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# 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

**A Guidebook**  
*Version 2002*



United States Coast Guard



United States Environmental Protection Agency



Department of the Interior's Fish and Wildlife Service



National Oceanic and Atmospheric Administration's National Marine Fisheries Service



National Oceanic and Atmospheric Administration's National Ocean Service



Department of the Interior

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**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**

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## DISCLAIMER:

The policies set forth in this document are intended as guidance to employees of a number of Federal agencies (including US EPA, US Coast Guard, Department of the Interior, and Department of Commerce), on how these agencies intend to implement certain statutory and regulatory obligations. This guidance is designed to implement national policy on these issues. This document does not impose legally binding requirements on any Federal agency, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. To fulfill statutory and regulatory obligations, each agency or department retains the discretion to adopt approaches on a case-by-case basis that may differ from this guidance.

## REPORT AVAILABILITY

Copies of this report can be obtained from the following addresses:

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2100 Second Street, SW  
Washington, DC 20593

Oil Program Center, Office of Emergency and Remedial Response  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 5203G)  
Washington, DC 20460

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# LIST OF ABBREVIATIONS, SYMBOLS, AND ACRONYMS

Term.....	Abbreviation, Symbol, or Acronym
Area Contingency Plan .....	ACP
Department of Commerce.....	DOC
Department of the Interior .....	DOI
DOI, Office of Environmental Policy and Compliance.....	OEPC
DOI, Fish and Wildlife Service .....	FWS
Endangered Species Act .....	ESA
Environmental Protection Agency.....	EPA
EPA’s Environmental Response Team .....	ERT
Federal On-Scene Coordinator .....	Federal OSC or FOSC
Incident Command System.....	ICS
National Contingency Plan .....	NCP
National Oceanic and Atmospheric Administration .....	NOAA
NOAA’s National Marine Fisheries Service .....	NMFS
NOAA’s National Ocean Service .....	NOS
National Pollution Funds Center.....	NPFC
National Response Center.....	NRC
National Response System.....	NRS
National Strike Force .....	NSF
On-Scene Coordinator .....	OSC
Pollution Removal Funding Authorization.....	PRFA
Pollution Reports .....	POLREPS
Regional Contingency Plan.....	RCP
Regional Environmental Officer.....	REO
Regional Response Coordinator .....	RRC
Regional Response Team.....	RRT
Scientific Support Coordinator .....	SSC
Services .....	FWS and NMFS
Unified Command.....	UC
United States Coast Guard.....	USCG
United States Fish and Wildlife Service .....	FWS



## **ACKNOWLEDGMENTS**

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# 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

A Guidebook

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## **Abstract**

In 2001, the United States Coast Guard; United States Environmental Protection Agency; Department of the Interior's Office of Environmental Policy and Compliance and Fish and Wildlife Service; and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service and National Ocean Service developed and signed an *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*. The purpose of this MOA is to increase cooperation and understanding among agencies involved in Endangered Species Act compliance at every stage in oil spill planning and response. The MOA outlines procedures to streamline the ESA compliance process before, during, and after an incident. The purpose of this guidebook is to familiarize oil spill responders and Service representatives with: the MOA; other pertinent documents and management plans; the processes through which cooperation should occur before, during, and after an incident; and the roles of several players in the oil spill response process.



# INTRODUCTION to Guidebook

## SUMMARY

*The Memorandum of Agreement (MOA) and this guidebook are the result of a cooperative effort on the part of the US Coast Guard, Environmental Protection Agency, Department of the Interior's Office of Environmental Policy and Compliance and Fish and Wildlife Service, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service and National Ocean Service to examine endangered species consultation procedures before, during, and after oil spill response. The purpose of the MOA and this manual is to facilitate cooperation and understanding between agencies involved in oil spill planning and response. This cooperation needs to begin before an incident occurs, and continue throughout the incident and the post-incident follow-up and review. By the end of this training, you will be familiar with documents and procedures related to compliance with the Endangered Species Act and the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan.*

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## **Who should use this guidebook?**

This guidebook was designed for use by the Federal agencies that signed the Memorandum of Agreement (MOA):

Department of the Interior (DOI)  
    Office of Environmental Policy and Compliance (OEPC)  
    US Fish and Wildlife Service (FWS)  
Environmental Protection Agency (EPA)  
National Oceanic and Atmospheric Administration (NOAA)  
    National Marine Fisheries Service (NMFS)  
    National Ocean Service (NOS)  
US Coast Guard (USCG)

This Guidebook may also be of interest to other parties who participate in oil spill preparedness and response actions under the National Contingency Plan, including other Federal agencies; tribal, state, and local government representatives; and responsible parties.

## **How do we use this guidebook?**

This guidebook is designed for use either in training or as a reference. It provides users the opportunity to examine materials and processes involved in endangered species consultations before, during, and after an emergency response.

This guidebook has three purposes. The first is to familiarize the response community with the requirements of Section 7 of the Endangered Species Act and to familiarize natural resource managers with the requirements of the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The second is to help planners and responders set procedures in place that will facilitate smooth consultation procedures during oil spill planning and response. The last is to identify the roles of each player in the oil spill response process.



If at all possible, train with members from agencies involved in spill response within a given Coast Guard District or EPA Region. Participants will benefit most from training in an inter-agency group.

This document is organized into a series of Chapters. If training is conducted as an intra-agency session, then the instructor may choose to adjust the training to abbreviate coverage of the materials that are already familiar to the class. However, we do recommend that all participants in this training acquaint themselves with the contents of each chapter to be aware of what material is being presented to colleagues in other agencies.

At the beginning of each chapter is a text box that outlines the information presented in that chapter. At the end of each chapter is a section titled “Where can I find more information?” in which you will find references to documents or websites containing further information on the chapter topic.

## Chapter 1: Memorandum of Agreement Overview

### SUMMARY

*The MOA provides a general framework for cooperation and participation among agencies in the exercise of their oil spill planning and response duties. Recognizing that one of the overarching goals of both the Federal Water Pollution Control Act and the Endangered Species Act (ESA) is to protect fish, wildlife, and natural resources (including endangered species and critical habitat). This MOA attempts to coordinate the requirements of both statutes. Federal agencies have responsibilities under both statutes. Following the recommended procedures will provide for the conservation of listed species, improve the oil spill planning and response, and ultimately streamline the process required by Section 7(a)(2) of the ESA. Some regional differences in process will naturally exist; however, the common underlying factor is that teamwork is essential if we are to meet our end goal - better overall protection of the environment.*

### **Why is this MOA important?**

The fundamental goal of the MOA is better overall protection of the environment, as well as alignment of actions taken under the National Contingency Plan with the provisions of the Endangered Species Act. The MOA was written for two reasons:

- 1) To encourage consistent, ongoing communication and cooperation among agencies involved in oil spill planning and response as it pertains to ESA consultations.
- 2) To familiarize members of the response community with each agency's role(s) in meeting the legal requirements of an oil spill response effort as they pertain to endangered species consultations.

Conducting an endangered species consultation can be challenging and time consuming even under the best circumstances. During an emergency oil spill response, the pressure on all parties is even greater. The ESA implementing regulations governing consultations take into account the

special circumstances and needs of an emergency situation. In addition, the MOA should alleviate some of the confusion by providing step-by-step procedures for coordination and consultation at each stage in the response.

### **Purpose**

As stated in the MOA, its purpose is three-fold.

- 1) "To identify and incorporate plans and procedures to protect listed species and designated critical habitat during oil spill planning and response activities." In other words, the MOA encourages agencies involved in oil spill response to work together *before* an event occurs so that *when* it occurs, the necessary *procedures are in place and familiar* to all parties.
- 2) "To provide guidance on how to conduct emergency consultation under ESA...[and] steps for completing formal consultation, if necessary, after the case is closed." The MOA provides an

easy to follow, step-by-step flowchart outlining planning, response, and post-incident procedures as well as inter-agency contacts that should take place at each stage of oil spill planning and response.

- 3) To provide methods through which oil spill response representatives and the Service(s) “engage in informal consultations whenever possible during planning and response” and to facilitate formal consultation when it is necessary.

The procedures outlined in the MOA are based on the need to meet legal requirements set forth in the Federal Water Pollution Control Act, National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and Endangered Species Act (ESA). In addition, the added cooperation and sharing of information will improve oil spill response planning and lead to more effective oil spill responses. A brief description of each authority is presented in the following segments. Each authority will be more fully examined in following Chapters.

**Purpose of the MOA**  
1- ID better plans and procedures  
2- Provide guidance for Emergencies  
3- Use informal consultation whenever possible

### Clean Water Act

The Federal Water Pollution Control Act, commonly known as the Clean Water Act (33 USC § 1321), requires the President of the United States to take action to:

- 1) Ensure effective, immediate removal of oil spills (called discharges in the law) into US waters, and

- 2) Mitigate or prevent any further risk of oil spills (discharges) into US waters.

The President delegates this authority to the On-Scene Coordinator (OSC) through an Executive Order. Oil spill planning and response requirements are implemented in part through the National Contingency Plan.

The Oil Pollution Act of 1990 (OPA) amends Section 311(j) of the Clean Water Act to expand prevention and preparedness activities, improve response capabilities, and establish an Oil Spill Liability Trust Fund administered by the U.S. Coast Guard.

### National Contingency Plan

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides for “efficient,

**Coordinate  
Effective,  
Immediate  
Removal of  
Discharges**

coordinated, and effective response to discharges” in US waters. The NCP outlines the capabilities and responsibilities of different Federal agencies during oil spill response.

The NCP assigns highest priority to the safety of human life and stabilization of the oil spill situation. The NCP also emphasizes protection of the environment from adverse impacts during a spill. According to the NCP, the Federal OSC must determine whether an oil spill poses a substantial threat to “public health or welfare of the United States (including, but not limited to, fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United

States).”<sup>1</sup> If investigation shows that the oil spill may or does in fact present such a threat, the Federal OSC directs all Federal, state, and private actions to remove the oil spill or to mitigate or prevent the threat of such an oil spill as appropriate.

### Endangered Species Act

The purpose of the Endangered Species Act (ESA) is to conserve listed species and the ecosystems on which listed species depend. Under section 4 of the ESA, certain species may be listed as either endangered or threatened according to assessments of their risk of extinction. Once listed, legal measures take effect to aid the conservation of the species. Two such measures are contained in Section 7 of the ESA. Section 7(a)(1) requires *Federal* agencies to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species. Section 7(a)(2) requires *Federal* agencies to ensure that any action they authorize, fund, or carry out is not likely to *jeopardize* the continued existence of listed species or result in the *destruction or adverse modification* of designated critical habitat. These mandates are to be carried out in consultation with FWS or NMFS, collectively referred to as the Services.

The Services promulgated regulations for compliance with Section 7 and published a handbook to assist Federal agencies (See “Where Can I Find More Information?” at the end of this chapter.) Consultation is a cooperative process between the Federal action agency and the Service(s). During consultations, the involved agencies analyze the effects of a Federal action on listed species and designated critical habi-

**Listed Species = Any species of fish, wildlife, or plant, determined as threatened or endangered under ESA Section 4**

tat.<sup>2</sup> Consultations involve an examination of the best available scientific and commercial data to determine whether the action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. The ESA Handbook acknowledges that *no one organization has all the answers*, and thus encourages open, consistent communication throughout the consultation process.

### **Keep in Mind**

- 1) This MOA addresses oil spill RESPONSE ACTIVITIES, not the results of the oil spill itself on listed species and critical habitat. This is an important distinction.
- 2) Be proactive. Investigating response options during advance planning results in a more efficient and effective response.
- 3) Just as each of these Federal statutes work in concert to provide protection for the environment, so should all the agencies involved in oil spill response. The MOA encourages cooperation and communication at every step in the process. Teamwork is necessary if we are to meet the end goal - better overall protection for the environment.

