ESA Section 7 & IPaC use in Spill Response

RRT2 MEETING – NOV 8, 2022 PRESENTED BY: SARAH SCHEAFFER (USFWS)

Introductions

- Andrew Raddant , Department of the Interior's Regional Environmental Officer for RRT 1 & 2
- Sarah Scheaffer, FWS New Jersey Ecological Services Field Office, Fish and Wildlife Biologist (FSRC to New York, New Jersey, Delaware & Eastern PA)
 - Drew Major/Lattice Fuentes, FWS New England Field Office, Fish and Wildlife Biologist (FSRC to New England and CANUSLAK Joint Response Team)

FWS Northeast Region 5



Overview

- DOI and FWS missions
- DOI and FWS roles in spill planning and response
- Natural Resource Damage Assessment and Restoration (NRDAR)
- Endangered Species Act and spill response
- IPaC overview and demonstration

DOI and FWS Missions

Department of Interior (DOI) Mission

The U.S. Department of the Interior protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated Island Communities.

▶ U.S. Fish and Wildlife Service (Service) Mission

Working with others to conserve, protect, and enhance, fish, wildlife, plants, and their habitats for the continuing benefit of the American people

<u>Service trust resources:</u> threatened and endangered species, migratory birds, interjurisdictional fishes, supporting habitats, and DOI managed lands





Overview of DOI and FWS Roles in Spill Planning

Participate on Area Committees

- Contribute to RCP and ACPs to ensure natural and cultural resources are taken into consideration as part of a response.
 - Fish and Wildlife and Sensitive Environments Plan
 - Pre-spill consultation for Contingency Plans
- Maintain training and participate in drills and exercises
- Collaborate with partners on tools and guides to assist OSCs in protecting natural and cultural resources during an activation
 - Habitat and Species Fact Sheets for Response

Overview of DOI and FWS Roles during Spill Response

- DOI and FWS may provide support (remote or on-site) for protecting trust resources
 - Assistance to the Planning Section
 - Information for resources-at-risk, resource protection, and development of cleanup techniques
 - Assist in identifying and obtaining appropriate FWS permits
 - Emergency consultation for the Endangered Species Act
 - Assistance to the Operations Section
 - Early reconnaissance of natural resources in the vicinity of the spill
 - Protection strategies to avoid and minimize impacts to trust resources and habitats
 - Technical assistance to wildlife response, implement or coordinate wildlife response (e.g., FWS can fill the Wildlife Branch Director role)

Natural Resource Damage Assessment and Restoration (NRDAR)

- FWS may pursue NRDAR with Co-Trustees to assess damages from spill and response actions
- While separate from response, some NRDAR activities may be conducted at the same time as spill response activities
- Ephemeral data collection occurs during the spill
 - Source oil sample, samples from oiled wildlife, information on extent of oiling and responses
- Assessment work can lead to settlement or litigation
- NRDAR Goal: Return the injured resources to baseline

Endangered Species Act (ESA)



Purpose

Protect and recover threatened and endangered species and critical habitats

Administration – by the "Services"

- Department of the Interior U.S. Fish and Wildlife Service (FWS)
- Department of Commerce National Marine Fisheries Service (NMFS)

Endangered Species Act – Section 7

Interagency Cooperation

- Section 7(a)(1): All Federal agencies shall utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of listed species.
- Section 7(a)(2): Each Federal agency shall insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of designated critical habitat
 - If a Federal agency action may affect individuals of a listed species or critical habitat, the agency must initiate consultation with the Service



ESA Section 7 – Effects Determination

No effect

- Does not require concurrence from the Service
- Include justification/support in project file
- May affect, not likely to adversely affect (NLAA)
 - Requires written concurrence from the Service
 - Informal consultation, 30 days
- May affect, likely to adversely affect
 - Requires formal consultation
 - 135 days after acceptance of initiation package



*Take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct

ESA Memorandum of Agreement & Guidebook

- Developed jointly with NOAA, FWS, EPA and USCG
- MOA provides framework and guidance for cooperation and participation among ESA Trustees (FWS & NMFS) in spill planning and response
- Calls for cooperation with FWS and NMFS in pre spill planning such as ACPs
- MOA does not limit the authority of the FOSC nor is it meant to stop the response
- Safety of human life continues to be the top priority during every response

Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act



Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

[•] U.S. Coast Guard, U.S. Environmental Protection Agency, Department of Interior, and Department of Commerce. (2002). Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act.

IPaC Information for Planning and Consultation

https://ipac.ecosphere.fws.gov/on for Planning and Consultation

PaC is a project planning tool that streamlines the USFWS environmental review process

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<u>https://ipacb.ecosphere.fws.gov/</u>

Integrate the environmental review process into your project design

beta version of IPaC

intended for testing only; there is no guarantee that data entered here will be preserved. Please use the production (live) |PaC if you are not testing



Integrate the environmental review process into your project design

Quickly and easily identify USFWS managed resources and suggested conservation measures for your project.

