



United States Department of the Interior

U.S. Fish and Wildlife Service
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In Reply Refer To:

AESO/SE
02-21-99-F-0145-R2

January 30, 2003

Mr. Gene Waldrip
District Ranger
Peaks Ranger District
5075 North Highway 89
Flagstaff, Arizona 86004

Dear Mr. Waldrip:

Thank you for your request for reinitiation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended. Your request for reinitiation of formal consultation dated September 10, 2002, was received by us on September 21, 2002. This constitutes a re-initiation of consultation regarding the March 11, 1999, biological opinion on the Fort Valley 10K, Coconino County, Arizona. The non-jeopardy biological opinion (02-21-99-F-0145) considered the effects of the proposed forest management activities and recreation planning on the threatened Mexican spotted owl (*Strix occidentalis lucida*) (MSO). Critical habitat for this species has been designated; however, this action does not affect any areas of critical habitat. Therefore, the effects on critical habitat are not addressed further in this biological opinion.

This reinitiation of consultation is based on information provided in the September 10, 2002, letter; the March 5, 2001, reinitiation; the March 11, 1999, biological opinion; the December 10, 1998 Biological Evaluation and Assessment (BAE); the December 1998 Fort Valley Environmental Assessment (EA); correspondence and meetings with your staff; telephone conversations; field investigations; and other sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the MSO, forest management and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office. We have assigned log number 02-21-99-F-0145-R2 to this project. Please refer to this number in future correspondence on this consultation.

Consultation History

Details of the consultation history are summarized in Table 1.

Table 1. Summary of Consultation History

<i>Date</i>	<i>Event</i>
September 2001 - August 2002	We recommended reinitiation of consultation to the Forest Service for actions not completed as agreed to in the March 11, 1999, Fort Valley 10K biological opinion and the March 5, 2001, reinitiation.
August 19, 2002	We requested in writing that the Forest Service reinitiate consultation on the Fort Valley 10K because trail closures and re-routing of trails within the Orion Springs protected activity center (PAC) was not completed prior to March 2002 as stated in the March 5, 2001, reinitiation of the biological opinion.
September 21, 2002	We received your letter discussing the project and plans for completion. It was not clear in the letter if the Forest Service was reinitiating consultation on the project. We also learned in this letter that the Forest Service felt it had promised the public that the social trail system would not be closed until a new trail system was in place. This was not documented in the EA, the BAE, the biological opinion, or the reinitiation of the biological opinion.
October 8, 2002	We received confirmation that the Forest Service would be reinitiating consultation on the Fort Valley 10K.
October 2002 thru January 2003	We worked with Forest Service staff, the Grand Canyon Trust, and the Flagstaff Biking Club to locate grant money for the project.
November 6, 2002	We met with Forest Service staff and the Grand Canyon Trust to discuss alternate funding sources and alternatives for the new trail system that would expedite closing trails within the Orion Springs Protected Activity Center.
January 14, 2003	We requested that the Forest Service put in writing our agreement from the November meeting regarding the details of the replacement trail.
January 27, 2003	We were informed by the Forest Service that the project would not be implemented as discussed in November and to analyze the project as stated in the September 10, 2002, letter.

BIOLOGICAL OPINION RE-INITIATION

DESCRIPTION OF THE PROPOSED ACTION

The project is as described in the March 11, 1999, biological opinion and March 5, 2001, reinitiation of the biological opinion, except for the following changes:

The Forest Service informed us that the social trail within the Orion Spring MSO PAC (#040207) will not be closed until a new replacement trail is completed. Currently, recreation personnel and volunteers have constructed approximately four of the nine miles of trail to be completed. At the current rate of implementation, the Forest Service anticipates that the new trail system will be completed in 2005 with social trails in the PAC obliterated soon thereafter (fall 2005).

STATUS OF THE SPECIES

The following section is added to the end of this section (pages 14 thru 15) of the March 11, 1999, biological opinion and March 5, 2001, reinitiation of the biological opinion:

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 Recovery Unit (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) (Table 1). 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.

Since the owl was listed, we have completed a total of 95 formal consultations for the MSO. These formal consultations have identified incidences of anticipated incidental take of MSO in 262 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, we 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 92 of those PACs located in the Upper Gila Mountains RU. To date, consultation on individual actions under the amended Forest Plans have resulted in 194 PACs adversely affected, with 83 in the Upper Gila Mountains RU.

