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United States Department of the Interior

FISH AND WILDLIFE SERVICE
ECOLOGICAL SERVICES
100 N PARK, SUITE 320
HELENA MT 59601

orig to Pin
cc: Joel A-5
Roda
Nancy W.
A19 Proj. file

File: M.19 Flathead Nat. Forest
(Forest Plan Amendment 19)

February 17, 1995

Joel Holtrop, Forest Supervisor
Flathead National Forest
1935 Third Avenue East
Kalispell, MT 59901

Dear Mr. Holtrop:

This is in response to your February 10 request for the Fish and Wildlife Service's (Service) concurrence with a number of changes in the November, 1994, Environmental Assessment (EA) prepared for the Flathead National Forest's (Forest) Amendment 19 to the Forest Plan (Amendment). These changes are described in the Supplement to the Biological Assessment (February 10, 1995). In addition, the Forest requested that the Service amend the incidental take statement in the biological opinion on the Amendment.

On January 6, 1995, the Service issued a biological opinion on the preferred alternative 3 of the Amendment, as described in the EA. On February 10, 1995, the Forest submitted a Supplement to the Biological Assessment prepared for the Amendment. In that Supplement, the Forest identified a preferred alternative 3-corrected, which incorporated four changes to the EA relevant to the determinations of effects on threatened and endangered species:

- (1) corrections to the calculations of open and total motorized access and core areas;
- (2) corrections and changes to the preferred alternative to establish short and long term objectives that conform to the terms and conditions in the incidental take statement in the January 6 biological opinion (as amended according to (1));
- (3) clarification of the intent and enforceability of "objectives" as compared with "standards" in Appendix A; and
- (4) clarification of the Forest Plan road definitions.

These changes were incorporated into the EA to reflect public comments, recommendations, and the terms and conditions of the incidental take statement issued by the Service in its January 6, 1995, biological opinion.

The Service supports the recalculations referenced in (1) above. The Forest reanalyzed the motorized access conditions in the South Fork Study composite home range, using an annual roads database (from

Manley (1993) than does the database (from 1994) used in the initial calculations. The results of these recalculations warranted a change in the Forest objective for open motorized access density exceeding 1 mile per square mile in BMU Subunits, from 13 to 19 percent. This increase occurred, in part, because of the number of road closures that occurred between 1990 and 1994. Currently, the BMU Subunit average for open motorized access exceeding 1 mile per square mile is 20 percent, which was the initial short-term (5 year) objective. Because this is close to the recalculated objective of 19 percent, the Forest eliminated the 5- and 10-year strategy for attainment of open motorized access goals. The Forest objective for open motorized access exceeding 1 mile per square mile is revised to no more than 19 percent within all BMU Subunits in 5 years.

Objectives for total motorized access density remain unchanged. For core area, the long-term objective is 68 percent and short-term objective is 60 percent of a BMU Subunit, which is consistent with the terms and conditions in the Service's January 6, 1995, biological opinion.

The Service has reviewed all revisions and appendices referenced in (1), (2), (3), and (4) above, and concludes that the changes and clarifications described do not warrant changes in the Forest's initial determinations of effects to endangered and threatened species. The Service believes that these changes and clarifications strengthen the Amendment regarding threatened and endangered species. Therefore, the Service concurs with the determinations that the Amendment, as described in the preferred alternative 3-corrected, will have no effect on endangered gray wolves (*Canis lupus*), endangered peregrine falcons (*Falco peregrinus*), or threatened water howellia (*Howellia aquatilis*), and may have beneficial effects on endangered bald eagles (*Haliaeetus leucocephalus*).

Further, the Service concurs that the direction proposed in alternative 3-corrected does not change the conclusion reached in the January 6, 1995, biological opinion: the proposed Amendment is not likely to jeopardize the threatened grizzly bear (*Ursus arctos horribilis*) but will result in incidental take. The Service believes that although the objectives for open motorized access and for core area have changed or been revised, the reasoning and conclusions of our January 6, 1995, biological opinion are still valid and applicable. The revised Forest objectives, as described in alternative 3-corrected, will result in motorized access conditions similar to or improved over those conditions in the South Fork Study composite home range. The composite home range encompasses habitat used by female grizzly bears that have demonstrated survival to adulthood and reproduction.

