

USDA Forest Service

Monongahela National Forest

Barbour, Grant, Greenbrier, Nicholas, Pendleton, Pocahontas,
Preston, Randolph, Tucker, & Webster Counties, West Virginia



March 2004

Decision Notice & Finding of No Significant Impact

FOR THE

Threatened & Endangered Species Amendment to the Monongahela National Forest Land & Resource Management Plan

Responsible Official/Deciding Officer: Clyde N. Thompson

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DECISION

It is my decision to authorize a non-significant amendment to the Forest Plan (Monongahela National Forest Land and Resource Management Plan) to strengthen conservation of threatened and endangered species. This decision updates Forest-wide and Zoological Area standards for several threatened and endangered species and adds MP (Management Prescription) 6.3 standards for the management of Indiana bat habitat. It enhances the monitoring section of the Forest Plan and revises pages 15 and 17 of Appendix K (Guidance for Processing Mineral Authorization Documents and Approving Plans for Mineral Activities on lands on the Monongahela National Forest). It also authorizes the deletion of Forest Plan Appendix X (Interim Standards for the Virginia Northern Flying Squirrel), which is inconsistent with the latest scientific information for squirrel management.

I have chosen to implement Alternative 1 of the EA (Environmental Assessment for the Threatened and Endangered Species Amendment to the Forest Plan) with some modifications. The standards I am incorporating into the Forest Plan are displayed in Appendix H and explanations of the modifications are documented in Appendix I (attached). Note: Appendix H replaces Appendix A of the pre-decisional EA.

Alternative 1 is consistent with the 1973 ESA (Endangered Species Act), as amended. It furthers the recovery of threatened and endangered species and emphasizes their recovery as the Forest's first [or top] priority (Forest Plan, p. 84). Alternative 1 incorporates standards into the Forest Plan that will implement the following new information about threatened and endangered species:

1. The eleven Mandatory Terms and Conditions and two conservation recommendations that were identified in the USFWS' (U.S. Fish and Wildlife Service) March 2002 Biological Opinion (Biological Opinion on the Impacts of Forest Management and Other Activities to the Indiana Bat on the MNF and Associated Incidental Take Permit).
2. The Guidelines for the Identification and Management of WV Northern Flying Squirrels that were made part of the Appalachian Northern Flying Squirrels' Recovery Plan (Updated) in 2001.

This decision also revises Forest Plan standards and monitoring requirements to better articulate the MNF's on-going efforts to manage, protect, and aid in the recovery of threatened and endangered species.

BACKGROUND

USFWS Consultation Process

The MNF consulted with the USFWS for the 1986 Forest Plan (EA, p. ii). Since the Forest Plan's authorization, the Forest has worked closely with the USFWS, other Federal and State agencies, and members of the scientific community to gather and evaluate new threatened and endangered species' information and compare such information with existing Forest Plan standards. When needed, the Forest has implemented project-specific mitigation or amended the Forest Plan to ensure threatened, endangered, and proposed species protection and recovery was promoted consistent with applicable laws like the ESA. October 1992 was the last time Forest Plan standards for threatened and endangered species were updated (USFS, Oil and Gas Leasing and Development Decision Notice, 9/30/91). The events that lead up to this decision to amend threatened and endangered species' standards of the Forest Plan are summarized below. For more information, see EA, pages iii and iv.

- In 1999, the MNF evaluated the effects of implementing the Forest Plan given new threatened and endangered species research and data identified since the last amendment. From this review, the MNF identified measures that could be taken to further species' protection and recovery.
- In 2000, the MNF documented its analysis in a Biological Assessment and consulted with the USFWS about the prospect of amending Forest Plan standards to take into account new information

regarding the endangered Indiana bat.

- In spring 2001, the USFWS reviewed the Biological Assessment and identified several issues that needed to be resolved. The primary issue centered on new WV northern flying squirrel management direction that the USFWS was considering including in the 1990 Appalachian Northern Flying Squirrels' (*Glaucomys sabrinus fuscus*, *Glaucomys sabrinus coloratus*) Recovery Plan.
- In fall 2001, the USFWS amended the flying squirrel's recovery plan. The MNF revised the Biological Assessment to address this and other issues identified by the USFWS and forwarded the assessment to USFWS with a request for formal consultation.
- In a letter dated November 9, 2001, the USFWS stated that the Revised Biological Assessment adequately evaluated the results of continued implementation of the Forest Plan, as amended, on the nine federally listed species that occur on the MNF (USFWS, 11/09/2001, p. 1). They concurred with the MNF's determinations that continued implementation of the Forest Plan will not negatively impact the WV northern flying squirrel, bald eagle, VA big-eared bat, Cheat Mountain salamander, running buffalo clover, shale barren rock cress, small whorled pogonia, and VA spiraea. Their concurrence concluded ESA Section 7 consultation for these species at the programmatic level.

As to Indiana bats, the USFWS concurred with the Forest's determination that continued implementation of the Forest Plan will result in a "May Affect, Is Likely to Adversely Affect" determination (USFWS, 11/09/2001, p. 2). They agreed existing standards are adequate to manage and protect Indiana bat habitat; but standards are not adequate to prevent the incidental taking of individual Indiana bats during the otherwise lawful implementation of MNF management activities. As stated on pages 2-3 of the Revised Biological Assessment, the chance of harming an Indiana bat that may be roosting in a tree during MNF tree cutting activities or prescribed fire activities in the general forest area is relatively small. However, the chance of harm is not discountable. Formal consultation on the Indiana bat was entered into as of October 9, 2001.

- On March 26, 2002, the USFWS issued their final Biological Opinion relating to the Indiana bat. It recommended the MNF establish management areas and prescriptions to protect Indiana bats and their habitat. It listed 11 Terms and Conditions the MNF must implement to minimize the level of incidental take of Indiana bats and maintain an incidental take permit. Two optional Conservation Recommendations were identified that could be implemented to further conservation of this species.
- In January 2003, the MNF issued the EA. The EA identified, among other things, alternatives to incorporate the Terms and Conditions of the Biological Opinion into the Forest Plan. The USFWS reviewed the EA in the spring of 2003 and provided comments for the Forest's consideration.
- Clarification on most USFWS concerns has been provided during several subsequent meetings and is summarized in the responses to comments in the attached Appendix I. Remaining concerns were addressed by making minor changes to WV northern flying squirrel standards and to the map representing suitable habitat, which formalize how squirrel habitat will be identified and managed.
- In a letter dated February 25, 2004, the USFWS acknowledged that concerns they had raised "have been thoroughly addressed...through informal consultation between our respective staff" and concurred with the determinations made in the Biological Evaluation for the Amendment. USFWS stated the Amendment provides a process for the positive contribution toward the conservation and recovery of listed species. They noted the action alternatives, including Alternative 1, are consistent with the Terms and Conditions outlined in their Biological Opinion and additional formal consultation is not necessary because implementation of the Amendment, in and of itself, will not result in the loss of Indiana bat habitat. Additional consultation or review of site-specific projects with the USFWS will continue as needed when new projects have the potential to affect federally listed or proposed species. As described in Term and Condition #11 of their Biological Opinion, the USFWS will

continue to implement a tiered programmatic consultation approach. This will require formal consultation for individual projects implemented under the Forest Plan that may affect Indiana bats.

