



*The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.*

February 25, 2013

Wyoming Field Office  
US Fish and Wildlife Service  
5353 Yellowstone Road, Suite 308 A  
Cheyenne, WY 82009

To Whom It May Concern,

Following are the Wyoming Department of Agriculture's (WDA) comments regarding the US Fish and Wildlife Service's (USFWS) Draft Revised Recovery Plan (Revised Plan) for the Kendall Warm Springs Dace (Dace).

Our comments are specific to our mission within state government: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this plan impacts our agriculture industry, our natural resources, and the welfare of our citizens, we believe it is important you continue to inform us of proposed actions and decisions and continue to provide us the opportunity to express pertinent issues and concerns.

WDA appreciates the USFWS in their efforts to develop a plan to protect and delist the Dace from the Endangered Species Act (ESA). We offer the following comments regarding the Plan:

**Executive Summary:**

The "Original and Approved" Plan is dated July 12, 1982. The current Revised Plan is developed with a five year timeline. WDA urges the USFWS to provide background information of why a plan is developed for only five years if the plans are not updated every five years. Also, the Revised Plan lacks specific and pertinent information of what the USFWS has accomplished since the 1982 Plan.

- **Current Species Status:** The USFWS states *"The species has a Recovery Priority Number of 12C indicating that it is a subspecies with a moderate degree of threat and low recovery potential and may be in conflict with development projects."* We believe the Revised Plan as written provides a false sense of hope for delisting the Dace, when the population only occurs in 984 feet of stream length, in a single location. We would rather the USFWS openly convey the unlikelihood of ever removing the Dace from the ESA List.

The USFWS should include a habitat assessment in the Recovery Plan conveying the actual holding capacity of the Dace. The 984 feet of stream can only sustain a certain population size even with all the threats removed.

The last sentence of the first paragraph states, *"The number of fish present in the population has never been accurately estimated; however, population trend data indicate a decline over the last decade."* Then on page xiii, section (3), it states, *"The naturally-occurring KWS dace population is not experiencing a downward trend in abundance."* WDA urges the USFWS ensure the Recovery Plan utilizes baseline data and current population trends before stating the population is declining.

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- Total Estimated Cost of Recovery Table: WDA does not support the table provided by the USFWS. The table conveys a nearly \$2 million price tag and only a five year timeline will delist the Dace from the ESA List. We are unaware of the USFWS delisting any species for only \$2 million or in a five year timeline. We would instead, support the USFWS to develop a more realistic table estimating the cost of maintaining the Dace as an endangered species for the next 50 years.

**Background:**

Page 2, first line states, *"The KWS dace is confined to one stream approximately 328 yards..."* but later in the paragraph it states, *"The stream, fed solely by the warm springs, is 984 feet..."* We encourage the USFWS ensure the Recovery Plan is consistently using the same measurements throughout.

Page 3, fourth paragraph provides information regarding the Gryska and Hubert 1997 study where dace regularly drift from the Kendall Warm Springs, over the waterfall, and into the Green River. We urge the USFWS to inventory the Green River for Kendall Warm Springs Dace. Is it possible the Dace adapts to conditions in the Green River? The USFWS should tag Dace to more thoroughly understand the lifecycle and ability to adapt to conditions outside the Kendall Warm Springs.

Page 7, last paragraph states, *"KWS dace have declined in the stream from 1997 through 2011."* This statement contradicts the comment above regarding the lack of an accurate population estimate.

**Threats:**

- Livestock: Page 15 first paragraph discussing the presence of livestock in Dace habitat. The paragraph lacks specific scientific studies to offset statements such as, *"Livestock use of the stream is known to increase the quantity of toxic chemical (e.g., nitrates, ammonia levels from manure and urination of the large grazing animals in the stream."* WDA insists the USFWS removes this statement from the Recovery Plan. We also ask the USFWS to provide specific incidents when livestock have gained access into the enclosure, as well as water quality analysis results indicating the water quality levels were in fact at toxic levels due to livestock.

While we appreciate and support the USFWS analyzing livestock as a low threat to Dace due to the enclosure, we question why the USFWS intentionally excludes analyzing the possibility of wild ungulates, such as moose, elk, or deer freely entering the enclosure and possibly degrading water quality or stream banks.

- Herbicide/Pesticide Use: If the USFWS actually approves chemically treating noxious and invasive weeds under Section 7 in consultation with the US Forest Service, we recommend transparency in listing out what chemicals are approved, how often they are applied, what results are achieved, and the basic application methods in relation to application restrictions according to the chemicals' labels.
- Deleterious Effects of Research Efforts: Page 19, first sentence states, *"By visual observations from the stream-side, the population appears robust."* Again, this statement, lacks any scientific merit, and contradicts previous statements indicating a population decline.

