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9 May 2024

Ms. Deeanne Meliopoulos
Wildlife Biologist
Northern New Mexico Refuge Complex
United States Fish and Wildlife Service (USFWS)

RE: Maxwell Burn; NMERT Project No. NMERT-3475

Dear Ms. Meliopoulos,

The New Mexico Department of Game and Fish (Department) has reviewed your 6 May 2024 submission of the Maxwell burn project to the New Mexico Environmental Review Tool (NMERT). An auto-generated project report is available for your review in the NMERT.

In addition to the recommendations in the project report, the Department recommends the following for the proposed herbicide application on the Maxwell National Wildlife Refuge:

- To mitigate the potential for herbicide drift into sensitive aquatic and native riparian habitats, the Department recommends applying a minimum buffer of 250 ft (if using aerial spraying) or 20 ft (if using ground spraying) around all aquatic habitats and native riparian vegetation in the proposed treatment area.
- Apply herbicides directly to target plants, rather than broadly to large areas, whenever possible to avoid harming nearby non-target or native vegetation.
- Avoid herbicide spraying on days when wind speeds are high.
- Use the lowest concentration possible that will still allow for achievement of the desired result.
- Avoid applying herbicides to and removing vegetation that is being used by birds for nesting. When nesting birds may be present in target vegetation in the project area, herbicides should be applied outside of the breeding bird season (April – September).
- In areas dominated by undesired or non-native plants, habitat loss may occur if herbicide is applied to the entire area, resulting in a total loss of vegetation. To avoid this, apply herbicides in a mosaic pattern, alternating treated and non-treated sites between years.

- The Department recommends not using herbicides that contain the following chemicals that have been found to be slightly to highly toxic to wildlife including birds, fish, and pollinators: 2,4-D, dichlobenil, dichlorprop, fluazifop, glyphosate, oxyfluorfen, propyzamide, quizalofop, sulfometuron, and triclopyr (Michael 2002).

The Least Shrew (*Cryptotis parva*) was recently documented in the project area. Thus, the Department recommends that all native vegetation be avoided during the proposed herbicide application and other project activities. With the implementation of this avoidance measure, and the recommended native vegetation buffer mentioned above, the Department does not anticipate adverse effects to the Least Shrew. The Department requests that any sightings of the Least Shrew be reported to the Department's Nongame Mammal Biologist, James Stuart (james.stuart@dgf.nm.gov).

All migratory birds are protected against direct take under the federal [Migratory Bird Treaty Act](#) (16 U.S.C. Sections 703-712), and hawks, falcons, vultures, owls, songbirds, and other insect-eating birds are protected under New Mexico State Statutes (17-2-13 and 17-2-14 NMSA), unless permitted by the applicable regulatory agency. To minimize the likelihood of adverse impacts to migratory birds, nests, eggs, or nestlings, the Department recommends that ground disturbance and vegetation removal activities be conducted outside of the primary migratory bird breeding season of April 15-September 1. Breeding season may begin earlier for raptors or when working in low-elevation habitats such as deserts. If ground disturbing and clearing activities must be conducted during the breeding season, the area should be surveyed for active nest sites (with birds or eggs present in the nesting territory) and avoid disturbing active nests until young have fledged. For active nests, establish adequate buffer zones to minimize disturbance to nesting birds. Buffer distances should be at least 100 feet from songbird and raven nests; 0.25 miles from most raptor nests; and 0.5 miles for Ferruginous Hawk (*Buteo regalis*), Golden Eagle (*Aquila chrysaetos canadensis*), Peregrine Falcon (*Falco peregrinus*), and Prairie Falcon (*Falco mexicanus*) nests. Active nest sites in trees or shrubs that must be removed should be mitigated by qualified biologists or wildlife rehabilitators. Department biologists are available to consult on nest site mitigation and can facilitate contact with qualified personnel.

The list of [New Mexico SGCN](#) (see link, page 14, table 5) and the federal list of [Birds of Conservation Concern](#) should be reviewed to fully evaluate potential effects to migratory birds from your proposed project. Federal agencies are also required under Executive Order 13186 to implement standards and practices that lessen the amount of unintentional take attributable to agency actions. These conservation measures are strongly recommended to ensure persistence of migratory bird species whose populations are small and/or declining within New Mexico.

Thank you for the opportunity to review your project. Please contact Jack Marchetti, Aquatic/Riparian Habitat Specialist, at jack.marchetti@dgf.nm.gov or (505) 479-1269 if you have any questions.

Sincerely,

Virginia Seamster, Ph.D.
Assistant Chief for Technical guidance

References

Michael, J.L. 2002. Impact of herbicides on the forest ecosystem, aquatic ecosystems and wildlife: the American experience. *Revue Forestiere Francaise* 6:593-608.