

## **Appendix C**

### Endangered Species Act Compliance



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Bishop Henry Whipple Federal Building  
1 Federal Drive  
Fort Snelling, MN 55111-4056



FWS/AES-EC

August 9, 2002

## Memorandum

To: Janet Smith, Field Supervisor, Green Bay Ecological Services Field Office

From: Colette S. Charbonneau, Restoration Coordinator, Lower Fox River and Green Bay PCB Site

Subject: Initiation of Endangered Species Act Section 7 Intra-Service Consultation

This memorandum is intended to initiate the consultation process pursuant to Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and its implementing regulation (50 CFR 402) regarding the attached Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay area. Also attached is a biological evaluation of the potential effects to threatened, endangered or candidate species or critical habitats and avoidance measures for any adverse effect to listed species.

Please respond with your concurrence on the attached Intra-Service Section 7 determination by returning the signed copy to myself for the administrative record. If you feel you do not have enough information in the proposal to make a determination, please contact me at 920-465-7407 for more specifics on the Restoration Plan. If a non-concurrence determination is made, please inform me at your earliest convenience so revisions can be made if possible.

Thank you for your review of the attached information and assistance in the Intra-Service Section 7 consultation process.

/s/Colette S. Charbonneau

Attachments

cc w/o attachments: AES, Fort Snelling, MN (Attn: Frank Horvath)

**INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION FORM**

Originating Person: Colette S. Charbonneau

Telephone Number: 920-465-7407

Date: August 8, 2002

**Project: Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area**

- I. Region: 3
- II. Service Activity (Program): Ecological Services, Environmental Contaminants Program
- III. Pertinent Species and Habitat:
  - A. Listed species and/or their critical habitat within the action area: Bald eagle (T), Kirtland's warbler (E), piping plover (E) and critical habitat, gray wolf (E), Canada lynx (T), Karner blue butterfly (E), Hine's emerald dragonfly (E), Pitcher's thistle (T), dwarf lake iris (T), eastern prairie fringed orchid (T) and Fassett's locoweed (T)
  - B. Proposed species and/or proposed critical habitat within the action area: none
  - C. Candidate species within the action area: eastern massasauga rattlesnake
- IV. Geographic area or station name and action: The proposed action is to restore, rehabilitate, replace and/or acquire the equivalent of those natural resources injured by the release of PCBs into the environment as described in the attached Joint Restoration Plan and Environmental Assessment. Alternative C is the proposed action which includes all of the Green Bay and portions of the Manitowoc River watersheds.
- V. Location (attach map):
  - A. Ecoregion Number and Name: Great Lakes Ecoregion
  - B. County and State: Alger, Delta, Dickinson, Iron, Marquette and Menominee Counties, Michigan and Adams, Brown, Calumet, Columbia, Door, Florence, Fond du Lac, Forest, Green Lake, Kewaunee, Langlade, Manitowoc, Marathon, Marinette, Menominee, Oconto, Oneida, Outagamie, Portage, Shawano, Waupaca, Waushara, and Winnebago Counties, Wisconsin

C. Section, township, and range (or latitude and longitude): Specific project locations are unknown at this time, therefore, townships, section and range information is not available. A map which shows the boundary area for the Proposed Action (Alternative C) is contained in the attached Joint Restoration Plan and Environmental Assessment.

D. Distance (miles) and direction to nearest town: Specific project locations are unknown at this time, therefore distance and direction to nearest town information is not available. A map which shows the boundary area for the Proposed Action (Alternative C) is contained in the attached Joint Restoration Plan and Environmental Assessment.

E. Species/habitat occurrence:

Alger County, MI - gray wolf, bald eagle, Canada lynx-historic

Delta County, MI - gray wolf, bald eagle, Kirtland's warbler, Pitcher's thistle, dwarf lake iris

Dickinson County, MI - gray wolf, bald eagle, Canada lynx-historic

Iron County, MI - gray wolf, bald eagle

Menominee County, MI - gray wolf, bald eagle, dwarf lake iris

Adams County, WI - bald eagle

Brown County, WI - bald eagle, dwarf lake iris

Calumet County, WI - bald eagle

Columbia County, WI - bald eagle, eastern massasauga rattlesnake

Door County, WI - bald eagle, Hine's emerald dragonfly, Pitcher's thistle, dwarf lake iris

Florence County, WI - gray wolf, Canada lynx, bald eagle

Fond du Lac County, WI - no listed species

Forest County, WI - gray wolf, Canada lynx, bald eagle

Green Lake County, WI - bald eagle, Karner blue butterfly

Kewaunee County, WI - Hine's emerald dragonfly

Langlade County, WI - bald eagle

Manitowoc County, WI - bald eagle, piping plover and critical habitat, and Pitcher's thistle

Marathon County, WI - bald eagle

Marinette County, WI - Canada lynx, bald eagle, Kirtland's warbler, piping plover and critical habitat

Marquette County, WI - Karner blue butterfly

Menominee County, WI - bald eagle, Karner blue butterfly

Oconto County, WI - bald eagle, Karner blue butterfly

Oneida County, WI - gray wolf, Canada lynx, bald eagle

Outagamie County, WI - bald eagle, Karner blue butterfly

Portage County, WI - bald eagle, Karner blue butterfly, Fassett's locoweed

Shawano County, WI - bald eagle, Karner blue butterfly

Waupaca County, WI - bald eagle, Karner blue butterfly

Waushara County, WI - bald eagle, Karner blue butterfly, Fassett's locoweed

Winnebago County, WI - bald eagle, eastern prairie fringed orchid

VI. Description of proposed action: The proposed action is to restore, rehabilitate, replace and/or acquire the equivalent of those natural resources injured by the release of PCBs into the environment as described in the attached Joint Restoration Plan and Environmental Assessment.

