

**United States Department of the Interior  
U.S. Fish and Wildlife Service  
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AESO/SE  
2-21-99-I-266 R1

March 1, 2002

Mr. John McGee, Forest Supervisor  
Coronado National Forest  
300 West Congress Street  
Tucson, Arizona 85701

Dear Mr. McGee:

This biological opinion responds to your request for reinitiation of formal consultation with the U.S. Fish and Wildlife Service (Service) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your request for reinitiation was dated January 23, 2002, and received by us on January 24, 2002. The original biological opinion was dated February 29, 2000. Reinitiation is requested due to proposed changes in the timing of the action that alter the effects to the Mexican spotted owl (MSO) [50 CFR 402.16(c)]. At issue are impacts that may result from activities and noise levels caused by fuel treatment operations on the Kent Springs portion of the Madera Canyon Developed Recreation project (2-21-99-F-266).

This biological opinion was prepared using information from the following: your October 19, 1999, request for formal consultation and the accompanying biological assessment; our February 29, 2000, biological opinion; your May 4, 2000, letter of clarification in fuels treatments in the Kent Springs portion of the project; electronic and telephone discussions between the Forest Service and the Service; your January 23, 2002, letter requesting reinitiation of formal consultation; site visits; and our files. A complete administrative record of this consultation is on file in our Phoenix office.

### **CONSULTATION HISTORY**

In our February 29, 2000, biological opinion, we concurred that effects from the proposed action in the Kent Springs and Madera II portions of the action were not likely to adversely affect the MSO. Your request for reinitiation noted the changes you wished to make in the proposed action: chainsaw and other noise will now occur within one mile of a MSO PAC boundary during MSO breeding season. Because noise occurring within one mile of a MSO PAC during the MSO breeding season is not in compliance with the MSO Recovery Plan (page 88), you

changed your initial effect determination and determined that the Kent Springs portion and the Madera II portion of the proposed project may adversely affect the MSO and requested reinitiation of consultation.

### **BIOLOGICAL OPINION**

The proposed action remains the same as described in our February 29, 2000, biological opinion, with the exception of the following:

#### Term of the Action:

Original Action: Fuel treatment work in the Kent Springs portion will be conducted in any year outside the MSO breeding season (March 1 to August 31, annually).

New Action: Fuel treatment work in the Kent Springs portion will begin before the 2002 MSO breeding season and continue into the beginning of the 2002 MSO breeding season. Due to personnel and budget uncertainties, you are unable at this time to provide a more specific time line (T. Newman, pers. comm 2002).

All work will continue to be conducted in a manner that reduces potential impacts to MSO by first completing work in areas closest to the PACs before the 2002 MSO breeding season begins (March 1). As the 2002 MSO breeding season progresses, surveys will be used to establish presence in the four PACs near this work area. If monitoring shows a PAC is unoccupied, or if work near a PAC has been completed before March 1, 2002, monitoring of that PAC need not be conducted. We would appreciate brief notes to update us on MSO status during project construction, and after all 2002 project work is finished for 2002, a summary of the entire project's status will be included in the Forest Service's annual report to the Service.

#### **STATUS OF THE SPECIES**

Mexican spotted owl (*Strix occidentalis lucida*)

The status of the MSO remains similar to that described in the February 29, 2000, biological opinion. MSO monitoring in these four PACs has been conducted most years from 1995, and a general pattern of occupancy and reproductive status can be inferred by this long-term record. These four PACs will be surveyed and monitored in the spring of 2002, and that information will aid in establishing MSO presence and reproductive status for the 2002 season.

#### **ENVIRONMENTAL BASELINE**

The environmental baseline remains the same as described in the February 29, 2000, biological opinion.

## EFFECTS OF THE ACTION

The analysis of effects as described in the February 29, 2000, biological opinion is still valid in terms of the overall project (see pages 7 to eleven). No new research or information has come to our attention to change that analysis. Changes in the timing of work conducted near PACs (out of compliance with the MSO Recovery Plan) have altered how noise will affect the MSO. Changes are described as follows:

### Timing of the Action

Fuel treatment work (chainsaw and chipper noise) will be conducted in the Kent Springs portion of the project (within one mile of four MSO PAC boundaries) for about 8 days early in the 2002 MSO breeding season. An exact date is uncertain, per Forest Service information (T.Newman, pers.comm 2002).

While the work in the Kent Springs portion of the project will not occur within any PAC boundaries, it will occur within one mile of four different PACs. Noise can be considered a disturbance within one mile of a PAC boundary because MSO use areas greater than the typical 600-acre designated PAC for foraging, dispersal, and other activities essential to survival. An ambient level of low noise already exists in the project area (cars coming and going, people hiking, birding, photographing and passing through). This level of noise is quickly attenuated; vehicle and people noise is lost to human hearing about 100 yards off the road or 50 yards off the trail. For this specific portion of the project, noise from crews, chainsaws, and a large chipper machine is expected to be loud at the immediate work site and quickly diminish with distance and topography. Activities (chainsaws, chipping) will occur during daylight hours and are not expected to interfere with MSO foraging, which occurs mostly during dawn, dusk, and at night. This action is estimated to require about 8 days of consecutive work to complete.

