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Day 3: Friday, 19 August 2005: Section 7 Consultation

Susan Linner

Leslie Elwood

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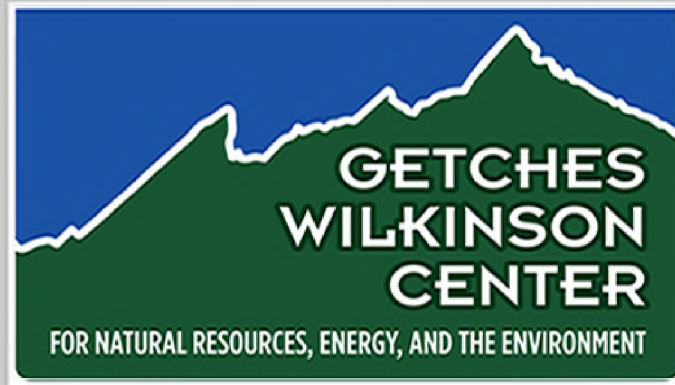
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*Day 3: Friday, 19 August 2005: Section 7
Consultation, in* ENDANGERED SPECIES ACT CONGRESSIONAL
FIELD TOUR 2005 (Natural Res. Law Ctr., Univ. of Colo.
Sch. of Law 2005).

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Section 7 Consultation Manitou Experiment Station

Drive to Denver with a brief stop to view a sage grouse lek area. Stop at Manitou Experiment Station near Deckers for a picnic lunch and discussion of ESA Section 7 consultation in general and wildfire hazardous fuels mitigation projects in particular.

Panel:

- **Susan Linner, Colorado Ecological Services Field Office, U.S. FWS**

Susan Linner is Field Supervisor of the U.S. Fish and Wildlife Service Colorado Ecological Services Office in Lakewood, Colorado. Current duties include supervising the 2 Colorado Ecological Services offices. Major office emphases include endangered species listing, consultation, and recovery activities; coordination with other Federal agency planning efforts, particularly on water projects and wetlands protection; and environmental contaminants investigation and remediation. Prior to her current position, Susan served as Ecological Services Program Supervisor, Northern Ecosystems, and as Biologist and Branch Chief for Listing and Candidate Conservation at the Fish and Wildlife Service in Arlington, Virginia. Before joining U.S. FWS, Susan was Supervisor and Biologist with Utah Division of Oil, Gas & Mining. She holds a Bachelor of Arts in Biology from Luther College in Iowa, and a Master of Science in Wildlife Science from Utah State University.

- **Leslie Elwood, Colorado Ecological Services Field Office, U.S. FWS**

Leslie Elwood is a Biologist with the Colorado Ecological Services Office of the U.S. Fish and Wildlife Service. Current duties include conducting section 7 consultations, with an emphasis on USFS, BLM, and NPS fuels reduction projects. Other duties include recovery efforts for the Mexican spotted owl and the Pawnee montane skipper. Prior to joining FWS, Leslie served as a Biologist with Dames & Moore Engineering and Environmental Consulting Services, and with the San Juan BLM in Durango, Colorado. Leslie holds a Bachelor of Arts in Biology, and a Master of Science in Ecology & Mammalogy from the University of Colorado at Boulder.

- **Steve Culver, Fisheries Biologist, U.S. Forest Service**

National Park Service, Denver Service Center – 13 years. As a natural resource specialist worked on plans and associated environmental compliance documents for general park management, mining, road and bridge rehabilitation, new park facilities, and wetland and river ecosystem restoration.

