

# Endangered Species Act Consultations & Procedures during Emergency Response

CRRT Meeting

August 8-9, 2017

St. Croix, USVI

# NRT MOA

- “Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the National Oil and Hazardous Substances Pollution Contingency Plan and The Endangered Species Act”
  - Signed in 2001 by USCG, EPA, USFWS, NOAA and DOI
- Coordinates ESA consultation requirements with NCP pollution response responsibilities
- Addresses three areas of oil spill response activities:
  - pre-spill planning activities,
  - spill response event activities, and
  - post-spill activities.
- Identifies the roles and responsibilities of each agency under each activity.
- In addition, the MOA and The Endangered Species Act Guidebook (2002) further describe the process, roles and responsibilities.

# RCP Section 3: Regional Response Policies

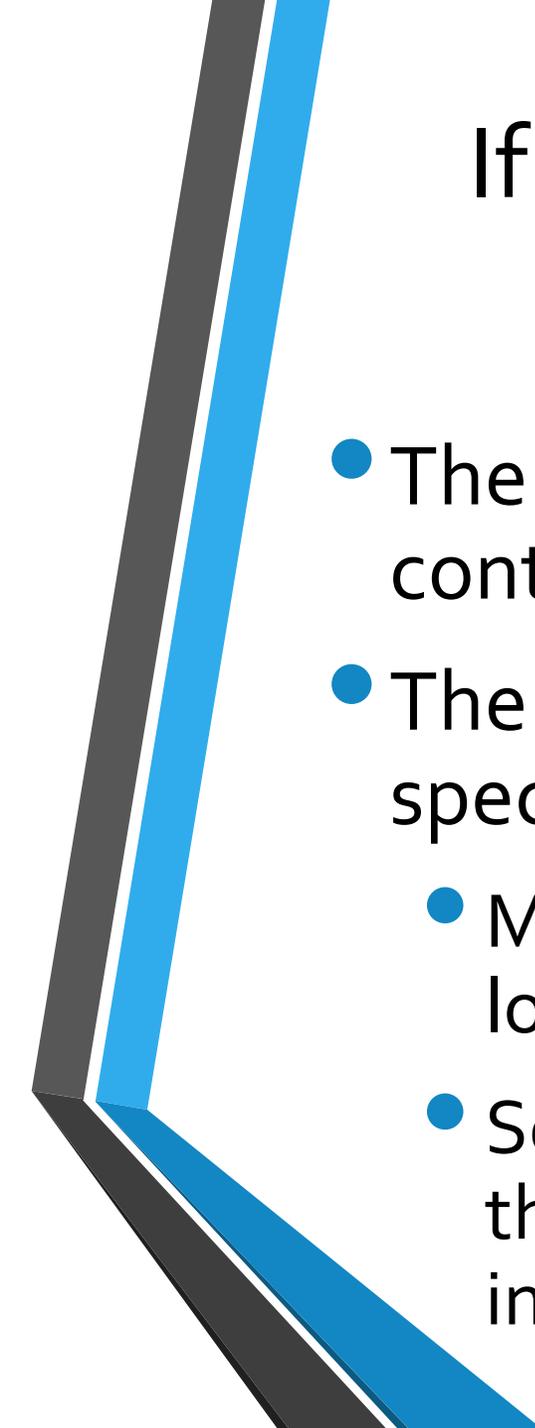
(derived from the MOA)

## “DURING RESPONSE:”

- Emergency consultation procedures allow the FOSC to incorporate listed species concerns/recommendations into response actions
- During emergencies, the primary objective is to protect human life and property
  - This objective takes precedence over normal consultation requirements
  - Emergency response actions should begin immediately and should not be delayed by the ESA consultation process

# Notification of Natural Resource Trustees

- As per the NCP, RCP and ACP:
  - FOSC shall notify the DOI and DOC RRT Natural Resource Trustee reps
  - Regardless of whether listed species or critical habitat are present
- Upon notification, the DOC and DOI Trustee reps shall contact:
  - NOAA SSC and USFWS Regional Response Coordinator (RRC), respectively
  - Other appropriate Service contacts
  - If established in the ACP, the FOSC may also contact the Service regional or field offices directly.



If listed species and/or critical habitat are present or could be present:

- The FOSC shall initiate emergency consultation by contacting the Services through the SSC or RRC.
- The SSC and RRC shall coordinate appropriate listed species expertise.
  - May require timely on-scene expertise from the Services' local field offices.
  - Service representatives may, as appropriate, form part of the FOSC's Incident Command System and provide timely information to the FOSC.

