



United States Department of the Interior

FISH AND WILDLIFE SERVICE
East Lansing Field Office (ES)
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EPA REGION 5

September 25, 2008

Mr. Stephen Roy, Geologist
U.S. Environmental Protection Agency WU-16J
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Re: Endangered Species List Request: Proposed Treated Water Infiltration System for the Kennecott Eagle Minerals Company Mine, US Environmental Protection Agency Underground Injection Control Permit #MI-103-5W20-002.

Dear Mr. Roy:

We are responding to your e-mail of June 30, 2008, requesting an updated list of threatened and endangered species for the above referenced project. An update on the status of coaster brook trout was also requested in the June 2008 e-mail, and during a follow up phone conversation between you and Christie Deloria, of my staff. Your request and this response are made pursuant to the Endangered Species Act of 1973, as amended (Act).

According to the information provided, you are reviewing a permit application for a Treated Water Infiltration System (TWIS) associated with the proposed Kennecott Eagle Mine in Marquette County. The TWIS would allow an average of 116,640 gallons of treated water to infiltrate into the ground. The TWIS would be located in T50N, R29W, Section 12 in Marquette County.

Kirtland's warbler and Canada lynx

Our records indicate that Kirtland's warbler (*Dendroica kirtlandii*) and Canada lynx (*Lynx canadensis*), both on the federal list of threatened and endangered species, may occur at or near the proposed project site. If these species are present in the action area, you should assess the impacts of the proposed project on these species. First, the Kirtland's warbler, an endangered species, was detected within three miles of the project site during the 2006 and 2008 Kirtland's warbler census. Kirtland's warblers utilize young (4 – 20 year old or < 10 feet tall), dense stands of jack pine that are interspersed with tree-less openings. We recommend determining whether this type of habitat occurs within the action area of the project. If the action area contains potential habitat, please conduct a survey during late May to late June to detect the presence of

male Kirtland's warbler. We can assist you in the planning and techniques if a survey occurs. If a survey indicates Kirtland's warblers are present, you should determine how the proposed project would affect the Kirtland's warbler.

Second, the Canada lynx's range includes the proposed project site. Currently, the best available information, including historic records and recent surveys, indicates that Canada lynx, if present, in the Upper Peninsula are likely limited to a small number of dispersing individuals. Therefore, we believe, an assessment for potential effects to lynx is prudent.

As lynx are wide ranging and difficult to detect at low population numbers, we generally use habitat conditions to indicate whether Canada lynx could be present. Canada lynx utilize a variety of habitat types and are typically found where snowshoe hares or red squirrels are abundant. For more details on lynx habitat, we recommend visiting our website (<http://www.fws.gov/midwest/endangered/section7/s7process/lifehistory.html>). If potential lynx habitat is identified in the action area, you should determine how the proposed project would affect the Canada lynx.

Action Area and Endangered Species Effects Determination

Under section 7 of the Act, Federal agencies must analyze the effects of their actions on listed species and critical habitat within the action area. "Action area" is defined as all areas to be affected directly or indirectly by the Federal action, and not merely the immediate project footprint. "Effects of the action" refers to both the direct and indirect effects of an action, plus the effects of any interrelated or interdependent actions. Interrelated actions are defined as part of the proposed action, and depend on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the proposed action. You can identify the interdependent or interrelated actions by asking the question "But for the TWIS what other activities or actions could not take place?" You should identify any interrelated and interdependent activities and determine the action area for the TWIS. Identification of potential Kirtland's warbler habitat should be made for the entire action area. Subsequent Kirtland's warbler surveys should be conducted in these potential habitat areas. For Canada lynx, the same action area should be reviewed for suitable habitat.

If Kirtland's warblers or Canada lynx habitat are found within the proposed action area, you should determine how the proposed project would affect these listed resources. There are three conclusions that could be reached as a result of the determination: *no effect*, *not likely to adversely affect* and *likely to adversely affect*. A "*no effect*" determination means your assessment revealed that the proposed action would have no effect whatsoever on listed resources. A "*not likely to adversely affect*" determination is reached if the proposed action would have any beneficial, insignificant, or discountable effects, and a "*likely to adversely affect*" determination should result if any direct or indirect adverse effects can be identified that are not insignificant or discountable.

If your effects determination concludes that the project will have no effect on listed resources, you should document this in your file. A concurrence letter from our office is not needed. If your effects determination concludes that listed resources may be affected (positively or

negatively) by the proposed action, you should initiate section 7 consultation with our office. If the effects determination concludes that listed resources are not likely to be adversely affected as a result of the proposed action, you must obtain written concurrence from us. If, however, you determine that listed resources are likely to be adversely affected as a result of the proposed action, you should initiate formal consultation with our office.

For additional information about the Kirtland's warbler, Canada lynx or the Environmental Protection Agency's responsibilities under section 7 of the Act, please refer to our endangered species technical assistance website, located at

<http://www.fws.gov/midwest/endangered/section7/index.html>.

Coaster Brook Trout

On March 1, 2006 we received a petition from the Sierra Club Mackinac Chapter and the Huron Mountain Club to list the coaster brook trout as an endangered species and to designate critical habitat. On March 20, 2008 we found that the petition provided substantial information which prompted a status review of this form of brook trout. At the conclusion of the status review we will issue a 12-month finding on the petition which is due to be published in the federal register by December 15, 2008. For more information on the coaster brook trout, Service actions related to the petition, or periodic updates on the status review, please visit our website at:

<http://www.fws.gov/midwest/eco%5Fserv/soc/fish/cobr/index.html>.

In reviewing requirements under section 7 of the Act, only species that are federally listed as endangered or threatened, species proposed for listing, designated critical habitat, or areas proposed as critical habitat must be considered during consultation. As the coaster brook trout is not a listed species nor is it proposed for listing, EPA has no responsibility under the Act to consider impacts of the proposed project on this species. If this or another species is proposed for listing or becomes listed during the permit period, you should reinitiate consultation with this office.

We appreciate your concern for endangered and threatened species. If you have questions or need further information please contact Christie Deloria of our U.P. sub-office at 906/226-1240 or <christie_deloria@fws.gov>.

Sincerely,



Craig A. Czarnecki
Field Supervisor

cc: Jessica Hogrefe, USFWS, Twin Cities, MN