



## FOREST SERVICE MANUAL NATIONAL HEADQUARTERS (WO) WASHINGTON, DC

### FSM 2600 - WILDLIFE, FISH, AND SENSITIVE PLANT HABITAT MANAGEMENT

#### CHAPTER 2670 - THREATENED, ENDANGERED AND SENSITIVE PLANTS AND ANIMALS

**Amendment No.:** 2600-2005-1

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**Duration:** This amendment is effective until superseded or removed.

**Approved:** FREDERICK NORBURY  
Associate Deputy Chief, NFS

**Date Approved:** 08/29/2005

**Posting Instructions:** Amendments are numbered consecutively by title and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this title was 2600-95-7 to 2670-2671.

<b>New Document</b>	2670-2671	22 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2670-2671 (Amendment 2600-95-7, 06/23/1995)	19 Pages

#### **Digest:**

2670.12 - Changes caption from "Secretary of Agriculture's Policy on Fish and Wildlife" to "U.S. Department of Agriculture Directives".

2671.45f - Incorporates the direction formerly issued in Interim Directive (ID) 2670-2002-1. Clarifies and expands policy and procedures regarding Endangered Species Act consultation with the Department of the Interior, Fish and Wildlife Service (FWS) and the Department of Commerce, National Oceanic Atmospheric Administration Fisheries Service (NOAA Fisheries) in emergency situations. Makes clear that human safety is the highest priority for every emergency response action, and under no circumstances should an emergency response action be delayed in order to contact FWS or NOAA Fisheries for initiating emergency consultation or during an ongoing consultation. This is consistent with the FWS and NOAA Fisheries Endangered Species Consultation Handbook direction on this topic.

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**Digest--Continued:**

Also adds cross-references to FSM 5130 for related direction on emergency responses involving wildland fire suppression.

2671.2 - Removes obsolete direction on requests for information from public and adds reference to FSH 6209.13 Freedom of Information/Privacy Act Handbook.

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## **2670.1 - Authority**

### **2670.11 - Endangered Species Act**

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, hereinafter referred to as the Act).

1. Section 2 declares that ". . . all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."
2. Section 5 of the Act directs the Secretary of Agriculture to "establish and implement a program to conserve fish, wildlife, and plants," including federally listed species.
3. Section 7 of the Act directs federal departments and agencies to ensure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of their critical habitats.
4. Joint Secretary of the Interior-Secretary of Commerce regulations on interagency cooperation (50 CFR part 402) pursuant to section 7 of the Act direct Federal agencies to consult with the Secretary of the Interior (on nonmarine species) or the Secretary of Commerce (on marine species) whenever an action authorized by such agency is likely to affect a species listed as threatened or endangered or to affect its critical habitat.
5. These regulations on interagency cooperation (50 CFR part 402) mandate conference with the appropriate Secretary whenever an action is likely to jeopardize the continued existence of any species proposed for listing as threatened or endangered, or whenever an action might result in destruction or adverse modification of critical habitat proposed for listing (16 U.S.C. 1536(a)4).

### **2670.12 - U.S. Department of Agriculture Directives**

Departmental Regulation 9500-4. This regulation directs the Forest Service to:

1. Manage "habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species."
2. Conduct activities and programs "to assist in the identification and recovery of threatened and endangered plant and animal species."
3. Avoid actions "which may cause a species to become threatened or endangered."

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## **2670.2 - Objectives**

### **2670.21 - Threatened and Endangered Species**

1. Manage National Forest System habitats and activities for threatened and endangered species to achieve recovery objectives so that special protection measures provided under the Endangered Species Act are no longer necessary.

2. Promote recovery efforts through Research and Development and State and Private Forestry programs.

### **2670.22 - Sensitive Species**

1. Develop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions.

2. Maintain viable populations of all native and desired nonnative wildlife, fish, and plant species in habitats distributed throughout their geographic range on National Forest System lands.

3. Develop and implement management objectives for populations and/or habitat of sensitive species.

## **2670.3 - Policy**

### **2670.31 - Threatened and Endangered Species**

1. Place top priority on conservation and recovery of endangered, threatened, and proposed species and their habitats through relevant National Forest System, State and Private Forestry, and Research and Development activities and programs.

2. Establish, through the Forest planning process, objectives for habitat management and/or recovery of populations, in cooperation with states, the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries), and other federal agencies.

3. Review, through the biological evaluation process, actions and programs authorized, funded, or carried out by the Forest Service to determine their potential for effect on threatened and endangered species and species proposed for listing.

