



**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

**NATIONAL MARINE FISHERIES SERVICE**

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

**JUN 5 2014**

F/SER31:KPB  
SER-2014-13339

Captain B. Penoyer  
United States Coast Guard  
Commander, Sector Houston-Galveston  
13411 Hillard Street  
Houston, Texas 77034

Ref.: Surface Washing Agent Pre-Approval Plan, Central Texas Coastal Area Contingency Plan; Chambers, Houston, Galveston, and Brazoria Counties, Texas

Dear Captain Penoyer:

This letter responds to your January 23, 2014, request to the National Marine Fisheries Service (NMFS) for concurrence with your project-effects determination under Section 7 of the Endangered Species Act (ESA). You determined the projects may affect, but are not likely to adversely affect, leatherback, loggerhead, hawksbill, green, and Kemp's ridley sea turtles. Prior to this request for concurrence, we received a June 4, 2013, request for a species list and comments on the development of the Surface Washing Agent (SWA) Plan for the Central Texas Coastal Area from Lieutenant Commander Kevin Boyd of the U.S. Coast Guard (USCG), Sector Houston-Galveston. We provided comments and a species list on August 2, 2013. Thank you for including our comments in the SWA Plan. Our findings on the plan's potential effects are based on the description in this response. Changes to the proposed action for any of these projects may negate our findings and may require the reinitiation of consultation.

The USCG is proposing areas for the in situ use of "lift and float" surface washing agents (SWAs) as an emergency oil spill response technique, to clean oiled vessel hulls and other hard manmade structures that are impacted by oil spills that occur within the designated port areas along Texas waterways. The SWAs have been tested and approved by EPA, as required for inclusion in the National Contingency Plan (NCP) Product Schedule. The NCP requires that the approval of any regional plan to use any chemical countermeasure must first be evaluated for the potential to affect the environment, including ESA-listed species, which is the focus of this consultation on the potential effects to sea turtles. This consultation is for pre-approval of use of SWAs, as described below, to streamline spill response actions by evaluating the potential effects prior to a spill occurring that warrants the use of SWAs.



The SWA Plan for the Central Texas Coastal Area includes specific procedures to be followed for SWA use to clean commercial vessels oiled in pre-identified, industrial, port areas within Houston, Galveston, Texas City, and Freeport, Texas (Figures 1-4, images from the Surface Washing Agent (SWA) Plan for the Central Texas Coastal Area submitted by the USCG). Typically, vessels oiled outside of non-oiled areas are not allowed to transit the unoiled areas; thus, only vessels oiled by spills that occur within the designated areas are proposed for cleaning with SWAs. The designated SWA areas were chosen to avoid the most sensitive resources in each port area using an environmental sensitivity index (ESI) that identified the most environmentally sensitive areas found in each of these industrial areas. The areas for use of SWAs were chosen with input from state and federal natural resource managers. The shorelines in the pre-approved areas are dominated by hard man-made structures (including riprap) with some smaller isolated marshes, fine- to medium-grained sand beaches, and scarps. Although the identified SWA areas are of a lower habitat quality, mobile species such as sea turtles can be potentially found there. A number of protocols and requirements are proposed to avoid and minimize any potential impacts to sea turtles in the event they are in the area during a spill in which SWAs will be used.

