

## FIRE MANAGEMENT ON PRIVATE LANDS ISSUE PAPER

In August 2002, the Partners and Coastal Programs held a teleconference with staff from Washington and Regional Partners for Fish and Wildlife and Fire Management programs to discuss potential gaps in FWS wildland fire policy and other issues related to the use of prescribed on private lands. The Fire Management Branch was asked to review two documents - Partners for Fish and Wildlife Program Coastal Program Prescribed Burns on Private Lands and FWS Management Policy and The Use of Prescribed Fire on Private Lands through the Partners for Fish and Wildlife Program - and provide comments and recommendations to the Partners and Coastal Programs to help them determine if their advocacy, funding, and involvement in the use of prescribed fire on private lands is a prudent and efficient undertaking. The following are the comments and recommendations of the Fire Management Branch.

### BACKGROUND

There is significant evidence that the exclusion of fire from fire-adapted ecosystem is causing significant changes in species composition and diversity which is more detrimental than beneficial in achieving FWS goals and objectives. The FWS and other federal and state government agencies, non-governmental groups and private organizations and individuals have successfully used prescribed fire for many years to restore and maintain ecological integrity in many fire adapted ecosystems.

The use of prescribed fire is risky. Although many of the above institutions have accepted this risk on their own lands, many are reluctant to accept the additional risk of using fire on lands they do not have direct control on.

The FWS has accepted the risks of using prescribed fire on our lands and on private lands identified relative to the National Fire Plan.

### ISSUES

Issues identified fall into 4 areas - policy, liability, funding, and use of contractors:

1. Service wildland fire management policy only applies to lands under direct control of the FWS (i.e., ownership or specific activities in an approved agreement easement or lease<sup>1</sup>).

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<sup>1</sup>Projects where the agreement easement or lease does not specifically stipulate that the U.S. Fish and Wildlife Service has an affirmative responsibility for fire management on the land in the agreement or lease are not included from FIREBASE. .

- Emergency Operations Wildland Fire Operations
  - 095FW3.1 - This chapter describes the policies, objectives, definitions, and responsibilities for wildland fire management activities on **our lands**.
  - 095 FW 3.5 - The Secretary has given responsibility for the operation of the wildland fire management program on **our lands** to the Director (620 DM 1.2).
  - 095 FW 3.5.C - The Regional Director, through the Regional Fire Management Coordinator, will provide wildland fire management program support to **our lands** located within their geographic Region.
- Policy and Responsibility of Fire Management
  - 621 FW 1.1 - This chapter describes policies, objectives, definitions, and responsibilities for fire management on **our lands**.

Should there be a separate fire management policy for FWS related fire management activities off “our lands” (i.e., private lands), or should the same policy apply to all FWS fire management activities regardless of what lands those activities occur (i.e, Partners for Fish and Wildlife, Coastal Program, Wildland Urban Interface, etc.)?

**Fire Management Branch Recommendation** - All FWS fire management policy should be the same regardless of land ownership.

2. The risk and potential consequences from poorly planned and/or executed prescribed fire activities can be significant (i.e., Cerro Grande Fire, Lowden Ranch Fire, etc.). These include direct fire effects (i.e., employee and public injury or death, private property and natural resource loss) and smoke effects (i.e, employee and public health effects and traffic accidents caused by reduced visibility).

- What is the liability exposure to the FWS being involved in private land prescribed fire activities?
- Are there ways of limiting the FWS liability exposure through limiting FWS involvement? Minimal involvement would include providing a biological recommendation that includes the need for prescribed fire. Additional involvement include being directly involved in one or a combination of the following activities: funding, prescribed fire plan development, plan implementation (as a member of the burn crew, leader of the burn crew [burn boss], fully responsible for plan implementation), and/or monitoring and evaluating the prescribed fire operations.

**Fire Management Branch Recommendation:** A solicitors opinion is required to evaluate FWS liability exposure from FWS involvement in private land prescribed fire activities. However, risks associated with prescribed fire operations can be reduced, but not eliminated by;

- Have a good plan and follow that plan.

- Operating within recognized standard operating standards (i.e., National Wildfire Coordinating Group - NWCG, FWS Fire Management Handbook, etc.).

3. Prescribed fire activities are expensive: (i.e., prescribed fire plan development, environmental compliance and approval [i.e., NEPA, ESA, smoke management, permitting, etc.], implementation, and monitoring and evaluation [i.e., treatment and resource effects]). FWS 2001 prescribed fire costs on our lands averaged \$50 per acre.

