

Swan View Coalition

Nature and Human Nature on the Same Path



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June 19, 2019

To: comments-northern-flathead-tally-lake@fs.fed.us and comments-northern-flathead-swan-lake@fs.fed.us

Re: June 12 Request for Public Comment on Four Special Use Permits (SUP)

We here expand on our June 13 comment that a “one week for public comment is too short for most people and agencies to become fully informed and submit comments.” We also describe how consultation with Fish and Wildlife Service in these matters is currently inadequate and request that formal consultation be initiated.

Included in this PDF is our June 12 email to wildlife biologist Amy Jacobs asking for a copy of the “most current Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species and any Biological Opinion, concurrence or other communication FWS may have issued in response to it.” That email also asks for an explanation of how that BA is being used for issuing Special Use Permits including the Whitefish Legacy and Foys to Blacktail ultra-marathon Permits.

Also included in this PDF is the June 18 (7:36 pm) email response from Rob Carlin, attempting to answer our questions of Amy Jacobs and deferring our request for the BA and BiOp/consultation records to FOIA coordinator Michele Draggoo. Hence, we still do not have those records today, the close of the public comment period in the above matter. If the Flathead is going to use procedures that confound public inquiries and requests for documents and require all requests for documents to be formal FOIA requests, then it needs to provide public comment periods well in excess of the 20 working days allowed the government for its FOIA responses.

Given the information we do have at this time, we find that the programmatic consultation process described is wholly inadequate and inappropriate for these SUPs. It does no good for FWS to find out about these SUPs in some sort of semi-annual summary review months after the SUPs are issued and the events have taken place. Both NEPA and the ESA make it clear that commitments of resources and decisions are not to be made prior to adequate NEPA public disclosure and ESA consultation.

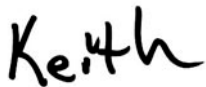
At stake here, and as detailed in our June 11 and June 13 letters, are SUPs for ultra-marathons that would commercialize the promotion of risky recreational behaviors that run counter to the best interagency advice saying that people should not run or bike fast on trails in bear habitat. It is irrational to conclude that authorizing such SUPs, which would negate public education efforts on how to recreate responsibly in bear habitat, fall into some category of activities with “insignificant or discountable” effects on listed species!

Has the Flathead asked the other authors of the BOR reports and recommendations what they think of these ultra-marathon SUPs in light of past harm and /or death to people and bears due to fast-paced recreation, including the death of Brad Treat? Has the Flathead asked other members of the IGBC and its NCDE Subcommittee what they think? Do they think that these SUPs are “insignificant and discountable” in their effect on public education efforts about recreation in the habitats of listed species?

We have asked FWS’s Jodi Bush to initiate formal consultation with the Flathead NF over these Permits. We now ask the Flathead NF to initiate formal consultation with FWS over these Permits.

Moreover, we ask that the Flathead NF extend the public comment period on these Permits to a minimum of 30 days and make that a standard practice for all public comment periods when Categorical Exclusions from preparation of and EA or EIS are being considered. Importantly, the Flathead NF must insure that requested documents and information be provided the public well in advance of the close of the comment period.

Sincerely,

A handwritten signature in black ink that reads "Keith". The letters are cursive and slightly slanted to the right.

Keith J. Hammer
Chair

Enclosures: Hammer to Jacobs email dated June 12, 2019
Carlin to Hammer email dated June 18, 2019, 7:36 pm

From: Keith Hammer keith@swanview.org
Subject: Programmatic BA for Not Likely to Adversely Affect
Date: June 12, 2019 at 11:41 AM
To: Amy Jacobs ajacobs@fs.fed.us

KH

Amy;

How does the Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species work?

I see you utilized it on 11/20/17 for the Glacier Adventure Guides Temporary Outfitter-Guide Permit Issuance.

Are you utilizing it also for the Whitefish Legacy Partners Ultra-Marathon Special Use Permit? And what about for the Foys to Blacktail Ultra-Marathon Special Use Permit?

What "affect" determinations do or do not trigger formal or informal consultation with FWS? Is FWS even contacted if the determinations are "May Affect, Not Likely to Adversely Affect?"

Is Region One's 2010 Programmatic BA still the one in use? Did FWS issue a Biological Opinion in response to the Programmatic BA?

Please email us a copy of the most current Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species and any Biological Opinion, concurrence or other communication FWS may have issued in response to it.

Please respond to this as soon as possible.

Thanks,

Keith

Keith Hammer - Chair
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"Nature and human nature on the same path."

From: Carlin, Rob -FS rob.carlin@usda.gov 
Subject: Response to Questions Regarding Programmatic Biological Assessment
Date: June 18, 2019 at 7:36 PM
To: keith@swanview.org
Cc: Draggoo, Michele -FS michele.draggoo@usda.gov, Jacobs, Amy -FS amy.jacobs@usda.gov

CR

Keith,

I was forwarded your email you sent to Amy Jacobs, Flathead National Forest Wildlife Biologist, regarding questions on the programmatic biological assessment we use for activities not likely to adversely affect threatened and endangered wildlife species. Here are the answers to your questions:

1. How does the Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species work?

The BA includes screens for grizzly bear, Canada lynx, and Canada lynx critical habitat for use in making determinations for simple, straightforward projects that have insignificant or discountable effects. If a proposed action is fully compliant with the conditions in the screens and the screens lead to a “not likely to adversely affect” conclusion, the actions will be covered for terrestrial species by a programmatic concurrence from the FWS.

2. I see you utilized it on 11/20/17 for the Glacier Adventure Guides Temporary Outfitter-Guide Permit Issuance. Are you utilizing it also for the Whitefish Legacy Partners Ultra-Marathon Special Use Permit? And what about for the Foy's to Blacktail Ultra-Marathon Special Use Permit?

Yes, these projects met the screens in the BA so the programmatic consultation process was applied for lynx and grizzly.

3. What “affect” determinations do or do not trigger formal or informal consultation with FWS? Is FWS even contacted if the determinations are “May Affect, Not Likely to Adversely Affect?”

“May Affect, Likely to Adversely Affect” and “May Affect, Not Likely to Adversely Affect” project determinations both trigger consultation with FWS. A summary sheet for all projects that apply this screening process is sent to FWS semi-annually for review. In addition, a randomly selected set of projects are reviewed jointly by FWS and USFS biologists annually.

4. Is Region One's 2010 Programmatic BA still the one in use? Did FWS issue a Biological Opinion in response to the Programmatic BA?

The BA we use now is dated October 2014. The FWS did not issue a Biological Opinion. FWS issued a letter of concurrence dated December 14, 2014.

5. Please email us a copy of the most current Programmatic Biological Assessment for Activities Not Likely to Adversely Affect Threatened and Endangered Terrestrial Wildlife Species and any Biological Opinion, concurrence or other communication FWS may have issued in response to it.

Requests for records should be sent separately to the Forest FOIA coordinator, Michele Draggoo. I have forwarded her your request, but you should be sending all requests for records separately to her in

order to assure you receive your records in a timely manner.

/s/ Rob Carlin



Rob Carlin
Acting Forest Supervisor for Chip Weber
Forest Service
Flathead National Forest

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