

**ENVIRONMENTAL COMMENTING:  
POLICIES & PROCEDURES  
GUIDELINES**



**2011**  
*(revised 2013)*

**WYOMING GAME & FISH DEPARTMENT  
OFFICE OF DIRECTOR  
HABITAT PROTECTION PROGRAM**

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## **I. INTRODUCTION**

### **I.A. Purpose and Need for Commenting**

Wyoming Statutes stipulate the Wyoming Game and Fish Commission (the Commission) shall conduct activities necessary to manage all wildlife within Wyoming (W.S. 23-1-103 and W.S. 23-1-302). To a large degree, the Commission exercises its authorities by regulating take and possession of wildlife (i.e., setting hunting seasons, enforcing wildlife statutes). However, wildlife cannot be managed apart from the habitat upon which they depend. Although the Commission has no direct authority (except on limited land holdings) to manage habitat, several federal statutes and regulations require consultation with state wildlife agencies before federal actions are approved or taken. Such provisions enable the Commission, through the Wyoming Game and Fish Department (the Department), to recommend appropriate, science-based conservation practices at local, regional, and programmatic levels. Considering 48% of the land surface in Wyoming is managed by federal agencies, and many development activities on private lands also have a federal nexus, participation in environmental review processes enables the Department to influence how land use practices affect wildlife habitats throughout Wyoming. Other federal actions, such as proposed listings under the Endangered Species Act, directly impact the Department's principal management authorities. Accordingly, the Department and Commission have made participation in environmental reviews a high priority for all field personnel over the past 30 plus years.

The National Environmental Policy Act of 1969 (NEPA) is the umbrella legislation that formally establishes a public disclosure and review process for all federally funded, authorized or permitted actions excepting certain actions taken in the interest of national security. The Code of Federal Regulations (CFR) 40, Section 1501.7(a)(1) stipulates, "As part of the scoping process, the lead agency shall invite the participation of affected Federal, State, and local agencies ..." Sections 1503.1(a)(2)(i) and (iii) provide further that, "After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall request comments of appropriate State and local agencies which are authorized to develop and enforce environmental standards ... and any agency which has requested that it receive statements on actions of the kind proposed." Section 1503.1(a)(4) also requires the lead agency shall "request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected." Specific consultation clauses are also provided by many laws such as the Fish and Wildlife Coordination Act of 1934 as amended, the Clean Water Act, the Surface Mining Control and Reclamation Act of 1977, and others.

Several of the most intact, natural ecosystems remaining in the lower 48 states are still found in Wyoming. Many important ecosystems exist wholly or partially on federal lands administered primarily by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), and to a lesser extent the National Park Service (NPS) and U.S. Fish and Wildlife Service (USFWS). BLM and USFS lands are managed according to principals of multiple use and sustain yield, as set forth by the Federal Land Policy and Management Act of 1976 (BLM) and the Multiple Use and Sustained Yield Act of 1960 (USFS).

Although wildlife habitat is a designated principle land use within the National Forest System and lands administered by the BLM, other principal uses including timber and mineral development, grazing, recreation, scenic resources, and public easements are also recognized. These major uses of

the public lands have potential to conflict in numerous circumstances. The underpinning philosophy of “multiple use management” is to manage the lands for a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including but not limited to wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment [CFR 43, Sec. 1601.0-5(i), 1702(c)]. Through NEPA consultation, state wildlife agencies are often relied upon to provide expert recommendations regarding the value of wildlife resources and appropriate integration of wildlife habitat within the federal system of multiple use management. It is important to the State of Wyoming and the public that such recommendations are made to conserve habitat for the State’s wildlife.

### **I.B. General Description of the Current Habitat Protection Program (HPP) Process**

A formalized process for managing Department involvement in environmental reviews was originally established in the mid-1970s. The process has since been modified and is now referred to as the Wildlife Environmental Review System, or WER. Throughout the 1980s to early-mid 1990s, the program was less centralized and the Divisions and individual regions often interacted directly with lead agencies. The Director’s Office became involved in major projects and whenever a formal Department response was required. During the late 1990s, additional environmental program staff were hired in the Habitat Protection Section. Position functions that formerly served as clearinghouses for Division level comments (e.g., the Wildlife Division Environmental Biologists, Water Development Biologists) were transferred to the HPP Section. All project review requests through HPP are entered into the permanent WER database accessible to all Department personnel.

All environmental review solicitations needing Director’s Office response and certain information requests are currently processed by HPP. Any agreements or letters of support must go through the Director’s Office for review. HPP also represents the Department in the development, evaluation, and implementation of statewide Memoranda of Understanding (MOU) or cooperative agreements pertaining to environmental and HPP issues. In addition, HPP personnel lead or participate in efforts to develop and update environmental review guidelines, standard comments, and mitigation recommendations such as oil and gas recommendations, wind energy recommendations, and the Governor’s sage-grouse core area policy.

A WER number is assigned by HPP administrative staff, allowing the project, activity, plan, or policy to be tracked indefinitely. A WER file is established to retain all documentation including inter- and intra-agency communications. Each project is also tracked in a WER database that is accessible to all Department personnel. Active files are retained as long as necessary or until a project is completed and all mitigation commitments are met. Hard copies of all documentation associated with a project or activity are retained 20 years – 5 years in HPP’s centralized files and 15 years in archives. The WER database is the Department’s best source of current and historic comments and other project information for any area in the state.

When a review request is received, it is given a due date and assigned to one or more HPP biologists. HPP biologists identify the appropriate field personnel or staff to conduct the review; transmit review assignments, due dates and project documents; and consider and consolidate all pertinent and appropriate input received from reviewers to prepare the official Department response.

Programmatic reviews, particularly of laws or policies, are conducted by HPP staff except when specific expertise is available elsewhere in the Department. The Director's Office signs all formal Department responses. Final letters are available electronically to all Department personnel the same day the letter is signed. All letters are available to the public.

As with many Department programs, the environmental review process is a team effort and, depending on the issues, can involve personnel from numerous divisions and sections. The HPP process is continually reviewed for ways to improve its effectiveness and efficiency. HPP welcomes input and suggestions from any Department personnel with ideas to improve the process. Likewise, the HPP Coordinator and staff are available at all times to assist field personnel in resolving conflicts or problems with HPP-related issues at local, regional, or Division levels.

Several sets of guidelines are available to assist personnel with drafting comments. Many of these are accessible through the HPP Intranet home page.

## **II. COMMENTING ROLES AND GUIDELINES**

### **II.A. Commenting Roles**

#### **II.A.1. Role of HPP Program Coordinator**

The HPP Coordinator supervises HPP personnel and oversees the review of projects, plans, policies, and activities on a statewide level. The Coordinator assures the Director's Office is kept apprised of HPP issues, usually through the Deputy Director for External Operations. The Coordinator and HPP staff biologists often assume lead roles in coordinating reviews of major projects or activities involving multiple regions or habitat resources, and reviews of high profile projects in which the Director's Office wishes to be closely involved. In the absence of the Director or Deputy Directors, HPP can represent the Director's Office at meetings requiring decisions on HPP issues, negotiated mitigation, or funding agreements.

#### **II.A.2. Role of HPP Administrative Assistant**

The role of the HPP Administrative Assistant is to enter all electronic and hard copies of documents into the WER database, organize assignments, manage deadlines, send Department responses to the appropriate agency, and manage project files in accordance with the Department and Wyoming statutes and regulations.

#### **II.A.3. Role of HPP Staff**

The role of the HPP terrestrial and aquatic biologists (HPP staff) is to coordinate Department reviews of all development actions that may affect fish and wildlife and their habitats in Wyoming. The biologists coordinate response information with field personnel, while ensuring consistent and appropriate comments are submitted to the requesting agency or organization. Through the process described below, HPP staff determine which projects need field or administrative review, expedite the dissemination of project information to assigned reviewers, and ensure comments are completed on time.

