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U.S. Fish and Wildlife Service
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AESO/SE
02-21-03-F-0238

September 3, 2003

Ms. Nora Rasure
Forest Supervisor
Coconino National Forest
Supervisor's Office
2323 East Greenlaw Lane
Flagstaff, Arizona 86004-1810

Dear Ms. Rasure:

This letter constitutes the U.S. Fish and Wildlife Service's biological opinion based on our review of the Hazard Tree Removal Project along Highway 87, Mogollon Rim Ranger District, Coconino National Forest, Coconino County, Arizona. This biological opinion analyzes the project's effects on the threatened Mexican spotted owl (*Strix occidentalis lucida*) (MSO) and threatened bald eagle (*Haliaeetus leucocephalus*) in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). We received your April 21, 2003, request for formal consultation on April 23, 2003. In this request, you determined that activities associated with the removal of large diameter trees and snags within the Blue protected activity center (PAC) (#040737) would likely adversely affect the MSO. In your letter you also requested our concurrence that the proposed action may affect, but is not likely adversely affect, the bald eagle. We concur with your determination. The basis for our concurrence is found in Appendix A.

This biological opinion is based on information provided in the April 21, 2003, Biological Assessment and Evaluation (BAE), conversations with your staff, and other sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the MSO, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

Consultation History

Details of the consultation history are summarized in Table 1.

Table 1. Summary of Consultation History

<i>Date</i>	<i>Event</i>
April 11, 2003	The Forest Service requested emergency consultation on the immediate removal of hazard trees within the Blue MSO PAC that were in danger of falling on Highway 87. In addition, the removal of snags and dying trees that do not currently threaten the highway, would be included in the consultation.
April 23, 2003	The Forest Service requested formal consultation on effects of the hazard tree removal on the MSO.
June 11, 2003	Forest Service and Fish and Wildlife Service personnel examined the hazard trees that were removed and the trees to be removed this fall.
September 2, 2003	The Forest Service informed us that no trees were harvested during the 2003 MSO breeding season as initially proposed.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The project is located along State Highway 87, between mile markers 297 and 298, on the Mogollon Rim Ranger District, Coconino National Forest, in an area burned by the 2002 Springer Fire (see consultation 02-21-02-F-0199). A combination of drought, fire, and bark beetles has left many dead and dying trees along 0.75 mile of the highway. Dead and dying trees leaning towards Highway 87 and Forest Road 10D may fall onto the road and pose a potential threat to motorists.

The Forest Service originally identified approximately 20 trees that posed an immediate hazard for vehicles traveling along the highway and along Forest Road 10D, which parallels the highway. These dead and dying trees were considered hazardous because their bases were rotten and they were leaning toward the highway. The Forest Service planned to remove those trees during the 2003 MSO breeding season (April 21, 2003, BAE). However, no trees were cut this past summer (D. Spaeth, pers. comm. 2003). The current plan is to remove 64 trees identified as

future threats to motorists over the next three years outside the MSO breeding season. Following harvest, cut oaks will likely be gathered as fuelwood and some ponderosa pine trees will be left on the ground as coarse woody debris.

STATUS OF THE SPECIES

The Mexican spotted owl was listed as a threatened species in 1993 (USDI 1993). The primary threats to the species were cited as even-aged timber harvest and catastrophic wildfire, although grazing, recreation, and other land uses were also mentioned as possible factors influencing the MSO population. The Service appointed the Mexican Spotted Owl Recovery Team in 1993, which produced the Recovery Plan for the Mexican Spotted Owl (Recovery Plan) in 1995 (USDI 1995).

A detailed account of the taxonomy, biology, and reproductive characteristics of the MSO is found in the Final Rule listing the MSO as a threatened species (USDI 1993) and in the Recovery Plan (USDI 1995). The information provided in those documents is included herein by reference. Although the MSO's entire range covers a broad area of the southwestern United States and Mexico, the MSO does not occur uniformly throughout its range. Instead, it occurs in disjunct localities that correspond to isolated forested mountain systems, canyons, and in some cases steep, rocky canyon lands. Surveys have revealed that the species has an affinity for older, well-structured forest, and the species is known to inhabit a physically diverse landscape in the southwestern United States and Mexico.

