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U.S. Fish and Wildlife Service
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AESO/SE
2-21-99-I-145

March 5, 2001

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

Dear Mr. Waldrip:

This letter constitutes an amendment to the March 11, 1999, biological opinion on the Fort Valley 10K in accordance with section 7 of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.). The opinion considered effects of the Fort Valley 10K on the Mexican spotted owl (*Strix occidentalis lucida*). In addition, the opinion provided concurrence with a determination of “may effect, not likely to adversely affect” for the bald eagle (*Haliaeetus leucocephalus*).

CONSULTATION HISTORY

On July 10, 2000, the Forest Service requested an amendment to the March 11, 1999, Biological Opinion on the Fort Valley 10K Project. That request was received in our Flagstaff Office on July 10, 2000. Your letter states that terms and conditions implementing reasonable and prudent measures for the MSO have not been implemented due to delays caused by appeals and a lawsuit. Specifically, trail re-routing and closures as well as seasonal closures of dispersed camp sites did not occur prior to March 2000. In addition, your letter states that, because this implementation did not occur as originally planned, incidental take has been exceeded.

In February 2001, a discussion between the Forest Service biologist and the Service indicated that the trail projects were expected to be completed in mid summer 2001, thus it was determined that the incidental take statement in this amendment should reflect that work would not be completed until that time. Edits are in italics below

CONCURRENCES

This amendment does not change the concurrence previously provided for the bald eagle.

BIOLOGICAL OPINION AMENDMENT

This amendment does not change the description of the proposed action or the cumulative effects sections of this opinion.

STATUS OF THE SPECIES

The following paragraph is added to paragraph one of this section (page 8-9) of the March 11, 1999, opinion:

On July 21, 2000, the Service proposed designation of approximately 13.5 million acres of critical habitat for the MSO in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands (FR 65:45336). In Arizona, over 4.6 million acres were proposed, with approximately 3.3 million acres managed by the U.S. Forest Service. On February 1, 2000, the Service designated final critical habitat (FR 66: 8530). In Arizona, approximately 831,000 acres were designated which excluded all U.S. Forest Service lands in Arizona and New Mexico from the final designation.

ENVIRONMENTAL BASELINE

Status of the Mexican Spotted Owl and its Habitat in the Project Area

The following paragraph is inserted between paragraphs 2 and 3 (on page 15) of this section of the opinion:

The Orion Springs PAC was monitored in the summer of 1999. The site was monitored by the Rocky Mountain Research Station as part of the Mexican Spotted Owl Population Monitoring Pilot Study: 1999. A pair of MSO were present within the PAC and the owls were determined not to be nesting that year. The pair was using drainages which have been historically used within this PAC. Monitoring of the Orion Springs PAC took place in 2000 as well. An active nest was located on May 9, 2000, and again on May 27, 2000. The nest site was located in very close proximity to a large dispersed campsite. The Forest Service closed this campsite after finding the active nest. Monitoring in July indicated that the nest had been abandoned and the owl pair was not located again that year. The closure at the campsite was lifted when nest abandonment was determined.

The following sentences replace the first two sentences of paragraph 3 of this section (last paragraph on page 15):

A total of 228 projects have undergone formal consultation for the owl in Arizona and New Mexico. Of that aggregate, 86 projects resulted in a total anticipated incidental take of 199 owls plus an additional undetermined number of owls.

EFFECTS OF THE ACTION

Recreation--Orion Springs PAC

The following paragraph replaces paragraph 5 of the Effects of the Action Section (first full paragraph on page 17) of the opinion:

The proposed actions as detailed in Alternative B will assist in the reduction of adverse effects to MSO that the 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). The Service believes 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 2001 MSO breeding season. The Forest Service indicates that closure and re-routing will likely occur in the summer and/or fall of 2001. The Service believes the existing condition of unofficial social trails within the PAC and core area, as well as dispersed camping along the Freidlein Prairie Road, has resulted in adverse effects to the Orion Springs PAC for the 2000 breeding season. Because trail closures and re-routing and seasonal campsite closures will not occur until the middle or end of the 2001 breeding season, The Service believes adverse effects to the Orion Springs PAC will continue for the 2001 breeding season. Although the Forest Service did not design these trails or dispersed campsites, the failure to close them as outlined in Alternative B prior to the 2000 breeding season is a discretionary action, and therefore the effects of this decision must be disclosed during consultation.

The following is added to the end of paragraph 11 of the Effects of the Action (first full paragraph on page 19) of the opinion:

In both 1999 and 2000, the MSO pair were located in the historically used nest/roost stand of the Orion Springs PAC.

