United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

JUN 15 2011

In Reply Refer to:
ES-61411/WY11TA0288

Dear Federal Land Manager in Wyoming:

As the 2011 fire season approaches, the U.S. Fish and Wildlife Service (Service) would like to review with you the procedure for emergency consultations under section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). We also address use of fire retardant chemicals related to Kendall Warm Springs dace (*Rhinichthys osculus thermalis*) habitat (applicable only to the Bridger-Teton National Forest - see Enclosure 1). Please distribute this letter to other staff members in your office as it is through these emergency consultation procedures that our agencies address wildfire suppression activities.

Firefighter and public safety is the first priority. You should not implement measures for the protection of listed species or their habitat if doing so may place firefighters or the public in danger. **Firefighter and public safety comes first on every fire, every time.**

There is no need to consult on the wildfire itself. Wildland fire has many beneficial effects in a naturally functioning ecosystem, but on occasion, fire can destroy threatened or endangered species and their habitats and/or alter critical habitat. Wildland fire is considered a disaster or an act of God under section 7 of the Act (50 CFR §402.05). Initiation of consultation is only required if there may be an effect to a listed species resulting from *wildfire suppression activities*. The Service can be contacted at any time for assistance in identifying areas with federally protected species. Chapter 8 of the Section 7 Consultation Handbook (FWS/NMFS, 1998) describes the emergency consultation process. The Action Agency (*i.e.*, the lead Federal agency) has a duty to meet its section 7(a)(2) and 7(d) obligations under the Act even in emergency situations. We summarize emergency consultation for wildland fire as a 4-step process:

1. Initial contact by the Action Agency: Initial contact by the Action Agency can be by phone or fax (please refer to the telephone numbers listed below). This contact should be followed by a written request from the Action Agency for emergency consultation if fire suppression activities may affect a listed species or critical habitat. **Do not delay response to a wildfire to contact the Service.** Initial contact with the Service occurs simultaneously with, or at the earliest possible convenience after, the Action Agency's response to a fire. Typically, the designated Resource Advisor serves as the field contact for coordination with the Service. During the initial contact with the Service, the Action Agency describes the emergency incident and response (proposed and taken actions) and the Service provides recommendations to minimize effects to listed species and their habitats. In addition to site-

specific recommendations, the Service advises use of Minimum Impact Suppression Tactics (Enclosure 2) in areas with federally protected species or habitat. The Service recommends that additional on-the-ground monitors be in place when fire suppression activities occur in areas with federally protected species. In situations where an adverse effect to listed species or their proposed or designated critical habitat may occur, the Service will determine whether the incident may result in jeopardy or adverse modification.

2. Completing Consultation: During the fire containment phase, the Action Agency continues the consultation process. A Biological Assessment, including justification for expedited consultation, a description of the fire and fire suppression activities, and resultant effects to listed species and their habitats is required. Note that the "Federal action" consists of the agency actions (i.e., fire suppression activities) that occurred, whereas the description of fire effects considers the environmental baseline for listed species.

3. Biological Opinion: Emergency consultations are "after the fact" consultations and are modified from the standard Biological Opinion format. Their focus is on the assessment of effects, identification of restoration opportunities, and re-evaluation of the environmental baseline. Therefore, reasonable and prudent measures or terms and conditions are generally not applicable. An emergency consultation (1) estimates the amount of 'take' that occurred due to the emergency fire suppression, (2) documents the Service's recommendations to minimize effects, (3) evaluates the success of the Action Agency carrying out these recommendations, and (4) determines the ultimate effect of 'take.' If there is incidental 'take' of a listed species, it is only for fire suppression actions; federally-listed species or critical habitats lost due to the wildfire itself are not counted as 'take' attributable to the consulting agency.

4. Conservation Recommendations: Emergency consultations may contain conservation recommendations to help protect listed species and their habitats in future emergency situations or to initiate beneficial actions to conserve listed species. For example, a conservation recommendation may advise restoration of areas that previously provided habitat for listed species prior to being affected by suppression activities. Rehabilitation efforts in areas near or occupied by federally protected species should be coordinated with the Service. Proactive suppression response tactics that reduce the need for rehabilitation are preferred whenever feasible. Please refer to the Conservation Measures in Enclosure 2.

