

Appendix K: Endangered Species and Fire Policy Clarification: US Fish & Wildlife Service Consultation Memorandum

Memorandum FWS/RF95-00209

United States Department of the Interior

FISH AND WILDLIF SERVICE WASHINGTON, D.C. 20240

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FWS/RF95-00209 Memorandum

To: Regional Directors, Regions 1-7

From: Director

Subject: Endangered Species and Fire Policy Clarification

The following policy clarification is provided to address the relationship between wildfire suppression and the conservation of candidate, threatened and endangered species. This information should prove useful to you in your work with other land management agencies and as it applies to the management of service lands.

This discussion should begin with some overriding principles:

1. Of paramount importance is the safety of the firefighters. No constraints for protection of endangered species or their habitat will be considered if they place firefighters in danger. **FIREFIGHTER SAFETY COMES FIRST ON EVERY FIRE, EVERY TIME.**
2. Incident Management Teams are responsible for suppressing fires. Their expertise will provide the foundation for determining the type and intensity of response actions during a fire. On large fires, Incident Commanders are accompanied by Resource Advisors to provide information about resources at risk from the fire.
3. The opportunity and utility of prescribed fire in ecosystem management is the best way to reduce the threats of catastrophic wildfires.
4. It is the responsibility of all concerned, Fish and Wildlife Service and our cooperators, to protect life and property.

Consultation with the Fish and Wildlife Service

Several questions have been raised about the need to enter into consultation under Section 7 of the Endangered species Act and how that consultation process affects the ability to respond to wildfires. There is no need to consult on the wildfire itself. Fire can and often does destroy endangered species and alters critical habitat. However, fire itself is considered a disaster or an act of God in the sense of 50 CFR 402.05.2.

Consultation is conducted on the agency response to wildfires for those actions under control of the consulting agency. However, these consultations are in a special category, Emergency Consultations, and are handled in a very expeditious manner.

Typically, the consulting agency contacts the Fish and Wildlife Service by telephone if a wildfire is determined to be close to an endangered species, territory and response actions may affect the species or habitat. These contacts can be done by telephone, at numbers that the Fish and Wildlife Service will provide. **YOU DO NOT NEED TO DELAY RESPONSE TO A WILDFIRE FOR THIS CONTACT. IT CAN BE SIMULTANEOUS OR AT YOUR EARLIEST POSSIBLE CONVENIENCE.** At this time, an emergency consultation number is provided and any information concerning the fire documented by the Fish and Wildlife Service. Subsequent calls to the Fish and Wildlife service can add information. An estimate of "incidental take" of the endangered species can often be discussed, if specific information is known.

There have been instances where the location of a fire camp or some other aspect of emergency fire management activities has resulted in the unanticipated take of an endangered species. Some agencies appear reluctant to go forward with an action once a "take" situation has been identified. This is counterproductive. It is recognized by all concerned that no one wants to deliberately cause the take of an endangered species. However, if an action is determined to be necessary to control a wildfire, save lives and/or property, and ensure that fire crews can do their jobs safely and efficiently, and then it is appropriate to act even if it results in the take of an endangered species. The term is "incidental take," with the emphasis on "incidental." It is not a question of deliberate taking of the endangered species. These results are recognized as incidental to the purpose of your action, which is to respond to the wildfire and protect the safety of the response teams. The take is only for actions responding to a wildfire; those endangered species or critical habitats lost from the fire itself are not counted as take attributable to the consulting agency.

Fish and Wildlife Service personnel should provide as accurate information concerning the endangered species as possible, including the potential for take. Consulting agency personnel should document the take, and not assume that the action cannot be accomplished if take is involved. After the wildfire is suppressed, a written report can be provided and consultation concluded.

Wildfire

Informal consultation with the Fish and Wildlife Service should take place during the development of the consulting agency's "Fire Management Plan." Endangered species concerns can be identified before a wildfire starts, and specific pre-attack suppression strategies can be anticipated that best address endangered species needs. This will provide the initial attack Incident Commander important information and facilitate the development of the Escaped Fire Situation Analysis (EFSA), if necessary.

