

Realignment of federal environmental policies to recognize fire's role



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This article highlights the barriers that federal environmental statutes create for reintroducing and maintaining beneficial fire in fire-adapted and fire-dependent ecosystems, proposing specific policy reforms to support the use of beneficial fire on these landscapes. Beneficial fire encompasses prescribed fire, cultural burning,¹ and wildfire managed for resource benefit. By focusing on three key federal statutes aimed at environmental protection—the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Clean Air Act (CAA)—the authors highlight how these statutes create disincentives for the implementation of beneficial fire practices, due to their failure to recognize the unique role of fire in ecosystems. They also examine the historical context of these laws to explain the challenges and suggest regulatory and statutory revisions to address the current wildfire crisis.

NEPA, ESA, and CAA all lack clear statutory provisions for beneficial fire. The authors attribute this to the time period these laws were enacted, in the 1970s, when fire suppression dominated federal strategies and the significance of fire and Indigenous stewardship as a vital ecological process was not fully acknowledged. As a result, these foundational environmental laws lack explicit statutory language about fire, resulting in ongoing debate around fire policy. This has forced federal agencies responsible for issuing regulations to implement these laws to treat fire as exogenous, rather than a natural ecosystem process.

Despite the lack of agreement among policymakers around how to craft fire policy to effectively address the wildfire crisis, there is consensus among policymakers on the importance of beneficial fire. For example, the Biden Administration's Wildland Fire Mitigation and Management Commission Final Report calls for a significant increase in beneficial fire to address the wildfire crisis, the Forest Service's "Confronting the Wildfire Crisis" 10-year strategic plan established a goal of fuel treatments across an

¹ Cultural burning is defined as "the intentional application of fire to land pursuant to Tribal or Indigenous law for purposes including sustenance, biodiversity, ceremonial, or other benefits."

POLICY IMPLICATIONS

Suggested policy reforms:

- Recognize cultural burning is a retained right of Indigenous peoples and should not be regulated by non-tribal governments.
- Under NEPA, clarify that reintroducing beneficial fire in fire-dependent and fire-adapted landscapes is not considered an agency action. Additionally, ensure NEPA alternatives analysis evaluates the impacts of ongoing fire exclusion.
- Revise ESA agency policies to recognize fire as a natural component of ecosystems and to support the use of beneficial fire as a mechanism for conservation and stewardship of fire-adapted and fire-dependent ecosystems.
- Address the disincentives to beneficial fire use created by the CAA to better align with the policy's goals by recognizing smoke from beneficial fire as a "natural" or "baseline" condition.

additional 20 million ha which includes the use of beneficial fire, and California's Strategic Plan for Expanding the Use of Beneficial Fire calls for burning 160,000 ha per year by 2025.

Although federal and state reports, strategic plans, and directives identify beneficial fire as essential for ecosystem health and wildfire risk reduction, the federal statutes and regulations designed to protect the environment often hinder its use. The absence of clear language about fire in these federal statutes

has resulted in federal agencies issuing regulations to implement these statutes that treat restoration or maintenance fires as agency or human actions. This classification imposes strict compliance with environmental regulations, rather than acknowledging beneficial fire as a natural baseline condition, necessary for maintaining healthy ecosystems.

The author suggests that federal agencies and Congress should reform environmental laws to explicitly recognize fire as a natural keystone process, ensuring that restoring fire in fire-adapted and fire-dependent ecosystems within natural return intervals is not classified as an agency or human action.

Currently, these environmental laws incentivize the wrong kind of fire by providing emergency exemptions that significantly reduce regulatory requirements. NEPA, ESA, and CAA all include emergency exemptions for wildfires. With these exemptions, suppressing a wildfire requires far less regulatory compliance than actively managing the land with beneficial fire programs to reduce the risk of future wildfires. Under an emergency exemption, fire suppression activities may be exempt from NEPA analysis. Similarly, the ESA has a shortened consultation process under an emergency exemption. The CAA's Exceptional Events Rule further discourages proactive land management in favor of fire suppression by permitting agencies to exclude emission data from the EPA if a wildfire is the cause. These regulations create a bias against proactive beneficial fire programs in favor of fire suppression, disincentivize active stewardship, and undercut the purposes of these statutes.

The authors emphasize the importance of amending environmental laws and policies to recognize fire's unique role in ecosystem health. By explicitly acknowledging fire as a natural and keystone process, these modifications would facilitate beneficial fire use,

and better align with the statutes' core objectives. They also stress that these revisions must correct policies that undermine Tribal sovereignty and their retained right to steward.

Additional Information

This brief is based on the following article:

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