The revised Forest objective for open motorized access does, however, necessitate an amendment of the incidental take statement in the Services's January 6, 1995, biological opinion. The motorized access route densities form the basis for the Forest's objectives for grizzly bear habitat, and correspondingly, the Service's incidental take statement. The revisions are based on the Forest's February 10, 1995, Supplement to the Biological Assessment on Amendment 19. The following amended incidental take statement that shall replace the incidental take statement in the January 6, 1995, biological opinion:

(Amended Incidental Take Statement - Amendment 19, Flathead National Forest Plan)

Incidental Take

Sections 4(d) and 9 of the Act, as amended, prohibit taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or

degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. As part of the consultation process, the Service may conclude that an action, or the action with the implementation of any reasonable and prudent alternatives, and the resultant incidental take of listed species, will not violate section 7(a)(2). This is done by providing a biological opinion with an incidental take statement. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of the incidental take statement. Should the amount or extent of incidental taking be exceeded, the Federal agency must reinstate consultation immediately.

Section 7 consultation includes responsibility for direct and indirect effects together with the effects of other activities that are interrelated or interdependent with that action. These effects are added to the existing environmental baseline to determine the impact on the species. Section 9 liability for taking has not been defined by the Service to include or exclude legal responsibility for this range of the effects of the action. Since it is not an enforcement activity, the section 7 consultation process does not address liability, although it does address the biological judgement on causal connection between agency action and direct and indirect effects that result in takings. The incidental take protections provided through the incidental take statement are to ensure the consulting Federal agency that it may proceed with the proposed action free from any risk of section 4(d) or 9 taking liability. Such a statement does not serve to affirmatively define the scope of legal responsibility under section 4(d) or 9 to include the effects of the action definition applicable to the section 7 consultation process. In other words, the scope of the statement is not intended to define legal responsibilities or takings under section 9.

It is the biological judgement of the Service that the existing high road densities in the environmental baseline of several BMU Subunits results in significant habitat modification or degradation which results in actual injury to grizzly bears by significantly disrupting normal behavioral patterns, including breeding, feeding, or sheltering. It is the biological judgement of the Service that direct and indirect effects of the proposed Amendment and associated activities would not add significant new effects, other than those considered in relation to roading and road management.

The effects of the proposed Amendment are largely unquantifiable in the short term, and may be measurable only as long-term effects on the species' habitat and population levels. Therefore, even though the Service believes incidental take will occur from the effects of the proposed Amendment, the best scientific and commercial data available are not sufficient to enable the Service to quantify a specific amount of incidental take of the species itself. In instances such as these, the Service designates the expected level of individual incidental take as unquantifiable.

The anticipated level of incidental take of grizzly bears on the Forest as a result of the proposed Amendment is as follows:

The incidental take of grizzly bears in terms of numbers of bears is numerically unquantifiable.

It is the Service's biological judgement that "harm" of grizzly bears is likely to occur when:

1. The precise open motorized access density exceeds 1 mile per square mile in over 19 percent of a BMU Subunit. Research has demonstrated that when open road densities exceeded 1 mile per square mile of habitat, adult grizzly bear use of habitat significantly declined from

expected use. It is reasonable to assume that some level of under-use of habitat may occur before essential behavior patterns are significantly impaired to the point of causing injury or death to individual bears. Research has also demonstrated that adult females utilizing home ranges encompassing some area of open road density greater than 1 mile per square mile were able to survive and produce cubs. Nineteen percent of the adult female composite home range in the South Fork study area had open motorized access density exceeding 1 mile per square mile.

Therefore, until additional research or analysis indicates otherwise, if within 5 years, all BMU Subunits meet or exceed the proposed Forest objective for area exceeding 1 mile per square mile (19 percent), then the intent of the open motorized access density biological objectives will be met and Forest-wide conditions will be within acceptable levels of "taking".

2. The precise total motorized access density exceeds 2 miles per square mile in over 19 percent of a BMU Subunit. Research has suggested that when total road densities exceeded 2 miles per square mile of habitat, use of habitat by all sex and age classes of grizzly bears significantly declined from expected. It is reasonable to assume that some level of under-use of habitat may occur before essential behavior patterns are significantly impaired to the point of causing injury or death to individual bears. Research has also demonstrated that adult females utilizing home ranges encompassing some area of total road density greater than 2 miles per square mile were able to survive and produce cubs. Nineteen percent of the adult female composite home range in the South Fork study area had total motorized access density exceeding 2 miles per square mile.

Therefore, until additional research or analysis indicates otherwise, if, within 5 years, all BMU Subunits meet or fall below the Forest-wide BMU Subunit average density for area exceeding 2 miles of total motorized access per square mile (24 percent), and if within 10 years, all BMU Subunits meet or exceed the Forest objective for area exceeding 2 miles total motorized access per square mile (19 percent), then the intent of the total motorized access density biological objectives will be met and Forest-wide conditions will be within acceptable levels of "taking".