All solicitations for project reviews sent to the Department are initially screened by HPP staff to determine whether HPP can respond independently, or if involvement of field personnel is necessary. Field personnel should expect to review most documents. If a field review is needed, HPP staff will distribute the project description to all personnel with management responsibilities in the location where the project is proposed, including wildlife biologist(s), habitat biologist(s), regional fisheries supervisor(s), and wildlife management coordinator(s). Notification is also provided to programs with statewide responsibilities including nongame, trophy game, aquatic assessment, enforcement, Veterinary Services, lands, and Division staff, as appropriate. HPP staff are responsible for ensuring appropriate Department personnel receive copies of the project description, or at a minim, information on how local personnel can obtain a copy of the project description (e.g., web links). When possible, HPP staff will include preliminary comments with the project review request and indicate where field personnel can look at comments submitted previously on the same or similar projects.

HPP staff serve on ad hoc committees and may deal with issues having a statewide or multi-regional scope, or when requested to represent the Director's Office. HPP staff also provide consultation to Department and federal agency personnel regarding federal and state environmental and wildlife laws and policies. HPP staff routinely assist other state and federal agencies in determining impacts and appropriate mitigation and reclamation of proposed projects.

HPP staff are also responsible for staying informed of current scientific literature, habitat and selected wildlife management techniques, alternative resource development technologies, mitigation and reclamation practices, and changes in state and federal laws affecting wildlife and wildlife management. When appropriate, HPP staff disseminate this information to appropriate Department personnel and inform specific personnel when major change are made to comments or Department positions affecting projects within the scope of their programs.

#### **II.A.4. Role of HPP on Major Projects**

The Director's Office, through HPP, takes the lead role on certain major projects and related negotiations. This has largely been established by policy, but much of the reasoning is common sense. The Director's Office needs to be kept informed and involved on high profile projects in order to keep Division administrators apprised, and to address inquiries from the press, Commissioners, legislators, the Governor's Policy Office (GPO), and other agency administrators, in addition to the general public.

The Director's Office may assign a representative to serve on steering committees, interdisciplinary teams, mitigation teams, etc. This involvement continues through the permitting stage or issuance of the final environmental document and decision. Subsequent involvement (on-the-ground coordination) should logically be accomplished at the regional/local level, provided the Director's Office is kept informed of progress. Although the Director's Office has occasionally intervened in local efforts, the preferred approach is to keep involvement local.

Following are examples of when the Director's Office (Director, Deputy Directors, or HPP), may take the lead coordination role on major projects:

1. High profile projects including those with significant political ramifications or interstate

implications, or those in which the GPO takes a lead role for the State as a whole (e.g., Sage-grouse Executive Order, Pinedale Anticline Project);

2. Projects that span more than one region (e.g., the BLM's Lander Resource Management Plan) or multiple Divisions;

3. Projects proposed, administered, or regulated by other state agencies or authorities (e.g., Water Development Commission, Industrial Siting Council, or Department of Environmental Quality projects);

4. Projects for which the local biologist, coordinator, or supervisor is unable to devote the necessary time due to other commitments (e.g. Forest Plans and Resource Management Plans); or

5. Projects, policies, legislation typically initiated from Cheyenne (e.g., coal mine program, state agency rulemaking, state legislation).

NOTE: If the issues are strictly aquatic, terrestrial, single species, or Division-specific, Division administrations may take the lead.

#### **II.A.5. Regional Coordination**

Priorities are sometimes inconsistent or conflicting within the Department and between Divisions. Department comments should provide a coordinated response among Divisions and Regions including Wildlife, Fisheries, and Services divisions. If Divisions have differing perspectives on how to respond, these should be resolved at the Regional level. When the Department sends conflicting recommendations, it has been our experience the receiving agency is reluctant to incorporate Department input.

During field reviews and comment preparation, the following considerations generally receive priority attention:

- Big game crucial ranges
- Greater sage-grouse core areas, connectivity areas, and non-core areas
- Species of Greatest Conservation Need (SGCN) habitat
- State Wildlife Action Plan (SWAP)
- Strategic/State Habitat Plan (SHP) priority areas
- Specific recommendations or best management practices (BMPs) not found or referenced in the environmental document
- Stream/Lake Database

HPP staff review and consolidate comments received from project reviewers to develop a draft comment letter. The final set of comments should reflect the mission of the Department to serve people and conserve wildlife, and adhere to the following additional guidelines:

- Consistency with Department policy and the Commission's mitigation policy (Policy No. VII H, Commission Policy Manual);
- Consistency with prior comments on the same or similar projects. If there are differences, the staff biologist determines whether they are justified and ensures justification is provided in the final letter. On occasion, certain draft comments may be sent to the



- appropriate Division administration to ensure consistency with Division policy;
- Consistency among comments submitted on the same project and with information provided in the project description (i.e., making sure the comments accurately represent alternatives discussed in an environmental assessment);
- Consensus among biologists, regions, divisions, and Director's Office when needed. Consensus issues should normally be resolved before comments are submitted to HPP. The staff biologists are responsible for alerting wildlife management coordinators, regional fisheries supervisors or other appropriate personnel of potential intra-agency conflicts ahead of the deadline for submitting comments. If resolution is not possible at that level, the staff biologist(s) will request the assistance of the affected Division administrations to obtain resolution;
- All comments will be edited for grammar, spelling, and to eliminate repetition.

#### **II.A.6. Role of the Wildlife Division (Regional Wildlife Coordinators/Biologists, Non-Game Biologists, and Trophy Game Biologists)**

The Wildlife Management Coordinator (WMC) is responsible for ensuring projects are properly reviewed by Wildlife Division personnel, and seeing that comments submitted to HPP staff are professional and received by the assigned due date. If the WMC becomes aware comments from Wildlife Division biologists are inconsistent or conflict with comments from other Department sections (e.g., fisheries, services), the WMC works to resolve the conflicts or inconsistencies before comments are submitted to HPP staff.

Wildlife Division biologists are responsible for reviewing the project and drafting initial comments. Comments should identify whether crucial or important habitats are present, describe potential or known terrestrial wildlife impacts, and recommend appropriate mitigation. Similar concerns often apply to many different projects (e.g., sage grouse leks, big game seasonal ranges), so some comments have become fairly standard. Although standard comments have been developed to address terrestrial wildlife and habitat concerns (see HPP Intranet page), the reviewer should assure they are appropriately applied to the given situation. The field biologist(s) should also provide other pertinent information regarding local or unique conditions. Wildlife Division biologists should collaborate with other work units within the Department (fisheries, wardens, nongame, etc.) in preparing comments. Draft comments should then be submitted to the WMC.

Non-game biologists, trophy game biologists, and other Department specialists such as the herpetologist are asked to review projects potentially affecting the resources they manage. The WMC and HPP have discretion to seek additional WGFD expertise if necessary. The Non-game Section has also prepared standard comments for regional biologists to use (refer to nongame section of standard wildlife comments, HPP Intranet home page).

If Wildlife Division biologists become aware of information that was not in the project description or changes that have a potential bearing on a project review, that information should be conveyed to the HPP staff for dissemination to other affected Department personnel, as necessary.

Each Wildlife Region should develop a procedure for handling project requests, including coordination and administrative review of draft comments, which accommodates regional work schedules and policies. However, regions are ultimately responsible for submitting accurate,

professional comments to HPP by the assigned due date. As appropriate, comments should also be supported by resource data and/or relevant literature citations.

### **II.A.7. Role of the Fisheries Division (Regional Fish Supervisor, Statewide Crews, Herpetologist)**

The Regional Fisheries Supervisor (Supervisor) is responsible for coordinating comments received from field personnel and the aquatic habitat biologist, and for ensuring professional comments are submitted to HPP staff by the assigned due date. If the Supervisor becomes aware comments from Fish Division biologists are inconsistent or conflict with comments from other Department sections (e.g., wildlife, nongame), the Supervisor should work to resolve the conflicts or inconsistencies before comments are submitted to HPP staff.