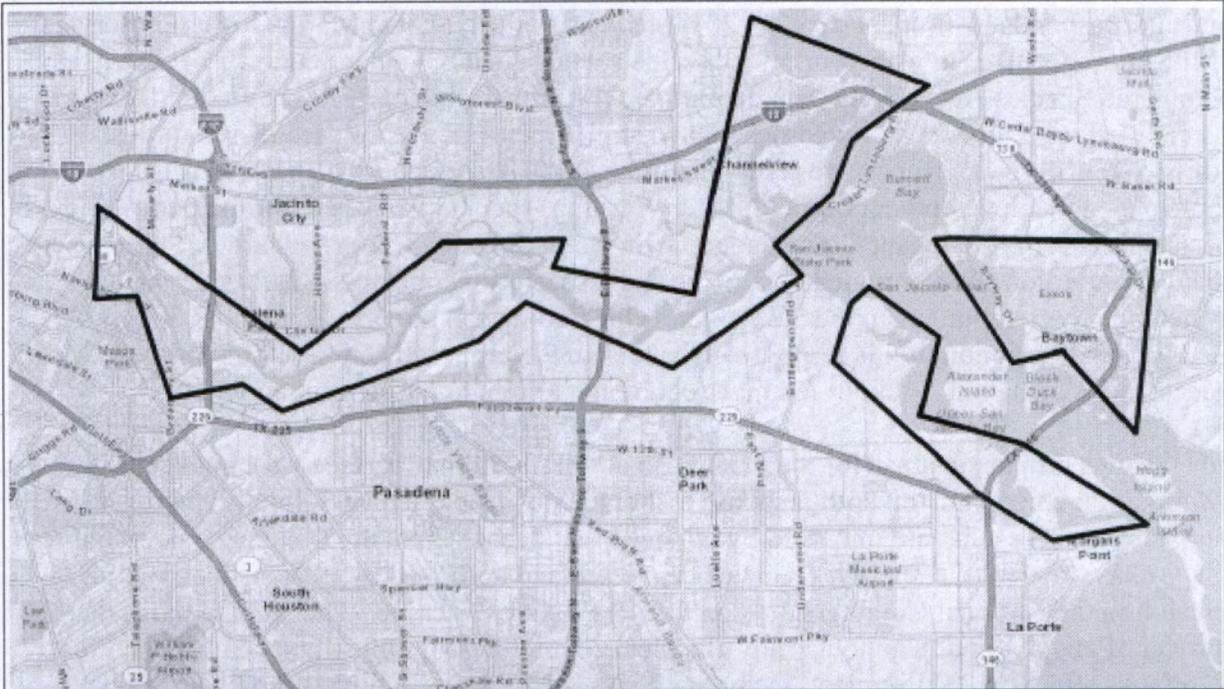


Figure 1. Upper Houston Ship Channel pre-approved areas

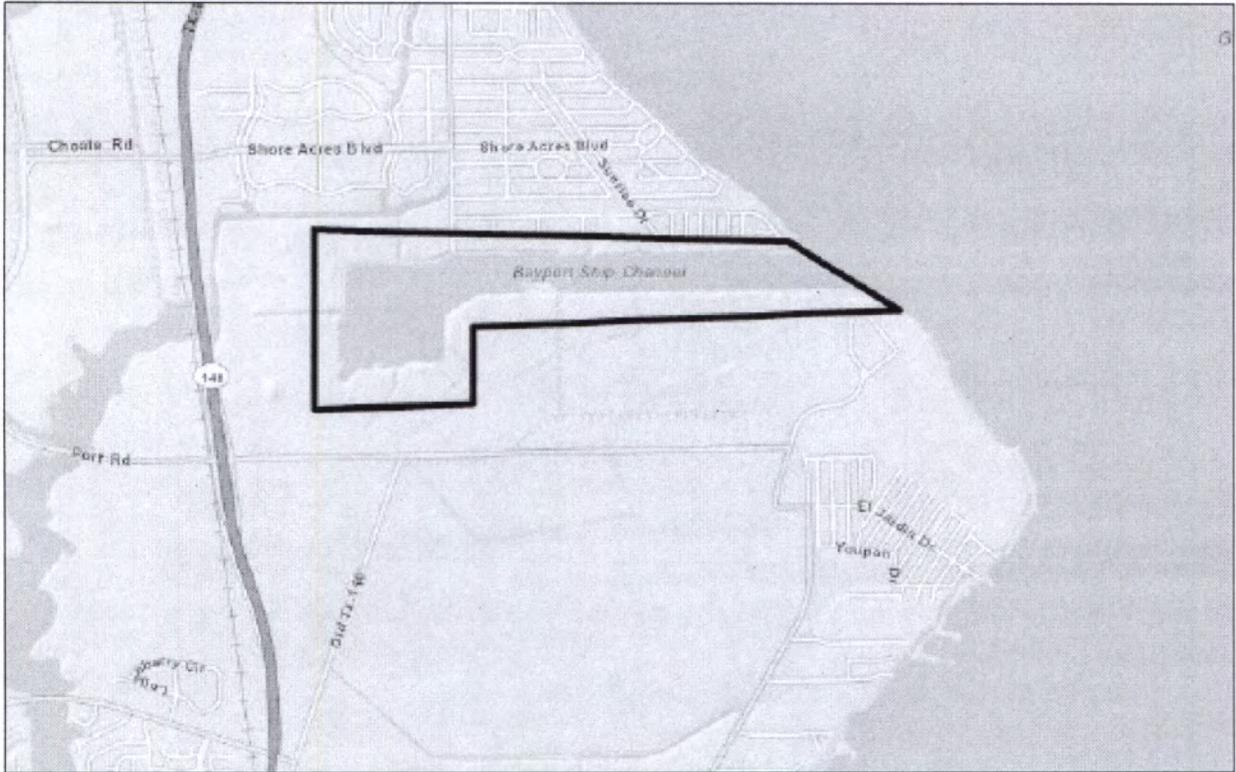


Figure 2. Bayport Ship Channel pre-approved area

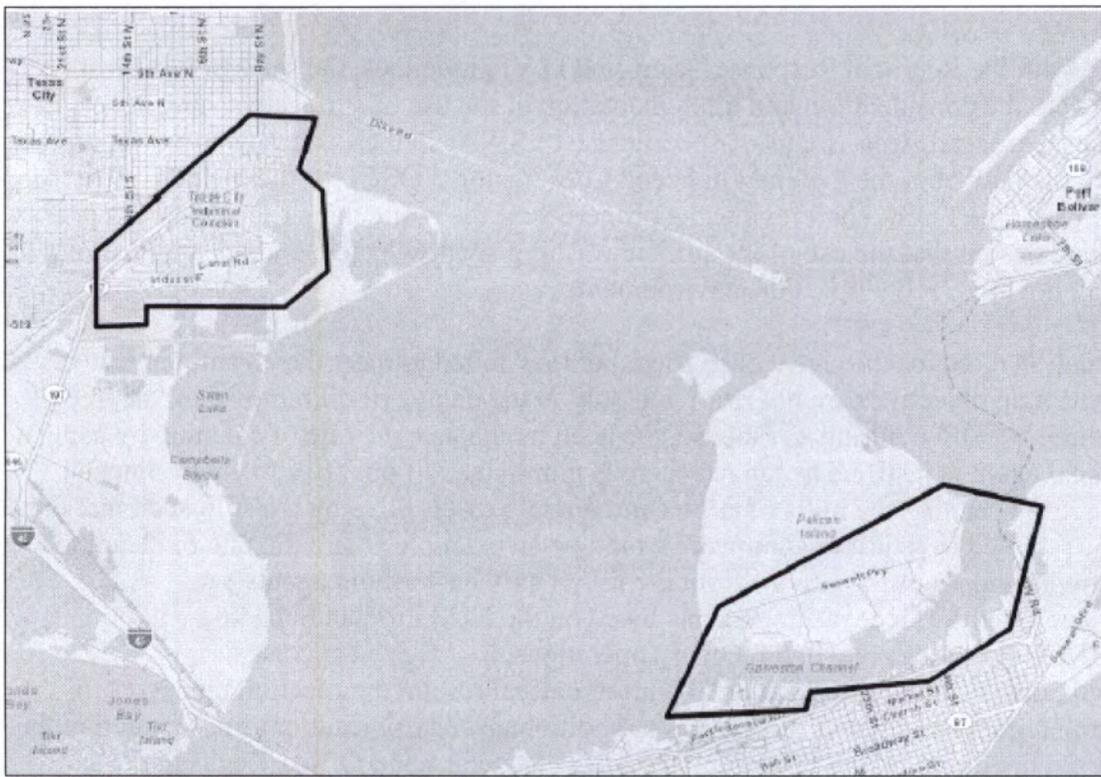


Figure 3. Texas City Ship Channel and Galveston Channel pre-approved areas

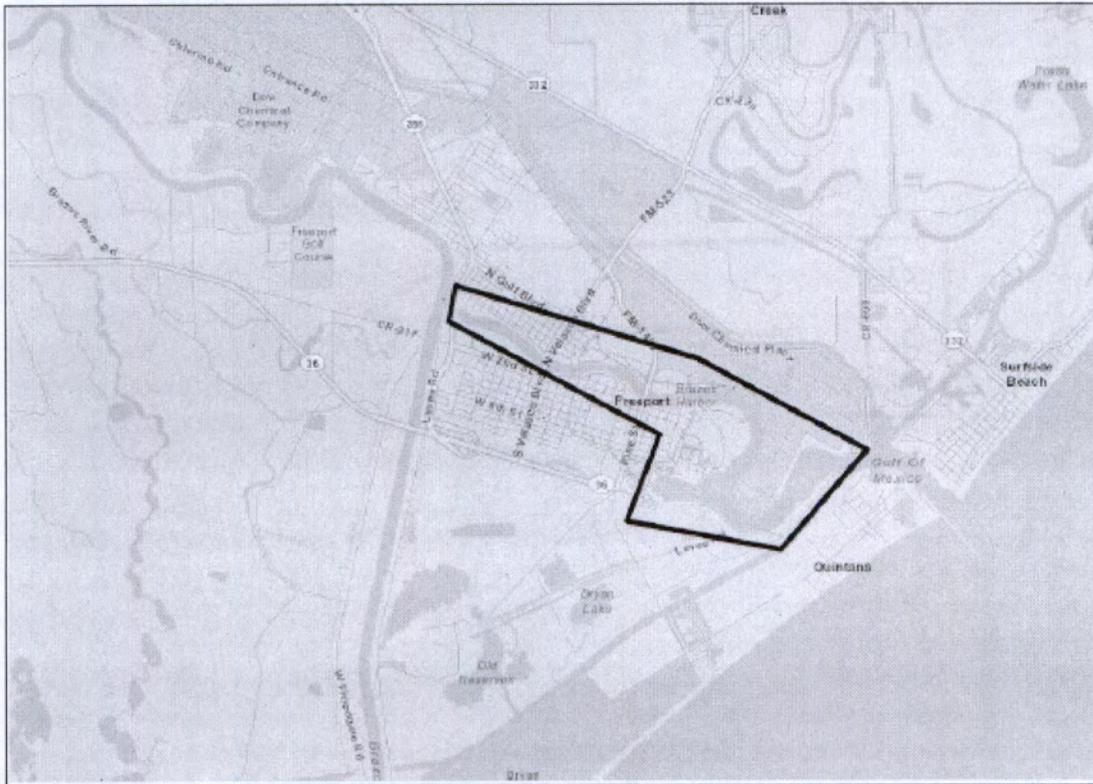


Figure 4. Freeport pre-approved area

#### *Guidelines for Use of SWAs*

In accordance with the Regional Response Team (RRT) VI guidelines, the steps below must be addressed prior to the consideration and implementation of the use of surface washing agents in the Central Texas Coastal Area. Incident-specific use of SWAs in these areas does not require approval from the RRT, but the Federal On Scene Coordinator (FOSC) for the incident must approve their use. The FOSC shall review the properties of the particular surface washing agent (i.e. MSDS) and ensure that the use of the surface washing agent selected, and the application technique, will not adversely impact the environment:

