



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

In Reply Refer To:
ES-61411/W.32/WY07SL0361

JAN 18 2008

Mr. Ron C. Linton
Senior Groundwater Hydrologist/Project Manager
U.S. Nuclear Regulatory Commission
Office of Federal and State Materials
And Environmental Management Programs
Mail Stop T-8F5
11545 Rockville Pike
Rockville, Maryland 20852-2738

Dear Mr. Linton:

Please find enclosed the U.S. Fish and Wildlife Service's (Service) current list of endangered, threatened, and candidate species which may occur within the State of Wyoming. This list is provided as a general reference for the U.S. Nuclear Regulatory Commission (NRC) to use when evaluating actions under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). We have revised our previous species list to reflect the recovery and delisting of the bald eagle (*Haliaeetus leucocephalus*). On July 9, 2007, the Service published a Federal Register notice (72 FR 37346) announcing that the bald eagle would be removed from the list of threatened and endangered species under the Act on August 8, 2007. However, the protections provided to the bald eagle under the Bald and Golden Eagle Protection Act, 16 U.S.C. 668 (BGEPA) and the Migratory Bird Treaty Act, 16 U.S.C. 703 (MBTA) will remain in place. The term "disturb" under the BGEPA has recently been defined as: "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (72 FR 31332).

To assist with the de-listing transition, the Service has developed National Bald Eagle Management Guidelines to advise land managers when and under what circumstances the protective provisions of the MBTA and BGEPA may apply to their activities. These guidelines are available on our web page at <http://www.fws.gov/migratorybirds/baldeagle.htm>. The Service intends to update these guidelines as more information becomes available through adaptive management. Please be advised that the Service's Wyoming Ecological Services Office, in collaboration with the Wyoming Game and Fish Department will be modifying these guidelines in the near future to ensure they adequately address the unique conditions of our state. We will

notify you of these "Wyoming" guidelines as soon as they become available. Additionally, the Service has proposed a permit structure under the BGEPA that is similar to the permit structure that exists under the Endangered Species Act for when impacts are unavoidable. However, this structure is currently undergoing public comment and is not yet in place. Please contact the Wyoming Ecological Services Office if you have any questions regarding this permit structure, the de-listing decision, or require technical assistance regarding any planned or ongoing activities that cannot be conducted in compliance with the MBTA, BGEPA, or the National Bald Eagle Management Guidelines.

We have included information that may be useful in the development of a project assessment for listed species, as well as other areas of Service trust authorities such as the MBTA, the BGEPA, and wetlands protection.

Although we intend to update this species list annually or when additions or changes in species' status occur, the NRC should contact this office to verify the list before completing any major construction activity, as defined by regulations implementing the Act (50 CFR §402.02). If you have any questions regarding this letter or your responsibilities under the Act, please contact us at our letterhead address or call (307) 772-2374.

Sincerely,


for Brian T. Kelly
Field Supervisor
Wyoming Field Office

Enclosures (3)

cc: WGFD, Non-game Coordinator, Lander, WY (B. Oakleaf)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)

Wyoming Species List

ENDANGERED, THREATENED, PROPOSED AND
CANDIDATE SPECIES,
AND DESIGNATED CRITICAL HABITAT
IN WYOMING STATE, AS PREPARED BY
THE U.S. FISH AND WILDLIFE SERVICE, WYOMING FIELD OFFICE
(January 17, 2008)

Endangered

Black-footed ferret (*Mustela nigripes*)
Kendall warm springs dace (*Rhinichthys osculus thermalis*)
Penstemon haydenii (Blowout penstemon)
Wyoming toad (*Bufo baxteri*)

Threatened

Canada lynx (*Lynx canadensis*)
Gray wolf (*Canis lupus*) – threatened on any unit of National Park or Wildlife Refuge Lands
Preble's meadow jumping mouse (*Zapus hudsonius preblei*) with designated critical habitat
Gaura neomexicana ssp. *coloradensis* (Colorado butterfly plant) with designated critical habitat
Spiranthes diluvialis (Ute ladies'-tresses)
Yermo xanthocephalus (Desert yellowhead) with designated critical habitat

Please note: If the proposed action will lead to water depletion (consumption) in the Colorado or the Platte River systems, impacts to the following species and/or its critical habitat should be considered. Please contact us for additional details.