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<sup>1</sup> Phrasing used in NCP Sec. 300.305(d) and 200.322(a).

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<sup>2</sup> During interagency cooperation, the agencies can address not only listed species and designated critical habitat, but also species *proposed* for listing and habitat *proposed* for designation as critical habitat. Formal consultation, however, is not required.



## **Where Can I Find More Information?**

*Clean Water Act:*  
33 USC § 1321

<http://www4.law.cornell.edu/uscode/33/ch26.html>

*National Contingency Plan:*

40 CFR Part 300

[http://www.nrt.org/epa/nrt/home.nsf/resources/PDFS/\\$File/ncp.pdf](http://www.nrt.org/epa/nrt/home.nsf/resources/PDFS/$File/ncp.pdf)

*Endangered Species Act:*

16 USC § 1531

<http://endangered.fws.gov/esasum.html>

*Section 7 Consultations:*

50 CFR Part 402

<http://endangered.fws.gov/consultations/index.html>

US Fish and Wildlife Service and National Marine Fisheries Service. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*. US Government Printing Office, Washington, D.C. March 1998.

<http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>

## Chapter 2: National Contingency Plan and the National Response System

### SUMMARY

*The Clean Water Act was enacted to protect and preserve US waters. The National Contingency Plan was developed to support the Clean Water Act by establishing an organizational structure and procedures for responding to oil spills in US waters. That organizational structure and set of procedures is known as the National Response System.*

### **What are the National Contingency Plan and the National Response System? How do they relate to each other?**

#### National Contingency Plan

The National Contingency Plan (NCP), a regulation that implements important parts of the Clean Water Act, calls for agency representatives to work together to *prepare for, respond to, and remove* spills in or adjacent to US waters. The NCP sets forth the organizational structure and procedures that guide oil spill planning and response actions, including coordination in the planning stage, notification of a oil spill event, and setting up response options.

#### National Response System

The organizational structure established by the NCP is known as the National Response System (NRS). The purpose of the NRS is to foster and encourage effective and coordinated preparedness and response actions among all levels of government and between private sector and public efforts.

#### **Fundamental Response Activities**

- 1-Preparedness planning & Coordination
- 2-Notification & Communications
- 3-Response operations

Oil spills are to be reported to the National Response Center (NRC). The NRC then alerts the Federal On-Scene Coordinator (OSC) for the area in which the oil spill occurred. The Federal OSC initiates the appropriate response activities.

#### *On-Scene Coordinators*

Under the NCP, oil spill response actions are led or overseen by the Federal OSC from the “lead agency.” USCG is the lead agency for oil spills in open-ocean and most coastal waters. EPA is the lead agency for most inland oil spills.

To ensure an effective response, Federal OSC's are also responsible for directing oil spill contingency planning in their areas of responsibility and overseeing the Area Committee's (described in Chapter 5) preparation of an Area Contingency Plan. This preparedness planning includes work-

**Which Came First...?**

Clean Water Act  
*led to the*  
National Contingency Plan  
*which established the*  
National Response System

ing with appropriate Federal, state and local officials to assure planning of joint response efforts. This planning includes developing appropriate response procedures.

The Federal OSC is responsible for decision-making during responses to oil spills, but is supported by and receives advice from other agencies including state and local agencies. The Federal OSC can secure assistance from special support personnel such as the NOAA Scientific Support Coordinator (SSC) and the EPA Environmental Response Team (ERT) on scientific/technical issues, and the Coast Guard's National Strike Force (NSF) for other types of resource support.

*Scientific Support Coordinators  
and Environmental Response Team*

SSCs are usually provided by NOAA in coastal zones and by EPA in inland zones.

**Trustee Distinction**

Natural Resource Trustees (designated in NCP) are *NOT* necessarily Endangered Species Act specialists.

*In order to ensure compliance  
with ESA, plans must include  
coordination with Service ESA  
Specialists.*

SSCs from NOAA and the ERT assist the Federal OSC with such technical matters as oil fate and effects modeling; resources at risk; recommending response techniques; coordinating scientific information; data collection; and determining when the emergency response is complete. NOAA SSC's often provide technical assistance during both planning and response. The ERT often does very specific on-site technical assistance in treatment technology, biology, chemistry, hydrology, geology and engineering and can be designated as an SSC.

*National Strike Force*

**NRS Components**

- National Response Team (NRT)
- Regional Response Teams (RRT)
- Federal On-Scene Coordinators (OSC)
- Area Committees (See Ch. 5)
- National Response Center (NRC)
- Special Teams

The Coast Guard's National Strike Force (NSF) maintains a highly specialized staff to assist the Federal OSC in many ways. For example, the NSF coordinates and maintains a nation-wide inventory of oil spill response equipment; provides public affairs assistance; provides expertise in proper deployment of oil spill collection and recovery systems; and provides support to set up and lead an Incident Command System for response. Strike team members are capable of assisting with site assessments, safety, action plan development, documentation for oil spills, and other activities in any area, regardless of whether EPA or Coast Guard provides the Federal OSC.



### ***National and Regional Response Teams***

The NCP also establishes the roles and responsibilities of the National Response Team (NRT) and Regional Response Teams (RRT). The NRT is composed of 16 different Federal agencies. EPA chairs the organization with USCG as vice-chair. There are 13 RRTs, one for each of the 10 standard Federal regions plus one each for Alaska, the Caribbean, and Oceania. The same 16 Federal agencies are represented on the RRTs, along with state and tribal governments. RRTs are co-chaired by EPA and USCG. Both the NRT and the RRTs have preparedness and response roles.

In preparedness, both the NRT and RRTs provide policy guidance and assistance. The RRTs are also responsible for developing and maintaining a Regional Contingency Plan (RCP). They also address regionally specific issues such as the use of non-mechanical response technologies. In response, the NRT and RRT provide support, if requested, to the Federal OSC. (See Chapter 5 for more information on RCPs)

#### **National Response Center**

Notification of a oil spill event:  
800/424-8802 (operable 24/7)

#### **Regional Response Teams**

*RRT 1* CT, ME, MA, NH, RI, VT  
(USCG District 1)

*RRT 2* NJ, NY, Puerto Rico, VI, Caribbean  
(USCG District 1, except Caribbean)

*RRT 3* DE, DC, MD, PA, VA, WV  
(USCG District 5)

*RRT 4* AL, FL, GA, KY, MS, NC, SC, TN  
(USCG District 7)

*RRT 5* IL, IN, MI, MN, OH, WI  
(USCG District 9)

*RRT 6* AR, LA, NM, OK, TX  
(USCG District 8)

*RRT 7* IA, KS, MO, NE  
(USCG District 8)

*RRT 8* CO, MT, ND, SD, UT, WY  
(USCG District 8)

*RRT 9* AZ, CA, NV  
(USCG District 11)

*RRT 10* AK, ID, OR, WA  
(USCG District 13, except Alaska)

*Caribbean*  
(USCG District 7)

*Alaska*  
(USCG District 17)

*Oceania*  
(USCG District 14)

#### ***State and Local agencies***

Under the NCP, each state governor has been asked to designate one state office/representative to represent the state on the appropriate RRT and a lead state agency that directs response operations. The state agency partners with the USCG and/or EPA in the development of the Area Contingency Plan and is part of the Unified Command (see Chapter 4) during spill responses.

Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative.

State and local involvement is critical because these organizations are normally the first at the scene of a spill and are expected to initiate public safety measures necessary to protect health and welfare and are consistent with containment and cleanup requirements in the NCP. They can also



provide services and expertise not readily available at the Federal level.



## **Where Can I Find More Information?**

*Clean Water Act:*  
33 USC § 1321

<http://www4.law.cornell.edu/uscode/33/ch26.html>

*Oil Pollution Act, 1990:*

33 USC § 2701-2761

<http://www4.law.cornell.edu/uscode/33/ch40.html>

*National Contingency Plan:*

40 CFR Part 300

[http://www.nrt.org/epa/nrt/home.nsf/resources/PDFS/\\$File/ncp.pdf](http://www.nrt.org/epa/nrt/home.nsf/resources/PDFS/$File/ncp.pdf)

*National Response Team*

<http://www.nrt.org>

*USCG website:*

<http://www.uscg.mil/d1/staff/m/rrt/roles.html>

## Chapter 3: Endangered Species Act Overview

### SUMMARY

*In 1973, Congress enacted the Endangered Species Act (ESA) for the purpose of conserving listed species and their habitats. The ESA requires Federal agencies to work together to accomplish this purpose. Section 7 of the ESA and the implementing regulations outline the procedures through which Federal agencies consult with the Services on the effects of their action(s) on listed species and designated critical habitat. The Memorandum of Agreement focuses on helping Federal oil spill responders meet the consultation requirements of the ESA. In this section, we briefly outline the basic elements of consultation. These elements will be useful during discussions with the Services. Detailed information on pre-spill planning consultations and emergency consultations can be found in Chapters 6 and 7, respectively.*

### What is the Endangered Species Act?

Congress passed the Endangered Species Act (ESA) in 1973 acknowledging that species extinctions were occurring as a consequence of economic growth and development untempered by adequate concern and conservation. The ESA outlines a program for conserving threatened and endangered plants and animals and the habitats on which they rely.

#### **Conserve**

To use all methods to bring listed species to a point at which protection under the ESA is no longer necessary

FWS and NMFS maintain lists of endangered species and threatened species. Listed species include birds, fish, reptiles, mammals, insects, crustaceans and other invertebrates, flowers, grasses, and trees. The ESA prohibits anyone from undertaking an action that results in a "taking" of a

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

Harm can include significant habitat modification or degradation.

Harass includes activity that significantly disrupts normal behavior patterns.

listed species of fish or wildlife without prior authorization of the Service(s).

### Who administers the ESA?

DOI's Fish and Wildlife Service (FWS) and NOAA's National Marine Fisheries Service (NMFS) serve as the lead agencies in administering the ESA. Often these agencies are referred to collectively as "the Services." In general, NMFS handles marine and anadromous fish species in marine waters. FWS generally handles ter-

restrial and freshwater species and migratory birds. FWS and NMFS split the responsibility for conservation of marine mammals. NMFS conserves and manages most pinnipeds and all whales. FWS has responsibility for walrus and all other marine mammals (such as sea otters, polar bears and manatees).

## ESA Section 7

Section 7 of the ESA provides tools for three related purposes:

- 1) To conserve listed species,
- 2) To assist with species recovery, and
- 3) To protect critical habitat.

Federal agencies must consult with one or both of the Services when any activity carried out, funded or authorized by that agency may affect listed species or designated critical habitat.

The Services conduct many types of consultations. Because the NCP and ESA use “consultation” to mean different things, the MOA attempts to clarify this by suggesting procedures that meet the mandates of both. The language used in this section is from the ESA regulations. How the consultations presented here are specifically integrated into planning and response procedures is explained more thoroughly in Chapters 6 and 7. The following consultation definitions pertain most directly to the MOA.

- 1) *Informal Consultations* may precede formal consultation. Informal consultation is an optional process that includes all discussions and correspondence between the Service(s) and Federal action agency to determine whether a proposed Federal action may affect listed species or critical habitat. A written concurrence from the appropriate Service that the action is not likely to ad-

versely affect listed species or critical habitat concludes the informal consultation process. If specific sources of potential adverse effects are identified and removed, the Service(s) will provide a concurrence letter and Section 7(a)(2) requirements are met.