Decibel levels have not been scientifically established to determine under what intensities and durations MSO would be negatively impacted at this time of their breeding cycle, although logically, the louder and more prolonged the noise, the greater the negative impacts that could be expected. While early in the breeding season is a crucial time for MSO mate and nest selection, the distance of the louder, localized noise from the PAC boundaries, in addition to the distance from the MSO nest and roost sites (about one mile total), leads to the belief that this noise disturbance will be minimal to MSO under these circumstances.

Past MSO survey and monitoring information on the four PACs of the project area indicate a pattern of periodic occupancy and reproduction that seems to rotate among the PACs; not every PAC is occupied every year, and MSO do not nest every year. The four PACs will be surveyed for occupancy and monitored for reproductive status this spring (2002); this will aid in determining if noise from the project appears to be a discernable factor in MSO behavior on this portion of the project.

## **CUMULATIVE EFFECTS**

Cumulative effects are those adverse effects of future non-Federal (State, local government, and private) actions that are reasonably certain to occur in the project area. Future Federal actions would be subject to the consultation requirements established in section 7 of the Act, and therefore, are not considered cumulative to the proposed project. Effects of past Federal actions and private actions are considered in the Environmental Baseline. Analysis of cumulative effects remains unchanged from the February 29, 2000, biological opinion.

## **CONCLUSION**

After reviewing the current status of the Mexican spotted owl, the environmental baseline for the action area, and the anticipated effects of the revised proposed fuel treatment action in the Kent Springs portion of the project, it is the Service's biological opinion that the proposed action is not likely to jeopardize the continued existence of the MSO. We make this finding for the following reasons:

1. Treatment noise will occur in the same place and at the same levels and intensities as originally consulted on;
2. Noise will occur outside PAC boundaries and still remain about a mile from known MSO nest and roost sites;
3. MSO nest and roost sites in the four PACs are static (due to topography and verified by years of surveys and monitoring) and may or may not be occupied each year;
4. This is the only year the described noise is anticipated to occur;
5. Noise levels are anticipated to be loud at the immediate work area and be well-muffled by topography and vegetation;
6. Noise will occur during daylight hours only for about 8 days; and
7. All four PACs will be surveyed for presence, and those with confirmed MSO presence will continue to be monitored for MSO reproductive status.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act prohibits the take of listed species without special exemption. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or

sheltering (50 CFR 17.3). Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering. Incidental take is any take of a listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. Under the terms of section 7(b)(4) and 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 under the Act provided that such taking is in compliance with this incidental take statement.

#### AMOUNT OR EXTENT OF TAKE

MSO habitat and designated PACs exist near the Kent Springs portion of the project. MSO are known to inhabit the four PACs in the area in different years and show a pattern of episodic occupancy and reproduction. If MSO were determined to occupy any or all of the four PACs, we would not anticipate any take due to harm, harassment, or direct mortality for the following reasons: 1) noise will still occur about a mile from nest or roost sites in PACs, 2) topography, vegetation, and distance will strongly reduce the louder noise to at least the ambient level by the time a MSO might hear it in a nest or roost area, 3) noise will occur during daylight hours only and is not expected to interfere with MSO foraging behaviors, 4) noise is expected to occur 8 days into the MSO early breeding season, for this spring only (2002).

#### CONSERVATION RECOMMENDATIONS

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are discretionary agency activities to minimize or avoid effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information on listed species. The recommendations provided here do not necessarily represent complete fulfillment of the agency's section 2(c) or 7(a)(1) responsibilities for the MSO. In furtherance of the purposes of the Act, we recommend implementing the following actions:

In order for the Service to be kept informed of action minimizing or avoiding adverse effects or benefitting listed species, the Service requests notification of implementation of any conservation actions.

#### REINITIATION NOTICE

This concludes reinitiation of formal consultation on the Forest Service's revised Kent Springs portion of the Madera Canyon Developed Recreation project in Pima and Santa Cruz counties, Arizona. 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 maintained (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 adversely 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 a 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 this action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation, if it is determined that the impact of such taking will cause an irreversible and adverse impact to the species. Continuing surveys of suitable habitats and from MSO may yield new information suggesting the proposed action may affect the MSO in a manner or to an extent not previously considered. If this occurs, reinitiation of consultation may be necessary.

If we can be of further assistance in this matter, please contact Thetis Gamberg (520/670-4619) or Sherry Barrett (520/670-4614) of my Tucson staff.

Sincerely,

/s/ David L. Harlow  
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)  
Field Supervisor, Fish and Wildlife Service, Albuquerque, NM

Director, Arizona Game and Fish Department, Phoenix, AZ  
Director, Arizona Game and Fish Department, Tucson, AZ