DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT37

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Virginia Northern Flying Squirrel (Glaucomys sabrinus fuscus) from the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or we), extended the public comment period on the proposed rule to remove the Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), more commonly known as the West Virginia northern flying squirrel (WVNFS), on February 21, 2007 (72 FR 7852). However, we inadvertently left out the e-mail address to which the public could send comments. This document corrects that error.

DATES: The public comment period for the proposed rule published on December 19, 2006 (71 FR 75924) ends on April 23, 2007. If you previously submitted a comment through the regulations.gov Web site and did not receive an automatic confirmation that we received your comment, please either resubmit those comments or contact us. If you previously submitted a comment to us via mail, courier, or fax, you do not need to resubmit those comments as they have been incorporated into the public record and will be fully considered in the final determination. Any comments received after the closing date may not be considered in the final decision on the proposal.

ADDRESSES: You may submit comments on the proposed delisting by any one of several methods:

1. You may submit written comments and information to the Assistant Chief, Division of Endangered and Threatened Species, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035.

2. You may hand-deliver written comments to our Northeast Regional Office, at the above address.

3. You may fax your comments to 413–253–8482.

4. You may e-mail your comments to *wvnfscomments@fws.gov.*

5. You may use the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at our Northeast Regional Office.

FOR FURTHER INFORMATION CONTACT: Diane Lynch at our Northeast Regional Office (telephone: 413–253–8628) or the Field Office Supervisor, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241 (telephone: 304–636–6586).

SUPPLEMENTARY INFORMATION: On December 19, 2006, the Service published a proposed rule (71 FR 75924), under the authority of the Act, to remove the WVNFS from the Federal List of Endangered and Threatened Wildlife, due to recovery. On February 21, 2007, we published a 60-day comment period extension (72 FR 7852) to the proposed rule. However, we inadvertently left out the email address to which the public could send comments. We now correct that error.

Please see the comment period extension document (72 FR 7852) for a list of subjects for which we are seeking comments. The public comment period for the proposed rule ends on April 23, 2007.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 21, 2007.

Sara Prigan,

Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 07–855 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings on a Petition To Revise Critical Habitat for the Indiana Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day and 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day and 12-month findings on a petition to revise critical habitat for the federally endangered Indiana bat (*Myotis sodalis*). We find that the petition does not present substantial scientific information indicating that revising critical habitat for the Indiana bat may be warranted. However, we have also elected to make a 12-month finding at this time.

DATES: The finding announced in this document was made on March 6, 2007. You may submit new information concerning this species or its habitat for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Bloomington Ecological Services Field Office, 620 South Walker Street, Bloomington, IN 47403–2121. New information, materials, comments, or questions concerning this species or its habitat may be submitted to us at any time.

FOR FURTHER INFORMATION CONTACT: Scott Pruitt, Field Supervisor of the Bloomington Ecological Services Field Office (see **ADDRESSES**), by telephone at (812) 334–4261, or by facsimile to (812) 334–4273. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that we make a finding on whether a petition to revise critical habitat for a listed species presents substantial scientific information indicating that the revision may be warranted. Our listing regulations at 50 CFR 424.14(c)(2)(i) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and we must promptly publish our finding in the **Federal Register**.

If we find that substantial information is presented, we are required to determine how we intend to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register**. The Act gives us discretion in determining whether to revise critical habitat, stating that the ''Secretary may, from time-to-time thereafter as appropriate, revise such designation.''

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(c). Our

process of coming to a 90-day finding under section 4(b)(3)(D) of the Act and § 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. However, we have also elected to respond as if a positive 90-day finding was made, and to also render a 12-month finding at this time.

Previous Federal Action

We originally listed the Indiana bat as in danger of extinction under the Endangered Species Preservation Act of 1966 (32 FR 4001; March 11, 1967). This species is currently listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). We designated critical habitat for the Indiana bat on September 24, 1976 (41 FR 41914).