COLORADO RIVER SPECIES

Bonytail chub (*Gila elegans*) - *endangered*
Critical Habitat for the bonytail chub - *designated*
Colorado pikeminnow (*Ptychocheilus lucius*) - *endangered*
Critical Habitat for the Colorado pikeminnow - *designated*
Humpback chub (*Gila cypha*) - *endangered*
Critical Habitat for the Humpback chub - *designated*
Razorback sucker (*Xyrauchen texanus*) - *endangered*
Critical Habitat for the Razorback sucker - *designated*

PLATTE RIVER SPECIES

Interior least tern (*Sterna antillarum*) - *endangered*
Pallid sturgeon (*Scaphirhynchus albus*) - *endangered*

Piping plover (*Charadrius melodus*) - *threatened*
Western prairie fringed orchid (*Platanthera praeclara*) - *threatened*
Whooping crane (*Grus Americana*) - *endangered*
Critical Habitat for the Whooping crane - *designated*

Proposed or Section 10 (j) of the Endangered Species Act

Gray wolf (*Canis lupus*) - Experimental non-essential populations occurring outside of National Parks and Refuges

Black-footed ferret (*Mustela nigripes*) - Experimental non-essential population in Shirley Basin

Species listed as experimental/non-essential populations remain protected under the Endangered Species Act of 1973, as amended (Act) although additional flexibility is provided for their management under the provisions of the special regulations promulgated for this alternate status. Requirements for interagency consultation under section 7 of the Act differ based on the land ownership and/or management responsibility where the animals occur. On any unit of National Park System or National Wildlife Refuge System lands, species that are part of the experimental population are considered a threatened species and the full provisions of section 7 apply. Additional management flexibility is provided for managing species which exist outside of the National Park or National Wildlife Refuge System (e.g., Forest Service lands). Species designated as non-essential experimental in these areas are treated as proposed rather than listed.

Candidate

Yellow-billed cuckoo (*Coccyzus americanus*)

Candidate species are those species for which the U.S. Fish and Wildlife Service has sufficient information to propose for listing as threatened or endangered under the Act. Species of concern (some of which are former Category 1 and Category 2 candidates) are those species whose conservation standing is of concern to the Service, but for which status information is still needed. Conservation measures for species of concern and candidate species are voluntary but recommended. Protection provided to these species now may preclude possible listing in the future.

SPECIES INFORMATION

Endangered

Black-footed ferret: Black-footed ferrets may be affected if prairie dog towns are impacted. Please be aware that black-footed ferret surveys are no longer recommended in black-tailed prairie dog towns statewide or white-tailed prairie dog towns except those noted in our enclosed February 2, 2004, letter (listed herein as Enclosure 3). We encourage all agencies to protect all prairie dog towns for their value to the prairie ecosystem and the myriad of species that rely on them. We further encourage you to analyze potentially disturbed prairie dog towns for their value to future black-footed ferret reintroduction.

If white-tailed prairie dog towns or complexes greater than 200 acres will be disturbed, surveys for ferrets may be recommended in order to determine if the action will result in an adverse effect to the species. Surveys are recommended even if only a portion of the white-tailed prairie dog town or complex, as identified in our enclosed letter, will be disturbed. According to the *Black-Footed Ferret Survey Guidelines* (USFWS 1989), a prairie dog complex consists of two or more neighboring prairie dog towns less than seven km (4.3 miles) from each other. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Reference

U.S. Fish and Wildlife Service. 1989. Black-footed ferret survey guidelines for compliance with the Endangered Species Act, April 1989. U. S. Fish and Wildlife Service, Denver, Colorado and Albuquerque, New Mexico. 15 pp.

Blowout penstemon: Blowout penstemon is a perennial herb with stems less than 12 inches tall. The inflorescence is two to six inches long and has six to 10 compact whorls of milky-blue to pale lavender flowers. Blowout penstemon was listed as endangered on October 1, 1987. The plant's current known range in Wyoming consists of the Ferris dunes area in northwest Carbon County where the plant is restricted to two habitat types: steep, northwest facing slopes of active sand dunes with less than five percent vegetative cover; and on north-facing sandy slopes, on the lee side of active blowouts with 25 to 40 percent vegetative cover. Recent surveys have indicated that systematic surveys are warranted in all lower elevations (below 6700 feet) in Wyoming where sand blowout features are located.

Blowouts are formed as strong winds deposit sands from the windward side of a dune to the leeward side and result in a sparsely vegetated crater-like depression. Associated vegetation includes blowout grass, thickspike wheatgrass, lemon scurfpea, Indian ricegrass and western wheatgrass. Threats to the plant occur when sand dunes are removed or overly disturbed by vehicular traffic. Known populations in Wyoming are found between 6680-7440 feet in elevation (Fertig 2001). Recent surveys by Blomquist and Heidel (June 2002) indicate that surveys may be warranted in some lower elevations where active sand blowout features occur. Surveys should be conducted from mid-June to early-July when flowering occurs by knowledgeable botanists trained in conducting rare plant surveys. We do not maintain a list of

"qualified" surveyors but can refer those wishing to become familiar with the blowout penstemon to experts who can provide training/services.

References

Fertig, Walt. 2001. 2000 Survey of Blowout Penstemon (*Penstemon haydenii*) in Wyoming. Report prepared for the Wyoming Cooperative Fish and Wildlife Research Unit, US Fish and Wildlife Service, a Wyoming Game and Fish Department by the Wyoming Natural Diversity Database, Laramie, Wyoming.