😤 Explore species and habitat

See if any listed species⁽²⁾, critical habitat, migratory birds or other natural resources may be impacted by your project.

Using the map tool, explore other resources in your location, such as

Q Conduct a regulatory review

Log in and define a project to get an official species list and evaluate potential impacts on resources managed by the U.S. Fish and Wildlife Service.

Follow IPaC's Endangered Species Act (ESA)

Duild a Consultation Package

Consultation Package Builder (CPB) replaces and improves on the original Impact Analysis by providing an interactive, step-by-step process to help you prepare a full consultation package leveraging LLS. Fish and Wildlife Service



IPaC Information for Planning and Consultation





IPaC Information for Planning and Consultation

U.S. Fish & Wildlife Service





IPaC Information for Planning and Consultation

U.S





Country

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17

Layers

IPaC Information for Planning and Consultation

Explore location LOCAL OFFICE NJ ESFO -

U.S. Fish & Wildlife Service

LOG IN



Monmouth County, New Jersey CHANGE LOCATION

18

Resources 7 ENDANGERED SPECIES BALD & GOLDEN EAGLES 1 45 MIGRATORY BIRDS COASTAL BARRIERS 1 FACILITIES WETLANDS . PRINT RESOURCE LIST What's next? Define a project at this location to evaluate potential impacts, get an official species list, and make species determinations.

DEFINE PROJECT

Endangered species

Listed species² and their critical habitats are managed by the <u>Ecological Services Program</u> of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries⁹).

Species and critical habitats under the sole responsibility of NOAA Fisheries are not shown on this list. Please contact NOAA Fisheries for species under their jurisdiction.

Additional information on endangered species data is provided below.

The following species are potentially affected by activities in this location:

#THUMBNAILS #LIST

Mammals



Birds





IPaC Information for Planning and Consultation U.S. Fish & Wildlife Service														
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	Double-crested Cormorant Non-BCC Vulnerable	-++-	++-+			())]				-11-	-11		1-1	

Integrate the environmental review process into your project design

Quickly and easily identify USFWS managed resources and suggested conservation measures for your project.

Explore species and habitat See if any listed species⁽²⁾, critical habitat, migratory birds or other natural resources may be impacted by your project.

Using the map tool, explore other resources in your location, such as wetlands, wildlife refuges, GAP land cover, and other important biological resources. **Q** Conduct a regulatory review

Log in and define a project to get an official species list and evaluate potential impacts on resources managed by the U.S. Fish and Wildlife Service.

Follow IPaC's Endangered Species Act (ESA) Review process—a streamlined, step-bystep consultation process available in select areas for certain project types, agencies, and species. Build a Consultation Package Consultation Package Builder (CPB) replaces and improves on the original Impact Analysis by providing an interactive, step-by-step process to help you prepare a full consultation package leveraging U.S. Fish and Wildlife Service data and recommendations, including conservation measures designed to help you avoid or minimize effects to listed species.

2

CPB will continue to be improved over time.

Will need to get a LOGIN.GOV account if you don't already have one (https://login.gov/)



Helpful Videos

IPaC 101 Presentation (Slides only)
IPaC 10-minute tour (Demo only)
IPaC Overview (Demo & Slides)
IPaC Commercial
Requesting an Official Species List (Demo only)
Using a Determination Key (Demo only)
Using the Consultation Package Builder (Demo only)
Consultation Package Builder Commercial

IPaC Resource List

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U.S. Fish & Wildlife Service

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as trust resources) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

IPaC: Explore Location resource

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.



None

Local office Minnesota-Wisconsin Ecological Services Fiel

\$ (952) 252-0092 https://ipac.ecosphere.fws.gov/project/5FNK/YWOFFHKTFYFWOKH 3/9/22, 1:38 PM (952) 646-2873 MAILING ADDRESS 4101 American Blvd F Bloomington, MN 55425-1665 PHYSICAL ADDRESS

4101 American Blvd B Bloomington, MN 55425-1665

http://www.fws.gov/midwest/Endangered/section7/s7process/step1.html

OT FOR CONSULTATION

IPaC: Explore Location resources

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https://ipac.