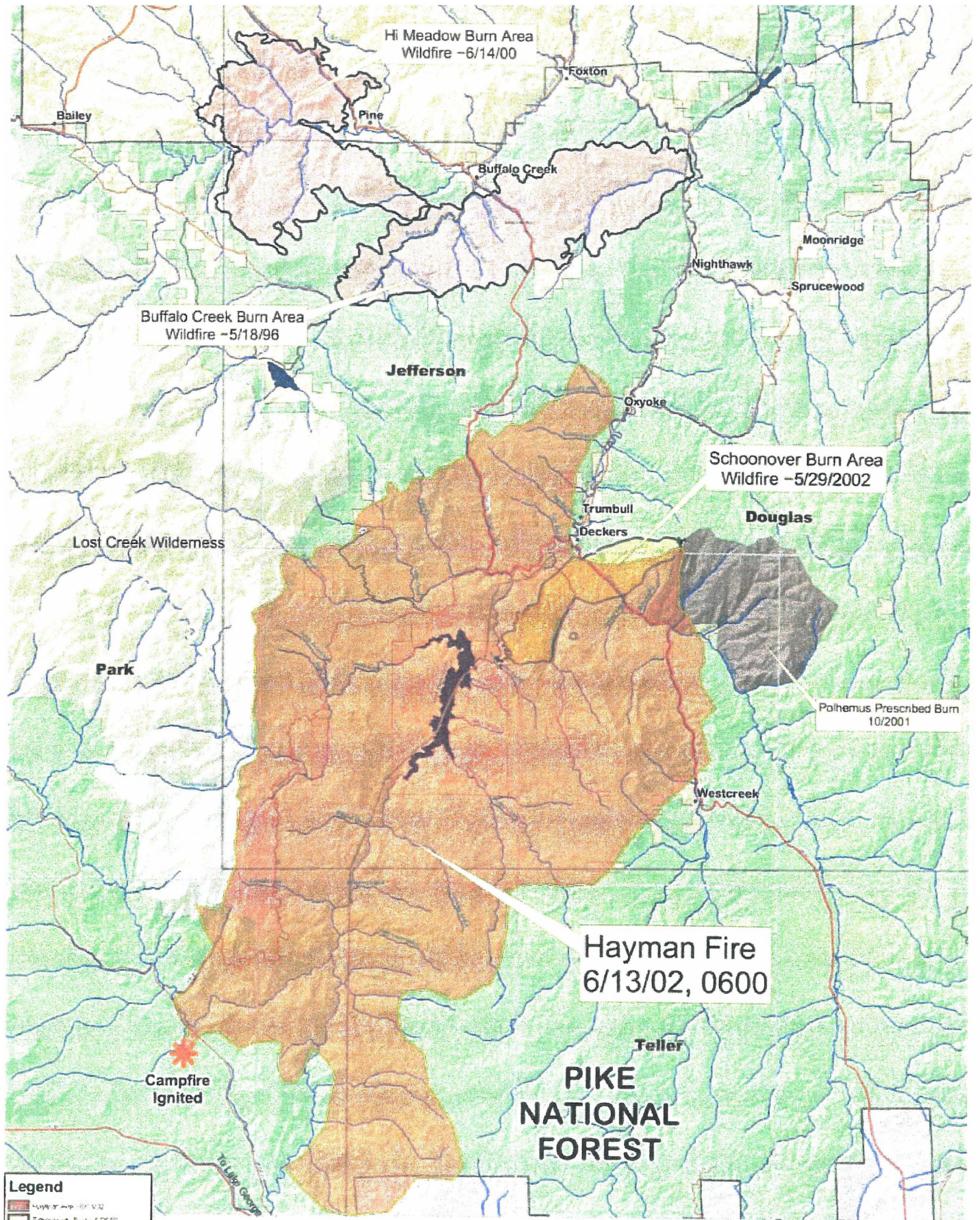
USDA Forest Service, Pike and San Isabel National Forests – 6 years. As a fisheries biologist worked mostly on the Upper South Platte Watershed Protection and Restoration Project. Prepared management plans and NEPA documents for improving forest health, rehabilitating roads and trails, restoring burned areas, and improving habitat used by federally-listed and other species. Implemented and monitored the various Upper South Platte projects with the help of contractors.

Reading:

Map of 2002 Hayman Fire Burn, U.S. Forest Service.

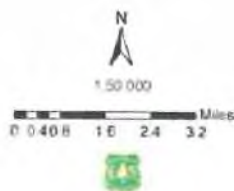
Consultations with Federal Agencies: Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service, February 2002.

Forest Health Restoration Treatments: Helping Recover a Threatened Species.



