

Suzanne Steab - Wildlife Buffer Team Meeting

From: Suzanne Steab
To: Bailey, Carmen; Bates, Bill; Bezzant, Gary; Bonebrake, Bruce; Bonzo,...
Date: 6/1/2010 11:32 AM
Subject: Wildlife Buffer Team Meeting
CC: Daron Haddock; Ingrid Wieser; Jim Smith; Joe Helfrich
Attachments: RaptorSurveyProtocol.pdf; REVISEDTech-009Wildlife Exclusionary Periods.pdf; FinalCo Fish FWSProtocol.pdf; WBTMemo.pdf

Attached is a Memo giving details of the upcoming Wildlife Buffer Team Meeting scheduled for June 15, 2010 from 9:00 a.m. to Noon at the Price Field Office.

Also attached are documents which will be addressed at the meeting.

If you have any questions or comments in the interim, please email or call Joe Helfrich at (801) 538-5290 joe Helfrich@utah.gov or Ingrid Weiser at (801) 538-5318 ingridweiser@utah.gov.

We look forward to seeing you. Thanks.

Subject: Wildlife Buffer Team Meeting
Created By: SUZANNESTEAB@utah.gov
Scheduled Date:
Creation Date: 6/1/2010 11:32 AM
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Attachments: Wildlife Buffer Team Meeting



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GARY R. HERBERT
Lieutenant Governor


State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

June 1, 2010

TO: Wildlife Buffer Team Meeting Attendees

FROM: Daron R. Haddock, Coal Program Manager 

SUBJECT: Colorado Fish Recovery, Raptor Survey Protocol and Wildlife Protection and Enhancement guidance documents, Outgoing File

The Division has completed an internal review of the Colorado Fish Recovery, Raptor Survey Protocol and Wildlife Protection and Enhancement guidance documents. Representatives from the Bureau of Land Management, (BLM), Forest Service, (FS), US Fish and Wildlife Service, (FWS), Division of Wildlife Resources, (DWR), and School and Institutional Trust Lands, (SITLA) also participated in the review as members of the Wildlife Buffer Team.

These documents are guidance documents designed to assist the Division, State and Federal Agencies, members of the Mining communities and private industry in addressing the requirements of the Utah Coal Regulatory Program

You are invited to attend the Wildlife Buffer Team meeting on Tuesday, June 15th, 2010 at the DNR Price Field Office from 9:00 Am to 12:00 PM. The meeting is intended to solicit your input about the Colorado Fish Recovery guidance document, and time permitting the Raptor Survey Protocol and Wildlife Protection and Enhancement guidance documents. Kevin McAbee from the FWS and Joe Helfrich and Steve Christensen from DOGM will provide a brief overview of the Colorado Fish Recovery guidance document.

In the interim please email or direct your questions and comments to Joe Helfrich, (801 538-5290, joehelfrich@utah.gov) or Ingrid Wieser, (801 538-5318, ingridwieser@utah.gov). Please let us know if you plan on attending.

We look forward to your participation.

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RAPTOR SURVEY GUIDELINES

Utah Coal Regulatory Program

Purpose

The purpose of this document is to:

- A) Provide the coal industries with a guideline for conducting raptor surveys,
- B) Ensure accurate and consistent data acquisition and reporting, and
- C) When completed and endorsed by other agencies used as an Agency Procedure

This is a cooperative document between the Division of Oil, Gas and Mining, the Division of Wildlife Resources and the U.S. Fish and Wildlife Service. This is a working document in which the procedures will be refined and updated as needed.

Background

The Bald and Golden Eagle Protection Act prohibits the "take" of bald and golden eagles. The Act defines "take" to mean kill, molest or disturb. "Disturb"¹ means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" (50 CFR 22.3). A violation of the Act can result in a fine of \$100,000 (\$200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.

The Migratory Bird Treaty Act implements four bilateral agreements between the United States and Canada, Mexico, Japan and Russia to protect migratory birds. This Act also prohibits the unlawful taking of migratory birds, which includes any attempt at hunting, pursuing, wounding, killing, possessing or transporting any migratory bird, nest, egg, or part thereof. Most birds in Utah are protected by the Act as well as their parts, nests, or eggs. All of Utah's raptors are protected by this Act.

Utah law also protects wildlife existing within the state, except those held by private ownership and legally acquired (Utah Code Section 23-13-3). Sections 23-30-3, 23-20-4

¹ The term "disturb" under the Eagle Act was recently defined via a final rule published in the Federal Register on June 5, 2007 (72 Fed. Reg. 31332). This term now covers impacts that result from alterations that were started near a nest site during a time when eagles are not present if, upon the eagle's return, those alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and cause injury, death or nest abandonment

and 23-20-4.5 make illegal the taking, transporting, selling, purchasing or wanton destruction of protected wildlife.

The Utah Administrative Code Annotated (R645-301-358.300) states that coal mining and reclamation operations are prohibited from the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973 or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 et seq. The coal mine operator must avoid and minimize disturbance and adverse impacts to wildlife species protected by state or federal law and describe in the mining and reclamation plan how this will be accomplished (R645-301-333).