IPaC: Explore Location resources

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act requires Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can only be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that	3/9/22, 1:38 PM IPaC: Explore Location	Explore Location resources		
and request an official spec 1. Log in to IPaC. 2. Go to your My Projects li 3. Click PROJECT HOME for 4. Click REQUEST SPECIES L	Northern Long-eared Bat Myotis septentrionalis Wherever found No critical habitat has been designated for this species. https://ecos.fws.gov/ecn/species/50/55	Threatened		
Listed species ¹ and their cri	Clams			
Fish and Wildlife Service (US Administration (NOAA Fishe	NAME	STATUS		
Species and critical habitats list. Please contact NOAA Fi:	Higgins Eye (pearlymussel) Lampsilis higginsii Wherever found No ortikal habitat has been designated for this species. https://ecos.fws.gov/ecp/species/5428	Endangered		
 Species listed under the species that are candida information. IPaC only sł <u>NOAA Fisheries</u>, also kno National Oceanic and At 	Sheepnose Mussel Plethobasus cyphyus Werever found No ortical habitat has been designated for this species. https://ecos.fws.gov/eco/species/6903	Endangered		
The following species are po	Insects	STATIS		
NAME	Karner Blue Butterfly Lycaeides melissa samuelis	Endangered		
https://ipac.ecosphere.fws.gov/project/5FNK	Wherever found There is proposed critical habitat for this species. The location of th critical habitat is not available. https://ecos.fivs.gov/ecos/species/6656	ne		

Monarch Butterfly Danaus plexippu lo critical habitat has been designated for this species

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

Candidate

Endangered

THERE ARE NO CRITICAL HARITATE AT THIS LOCATION.

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Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act¹ and the Bald and Golden Eagle Protection Act²

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described below.

IPaC: Explore Location resource

1. The Migratory Birds Treaty Act of 1918. 2. The Bald and Golden Eagle Protection Act of 1940.

Additional information can be found using the following links:

- Birds of Conservation Concern http://www.fws.gov/birds/management
- birds-of-conservation-concern.php · Measures for avoiding and minimizing impacts to birds http://www.fws.gov/birds/management/project-assessment-tool conservation-measures.php
- Nationwide conservation measures for birds http://www.fws.gov/migratorybirds/pdf/managem rvationmeasures.pdf /nationwidestandardc

The birds listed below are birds of particular concern either because they occur on the USFWS Birds of Conservation Concern (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ below. This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see exact locations of where birders and the general public have sighted birds in and arounc 3/9/22, 1:38 PM IPaC: Explore Location resources enter your location, desired date range Atlantic Coast, additional maps and mo Golden-winged Warbler Vermiyora chrysoptera species on your list are available. Links

This is a Bird of Conservation Concern (BCC) throughout its range in other important information about you the continental USA and Alaska. use your migratory bird report, can be t https://ecos.fws.gov/ecp/species/874 For guidance on when to schedule activ

reduce impacts to migratory birds on y the top of your list to see when these b project area NAME

https://ipac.ecosphere.fws.gov/project/5ENKIYWOEEHKTEY

https://ecos.fws.gov/ecp/species/3941 Le Conte's Sparrow Ammodramus leconteii

Henslow's Sparrow Ammodramus henslowii

the continental USA and Alaska.

This is a Bird of Conservation Concern (BCC) throughout its range i the continental USA and Alaska.

This is a Bird of Conservation Concern (BCC) throughout its range in

Lesser Yellowlegs Tringa flavipes This is a Bird of Conservation Concern (BCC) throughout its range the continental USA and Alaska. https://ecos.fws.gov/ecp/species/9675

Red-headed Woodpecker Melanerpes erythrocephalus Breeds May 10 to Sep 10 This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Ruddy Turnstone Arenaria interpres morinella This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Rusty Blackbird Euphagus carolinus This is a Bird of Conservation Concern (BCC) only in particular Bird Conservation Regions (BCRs) in the continental USA

Breeds May 1 to Jul 20

Breeds May 1 to Aug 31

Breeds Jun 1 to Aug 15

Breeds elsewhere

Breeds elsewhere

Short-hilled Dowitcher, Limnodromus griseus Breeds elsewhere This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska. https://ecos.fws.gov/ecp/species/948

Wood Thrush Hylocichla mustelina Breeds May 10 to Aug 31 This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

IPaC Consultation Package Builder (optional resource in IPaC)

- Consultation Package Builder (CPB) provides an interactive, step-by-step process to help you prepare a full consultation package leveraging U.S. Fish and Wildlife Service data and recommendations, including conservation measures designed to help you avoid or minimize effects to listed species
- Many spill response activities built-in to the CPB
- You may want to skip using CPB if:
 - > You expect your project only needs minor technical assistance; or
 - You have already analyzed and made justified effect determinations for the species in your action area.

IPaC Example Project Type and Deconstruction

X

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×

Project type and deconstruction

Deconstruct the proposed action by selecting all of its activities and structures.

The selected activities and structures provide the headings under which the Effects Analysis (i.e., effects of the action) for the species and critical habitat will be organized in your final document (i.e., biological assessment or other environmental review document). Later you will describe each activity and structure in greater detail.

1) What structures and activities comprise your project?