The goal of the MOA is to use this form of the consultation process whenever possible so as to avoid or minimize impacts to listed species or critical habitat. The ACP planning process, which should include the Services, is considered informal consultation. See Chapter 6 for specific information.

- 2) *Formal Consultation* is a process conducted between a Federal agency and the Service(s) to determine whether a proposed action is likely to jeopardize a listed species or destroy or adversely modify critical habitat. “Jeopardy” or “to jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species. Formal consultation is required for actions that may affect listed species or critical habitat unless the Federal agency determines, with the written concurrence of the Service(s), that the proposed action is not likely to adversely affect listed species or critical habitat. The process concludes with a written Biological Opinion (BO), and may include an incidental take statement.

In some cases while using the MOA process, it may be necessary and even beneficial to engage in formal consultation following informal or emergency consultation. Formal consultation could be used in the planning process or

following a spill. See Chapters 6,7, and 8 for more information.

**Jeopardy**

To directly or indirectly reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species.

- 3) *Conference* is a process of early inter-agency cooperation involving informal or formal discussions between a Federal agency and the Service(s) regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are required for proposed Federal actions that are likely to jeopardize proposed species or destroy or adversely modify proposed critical habitat.

For the purposes of the MOA, “conferencing” on proposed species is achieved through the ACP planning process, and can be included in informal consultation. Biological Assessments and subsequent Biological Opinions are not required.

- 4) *Emergency Consultations* occur during disasters, casualties, national defense or security emergencies, or as addressed in the MOA, during response to an oil spill. The emergency consultation is initiated informally. The action agency contacts the Service(s) as soon as possible about the situation for advice on measures that would minimize effects of the response. This contact need not be in writing. Generally, under the MOA, the Federal OSC contacts the DOC and DOI representatives who then

follow up with the NOAA SSC and RRC respectively. The Service(s) will follow the initial contact with a written summary of the conversation.

If the initial review indicates that the action may result in jeopardy or adverse modification, and no means of reducing or avoiding this effect are apparent, the agency should be so advised, and the Service(s) conclusions documented.

The action agency then initiates formal consultation after the emergency situation is over if listed species or critical habitat have been adversely affected. At this time, the consulting parties assess impacts to listed species and critical habitat as well as the effects of any recommendations provided by the Service(s) during the response. The Service(s) provide a BO that documents the effects of the emergency response on listed species and/or designated critical habitat.

The subject of these consultations is the effects of **RESPONSE ACTIVITIES**

**NOT** the effects of spilled **OIL** on listed species/critical habitat

As per the MOA, if a spill response activity may affect listed species and/or critical habitat, emergency consultation is used until the case is closed. This should result in open communication between the action agency and the Services. Recommendations as well as actions taken should be recorded. See Chapter 7 for more information on emergency consultation and Chapter 8 for post-response procedures.

## Documentation

Each agency is responsible for coordinating not only internally, but also with other agencies, to ensure proper documentation at each stage in the ESA compliance process. Some of the more important materials are presented below, including Biological Assessments, Biological Opinions, Incidental Take Statements, and letters of concurrence.

Note that these are general terms taken from the regulations. How they are used in the MOA is described in Chapters 6-8.

### Biological Assessment

A Biological Assessment (BA) can be a part of the Section 7(a)(2) consultation process. BAs contain an *evaluation of the potential impacts of a proposed Federal activity on listed species, proposed species, or designated or proposed critical habitat*. This information is provided by, or under the direction of, the Federal action agency.

The conclusion(s) of the BA determine whether a formal consultation is required. If the conclusion is that the action is not likely to adversely affect listed species or critical habitat, then the agency sends a request for concurrence to the Service(s). The Service(s) may agree or disagree with the determination. If the conclusion is that the action is likely to adversely affect listed species or critical habitat, then the action must undergo a formal consultation. The Federal agency submits an initiation package to the appropriate Service to begin consultation.

In the MOA, information needed for a BA can be gathered by using the Planning Template provided in Appendix C. See Chapter 6 for more information.

### Letters of Concurrence

If a Federal agency determines that its proposed action is not likely to adversely affect listed species or designated critical habitat, it may request concurrence from the Service(s) in their determination. This is part of informal consultation. Once the Service(s) have the opportunity to review the action and agree that no adverse effects are likely, they provide a letter of concurrence.

If, however, the assessment of the proposed action reveals potential adverse effects, then the action agency has two alternatives. The action agency can implement modifications to its proposed action that would eliminate the potential impacts; otherwise, the action agency can initiate a formal consultation.

Appendix E of the MOA contains sample letters for requesting concurrence. Note that in the MOA, it is expected that the Services are part of these conversations, i.e., that they are not “reviewing” it after the fact. The letter of concurrence provides documentation both for the Service(s) and the action agency that this coordination has taken place. See Chapter 6 for more information.

### Initiation Package

Formal consultation starts when the agency submits a written request to initiate the process. The initiation package includes a written request to the Service(s) to initiate formal consultation and contains:

- 1) A description of the action to be considered;
- 2) A description of the specific area that may be affected by the action;

- 3) A description of any listed species or critical habitat that may be affected by the action;
- 4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
- 5) Relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and
- 6) Any other relevant available information on the action, the affected listed species, or critical habitat.

If the Service(s) find the package complete, then consultation begins. If the package is deemed incomplete, additional information may be requested. Once the package is accepted, the Service(s) can begin formal consultation and the preparation of a BO. Note that in the MOA, the Services can often assist in the development of information needed on response activities through the planning process. The outline for the initiation package potentially needed after a spill response is found in Appendix B. Appendix C of the MOA provides a planning template for use in preparing the initiation package used during planning.

### **Biological Opinion**

A Biological Opinion (BO) is prepared by the Service(s) in response to receipt of an initiation package from a Federal agency. The BO includes:

- 1) The opinion of the Service(s), stating whether a Federal action is likely to jeopardize the continued existence of listed species, or result in destruction or adverse modification of designated critical habitat,

- 2) A summary of the information on which the opinion is based, and
- 3) A detailed discussion of the effects of the action on listed species or designated critical habitat.

If the Service(s) determine an action is likely to jeopardize the continued existence of listed species, or destroy or adversely modify designated critical habitat, the BO will contain available Reasonable and Prudent Alternatives that are within the agency's authority and do not result in jeopardizing listed species or adverse modification of critical habitat.

If a Service issues a jeopardy BO, the Federal agency must notify the Service of its intent to proceed or not proceed with the action. If the Federal agency cannot avoid jeopardy (i.e., the project must proceed, but taking of listed species or critical habitat is likely), then the Federal agency and Service(s) should meet to discuss how to resolve the issue. As described in the MOA, communications throughout the ACP planning process can help avoid this jeopardy determination.

The Services may generate a BO as a result of the ACP planning process or after a spill response. See Chapters 6 and 8 for more information. A BO prepared after a spill has occurred may contain slightly different information, as the spill response actions have already been taken.

### **Incidental Take Statement**

If the Service(s) determine that the action will not violate ESA Section 7(a)(2), then an incidental take statement will be included in the BO. Incidental take is the take of listed species that results from, but is not the purpose of, carrying out an oth-

erwise lawful activity conducted by a Federal agency or applicant.

An incidental take statement specifies the allowable amount or extent of take of a listed species through an activity that is otherwise legal. The incidental take statement also includes methods to minimize take (called Reasonable and Prudent Measures). The methods to implement the Reasonable and Prudent Measures are outlined in the Terms and Conditions.

In the MOA, Incidental Take Statements may be provided during planning. Take will be documented during a response or even after a response. The Reasonable and Prudent Measures and Terms and Conditions are designed to minimize harm and harassment to listed species and their habitat, as well as describe procedures for handling species that are actually taken.

### **Conservation Recommendations**

Conservation recommendations, which describe how the agency can promote the recovery of the species, are frequently provided. These are discretionary measures that the action agency may elect to carry out.

### **How does the Endangered Species Act relate to the National Contingency Plan?**

Response actions undertaken to limit or prevent oil discharges and/or their effects on the environment have the potential to adversely affect listed species and critical habitat. In order to fully meet the goals of both the NCP and ESA, spill response agencies and the Services should coordinate on spill planning and response efforts. The NCP requires OSCs to coordinate with natural resource trustees on spill response efforts. In addition, the NCP also

states that the Services will provide technical expertise during planning and response. However, the NCP does not specify consulting with ESA specialists on spill response efforts. Therefore, efforts should be made on both sides to ensure that the Services provide input on spill response measures during the planning stages, and during actual responses. Response agency leads should request input from Service representatives during the planning and response processes. Likewise, Service representatives should be available for consultation (informal or otherwise) during planning and response processes.



### **Where Can I Find More Information?**

*Endangered Species Act:*  
16 USC § 1531

*NOAA websites:*

<http://www.noaa.gov>

<http://www.nmfs.noaa.gov>

<http://www.nmfs.noaa.gov/endangered.htm>

<http://www.nmfs.noaa.gov/sfa/hmspg.html>

*Take permits*

[http://www.nmfs.noaa.gov/prot\\_res/PR3/Permits/ESAPermit.html](http://www.nmfs.noaa.gov/prot_res/PR3/Permits/ESAPermit.html)

*Protected Resources*

[http://www.nmfs.noaa.gov/prot\\_res/overview/es.html](http://www.nmfs.noaa.gov/prot_res/overview/es.html)

*Office of Response and Restoration*

<http://response.restoration.noaa.gov/>

*US EPA websites:*

<http://www.epa.gov>

*Endangered Species Act*

<http://www.epa.gov/region5/defs/html/esa.htm>

*US FWS website:*

<http://www.fws.gov>

*Endangered Species Act*

<http://endangered.fws.gov/esasum.html>

*Section 7 Consultations*

50 CFR Part 402

<http://endangered.fws.gov/consultations/index.html>

US Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Act Consultation Handbook: Procedures for conducting Section 7 consultations and conferences*. US Government Printing Office, Washington, D.C.

<http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>





## Chapter 4: Incident Command System Overview

### SUMMARY

*The National Response Team endorses the use of a management system called the Incident Command System (ICS) to manage response operations. ICS, along with a Unified Command (UC), provides an organizational framework for managing a variety of activities. The MOA focuses on ICS and UC as it pertains to oil spill response. In this chapter, we will introduce various aspects of the ICS. Potential members of an ICS/UC should become familiar with the response management system identified in the appropriate Area Contingency Plan.*

### How do the National Response System and Incident Command System fit together?

While the NRS includes the different agencies involved in oil spill preparedness and response, the ICS establishes a response management mechanism within which agencies operate. For example, the NRS includes OSCs. The ICS places the OSC within the Incident Command/ Unified Command portion of the response management framework. Likewise, the NRS includes multiple resources that the OSC can call for support during response operations. For example, USCG special teams, such as the Strike Force, support the OSC throughout all Sections of ICS; NOAA's SSCs and the EPA's ERT support the OSC through the Planning and/or Operations Section of ICS.

### What is the Incident Command System?

The Incident Command System (ICS) is a standardized on-scene emergency management concept designed specifically to allow system users to adopt an integrated organizational structure equal to the complexity and demands of any single incident

or multiple incidents without being hindered by jurisdictional boundaries. The USCG and EPA use ICS to achieve the coordination necessary to carry out effective and efficient oil spill responses. The ICS was originally developed to manage fast-moving wildfires. After the Exxon Valdez spill in 1989, the system was adapted to oil spill response operations. It allows for the inclusion of Federal, state, local, and responsible party representatives in the response effort.

