



United States Department of the Interior

Fish and Wildlife Service

Montana Ecological Services Office

585 Shepard Way, Suite 1

Helena, Montana 59601-6287

Phone: (406) 449-5225; Fax: (406) 449-5339



In reply, refer to:

File: M19 Forest Service Region 1

06E11000-2021-I-0098 2020 NLAA programmatic screens, updated

December 11, 2020

Christopher S. Savage
RRM Director
U.S. Forest Service, Northern Region
26 Fort Missoula Road
Missoula, Montana 59804

Dear Mr. Savage:

This is in response to your December 1, 2020, request for U.S. Fish and Wildlife Service (Service) concurrence with the determinations in the updated and reissued *Programmatic Biological Assessment for Activities that are Not Likely to Adversely Affect Canada Lynx, Grizzly Bear, and Designated Canada lynx Critical Habitat* (biological assessment), which analyzes impacts to the threatened grizzly bear (*Ursus arctos horribilis*), the threatened Canada lynx (*Lynx canadensis*), and designated critical habitat for Canada lynx. The Forest Service Northern Region Office (Forest) submitted the biological assessment on the behalf of the National Forests in Montana and Idaho within the Forest Service's Northern Region. The determinations pertain to the effects on grizzly bears, Canada lynx, and lynx critical habitat from projects or actions that meet the conditions and criteria of the appropriate screening processes contained as appendices A, B, and D to the biological assessment.

In 2003, biologists from the Forests, our office, and other Montana Level 1 Wildlife Team (Level 1 team) participants developed this programmatic approach to section 7 informal consultation to expedite consistent, adequate biological review and fulfillment of section 7 obligations for a wide range of minor projects and activities carried out, funded by, or approved by the Forests. The process was designed to rapidly identify those actions that have the potential to affect specific listed terrestrial species, but where the effects are clearly insignificant or discountable. Such actions accommodate a programmatic approach to section 7 compliance. We first concurred with the biological rationales that supported *not likely to adversely affect* determinations pertaining to specific actions related to minor project types on April 30, 2004. We have subsequently concurred several additional times as information is updated or the process renewed. The most recent update to the renewal of the biological assessment and subsequent concurrence letter occurred in June 2020. Due to some errors, the Programmatic biological assessment was revised and updated from the June 2020 version with some

adjustments to screening criteria for grizzly bears, Canada lynx, and Canada lynx critical habitat per interagency team discussions on October 21, 2020 and subsequent team leader discussions. In addition to several minor changes, the interagency team agreed upon some substantive changes to the programmatic screens as described in the Forest's December 1, 2020 letter requesting concurrence.

The Service has reviewed the December 2020 biological assessment and screening processes and we concur with the determinations that projects and actions that fully comply with the conditions and criteria outlined in the screening processes *may affect, but are not likely to adversely affect* the threatened grizzly bear, the threatened Canada lynx, or designated critical habitat for Canada lynx. Therefore, pursuant to 50 CFR 402.13 (a), formal consultation on the species and critical habitat referenced above is not required. This programmatic concurrence will expire on December 31, 2025. At that time, the Service and the Forests will review the application of this programmatic approach and jointly determine whether its use should be continued. In the interim, the interagency regional terrestrial consultation team (Level 1 team) will serve as a forum for discussion of issues or problems that may arise with the implementation of this approach, in addition to the annual review of a sample of projects.

Our rationale for the concurrence includes but not limited to the following:

1. This programmatic concurrence is expressly limited to those actions with effects to listed species that are insignificant or discountable as defined in the Service's section 7 consultation handbook, based on site specific information and analysis. As described in the biological assessment, this programmatic concurrence applies to Forest projects or actions for which the screening processes (found as appendices A, B, and D to the biological assessment) clearly leads a biologist to a determination of "not likely to adversely affect." More complex projects, which do not clearly lead to a "not likely to adversely affect" determination, or those for which the project biologist determines there may be effects not accounted for in the screening processes, do not qualify for this programmatic concurrence. Such projects must be evaluated in biological assessments submitted as usual for individual or batched concurrence or formal consultation, as appropriate.
2. Application of the screening processes and the determination of project effects must be made by a qualified wildlife biologist assigned by the Forest as the lead and/or responsible biologist for the project, as described in the programmatic biological assessment.
3. In no case does this programmatic concurrence apply to any project or action that has the potential to cause or increase the likelihood of "take" as defined by regulations and the Service's section 7 handbook, based on site specific information and analysis.
4. This programmatic concurrence does not apply to management activities that individually, additively, or cumulatively are likely to adversely affect a species or critical habitat through direct impacts or impacts to habitat. Projects for which a biological assessment leads to anything other than a *not likely to adversely affect* determination (i.e., those that do not fully meet the screening processes) or do not fully meet all of the above conditions shall be handled according to standard, project-level section 7 procedures.