VII. Determination of effects:

A. Explanation of effects of the action on species and critical habitats in items III. A, B, and C: Effects of the proposed action on species and critical habitats are outlined in Chapter 4, Environmental Consequences of the attached Joint Restoration Plan and Environmental Assessment.

A number of federally-listed threatened or endangered and candidate species would receive further protection and aid in the recovery of the species if the Proposed Action is implemented. Wetland, associated upland and aquatic habitat preservation would most likely benefit the bald eagle, piping plover, Hine's emerald dragonfly, dwarf lake iris, Pitcher's thistle, Fassett's locoweed, eastern prairie fringed orchid and the candidate eastern massasauga rattlesnake. The action alternatives may provide limited benefits to the gray wolf and Karner blue butterfly due to the type of habitats required by these species.

The Canada lynx, if present, and Kirtland's warbler would not be negatively or positively affected by the Proposed Action. Canada lynx only occasionally occur in northern forested areas of Wisconsin and require extensive coniferous forests as habitat. These types of lands are not a part of the Co-trustees' restoration strategy to restore, rehabilitate, replace and/or acquire the equivalent of natural resources injured by the release of PCBs into the environment. The Kirtland's warbler also requires a very specific habitat, large stands of young jack pines, that is not part of the restoration strategy outlined in the alternatives. These type of habitats are not proposed to be preserved, restored or enhanced within any of the alternatives. These two species were not harmed by the release of PCBs into the environment, nor are they the equivalent of those injured and therefore, are not subject to any priority for restoration.

B. Explanation of actions to be implemented to reduce adverse effects: During implementation of any restoration projects, protective measures will be taken as provided in the attached document, Avoidance of Adverse Effect to Listed Species.

It is believed that projects implemented through the Joint Restoration Plan and Environmental Assessment are not likely to adversely affect federally-listed threatened or endangered species and critical habitat and are not likely to jeopardize candidate species because: 1) there will be coordination with the U.S. Fish and Wildlife Service prior to implementing any on-the-ground work to determine whether threatened, endangered, candidate species or critical habitat occur or potentially occur within the restoration project area; 2) avoidance measures (attached) will be implemented to eliminate any

potential adverse effects; and 3) if the restoration plan is changed or the avoidance measures cannot be adhered to for a particular restoration project, the U.S. Fish and Wildlife Service will be coordinated with prior to conducting any further work.

II. Effect determination and response requested: [\* = optional]

A. Listed species/designated critical habitat:

<u>Determination</u>	<u>Response requested</u>
no effect/no adverse modification	___*Concurrence
may affect, but is not likely to adversely affect species/adversely modify critical habitat (species: bald eagle, Kirtland's warbler, piping plover, gray wolf, Canada lynx, Karner blue butterfly, Hine's emerald dragonfly, Pitcher's thistle, dwarf lake iris, eastern prairie fringed orchid, and Fassett's locoweed)	__X__Concurrence
may affect, and is likely to adversely affect species/adversely modify critical habitat	___Formal Consultation

B. Proposed species/proposed critical habitat:

<u>Determination</u>	<u>Response requested</u>
no effect on proposed species/no adverse modification of proposed critical habitat	___*Concurrence
is likely to jeopardize proposed species/adversely modify proposed critical habitat	___Conference

C. Candidate species:

<u>Determination</u>	<u>Response requested</u>
no effect (species: eastern massasauga rattlesnake)	__X__*Concurrence
is likely to jeopardize candidate species	___Conference

/s/ Frank J. Horvath  
Frank Horvath,  
Environmental Contaminants Program Manager

8/6/02  
date

[Title/office of supervisor at originating station]

IX. Reviewing ESO Evaluation:

A. Concurrence \_\_\_\_\_ Nonconcurrency \_\_\_\_\_

B. Formal consultation required \_\_\_\_\_

C. Conference required \_\_\_\_\_

D. Informal conference required \_\_\_\_\_

E. Remarks (attach additional pages as needed):

\_\_\_\_\_  
signature  
[Title/office of reviewing official]

\_\_\_\_\_  
date

## Avoidance of Adverse Effects to Listed Species

To assure that listed species will not be adversely affected, or proposed species are not jeopardized, the Co-trustees will require the following guidelines to be observed as restoration projects are implemented in the Lower Fox River and Green Bay restoration area. The restoration area is defined as the 39 miles of the Lower Fox River, adjacent floodplain and ecologically associated uplands, Green Bay and adjacent coastal wetlands, tributaries to the Lower Fox River and Green Bay up to the headwaters including adjacent floodplains and ecologically associated uplands, and watersheds adjacent to these river systems.