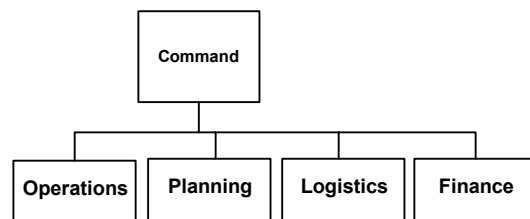


Figure 4-1. ICS Management Activities

An ICS enables integrated communication and planning by establishing a manageable span of control. An ICS divides an emergency response into five manageable functions essential for emergency response: Command, Operations, Planning, Logistics, and Finance and Administration.

Each of the primary ICS functions may be sub-divided as needed. The ICS organiza-

tion has the capability to expand or contract to meet the needs of the incident. The 5 functions are described in the following section.<sup>3</sup>

### Command

The Command sets objectives and priorities, and has the overall responsibility for all response actions at the incident. In smaller spill situations, there is generally one Incident Commander (IC) who leads the entire operation. This person is likely to be a representative of the responsible party or a local emergency responder. In some incidents, the Federal OSC will be the IC for the spill. In larger spills, another command mechanism can be implemented (see Unified Command) in which several representatives work in concert to make decisions during a spill event. The Incident Commander may also have deputies from the same agency, an assisting agency, or the responsible party.

### Planning

The Planning Section takes the objectives established by Incident Command or Unified Command, and develops an Incident Action Plan to accomplish those objectives. The plan includes procedures for collecting and evaluating information, tracking all resources, and documenting the response effort.

### Operations

The Operations Section of ICS conducts operations to carry out the plan, develops tactical objectives and directs all resources.

### Logistics

The Logistics Section provides support to meet incident needs, including resources and all other services needed to support the incident.

### Finance/ Administration

The Finance/Administration Section supports the spill response effort by maintaining all records related to costs, accounting, procurement, and time recording, as well as providing cost analysis.

### Command Staff

If the situation requires it, the IC can also assign personnel for a Command Staff, providing Information, Safety, and Liaison services for the entire organization.

*Liaison Officer:* Incidents that are multi-jurisdictional or have several agencies involved may require the establishment of a Liaison Officer. The Liaison Officer is the primary point of contact for coordinating other agency involvement.

*Information Officer:* The Information Officer is responsible for developing and releasing information about the incident to the news media, incident personnel, and other appropriate agencies and organizations, as appropriate.

*Safety Officer:* The Safety Officer develops and recommends measures to assure personnel safety, and to assess and/or anticipate hazardous and unsafe situations. Responsibilities include the development of the site safety plan, ensuring that all personnel involved in the response activities are properly trained to meet OSHA standards (or state standards when appropriate), working with local health officials, and reviewing incident action plan to identify safety and health issues and make ap-

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<sup>3</sup> Source: Coast Guard *Incident Management Handbook*, 2000.

appropriate recommendations to minimize risks to workers and general population. The safety officer may exercise emergency authority to stop and prevent unsafe acts.

### Unified Command

The Unified Command (UC) is an alternate version of Command. As depicted in Figure 4-2, the UC is a structure that brings together the “Incident Commanders” of all major organizations involved in the incident to coordinate an effective response while at the same time carrying out their own jurisdictional responsibilities. The UC provides a forum for these organizations to make consensus decisions. Under the UC, the various jurisdictions and/or agencies, the responsible party, and non-government responders blend together to create an integrated response team.

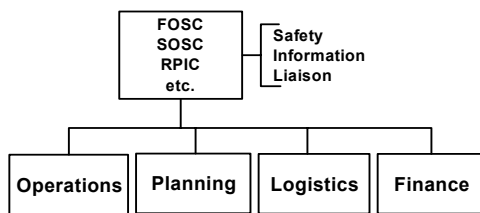


Figure 4-2. Unified Command Structure

The UC may be used whenever multiple jurisdictions are involved in a response effort. These jurisdictions could be determined by:

- Geographic Boundaries
- Government Levels
- Functional Responsibilities
- Statutory responsibilities
- Some combination of the above

The actual UC make-up for a specific incident will be determined on a case-by-case basis. To be effective, the number of members is kept as small as possible.

Like Command, the UC is responsible for the overall management of the incident. The UC directs incident activities, including the development and implementation of overall objectives and strategies, and approves the ordering and releasing of resources.

The Unified Command generally has three to four members: the Federal OSC (FOSC or OSC), the State OSC (SOSC), the Responsible Party Incident Commander (RPIC), and sometimes a local government representative (fire, police, emergency management agency), and/or tribal representatives as appropriate. Area Contingency Plans should be consulted to familiarize potential members of an ICS/UC with the response management structure.

### **Where do the Services fit into ICS?**

The Services are an important part of the OSC’s support system, especially to provide data and recommendations for action in areas with listed species or critical habitat. The Services can contribute to the response effort through the ICS in several areas. (Refer to Figure 4-3 for a sample expanded ICS during an oil spill incident.)

In situations that involve listed species, the Services’ endangered species specialists will most likely be serving as technical specialists making recommendations for response options that are expected to prevent or mitigate effects on listed species and/or critical habitat. As a “tech spec,” a Service endangered species specialist may

be in either the Environmental Unit, found in the Planning Section, or in the Operations Section.

Other members of the Services (such as FWS Contaminants specialists) may work in these Sections as well, providing information on wildlife and habitat and helping to guide response actions. For example, a Service member with expertise in wildlife rehabilitation may work in the Wildlife Branch of the Operations Section if the spill has affected wildlife.

During some spill incidents, a representative from a Service could be assigned as an Agency Representative. The Agency Representative is not on direct tactical assignment, but helps in coordination efforts and makes decisions on matters affecting the agency's participation in the incident.

(For more information on Service roles in Pre-Planning and Emergency Response, see Chapters 6 & 7).

### **Contacts**

Coast Guard Office of Response, Response Operations Division: 202-267-6860

National Strike Force Coordination Center: 919-331-6000

Coast Guard Marine Safety School, Training Center Yorktown: 757-856-2234



### **Where Can I Find More Information?**

U.S. Coast Guard *Incident Management Handbook*, April

2001

### *USCG Websites:*

<http://www.uscg.mil/hq/g%2Dm/mor/articles/ics.htm>

<http://www.uscg.mil/d13/m/training/ics/ics.htm>

<http://www.uscg.mil/hq/nsfcc/nsfweb/>

<http://www.uscg.mil/lantarea/rrt/rrt/owg%20may%202000.doc>

<http://www.uscg.mil/pacarea/pm/icsforms/ics.htm>

### *NRT Website and available documents:*

<http://www.nrt.org>

- Incident Command System/Unified Command Technical Assistance Document
- Minimum Essential ICS/UC Training Elements
- Guidance for Developing a Site Safety Plan for Marine In-Situ Burn Operations
- The National Response System (NRS) and the Incident Command System/Unified Command (ICS/UC)
- Federal Natural Resource Trustees and the Incident Command System/Unified Command

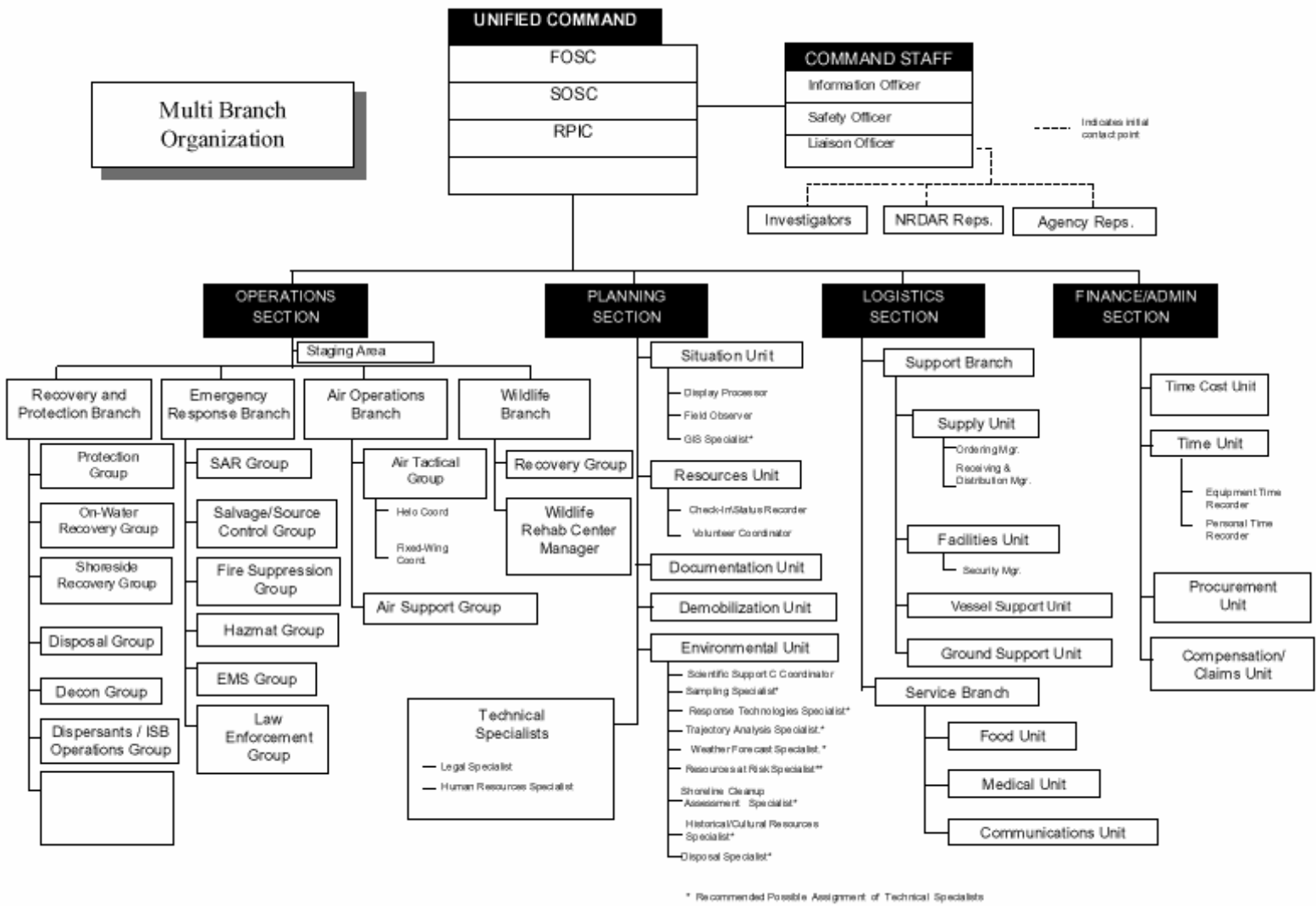


Figure 4-3. Expanded Incident Command Structure



## Chapter 5: Area Contingency Plans, An Overview

### SUMMARY

*The NCP requires Area Committees consisting of representatives from Federal, state, and local governments to develop Area Contingency Plans for their area. ACPs address removal of a worst case discharge, among other things. They include information such as roles and responsibilities, resources, sensitive areas, and response methods.*

### **What is an Area Contingency Plan?**

An ACP is a plan required by the Oil Pollution Act (OPA) that contains information necessary for effective preparedness and response activities in the area covered by the plan.<sup>4</sup>

Through development of ACPs, Federal, state, and local agencies prepare for response to a worst-case spill or for prevention of such a spill. The goal is to mitigate the effects of such a spill or prevent it from reaching the navigable waters of the U.S.

Both USCG and EPA maintain ACPs – USCG for coastal and marine areas and EPA for inland areas. Some areas of the United States are also covered by sub-area plans or geographic response plans, which, for the purposes of this document, are considered part of the ACP.