4. Avoid all adverse impacts on threatened and endangered species and their habitats, except when it is possible to compensate adverse effects totally through alternatives identified in a biological opinion rendered by the Department of the Interior, Fish and Wildlife Service (FWS) or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries

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Service (NOAA Fisheries); when an exemption has been granted under the act; or when the FWS or NOAA Fisheries biological opinion recognizes an incidental taking. Avoid adverse impacts on species proposed for listing during the conference period and while their federal status is being determined.

5. Initiate consultation or conference with the FWS or NOAA Fisheries when the Forest Service determines that proposed activities may have an effect on threatened or endangered species; are likely to jeopardize the continued existence of a proposed species; or result in the destruction or adverse modification of critical or proposed critical habitat.

6. Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species. Protect individual organisms or populations from harm or harassment as appropriate.

### **2670.32 - Sensitive Species**

1. Assist states in achieving their goals for conservation of endemic species.
2. Review programs and activities as part of the National Environmental Policy Act of 1969 process through a biological evaluation, to determine their potential effect on sensitive species.
3. Avoid or minimize impacts to species whose viability has been identified as a concern.
4. Analyze, if impacts cannot be avoided, the significance of potential adverse effects on the population or its habitat within the area of concern and on the species as a whole. (The line officer, with project approval authority, makes the decision to allow or disallow impact, but the decision must not result in loss of species viability or create significant trends toward federal listing.)
5. Establish management objectives in cooperation with the states when projects on National Forest System lands may have a significant effect on sensitive species population numbers or distributions. Establish objectives for federal candidate species, in cooperation with the FWS or NOAA Fisheries and the states.

### **2670.4 - Responsibility**

#### **2670.41 - Chief**

The Chief of the Forest Service approves any recommendation to file for project exemptions under the Endangered Species Act of 1973, as amended.

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**2670.42 - Deputy Chief for National Forest System**

The Deputy Chief for National Forest System:

1. Approves final recommendations to the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service before the Forest Service implements recovery plans.
2. Approves Forest Service recovery strategies for all federally listed species with distributions in two or more regions.
3. Approves Forest Service recommendations for classification and declassification of species and for critical habitat determinations to the Department of the Interior, Fish and Wildlife Service or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service.
4. Assigns lead regional responsibilities for preparation of recovery strategies and for programs or activities requiring formal consultation where two or more regions are involved.
5. Approves the Forest Service portion of recovery objectives and completion dates for threatened, endangered, and sensitive species.

**2670.43 - Director of Watershed, Fish, Wildlife, Air and Rare Plants, Washington Office**

The Director, Watershed, Fish, Wildlife, Air and Rare Plants Staff, Washington Office:

1. Recommends Forest Service policies, programs, and procedures for conservation of endangered, threatened, proposed, and sensitive species of plants and animals on National Forest System lands or involving State and Private Forestry programs.
2. Identifies, in cooperation with Forest Service Research and Development, research needs for threatened, endangered, proposed, and sensitive species.
3. Coordinates Forest Service programs for the conservation of threatened, endangered, proposed, and sensitive species with other agencies, organizations, and groups concerned with management of and research on those species.
4. Coordinates with all concerned units the planning and management activities for species common to two or more regions.
5. Informs Regional Foresters, Station Directors, and Area Director of all status reviews, rulemakings, and other actions related to listed species and seeks their advice prior to submitting comments on these actions to the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service.

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6. Nominates Forest Service members to recovery teams for those species with distributions in two or more regions.

7. Interprets policy and regulations relative to lawsuits, appeals, and public inquiries regarding threatened, endangered, and sensitive species.

**2670.44 - Regional Foresters**

The Regional Foresters:

1. Formulate and coordinate the overall regional Threatened, Endangered, and Sensitive Species Programs to ensure compliance with law and policy.

2. Coordinate regional programs with states and other federal agencies, groups, and individuals concerned with the management of threatened, endangered, and sensitive species.

3. Ensure that Forest Service involvement in State and Private Forestry programs complies with requirements of law and policy.

4. Establish programs to determine which endangered, threatened, proposed, and sensitive plant and animal species occur on National Forest System lands and which species may be involved with State and Private Forestry programs.

5. Ensure that specific management objectives, and legal and biological requirements for the conservation of endangered, threatened, proposed, and sensitive plants and animals are included in regional and forest planning, and ensure that planning for those species common to two or more forests is coordinated among concerned units.

