



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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3050 Lake Harbor Lane, Suite 126
Boise, Idaho 83703-6217

Larry J. Dawson
Forest Supervisor
Clearwater National Forest
12370 Highway 12
Orofino, Idaho 83544

Subject: Lolo Pass Redevelopment Project and U.S. Highway 12 Improvements--
Biological Opinion
File #104.0700 1-4-02-F-878 HUC #17060303

Dear Mr. Moreno and Mr. Dawson,

With this letter, the U. S. Fish and Wildlife Service (Service) is providing you with clarification and conveying concerns regarding the 2000 Lolo Pass/U. S. Highway 12 Projects, Biological Opinion (Opinion), Memorandum of Understanding (MOU), and Collection Agreement (CA) (11/9/2000, 6/20/2000 1-4-00-7-735). It has come to our attention that there may be some misunderstanding regarding the intent of the Terms and Conditions of the Opinion, specifically that the surveys and monitoring components associated with the Lolo Pass consultation can serve as mitigation for other transportation projects in Idaho potentially affecting lynx. Additionally, the Service has concerns regarding compliance with the Terms and Conditions specified in the Opinion.

The Applicability of the Lolo Pass Surveys to other Transportation Projects in Idaho

The Opinion was issued as part of the formal consultation for the Lolo Pass Site Redevelopment Project and five U.S. Highway improvement projects, including; NH-4200 (627) - Warm Springs to Montana State Line Project; NH-4200 (124) - Lochsa Ranger Station to Bald Mountain Project; NH-4200 (105) - Tumble Creek to Lochsa Ranger Station Project; NH-4200 (122) - First Lolo Passing Lane Project; and NH-4200 (123) - Second Lolo Passing Lane Project. These projects span from Milepost (MP) 113.84 (approximately 69.88 miles east of Orofino, Idaho) to MP 174.05 (Lolo Pass, at the Montana state line) all in Idaho County, Idaho. The actions involving Lolo Pass and the associated improvements along U.S. Highway 12 included the MOU #00-MU-11010500-040 (June 27, 2000) signed by the Clearwater National Forest (Forest), the Idaho Transportation Department (Department), the Federal Highway Administration (Administration), and the Service. Also included in the proposed action was the Collection Agreement #00-CO-11010500-033 (June 27, 2000) signed by the Forest and the Department.

The MOU was executed as of June 27, 2000 and will expire on October 1, 2005. While the Administration is responsible for formal consultation with the Service, the Department is responsible for implementing the Terms and Conditions of the Biological Opinion.

It was understood by the parties of the MOU that if the Terms and Conditions of the Lolo Pass Opinion were met, then the results of the Lolo Pass study could be used as a base document for many other proposed highway construction projects that exist within lynx habitat in Idaho. Each new project utilizing the results of this study would still need to provide specific project descriptions and existing site-specific information. An important premise of the agreements was that information gathered would be applied in analyzing future agency projects, at Lolo Pass and other similar sites. The purpose of these agreements remains to provide a general framework of cooperation between the parties and to share expenses and avoid redundant field work across the state. This was an effort on the part of all of the cooperating agencies to accomplish mutually beneficial objectives related to the conservation and recovery of lynx and other forest carnivores.

It is anticipated that upon analysis of preliminary and final results of the Lolo Pass studies, our knowledge regarding the effects of highway projects upon lynx will be better defined, and this body of information will be directly applicable to making effects determinations for similar projects statewide. In the interim, it is important for all parties to understand that the ongoing study was not intended to replace analysis of effects on lynx from new transportation projects elsewhere. Section 7 of the Endangered Species Act does not provide for consultation coverage on one project substituting consultation or analysis for another project. Neither does research in itself serve to avoid or minimize effects on listed species resulting from Federal actions. In this case, it is the information resulting from the research efforts at Lolo Pass that will provide value to analyzing effects of other similar projects in lynx habitats in Idaho.

The Service clearly expressed this same information during the consultation for the Highway 12 projects in 1999 and 2000. Any current misunderstandings about the applicability of this effort to other proposed projects is likely due to misinformation or miscommunication. We will work with you to help assure everyone involved understands the relationship between the Lolo Pass work and other projects.

Forest Service and Idaho Transportation Department Compliance with Terms and Conditions Required by Lolo Pass Biological Opinion Regarding Lynx

The Service continues to support the original purpose and intent of the MOU and CA finalized in 2000. We anticipate that future highway projects occurring in or near lynx habitats in Idaho can benefit from information gathered through completion of research efforts and compliance with the terms and conditions required by the Opinion regarding lynx. However, we are concerned that not all terms and conditions of the Opinion have been achieved to date. Future benefits to other projects can only be realized with full compliance with the Opinion. Also, in order to be exempt from the prohibitions of Section 9 of the Act, the Administration and Forest must comply with all those non-discretionary terms and conditions. Following is a summary of the status of

actions anticipated in the Incidental Take Statement of the Opinion.

Review of Terms and Conditions and Status of Completion

- 1.1. The Department's Project Engineers and the responsible official for the Forest shall notify the Service when construction activities for each of the project components begin.