The Service has determined that these levels of incidental take are not likely to result in jeopardy to the species because:

1. Adult females are well represented in the South Fork Study area, which encompasses the composite home range upon which the objectives for open and total motorized access density and core area are based.
2. Motorized access management comparable to or improved over that in the composite home range of adult females in the South Fork Study area would be applied to all areas of the recovery zone on the Forest, resulting in an improvement over existing Forest conditions and over South Fork conditions where females are known to have reproduced.
3. The 5-year objectives place priority for reductions in open and total motorized access and increased core area in areas that currently have the lowest security for grizzly bears.

4. Monitoring data for the period 1987 to 1993 indicate the Recovery Plan population recovery parameters for 6-year averages for numbers of females with cubs, occupancy of BMUs by family groups, and total human-caused grizzly bear mortality limits in the NCDE are being met. Female grizzly bear mortality limits are not being met.
5. The Forest is committed to revising the Forest Plan within the next 3 to 5 years. Recommendations from the IGBC Access Subcommittee, the final paper on the effects of roads and bears from the South Fork Study, and other new or relevant information will be considered at that time. The Forest will also initiate formal consultation with the Service at that time.

The Federal agency has a continuing duty to regulate the activity that is covered by this incidental take statement. If the agency fails to adhere to the terms and conditions of the incidental take statement, the protective coverage of section 7(o)(2) lapses.

This biological opinion provides reasonable and prudent measures which are expected to reduce the amount of incidental take. The measures described below are nondiscretionary and must be implemented by the agency in order for the exemption in section 7(o)(2) to apply.

Reasonable and Prudent Measures

The IGBC Taskforce recommended three parameters:

- (1) open road and open motorized trail route density,
- (2) total motorized access route density, and
- (3) percent of analysis area in core area(s),

be incorporated into access management programs to provide adequate habitat security for grizzly bears (IGBC 1994). The proposed Amendment bases Forest objectives on these parameters. The Service believes that these parameters are necessary and appropriate to minimize the incidental take of grizzly bears caused by high road densities in the existing environmental baseline and by roads associated with timber harvest activities related to the amended ASQ, and therefore serve as reasonable and prudent measures.

The Service believes that the following reasonable and prudent measures are necessary and appropriate to minimize take:

1. Open Road and Open Motorized Trail Route Density. Implement a road and motorized trail management program that regulates the density of open road and open motorized trails to adequately minimize incidental take.
2. Total Motorized Access Route Density. Implement a road and motorized trail management program that regulates the total motorized access route density to adequately minimize incidental take.

3. Percent of Analysis Area in Core Area(s). Assure that timber harvest programs and associated transportation network maintains existing core areas or creates core areas within each BMU Subunit to adequately minimize take.
4. Information Program. Implement an information program that provides the public with accurate and accessible information regarding the biological basis for and the resulting effects of the Amendment 19, to adequately minimize take.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Forest Service must comply with the following terms and conditions, which implement the reasonable prudent measures described above:

1. For those BMU Subunits that are predominantly National Forest (>75 percent), compliance with the Forest objective of no more than 19 percent of a BMU Subunit exceeding 1 mile of open motorized access per square mile will be achieved within 5 years of the initiation of Amendment 19.

For those BMU Subunits that are not predominantly National Forest (<75 percent), Forest activities will not result in an increase in open motorized access density in any BMU Subunit.

2. For those BMU Subunits that are predominantly National Forest (>75 percent), compliance with no more than 19 percent of a BMU Subunit exceeding 2 miles of total motorized access per square mile will be achieved within 10 years of the initiation of Amendment 19. Within 5 years, BMU Subunits will meet or fall below the current Forest-wide average for total motorized access density of not more than 24 percent of a Subunit exceeding 2 miles of total motorized access per square mile.

For those BMU Subunits that are not predominantly National Forest (<75 percent), Forest activities will not result in an increase in total motorized access density in any BMU Subunit.

3. For those BMU Subunits that are predominantly National Forest (>75 percent), minimum core area will be 68 percent or greater of a Subunit and will be achieved within 10 years of the initiation of Amendment 19. Within 5 years, BMU Subunits will meet or exceed the current Forest-wide average for core area of 60 percent of a BMU Subunit.

The Forest will, in consultation with Montana Department of Fish, Wildlife, and Parks and the Service, insure that core areas contain seasonal habitat approximately proportional to its availability in the BMU Subunits. The habitat overlay and Seasonal Habitat Index created by the Grizzly Bear West Side NCDE Cumulative Effects Model will aid in ensuring that this objective is accomplished.

For those BMU Subunits that are not predominantly National Forest (<75 percent), Forest activities will not result in a decrease in existing core area in any BMU Subunit.