6. Recommend research needs for endangered, threatened, proposed, and sensitive species in the regions.

7. Develop Forest Service recovery strategies to implement approved Recovery Plans. Apportion recovery objectives among forests. In cooperation with the FWS and States, establish recovery objectives in the absence of, or interim to, approved Recovery Plans; integrate these objectives with regional and forest plans.

8. Identify and approve management strategies to achieve conservation.

9. Ensure that standards for biological evaluations are met (FSM 2672.42) for all regional programs and activities.

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10. Ensure that requirements pursuant to Section 7 of the Endangered Species Act of 1973, as amended are met for all regional programs and activities. Enter consultation or conference when requested by the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service. Initiate early consultation when requested by a prospective permit or license applicant.

11. Recommend classification (or declassification) of species and propose critical habitat designations.

12. Approve nominations of Forest Service representatives to recovery teams dealing with species occurring solely within the region. Nominate Forest Service candidates to recovery teams dealing with multi-regional species; the Washington Office Director of Watershed, Fish, Wildlife, Air and Rare Plants approves these nominations.

13. Inform Forest Supervisors of all status reviews, rule-makings, and other actions of the Department of the Interior, Fish and Wildlife Service or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service and state agencies related to listed species within their area of concern.

14. Approve the introduction or translocation of any federally listed species on National Forest System lands.

15. Approve closures of National Forest System lands as necessary to protect habitats or populations of threatened, endangered, proposed, or sensitive species (36 CFR 261.70).

**2670.45 - Forest Supervisors**

The Forest Supervisors:

1. Ensure that legal and biological requirements for the conservation of endangered, threatened, and proposed plants and animals are met in forest land and resource management planning; ensure compliance with procedural and biological requirements for sensitive species.

2. Develop quantifiable recovery objectives and develop strategies to effect recovery of threatened and endangered species. Develop quantifiable objectives for managing populations and/or habitat for sensitive species.

3. Make recommendations to the Regional Forester for critical or essential habitat designation on National Forest System lands.

4. Determine distribution, status, and trend of threatened, endangered, proposed, and sensitive species and their habitats on forest lands.



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5. Coordinate forest programs with other federal agencies, states, and other groups and individuals concerned with the conservation of threatened, endangered, proposed, and sensitive species.

6. Ensure that consultation and conferencing requirements pursuant to Section 7 of the Endangered Species Act of 1973, as amended are met in all forest programs and activities.

**2670.46 - District Rangers**

The District Rangers:

1. Ensure compliance with legal and biological requirements for the conservation of threatened, endangered, and proposed species in district land management and project planning; ensure compliance with procedural and biological requirements for sensitive species.

2. Identify, manage, and protect essential and critical habitats to meet legal requirements and recovery objectives for federally listed species; identify, protect, and manage habitat necessary to meet sensitive species objectives.

3. Coordinate district activities with interested state and federal agencies, groups, and individuals concerned with the conservation of threatened, endangered, proposed, and sensitive species.

4. Conduct necessary biological evaluations and notify the Forest Supervisor of those projects requiring formal or early consultation or conference with the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, Fisheries Service (NOAA Fisheries).

5. Prohibit the taking of threatened and endangered species of plants and animals except under FWS or NOAA Fisheries permits. Prohibit the collection or taking of sensitive plants except as authorized by regional policy.

**2670.5 - Definitions**

Adverse Effect. An action that has an apparent direct or indirect adverse effect on the conservation and recovery of a species listed as threatened or endangered. Such actions include, but are not limited to:

- a. Any action that directly alters, modifies, or destroys critical or essential habitats or renders occupied habitat unsuitable for use by a listed species, or that otherwise affects its productivity, survival, or mortality.
- b. Any action that directly results in the taking of a listed species. See Title 50 Code of Federal Regulations, Section 17.3 for an explanation of what constitutes a taking.

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c. Any action involving the disposal of land that is essential to achieving recovery objectives.

Biological Assessment. A "biological evaluation" conducted for major federal construction projects requiring an environmental impact statement, in accordance with legal requirements under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(c)). The purpose of the assessment and resulting document is to determine whether the proposed action is likely to affect an endangered, threatened, or proposed species.

Biological Evaluation. A documented Forest Service review of Forest Service programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed, or sensitive species.

Biological Opinion. An official report by the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) issued in response to a formal Forest Service request for consultation or conference. It states whether an action is likely to result in jeopardy to a species or adverse modification of its critical habitat.

