

U.S. Fish and Wildlife Service

CONTINGENCY PLAN

November 2023



**Department of the Interior
U.S. Fish and Wildlife Service
Contingency Plan for a Potential Lapse in Appropriations
November 2023**

Overview

The U.S. Fish and Wildlife Service (Service or FWS) is the oldest Federal conservation agency, tracing its lineage back to 1871. The Service has a wide variety of facilities and offices around the Nation, including nearly 600 National Wildlife Refuges, 70 fish hatcheries, and more than 100 other offices including science laboratories, Regional Offices and Field Offices.

The Service is responsible for implementing and enforcing some of our Nation’s most important environmental laws, such as the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammal Protection Act, the Lacey Act, and international agreements like the Convention on International Trade in Endangered Species.

This plan establishes the process by which the Service will ensure that its activities are within the law if there is a lapse in appropriations.

The Director has responsibility for oversight of the execution of the plan. The Assistant Director for Management and Administration will serve as the Agency’s Point of Contact for planning and implementation.

Orderly Shutdown

The Service estimates that it will take a half day to shut down most operations. Service staff must report to work if practicable on the first day of their normal work schedule under the lapse in appropriations. Staff will be provided with furlough notices by their supervisors and thereafter will have 4 hours to conclude business, gather necessary personal possessions and depart from the office. The Service expects that about 100 additional employees will need an additional 8-16 hours for the shutdown process, or in some cases more time, to assure property is secured and instructions are provided to remaining and furloughed staff. In addition, acquisitions personnel may need additional time to communicate with contractors and determine which contracts may continue and which must be issued stop work/suspension of work/or termination notices.

Lapse Plan Summary Overview

Short-Term Lapse

Short Lapse Plan (1-5 days) Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	0.50
Total number of agency employees expected to be on board before implementation of the plan:	9,018
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	6,099

Short Lapse Plan (1-5 days) Summary Overview	
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	1,997
Necessary to perform activities expressly authorized by law:	0
Necessary to perform activities necessarily implied by law:	0
Necessary to the discharge of the President's constitutional duties and powers:	0
Necessary to protect life and property:	922

Brief summary of significant agency activities that will continue during a lapse:

Funds available to the Service include the following: 2-year and no-year discretionary funds, and permanent authority of over \$1 billion, which is largely grant funding. In addition, the Service receives a significant amount of reimbursable income, mostly from State and Federal sources.

Where the Service's funds are permanent in nature, the Service will continue operations as practicable in these areas. Where reimbursable funding from other agencies is available without additional appropriation, the Service may also continue operations. Where the Service has prior year funds, the Service may elect to continue operations, or it may do so in priority areas only.

In addition, Service staff necessary to protect life and property, such as law enforcement officials, and animal caretakers, will continue operations to the extent necessary to carry out their duties related to protection of life and property. Occasionally, the Service may have staff in our International Affairs and Law Enforcement programs who are on diplomatic or law enforcement missions abroad who are necessary to the discharge of the President's constitutional duties and powers. Contracts that were previously funded by prior enacted appropriations may continue where government oversight is not needed or in the case where oversight is required and there is an excepted employee available to provide the oversight.

Exempt and Excepted Employees

Unless authorized by law, the Anti-Deficiency Act prohibits the Federal government from obligating funds before an appropriations measure has been enacted and from accepting voluntary services. See 31 U.S.C. 1341 and 1342. The Act provides an exception for emergencies involving the safety of human life or the protection of property. However, emergencies involving the safety of human life and the protection of property do not include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property. See 31

U.S.C. 1342. Also, a shutdown generally does not apply to activities funded by obligations validly incurred in an earlier fiscal year or by multi-year or permanent appropriations.

The Service has designated exempt and excepted personnel in six categories. Exempt personnel are those employees who perform activities that are funded by non-lapsing appropriations, or perform activities the Service elects to use carryover funding to continue such activities. These employees include those funded by the Service's permanent funds, including Sportfish and Wildlife Restoration funds and Federal Lands Recreation Enhancement Act fees, and including funding for reimbursable agreements from non-Federal agencies and from other Federal agencies with non-lapsing appropriations, such as the Federal Highway Trust Fund. A list of exempt programs can be found below.

