

Section 7 of the Endangered Species Act (ESA) and Essential Fish Habitat (EFH) Emergency Consultation

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.” EFH consultations are submitted to a different NOAA NMFS program representative. **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>

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*, 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.org](https://nrt.org)². 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\(EESA\)%20Section%207&ResourceSection=2](https://nrt.org/Main/Resources.aspx?ResourceType=Endangered%20Species%20Act%20(EESA)%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 RESPONSE.

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.

FOR FURTHER GUIDANCE WITHIN THE USCG, PLEASE CONSULT WITH:

U.S. Coast Guard Natural Resources, COMDTINST 5090.3A (series)

Commanding Officer's Environmental Guide, COMDTPUB P5090.1 (series)

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: Email:	T: C:
TO: USFWS	Name: Email:	T: C:
TO: NMFS ESA Office	Name: Email:	T: C:
TO: NMFS EFH Office	Name: Email:	T: C:
COPY: NOAA Scientific Support Coordinator	Name: Email:	T: C:
COPY: DOI Regional Environmental Officer	Name: Email:	T: C:

This is an: Initial Report Updated Report

INCIDENT DETAILS	
Name of Incident:	
Date of Incident:	Time of Incident:
Incident Type (e.g., vessel grounding, vessel collision, pipeline, transfer):	

INCIDENT DETAILS

Product(s) Released/Discharged:

Volume Released/Discharged (indicate whether gallons or barrels):

Potential Volume (indicate whether gallons or barrels):

Has the release/discharge been stopped, continuing, or is the status unknown?

Is the release/discharge contained, spreading, or is the status unknown?

INCIDENT DETAILS

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

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

CENTER LOCATION

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

Longitude (example: 74°51'53" W or -73.14):

Nearest Landmark/Town:

Location Type (Check all that apply below)	Name/Landmarks
Port/Industrial/Canal	
Riverine	
Inshore/Estuarine	
Nearshore/Coastal	
Offshore/EEZ	
Lake/Lacustrine (freshwater)	
Wetland (freshwater)	

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

Date of Transmittal:

Time of Transmittal:

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: Initial List of Response Actions Updated List of Response Actions

Action (check all that apply)	Details/Notes
Barriers/Berms/Fences	
Booming (Containment/Exclusion)	
Dispersants	
Flooding/Flushing	
In-situ Burning	
Manual Oil Removal/Cleaning	
Net Use or Trawling	

RESPONSE ACTIONS	
Action (check all that apply)	Details/Notes
Nutrient Enrichment/ Bioremediation	
Oiled Vegetation Cutting/ Removal	
Oiled Debris Removal	
Physical Herding	
Pre-oiling Debris Removal	
Sand Blasting	
Sediment Removal/Dredging	
Sediment Reworking/Tilling	

RESPONSE ACTIONS	
Action (check all that apply)	Details/Notes
Shoreline Cleaning	
Skimming	
Solidifiers	
Sorbents (specify type in notes – e.g., sausage, pom-pom, particulate: Bagasse, peat moss, natural/organic, etc.)	
Steam Cleaning	
Surface Washing Agent/ Chemical Shoreline Cleaners	
Surface Collecting Agents/ Herders	
Trenching	

RESPONSE ACTIONS	
Action (check all that apply)	Details/Notes
Vessel/Container Removal	
Vacuuming	
Other	

Additional information on response actions:

WILDLIFE RESPONSE ACTIONS

This is an: Initial List of Response Actions Updated List of Response Actions

Action (check all that apply)	Details/Notes
Aerial Surveys	
Vessel Surveys	
Capture and Relocation	
Capture and Rehabilitation	
Deterrence/Hazing	
Nest Protection	
Necessary Holding Location	

WILDLIFE RESPONSE ACTIONS

Other

Additional information on wildlife response actions:

VESSELS/VEHICLES	
Vessel/Vehicles (check all that apply)	Details/Notes
Airplanes	
ATVs	
Boats	
Unmanned Aerial Vehicles (UAVs) or Unmanned Aerial Systems (UASs)	
Heavy Equipment	
Helicopters	
Staging Areas	
Truck or other automobile	

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	Exposed	Not Exposed
Salt/Tidal Marsh	Exposed	Not Exposed
Wetland (freshwater)	Exposed	Not Exposed
Marine (open water)	Exposed	Not Exposed
Other (enter below):	Exposed	Not Exposed
Other (enter below):	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
Skimming	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.
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):	Yes	No
Other (enter below):	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)?

Wildlife 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.
Aerial Surveys	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):	Yes	No
Other (enter below):	Yes	No
Other (enter below):	Yes	No
Other (enter below):	Yes	No
Other (enter below):	Yes	No
Other (enter below):	Yes	No
Other (enter below):	Yes	No

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

Date of Transmittal:

FROM:	Name: Email:	T: C:
TO: FOSC U.S. Coast Guard/EPA	Name: Email:	T: C:
Name of Incident:		

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

Continue on next page if necessary.

Recommendations (continued):