PUBLIC INVOLVEMENT CONDUCTED

Consistent with 40 CFR (Code of Federal Regulation) 1506.6, the MNF encouraged public involvement throughout the process:

1. Information about the Amendment was described in the MNF SOPA (Schedule of Proposed Actions) from December 2000 through December 2003. The SOPA was mailed to hundreds of interested parties and posted at the MNF website.
2. Scoping for the Proposed Action was initiated February 1, 2001. The Proposed Action was mailed to over 700 individuals, organizations, and Federal, State, and county agencies for the purpose of obtaining their comments and determining significant issues related to proposed standards.
3. Legal notices that described the Proposed Action were published in six newspapers--including *The Inter-Mountain Newspaper*, the paper of record for this decision, which is published in Elkins, WV.
4. The Proposed Action and the 2000 Biological Assessment were posted on the MNF website.
5. Information about the availability of the Revised Biological Assessment, a December 2001 Planning Update, and the USFWS' Biological Opinion was posted to the MNF website. Information about the availability of these documents was sent to those who had expressed interest in the Amendment.

The Forest received about 120 letters, phone calls, or e-mails from these public participation endeavors (EA, p. I-7). The ID Team (interdisciplinary team) used some comments to develop issues and alternatives. Some comments were responded to as "Issues Not Addressed in Detail." Others were outside the scope of the analysis or not applicable to the decision and were not discussed in the EA.

The ID Team's analyses of comments lead to the consideration of twenty-one alternatives. Seventeen were dismissed from detailed study for reasons briefly described on pages II-35 through II-44 of the EA. The remaining four alternatives were considered in detail because (1) implementing regulations of the NEPA (National Environmental Policy Act) require a No Action Alternative be considered (40 CFR 1502.14(d)); and (2) significant issues lead to the development and analysis of three action alternatives.

The Deciding Official reviewed the alternatives and determined the four alternatives were sufficient. The following two issues, along with the Purpose and Need described in Chapter I of the EA, were the impetus for the range of alternatives that were considered in detail for the Amendment.

Issue #1: Level of "take" of Indiana bats. Some people asked that the potential for "taking" of Indiana bats be minimized. To address this issue, all action alternatives proposed standards to reduce potential "taking" of Indiana bat. Alternative 1 reduces the potential for "taking" by establishing new Forest-wide standards for management of Indiana bats and creating MP 6.3 and Zoological Area standards that place restrictions on the type of activities that can be implemented within five-mile radii of Indiana bat hibernacula and two-mile radii of maternity colonies. The Proposed Action would have implemented the same measures and restricted tree felling for large-scale activities to winter months when Indiana bats would be hibernating and presumably free from incidental take. Alternative 2 would have minimized the potential for "taking" by prohibiting all commercial timber harvesting within five-mile radii of Indiana bat hibernacula and within two-mile radii of maternity colonies.

Issue #2: Seasonal restriction on tree felling. Concerns were raised that imposing seasonal restrictions on tree felling within five-mile radii of hibernacula would have long-term, adverse effects on the Forest's ability to provide vegetative diversity for wildlife, including the Indiana bat, and timber outputs in an economically efficient manner (EA, p. I-8). To address these concerns, Alternative 1 was developed to contain all the standards identified for the Proposed Action except the seasonal restriction on large-scale tree felling within five-mile radii of Indiana bat hibernacula. The

effects of imposing versus not imposing a seasonal restriction on tree felling are documented in Chapter III, pp. 12, 16, 24, 26, 35, 37, 38, 45, 54, 56, 57, 63, 64, 67, 68, 71, 72, 85, and 91.

The issues served as a basis for evaluating the alternatives and assessing their environmental consequences. Once the analysis of effects was completed, a public review and comment period was offered to ensure the Forest had addressed public concerns. The EA was sent to about 125 individuals, organizations, and agencies that had expressed interest in the amendment process. Legal notices were published in the same six newspapers that Proposed Action information was published. The EA was also posted to the MNF website. Comments about the EA were initially due February 28, 2003; but at the request of the public, comments continued to be accepted until March 31, 2003.

The Forest received over 270 e-mails and about 20 postal letters. All but about 20 of these responses appeared to be form letters. A few of the comments provided during the comment period for the EA were new; but some were the same as those raised during the scoping period for the Proposed Action. A summary of public comments, and the Forest's responses to them, are attached (Appendix I).

The Forest consulted with the USFWS and worked with WVDNR personnel throughout the analysis process. Both agencies reviewed the EA and provided comments that the Forest responded to in meetings conducted in 2003, in Appendix I, or by making minor changes to Alternative 1 standards (Appendix H). Both the USFWS and WVDNR have since indicated their support of implementing Alternative 1 (USFWS correspondence 02/25/04 and WVDNR correspondence 12/05/03). See the description of the USFWS Consultation Process on page 3 and Appendix I for more details. The WVDNR stated that Alternative 1 will offer increased protection for federally threatened and endangered species on the Forest (WVDNR 12/05/03 correspondence, page 1). The WVDNR remarked that the Amendment will assist in the conservation and recovery of federally listed species on the Forest, especially the Indiana bat and WV northern flying squirrel.

SELECTED ALTERNATIVE & REASON FOR THE DECISION

My decision is to adopt Alternative 1 of the EA with minor additions and modifications. My decision is based on my consideration of (1) information disclosed within the January 2003 EA, (2) public comments, (3) the USFWS' Biological Opinion and their correspondence dated February 25, 2004, (5) supporting information in the decision documentation, and (6) all applicable legal and policy requirements, particularly the ESA, NEPA, and NFMA (National Forest Management Act of 1976). This section describes the types of changes that will be made to the Forest Plan because of this decision and the rationale for such changes. The pages to be incorporated into the Forest Plan are in Appendix H. For definitions of terms like Zoological Area, MP 6.3, and Forest-wide standards; key areas; swarming habitat; etc. see Appendix C of the EA.

