Section 9404
Region 10 Regional
Response Team/
Northwest Area
Committee
Endangered Species
Act Compliance
Guide for Federal
Responders during
Emergency
Response

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Region 10 Regional Response Team/Northwest Area Committee Endangered Species Act Compliance Guide for Federal Responders during Emergency Response

9404.1 Initial Information Exchange

This document is intended to assist the Federal On-Scene Coordinator (FOSC) in minimizing impacts to threatened and endangered species during emergency response operations. It may be used to assist FOSCs in meeting their statutory obligations to conduct emergency consultation under Section 7 of the Endangered Species Act (ESA). It may also provide a consistent template for the united States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) (collectively, the "Services") to use in compiling relevant information and recommendations.

Use this form when federal actions may impact or potentially impact federally listed threatened or endangered species or their critical habitat. Neither the use of this document nor its suggested approaches is mandatory on any FOSC or Services employee.

9404.1.1 Emergency/First Contact:

As outlined in the Northwest Area Contingency Plan, response agencies shall promptly notify Federal Natural Resources Trustees of discharges or releases according to the notification guidelines under their jurisdiction. In the Northwest Area:

- NOAA 24-HR Spill Line: (206) 526-6322. Secretary of Commerce representative to Region 10 Regional Response Team.
- DOI Regional Environmental Officer: (503) 720-1212 Secretary of the Interior representative to Region 10 Regional Response Team.

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The trustee representatives from these agencies will notify appropriate Service staff (NMFS or USFWS) of the incident and response, as well as facilitate contact between their respective Service and agency response personnel.

9404.1.2 Process for Completing the Form

After initial contact to the Natural Resource Trustee(s) is made by the Response Agency, the FOSC should fill out ATTACHMENT 1: DOCUMENTATION OF ESA SECTION 7 EMERGENCY CONSULTATION DURING EMERGENCY RESPONSE ACTIVITIES – FOSC INITIAL INFORMATION REPORT to extent possible, given the available information. All response actions taken or being considered should be indicated, including any FOSC approved response measures to minimize impacts to listed species and critical habitats.

To maximize the effectiveness of the emergency notification to the Natural Resource Trustees, this form should be completed by the FOSC within 24 hours following the start of emergency response activities and transmitted via email to the Natural Resource Trustee representatives. The Services will consider the proposed response actions and use ATTACHMENT 2: DOCUMENTATION OF ESA SECTION 7 EMERGENCY CONSULTATION DURING EMERGENCY RESPONSE ACTIVITIES - USFWS/NMFS RESPONSE to acknowledge notification. If the response may affect any listed species or critical habitat as well as provide recommendations and offer Best Management Practices or other measures to avoid and minimize any potential adverse effects, the Services will provide any proposed conservation measures to the FOSC as soon as possible, preferably within 24 hours, after receipt of the FOSC notification.

Any and all of this information may be conveyed verbally, via fax, or over email.

If the response is anticipated to continue beyond the 48-hour notification and response period, the FOSC will continue to coordinate with the Services as appropriate. The final product should document emergency response activities including measures taken to avoid or minimize impacts to listed species and critical habitat during the response.

Responders should not delay emergency response actions while awaiting a response from the Services.

9404.1.3 National Response Team (NRT) Emergency Consultation Form for Section 7 of the Endangered Species Act (ESA) and Essential Fish Habitat (EFH)

The purpose of this document is to inform Federal On-Scene Coordinators (FOSCs) of the potential need to conduct emergency consultations in accordance with 50 Code of Federal Regulations (CFR) § 402.05 and 50 CFR § 600.920(a)(1). This National Response Team (NRT) Emergency Consultation Form for both ESA emergency consultations and EFH coordination is provided to assist FOSCs through the emergency consultation process. Whenever an FOSC makes a determination that federal response actions may affect ESA-listed (threatened or endangered) species and/or designated Critical Habitat or may adversely affect EFH¹, the action agency (U.S. Coast Guard (USCG) within the coastal zone, Environmental Protection Agency (EPA) within the inland zone, Department of Defense, and Department of Energy) shall initiate emergency consultation protocols as appropriate. The FOSC initiates this emergency consultation as soon as practicable, via email to the Services, after the response is initiated. If the FOSC determines consultations are not practicable during emergency response operations, refer to the NRT's Post-Response Procedures guidance for ESA Section 7 and EFH compliance requirements.

