



# United States Department of the Interior

## U.S. Fish and Wildlife Service

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Kelly Urbanek  
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720 E. Park Blvd., Suite 245  
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Subject: Programmatic Idaho Transportation Department Statewide Federal Aid, State, and Maintenance Actions—Idaho Statewide—Reinitiated Biological and Conference Opinion  
In Reply Refer to: 14420-2010-F-0287-R001

Dear Mr. Hartman and Ms. Urbanek:

This letter concludes reinitiation of formal consultation for the Programmatic Idaho Transportation Department Statewide Federal Aid, State, and Maintenance Actions (Programmatic). In separate email letters respectively dated July 15 and July 14, 2015, the Federal Highway Administration (FHWA) and the Army Corps of Engineers (Corps) requested reinitiation of consultation on behalf of the Idaho Transportation Department (ITD, collectively the Agencies) and included an Addendum, developed by ITD, describing proposed changes to the Programmatic Biological Assessment (PBA). A revised Addendum was received from ITD on September 23, 2015, to address comments from NOAA Fisheries. On October 21, 2015, ITD sent an email letter to FHWA and the Corps requesting that the agencies reinitiate consultation with the U.S. Fish and Wildlife Service (Service) on their behalf. The Service received the final requests for reinitiation from FHWA and the Corps on November 5, 2015.

Specific changes to the PBA described in the Addendum and assessed here are: (1) extend the Programmatic to October 1, 2020; (2) update Table 1 of the PBA to show the 2015 Species List and Designated Critical Habitat within the action area; (3) extend eligibility for use of the Programmatic on ITD projects statewide; (4) modify the Bridge Deck Hydro-Demolition, Bank Stabilization, and Culverts project actions; and (5) analyze effects to slickspot peppergrass (*Lepidium papilliferum*) proposed critical habitat. At the Agencies written request, this letter also serves to convert the 2010 Conference Opinion on proposed bull trout (*Salvelinus confluentus*) critical habitat to a Biological Opinion on designated critical habitat. These proposed changes are described in more detail below, by PBA chapter where applicable, and are adapted from the Addendum with minor format changes. Finally, in this letter, the Service has included an analysis of potential effects to proposed critical habitat for the western yellow-billed cuckoo (*Coccyzus americanus*).

### Extension of the Programmatic

The Service's Biological and Conference Opinions (1442020-10-F-0287) for the Programmatic were issued on July 13, 2010, for a five-year term extending through July 13, 2015. The Agencies report that since the original Programmatic was issued in 2010, it has been used on 30 transportation projects, expediting project schedules, saving project costs (upwards of \$300,000), and Federal and State agency resource staff time. During the five years of implementing the Programmatic, there have been no reported effects to listed species or critical habitat that were not previously addressed in the 2010 Opinion. The majority of actions undertaken resulted in insignificant effects (Not Likely to Adversely Affect (NLAA) determinations), and where actions were assumed to be adverse, post-project checklists did not identify



any effects outside of those expected via the original Opinion. With this letter the Service authorizes extending the Programmatic another 5 years until October 1, 2020.

## **Chapter 1 - Introduction**

### **Section 1.1 Executive Summary**

#### **Update Table of Listed Species (Table 1 in the PBA)**

Since the 2010 PBA, the following changes to the status of candidate, proposed, and listed species/critical habitat have occurred that will be reflected in a revised PBA Table 1 (*Service annotations in italics*):

- Added – Yellow-billed cuckoo (Threatened) (December 2014). *On October 24, 2014, the Service concurred on a not likely to adversely affect (NLAA) determination for the yellow-billed cuckoo documented in an amendment to the PBA (01EIFW00-2015-I-0049). The Service issued a proposed rule to designate critical habitat for the yellow-billed cuckoo on August 15, 2014.*
- Added – Bull trout upgraded from Proposed to Designated Critical Habitat (September 2010). *The Service published a final rule designating bull trout critical habitat on October 18, 2010, effective November 17, 2010.*
- Delisted - Utah valvata snail and gray wolf.
- Removed - Christ's paintbrush *as a candidate species.*
- Downgraded – from Threatened to Proposed - slickspot peppergrass. *Pending outcome of litigation, threatened status of slickspot peppergrass may be reinstated.*
- Added - Slickspot peppergrass proposed critical habitat.
- Added Candidates – Whitebark pine; greater sage grouse. *On September 22, 2015, the Service found that listing the greater sage-grouse under the Act was not warranted.*

### **Section 1.3 Programmatic Biological Assessment Procedures**

Add the following:

“The PBA is eligible for use on ITD projects statewide, except projects administered by local public agencies or LHTAC.”