Coal Mines have the potential to "take" eagles or other migratory bird species in several ways including direct or indirect disturbances to their nest, roosts, or food sources resulting from mining related disturbances due to:

- Subsidence;
- Surface facilities;
- Exploration drilling; or
- Gas or ventilation holes or openings.

In order to prevent the "take" of eagles and other raptor species in past years the mines in conjunction with DWR have typically conducted annual helicopter surveys. The Division of Oil, Gas and Mining (DOGGM) has accepted those surveys, as adequately addressing raptor survey needs. Even though The Division of Wildlife Resources (DWR) is no longer conducting surveys, the mines are still required to provide the necessary information to demonstrate a "take" is being prevented. This document is meant only as a guideline; prior to conducting surveys, a DOGGM biologist should be contacted to discuss specific project details. Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances (Romin and Muck 2002) guidelines are incorporated into these suggested procedures.

General Survey Guidelines

Survey methodology should be designed to inventory the species expected within the habitat to be disturbed. Aerial or ground survey methodologies target different raptor species and are used to collect different types of data. Appendix C lists recommended survey methodologies and typical nesting substrates for specific raptor species. Most coal operators are interested in nest locations and presence/absence data during the nesting season. Survey methodology should be designed by a qualified raptor biologist and reviewed on a case-by-case basis with DOGGM in coordination with DWR, the US Fish and Wildlife Service (FWS), and the surface land management agency. Survey methods will be incorporated into the mining and reclamation plan. To be consistent with State AGRC standards, coordinates should be provided in UTM zone 12, NAD83.

Subsidence

Raptor surveys should be conducted to identify nest locations in areas where subsidence is possible. Aerial surveys are typically conducted.

1. Conduct survey for two years prior to permit issuance to determine resource.
2. Repeat surveys in subsidence zones prior to mining and then again two years post mining or until subsidence has ceased to verify no impact.
3. Surveys are best performed in May to determine nest status.
4. Survey information required,
 - i.) Species
 - ii.) Nest location
 - iii.) Nest status (active, inactive, tended, dilapidated...)
 - iv.) Additional information as shown in Appendix A is desirable but not required.
5. Raptor data are confidential and should not be shared with the public. The data must be submitted to DOGM and DWR. In the future, the data may be directly entered into an online database.
 - i) In an electronic format, suitable for uploading into ArcGIS (shapefiles).
 - ii) In a map format showing mine panels, subsidence boundary, dates of anticipated or completed mining activity, and nest locations indicating species, activity etc.

Surface facilities

Raptor surveys² for long-term surface facilities placement should be conducted to identify species, locate nests, winter roosts, and other important habitat so they can be avoided.

1. Conduct spring nesting and winter roosting surveys for three years prior to permit issuance to determine resource.
2. Survey within the spatial buffer of the target species (refer to Romin and Muck, 2002) at the proposed facility.
3. Nesting surveys are best performed in May to determine nest status.
4. Bald Eagle Roost surveys should be conducted in January within winter roosting habitat.
5. Survey information required
 - i) Species
 - ii) Nest location
 - iii) Bald Eagle Roost location
 - iv) Nest status (active, inactive dilapidated...)
 - v) Additional information as shown in Appendix A.
6. The initial survey should be an aerial and ground survey; however, this will depend on terrain of proposed facilities and raptor species targeted. Follow-up surveys may be ground if the status of the nest can be accurately determined.

² A prey-based survey may also be required, especially if applying for an incidental take permit.

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7. A qualified wildlife biologist should be retained to annually inventory and document raptor nesting and winter roosting status within the one-mile disturbance radius.
 8. If a surface facility is inactive before the site is reclaimed another survey will be required prior to the start of reclamation activities. These surveys should include the surface structures such as conveyors and buildings as well as surrounding terrain.

Exploration drilling

Exploration drilling is generally a one-time short duration occurrence. The surface management agency needs to be contacted for specific survey requirements and to determine if existing data are available. If nest locations are known aerial or ground surveys can verify nest status so that appropriate spatial and season buffers can be determined. Generally, plan exploration drilling between August and November to avoid seasonal buffers.

Gas or Ventilation Holes or Openings

1. Conduct spring and winter surveys for one year prior to permit issuance to determine resource.
2. Survey within the spatial buffer of the target species (refer to Romin and Muck, 2002) at the proposed facility.
3. Nest surveys are best performed in May to determine nest status.
4. Bald Eagle Roost surveys should be conducted in January within winter roosting habitat.
5. A prey-based survey may also be required.
6. Survey information required
 - i) Species
 - ii) Nest location
 - iii) Bald Eagle Roost location
 - iv) Nest status (active, inactive dilapidated...)
 - v) Additional information as shown in Appendix A.
7. The initial survey should be an aerial and ground; however this will depend on terrain of proposed facilities and raptor species potentially present. Follow-up surveys may be ground if the status of the nest can be accurately determined.
8. A qualified wildlife biologist should be retained to annually inventory and document raptor nesting and winter roosting status within the one-mile disturbance radius.

Protocol

The following protocol has been developed in consultation with DOGM, DWR and FWS.