**Existing Regulatory Mechanisms:**

The third paragraph, page 21 discusses the implementation of the enclosure fence to keep livestock out of Dace habitat. The following statement in the middle of the paragraph states, *"However, livestock have occasionally gained access to the springs for watering."* We ask the USFWS to include specific information regarding the type of materials used, such as buck and rail, barbed wire, etc. Also, provide the year the enclosure was first established, as well as document the dates and number of livestock which have gained access to the enclosure. The WDA believes the USFWS and the US Forest Service

should consider allowing livestock grazing to occur in the enclosure on an agreed upon timeline to remove decadent vegetation, remove weeds and reduce fine fuels to reduce fire.

#### **Summary of Threats Table:**

Page 15 first paragraph states *"Since this is a historic threat that has been minimized by excluding livestock from the KWS dace habitat, we rank the overall threat level for this threat as low."* However, page 29, *"Excluding livestock from habitat"* on page 29 is marked as a "Moderate" threat. We recommend adjusting the table to indicate livestock as a "Low" threat.

Further down, the table reveals *"Vandalism"* as a moderate threat. Similar to our request documenting livestock gaining access to Dace habitat, we ask the USFWS to also document the types of vandalism, the number of incidents, and how these incidents impacted the Dace habitat.

#### **Recovery Strategy**

- Reclassification to Threatened, page 31: The section discusses the USFWS' ability to reclassify the Dace from Endangered to Threatened based on three criteria, including the threat of fracking fluids. We ask the USFWS to have specific and scientific data indicating the distance required to eliminate the risk of fracking fluid entering the Kendall Warm Springs. We also question the ability to develop an appropriate "no drilling zone" or the possibility to scientifically prove a decrease in the water table from oil and gas development.
- Delisting, page 31: The section discusses the USFWS' ability to delist the Dace from ESA List based on a five criteria.
  - 1) *"The population of KWS dace and its habitat are shown to be protected from present and foreseeable threats to the point where listing is no longer required through implementation of activities including stewardship, protection of groundwater in the springs recharge zone, and ensuring adequate regulatory enforcement."* What are considered "foreseeable," and is this a tangible target?
  - 2) *"A viable population..."* If the USFWS lacks adequate baseline data, population trends, and current populations, how can your agency determine what is "viable?"
  - 3) *"Necessary administrative measures are implemented to ensure flows are maintained."* What are "administrative measures?" Does an earthquake or other geological shift causing reduced flow constitute a threat to ensuring flows are maintained?
  - 4) *"Captive KWS dace populations are established...Populations will consist of the number of individuals and pairs that will ensure the maintenance of long-term genetic diversity..."* We insist the USFWS establish concrete captive population requirements and not leave this open for interpretation and litigation.
  - 5) *"Invasive Species, if present..."* The USFWS uses the term "invasive" on page 31, however, later on page 34 the term "exotic" is used. We recommend not interchanging and using one term throughout the Recovery Plan. Additionally, we ask how the USFWS could ever control this threat with 100% certainty. Does the USFWS expect 100% certainty throughout the five criteria before delisting could occur? This comment refers back to our original comment concerning developing a five year Recovery Plan and spending \$2 million on a species, when the USFWS has no intent or ability to delist.

#### **Recovery Actions:**

The USFWS provides 8 criteria for recovery on page 32: 1) *protection of habitat*, 2) *exotic species*, 3) *genetics*, 4) *captive populations/refugia*, 5) *monitoring*, 6) *adaptive management*, 7) *life history studies*, and 8) *cooperation with stakeholders/agencies*. We request the USFWS provides a comprehensive list of activities of what has been done to-date, as well as the timelines to accomplish each of the tasks.

Page 33 discusses the need to develop a habitat enhancement plan. WDA noticed the Recovery Plan requires six plans, including the habitat enhancement plan: 1) Watershed Plan, 2) Catastrophe Plan, 3) Genetics Management Plan, 5) Captive Introduction Plan, and 6) Post-delisting Monitoring Plan. WDA believes six plans are excessive. Additionally, should the USFWS ever get to a delisting decision, each plan creates an easy opening for environmental organizations to litigate based on an underdeveloped plan.

**Genetics:** Page 35, first paragraph states, *"It is possible that the dace in KWS has undergone bottleneck effects as a result of its use as baitfish from the 1930s to the 1960s..."* What baseline data does the USFWS have to make this assumption? If the genetic diversity is in-fact, low, what can the USFWS do to alleviate this? Will lack of genetic diversity be yet another point for environmental organizations to litigate on?

**Implementation Schedule:**

We appreciate the USFWS developing a table with timelines to delist the Dace. However, we again believe, the five-year timeline is completely unobtainable. We strongly discourage the USFWS to proceed with this table. We instead recommend revising the table with a 50-year timeline, indicating a maintenance plan, with realistic dollar amounts and current staffing to fulfill the tasks proposed.

We appreciate the opportunity to comment and encourage you to contact us with any questions or comments.

Sincerely,



Jason Fearneyhough  
Director

JF/jw

CC: Governor's Policy Office  
Wyoming Board of Agriculture  
Wyoming Stock Growers Association  
Wyoming Wool Growers Association  
Wyoming Farm Bureau Federation  
Wyoming State Grazing Board  
Wyoming Association of Conservation Districts  
Wyoming Game and Fish Department