

## **AFTER ACTION REPORT (AAR)**

### FY 1999 Grazing Permit Renewals - ESA Section 7 Consultation

#### **Introduction/Background**

On October 13, 1999, an After action@ meeting was held in Casper to review the progress of the Endangered Species Act (ESA) Section 7 consultation activities for the FY 1999 Federal grazing permit renewals for BLM administered Public Lands in Wyoming. The agenda of the meeting is shown in Attachment 1. Those individuals attending the meeting are shown in Attachment 2.

#### **Results/Findings**

The meeting started with brief introductions and an overview of the history of the effort, procedural directives, and requirements. Each BLM Field Office then presented a brief summary of their threatened and endangered (T&E) species efforts for the grazing permit renewal process. All offices had completed the T&E species review in a fashion that allowed all the permits to be processed without delays for ESA reasons. None of the offices had experienced any situations that could not be handled by informal Section 7 consultation, with the exception of the Platte and Colorado River water depletions which were handled by the Wyoming State Office (WSO). Some of the more significant or unique items reported during the individual office presentations, both pro and con, included:

- The initial procedural directions coming from WSO were thought by most Field Offices to have been made available later than they should have been in the fiscal year, but this does not appear to have had any long-term impact on the ability of the Field Offices to accomplish their work.
- The coordination contacts between the BLM and the U.S. Fish and Wildlife Service (FWS) staffs was timely and appropriate in most cases. Some offices/individuals on both sides of the process had probably not maintained as close of a contact as they should have, and there were some misunderstandings that had arisen from that breakdown, but the overall negative effect from a process standpoint appears to have been minimal.
- At the time of this meeting, the FWS had completed the initial review of the Platte River water depletion Biological Assessment (BA), and expected to complete the Biological Opinion (BO) on it in the near future. The completion date has been extended to January 24, 2000. The Colorado River water depletion BA should be sent to the FWS by the end of October, and the BO should come back to BLM by the end of January.

- Most offices had performed some sort of initial screening of allotments for T&E species non-applicability and no effect/may affect determinations utilizing the impacts decision trees developed in February 1999. Some offices had modified the initial decision trees, or created newer/better impacts screens.
- Several offices had developed a screening checklist to help organize their review thought processes and document the results of their analyses. Almost all the offices had done a good job of documenting their review in writing and maintaining a written record in their official grazing files. Some offices had incorporated their T&E species review as part of their healthy rangelands standards and guidelines evaluation process. Some offices had used the NEPA document as their sole T&E species recordation. Some offices had assigned the T&E reviews for allotments solely to the wildlife biologists, and other offices were performing these reviews as an interdisciplinary team.
- The Field Offices had taken a variety of approaches to handling Terms and Conditions (T&Cs) for T&E species on the grazing permits. Some offices were writing T&Cs directly on the grazing permit form. Other offices were including T&Cs as a separate attachment to the grazing permit. Still other offices were mailing out separate information and instructional letters about specific T&E species (e.g., mountain plover) to grazing permittees.

Mike Long, Mary Jennings, Pat Deibert, and Terry Root of the U.S. Fish and Wildlife Service presented their view of the review and consultation process for the grazing permit renewals, next. Mike stated that overall, he felt the process had gone very well, especially for the initial effort, and that where some breakdowns had occurred, he felt those could be easily corrected in the future. He commended all the players in both agencies for their hard work, especially under the short timeframes. The FWS identified the following areas that they thought could be improved:

- There could be more consistency in the manner in which the contacts were made between agencies, the way the reviews were conducted, and in the actual findings in similar situations.
- From the standpoint of scheduling coordination, the FWS stated they would like to have a better feel for BLM's deadlines for documentation (i.e., NEPA and permit issuance).
- FWS wanted to see coordination or consultation, as appropriate, take place prior to permit renewal, since this seems to take some of the pressure off of arriving at a collaborative outcome. It also presents a better range of solution options to any problem that may be present. In short, talk early on in the process.