The EFSA is an accepted and effective means of identifying all resource considerations, including endangered species and their critical habitats. The EFSA identifies the appropriate suppression actions to be taken. Appropriate suppression actions can include the entire range of activities normally implemented; slurry, backfires, helicopters, line construction. If those actions might affect endangered species, one must utilize the procedures of emergency consultation. However, NEVER delay the measures needed to protect the lives of fire crews waiting for that consultation. We would all like the time to fully weigh alternatives and gain expert opinions. In the case of wildfire suppression and fire crew safety, the expert opinions are on the fire line. If you have to wait until after the initial attack for the time to contact the Fish and Wildlife Service, by all means, then wait.

Fire Retardant -Aerial borne fire retardant, usually over large-scale landscapes, may be applied with or without surfactant and can be applied at any time from dawn to dusk under suitable conditions. These activities have the potential to affect the

endangered species or its critical habitat. It is expected that the planes may disturb individuals; the retardant may disrupt breeding or foraging activities and, in the extreme, may result in the take of endangered species. However, the purpose of its application is to conserve the critical habitat.

Backfires -Tactical tools such as backfire/burnout may be used to halt the forward spread or to secure a piece of constructed line through removal of unburned fuels between you and the fire. Though applied under conditions of control to avoid further forward spread of the main wildfire, backfires can destroy some critical habitat. It is recognized that backfires may adversely affect endangered species habitat and perhaps take endangered species, but in comparison to the loss of habitat, territories, and endangered species caused by the wildfire not being suppressed, these losses can be considered of lesser severity.

Helicopters -Under certain conditions, helicopters are used to implement bucket drops, personnel transportation, cargo delivery and retrieval, firing operations (burnout/backfire), and fire reconnaissance. When a known endangered species territory is in the area, attempts to avoid disturbance will be made. However, helicopter use will be directed under the constraints of safety for helicopter crew and ground personnel. Impacts to endangered species by helicopters during fire suppression activities have to be considered within the context of all other ground activities and the fire itself.

Line construction -Either by hand or by machinery, line construction could conceivably require the removal of critical habitat in order to contain a fire. These decisions are best made on the ground. However, when possible, the Resource Advisor and the Incident Management Team should be involved.

Fire Camp placement -The primary concern is firefighter safety. Fire camp placement should NEVER compromise firefighter safety. If placement can avoid adverse impacts to listed species or critical habitats without compromising firefighter safety or fire fighting effectiveness, then camps should be sited to avoid or decrease those adverse impacts.

As previously stated, each of these actions may result in the take of an endangered species or adversely affect its habitat. However, none of these actions is taken without consideration for the ultimate goal of saving wildland resources through containment and suppression of ongoing wildfire threatening those resources.

Prescribed Fire

The value of fire as a component of natural ecosystems is well accepted. Climate, combined with increased fuel loadings, can present a scenario where conditions easily escalate to catastrophic. Given the present conditions of fire dependent communities, the immediate future could bring about wildfires beyond anything seen in the past. The approach of instituting programmatic prescribed burning is a positive step toward acknowledging fire's role in an ecological approach to management of wildland resources. The increased use of prescribed fire and other tools will be needed to reduce fuel loads and the probability of catastrophic, stand replacing crown fires. Prescribed fire whether Management Ignited Prescribed Fire (MIPF) or Prescribed Natural Fire (PNF) is a planned resource management activity no different than any other management activity and subject to consultation. Prescriptions identified in approved MIPF or PNF plans are generally designed to address endangered species needs, avoid high fire severity, and would not likely be found to jeopardize the endangered species.

Informal consultation with the Fish and Wildlife Service is perhaps the best and most efficient vehicle for review of "Prescribed Fire Plans" and their application to maintain ecosystem viability for endangered species.