## **Chapter 2 – Project Actions**

### **Section 2.5 Bridge Deck Hydro-Demolition**

Delete the last sentence, regarding the word “potable” water, from paragraph 3 and from the Best Management Practices (*BMPs*).

Add to the Best Management Practices:

- “If the Contractor proposes to draft water from a waterbody with ESA listed species, specify the intake hose for the water will be screened and operated per NMFS criteria and guidelines, in order to prevent entrainment of fish. See details in NMFS 2011. Anadromous Salmonid Passage Facility Design. NMFS, Northwest Region, Portland, Oregon. <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf>

- The water rights permit from IDWR shall demonstrate IDWR coordination with IDFG. The Contractor shall comply with all IDFG recommendations.”

**Section 2.15 Bank Stabilization; 2.16 Bank Stabilization (Gabion Basket); 2.17 Mechanically Stabilized Earth Embankment (MSE Wall)**

Revise BMPs:

Bullet 1 - Delete the first sentence and replace with - “No more than two bank armoring projects per watershed (4<sup>th</sup> Code HUC) shall be approved for construction within the same construction season.”

**Section 2.20 - 2.22 Culverts**

Move from the BMP section to the description of work:

“A rock apron inlet and outlet protection including geotextile separation fabric is installed on all new culverts and extensions to minimize sediment delivery to the aquatic resource. The apron is designed per guidance from FHWA HEC-14 Energy Dissipators for Culverts and Channels, Chapter 10: Riprap Basins and Aprons. Dimensions vary based on the pipe velocity, pipe dimensions, size of riprap and tailwater conditions, conforming to the downstream channel.”

Add to the BMP bullet 1:

- “Design to meet NMFS fish passage criteria designated in the 2011 Anadromous Salmonid Passage Facility Design.”

**Chapter 3 – Species Accounts**

**Section 3.27 Slickspot Peppergrass (*Lepidium papilliferum*)**

Add the following:

“Note: The 2010 PBA effects determination for slickspot peppergrass was based on threatened status. In 2015 the species status is listed as “proposed as endangered”<sup>1</sup>; however, due to possible reinstatement of threatened status in the future, the PBA will continue to address the species as threatened. No changes are proposed.”

Add the following:

**“Slickspot peppergrass Proposed Critical Habitat**

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<sup>1</sup>On October 8, 2009, the Service published a final rule listing the slickspot peppergrass as threatened throughout its range (74 FR 52014). However, on August 8, 2012, the United States District Court for the District of Idaho ordered that the final rule listing slickspot peppergrass as a threatened species under the Act, be vacated and remanded for further consideration consistent with the court’s decision. On February 12, 2014, the Service published a Federal Register Notice which addressed the Court’s request that a specific definition of “foreseeable future” for slickspot peppergrass be provided. In addition, the Service proposed that threatened status be reinstated for slickspot peppergrass under the Act. A final decision on the Service’s proposal to reinstate slickspot peppergrass as threatened under the Act is anticipated in 2015.

Slickspot peppergrass proposed critical habitat was listed subsequent to the 2010 PBA<sup>2</sup>. The proposed critical habitat is listed in parts of southern Idaho. There are isolated locations where slickspot peppergrass PCH overlaps the I-84 corridor.

#### **Potential Effects**

There is potential for direct and indirect effects from transportation, including accidental destruction of individuals or disturbance of occupied or potential habitat. Roads have the potential to spread non-native plant species. Weed control adjacent to and within listed plant populations can reduce adverse effects from non-native species competition. Unknown individuals or populations could be at risk to road construction and maintenance. Noxious weeds and other invasive plants have encroached on populations of slickspot peppergrass. Indirect effects from highway uses may cause weed encroachment into occupied habitats. Weed management along highway rights of way is employed, and adaptive management practices are available if new populations are identified. When activities *are proposed* to take place within suitable habitat, species surveys will be conducted *prior to project implementation*.

#### **Determination of Effects on Slickspot Peppergrass Proposed Critical Habitat**

The project types proposed under this PBA may affect but are not likely to adversely affect slickspot peppergrass. **Rationale for the Determination** - Activities that occur in the vicinity of proposed critical habitat will require a survey prior to implementation. If the species is present, the preconstruction monitoring form will address and confirm the avoidance of adverse effects. If adverse effects are unavoidable, the action is not eligible to use the programmatic biological assessment. Formal Section 7 consultation for the species will be required.”

#### **Section 3.33 Whitebark Pine**

Add the following:

“Whitebark pine was added as a candidate species subsequent to the 2010 PBA. ITD has not addressed the candidate species at this time. ITD will review the listing forecast with FWS at the annual meeting and append the PBA in the future if needed.”