- The FWS felt there was some confusion in the Bureau about the difference between *Ainformal@* and *Aformal@* consultation, and when each was appropriate or required. (NOTE: From the BLM standpoint, we are not so sure this is really a Bureau lack of understanding about the difference between *Ainformal@* and *Aformal@* consultation, or just simply a different agency view of impacts and risk management).
- The FWS acknowledged their appreciation of the opportunity to be informed of those situations where BLM had arrived at a *Anon-applicable@* or *Ano effect@* determination following our internal review. The FWS indicated it would be helpful to them, however, if the Bureau would document a little more of the thought process or rationale for our conclusions. Some examples of good documentation were presented and discussed.
- The FWS expressed some concern with the large number of *Ano effect@* determinations the Bureau was arriving at. They felt this might be unrealistic, or inappropriate in some cases (see the earlier NOTE two comments above). They also wanted to make clear, from their point of view, if information was unknown about a species, then the most appropriate conclusion within the range and habitat of that species was *Amay affect,@* possibly with a conditional *ANot Likely To Adversely Affect@* (NLAA) until surveys had been conducted for the species.
- The FWS expressed concern that the BLM was not taking an aggressive enough position about placing stipulations on leases in some allotments with grizzly bear potential, or in arriving at *Amay affect@* determinations for these areas. The FWS felt the BLM should exercise more authority and responsibility on these allotments, even if they were predominately private lands. (NOTE: While this viewpoint may have some validity, it more likely reflects a difference in management philosophy between our two agencies).

## **Discussion**

There was some general discussion about the liabilities of all Federal agencies (including the FWS) under the ESA. There is always the possibility of lawsuits under the ESA coming from some *Aoutside@* group (i.e., everyone-s watching). The best way to avoid this is by strict compliance with the spirit and letter of the Act, and the regulations. A *Atake@* situation on a species can occur at any time, with or without consultation. If a *Atake@* occurs, it may force a formal consultation. It is also important to note an agency cannot legally make an irreversible or irretrievable commitment of resources while pending the outcome of a consultation, although in some cases, conditional authorizations may be granted. *Food for thought!*

The current and future status of several species were discussed. The following points of these discussions were noted:

\* Grizzly Bear - The State of Wyoming is currently looking at the preparation of a grizzly bear management plan with an eye on delisting if an adequate plan is prepared.

\* Peregrine Falcon - The very recent delisting of the peregrine has left its management status somewhat uncertain right at this moment. There should be some guidance coming out in the very near future. The ESA still requires a minimum of 5 years of follow up monitoring following delisting. The peregrine is still protected under the Migratory Bird Treaty Act (MBTA). For the moment, we should probably still be addressing the peregrine in our analyses and documents as though it were still listed.

\* Bald Eagle - The current expectation here is that the bald eagle will be delisted on July 4, 2000. The same comments apply to the bald eagle as for the peregrine falcon, plus this species is also covered by the Bald Eagle Protection Act, which has no Atake@ provision.

\* Canada Lynx - The species is currently AProposed.@ A final listing decision is expected by January 8, 2000. The comment period on the Science Report was just about over at the time of the meeting.

\* Mountain Plover - This species is also currently AProposed.@ A final listing decision is expected by February 14, 2000.

### Action Items

The following action items were identified at the meeting:

1. ISSUE: BLM authority, liabilities, responsibilities, and enforcement ability, on private lands that may contain T&E species habitat.

\* **Reissue IM # WY-99-24 (dated Feb. 23, 1999) entitled AThe Extent of Federal Authority Over Actions Occurring on Private Lands - Plants and Wildlife@.** (WSO - Roberts/Carroll)

2. ISSUE: Preparation of statewide (BAs) for grizzly bears and mountain plovers.

\* Most of the wildlife and range staff people present at the meeting wanted to see the WSO prepare a statewide BA for grizzly bears and mountain plovers. This issue had been raised to the WMT and turned away once before. A statewide BA would likely foster greater consistency of action (pro), but it would also remove some decisionmaking authority from the Field Managers (con), and it would still require considerable work at the Field Office level (con). **It was agreed to run this in front of the Wyoming BLM management team again.** If the decision is

made to develop a statewide BA for these species, it may address a number of issues; not just livestock grazing. (WSO - Simpson/Roberts/Carroll)

3. ISSUE: Current T&E species status list for the state issued periodically.

\* The FWS felt this was a good idea, and in fact, they had already started developing such a list. **The WSO would issue this list by Field Office on a regular basis as it is periodically updated by the FWS.** It should be remembered that if an action will be initiated greater than 90 days from the issue of the relevant species list, the FWS should be contacted (by phone or e-mail is OK) for an update. (WSO - Roberts / Carroll)