Alternative 1 Changes

Alternative 1 will modify six areas of the existing Forest Plan: the "Forest-wide Standards/Guidelines" section (pp. 84-88); the "Management Prescription 6.3" section (pp. 190a-190g); the "Zoological Area Standards/Guidelines" section (pp. 230-234b); the "Monitoring and Evaluation" section (pp. 252 and 256-256a); "Appendix K, Guidance for Processing Mineral Authorization Documents and Approving Plans for Mineral Activities on Lands on the Monongahela National Forest" (pp. K-15 and K-17); and delete Forest Plan Appendix X, Interim Standards for the Virginia Northern Flying Squirrel. Alternative 1 will not change the goals and objectives or the projected outputs sections of the Forest Plan.

Amending the Forest Plan via implementation of Alternative 1 meets the three needs identified in the EA (see I, II, and III on the following pages). It ensures the Forest Plan meets Forest Service responsibilities for threatened, endangered, and proposed species of the MNF consistent with (1) the ESA; (2) approved Recovery Plans of each threatened and endangered species of the MNF; and (3) Biological Opinions issued by USFWS for the Forest Plan. It does this by accomplishing the items on the following pages.

I. Consistent with Purpose and Need #1 of the EA, Alternative 1 incorporates the **11 Terms and Conditions and two Conservation Recommendations** identified in the USFWS March 2002 Biological Opinion. This action furthers the protection, conservation, and recovery of the Indiana bat by (a) minimizing the level of incidental take of Indiana bats on the MNF; (b) encouraging the perpetuation of Indiana bat hibernating, roosting, foraging, and swarming habitat on the MNF; and (c) clarifying monitoring and reporting procedures. Implementing these measures will allow the MNF to maintain an incidental take permit while not jeopardizing the species and remain compliant with the ESA. The following paragraphs explain how each Term and Condition is addressed.

1. **Term and Condition #1** states: “Protect swarming areas (five-mile radii around hibernacula) by establishing management areas and prescriptions that emphasize Indiana bat and allow for activities compatible with Indiana bat management” (EA, Appendix D, Biological Opinion). Alternative 1 addresses this by designating ~136,000¹ acres for management, protection, and recovery of Indiana bat, over 135,000 acres more than required by existing Forest Plan standards.

First, Alternative 1 expands protection and management of habitat near Indiana bat hibernacula from ~30 acres to over 2,000 acres. Existing areas of protection are extended to include at least another 150 acres adjacent to or near each hibernacula, which are referred to as “key areas” (838 Zoological Area standard 1950 #2 (a) and 2670 A #3 (a) and 2670 A #3 (b)).

Second, if a maternity site is found on the MNF, a two-mile radius around it would be protected instead of the 1986 Forest Plan requirement of protecting only a 200-foot radius around a maternity site (Forest-wide standard 2670 A #13 (c) (6) and 2670 A #13 (c) (7); and 838 Zoological Area standard 1950 #2 (b)).

Third, Alternative 1 creates MP 6.3 to manage and protect ~134,000 acres of Indiana bat summer roosting and foraging habitat (Forest-wide standard 2670 A #9 (b), Forest-wide standard 2670 A #13 (c) (1), and MP 6.3 descriptions of primary purpose, area description, and desired future condition). These ~134,000 acres will be within five-mile radii of Indiana bat hibernacula, but they will be outside the boundaries of the ~2,000 acres of Indiana bat habitat managed as Zoological Area 838.

2. Consistent with Term and Condition #1, Alternative 1 establishes standards that emphasize Indiana bat protection but allow for activities compatible with Indiana bat management (Appendix H, pp. 84c, 86-86c, 190a-190g, 233b-233g, and K-17). Alternative 1 standards also specify the number, type, and/or location of snags, culls, leave trees, old growth, etc. that must be maintained forest-wide for Indiana bat swarming, roosting, and foraging habitat, thus meeting **Terms and Conditions #3, #4, and #6**.

Terms and Conditions #3, #4, and #6 state the following: #3 – “Retain all shagbark hickory trees in cutting units except where public safety concerns exist.” #4 – “Monitor snag retention in cutting units. If there exists an average of less than 6 snags/acre, manually create additional snags.” #6 – “Protect all known roost trees on the MNF until such time as they no longer serve as roost trees (e.g., loss of exfoliating bark or cavities, blown down or decay).” These will be applied forest-wide (Appendix H, p. 86a).

Restrictions are placed on vegetation and timber management within the ~136,000 acres of Indiana bat MP 6.3 and Zoological Areas. Management of mineral resources, recreation, special uses, transportation, etc. is allowed as long as it is compatible with Indiana bat management. Management activities will be more restricted within Zoological Areas than within MP 6.3 areas.

¹This figure is 22,000 acres less than what was identified for Alternative 1 in the EA. This acreage was calculated following mapping corrections. Acreages and output projections in the EA and this decision are estimates; approximations are based on current information.

3. Alternative 1 addresses **Terms and Conditions #2, #5, #7, #8, #9, #10, and #11** by creating additional Forest-wide Indiana bat standards. These Terms and Conditions read as follows: **#2** – “Each year, report quarterly to the Service the cumulative amount of acres involved in tree removal and prescribed burning.” **#5** – “Continue to seek maternity sites and evidence of summer use on the MNF on a watershed basis using survey methods and frequencies that follow guidelines and protocols established by the Service, in consultation with the Service and the WVDNR.” **#7** – “Where evidence of possible maternity colonies (lactating females or juveniles prior to August 15) is discovered, a temporary 3-year, 2-mile radius buffer will be established around the discovery site. Continue to search for actual maternity colonies within a 2-mile radius of the site through mist netting and radio telemetry for a period of 3 years following the discovery.” **#8** – “If monitoring activities result in the discovery of maternity sites on the MNF, roost trees used by a maternity colony will be protected by establishing a zone centered on the maternity roost site. The actual area, not to exceed a 2-mile radius around the colony, will be determined by a combination of topography, known roost tree locations, proximity of permanent water, and a site-specific evaluation of the habitat characteristics associated with the colony. Protective measures shall be established by developing a management strategy in cooperation with the Service and the WVDNR.” **#9** – “If any new Indiana bat hibernacula are discovered, the MNF shall develop an appropriate protection plan, which could include signs, fences, or gates.” **#10** – “Projects on the MNF may proceed without formal consultation if they occur during the hibernation period or if site-specific projects proposed for implementation during the non-hibernation period are surveyed for Indiana bats according to protocols established by the Service, and no Indiana bats are detected. When Indiana bats are not detected, it will be assumed that the bats may be present, but in such low numbers that the project is not likely to adversely affect the bat. However, mist netting cannot be used to clear projects in the ZICs, (5-mile radius of a hibernaculum or within a 2-mile radius of a maternity colony/roost tree or capture site). Also, Projects cleared by mist netting under this scenario must be completed within three years of the netting or additional mist netting must be conducted to support the assumption that bats may be present but in such low numbers that the continuation of the project is not likely to adversely affect the bat. Project acres cleared during the hibernation period or cleared outside of the hibernation period through negative mist net results do not count against the annual allowable acres permitted under the programmatic incidental take statement.” **#11** – “To ensure that the exemption of incidental take is appropriately documented, the Service will implement a tiered programmatic consultation approach. As individual projects are proposed under the Forest Plan, the MNF shall provide project-specific information to the Service that (1) describes the proposed action and the specific area to be affected, (2) identifies the species that may be affected, (3) describes the manner in which the proposed action may affect listed species, and the anticipated effects, (4) specifies that the “anticipated effects from the proposed project are similar to those anticipated in the programmatic BO”, (5) a cumulative total of take that has occurred thus far under the tier I BO, and (6) describes any additional effects, if any, not considered in the tier I consultation.”