On October 18, 2002, we received a petition to revise critical habitat for the endangered Indiana bat from Southern Appalachian Biodiversity Project, Buckeye Forest Council, Kentucky Heartwood, Virginia Forest Watch, Brent Bowker, Shenandoah Ecosystems Defense Group, Indiana Forest Alliance, and Heartwood. The submission clearly identified itself as a petition and included the identification information of the petitioners required by 50 CFR 424.14(a). At that time, we notified the petitioners that we lacked funding to develop a 90-day finding on the petition. We also indicated that funding was not anticipated to be available until Fiscal Year 2004 or later and that we would not be able to process the petition until funding became available. On May 6, 2005, Heartwood, Southern Appalachian Biodiversity Project, Buckeye Forest Council, Kentucky Heartwood, Indiana Forest Alliance, Virginia Forest Watch, National Forest Protection Alliance, and Wild Virginia filed a complaint (*Heartwood, et al.* v *Norton, et al.* 1:05CV313-SSB-TSH, District of Southern Ohio) that cited our failure to comply with the Act's section 4 petition deadlines and that made various claims of violations under section 7 of the Act. On May 24, 2006, we reached a settlement agreement with the plaintiffs with regards to the section 4 portion of the complaint. In that settlement we agreed that we would submit to the **Federal Register** by February 28, 2007, a 90-day finding as to whether the petition presents substantial information indicating that a critical habitat revision may be warranted for Indiana bat. We also agreed that if we determined in the 90-day finding that the petition does present substantial information indicating that the petitioned action may be warranted we would submit to the **Federal Register** by December 15, 2007, a 12-month determination that would explain how the Secretary intends to proceed with the proposed revision pursuant to 16 U.S.C. 1533(b)(3)(D)(ii).

Species Information

The Indiana bat is a temperate, insectivorous, migratory bat that occurs in 20 States in the eastern half of the United States. The Indiana bat hibernates colonially in caves and mines during winter. In spring, reproductive females migrate and form maternity colonies where they bear and raise their young in wooded areas, specifically behind exfoliating bark of large, usually dead, trees. Both males and females return to hibernacula (i.e., the caves and mines where Indiana bats hibernate) in late summer or early fall to mate and enter hibernation. As of October 2006, the Service had records of extant winter populations of approximately 281 hibernacula in 19 States and 269 maternity colonies in 17 States (King 2007, pp. 2–23). The 2005 winter census estimate of the population was 457,000, which is a 15 percent increase from the 2003 estimate (King 2007, p. 24).

Analysis of Background Information Provided in the Petition

The petition includes an incomplete list of areas currently designated as Indiana bat critical habitat. Wyandotte Cave and Ray's Cave in Indiana are not, however, included on that list. We clarify that Wyandotte Cave and Ray's Cave in Indiana are currently designated as critical habitat. We assume this omission is simply an oversight on the part of the petitioners. Therefore, when the petitioners reference current critical habitat in the petition we assume that they are referring to Big Wyandotte and Ray's Caves as well as all other designated critical habitat.

In addition, the petition states that ''In the 1999 draft Indiana Bat (*Myotis sodalis*) Revised Recovery Plan the USFWS admitted that ''it is evident that these measures have not produced the desired result of the recovery of the species (USFWS 1999a).'' We reviewed our 1999 draft Recovery Plan, and while this statement does appear in that document, it does not refer to the failure of critical habitat to promote recovery. In the 1999 draft Recovery Plan, this sentence relates specifically to conservation efforts directed at protection of winter habitat of the Indiana bat (USFWS 1999, p. 19). We listed the Indiana bat as endangered due primarily to human disturbance of hibernating bats, and associated declines in populations. We also recognized that modifications to caves were a major threat. Those modifications altered the internal climates of caves, rendering them unsuitable or less suitable for hibernating bats. Early conservation efforts focused on alleviating threats to the hibernacula, but populations continued to decline. In light of these continued declines, the 1999 draft Recovery Plan recognized that we need to continue and expand restoration and conservation efforts at hibernacula and conserve the known habitats that the species uses throughout its annual cycle.

Analysis of Petitioners Assertion That Expanded Critical Habitat Is Necessary

Petitioners Assert That the Population Continues to Decline

The petition states that ''Populations of Indiana bat continue to decline despite the 1976 designation of critical habitat by the USFWS.'' The petition states that ''The current critical habitat designation for the Indiana bat is having no effect on the species' survival.''

