

**United States  
Department of Agriculture  
Forest Service**

**United States  
Department of Interior  
Fish and Wildlife Service**

**United States  
Department of Interior  
National Park Service**

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Memorandum

To: All Field Supervisors, Forest Supervisors, and Park Superintendents

From: Regional Director, Region 6 (USFWS)  
Deputy Regional Forester, Region 2 (USFS)  
Regional Director, Intermountain Region (NPS)

Subject: **Emergency Consultation under the Endangered Species Act**

We are jointly issuing this memorandum to affirm and outline the procedures our agencies will use to meet our responsibilities to endangered species without compromising human safety during emergency response activities on our respective administrative units.<sup>1</sup> The procedures here apply to all designated units and personnel for the Fish and Wildlife Service (USFWS) Region 6 (see attachment for applicable states), Forest Service (USFS) Region 2 (all Forests and Districts), and National Park Service (NPS) Intermountain Region (Colorado and Wyoming only). These procedures are intended to be consistent with existing USFS, NPS, and USFWS regulations, policies, and interim guidelines for emergency consultation as defined by the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 et seq.), including the Endangered Species Act Section 7 Consultation Implementing Regulations (50 CFR 402.05), the Endangered Species Act Section 7 Consultation Handbook (chapter 8), the Forest Service Manual (FSM § 2671.45f and 5130), USFWS memorandum FWS/RF95-00209 (September 21, 1995), USFWS memorandum “Emergency Consultations for Wildfire Suppression Activities” (Wyoming, May 20, 2003), and applicable NPS direction. We emphasize pre-planning as one of the most effective ways to deal with emergency situations.

Current regulations recognize that Federal agency responses in certain emergency situations that may affect endangered species may require expedited consultation. An emergency is a situation involving an act of God, disasters, casualties, national defense or security emergencies, etc., and includes proposed or actual response activities that must be taken to prevent imminent loss of human life or property. USFS, NPS, and USFWS are committed to avoiding and minimizing the effects of these responses to federally listed species and designated critical habitat where possible.

*Human safety is the highest priority for every emergency response action.* The policy of the three agencies remains unequivocal that when emergency response and endangered species issues overlap, under no circumstances should the emergency response action be delayed in order to contact the USFWS and initiate or continue an emergency consultation. Appropriate USFS and NPS personnel retain authority to make the decision as to when USFWS should be contacted.

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<sup>1</sup> Our reference to “endangered species” or “listed species” refers to any species or habitat that is listed or proposed for listing under the Endangered Species Act of 1973 (as amended).

Consistent with FSM § 2671.45f / 5130 and NPS direction, USFS and NPS will seek to address predictable emergency actions in project planning. To facilitate this, our agencies will maintain and share updated information on endangered species for use in emergency planning. NPS and USFS biological resource staffs should be engaging their USFWS counterparts *before emergencies happen*, to fully identify options and opportunities for addressing endangered species in pre-emergency and emergency response actions. These communications should include information sharing about endangered species' status, distribution, and management considerations specific to local management units (Park, Forest, District). Key emergency response personnel on our units (e.g. fire managers) should also be involved in early communications, in order to be aware of the location of endangered species issues. At that time, they can also help identify and incorporate into their planning any feasible response scenarios or management options in the event of an emergency. Staffs should assure that existing consultation agreements between our agencies are known and incorporated into emergency planning, such as the USFS's *Guidelines for Aerial Application of Fire Retardant and Foams in Aquatic Environments*.

Planning for emergencies should also include direction that USFWS be notified of an emergency when it happens. Upon contact, USFWS personnel may provide recommendations to minimize and avoid adverse impacts to endangered species. These recommendations should be brought to the attention of the Incident Commander or other appropriate emergency response line officer by the relevant biological staff/resource advisor for consideration in the response planning process. The Incident Management Team personnel managing the emergency should consider the recommendations of USFWS in light of other factors such as firefighter safety, available resources, and planner forecasts. USFS and NPS personnel should collaborate with their USFWS contact and conduct section 7 consultation as soon as practical after the emergency is under control when endangered species have been affected by the incident and response. In situations that overlap state boundaries, the USFS and/or NPS consulting officials should contact the most appropriate USFWS field office (per instructions below). The USFWS field office will then coordinate with other states and the USFWS Regional Office as necessary.

Burned Area Emergency Rehabilitation (BAER) activities are also considered emergency actions under section 7 of the ESA. During the emergency, BAER teams should be in contact with FWS while developing BAER plans that may adversely affect listed and proposed species or their habitat. The FWS will provide suggestions on how to avoid or minimize those effects. The BAER team leader may also consider inviting a FWS representative to participate in the initial field review to assess effects of the incident on listed species and identify ongoing concerns for consideration in BAER planning and project prioritization. It is not necessary that BAER plans be sent to the FWS immediately upon completion. However, if time and conditions permit (i.e. there is no risk to life) and a proposed BAER project has potential to adversely affect listed or proposed species or designated or proposed critical habitat, the BAER plan should be shared with the FWS. As soon after the emergency as is practical, there is a need to close consultation with written documentation. This can be done on a per-fire basis or by agency agreement by batching multiple fires, and can include assessments of both the suppression activities and the BAER treatments for each fire. BAER activities should be documented and effects determinations made for listed and proposed species and designated and proposed critical habitat. Documentation should include a description of the emergency (fire), rationale for the expedited consultation, and an evaluation of the impacts of the fire and of the BAER response, together with a discussion of how any FWS recommendations were implemented and their results. We highly recommend contact with the FWS prior to submitting information, so that any other issues or information needs may be addressed immediately and will not delay consultation. Since BAER activities are designed to mitigate effects of the fire, there usually will not be adverse effects to listed species and the consultation likely will be minimal and informal. However, in those infrequent cases where BAER activities resulted in adverse effects, formal consultation would be required. Restoration activities that are not conducted during or immediately after the

emergency, or are not included in BAER plans, are not considered emergency actions. ESA consultation should follow normal procedures in those cases.

Attached to this Memorandum are specific contact personnel across our agencies. These are the people identified by the units as the appropriate 'emergency contacts' for the situations described in this memo. Many of these contacts have expressed willingness to share home and cell phone numbers with their interagency counterparts for after-hour emergencies. Individual USFS (Forest/Grassland) and NPS (Park) units will be responsible for contacting the appropriate USFWS field offices for their state and completing the contact information to have readily available for future emergency situations. These personnel will also be responsible for confirming annually the contact information. This should be done early each year and a copy sent to the Regional contact (see below).

Please share this memo widely on your units to be sure all appropriate resource staffs, fire staffs, and other appropriate emergency response managers are aware of, and following, these procedures. We expect that broad understanding and use of these procedures and emergency contacts will ensure that human safety will not be compromised when emergency incidents overlap endangered species issues on our administrative units. Further questions about this memo or emergency consultation procedures can be directed to Cay Ogden, NPS (303/ 969-2929, cay\_ogden@nps.gov), Peter McDonald, USFS (303/ 275-5029, petermcdonald@fs.fed.us), or Ari Cornman (303/ 236-7400 x 277, ari\_cornman@fws.gov).

Signed By:

*/s/ JC Wessels (for)*  
Karen P. Wade  
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*/s/ Richard Stem*  
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Deputy Regional Forester, Region 2  
USDA Forest Service  
*June 13, 2003*

*/s/ Ralph O Morgenweck*  
Ralph O. Morgenweck  
Regional Director, Region 6  
U.S. Fish and Wildlife Service  
*June 24, 2003*