Excepted personnel are those who perform activities necessary for the protection of life and property and for law enforcement. Included in this area are animal caretakers, who must feed and care for live animals and those who must protect lab materials that may spoil; refuge management personnel who are necessary to protect Federal property and public safety; necessary infrastructure personnel, who are necessary to providing support services, such as information technology and building security to other working employees; and law enforcement officers, including refuge law enforcement and criminal investigators.

Lead timekeepers will be available to assist non-furloughed supervisors and managers so that hours are tracked correctly in the time and attendance system as exempt, excepted, or furloughed. This helps ensure employees are correctly paid during and after shutdown.

Employees Groupings – Definitions

GROUP 1 – Exempt

The following categories of employees will continue working and are in pay status:

- 1) Permanent funds. Covers staff who are working and funded with permanent funding for example Sportfish and Wildlife Restoration funded staff, Law Enforcement Port Inspectors, and others. See the full list on page 5.
- 2) Prior year funds. Where the Service elects to do so, staff who are working and funded with multi-year funding, including Resource Management 2-year funds and Land Acquisition and Construction Funds. Some of this funding may run out as time passes, or Service leadership may decide to fund only priority activities. When funds are not available or otherwise used, staff will be furloughed. The status of funds will be monitored to determine whether these employees need to be furloughed.
- 3) Reimbursable. Staff funded by reimbursable funding where adequate supervision and funding is available. Federal funds used for this purpose must be appropriated and available.

GROUP 2 - Excepted

This group includes staff working on activities to protect life or property. This includes law enforcement, animal caretakers, and others as outlined below. Excepted staff may or may not be in pay status, depending on the availability of carryover funds.

GROUP 3 - Furloughed

The remainder of Service employees will be furloughed. These people are in non-pay status. This includes employees who are on call in the case of emergency, but not Exempt or Excepted until that emergency occurs.

Group 1: Exempt Employees

Employees whose salaries are paid from permanent appropriations (receipts) and unobligated balances brought forward in no-year and multi-year accounts will continue to carry out their normal functions where the Service elects to do so. A listing of these accounts is provided below. However, additional employees may be required to work if carryover funds are available and keeping these employees working is in the best interests of the Service.

The Service may use the minimal level of FLREA funding necessary to continue critical visitor services as exempt activities at sites that directly generate the collections. These critical services include health and safety functions, such as restrooms, sanitation, and trash collection.

Personnel Exempt from Lapse in Appropriations

The Service has approximately 2,011 employees who fit into the category of employees whose compensation is financed by other than its 2-year appropriations. In addition, Service employees working on unexpired 2-year funding will continue to work if funding is available and it is in the best interest of the Service.

Permanent accounts (not subject to Congressional appropriation each year). In these accounts, carryover balances and new receipts would be available.

- Federal Aid in Wildlife Restoration (all subactivities)
- Sport Fish Restoration (all subactivities)
- North American Wetlands Conservation Fund (all subactivities from 5820-5864)
- Natural Resource Damage Assessment Fund - Receipts/Interest (transfer from Office of the Secretary; all subactivities from 9810-9831)
- National Wildlife Refuge Fund Expenses for Sales; Payments to Counties (permanent only, with receipts); Alaska National Interest Lands Conservation Act
- Migratory Bird Conservation Account
- Contributed Funds
- Multinational Species Conservation Fund
- Operations and Maintenance of Quarters
- Federal Lands and Recreation Enhancement Act - Recreational Fees
- Lahontan Valley and Pyramid Lake Fish and Wildlife Fund
- Wildlife Inspection paid from offsetting collections
- Proceeds from Sales
- GAOA funding for Deferred Maintenance and Land Acquisition
- Bipartisan Infrastructure Law, Inflation Reduction Act and disaster supplemental funds

This work may continue assuming adequate supervision of staff and that furloughed staff are not necessary to provide support or open offices.