Candidate Species. Those plant and animal species that, in the opinion of the FWS, may become endangered or threatened. These are documented in the FWS's program advice to its regional directors for preparation of listing packages or documented in a current Federal Register Notice of Review (categories 1 and 2) for threatened or endangered listing.

The FWS recognizes three categories of candidate species for listing as endangered or threatened:

a. Category 1 are taxa for which the FWS has substantial information on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently, data are being gathered concerning essential habitat needs, and for some taxa, the precise boundaries for critical habitat designations. Development and publication of proposed listing of these species is anticipated.

b. Category 2 are taxa for which information now in possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) are not currently available to support proposed listing.

c. Category 3 are taxa that are no longer being considered for listing as endangered or threatened and are not regarded as candidate species. There are three subcategories:

(1) Taxa for which the Department of the Interior, Fish and Wildlife Service has persuasive evidence of extinction.

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(2) Taxa that while represented in published revisions and monographs do not meet the Endangered Species Act of 1973, as amended definition of species on the basis of current taxonomic understanding.

(3) Taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject or any identifiable threat.

Conservation of Endangered Species. Efforts undertaken to bring a species to the point at which listing is no longer required.

Critical Habitat. Those areas designated as critical by the Secretary of the Interior or Commerce, for the survival and recovery of listed species (50 CFR Parts 17 and 226). Because use of the term has legal implications, the Forest Service limits its use to only those habitats officially determined as critical by the Secretary. See "Essential Habitat in this definitions section)."

Endangered Species. Any species in danger of extinction throughout all or a significant portion of its range. This does not include a species of the Class Insecta determined by the Secretary to be a pest whose protection under the provisions of the Endangered Species Act of 1973, as amended, would present an overwhelming and overriding risk to humans.

Essential Habitat. Those areas designated by a regional forester as possessing the same characteristics as critical habitat without having been declared as critical habitat by the Secretary of the Interior or Commerce. The term includes habitats necessary to meet recovery objectives for endangered, threatened, and proposed species and those necessary to maintain viable populations of sensitive species.

Fish and Wildlife. Any nondomesticated member of the animal kingdom including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, anthropod, or other invertebrate, and including any part, product, egg, or offspring, thereof, or the dead body or parts thereof.

Incidental Taking. A taking that the Department of the Interior, Fish and Wildlife Service or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service formally recognizes in a biological opinion as incidental to, and not for the purpose of, carrying out an otherwise lawful activity conducted by an agency or applicant.

Irreversible or Irretrievable Commitment of Resources. Any commitment of resources that has the effect of foreclosing any reasonable or prudent alternatives that would not result in jeopardy to a federally listed species.

Listed Species. Any species of fish, wildlife, or plant officially designated as endangered or threatened by the Secretary of the Interior or Commerce. Listed species are documented in 50 CFR 17.11 and 17.12.

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Plant. Any member of the plant kingdom, including seeds, roots, and other parts thereof.

Proposed Critical Habitat. Habitat proposed to be designated for the benefit of any listed or proposed species. Notice of proposed critical habitat appears in the Federal Register.

Proposed Species. Any species of fish, wildlife, or plant that is proposed by the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service to be listed as threatened or endangered.

Recovery Increment. Each identifiable unit of a recovery objective (FSM 2672.24a, ex. 01) toward meeting the total Forest Service portion of a recovery objective for a species (for example, occupied streams, number of animals).

Recovery Strategy. A written strategy to implement the Forest Service portion of recovery objectives identified in an approved Department of the Interior, Fish and Wildlife Service or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service Recovery Plan, or to implement interim Forest Service objectives in the absence of an approved Recovery Plan.

Sensitive Species. Those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by:

- a. Significant current or predicted downward trends in population numbers or density.
- b. Significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution.

Take. To harass, harm, pursue, hunt, shoot, wound, trap, or collect, or to attempt to engage in any such conduct. (For plants, see the following paragraph c.)

- a. Harass. An intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to an extent that significantly disrupts normal behavioral patterns, including, but not limited to, breeding, feeding, or sheltering.
- b. Harm. An act or omission that actually injures or kills wildlife, including acts that annoy it to an extent that significantly disrupts essential behavioral patterns, including, but not limited to, breeding, feeding, or sheltering. Harm includes significant environmental modification or degradation that results in direct death or injury.

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c. Collect. Used in the Forest Service to mean the same as "remove and reduce to possession", referring to the taking of plants. "Collect" means to remove a plant from the substrate in which it grows and to hold it as a person's own. Habitat alterations that might result in adverse effects on listed plants are covered under the requirements, governing consultation in section 7 of the Endangered Species Act of 1973.