**Bald eagle** (*Haliaeetus leucocephalus*) No disturbance will take place during critical periods within protective zones as described in the 1983 Northern States Bald Eagle Recovery Plan, Appendix E, Management Guidelines for Breeding Areas, pages E1-E5 and as outlined in the U.S. Fish and Wildlife Service's Bald Eagle Management Guidelines.

**Piping plover** (*Charadrius melodus*) The Great Lakes population of the piping plover is at a perilously low level. Restoration projects on sites occupied by this species will include provisions to limit human activity in nesting areas and will not degrade essential habitat; wide, flat, open, sandy beaches. The Co-trustees will consider restoration activities subject to U.S. Fish and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites or designated critical habitat.

**Karner blue butterfly** (*Lycaeides melissa samuelis*) Restoration projects must not initiate burning, mowing, disking, herbicide application or other vegetation or soil disturbance on sites occupied by this species or sites with wild blue lupine (*Lupinus perennis*). The Co-trustees will consider restoration activities subject to U.S. Fish and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites.

**Hine's emerald dragonfly** (*Somatochlora hineana*) Habitat requirements for the Hine's emerald dragonfly are very specific to marshes and sedge meadows fed by calcareous groundwater seepage and underlain by dolomite bedrock. Restoration projects must not disrupt the ecological and hydrological processes needed to sustain this type of habitat. The Co-trustees will consider restoration activities subject to U.S. Fish and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites.

**Pitcher's thistle** (*Cirsium pitcheri*) Restoration projects must avoid manipulation and extensive human disturbance of sand dune habitat on sites occupied by the Pitcher's thistle. The Co-trustees will consider restoration activities subject to U.S. Fish and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites.

**Dwarf lake iris** (*Iris lacustris*) Restoration projects must avoid the use of fertilizers, herbicides and insecticides on sites occupied by the dwarf lake iris. Also, off-road vehicle use must not be permitted on these sites. The Co-trustees will consider restoration activities subject to U.S. Fish

and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites.

**Eastern prairie fringed orchid** (*Platanthera leucophaea*) Restoration projects must avoid mowing, brushing, burning, flooding or herbicide use in occupied or potential sites. This species, which is found in wet meadows and mesic to wet-mesic prairies, has a high potential to be adversely affected directly by habitat restoration activities that alter vegetation and hydrology. The same activities, however, may benefit the species when properly planned and timed. A beneficial project that may result in an adverse effect (short term harm) can proceed after careful site surveys, planning, early coordination with species experts and a project specific Section 7 consultation. Reference U.S. Fish and Wildlife Service, 1999, Eastern Prairie Fringed Orchid (*Platanthera leucophaea*) Recovery Plan. Ft. Snelling, MN, to guide conservation planning.

**Fassett's locoweed** (*Oxytropis campestris var. chartacea*) Restoration projects must avoid modification and extensive human disturbance of gravel and sand lakeshores on sites occupied by the Fassett's locoweed. The Co-trustees will consider restoration activities subject to U.S. Fish and Wildlife Service guidelines and further Section 7 consultation, including formal consultation on occupied sites.

**Eastern massasauga rattlesnake** (*Sistrurus catenatus catenatus*) Although not currently listed (August, 2002), the eastern massasauga rattlesnake is a candidate for listing. U.S. Fish and Wildlife Service policy requires the agency to treat candidates as proposed for listing. In occupied sites, restoration projects must avoid actions that favor vegetational succession from open to closed canopy, modify (*e.g.* burn, now, brush hog) or destroy any upland or wetland connections between wetlands (habitat fragmentation), or drain, flood or otherwise modify hydrology permanently or seasonally. Reference the Threats to Massasauga Habitat and Management Strategies section (pages 16-30) of Johnson *et al.*, 2000, The Eastern Massasauga Rattlesnake: A Handbook for Land Managers, U.S. Fish and Wildlife Service, Fort Snelling, MN to avoid actions that contribute to identified threats.

The above measures for avoiding adverse effects apply to restoration project sites where listed, proposed or candidate species are known to occur or where it is necessary to assume they are present. On these sites, actions that adhere to the above restrictions should have no effect on the listed species. To comply with Endangered Species Act section 7(a)(2) and to determine whether listed and proposed species may be affected, project specific review must occur. On sites where surveys or other current information provides certainty that federally-listed species are not present, actions that are determined to have no effect on listed species may proceed without additional Section 7 contact with the appropriate U.S. Fish and Wildlife Service Ecological Services field office. Projects on occupied sites that are determined to benefit listed species, that is, not likely to adversely affect species, need field office concurrence. Early coordination with the field office is advisable where any uncertainty exists. Those projects which are proposed within the state of Wisconsin will require coordination with the Green Bay Field Office, 1015

Challenger Court, Green Bay, Wisconsin 54311; those projects which are located in the state of Michigan will require coordination with the East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823.

The materials referenced in this document may be obtained by contacting the U.S. Fish and Wildlife Service Ecological Services Field Office (920-465-7440) in Green Bay, Wisconsin.