Standards displayed in Appendix H provide direction for (1) reporting and documenting Indiana bat information (Forest-wide standard 2670 A #13 (c) (2) and #13 (c) (11)); (2) consulting with the USFWS (Forest-wide standard 2670 A #13 (c) (9) and (10)); and (3) monitoring and developing appropriate protection plans (Forest-wide standard #13(c) (4); #13 (c) (6); #13 (c) (7); and #13 (c) (8)).

4. Alternative 1 addresses the two Conservation Recommendations by adding guidelines for (1) developing an outreach program specifically for eastern woodland bat species and their conservation (Forest-wide standard 2670 A #13 (c) (12)) and (2) retaining or creating pools of water during road abandonment where appropriate (Forest-wide standard 2670 A #13 (c) (13)).

- II. Consistent with Purpose and Need #2, Alternative 1 deletes Appendix X, “Interim Guidelines” for WV northern flying squirrel management, from the Forest Plan. Instead, it incorporates standards to implement “The Guidelines for the Identification and Management of WV Northern Flying Squirrels” that were made part of the Appalachian Northern Flying Squirrel’s Recovery Plan in 2001 (Forest-wide standard 2670 A #13 (g) and Zoological Area standard 832, 1950 (1)).

Alternative 1 strengthens protection of WV northern flying squirrel habitat by further defining the types of management that may or may not be implemented within these areas. Standards were modified slightly because of public and agency comments on the EA. Changes were made to document clearly that the acres managed for recovery of WV northern flying squirrel include (a) suitable WV northern flying squirrel habitat as well as (b) all verified WV northern flying squirrel sites (Zoological Area standard for OA 832, 1500 (1) and 1950). The map in Appendix J displays the most recent information about WV northern flying squirrel habitat. As compared to the existing condition (No Action Alternative), the net increase of acres receiving additional, immediate protection via standards for WV northern flying squirrel is approximately 53,000.

- III. Consistent with Purpose and Need #3, Alternative 1 updates Forest Plan information for other threatened and endangered species; revising or adding standards and monitoring requirements as appropriate to reflect new information about the species or clarifying the measures the MNF implements to conserve, protect, and aid in their recovery (Appendix H). For example, a Forest-wide standard is edited to specify the MNF protects habitat for all threatened and endangered species, not just fish and wildlife (Forest-wide 2670 standard A #1). Forest-wide standards are created to explain the Forest’s existing practice of managing and protecting “areas of influence” for threatened and endangered species (Forest-wide 2670 A #7, #9, and #10). Other Forest-wide standards are created to describe steps taken to avoid adverse effects to threatened, endangered, and proposed species during project implementation (Forest-wide 2670 A #8 and #12). A Forest-wide VA big-eared bat standard is added to ensure VA big-eared bats using old buildings within six-mile radii of VA big-eared bat caves will not be adversely affected by Forest Service activities associated with these sites (Forest-wide 2670 A #13 (b) (2)). An existing Zoological Area standard for VA big-eared bats is changed to a Forest-wide standard to ensure prescribed fire effects to VA big-eared bat are considered at a larger scale (Forest-wide 2670 A #13 (b) (4)). Changes in Cheat Mountain salamander standards are revised to reflect current knowledge regarding relocating, mapping, and protecting their populations (Forest-wide 2670 A #13 (e) (1) and (2)).

Reasons for Choosing Alternative 1

This Amendment is needed to incorporate new information about threatened and endangered species of the MNF. It is also needed to clarify inconsistent language in and organization of the Forest Plan regarding threatened and endangered species in general (EA, p. I-2, “Purpose and Need for Action”). Chapter III of this EA describes the environmental consequences of Alternative 1. My decision to implement Alternative 1 is a programmatic decision that will provide a framework for implementing future activities across the MNF. This decision is not project-specific or site-specific. Further analysis will be conducted before site-specific projects are approved and implemented.

I have chosen to implement Alternative 1 because it:

1. Meets the Purpose and Needs for Action (EA, p. I-2).
2. Ensures the MNF is compliant with the USFWS’ 2002 Biological Opinion and ESA (USFWS’ letter, 02/25/04).
3. Is consistent with Forest Plan goals and objectives (EA, pp. I-2, I-5, II-21, II-30 through III-34, III-18, III-28, III-60, III-67, III-91, III-95, and various resource reports in the project file).

4. Responds to the two significant issues that were raised during public scoping for the Proposed Action by minimizing the potential for taking of individual Indiana bats and not imposing restrictions that will have long-term, adverse effects on the Forest's ability to provide vegetative diversity for wildlife and timber outputs in an economically efficient manner (EA, p. I-8 and DN/FONSI, pp. 4-8).
5. Does not increase the potential for adverse soil, sediment, and aquatic effects as the Proposed Action may have (EA, pp. II-31 and III-63 and III-64).
6. Implements the two, optional "Conservation Recommendations" identified in the USFWS' 2002 Biological Opinion (DN/FONSI, p. 8).
7. Clarifies Forest Plan direction for implementing the Conservation Program for federally threatened and endangered species (Appendix E of the EA).
8. Furthers the protection, conservation, and recovery of MNF threatened and endangered species as the MNF's first priority, consistent with the ESA (EA, pp. III-19 and DN/FONSI, p. 2). The Biological Evaluation in Appendix D of the EA supports this conclusion. The USFWS has been consulted regarding this programmatic assessment and concurs with the findings in the Biological Evaluation (03/25/04 USFWS' concurrence letter).
9. Is not anticipated to cause any loss of viability of populations of sensitive species or create a trend toward federal listing (EA, pp. III-26).
10. Is based on the best available science. Alternative 1 was developed as the result of informal and formal consultation with the USFWS. Forest Service biologists used many scientific studies in preparing the September 2001 Revised Biological Assessment before entering into formal consultation (literature citation section of the Revised Biological Assessment). Besides the Revised Biological Assessment prepared by the Forest, the USFWS used scientific studies to develop the Biological Opinion. This extensive review and use of the available scientific literature indicates that Alternative 1 standards are based on the best available science.
11. Is supported by USFWS (02/25/04 letter and DN/FONSI, p. 3). USFWS noted it provides a process for the positive contribution toward the conservation and recovery of listed species.
12. Helps fulfill the MNF's responsibilities to aid in the conservation and recovery of threatened and endangered species as described in Forest Service Manual 2670 and in the Forest Plan (p. 37 and 84).
13. Results in minor effects to other Forest management activities as supported by the environmental consequences documented in the EA. Implementing Alternative 1 will not result in significant effects to resources of the MNF.