4. ISSUE: Consistency of T&E species review and documentation.

\* It was generally felt the current T&E species review and impact evaluation process was too haphazard and inconsistent from office to office across the state. **Some statewide impacts models/screens (i.e., decision trees) will be developed for all the species to be addressed in grazing permit renewals, and a standard set of statewide documentation will be created based on the effort already being used in the Field Offices by the end of FY 2000.** (WSO - Roberts/Carroll)

\* **Each BLM Field Office needs to send a sample copy of their current T&E species review/analysis documentation (e.g., checklists, etc.), permit stipulations, and samples of their T&E species correspondence to the WSO for consideration in development of statewide consistency procedures.** (WSO - Roberts will make a formal request of all Field Offices)

5. ISSUE: Knowledge level of the BLM staffs and management on ESA procedures.

\* A more formalized training on ESA procedures should be provided to the professional and technical staffs that deal with T&E species issues. **Arrangements were made to bring the national T&E species training (BLM Course 1730-30) to Wyoming for presentation on December 6-10, 1999.** (WSO - Carroll)

\* **An offer will be made to present the shortened version video modular training on T&E species management to the BLM Wyoming Management Team (WMT) in the very near future.** (WSO - Simpson/Carroll)

6. ISSUE: Dissemination of available T&E species information to all Wyoming Field Offices.

\* There have been a number of recent inventories of various T&E species completed around the State. There has also been some recent literature developed and published about the biology and ecology of T&E species found in Wyoming. **An attempt will be made by the WSO to collect and disseminate information about our T&E species to all the BLM Field Offices, and FWS, as appropriate. When possible, electronic mail should be used for this effort.** (WSO - Carroll/Roberts/Gorges)

\* **When possible, place a synopsis of the information mentioned above on the BLM Wyoming intranet for ease of distribution and access. An attempt will also be made to place Wyoming T&E species information into a technical note series whenever possible beginning in FY 1999.** (WSO - Carroll/Roberts/Gorges)

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### Attendance List

<u>Name</u>	<u>Agency/Office/Location</u>	<u>Phone</u>
Mike Long	FWS/Wyoming/Cheyenne	(307) 772-2374 x34
Mary Jennings	A @ A	@ A @ x32
Pat Deibert	A @ A	@ A @ x26
Terry Root	A @ /Cody	@ 587-2216
Don Simpson	BLM/WSO/Cheyenne	(307) 775-6113
Mark Gorges	A @ A	@ A -6100
Jeff Carroll	A @ A	@ A -6090
Dave Roberts	A @ A	@ A -6099
Tom Enright	A @ A	@ A -6329
Don Glenn	A @ A	@ A -6097
Joe Vessels	BLM/WFO/Worland	(307) 347-5197
Tim Stephens	A @ A	@ A -5134
Dennis Saville	BLM/CFO/Cody	(307) 587-2216
Walt George	BLM/RFO/Rawlins	(307) 328-4363
Mary Read	A @ A	@ A -4255
Frank Blomquist	A @ A	@ A -4207
Larry Apple	A @ A	@ A -4204
Bernie Weynand	BLM/RSFO/Rock Springs	(307) 352-0246
Lance Porter	A @ A	@ A -0252
Lorraine Keith	A @ A	@ A -0368
Tom Rinkes	BLM/LFO/Lander	(307) 332-8404
Connie Breckenridge	A @ A	@ A -8431
George Soehn	BLM/CFO/Casper	(307) 261-7531

Dennis Stenger  
Larry Gerard

BLM/BFO/Buffalo  
A @ A

(307) 684-1100  
@ A -1142

Gary Lebsack

BLM/NFO/Newcastle

(307) 746-4453

Abbie Jossie  
Vern Phinney

BLM/KFO/Kemmerer  
A @ A

(307) 828-4503  
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Keith Andrews

BLM/PFO/Pinedale

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Tentative Agenda

<u>Time:</u>	<u>Topic:</u>	<u>Responsible Presenter</u>
9:00am-9:15	Overview of the Statewide Process	BLM - WSO staff
9:15-10:55	Field Office Reports (10) [Max. = 10 minutes each]	BLM - FO=s staff
10:55-11:00	<b>Short Break</b>	
11:00-11:45	FWS Perspective / Critique of the Process	FWS - Wy FO staff
11:45am-12:30pm	Discussion of the Good / Bad Points of the Effort	All
12:30-1:30	Discussion of Any Recommended Improvements	All
1:30-??	FY 2000 Expectations	All