Reimbursable authority

- Resource Management (subactivities from 1900-1999)
- Construction and Anadromous Fish 2690 Drought
- Natural Resource Damage Assessment 8912 Damage Assessment
- Land Acquisition (subactivities from 8470-8479)
- PRFPs Oil Spills
- Federal Highway Trust Fund

Reimbursable work may continue only if the ordering agency has funds available during the lapse, and the work is funded exclusively by the ordering agency not funded by annual appropriations. In addition, if the supervision of furloughed employees is necessary to continue work, work must be halted, as furloughed employees may not be brought in to work exclusively for this purpose.

No-Year Funding

Construction staff who are funded with no-year funds will continue to operate as long as balances are available to oversee contracts and respond to the needs of ongoing operations.

Land Acquisition - Activities will continue on funded projects as dollars are available. Some contraction of effort is expected, as many personnel are jointly funded with yearly and no-year appropriations. Some land acquisition funding will also be available from GAOA authorized mandatory funding provided in some years.

To the extent prior year Resource Management funds are available, these resources may be used to avoid furloughing staff. Service leadership may choose to fund salaries of all staff, or a subset of staff conducting priority activities. Service leadership may want to furlough more staff in the first days of a shutdown if it is expected to be lengthy, in order to allow funding for priority work later in a shutdown.

Group 2 - Excepted Employees

Excepted personnel are those who perform activities necessary for the protection of life and property and for law enforcement. Included in this area are animal caretakers, who must feed and care for live animals and those who must protect lab materials that may spoil; refuge management personnel who are necessary to protect Federal property and public safety; infrastructure personnel, who are necessary to provide support services, such as information technology and building security for other working employees; and law enforcement officers, including refuge law enforcement and criminal investigators.

In addition, the Service may have some employees on diplomatic missions to other countries. The Service is the lead Federal agency for the Conference on Trade in Endangered Species, and occasionally has staff out of the country meeting with representatives of other governments. These personnel may fall under the exception of necessary to the discharge of the President's constitutional duties and powers.

Animal Caretakers

Fisheries and Habitat Conservation

Each of the hatcheries will have at least one person on site, with up to two persons on call, to protect the physical facility and maintain the fish at the hatchery. For hatcheries where high hazard dams are located, this includes monitoring of high hazard dam performance and activation of the Emergency Action Plans if necessary. During a short-term lapse, fish on site would be maintained, while further determinations will need to be made as time passes in the event of a longer-term shutdown. Fish Health Centers and Fish Tech Centers will also have at least one but not more than three persons to maintain live animals and cell cultures. The Aquatic Animal Drug Approval Program (AADAP) in Bozeman, MT will also have at least one but not more than three persons to maintain live animals and cell cultures. To the extent AADAP has partner funding available to fund work, work can continue.

Endangered Species

Each Service captive breeding facility will have at least one person on site but not more than three persons on call to protect the physical facility and maintain the live animals at the facility. Certain other staff will be retained to work on activities that are required based on court-ordered deadlines.

National Wildlife Refuge System

The Fish and Wildlife Service has 568 national wildlife refuges and 38 wetland management districts, in all more than 600 units. In the absence of appropriations, FWS must close refuge units unless and until it is able to determine that allowing particular areas to be reopened or limited activities to resume will not cause it to expend or obligate funds in violation of the Anti-deficiency Act. However, where public access to refuge lands does not require the presence of a Federal employee or contractor, activities on refuge lands will be allowed to continue on the same terms as before the appropriations lapse, including any activities conducted under a previously issued permit (when required).

Consistent with the terms of its concessions contracts, visitor services offered by concessioners are closed when the refuge is closed to visitors as a result of a lapse in appropriations. However, where public access is allowed to continue for activities on refuge lands as described above, concessioners will be allowed to continue operations in instances where they do not rely on buildings or other structures closed by the shutdown, and otherwise do not require the presence of a Federal employee or contractor. A FWS Closure Determination and Notice will be issued if a shutdown occurs. That notice will provide additional details on areas that are open and areas that are closed, what concessioners may continue to operate, and the process FWS will use to consider any case-by-case determinations that may become necessary.