Activities

Monitor air quality	Û
Use of cofferdam	Û
Use of decontamination area	Û
Vacuuming	Û

ADD MORE STRUCTURES AND ACTIVITIES

2) What kind of project is this?

Project types

Contaminant spill response

Select structures and activities

Search to find project types (which include structures and activities) that best match your project; or add structures and activities individually. If your search produces no results, you can create a custom structure or activity.

spill response	FILTER -
Structures	
Lake/pond Possibly related	+
Activities	
Contaminant residue removal (land)	+
Contaminant residue removal (water)	+
Contaminated debris removal	+
Contaminated sediment removal	+



← → C A fisheries.noaa.gov/resource/map/greater-atlantic-region-esa-section-7-mapper

-	D ATMOSPHERIC ADMINISTRAT	FION U.S. DEPARTMENT OF COMMER	Search NOAA	Q			
Find A Species	Fishing & Seafood	Protecting Marine Life	Environment	Regions	Resources & Services	About Us	

RESOURCES

The Greater Atlantic Region ESA Section 7 Mapper

We created an online application, the Section 7 Mapper, to assist federal action agencies in identifying the ESA-listed species and critical habitat in their project action area.

Map | New England/Mid-Atlantic

Within the Section 7 Mapper, we have included data layers that represent our best estimate of the spatial and temporal range of listed species' life stages, behaviors, and critical habitat in our region.

Use of this app does NOT replace the section 7 consultation process.

We are providing the Section 7 Mapper as a technical assistance tool and expect action agencies will use it as a first step in determining if a proposed federal action overlaps with listed species or critical habitat.

We have published several documents to support the mapper.

These include:

- A <u>User Guide</u> for the Section 7 Mapper (PDF, 24 pages).
- <u>Metadata</u> describing the Section 7 Consultation Area geodatabase, which informs the mapper (PDF, 84 pages) (last updated August 2022).
- <u>General descriptions of Atlantic sturgeon life stages and behaviors used in the Consultation</u>
 <u>Areas (PDF, 4 pages).</u>
- <u>General descriptions of Shortnose sturgeon life stages and behaviors used in the Consultation</u>
 <u>Areas (PDF, 4 pages).</u>

More Information

- Launch the ESA Section 7 Mapper (last updated August 2022) 2
- Section 7: Species/Critical Habitat Information & Maps for the Greater Atlantic...
- Section 7 Consultations in the Greater Atlantic Region

Environmental Best Management Practices (BMPs) for Oil Spill Response in Regional Response Team 3 (RRT3) Coastal Zone

General Response Operations

- Response personnel may not attempt to scare, herd, disturb, or harass any protected species to encourage them to leave the area. Coordination with National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator (SSC), U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) Stranding Coordinator, or appointed point of contact, may result in authorization for these actions.
- Report stranded, injured, sick, trapped, entangled, or dead wildlife to the Incident Commander (IC) and Environmental Unit as soon as possible to ensure appropriate agency notifications are made.
- □ The area should be surveyed for the presence of wildlife impacts by an individual trained to identify oiled wildlife. Report wildlife observations (oiled and unoiled animals and habitats) to the Command Center so that they can be plotted in the COP (Common Operating Platform).Do not assume that an inactive turtle is dead. The onset of rigor mortis and/or rotting flesh are often the only definite indications that a turtle is dead. Releasing a comatose turtle into any amount of water will drown it, and a turtle may recover once its lungs have had a chance to drain.
 - If a turtle appears to be comatose (unconscious), contact the designated stranding/rehabilitation personnel immediately. Pick up sea turtles by the front and back of the top shell (carapace). Do not pick up sea turtles by flippers, the head or the tail. Once the rehabilitation personnel have been informed of the incident, attempts should be made to revive the turtle at once. Sea turtles have been known to revive up to 24 hours after resuscitation procedures have been followed. In accordance with Sea Turtle Resuscitation Regulations (50 CFR 223.206(d)(1), steps for resuscitation can be found at https://media.fisheries.noaa.gov/dammigration/sea turtle handling and resuscitation measures.pdf.
 - If the sea turtle is stranded, injured, or sick, and actively moving it should be retained at onboard until transported by stranding/rehabilitation personnel to the nearest designated stranding/rehabilitation facility.

Summary

- DOI Trustee for natural resources and DOI managed lands
- Ensure trust resources and supporting habitats are considered during planning and response

- ► FWS may conduct NRDAR with co-Trustees
- We are here to help during planning and response

Contact

USFWS Field Spill Response Coordinators:

- Sarah Scheaffer sarah_scheaffer@fws.gov or 609-833-1476
- Andrew "Drew" Major andrew_major@fws.gov 603-748-8082

- Lattice Fuentes latice_fuentes@fws.gov 603-333-6015
- Department of the Interior's Regional Environmental Officer:
 - Andrew Raddant andrew_raddant@ios.doi.gov 617-592-5444