1. Conventional approaches have been tried, but they failed to meet the cleanup objectives. (The cleanup objectives are not restricted only to the degree of oil removal or “degree of cleanliness.” Often during a response, the need to enhance the rate of cleaning by using a chemical agent is justified as long as there is minimal additional risk to environmental resources. Cleaning the hulls of large commercial vessels oiled by the spill such that they can be released to return to commerce would be an example where the rate of cleaning to a desired standard might benefit from the use of surface washing agents.)
2. Only approved surface washing agents listed on the NCP Product Schedule will be considered for oil cleanup and recovery operations.
3. Consultation with the Environmental Unit or natural resource protection managers to determine if any additional restrictions or additional safety precautions are required in the proposed operation. (At a minimum, the Texas General Land Office, Texas Parks and Wildlife, National Oceanic and Atmospheric Administration Scientific Support

Coordinator, and current ESI maps and wildlife information must be consulted prior to conducting cleanup operations involving surface washing agents.)

4. Cleanup areas requiring the use of surface washing agents shall be boomed off. (Booms shall be placed as appropriate to both prevent potential oil and/or surface washing agents from escaping the cleanup area, and to establish a physical perimeter to minimize potential fish, marine mammals, and other marine life from entering the cleanup site.)
5. A trained observer shall be posted to ensure the safety of all responders involved in the surface washing agent cleanup operations. Additionally, the trained observers will report any potential harmful impacts immediately to the FOSC or designated representative.
6. Surface washing agent operations shall not be used in or near seagrass areas.
7. In consideration of the safety of workers assigned to the application of surface washing agents, and in consideration of the protection of the environment, it is preferred that surface washing agents are applied during daylight hours.
8. Ensure that the oil spill removal organization/spill management team develops an approved, written work plan for use that includes worker safety precautions. (This plan should be in writing to the FOSC, should be incorporated into the Incident Action Plan, and in compliance with reference (a). The work plan can be formatted in accordance with company standards, or may be in the form of an ICS-204 work assignment form [an example has been provided in Section 3253.6].)
9. An after-action report is also required. At a minimum, the monitoring checklist found in Section 3253.4 should be completed to aid in generating this report. The level of detail in the after-action report would be dictated by the response and any lessons learned that would aid future decision-making. The after-action report can be generated by the Responsible Party or by federal or state personnel. The report must be approved by the FOSC or their representative prior to being submitted to the RRT.
10. The FOSC or designated representative shall halt surface washing agent operations if sea turtles are sighted within the designated cleanup locations and obtain guidance from appropriate trustee. Additionally, on-scene FOSCs and trustees shall also be mindful of the potential exposure of SWAs to the prey of sea turtles.

*NMFS Analysis*

The following sea turtles species may occur in any of the surface washing areas. We believe the proposed SWA Plan will not adversely affect sea turtles for the reasons discussed below.

**Table 1. Endangered and threatened species in the central Texas coastal area**

<b>Common Name</b>	<b>Scientific Name</b>	<b>Status</b>
leatherback sea turtle	<i>Dermochelys coriacea</i>	endangered
Kemp's ridley sea turtle	<i>Lepidochelys kempii</i>	endangered
green sea turtle <sup>a</sup>	<i>Chelonia mydas</i>	endangered
hawksbill sea turtle	<i>Eretmochelys imbricata</i>	endangered
loggerhead sea turtle <sup>b</sup>	<i>Caretta caretta</i>	threatened

<sup>a</sup> Green turtles in U.S. waters are listed as threatened except for the Florida breeding population which is listed as endangered.

<sup>b</sup> Northwest Atlantic Ocean Distinct Population Segment

The use of SWAs would remove oil from vessels and the oil/SWA mixture would float on the surface for recovery. Adult crabs or shellfish live on the sea bottom and would not come into contact with the SWAs at the surface. There is a potential for some free-floating larval stages and adult prey to contact SWAs at the water/shoreline interface. These potential effects will be infrequent and localized during some spill response activities. The SWAs will have no measureable effect of the recruitment of larval stages into adult stages that turtles forage on. There will be no measurable reduction of the foraging success of sea turtles from the mortality of intertidal invertebrates exposed to SWAs. The use of SWAs is prohibited in seagrasses and other sensitive areas. However, despite the approved use of SWAs in only lower quality habitat areas, there is the potential for SWAs unintentionally contacting shorelines and resulting in some toxic effects to intertidal and benthic invertebrates. The potential effect that SWAs may have on the mortality of intertidal invertebrates is expected to be too small to have any detectable effect on the availability of sea turtle prey and would be insignificant.

