



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



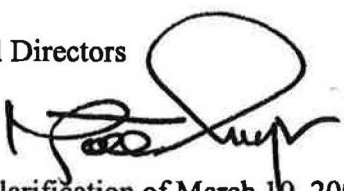
In Reply Refer To:

FWS/AES/DCHRS/021184

JUL 01 2005

Memorandum

To: Regional Directors

From: Director 

Subject: Policy Clarification of March 10, 2005 memo on Regarding Consultation on Requests for Access Across National Forest and Bureau of Land Management Lands

This is in response to a November 12, 2004, request for policy interpretation regarding consultation requests for access across national forest lands and replaces all previous guidance. The intent of this memo is to clarify the March 10, 2005 memo regarding concern arising from the 2003 interagency agreement, *Application of the Endangered Species Act to proposals for access to non-federal land across lands administered by the Bureau of Land Management and the Forest Service* (2003 interagency agreement). The 2003 interagency agreement addressed two issues: agency discretion in issuing right-of-way (ROW) permits and indirect effects to listed species on private lands associated with issuing ROW permits.

Consistent with the 2003 interagency agreement, if the Forest Service or Bureau of Land Management makes a determination that the issuance of a ROW permit only "facilitates" and is not "essential" to causing an effect to listed species on private land, then the effects of activities on private land are not subject to consultation. If the Federal agency determines the issuance of their ROW permit is "essential" to causing an effect to listed species on private land, then the action agency must examine whether the activities on private lands may affect listed species.

If the Federal agency determines their ROW permit is essential to activities occurring on private land and the Federal agency makes a determination their action may affect, but is not likely to adversely affect, listed species, then the agency should provide the Service with information sufficient for our concurrence. If the information provided for consultation is otherwise inadequate or not consistent with our section 7 regulations (50 CFR 402), then the Service should return the request to initiate consultation to the action agency with a description of any deficiencies.

If you have any questions regarding this memorandum, please contact Chris Nolin at (703) 358-2171.

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