber harvest activities that could result in the potential take of Indiana bats have been increased to 1,716 acres (Table 1).

Potential adverse effects of the proposed action are consistent with the effects described on pages 51-56 of the July 2006 programmatic opinion. The implementation of the terms and conditions of the programmatic opinion, and project-specific and forest wide avoidance and conservation measures, will minimize any incidental take and ensure that this area will continue to provide potential habitat to support Indiana bats. All proposed activities fall within the scale and the scope addressed in the programmatic opinion and within the level of take identified in the Incidental Take Statement. If future monitoring conducted on the MNF identifies additional evidence of Indiana bats utilizing the project areas, then the MNF should consult with the Service and the West Virginia Division of Natural Resource to develop further protective measures in accordance with the MNF Forest Plan and the programmatic opinion.

Cumulative Effects

No additional cumulative effects beyond those described in the previous Tier 2 biological opinion are anticipated.

Conclusion

The actions and effects associated with the proposed activities in the Cherry River Project Area are consistent with those identified and discussed in the Service's July 2006 programmatic opinion. After reviewing the size and scope of the project, the environmental baseline, the overall status of the Indiana bat, new information on the species, 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 because: 1) surveys indicate there is only a low likelihood of Indiana bat use of the area; 2) a large portion of the action area will remain as suitable Indiana bat habitat; and 3) the likelihood of take of individual bats is low due to the conservation measures proposed by the Forest Service.

Incidental Take Statement

The Service anticipates that the proposed actions associated with the Cherry River Project Area will result in the incidental take of Indiana bat as outlined in Table 1. The type and amount of anticipated incidental take is consistent with that described in the programmatic opinion and does not cause the total annual level of incidental take (via harm to forested acres) in the programmatic opinion to be exceeded. The actual incidental take reported by the Forest Service has consistently been below the annual levels estimated (exempted) in the programmatic opinion, therefore, we do not anticipate that implementation of this project will result in take levels being exceeded in the programmatic opinion.

Table 1. Authorized incidental take (as measured indirectly by acreage) due to the removal or disturbance of potential Indiana bat habitat on the Monongahela National Forest during calendar year 2007.

Activity	Cherry River Project Area	Other Projects Authorized during 2007	Total (2007)	Annual Incidental Take Authorized
Timber Harvest	1,716	0	1,716	6,900
Road Construction/Maintenance	21	0	21	78

Please note that as per the terms and conditions of the July 2006 programmatic opinion, Tier 2 biological opinions, including this one, will track the amount of incidental take authorized. However, incidental take does not actually occur until the time that the project is implemented. Most projects authorized under Tier 2 biological opinions will not be implemented for a number of years, therefore the Forest Service must annually report the total amount of incidental take that occurs each year and for each project. This number will be compared to the maximum annual incidental take as authorized in the July 2006 programmatic opinion. If it is determined during future project planning or over the course of project implementation that either the authorized amount of project

specific incidental take as detailed above, or the maximum amount of annual incidental take as detailed in the programmatic opinion, may be exceeded, additional consultation with the Service will be required.

Reasonable and Prudent Measures

The Forest Service must implement all pertinent reasonable and prudent measures (RPM) and terms and conditions stipulated in the programmatic opinion to minimize the impact of the anticipated incidental take of Indiana bats, and to be exempt from the take prohibitions of section 9 of the ESA. The Service has determined that implementing the reasonable and prudent measures specified in the programmatic opinion, in conjunction with the project specific avoidance and conservation measures as described in the April 2006 Cherry River Project Area Biological Evaluation, will appropriately minimize the impact of incidental take anticipated for the proposed activities in this project area. Therefore, the following site-specific RPM will apply:

- The MNF will implement site-specific avoidance and conservation measures as proposed in the April 2006 Cherry River Project Area Biological Evaluation as amended by the May 17, 2006 Biological Evaluation. Timber harvest and road construction/maintenance activities will be implemented consistent with Alternative C as described in the Biological Evaluation.

Reinitiation Notice

Incidental take that occurs as a result of this and other projects on the MNF cannot exceed the annual or cumulative incidental take levels established in the programmatic 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 be provided to this office tabulating the amount of incidental take on projects being implemented and authorized throughout the MNF, as indirectly measured by acres affected.

This fulfills your consultation requirements for this action. Should new information reveal effects of the agency action that 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.

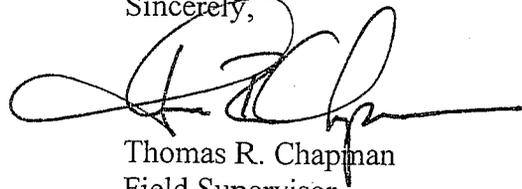
The Service appreciates the opportunity to work with the Forest Service in fulfilling our mutual responsibilities under the Endangered Species Act.

Mr. Clyde N. Thompson
July 6, 2007

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If you have any questions regarding this letter, please contact Ms. Barbara Douglas of my staff at (304) 636-6586 ext. 18, or at the letterhead address.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Chapman', with a long horizontal flourish extending to the right.

Thomas R. Chapman
Field Supervisor

Mr. Clyde N. Thompson
July 6, 2007

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cc:

Project File

Reader File

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