United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

APR 2 2 2016

In Reply Refer To:
06E13000-2016-TA-0179

Dear Federal Land Manager in Wyoming:

As the 2016 fire season begins, the U.S. Fish and Wildlife Service (Service) would like to review with you the procedures for emergency consultations under section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.)*. In addition, we have enclosed conservation measures, including measures specific to the greater sage-grouse (*Centrocercus urophasianus*), intended to minimize the effects of fire suppression activities to listed species (Enclosure 1). We also address use of fire retardant chemicals near habitat for the Kendall Warm Springs dace *(Rhinichthys osculus thermalis)* applicable only to the Bridger-Teton National Forest (Enclosure 2). Please distribute this letter to your staff to ensure that these emergency consultation procedures are used to address wildfire suppression activities and that measures to conserve listed species are adopted as part of your incident response.

Firefighter and public safety should always be the first priority of incident response. 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 may have beneficial effects in a functioning ecosystem, but on occasion, fire can affect threatened or endangered species and their habitats and/or impact critical habitat. **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 occupied by federally protected species. If there is a question as to whether or not suppression activities may affect listed species or critical habitat, the Service should be contacted as soon as possible. If suppression activities may affect listed species or critical habitat, Resource Advisors (READs) should be added to the Incident Management Team (IMT) early in response to the incident and READs should coordinate with the Service if there is any question related to effects to listed species or their habitat.

Chapter 8 of the Section 7 Consultation Handbook describes the emergency consultation process. (FWS 1998; http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf). 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 ESA 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, transmitted by fax or email, 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 incident contact for coordination with the Service. During the initial contact with the Service, the Action Agency describes the incident and response (proposed and implemented 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 (MIST) in areas with federally protected species or habitat. The Service recommends that additional on-the-ground monitors (READs; Fire Effects Monitors, FEMOs) 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 to listed species or adverse modification of designated critical habitats.

2. Completing Consultation: During the fire containment phase, the Action Agency continues the consultation process and drafts a Biological Assessment. The Biological Assessment should include justification for expedited consultation, a description of the fire and fire suppression activities, documentation of how the Service's recommendations were implemented, and resultant effects to listed species and their habitats. Note that the "federal action" consists of the agency actions (i.e., fire suppression activities) that occurred, whereas the description of effects related to the fire is incorporated into the description of the baseline condition for listed species and their habitat.

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 provides:

    a) an estimation of the amount of take that occurred due to emergency fire suppression;
    b) documentation of the Service's recommendations to minimize effects;
    c) an evaluation of the Action Agency's success in carrying out these recommendations; and
    d) a determination of the ultimate effect of the take of listed species.

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 regarded as take attributable to the Action 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 occupied by federally protected species should be coordinated with the Service. Proactive suppression efforts that reduce the need for rehabilitation are preferred whenever feasible.

The most effective way to minimize impacts to listed species is through informal discussions with the Service during the development of the consulting agency's "Fire Management Plan." Listed species concerns can be identified before wildfires start, and suppression strategies can be designed to address listed species conservation. Strategies will provide important information to initial and extended attack Incident Commanders and facilitate implementation of the Wildland Fire Decision Support System (WFDSS), if necessary. The WFDSS is an effective means of identifying resource considerations, including listed species and their critical habitats. The WFDSS also provides the opportunity to pre-load information, such as maps of localized habitats for listed species, facilitating incident pre-planning.

If you have any questions or comments regarding your responsibilities under the ESA 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 at (307) 286-7242

Sincerely,

Tyler A. Abbott
Acting Field Supervisor
Wyoming Field Office

Enclosures (2)

cc:

BUREAU OF LAND MANAGEMENT

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Buffalo Field Office – Duane Spencer (dspencer@blm.gov)
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FISH AND WILDLIFE SERVICE

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National Elk Refuge, Jackson, WY – Steve Kallin, Project Leader (steve_kallin@fws.gov)
Seedskadee National Wildlife Refuge and Cokeville Meadows National Wildlife Refuge, Green River, WY – Tom Koerner, Project Leader (tom_koerner@fws.gov)
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- Forest Fire Management Officer – Todd Pechota (tpechota@fs.fed.us)

Bridger-Teton National Forest – Region 4
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NATIONAL PARK SERVICE

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- Superintendent – Tim Reid (Tim_Reid@nps.gov).

