

Attachment C – U.S. Fish and Wildlife Service Consultation Letter



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Oregon Fish and Wildlife Office

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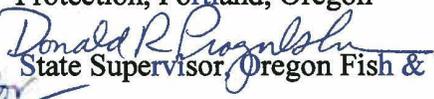
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Memorandum

To: Bureau of Land Management, Deputy State Director for Resource Planning, Use and Protection, Portland, Oregon

From: 
State Supervisor, Oregon Fish & Wildlife Office, Portland, Oregon

RE: Informal consultation on the proposed Bureau of Land Management (BLM) Vegetation Treatments Using Herbicides on BLM Lands in Oregon [FWS reference: 13420-2010-I-0173].

This Letter of Concurrence (LOC) is based on our review of the Bureau of Land Management's (BLM) 2010 final Environmental Impact Statement (EIS) for *Vegetation Treatments Using Herbicides on BLM Lands in Oregon* and the 2006 programmatic Biological Assessment (BA) prepared for the national *Vegetation Treatments Using Herbicides on Bureau of Land Management in 17 Western States* programmatic Environmental Impact Statement (PEIS).

The Fish and Wildlife Service's (Service) Washington D.C. office on April 24, 2006 completed an informal section 7 consultation, in accordance with the Endangered Species Act (ESA) of 1973 (as amended (16 U.S.C. 1531 *et seq.*)), for the PEIS and BA. On the national level, the Service concurred with BLM's *May Affect, Not Likely to Adversely Affect* (NLAA) determinations for federally listed species addressed in the BA. The Service's Oregon Fish and Wildlife Office (OFWO) received a request from the BLM's Oregon State Office (OSO) on July 27, 2009 for concurrence on the draft Oregon EIS tiered to the PEIS and BA. In their request, the BLM's OSO determined that the BA adequately addressed the effects of alternatives analyzed in the draft Oregon EIS at the programmatic level and that they are not likely to adversely affect federally listed (threatened/endorsed) species in Oregon (Table 1), with the understanding that further analysis and ESA section 7 consultation may be required at the project level if site specific analyses reveal adverse effects for any listed species or effects not accounted for in the national-level BA. We provide further insight about those potential impacts below in this memorandum. The OFWO received the final Oregon EIS on July 30, 2010.

The selected alternative (modified version of Alternative 4 in the final Oregon EIS) includes the addition of 10 herbicides to be used west of the Cascades and 13 herbicides east of the Cascades (see Table 2). According to the BLM, the four herbicides currently approved for use by the BLM in Oregon (*i.e.*, 2, 4-D, Dicamba, Glyphosate, and Picloram) cannot effectively control many noxious plant species. The BLM also would like to expand the use of these herbicides beyond noxious weed treatments to include: the control of all invasive plants; control of pests and diseases; control of native and other-invasive vegetation in rights-of-way, administrative sites, and recreation sites; and treatment of vegetation to achieve habitat goals specific in interagency Recovery Plans or other plans specifically identified as part of recovery or delisting plans, Conservation Strategies, or Conservation Agreements for federally listed species and other special status species. Herbicides will be applied through a variety of application techniques, depending on management objectives. As addressed in the final Oregon EIS, no aerial application of herbicides will be permitted west of the Cascades. Herbicide use in treatment areas may also be combined with other vegetation control techniques, such as mechanical control, prescribed fire, and biological control with livestock or other agents.

Table 2. List of additional herbicides for use on BLM lands in Oregon.

Herbicide	Use West of the Cascades	Use East of the Cascades
Bromacil		X
Chlorsulfuron		X
Clopyralid	X	X
Dicamba + Diflufenzopyr	X	X
Diuron	X	X
Fluridone	X	X
Hexazinone	X	X
Imazapic	X	X
Imazapyr	X	X
Metsulfuron methyl	X	X
Sulfometuron methyl	X	X
Tebuthiuron		X
Triclopyr	X	X

Based on the above-mentioned documents, the Service concurs with BLM's NLAA determinations at the **programmatic level** for the federally listed species listed in Table 1. The herbicide conservation measures and considerations/requirements in management and treatment plans, as addressed in the final Oregon EIS and BA, should provide sufficient protection for these species to avoid a *May Affect, Likely to Adversely Affect* (LAA) determination for any of these listed species.

However, the Service cautions that effects from the proposed action to the federally listed fish and invertebrates listed in Table 1 may potentially result in LAA determinations when project level analyses are conducted as part of ESA consultations, depending on the treatment locations. For listed fish species and the vernal pool fairy shrimp, this determination is based on the limited Oregon distribution of these species and the lack of wider buffer zones in or near aquatic habitats to prevent adverse affects from herbicide runoff, drift, direct sprays, and accidental spills

For similar reasons stated above for listed fish species, affects to Fender's blue butterfly and Oregon silverspot butterfly may result in LAA determinations at the project level. As stated in the Appendix 5 of the final Oregon EIS under conservation measures for butterflies (page 514),

Table 1. Federally listed (threatened/endangered) species and critical habitats addressed in the final Oregon EIS and BA, except as noted.