The most effective way to minimize impacts on endangered species is to informally consult with the Service during the development of the consulting agency's "Fire Management Plan." Endangered species concerns can be identified before wildfires start, and pre-attack suppression strategies can be designed to address endangered species needs. Strategies will provide important information to the initial attack Incident Commander and facilitate the development of the Wildland Fire Situation Analysis (WFSA), if necessary. The WFSA is an effective means of identifying all resource considerations, including endangered species and their critical habitats. The WFSA also identifies appropriate suppression actions. Appropriate suppression actions can include the entire range of activities normally implemented, such as application of retardant, backfires, air attack, line construction, etc.

If you have any questions or comments regarding your responsibilities under the Act or emergency consultation procedures, please contact our office at the letterhead address, phone

(307) 772-2374 or fax (307) 772-2358.

After Hours Emergency Contact: Tyler Abbott – (307) 286-7242.

Sincerely,

R. Mark Sattelberg
Field Supervisor
Wyoming Field Office

Enclosures (2)

PAPER cc:

BLM, State Office, Cheyenne, WY:
Section 7 and Fisheries Lead – C. Keefe

BLM, Wildlife Fire Response Staff, WY:
High Desert District (Kemmerer, Pinedale, Rawlins and Rock Springs Field Offices)
District Manager - John Ruhs
Fire Management Officer - Frank Keeler
High Plains District (Buffalo, Casper and Newcastle Field Offices)
District Manager - Stephanie Connolly
Fire Management Officer - Jay Esperance
Wind River/Bighorn Basin District (Cody, Lander and Worland Field Offices)
District Manager - Eddie Bateson
Fire Management Officer - Chuck Russell

FWS, R6, Lakewood, CO (B. Fahey, S. Selbo)

NPS, Intermountain Regional Office, Denver, CO (C. Ogden)

NPS, Superintendents, Natural Resource Staff and Fire Response Staff, WY:
Bighorn Canyon NRA
c/o John Keck, NPS, Cheyenne, WY
Devil's Tower NM
Superintendent - Dorothy Firecloud, Devil Tower, WY
Fort Laramie NHS
Superintendent - Mitzi Frank, Ft. Laramie, WY
Fossil Butte NM
Superintendent – Nancy Skinner, Kemmerer, WY
Grand Teton NP/John D. Rockefeller, Jr. Memorial Parkway:
Superintendent – Mary Gibson-Scott, Moose, WY
Yellowstone NP
Superintendent – Dan Wenke, Yellowstone NP, WY

NWR:
National Elk Refuge, Jackson, WY 83002
Seedskadee NWR and Cokeville Meadows NWR, Green River, WY

USFS, Region 2, Regional Office, Golden, CO (P. McDonald, N. Warrren)

USFS, Region 4, Regional Office, Ogden, UT (Lee Jacobson)

USFS, Forest Supervisors, WY:
Bighorn NF (R2)
Forest Supervisor - Bill Bass, Sheridan, WY
Black Hills NF (R2)
Forest Supervisor - Craig Bobzien, Custer, SD
Bridger-Teton NF (R4)
Forest Supervisor - Jacque A. Buchanan, Jackson, WY
Medicine Bow-Routt NF/Thunder Basin NG (R2)
Forest Supervisor - Phil Cruz, Laramie, WY
Shoshone NF (R2)
Forest Supervisor - Joe Alexander, Cody, WY

WGFD, Lander, Non-Game Coordinator (B. Oakleaf)
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (M. Flanderka)

ELECTRONIC cc:

Buffalo FO:
Field Manager - Duane Spencer: **dspencer @blm.gov**
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Field Manager – Karla Bird: **Karla_Bird@blm.gov**

FWS, Ecological Services Biologists, WY

FWS-FWMAO, Lander, WY: P. Hnilicka: **Pat_Hnilicka@fws.gov**

NWR, c/o Louis Hartjes: **Louis_Hartjes@fws.gov**

USFS, WY:

Bighorn NF (R2)

Fire Management Officer - Jon Warder: **jwarder@fs.fed.us**

Black Hills NF (R2)