#### **Section 3.34 Sage Grouse**

Add the following:

“Sage Grouse was added as a candidate species subsequent to the 2010 PBA. ITD has not addressed the candidate species at this time. ITD will review the listing forecast with FWS at the annual meeting and append the PBA in the future if needed.”

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<sup>2</sup> Critical habitat was proposed for slickspot peppergrass on May 10, 2011. On February 12, 2014, the Service amended the original May 10, 2011 critical habitat proposal to include recently discovered slickspot peppergrass locations that met critical habitat designation criteria. A final critical habitat designation for slickspot peppergrass is expected in 2015. In total, approximately 61,301 acres in Ada, Gem, Payette, Elmore, and Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation.

*The Service notes that there is no need to address the greater sage grouse in the PBA Addendum at this time because on September 22, 2015 the Service found that listing the sage grouse was not warranted.*

#### **Chapter 4 – Baseline Descriptions**

Add the following:

“While there may be small localized baseline changes during the period of 2010 to 2015, there are no significant major baseline changes at the scale of the statewide analysis. The smaller changes will be addressed at the project level through the pre-project notification forms. Incremental beneficial improvements have been happening due to natural conditions.”

#### **Conclusion**

The Service has reviewed the current status of the species that may be affected by use of the Programmatic, the environmental baseline in the action area, the effects of the proposed changes to the PBA, and cumulative effects, and it is our conclusion that the proposed changes described in the Addendum to the PBA are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat.

Furthermore, we are not expecting any effects to listed species or critical habitat that have not already been addressed in the 2010 Opinion. We anticipate that all of the changes to the PBA inclusive of extending the Programmatic until October 1, 2020; updating the species list; extending the use of the Programmatic to all ITD districts, and making minor changes to the project actions are anticipated to result in insignificant or discountable effects to listed species and critical habitat. Our previous conclusions remain valid.

Effects from PBA maintenance actions to slickspot peppergrass proposed critical habitat are expected to be insignificant or discountable because of the protective measures and BMPs to be implemented under the PBA.

Additionally, the effects to designated bull trout critical habitat are not expected to differ from the effects analyzed in the Conference Opinion for proposed critical habitat. Our conclusion in the Conference Opinion of no destruction or adverse modification to proposed bull trout critical habitat remains valid. At the Agencies written request, this letter serves to convert the 2010 Conference Opinion on proposed bull trout critical habitat to a Biological Opinion on designated critical habitat.

As previously noted, the Service published a proposed rule to designate critical habitat for the yellow-billed cuckoo on August 15, 2014 (79 FR 48548). Only four critical habitat units are proposed in Idaho, all located in the southeastern part of the State in riparian corridors along the Snake and Wood Rivers. In general there is little spatial overlap between these riparian areas and Federal or State highways where PBA maintenance actions occur (see maps on pp. 48643-48645 of the proposed rule). The Service also made every effort to avoid land covered by pavement and buildings when determining proposed critical habitat boundaries which is expected to further minimize the chance of overlap with Federal and State highways. Among the types of actions identified in the proposed rule that could potentially affect cuckoo proposed critical habitat, the Service identified actions related to the Federal highway system, including new road construction and right-of-way designation. However, these types of actions are not included in the actions covered by the PBA. For these reasons, PBA maintenance activities are unlikely to significantly affect the Primary Constituent Elements (PCEs) of yellow-billed cuckoo critical habitat: (1)

Riparian Woodlands, (2) Adequate Prey Base, and (3) Dynamic Riverine Processes. The Service therefore concludes that PBA maintenance actions are not likely to adversely affect yellow-billed cuckoo proposed critical habitat.

To ensure a clearer understanding of projects authorized via the PBA versus those actually executed (notably given the limitation on the number of bank stabilization projects approved for implementation within a given year), the Service stresses the need for timely submittal of post-project checklists. In addition, we recommend a running tally of PBA actions (authorized and implemented) be discussed annually to ensure closer coordination among the involved agencies.

Please retain this letter in the project file. Our Opinion, the Addendum to the PBA, our concurrence letter on the effects to the yellow-billed cuckoo, and this letter constitute the entire record for this action. Please contact Mark Robertson at (208) 378-5287 or Clay Fletcher at (971) 701-1497, if you have questions regarding this letter.

Sincerely,



Michael Carrier  
State Supervisor

cc: NOAA, Boise (Mabe, Leonard)  
FHWA, Boise (Inghram)  
COE, Walla Walla (Mitchell)  
COE, Boise (Braspennickx)  
ITD-HQ, Boise (Sullivan)  
ITD-D1, Coeur d'Alene (Hartz)  
ITD-D2, Lewiston (Smith)  
ITD-D3, Boise (Vitley)  
ITD-D4, Shoshone (Jones)  
ITD-D5, Pocatello (Salmore)  
ITD-D6, Rigby (Cramer)  
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