FWS has determined that Waterfowl Production Areas (WPA) may lawfully remain open during the appropriations shutdown. Pursuant to the specific authorities for subsistence uses under the Alaska National Interest Lands Conservation Act (ANILCA), FWS has determined that Alaskan subsistence access and activities will be allowed to continue during the shutdown period.

FWS will not retain staff at every refuge but will have a Refuge Manager and/or Federal Wildlife Officer(s) at every station with on-site staff, including major refuge complexes. Excepted staff will protect life and safeguard government property and records. For example, areas where the refuge is bisecting a highway may require access through the refuge to respond to accidents on the highway. Excepted staff at refuges with high hazard dams are needed to monitor dam performance and activate Emergency Action Plans if necessary.

Refuge visitor centers and other buildings will be closed to public access, however, employees are needed to patrol government property and ensure the protection of vehicles, heavy equipment, and other assets.

Additional personnel would be on call to respond in the case of a large-scale incident, for emergency response and/or to protect property.

Refuge Law Enforcement

In the event of a shutdown, all Federal Wildlife Officers of the National Wildlife Refuge System will be necessary for basic protection of human life and the security of FWS property, infrastructure and lands. These personnel have primary responsibility for providing basic protection of FWS managed property, infrastructure and lands. They will also serve as critical emergency first responders.

Fire Management

Generally, fire management employees are designated as excepted for purposes of protecting life and property, and to provide emergency services. During a lapse, FWS will work with the Office of Wildland Fire Management to identify and utilize available carryover funding until exhausted to exempt fire employees.

Fire employees must suppress wildfires on or near FWS owned land because those fires can harm life and/or property belonging to the FWS and to private landowners. The need for fire management personnel varies across the Nation according to weather and season.

Units within their fire season will retain excepted fire staff sufficient for minimal Initial Attack capability on site (per staffing plans and preparedness levels). Excepted staff must be approved by the Project Leader and Regional Fire Management Coordinator (RFMC), and each unit must establish procedures for calling in additional capability as needed for larger scale fire suppression activities. Units will not implement any prescribed fires until after the shutdown ends.

- Regions and Units will retain excepted staff in established interagency Dispatch and/or Coordination Centers if these areas are experiencing wildfires.
- Regions will retain the RFMC, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed for fire suppression.
- The FWS will retain the Chief of the Fire Management Branch, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed.

Law Enforcement

Refuge Law Enforcement Staff

In the event of a lapse, all Federal Wildlife Officers of the National Wildlife Refuge System will be necessary for the basic protection of human life and the security of Service property and facilities. These personnel have primary responsibility for providing basic protection for Service managed facilities and lands. They will also serve as critical emergency first responders.

Law Enforcement

Law enforcement criminal investigators, conservation officers, and wildlife inspectors will continue to function, as necessary for protection of human life and to safeguard government property. Wildlife inspectors are paid with fees and not lapsing appropriations. Of the administrative personnel, only those needed to maintain these exempt functions will remain on duty.

Emergency Personnel

Fire Management Staff

Generally, fire management employees are designated as excepted for purposes of protecting life and property, and to provide emergency services. During a lapse, FWS will work with the Office of Wildland Fire Management to identify and utilize available carryover funding until exhausted to exempt fire employees.

Fire staff must suppress wildfires on or near Service owned land because those fires can harm life and/or property belonging to the Service and to private landowners. The need for fire management staff varies across the Nation according to weather and season.

Units within their fire season will retain excepted fire staff sufficient for minimal Initial Attack capability on site (per staffing plans and preparedness levels). Excepted staff must be approved by the Project Leader and Regional Fire Management Coordinator (RFMC), and each unit must establish procedures for calling in additional capability as needed for larger scale fire suppression activities. Units will not implement any prescribed fires until after the shutdown ends.

- Regions and Units will retain excepted staff in established interagency Dispatch and/or Coordination Centers if these areas are experiencing wildfires.
- Regions will retain the RFMC, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed for fire suppression.
- The Service will retain the Chief of the Fire Management Branch, or acting, as excepted staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed.

Natural Resource Damage Assessment/Spill Response/Other Emergency Staff

Other staff may be necessary to continue operations at any emergencies existing at the time of a appropriations lapse, or emergencies that occur after the lapse of appropriations.

