



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT
04-0446

February 9, 2004

Diane Freeman, Project Team Leader
Beaver Ranger District
Fishlake National Forest
575 S. Main Street, P.O. Box E
Beaver, Utah 84631

RE: South Fork Vegetation Treatment

Dear Ms. Freeman:

The U.S. Fish and Wildlife Service (FWS) has reviewed your letter of January 15, 2004 proposing the South Fork Vegetation Treatment Project. The purpose of the project is to remove dead trees, reduce overall tree stand densities, and reduce hazardous fuels. The proposed action would conduct salvage and sanitation treatments of trees infested with, or at high risk of spruce beetle infestation on approximately 2,000 acres of Engelmann spruce and subalpine fir forest. Treatments would occur in six treatment units ranging from approximately 200 to 500 acres in size and reforestation may occur if necessary to supplement natural regeneration. A minimum of 300 snags per 100 acres, greater than 18 inches in diameter, and 30 feet in height, would be retained, where available. Treatments are proposed to begin in spring 2004 and last for five years. Additionally, 10 miles of temporary roads are proposed to be reopened, and 3 miles of temporary roads are proposed to be constructed. These roads would all be restored to a natural state and signed as closed upon completion of the proposed treatment activities.

Consistent with NEPA regulation 40 CFR § 1503.1(a)(1) that the action agency shall obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, we are responding to your request for concerns and comments on this proposed project. In Section 1 of this letter we convey our concerns that should be addressed in the NEPA compliance document for this project. Section 2 of this letter addresses your Endangered Species Act (ESA) Section 7 responsibilities.

Section 1.

We recognize the need to restore the health of spruce-fir stands and appreciate your efforts to move towards desired conditions. However, these treatments also incur short and long term

impacts to wildlife species that should be carefully considered during project planning and implementation.

Surveys should be completed to assess the abundance and distribution of sensitive species prior to the initiation of project work. Each alternative within the NEPA document should discuss and commit to measures to avoid, minimize, and mitigate impacts to sensitive fish and wildlife habitats. Size, timing, frequency, and past history of vegetation treatments influence the impacts of vegetation treatment on wildlife and their habitats. The NEPA document should identify the beneficial and detrimental impacts to terrestrial and aquatic wildlife, plants, pollinators, and sensitive habitats resulting from changes in the extent, distribution, and composition of vegetative communities through the proposed vegetation treatment, as well as the site preparation for this activity. It is also important to describe the large scale and associated cumulative effects of the vegetation treatment.

The proposed study area contains several lakes, springs, creeks, and tributaries. Wetland and riparian areas are sensitive habitats which are relatively scarce and highly valuable to many species of insects, amphibians, reptiles, fishes, birds and mammals. Impacts to these areas should be avoided to the greatest extent possible. Unavoidable impacts should be fully mitigated.

The project area may contain remnant populations of Bonneville Cutthroat Trout, a Conservation Agreement species. We recommend that the Forest consider using the guidelines listed in the Inland Native Fish Strategy (INFISH) (USFS 1995). As per INFISH, no disturbance should occur within a buffer zone of 300' on each side of perennial fish bearing streams, 150' on each side of perennial non-fish bearing streams, and between 50' - 100' on each side of intermittent streams.

Noxious weeds will have greater potential to invade with increased road traffic and soil disturbance. Therefore, we recommend surveys for invasive plants, and use of practices to minimize the potential for introduction of non-natives. Each alternative should be evaluated with regard to the potential for increased spread of invasive species and describe the measures to be taken to avoid and/or control invasive plant species. We recommend the use of native seed for any revegetation activities.

We are concerned that increased road construction and logging activities will have negative impacts to the environment and wildlife. Road construction increases habitat fragmentation, direct mortality of wildlife, noise disturbance, soil compaction, and stream sedimentation. Efforts to minimize road construction and/or to close or restore temporary roads are recommended.

Potential short-term and long-term impacts to migratory birds and their habitat should be specifically addressed in the NEPA compliance document. Vegetation treatments should be timed to avoid nesting and breeding seasons for goshawks and other migratory birds. Vegetation

treatments from early spring through late summer (April - August) would have the highest potential for deleterious effects to migratory birds; including physical destruction of active nests, eggs, and nestlings. Actual nesting months are species-specific and should be more clearly defined following species survey efforts or based on known forest species distribution information.

The Migratory Bird Treaty Act which makes it unlawful to pursue, hunt, take, capture, or kill migratory birds, their parts, nests, or eggs (16 U.S.C. 703-712). When taking of raptors or other migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors; nests occupied by eggs or nestlings; nests still essential to the survival of the juvenile bird; nestlings; or eggs, Migratory Bird Permits pursuant to 50 CFR parts 13 and 21 must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, 2002) which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon. Locations of existing raptor nests should be identified prior to initiation of treatments. Direct loss of nesting sites or territories should be avoided. Appropriate spatial buffer zones of inactivity should be established during crucial breeding and nesting periods relative to raptor nest sites or territories. Arrival at nesting sites can occur as early as December for certain raptor species. Nesting and fledging continues through August. Generally we recommend spacial buffers of 1.0 mile for threatened or endangered raptors, 0.5 mile for other diurnal raptors, and 0.25 mile for nocturnal raptor nests.

We note that goshawk nests occur in the Woods Lake and Buck Pasture treatment units. The Raptor Guidelines recommend a 0.5 mile buffer during the goshawk nesting season; this buffer should be applied for all activities associated with the vegetation treatment.

Monitoring should be conducted to determine the effectiveness of the vegetation treatments in achieving project objectives and effectiveness of mitigation strategies. The NEPA document should include a description of the monitoring plan.

Section 2. Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T), endangered (E) and candidate (C) species that may occur within the area of influence of your proposed action.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Bald Eagle ¹	<i>Haliaeetus leucocephalus</i>	T
California Condor ²	<i>Gymnogyps californianus</i>	E

Western Yellow-billed Cuckoo	<i>Coccyzus americanus occidentalis</i>	C
Utah Prairie Dog	<i>Cynomys parvidens</i>	T

¹ Wintering populations (only four known nesting pairs in Utah).

² Experimental nonessential population.

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

Only a Federal agency can enter into formal Endangered Species Act (ESA) section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

The following is a list of species that may occur within the project area and are managed under Conservation Agreements/Strategies. Conservation Agreements are voluntary cooperative plans among resource agencies that identify threats to a species and implement conservation measures to proactively conserve and protect species in decline. Threats that warrant a species listing as a sensitive species by state and federal agencies and as threatened or endangered under the ESA

should be significantly reduced or eliminated through implementation of the Conservation Agreement. Project plans should be designed to meet the goals and objectives of these Conservation Agreements.

Common Name

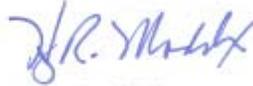
Bonneville Cutthroat Trout

Scientific Name

Oncorhynchus clarki utah

We appreciate the opportunity to provide these comments. If you need further assistance, please contact Kate Schwager, Fish and Wildlife Biologist, at the letterhead address or (801) 975-3330 ext. 132.

Sincerely,



Henry R. Maddux
Utah Field Supervisor

cc: UDWR - SLC