Blomquist, Frank, and Bonnie Heidel. 2002. 2002 Census of Blowout Penstemon (*Penstemon haydenii*), Bear Mountain-Junk Hill Population (EO#002), 25 and 27 June 2002. Report prepared for the Bureau of Land Management, Rawlins, Wyoming and Wyoming Natural Diversity Database, Laramie, Wyoming.

Kendall Warm Springs dace: The Kendall Warm Springs dace was listed as endangered in 1970 in the only location where it is known to occur; the Green River in Sublette County, Wyoming. This location is a series of small thermal springs and seeps about 300 meters long which feeds into the Green River. A three-meter high water fall forms a barrier to fish migration into Kendall Warm Springs from the Green River. Adult Kendall Warm Springs dace average in size from 23 to 54 millimeters. Breeding males are often a bright purple color while females are typically dull olive green. Recent population accounts of this species place their numbers at between 200,000 and 300,000 individuals. The potential threats to the Kendall Warm Springs dace include: (1) water table lowering or contamination in the areas surrounding the Kendall Warm Springs, (2) potential collection of individuals, (3) introduction of exotic fish species into Kendall Warm Springs, and (4) destruction of riparian stream-side vegetation or in-stream habitat. Management objectives for the recovery of this species are to maintain the existing population and protect its habitat.

Wyoming toad: The Wyoming toad historically occupied flood plains, ponds, and seepage lakes associated with shortgrass communities occurring between 7,000 and 7,500 feet in elevation within the Laramie Basin. The toad was associated with both the Big and Little Laramie rivers. Wyoming toad populations suffered a dramatic decline in the 1970s and the current distribution is limited to Mortenson Lake National Wildlife Refuge (MLNWR) and possibly Hutton Lake National Wildlife Refuge (HLNWR). Western Ecosystems Technology Incorporated conducted in depth toad surveys following U.S. Fish and Wildlife Service protocol in 1994 and 1995. No new populations were discovered.

Current recommendations call for surveys when proposed projects occur within one mile of any border of MLNWR or HLNWR during the toad's annual active season (May through September). These guidelines may change as new sites are established.

Threatened

Canada lynx: We published a Final Rule in the Federal Register on March 24, 2000 (65 FR 16052) listing the Canada lynx in the contiguous United States as threatened. Historically, lynx were observed in every mountain range in the state. Concentrations of observations occur in western Wyoming in the Wyoming and Salt River ranges and continuing north through the Tetons and Absaroka ranges in and around Yellowstone National Park. Numerous records have also come from the west slope of the Wind River Range, with fewer observations in the Bighorn and Uinta mountains (Reeve et al. 1986). In Wyoming, the lynx lives in subalpine/coniferous forests of mixed age and structural classes. Mature forests with downed logs and windfalls provide cover for denning sites, escape, and protection from severe weather. Early to mid successional forest with high stem densities of conifer saplings provide optimal habitat for the lynx's primary prey, the snowshoe hare. Snowshoe hare reach their highest densities in regenerating forests that provide visual cover from predators and thermal cover (Wolff 1980, Litvaitis et al. 1985). It is likely that winter, when food is less abundant and less nutritious and energy demands are higher, is the limiting season for snowshoe hares (Pietz and Tester 1983). To most benefit lynx, habitats should retain an overstory for concealment and forested connectivity between feeding, security, and denning habitats

We have identified significant threats to the lynx including (1) loss and/or modification of habitat; (2) past commercial harvest (trapping), which is partially responsible for the extremely small lynx population; (3) inadequate regulatory mechanisms to protect lynx and their habitat; and (4) other factors such as increased human access into suitable habitat and human-induced changes in habitat allowing other species (e.g., bobcats and coyotes) to move into lynx habitat and compete with them. Examples of human alteration of forests include loss of and conversion of forested habitats through urbanization, ski area and other developments; fragmentation that leads to isolation of forested habitats by highways or other major construction; and certain timber harvesting practices and fire suppression measures.

References

- Litvaitis, J., J. A. Sherburne, and J. A. Bissonette. 1985. Influence of understory characteristics on snowshoe hare habitat use and density. *Journal of Wildlife Management* 49:866-873.
- Pietz, P. J. and J. R. Tester. 1983. Habitat selection by snowshoe hares in north central Minnesota. *Journal of Wildlife Management* 47:686-696
- Ruediger, B., J. Claar, S. Gniadek, B. Holt, L. Lewis, S. Mighton, B. Naney, G. Patton, T. Rinaldi, J. Trick, A. Vandehey, F. Wahl, N. Warren, D. Wenger, and A. Williamson. 2000. *Canada Lynx Conservation Assessment and Strategy*. USDA Forest Service, USDI Fish and Wildlife Service, USDI Bureau of Land Management, and USDI National Park Service. Forest Service Publication #R1-00-53, Missoula, MT. 142 pp.

Reeve, A., F. Lindzey, and S. Buskirk. 1986. Historic and recent distribution of the lynx in Wyoming. Wyoming Coop. Fish and Wildl. Res. U., Laramie, Wyoming. 55 pp.