The U.S. range of the MSO has been divided into six recovery units (RU), as discussed in the Recovery Plan. The primary administrator of lands supporting the MSO in the United States is the Forest Service. Most owls have been found within Forest Service Region 3 (including 11 National Forests in Arizona and New Mexico). Forest Service Regions 2 and 4 (including 2 National Forests in Colorado and 3 in Utah) support fewer owls. According to the Recovery Plan, 91 percent of MSO known to exist in the United States between 1990 and 1993 occurred on lands administered by the Forest Service.

The Upper Gila Mountains RU is a relatively narrow band bounded on the north by the Colorado Plateau RU and to the south by the Basin and Range-West RU. The southern boundary of this RU includes the drainages below the Mogollon Rim in central and eastern Arizona. The eastern boundary extends to the Black, Mimbres, San Mateo, and Magdalena mountain ranges of New Mexico. The northern and western boundaries extend to the San Francisco Peaks and Bill Williams Mountain north and west of Flagstaff, Arizona. This is a topographically complex area consisting of steep foothills and high plateaus dissected by deep forested drainages. This RU can be considered a "transition zone" because it is an interface between two major biotic regions: the Colorado Plateau and Basin and Range Provinces (Wilson 1969). Most habitat within this RU is administered by the Kaibab, Coconino, Apache-Sitgreaves, Tonto, Cibola, and Gila National Forests. The north half of the Fort Apache and northeastern corner of the San Carlos Indian reservations are located in the center of this RU and also support MSOs.

The Upper Gila Mountains RU consists of pinyon/juniper woodland, ponderosa pine/mixed conifer forest, some spruce/fir forest, and deciduous riparian forest in mid- and lower-elevation canyon habitat. Climate is characterized by cold winters and over half the precipitation falls during the growing season. Much of the mature stand component on the gentle slopes surrounding the canyons had been partially or completely harvested prior to the species' listing as threatened in 1993; however, MSO nesting habitat remains in steeper areas. MSO are widely distributed and use a variety of habitats within this RU. Owls most commonly nest and roost in mixed-conifer forests dominated by Douglas fir and/or white fir, and canyons with varying degrees of forest cover (Ganey and Balda 1989, USDI 1995). Owls also nest and roost in ponderosa pine-Gambel oak forest, where they are typically found in stands containing well-developed understories of Gambel oak (USDI 1995).

A reliable estimate of the numbers of owls throughout its entire range is not currently available (USDI 1995) and the quality and quantity of information regarding numbers of MSO vary by source. USDI (1991) reported a total of 2,160 owls throughout the United States. Fletcher (1990) calculated that 2,074 owls existed in Arizona and New Mexico. However, Ganey *et al.* (2000) estimates approximately $2,950 \pm 1,067$ (SE) MSOs in the Upper Gila Mountains RU alone. The Forest Service Region 3 most recently reported a total of approximately 980 protected activity centers (PACs) established on National Forest lands in Arizona and New Mexico (USDA Forest Service, Southwestern Region, December 19, 2002). Based on this number of MSO sites, total numbers in the United States may range from 980 individuals, assuming each known site was occupied by a single MSO, to 1,960 individuals, assuming each known site was occupied by a pair of MSOs. The Forest Service Region 3 data are the most current compiled information available to us; however, survey efforts in areas other than National Forest System lands have likely resulted in additional sites being located in all Recovery Units. Currently, we estimate that there are likely 12 PACs in Colorado (not all currently designated) and 105 PACs in Utah.

Since the owl was listed, we have completed or have in draft form a total of 117 formal consultations for the MSO. These formal consultations have identified incidences of anticipated incidental take of MSO in 289 PACs. The form of this incidental take is almost entirely harm or harassment. These consultations have primarily dealt with actions proposed by the Forest Service, Region 3. However, in addition to actions proposed by the Forest Service, Region 3, we have also reviewed the impacts of actions proposed by the Bureau of Indian Affairs, Department of Defense (including Air Force, Army, and Navy), Department of Energy, National Park Service, and Federal Highway Administration. These proposals have included timber sales, road construction, fire/ecosystem management projects (including prescribed natural and management ignited fires), livestock grazing, recreation activities, utility corridors, military and sightseeing overflights, and other activities. Only one of these projects (release of site-specific owl location information) has resulted in a biological opinion that the proposed action would likely jeopardize the continued existence of the MSO.

