

**Decision Notice and
Finding of No Significant Impact
Forest Plan Amendment for Threatened and Endangered Species
USDA Forest Service
Wayne National Forest**

**Athens, Gallia, Hocking, Jackson, Lawrence, Monroe, Morgan,
Perry, Scioto, Vinton and Washington Counties; Ohio**

Decision and Reasons for the Decision

In February 2003 the Wayne National Forest completed an environmental assessment (EA) analyzing the impacts of a proposed Forest Plan Amendment addressing threatened and endangered species. This proposed Forest Plan amendment is a programmatic action and is not related to a specific project.

Background

In 1988, the Wayne National Forest completed a comprehensive land management planning effort with the publishing of the Wayne National Forest Land and Resource Management Plan (Forest Plan) (USDA FS, 1988). The analysis that supported the Forest Plan determined that Federally listed threatened and endangered species were not present on the Forest. This determination was supported through informal consultation with the Fish and Wildlife Service in 1986. The Forest Plan was amended in 1992 to recognize the possible occurrence of four federally listed species (Indiana bat, bald eagle, peregrine falcon, and Kirkland's warbler) on the Wayne National Forest. In 1998 an Indiana bat, a federally listed species, was found roosting in the Forest. Subsequent surveys have found Indiana bats at a number of locations around the Forest. During this period (1986-2001) the effects of Forest actions on Federally listed species were addressed through informal consultation with the Fish and Wildlife Service.

The Wayne National Forest completed a Biological Assessment (BA) (USFS, 2001) in March of 2001, of the potential effects to federally listed threatened and endangered species that could result from the continued implementation of the Forest Plan. The BA was submitted to the Fish and Wildlife Service for formal consideration. The Fish and Wildlife Service completed their review of the BA, and issued a Biological Opinion (USFWS, 2001) on September 20, 2001. The Biological Opinion will remain in effect for five years (until September 20, 2006) or until the Forest Plan is revised and a new BO is issued on the revised Plan. In the BO (pg 35) the Fish and Wildlife Service stated that:

“In March 2001 the Wayne National Forest completed a Biological Assessment (BA) of the continued implementation of the Forest Plan and the potential effects to federally listed threatened and endangered species. The BA was submitted to the Fish and Wildlife Service for consideration. The Fish and Wildlife Service has finished their review, and

have issued a Biological Opinion on the Land and Resource Management Plan, Wayne National Forest, Ohio (September 2001). The measures described below [the Terms and Conditions] are non-discretionary, and must be undertaken by the Wayne NF for the exemption in section 7(o)(2) to apply. The Wayne NF has a continuing duty to regulate the activity covered by the incidental take statement. If the Wayne NF fails to assume and implement the terms and conditions, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Wayne NF must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)]."

Purpose and Need for Action

The Fish and Wildlife Service, in their Biological Opinion on the Land and Resource Management Plan for the Wayne National Forest concluded that the continued implementation of the existing Forest Plan is not likely to jeopardize the existence of the Indiana bat, bald eagle, and American burying beetle and as critical habitat has not been designated on the Forest for these three species none will be affected. (USFWS 2001, pgs. 33-34)

The Fish and Wildlife Service also stated that while "Section 9 of the ESA [Endangered Species Act] and Federal regulation pursuant to section 4(d) of the ESA prohibits the take of endangered and threatened species, respectively, without special exemption." Take "that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of the incidental take statement". (USFWS 2001, pg. 34)

The Fish and Wildlife Service also declared that the Reasonable and Prudent Measures and the Terms and Conditions are non-discretionary, and must be undertaken by the Wayne National Forest for the exemption described above to apply, and that the Wayne National Forest has "a continuing duty to regulate the activity covered by the incidental take statement." "If the Wayne National Forest fails to assume and implement the terms and conditions, the protective coverage...may lapse." The Wayne National Forest must also monitor incidental take and report the impact of its actions on the federally listed species to the Fish and Wildlife Service. (USFWS 2001, pgs. 35)

The purpose and need for this proposal is to amend the Forest Plan to incorporate the Reasonable and Prudent Measures and the Terms and Conditions included in the Biological Opinion as standards and guidelines in the Forest Plan. This action will insure that the Reasonable and Prudent Measures and Terms and Conditions are fully implemented and that the incidental take permit authorized by the Fish and Wildlife Service remains in effect.