Wolff, J. O. 1980. The role of habitat patchiness in the population dynamics of snowshoe hare. *Ecological Monographs* 50:111-130.

Gray wolf: All wolves within Wyoming are now considered part of a experimental non-essential population. Although such wolves remain listed and protected under the Endangered Species Act of 1973, as amended (Act), additional flexibility is provided for their management under the provisions of the final rule and special regulations promulgated for the experimental non-essential populations on November 22, 1994 (59 FR 60252).

Wolves are dependant on movements of big game populations and may occur in large ungulate migration, wintering, or parturition areas. During project activities wolves may change their use of the project areas based upon changes to big game population numbers and changes in movement of herds. Project planning should consider impacts to big game populations, including wintering grounds and migration corridors.

Preble's meadow jumping mouse: The Preble's meadow jumping mouse is a small rodent in the Zapodidae family and is one of 12 recognized subspecies of the species *Z. hudsonius*, the meadow jumping mouse. The diet of the Preble's meadow jumping mouse consists of seeds, fruits, fungi and insects. Hibernation occurs from October to May, annually, in small underground burrows. Nests are made of grass, leaves or woody material in burrows the mouse excavates several centimeters underground. The Preble's meadow jumping mouse is primarily nocturnal or crepuscular, but has been observed during daylight. This mouse occurs in low undergrowth consisting of grasses, forbs, or a mix of both, in wet meadows and riparian corridors, or where tall shrubs and low trees provide adequate cover. Additionally, the Preble's meadow jumping mouse exhibits a preference for lush vegetation along watercourses or herbaceous understories in wooded areas with close proximity to water. In Wyoming, the Preble's meadow jumping mouse has been recently documented in Albany, Laramie, Platte and Converse Counties, and may occur in Goshen County. If a proposed project will result in a disturbance to suitable habitat within any of these five counties, surveys should be conducted prior to any action. Due to the difficulty in identifying the Preble's meadow jumping mouse, surveys should be conducted by knowledgeable biologists trained in conducting these surveys.

Please note the following if actions might affect the Lodgepole Creek, Chugwater Creek, or Cottonwood Creek drainages:

Critical habitat has been designated for Preble's in Albany, Converse, Laramie, and Platte counties along portions of Lodgepole, Chugwater, and Cottonwood creeks and their tributaries. Critical habitat varies in width from 360 feet to 394 feet on each side of the stream or tributary. Within critical habitat, four primary constituent elements necessary for the conservation of Preble's have been identified. These include: (1) a pattern of dense riparian vegetation consisting of grasses, forbs, and shrubs in areas along rivers and streams that provide open water through the Preble's active season; (2) adjacent floodplains and vegetated uplands with limited human disturbance (including hayed fields, grazed pasture, other agricultural lands that are not

plowed or disced regularly, areas that have been restored after past aggregate extraction, areas supporting recreational trails, and urban/wildland interfaces); (3) areas that provide connectivity between and within populations (including river and stream reaches with minimal vegetative cover or that are armored for erosion control; travelways beneath bridges, through culverts, and along canals and ditches; and other areas that have experienced substantial human alteration or disturbance); and, (4) dynamic geomorphological and hydrological processes typical of systems within the range of the Preble's, *i.e.*, those processes that create and maintain river and stream channels, floodplains, floodplain benches, and promote patterns of vegetation favorable to the Preble's. Maps and more detailed location information are available at: <http://mountain-prairie.fws.gov/preble>.

Colorado butterfly plant: The Colorado butterfly plant is a perennial herb endemic to moist soils in wet meadows of flood plain areas in southeastern Wyoming, north-central Colorado, and extreme western Nebraska between elevations of 5,000 and 6,400 feet. These plants are often found in low depressions or along bends in wide meandering stream channels a short distance upslope of the actual channel. Threats to the plant include non-selective herbicide spraying, haying and mowing schedules that inhibit the setting of seed, land conversion for cultivation and competition from noxious weeds. The low numbers and limited distribution contribute to the plant's vulnerability. Surveys should be conducted during flowering season which normally occurs in August each year, although some temporal variability exists from site to site and from year to year depending on annual climatic conditions. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. We do not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the Colorado butterfly plant to experts who can provide training/services.

Critical habitat for the Colorado butterfly plant has been designated in Laramie and Platte counties, Wyoming. About 3,538 total acres along 51 stream miles fall within the boundaries of critical habitat designation. For additional information see Federal Register notice (70 FR 1940). Management considerations for the Colorado butterfly plant include: maintaining surface and subsurface water flows that provide the essential hydrological regime that supports the species; appropriate restraints on application of herbicides used to control noxious weeds; preventing habitat degradation caused by plant community succession; and preventing harmful habitat fragmentation from residential and urban development that detrimentally affects plant-pollinator interactions, leads to a decline in species reproduction, and increases susceptibility to non-native plant species.