The direct exposure of sea turtles to SWAs or the floating oil it creates will be avoided through the use of floating boom and observers. The use of SWAs will not increase the impacts in the oil footprint because it will be freed from oiled substrates and cause it to float and spread at the surface. However, the floating oil will be contained within a small area, and recovered with sorbent materials such as pads and boom. To prevent any adverse impacts to sea turtles, observers shall be employed during SWA operations and trained on SWA use and restrictions associated with resources at risk. Observers will lookout for sea turtles to ensure their protection and report any sightings in the area. In addition to the use of observers to prevent any impacts to wildlife, boom will be deployed to cover the entire water column so that large animals such as sea turtles will be excluded from the immediate work area. The boom will be removed after cleanup and will not appreciably block use of the area (for foraging or sheltering) by sea turtles. Therefore, we believe the above-described potential effects will be discountable or insignificant.

This concludes the USCG's consultation responsibilities under the ESA for species under NMFS's purview. Consultation must be reinitiated if a take occurs or new information reveals effects of the actions not previously considered, or the identified actions are subsequently modified in a manner that causes an effect to the listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or if critical habitat is designated that may be affected by the identified actions.

We have enclosed additional relevant information for your review. We look forward to further cooperation with you to ensure the conservation and recovery of our threatened and endangered marine species. If you have any questions regarding this consultation, please contact Kyle Baker, Consultation Biologist, by email at [Kyle.Baker@noaa.gov](mailto:Kyle.Baker@noaa.gov) or by telephone at (727) 824-5312.

Sincerely,



*for* Roy E. Crabtree, Ph.D.  
Regional Administrator

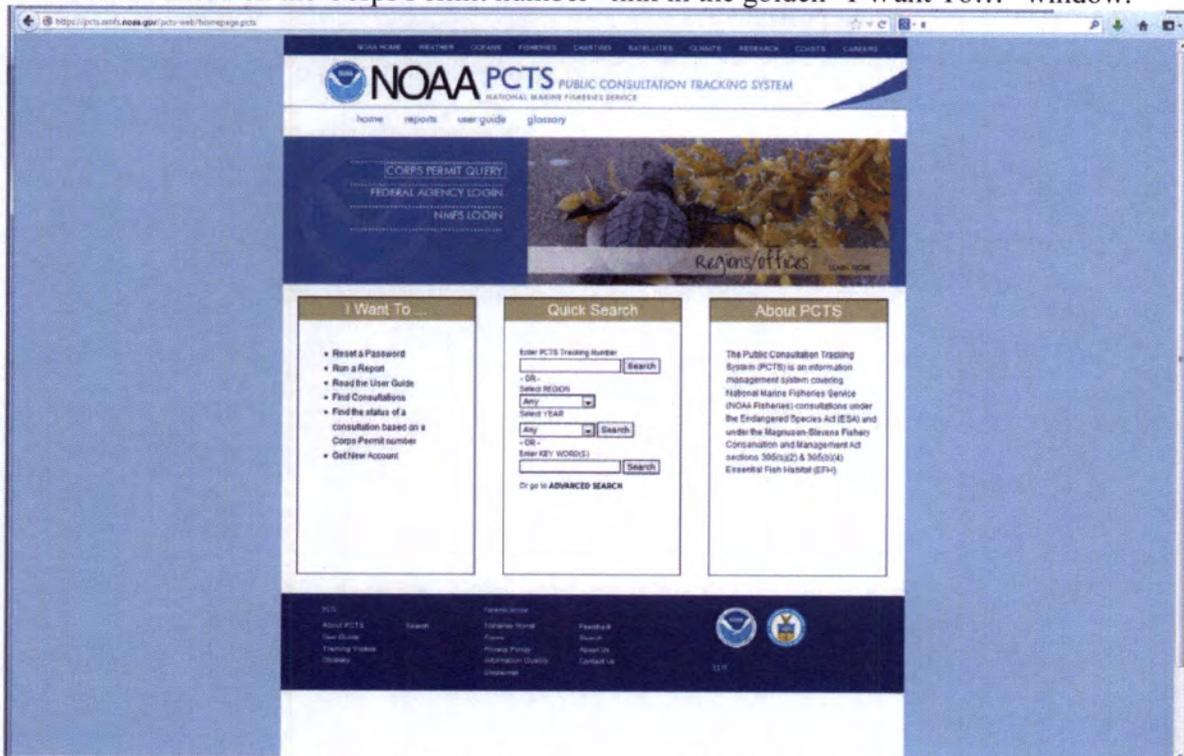
Enc.: 1. *PCTS Access and Additional Considerations for ESA Section 7 Consultations* (Revised June 11, 2013)