Threatened Species. Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range and that the appropriate Secretary has designated as a threatened species. (Some states also have declared certain species as threatened through their regulations or statutes.)

Viable Populations. A population that has the estimated numbers and distribution of reproductive individuals to ensure the continued existence of the species throughout its existing range (or range required to meet recovery for listed species) within the planning area.

## **2671 - COOPERATION**

### **2671.1 - Cooperation With State Agencies**

The Forest Service cooperates with state agencies to inventory, protect, manage, and plan for threatened, endangered, proposed, and sensitive species. Inform the states of all formal consultations with the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service, and seek their participation in the consultation process. In State-Forest Service memorandums of understanding or cooperative wildlife and fisheries agreements, include provisions for cooperative management of threatened, endangered, proposed, and sensitive species.

### **2671.2 - Cooperation With the Public**

See FSH 6209.13, Freedom of Information Act/Privacy Act Handbook, for direction on requests for information from the public.

### **2671.3 - Cooperation With Other Department of Agriculture Agencies**

A Forest Service representative serves on the Endangered Species subgroup of the Department of Agriculture's Fish and Wildlife Issues Working Group, which is under direction of the Natural Resources and Environment Committee of the Secretary's Policy and Coordination Council. The Endangered Species subgroup, which includes representatives of other departmental agencies, is responsible for formulating Department of Agriculture policy and providing program coordination for endangered and threatened species.

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**2671.4 - Cooperation With Fish and Wildlife Service and National Marine Fisheries Service**

**2671.41 - Interagency Agreement**

See FSM 1531.6 for the interagency agreements between the Forest Service and the Department of the Interior, Fish and Wildlife Service (FWS) on a cooperative approach to fish and wildlife management.

**2671.42 - Listings, Delistings, and Critical Habitat Determinations**

1. The Secretary of the Interior and the Secretary of Commerce have the authority to determine that species within their jurisdiction are threatened or endangered and to make critical habitat determinations. Either Secretary makes determinations about specific species after consultation with the states, private groups, individuals, and other federal agencies involved. A state or federal agency, private group, or individual may petition for such action; or the process may be initiated by the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service.

2. The Deputy Chief for the National Forest System issues comments on status reviews and proposed rulemakings affecting National Forest System lands. Regional Foresters shall submit timely comments along with current relevant scientific information to the Washington Office for review, consolidation, and transmittal to the Department of the Interior, Fish and Wildlife Service or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service.

3. Regional Foresters may initiate petitions for listing, delisting, or change in a species' Endangered Species Act of 1973 status through the Deputy Chief of National Forest Systems.

4. Petitions must be supported by biological information relevant to population levels and trend, distribution, habitat condition and trend, and known threats.

a. Regional Foresters shall initiate requests for delisting species that occur mostly or entirely on National Forest System lands when Forest Service portions of recovery objectives or Forest Service interim recovery objectives have been met, and when other Forest Service and Department of the Interior, Fish and Wildlife Service agreements and the status and trend of the species and habitat indicate a change in classification (50 CFR 424).

b. Regional Foresters shall coordinate with the appropriate states and regional Department of the Interior, Fish and Wildlife Service Directors on classification changes (50 CFR 424).

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- c. The Director of Watershed, Fish, Wildlife, Air and Rare Plants of the Forest Service shall ensure that Forest Service petitions meet Department of the Interior, Fish and Wildlife Service criteria for listing and delisting (50 CFR 424).

### **2671.43 - Experimental Populations**

Experimental populations are those populations of threatened and endangered species so declared by the Secretary of the Interior, which are wholly separate geographically from naturally occurring populations of the same species. Experimental populations are exempt from the full protective measures of the Endangered Species Act of 1973, as amended, in order to encourage reintroductions of listed species and experimental approaches to accelerate recovery.

1. All experimental populations shall receive the same treatment as "threatened" species.
2. The Secretary of the Interior may issue regulations to allow for appropriate conditions and levels of "takings."
3. Critical habitat is not declared for experimental populations.
4. The Secretary of Interior may declare further that certain experimental populations are "nonessential" to the continued existence of the species.
5. For the purposes of consultation requirements, nonessential experimental populations receive the same treatment as species proposed for listing. Consequently, the Forest Service must "confer" with the Secretary of the Interior or Commerce in accordance with requirements for proposed species (FSM 2671.45b).