Ute ladies'-tresses: Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial, terrestrial orchid from eight to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. *Spiranthes* typically blooms annually from late July through August; however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October. *Spiranthes* is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams where it colonizes early-succession point bars or sandy edges. The elevation range of known occurrences is 4,200 to 7,000 feet in elevation in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where *Spiranthes* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *Spiranthes* is not found in heavy or tight clay soils or in

extremely saline or alkaline soils. *Spiranthes* seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. *Spiranthes* is difficult to survey for primarily due to its unpredictability of emergence of flowering parts and subsequent rapid desiccation of specimens. We do not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training or services.

Desert yellowhead: The desert yellowhead is a perennial herb with leafy stems up to 12 inches high. Flower heads are crowded at the top of the stem with each head having four to six yellow disk flowers. Desert yellowhead is endemic to the Beaver Rim area on the western edge of the Sweetwater Plateau and Wind River Basin in southern Fremont County, Wyoming. Currently, only a single population of the desert yellowhead is known. This population occurs in shallow wind excavated hollows with shallow loamy soils and sparse vegetation. The main threat to the plant is potential resource extraction, such as uranium mining or oil and gas development. Additionally, direct disturbance from activities such as off-road vehicle use threatens the population. Surveys for desert yellowhead should occur annually from mid-June to August when flowering occurs. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. We do not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the desert yellowhead to experts who can provide training/services.

Critical habitat has been designated for desert yellowhead in Fremont County, Wyoming. Critical habitat consists of 360 acres of Bureau of Land Management administered lands within portions of Township 31 North, Range 95 West, Sections 27 and 34. Within critical habitat, three primary constituent elements necessary for the conservation of desert yellowhead have been identified. These include: (1) Recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation; (2) plant communities that include, but are not limited to, sparsely-vegetated cushion plant communities with scattered clumps of *Oryzopsis hymenoides* (Indian rice grass) between 6,700 and 6,800 feet elevation in Fremont County, Wyoming; species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *hymenoxys acaulis* (stemless hymenoxys) and *Phlox muscoides* (squarestem phlox); these cushion-plant communities also contain natural openings; (3) topographic features/relief (outcroppings, cliffs, and hills) and physical processes, particularly hydrologic processes, that maintain the shape and orientation of the hollows characteristic of desert yellowhead habitat (through microscale dynamics of local winds and erosion) and maintain moisture below the surface of the ground (through sheet wash from the adjacent outcroppings, cliffs, and hills). Ground disturbing activities such as access roads, pipelines and seismic exploration, which have the potential to change the constituent elements, may have an adverse affect to designated critical habitat and may require consultation per section 7 of the Act.

Water Depletions

Colorado River water depletions: Formal consultation is required for projects that may lead to depletions of water to the Colorado River system. Federal agency actions resulting in water

depletions to the Colorado River system may affect the endangered bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and razorback sucker (*Xyrauchen texanus*) downstream in the Green and Colorado river systems. In addition, depletions may contribute to the destruction or adverse modification of designated critical habitat for these four species.

In general, depletions include evaporative losses and/or consumptive use of surface or groundwater within the affected basin, often characterized as diversions less return flows. Project elements that could be associated with depletions include, but are not limited to, ponds (detention/recreation/irrigation storage/stock watering), lakes (recreation/irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), hydrostatic testing of pipelines, wells, dust abatement, diversion structures, and water treatment facilities. Any actions that may result in water depletion should be identified. The document should include: an estimate of the amount and timing of average annual water use (both historic and new uses) and methods of arriving at such estimates; location of where water use or diversion occurs as specifically as possible; if and when the water will be returned to the system; and what the water is being used for. Note that if the project has peculiarities or oddities, we may have more specific questions regarding the potential consumptive use of water.

Platte River water depletions: Water depletions to the Platte River system may affect the federally listed whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*). In addition, depletions may contribute to the destruction or adverse modification of designated critical habitat for the whooping crane and the northern Great Plains breeding population of the piping plover. Depletions include evaporative losses and/or consumptive use, often characterized as diversions from the Platte River or its tributaries less return flows. Project elements that could be associated with depletions to the Platte River system include, but are not limited to, ponds (detention/recreation/irrigation storage/stock watering), lakes (recreation/irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), created or enhanced wetlands, hydrostatic testing of pipelines, wells, diversion structures, dust abatement, and water treatment facilities. Any actions that may result in any water depletion to the Platte River system should be identified. The document should include: an estimate of the amount and timing of average annual water use (both historic and new uses) and methods of arriving at such estimates; location of where water use or diversion occurs as specifically as possible; if and when the water will be returned to the system; and what the water is being used for. Note that if the project has peculiarities or oddities, we may have more specific questions regarding the potential consumptive use of water.

Candidate Species

Candidate species are those species for which the Service has sufficient information to propose for listing as threatened or endangered under the Act. Species of concern (some of which are former Category 1 and Category 2 candidates) are those species whose conservation standing is of concern to the Service, but for which status information is still needed. Conservation

measures for species of concern and candidate species are voluntary but recommended. Protection provided to these species now may preclude possible listing in the future.

