



Decision Memo

Forest Plan Amendment for Threatened, Endangered, and Sensitive Species

USDA Forest Service Mark Twain National Forest

Barry, Bollinger, Boone, Butler, Callaway, Carter, Christian, Crawford, Dent, Douglas, Howell, Iron, Laclede, Madison, Oregon, Ozark, Phelps, Pulaski, Reynolds, Ripley, St. Francois, Ste. Genevieve, Shannon, Stone, Taney, Texas, Washington, Wayne, and Wright Counties, Missouri.

Background

Since US Fish and Wildlife Service (FWS) issued the 2005 Programmatic Biological Opinion for the Mark Twain Forest Plan, four additional aquatic species (Ozark hellbender, snuffbox, spectaclecase, sheepnose) with habitat on the Mark Twain National Forest have been listed as endangered, and critical habitat designations have been made for two other endangered species (Hine's emerald dragonfly, and Tumbling Creek cavesnail). In addition, one endangered plant (running buffalo clover) was discovered to exist on the Mark Twain National Forest.

During this same time period, three bat species (little brown bat (*Myotis lucifugus*), northern long-eared bat (*M. septentrionalis*), and tri-colored bat (*Perimyotis subflavus*) have been added to the Regional Forester's Sensitive Species list. These species are not listed under the Endangered Species Act, but receive consideration in accordance with management direction in the Mark Twain Forest Plan (page 2-6.)

In light of this new information, a Forest interdisciplinary team reviewed the Forest Plan, the Final Environmental Impact Statement (FEIS) for the Forest Plan, and other analysis documented in the planning record to determine whether any changes to the Forest Plan or the FEIS were needed to protect these species. As part of this review, the Forest determined in its discretion that FWS involvement in the review process would be helpful. Although it is the Forest Service's understanding that existing plans are not subject to required reinitiation of consultation under 50 CFR 402.16, the agency voluntarily exercised its discretion in this particular situation to reinitiate consultation with FWS concerning the Ozark hellbender, snuffbox, spectaclecase, sheepnose, Hine's emerald dragonfly, Tumbling Creek cavesnail, and running buffalo clover direction in the Mark Twain NF plan.

The team's literature review, analysis, findings, and recommendations are documented in four new supplemental information reports: one for the Ozark hellbender, snuffbox, spectaclecase and sheepnose; one for the three bat species; and one each for critical habitat for the Hine's emerald dragonfly and Tumbling Creek cavesnail. In addition, the team reviewed a supplemental information report prepared in 2009 to address the discovery of the running buffalo clover on the Forest. The review contained in these supplemental information reports incorporated the best available science and available monitoring information, as well as the views of the FWS experts on the adequacy of the current Standards and Guidelines.

After review of the supplemental information report for the four aquatic species, I determined that the Forest Plan has adequate Standards to protect the snuffbox, spectaclecase, and sheepnose because specific Standards for the protection of rare mussels are already included in the Forest

Plan. Similarly, I determined that existing Forest Plan Standards and Guidelines are adequate to protect, maintain, and/or improve the primary constituent elements of critical habitat for the Hine's emerald dragonfly, given that the critical habitat designation for Hine's emerald dragonfly did not contain any new information or practices for managing fen habitat. Finally, there is no critical habitat for the Tumbling Creek cavesnail designated on the Mark Twain National Forest, and current Standards and Guidelines have been found to adequately protect the quality and quantity of water that flows into the cavesnail's critical habitat near the Forest.

After scoping had begun for this project, the northern long-eared bat (*Myotis septentrionalis*) was proposed for listing as endangered under the Endangered Species Act. I considered altering the proposed amendment to include specific management direction for the northern long-eared bat, but at this point it is not known exactly what additional management direction, if any, will be needed. Therefore, I concluded that this issue was not ripe for decision, and that additional direction specific to the northern long-eared bat would not be proposed.

Decision

I also determined that a Forest Plan amendment is necessary at this time to provide additional protective measures to conserve and recover declining Ozark hellbender populations and individuals; to promote the conservation and recovery of running buffalo clover; and to ensure persistence of the three bat species' populations on the Forest. The FWS has indicated that with the proposed changes outlined below, at the programmatic level, implementation of the Forest Plan is not likely to adversely affect these species.

My decision is to amend the Forest Plan by:

1. modifying existing Standards and Guidelines for threatened and endangered mussel species so that they are applicable to all threatened, endangered, or rare aquatic species, including the Ozark hellbender;
2. modifying existing Standards and Guidelines that currently apply only to Indiana or gray bats so that they protect all threatened, endangered, and sensitive bat species; and
3. adding new Standards and Guidelines to protect running buffalo clover sites.