### **2671.44 - Determination of Effects on Listed or Proposed Species**

1. Use the biological evaluation process to conduct and document the program and activities review necessary to ensure that any action authorized, funded, or carried out by the Forest Service is not likely to jeopardize the continued existence of any listed or proposed species or to result in the destruction or adverse modification of critical or proposed critical habitat.
2. Use the biological evaluation process, to make full use of internal biological expertise and informal consultation with the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NOAA Fisheries) to reach supportable determinations of effect.



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3. Coordinate with States and other Federal agencies as appropriate. During informal consultation, request a written species list from the FWS or NOAA Fisheries to identify which endangered, threatened, or proposed species, if any, may be present in the project area. The official list along with other determinations made in the informal consultation must be documented as part of the biological determination even if no species are determined to be present.

4. Ensure compliance with standards for biological evaluations under FSM 2672.42.

5. Conduct biological evaluations as a part of the environmental analysis process. Informal consultation with FWS or NOAA Fisheries in the early project planning stages provides the best opportunity for the formulation of project or program alternatives that will not have an adverse effect on listed or proposed species or their habitat.

6. Consider effects on suitable unoccupied habitat essential to recovery of the species when doing the biological evaluation. Do not request formal consultation on potential adverse effects until informal consultation has exhausted all alternatives for reaching a determination of "no adverse effect."

### **2671.45 - Consultation and Conference**

This section establishes Forest Service direction and procedures for implementation of joint Secretary of the Interior-Secretary of Commerce regulations on interagency cooperation (50 CFR 402) pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536(c)).

The consultation process may encompass informal consultation, conference, formal consultation, early consultation, and further discussion. Use the biological evaluation process to identify which listed and proposed species would be affected by the proposed action, to evaluate the possible effects resulting from the proposed action, and to determine whether consultation or conference is required. Four interrelated factors determine the type of review and consultation procedures to follow in determining effects on listed or proposed species. They are:

1. Presence of listed or proposed species or their critical habitat.
2. Forest Service determination of effect in the biological evaluation (FSM 2671.44).
3. Whether action is "construction" or "nonconstruction project" as defined by the Endangered Species Act of 1973.
4. Extent of environmental impact.



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### **2671.45a - Informal Consultation**

Informal consultation consists of all contacts, correspondence, or discussion between a federal agency or its designated non-federal representative and the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) that take place prior to initiation of any necessary formal consultation.

Utilize informal consultation with FWS or NOAA Fisheries to achieve the following:

1. To produce a sound biological evaluation that incorporates the best information available from FWS or NOAA Fisheries.
2. To identify project alternatives and discuss modifications and protective measures that would avoid adverse effects so that formal consultation is not necessary.
3. To inform FWS or NOAA Fisheries of actions designed to benefit proposed species.

### **2671.45b - Conference**

Conference with the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) is mandatory when the Forest Service determines that a Forest Service action is likely to jeopardize the continued existence of any species proposed for listing or is likely to result in the destruction or adverse modification of proposed critical habitat. See 50 CFR 402.10 for specific conferencing procedures to be followed. Conferencing may also be used when both agencies agree it would avoid or minimize delays, assist in resolving potential conflicts, or promote efficiency.

Conferencing may be conducted in accordance with the procedures for formal consultation if requested by the Forest Service and deemed appropriate by the FWS or NOAA Fisheries. The ability to convert a conference report to a biological opinion during the 30-day period after listing would be facilitated by using the formal consultation procedures during conferencing (50 CFR 402.10(d)).

### **2671.45c - Formal Consultation**

1. Formal Consultation Process. Formal consultation is mandatory for all agency programs or activities that may affect a listed species or critical habitat, unless the Department of the Interior, Fish and Wildlife Service (FWS) or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) concurs with the Forest Service determination that the proposed action is not likely to adversely affect listed species.

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Unless there is a clear rationale of no effect documented in the biological evaluation (FSM 2671.44), or a letter from FWS or NOAA Fisheries indicating they do not wish to consult on the Plan, or prefer to consult at the project implementation level, the Forest Service shall formally consult on Forest Plans.