ENVIRONMENTAL BASELINE

The following paragraphs are inserted at the end of the second paragraph (page 15) of the March 11, 1999, biological opinion, as amended by the March 5, 2001, reinitiation of the biological opinion:

The PAC has continued to be monitored on an annual basis. Surveys in 2002 indicated that the PAC was occupied, but nesting status was not determined. Early in the season, a single male was located within the PAC. The owl was located two drainages to the east of its historical location.

Efforts to seasonally restrict camping within the Orion Springs MSO were completed in the summer of 2000. This has reduced noise and human disturbance within the MSO PAC.

EFFECTS OF THE ACTION

Insert the following paragraph at the beginning of this section (page 16) of the March 11, 1999, biological opinion:

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.

Recreation – Orion Springs PAC

The following paragraph replaces paragraph five (first full paragraph on page 17) of the March 11, 1999, biological opinion as amended by the March 5, 2001, reinitiation of the biological opinion:

The proposed actions as detailed in Alternative B will assist in the reduction of adverse effects to MSO that the Fish and Wildlife Service and Forest Service believe are currently occurring in the Orion Springs PAC. This alternative represents a compromise between the existing condition and total removal of recreation in the PAC and along Freidlein Prairie Road (as proposed in Alternative A). We believe full implementation of all aspects of Alternative B designed to reduce impacts to MSO will result in insignificant and discountable effects to the MSO. However, the Forest Service indicates that implementation of the closure of the Secret Trail and other social trails, as well as the re-route of the Secret Trail out of the Orion Springs PAC core area will not occur until the 2006 MSO breeding season. The Forest Service indicates that closure and re-routing will likely be completed in the summer and/or fall of 2005. We believe the existing condition of unofficial social trails within the PAC and core area has resulted in adverse effects to the Orion Springs PAC. Because trail closures and re-routing and seasonal campsite closures will not occur until the middle or end of the 2005 breeding season, we believe adverse effects to the Orion Springs PAC will continue for the 2002, 2003, 2004, and 2005 breeding seasons. Although the Forest Service did not design these trails, the failure to close them as outlined in Alternative B prior to the 2002 breeding season is a discretionary action, and therefore the effects of this decision must be disclosed during consultation.

CONCLUSION

This amendment does not change the non-jeopardy conclusion as stated in the March 11, 1999, biological opinion, or as amended in the March 5, 2001, reinitiation of the biological opinion.

INCIDENTAL TAKE STATEMENT

The March 11, 1999, biological opinion anticipated the take of two adult spotted owls (one pair) and/or associated eggs/juveniles during the 1999 breeding season (one PAC).

The March 5, 2001, reinitiation of the biological opinion anticipated the take of two spotted owls (one pair) and/or associated eggs/juvenile during the 2000 and 2001 breeding seasons (2 PACs).

Amount or Extent of Take Anticipated

The following paragraphs replace this section beginning on page 25:

We anticipate that spotted owls associated with the Orion Springs PAC (#040207) were taken during the 2002 breeding season. Although the Coconino National Forest did close from mid-May through mid-July of 2002, recreationists had full access to and continued to use the Secret Trail during the incubation and brooding stages of the breeding season (March through mid-May). Surveys indicate that the site was occupied, though nesting status was not determined. We believe that this resulted in harassment to owls that may have been attempting to nest. We believe that these birds will continue to be taken during the 2003, 2004, and 2005 breeding

seasons (one pair per year), as a result of continued recreational use on the Secret, Moto, and other trails within the PAC and core area. The incidental take would be in the form of harassment. As defined by the regulations at 50 CFR 17.3, harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. We believe the action of allowing the continued high levels of recreational use in the Orion Springs PAC would result in harassment by allowing noise disturbance during the breeding season. We anticipate that incidental take of MSO will be difficult to detect because all anticipated incidental take is in the form of harassment as a result of activities that significantly disrupt or impair normal behavioral patterns. Any incident of harassment is likely to be of limited extent and intensity, and therefore difficult to distinguish from normal behavior and difficult to document. We conclude that incidental take from the proposed action will be considered to be exceeded if any of the following conditions are met:

1. The re-routing of trails within the Orion Springs PAC are not completed by March 2006.
2. Required monitoring of MSO and effectiveness of trail closures and seasonal closures of dispersed campsites are not completed and reported to the Fish and Wildlife Service as scheduled.

If, during project activities, the amount or extent of take is exceeded, the Forest Service must reinitiate consultation with the us immediately to avoid violation of section 9. Operations must be stopped in the interim period between initiation and completion of the new consultation if it is determined that the impacts of the additional taking will cause an irreversible or adverse impact on the species, as required by 50 CFR 402.14(i). An explanation of the taking will be provided to the Fish and Wildlife Service.