5. To ensure proper use of the screening processes under this programmatic concurrence, the December 2020 biological assessment describes a review process. For all projects and actions reviewed and analyzed using the screening processes, the consultation summary sheets in Appendix E of the biological assessment must be filled out and reviewed by Forest wildlife biologists and submitted to the Service semi-annually for review. Submittal dates are June 15 and December 15 of each year. These summary sheet reports shall be submitted to the Service, and an electronic copy sent to the Forest Service Northern Region Threatened and Endangered Species Program Leader.

6. To ensure proper use of the screening processes and this programmatic concurrence, the interagency regional terrestrial consultation team (Level 1 team) is required to review projects annually and as needed. The interagency regional terrestrial consultation team will continue to annually randomly select a number of projects and review the use of the screening processes and documentation. The interagency regional terrestrial consultation team must be comprised of Forest wildlife biologists and Service biologists, at a minimum, in order for the review process to remain valid.

The Service also bases its concurrence primarily on, but not limited to, the following factors: the information and determinations presented in the biological assessment prepared for the screening processes, interagency regional terrestrial consultation team meetings and discussions, information in our files, knowledge and information accrued through experience with the effects of Forest Service projects and actions on the species and critical habitat listed above, and various information gained through the review of project effect analyses during past formal and informal consultation. The species and habitat considered in this programmatic consultation have an extensive history of being considered in analyses in formal and informal consultations between the Forests and the Service. Such experience helps to inform us as to the potential effects of the actions described in the screening processes. Our concurrence with the determination that projects fitting conditions of the screening processes are *not likely to adversely affect* these species requires project adherence to the conditions described in the screening processes contained in appendices to the biological assessment. The Service notes that such adherence compliments, or is in agreement with, all biological analysis protocols and mapping strategies developed for these species during consultation with the Service, and all assumptions underlying their development.

The Service may review the appropriateness of this programmatic concurrence at any time. The Service will keep informed of the latest information and science related to the species considered here, and recommend interagency regional terrestrial consultation team reviews, edits, or revisions of the screening processes as needed. Concurrence with specific projects may be invalidated as a consequence of any changes to the basis for which concurrence was issued, any problems of implementation that may be identified, changed assumptions or protocols, or when accountability measures within the programmatic concurrence process fail to be completed. In the event that a project or action proceeds under this programmatic concurrence and later (a) results in adverse effects or “take” of listed species or critical habitat, or (b) exceeds the conditions of this programmatic concurrence (e.g., does not adhere to conditions in the screening processes), the appropriate Forest must initiate site-specific consultation, as appropriate, for that project or action.

Through this process, we have appreciated the Forest Service's collaborative efforts in meeting their obligations under section 7 in a more efficient and expeditious manner. We look forward to a continued cooperative relationship between our staffs. For any questions and other needs regarding this programmatic concurrence and ongoing section 7 processes, please feel free to contact Katrina Dixon at 406-449-5225 for Montana Forests or Shannon Brinkman at 208-769-5116 for Idaho Forests.

Sincerely,



for Jodi L. Bush
Office Supervisor
Montana Ecological Services Office



for Christopher Swanson
Deputy State Supervisor
Idaho Ecological Services Office

cc: USFS, SO, Helena, MT (Attn: William Avey)
USFS, SO, Missoula, MT (Attn: Carolyn Upton)
USFS, SO, Hamilton, MT (Attn: Matthew Anderson)
USFS, SO, Kalispell, MT (Attn: Kurt Steele)
USFS, SO, Libby, MT (Attn: Chad Benson)
USFS, SO, Dillon, MT (Attn: Cheri Ford)
USFS, SO, Bozeman, MT (Attn: Mary Erickson)
USFS, SO, Coeur d'Alene, ID (Attn: Jeanne Higgins)
USFS, SO, Kamiah, ID (Attn: Cheryl Probert)
USFS, RO, Missoula, MT (Attn: Lydia Allen)