OTHER ALTERNATIVES STUDIED IN DETAIL

Three other alternatives besides Alternative 1 were considered in detail. Their effects were documented in the EA. They were not selected for the reasons identified on the following pages.

No Action Alternative

The No Action Alternative represents implementation of the existing Forest Plan, as amended to date. Under this alternative, no amendment would be made at this time, but could be considered in the future. Only those goals, objectives, and standards and guidelines currently in the Forest Plan would be used to guide management for threatened and endangered species. The 11 Terms and Conditions identified in the USFWS' Biological Opinion would not be added as standards to the Forest Plan. The Guidelines for the Identification and Management of WV Northern Flying Squirrels that were made part of the Appalachian Northern Flying Squirrels' Recovery Plan (Updated) in September 2001 would not be incorporated. Forest Plan standards and monitoring requirements would not be modified to clarify the MNF's on-going efforts to manage, protect, and recover threatened and endangered species. This alternative was analyzed to satisfy NEPA requirement for a No Action Alternative as a basis for comparison.

I did not choose to implement the No Action Alternative because it would:

1. Not meet the Purpose and Needs for Action (EA, p. I-2 and DN/FONSI, pp. 2 and pp. 6-8).
2. Not respond to new information about the management of federally listed threatened and endangered species on the MNF (EA, p. II-1).
3. Potentially violate the ESA and USFWS's 2002 Biological Opinion if the 11 Terms and Conditions of the Biological Opinion were not implemented at the project-level. Theoretically, the Terms and Conditions could be implemented as site-specific mitigation for each future project. However, this would not ensure consistent implementation across the Forest. Implementing them on a project-by-project basis could lead to violation of the Incidental Take Statement (EA, p. II-1).
4. Not expand or strengthen protection of Indiana bat and WV northern flying squirrel habitat. Only a 200-foot radius from the entrances of inhabited Indiana bat caves would be protected via existing Zoological Area standards (Forest Plan, p. 230), instead of about 136,000 acres. Only "occupied" habitat of WV northern flying squirrels would be protected, leaving many acres of suitable, but not know to be occupied, habitat unprotected by Forest Plan standards.
5. Be inconsistent with the Forest Plan goal, direction, and standards for Indiana bat and WV northern flying squirrel management because it may violate the ESA and be inconsistent with the Appalachian Northern Flying Squirrels Recovery Plan (Updated) (EA, p. II-1 and III-10 and III-11).
6. Not be adequate to minimize the incidental taking of individual Indiana bats during the otherwise lawful implementation of MNF activities (Revised Biological Assessment, p. 4).

Proposed Action

The Proposed Action is the same as Alternative 1 except it would adopt standards that would limit large-scale tree felling and associated activities within five-mile radii of Indiana bat hibernacula to winter months when Indiana bats are hibernating (prohibiting such activities April 1 through November 15).

I did not choose to implement the Proposed Action because it would:

1. Increase the potential for adverse soil, sediment, and aquatic effects without substantial benefits to the Indiana bat. Based on the analysis documented in the EA, I find a complete cessation of summer logging within five-mile radii of Indiana bat hibernacula to be unnecessarily restrictive. It was revealed that cessation of summer logging within five-mile radii of Indiana bat hibernacula would increase the chance that sensitive soils would be disturbed during periods of high water saturation (EA, pp. III-63). This would increase the risk of adverse soil, sediment, and aquatic effects. The analysis documented that limiting large-scale tree felling activities within five-mile radii of Indiana bat hibernacula to winter months when Indiana bats are hibernating may further minimize the chance of "taking" an individual Indiana bat (EA, p. III-12). However, cessation of summer logging within five-mile radii of Indiana bat hibernacula seems unnecessary because the chance of "taking" an Indiana bat is already small due to the limited amount of harvesting conducted on the MNF and the great abundance of potential roost trees available on the MNF (Revised Biological Assessment, pp. 2-3 and 53-54; and EA, pp. III-4, III-5, and III-73). In addition, monitoring indicates Indiana populations are stable or increasing in West Virginia, even as timber harvesting and other earth-disturbing activities are occurring. The USFWS emphasized the importance of reducing the risk of harm to individual Indiana bats through the retention and protection of suitable roost trees and other measures, which are accomplished by Alternative 1.
2. Have potentially greater effects to vegetation management activities and timber outputs than Alternative 1 (EA, pp. III-45 through III-50, III-56, and III-77).
3. Not adopt the two conservation measures recommended in the USFWS' 2002 Biological Opinion.

Alternative 2

Alternative 2 is the same as Alternative 1 except it would prohibit commercial timber harvests within five-mile radii of Indiana bat hibernacula. I did not choose to implement Alternative 2 because it would:

1. Allow for greater effects to vegetation management activities and timber outputs than Alternative 1 without substantially aiding in the conservation, protection, and recovery of Indiana bats. As documented in the EA and the Biological Opinion, complete prohibition of vegetation management activities within five-mile radii of Indiana bat hibernacula may be counterproductive to Indiana bat and other threatened and endangered species (Appendix H). Based on the analysis documented in the EA, I find a complete elimination of commercial timber harvesting within five-mile radii of Indiana bat hibernacula is unnecessarily restrictive. The analysis documented that such prohibitions on timber harvesting may further minimize the chance of “taking” an individual Indiana bat. However, it seems unnecessary because the chance of “taking” an Indiana bat is already small due to the limited amount of harvesting conducted on the MNF and the great abundance of potential roost trees available on the MNF (Revised Biological Assessment, pp. 2-3 and 53-54). The USFWS emphasized the importance of reducing the risk of harm to individual Indiana bats through the retention and protection of suitable roost trees and other measures, which are accomplished by the selected alternative, Alternative 1.

FINDING OF NO SIGNIFICANT IMPACT

I have considered the environmental effects that were documented in the EA and reviewed the contents contained within the decision documentation to determine that this Amendment is not a major federal action, individually or cumulatively. Preparation of an environmental impact statement is not needed because the Amendment will not significantly affect the quality of the human environment.

"Significance," as used here, is described in NEPA, 42 U.S.C. 4321 et seq. and 40 CFR 1508.27.