The three ESA thresholds, which are used to determine action necessary by the FOSC, are:

- (1) **No Effect** (none at all, negative or positive);
- (2) May Affect; Not Likely to Adversely Affect, (NLAA); and
- (3) May Affect; Likely to Adversely Affect (LAA).

The two EFH thresholds, which are used to determine action necessary by the FOSC, are:

- (1) Would Not Adversely Affect; and
- (2) **May Adversely Affect (Adverse Effects** are any effect that reduces the quality or quantity of EFH).

ESA Section 7 consultation is completed through the regional offices of the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (DOC-NMFS), and the Department of the Interior, U.S. Fish and Wildlife Service (DOI-USFWS). These agencies are referred to as "the Services." **The FOSC should ensure that the following are completed during emergency response actions:**

- Provide a description of the emergency to the Services;
- Check Geographic Response Strategies (GRS), Environmental Response Management Application (ERMA), EFH Mapper, NMFS ArcGIS Viewer, Environmental Conservation Online System (ECOS), and Information for Planning and Consultation (IPAC) for all listed species, designated Critical Habitats, and designated EFH, along with the contacts for each of the Services.
- Provide an evaluation of the emergency response actions and their potential impacts, if any, on listed and endangered species, and designated Critical Habitats, and/or EFH. The scope of the

¹ NMFS supplies an EFH mapping tool for assistance in identifying EFH. EFH Mapping tool link: https://www.habitat.noaa.gov/application/efhmapper/index.html. FWS also provides the IPaC Species List Tool at https://ipac.ecosphere.fws.gov/.

consultation is focused on the agency's response actions during an emergency, NOT the emergency itself.

- If pre-spill planning consultations were completed with the Services, employ Best Management Practices (BMPs) specified in the pre-spill planning consultation Biological Opinion (BO)/EFH consultation and document how the Services' recommendations were implemented to minimize "effects." These BMPs may be incorporated into the GRSs, Area Contingency Plans (ACPs), and Regional Contingency Plans (RCPs) as appropriate.
 - (1) If a BO is completed, implement reasonable and prudent measures and terms and conditions, which **must be completed** by the FOSC. Additional conservation recommendations may also be included in a BO and remain **discretionary** to the FOSC.
 - (2) If a Letter of Concurrence (LOC) is completed, implement any applicable conservation measures.
 - (3) Any documents that result from Emergency Consultations should be incorporated into GRSs, ACPs, RCPs, and any pre-spill planning efforts, as appropriate.
- Depending on the scale and scope of emergency response actions, pre-spill planning consultations can minimize the level of effort of emergency consultation(s) and, in certain circumstances, even alleviate the need for emergency consultation(s). (The pre-spill planning consultation covers all potential response actions that may be implemented during the emergency response).
- If pre-spill planning consultations have not been completed, provide a comparison of the emergency response actions as described above with any other pre-planned or ongoing countermeasures and mitigation information to the Services.

More guidance regarding Section 7 consultation can be found in the 2001 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 (2001 MOA) and the NRT's National Environmental Compliance (NEC) Subcommittee ESA guidance page at NRT.org². EFH consultations should be completed simultaneously with ESA Section 7 consultations.

Emergency Consultation Form

This form is intended for documentation of emergency response actions that may or are likely to affect:

- Species listed as endangered or threatened under the ESA;
- Designated Critical Habitat under the ESA; and
- Fishery habitat designated as EFH under section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

This form is intended to provide as much detailed information as possible to the Services within 48 hours of the federal action agency undertaking emergency response actions. It is not intended to be comprehensive and **responders should not delay emergency response actions while awaiting a response from the Services**. This form may be used to assist FOSCs in meeting their statutory

² National Response Team (NRT) National Environmental Compliance (NEC) Homepage link: https://nrt.org/Main/Resources.aspx?ResourceType=Endangered%20Species%20Act%20(ESA)%20Section%207&ResourceSection=2

obligations to conduct emergency consultation under Section 7 of the ESA and/or designated EFHs. This form is also designed to document communication efforts between the Action Agencies and the Services as well as provide a consistent template for the Services to use in compiling relevant information and recommendations during emergency response operations.

- USFWS ESA emergency contact: (email) (phone)
- NMFS ESA emergency contact: (email) (phone)
- NMFS EFH emergency contact: (email) (phone) (reference below link) https://www.fisheries.noaa.gov/contact-directory/regional-essential-fish-habitat-coordinators

Note: The Services will review the supplied information and respond with BMPs to mitigate potential impacts to any ESA-listed (threatened or endangered) species and/or designated Critical Habitat and/or EFH. The BMPs are then incorporated into response actions and species specialists may be brought into the response to provide additional oversight and guidance via Pollution Removal Funding Authorization (PRFA).