Forest Fire Management Officer – Todd Pechota: **tpechota@fs.fed.us**

Bridger-Teton NF (R4)

Natural Resources Staff Officer - Pam Bode: **pbode@fs.fed.us**

Fire/Timber Staff Officer – Tobin Kelley: **tkelley@fs.fed.us**

Medicine Bow-Routt NF/Thunder Basin NG (R2)

Fire Management Officer – Vern Bentley: **vbentley@fs.fed.us**

Shoshone NF (R2)

Forest Biologist - Lynette Otto: **lotto@fs.fed.us**

Fire Management - Mark Giacoletto: **mgiacoletto@fs.fed.us**

References

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Act Consultation Handbook. 224pp. + Appendices.

Enclosure 1 – Bridger-Teton National Forest only

Kendall Warm Springs Dace:

The U.S. Fish and Wildlife Service (Service) 2008 Biological Opinion (USDI FWS 2008) on the continued aerial application of fire retardants on National Forest System Lands disclosed effects on threatened and endangered species and designated critical habitat, and in particular, Kendall Warm Springs dace (*Rhinichthys osculus thermalis*), in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The consultation was based on the *Guidelines for Aerial Application of Fire Retardant and Foams Near Waterways* (April 20, 2000). These guidelines established a buffer area of 300 feet adjacent to waterways in which no retardant is to be applied, except in the case of certain specified exceptions. Implementation of the guidelines is intended to minimize instances of retardant entering aquatic systems.

While the U.S. Forest Service (USFS) will fight fires with long-term retardants on all National Forests, there are no specific non-discretionary standards that would completely preclude the use of fire retardant within or near the habitat of the Kendall Warm Springs dace. Although misapplication or deliberate use of fire retardant in the Kendall Warm Springs area may be of low likelihood, the potential effects of such activity, if it did occur, could be disastrous for this species. However, the USFS is committed to protect and maintain Kendall Warm Springs dace and its habitat as part of the Bridger-Teton National Forest Land and Resource Management Plan (USDA FS 1990).

The Service encourages the Bridger-Teton National Forest to coordinate with the Wyoming Field Office prior to the fire season to develop specific measures to be carried out before, during, and/or after fire emergency response. The measures should include (1) the most up-to-date detailed maps or descriptions of the Kendall Warm Springs area, (2) plans to distribute this information to appropriate fire resources personnel for avoiding application of retardants to the Kendall Warm Springs area, and (3) any other appropriate conservation or contingency measures to avoid the likelihood of jeopardizing the species. The Service's Wyoming Field Office contact for Kendall Warm Springs dace is Alex Schubert, (307) 772-2374, ext. 238.

References:

USDA Forest Service. 1990. Bridger-Teton National Forest, Land and Resource Management Plan. 366pp. + Appendices.

USDI Fish and Wildlife Service. 2008. Biological opinion on the USDA Forest Service application of fire retardants on National Forest System lands. 156pp. + Appendices.

Enclosure 2

Conservation Measures to Minimize Fire Suppression Effects to Federally Protected Species

The U.S. Fish and Wildlife Service (Service) recommends the following conservation measures be implemented during fire suppression operations unless firefighter safety, public safety, or the protection of property, improvements, or natural resources renders them infeasible. The Service is providing these measures to reduce potential adverse effects to Federally protected species and their habitats from wildland fire suppression activities. Section 7 (a)(1) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.)* directs Federal agencies to further the purpose of the Act by carrying out conservation measures for the benefit of endangered and threatened species. Resource Advisors should coordinate with the Service to document necessary modifications or supplementation of these conservation measures during fire suppression operations.

1. **Coordination**
   a. Brief all firefighting and support personnel about Federally protected species and procedures to minimize impacts.
   b. Apply operation guidelines from the Interagency Standards for Fire and Fire Aviation Operations 2008.
   c. Ensure that equipment is free of weed seeds, parasites, diseases, and contaminants.