HPP determines which projects require Fish Division review apart from those that can be addressed through standard comments. In cases where a review is needed, HPP staff will send a copy of the project document to the regional Fisheries supervisor, aquatic habitat biologist, other specialists and the herpetologist. The regional Fisheries Supervisor has discretion to determine how commenting is coordinated by the Fish Division biologists. The Fisheries' Supervisor may enlist additional WGFD expertise if necessary. Regional fisheries supervisors or regional fisheries biologists are responsible for reviewing the project description and drafting the initial comments. Comments should identify whether sensitive species or high quality habitats are present, describe potential or known aquatic wildlife impacts, and when appropriate, recommend mitigation. Although standard comments have been developed to address aquatic wildlife and habitat concerns (see HPP Intranet home page), the reviewer should assure they are appropriate in the given situation. The fisheries management crews should also provide other pertinent information regarding unique or local conditions. Fish Division personnel should collaborate with other work units (e.g., wildlife, nongame, wardens, etc.) within the Department in developing comments.

If Fish Division biologists become aware of information that was not in the project description or changes that have a potential bearing on project review, that information should be conveyed to the HPP biologist for dissemination to other affected Department personnel as necessary.

Each Aquatic Region should develop a procedure for handling project requests, including coordination and administrative review of draft comments, that accommodates work schedules and policies. However, every crew is responsible for submitting accurate and professional comments by the assigned due date. As appropriate, comments should also be supported by resource data and/or relevant literature citations.

### **II.A.8. Role of Habitat Biologists**

Input from the Department's habitat specialists is essential and will be provided either to the WMC or Fish Supervisor. Unless the HPP staff is otherwise notified, the habitat biologist's comments are assumed to be incorporated with those received from the WMC or Fisheries Supervisor.

## **II.A.9. Role of Division Administrators**

Division administrators should guide/train their personnel regarding how to handle project review requests in accordance with the respective division's policies and procedures. When consensus on comments cannot be achieved at the field level, Division administration will be responsible for resolving differences within or between divisions. When possible, final decisions should be based on the best scientific data available and experience on past projects. In cases where resource uses or social expectations conflict and cannot be resolved, the Director's Office will mediate. On some projects, division administrators may comment directly to the requester.

Division administrators are not involved in the day to day environmental review process, but should be apprised of significant issues, including involvement that is likely to become controversial, and should be consulted for direction as necessary. This consultation and coordination can happen directly between field personnel and division administration or through HPP. HPP is ultimately responsible for assuring division administrators are kept apprised of significant environmental issues or opportunities. Division administrators also have access to pending review lists and can request direct involvement at any time.

## **II.A.10. Role of the Director's Office**

The Director ultimately must assume ownership of Department positions, comments, and recommendations on all plans, projects, activities and policies. In practice, the Deputy Director for external operations is primarily responsible for overseeing the environmental review program, assuring Department recommendations and involvement comply with State laws, and are consistent with Department and Commission policy. The Director's Office acts as the binding signatory for all Department comments, position statements, and recommendations.

As necessary, the Director's Office keeps staff and the Commission apprised of significant environmental issues potentially affecting fish and wildlife resources. The Director's Office also represents the Department in communications with the GPO, legislators, the press, and other state and federal agencies concerning environmental issues. The Director's Office may, at times, designate other key staff members to represent the Department.

Notices, documents, and review requests received by the Director's Office are passed on to HPP for processing. HPP schedules reviews and provides the Director's Office with weekly pending project lists. If the Director or Deputy Directors take a special interest in a project, they may request a briefing once internal review is complete, or they may have the response letter prepared for their signature.

Comments should be clear, concise, constructive, professional, and non-antagonistic. Comments should always convey the specific action or response the reviewer is recommending. Collaborative approaches to resolve our concerns are always recommended and expected. When an environmental issue becomes or has the potential to be locally controversial, field personnel should notify the Director's Office or HPP. It is essential for the Director's Office to remain apprised of potentially controversial situations in order to effectively address inquiries from constituents, commissioners, legislators, the press, the general public, and others.

## **II.B. Special Considerations**

### **II.B.1. The Review Document**

The WER database identifies about 50 types of review documents. The type of input that should be provided and its format can vary depending on the document type and governing legislation. Following is a brief summary of pertinent points for some of the more commonly received documents.

**National Environmental Policy Act (NEPA) Documents (Scoping Statements, Environmental Assessments, Environmental Impact Statements, Records of Decision, Findings of No Significant Impact, etc.):** These are received directly and through notification in the Federal Register. Subject to NEPA standards, each federal agency has its own regulations, procedures, and time frames for public commenting on the NEPA documents. “A citizen’s Guide to the NEPA is a useful reference for a basic understanding of NEPA procedures. See: [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-CitizensGuide.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CitizensGuide.pdf)

**Oil and Gas Activities (Applications for Permit to Drill, Notices Of Staking, Plans Of Development, Geophysical Exploration, Lease Notices, etc.):** All field biologists need to be familiar with Appendix 5g of our MOU with the Bureau of Land Management (BLM) regarding coordination procedures for oil and gas developments. This appendix sets forth very specific steps and timeframes, largely based on regulation. Any questions regarding Appendix 5g, should be directed to HPP for clarification. Most forms of Department response outlined in Appendix 5g are between the Regional Office and the corresponding BLM field office unless the particular activity is highly contentious, in which case it should be elevated to the Director’s Office and State BLM Office. Appendix 5g is accessible on the Habitat Protection Intranet home page.

**U.S. Army Corps of Engineers Public Notices:** The Department receives numerous Corps Public Notices for review annually. Notices are typically 15 day (for actions conducted under a Nationwide permit) or 30 day (for actions requiring individual permits). The Department also commonly review after-the-fact and other violation notices, and we are often involved in the development of General Permits. Timeframes for review of Corps notices are established by regulation. Therefore, the Department must provide timely input in order to have our comments fully considered. Corps notices received by the Department are also sent to the Environmental Protection Agency, US Fish and Wildlife Service, and WY Department of Environmental Quality-Water Quality Division. A system is established whereby comment letters are exchanged among the agencies involved. In the case of particularly contentious notices, the agencies may coordinate in advance of submitting a response to the Corps. There is no particular format for responding to Corps notices.

**Natural Resource Conservation Service (NRCS) Proposed Conservation Practice:** The Department’s MOU with the NRCS provides the opportunity to review and comment on certain Conservation Practices (e.g., prescribed burns, spray projects, fencing, water

developments). All NRCS project notices should be sent to the WMC who will prepare comments incorporating input from regional fisheries supervisor, aquatic habitat biologist, terrestrial habitat biologist, and regional wildlife biologists.

**Wyoming Department of Transportation Right-Of-Way Plans:** Our MOU with the Wyoming Department of Transportation provides the opportunity to review and comment on all highway-related activities. The Department maintains two sets of right-of-way maps for reference: one is retained in HPP and the other is available for use by field personnel. The maps available to field biologists need to be shared between reviewers of terrestrial and aquatic resource concerns. Maps are not automatically sent to the field, but HPP will always inquire whether field biologists need to see them. The maps provide a great deal of information, but require some civil engineering knowledge to interpret. In particular, the maps should be referenced in comments pertaining to stream crossings and associated bank stabilization work, locations of staging and borrow areas, fencing, right-of-way disturbance, etc.

The planning and design process for a highway project may involve several stages in which the Department has an opportunity to provide comments. When significant concerns are identified, reviewers need to evaluate subsequent design stages to determine whether the problems identified in earlier reviews have been adequately addressed.

Our MOU on Transportation projects allows a 30-day period for review and comment. Usually, we have ample lead time to review highway projects before they are actually put out for bid. This provides adequate time to resolve most major problems, if they exist.

**Federal Register Notices:** HPP will screen the Federal Register for any NEPA documents and other notices that may affect Wyoming resources. Relevant notices will be processed for review by the affected region, work unit, or special expertise. Programmatic-type reviews are generally conducted within HPP.

**Sage Grouse Executive Order:** The BLM will coordinate with the applicable WMC in accordance with the BLM's sage grouse direction and the Governor's Sage Grouse Executive Order (Attachment 1).

([http://gf.state.wy.us/wildlife/wildlife\\_management/sagegrouse/Sage\\_Grouse\\_EO\\_2011\\_5.pdf](http://gf.state.wy.us/wildlife/wildlife_management/sagegrouse/Sage_Grouse_EO_2011_5.pdf))

**Requests for Information:** External requests for information that generally require minimal time can and should be handled at the field level. If significant effort or coordination will be required to assemble information, the requests should be sent to the Director's Office for coordination.