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- Superintendent – Raymond Vela (David_Vela@nps.gov)

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WYOMING GAME AND FISH DEPARTMENT

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

Enclosure 1

Conservation Measures to Minimize Fire Suppression Effects to Federally Protected Species

The U.S. Fish and Wildlife Service (Service) recommends that land management agencies and Incident Management Teams (IMTs) implement the following conservation measures during fire suppression operations unless precluded by the necessity to ensure firefighter safety, public safety, or the protection of property. The Service is providing these measures to reduce potential adverse effects to federally protected species and their habitats from wildland fire suppression activities. Where federally protected species may be affected, section 7 (a)(2) of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.)*, requires that federal agencies consult with the Service to further the purpose of the ESA by carrying out measures to conserve listed species.

One of the most effective means to conserve listed species and their habitats during your response to an incident is to engage the services of a qualified Resource Advisor (READ). In the event that listed species or their habitats may be affected by suppression activities, the Service suggests that a READ (line-qualified where possible) should be acquired as early as possible during incident response. The READs should coordinate with affected agency staff to develop mapping products that identify resources of concern and should ensure that these products are made available to the incident planning and operations staff. If listed species may be affected, the Service suggests that READs coordinate with the Service early in incident response to document necessary modifications or supplementation of these conservation measures. Resource Advisors should be familiar with the Resource Advisor's Guide for Wildland Fire (http://www.nwcg.gov/sites/default/files/products/pms313.pdf).

1. Coordination

a. Confer with affected agency staff to identify areas or habitats of particular import for the conservation of listed, proposed, or candidate species (e.g., sage-grouse leks, localized, occupied habitats of listed species).
b. Brief firefighting staff and agency representatives about federally protected species, localized habitats, and procedures to minimize impacts.
c. Apply guidelines related to natural resources from the Interagency Standards for Fire and Fire Aviation Operations 2014 (Redbook; Chapter 11, www.nifc.gov/PUBLICATIONS/redbook/2014/RedBookAll.pdf).

2. Fire Fighting Construction, Activity Areas, and Camps

a. Where possible, use historic lines, existing skid trails, roads, and trails as fuel breaks.
b. Where possible, 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.
e. Where possible, so as to minimize soil disturbance in habitats occupied by listed species, build hand lines instead of using heavy equipment (e.g., bulldozer) line, especially in riparian areas and wet meadows.
f. Locate camps, staging areas, aircraft landing areas, and fueling areas outside of federally protected species' habitats and riparian areas, preferably in areas already disturbed.
g. Establish good sanitation for the 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 at least 100 yards downwind of camps. Where remote camps are used, make provision to remove trash regularly via helicopter sling-load where possible. Do not burn trash as incomplete combustion will produce odors that may act as attractants.
h. Early in the incident, establish a 'weed wash' station to ensure that vehicles and equipment are free of weed seeds or other materials that may transmit parasites, disease agents, or contaminants.
i. Within the range of the northern long-eared bat (NLEB), locate remote camps or fire lines away from potential maternal roost trees where possible in order to avoid the need to fell hazard trees. If necessary, a line-qualified Resource Advisor (READ) familiar with the characteristics of NLEB maternal roost trees can quickly confirm if a tree is occupied or not.

3. Aquatic Environments

a. Consistent with the *Implementation Guide for Aerial Application of Fire Retardant* (USDA Forest Service 2013) uniformly avoid the use of retardants or foams within 300 horizontal feet from the edge of any waterway, waterbody, or wetland. **Depending on local circumstances, make certain that incident staff is aware of avoidance areas that expand the buffer around waterways, waterbodies, or wetlands. Or, if avoidance areas for terrestrial habitats of concern have been identified.**
b. Avoid contamination of water sources with residual retardant. Buckets that have contained fire retardant or foam should not be refilled in open waters. Set up a dip tank that is isolated from natural water bodies for this purpose.
c. Avoid cross-contamination of water sources. 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. For example, buckets filled from a water source known to harbor whirling disease should not be subsequently filled from an uncontaminated source without first being thoroughly disinfected.
d. Limit stream crossing sites and locate them on hardened ground or over logs or rocks.
e. Store fuel, and refuel equipment, well away from any waterway, waterbody, or wetland.
f. Use containment systems for portable pumps to avoid fuel spills.
g. Incorporate contingency for handling spills of retardant, foams, fuels or other chemicals

into the incident safety plan or station fire management plan.

h. 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. At a minimum, avoid establishing incident infrastructure (staging areas, camps, spike camps, air bases, helispots, etc.) within 0.25 mile, and particularly in direct line of sight, of any active raptor nest (e.g., bald and golden eagles, goshawk, etc.). Both as a matter of aviation safety and avian conservation, pilots should avoid low-level flight paths in the vicinity of active raptor nests when possible.

b. Where air operations occur with 0.25 mile of active raptor nests, consider use of helicopter water drops as an alternative to retardant drops to minimize potential effects to raptors.