# ESA Emergency Consultation Form

## ***“Endangered Species Consultation for Emergency Responses in Puerto Rico and the U.S. Virgin Islands”***

- Documents emergency consultation with NMFS and/or USFWS
- Streamlines consultation when emergency response activities in coastal or marine areas may adversely affect listed species or designated critical habitat.
- Appendix 6 of the RCP
- Also on the “Policies and Guidance” page at:  
[www.nrt.org/CRRTplans](http://www.nrt.org/CRRTplans)

# NMFS' USCG Spill Response Emergency ESA & EFH Consultation Form

- Intended to document emergency consultation with NMFS under both EFH and ESA, in situations where endangered species under FWS jurisdiction are not expected to be encountered.
- Also in Appendix 6 of the RCP
- Online at:  
[http://sero.nmfs.noaa.gov/protected\\_resources/section\\_7/emergency\\_consultation/documents/nmfs\\_emergency\\_consultation\\_form.pdf](http://sero.nmfs.noaa.gov/protected_resources/section_7/emergency_consultation/documents/nmfs_emergency_consultation_form.pdf)

# Emergency Consultation

- The Services shall provide the FOSC with any timely recommendations to avoid and/or minimize impacts to listed species and critical habitat.
- The NOAA SSC should facilitate the ESA consultation process as outlined in the May 2014 USCG Incident Management Handbook.
- If incidental take is anticipated, and if no means of reducing or avoiding this take are apparent, the FOSC should be immediately advised and the incidental take documented.
- If available, the FOSC should consider this information in conjunction with the national response priorities established in the NCP.
- ***The FOSC makes the final determination of appropriate actions.***

# Documentation

- Responsibility of both the FOSC and the Services to maintain a record of written and oral communications during the oil spill response
- Includes collection of information required to initiate a formal consultation when listed species and/or critical habitat have been adversely affected by response actions.
- If it is anticipated that listed species and/or critical habitat may be affected, the FOSC may request that the USFWS and/or NMFS representative to the Incident Command System provide technical assistance and guidance for the gathering of the required information ***while the response is still ongoing.***

# Documentation

- The FOSC may also designate another qualified individual to be responsible for collecting the relevant ESA information.
- Although in some instances the drafting of information may be completed after field removal operations have ceased, it is anticipated that collection of the information should be complete before the case is officially closed and that no further studies will be necessary.

# Changes in Operations/Seasonal and Other Variances

- FOSC responsibility to notify the Services of changes in response operations due to weather, extended operations, or some other circumstance.
- Responsibility of the Services to notify the FOSC of seasonal variances (e.g., bird migration, sea turtle nesting), or other natural occurrences affecting the resource.
- If no Service rep in the Incident Command System, the FOSC will ensure that the DOC and/or DOI reps to the RRT remains apprised of the situation.
- The Services will continue to offer to avoid jeopardizing listed species or adversely modifying critical habitat, and to minimize the take of listed species associated with spill response activities.
- The FOSC will implement as many avoidance and minimization recommendations and conservation measures as feasible without delaying the response.

# If Take, Jeopardy or Adverse Modification

- If the Service(s) determine:
  - Emergency response procedures may result in take, jeopardy or adverse modification of designated critical habitat, *and*
  - no means of reducing or avoiding this impact are available, *then*
  - the Service(s) will advise the FOSC and document this conclusion.
- The FOSC will not stop or delay the emergency response because of this notification.
- In such a situation, the FOSC and the Service(s) will initiate after the fact consultation following conclusion of the emergency.

## Post Response:

- FOSC determines that removal operations are complete in accordance with 40 CFR 300.320(b)
- The impacts of the response activities on listed species and critical habitat are jointly evaluated by the FOSC and the Services
- If no adverse impacts occurred, ESA consultation is considered complete

# Post Response, if Listed Species or Critical Habitat were Adversely Affected

- The FOSC follows the procedural requirements of 50 CFR 402.05(b) (see Appendix A of the MOA).
- The information required to initiate a formal consultation should be included with a cover letter to the Services requesting consultation, and signed by the FOSC.
- The FOSC identifies any incidental take of a species or an adverse effect to critical habitat that resulted from emergency response actions
- Formal consultation follows standard procedures, includes a description of the actions taken to respond to the emergency, and identifies the final impacts to listed species

# Biological Opinion

- Services normally issue a biological opinion within 90 days of receipt
- Depending on complexity, the Services may use an additional 45 days
- If all agencies agree, the consultation period may be extended.
- The final BO is provided to the FOSC, USFWS RRC, NOAA SSC, DOI and DOC RRT members, the RRT Co-Chairs, and the Area Committee Chair
- Recommendations can be reviewed, and where appropriate, implemented to minimize and/or avoid effects to listed species and critical habitat from future oil spill response actions
- Results should be considered for inclusion in a lessons learned system so changes can be made to the RCP and/or ACP, as necessary