**Federal Energy Regulatory Commission (FERC) Notices:** Though we receive comparatively few FERC notices, their process and review timeframes are very strict. Comments on FERC projects must be received by the closing date.

## **II.B.2. Timelines and Extensions**

The Department comments on several hundred projects and issues each year. To ensure an organized, efficient, and timely flow of work, it is important to understand and adhere to all time constraints established for review and commenting. HPP receives most environmental documents and review requests directly from federal and state agencies. The goal is to involve field personnel as much as possible; however, short deadlines at times may require HPP to prepare the WGFD comments when field personnel are unavailable. A due date is established for responses to be received by HPP. Various factors are considered in establishing timelines for environmental reviews, including:

- a. Many agencies have timelines established by statute or regulation (late comments will not be accepted by these agencies);
- b. Some timelines are established by Memoranda of Understanding or cooperative agreements (the Department is signatory to these);
- c. Projects identified by the Governor's Policy Office (GPO) will have very tight timelines. Comments from field biologists need to be sent to HPP for compilation and then sent the Deputy Director for review.
- d. Mailing time must be considered when the requesting entity does not accept copies by fax or email (e.g., Federal Energy Regulatory Commission) or the entity does not have a fax machine available;
- e. A reasonable amount of time is needed by HPP staff to process field input and prepare a response letter for signature by the Director's Office;
- f. The Director's Office requires an amount of time to review responses, dependent on staff availability and schedules; and
- g. In some cases, additional time is needed to coordinate with other agencies including the Governor's Office after field responses have been received and before the Department's response is finalized.

When input from different work units contains conflicting findings or recommendations (e.g., between aquatic and terrestrial interests), resolution should be accomplished at the regional level before responses are submitted to HPP. Occasionally, HPP discovers conflicts after field responses are received, necessitating additional time to obtain a resolution. Timelines can become critical in these instances. If appropriate field personnel are not available, either the Division Administrators or the Director's Office may independently resolve the conflict. If the conflict is especially significant, HPP will attempt to obtain an extension of the due date. If field personnel become aware of circumstances that will prevent a timely response, HPP should be notified immediately so an extension can be pursued.

### **II.B. 3. County/City Projects**

On occasion, County and City Planning Offices will contact the WMC or fisheries supervisor regarding projects they propose to undertake or authorize. In most cases, the WMC or fisheries supervisor should respond directly.

### **II.B.4. External Requests to Field Personnel**

Occasionally, a federal or state agency will solicit comments directly from a regional office or local biologist. The Department maintains MOUs with most federal agencies relative to NEPA reviews, which specify both the Director's Office (via HPP) and the local biologists are to receive project documentation. Preliminary field comments that are provided directly to the requester may or may not be the final comments from the Director's Office.

If another agency wants to receive official Department comments, a notice of request for comments should be sent to the Director's Office and HPP will coordinate the field review. The Department supports early collaboration with project proponents, which may include non-official comments. However, the Department's final comments may deviate from early, informal comments shared with another state or federal agency after a more thorough review is completed and/or pending disclosure of additional information about the project.

### **II.C. Preparing Comments**

#### **II.C.1. Determining the Need to Comment, and to What Extent**

Not all projects warrant comment. HPP staff will handle many inquiries regarding such questions as whether an urban development will affect threatened or endangered species or crucial wildlife habitat. Since these types of projects receive federal grants, the proponents are required to request this information.

Once a project is sent to field personnel for review, local biologists, coordinators, and supervisors should determine whether the nature and scope of the proposed action warrants commenting. This decision may be influenced by the scale of impact, whether the project is located in a previously impacted area that could be negatively affected by further activities (i.e., cumulative effects), whether the project may have beneficial impacts and should be encouraged, or any number of other considerations.

There are three potential responses if a project will not negatively impact wildlife. These include no comment, no concerns, or support for the proposed project. Although the differences are subtle, they will influence how the final letter to the requesting agency is drafted, and therefore, the position the Department takes.

- A "no comment" indicates a project either will not impact wildlife or the wildlife resource does not need to be considered in planning or designing the proposed activities.
- A "no concern" should be used when project impacts on the wildlife resource are negligible.
- "Support" should be used when the project will benefit fish, wildlife, or habitat; or

hunting, fishing, or non-consumptive recreation opportunities.

Failure to be specific when one of these responses is appropriate may cause the Department's position on a project to be misinterpreted, and could result in harm to the resource.

When comments are submitted, specific impacts should be identified and changes in the project design or location suggested to reduce the impact.

**A note of caution: Field personnel are responsible for submitting comments by the assigned due date. If comments are not received on time, and if HPP staff are unable to contact the appropriate field personnel, a "no concern" letter will be drafted. HPP recognizes the regions may be extremely busy at different seasons. If the region has concerns, but is unable to respond with much detail, this should be communicated to HPP early in order that HPP staff can do the necessary research to further develop constructive comments.**

## **II.C.2. Commenting**

### **II.C.2.a. Content**

Department biologists should begin by evaluating the location and nature of the proposed activity. If it is a programmatic action (e.g., a land use or resource management plan), the biologist should consider the nature of activities that would be authorized, and their potential effects throughout the geographic area covered by the plan. NEPA documents [i.e., an Environmental Assessment (EA) or Environmental Impact Statement (EIS)] should contain adequate descriptions of the affected environment and potential consequences of the proposed action. These descriptions are the most important function of a NEPA analysis and are explicitly required by Council on Environmental Quality (CEQ) Regulations. If the descriptions are not comprehensive and quantitative in their treatment, the biologist should focus review comments on the deficiencies.

If the review request is for a specific, localized project or activity [such as an application for permit to drill (APD)], the agency will generally depend upon the Department biologist to identify the affected wildlife resources, potential impacts, and recommended mitigation.

In either case, the biologist should rely upon personal knowledge of the wildlife resources and habitats that would be affected by the proposed action, and should also consult available data layers or studies containing resource information that is relevant to the project area. When commenting on a NEPA document, the reviewer should identify deficient content and analyses; in the case of a localized project or permitting action, the reviewer should describe the affected wildlife resources. The biologist should also recommend reasonable, effective, and appropriate monitoring, mitigation, and reclamation. To the extent practical, statements regarding affected wildlife resources, the nature of the anticipated impacts, and recommended mitigation should be documented with Department data and reference to relevant scientific literature. If the biologist has reason to believe the preferred alternative or proposal is out of compliance with specific laws or regulations, comments should include citations for these as well.

Each comment should identify a specific concern and should include recommendations to resolve the concern. In other words, comments should convey a specific action or result. For example, it is not



sufficient to merely note the description of affected wildlife resources may be incomplete. The comment should identify the resources that have been overlooked, or should describe the types of studies necessary to adequately characterize them. Likewise, it is not satisfactory to only indicate the proposal fails to include effective mitigation. The comment should describe the recommended mitigation.

### **II.C.2.b. Format**

Comments should be submitted to HPP staff in electronic format to expedite processing and submission of a final letter. HPP typically gives field personnel the maximum possible time for project review and commenting, reserving little time for internal review, compilation of comments, and preparation of a final letter for Director's Office signature. Therefore, it is critical to meet the assigned commenting deadlines.

When commenting on a large document (e.g., an environmental impact statement), reviewers should include the appropriate chapter, section, and page to which each comment refers (e.g., reference Section III.C.2.a. Riparian Habitats). This can clarify comments and facilitate communication to the recipient.

### **II.C.2.c. Types of Comments**

Comments should provide specific information regarding the fish and wildlife resources affected, anticipated impacts, and recommended mitigation. This information should be based on the best available data, literature, regulatory considerations, and field experience. Generally, each letter conveying substantive comments should begin with a brief summary (both terrestrial and aquatic) of the important fish and wildlife resources in the area. Comments should be concise yet complete.

Additional fish or wildlife background information need only be provided when necessary to understand why a comment is made, or to explain changes from prior comments. Background information that does not help to determine the impacts/benefits to fish or wildlife is superfluous and usually deleted from the final letter.