5. Summarize Efforts and Effects

a. Document the location and type (e.g., hand, dozer) of firelines constructed on the incident.

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, re-opened, or re-constructed roads or trails.

f. Identify the locations of all water sources on the incident, including those that may have inadvertently receiving water from another source.

g. Identify areas where invasive weeds may be a post-fire concern.

h. Identify areas where post-fire rehabilitation will be required.

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 scattered brush, limbs, rocks, and rotten logs.

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. If reseeding, use sources of local native seed when possible.

f. Where applicable, restore temporary impoundments used as water sources to pre-fire conditions. Ensure that no foam or retardant residues enter waterways during restoration.

g. Where pre-fire conditions consisted of degraded resources, restore or stabilize areas to the extent possible.

h. In habitats occupied by listed species, monitor Burned Area Emergency Rehabilitation (BAER) efforts and report results to the Service.

7. Greater Sage-grouse

In 2012, significant sage-grouse habitats were lost across California, Nevada, Idaho, and Oregon. Habitat acres lost included approximately 265,151 acres in California, 486,293 acres in Nevada, 286,820 acres in Idaho, and 695,619 acres in Oregon. The resulting loss of habitat raises legitimate concern for the capacity of some of these locales to sustain sage-grouse populations.

The Service supports fire suppression efforts, including the use of retardant, to conserve sage habitats, recognizing that **priority will continue to be placed upon ensuring firefighter and public safety and minimizing property loss**. Because habitat loss as a result of wildland fire is a substantial threat to the greater sage-grouse, the Service recommends that land management agencies and Incident Management Teams implement the following:

a. As part of their annual fire refresher training, develop and distribute to local initial attack forces information and maps regarding the location and features of priority sage-grouse habitats (*e.g.*, leks, brood habitats, etc.).
b. Prior to onset of the fire season, identify local resource advisors (READs), preferably line-qualified, that are capable of advising initial and extended attack incident commanders and operations staff of issues related to conservation of local sage habitats.
c. On fire weather days where the probability of ignitions are high, consider pre-positioning resources to maximize the effectiveness of initial attack suppression efforts.
d. Where possible, locate support areas (e.g., base camps, helispots, etc.) in areas that do not provide sage habitat.
e. On all incidents, as soon as feasible, establish equipment power-wash areas to service all vehicles and equipment so as to minimize the spread of noxious weeds, such as cheatgrass.
f. So as to reduce the loss of habitat for the greater sage-grouse, minimize the use of burnout operations in priority sage habitats.

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Enclosure 2 (Bridger-Teton National Forest)

Kendall Warm Springs Dace:

Consultation History: The U.S. Fish and Wildlife Service's (Service) 2008 Biological Opinion on the Continued Aerial Application of Fire Retardants on National Forest System Lands (USDI FWS 2008) disclosed effects to threatened and endangered species and designated critical habitat and, in particular, the Kendall Warm Springs dace (*Rhinichthys osculus thermalis*). 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 was to be applied, except in the case of certain specified exceptions. Implementation of the guidelines was intended to minimize the possibility of fire retardant entering aquatic systems.

In 2011, the U.S. Forest Service reinitiated consultation on its August, 2011 *Nationwide Aerial Application of Fire Retardant on National Forest System Land Biological Assessment*. The Service issued an associated biological opinion on October 31, 2011. Included in this consultation was a change to the size of the required buffer around the Kendall Warm Springs area within which the aerial application of fire retardant was prohibited. Although misapplication or deliberate use of fire retardant in the Kendall Warm Springs area may be of low likelihood, the potential effects of such an activity, if it were to occur, could be disastrous for this species. Therefore, the Bridger-Teton National Forest and the Service have agreed to expand the buffer to 0.5 mile, thereby significantly reducing the likelihood of adverse effects to the Kendall Warm Springs dace. While the U.S. Forest Service will continue the use of retardants on National Forest System lands, the Bridger-Teton National Forest has committed to protect and maintain the Kendall Warm Springs dace and its habitat as part of the Forest's Land and Resource Management Plan (USDA FS 1990).

The Service encourages the Bridger-Teton National Forest to coordinate with the Wyoming Ecological Services Field Office prior to the fire season to develop specific measures to be carried out before, during, or after incident 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 fire incident command staff 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 Nathan Darnall at (307) 772-2374, extension 246.