Information in our files shows that surveys since 2001 report increases in population numbers. Indiana bat population estimates are based on surveys conducted at Indiana bat hibernacula. During the 1950s, biologists began conducting winter bat surveys at irregular intervals and recording population estimates for a limited number of Indiana bat hibernacula (Hall 1962, pp.19–26). During the 1960s and most of the 1970s, winter surveys of the largest Indiana bat populations known at that time were relatively few, and many medium-sized and large winter populations had not yet been discovered. Since the release of the original Recovery Plan in 1983 (USFWS 1983, 80 pp.), with few exceptions, regular biennial surveys have been conducted in the most populous hibernacula. Rangewide population estimates over the three most recent biennial survey periods do not show the same declining trend seen in estimates spanning 1965 through 2000. There was approximately a 4-percent increase from the 2001 estimate of 381,000 bats to the 2003 estimate of 398,000 bats, and a 15-percent increase from the 2003 estimate of 398,000 bats to the 2005 estimate of 457,000 bats (King 2007, p. 24).

The petition states ''Even in Priority 1 hibernacula (protected caves with recorded winter populations exceeding 30,000 bats) the species continues to decline.'' It is not accurate to state

categorically that populations at sites designated as critical habitat have declined. Trends at hibernacula currently designated as critical habitat have not been consistent: some have declined while others have increased. For example, the population at (Big) Wyandotte Cave in Indiana was estimated at 1,900 Indiana bats in 1974 (the last estimate prior to designation as critical habitat) and the 2005 estimate was 54,913 bats (King 2007, p. 24). In contrast, the estimate at Cave 29 (Great Scott Cave) in Missouri was 81,800 bats at the time of critical habitat designation, and the 2005 estimate was 6,450 Indiana bats (King 2007, p. 25). The same applies to hibernacula not designated as critical habitat; the populations at some individual hibernacula have remained relatively stable or increased, while others have declined. The petitioners provide no new information or evidence to suggest otherwise.

Petitioners Assert That Declines Are Linked to Activities Occurring Outside Hibernacula

The petition states that ''Research demonstrates that the pressure exerted on the survival of the Indiana bat comes from activities occurring outside of protected, wintering hibernacula, and that revision of critical habitat designations is over-due; advances in the study of Indiana bat populations (Murray et al. 1999) and the knowledge of Indiana bat summering habitat (Romme et al. 1995: Humphrey et al. 1997: and USFWS 1999a) provide for revision to the critical habitat designation without delay.''

(Note that the above quote cites Humphrey et al. 1997. However, the list of references provided with the petition does not include a citation for Humphrey et al. 1997, but does include a citation for Humphrey et al. 1977. We assume that the reference to the 1997 document in the text is a mistaken reference to the 1977 document.)

Based on our review of the literature cited we have found the petitioners' claim to be inaccurate. None of the references cited by the petitioners report on research linking declines in Indiana bat populations to activities occurring outside of the hibernacula. The Murray et al. (1999, pp. 105–112) paper reported on a study comparing mist nets and the Anabat II detector system (an ultrasonic bat detector) for surveying bat communities; the paper did not report on causes of population declines in Indiana bat populations (and, in fact, Indiana bats were infrequently encountered during this study). The other three papers contain references to population declines, but do not report on research linking declines to factors outside of hibernacula.

Romme et al. (1995, p. 1) stated: ''Although a variety of factors undoubtedly have contributed to population losses, protection of hibernacula has been a management priority. Despite this protection, population declines have continued.'' No specific research linking declines to activities outside hibernacula were cited in this paper; rather, the paper urged that factors in addition to hibernacula protection should be considered in Indiana bat conservation efforts.

Similarly, USFWS (1999a, p. 19) (which is an agency draft of a revised Indiana Bat Recovery Plan) also pointed out that the emphasis of Indiana bat conservation efforts up to that time had been hibernacula protection, and that populations continued to decline. However, the document stated that ''not all causes of Indiana bat population declines have been determined'' (USFWS 1999a, p. 15).

Humphrey et al. (1977, pp. 334–346) reported on the discovery, in Indiana in 1974, of the first known maternity colony of the Indiana bat. As this was the first known maternity colony, relatively little was known about summer habitat at that point in time. Prior to this discovery, it was not known that the Indiana bat's maternity colonies occur in trees. The authors noted that summer habitat is needed for the reproduction and survival of the Indiana bat and pointed out that the crucial events of gestation, postnatal development, and post-weaning maturation take place during this time. The authors also discussed that suitable summer habitat is destroyed by some human land uses and urged caution in managing those habitats.