The environmental assessment (EA) documents the analysis of three alternatives to meet this need.

Decision

Based upon my review of all alternatives, I have decided to implement Alternative C that provides a higher level of protection than required by the Threatened and Endangered Species Act and integrates the Conservation Recommendations and conservation plan into the Forest plan.

When compared to the other alternatives this alternative will provide more protection than the minimum required by the Threatened and Endangered Species Act. All of the non-discretionary Reasonable and Prudent Measures (as Forest Management Goals) and Terms and Conditions (as Forest-wide Standards and Guidelines) contained in the Biological Opinion (BO) will be incorporated into the Forest Plan. This alternative will incorporate new information about preferred tree species in Indiana Bat Term and Condition #4 (as a Forest-wide Standard and Guideline), and will incorporate the BO's discretionary Conservation Recommendations as part of the Wayne National Forest's Conservation Plan to protect and conserve Federally listed species (as Forest Plan Appendix J). In addition, current Forest Plan direction that conflicts with the BO's non-discretionary Reasonable and Prudent Measures and Terms and Conditions and discretionary Conservation Recommendations will be revised or deleted, as appropriate. This alternative meets requirements under Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the National Forest Management Act of 1976 (NFMA), implementing regulations found in 36 CFR Part 219.10 (f), the National Environmental Policy Act (NEPA), and implementing regulations found in 40 CFR 1500-1508.

Other Alternatives Considered

In addition to the selected alternative, I considered two other alternatives. A summary comparison of the effects these alternatives can be found in the EA in Tables 1 and 2.

Alternative B No Action

Under the No Action alternative, the Forest Plan would not be amended at this time. The Reasonable and Prudent Measures and Terms and Conditions would be incorporated into the Forest Plan revision, which is to be completed in 2005. In the meantime, WNF biologists will incorporate, as appropriate, the Reasonable and Prudent Measures and Terms and Conditions on a project-by-project basis.

Alternative A. The proposed action.

Alternative A would amend the Forest Plan to incorporate all of the non-discretionary Reasonable and Prudent Measures and Terms and Conditions, contained in the BO prepared by the U. S. Fish and Wildlife Service, as Forest Management Goals and Forest-wide Standards and Guidelines in the Forest Plan. This is the level of protection required by the BO. In addition, existing Forest Plan direction and standards and guidelines that conflict with the Reasonable and Prudent Measures and Terms and Conditions from the BO would be revised or deleted as appropriate.

Public Involvement

As described in the background, the need for this action arose in 1998. A proposal to [insert proposal] was first listed in the Schedule of Proposed Actions December of 1998. A letter asking for comments was mailed to the Wayne National Forest's list of interested parties on December 13, 2001. The mailing list included approximately 160 individuals and organizations that had expressed interest in Forest actions. The letter contained the purpose and need for this action and described the proposed action. A second letter asking for clarification of issues was mailed to two of the respondents on May 2, 2002.

A Public Notice notifying the public of the proposal and requesting their comments was published in The Messenger (Athens, Ohio) on December 18, 2001. Specific comments, issues, and concerns were identified from these sources. Responses were received as written letters, telephone calls, and personal contacts. A list of those groups or individuals that responded is listed in Appendix A of the EA. The interdisciplinary team evaluated each comment to determine how it should be addressed. The results of the evaluation are displayed in Appendix A of the EA.