Many federal agencies have policies to protect candidate species from further population declines. The Service would appreciate receiving any information available on the status of these species in or near project areas. In addition, if one or more of these species is listed prior to the completion of your project, unnecessary delays may be avoided by considering project impacts to candidates now. Should any of these species be proposed for listing, the lead federal agency would be required to confer with the Service if that agency determines the action (e.g., approval of the project) is likely to jeopardize the continued existence of any of these species.

Yellow-billed cuckoo: The western population of the yellow-billed cuckoo is a candidate for listing as threatened or endangered and may occur in riparian areas west of the Continental Divide in Wyoming. The yellow-billed cuckoo is a slender, long-tailed bird approximately 12 inches long. The head, nape, back, and upper-wings are gray-brown and the chin, breast, and belly are white. The primaries are rufous and the black tail is tipped in white. Adults have a narrow yellow eye ring. The slightly down-curved beak is blue-black above and yellow below, and the foot is zygodactyl.

In Wyoming, the yellow-billed cuckoo is dependent on large woody, riparian areas that include both a dense shrubby understory for nesting and a cottonwood overstory for foraging. Biologists estimate that more than 90 percent of the bird's riparian (streamside) habitat in the West has been lost or degraded as a result of conversion to agriculture, dams and river flow management, bank protection, overgrazing, and competition from exotic plants such as tamarisk. As nest success is correlated to cyclic outbreaks of insects, activities that control outbreaks of caterpillars, cycads or grasshoppers, and the general use of insecticides in or adjacent to riparian areas may negatively affect yellow-billed cuckoos.

Federal Agency Responsibilities

The U.S. Fish and Wildlife Service (Service) has responsibility, under a number of federal laws, treaties, executive orders, and memoranda of agreement, for the conservation and management of fish and wildlife resources. Some of these same authorities also require other federal agencies to consider, avoid, or prevent adverse impacts to fish, wildlife, and wetland resources. To ensure resources are afforded adequate consideration and protection, federal agencies are often required to consult with the Service regarding potential impacts their actions may have on fish and wildlife resources.

When reviewing proposed actions of other agencies, this office normally focuses on three broad categories of trust resources: (1) threatened, endangered, and candidate species, (2) migratory birds, and (3) wetlands and riparian areas. The Service provides recommendations for protective measures for threatened and endangered species in accordance with the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Protective measures for migratory birds are provided pursuant to the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703) and Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668). Wetlands are protected pursuant to Section 404 of the Clean Water Act, Executive Order 11990 (wetland protection) and Executive

Order 11988 (floodplain management) with the goal of “no net loss of wetlands.” Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a-742j).

Federal agency actions may range from small, site specific, short duration projects to expansive, long-term programs. Because of the wide range of possible actions, the Service provides the following comments with the understanding that this list of comments may not be all inclusive or may not be applicable for each federal project.

Regulations implementing the Act at 50 CFR §402.12 require the preparation of a biological assessment for any federal action that is a major construction activity to determine the effects of the proposed action on listed and proposed species. If a biological assessment is not required (i.e., all other actions), the lead federal agency is responsible for review of proposed activities to determine whether listed species will be affected. If it is determined that the proposed activities may affect a listed species, you should contact the Service to discuss consultation requirements.

If it is determined that any federal agency program or project “is likely to adversely affect” any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so the Service can assist you in determining how the project could be modified to reduce impacts to listed species to the “not likely to adversely affect” threshold. If it is concluded that the project “is not likely to adversely affect” listed species, you should request that the Service review the assessment and concur with the determination.

For those actions where a biological assessment is necessary, it should be completed within **180 days** of receipt of a species list. This deadline can be extended by mutual agreement between the lead agency and the Service. If the assessment is not initiated within 90 days of receipt of a species list, the list of threatened and endangered species should be verified with the Service prior to initiation of the assessment. The biological assessment may be undertaken as part of the agency’s compliance with section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. A description of the project.
2. A description of the specific area potentially affected by the action.
3. The current status and habitat use of threatened and endangered species in the project area.
4. A discussion of the methods used to determine the information in item 3.
5. The direct and indirect impacts of the project to threatened and endangered species.
6. An analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts (pursuant to the Act) from State, or private projects in the area.
7. Measures that can potentially reduce or eliminate adverse impacts to threatened and endangered species.
8. The expected status of threatened and endangered species in the future (short and long term) during and after project completion.

9. A determination of “is likely to adversely affect” or “is not likely to adversely affect” for listed species.
10. A determination of “is likely to jeopardize” or “is not likely to jeopardize” for proposed species.
11. Alternatives to the proposed action considered, a summary of how impacts of those alternatives on listed and proposed species would differ from the proposed actions, and the reasons for not selecting those alternatives.
12. Citations of literature and personal contacts used in the assessment.