Humphrey et al. (1977, p. 345) makes the observation that summer habitat does not appear to be limiting to the Indiana bat:

> Despite the problems sometimes occurring in tree roosts, one great advantage is realized. Suitable foraging habitat occurs over a vast area of the eastern United States, and the bats can roost in a nearby tree so that flying to the feeding area is not costly. This means that *M. sodalis* has much summer habitat available to it; thus a large population size and distribution are possible.

In summary, none of the information provided or references cited by the petitioners report on research that demonstrates that factors outside the hibernacula are linked to declines in populations of Indiana bats. Rather, the references suggest that conservation efforts beyond the efforts focused on hibernacula may be appropriate. While they point out that summer habitat is important to Indiana bats, the references do not provide evidence that revising critical habitat to include summer areas may be warranted.

Petitioners Assert That Designating Critical Habitat in Summer Range Is Essential for Recovery

The petitioners make multiple claims that the current critical habitat designation has failed to promote recovery of the Indiana bat, and that designation of critical habitat in the summer range of the species is needed for recovery. Specifically, the petitioners state that ''Because there is no designated critical habitat in the Indiana bat's summer range, the USFWS continues to issue incidental take statements throughout the country, allowing many Indiana bats to be killed. For example, in southern Indiana, the USFWS allowed the permanent destruction of 121 ha (299 ac) of forest habitat in an area that has the highest known concentration of Indiana bat maternity roosts in the world (USFWS 1998). If the current protections fail to protect even this important area, expanded critical habitat is necessary.''

Designation of critical habitat would not address the issue of incidental take and the killing of Indiana bats. Take prohibition is addressed under section 9 of the Act, and we evaluate and address incidental take under sections 7 and 10 of the Act. The critical habitat analysis done under section 7 does not include consideration of take of the species itself, only habitat destruction or modification.

Furthermore, the example provided by the petitioners refers to Camp Atterbury Army National Guard Training Site. Camp Atterbury provides an excellent conservation example; current efforts at this site have been very effective in conserving the Indiana bat's summer habitat. Camp Atterbury comprises 13,409 ha (33,120 ac) in portions of Bartholomew (11,397 ha) (28,151 ac), Brown (1,609 ha) (3,974 ac), and Johnson (402 ha) (993 ac) Counties, Indiana. Approximately 10,927 ha (26,990 ac) of the site is forested. In August 1997, a mist net survey of 22 sites at Camp Atterbury was conducted to determine whether Indiana bats, as well as other bat species, were present on the installation. A total of 208 bats, representing 8 species, was captured, including 13 Indiana bats. In 1998, the Service and Department of Defense (DoD) consulted on the construction and operation of a training range at this base; the Service issued a biological opinion (cited by the petitioners as USFWS 1998b) and a subsequent amendment

that allowed for the loss of 121 ha (299 ac) of habitat suitable for summering Indiana bats for the development of a training range at the base. DoD incorporated a number of conservation measures into the proposed project, including setting aside 315 ha (778 ac) for Indiana Bat Management Zones, developing a landscape-scale forest management policy for the entire base to ensure long-term conservation of Indiana bat's summer habitat, development of a permanent water source for bats, restrictions on the use of training materials potentially toxic to Indiana bats, and development of bat research and education programs on the facility. DoD has worked closely with the Service to ensure that Indiana bat summer habitat conservation efforts have continued. DoD has continued to fund monitoring of the Indiana bat population, as well as other research efforts, and this monitoring demonstrates that the facility continues to support multiple maternity colonies of Indiana bats. There is no evidence that the long-term viability of Camp Atterbury's bat population has declined as the result of military activities. In fact, consultation between DoD and the Service (under section 7 of the Act) has led to many enhancements of summer habitat that are likely improving the long-term viability of this population.