Legend

- Hayman Fire - 6/13/02
- Schoonover Burn - 5/29/02
- Hi Meadow Burn - 6/14/00
- Buffalo Creek Burn - 5/18/96
- Polhemus Prescribed Burn - 10/2001
- Private Land
- Wilderness
- County Road
- Forest Road
- Interstate
- State Highway
- U.S. Highway



Hayman Fire
 Pike and San Isabel National Forests
 USDA Forest Service
 June 13, 2002

National Fire Plan Consultations (2001-2005)
USFWS Office: CO Field Office

Action Agency	Action Agency Subunit*	Project Name and Location	Type of Assistance Provided	Outcome	Federally-Listed Species**
USFS					
	ARNF	Cache le Poudre Prescribed Burn, Ft. Collins, CO	Formal	Biological Opinion	PMJM
	ARNF	Sheep Creek I Fuels, Ft. Collins, CO	Informal	Concurrence	Lynx, GBT
	ARNF	Sheep Creek II Fuels, Ft. Collins, CO	Informal	Concurrence	Lynx, GBT
	ARNF	Pine Wood Springs, CO	Pre-consultation	Ongoing	PMJM
	ARNF	Canyon Lakes District Fuels Reductions, Rx Burn, CO	Informal	Concurrence	Lynx, PMJM
	ARNF& PSICC	Preble's Fuels Reduction Management Programmatic, Denver, CO	Pre-consultation	Ongoing	PMJM
	ARNF & PSICC	Front Range Fuels Treatment Partnership Roundtable, Denver, CO	Pre-consultation	Ongoing	MSO, PMJM, BE, Skipper, Lynx, BE
	PSICC	Polhemus Prescribed Burn, Deckers, CO	Informal	Concurrence	PMJM
	PSICC	Trout West Fuels Reduction, Woodland Park, CO	Informal	Concurrence	MSO, Skipper, PMJM
	PSICC	Molly Gulch Prescribed Burn, Deckers, CO	Informal	Concurrence	PMJM, Skipper
	PSICC	Sugar Loaf Prescribed Burn, Deckers, CO	Informal	Concurrence	PMJM, Skipper
	PSICC	Wetmore Fuels Reduction, Wetmore, CO	Informal		MSO
	PSICC	Perry Park Fuels Reduction, Perry Park, CO	Informal	Concurrence	PMJM
	PSICC	Snaking Fire/Black Mtn Fire, Bailey, CO	Emergency Consult	Concurrence	Lynx
	PSICC	Schoonover Fire, Deckers, CO	Emergency Consult	Concurrence	PMJM, skipper, MSO
	PSICC	Hayman Fire, Deckers, CO	Emergency Consult	Concurrence	PMJM, skipper, MSO, lynx
	PSICC	Post-Hayman Fire Pawnee Montane Skipper Survey, Deckers, CO	Recovery	Ongoing	Skipper
	PSICC	Post -Hayman Fire Bald Eagle Winter Roost Surveys, Deckers, CO	Recovery	Complete	BE
	PSICC	Post-Hayman Fire Trail Creek Sediment Control, Deckers, CO	Pre-consultation	Ongoing	PMJM
	PSICC	Box Creek Fuels Reduction, Leadville, CO	Informal	Concurrence	Lynx
	PSICC	NW Leadville Fuels Reduction, Leadville, CO	Pre-consultation	Ongoing	Lynx
	PSICC	Ranch of the Rockies Fuels, Buena Vista, CO	Informal	Concurrence	Lynx
	PSICC	Douglas-fir Tussock Moth Rx Burn, Deckers, CO	Formal	Biological Opinion	MSO, PMJM, Preble's, BE, Skipper
	PSICC	Harris Park Fuels Reduction, Bailey, CO	Pre-consultation	Ongoing	Lynx
	PSICC	Upper South Platte Fuels Reduction, Deckers, CO	Formal	Biological Opinion	MSO, PMJM, BE, Skipper
	PSICC	Mason Fire, Wetmore, CO	Emergency Consult	Ongoing	MSO
	PSICC	Greenhorn Mtn. Fire Use Planning Meeting	Pre-consultation	Ongoing	MSO
	PSICC	Buffalo Creek RX Burn, Deckers, CO	Informal	Concurrence	PJM, Skipper
	PSICC	Black Trout Fuels Reduction, Fairplay, CO	Pre-consultation	Ongoing	Lynx
	PSICC	Kaufman Fuels Reduction, Buena Vista, CO	Pre-consultation	Ongoing	Lynx
	San Juan	Archuleta Creek Fuels Reduction, Pagosa Springs, CO	Pre-consultation	Ongoing	MSO
	San Juan	Gore Lakes Mechanical Fuels, CO	Informal	Concurrence	Lynx
	San Juan	Missionary Ridge Fire, Durango, CO	Emergency Consult	Concurrence	Lynx
	San Juan	San Juan NF Resource Management Plan Conference and Review	Informal	Concurrence	Lynx
	GMUG	Ward Lake Fuels Reduction	Informal		Lynx
	Route NF	Big Fish Fire, Meeker, CO	Emergency Consult	Concurrence	Lynx
		Spring Creek Fire	Emergency Consult		