- a. Formal consultation on marine species shall be with NOAA Fisheries. Formal consultation shall be with the FWS for all other species.
- b. The FWS or NOAA Fisheries may initiate formal consultation. Such requests must be in writing. Upon receipt of such request, the Forest Service shall engage in the appropriate stage of the formal consultation process promptly. If biological evaluations and informal consultations provide a sound and comprehensive basis for the determination of effects, FWS or NOAA Fisheries initiation of formal consultation is likely to be infrequent.
- c. Consultation on threatened or endangered species may be consolidated with requirements of other acts or regulations, such as the Fish and Wildlife Coordination Act of 1958, National Environmental Policy Act of 1969, or Resource Planning Act of 1974. However, consolidation does not relieve the Forest Service of its obligation to comply with the specific consultation requirements set forth in 50 CFR part 402.
- d. If a project involves more than one federal agency, the agencies may, upon notification to the Department of the Interior, Fish and Wildlife Service or Department of Commerce, National Oceanic Administration Fisheries Service, fulfill their review and consultation responsibilities through a single lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which each agency would become involved, the magnitude of its involvement, its relative expertise with respect to the species of concern, and the environmental effects of the activity or program.
- e. Once there is a determination of effect for a listed species, the proposing or lead unit, through the Regional Forester, shall request formal consultation in writing. Requests must include the following:
  - (1) A description of the proposed action.
  - (2) A description of the specific area that the action may affect.
  - (3) A description of any listed species or critical habitat that may be affected adversely by the action.
  - (4) A description of the manner in which the action may affect any listed species or critical habitat, including a description of any cumulative effects.

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(5) Reports, including any environmental impact statement, environmental assessment, biological assessment, or biological evaluation prepared for the proposed action.

(6) A list of other Federal agencies that have jurisdiction in the action area and how the action may affect them.

(7) Any other relevant available information on the action, the affected listed species, or critical habitat.

f. Until formal consultation is concluded, make no irreversible or irretrievable commitment of resources that has the effect of jeopardizing the continued existence of any listed or proposed species or adversely modifying its critical habitat.

g. The Regional Forester provides the appropriate state wildlife and fish or resource agency with a copy of the request for formal consultation. The unit proposing the action must coordinate with state wildlife and fish agencies for species of state concern, before requesting formal consultation.

2. Department of the Interior, Fish and Wildlife Service (FWS) or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) Response to Formal Consultation. Upon receipt of the request for consultation, the FWS or NOAA Fisheries notifies the Regional Forester and begins consultation on the identified program or activity. This includes a review of information provided by the Forest Service or otherwise available to the FWS or NOAA Fisheries. The Forest Service encourages onsite inspections.

Within 90 days of the receipt of the request for consultation or within such other time period as the FWS or NOAA Fisheries and the Regional Forester mutually agree upon, the FWS or NOAA Fisheries must conclude formal consultation. The FWS or NOAA Fisheries may provide "conservation recommendations" and may provide a statement concerning "incidental take."

3. Forest Service Response to Department of the Interior, Fish and Wildlife Service (FWS)/Department of Commerce National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) Biological Opinion.

a. Proceed with the proposal, if the biological opinion states that the activity or program is not likely to jeopardize the continued existence of the species or to result in the destruction or adverse modification of its critical habitat.

b. Evaluate all FWS and NOAA Fisheries conservation recommendations. If appropriate, incorporate them into the proposal.

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- c. The preparing unit must notify the FWS or NOAA Fisheries in writing of the acceptance or rejection of conservation recommendations and must document the results of the formal consultation in the appropriate National Environmental Policy Act document.
- d. If the FWS or NOAA Fisheries plans to render a jeopardy (and/or adverse modification of critical habitat) opinion, that agency contacts the Regional Forester before issuing the opinion in order to discuss any reasonable and prudent alternatives. This is known as the "further discussion" process.

**2671.45d - Further Discussion**

This process provides the proposing unit and the Regional Director, Department of the Interior, Fish and Wildlife Service (FWS) with the opportunity to discuss further the refinement of alternatives and recommendations or to identify new alternatives for the biological opinion. The proposing unit must document further discussion.

1. If further discussion generates a suitable alternative that results in a "no adverse effect" determination, the proposing unit must:

- a. Subject the new alternative to the environmental analysis process.
- b. Designate the alternative as the new preferred alternative.
- c. Request, through the Regional Forester, that the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) terminate the original consultation and initiate formal consultation on the new preferred alternative.

2. If further discussion generates an alternative that results in a "may adversely affect" determination, the proposing unit must:

- a. Subject the new alternative to the environmental analysis process.
- b. Designate another alternative as the preferred alternative.
- c. Through the Regional Forester, notify the Regional Director of the FWS or NOAA Fisheries of the findings, and request that the FWS or NOAA Fisheries terminate the consultation request that stimulated the jeopardy opinion and further discussion.