- What funds are available for private land prescribed fire activities?

**Fire Management Branch Comment:** The Fire Management Branch can only speak about *Wildland Fire Preparedness* and *Wildland Fire Operations* funding. These funds are used for fire management activities identified in the appropriations and other related legislation. Three Wildland Fire Preparedness and Wildland Fire Operations subactivities fund prescribed fire activities:

- Subactivity 9131- Preparedness (i.e., fire management personnel salaries, equipment, and support services, etc.). Used to support approved Fire Management Plan implementation.
- Subactivity 9263 - Hazardous Fuels (i.e., fuel management project personnel salaries, equipment, and support services, etc.). Used to implement prescribed fire activities on lands under direct control of the FWS. This may include working with interagency partners or private individuals or organizations (i.e., The Nature Conservancy) who meet FWS standards to achieve approved Fire Management Plan objectives.
- Subactivity 9264 - Wildland/Urban Interface (i.e., wildland/urban interface project personnel salaries, equipment, and support services, etc.). The National Fire Plan recognizes the importance of providing outreach, education, and support for local communities who must play a primary role in reducing fire hazards in and near their communities, hence the management of private lands in this wildland/urban interface has become a key factor in the fire-risk equation. A top priority for reducing risk is to reduce fuels in forests and rangelands adjacent to, and within communities. Particular emphasis is placed on projects where fuel treatments can also be accomplished on adjoining State, private, or other nonfederal land so as to extend greater protection across the landscape. Prescribed fire on private lands in the wildland/urban interface is an acceptable hazard fuel reduction option.

The Department of the Interior Fuel Treatment Program Development and Collaboration Process is used to select projects funded with *Wildland Fire Preparedness* and *Wildland Fire Operations* subactivities. Private lands prescribed fire project costs not identified by this process (i.e., 9131, 9263, or 9264 personnel salaries, equipment, and support services, etc.) must be paid by the appropriate benefitting activity (i.e., 1121, or 1261).

4. Use of contractors and cooperators in prescribed fire activities. The following is a excerpt out of 621 FW 3.

621 FW 3.6 Can we use contracts and cooperative agreements? Local fire departments, qualified contractors or other cooperators can conduct prescribed fire operations on our lands. You must complete an agreement or contract clearly stating the conditions under which these individuals may conduct prescribed fire operations, liability waivers, qualification and PPE requirements or other items important to the burning operation.

A. Contractors. Private contractors who specialize in providing fire management services must meet our standards<sup>2</sup> for qualifications and PPE. Your contract should specify these requirements as well as other standards or work accomplishments they are to meet.

B. Cooperators. Encourage your cooperators to meet our standards for qualification and PPE. Many local cooperators such as Volunteer Fire Departments cannot afford the PPE or the training to meet our standards, and we cannot force them. We should consider not using them in our prescribed fire program when this is the case. If you must use them, you may need to invite the cooperator to attend one of our training sessions prior to burning season or loan PPE to them during the burning operations. If an individual cooperator will be supervising FWS employees on the burn operation, he/she must meet our qualification and experience standards.

Should there be a separate FWS fire management fire management standards (i.e., planning, qualification, training, implementation, monitoring, evaluation, etc.) for FWS related fire management activities off our lands (i.e., private lands), or should the standards apply to all FWS fire management activities regardless of what lands those activities (i.e, Partners for Fish and Wildlife, Coastal Program, Wildland Urban Interface, etc.) occur on?

**Fire Management Branch Recommendation** - Uniform wildland fire standards are preferred and the standards outlined in the Service Manual and Fire Management Handbook should apply to all FWS fire management activities.

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<sup>2</sup>095 FW 6.5.A Refuge and interagency operations - (1) You must meet training requirements detailed in the National Interagency Incident Management System Wildland and Prescribed Fire Qualifications System Guide, PMS 310-1 to perform on interagency wildland or prescribed fire assignments. B. Strictly limited to refuge operations - (2)(b) We established the Burn Boss Type 3 (RXB3) position for use on refuge prescribed fires of low complexity. Prescribed fires of moderate or greater level that involve interagency personnel require a RXB2 or RXB1 qualification.

I hope the Solicitor's opinion concerning FWS liability exposure and these comments and recommendations help the Partners and Coastal programs assess the degree of private lands prescribed fire involvement they are willing to accept.