National Fire Plan Consultations (2001-2005)
USFWS Office: CO Field Office

Action Agency	Action Agency Subunit*	Project Name and Location	Type of Assistance Provided	Outcome	Federally-Listed Species**
		Burned Ridge Fire	Emergency Consult		
	WRNF	Fire use fire	Emergency Consult	Ongoing	Lynx
	WRNF	White River NF RMP	Informal		Lynx
	WRNF	White River National Forest Plan Review	Informal		Lynx
	WRNF	White River RMP Review	Informal		Lynx
	WRNF	Vail Valley Forest Health, Holy Cross	Informal		Lynx
		Wildland Urban Interface Areas at Risk and Guidelines	Informal		
		Fox Fire Mechanical Fuels Reduction, CO	Notice/Review	No Comment	No Species
		Hidden Valley Fuels Reduction, CO	Notice/Review	No Comment	No Species
		May Day Mechanical Fuels Reduction, CO	Notice/Review	No Comment	No Species
	Statewide	Provided Mexican Spotted Owl Survey Training for USFS Biologists	Training	Ongoing	MSO
BLM					
	Royal Gorge Field Office	Royal Gorge Field Office Fire Management Plan	Informal	Concurrence	MSO, BE, Lynx
	Royal Gorge Field Office	Box Creek Fuels Reduction, Leadville, CO	Informal	Concurrence	Lynx
	Royal Gorge Field Office	NW Leadville Fuels Reduction, Leadville, CO	Pre-consultation	Ongoing	Lynx
	Royal Gorge Field Office	Cooper Mtn Fuels Reduction, Canon City, CO	Pre-consultation	Ongoing	MSO, BE
	Glenwood Field Office	Glenwood Field Office Fire Management Plan	Informal	Concurrence	
	Colorado Nat'l Monumnt	CO Nat'l Monument Fire Management Plan	Informal	Concurrence	
	San Juan Field Office	Canyon of the Ancients, Cortez, CO	Informal	Ongoing	BE, GUSG, SWWF, YBC
	San Juan Field Office	Gore Lakes Mechanical Fuels, CO	Informal	Concurrence	Lynx
	CO Regional Office	BLM Project Conservation Measures	Pre-consultation	Ongoing	All Colorado species
	Kremmling Field Office	Kremmling Field Office Fire Management Plan	Informal	Concurrence	
	San Luis Field Office	Poncha Pass Fuels Reduction, Poncha Pass, CO	Informal	Concurrence	Lynx
		Indian Creeks Fuels Project	Informal	Ongoing	
	Montrose Field Office	Montrose Field Office Fire Management Plan	Informal	Concurrence	
		Dutch Gulch Fuels Project			
	San Luis Field Office	San Luis Valley Fire Management Plan	Informal	Concurrence	
		Uncompahgre Plateau Fuels Reduction Plan	Informal	Concurrence	
		Burn Canyon Fire	Emergency Consult	Concurrence	
	Statewide	Provided Mexican Spotted Owl Survey Training for BLM Biologists	Training	Ongoing	MSO
NPS					
	Curecanti/Black Canyon NP	Curecanti NP Fire Management Plan, CO	Informal	Ongoing	Fish, GUSG
	Mesa Verde NP	Mesa Verde NP Fire Management Plan, CO	Pre-consultation	Ongoing	MSO
	Colorado Nat'l Monumnt	Resource Management Plan	Informal	Ongoing	BFF, BTPD
	Mesa Verde NP	Mesa Verde NP, Western Border Fuels Reduction	Pre-consultation	Ongoing	MSO
	Rocky Mtn NP	Bark Beetle Management Plan	Informal	Ongoing	Lynx, MSO, GBT
	Rocky Mtn NP	Greenback Cutthroat Trout Management Plan	Pre-consultation	Ongoing	GBT



Consultations with Federal Agencies

Section 7 of the Endangered Species Act

The Endangered Species Act (ESA) has broader mandates than simply directing the Fish and Wildlife Service to protect listed plants or animals. It directs *all* Federal agencies to participate in endangered species conservation. Specifically, section 7 of the ESA charges Federal agencies to aid in the conservation of listed species (section 7 (a)(1)) and requires Federal agencies to ensure that their activities will not jeopardize the continued existence of listed species or adversely modify designated critical habitats (section 7 (a)(2)).

What types of conservation activities are we doing under section 7(a)(1)?

One way that we actively carry out conservation activities for listed species under section 7(a)(1) is through our Partners for Fish and Wildlife Program. This program is geared toward habitat restoration on private lands. Listed species are considered a priority in this program; as a result, habitat restoration efforts funded by the Partners program have directly benefitted a number of listed species, such as the Louisiana black bear (*Ursus americanus luteolus*) and the red-cockaded woodpecker (*Picoides borealis*).

Other Federal agencies also have used their existing authorities to conserve listed species. For example, some wildlife conservation programs administered by the U.S. Department of Agriculture's Natural Resources Conservation Service, including the Wetland Reserve Program, the Wildlife Habitat Incentive Program, the Conservation Reserve Program, and the Environmental Quality Incentive Program, have incorporated listed species.

What is the consultation process that occurs under section 7(a)(2)?

The provision under section 7 that is most often associated with the FWS and other Federal agencies is section 7(a)(2). It requires Federal agencies to consult

with the FWS to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats. FWS issued regulations in 1986 detailing the consultation process, and we have since completed a handbook describing the process in detail. The handbook is available on our web site at <http://endangered.fws.gov/consultations>.

How is the consultation process started?

Before initiating an action, the Federal action agency (the agency planning a specific action), or its non-Federal permit applicant, must ask the FWS to provide a list of threatened, endangered, proposed, and candidate species and designated critical habitats that may be present in the project area. If we answer that no species or critical habitats are present, then the Federal action agency has no further ESA obligation under section 7(a)(2) and consultation is concluded. If a species is present, then the Federal action agency must determine whether the project *may affect* a listed species. If so, consultation is required. If the action agency determines (and the FWS agrees) that the project *does not adversely affect* any listed species, then the consultation (informal to this point) is concluded and the decision is put in writing.

What happens if a federal project may adversely affect a listed species?

If the Federal action agency determines that a project *may adversely affect* a listed species or designated critical habitat, formal consultation is required. There is a designated period of time in which to consult (90 days), and beyond that, another set period of time for the FWS to prepare a biological opinion (45 days). The determination of whether or not the proposed action would be likely to jeopardize the species or adversely modify its critical habitat is contained in the biological opinion. If a *jeopardy* or *adverse modification* determination is



Red-cockaded woodpecker
USFWS photo by John & Karen Hollingsworth

made, the biological opinion must identify any *reasonable and prudent alternatives* that could allow the project to move forward.

How does the Service manage projects that require the 'take' of some listed species?

If the FWS issues either a *nonjeopardy* opinion or a *jeopardy* opinion that contains reasonable and prudent alternatives, it may include an incidental take statement. "Take" is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct. ("Harm" is further defined to include significant habitat modification or degradation that results in death or injury to a listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.) "Incidental take" is defined as take that is incidental to, and not the purpose of, an otherwise lawful activity. The FWS must anticipate the take that may result from the proposed

project and, providing such take will not jeopardize the listed species, describe that take in the incidental take statement. The latter contains clear terms and conditions designed to reduce the impact of the anticipated take to the species; these terms are binding on the action agency.

What is the consultation workload?

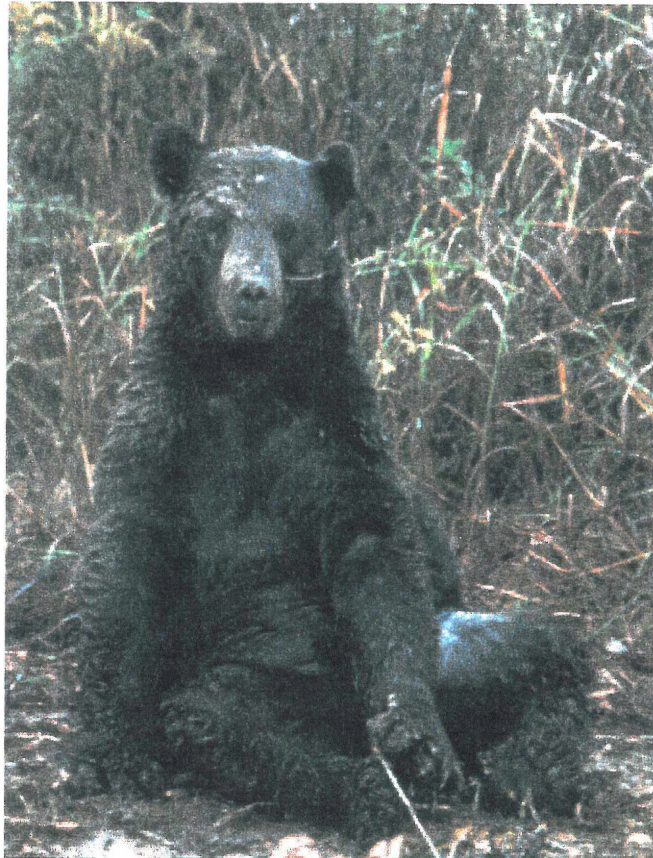
The vast majority of evaluated actions have no effect on listed species or their designated critical habitat. In fact, from 1998-2001 the Service conducted over 219,000 informal and formal Section 7 consultations. Of those, only 367 received a "jeopardy" opinion which required reasonable and prudent alternatives to further reduce adverse impacts to listed species.

A large percentage of projects that would have, at least as initially planned, adverse impacts to listed species are dealt with through informal consultation, in which the Federal action agency makes changes to the project design so that impacts to listed species are avoided.

As more and more Federal agencies begin to work with the FWS under section 7(a)(1), the conservation benefits should be reflected in an even lower number of jeopardy opinions.

What type of guidance is available for other Federal agencies?

Guidance is available on our section 7 webpage at <http://endangered.fws.gov/section7>. Please call us at 703/358-2106, if you have any questions or see our contacts webpage at <http://endangered.fws.gov/contacts.html> to locate a Service office in your area.



The Louisiana black bear in this picture was one of the largest ever captured on Tensas River National Wildlife Refuge, weighing in at over 400 pounds. The bear was trapped using a leg-hold cable snare that does not injure the animal. The biological information obtained, including weight, sex, a tooth for aging, and other measurements, are part of the Service's ongoing research efforts to aid in the recovery of this threatened subspecies. Afterwards, the bear was released on site.