While some amount of project description can be helpful in understanding why comments are being made, a reiteration of the project scope is generally not necessary. In most cases, comments are being provided to the entity that originally wrote the project description.

When possible, comments should be written with a result orientation, focusing on the outcome, product, or conditions sought. Any comment that identifies a problem should offer a reasonable, constructive solution or recommended action. Whenever practical and appropriate, comments should be quantitative in order convey the clearest possible recommendation to the project proponent(e.g., no more than 25% to 35% utilization; a maximum of 1 mile of road per square mile).

Reviewers should avoid excessive negativity. Sometimes, negative comments cannot be avoided or are entirely appropriate. However, excessive negativity detracts from the professionalism of a letter, is often perceived as antagonistic, makes reading difficult, and immediately puts the recipient on the defensive. Constructive criticism is a far better approach and is more likely to achieve a positive result, often with less time expended in follow-up negotiations. A simple example of

changing negative to positive or constructive writing is to rephrase all the “you didn’t do” this or that to “we recommend the following.”

When it is appropriate, commend project proponents and agency personnel who have done a good job addressing the needs of fish and wildlife. Such compliments are greatly appreciated and can improve relationships and provide greater assurances that fish and wildlife will receive similar consideration in the future. Also, emphasize an “open door” policy so project proponents or land management agencies feel more comfortable consulting us to resolve differences, and are more inclined to involve us early in the process so issues can be resolved before the letter writing stage.

Reviewers should always bear in mind the Department has no authority to stop or direct development activities on private, state or federal lands. Our input is typically supported by statutory or regulatory provisions that require the lead agency or project proponent to *consult* the state wildlife agency or *consider* “public input” that may include resource agency comments. As such, our comments are provided in the context of expert agency recommendations and not directives or orders. However, requests for additional information on project impacts, cumulative impacts, additional data, etc., are appropriate and may be supported by specific agency regulations. These requests should place the responsibility (politely, but assertively) on the project proponent. Requests for documentation of monitoring results or anticipated future management actions are also appropriate.

Biologists should limit comments to the resource concerns for which the Department has management responsibilities (i.e., the statutory responsibilities of the Wyoming Game and Fish Commission and Department). Comments that do not directly address wildlife and habitat-related considerations, or wildlife-dependent recreation opportunity, are inappropriate. For example, the Department is not charged with maintaining aesthetic or cultural resources, or with determining the economical feasibility of the proposed project. Only comments about fish, wildlife, habitat, and related recreation will be included in the final letter.

#### **II.C.2.d. Quality of Information**

All comments need to be factual and clearly written. Comments based on unsupported assumptions, hearsay, and incorrect information are unprofessional, often challenged, and detract from the Department’s credibility. There are, however, circumstances in which the anticipated impacts of rapid, large-scale developments or activities that have not been adequately researched and published in peer-reviewed journals (e.g., the early wind energy developments). In those cases, responsible inferences about impacts are legitimate and should be based on the best available information including studies of other activities with similar characteristics, and carefully filtered gray literature. The Department’s biologists serve as the State’s experts to interpret and apply best available information in support of the Department’s primary mission. It is also legitimate to recommend the project proponent provide additional information to demonstrate the proposed activities will not have significant adverse effects, or can be effectively mitigated (see also Section II.C.2.c).

Comments should be simple, clear statements. Ambiguous comments are open to interpretation. Although a comment may seem clear to local personnel familiar with local conditions, bear in mind that comments are sent to individuals who may not be as familiar with the affected resource or the terminology we use. Define all terms that would be unfamiliar to a lay person and avoid acronyms.

Comments should be clear, concise, and understandable to the average person.

### **II.C.2.e. Acceptable Language**

Although a project, activity, or project proponent may at times cause frustration, comments still need to be professional. Antagonistic or inflammatory language will be omitted from the final letter. Use of such language is unprofessional and impacts our credibility with the public and recipient agencies. Also bear in mind comments received from reviewers are included in the project file, which is public information. Although inappropriate comments will not be sent in a formal letter, they are retained in a file that could be viewed by anyone.

### **II.C.2.f. Editorial Problems**

All comments should be edited for content, format, spelling, repetition, grammar, and punctuation before they are submitted to HPP. Additionally, field comments that contain these types of errors are placed in the project file, which again is public information.

### **II.C.2.g. Application of Mitigation Policy**

All comments must be consistent with the Commission mitigation policy. The Department's credibility is diminished when mitigation recommendations are inconsistently applied. It is very important to understand the policy and apply it as a tool for drafting comments. Remember the mitigation policy only guides the process of developing recommendations. The policy does not vest any regulatory authority to the Department where such authority does not exist. Our recommendations are primarily advisory and the entity receiving them is not obligated to consider or implement them, except as may be provided by other federal, state or local laws or policies.

### **II.C.2.h. Summary of Content**

A brief list of recommended "dos" and "don'ts" follows. These were largely developed by the Interdivisional Environmental Review Team. Adherence to these suggestions would greatly facilitate the Director's Office review and approval of final letters.

#### Dos

- follow format for document type
- apply mitigation policy, as appropriate
- give citations/references
- commend good work
- provide constructive criticism
- be brief
- offer reasonable solutions
- meet comment deadlines
- be precise, specific, clear
- specify desired action or outcome

#### Don'ts (or things to avoid)

- excessive negativity
- repetition
- antagonistic or biased comments
- acronyms
- hearsay, being judgmental
- asking questions (restructure comment)
- finger pointing
- non-wildlife related comments
- ambiguous terms, statements

### **III. USE OF E-MAIL**

Projects are assigned to appropriate personnel via email. Emailed assignments will include the WER number, the date comments are due back to HPP and other pertinent information. To the extent possible, the review document will be attached to the E-mail message so it is readily available to the recipient. In some cases, a link to a document is provided. Comments (including “no comment” or “no concern”) should be returned to HPP via email. Comments may be included in the email message itself if they are short (a couple of paragraphs), or in a Word document attached to the email message. Remember, all e-mail messages pertaining to a project will be included in the project file and are available for public review. Remain professional and objective in all correspondence.

### **IV. OTHER CONSIDERATIONS**

#### **IV.A. Requests for Department Letters**

All Department correspondence is available to the public. Department letters should be in the hands of the receiving agency before their content is released to others. This applies to letters sent directly from the Department to the agency, as well as those sent through the GPO. We want to avoid situations wherein the recipient becomes aware of our comments and recommendations (e.g., through the press) before receiving the official Department response. Courtesy and common sense dictate this sequence. Once an official response has been received by the intended recipient, it is public information and can be released to anyone upon request. However, in all situations, formal requests filed under the Public Records Act must follow the specific procedures outlined in that statute.

Biologists’ comments are considered a Department record, not the individual’s. Requests for Department records prior to official release should be made in writing to the Director. Like an individual biologist’s comments, Department letters to the GPO are considered a work product of the GPO and the Governor for preparation of the State position. Requests for these letters prior to release of the State position should be directed to the GPO.

A specific process is outlined for letters supporting Wildlife and Natural Resource Trust Fund Projects. Contact the Wildlife or Aquatic Habitat Supervisor for direction.

#### **IV.B. Press-Media Inquiries**

In general, personnel are free to talk to the press or other media regarding the Department’s position on any issue. If an official Department position has not been released, the Director’s Office should be contacted for an official response. Occasionally, the Director’s Office will designate a sole contact for media inquires of highly sensitive or political issues such as wolf delisting. In such cases, all requests for information should be referred to that contact. Once the Department response is received by the intended recipient, all records are open to the press or any other interested party.

#### **IV.C. Cooperating Agency Status**

### **CRITERIA for DECIDING on COOPERATING AGENCY STATUS for the STATE of WYOMING**

#### **Pertaining to Federal Actions on Federal Lands within Wyoming**

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Because 48% of Wyoming's surface area is under Federal jurisdiction, actions on Federal lands have significant socioeconomic and natural resource implications to the State. The National Environmental Policy Act (NEPA), as amended, provides opportunities for Federal, State, local, and tribal interests to work together when Federal land resource management decisions are made.

In recent years, the surge of invitations to participate as a cooperating agency in Federal resource decisions has necessitated criteria for selecting the most pertinent projects. Being strategic in our participation is especially important given our personnel limitations. The net worth of these partnership opportunities is evaluated based on four considerations:

#### **What will the State gain by participating as a cooperating agency?**

- Effectiveness of State and local input in shaping alternatives
- Capacity to influence the outcome
- Indirect benefits (e.g., a closer working relationship with agencies, NGOs)
- Setting a working example for others
- Credibility as a valuable partner

#### **What will the State lose by not participating as a cooperating agency?**

- Effectiveness of State and local input in shaping alternatives
- Capacity to influence the outcome
- Credibility as a valuable partner
- Time and money to protest an adverse decision or outcome
- Time and money to mitigate poor decisions through regulatory action
- Socioeconomic benefits or natural resource health

#### **Under what terms can the State participate?**

- As an active partner on the Interdisciplinary (ID) team, reviewing public scoping comments, developing alternatives, and studying the impacts of those alternatives
- By acknowledgment as having special expertise in the State's socio economic issues (the Department's expertise in this area would be confined to wildlife-based recreation and related economic considerations)
- With editing rights on the environmental analysis document
- With the ability to write decision documents for aspects in which the State has special expertise
- As an active partner through the final decision, even though the State is not given ultimate sign-off authority
- With the ability to publish a dissenting opinion if the State disagrees with the final decision

#### **Other considerations?**

- The State will gain more by participating than it will lose by not participating
- Would the State lose the right to appeal if it doesn't like the outcome?
- Extent and direction of public interest
- Extent of public desire for State involvement
- Extent and direction of ramifications for the State's interest in other projects/issues

#### **IV.D. National Parks, Reservations, and Adjoining State Projects or Policies**

The Department periodically receives requests to review projects or policies proposed in jurisdictions where we have no authority over wildlife (e.g., Yellowstone National Park, Wind River Reservation, or adjoining states). HPP will examine these proposals to determine whether the project or policy could affect resources under the Department's jurisdiction (e.g., interstate big game herds, Department lands within the Reservation boundary, downstream impacts, etc.). A field review will be requested pending this determination.

#### **IV.E. Appeals of NEPA Decisions and Other Legal Actions**

The Department has previously appealed some NEPA decisions, but such actions necessitate the concurrence of the Governor's Policy Office and the Attorney General's Office. NEPA actions are only appealable on the basis of process (full disclosure) and not undesirable outcomes. Where there appears to be a legitimate reason to appeal a NEPA decision, HPP should be notified and provided with a justification including all documentation. HPP will seek Director and staff approval of such action should it be warranted. The next step would be to work with the Attorney General's Office and the GPO.

#### **IV.F. Programmatic Reviews**

Policy documents, regulations, etc. are generated at the State or National level and many Federal Register Notices are treated as programmatic reviews. HPP takes the lead on these reviews and will seek field input depending on the nature of the document. HPP may notify regional coordinators and supervisors of the review and give them the option to review and comment.

#### **IV.G. Commenting on Federal Trust Species**

Federal trust species are protected by federal statutes (Endangered Species Act, Migratory Bird Treaty Act, Eagle Protection Act etc.). Federal trust species are also State trust species. The State cannot abrogate its authority to manage State trust species. We exercise management jurisdiction over the species, regardless of its federal status. However, federal law may constrain the types of management actions that can be taken at the State level. The Department maintains primary knowledge, expertise, and data pertaining to most if not all federal trust species inhabiting Wyoming, and the U.S. Fish and Wildlife Service relies on the Department for this information and expertise. The Department's comments and recommendations pertaining to federal trust species should be based on the status of the species under Wyoming statutes, the Commission Mitigation Policy, and/or applicable cooperative agreements with the U.S. Fish and Wildlife Service. Project proponents should be referred to the U.S. Fish and Wildlife Service for direction on specific survey needs, protective restrictions, or other assistance relating to compliance with federal statutes. Where we have a vested interest or mandate as outlined above, personnel should decide how much time and effort is appropriate.

#### **IV.H. Activities on State Lands (SL)**

Opportunities for the Department to review and comment on activities affecting wildlife or habitats

on state land (SL) are very limited. Although we review Oil and gas leases on SL, only stipulations approved by the SL Board may be used. Field personnel will be consulted and in rare cases, we may ask for additional stipulations. We also review any actions or activities that may impact Sage-grouse Core Area habitats.

#### **IV.I Attorney General (AG) Affidavits**

Affidavits requested by the AG should be reviewed by appropriate Division Administrator and Director's Office prior to release.

#### **IV.J. Knowledge of Other State Agency Rules and Regulations**

There are instances when WGF's mission is counter to that of another agency. For example, grasshopper spraying by the WY Department of Agriculture may have adverse impacts on sage-grouse broods. WGF will need to be cognizant of the contradictions and carefully consider any review requests that may contradict another agency's rule or mission, especially as it pertains to actions on private lands.

#### **IV.K. Sage Grouse Core Areas**

Before authorizing projects or activities in Sage Grouse Core Areas, federal agencies will follow the coordination procedure outlined in the cooperative strategy instruction memorandum, which includes consultation with the Department. Refer to Attachment 1.

### **V. TECHNICAL AND OTHER RESOURCES TO BE USED IN DOCUMENTS**

#### **V. A. Technical Documentation**

The Department maintains several data sources, maps, guidance documents, and other references that can be consulted to provide technical justification for specific comments. The majority of these resources are available from the Biological Services Section of the Wildlife Division in Cheyenne and several are posted on the Habitat Protection Section's Intranet Home Page. Individual biologists generally maintain copies of data and other information specific to their districts, and regional offices also maintain resource data. Biologists are encouraged to support comments by making references to appropriate technical information when it is available. Data sets, reports, and maps maintained by Biological Services and Habitat Protection Section include:

- Wildlife Observation System (geographical database)
- Job Completion Report Database (big game harvest and population statistics)
- Electronic Versions of Job Completion Reports
- Annual Completion Reports
- Small, Upland Game, and Big Game Annual Harvest Survey Reports
- Seasonal Range Maps
- Sage-grouse Maps (now available in digital format)
- National Wetland Inventory Maps (available in digital format)  
<http://www.fws.gov/wetlands/data/mapper.html>
- Atlas of Birds, Mammals, Reptiles and Amphibians in Wyoming
- Nongame Bird and Mammal Plan

- State Wildlife Action Plan
- State Habitat Plan
- Wyoming Wetlands Conservation Strategy and regional step-down plans there under
- Other WGFD/Division Plans and Reports

When appropriate, references to scientific journal articles and other sources can greatly strengthen comments. This is particularly important if a federal agency or company questions the likelihood of a particular impact (e.g., displacement from roads, noise effects), or mitigation recommendation (e.g., wetland mitigation ratios). Biologists' familiarity with literature varies, so it is often helpful to "share" expertise. For example, someone's prior comments on a similar project may contain useful scientific references. It is legitimate and encouraged to "borrow" applicable references from other comments. Bibliographical references of disturbance literature have also been compiled in various studies and guidelines (e.g., references section of "Recommendations for Development of Oil and Gas Resources in Important Wildlife Habitats," etc.). In addition, the Wyoming Interagency Spatial Database & Online Management (WISDOM) is accessible from the Habitat Link on the WGFD Home Page. WISDOM contains the most recent land management and wildlife datasets and is available for both public and WGFD internal use.

#### **V. B. Legal/Scientific Documentation**

Personnel who develop policy interpretations or review programmatic documents such as legislative proposals occasionally need to research and cite legal references including statutes, regulations, policies, orders, directives, handbooks, guidelines, cooperative agreements, instructional memoranda, and so forth. For the most part, field personnel should focus on technical issues associated with each project. However, a working knowledge of applicable statutes and regulations will help the biologist write more effective comments, better understand the constraints and capabilities of agency programs, and negotiate more effectively at meetings. On more than one occasion, a federal regulation has been misapplied by the lead agency. Knowledge is the best defense. Therefore, it is useful to review the laws, policies, and regulations that govern the specific activities under review. Where appropriate and necessary, citations can be included, however HPP does not require legal citations to accompany most technical comments.

Federal program guidance, including statutes and regulations, can be accessed through links or searches from most agency home pages. The National Environmental Policy Act, Clean Water Act, and regulations of the Council on Environmental Quality (CEQ) can be accessed from the home page of the Environmental Protection Agency ([www.epa.gov](http://www.epa.gov)). Information about other, major federal programs in Wyoming can be accessed through the following web sites:

- [www.blm.gov](http://www.blm.gov) (Bureau of Land Management) Federal Land Policy and Management Act  
Oil and Gas Regulations, Grazing Regulations, other Land Use Regulations  
BLM Handbook, BLM Instructional Memoranda  
Onshore Oil and Gas Order No. 1
- [www.fs.fed.us](http://www.fs.fed.us) (U.S. Forest Service)  
Multiple Use and Sustained Yield Act  
Forest Management Act  
Forest Management Prescriptions, Policies



- [www.fws.gov](http://www.fws.gov) (U.S. Fish and Wildlife Service) Federal Endangered Species Act
  - Convention on International Trade in Endangered Species
  - Migratory Bird Treaty Act
  - Wildlife Refuge Improvement Act
  - Fish and Wildlife Service Handbook
  - Vertebrate Policy on Distinct Population Segments, Other Policies
- [www.usace.army.mil](http://www.usace.army.mil) (U.S. Army Corps of Engineers)
  - Section 404 of the Clean Water Act
  - 404(b)(1) Guidelines
  - Section 10 of the Rivers and Harbors Act [www.usbr.gov](http://www.usbr.gov) (U.S. Bureau of Reclamation)
  - General Information on Bureau of Reclamation Programs
- [www.fhwa.dot.gov](http://www.fhwa.dot.gov) (Federal Highway Administration)
  - National Transportation Equity Act for the 21<sup>st</sup> Century
  - Various Directives and Policy Memorandums
- [www.osmre.gov](http://www.osmre.gov) (Federal Office of Surface Mining)
  - Surface Mining Control and Reclamation Act of 1977
  - Federal Surface Mining Regulations
- [www.nrcs.usda.gov](http://www.nrcs.usda.gov) (Natural Resources Conservation Service)
  - Swampbuster Provision of the Food Security Act
  - Conservation Reserve Program, Grassland Reserve Program, Wetland Reserve Program, Wildlife Habitat Incentives
- [www.usda.gov](http://www.usda.gov) (U.S. Department of Agriculture)
- [www.ferc.gov](http://www.ferc.gov) (Federal Energy Regulatory Commission)

## Attachment 1: Step-by-step Cooperative Strategy for Use of Web-based Density and Disturbance Calculation Tool (DDCT)

BLM Sage-grouse Update No. 10: STEP-BY-STEP COOPERATIVE STRATEGY FOR USE OF WEB-BASED DENSITY AND DISTURBANCE CALCULATION TOOL (DDCT)”

[http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/SG\\_NEWSLETTER100004555.pdf](http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/SG_NEWSLETTER100004555.pdf)



### United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office  
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In Reply Refer To:  
6840 (930) P

June 11, 2013

EMS TRANSMISSION: 6/12/13  
Instruction Memorandum No. WY-2013-035  
Expires: 09/30/2014

To: District Managers and Deputy State Directors

From: State Director

Subject: Step-by-step Cooperative Strategy for Use of Web-based Density and Disturbance Calculation Tool (DDCT)

**Program Area:** All programs

**Purpose:** This Instruction Memorandum (IM) transmits the workflow procedures for use of the web-based Wyoming Density and Disturbance Calculation Tool (DDCT) for Greater Sage-Grouse and guidance for its use in Bureau of Land Management (BLM) Wyoming Field Offices (FO). This guidance supplements the flowchart included as WY IM No. 2012-019 Greater Sage-Grouse Habitat Management Policy on BLM Wyoming administered public lands including Federal Mineral Estate, Attachment 4, and replaces the manual included as Attachment 5. The purposes of the web-based tool are to (1) assist FO specialists in calculating levels of disturbance within Greater Sage-Grouse Core Areas, as defined by the Wyoming Governor's Sage-Grouse Implementation Team, and (2) to maintain a central repository for all existing and proposed disturbances within the Core Areas. Specifically, this IM provides guidance on the workflow coordination between the technical review and the policy review for each DDCT project, the use of the web-based DDCT tool, and the accompanying most current Sage-Grouse Executive Order (SGEO) Worksheet (see <https://ddet.wygisc.org/Data/Sites/24/files/Worksheet.pdf> and [https://ddet.wygisc.org/Data/Sites/24/files/worksheet\\_questions.pdf](https://ddet.wygisc.org/Data/Sites/24/files/worksheet_questions.pdf)). The BLM Wyoming State Office will conduct periodic review of the implementation of Directives contained in this IM to determine their applicability and effectiveness and make changes as necessary.

**Policy/Action:** It is the policy of BLM Wyoming to manage Greater Sage-Grouse habitats in support of management objectives set by the Wyoming Game and Fish Department (WGFD). The following procedures (Attachment 1 or most recent version that is located at <https://ddet.wygisc.org/ddet-procedure.aspx> or direct download at

[https://ddct.wygisc.org/Data/Sites/24/files/DDCT\\_Procedures.pdf](https://ddct.wygisc.org/Data/Sites/24/files/DDCT_Procedures.pdf)), worksheet (Attachment 2 or most recent version located at <https://ddct.wygisc.org/Data/Sites/24/files/Worksheet.pdf> and [https://ddct.wygisc.org/Data/Sites/24/files/worksheet\\_questions.pdf](https://ddct.wygisc.org/Data/Sites/24/files/worksheet_questions.pdf)), and workflow diagram (Attachment 4) are consistent with separately issued guidance for BLM WY IM No. 2012-019 and with guidelines and recommendations provided for in the Wyoming Governor's Sage-Grouse Implementation Team's Core Population Area Strategy and the most recent Wyoming Governor's Executive Order (EO) 2011-5 (or subsequent direction).

It is the goal of BLM Wyoming to continue to work toward the long-term conservation of Greater Sage-Grouse habitats in Wyoming through coordination with partners, including the Governor's Office of the State of Wyoming, the WGFD and the U.S. Fish and Wildlife Service (USFWS), and to also utilize input from the Resource Advisory Council (RAC), Local Sage-Grouse Working Groups (LWGs), the BLM cooperators and stakeholders through a process that includes the immediate implementation of the following measures and statements.

**Instructions for the use of the web-based DDCT (see also Attachment 4):**

For any new activity or development proposal submitted to or proposed by a BLM Wyoming Field Office:

- 1) The Federal agency specialist determines whether the project is in a Greater Sage-Grouse Core or Connectivity Area.
  - a. If the project is located within a Core or Connectivity Area, is the project an activity that is listed as Exempt ("de minimus") Activities" listed at <https://ddct.wygisc.org/ddct-cap-faqs.aspx>
    - i. If yes, then no DDCT is necessary and analysis of impacts will continue as provided for in the National Environmental Policy Act.
    - ii. If no, then:
      1. The specialist notifies the project lead that a DDCT will be required.
      2. The specialist notifies the Application and Data Steward at WyGISC ([wygiscweb@uwyo.edu](mailto:wygiscweb@uwyo.edu)), from here on referred to as Data Steward, of the existence of the project.
  - b. If the project is not located within a Core or Connectivity Area, then no DDCT is necessary and analysis of impacts will continue as provided for in National Environmental Policy Act.