The following paragraph replaces paragraph 12 of this section (third paragraph on page 19) of the opinion:

The "Secret Trail" passes within close proximity (200-300 feet) to the 1993 and 1994-1997 nest site, as well as a similar distance from the roost site and 2000 nest site. This trail as well as others in the PAC were built by recreationists without authorization or designation by the Forest Service. The timing of the increased popularity and use of the Secret Trail by hikers and mountain bikers in recent years corresponds to the lack of reproduction and movement by the Orion Springs MSO. The locations of human-wildlife interactions may influence the effects to wildlife. In particular, the presence of humans in key wildlife areas may present major impacts (Hammit and Cole 1987). It is impossible to prove a direct cause and effect correlation between increased recreational use on the Secret Trail in the PAC and lack of the owl's reproduction, but the Service finds the evidence convincing. The impacts of increased human use appear to be the frequent movement of the pair to new nesting and roosting sites over a ten year period and continued reproductive failure. The concern has been that the birds moved in 1998 due to human disturbance into habitat which will not meet reproductive needs. Concerns continued in 2000 with the observation of a nesting attempt and the eventual abandonment of that effort. The reasons for nest abandonment in 2000 are unknown and may be related or unrelated to trail use. Some evidence exists that suggests a different male occupied the PAC in 1999 (Tammy Randall Parker, Peaks Ranger District, pers. comm.), and this may have played a role in the pair's behavior. In addition, the Coconino National Forest implemented a forest closure in the month of June, thus it can be assumed that no recreational disturbance occurred in that month.

The following sentence is added to the end of paragraph 13 (page 19) of the opinion:

Concern with the location of the Secret Trail and the proximity of the trail to nest and roost sites continue to be a concern given MSO location data from 1999 and 2000.

The following paragraph, Table 2 and Table 3 are inserted between paragraphs 15-16 of the Orion Springs PAC section on page 20:

The Forest Service conducted monitoring of recreational use in the Orion Springs PAC in 2000 as specified in the terms and conditions of the March 11, 1999, biological opinion. Monitoring was conducted once a month for approximately eight hours from April through August. Monitoring was not conducted in June because of a forest closure. Monitoring took place on the Freidlein Prairie Road and the Secret Trail. Monitoring took place on Saturdays and Sundays on April 29, May 28, July 15, and August 26. Monitoring indicated that the highest user group of both the Freidlein Prairie Road and the Secret Trail were mountain bikers. Monitoring of group sizes indicated some single bikers, but also many consistent group sizes of 2, 3, 4, 5, as well as single incidences of group sizes of 6 and 20. The highest use for mountain bikers on both the road and the trail was in May, early in the MSO breeding season. Results of the monitoring follow:

Table 2: Frequency of Use on Friedlein Prairie Road in 2000 (Anderson and Wansleben 2000)

	<i>Vehicle</i>	<i>Bike</i>	<i>Foot</i>	<i>Horse</i>	<i>Motorcycle</i>	<i>Dog</i>
<i>April</i>	<i>1 every 8 hours</i>	<i>1 every 48 minutes</i>	<i>1 every 4 hours</i>		<i>1 every 4 hours</i>	<i>1 every 2 hours</i>
<i>May</i>	<i>1 every 1.3 hours</i>	<i>1 every 22 minutes</i>	<i>1 every 2.6 hours</i>			
<i>July</i>	<i>1 every 1.3 hours</i>	<i>1 every 44 minutes</i>	<i>1 every 2.6 hours</i>			
<i>August</i>	<i>1 every 24 minutes</i>	<i>1 every 32 minutes</i>	<i>1 every 8 hours</i>			

Table 3: Frequency of Use on Secret Trail in 2000 (Anderson and Wansleben 2000)

	<i>Vehicle</i>	<i>Bike</i>	<i>Foot</i>	<i>Horse</i>	<i>Motorcycle</i>	<i>Dog</i>
<i>April</i>		<i>1 every 1.3 hours</i>	<i>1 every 4 hours</i>			<i>1 every 2.3 hours</i>
<i>May</i>		<i>1 every 37 minutes</i>	<i>1 every 8 hours</i>			<i>1 every 8 hours</i>
<i>July</i>		<i>1 every 1.6 hours</i>	<i>1 every 8 hours</i>	<i>1 every 8 hours</i>		
<i>August</i>		<i>1 every 8 hours</i>				

The following paragraph replaces paragraph 17 of the Effects of the Action Orion Springs-PAC (first paragraph on page 21) of the opinion:

In summary, effects of recreational use to the Orion Springs MSO are very difficult to quantify. Given the past successful reproduction of MSO in the PAC, the location of quality nesting habitat proximate to the Secret Trail, the return of the pair to the historically used area, and the nesting attempt made in 2000, it is likely that MSO may again attempt to nest in this area if disturbance is reduced or eliminated. The current level of disturbance caused by the Secret Trail and dispersed camping off Friedlein Prairie Road may affect the ability of MSO to nest and

successfully reproduce and fledge young. In addition, direct and indirect effects to habitat in the PAC are and will continue to occur due to the Trail location and camping. Effects to this habitat may negatively effect MSO prey species.