Migratory Birds

Under the MBTA and BGEPA, the federal agency has a mandatory obligation to protect the many species of migratory birds, including eagles and other raptors which may occur on lands under its jurisdiction. In order to promote the conservation of migratory bird populations and their habitats, the Service recommends that the federal agency implement those strategies outlined within the Memorandum of Understanding directed by the President of the U.S. under Executive Order 13186, where possible.

During project planning analysis of the following information is recommended to determine project effects to migratory birds:

1. The current status and habitat use of migratory birds in the project area. This may include number of individuals, breeding pairs, population trends, and active nests within and adjacent to the project area.
2. An analysis of the effects of the proposed action on migratory birds and their habitats.
3. Measures that will reduce or eliminate adverse impacts to migratory birds, including protective buffers, seasonal restrictions, maintenance of habitat within the project area, raptor-proofing power lines, and netting of waste pits.
4. The projected short and long term impacts to migratory birds and their trends during and after project completion using monitoring, modeling and current literature.

Potential adverse effects to migratory birds from power lines should be identified and every attempt to mitigate such effects should be implemented. Structures that are identified as affecting birds should be made safe to prevent subsequent mortalities. If you determine that power poles and/or stretches of power line are resulting in electrocution of migratory birds, especially raptors, the Service requests that specific information be documented regarding these mortalities. Based on regulations pursuant to the MBTA and BGEPA, migratory bird carcasses may only be collected, possessed or moved by state game wardens, Service refuge officers, Service special agents, or persons holding a valid salvage permit issued by the Service and the applicable state. When a migratory bird mortality is observed the Service recommends that as much of the following information as possible be documented: legal location, GPS location, all identifying numbers from the nearest power pole, date of observation, species, photographs (pole number, top section of the pole, and the dead bird), and directions to the scene. Please contact our office with the information and call or email Dominic Domenici of the Service's Law Enforcement Office at 307-261-6365 /dominic_domenici@fws.gov to report your observation and obtain further guidance. The Service appreciates your efforts to protect migratory birds.

Wetlands

The functions and values of wetlands are well documented and are especially important in the arid west. Substantial degradation diminishes the effectiveness of wetlands to function as food, cover, and breeding sites for wetland dependent species; sediment transport systems; water retention/storage sites; contaminant sinks; and chemical exchange sites. To ensure the Service has sufficient information to assess project impacts on wetlands, assessments should include:

1. An enumeration of the acreage of wetlands, by type, impacted by the proposed action.
2. A discussion of why wetlands cannot be avoided.
3. A description of the functions and values of the wetlands, including sediment transport, water storage, habitat for aquatic and terrestrial organisms, and contaminant sinks, as well as the potential risks of water removal for these functions and values.
4. Measures that will reduce or eliminate adverse impacts to wetlands such as a mitigation plan to offset unavoidable impacts, protective buffers, seasonal and physical restrictions, maintenance of the natural hydrograph, and development and implementation of a monitoring program to track the effectiveness of mitigation measures.
5. Results of wetland monitoring or management activities in, or adjacent to, the proposed project site.
6. The anticipated short and long term effects to wetland and riparian areas during and after project completion.

We recommend the federal agency address each of the above concerns where applicable to the project. Without this information it may be difficult for the Service to effectively review assessments.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

**Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001**

In Reply Refer To:
ES-61411/BFF/WY7746

February 2, 2004

Dear Interested Party:

This letter is to inform you that black-footed ferret (*Mustela nigripes*) surveys are no longer necessary in black-tailed prairie dog colonies statewide or in white-tailed prairie dog towns except those noted in the attachment. In response to requests from numerous entities and our own review of the situation regarding ferret surveys, the U.S. Fish and Wildlife Service (Service) and others have been evaluating the potential for a previously unidentified black-footed ferret population to occur in Wyoming and the need for conducting black-footed ferret surveys across the entire state. This issue has been especially pertinent when evaluating various activities for compliance with the Endangered Species Act of 1973 (Act), as amended (16 USC 1531 *et seq.*).

The black-footed ferret was listed as an endangered species in 1967, prior to the Act (under the Endangered Species Preservation Act of 1966). The Act prohibits the take of listed species without proper permits and places an additional requirement on activities funded, authorized or carried out by Federal agencies to ensure that such actions will not jeopardize the continued existence of any listed species. The latter process is known as interagency consultation and is outlined in section 7(a)(2) of the Act (50 C.F.R. §402.13).

The Service developed the 1989 *Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act* (Survey Guidelines) to assist with section 7 consultations for ferrets. The Survey Guidelines provide a mechanism to evaluate the possibility of locating existing ferrets in prairie dog colonies by examination of the size, density, and juxtaposition of existing prairie dog colonies. The key points of the strategy are to determine the existence of ferrets or an area's potential for ferret recovery and either may be used in section 7 consultations when determining whether an action may affect the black-footed ferret. The Survey Guidelines can be followed by interested parties (federal agencies and their partners) during the section 7 consultation process to make determinations on whether an activity may adversely affect ferrets. However, an unintended drawback to the Survey Guidelines is that repetitive surveys may be undertaken to evaluate possible impacts to ferrets on prairie dog colonies that have already been searched or that didn't present any realistic opportunities for ferret reintroduction.