Photo by Dan Anderson/USFWS

**U.S. Fish & Wildlife Service
Division of Endangered Species
703/358 2106
<http://endangered.fws.gov>
February 2002**

Forest Health Restoration Treatments: Helping Recover a Threatened Species



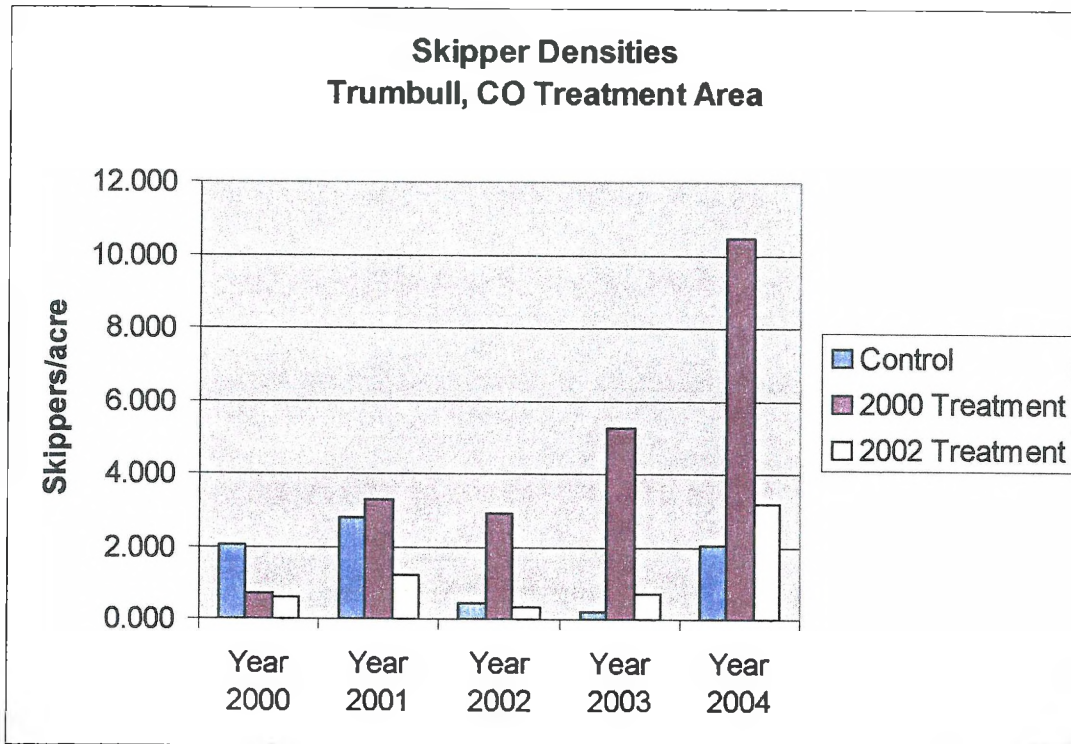
The Pawnee montane skipper (*Hesperia leonardus montana*) is a federally threatened sub-species of butterfly endemic to the upper South Platte watershed. The entire range of this species is limited to approximately 25,000 acres of the South Platte Ranger District and neighboring private lands. The species is dependent on open ponderosa pine forests with abundant blue grama grass (*Bouteloua gracilis*) and prairie gayfeather flowers (*Liatis punctata*). Eggs are laid on the blue grama, where the larvae survives the winter at the base of the plant and feeds for almost a year. In August and September adults emerge and feed on nectar from prairie gayfeather, mate, and lay eggs to perpetuate the next generation.

Decades of fire suppression have resulted in an over-population of trees that have shaded out much of the blue grama and prairie gayfeather in these forests. Approximately 30% of the skipper's range has also been impacted by uncharacteristically severe wildfires in recent years as a result of these dense forest conditions. In these areas, fires killed all the ponderosa pine, caused severe erosion, and have created conditions unsuitable for skippers to survive.

The USDA Forest Service has partnered with numerous parties, including the US Fish and Wildlife Service, Denver Water, Colorado State Forest Service, and various contractors and volunteers to restore high-quality habitat for the skipper in remaining unburned habitat, and monitor skipper recovery. Habitat is restored by thinning out many of the smaller trees in the forests, allowing more sunlight, moisture, and nutrients to reach the understory plants the skipper depends on. These treatments also greatly reduce the risk of severe wildfire, while creating conditions that do allow for natural, low-intensity fires to burn and maintain habitat conditions over time. Five years of skipper surveys at one such treatment site, located near Trumbull, CO, indicate that these efforts are having dramatic results. With continued efforts to restore forest health, the future of the skipper now appears bright.

Dramatic Recovery:

During five years of monitoring, skipper numbers in a control (untreated) area declined during severe drought conditions, and then rebounded with increased precipitation to their original levels. Skipper numbers in an area treated in 2000 increased dramatically, maintained elevated densities during the drought, and continued a dramatic increase following the drought to attain a 14-fold increase five years following treatment. Another unit, treated in 2002, has seen a five-fold increase in skippers in two years, and appears to be on a trajectory similar to the 2000 treatment area, with continued expansion of the skipper population expected.



Summary:

Year 2000 – The control unit contains approximately twice as many skippers as the planned treatment areas. The 2000 treatment unit is thinned.

Year 2001 - Increased precipitation leads to increased skipper numbers in all units, but the 2000 treatment area overtakes the control as the best habitat one year following treatment

Year 2002 - Severe drought dramatically reduces skippers in the control unit and the still-untreated 2002 unit, but skipper numbers remain almost constant in the 2000 treatment unit (maintains a four-fold increase over pre-treatment levels). The 2002 unit is treated after surveys are completed.

Year 2003 – The decline in skipper density continues in the control unit, but recovery begins in the 2002 treatment area one year following treatment. A population expansion continues in the 2000 treatment unit.

Year 2004 - The control unit returns to its baseline skipper density following two years of increased precipitation. The 2002 treatment unit skipper density has increased five-fold over the pre-treatment level, and the 2000 treatment unit skipper density has increased 14-fold over the pre-treatment level.