### Contents

According to the NCP, an ACP is to contain the following:

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<sup>4</sup>OPA can be found at:

<http://www.uscg.mil/hq/g-m/nmc/response/opawordp.pdf>

- 1) An area description, including areas of special environmental or economic importance that might be damaged by a spill, such as water intakes;
- 2) A detailed description of the responsibilities of all parties in the National Response System – Federal, state, and local agencies and owners and operators – in removing or preventing discharges;
- 3) A list of equipment and other response materials necessary to *a)* ensure an effective removal and *b)* prevent or mitigate substantial threat of a spill;
- 4) Procedures for expedited decision-making on the use of dispersants;
- 5) A detailed explanation of how the plan fits into other ACPs and vessel and facility response plans; and
- 6) A Fish and Wildlife and Sensitive Environments Annex providing detailed information on fish, wildlife, and sensitive environments within the area covered by the ACP.<sup>5</sup>

### Process

The NCP does not propose specific procedures for developing an ACP. It stipulates

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<sup>5</sup> The Annex is required as per NCP Sec. 300.210(4).



that the OSC should coordinate with local, state, and other Federal government agency personnel with a stake in oil spill response to see that the ACP works in conjunction with existing local and state plans for spill response. The Area Committee often looks to the RRT to provide planning and response policy guidance for the ACP, and to ensure that the ACP works in conjunction with the Regional Contingency Plan.

Area Committees meet as often as needed or practical to keep their ACP up-to-date.

Each organization with a stake in spill response outcomes should participate on the Area Committee. This concept will be addressed again in Chapter 6 on Pre-Planning.

### **How does the Fish and Wildlife and Sensitive Environments Annex fit into the ACP planning process?**

The Services contribute to the ACP process in a particularly important way by consulting with the Area Committee on the Fish and Wildlife and Sensitive Environments Annex. Pursuant to the NCP, the Annex includes the following:

- 1) Identification of priority species and areas for protection;
- 2) Mechanisms for use during spill response to identify environmental protection priorities and to evaluate and consult expeditiously on spill response measures;
- 3) Identification of potential effects of response actions and of priorities for response measures to prevent and/or mitigate effects on species and/or habitat;

- 4) Provision for pre-approval of specific response measures in certain areas to protect species and/or habitat;
- 5) Provision for monitoring response method effectiveness;
- 6) Identification of and plans for acquiring and using response capabilities to protect, rescue, and rehabilitate species and/or habitat;
- 7) Identification of Federal and state agency contacts responsible for coordinating activities related to fish, wildlife, and habitats during spill response;
- 8) Identification of how volunteers will receive health and safety training if this is needed; and
- 9) Definitions of requirements for evaluating Annex compatibility with non-Federal response plans affecting species and habitat (i.e. plans for vessels, facilities, and pipelines).

Note that the information necessary to complete the Annex may appear in an ACP in more than one way, such as:

- 1) An appendix to the ACP, or
- 2) Incorporated throughout appropriate sections of the ACP.

“Consulting” with the Services for their input into the Annex, as the term is used in the NCP, may not necessarily meet the *legal requirements* to consult under ESA Section 7. As discussed in Chapter 3, the ESA addresses specific standards regarding effects on listed species and critical habitat and requires specific *documentation* of consultation. The MOA attempts to remedy this apparent confusion. The Planning Template in Appendix C of the MOA outlines the information necessary to meet ESA’s consultation requirements. By completing the Planning Template in the MOA, EPA and USCG can address the

consultation requirements set forth in the ESA and secure some of the information required for the Fish and Wildlife Annex. See Chapter 6 for more details. As mentioned previously, the information for the Annex can be presented in the ACP in any manner the Area Committee sees fit. It does not have to be presented in the format developed for the Planning Template in the MOA.

Area. Texas General Land Office, Austin, TX.



## Where Can I Find More Information?

*USCG Websites:*  
Coast Guard Area Contingency

Plans:

<http://www.uscg.mil/vrp/acp/acp.shtml>

*NRT Websites:*

<http://www.nrt.org>

*Check with the OSC chair of your Area Committee for more information on your ACP.*

*Further reading – possible procedural framework for developing an ACP:*

EPA Guidelines for Ecological Risk Assessment, 63 F.R. 26846-26924, May 14, 1998.

Pond, R.G., D.V. Aurand, J.A. Kraly (compilers). 2000a. *Ecological Risk Assessment Principles Applied to Oil Spill Response Planning in the San Francisco Bay Area*. California Office of Spill Prevention and Response.

Pond, R.G., D.V. Aurand, J.A. Kraly (compilers). 2000b. *Ecological Risk Assessment Principles Applied to Oil Spill Response Planning in the Galveston Bay*



## Chapter 6: Pre-Spill Planning

### SUMMARY

*The planning process outlined in this chapter is designed to help meet the legal requirements to consult on the response measures described in the ACP. Knowing which response measures are preferred from a species-protection perspective for an oil spill in a given area will reduce efforts to gather that information during the response, thus improving the protection of the environment.*

### **What is the purpose of this chapter?**

In this chapter, participants will learn about the importance of pre-spill planning through developing the information described in the Planning Template, Appendix C, of the MOA. Most of this information should be made available in the ACP, and may also be included in sub-area plans, Geographic Response Plans, resource databases, etc. that are considered part of the ACP.

Pre-spill planning (development of the ACP) will identify the range of response measures available to the OSC, and will identify sensitive resources (habitats and species) that occur in the planning area. The ESA consultation process will identify potential effects to listed species and their habitat from various response measures.

The purpose of ESA consultation (informal or formal) during pre-spill planning is to lessen the burden on everyone involved during and after a spill event. If pre-spill planning is adequately completed, consultation during a spill can be streamlined. The Federal OSC can respond knowing that the Services support the actions recommended in the ACP.

Some USCG Districts and EPA Regions have already developed ways in which the MOA planning process can be implemented. Area Committees and RRTs have used sub-committees, held workshops, or convened special meetings focusing on particular response measures and/or specific geographic areas. In some regions, ESA consultation has already occurred for some response measures, i.e., use of dispersants and in-situ burning. Similar procedures can be adopted, or new ones can be developed for gathering the information. If procedures have already been instituted that work well for the Area Committee, they should be maintained. The objective is to gather the information noted in the MOA that can assist in complying with the ESA.

### **Getting Started**

This process is really just an expansion of the regular ACP planning process. Participation by the Services' endangered species specialist in Area Committee planning is considered part of informal consultation. The goal is to develop response measures that will not adversely affect listed species and critical habitat, and, if possible, to develop protection strategies. Proposed and candidate species can also be considered during planning. Note that the RRT may sometimes act as the Area Committee, for the purposes of the MOA, to address regional response policy issues.

The flowchart developed for the MOA is included for reference as Figure 6-1 at the end of this Chapter. It may be useful to refer to it while moving through the steps in the process.

### **Step 1 - Who needs to be involved in planning?**

#### **USCG and EPA**

In general, USCG and EPA provide a pre-designated Federal OSC for oil spills. USCG generally handles marine and coastal oil spills; EPA generally handles inland oil spills. The Federal OSC usually leads the Area Committee in developing and maintaining the ACP. As described in the MOA, this responsibility includes requesting assistance during planning from Service representatives with knowledge of, or access to information on listed species and critical habitat.

#### **Department of the Interior, Office of Environmental Policy and Compliance (OEPC)\***

DOI participates in incident preparedness and response activities, including preparation and maintenance of contingency plans to ensure the resources DOI is responsible for are appropriately considered. The OEPC Regional Environmental Officers (REOs) provide access to and encourage DOI Bureaus to participate in appropriate preparedness and response activities.

#### **NOAA's National Ocean Service (NOS) and EPA's Environmental Response Team (ERT)**

NOAA-NOS generally provides SSCs for the coastal zone through its Office of Re-

sponse and Restoration's Hazardous Materials Response Division, while EPA ERT performs SSC functions for responses in the inland zone. SSCs provide critical advice on science and natural resource issues to Federal OSCs during responses. Additionally, SSCs support the development of contingency plans by Area Committees by providing Environmental Sensitivity maps, spill trajectory analysis, guidelines on countermeasures, and other environmental data.

#### **DOI's US Fish and Wildlife Service (FWS) and NOAA's National Marine Fisheries Service (NMFS)**

The Services participate in the ACP process to ensure that resources for which they are responsible, including listed species and critical habitat, are covered appropriately. The Services assist in identifying resources for inclusion in ACP's Fish and Wildlife Annex as well as in the evaluation of potential response measures. It may be useful to include in the measures how listed species will be handled if they are likely to be encountered during an oil spill response. A FWS or NMFS ESA specialist can provide this information.

If the measures in the ACP are not likely to adversely affect listed species or critical habitat, then the Service representative provides a letter of concurrence. If the measures in the ACP are likely to adversely affect listed species or critical habitat, then the Service works with the Federal OSC in the completion of a formal consultation based on the information gathered for the Planning Template (Appendix C of the MOA).

#### **Other Stakeholders**

State and local emergency response representatives and representatives of local industry are also invited to participate in the

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\* Information taken from the Department of the Interior Emergency Preparedness & Response Strategy Oil Discharges & Hazardous Substance Releases August 2000

planning process. Most of the time, local responders are the first to arrive on scene. The participation of local government officials in developing the ACP increases the likelihood that first responders will employ response measures approved for the area. This also increases the chance that they will not initiate anything that would adversely affect listed species or critical habitat.

Area Committees whose areas cover Federal lands or marine sanctuaries generally include representatives from the managing agencies' local office in the planning process.

After requesting participation from the agencies and Services within the area proceed to step 2.

## **Step 2 - Information Gathering**

### *Step 2a - What information is needed?*

#### **Listed Species and Critical Habitat**

One or more Service representatives within the District, Area, or Region will have this information. The DOI REO, FWS RRC, and/or NOAA SSC may assist the Federal OSC in finding the appropriate information.

#### **Area Contingency Plans**

Area Contingency Plans may not be available online, but are available from the Federal OSC, Area Committee, or RRT.

#### **Other Available Information**

Using information already available such as resource databases, Environmental Sensitivity Indices, Geographic Response Plans, sub-area plans, wildlife response plans, etc. may greatly reduce the amount of time needed to generate and/or compile information.

Although the Services may have been involved in the planning process, it may be helpful for documentation purposes for the Federal OSC to submit a written request to one or both Services for expertise on listed species and critical habitat present in the area covered by the ACP. The request should include the specific geographic area of concern and a description of the response measures under consideration for that area.

For a sample request letter, see the Sample Documents folder on your CD.

### *Step 2b - Are Listed Species or Critical Habitat Present?*

The Service(s) should respond promptly with one of the two following conclusions.

#### **No Listed Species or Critical Habitat Present**

If the Service(s) state that no listed species or critical habitat are present, then the consultation is complete. The Federal OSC should document this coordination.

#### **Listed Species or Critical Habitat Present**

If the Service(s) determine the presence of listed species or critical habitat, then the Federal OSC should request that the Service(s) provide a representative to assist in the completion of the ESA consultation process for response measures in the ACP.

## **Step 3 - Will there be any effects to listed species and/or critical habitat?**

The Federal OSC makes a "no effect" determination based on the information available from the Services and/or other sources. The Federal OSC is encouraged to inform the Services of this determination. If the Federal OSC determines that the response

measures “may affect” listed species and/or critical habitat, coordination with the Services should continue. Proceed to step 4.

#### **Step 4 - Which response measures are preferred?**

If listed species or critical habitat are present in the planning area, the Area Committee and ESA Service representative(s) can use the process outlined in the Planning Template of the MOA to compile the information needed to complete the consultation. Another method may also be agreed upon.