The specific language of these modifications and additions is included in Appendix A.

As I proposed in my draft Decision Memo, I am making one change in one standard from what was shown in the scoping package. Under the direction for TES Aquatic Species, we had proposed a Standard that stated "Heavy equipment operation is prohibited at threatened, endangered, or rare aquatic species sites unless needed to implement a habitat improvement project approved by the U.S. Fish and Wildlife Service." I am removing the words "habitat improvement" so that projects requiring heavy equipment, such as bridge replacements, could be considered if needed. This Standard would continue to require U.S. Fish and Wildlife approval for all projects using heavy equipment at threatened, endangered or rare aquatic species sites.

This action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in 36 CFR 220.6(e)(16) which covers "...plan amendments...developed in accordance with 36 CFR 210 et seq. that provide broad guidance and information for project and activity decisionmaking in a NFS unit." This category of action is applicable because this proposed decision does not propose or approve any projects or activities, it does not command anyone to refrain from undertaking projects and activities, and it does not grant, withhold, or modify contracts, permits or other formal legal instruments.

Relationship to Extraordinary Circumstances

I find that there are no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS. I took into account resource conditions identified in agency procedures that should be considered in determining whether extraordinary circumstances might exist:

- Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species – Although this amendment deals with Federally listed threatened or endangered species, critical habitat, and Regional Forester Sensitive Species, this does not necessarily mean that extraordinary circumstances exist. Rather, “it is the existence of a cause-effect relationship between the proposed action and the potential effect on these resource conditions and...the degree of the potential effect...that determine whether extraordinary circumstances exist.” (36 CFR 220.6(b)) The Endangered Species Act requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species’ designated critical habitat. Because these changes to the Forest Plan standards and guidelines are designed to minimize effects on the species, and discussions with FWS have indicated that adverse effects are unlikely, I find that there is no uncertainty that the degree of effect is not significant.
- Flood plains, wetlands, or municipal watersheds – This amendment makes changes to some of the standards and guidelines that protect flood plains and wetlands so that they apply to all threatened, endangered, and rare aquatic species. The effects of these standards and guidelines were examined in the FEIS for the 2005 Forest Plan and were found to be non-significant. Therefore, there is no uncertainty about the degree of effect of this amendment.
- Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas – This amendment does not change management direction related to wilderness, wilderness study areas or national recreation areas. Therefore, there is no effect on these areas.
- Inventoried roadless areas or potential wilderness areas – This amendment does not change management direction related to inventoried roadless areas or potential wilderness areas. Therefore, there is no effect on these areas.
- Research natural areas – This amendment does not change management direction related to research natural areas. Therefore, there is no effect on these areas.
- American Indians and Alaska Native religious or cultural sites – This amendment does not change management direction related to American Indians and Alaska Native religious or cultural sites. Therefore, there is no effect on these areas.
- Archaeological sites, or historic properties or areas – This amendment does not change management direction related to archaeological sites, or historic properties or areas. Therefore, there is no effect on these areas.

Public Involvement

This action was originally listed as a proposal on the Mark Twain National Forest Schedule of Proposed Actions and updated periodically during the analysis. A letter announcing the initiation of the project and the comment period was sent via postal mail or email to about 200 individuals

on August 30, 2013. This letter also explained that additional information was available on the Forest's website. A legal notice with the same information was published on September 3, 2013 in the *Rolla Daily News*. An article about the amendment appeared in *The Current Wave* (Shannon County, MO). The Associated Press issued a short article about the proposed amendment, and it appeared *The Current Local* (Van Buren, MO), as well as on the websites for KOMU (Columbia, MO), KAIT (Jonesboro, AR), NewsOK (Oklahoma City, OK), *The Gazette* (Colorado Springs, CO) and the *Seattle Post-Intelligencer* (Seattle, WA).

We received comments from 20 people and organizations. Most of the responses indicated approval of the proposed changes, although a few were opposed. Several commenters suggested that additional standards and guidelines might be needed because a wide range of management activities and forest uses could contribute to sedimentation and harm aquatic species. It was also suggested that alternatives were needed to protect wildlife corridors. As explained in the Background section of this document, a Forest interdisciplinary team reviewed all the standards and guidelines currently in the Forest Plan, as well as the environmental analysis documenting the effects of implementing the Forest Plan, to determine if any additional standards and guidelines were needed. This review is documented in four supplemental information reports, which are available in the project folder. The Forest Plan already has many standards and guidelines that protect water quality and prevent sedimentation from forest management activities. The standards and guidelines in this amendment were determined to be needed in addition to those already in the Forest Plan (see Appendix B, Comment Response Report, response to Concern 1.)