- 2) The project lead, working with the project proponent, determines who will complete the DDCT.
  - a. If it is determined that the BLM specialist will complete the DCCT, proceed to step 3.
  - b. If it is determined that the proponent/contractor will complete the DDCT, proceed to step 4.
- 3) The BLM specialist uses the DDCT process to determine whether or not the project proposal is consistent with guidelines contained in SGEO and WY IM No. 2012-019 or subsequent Resource Management Plan (RMP) Revisions/Amendments:
  - a. Obtain and review:
    - i. All proposed disturbance locations associated with the proposed action, including the best estimate of infrastructure location/needs.
    - ii. Disturbance areas typically associated with the proposed disturbances (i.e. ROW width, well pad size, etc.).
    - iii. Any reclaimed/suitable habitat areas (those that were determined to be or calculated as disturbed in previous DDCTs and are now reclaimed to suitable or trending toward suitable in cases of wildfire – see <https://ddct.wygisc.org/ddct-cap-faqs.aspx> - Wildfires within a DDCT, Suitable Sage-Grouse Habitat Definition, Vegetation Monitoring for Suitability Criteria, etc.).
    - iv. Any additional information that may be helpful to delineate proposed disturbances.
  - b. Register and/or access the Wyoming Density/Disturbance Calculation Tool (<https://ddct.wygisc.org>) to log project and obtain an assigned project number.
  - c. Within the web application, digitize or upload the proposed project. The tool will generate the project assessment area boundary (i.e., DDCT boundary).
  - d. Verify all existing disturbances are included and/or digitize any existing disturbances not yet accounted for within the project assessment area by digitizing disturbance using the web application or by uploading ArcGIS shapefiles.
    - i. If necessary conduct additional onsite visits. Make project adjustments in order to minimize/co-locate disturbances and/or address other project conflicts.

- ii. Using the web application, modify disturbances to reflect the final project proposal. This can be accomplished by either uploading only the changes that occurred or by uploading an entirely new file that replaces the original. If the proposed project size/shape/overall location changes, a new DDCT boundary will need to be generated and existing disturbances verified.
  - e. Complete the entire SGEO Worksheet, providing as much detail as possible. NOTE: This worksheet serves as the primary means of documentation of EO compliance and must contain information addressing every question.
  - f. Notify the Field Manager/Resource Advisor/Wyoming State Office, as necessary, if any potential EO compliance issues arise.
  - g. Submit the DDCT results for technical review and the completed worksheet to the Data Steward.
    - i. If the project proposal is incorrect (missing information, existing disturbance not digitized, etc.), the Data Steward will return the project to the specialist to correct and resubmit. The Data Steward will use Mapbook as a means to communicate general submission and/or correction needs via easily downloadable pdf maps.
  - h. Once the Data Steward determines the submissions is technically correct, he/she submits the Mapbook, final DDCT results, and completed worksheet to the WGFD Habitat Protection Program (HPP) for policy review.
  - i. WGFD HPP will coordinate with other state agencies and the Federal permitting agency as needed to resolve any EO compliance issues.
  - j. WGFD HPP will send a letter to the Federal agency and copy the response to the project proponent.
- 4) The project proponent / consultant uses the DDCT process to determine whether or not the project proposal is consistent with guidelines contained in SGEO and WY IM No. 2012-019 or subsequent RMP Revisions/Amendments:
  - a. Register and/or access the Wyoming Density/Disturbance Calculation Tool (<https://ddet.wygisc.org>) to log project and obtain an assigned project number.
  - b. Using the web application, digitize or upload the proposed project. The tool will generate the project assessment area boundary (i.e., DDCT boundary).

- c. Within the web application or in ArcGIS, obtain current compiled existing disturbance data. Review the existing disturbance files. Verify all existing disturbances are included and/or digitize any existing disturbances not yet accounted for within the project assessment area as preliminary disturbance.
- d. The project proponent/consultant will notify the BLM that the preliminary DDCT process is complete.
- e. The BLM specialist notifies the Data Steward that the project should be moved from proponent /contractor ownership to BLM ownership.
- f. The BLM specialist reviews the preliminary DDCT, working with the proponent to resolve any discrepancies.
  - i. The BLM will conduct any necessary additional onsite visits and make project adjustments in order to minimize/co-locate disturbances and/or address other project conflicts.
  - ii. Using the web application, the BLM specialist will modify disturbances to reflect the final project proposal. This can be accomplished by either uploading only the changes that occurred or by uploading an entirely new file that replaces the original. If the proposed project size / shape / overall location changes, a new DDCT boundary will need to be generated and existing disturbances verified.
- g. The project proponent/consultant will complete the SGEO Worksheet, providing as much detail as possible and submit it to the BLM specialist. NOTE: This worksheet serves as the primary means of documentation of EO conformance and must contain information addressing every question.
- h. The BLM specialist will submit the DDCT results for technical review and the completed worksheet to the Data Steward.
- i. The Data Steward performs a technical review:
  - i. If the project proposal is incorrect, (missing information, existing disturbance not digitized, etc.) the Data Steward will return the project to the BLM specialist.
  - ii. The BLM specialist will work with the proponent to resolve the discrepancies and, once resolved, will resubmit it to the Data Steward. The Data Steward will use Mapbook as a means to communicate general submission and/or correction needs via easily downloadable pdf maps.

- j. Once the Data Steward determines the submission is technically correct, he/she submits the Mapbook, final DDCT results, and completed worksheet to the GFD Habitat Protection Program (HPP) for policy review.
- k. WGFD HPP will coordinate with other State agencies and the Federal permitting agency as needed to resolve any EO compliance issues.
- l. WGFD HPP will send a letter to the Federal agency and copy the response to the project proponent.

**Monitoring Effectiveness:** It is extremely important that the directives contained in this IM are followed as a monitoring tool for compliance with the most current EO and WY IM No. 2012-019 or subsequent RMP Revisions/Amendments. BLM Wyoming Field Offices are to establish additional monitoring protocols that will be incorporated into individual project approvals as appropriate and necessary.

**Deviations from the Policy and Strategy:** This statewide policy is intended to provide consistent use of the web-based DDCT for Greater Sage-Grouse habitat management on BLM administered public lands including Federal mineral estate in Wyoming and ensure that existing and proposed disturbances within Core Areas are compiled in one central, frequently updated, location. Because Wyoming is a diverse state, there may be occasional circumstances which could justify deviation from the policies stated herein. In all cases, prior to actions where deviations from policy may take place, FOs will coordinate with WGFD counterparts and advise the Deputy State Director for Resources Policy and Management (WY 930) and the Deputy State Director for Minerals and Lands (WY 920) through the District Office of their intent to take such actions. The purpose of such notification and interaction is to ensure State Office awareness of the number and type of such actions, and not to request advance WY BLM State Office approval for such actions.

**Timeframe:** Effective immediately.

**Budget Impact:** The effect on the budget should be minimal as this guidance helps provide a consistent approach across Field Offices to managing a Candidate species.

**Background:** Governor Matthew Mead of the State of Wyoming issued Executive Order 2011-5 on June 2, 2011. In February 2012, the WY BLM State Office issued revised instruction to the field through Instruction Memorandum (IM) WY-2012-019, which adopts the core strategy of the State and provides guidance to the field concerning the implementation of the core area conservation strategy on BLM public lands and mineral resources. Since that time, the WY BLM, in partnership with the WGFD, WyGISC, the Wyoming Sage-Grouse Implementation Team, and others, has worked in close coordination to address many questions and to resolve difficult issues related to the direction set forth in these documents.

Based upon these experiences, it has become necessary to establish a clear and consistent approach to BLM use of the web-based DDCT. This IM provides guidance and direction to BLM Wyoming Field Offices to maintain that consistent step-by-step approach for use of the web-based DDCT.

**Manual or Handbook Sections Affected:** No BLM manual or handbook sections are affected.

**Coordination:** This IM was coordinated among the BLM Wyoming Field Offices, the Wyoming Office of Governor Mead and the Wyoming Game and Fish Department.

**Contacts:** Jennifer Morton, BLM WY Greater Sage-Grouse Program Lead at (307) 775-6090 or Buddy Green, Deputy State Director, Resources Policy and Management at (307) 775-6113.



**4 Attachments:**

- 1-DDCT Process (23 pp.)
- 2-Sage-Grouse Executive Order 2011-5 DDCT Worksheet (7 pp.)
- 3-Sage-Grouse Executive Order 2011-5 DDCT Worksheet Questions (3 pp.)
- 4-DDCT Workflow Diagram (3pp.)

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cc:

Johanna Munson, National Sage-Grouse Project Manager (930)