



October 15, 2018

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Elizabeth McNichols, District Ranger
Warm Springs Ranger District
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Dear Ranger McNichols:

Re: Duncan Knob Gypsy Moth Project Scoping Comments – Supplemental Information

Board of Directors:

Dear Ranger McNichols:

Bette Dzamba

Howard Evergreen

Katie Keller

Brian Lux

David Sellers

Deirdre Skogen

Jamie Trost

Ryan Wagener

Elizabeth Williams

In response to the scoping notice (Notice) for this proposal, dated June 27, 2018, Wild Virginia submitted timely comments on July 26, 2018. We submit this letter to call on the Forest Service (FS) to incorporate additional information regarding the federally-endangered Rusty Patched Bumblebee (RPB), *Bombus affinis*, and to conduct a full and adequate review of this project.

We believe that the activities proposed could negatively impact this sensitive and rare species and these negative impacts are likely to outweigh any benefits the project may have. As explained in our earlier comments, we assert that the benefits of this type of project are overstated and that the general goal of fostering a mosaic of habitats in the forest is served by a range of disturbances, including gypsy moth infestations. Such disturbances are generally not accompanied by the negative effects of ground compaction, road building, and other impacts.

If the FS chooses to proceed with the project review despite these potential impacts, an environmental assessment (EA) should be completed, in accordance with regulations implementing the National Environmental Policy Act (NEPA), because use of a categorical exclusion (CE) is inappropriate for the proposed action.

In the scoping notice (Notice), you stated: “It is my current intention to utilize this CE authority for this gypsy moth damage project (Section 603 of HFRA (16 U.S.C. 6591b), unless information collected during scoping or project development warrant otherwise.” Notice at 3. We assert that the information discussed herein is of the kind that you must consider and that findings of additional RPBs in and near the project area and information in the U.S. Fish and Wildlife Service (USF&WS) revised biological opinion (Bi-op) for the Atlantic Coast Pipeline (ACP) demonstrate that “extraordinary circumstances” exist that make the use of the categorical exclusion (CE) cited in the Notice inappropriate, as explained below.

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Legal Background

A federal agency may forego preparation of an EA when a project falls within a category of activities for which a CE has been established. One such category, as cited in the Notice, has been established under the Healthy Forest Restoration Act (HFRA), 16 U.S.C 6591 at Section 603. However, for projects considered under a CE, an agency must determine whether “extraordinary circumstances” exist. Under FS regulations, extraordinary circumstances may be found if certain “resource conditions” exist. 6 C.F.R. § 220.6(b). One such resource condition is the presence of “federally listed threatened or endangered species or designated critical habitat,” 36 C.F.R. § 220.6(b)(1)(i).

Once the agency finds that such species or designated critical habitat may be affected, the responsible official must then “consider whether ‘a cause-effect relationship between a proposed action’ and these resource conditions exists and, if so, ‘the degree of the potential effect.’” *Sierra Club v. U.S. Forest Service*, 828 F.3d 402, 408 (6th Cir. 2016) (quoting 36 C.F.R. § 220.6(b)(2)). FS regulations require that the agency prepare an EA if it “determines, based on scoping, that it is *uncertain whether the proposed action may have a significant effect on the environment.*” *Id.* (emphasis added). Thus, an EA must be conducted if there is uncertainty as to the potential for significant impacts from the project.

Factual Background

In relation to its analysis of potential impacts from the Atlantic Coast Pipeline (ACP), the USF&WS has defined a High Potential Zone (HPZ) in which the RPB may be found (see attached letter, USF&WS to Federal Energy Regulatory Commission (FERC), transmitting a revised Biological Opinion, September 11, 2018). “The HPZs generated by [a model used by USF&WS] suggest areas with the highest potential for the species to be present based on the location of 1 or more RPBB records, typical foraging distances, and inferred habitat suitability.” USF&WS letter at 23.

A map delineating an HPZ for the RPB in Bath County is shown on the USF&WS letter at page 28, depicting an area that the agency estimates to be 969.6 hectares in size, based on revised population surveys conducted in 2018 (letter at 24). The USF&WS letter states that “RPBB in the HPZ are affected by existing actions associated with forest management at GWNF.” *Id.* at 29. Based on a comparison between the map in the Notice and the USF&WS map, a number of the areas where the FS proposes activities for this project fall within the HPZ.