Once this form is submitted, the Services will consider the proposed response actions and use ATTACHMENT 2: DOCUMENTATION OF ESA SECTION 7 AND EFH EMERGENCY CONSULTATION DURING EMERGENCY RESPONSE ACTIVITIES – USFWS/NMFS REPSONSE.

For all consultations:

The regional NOAA Scientific Support Coordinator (SSC) and/or DOI Regional Environmental Officer **shall** be informed whenever the FOSC engages in emergency consultation with the Services.

The NOAA SSC may be able to facilitate communications between the USCG and the Services; however, it is the sole responsibility of the FOSC to initiate, conduct, and complete the consultation.

The DOI Regional Environmental Officer may also be able to facilitate communications between the action agencies and USFWS.

U. S. Coast Guard (USCG) District Incident Management and Preparedness Advisors (IMPAs) and District Response Advisory Teams (DRATs) are excellent resources for all required consultations (ESA, EFH, State Historic Preservation Office (SHPO), and Tribal Historic Preservation Office (THPO)).

The USCG IMPA and DRAT are available 24/7 via District command centers.

Note: This is a guidance document only. Units are encouraged to modify this document as they see fit to suit the needs of their respective Regions or Areas.

ESA SECTION 7 / EFH FORM INSTRUCTIONS

In using the below ESA Section 7/EFH Form, FOSCs (or their designated representative) should complete the Cover Memo and Attachment 1 after initial contact is made to the Services. Attachment 1 should be filled out with the best available information at the time of the response and should account for all response actions taken or being considered.

Attachment 2 is intended to be submitted blank to the Services by the FOSC (or their designated representative), so the Services can both acknowledge the request for consultation as well as begin to consider the FOSC's actions or proposed actions during the emergency response.

ESA SECTION 7/EFH FORM COVER MEMO

FROM: FOSC U.S. Coast Guard/EPA	Name: Click or tap here to enter text. Email: Click or tap here to enter text.	T: Click or tap here to enter text. C: Click or tap here to enter text.
TO: NOAA Scientific Support Coordinator	Name: Click or tap here to enter text. Email: Click or tap here to enter text.	T: Click or tap here to enter text. C: Click or tap here to enter text.
TO: DOI Regional Environmental Officer	Name: Click or tap here to enter text. Email: Click or tap here to enter text.	T: Click or tap here to enter text. C: Click or tap here to enter text.

This is an:

O Initial Report O Updated Report

INCIDENT DETAILS			
Name of Incident:			
Click or tap here to enter text.			
Date of Incident: Click or tap to enter a date. Time of Incident: Click or tap here to enter text.			
Incident Type (e.g., vessel grounding, vessel colli	sion, pipeline, transfer):		
Click or tap here to enter text.			
Product(s) Released/Discharged:			
Click or tap here to enter text.			
Volume Released/Discharged (indicate whether	gallons or barrels):		
Click or tap here to enter text.			
Potential Volume (indicate whether gallons or ba	arrels):		
Click or tap here to enter text.			
Has the release/discharge been stopped, continuing, or is the status unknown?			
Click or tap here to enter text.			
Is the release/discharge contained, spreading, or is the status unknown?			
Click or tap here to enter text.			

INCI	DENT	DE1	TAILS

Indicate which Geographic Response Strategies exist for the area affected or potentially affected by the release/discharge:

Click or tap here to enter text.

Indicate which, if any, Response Actions have been or are being deployed:

Click or tap here to enter text.

CENTER LOCATION

Latitude (example: 40°10'8" N or 40.17):

Click or tap here to enter text.

Longitude (example: 74°51′53″ W or -73.14):

Click or tap here to enter text.

Nearest Landmark/Town:

Click or tap here to enter text.

Location Type (Check all that apply below)	Name/Landmarks
☐ Port/Industrial/Canal	Click or tap here to enter text.
☐ Riverine	Click or tap here to enter text.
☐ Inshore/Estuarine	Click or tap here to enter text.
☐ Nearshore/Coastal	Click or tap here to enter text.
☐ Offshore/EEZ	Click or tap here to enter text.
☐ Lake/Lacustrine (freshwate	Click or tap here to enter text.
☐ Wetland (freshwater)	Click or tap here to enter text.