4. Within one year of issuance of the proposed Amendment, develop and implement a public information program on the positive effects of road closures for fish and wildlife, water quality, and other Forest resources. The effort should focus on both information that is available and relevant at a local, district level and on information pertinent to a more broad-based Forest level approach. The public should be provided a thorough and understandable analysis of existing road densities and future road densities resulting from implementation of the Amendment. The net reduction in open motorized access density and the remaining opportunities for motorized public access, timber extraction, recreation, and other Forest uses should be emphasized.

Reporting Requirements

The Forest shall submit an annual report the Service in December of each year. The report shall detail the progress in achieving the open and total motorized access densities and core area criteria in the BMU Subunits. The Service will use this report to ascertain whether sufficient progress is being made towards realizing the Forest's 5-year and 10-year objectives.

Within 90 days after meeting the open and total motorized access densities and core area requirements in each BMU Subunit, the Forest shall provide the Service with a final report for that BMU Subunit detailing all activities undertaken in association with terms and conditions of this biological opinion.

Should the incidental take limit be exceeded once compliance with 5- and 10-year objectives is achieved, the Forest shall immediately cease the activity resulting in the take and reinitiate consultation with the Service to avoid violation of section 9 of the Act. The proposed actions must be stopped in the interim period between the initiation and completion of the new consultation. The Forest should provide an explanation of the causes of the taking.

Administrative Amendment to Previous Incidental Take Statements

This incidental take statement and its associated reasonable and prudent measures, terms and conditions, and reporting requirements as defined above, shall replace those included in previous biological opinions on:

1. Flathead Forest Plan Amendment 19 (January 6, 1995)
2. Lost Silver Timber Sale (September 3 and October 5, 1993)
3. Rock Creek, Firefighter Winter Range Project, Emma Creek Salvage, Tent Creek Salvage and Pearl Point Timber Salvage sales (January 14, 1994)
4. Bent Flat Timber Sale (April 20, 1994)

The Service amends the incidental take statements in these biological opinions because of new information presented in the IGBC Taskforce Report (1994), and described earlier in this opinion, which was not available at the time the opinions were submitted. The "no jeopardy" conclusions set forth in the above-listed opinions remain unchanged.

(end - Amended Incidental Take Statement)

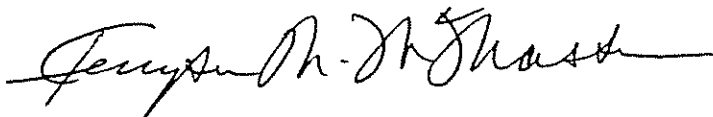
On another issue related to the Amendment, on February 8 the Forest submitted to the Service three Forest Service letters/memorandums dating back to 1983, pertaining to the subject of timber harvest schedules and grizzly bear habitat objectives and standards. Mr. Keith Hammer and his attorney, Mr. Dan Rohlf, believe these documents to be relevant to the consultation on the proposed Amendment. As explained in the Forest's letter accompanying the documents, Mr. Hammer and Mr. Rohlf ascertain that the Management Area delineation included in the Forest Plan is inconsistent with the IGBC Guidelines and the conservation of listed species.

The Service appreciates the opportunity to review these documents. Apparently these documents were written before implementation of Amendments 8 and 9 to the Forest Plan in 1989. Amendments 8 and 9 established non-discretionary standards and guidelines for threatened and endangered species, and formally added the IGBC Guidelines to Forest-wide standards for grizzly bears. Furthermore, the proposed Amendment (19) would amend the Forest Plan Forest-wide General Standard No. 1 to affirm that the proposed habitat objectives for grizzly bears are nondiscretionary and supersede any conflicting or inconsistent management direction in the Forest Plan.

The Service is satisfied that, although confusion may have existed regarding Management Area delineations and Forest-wide direction for grizzly bear conservation, the above mentioned amendments, the grizzly bear standards and guidelines in the Forest Plan, and the proposed Amendment adequately establish the precedence of standards and guidelines for grizzly bears and other threatened and endangered species in all Management Areas across the Forest. Further, the adjusted ASQ submitted in the proposed Amendment was derived through an analysis that was reviewed by the Service in our January 6, 1995, biological opinion. The Service concludes that the adjusted ASQ is consistent with standards and guidelines for grizzly bears.

If you or your staff have questions or comments regarding this correspondence or accompanying documentation, please contact Dale Harms or Anne Vandehey at the address listed above or by phone (406) 449-5225. Your cooperation and assistance in meeting our joint responsibilities under the Endangered Species Act are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Kemper M. McMaster", written in a cursive style.

Kemper M. McMaster
Field Supervisor
Montana Field Office

AMV/amv

cc: Pat Graham, Director, Montana Department of Fish, Wildlife, and Parks, Helena
Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, Missoula
ARD, Ecological Services, U.S. Fish and Wildlife Service, Denver, CO
DES, U.S. Fish and Wildlife Service, Washington, DC