Consistent with law and regulation, I based my determination on considerations of both the context and the intensity of the action, as described on the following page.

(a) Context

The context of the Amendment is the Forest Plan and MNF lands that represent habitat or potential habitat for threatened and endangered species known to occur on the MNF and habitat for those that could be proposed in the future. The context also includes knowledge of these species and their use of habitat, which has been acquired since the 1986 Forest Plan was approved.

This Amendment changes the Forest Plan. It applies to all MNF system lands; it does not apply to any private or other public lands. The effects are primarily limited to the programs and management activities of the MNF. The Amendment is programmatic in nature and does not authorize site-specific projects. Additional analysis will be required at the site-specific level prior to project implementation, at which time effects to resources, including timber harvesting, will be assessed.

(b) Intensity

1. Impacts that may be both beneficial and adverse: Alternative 1 is not expected to result in significant beneficial or adverse effects. Beneficial effects have not been used to offset or compensate for potential adverse effects. Effects associated with the selected alternative are described in Chapter III and Appendix G of the EA and summarized in Chapter II. Effects from Alternative 1 may be both beneficial to some resources such as threatened and endangered species and adverse to others such as the timber sale program. However, as indicated in the 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 threatened, endangered, or sensitive species or other resources.

It is important to note that changes made by the Amendment are programmatic in nature (e.g. modifications of standards). Consequently, they have no effects in and of themselves, but only result in effects when implemented as part of site-specific projects. Forest Plans function like a zoning ordinance, providing a framework for future project-level decisions. This programmatic Amendment to the Forest Plan does not carry out any on-the-ground environmental changes; nor does it dictate that any particular site-specific action causing environmental injury must occur. 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 (e.g. beneficial to wildlife, adverse to timber volume produced). The Amendment does not commit resources or authorize new on-the-ground activities. Therefore, there are no irretrievable or irreversible resource commitments or losses associated with it. Site-specific projects will be subject to additional NEPA analysis and ESA consultation as appropriate.

2. The degree to which the proposed action affects public health or safety: Public health and safety will not be adversely affected. Standards allow action to be taken if needed to protect public health and safety (EA, pp. III-13, III-18, III-27, III-36, III-54, III-55, III-57, III-59, III-70, and III-78). For example, standards allow the removal of trees that pose hazards to public safety (p. 190b, MP 6.3 1900 standard #4 and #5(a)). Most changes fall within the context of the existing Forest Plan and would not have hazardous components associated with them. For example, monitoring standards would be added or clarified to provide additional monitoring direction (pp. 252 and 256-256a). This in no way affects public health and safety. Again, the Amendment is programmatic in nature; it does not propose or authorize any on-the-ground activities that could affect public health and safety.
3. Unique characteristics of the geographic area: Unique characteristics of the MNF (e.g. historic or cultural resources, park lands, prime farmlands, floodplains, wetlands, wild and scenic rivers or ecologically critical areas) will not be significantly affected by the implementation of Alternative 1 (EA, II-33 and II-34; III-95 through III-103). In fact, ecologically important areas of threatened and endangered species habitat are being protected. This is a programmatic amendment to the Forest Plan, and does not propose or authorize any on-the-ground activities that could affect such unique characteristics. Site-specific analyses and decision would be made for individual projects.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial: The effects of the actions to be implemented under Alternative 1 are not highly controversial in nature. That is, there is no substantial dispute among the scientific community as to the size, nature, or effect of the Federal action on the various biological and physical environments due to changes in Forest Plan standards. Controversy as described here is a dispute among the scientific community about the effects of the proposal, not controversy over the proposal itself. None of the comments received substantially refutes the conclusions reached by scientific experts; and the Forest is not aware of any additional pertinent scientific literature beyond what has already been examined that is more germane to the decision being made (EA, Appendix I, pp. 23-24).

Alternative 1 was developed following a lengthy process, including a review of available scientific literature and the consultation process with the USFWS (EA, I-iii). MNF biologists used a number of scientific studies in preparing the Revised Biological Assessment to evaluate effects of ongoing and anticipated management practices associated with implementing the Forest Plan on federally listed and endangered species. The USFWS used the Forest's Revised Biological Assessment, numerous scientific studies, recovery plans, and comments from their counterparts in similar situations to develop their Biological Opinion. Through this extensive process and review of the most pertinent, up-to-date scientific information, the effects and risks of my decision have been fully examined.

The comments and numerous opinions about various aspects of the Amendment and its possible effects do not lead me to conclude that there is controversy beyond that which is normally expected in the management of NFS lands. No comments or opinions have identified new information or omissions from previous analysis that would alter the basic assumptions and conclusions reached on MNF threatened and endangered species.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks: The effects on the human environment are not highly uncertain, nor do they involve unique or unknown risks. While some comments expressed concern over the uncertainty associated with future management options, or the lack of knowledge regarding species biology, uncertainty here relates to uncertainty of effects of this action, not uncertainty over the future of certain types of knowledge. As described in #4 above, Alternative 1 was developed following a lengthy analysis and after consultation with the USFWS (EA, p. I-iii). Information obtained during these processes was used to evaluate effects to MNF threatened and endangered species. There is little uncertainty that additional protection measures will enhance conservation and protection of threatened and endangered species known to occur on the MNF and species that could be proposed in the future.

The Amendment makes minor changes to Forest Plan threatened and endangered species standards (Appendix H). Adoption of the new standards increases the acres managed expressly for protection and recovery of Indiana bats and WV northern flying squirrels; regulates vegetation and timber management specifically to benefit Indiana bats and WV northern flying squirrels; creates requirements for reporting and documenting Indiana bat information, consulting with the USFWS, monitoring and developing protection plans; places limits on other MNF management activities to avoid adverse effects to threatened and endangered species; and provides more information as to how existing standards or policies should be executed.

The effects of implementing Alternative 1 are not highly uncertain. Many new standards will be incorporated, but they are not major changes that will significantly change the management techniques used by the Forest to implement the Forest Plan. The effects of implementing the Forest Plan since 1986 have been evaluated over time via Forest and site-specific monitoring reports and the No Action Alternative in the EA; and the effects of Alternative 1 have been fully examined (EA, pp. III-1 through III-20 and Appendix G).

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration: The Amendment is not likely to establish a precedent for future actions with significant effects. This is because the Amendment makes only minor changes to Forest Plan standards and guidelines regarding the amount, number, and types of reserve trees to be retained in cutting units; provides clarification of existing standards and policy for threatened, endangered, and proposed species; and incorporates additional protection measures and monitoring requirements. These modifications do not constitute significant changes from current management.