Common Name	Scientific Name	Listing Status
Mammals		
Gray wolf (Conterminous USA distinct population segment)	<i>Canis lupus</i>	E
Canada lynx	<i>Lynx canadensis</i>	CH/T
Columbian white-tailed deer (Columbia River distinct population segment)	<i>Odocoileus virginianus leucurus</i>	E
Birds		
Marbled murrelet	<i>Brachyramphus marmoratus</i>	CH/T
Western snowy (coastal) plover	<i>Charadrius alexandrinus nivosus</i>	CH/T
Northern spotted owl	<i>Strix occidentalis caurina</i>	CH/T
Fishes		
Modoc sucker	<i>Catostomus microps</i>	CH/E
Warner sucker	<i>Catostomus warnerensis</i>	CH/T
Shortnose sucker	<i>Chasmistes brevirostris</i>	PCH/E
Lost River sucker	<i>Deltistes luxatus</i>	PCH/E
Hutton tui chub	<i>Gila bicolor ssp.</i>	T
Borax Lake chub	<i>Gila boraxobius</i>	CH/E
Lahontan cutthroat trout	<i>Oncorhynchus clarki henshawi</i>	T
Foskett speckled dace	<i>Rhinichthys osculus ssp.</i>	T
Bull trout	<i>Salvelinus confluentus</i>	CH/T PCH ¹
Invertebrates		
Fender's blue butterfly	<i>Icaricia icarioides fenderi</i>	CH/E
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>	CH/T
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	CH/T
Plants		
McDonald's rockcress	<i>Arabis macdonaldiana</i>	E
Applegate's milk-vetch	<i>Astragalus applegatei</i>	E
Golden paintbrush	<i>Castilleja levisecta</i>	T
Willamette daisy	<i>Erigeron decumbens var. decumbens</i>	CH ² /E
Gentner's fritillary	<i>Fritillaria gentneri</i>	E
Water howellia	<i>Howellia aquatilis</i>	T
Western lily	<i>Lilium occidentale</i>	E
Large-flowered woolly meadowfoam	<i>Limnanthes floccosa ssp. grandiflora</i>	CH ² /E
Bradshaw's lomatium	<i>Lomatium bradshawii</i>	E
Cook's lomatium	<i>Lomatium cookii</i>	CH/E
Kincaid's lupine	<i>Lupinus sulphureus ssp. kincaidii</i>	CH/T
MacFarlane's four o'clock	<i>Mirabilis macfarlanei</i>	T
Rough popcornflower	<i>Plagiobothrys hirtus</i>	E
Nelson's checker-mallow	<i>Sidalcea nelsoniana</i>	T
Spalding's catchfly	<i>Silene spaldingii</i>	T
Malheur wire-lettuce	<i>Stephanomeria malheurensis</i>	CH/E
Howell's spectacular thelypody	<i>Thelypodium howellii ssp. spectabilis</i>	T

E – endangered, T – Threatened, CH – Designated critical habitat, PCH – Proposed critical habitat,

¹ - Proposed rule for the revised designation of critical habitat for bull Trout (Federal Register 75: 2270-2431) was completed after the July 27, 2009 request for concurrence by BLM.

² - Final critical habitat rule for Cook's lomatium and large-flowered woolly meadowfoam was completed after the July 27, 2009 request for concurrence by BLM.

“each local BLM office is required to draw up management plans related to treatment activities that identify any [listed] butterfly or moth species or their critical habitat that are present in the proposed treatment areas, as well as the measures that will be taken to protect these species.” It appears that local site-specific conditions will affect what protection measures will be implemented for these two butterfly species. Conservation measures for egg, larval, and adult life stages are not adequately addressed in the final Oregon EIS and BA to ensure appropriate protection for these two butterfly species. In order to adequately analyze effects to these species, additional local site-specific vegetative treatment information will be needed to ensure their protection, as part of project level ESA consultations, depending on the project location.

This response is prepared in accordance with section 7(a)(2) and 7(c) of the Act, and concludes informal consultation at the programmatic level pursuant to 50 CFR 402. If new information or project modification reveals that the proposed actions may affect listed species in a manner or to the extent not considered in your assessment, or if a new species is listed or critical habitat is designated that may be affected by the actions, project activities should be halted and consultation reinitiated immediately.

If you have any questions regarding this informal consultation, please contact Dan Perritt or Bob Progulski at (503) 231-6179.

cc: Todd Thompson – BLM NRS Restoration Coordinator
cc: Nancy Gilbert, Gary Miller, Laura Todd, Jim Thrailkill, Laurie Sada