Information in the Planning Template materials can help determine whether or not an oil spill response measure is likely to adversely affect listed species or critical habitat. As mentioned in previous chapters, information produced by completing the Planning Template can also be incorporated into multiple areas of the ACP.

Consultations may be conducted on the combination of response measures and their effects. In this process, the Federal OSC should also consider pre-approval for certain response methods. In some instances, this may increase the chance of preserving certain species or habitats.

#### **Which response measure(s) will avoid or minimize impacts on listed species and critical habitat?**

Information gathered in the planning process will be used to determine which ACP response measures will provide the best protection for listed species and critical habitat. Service concurrence can be sought through the consultation procedures outlined in the Planning Template of the MOA, or a similar process. Changes to the ACP should be made through joint decisions if potential adverse effects on listed

species and critical habitat are noted. In these cases, practicable response alternatives may be developed. These approved measures should be noted and the letters of concurrence or more formal documentation filed in the ACP (at least by reference.)

#### **Which response measure(s) will be most appropriate?**

Tradeoffs and sensitive area priorities should be considered during pre-spill planning. The NCP calls first for protection of public health and welfare and the stabilization of the scene. Health and human safety, including both the general public and workers on-site, comes first. Therefore, complete protection of listed species or critical habitat may not always be possible. If protecting a listed species or critical habitat means endangering human health, then the Federal OSC must protect human health and safety first and the listed species or critical habitat second.

Similarly, a measure may protect listed species or critical habitat, but endanger larger portions of the ecosystem. Trade-offs may need to be made between listed species and critical habitat. For example, dispersing oil may adversely affect endangered fish larvae; however, letting the oil come ashore would damage an entire snowy plover population and critical habitat. Take time during planning to consider tradeoffs and sensitive area priorities. The Selection Guide for Oil Spill Applied Technologies, developed by Regional Response Teams III and IV, may be a helpful tool. The Selection Guide provides information and guidance for evaluation of response techniques under a wide range of oil spill conditions and circumstances.

Planning allows the opportunity to evaluate these response measures without the pressure of an emergency situation. The Ecological Risk Assessment Guidebook noted

at the end of this chapter (Pond, et. al.) may help participants evaluate ecological trade-offs. This is not the same process outlined by the EPA guidelines for risk assessments, but rather a specifically tailored process endorsed by the Coast Guard for Area Committee consensus building.

**Will there be adverse effects to listed species or critical habitat?**

The materials in the Planning Template (MOA) can aid the Federal OSC in reaching one of the following two conclusions.

***Not likely to adversely affect***

“Not likely to adversely affect” is the appropriate conclusion when effects on listed species or critical habitat are expected to be extremely unlikely to occur, insignificant (does not reach the scale where take occurs), or completely beneficial. The Federal OSC should contact the Services for assistance in determining if response measures are not likely to adversely affect listed species and/or critical habitat. If the Federal OSC determines that the response measures in the ACP are not likely to ad-

**“Not likely to adversely effect”**  
Effects are expected to be:  
1. Extremely unlikely to occur; or  
2. Insignificant; or  
3. Completely beneficial.

versely affect listed species or critical habitat, then the Federal OSC will request that the Service(s) provide a letter of concurrence. The reply from the Service(s) states whether or not the Service(s) concur with the Federal OSC’s conclusion. For a sample letter requesting concurrence, see the MOA, Appendix E or Sample Documents on the CD.

***Likely to adversely affect***

With Service involvement up to this point, it is hoped that response measures can be developed jointly that would avoid this conclusion. However, if the Federal OSC determines that the response measures are likely to adversely affect listed species or critical habitat, then a formal consultation is required. The Federal OSC submits a written request for a formal consultation to USFWS or NMFS, as appropriate, along with the information developed through Step 4. For a sample request letter, see the MOA, Appendix E or Sample Documents on the CD.

**Step 5 - Formal Consultation**

Once the Service(s) receive the Federal OSC’s request for formal consultation, with the associated initiation package, the Service(s) have 135 days to provide a response to the Federal OSC. The response consists of a Biological Opinion, which contains the Service(s)’ opinion of whether the response measure is likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. If it is a “no jeopardy or adverse modification” opinion, then the Federal OSC and Area Committee decide how to incorporate the non-discretionary measures provided in the Incidental Take Statement of the opinion to further minimize take of listed species. If it is a “jeopardy or adverse modification” opinion, then an alternative is provided in the opinion. The Federal OSC and Area Committee decide whether to incorporate the alternative and inform the Service(s) of their decision.

Further information on the process may be found in Chapter 3 and the ESA Consultation Handbook published by FWS and NMFS. (See “Where Can I Find More Information?” at the end of this chapter.)



## Step 6 - Documentation

The Federal OSC should ensure that copies of letters of concurrence or any other documentation produced during this process are incorporated or referenced in the ACP.

### **What do I do with this information? A Review**

- 1) Incorporate any information or documents resulting from completion of the Planning Template (MOA) into the ACP.

If a letter of concurrence is received from the Service(s), the Federal OSC should include or reference it in the ACP. A copy of the documentation should also be retained by the Service(s) for reference during an oil spill.

- 2) Include new data in the ACP.

Any new information that is generated during this planning process should be incorporated into the ACP. Even if the information is minimal, if it can fill in gaps, include it. For example, were new sensitive areas identified? Were new points of contact and parameters for notification agreed upon? The Federal OSC should include that information in the Annex and elsewhere in the ACP as appropriate.

- 3) Adjust recommended response measures as needed.

Did the Federal OSC or Service(s) conclude that a certain response measure did not adequately protect listed species or critical habitat? If so, the Federal OSC should consider whether the response measure can be modified. If it was determined that a response measure could adversely affect listed species or critical habitat, the Federal OSC and the Service(s)

should jointly develop practicable response measures if possible. If another response measure cannot be developed, the Federal OSC and the Service(s) should work jointly to secure an incidental take statement.

If new resources (equipment or methods) for protecting or conserving listed species or critical habitat are identified, they should also be included.

- 4) Include any additional procedures developed through this process during an oil spill in the ACP.

Pre-approval processes for spill response are encouraged in the ACP as appropriate.



### **Where Can I Find More Information?**

*ESA Consultations:*

<http://endangered.fws.gov/consultations/index.html>

US Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Act Consultation Handbook: Procedures for conducting Section 7 consultations and conferences*. US Government Printing Office, Washington, D.C.  
<http://endangered.fws.gov/consultations/s7hndbk/s7hndbk.htm>

*Oil spill response planning tools:*

<http://response.restoration.noaa.gov/oilaid/reports.html>

National Oceanic and Atmospheric Administration. 2000. *Characteristic Coastal Habitats: Choosing Spill Response Alternatives*. US Department of Commerce, NOAA.

<http://response.restoration.noaa.gov/oilaid/coastal/coastal.html>

*Selection Guide For Oil Spill Applied Technologies*. Developed by RRT III and RRT IV

<http://www.uscg.mil/lantarea/rrt/rcp/index.html>

*Further reading – possible procedural frameworks:*

Pond, R.G., D.V. Aurand, J.A. Kraly (compilers). 2000a. *Ecological Risk Assessment Principles Applied to Oil spill Response Planning in the San Francisco Bay Area*. California Office of Spill Prevention and Response.

Pond, R.G., D.V. Aurand, J.A. Kraly (compilers). 2000b. *Ecological Risk Assessment Principles Applied to Oil spill Response Planning in the Galveston Bay Area*. Texas General Land Office, Austin, TX.

## How Planning can work

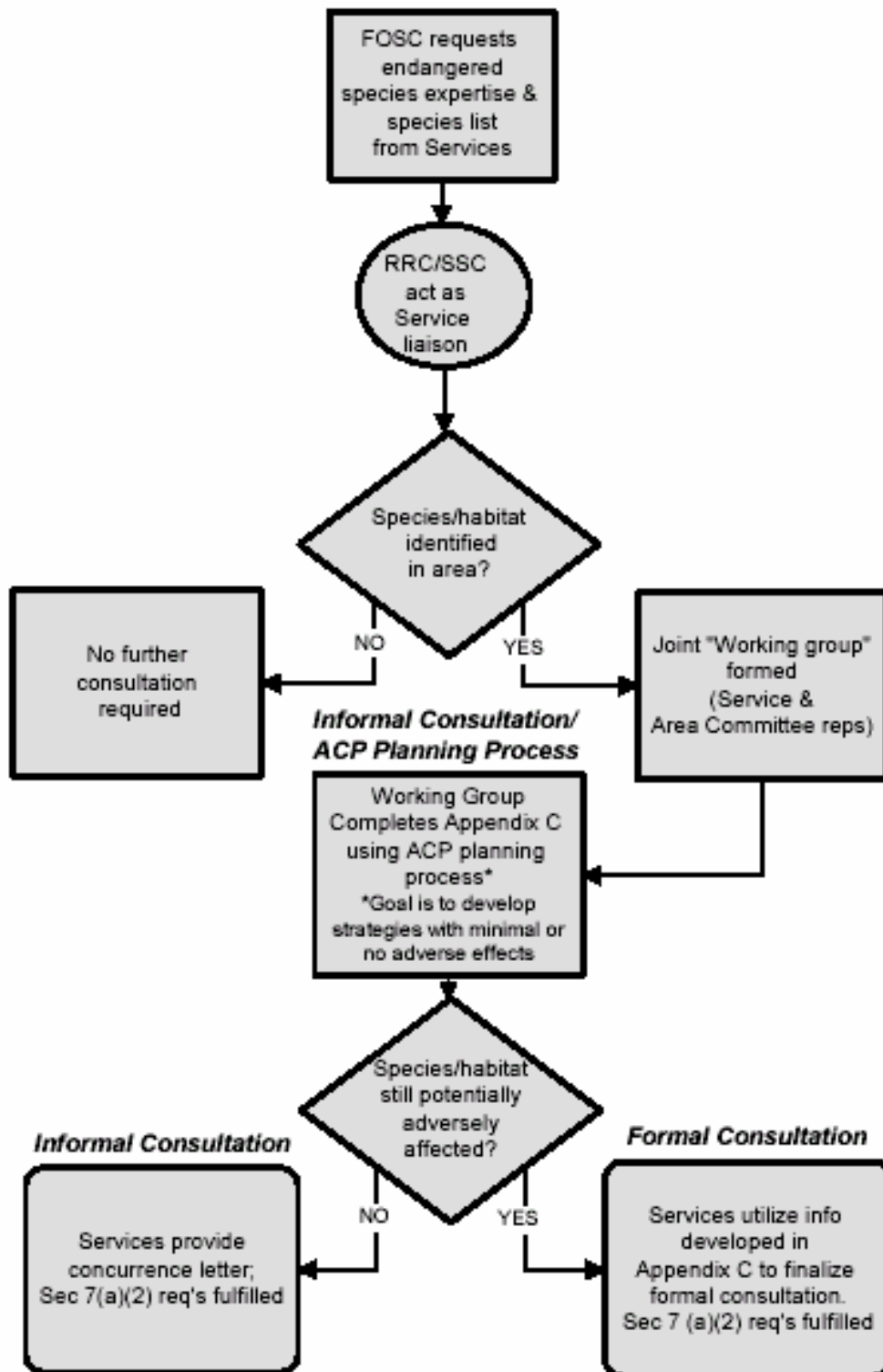


Figure 6-1. Pre-spill Planning Procedures

# NOTES

# NOTES

## Chapter 7: Emergency Response

### SUMMARY

*During an oil spill response involving listed species or critical habitat, emergency consultation procedures are used where appropriate. Pre-planned ACP response measures should form the basis for immediate response actions. However, technical advice from endangered species experts is also sought through the Service(s)' involvement in the Incident Command System. In anticipation of follow-up formal consultation, information can be gathered during the response by using Appendix B of the MOA as necessary. It is important to note that emergency consultation continues until the response portion of the case is closed by the Federal OSC.*

### **What is the purpose of this chapter?**

This chapter describes, in general terms, how emergency consultation can be accomplished during response to an oil spill. Emergency consultation helps the Federal OSC make more informed response decisions when listed species or critical habitat are present by providing a method for Service experts to offer technical advice. As previously stated, nothing in the MOA affects the Federal OSC's final decision-making authority. Emergency consultation continues until the case is closed by the Federal OSC.