2. **Fire Fighting Construction, Activity Areas, and Camps**
   a. Use historic lines, existing skid trails, roads, and trails as fuel breaks.
   b. Use natural barriers as fuels breaks. In riparian areas, use openings in vegetation, such as sandy overflow channels, as fuel breaks.
   c. Use existing helispots and/or existing openings for helispot locations when possible.
   d. Construct temporary roads only if they are necessary for the protection of property or resources, including Federally protected species. Do not construct permanent roads.
   e. Build hand line instead of machine-built (e.g., bulldozer) line when possible, especially in riparian areas and wet meadows.
   f. Retain areas of fire tolerant tree species to the extent practicable.
   g. Locate camps, staging areas, aircraft landing areas and fueling areas outside of Federally protected species' habitats and riparian areas - preferably in areas that are already disturbed.
   h. Establish good sanitation for handling food and trash. In areas within the range of grizzly bears, store attractants (food, trash, toiletries etc.) in bear-proof containers or hang them 100 yards downwind of camps. Do not burn trash. Incomplete combustion leaves odors.

3. **Aquatic Environments**
   a. Inform pilots to avoid flight paths over waterways and to drop retardants or foams no closer than 300 horizontal feet from the edge of any waterway.
   b. Fire retardants and foams should not be used within 300 feet of waterways. Retardants may cause nitrate poisoning and may be lethal to aquatic organisms. Foams cause mortality to fish via the surfactant actions affecting the ability of gills to absorb oxygen.
   c. Buckets that have contained fire retardant or foam should not be dipped into open waters. Set up a dip tank that is isolated from natural water bodies for this purpose.
   d. Natural water bodies should not receive or be refilled with water from tanks, lakes or water sources that may support non-native aquatic species, parasites, or diseases.

e. Limit stream crossing sites and locate them on hardened ground or over logs or rocks.
f. Screen pump intakes with 3/32-inch plate screen to reduce fish entrainment.
g. Construct water chances or containments to minimize streambed alteration so that they do not inhibit fish passage.
h. Use erosion control methods, such as sediment traps, to limit the influx of ash and sediment into aquatic systems.
i. Store fuel and refuel equipment away from natural water systems.
j. Use containment systems for portable pumps to avoid fuel spills.
k. Be aware of management plans or develop and distribute management plans for handling spills of retardant, foams, fuels or other chemicals in waterways.
l. If fuel, other oil-based contaminants, or foam contact surface waters, inform your administrative unit's HazMat coordinator immediately to contain the spill, and contact the National Response Center at 1-800-424-8802 or 1-202-267-2675 to report it.

4. Raptors

a. Inform pilots to avoid raptor nests when possible. (Flight paths should be more than one mile from active bald eagle nests unless a different spatial restriction is warranted).
b. Where air operations occur with 0.5 mile of raptor nests, consider use of helicopter water drops as an alternative to retardant drops or foam, to minimize effects to raptors.

5. Summarize Efforts and Effects

a. Document the locations of hand and machine-built firelines.
b. Record the locations of areas impacted by fire and fire suppression activities, such as construction of safety zones, spike camps, sanitation facilities, and landing strips.
c. Identify the extent of any waterway inadvertently contaminated with foams or retardants.
d. Identify the chemical composition of retardants and foams used during fire suppression.
e. Record the locations of new or re-opened/re-constructed roads or trails.
f. Identify the locations of all water chances and waterbodies used as water sources or inadvertently receiving unused water from other sources.
g. Identify areas where invasive weeds may have been introduced and/or are likely to spread.
h. Identify general rehabilitation needs.

6. Rehabilitation

a. After suppression activities are completed, remove all garbage, litter, and equipment.
b. Discourage use of trails created during the suppression effort by covering with them with brush, limbs, rocks, and rotten logs in a natural arrangement.
c. Replace dug-up soil and duff and obliterate berms created during the suppression effort.
d. If trails were established on slopes greater than six percent, construct waterbars.
e. Re-seed, re-vegetate, directionally fell trees, etc., to minimize sediment delivery to waterways. Use nearby seed and transplant nearby native vegetation when possible.
f. Restore water chances and sites used for water dipping to pre-fire conditions. Ensure that no foam or retardant residues enter waterways during restoration.
g. Restore or stabilize areas where pre-fire conditions consisted of degraded resources, habitat or environmental conditions, to the extent possible.
h. Monitor Burned Area Emergency Rehabilitation (BAER) activities and long-term restoration activities and report results to the Service.