Using the comments from the public and the interdisciplinary team identified several issues regarding the effects of the proposed action. Main issues of concern included:

- Issue 1--Effect on Resource Management and Production--Some people raised concerns that the Proposed Action could affect the management of resources on the Wayne National Forest and possibly affect the production of goods and services from the Forest resources. Comments centered on perceived effects of the amendment on oil and gas resources.
- Issue 2--Protection and Recovery of Threatened and Endangered Species--Some people expressed concern that the Proposed Action would not minimize the potential incidental take of Indiana bat and bald eagle. Additional direction could be added to promote the protection and recovery of the Indiana bat, bald eagle and the American burying beetle. Specifically, they expressed concern that allowing logging, including seasonal logging, in T&E species habitat would do nothing to protect the Indiana bat. They stated that pesticide use should be banned anywhere near a listed species. They stated concern that Indiana bat hibernacula were not being adequately protected under the proposal. They proposed that the Forest consider an alternative that ends all logging on the Forest.
- Issue 3--Consistency of Forest Plan Information and Direction--Some people were concerned that there is some information and direction in the Forest Plan that needs to be clarified or updated to be consistent with the Proposed Action.

To address these concerns, the Forest Service created the alternatives described above.

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. My finding of no significant environmental effects is not biased by the beneficial effects of the action. Effects from Alternative 3 may be both beneficial to some resources and adverse to others. However, as demonstrated in the TES EA, the changes and effects are relatively minor, and so there are no impacts that are directly, indirectly, or cumulatively significant in their effects upon TES species or other resources. It is also important to note that, as for all plan amendments, the proposed adjustments evaluated in this amendment are programmatic in nature (e.g. modifications of standards and guidelines); consequently they have no effects in and of themselves, but only result in effects when implemented as part of a site-specific project. For instance, a new requirement to reserve a tree in and of itself causes no effect because there is no on-the-ground change in the tree being reserved. Only in the context of timber harvest or other tree-removing activity does the retention of the tree from harvest result in some effect (benefit to wildlife, for example).
2. There will be no significant effects on public health and safety, because the proposed standards specifically exempt reserving trees that would be considered a safety hazard (TES EA, page 4). All other changes would fall within the context of the existing Forest plan and would not result in hazardous situations. None of the activities covered by this decision have hazardous components associated with them.
3. There will be no significant effects on unique characteristics of the area, because this action is a Forest Plan amendment and as such is programmatic and does not in itself authorize any disturbance to historic or cultural resources, parklands, prime farmlands, floodplains, wetlands, wild and scenic rivers or ecologically critical areas. This is a programmatic amendment to the Forest Plan, and does not propose or authorize any on the ground activities that could affect the unique characteristics of any sites. Site-specific analyses and decisions would be made for individual projects (see Heritage Memo, May 13, 2002 in project file).
4. The effects on the quality of the human environment are not likely to be highly controversial. Controversy as described here is a dispute among the scientific community about the effects of the proposal, not controversy over the proposal itself. There is no controversy because there is no substantial dispute among the scientific community as to the effect of the Federal action on the various biological and physical environments. None of the comments received substantially refute the conclusions reached by the Forest, and the Forest is not aware of any additional pertinent scientific research beyond what has already been examined.
5. We have considerable experience with the types of activities to be implemented under the amended Forest Plan. The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk (see EA pages 15-44).

6. The action is not likely to establish a precedent for future actions with significant effects because the amendment makes only minor changes to standards and guidelines in the Forest Plan regarding the amount, number and types of reserve trees to be left in harvest units; provides clarification of existing standards and policy for TES species, and adopts additional monitoring requirements and resource protection objectives. These activities do not constitute significant changes from current management.
7. The cumulative impacts are not significant. This is a programmatic Forest Plan amendment. There are no known significant cumulative effects between this action and other past or reasonably foreseeable actions or projects (see EA pages 15-44).
8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, because this is a programmatic amendment to the Forest Plan, and does not propose or authorize any on the ground activities that could affect such historic places. Site-specific analyses and decisions would be made for individual projects. The action will also not cause loss or destruction of significant scientific, cultural, or historical resources, for the same reason (see Heritage Memo, May 13, 2002 in project file).
9. The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act of 1973, because this amendment addresses conservation of the threatened and endangered species on the Wayne National Forest, so effects are beneficial and not adverse. For the Indiana bat and the bald eagle there will be no effects beyond those set forth in the BO, which found that while continued implementation of the Forest Plan could result in the incidental take of these species, they would not jeopardize the continued existence of the species. Furthermore, the BO found that the risk of incidental take under the current Forest Plan was minimal, and would be reduced even further through implementation of the Terms and Conditions.
10. The action will not violate Federal, State, and local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see next section for a detailed discussion).