The revised Bi-op prepared by the USF&WS describes a variety of activities related to the ACP that may affect the RPB, at *Table 5. An analysis of effects on RPBB*. Some of the same types of activities in the HPZ in relation to the ACP will also be conducted if this FS project goes forward. For example, the vegetation treatments proposed for the Duncan Knob project, described in the Notice at page 2, include “commercial timber harvest with associated temporary road construction” and “salvage of dead or dying trees to regenerate the area with an oak component.”

The timber harvests and temporary road construction proposed here reflect similar actions proposed for ACP, for which the USF&WS has described possible negative impacts to the RPB. Like the ACP, this project would include “clearing of foraging habitat” and “human activity and disturbance.” According to the Bi-op, such actions may kill or harm all life stages of the RPB and the numbers and reproduction of the species.

In addition, treatments for non-native invasive species proposed for this project could have negative impacts to RPB individuals and populations. The Bi-op concludes that similar activities by ACP are unlikely to harm the species, however we note that this conclusion is based on a discussion of voluntary limits agreed to by the pipeline company, including time-of-year restrictions and specific limits on these actions.

Required Extraordinary Circumstances Analysis

The Notice for this proposal states, at page 2, that one purpose for this project is to “[e]stablish early successional habitat for pollinator species including rusty patched bumble bee (*Bombus affinus*). However, beyond this mention, the Notice fails to provide any information about the ways the proposed activities may affect individuals or populations of the RPB. Without such an analysis, use of the CE for this project cannot be justified.

The USF&WS letter states that “[d]ue to the rarity of the [RPB] in VA and uncertainty associated with some RPBB life history requirements, there is uncertainty regarding habitat use and distribution of the species during certain life stages and time periods,” USF&WS letter at 24-25 (emphasis added), and that “[s]tatus of colonies and the population in the HPZ are unknown at this time, Id. at 26 (emphasis added). We also note that in discussing potential cumulative impacts on the RPB, the USF&WS states that “[t]he Service is not aware of any future state, tribal, local, or private actions that are reasonably certain to occur within the action area at this time; therefore, no cumulative effects are anticipated.” Id. 49. This discussion fails to acknowledge this proposed FS action or to consider these activities in combination with those associated with the ACP.

The FS is obligated to address the variety of potential impacts to the RPB from this proposed project, including those listed in the Bi-op. Will the clearing of vegetation and associated human and vehicle traffic affect individuals and populations in ways described by the USF&WS? What specific actions are proposed with herbicides to control non-native invasive species and will they be adequate to protect the species? As noted above, while the Bi-op concludes that herbicide use is not likely to cause harm to the RPB, that conclusion is based on certain commitments made by the pipeline company. The FS should include discussion of such details in an EA, describe the specific measures it plans, and analyze likely impacts to the RPB.

The Notice states that one objective of this project is to establish early successional habitat for pollinators, including the RPB. Notice at 2. While this action may benefit the species, there also may be negative impacts from the removal of forest cover now in place. As described in the Bi-op, the removal of overstory vegetation can create “create too much sunlight for RPB, which prefers partial to filtered sunlight.” Bi-op, Table 5.

Use of CE is Inappropriate

As explained above, an agency has a legal obligation to conduct an EA or EIS rather than rely on a CE if it “determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment.” *Sierra Club v. U.S. Forest Service*, 828 F.3d 402, 408 (6th Cir. 2016) (emphasis added). By its own analysis, the USF&WS admits that there are significant uncertainties as to the population of RPB in the project area and the impacts activities may have on the species. There are a range of potential negative effects on the RPB, as described in the Bi-op that must be acknowledged and analyzed for this project to meet NEPA standards.

Elizabeth McNichols, District Ranger
October 15, 2018

Based on the information available to the FS, we assert that the agency must perform and EA if it proposes to proceed with this project review. Otherwise, the project should be cancelled.

Thank you for considering these comments.

Sincerely,

_____/s/____

David Sligh
Conservation Director

cc: Karen Overcash, GW&JNF