In 1996, the Service issued a biological opinion on Forest Service Region 3's adoption of the Recovery Plan recommendations through an amendment of their Forest Plans. In this non-jeopardy biological opinion, we anticipated that approximately 151 PACs would be affected by activities that would result in incidental take of MSOs, with approximately 91 of those PACs located in the Upper Gila Mountains RU. In addition, we completed a reinitiation of the 1996 Forest Plan Amendments biological opinion which anticipated the additional incidental take of five MSO PACs in Region 3 due to the rate of implementation of the grazing standards and guidelines, for a total of 156 PACs. To date, consultation on individual actions under the amended Forest Plans have resulted in 204 PACs adversely affected, with 93 of those in the Upper Gila Mountains RU.

ENVIRONMENTAL BASELINE

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat to provide a platform from which to assess the effects of the action now under consultation.

A. Status of the species within the action area

The Blue PAC (#040737) was delineated after an owl was located during the summer of 2000. The site was informally monitored in 2001, and no owls were detected. However, a dead MSO was located on Highway 87 adjacent to the PAC on October 4, 2001. In May 2002, the Springer Fire started within the Blue PAC and burned approximately 80 acres within the PAC. Most of the fire impacts to the Blue PAC occurred during the first eight hours of burning. Suppression activities included building approximately 1.0 mile of dozer line within the PAC, felling burning snags and trees within the PAC, and mopping up smoking stumps and logs for several days afterward. The 2000 roost location is approximately 0.75 mile from the portion of the fire south of the highway and approximately 0.3 mile from the fire on the north side of Highway 87. The roost location was not affected by the Springer fire or suppression activities associated with the fire.

B. Factors affecting species' environment within the action area

Actions within the project area that affect MSO include both domestic and wild ungulate grazing, development resulting in more people and traffic, and fuels reduction treatments. These activities have the potential to reduce the quality of MSO nesting, roosting, and foraging habitat, and may cause disturbance during the breeding season. The Blue PAC is located within the Bar-T-Bar Range Allotment. At this time, we do not have information regarding livestock access and use of protected habitat within the PAC. Most of the PAC is located on relatively steep slopes (approximately 30 percent slopes), but the PAC is adjacent to, and includes portions of, relatively

flat areas that may be used by livestock. Development and urban growth is occurring throughout this area and the Blue PAC is bordered by private property to the south and Highway 87 to the north. On October 4, 2001, a dead MSO was located on Highway 87, adjacent to the Blue PAC. It appeared that the owl was killed by a vehicle. The private property adjacent to the PAC was planned for logging, but we have no information regarding any hauling on Forest Service roads through the PAC that may have occurred from this action. Fuels reduction treatments, though critical to reducing the risk of catastrophic wildfire, may also have short-term adverse effects to MSO through habitat modification and disturbance. Currently, the closest fuels reduction project to the Blue PAC is the Blue Ridge Urban Interface Project (Consultation #02-21-00-F-0373). The project included prescribed burning of approximately 481 acres of the Blue Ridge PAC (#040705), immediately adjacent to the Blue PAC. We did not anticipate any incidental take for MSO from this action based on the Forest Service's implementation of the Recovery Plan guidelines for all actions in the Blue Ridge PAC and implementation of conservation measures which included surveying unoccupied potential habitat prior to habitat altering activities.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action, that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

The proposed action will result in the removal of 64 ponderosa pine and Gambel oak trees identified as current or potential hazards to motorists. This will result in the disturbance of approximately five acres of habitat within the Blue MSO PAC. In order to minimize disturbance to nesting owls, tree removal will occur outside the MSO breeding season (March 1 to August 31).

The following table is a summary of the estimated acres and number and size of ponderosa pine and Gambel oak trees to be removed within the PAC.

Table 2. Total hazard trees identified within the 2002 Springer Fire perimeter along Highway 87 and Forest Road (FR) 10D. Trees measured in inches at diameter at breast height (dbh).