Effect of the take

In the accompanying biological opinion, we determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

Reasonable and prudent measures

The following reasonable and prudent measures are necessary and appropriate to minimize take of the MSO associated with the Orion Springs PAC:

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 required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. The Forest Service shall minimize direct and indirect effects of visitor use to the MSO and its habitat in the Orion Springs PAC to the maximum extent possible.

The Term and Condition required to implement Reasonable and Prudent Measure 1 is:

- 1.1 Complete all trail closures and re-routing of trails within the Orion Springs PAC as soon as possible and prior to March 2006 at the latest.
2. The Forest Service shall monitor the effectiveness of trail closures within the Orion Springs PAC and take appropriate steps to reduce impacts to the owl.

The Terms and Conditions required to implement Reasonable and Prudent Measure 2 are:

- 2.1 The Forest Service shall monitor the effectiveness of trail closures and seasonal closures of dispersed camping off the Freidlein Prairie Road within the Orion Springs PAC during the 2003, 2004, and 2005 MSO breeding seasons. Monitoring will be conducted at least once a month (March through August) during both years.
- 2.2 The Forest Service shall immediately take the necessary steps to ensure compliance with trail and campsite closures within the Orion Springs PAC.
- 2.3 The Forest Service shall provide the results of effectiveness monitoring and efforts to ensure compliance as described in 2.1 and 2.2 to the Fish and Wildlife Service by the end of the 2003, 2004, and 2005 calendar years.
3. The Forest Service shall monitor the Orion Springs MSO PAC and minimize disturbance to nesting MSO to the maximum extent possible.

The Terms and Conditions required to implement Reasonable and Prudent Measure 3 are:

- 3.1 The Forest Service shall monitor the Orion Springs PAC in 2003, 2004, and 2005 to attempt to determine reproductive status and location of MSO.
- 3.2 If nesting MSO are located proximate to areas of trail work during the 2003, 2004, and/or 2005 breeding seasons, the Forest Service shall take appropriate steps to minimize disturbance to the MSO.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. With implementation of these measures, we believe that no more than one pair of spotted owls and/or their associated young associated with the Orion PAC (040207) will be incidentally taken during 2003, 2004, and 2005 breeding seasons. If, during the course of the action, this level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The Forest Service must immediately provide an explanation of the causes of the taking and review with us the need for possible modification of the reasonable and prudent measures.

Disposition of Dead or Injured Listed Species

This reinitiation does not change this section as stated in the March 11, 1999, biological opinion and the subsequent March 4, 2001, reinitiation.

CONSERVATION RECOMMENDATIONS

This section of the March 11, 1999, biological opinion as amended in the March 5, 2001, reinitiation of the biological opinion, is amended as follows:

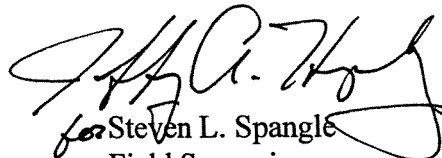
2. We recommend that the Forest Service prioritize trail closures and trail re-routing in the Orion Springs PAC such that the on-the-ground work is completed as soon as possible. We also encourage the Forest Service to continue to work with us and other interested parties to complete this project as soon as possible.

REINITIATION NOTICE

The provisions of the reinitiation statement of the March 11, 1999, biological opinion apply to this amendment.

We appreciate your efforts to identify and minimize effects to Mexican spotted owls from this project. If you have any questions regarding this consultation, please contact Shaula Hedwall of our Flagstaff Suboffice at (928) 226-1811 or Tom Gatz at (602) 242-0210 (x240). Please refer to the consultation number 02-21-99-F-0145, in future correspondence concerning this project.

Sincerely,


for Steven L. Spangle
Field Supervisor

cc: Regional Director, U.S. Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Field Supervisor, U.S. Fish and Wildlife Service, Albuquerque, NM
Forest Supervisor, Coconino National Forest, Flagstaff, AZ
Forest Supervisor, Coconino National Forest, Flagstaff, AZ (Attn: Cecelia Overby)
Wildlife Staff, Peaks Ranger District, Coconino National Forest, Flagstaff, AZ
(Attn: Tammy Randall-Parker)
Recreation Staff, Peaks Ranger District, Coconino National Forest, Flagstaff, AZ
(Attn: Brian Poturalski)

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