CONCLUSION

The following sentence replaces the last sentence in this section (page 23):

Critical habitat designated on February 1, 2001, does not include land managed by the U.S. Forest Service in Arizona and New Mexico.

INCIDENTAL TAKE STATEMENT

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

The following paragraphs replace this section beginning on page 25:

Amount or extent of take

The Service anticipates that two spotted owls (one pair) and/or associated eggs/juveniles could be taken during the 2000 and 2001 breeding seasons (one pair per year) associated with the Orion Springs PAC (040207), as a result of continued recreational use on the Secret, Moto, and other trails within the PAC and core area, and as a result of dispersed camping along the Freidlein Prairie Road within and adjacent to the Orion Springs PAC. 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. The Service believes 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. The Service anticipates 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. The Service concludes that incidental take from the proposed action will be considered to be exceeded if any of the following conditions are met:

- 1. Trail and campsite closures and re-routing of trails within the Orion Springs PAC are not completed by March 2002.*

2. *Required monitoring of MSO and effectiveness of trail closures and seasonal closures of dispersed campsites are not completed and reported to the Service as scheduled.*

If, during project activities, the amount of extent of take is exceeded, the Forest Service must reinstate consultation with the Service 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 Service.

Effect of the take

In this amended biological opinion, the Service has determined that this level of anticipated take is not likely to result in jeopardy to the species.

Reasonable and prudent measures

The following reasonable and prudent measures replace this section of the opinion:

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the take of MSO:

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.*
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.*
3. *The Forest Service shall monitor the Orion Springs MSO PAC and minimize disturbance to nesting MSO to the maximum extent possible.*

Terms and conditions

The following terms and conditions replace this section of the opinion:

The following terms and conditions are necessary to implement the reasonable and prudent measures.

Terms and conditions to implement reasonable and prudent measure 1:

- 1.1 *Complete all trail closures and re-routing of trails within the Orion Springs PAC as soon as possible and prior to March 2002 at the latest.*

- 1.2 *Complete seasonal closures of dispersed camp sites along Freidlein Prairie Road within and adjacent to the Orion Springs PAC as soon as possible and prior to March 2002 at the latest.*

Terms and conditions to implement reasonable and prudent measure 2:

- 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 2002 and 2003 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 Service by the end of the 2002 and 2003 calendar years.*

Terms and conditions to implement reasonable and prudent measure 3:

- 3.1 *The Forest Service shall monitor the Orion Springs PAC in 2001 and 2002 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 2001 breeding season, 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, the Service believes 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 both the 2000 and 2001 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 the Service the need for possible modification of the reasonable and prudent measures.

DISPOSITION OF DEAD, INJURED, OR SICK SPOTTED OWLS

This section of the biological opinion is amended as follows (replace the first sentence of this section with):

Upon locating a dead, injured, or sick spotted owl, initial notification must be made to the Service's Law Enforcement Office, Federal Building, Room 8, 26 North McDonald, Mesa, Arizona (telephone: 480/835-8289) within three working days of its finding.

CONSERVATION RECOMMENDATIONS

The following conservation recommendations are added to the opinion:

2. *Prioritize trail closures and trail re-routing in the Orion Springs PAC such that on-the-ground work begins as soon as possible in 2001.*
3. *Initiate seasonal closures of dispersed campsites along the Freidlein Prairie Road as early as possible in 2001.*

REINITIATION - CLOSING STATEMENT

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

If we can be of further assistance, please contact Michele James (520/527-3042) or Debra Bills (602/242-0210 x239).

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Field Supervisor, Fish and Wildlife Service, New Mexico Field Office, Albuquerque, NM
Forest Biologist, Coconino National Forest, Flagstaff, AZ (Attn: Cecilia Overby)

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

LITERATURE CITED

The following citations are added to the opinion:

Anderson, Jeremy and Tom Wansleben. 2000. Draft Summary Report on Campsites and Trail Usage Near the Orion Springs Owl PAC off the Friedlein Prairie Rd.: April 2000 - August 2000. Coconino National Forest, Peaks Ranger District. 8 pp.

U.S. Department of the Interior, Fish and Wildlife Service. 2000. Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Mexican Spotted Owl. Federal Register 65:45336 - 45353.

U.S. Department of the Interior, Fish and Wildlife Service. 2001. Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Mexican Spotted Owl. Federal Register 66:8530 - 8553.