	Ponderosa pine < 9" dbh	Ponderosa pine 9"-18" dbh	Ponderosa pine 18"-24" dbh	Ponderosa pine > 24"	Gambel oak 6"-12"
Highway 87	2	17	2	10	10
FR 10D	0	5	7	10	1
TOTALS	2	22	9	20	11

The project will remove approximately 51 ponderosa pine trees greater than nine inches dbh and 11 Gambel oak trees from the Blue PAC. Cutting trees and snags within MSO PACS greater than nine inches dbh is inconsistent with the desired management and direction provided in the Recovery Plan (USDI 1995). Some of the trees harvested will be left as down and dead material, which may enhance MSO prey habitat through the addition of large downed logs. However, some trees may be removed for their commercial value. In addition, due to the proximity to Highway 87 and Forest Road 10D, the Gambel oak logs and sound pine will most likely be removed by fuelwood collectors. The removal of large diameter trees will also reduce canopy cover within the PAC and may contribute to windthrow by opening up areas within the burned area and along the roads which run through the PAC. The value of these trees to MSO habitat is relatively low due to their proximity to the roads and because this area burned severely during the 2002 Springer Fire.

A 100-acre nest buffer has not been designated for the Blue PAC based on the lack of known owl locations within the PAC. However, the trees identified for removal are greater than 0.25 mile from the known roost location.

In summary, we believe that MSO associated with the Blue PAC could be adversely affected through impacts to protected habitat from the removal of large trees and snags. This impact may be minimized by operating outside the breeding season and leaving large logs for MSO prey habitat.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions are subject to the consultation requirements established under section 7 and, therefore, are not considered cumulative to the proposed action. Future actions within the project area that are reasonably certain to occur include recreation, fuels reduction treatments and/or commercial logging on the adjacent private land, increased development and other associated actions. These activities have the potential to reduce the quality of MSO nesting, roosting, and foraging habitat,

cause disturbance to breeding MSOs, and therefore contribute as cumulative effects to the proposed action. However, because of the predominant occurrence of MSOs on Federal lands in this area, and because of the role of the respective Federal agencies in administering the habitat of the MSO, actions to be implemented in the future by non-Federal entities on non-Federal lands are considered to be of minor impact to the owl population, but may have significant impacts on the Blue MSO PAC.

Conclusion

After reviewing the current status of the MSO, the environmental baseline for the action area, the effects of the action, and the cumulative effects, it is our biological opinion that the removal of hazard trees within the Blue PAC did not and will not likely jeopardize the continued existence of the MSO. This conclusion is based on the following:

1. The removal of 64 trees within five acres of the Blue PAC will not reduce the overall habitat quality for MSO. The majority of trees to be removed are immediately adjacent to Highway 87 and lie within a five acre stretch of habitat that was severely burned by the Springer Fire.
2. The trees will all be removed outside the breeding season (September through February), so potentially nesting birds will not be disturbed by harvesting activities.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined under section 3 of the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined under 50 CFR 17.3 as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. "Incidental take" is defined under 50 CFR 402.02 as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2) of the Act, taking that is incidental to, and not intended as part of, the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of an Incidental Take Statement.

Amount or Extent of Take Anticipated

The Fish and Wildlife Service does not anticipate that the proposed action will incidentally take any Mexican spotted owls. We believe this for the following reasons:

1. There will be no tree removal during the MSO breeding season. This will minimize disturbance impacts to the MSO;
2. Though current survey information for the Blue PAC is insufficient to delineate a nest buffer, the area of tree removal within the PAC is adjacent to Highway 87 and Forest Road 10D in a severely burned five acre area that is not considered nesting or roosting habitat; and,
3. The removal of 51 ponderosa pine trees greater than nine inches DBH and eleven Gambel oak from the Blue PAC will have minimal effects to overall habitat quality within the PAC.

The Fish and Wildlife Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. Sections 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. Sections 668-668d).