Chapter III of the EA indicates the effects of Alternative 1 will be minor and fall within the scope of the effects disclosed in the Environmental Impact Statement for the MNF Forest Plan. None of the Forest Plan goals would be changed. The Forest's multiple-use goods and services are not expected to change significantly. The Amendment does not eliminate future options for Forest management.

New standards are more restrictive than those in the current Forest Plan and are expected to improve conservation and protection of MNF threatened and endangered species. The USFWS stated the Amendment provides a process for the positive contribution toward the conservation and recovery of listed species (02/25/04 letter). The new standards, therefore, do not establish a precedent to promote future adverse actions with significant effects. On the contrary, they will result in future actions with less adverse environmental effects than those pursuant to the existing Forest Plan.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. This action is not related to other actions with individually insignificant but cumulative significant impacts. There are no known significant cumulative effects between this action and other past or reasonably foreseeable actions or projects (EA pp. III-27 and III-28, III-40, III-50 and III-51; III-54; III-58; III-60; III-64; III-68; III-72, III-74; III-79, III-85; III-86; III-91; III-95; III-96; III-99; III-100; III-103; and III-104 and cumulative effects information in the record). Past, present, and reasonably foreseeable future actions that were considered in conjunction with this amendment are described in the 2001 Revised Biological Assessment and Chapter III of the EA.
8. The degree to which the action may adversely affect eligibility of listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources. This Amendment does not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources (EA, III-95 and III-96). It is programmatic and proposes no on-the-ground activities. Site-specific analysis will be conducted as projects are proposed and mitigation could be applied, if necessary, to protect such resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its critical habitat. The degree to which this Amendment is likely to adversely affect an endangered or threatened species, or its habitat that has been determined to be critical under the ESA, is not significant. The determinations for each threatened and endangered species of the MNF are noted in the EA, Biological Evaluation, Appendix G, p.3; and the USFWS concurred with the determinations (USFWS 02/25/04 letter). Implementation of Alternative 1 will strengthen protection, conservation, and recovery of MNF threatened and endangered species. The Forest is mindful of the importance of threatened and endangered species recovery and will continue to afford threatened and endangered species as “first priority” (Appendix H, standard 2670 A #1 and EA, pp. I-2, I-6, II-18, II-19, III-11, III-12, III-17, III-33, III-59, III-92, E-2, E-3, E-8, E-9, E-12, and E-14).

The Biological Opinion found that while implementing Alternative 1 could result in the incidental take of the Indiana bat, it will not jeopardize the continued existence of the species, and many aspects of it will further protect, conserve, and aid in the recovery of Indiana bats. Furthermore, the Biological Opinion found that the risk of incidental take under Alternative 1 will be minimal and will be lessened or minimized more so than under the No Action Alternative because the Terms and Conditions of the March 2002 Biological Opinion and Incidental Take Statement will be implemented. The USFWS concurred with the MNF’s determination that the Amendment complies with the March 2002 Biological Opinion and Incidental Take Permit (USFWS 02/25/04 letter). Although individual Indiana bats could be harmed, adverse effects on the species as a whole are not significant, and many aspects of the Amendment will increase protection, conservation, and aid in the recovery of this and other threatened and endangered species of the MNF.

10. Whether the action threatens a violation of Federal, State, or local law, or requirements imposed for the protection of the environment. The Amendment does not threaten a violation of Federal, State, or local law, or requirements imposed for the protection of the environment (EA, pp. III-40, III-51, III-54, III-58, III-60, III-64, III-68, III-72; III-80, III-85, III-86, III-91, III-95, III-96, III-99, III-100, III-103, and III-104).

FINDINGS REQUIRED BY OTHER LAWS

The legal background and authority for amending forest plans comes from (1) the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) as amended by the NFMA of 1976 and the 1982 implementing regulations found in 36 Code of Federal Regulations (CFR) Part 219.10 (f); and (2) NEPA and implementing regulations in 40 CFR 1500-1508. Direction specific to who is responsible and why

and how to amend a Forest Plan is described in Forest Service Manual (FSM) 1922 and Forest Service Handbook (FSH) 1909.12, Chapter 5. Proposed changes to the Forest Plan must be consistent with these and other pertinent laws and regulations. In this case, the ESA of 1973, as amended, is of particular importance since it provides the legal background and authority for federal agency requirements related to endangered and threatened species. The following pages summarize the results of my review for compliance with pertinent laws and regulations.

Consistency with the Forest Plan

The Amendment does not change Forest Plan goals and objectives originally established in 1986 (EA, p. I-5). The effects analysis documented in Chapter III of the EA demonstrates that the effects of Alternative 1 are minor in scope and do not conflict with other resource area direction. This decision is consistent with the Final Environmental Impact Statement and the Record of Decision for the Forest Plan.

National Forest Management Act (NFMA) of 1976

The actions of this decision comply with the requirements of the NFMA of 1976 and NFMA implementing regulations at 36 CFR 219. This Amendment is made in response to new information regarding threatened and endangered species, which was evaluated through preparation of the Revised Biological Assessment, the March 2002 Biological Opinion, the programmatic Biological Evaluation (EA, Appendix G), and environmental effects section of the EA. These documents described, in the context of viability, the risk to management indicator species and threatened, endangered, and sensitive species known to occur on the MNF (EA, pp. III-1 through III-41). This evaluation responds directly to the NFMA requirement to maintain viable populations of species within the MNF (36 CFR 219.19; also USDA 9500-43.a (1)).

I have considered the extent of the change that will be made by the Amendment and followed the direction found in 16 U.S.C. 1604(f) (4), 36 CFR 219.10(f), and guidance in FSM 1922.5, and FSH 1909.12(5.32), which offer a framework for consideration. From my review, I determined that this is not a significant amendment to the Forest Plan. My reasons for making this determination are discussed in detail on pages I-4 and I-6 of the EA.

The Amendment does not meet all the factors of significance in FSM 1922.5 and FSH 1909.12 (5.32). “Significant,” as it pertains to a Forest Plan amendment, gauges the impact of a proposed change to a Forest Plan. Clearly, the timing of the Amendment strongly suggests the Amendment is non-significant. The Amendment comes late in the planning period. Revision of the Forest Plan is currently underway. During the revision process, the standards authorized by this Amendment will be reviewed and evaluated in the context of other issues, alternatives, and effects. A new Biological Assessment will be prepared, as part of the Forest Plan revision process and appropriate consultation will be undertaken with USFWS.

In regards to context or relation of the Amendment to the overall planning area, the primary effect of the Amendment is to ensure that jeopardy to the Indiana bat does not occur and to promote the protection, conservation, and recovery of the threatened and endangered species of the MNF. The actual effect on other resources throughout the planning area are minimal (EA, Chapter III), and the low number of acres of the Forest (Biological Opinion, p. 20) affected on an annual basis (~1%) supports that the Amendment is not significant. The primary effects of the programmatic Amendment favor the conservation and protection of ESA-listed species. Site-specific projects will be subject to additional NEPA analysis and ESA consultation as appropriate. Additional environmental analysis will occur prior to any ground-disturbing activity.