The petitioners also state: ''Because in [sic] the change in knowledge concerning the Indiana bat's summer habitat since 1996, it is necessary that the USFWS designate summer habitat for the Indiana bat.'' We assume that the reference to 1996 is a mistaken reference to 1976, which is when we designated critical habitat for the Indiana bat. It is true that we have more knowledge of summer habitat than when we designated critical habitat in 1976, but it is not a logical extension that the knowledge necessitates the designation of critical habitat on the summer range of the species. Under section 3(5)(A) of the Act, critical habitat is defined as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The petitioners do not provide information that can reliably define the features of summer habitat that are essential to the conservation of the species, or information about what special management is required, nor provide evidence that specific areas of summer habitat may be essential to the conservation of the species as a whole. As we gather additional information on summer habitat and the distribution of the Indiana bat, we are finding that the bat is widely distributed in a variety of wooded areas. We agree that summer habitat is needed by the species, and we are successfully applying our expanding knowledge in efforts to conserve summer habitat for the Indiana bat, as demonstrated by the Camp Atterbury example discussed above. The petitioners provide no new information to support their claim that current conservation efforts are failing to conserve the Indiana bat on its summer range or to suggest that critical habitat designation of summer habitat may be warranted.

Petitioners Recommendations Regarding Critical Habitat

The petitioners note that recommendations in their petition are not complete. The petitioners alternate between requesting designation of specific forested areas and designation of all suitable habitat, but their request for the revision of critical habitat for the Indiana bat includes the following sites:

(1) Areas surrounding hibernacula currently designated as critical habitat.

(2) Suitable habitat in all counties where maternity colonies or ''other summering Indiana bats'' (which we assume means males and non-reproductive females) have been found in 9 States (Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and North Carolina). In addition, the petitioners request that we designate as critical habitat all optimal summer and fall roosting and foraging habitat throughout those States.

(3) Additional specific sites, including:

Illinois: Forests surrounding all 51 roost trees discovered by Garner and Gardner in Illinois; all forested areas within Pike and Adams Counties; all or a majority of the Shawnee National Forest; all optimal and suitable habitat in Williamson and Johnson Counties; and Indiana bat habitat in the Georgetown area (along the Little Vermillion River).

Indiana: Bartholomew, Johnson, and Brown Counties, or at an absolute minimum forested land on Camp Atterbury; all forested areas and woodlots at Newport Chemical Depot and additional areas including Little Raccoon Creek; and Muddy Fork of Silver Creek watershed.

Kentucky: Federal land in Letcher and Pike Counties.

Missouri: Fort Leonard Wood; Mark Twain National Forest; and area around St. Lee's Island on the Mississippi River, in St. Genevieve and Jefferson Counties.

Pennsylvania: Allegheny National Forest.

Virginia and West Virginia: Cumberland Gap National Historic Park and George Washington and Jefferson National Forests; and the most optimal Indiana bat habitat on private land throughout Virginia.

References cited by the petitioners document the presence of Indiana bats at specific sites, but the petitioners provide neither information that can reliably define the features of summer habitat that are essential to the conservation of the species, or what special management may be necessary, nor evidence that specific areas of summer habitat may be essential to the conservation of the species as a whole. There is currently no reliable method for determining or evaluating the relative value of these areas as summer habitat for the Indiana bat.

The petitioners define ''essential'' summer habitat for the Indiana bat as an area with at least 30 percent deciduous forest cover and water within 0.97 kilometers (0.6 miles) and optimal habitat as an area with greater than 60 percent canopy cover. They further describe optimal habitat as having more than 27 trees greater than or equal to 22 centimeters (cm) (8.7 inches) in diameter per 0.4 ha (ac), and suitable habitat as having as few as one tree greater than or equal to 22 cm (8.7 in) in diameter per 0.4 ha (ac). These definitions are based on a summer habitat model developed by Romme et al. (1995, pp. 27–38) that was based on habitat parameters that had been collected across the range of the species (up to the time the model was developed). The model cited by the petitioners has not been found to be useful in predicting habitat occupancy by Indiana bats (Carter 2005, pp. 83–85). While the limiting factors of this model are unclear, the fact that the species occurs across a large range and in a variety of wooded habitats likely contributes to the difficulty of developing successful models. The petitioners also cite Gardner et al. (1990, pp. 8–9) as documenting that most maternity roost trees are found in areas with more than 80 percent canopy cover. The work by Gardner et al. (1990) was conducted only in Illinois, and was pioneering research that greatly enhanced our understanding of the summer ecology of Indiana bats. The results, however, cannot be used to

describe the characteristics of summer habitat across the range of the species because subsequent research has shown that characteristics of other occupied sites are quite different. For example, mean values of canopy cover surrounding Indiana bat maternity roost trees are highly variable among studies, ranging from less than 20 percent to 88 percent (Kurta 2005, p. 41). Yates and Muzika (2006, pp. 1245–1246) also noted that, across the range of the Indiana bat, the amount of nonforested land in occupied areas varies greatly. The best scientific information available on summer habitat suggests that the species is widely distributed in a variety of wooded habitats, ranging from highly fragmented woodlands in agricultural landscapes to extensively forested areas.