ESA Section 7 / EFH Form 9404-8 COVER MEMO

ATTACHMENT 1: DOCUMENTATION OF ESA SECTION 7 AND EFH EMERGENCY CONSULTATION DURING EMERGENCY RESPONSE ACTIVITIES – FOSC INITIAL

Date of Transmittal: Click or tap to enter a date. **Time of Transmittal:** Click or tap here to enter text.

DESCRIPTION OF INCIDENT (Include Incident Command System (ICS) Form 201, other ICS forms as appropriate, or include hand drawn or digitally inserted map of incident action area): Be as complete as possible. Include detailed information on initial impacts, and other relevant information.

RESPONSE ACTIONS				
This is an: O Initial List of Response Actions	○ Updated List of Response Actions			
Action (check all that apply)	Details/Notes			
☐ Barriers/Berms/Fences	Click or tap here to enter text.			
☐ Booming (Containment/Exclusion)	Click or tap here to enter text.			
☐ Dispersants	Click or tap here to enter text.			
☐ Flooding/Flushing	Click or tap here to enter text.			
☐ In-situ Burning	Click or tap here to enter text.			
☐ Manual Oil Removal/Cleaning	Click or tap here to enter text.			
☐ Net Use or Trawling	Click or tap here to enter text.			
☐ Nutrient Enrichment/Bioremediation	Click or tap here to enter text.			
☐ Oiled Vegetation Cutting/Removal	Click or tap here to enter text.			
☐ Oiled Debris Removal	Click or tap here to enter text.			
☐ Physical Herding	Click or tap here to enter text.			
☐ Pre-oiling Debris Removal	Click or tap here to enter text.			
☐ Sand Blasting	Click or tap here to enter text.			
☐ Sediment Removal/Dredging	Click or tap here to enter text.			
☐ Sediment Reworking/Tilling	Click or tap here to enter text.			
☐ Shoreline Cleaning	Click or tap here to enter text.			
☐ Skimming	Click or tap here to enter text.			
☐ Solidifiers	Click or tap here to enter text.			
☐ Sorbents (specify type in notes – e.g., sausage, pom-pom, particulate: Bagasse, peat moss, natural/organic, etc.)	Click or tap here to enter text.			
☐ Steam Cleaning	Click or tap here to enter text.			
☐ Surface Washing Agent/ Chemical Shoreline Cleaners	Click or tap here to enter text.			

RESPONSE ACTIONS

ESA Section 7 / EFH Form 9404-10 ATTACHMENT 1

RESPONSE ACTIONS		
This is an: ○ Initial List of Response Actions	© Updated List of Response Actions	
Action (check all that apply)	Details/Notes	
☐ Surface Collecting Agents/ Herders	Click or tap here to enter text.	
☐ Trenching	Click or tap here to enter text.	
☐ Vessel/Container Removal	Click or tap here to enter text.	
☐ Vacuuming	Click or tap here to enter text.	
☐ Other	Click or tap here to enter text.	

Additional information on response actions:

WILDLIFE RESPONSE ACTIONS			
This is an:			
O Initial List of Response Actions Updated List of Response Actions			
Action (check all that apply) Details/Notes			
☐ Aerial Surveys	Click or tap here to enter text.		
☐ Vessel Surveys	Click or tap here to enter text.		
☐ Capture and Relocation	Click or tap here to enter text.		
☐ Capture and Rehabilitation	Click or tap here to enter text.		
☐ Deterrence/Hazing	Click or tap here to enter text.		
☐ Nest Protection	Click or tap here to enter text.		
☐ Necessary Holding Location	Click or tap here to enter text.		
□ Other	Click or tap here to enter text.		

Additional information on wildlife response actions:

VESSELS/VEHICLES			
Vessel/Vehicles (check all that apply)	Details/Notes		
☐ Airplanes	Click or tap here to enter text.		
□ ATVs	Click or tap here to enter text.		
□ Boats	Click or tap here to enter text.		
☐ Unmanned Aerial Vehicles (UAVs) or Unmanned Aerial Systems (UASs)	Click or tap here to enter text.		
☐ Heavy Equipment	Click or tap here to enter text.		
☐ Helicopters	Click or tap here to enter text.		
☐ Staging Areas	Click or tap here to enter text.		
☐ Truck or other automobile	Click or tap here to enter text.		