The Amendment does not alter multiple-use goals and objectives currently documented in the Forest Plan; nor does it alter the long-term relationship between goods and services in the overall planning area (EA, Chapter III). In fact, the Amendment furthers existing Goal IV: “Manage habitat to help recovery of threatened and endangered species on the Forest” in a manner consistent with other goals (Forest Plan,

pp. 37-40 and EA, Chapter III). The Amendment does not demand any new service or good not discussed in or contemplated by the 1986 Forest Plan. Chapter III discloses that none of the alternatives would cause outputs to differ substantially from those currently being provided and which are within the range of outputs projected by the Forest Plan (pp. 50-51, 54, 72, 74, 79-80, 86, 89, 91, 93-95, and 102-103). None would permanently forego an opportunity to achieve an output in later years.

National Environmental Policy Act (NEPA) of 1976

Council of Environmental Quality (CEQ) regulations and FSM and FSH direction were followed to complete and document the environmental analysis for the Amendment. An interdisciplinary team of resource specialists oversaw all aspects of the environmental analysis, including public involvement.

After considering the effects disclosed in Chapter III of the EA and reports in the decision documentation, I have decided, in accordance with NEPA that selecting Alternative 1 will not have significant impacts on the quality of the human environment, so an Environmental Impact Statement (EIS) does not need to be prepared (NEPA 1501.4(c) and (e)). Since no significant impacts are expected, this Decision Notice includes a “Finding of No Significant Impact” (NEPA 1508.13).

The public involvement process used for the EA for the Proposed Threatened and Endangered Species Amendment to the Forest Plan is summarized on pages 4-5 of this DN/FONSI. Consistent with NEPA, the scope of the analysis was limited to the changes needed at this time to meet the purpose and needs that were defined on page II-2 of the EA. The Purpose and Need for Action and the significant issues that were identified as a result of public involvement limited the range of alternatives. Alternatives that were considered but dismissed from detailed study are described on pages II-35 through II-44 of the EA.

Endangered Species Act (ESA) of 1973, as amended

I find that Alternative 1 is consistent with the ESA and will aid in the protection, conservation, and recovery of the threatened and endangered species of the MNF (EA, pp. I-7). The MNF followed appropriate formal consultation procedures for may affect, likely to adversely affect actions. The USFWS has reviewed Alternative 1 and concurs with our determination that this decision is consistent with ESA requirements (USFWS correspondence, 02/25/04).

This Amendment to the Forest Plan is made in direct response to new threatened and endangered species’ information evaluated in the 2001 Revised Biological Assessment. The EA took into consideration the informal and formal consultation between MNF and USFWS personnel to satisfy all the requirements of the ESA and the anticipated effects to threatened and endangered species of the MNF (EA, pp. ii-iv; Chapter I-7; Chapter III-2 thru III-20; Appendix D; Appendix E; Appendix G). Standards and monitoring identified under Alternative 1 and included in this decision will aid in the recovery of the bald eagle, Cheat Mountain salamander, VA big-eared bat, West Virginia northern flying squirrel, running buffalo clover, shale barren rock cress, small-whorled pogonia, and Virginia spiraea (EA, Chapter III, pp. 15-16, 19, 34, 96 and Appendix G, pp. 33 and 40).

Continued implementation of the Forest Plan will not adequately address incidental take of an individual bat. This Amendment will ensure the 11 Terms and Conditions of the 2002 Biological Opinion are implemented to lessen or minimize incidental take of Indiana bats. Their incorporation into the Forest Plan allows the MNF to operate under the Incidental Take Permit authorized by the USFWS in March 2002, consistent with the ESA (EA, II-1, II-2, II-12, and III-10, III-34, and III-41, USFWS 02/25/04 letter).

Other Relevant Laws

I have considered other relevant laws and regulations that this Amendment may affect. These include, but are not limited to, the Multiple Use Sustained Yield Act of 1960, the Forest and Rangeland Renewable Resources Planning Act of 1974, the Clean Air Act, the Clean Water Act, and the National

Historic Preservation Act. I have fully considered the effects of the Amendment on the public, and the public's concerns brought forward during the various comment periods. I feel that these concerns are adequately addressed in the EA, its appendices, and in this DN/FONSI. I have determined that my decision to approve this Amendment meets all applicable laws, regulations, and land policies, as well as Forest Service direction and guidance as outlined in the Forest Service Manuals and Handbooks (EA, pp. III-51, 53, 58, 60, 68, 80, 82, 85-86, 91, 94-96, 103-104, Appendix G, p. 5).

IMPLEMENTATION DATE

Implementation of this decision shall not occur for seven calendar days following publication of the legal notice of this decision as required in 36 CFR 217.10 (a). The paper of record for this decision is *The Inter-Mountain Newspaper*, which is published in Elkins, West Virginia.

APPEAL OPPORTUNITIES

This decision is subject to appeal pursuant to 36 CFR 217. To appeal this decision under this part, a person or organization must:

1. File a written notice of appeal, in duplicate, with USDA Forest Service, Eastern Region (R9), Attn: Randy Moore, Appeal Deciding Officer, Attn: Appeals and Litigation, USDA Forest Service, Eastern Region, 626 E. Wisconsin Avenue, Milwaukee, WI, 53202.
2. File the notice of appeal within 45 days of the date the legal notice for this decision is published in *The Inter-Mountain Newspaper*, Elkins, West Virginia.
3. Comply with the required contents of an appeal as provided in 36 CFR 217.9 as listed below:
 - (a) State that the document is a Notice of Appeal filed pursuant to 36 CFR part 217;
 - (b) List the name, address, and telephone number of the appellant;
 - (c) Identify the decision about which the appellant objects;
 - (d) 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;
 - (e) Identify specifically that portion of the decision or decision document to which the appellant objects;
 - (f) 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
 - (g) Identify the specific change or changes in the decision that the appellant seeks.

CONTACT PERSON

For more information, please contact Laura Hise, Monongahela National Forest, 200 Sycamore Street, Elkins, WV, 26241; lhise@fs.fed.us; or voice/TTY 304-636-1800, extension 219. The decision documentation for the Threatened and Endangered Species Amendment is available for public review at the Monongahela National Forest Supervisor's Office.

/s/ Clyde N. Thomspson

03/12/04

CLYDE N. THOMPSON
Forest Supervisor
Monongahela National Forest

DATE

ADDITIONAL APPENDICES

to the

Environmental Assessment for the Threatened and Endangered Species
Amendment to the Monongahela National Forest Land and Resource Management Plan