The Service has not been notified to date when construction activities for each project component has begun.

- 1.2. The Department and Forest shall inform construction contractors of all terms and conditions of this Opinion and assure that they are implemented. Contractors shall be educated in identification of lynx, and advised to exercise caution in vehicle and equipment use in order to avoid collisions with lynx. Contractors shall inform the Department or Forest of all suspected lynx sightings.

The Service has been notified of a probably lynx sighting on March 18, 2002 by Dan Davis of the Clearwater National Forest along Highway 12 near Jerry Johnson Hotsprings. No other sightings information has been received by the Service to date.

- 1.3. In the event that lynx presence in the action area is confirmed, evaluate construction practices to assure that disturbance and harassment of lynx is avoided to the extent practicable.

The Service has not been involved in evaluations of this nature.

- 1.4. By December 31 of each year of construction, report to the Service, work activities completed and compliance by contractors with these terms and conditions. This should be combined with other reports required in these terms and conditions.

The Service has not received reports addressing work activities completed and compliance by contractors with these terms and conditions.

- 2.1. Continue ongoing efforts to characterize the type and extent of recreation use at Lolo Pass.

The Service has not received information addressing the type and extent of recreation use at Lolo Pass.

- 2.2. Map and field verify potential denning habitat and implement recreation management actions to minimize disturbance to lynx in those areas during the breeding season from May to August, or when occupied by lynx.

The Service has received information and maps addressing potential denning habitat in

the Lolo Pass area. The Service has not received information regarding recreation management actions to minimize disturbance to lynx in those areas during the breeding season from May to August, or when occupied by lynx.

- 2.3. Based on information gathered about recreational activities in the action area, cooperate with the Service and others to refine analyses regarding disturbance effects on lynx. Identify and implement recreation management actions associated with the Visitor Center that reduce the negative effects of recreation activities on lynx.

The Service has not received information regarding recreation management actions associated with the Visitor Center as they may relate to lynx.

- 2.4. Provide educational and interpretive information to visitors to Lolo Pass about identification and legal protection of lynx.

The Service is not aware of Forest or Department efforts to provide educational and interpretive information to visitors to Lolo Pass about identification and legal protection of lynx.

- 2.5. Report to the Service results of monitoring of recreational activities and observed effects on lynx by December 31 each year for five years following the start of the projects. This should be combined with other reports required in these terms and conditions.

The Service has not received results of monitoring of recreational activities and observed effects on lynx to date.

- 3.1. On Federal lands, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas.

The Service has not received information on this matter.

- 3.2. Monitor and map location and intensity of all snow-compacting activities in the project area for five years following beginning the project.

The Service has not received information on this matter.

- 3.3. Based on information gathered about snow compacting activities in the action area, cooperate with the Service and others to refine analyses regarding effects on lynx associated with increased competition and changes in lynx habitat use. Identify and implement winter recreation management actions that reduce the negative effects associated with snow compaction.

The Service has not received information on this matter or been involved in discussions aimed at refining analytic methods or regarding management actions to address snow

compaction.

- 3.4. Report to the Service results of monitoring and management actions related to snow compacting recreational activities by December 31 for five years following the start of the projects. This should be combined with other reports required in these terms and conditions.

The Service has not received results of monitoring and management actions related to snow compacting recreational activities to date.

- 4.1. Monitor for road kill of lynx throughout the Lolo Pass project area (Lowell, Idaho to Lolo Hot Springs, Montana) for five years following beginning of the project beginning at the same time as construction. Note other wildlife mortality for the purpose of identifying possible preferred crossing areas that could be high-risk sites for vehicle collisions with lynx.

The Service has not received wildlife mortality information for the purpose of identifying possible preferred crossing areas that could be high-risk sites for vehicle collisions with lynx and other forest carnivores to date.

- 4.2. Any Canada lynx found dead due to take incidental to this action, including any road killed lynx, shall be placed in an appropriate container (e.g., a clean plastic bag) and frozen as soon as possible. The exact location (i.e., distance from permanent or semi-permanent landmarks) shall be noted along with any other evidence pertaining to the cause of death. As many photographs as necessary to visually document the appearance of the lynx as it was found and the circumstances of the death should be taken. As soon as possible, this information, the photographs, and the location of the carcass shall be provided to the U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho 83709, (208) 378-5243. The incidence and location of observed or injured lynx should also be reported to this office as soon as possible.

The Service has not received any indication of lynx mortality to date.

- 4.3. Report results of monitoring for roadkill by December 31 for five years following the start of the project. This should be combined with other reports required in these terms and conditions.

The Service has not received wildlife mortality (road kill) information to date.

- 5.1. Implement the interagency MOU and Collection Agreement beginning within six months of the date of this Opinion. Reinitiate consultation if any part of the MOU or Collection Agreement are not being met.

The Service participated in an interagency Implementation Update meeting on

November 7, 2001 in Boise, Idaho. The Service has not received information regarding implementation of the interagency MOU and Collection Agreement nor any request for reinitiation of consultation since that time.