File: 1514-22.H

## PCTS Access and Additional Considerations for ESA Section 7 Consultations (Revised 6-11-2013)

**Public Consultation Tracking System (PCTS) Guidance:** PCTS is a Web-based query system at <https://pcts.nmfs.noaa.gov/> that allows all federal agencies (e.g., U.S. Army Corps of Engineers - USACE), project managers, permit applicants, consultants, and the general public to find the current status of NMFS's Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultations which are being conducted (or have been completed) pursuant to ESA Section 7 and the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) Sections 305(b)2 and 305(b)(4). Basic information including access to documents is available to all.

The PCTS Home Page is shown below. For USACE-permitted projects, the easiest and quickest way to look up a project's status, or review completed ESA/EFH consultations, is to click on either the "Corps Permit Query" link (top left); or, below it, click the "Find the status of a consultation based on the Corps Permit number" link in the golden "I Want To..." window.



Then, from the "Corps District Office" list pick the appropriate USACE district. In the "Corps Permit #" box, type in the 9-digit USACE permit number identifier, with no hyphens or letters. Simply enter the year and the permit number, joined together, using preceding zeros if necessary after the year to obtain the necessary 9-digit (no more, no less) number. For example, the USACE Jacksonville District's issued permit number SAJ-2013-0235 (LP-CMW) must be typed in as 201300235 for PCTS to run a proper search and provide complete and accurate results. For querying permit applications submitted for ESA/EFH consultation by other USACE districts, the procedure is the same. For example, an inquiry on Mobile District's permit MVN201301412 is entered as 201301412 after selecting the Mobile District from the "Corps District Office" list. PCTS questions should be directed to Eric Hawk at [Eric.Hawk@noaa.gov](mailto:Eric.Hawk@noaa.gov) or (727) 551-5773.

EFH Recommendations: In addition to its protected species/critical habitat consultation requirements with NMFS' Protected Resources Division pursuant to Section 7 of the ESA, prior to proceeding with the proposed action the action agency must also consult with NMFS' Habitat Conservation Division (HCD) pursuant to the MSA requirements for EFH consultation (16 U.S.C. 1855 (b)(2) and 50 CFR 600.905-.930, subpart K). The action agency should also ensure that the applicant understands the ESA and EFH processes; that ESA and EFH consultations are separate, distinct, and guided by different statutes, goals, and time lines for responding to the action agency; and that the action agency will (and the applicant may) receive separate consultation correspondence on NMFS letterhead from HCD regarding their concerns and/or finalizing EFH consultation.

Marine Mammal Protection Act (MMPA) Recommendations: The ESA Section 7 process does not authorize incidental takes of listed or non-listed marine mammals. If such takes may occur an incidental take authorization under MMPA Section 101 (a)(5) is necessary. Please contact NMFS' Permits, Conservation, and Education Division at (301) 713-2322 for more information regarding MMPA permitting procedures.