

US EPA ARCHIVE DOCUMENT

Fact Sheet
Towards a Common Goal
Coordinating oil spill response actions under the Clean Water Act (FWPCA)
& the Endangered Species Act (ESA)

Purpose

To establish a protocol for cooperation and participation among the USCG, EPA, Department of the Interior (DOI) through the Fish and Wildlife Service (FWS), and the Department of Commerce (DOC) – National Oceanic and Atmospheric Administration (NOAA) through National Marine Fisheries Service (NMFS) and the National Ocean Service, in the exercise of oil spill planning and response duties and responsibilities under ESA. These procedures will help fulfill requirements under ESA Section 7(a)(2) as well as those mandated in the National Contingency Plan (NCP). It is a holistic approach to protection and conservation of the ecosystem upon which listed species depend that also facilitates interagency cooperation, reduces paperwork, makes the best use of limited financial and personnel agency resources, and develops a quality response plan.

Background

In February 2000, a workgroup comprised of members from the USCG, EPA, FWS, NMFS, and NOAA was formed to conduct an ESA Section 7(a)(1) review of the NCP and associated oil spill response *activities* (not the results of a spill itself). Under ESA Section 7(a)(2) federal agencies are required to consult on actions that may affect listed species and/or habitat. Similarly, the NCP requires that DOI/DOC be included in the Area Contingency Plan (ACP) planning process, provide technical expertise to Federal On Scene Coordinators (FOSCs) during a response, and facilitate compliance with ESA in both instances. The resulting Memorandum of Agreement (MOA) addresses three areas of oil spill response activities: pre oil spill planning, activities

during the oil spill, and post oil spill activities. The guidance clearly states the roles and responsibilities of each agency under these scenarios. In addition, following publication of the guidance as a Memorandum of Agreement, the workgroup will provide technical documents to assist with implementation and agency training.

The MOA was signed in July 2001.

Protocol Highlights**Planning**

- Pre-spill planning is accomplished using mainly informal consultation through the Area Contingency Plan planning process.
- Area Committees or RRT's may use any planning process that brings USFWS & NMFS endangered species representatives and USCG or EPA representatives together for joint decision-making.
- Information assembled from the planning process, provided as a Planning Template, can also be used as a biological assessment to aid in strategy pre-approval. It can be formalized by the Services if there is still a potential for adverse effects on listed species/habitat by response actions.
- Pre-spill planning requires ongoing involvement by USCG, EPA, USFWS, NOAA and NMFS to ensure that listed species/habitat are recognized and prioritized, and response strategies are developed.
- USFWS Regional Response Coordinator (RRC) and NOAA Scientific Support Coordinator (SSC) will act as liaisons for their respective Services as needed.

- Up front consultations (planning) will improve the speed of response and offer some legal protection to the FOSC.

Response

- Notification will occur as agreed in the ACP.
- Spill response activities that may result in an adverse effect to listed species/habitat require emergency consultation.
- The ACP, and/or agreed upon references cited in the ACP, will form the basis for immediate guidance on response actions.
- Emergency consultation will be accomplished by including USFWS and/or NMFS in the Incident Command System organization established by the FOSC. These representatives will provide timely recommendations to eliminate/minimize adverse effects to listed species/habitat.
- The emergency will continue until removal operations are complete in accordance with 40 CFR 300.320(b). The FOSC will continue emergency consultation until the case is closed.

Post Response

- If listed species/habitat have been adversely affected by spill response activities, the FOSC will initiate formal consultation after the case is closed.
- Requirements to initiate formal consultation following an emergency have been developed based on the Services' Consultation Handbook. The FOSC, or the SSC on behalf of the FOSC, will work with USFWS and NMFS to ensure that this package is complete.
- Pertinent information from the biological opinion developed by USFWS or NMFS can be included in a lessons learned system at

the discretion of the FOSC. The lessons learned will be used to make improvements to the Area Contingency Plan and spill response procedures.

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