It was also suggested that the Forest should develop a matrix of diverse forest stand conditions in order to provide the diverse habitats needed by the different bat species. The Forest Plan was designed to provide site appropriate natural communities, with management activities distributed so that the full range of variable conditions (from regeneration openings to areas exhibiting old growth characteristics) is present. Again, our review of the existing plan components and the environmental analysis previously prepared did not indicate a need for additional direction to ensure that the needed diverse habitats are provided (see Appendix B, Comment Response Report, response to Concern 6.)

Comments were also used to refine the project and analysis and to explore the possibility of extraordinary circumstances and potential effects to those resources (see discussion above regarding extraordinary circumstances.) Comments dealing with similar issues or resources were grouped and "Concern Statements" developed for each grouping. My responses to each of those Concern Statements are included in Appendix B.

Findings Required by Other Laws and Regulations

My decision complies with all applicable laws and regulations. I have summarized some pertinent ones below.

National Forest Management Act - This Act requires the development of long-range land and resource management plans (Plans). The Mark Twain Forest Plan revision was approved in 2005 under a prior regulation (the 1982 planning regulations) as allowed by the transition provisions of the 2000 rule, which was in force at the time.

This amendment has been developed in accordance with the NFMA and current implementing regulations published in the Federal Register on April 9, 2012. Under the transition language of these regulations, "...plan amendments may be initiated under the provisions of the prior planning regulation for 3 years after May 9, 2012, and may be completed and approved under those



provisions...” (36 CFR 219.17(b)(2)). I have elected to conduct this amendment following the 1982 planning regulations.

After reviewing the amendment and all the supporting documentation, I have determined that the decision to implement this amendment will not result in a significant change to the Mark Twain Forest Plan. The determination that this is a non-significant amendment is made in accordance with 16 USC 1604(f)(4), 36 CFR 219.10(f) (1982 regulations) and Forest Service Manual 1926.5. This plan amendment meets the criteria for a non-significant amendment because these changes will not “significantly alter the multiple-use goals and objectives for long-term land and resource management” and they will not “significantly alter the long-term relationship between levels of multiple-use goods and services originally projected” (FMS 1926.5.)

Endangered Species Act - See the section “Relationship to Extraordinary Circumstances” of this document.

Sensitive Species (Forest Service Manual 2670) - See the section “Relationship to Extraordinary Circumstances” of this document.

Clean Water Act - This Act is to restore and maintain the integrity of waters. The Forest Service complies with this Act by using Best Management Practices, which are incorporated into the Forest Plan as standards and guidelines. This decision does not authorize any on-the-ground activities, and does not change any of the standards and guidelines in the Forest Plan.

Wetlands (Executive Order 11990) - See the section “Relationship to Extraordinary Circumstances” of this document.

Floodplains (Executive Order 11988) - See the section “Relationship to Extraordinary Circumstances” of this document.

Federal Cave Resources Protection Act - This Act is to secure, protect, preserve, and maintain significant caves, to the extent practical. No known cave resources on Federal lands will be affected by this decision.

National Historic Preservation Act - See the section “Relationship to Extraordinary Circumstances” of this document.

Archaeological Resources Protection Act - See the section “Relationship to Extraordinary Circumstances” of this document.

Native American Graves Protection and Repatriation Act - See the section “Relationship to Extraordinary Circumstances” of this document.

Wild and Scenic Rivers Act - See the section “Relationship to Extraordinary Circumstances” of this document.

Environmental Justice (Executive Order 12898) - This Order requires consideration of whether projects would disproportionately impact minority or low-income populations. This decision complies with this Act. Public involvement occurred for this project, the results of which I have considered in this decision-making. Public involvement did not identify any adversely impacted local minority or low-income populations. This decision is not expected to adversely impact minority or low-income populations.



National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. The entirety of documentation for this decision supports compliance with this Act.

Pre-Decisional Administrative Review Opportunities

The draft decision was subject to a pre-decisional objection process as outlined in 36 CFR 219 Subpart B. A Legal Notice was published in the Rolla Daily News on September 19, 2014, marking the beginning of the 45-day objection period. No objections were received during that period.

Implementation Date

Pursuant to 36 CFR 219.58(c), I may approve this amendment on, but not before, November 10, 2014, which is the fifth business day following the end of the objection filing period. Notice of my decision will also be published in the Rolla Daily News.

Signature and Date

WILLIAM B. NIGHTINGALE

Forest Supervisor
Mark Twain National Forest

Date

Contact

For additional information concerning this decision, contact: Theresa Davidson, Forest Wildlife Biologist, Mark Twain National Forest, 401 Fairgrounds Rd, Rolla, MO 65401, 573-341-7499.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.