Findings Required by Other Laws and Regulations

Consistency with the Forest Plan

This decision to amend the Forest Plan is consistent with the intent of the forest plan's long term goals and objectives. This amendment will not change the Forest Plan goals and objectives originally established in 1988. The proposed changes are minor alterations to or clarification of existing standards. The TES EA (pages 15-44) demonstrates that the effects of these changes are minor in scope and do not conflict with other resource area direction.

National Forest Management Act (NFMA)

It is my finding that the actions of this decision comply with the requirements of the National Forest Management Act of 1976 and NFMA implementing regulations in 36 CFR Section 219. This amendment is made in response to new information regarding TES species, which was

evaluated through preparation of the BA and BO for nine species of Federally listed threatened and endangered species that are found on or near the Wayne National Forest. This evaluation responds directly to the NFMA requirement to maintain viable populations of species within the Wayne National Forest (36 CFR 219.19; also USDA 9500-43.a(1)).

I followed the direction found in 16 U.S.C. 1604(f)(4), 36 CFR 219.10(f), FSM 1922.5, and Forest Service Handbook (FSH) 1909.12(5.32) and determined that this is not a significant amendment to the Forest Plan because it does not meet the required definitions of significance found in FSM 1922.5 and FSH 1901.12(5.32). My reasons for making this determination are discussed in detail on pages 4-6 of the TES EA, and further clarified under comment #'s 13, 31-33 in Appendix 6 of this DN.

Endangered Species Act (ESA)

This Forest Plan amendment is made in direct response to new information evaluated in the 2001 BA. The TES EA takes into consideration the formal consultation between the Wayne National Forest and FWS personnel in order to satisfy all the requirements of the ESA. The 2002 BO includes Reasonable and Measures, Terms and Conditions, and Conservation Recommendations that insure the continued protection of Federally listed species.

Administrative Review or Appeal Opportunities

This decision is subject to appeal pursuant to 36 CFR 217. The last day to file an appeal of this decision is 45 days after a legal notice for this decision is published in the *Athens Messenger*. In order to be considered, a written Notice of Appeal (in duplicate) must be postmarked or received within 45 days of the legal notice publication, at the following address:

USDA, Forest Service, Eastern Region
ATTN: Appeals Reviewing Officer; 36 CFR 217
10 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203

A copy of the 36 CFR 217 appeal regulations can be obtained from this office or they can be found on the Internet at: http://www.access.gpo.gov/nara/cfr/waisidx_00/36cfr217_00.html

A Notice of Appeal must meet the requirements of 36 CFR 217.9, as listed below:

- State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;
- List the name, address, and telephone number of the appellant;
- Identify the decision about which the appellant objects;
- Identify the document in which the decision is contained by title and subject, date of the decision, and the name and title of the Deciding Officer;
- Identify specifically that portion of the decision or decision document to which the appellant objects;
- State the reasons for objecting, including issues of fact, law, regulation or policy, and, if applicable, specifically how the decision violates law, regulation, or policy; and
- Identify the specific change or changes in the decision that the appellant seeks.

If an appeal is filed, for 20 days following the filing of the notice of appeal, the Appeal Reviewing Officer (listed above) will accept requests to intervene from any interested or potentially affected person or organization. Intervention will be allowed pursuant to 36 CFR 217.14.

Implementation Date

Implementation of this decision may occur on, but not before, 8 calendar days from the publication of the legal notice of this decision (36 CFR 217.10).

Contact

For additional information concerning this decision or the Forest Service appeal process, contact Ted King
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Carleen Yocum (for)

May 22, 2003

MARY O. REDDAN
Forest Supervisor
Wayne National Forest

Date

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