

Section 7(p) - ESA Exemption In Presidentially Declared Disaster Areas

Section 7(p) of the Endangered Species Act (ESA) of 1973 provides the following **exemption** from the prohibitions of the ESA for **repair or replacement of public facilities** (substantially **as they previously existed**).

“In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. s 5121 et seq.], the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. ss 5171 or 5172], and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed.”

Some information about the use of the section 7(p) exemption is worth noting:

- It is not an emergency consultation procedure – Rather it is an emergency exemption from the taking prohibitions of the ESA (in section 9)
- It applies only in Presidentially Declared Disaster Areas
- It applies only to repair or replacement of a public facility
- The facility must be restored substantially as it existed prior to the disaster