The Service has summer records of Indiana bats from 296 counties in 20 States (King 2007, pp. 2–23). In addition to the specific areas identified above, the petitioners request that the Service revise critical habitat for the species to include all suitable habitat in all counties where there are summer records of the species in 9 States (Illinois, Iowa, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and North Carolina); the Service has summer records from 235 counties in those States. As previously discussed, Indiana bats summer in a wide variety of wooded habitats, and the petitioners provide no reliable method to evaluate or measure the relative value of sites or features contained therein as Indiana bat summer habitat.

Finding

We have reviewed the petition, literature cited in the petition, and information in our files. After this review and evaluation, we find the petition does not present substantial information to indicate that revision of critical habitat to include summer areas for the Indiana bat may be warranted. Nevertheless, we have elected to respond as if a positive 90-day finding has been made and also render a 12-month finding for which we have determined not to proceed with the requested revision to Indiana bat critical habitat.

Under section 3(5)(A) of the Act, in order for the Service to consider an area for designation as critical habitat, we must either conclude that a specific area within the geographical area occupied by the species, at the time it is listed, contains those physical or biological features essential to the conservation of the species and which may require special management considerations or protection, or that a specific area outside the geographical area occupied by the species at the time it is listed is essential for the conservation of the species. The petitioners do not provide information that adequately defines the features of summer habitat that are essential to the conservation of the species, or provide information about what special management may be necessary, or provide evidence that specific areas of summer habitat may be essential to the conservation of the species.

Under the statute, the petition process for revisions to critical habitat varies from that for other petitions. Under the statute were we to make a positive finding, we need only to determine how we intend to proceed with the requested revisions. We have determined that even if a 90-day finding was warranted with respect to this petition, for the reasons stated below, we are not proceeding with revision of the critical habitat. In making this finding we are exercising our discretion, provided under section 4(b)(3)(D)(ii) of the Act, with respect to revision of critical habitat.

We cannot justify exercising our discretion to revise critical habitat for the Indiana bat because considerable time and effort would be needed to conduct new analyses and complete other procedural steps that would be associated with completing this discretionary action. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. At the present time we have a backlog of actions involving non-discretionary designations of critical habitat for approximately 33 species. These include actions that are mandated by court orders and court-approved settlement agreements, as well as actions necessary to implement the requirements of the Act pertaining to critical habitat designations. It will take us a number of years to clear this backlog, and during that time we also need to meet non-discretionary requirements to designate critical as additional species are listed. Meeting these requirements, for which we have no discretion, is a higher priority than taking discretionary actions.

Based on our need to give priority to funding the large number of outstanding non-discretionary designations and to address new designations that will be required as additional species are listed, we find that the petitioned action to revise critical habitat for the Indiana bat is not warranted. The fact that we are making this finding and exercising our discretion not to revise critical habitat for the Indiana bat does not, however, alter the protection this species and its habitat will continue to receive under the Act. Specifically, it does not alter the requirement of section 7(a)(2) of the Act that all Federal agencies must insure the actions they authorize, fund, or carry out are not likely to ''jeopardize the continued existence'' of a listed species or result in the ''destruction or adverse modification'' of critical habitat. Further, the section 9 prohibition of take of the species, which applies regardless of land ownership or whether or not within designated critical habitat, is independent of whether critical habitat is revised to include summer habitat and is unchanged by this finding.

Although we will not commence a proposed revision of critical habitat in response to this petition, we will continue to monitor the Indiana bat population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the Indiana bat across its range. We will also be considering the recommendations covered in any final revisions to the recovery plan that is now being developed. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the Indiana bat, you may submit your information or materials to the Field Supervisor, Bloomington Ecological Services Field Office (see **ADDRESSES**).

References Cited

A complete list of all references cited herein is available, upon request, from the Bloomington Ecological Services Field Office (see **ADDRESSES**).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Bloomington Ecological Services Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: February 28, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E7–3868 Filed 3–5–07; 8:45 am]

BILLING CODE 4310–55–P