HABITAT TYPES CHECKLIST (Optional – fill out if known)			
Habitat Type (check all that apply)	Habitat Exposed/Not Exposed to response action(s) or vehicles/vessels?		
□ Beach	© Exposed	○ Not Exposed	
☐ Coastal Lagoon	© Exposed	○ Not Exposed	
□ Dune	© Exposed	○ Not Exposed	
☐ Submerged Aquatic Vegetation	© Exposed	○ Not Exposed	
☐ Intertidal/Mud Flats	© Exposed	○ Not Exposed	
☐ Lake/Lacustrine (freshwater)	© Exposed	○ Not Exposed	
☐ Riverine/Riparian (freshwater)	© Exposed	○ Not Exposed	
☐ Rocky Intertidal	O Exposed	○ Not Exposed	
☐ Salt/Tidal Marsh	© Exposed	○ Not Exposed	
☐ Wetland (freshwater)	© Exposed	○ Not Exposed	
☐ Marine (open water)	© Exposed	○ Not Exposed	
☐ Other (enter below): Click or tap here to enter text.	© Exposed	○ Not Exposed	

HABITAT TYPES CHECKLIST (Optional – fill out if known)			
Habitat Type (check all that apply)	Habitat Expo	osed/Not Exposed to response action(s) or ssels?	
☐ Other (enter below): Click or tap here to enter text.	© Exposed	○ Not Exposed	

ESSENTIAL FISH HABITAT (Applies to Inland and Coastal Zones – fill out if known) Are the response actions below in the vicinity of a designated EFH (can use NMFS EFH Mapper or technical assistance)?

Response Actions	Yes/Unknown: Technical Assistance is needed to determine need for consultation. If pre-spill planning is complete, utilize and implement BMPs.	No/Not Used: No further action needed.
Barriers/Berms/Fences	○ Yes	○ No
Booming (Containment/Exclusion)	○ Yes	○ No
Dispersants	○ Yes	○ No
Flooding/Flushing	○ Yes	○ No
In-situ Burning	○ Yes	○ No
Manual Oil Removal/Cleaning	○ Yes	○ No
Net Use or Trawling	○ Yes	○ No
Nutrient Enrichment/Bioremediation	○ Yes	○ No
Oiled Vegetation Cutting/Removal	○ Yes	○ No
Oiled Debris Removal	○ Yes	○ No
Physical Herding	○ Yes	○ No
Pre-oiling Debris Removal	○ Yes	○ No
Sand Blasting	○ Yes	○ No
Sediment Removal/Dredging	○ Yes	○ No
Sediment Reworking/Tilling	○ Yes	○ No
Shoreline Cleaning	○ Yes	○ No

ESSENTIAL FISH HABITAT (Applies to Inland and Coastal Zones – fill out if known) Are the response actions below in the vicinity of a designated EFH (can use NMFS EFH Mapper or technical assistance)?

Response Actions	Yes/Unknown: Technical Assistance is needed to determine need for consultation. If pre-spill planning is complete, utilize and implement BMPs.	No/Not Used: No further action needed.
Skimming	○ Yes	○ No
Solidifiers	○ Yes	○ No
Sorbents	○ Yes	○ No
Steam Cleaning	○ Yes	○ No
Surface Washing Agent/Chemical Shoreline Cleaners	○ Yes	○ No
Surface Collecting Agents/Herders	○ Yes	○ No
Trenching	○ Yes	○ No
Vessel/Container Removal	○ Yes	○ No
Vacuuming	○ Yes	○ No
Other (enter below): Click or tap here to enter text.	○ Yes	○ No
Wildlife Response Actions		
Aerial Surveys	C Yes	○ No
Vessel Surveys	○ Yes	○ No
Capture and Relocation	○ Yes	○ No
Capture and Rehabilitation	○ Yes	○ No
Deterrence/Hazing	○ Yes	○ No
Nest Protection	○ Yes	○ No
Necessary holding location	○ Yes	○ No
Other (enter below): Click or tap here to enter text.	○ Yes	○ No

ATTACHMENT 2: DOCUMENTATION OF ESA SECTION 7 AND EFH EMERGENCY CONSULTATION DURING EMERGENCY RESPONSE ACTIVITIES - USFWS/NMFS RESPONSE

Date of Transmittal: Click or tap to enter a date.

FROM:	Name: Click or tap here to enter text. Email: Click or tap here to enter text.	T: Click or tap here to enter text. C: Click or tap here to enter text.
TO: FOSC U.S. Coast Guard/EPA	Name: Click or tap here to enter text. Email: Click or tap here to enter text.	T: Click or tap here to enter text. C: Click or tap here to enter text.
Name of Incident: Click or tap here to ente	r text.	

Recommendations (may include information on species and designated Critical Habitats in the area, suggested conservation measures, etc.):