Essential Infrastructure

National Conservation Training Center (NCTC)

NCTC will cancel all scheduled classes and send current students home should a lapse occur. Most NCTC staff will be furloughed. NCTC will notify all students who are to arrive within two to four weeks after a furlough is implemented that classes may be cancelled or rescheduled. NCTC will operate at minimum capacity and will need a small number of staff for maintenance of operations for the security and safety of the facility.

Management and Administration

The Assistant Director Management and Administration is excepted to coordinate the activities of the Divisions of Budget, Human Resources, Human Capital, Financial Operations, and Acquisition and Property Operations and to direct the orderly shutdown of operations. The Division of Financial Operations will have a small number of employees and the Division Chief and/or Deputy on duty to answer questions and process emergency and exempt payments as well as conduct necessary financial operations activities. These staff will also be available to oversee emergency transactions that are needed related to excepted activities. If payment interest accumulates under the Prompt Payment Act, funds will need to be redirected to that purpose when operations recommence.

To provide liaison between programs and the Acquisition Office on actions related to ongoing projects, a few contracting officers and the Division Chief and/or Deputy will remain on duty. The contracting officers will be responsible for support of excepted contracting actions and closing down hundreds of service contracts and negotiating demobilization costs. Work on contracts that are not funded by a lapsing appropriation, such as projects that are fully funded, may continue, provided government additional oversight requiring additional excepted personnel is not necessary to facilitate performance during the shutdown.

Contracting personnel must issue Stop Work or Suspension of Work orders, or Terminate for the Convenience of the Government, for all non-exempt and non-excepted contracts that would have been funded by lapsing appropriations, in accordance with procedures under Federal Acquisition Regulations. Once this work is completed, if the employees do not have responsibility for other excepted work, they will be furloughed. This is expected to take a week or more.

Regional mail room operations will be suspended, but commercial carriers will continue to deliver packages. For Regional Offices that lease an entire building, one facilities manager will need to remain on duty.

Human Resources

A small number of Human Resource specialists will be available to oversee the human resources issues including payroll for permanently funded employees and employee emergency and support services.

Safety Operations

A small number of Safety Specialists will be available to address employee and public safety issues, workers compensation, and related concerns.

Division of Budget

The Division of Budget will need up to three key personnel to interact and communicate with the Department, the Office of Management and Budget, Treasury, and Congress, and to participate in the closeout of the prior year financial accounts. Policy and special analytical computations may be required to inform the Department, OMB, and others about exempt and excepted activities in the absence of appropriations and to monitor the status of appropriations and keep the organization informed of the status. Fund transfers and fund management of permanent funds and funding for excepted employees will be necessary. The Division of Budget assists the Human Resources Division in tracking the status of employees.

Assistant Director - Information Resources and Technology

To maintain required telecommunications (voice systems, email and networking) capabilities and internet access, maintain network servers as operational, and provide technical support to other staffed offices, a small number of employees will remain on duty at the Skyline Office in Virginia. Additionally, the Services Information Technology (IT) Security Manager will remain on call to respond to problems related to IT security. Ongoing efforts to upgrade IT security should continue during a shutdown, and employees necessary to this effort should be exempt, so long as other-than-annual funding remains, or excepted as necessarily implied. To maintain required telecommunications capabilities (voice systems, email and networking) nationally, maintain internet access and national network servers, and to provide support to the Regional and Field Offices that remain staffed, three employees will remain on duty in the Information Resources Management/National Communications Center (Denver, Colorado).

Office of Communications

The Assistant Director for Communications is excepted to respond to Congressional inquiries, press inquiries as appropriate, and ensure communications within the Service. The Assistant Director may designate a limited number of employees to carry out these responsibilities, so long as those employees perform exempt or excepted functions.

Service Leadership

The following members of the Directorate are deemed excepted to oversee exempt or excepted activities in the Service; communicate with employees, the Department, the Office of Management and Budget, and the Congress; and ensure the life safety and protection of facilities throughout the Service.