The Service has been coordinating with the Wyoming Game and Fish Department in reviewing information about the current and historic status of prairie dog towns throughout Wyoming. In addition to the status review, we have also been reviewing the history of black-footed ferret surveys to determine whether the survey guidelines should continue to be applied across the entire state. Through this process, the Service has developed an initial list of blocks of habitat that are not likely to be inhabited by black-footed ferrets. In these areas, take of individual ferrets and effects to a wild population are not an issue and surveys for ferrets are no longer recommended. The term 'block clearance' has often been used to describe this type of approach. This initial list is based largely on the quality of the habitat today, as well as information regarding past population bottlenecks that may have resulted from plague and poisoning events in particular areas and may have led to the loss of ferrets in the area.

Additional information regarding the survey effort on the specific areas not yet block-cleared is currently being reviewed by the Service. Based on this review, the Service will likely add several blocks of habitat to the list in the future. The Service will continue to collect and review information on any remaining areas to determine if they should be added to the list of areas cleared from the survey recommendation. Therefore, prior to conducting surveys, you should coordinate with the Service to determine which specific areas are recommended for surveys. We have attached our initial list of areas cleared from the ferret survey recommendation. We believe this approach is not only biologically defensible, but also allows all parties involved to focus survey effort and resources on those areas where the likelihood of discovering wild ferrets is greatest.

Please note that block clearance must not be interpreted to mean that the area is free of all value to black-footed ferrets. These areas, or blocks, are merely being cleared from the need for ferret surveys. Therefore, this clearance from the survey recommendations reflects only the negligible likelihood of a wild population of ferrets occurring in an area. It does not provide insight into an area's value for survival and recovery of the species through future reintroduction efforts. Nor does this clearance relieve a Federal agency of its responsibility to evaluate the effects of its actions on the survival and recovery of the species. For example, while an action proposed in a cleared area needs no survey and is not likely to result in take of individuals, the action could have an adverse effect upon the value of a prairie dog town as a future reintroduction site and should be evaluated to determine the significance of that effect. Consultation with the Service is appropriate for any agency action resulting in an effect significant enough to diminish a site's value as a future reintroduction site. Additionally, block clearance of an area does not imply that other values of maintaining the integrity of the prairie dog ecosystem are unimportant.

Enclosure 2

We appreciate your efforts to conserve listed species. Without the valuable information collected to date in association with black-footed ferret surveys, we would not be able to undertake this effort to focus ferret surveys on the most promising habitat. If you have any questions regarding this letter or your responsibilities under the Act, please contact Mary Jennings of my staff at the letterhead address or phone (307) 772-2374, extension 32.

Sincerely,

/s/ Brian T. Kelly

Brian T. Kelly
Field Supervisor
Wyoming Field Office

Enclosure (1)

cc: WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)
FWS, BFF Recovery Coordinator, Laramie, WY (M. Lockhart)

Enclosure 3

February 1, 2004

Black-footed Ferret Survey Block Clearance List

The following blocks of black-footed ferret habitat are cleared from the recommendation for ferret surveys:

1. All black-tailed prairie dog towns in Wyoming
2. All white-tailed prairie dog towns in Wyoming **EXCEPT** those identified in the following table.

Complex Name	Townships	Ranges	Complex Name	Townships	Ranges
Baxter Basin	T18, T19, T20	R103, R104	Fifteen Mile	T47-T49 T48	R97, R98 R96 (west half)
Big Piney	T 28 T29, T30, T31	R111, R112 R109-R111	Flaming Gorge	T12, T13 T12-T14 T13	R109 R108 R107
Bolton Ranch	T17 T18, T19	R86, R88 R86-R88	Manderson	T47, T48 T49	R90, R91 R91
Carter	T16, T17 T18	R114-R116 R115	Moxa	T15, T16 T17, T18 T19, T20 T21 T22, T23 T24	R112, R113 R111-R113 R111-R114 R110-R113 R111-R113 R112
Continental Divide	T16 T17 T18 T19 T20	R93-95 R92-95, 98-100, 97-98 R92-96, 98-99 R92-96 R92-95	Pathfinder	T27 T28 T29	R85, R86 R85-R89 R85, R89
Cumberland	T16 T17-T19 T19, T20	R118 R117 R116	Saratoga	T14 T15 T16	R82, R83 R82-R84 R83-R85
Dad	T15, T16 T17	R90-R93 R92, R93	Seminole	T23, T24	R84, R85
Desolation Flats	T13 T14 T15 T16	R93-95 R93-94 R93-94, 96 R93-96	Shamrock Hills	T22, T23 T24, T25 T26	R89, R90 R89 R89, R90

Enclosure 3