This chapter is organized according to the events and timeline established in the NCP and the Incident Management Handbook. Agency responsibilities pertaining to the MOA are discussed. Procedures may vary slightly from region to region as agreed upon by the Area Committee.

Recognizing that each response is different, this chapter will walk you through a stylized response. The step-by-step procedures included in this chapter represent the typical steps involved in completing a spill response (See Figure 7-1). To the ex-

tent possible, these procedures should be addressed during pre-spill planning.

### **Step 1 - Notification**

The Federal OSC receives notification that a spill has occurred through the NRC, the spiller, another agency, regional office, or perhaps through a witness. The Federal OSC is responsible for notifying Natural Resource Trustees and may contact other agencies and stakeholders regardless of the presence of listed species or critical habitat. A "Notification Checklist" is usually found in the ACP. Members of the RRT often forward information they receive to their own agencies.

Planning can clarify these procedures and establish points of contact, phone numbers, and spill notification parameters. It can also identify at what point an Endangered Species expert may be notified.

### **Step 2 - Evaluation of the Spill**

Among the many pieces of information gathered by the Federal OSC regarding the spill will be the area impacted (or potentially impacted) and what type of environmentally sensitive areas may be found

there. The location of listed species and critical habitat is very important for the Federal OSC to know when evaluating the spill.

**Human health and safety are the highest priorities during a spill response.**

If this information is already available in the ACP, or incorporated into an agreed upon reference such as Environmental Sensitivity maps, Geographic Response Plans, wildlife plans, resource databases, etc., it will minimize confusion and decrease any time spent evaluating potential impacts. Without this information, response actions could fail to protect listed species or critical habitat, or may inadvertently cause detrimental impacts. Therefore, it is important that planning involving ESA specialists occur to aid in this decision-making.

The Area Committee establishes procedures and sources for acquiring timely information regarding listed species and/or critical habitat during a response.

### **Step 3 - Decide on Actions**

If listed species or critical habitat are not present in the area affected by the spill response, then ESA emergency consultation is not required. (However, the Services may still be involved in the response. See Chapter 4.)

If listed species or critical habitat are present, or could be present, the Federal OSC will initiate emergency consultation by contacting the Services either directly or through agreed-upon procedures, such as contact through the DOC or DOI representative.

### ***Step 3a - Establish Response Team***

If appropriate, the NOAA SSC and/or the FWS RRC may coordinate endangered species expertise for the Federal OSC. This may require timely on-scene expertise from the Service(s)' local field offices as appropriate. (Note that health and safety training is required to work on some portions of a spill site). The Service representatives may be asked by the Federal OSC to participate within the Incident Command System and provide technical advice regarding listed species and/or critical habitat to the Federal OSC. It is possible that the representatives assigned to the spill response will not be experts themselves, but will coordinate with their endangered species experts to provide this information.

As described in Chapter 4, Service representatives will usually be part of the Planning Section's Environmental Unit or Operations Section. Each spill response organization is different depending on the oil spill.

### ***Step 3b - Implement ACP for initial actions***

The response measures in the ACP usually form the basis for immediate response actions.

### ***Step 3c - Develop Incident Action Plan***

As part of the emergency consultation, the Services provide the Federal OSC with timely recommendations to avoid and/or minimize impacts to listed species and critical habitat. The Planning Section develops an Incident Action Plan with strategies based on the specifics of the spill situation.

For example, the Services may recommend that response measures be modified based upon the confirmed presence of a listed species – e.g., vessel access may be preferred, if possible, over the use of four wheelers for access to a specific beach.

If incidental take is anticipated, the Services can advise the Federal OSC on ways to minimize the take and can document the take. Actual take is documented in any formal consultation after the case is closed.

### **ESA Consultation Documentation**

Under the MOA, it is the responsibility of both the Federal OSC and Service representatives to maintain a record of written and oral communications during the oil spill response. The checklist in Appendix B of the MOA provides a means for tracking this information. Appendix B lists information required to initiate a formal consultation after the case is closed in those instances where listed species and/or critical habitat have been adversely affected by response actions. (Note that other methods may be used when previously agreed upon, such as an additional statement in daily Pollution Reports – POLREPS, to document listed species recommendations.)

If it is anticipated that listed species and/or critical habitat may be affected, the Federal OSC may request that the Service representative to the ICS be responsible for compiling the information for Appendix B while the response is ongoing. The Federal OSC may also ask the NOAA SSC, or another appropriate individual to maintain this documentation as appropriate. This documentation must be completed before the case is closed (and funding is no longer available from the Oil Spill Liability Trust Fund).

### **Funding**

The Federal OSC has a responsibility to ensure that consultation is conducted. Therefore, the Federal OSC has the discretion to fund another agency to develop the documentation noted above. (Do *not* confuse Appendix B with a Biological Assessment or a Biological Opinion. The Services are not reimbursed from the Oil Spill Liability Trust Fund for completing a BO.)

The Pollution Removal Funding Authorization (PRFA) is a tool available to the Federal OSC to quickly obtain needed services and assistance from state, local, or other Federal government agencies during oil spill response actions. The PRFA commits the Oil Spill Liability Trust Fund administered by the National Pollution Funds Center (NPFC) to payment of costs incurred in pollution response activities.

Under the terms of a PRFA, a Federal OSC may agree to reimburse another government agency for costs incurred in providing any agreed upon assistance to the Federal OSC. (See Sample Documents on the CD for sample language.) In this case, the Federal OSC would provide a PRFA to prepare the documentation package that will be needed to initiate formal consultation after the case is closed if listed species or critical habitat are adversely affected. Generally, the assisting government agency would be FWS, NMFS or perhaps a state agency.

The assisting government agency receiving a PRFA must track its costs and provide documentation to support reimbursement. Cost documentation must follow the guidelines outlined in the National Pollution Funds Center Technical Operating Procedures for Resource Documentation (<http://www.uscg.mil/hq/npfc/tops.htm>)



This guidance, along with some of the forms mentioned below, is provided on the CD ROM. The assisting government agency should:

- Obtain a PRFA
- Maintain Daily Resource Reports (Form CG-5136A-E)
- Prepare a SF-1080/1081
- Send the SF-1080/1081 with the Daily Resource Reports within 90 days after completion of response activities to the Federal OSC
- Identify a Point of Contact

### *Step 3d - Operations Section Implements the Incident Action Plan*

Throughout the spill response, the Planning and Operations Sections work closely together to develop and implement the incident action plan. Therefore, work may cycle between Step 3c and 3d depending upon the spill response.

It is the responsibility of the Federal OSC to ensure there is a notification process in place that alerts Service representatives to the ICS of changes in response operations due to weather, extended operations, or some other circumstance. It is the responsibility of the Services to notify the Federal OSC of seasonal variances (e.g. bird migration), or other natural occurrences affecting the resource. This exchange of information should all happen through the ICS. (Note that the Endangered Species expert must be contacted to meet consultation requirements unless otherwise agreed upon in the ACP.) The Services continue to offer recommendations, taking into account any changes, to avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat, and to minimize the take of listed species associated with spill response activities.

If there is no Service representative in the ICS (but the Service is aware of the situation), the Federal OSC will ensure that the NOAA SSC and/or DOI or DOC representative to the RRT remains apprised of the situation.

### Step 4 - Closing the response portion of the case

During an oil spill response that may adversely affect listed species or critical habitat, the spill response team operates under *emergency consultation* procedures. Once the spill response is underway, emergency consultation continues until the case is closed, i.e., the Federal OSC determines that the spill response is complete.

Once the response portion of the case is closed, post-response guidelines take effect. (See Chapter 8.)

### **Scenarios**

As participants in this training, if you have time, you may choose to walk through a sample scenario. Your instructor will provide you with a sample scenario (or multiple scenarios if time allows). The scenario is based on one or more real oil spill incidents in which listed species or critical habitat were potentially impacted by an oil spill response option.

Alternatively, you may develop your own scenario. If you choose to create your own, remember to include the following:

- 1) A *significant* threat from response to listed species and/or critical habitat
- 2) Oil type – use an oil commonly handled, stored, or transported in your area
- 3) Oil spill size –reasonable, yet significant

- 4) Location – place the oil spill in an area where response is likely to jeopardize listed species or adversely modify critical habitat
- 5) Date, Time, and Weather
- 6) Nature of the oil spill – overturned tanker truck? Facility spill? Shipwreck? Pipeline rupture?

The instructor will walk you through the scenario. You will examine the response to the scenario from two perspectives – first, if the Area Committee completed the Planning Template (Appendix C); second, if the Area Committee has yet to complete the template. If you have enough participants in your training class, you may want to consider role-playing.

*natives*. US Department of Commerce, NOAA.

*PRFA*:  
See Sample Documents on training CD



### **Where Can I Find More Information?**

*ESA Consultations:*

<http://endangered.fws.gov/consultations/index.html>

US Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Act Consultation Handbook: Procedures for conducting Section 7 consultations and conferences*. US Government Printing Office, Washington, D.C.

*Oil spill response planning tools:*

<http://response.restoration.noaa.gov/oilaid/reports.html>

National Oceanic and Atmospheric Administration. 2000. *Characteristic Coastal Habitats: Choosing Spill Response Alter-*