Deputy Directors, Head of Staff

The Director may designate up to three additional employees on call to assist in carrying out executive responsibilities related to the shutdown of operations, so long as those employees perform excepted functions.

Regional Directors or their designees must be excepted to provide essential protection of life, animal care, safety and facility protection and to respond to any emergencies at field stations, respond to issues with the public on Federal lands, and coordinate with Headquarters. Regional Directors may designate up to three additional employees to assist in carrying out work related to the Regional Office. Regional Business Advisors will, in most cases, be excepted to assist Regional Directors in tracking staff and reporting. Regional Directors are authorized to call in as many people as are reasonably needed to respond to emergencies such as fires and floods.

Group 3 - Furloughed Employees

All other employees will be furloughed. Furloughed employees will be provided with notices of their furlough according to Department requirements.

Brief summary of significant agency activities that will cease during a lapse:

If the Service does not have sufficient carryover funds or other available sources of other-than-annual funds, the Service may close National Wildlife Refuges and Visitor Centers, National Fish Hatcheries, and its offices around the country, to the extent necessary. No permits may be issued or reviewed; most visitor events will not take place; surveys and habitat restoration activities will be put on hold, and most of the normal work of the Service will be discontinued.

The Fish and Wildlife Service has 568 national wildlife refuges and 38 wetland management districts, in all more than 600 units. In the absence of appropriations, FWS must close refuge units unless and until it is able to determine that allowing particular areas to be reopened or limited activities to resume will not cause it to expend or obligate funds in violation of the Anti-deficiency Act. However, where public access to refuge lands does not require the presence of a Federal employee or contractor, activities on refuge lands will be allowed to continue on the same terms as before the appropriations lapse, including any activities conducted under a previously issued permit (when required).

Consistent with the terms of its concessions contracts, visitor services offered by concessioners are closed when the refuge is closed to visitors as a result of a lapse in appropriations. However, where public access is allowed to continue for activities on refuge lands as described above, concessioners will be allowed to continue operations in instances where they do not rely on buildings or other structures closed by the shutdown, and otherwise do not require the presence of a Federal employee or contractor. A FWS Closure Determination and Notice will be issued if a shutdown occurs. That notice will provide additional details on areas that are open and areas that are closed, what concessioners may continue to operate, and the process FWS will use to consider any case-by-case determinations that may become necessary.

Refuge visitor centers and other buildings will be closed to public access.

Shutdown activities that will not be completed within one-half day:

There may be contracting issues that cannot be resolved in a day. Some additional staff may need to remain to resolve these issues.

Long-Term Lapse

Extended Lapse Plan (over 5 days) Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	0.50
Total number of agency employees expected to be on board before implementation of the plan:	9,108
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	6099
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	1928
Necessary to perform activities expressly authorized by law:	0
Necessary to perform activities necessarily implied by law:	0

Extended Lapse Plan (over 5 days) Summary Overview	
Necessary to the discharge of the President’s constitutional duties and powers:	0
Necessary to protect life and property:	991

Actions to Resume Orderly Operations

Communications

When funds have been appropriated by Congress and signed by the President, staff may return to work. Staff will be required to return to work the next normal workday following the President’s signature of an applicable appropriations act. Employees will be provided return to work checklists focusing on resuming activities. Checklists will remind employees to complete payroll activities, reschedule meetings, and work with leaders on establishing new deadlines for assignments and actions. Return to work activities are expected to take 1-2 days for normal employees. Additional time may be required for specific professions, such as HR and contracting.

Flexibilities Available to Supervisors

For employees who have problems returning to work after appropriations are available, supervisors have the option to allow the use of accrued annual leave, compensatory time off, credit hours or flexible work schedules.

Resuming Normal Operations

The Division of Budget will have key personnel on staff to interact and communicate with the Department, the Office of Management and Budget, Treasury, and Congress, and to participate in the closeout of the prior year financial accounts. Policy and special analytical computations may be required to inform the Department, OMB, and others about exempt and excepted activities in the absence of appropriations and to monitor the status of appropriations and keep the organization informed of status. Fund transfers and fund management of permanent funds and funding for excepted employees will be necessary. The Division of Budget assists the Human Resources Division in tracking the status of employees.