



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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JUL 15 2008



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received 7/21/08

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Consultation No. 21450-2003-I-0276

Dear Ms. Rutson:

Thank you for sending us a copy of the final environmental impact statement for the Southwest Gulf Railroad (SWGRR) Company. The U.S. Fish and Wildlife Service (Service) is concerned that the proposed railroad is routed through several patches of woodlands that may support the federally-listed golden-cheeked warbler (*Dendroica chrysoparia*) (GCWA). It is our understanding from Diana Wood of the Surface Transportation Board (Board) that the loading loop would be built by Vulcan Quarry and is not part of the SWGRR. It appears that quarry and loading loop is located in relatively large oak-juniper woodlands that may support breeding pairs of GCWA (Figure 1). We are unaware of any surveys for this species in the project area.

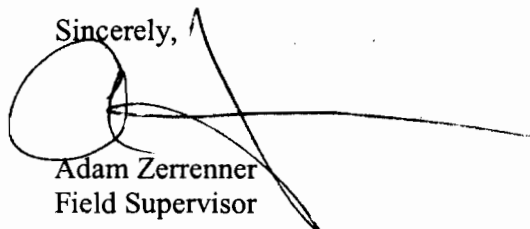
We recommend that the Board consider whether the project, directly or indirectly, is likely to adversely affect the warbler. If any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial, then the appropriate determination is "likely to adversely affect." This determination would require formal section 7 consultation with us.

Under the Endangered Species Act of 1973 as amended (Act), actions that result in "take" of golden-cheeked warblers can be legally addressed by two distinct Sections of the Act, namely, section 7 and section 10(a)(1)(B). Section 7 addresses take when there is a Federal nexus such as permitting or funding. Section 10(a)(1)(B) is available for non-Federal actions and requires that the applicant develop and implement a habitat conservation plan that minimizes and mitigates harm to listed species to the maximum practicable extent. We would like to work with the Board, SWRR Company, and Vulcan Quarry to help ensure compliance with the Act.

We recommend that SWRR Company and Vulcan Quarry consider the development of a habitat conservation plan pursuant to section 10 of the Act for potential future take should construction plans involve take of the GCWA that are not covered under section 7.

If you have any questions or comments, please contact Patrick Connor or Bill Seawell at 512-490-0057.

Sincerely,



Adam Zerrenner
Field Supervisor

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Figure 1 – Attachement