### How Response can work

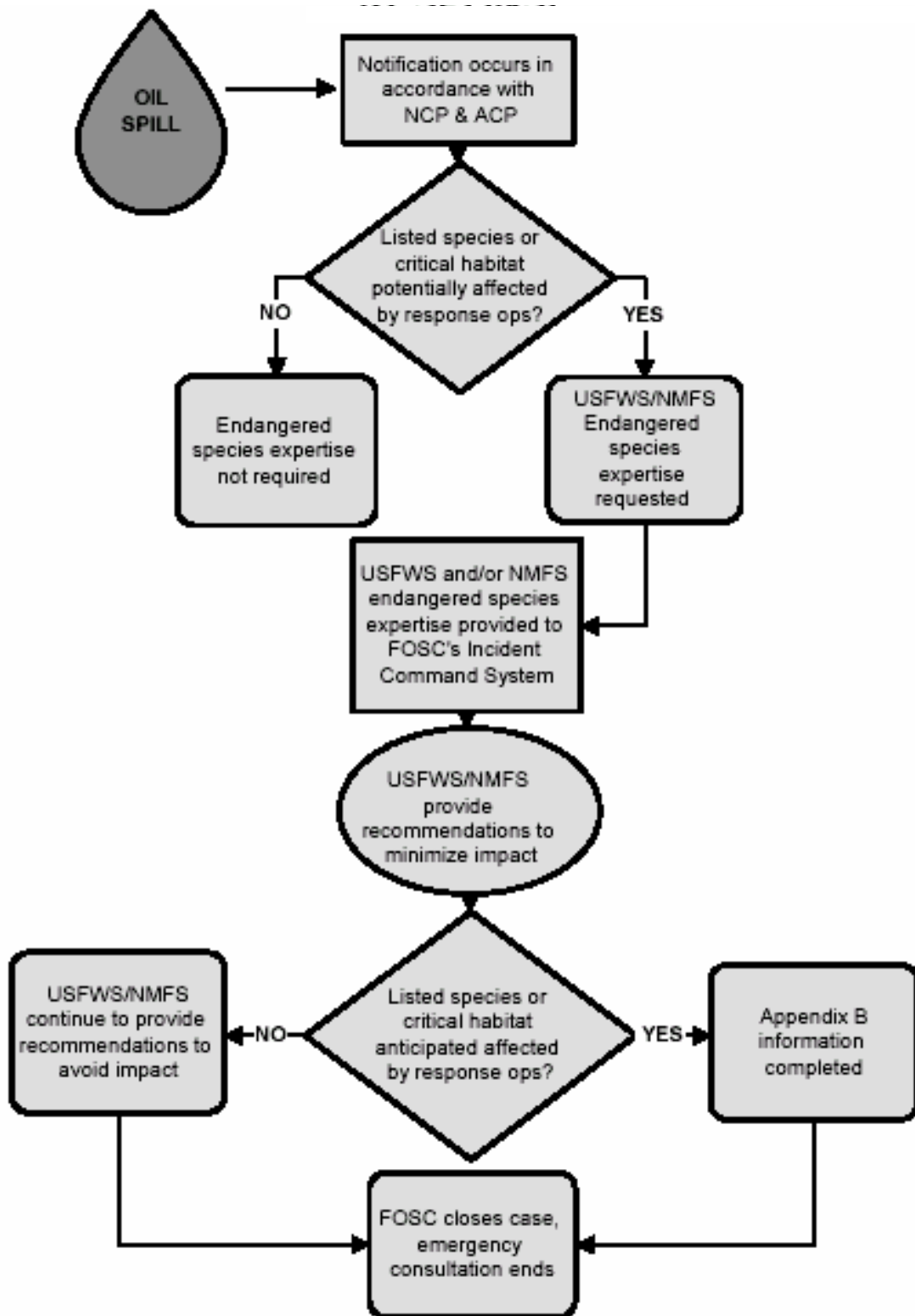


Figure 7-1. Emergency Response Procedures

# NOTES

# NOTES

## Chapter 8: Post-Response

### SUMMARY

*After a response is complete, there may be a need to complete ESA formal consultation, and review the response to determine if response measures or other procedures in the ACP should be changed. As in each of the preceding stages, the post-response process requires teamwork and cooperation among agencies to assure that all relevant and appropriate documentation is presented.*

### **What is the purpose of this Chapter?**

In this chapter, participants will learn about the step-by-step procedures presented in the MOA for completing consultation on an oil spill response (See Figure 8-1). Remember:

- 1) Formal consultation proceedings, *if necessary*, can only begin after the response portion of the case is closed, i.e., after emergency consultation ends.
- 2) Just because the spill response portion of the case is closed *does not mean that ESA consultation is complete*.
- 3) The Emergency Consultation Checklist should be compiled BEFORE the case is closed if impacts have occurred as a result of RESPONSE ACTIVITIES. Oil Spill Liability Trust Fund (OSLTF) funding is not available AFTER the case is closed.

It is important to complete the consultation after the spill for several reasons. First, it is necessary for the Services to readjust environmental baselines for the species. Second, incidental take statements may need to be generated to document the take for the Federal OSC. Third, it is important to document that the consultation took place for legal purposes, and to gather lessons learned so that future spill response

efforts may benefit. Again, these are suggested procedures. If other procedures exist that work in a given region, these may be retained.

### **Step 1 -Determination of Effects**

Throughout the spill response, either the Federal OSC or a representative designated by the Federal OSC should have documented all communications, including recommended response procedures and incidental take. After the emergency response is complete, the Federal OSC and the Service(s) will jointly review and evaluate the effects of response activities on listed species and/or critical habitat. The NOAA SSC, ERT and/or FWS RRC may assist as appropriate. The determination should be based on any available information. Further scientific studies should not be required.

### ***Impacts on Listed Species or Critical Habitat***

Based on the above information, the Federal OSC makes the final determination whether or not impacts have occurred. If impacts have occurred, then the Federal OSC must determine whether there were adverse effects.

If the joint review results in a disagreement between the Service(s) and Federal

OSC on whether listed species or critical habitat were adversely affected by spill RESPONSE ACTIVITIES, the Service(s) provide a letter stating why the Service(s) believe there were adverse effects on listed species and/or critical habitat. The Federal OSC can then choose to act on the Service(s)' reply or simply document the response.

*No Adverse Effects on Listed Species or Critical Habitat*

If, based on joint review and evaluation with the Service(s), the Federal OSC determines that the response resulted in no adverse effects on listed species or critical habitat, then the emergency consultation is complete. With the involvement of the Services throughout the process, adverse effects on species and habitat should be minimized, resulting in more "no adverse effects" determinations.

Upon closing the case, the Federal OSC ensures lessons learned are recorded, documentation filed, and advises the Area Committee of any necessary changes to the ACP. The data compiled for the Emergency Consultation Checklist, may also be forwarded to the Services in support of the no-effect determination, but the Checklist is not required.

*Formal consultation occurs if listed species and/or critical habitat were adversely affected during the course of the spill response.*

*Adverse Effects on Listed Species or Critical Habitat*

If through joint review and evaluation with the Service(s), the Federal OSC deter-

mines that RESPONSE ACTIVITIES did, in fact, adversely affect listed species or critical habitat, then the Federal OSC initiates formal consultation.

Step 2 - Finalizing Emergency Consultation Checklist (Appendix B, MOA)

To initiate formal consultation, the Federal OSC will finalize the Emergency Consultation Checklist and submit it with a cover letter as an initiation package to the Service(s). Note that if a Service representative assists in preparing the initiation package, the same representative will NOT be responsible for reviewing it.

If the Services assisted in gathering information for Appendix B during the spill, they should assist the Federal OSC in finalizing the resulting documentation. This documentation will become the Initiation Package that is submitted to the Service(s) with a request for formal consultation. (See Appendix E in the MOA.)

Step 3 - Is the Initiation package complete?

If the Service(s) determine that the information in the initiation package is incomplete, they will notify the Federal OSC within 30 days. The Federal OSC (or preparer of the initiation package) will work with the Service(s) to complete the information and re-submit the package to the Service(s).

Once the information in the Checklist is complete, the Service(s) will make a final determination, generally in the form of a BO. If incidental take of listed species occurred during the response, such take will be documented in the BO. This document is generally produced within 135 days of receipt of the initiation package.

The Service(s) will forward their determination to the Federal OSC with copies to FWS RRC or NOAA SSC, DOI and DOC RRT representatives, and the Area Committee.

**Step 4 - What changes, if any, should be made to the ACP?**

Once the formal consultation is complete, the Federal OSC should consider the results for inclusion in the lessons learned system. The results may also be incorporated into the ACP for the benefit of future spill response actions. If the response actions resulted in take of listed species or adverse effects on critical habitat, the Area Committee could consider adjusting the ACP. The Federal OSC should bring these considerations to the attention of the Area Committee as soon as possible.

If changes are made to the ACP as a result of the Service(s)' BO, the Service(s) should document the changes and complete any appropriate administrative steps. Assuming the changes result in better protection for listed species and/or critical habitat, the Federal OSC should consider obtaining a letter of concurrence docu-

menting approval of the new measures, as in the initial planning phase.

After resolving questions about impacts and finalizing consultation issues, the next thing to do is assess what worked and what did not work during the spill response. If possible, after the spill, the Federal OSC should convene a meeting with or obtain feedback from responders at that spill.



**Where Can I Find More Information?**

*ESA Consultations:*

<http://endangered.fws.gov/consultations/index.html>

US Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Act Consultation Handbook: Procedures for conducting Section 7 consultations and conferences*. US Government Printing Office, Washington, D.C.



### How Post-Response can work

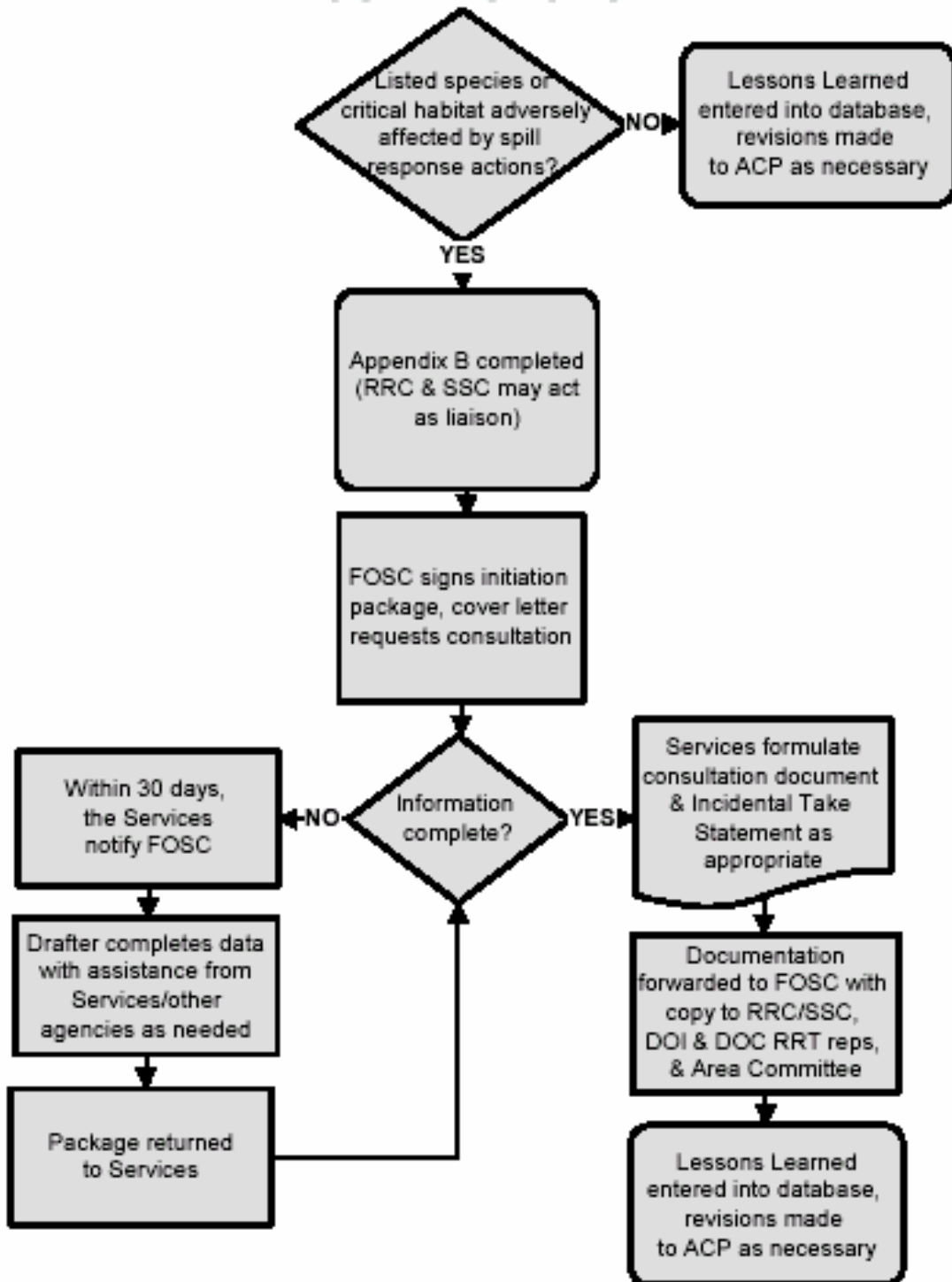


Figure 8-1. Post Incident Procedures

# NOTES

# NOTES