DISPOSITION OF DEAD, INJURED, OR SICK MSO

Upon locating a dead, injured, or sick spotted owl, initial notification must be made to the Service's Law Enforcement Office, 2450 West Broadway Suite #113, Mesa, Arizona 85202 (telephone: 480/967-7900) within three working days of its finding. Written notification must be made within five calendar days and should include the date, time, and location of the animal, a photograph, if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to this office. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling specimens to preserve the biological material in the best possible state. If possible, the remains of intact owl(s) shall be provided to this office. If the remains of the owl(s) are not intact or are not collected, the information noted above shall be obtained and the carcass left in place. Injured animals should be transported to a qualified veterinarian by an authorized biologist. Should the treated owl(s) survive, the Service should be contacted regarding the final disposition of the animal.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that the Blue MSO PAC be monitored annually for at least five years and that the results of the monitoring be provided to us.
2. We recommend that the Forest Service monitor MSO PACs to locate nest and roost locations in PACs, and that 100-acre nest/roost buffers be established according to the methods described by Ward and Salas (2000) as outlined in a June 5, 2000, letter from the Fish and Wildlife Service Regional Director to Recovery Team Leader Dr. William Block. These buffers should be considered when evaluating future suppression actions.

In order to keep us informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitat, we request notification of the implementation of any conservation recommendations.

REINITIATION - CLOSING STATEMENT

This concludes formal consultation on the action outlined in this biological opinion. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals 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; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

We appreciate your consideration of the threatened Mexican spotted owl. For further information, please contact Shaula Hedwall at (928) 226-0614 (x103), or Brenda Smith at (928)

Ms. Nora Rasure

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226-0614 (x101) of our Flagstaff Suboffice. Please refer to the consultation number 2-21-03-F-0238 in future correspondence concerning this project.

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Field Supervisor, Fish and Wildlife Service, New Mexico Field Office, Albuquerque, NM
District Ranger, Mogollon Rim Ranger District, Happy Jack, AZ (Attn: Larry Sears)
Wildlife Staff, Mogollon Rim Ranger District, Happy Jack, AZ (Attn: Cathy Taylor)
Forest Supervisor, Coconino National Forest, Flagstaff, AZ (Attn: Cecelia Overby)

John Kennedy, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ

W:\Shaula Hedwal\Hazard Tree Removal along HWY 87 (Springer Fire Area).wpd/ij

LITERATURE CITED

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APPENDIX A - CONCURRENCE

This appendix contains our concurrence with your determination that the proposed action may affect, but is not likely to adversely affect, the bald eagle.

Bald Eagle (*Haliaeetus leucocephalus*)

The bald eagle south of the 40th parallel was listed as endangered under the Endangered Species Preservation Act of 1966, on March 11, 1967 (USFWS 1967), and was reclassified to threatened status on July 12, 1995 (USFWS 1995). No critical habitat has been designated for this species. The bald eagle was proposed for delisting on July 6, 1999 (USFWS 1999). The bald eagle is a large bird of prey that historically ranged and nested throughout North America except extreme northern Alaska and Canada, and central and southern Mexico.

Bald eagles are primarily winter visitors to the Coconino National Forest occupying all habitat types and elevations. Wintering eagles arrive in the fall, usually late October or early November, and leave in early to mid-April. They feed on fish, waterfowl, terrestrial vertebrates, and carrion. Eagles are often seen perched in trees or snags near roadways where they feed on road-killed animals. At night, small groups or individual eagles roost in clumps of large trees in protected locations such as drainages or hillsides. Key habitat components include nighttime roosts and prey availability. Roost trees are usually live or dead, large ponderosa pine trees with open canopies on slopes that provide protection from inclement weather. Bald eagles do not breed within the action area and no bald eagle roosts have been identified within the action area or the Mogollon Rim Ranger District.

The project will remove up to 20 snags over 24 inches dbh and nine snags between 18 and 24 inches dbh. Such trees could provide perches for bald eagles to look for road-killed animals along the highway. Project activities may affect habitat by removing these potential perches along 0.5 to 0.75 mile of highway. The impact of removing these snags on the bald eagle should be negligible since only those snags that would fall on the highway or Forest Road 10D would be cut. Many more snags of all sizes exist within the perimeter of the 2002 Springer Fire, including those close to the highway that are not likely to fall toward the road.

We concur with the Forest Service's determination that the proposed action may affect, but is not likely adversely affect, the bald eagle. We base this determination on the following:

1. The proposed action will not significantly decrease the number of potential feeding perches along Highway 87, within the project area.
2. The removal of these trees will not impact any bald eagle night roosts.
3. The Forest Service will try to remove trees in the fall between September 1 and October 15 in order to minimize disturbance to any wintering eagles that may be present in the area (D. Spaeth, pers. comm. 2003).