- 5.2. Continue presence/absence surveys for lynx using the nationwide “hair snag” protocol. Develop permanent snow track survey transects and remote camera stations using standardized methods, and complementing the hair snag survey process.

The Service has not received presence/absence snow track survey results to date.

- 5.3. Monitor the abundance and distribution of snowshoe hares in the Lolo Pass project action area.

The Service has not received snowshoe hare abundance and distribution information for the Lolo Pass project action area to date.

- 5.4. With guidance from the interagency oversight team identified in the MOU, conduct other monitoring and research actions as described in the project Assessment.

The Service has not received information regarding other monitoring and research actions to date, nor are we aware of any such work by the oversight team.

- 5.5. Once annually, convene the interagency oversight team identified in the MOU to determine whether this Opinion is still valid. Review results of studies and monitoring to determine whether unanticipated risks, or project effects on lynx, may be occurring from the project. Likewise, review information gathered to determine whether fewer effects than anticipated may be occurring as a result of the project. The team shall reach consensus on whether reinitiation of consultation for the projects is warranted; if they determine it is needed, the Administration and Forest shall formally request reinitiation of formal consultation with the Service.

The Service has not participated in a interagency oversight team meeting other than previously described that occurred on November 7, 2001.

- 5.6. Provide an annual summary report to the Service that provides results of monitoring and inventory activities, recommended management actions, and actions implemented consistent with the MOU and these terms and conditions. This should be combined with other reports required by this Opinion.

The Service has not received an annual summary report that provides results of monitoring and inventory activities, recommended management actions, and actions implemented consistent with the MOU and these terms and conditions to date.

Review of Conservation Recommendations within the Lolo Pass Opinion

In addition to the non-discretionary terms and conditions required by the Opinion, conservation measures were also included. Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Service suggests discussion regarding these discretionary conservation recommendations listed below in addition to the required conditions.

1. Work with other agencies studying lynx to identify key linkage areas that may be important in providing landscape connectivity within and between geographic areas, across all land ownerships. Consider using a variety of techniques and methods to determine the location of "key linkage areas" including monitoring resident lynx and/or radio-collared lynx from Montana and other species of wildlife that inhabit the area.
2. Within identified key linkage areas, provide for landscape connectivity. Develop and implement a land management plan to protect and restore key linkage areas on federal lands.
3. Consider initiating a cooperative research effort to assess the relationship of highways to wildlife linkage areas like the one that was used by the Washington State Department of Transportation and Wenatchee National Forest on a 30-mile study area along I-90 between Snoqualmie Pass to Cle Elum. For more information, contact Peter Singleton at (509) 662-4315, extension 226 or pshingle/r6pnw_wenatchee@fs.fed.us. Another effort has been conducted in by the Florida Department of Transportation to apply Geographic Information System computer modeling to analyze highway-wildlife relationships. For more information on that work, contact Dan Smith at (352) 846-0559 or djs3@ufl.edu.
4. Evaluate whether land ownership and management practices are compatible with maintaining lynx highway crossings in key linkage areas. On public lands, management practices should be made compatible with providing habitat connectivity. On private lands, agencies should strive to work with landowners to develop conservation easements, exchanges, or other solutions. Work cooperatively with the Service, other agencies, and private land owners toward unified management direction via habitat conservation plans, conservation easements or agreements, and/or land acquisition.
5. The Forest and the Administration can take a lead role in developing the appropriate information and educational material necessary to help reduce accidental killing of lynx.
6. The Clearwater and Lolo National Forests should work cooperatively with the States of Idaho and Montana to collect information to determine what level of trapping is currently

Idaho and Montana to collect information to determine what level of trapping is currently being conducted in the Lolo Pass LAUs and make recommendations to reduce the potential incidental take of lynx. The respective state fish and game departments should include lynx (compared to bobcat) identification guidance in their hunting and trapping brochures.

7. Pursue cooperative efforts with Plum Creek Timber Company to manage intermingled public and private land for lynx conservation. Along with the Service, identify land management practices, regardless of land ownership, to restore habitat, reduce fragmentation, and promote safe migration and dispersal for lynx. In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, we request notification of the Forest and Department's implementation of any conservation recommendations.

The Service would welcome more frequent communication on this matter and encourages greater information exchange, both formally as required by the terms and conditions of the Opinion, and informally. We do commend the efforts of Forest Wildlife Biologist Dan Davis to involve scientists located at the Rocky Mountain Research Station in Missoula, Montana as well as biologists from the Idaho Department of Fish and Game in this effort. The cooperation and coordination among these and other entities will strengthen our collective knowledge regarding highways and forest carnivores, including lynx.

To further discuss the Biological Opinion and compliance with the terms and conditions, contact Janice Engle or Paul Moroz of my staff at (208) 685-6951 or (208) 378-5227, respectively.

Sincerely,



Supervisor, Snake River Basin Office

Enclosure

cc: FWS-ES, Portland (Salata)
FS-Region 1, Missoula (Ruediger)
IDFG-HQ, Boise (Melquist)
ITD-HQ, Boise (Clark)
ITD, Lewiston (Carpenter)