3. If further discussion fails to generate new alternatives the proposing unit:

- a. Must notify the Regional Director, through the Regional Forester, of the FWS or NOAA Fisheries in writing that the preferred alternative remains the same.

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b. At this point, the FWS or NOAA Fisheries issues the biological opinion that also references the results of further discussion. The opinion concludes that either the activity or program is likely or is not likely to jeopardize the continued existence of the listed species; or to result in the destruction or adverse modification of its critical habitat.

c. If a jeopardy opinion is issued, there are two alternatives available to a Regional Forester. These are:

(1) Abandon the proposed action and notify the FWS or NOAA Fisheries in writing of this decision.

(2) Forward all information about the project to the Chief of the Forest Service for further review. The Chief may direct the Regional Forester to modify the proposal. Resolution may occur at the national level, or the Chief can file for exemption. Rules governing exemptions are in 50 CFR parts 450, 451, 452, and 453.

d. If the Endangered Species Committee grants an exemption, the project proposal may proceed. If exemption is denied, withdraw the project proposal.

### **2671.45e - Early Consultation**

1. The Forest Service must consult with the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, National Oceanic and Atmospheric Administration Service (NOAA Fisheries) on any prospective action at the request of, and in cooperation with, a prospective permit applicant, when the applicant has reason to believe that a listed species may be present in the project area and that the action may affect the species.

2. Requests for early consultation must include the same supporting items required for formal consultation (FSM 2671.45b). Under most circumstances, early consultation will lead to formal consultation if the biological evaluation shows that the project may have an adverse effect upon or may benefit a listed species or its habitat. Conditions required for the prospective action before early consultation is permitted are set forth in 50 CFR 402.14.

3. Early consultation concludes within 90 days or such period of time agreeable to the FWS or NOAA Fisheries, the Forest Service, and the applicant. After conclusion of consultation, the FWS or NOAA Fisheries delivers a preliminary biological opinion.

### **2671.45f - Consultation in Emergencies**

Regulations at 50 CFR 402.05 [http://www.access.gpo.gov/nara/cfr/waisidx\\_00/50cfr402\\_00.html](http://www.access.gpo.gov/nara/cfr/waisidx_00/50cfr402_00.html) regarding interagency cooperation on Endangered Species Act of 1973, as amended recognize that an emergency (acts of God, disasters, casualties, national defense or security emergencies, and so on) may require expedited consultation. The Department of Interior, Fish and Wildlife

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Service (FWS) and Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) Consultation Handbook, Chapter 8, Emergency Consultation, outlines procedures for expedited consultation on emergency response actions, including those where human life is at stake. The Handbook may be electronically accessed at <http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>.

1. In preplanning for emergencies, identify listed, proposed, and sensitive species, designated and proposed critical habitats, and other habitat protection needs and procedures, to facilitate emergency response actions. Maintain updated information on listed, proposed, and sensitive species status, distribution, and critical protection measures for potential use in emergencies. For listed and proposed species, coordinate with the FWS and/or NOAA Fisheries to identify concerns and species recovery opportunities, as well as pre-emergency and emergency actions that may be needed.

2. Either before initiating an emergency response action, or as soon as possible after initiating an emergency response action, contact the FWS or NOAA Fisheries, when listed or proposed species, or designated or proposed critical habitats, are potentially affected. This contact initiates emergency consultation with Department of Interior, Fish and Wildlife Service (FWS) or Department of Commerce, National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries).

a. Human safety is the highest priority for every emergency response action (see FSM 5130.3 <http://fsweb.wo.fs.fed.us/directives/fsm/5100/5130.doc> for related direction on the wildland fire suppression policy and the priority for the safety of firefighters, other personnel, and the public). Under no circumstances should an emergency response action be delayed in order to contact FWS or NOAA Fisheries for initiating emergency consultation or during such an ongoing consultation.

b. When preparing an emergency situation analysis for an ongoing emergency (including a Wildland Fire Situation Analysis), consider any recommendations offered by FWS or NOAA Fisheries during emergency consultation to minimize the effects of emergency response actions on listed or proposed species or designated or proposed critical habitats. If any review by FWS or NOAA Fisheries indicates a proposed emergency response action is likely to result in adverse modification of critical habitat or species jeopardy, and no means of reducing or avoiding such effects are apparent, consider overall resource and emergency management objectives, the need for response actions and their likely effects, and proceed accordingly with the emergency response action.