Qualifications: Individuals responsible for designing and conducting the survey should have a Bachelor or higher degree in Wildlife Biology or a related discipline and experience in raptor behavior and excellent raptor identification skills. The act of surveying has the potential to disturb or molest the species surveyed and the qualified biologist will be responsible to prevent "take" during the survey. Safety of the surveyors and the birds are more important than obtaining all of the data attributes. All surveyors must attend the Utah Raptor Identification and Survey training, held annually by the US Fish and Wildlife Service. (For more information please contact the Division of Oil, Gas and Mining.) Qualified individuals should have a good working knowledge of GIS and GPS tools. Qualification statements or resumes must be submitted to DOGM prior to the survey.

Aerial Surveys

Golden Eagle and cliff nesting raptor surveys need to be initiated as close to May 10 as possible. This date will prevent "take" since eagle chicks have generally hatched and parent birds are less likely to abandon the nest. Surveys need to be completed by June 1 to ensure that the chicks are young enough that they will not be prematurely flushed from the nest by the disturbance.

Survey participants for aerial surveys historically included four members: the pilot, a company representative (scribe), a navigator, and a spotter/identifier (biologist). At least three people should be present. The navigator and spotter need to be qualified individuals as noted in the previous section of this document who can properly identify raptor species.

It is recommended that the navigator use moving-map type GPS technology to navigate during the survey to ensure adequate coverage of the survey area, navigate and identify known nests, and accurately record the location of newly discovered nests. Software that has been proven effective for these types of surveys include: ArcPad, Fugawi, Xmap, and National Geographic Map. These programs should show a topological map of the area, the surveyor's real-time location on the map, the locations of the known raptor nests and the track that the survey has covered.

The spotter/identifier finds new nests and birds; and assists in finding the known nest as the navigator explains its location on the computer. Once the nest is located, the spotter/identifier confirms the species, determines nest status and other information using the terms and data fields listed on the attached tables.

The company representative or scribe ensures that the area within 1 mile of the affected or potentially impacted area is thoroughly surveyed. The scribe records the information

listed on the attached table, i.e. nest number, date, time, species, status of the nest, nest type (i.e. cliff, tree...), number of eggs, number of young, age of young, and any additional comments that are deemed necessary, preferably in an electronic format on the GPS.

For active territories, the surveyor(s) must conduct a second survey to gather productivity data. The productivity survey should be conducted when the young have reached acceptable fledging age (51 days old) but have not yet left the nest. All nests in which occupancy or breeding status could not be collected during the presence/absence survey should be revisited at this time. The surveyor(s) must analyze the productivity data by calculating the percent of eagle pairs laying eggs.

GPS track logs should be recorded and submitted to DOGM as well as photographs of the nest. When a new nest not in the database is found, a point of that nest should be taken with a GPS handheld, or the Trimble Laser Pointer. At a minimum, latitude and longitude coordinates must be submitted to DOGM. Each new nest will be assigned an original nest ID # given by DWR.

Ground Surveys

Ground surveys generally target tree and ground nesting species and are used when there is adequate road access. Some species, including Northern Goshawk, Mexican Spotted Owl and Burrowing Owl, require a ground or calling survey. When used to inventory remote or cliff habitat they generally require more time than aerial surveys. Surveyors must obtain a permit from FWS before surveying for Mexican Spotted Owls

Survey methodology should be designed by a qualified raptor biologist and reviewed on a case-by-case basis with DOGM in coordination with DWR, the US Fish and Wildlife Service (FWS), and the surface land management agency. Ground surveys require all data collection as described in the aerial survey.

Species Specific Surveys

See Appendix B for a list of protocols.

Data Collection and Formatting

Surveyors must obtain existing survey data prior to conducting aerial or ground surveys. This information can be obtained by contacting DWR at 801 538 5700 and filling out the requisite release forms. In addition, the applicant needs to contact the Division to verify the necessary location and extent of the survey. This will assist in locating known nests and so that unique identifying numbers can be assigned to new nests.

After field data has been collected all GPS tracks need to be downloaded into separate company or mine files, and all collected nest data needs to be added to the master database.

After all newly collected data and new nest information has been entered into the master database, the data should be imported into ArcGIS and saved as a shapefile or other compatible geospatial file.

Survey data are confidential and should not be shared with the public. The data must be submitted to DOGM in the following formats.

- 1.** In an electronic format, suitable for uploading into ArcGIS.
- 2.** A report with photographs and a map format showing all surface facilities and pertinent raptor use area, an appropriate size buffer (.25-1 mile depending on species), nests indicating species and status.

BIBLIOGRAPHY

Pagel, J.E., D.M. Whittington, and G.T. Allen. 2010. Interim Golden Eagle technical guidance: inventory and monitoring protocols; and other recommendations in support of eagle management and permit issuance. Division of Migratory Bird Management, U.S. Fish and Wildlife Service.

Romin, L.A. and J.A. Muck. 2002. Utah Field Office guidelines for raptor protection from human and land use disturbances. U.S. Fish and Wildlife Service unpublished report.

**APPENDIX A
RAPTOR SURVEY FORM**