

Endangered Species Act Emergency Consultation Procedures

Background

The Endangered Species Act of 1973 (ESA) was signed into law by President Richard Nixon to protect critically imperiled species from extinction. The ESA provides protection to listed species, the habitats they utilize and designated areas known as critical habitats. The ESA prohibits a take¹ of an individual animal or adversely modifying critical habitat (Section 9 of ESA).

Section 7 of the ESA requires all federal agencies to consult with the Services² if their actions might result in a take of a listed species. Local governments must consult the services if their actions require federal permits or receives federal funding. In 2001, USCG, EPA, NOAA and DOI signed an inter-agency Memorandum of Agreement (MOA) regarding oil spill planning and response activities under National Contingency Plan (NCP) and the ESA. This MOA outlines the procedures to be followed during three phases of a spill: pre-spill planning, response and post-response. This document expands on the steps in the MOA relating to the response and post-response phases of a spill as currently understood.

Response Procedures

Early in a response, an ICS 232-CG Resources at Risk Summary report will be generated and will highlight any listed species and/or critical habitats³ that may be affected by response activities. If there are no ESA resources at risk, then no consultation is necessary. If listed species and/or any critical habitats are at risk, then the FOSC (or designee) must consult with the Services as soon as practical, usually within the first few days of the response.

For NMFS - To facilitate consultation with NMFS, the "RRT VI Spill Response Emergency Endangered Species Consultation" form has been created that can be filled out and sent electronically to the NMFS Southeast Regional Office Protected Resources Division. . Attached is a version of the form, but NMFS should be contacted during an incident to obtain the most up-to-date version of the form. The completed form should be submitted to NMFS per the instructions on the form.

For USFWS –Coordinate with USFWS contact below to determine appropriate methods, as they do not currently use a standard form or template. The USFWS contact will be looking for similar information as NMFS and supplying the contact with a copy of the NMFS form may be sufficient to initiate consultation.

¹ A take is to harass, harm, pursue, hunt, shoot, kill, wound, trap, capture or collect, or to attempt to engage in any such conduct

² The services are National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS).

³ Habitats which listed species may use, even if not designated as critical habitat should be considered.

For all ESA consultations - The regional NOAA Scientific Support Coordinator (SSC) will often be tasked by the Federal On-Scene Coordinator (FOSC) to complete the form and handle any ESA related issues. The services will review the supplied information and respond with Best Management Practices (BMP) to mitigate potential impact of any listed species and/or critical habitat. The BMP's are then incorporated into response operations and species specialist may be brought into the response to provide additional oversight and guidance.

Endangered Species Act Post-Response Procedures

The three thresholds which are used to determine action necessary by the FOSC are: (1) No effect⁴ (none at all, negative or positive), (2) Not Likely to Adversely Affect⁵, and (3) May adversely affect.

1. If the FOSC determines that response actions caused no effect listed species and/or critical habitat, then the FOSC is not required to draft a letter requesting concurrence from the services; however FOSC should retain all related documentation. If the FOSC would like service concurrence to their determination, please follow guidance related to Not Likely to Adversely Affect.
2. If the FOSC determines that response actions did not likely to adversely affect listed species and/or critical habitat, then the FOSC will draft a letter requesting concurrence from the services. This letter should include the following: (1) the date response concluded; (2) dates emergency consultation initiated; (3) geographic area of response activities; (4) the BMPs that were followed; (5) how the FOSC came to their determination; and (6) which listed species or critical habitat were or were not adversely effected.
3. If listed species or their habitats were affected the FOSC will need to engage in the formal consultation process as described in the referenced MOA.

Endangered Species Act Points of Contact

<p>Mr. Kyle Baker National Marine Fisheries Service Southeast Regional Office Protected Resources Division 263 Thirteenth Avenue, South St. Petersburg, FL 33701 Phone: (727) 824-5134 Kyle.baker@noaa.gov</p>	<p>Mr. Jeffery D. Weller, Field Supervisor Endangered Species Program US Fish and Wildlife Service 400 Cajundome Blvd., Suite 400 Lafayette, LA 70506 Phone: (337) 291-3100 jeff_weller@fws.gov</p>
---	--

⁴ No effect: the appropriate conclusion when the action agency determines its action will not affect a listed species or designated critical habitat.

⁵ Not likely to adversely affect (NLAA): the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial.