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***Protected Resources Management  
MOAs/MOUs/COOPERATIVE AGREEMENTS/  
INTER-AGENCY COOPERATIVE POLICIES***

***INTER-AGENCY MOA 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 ESA: A GUIDEBOOK***

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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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the Endangered Species Act:**

**A Guidebook**

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**Ecosystem Management & Associates, Inc.  
Report 0 -0**

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# TABLE OF CONTENTS

	Page
<b>INTRODUCTION .....</b>	<b>3</b>
WHO MAY USE THIS GUIDEBOOK? .....	3
HOW DO WE USE THIS GUIDEBOOK? .....	3
WHY IS THIS MOA NECESSARY? .....	4
<b>CHAPTER 1: MEMORANDUM OF AGREEMENT OVERVIEW .....</b>	<b>5</b>
PURPOSE .....	5
<i>Clean Water Act</i> .....	5
<i>National Contingency Plan</i> .....	6
<i>Endangered Species Act</i> .....	6
KEEP IN MIND .....	7
WHERE CAN I FIND MORE INFORMATION? .....	7
<b>CHAPTER 2: NATIONAL CONTINGENCY PLAN AND THE NATIONAL RESPONSE SYSTEM .....</b>	<b>9</b>
WHAT ARE THE NATIONAL CONTINGENCY PLAN, AND THE NATIONAL RESPONSE SYSTEM AND HOW DO THEY RELATE TO EACH OTHER? .....	9
CONTACTS .....	11
WHERE CAN I FIND MORE INFORMATION? .....	11
<b>CHAPTER 3: ENDANGERED SPECIES ACT OVERVIEW .....</b>	<b>13</b>
WHAT IS THE ENDANGERED SPECIES ACT? .....	13
WHO ADMINISTERS THE ESA? .....	13
<i>ESA Section 7</i> .....	14
DOCUMENTATION .....	15
<i>Biological Assessment or Evaluation</i> .....	15
<i>Letters of Concurrence</i> .....	15
<i>Initiation Package</i> .....	16
<i>Biological Opinion</i> .....	16
<i>Incidental Take Statement</i> .....	17
<i>Conservation Recommendations</i> .....	17
HOW DOES THE ENDANGERED SPECIES ACT RELATE TO THE NATIONAL CONTINGENCY PLAN? .....	17
WHERE CAN I FIND MORE INFORMATION? .....	17
<b>CHAPTER 4: INCIDENT COMMAND SYSTEM OVERVIEW .....</b>	<b>19</b>
WHAT IS THE INCIDENT COMMAND SYSTEM? .....	19
<i>Command</i> .....	19
<i>Planning</i> .....	20
<i>Operations</i> .....	20
<i>Logistics</i> .....	20
<i>Finance/ Administration</i> .....	20
<i>Unified Command</i> .....	20
HOW DO THE NATIONAL RESPONSE SYSTEM AND INCIDENT COMMAND SYSTEM FIT TOGETHER? .....	21
WHERE DO THE SERVICES FIT INTO ICS? .....	21
CONTACTS .....	22
WHERE CAN I FIND MORE INFORMATION? .....	22
<b>CHAPTER 5: AREA CONTINGENCY PLANS, AN OVERVIEW .....</b>	<b>25</b>
WHAT IS AN AREA CONTINGENCY PLAN? .....	25
HOW DOES THE FISH AND WILDLIFE AND SENSITIVE ENVIRONMENTS ANNEX FIT INTO THE ACP PLANNING PROCESS? .....	26
WHERE CAN I FIND MORE INFORMATION? .....	27

<b>CHAPTER 6: PRE-SPILL PLANNING .....</b>	<b>29</b>
WHAT IS THE PURPOSE OF THIS CHAPTER? .....	29
GETTING STARTED .....	29
<i>Step 1 – Who needs to be involved in planning?</i> .....	30
<i>Step 2 – What information is needed?</i> .....	31
<i>Step 3 – Are listed species or critical habitat in the area?</i> .....	31
<i>Step 4 – Which response measures are appropriate?</i> .....	31
<i>Step 5 – Formal Consultation</i> .....	33
<i>Step 6 – Documentation</i> .....	33
WHAT DO I DO WITH THIS INFORMATION? A REVIEW .....	33
WHERE CAN I FIND MORE INFORMATION? .....	34
HOW PLANNING SHOULD WORK .....	35
<b>CHAPTER 7: EMERGENCY RESPONSE .....</b>	<b>39</b>
WHAT IS THE PURPOSE OF THIS CHAPTER? .....	39
<i>Step 1 - Notification</i> .....	39
<i>Step 2 - Evaluation of the Spill</i> .....	39
<i>Step 3 - Decide on Actions</i> .....	40
<i>Step 4 – Closing the response portion of the case</i> .....	42
SCENARIOS .....	42
WHERE CAN I FIND MORE INFORMATION? .....	43
HOW RESPONSE SHOULD WORK .....	44
<b>CHAPTER 8: POST-RESPONSE.....</b>	<b>49</b>
WHAT IS THE PURPOSE OF THIS CHAPTER? .....	49
<i>Step 1 -Defining the incident</i> .....	49
<i>Step 2 – Completing Emergency Consultation Checklist (Appendix B, MOA)</i> .....	50
<i>Step 3 – Is the Information in the Checklist complete?</i> .....	50
<i>Step 4 - What changes, if any, should be made to the ACP?</i> .....	50
<i>Step 5 - Which procedures worked?</i> .....	51
WHERE CAN I FIND MORE INFORMATION? .....	51
HOW POST-RESPONSE SHOULD WORK .....	52

## LIST OF FIGURES

Figure	Description	Page
<i>Figure 4-1. ICS Management Activities</i>	.....	19
<i>Figure 4-2. Unified Command Structure</i>	.....	20
<i>Figure 4-3. Expanded Incident Command Structure</i>	.....	23
<i>Figure 6-1. Pre-spill Planning Procedures</i>	.....	35
<i>Figure 7-1. Emergency Response Procedures</i>	.....	44
<i>Figure 8-1. Post Incident Procedures</i>	.....	52





# LIST OF ABBREVIATIONS, SYMBOLS, AND ACRONYMS

Term.....	Abbreviation, Symbol, or Acronym
Area Contingency Plan .....	ACP
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
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 Marine Fisheries Service.....	NMFS
National Ocean Service.....	NOS
National Response Center.....	NRC
National Response System.....	NRS
National Strike Force .....	NSF
On-Scene Coordinator .....	OSC
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



## **ACKNOWLEDGEMENTS**

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# Inter-Agency Memorandum of Agreement for Endangered Species Consultations:

## Environmental Protection In Oil spill Response

### A Guidebook

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#### **Abstract**

In 2001, members of the United States Coast Guard, 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 a Memorandum of Agreement (MOA) titled *Inter-Agency Memorandum of Agreement Regarding Oil 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 oil spill planning and response. The MOA outlines procedures to streamline the compliance process before, during, and after an incident. The purpose of this guidebook is to familiarize oil spill responders and resource 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 each player in the oil spill response process.



# INTRODUCTION

## SUMMARY

*The 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 US 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, carry through the incident, and conclude with a post-incident follow-up and review. By the end of this training, you will be familiar with documents and procedures that each agency needs to complete in order to comply with the Endangered Species Act and the National Contingency Plan.*

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## Who may use this guidebook?

This guidebook was designed for use by the following agencies:

### **Federal**

- ✓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 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 National Contingency Plan. The second is to help planners and responders set procedures in place that will facilitate smooth consultation procedures before, during, and after an emergency response. The last is to identify the roles of each player in the oil spill response process.

If at all possible, train with a member from each agency involved in spill response

within a given District or Region. As participants, you will benefit most from training in an inter-agency group.

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

At the beginning of each chapter is a text box that outlines the information presented within 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.

### **Why is this MOA necessary?**

The fundamental goal of the MOA is better overall protection of the environment. The MOA was written for two purposes:

- 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 MOA alleviates some of the confusion by providing step-by-step procedures for contacting the right person at each stage in the response for information.



# Chapter 1: Memorandum of Agreement Overview

## SUMMARY

*The Memorandum of Agreement (MOA) provides a general framework for cooperation and participation among agencies in the exercise of their oil spill planning and response responsibilities. Recognizing that one of the overarching goals of both the Clean Water 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 "blend" the requirements set forth in both statutes. Federal agencies have responsibilities under both statutes. Following the recommended procedures will better 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 for the environment.*

## **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, it 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 resource managers can "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 Clean Water Act, National Contingency Plan, and Endangered Species Act. 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 document is presented in the following segments. Each document will be more fully examined in following Chapters.

### Clean Water Act

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

**Purpose**

- 1- ID better plans and procedures
- 2- Provide guidance for Emergencies
- 3- Use informal consultation whenever possible

- 1) Ensure effective, immediate removal of oil spills (discharges) 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 Executive Orders and the National Contingency Plan. Oil spill planning and response requirements are implemented in part through the National Contingency Plan.

**National Contingency Plan**

The National Contingency Plan (NCP) provides for “efficient, coordinated, and effective response to discharges” in US waters. The NCP outlines the capabilities and responsibilities of different Federal agencies during oil spill response.

**Coordinate  
Effective,  
Immediate  
Removal of  
Discharges**

The NCP assigns highest priority to the safety of human life and stabilization of the oil spill situation. 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 a 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 de-

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

pend (called “critical habitat”).<sup>2</sup> 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

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

<sup>2</sup> Planning can address not only listed species and designated critical habitat, but also *proposed* species and *proposed* critical habitat.

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 Services. During consultations, the agencies analyze the effects of a Federal action on listed species and designated critical habitat. Consultations involve an examination of the best available scientific and commercial data to determine whether the action will 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 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 must 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.



## 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.



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

### SUMMARY

*The National Contingency Plan (NCP) is required by the Clean Water Act. 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 and 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 (discharges) 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 gov-

#### **Fundamental Response Activities**

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

ernment and between private sector and public efforts.

Anyone who causes or discovers a oil spill must report it 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 procedures.

#### ***On-Scene Coordinators***

Under the NCP, all 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

**Which Came First...?**

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

spill contingency planning in their areas of responsibility and overseeing the Area Committee's (described in a later Chapter) preparation of an Area Contingency Plan. This preparedness planning includes working 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 a oil spill, but is supported by and receives advice from participants from other agencies. The Federal OSC can secure support from special support personnel, such as the NOAA Scientific Support Coordinator (SSC) and the EPA Emergency Response Team (ERT) on scientific/technical issues, and the Coast Guard's National Strike Force (NSF) for support in other areas.

**Trustee Distinction**

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

*In order to ensure you comply with ESA, your plans must include coordination with Federal ESA Specialists.*

**Scientific Support Coordinators and Emergency Response Team**

The SSC assists the Federal OSC with such technical matters as oil fate and effects modeling, resources at risk, and recommending response techniques. EPA's ERT assists the Federal OSC in data collection and recommending response techniques. Both the SSC and ERT assist the Federal OSC in determining when the emergency response is finished, i.e., when an area is "clean."

**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

**National Strike Force**

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; and provides support to set up and lead an Incident Command System for response. While NSF expertise is mostly in marine spills, strike team members are capable of assisting with site assessments, safety, action plan development, documentation for oil spills, and other activities in any area.

**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 Federal regions plus one each for Alaska, the Caribbean, and Oceania. The same 16 Federal agencies are represented on the RRTs, along with state members. 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). In response, the NRT and RRT provide support, if requested, to the Federal OSC. (Note: More information on RCPs is available in Chapter 5.)

## Contacts

### 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)



## 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)

*Oil Pollution Act, 1990:*  
\* 33 USC § 2701-2761

<http://www.epa.gov/region09/waste/sfund/oilpp/opa.html>

*USCG websites:*  
[www.uscg.mil/d1/staff/m/rrt/roles.html](http://www.uscg.mil/d1/staff/m/rrt/roles.html)





## Chapter 3: Endangered Species Act Overview

### SUMMARY

*In 1973, Congress established the Endangered Species Act (ESA) for the purpose of conserving listed species and their habitats. The ESA requires Federal agencies to work together for the protection and preservation of endangered species and their habitat. 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 on listed species and designated critical habitat. The Memorandum of Agreement focuses on helping response agents meet the consultation requirements of the ESA. In this section, we will briefly outline three different forms of consultation that apply to oil spill response.*

### 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.

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

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 listed species of fish or wildlife without prior authorization of the Services.

**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.

### 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 implementing the ESA. Often these agencies are referred to collectively as "the Services." NMFS handles marine and anadromous fish species. FWS handles terrestrial and freshwater species and migratory birds.

## ESA Section 7

Section 7 of the ESA provides tools for three united 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 by that agency may affect listed species or designated critical habitat.

The Services conduct many types of consultations. Previously, there was confusion over the use of “consultation” in the NCP versus “consultation” as used in the ESA. The MOA attempts to clarify this by suggesting procedures that meet the mandates of both. How the consultations presented here are 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 Services 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 adversely affect listed species or critical habitat concludes the informal consultation process. If specific sources of potential adverse effects are identified and removed, the Services will provide a concurrence letter and Section 7(a)(2) requirements will be deemed to have been met. It is the goal of the MOA to utilize this form of the consultation process whenever possible so as to avoid

or minimize impacts to listed species or critical habitat.

- 2) *Formal Consultation* is a process conducted between a Federal agency and the Services to determine whether a proposed action is likely to jeopardize a listed species or destroy or adversely modify critical habitat. Formal consultation is required for actions that may affect listed species or critical habitat unless the Federal agency determined, 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, and may include an incidental take statement. A biological opinion states the Services’ view of whether a proposed action is likely to jeopardize a listed species or destroy or adversely modify critical habitat. An incidental take statement specifies the allowable taking of a listed species through an activity that is otherwise legal. The incidental take statement specifies the amount or extent of taking of the species. It includes reasonable and prudent measures for minimizing impacts on the species, terms and conditions that must be complied with by the Federal agency, as well as procedures for handling species that are actually taken.

- 3) *Conference* is a process of early inter-agency cooperation involving informal or formal discussions between a Federal agency and the Services 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.

- 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 telephones or faxes the Service(s) as soon as possible about the situation for advice on measures that would minimize effects of the response. The Service will follow the initial contact with written correspondence detailing the conversation.

**Effects of  
RESPONSE ACTIVITIES  
are the subject of these  
consultations**

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

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 Services' conclusions documented.

The action agency then initiates formal consultation after the emergency situation 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 provides a biological opinion that documents the effects of the emergency response on listed species and/or designated critical habitat.

### **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.

### **Biological Assessment or Evaluation**

A Biological Assessment (BA) or Biological Evaluation (BE) can be a part of the Section 7(a)(2) consultation process. A Biological Assessment is required for actions that are major construction activities. BAs and BEs 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 of the BA or BE determines whether a formal consultation or conference is required. If the action is not likely to adversely affect listed species or critical habitat, then the agency sends a request for concurrence to the Service. The Service may agree or disagree with the determination. If 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.

### **Letters of Concurrence**

If a Federal agency determines that their proposed action is not likely to adversely affect listed species or designated critical habitat, it may initiate informal consultation and request concurrence from the Services of their determination. Once the Services have 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 action reveal potential adverse effects, then the action agency has two alternatives. The action agency can implement modifications to their 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.

### Initiation Package

The formal consultation begins 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 finds the package complete, then consultation begins. If the package is deemed incomplete, then additional information may be requested. Once the pack-

age is accepted, the Service can begin formal consultation and the preparation of a biological opinion. Appendix C of the MOA provides a planning template for use in preparing the initiation package.

### Biological Opinion

A Biological Opinion is prepared by the Services in response to the receipt of an initiation package from a Federal agency. It

- 1) *States the opinion of the Services 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) *Summarizes the information on which the opinion is based, and*
- 3) *Provides a detailed discussion of the effects of the action on listed species or designated critical habitat.*

If the Service determines that an action is likely to jeopardize the continued existence of listed species, or destroy or adversely modify designated critical habitat, the biological opinion will contain available Reasonable and Prudent Alternatives that is within the agency's authority but does not result in jeopardizing listed species.

If a Service issues a jeopardy biological opinion, the Federal agency must notify the Services of its intent to proceed with the action or not. If the Federal agency cannot comply with Section 7 (i.e., the project must proceed, but taking of listed species or critical habitat is likely), then the Federal agencies meet to discuss how to resolve the issue.

## Incidental Take Statement

If the Service determines that the project is not likely to jeopardize listed species, then an incidental take statement will be included in the biological opinion. Incidental take is the take of listed species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant.

The incidental take statement includes the amount of anticipated take, and methods to minimize take (called Reasonable and Prudent Measures.) The methods to implement the RPMs are outlined in the Terms and Conditions.

## 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 must 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 must be made on both sides to ensure that the Services provide input on spill response measures during the planning stages, and during actual responses. Agency leads must request input from Service representatives during the planning and response processes. Likewise, Service representatives must 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:*

[www.noaa.gov](http://www.noaa.gov)

[www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)

[www.nmfs.noaa.gov/endangered.htm](http://www.nmfs.noaa.gov/endangered.htm)

[www.nmfs.noaa.gov/sfa/hmspg.html](http://www.nmfs.noaa.gov/sfa/hmspg.html)

Take permits

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

Protected Resources

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

Response and Restoration

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

*US EPA websites:*

[www.epa.gov](http://www.epa.gov)

Endangered Species Act

[www.epa.gov/region5/defs/html/esa.htm](http://www.epa.gov/region5/defs/html/esa.htm)

US FWS website:

[www.fws.gov](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.

## 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.*

### 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 an effective and efficient oil spill response. 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.

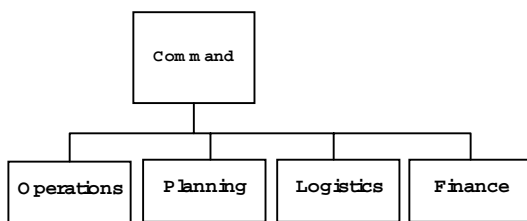


Figure 4-1. ICS Management Activities

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 operations: Command, Operations, Planning, Logistics, and Finance and Administration.

The ICS is organized around five major management activities. Each of the primary ICS activities may be sub-divided as needed. The ICS organization has the capability to expand or contract to meet the needs of the incident. Every response does not mandate the use of every management activity. Each major management activity is outlined in the following:<sup>3</sup>

#### Command

The Command sets objectives and priorities, and has the overall responsibility 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. In some incidents, the Federal OSC will be the IC

<sup>3</sup> Information taken and modified from the Coast Guard *Incident Management Handbook*.

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 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, organization, and directs all resources.

### Logistics

The Logistics Section provides support to meet incident needs, and provides 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.

### Unified Command

As depicted in Figure 4-2, the Unified Command (UC) is a structure that brings together the “Incident Commanders” of all major organizations involved in the inci-

dent 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.

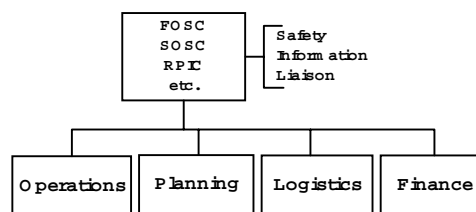


Figure 4-2. Unified Command Structure

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 should be kept as small as possible.

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.



In coastal and inland spills, the Unified Command generally has three to four members: the Federal OSC (FOSC), 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.

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 is responsible for recommending measures to assure personnel safety, and to assess and/or anticipate hazardous and unsafe situations.

### **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 an on-

scene organization 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 on which 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.

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

The Services are an important part of the OSC's support system, especially for providing 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 endangered 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" the 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 within these Sections as well, providing information on wildlife and habitat and help 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 the 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:*

[www.uscg.mil/hq/g%2Dm/mor/articles/ics.htm](http://www.uscg.mil/hq/g%2Dm/mor/articles/ics.htm)

[www.uscg.mil/d13/m/training/ics/ics.htm](http://www.uscg.mil/d13/m/training/ics/ics.htm)

[www.uscg.mil/hq/nsfcc/nsfweb/](http://www.uscg.mil/hq/nsfcc/nsfweb/)

[www.uscg.mil/lantarea/rrt/rrt/owg%20may%202000.doc](http://www.uscg.mil/lantarea/rrt/rrt/owg%20may%202000.doc)

[www.uscg.mil/pacarea/pm/icsforms/ics.htm](http://www.uscg.mil/pacarea/pm/icsforms/ics.htm)

*NRT Website and available documents:*

[www.nrt.org](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

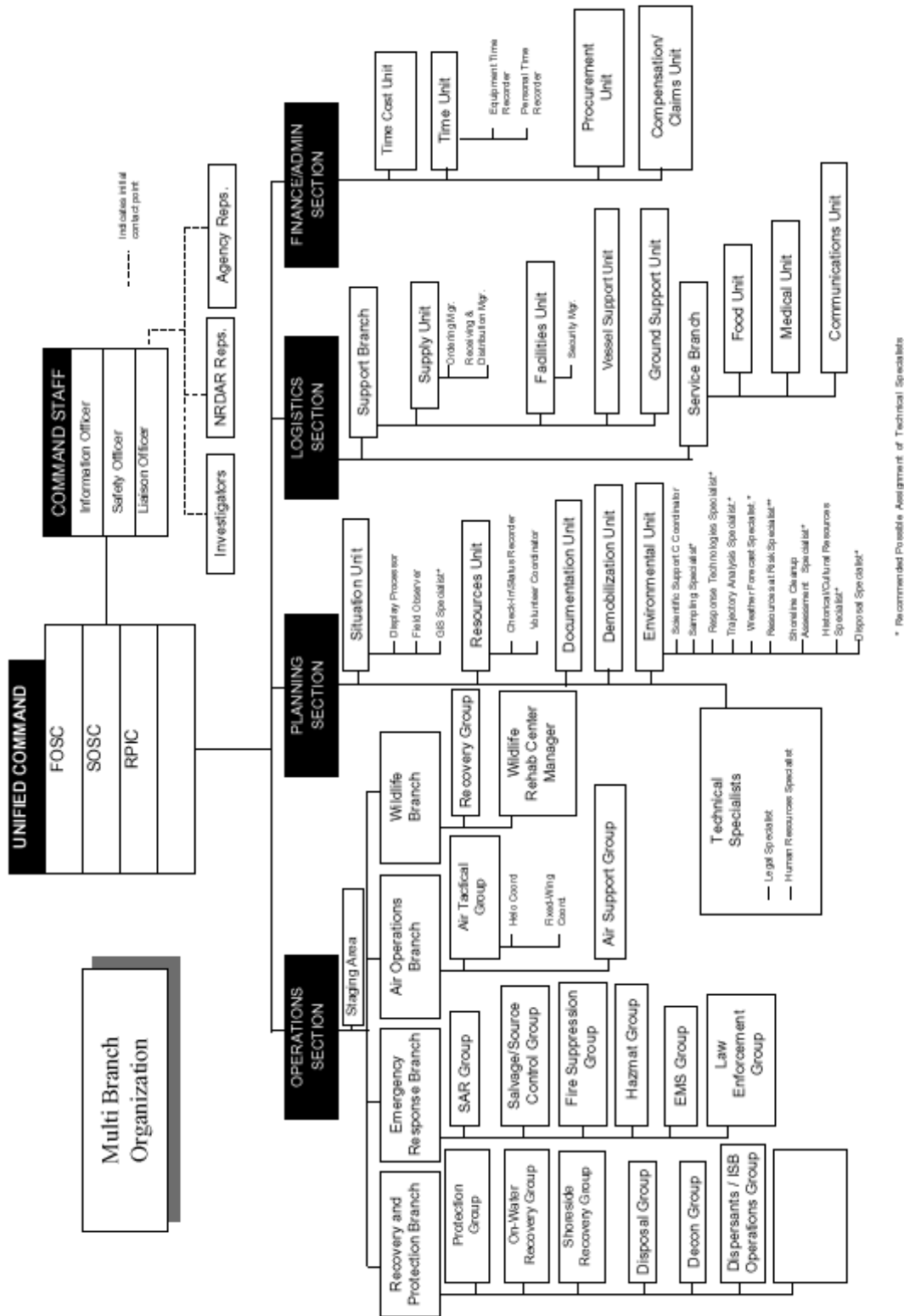


Figure 4-3 Expanded Incident Command Structure



## 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.*

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

An ACP is a plan required by OPA that contains information necessary for effective preparedness and response activities in the area covered by the plan, including:

- Resources, such as equipment and trained response personnel, available from government agencies in the area:
- Description of the roles and responsibility of each agency involved in oil spill response and how the agencies will respond if called upon in an emergency; and
- Appropriate procedures for mechanical containment and recovery of oil, oil dispersal, shoreline and other environmental cleanup, and protection of sensitive environmental resources and areas.

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 waters, and EPA for inland waters. Some areas of the

United States also maintain sub-area plans, geographic response plans, and 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:

- 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) A set of procedures for expedited decisions on the use of dispersants
- 5) A detailed explanation of how the plan fits into other ACPs and vessel and facility response plans
- 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.

## Process

The NCP does not lay out specific procedures for developing an ACP. It only stipulates that the OSC must 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.

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. Remember, the MOA focuses on teamwork and cooperation at all stages of the spill response process!

## **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
- 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 one of two ways:

- 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, does not meet the *legal requirements* to consult under ESA Section 7, according to the ESA. As discussed in Chapter 3, the ESA requires specific *documentation* of consultation. The MOA attempts to remedy this apparent confusion. (The Planning Template in the MOA outlines the information necessary to meet ESA’s consultation requirements.)

By completing The Planning Template in the MOA. EPA and USCG can meet the need to consult as defined by the ESA, as

well as secure the information required for the ACP Annex. 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).



## Where Can I Find More Information?

*USCG Websites:*

Coast Guard Area Contingency

Plans:

[www.uscg.mil/vrp/acp/acp.shtml](http://www.uscg.mil/vrp/acp/acp.shtml)

*NRT Websites:*

[www.nrt.org](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:*

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.





## Chapter 6: Pre-Spill Planning

### SUMMARY

*The planning process is designed to help meet the legal requirements to consult on the response measures as proposed in the ACP, i.e., to make sure the planned operations comply with ESA. Knowing which response measures are acceptable from an ESA perspective for an oil spill in a given area will reduce the need to gather that information during the response, thus increasing the efficiency of the oil spill response and improving the protection of the environment.*

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### What is the purpose of this chapter?

In this chapter, participants will learn about developing the information required in Appendix C (Planning Template) of the MOA. Completing the Planning Template will:

- Add valuable information to the ACP and,
- At the same time, assist in meeting ESA legal obligations to consult on oil spill response measures set forth in the ACP.

As mentioned in Chapter 5, just requesting the Services' input on the ACP Annex does not fulfill an agency's obligation to consult on listed species and critical habitat according to the ESA.

Completing an ESA consultation on oil spill response measures prior to an oil spill should improve the efficiency of the response process. Involving the appropriate parties in the planning process and to collect the appropriate information will benefit everyone in a spill situation. If the process is carried out correctly, the Federal OSC will enter an oil spill response knowing that all agencies with a stake in the response's outcome support the actions recommended in the ACP.

Some Districts and Regions have already developed ways in which the MOA planning process can be implemented. (One example, still in Draft form is included under Sample Documents on the CD.) 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 point 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. The Services' Endangered Species Expert participation in Area Committee planning is considered informal consultation. The goal is to develop response measures that will not adversely affect listed species and critical habitat, and even develop protection strategies if possible.

The flowchart developed for the MOA is included for reference as Figure 6-1. 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 handles marine and coastal oil spills; EPA handles inland oil spills. The Federal OSC also leads the Area Committee in developing and maintaining the ACP. This responsibility includes requesting assistance 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. This is done through the OEPC Regional Environmental Officers (REOs) and DOI Bureaus.

### **NOAA's National Ocean Service (NOS)**

NOAA-NOS provides SSCs through its Office of Response and Restoration's Hazardous Materials Response Division. SSCs provide critical advice on science and natural resource issues to Federal OSCs during responses affecting U.S. waters. Additionally, SSCs support the development of contingency plans by coastal zone 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 so that their input can be included in the ACP Annex. Oil spill responders need to be aware of the presence of listed species and critical habitat in their Region or District. This information can be provided by FWS and/or NMFS representative(s).

In addition, the Services assist the Area Committee in evaluating the response measures presented in the ACP. 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 assists the Federal OSC in the completion of a formal consultation based on the information gathered for the Planning Template (MOA).

### **Other Stakeholders**

State and local emergency response representatives and the responsible party (RP) are also invited to participate in the planning process. Most of the time, local responders are the first to arrive on scene. Their participation in developing the ACP increases the likelihood of their employing 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.

In some cases, the State OSC may require more stringent measures to be taken, based on State laws. In this case, the State OSC needs to be aware of his or her State requirements for oil spill response.

In some cases, agencies other than those listed above may need to be involved in

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

planning. For example, Area Committees whose areas cover Federal lands or marine sanctuaries need to 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 - 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, or NOAA SSC for the area may be able to assist in finding the appropriate Service representative(s).

#### **National and Area Contingency Plans**

The NCP is available at [www.nrt.org](http://www.nrt.org). Area Contingency Plans may not be available online, but are available from the Federal OSC, Area Committee, or RRT.

Proceed to Step 3.

### Step 3 - Are listed species or critical habitat in the area?

Although the Services may have been involved in the planning process, to meet the documentation requirements of the ESA for the ACP, the Federal OSC still needs 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.

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

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

If the Services 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 Services determine the presence of listed species or critical habitat, then the Federal OSC requests that the Services provide a representative to assist in the completion of the ESA consultation process for response measures in the ACP. Proceed to step 4.

### Step 4 - Which response measures are appropriate?

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.

The Planning Template (MOA) 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 (MOA) can also be incorporated into multiple areas of the ACP.

#### ***Decision-Making***

When listed species or critical habitat are present, programmatic consultations are recommended. Types of response measures and effects may be combined together

for analysis. 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 can then 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?***

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 to 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. Or tradeoffs may need to be made between listed

species and/or critical habitat. For example, dispersing oil may adversely affect an 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.

Planning allows the opportunity to evaluate these prospects without the pressure of an emergency situation. The Ecological Risk Assessment process noted at the end of this chapter can help participants evaluate ecological tradeoffs.

**Effect/No Effect Determinations**

The materials in the Planning Template (MOA) will result in one of the following two conclusions by the Federal OSC.

***Not likely to adversely affect***

If the Federal OSC determines that the response measures in the ACP not likely to adversely affect listed species or critical habitat, then the Federal OSC will request the Services to provide a letter of concurrence. The reply from the Services states whether or not the Services concur with the Federal OSC's conclusion. For a sample letter of concurrence, see 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 so the Services can complete the documentation. For a sample request letter, see the MOA, Appendix E.

### Step 5 - Formal Consultation

Once the Services receive the Federal OSC's request for formal consultation, they are required to provide a response within 135 days. The response consists of a Biological Opinion (BO), and possibly an Incidental Take Statement. The formal consultation may reveal that the response measure will not jeopardize listed species or destroy or adversely modify critical habitat. This will be noted by the Federal OSC and the consultation is complete. The Area Committee then decides what modifications (if any) are made to the ACP.

If, however, the BO determines that the response method *will* jeopardize listed species or critical habitat, alternatives could be recommended, environmental tradeoffs noted, procedures acknowledged, or any other suggestions documented. If no alternative will provide protection to listed species or critical habitat, then the Services may issue an incidental take statement, allowing the Federal agency to take a certain number or percentage of listed species or critical habitat during an oil spill response. Again, the consultation is complete and the Area Committee decides what modifications (if any) are made to the ACP.

For further information on the process, may be found in Chapter 3 and the ESA Consultation Handbook published by USFWS 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 Services, the Federal OSC should include or reference it in the ACP. A copy of the documentation must also be retained by the Services for reference during an oil spill.

- 2) Include new data in data 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 Services conclude that a certain response measure did not adequately protect listed species or critical habitat? If so, the Federal OSC should amend the response measure or priorities as appropriate. If it was determined that a response measure could adversely affect listed species or critical habitat, the Federal OSC and the Services should jointly develop practicable response measures. If another response measure cannot be developed, the Federal OSC and the Services should work jointly to secure an incidental take statement.

Were new resources (equipment or methods) for protecting or recovering listed spe

cies or critical habitat identified? If so, the Federal OSC should include those in the ACP, too.

- 4) If additional procedures were developed that will improve coordination more efficiently during an oil spill, include that information in the ACP.

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

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.



## **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 Alternatives*. US Department of Commerce, NOAA.

*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.

## How Planning should work

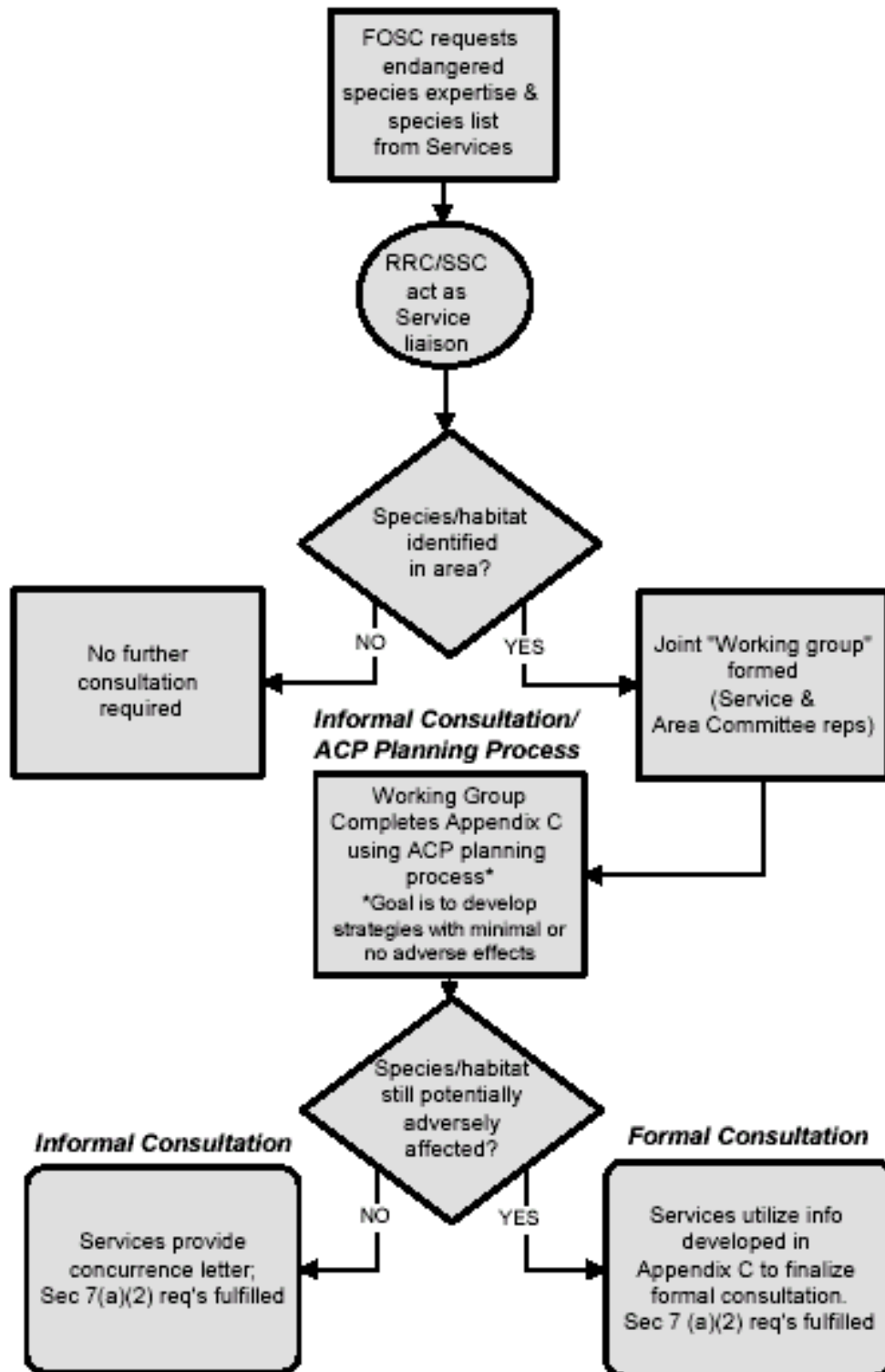


Figure 6-1. Pre-spill Planning Procedures

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## Chapter 7: Emergency Response

### SUMMARY

*During an oil spill response involving listed species or critical habitat, emergency consultation procedures are used. Pre-planned ACP response measures 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. Information needed to complete the consultation is gathered during the response 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.*

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### **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 provide technical advice. Emergency consultation continues until the case is closed by the Federal OSC.

The 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.

### Step 1 - Notification

To respond to an oil spill, the Federal OSC must first receive notification that a spill has occurred. This can happen through the NRC, the spiller, another agency, or perhaps through a witness. Based on the available information, the Federal OSC may contact numerous 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 pass information they receive onto their own agencies.

Planning can clarify these procedures, so that points of contact, phone numbers, and spill notification parameters are already established.

### 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.

If this information is readily available in the ACP, it will minimize confusion and decrease the amount of time necessary to evaluate potential impacts and respond.

If the information is not readily available, the Federal OSC could still respond to the spill, but without the benefit of this information. This could result in either the failure to provide protective measures or even inadvertent detrimental impacts. Therefore, it is critical that planning involving ESA specialists occur to aid in this decision-making.

It is up to the Area Committee to establish 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 being affected by the spill response, then ESA emergency consultation is not required. (However, the Services may still be involved in the response.)

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 a pre-agreed upon procedures, such as contact through the RRT DOI representative, or the NOAA SSC.

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

If necessary, the NOAA SSC and/or the FWS RRC will 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 may be required to work on the spill site, but not necessarily within a command post or other 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 in the Environmental Unit, or potentially the 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 any timely recommendations to avoid and/or minimize impacts to listed species and critical habitat. The Planning Section works together to develop 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 – i.e., vessel access may be preferred, if possible, over the use of four wheelers for access to a specific beach; or dispersants may be preferred to avoid impacts to critical habitat nearby.

If incidental take is anticipated and if no means of reducing or avoiding this take

are apparent, the Federal OSC should be advised and the incidental take documented.

### ***ESA Consultation Documentation***

It is the responsibility of both the Federal OSC and the Service(s)' representatives to maintain a record of written and oral communications during the oil spill response. The checklist contained in Appendix B of the MOA provides a means for tracking this information. Appendix B includes information required to initiate a formal consultation in those instances where listed species and/or critical habitat have been adversely affected by response actions after the case is closed. (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 Appendix B while the response is ongoing. The Federal OSC may also ask the NOAA SSC, or another agency to maintain this documentation as required.

### ***Funding***

Legally, the Federal OSC's 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.

The Pollution Removal Funding Authorization (PRFA) is a tool available to the Federal OSC to quickly obtain needed services and assistance from other government agencies: federal, state, or local during oil spill response actions. The PRFA commits the Oil Spill Liability

Trust Fund to payment, by reimbursement, 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. In this case, the Federal OSC would provide a PRFA to prepare the documentation package that would be needed to initiate formal consultation after the case is closed if listed species or critical habitat are adversely affected. Generally, under the MOA, the other government agency would be NOAA, USFWS, NMFS or perhaps a state agency.

The other government agency receiving a PRFA must track its costs and provide documentation to support reimbursement. Cost documentation must follow the guidelines outlined in the NPFC's Technical Operating Procedures for Resource Documentation

(<http://www.uscg.mil/hq/npfc/tops.htm>).

This guidance, along with the forms mentioned below, is provided on the CD Rom. Generally, the other government agency must:

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

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

Throughout the spill response, the Planning and Operations Section work closely together to develop and implement the

plan. Therefore, work may cycle between Step 3c and 3d depending upon the spill response.

It is the responsibility of the Federal OSC to notify the Service(s)' representative 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 naturally through the ICS. The Services will 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 they are aware of the situation), the FOSC will ensure that the NOAA SSC and/or DOI representative to the RRT remains apprised of the situation.

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

During an oil spill that may adversely affect listed species or critical habitat, the spill response team operates under *emergency consultation* procedures. Once the spill response is underway, it does not stop 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 to listed species and/or critical habitat
- 2) Oil type – use an oil commonly transported in your area
- 3) Oil spill size –reasonable, yet significant
- 4) Location – place the oil spill in an area where it 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? shipwreck?

Once you have had a chance to review your scenario, your instructor will begin asking questions. These questions will walk you through the scenario from two angles – first, if the Area Committee for your area completed the Planning Template (MOA) or something similar; second, if the Area Committee in your area has yet to complete the template. If you have enough participants in your training class, you may want to consider role-playing.



## Where Can I Find More Information?

*ESA Consultations:*

<http://www.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 Alternatives*. US Department of Commerce, NOAA.

*PRFA:*

See Sample Documents on training CD

### How Response should work

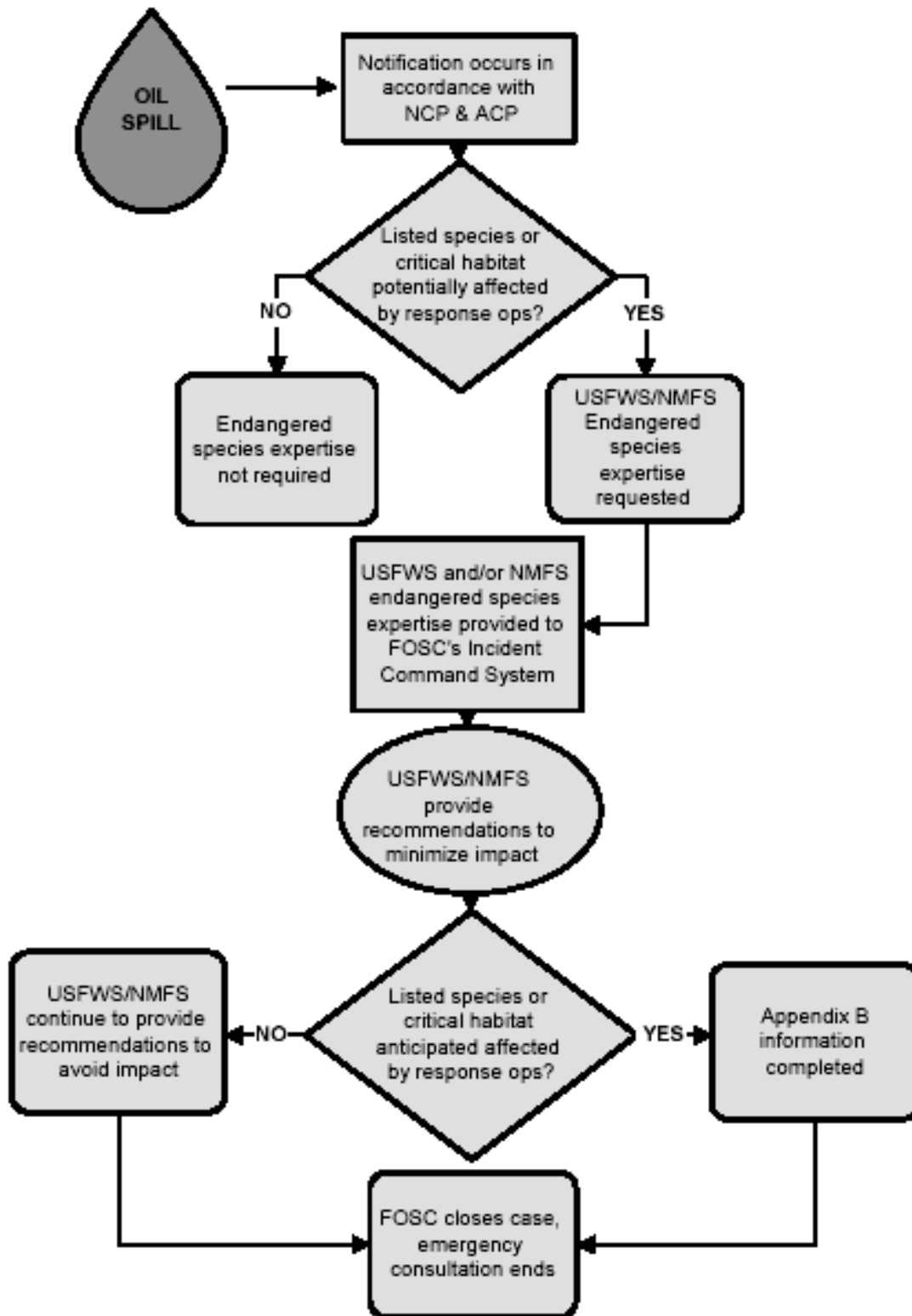


Figure 7-1. Emergency Response Procedures



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## Chapter 8: Post-Response

### SUMMARY

*After a response is complete, there may be a need to: complete the ESA consultation as necessary, and review the ACP to determine if response measures or other procedures 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?**

As in Chapters 6 and 7, this chapter will follow step-by-step procedures presented in the MOA for completing consultation on an oil spill. 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 the ESA consultation is complete.*

It is important to complete the consultation, even after the spill, for several reasons. First, it is necessary for the Services to readjust baselines for the species. Second, it is important to document not only that the consultation took place for legal purposes, but also to gather lessons learned so that future spill response efforts may benefit.

*Consultation only occurs if listed species and/or critical habitat were present during the course of the spill response.*

### Step 1 -Defining the incident

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 Services will jointly review and evaluate the affects of response activities on listed species and/or critical habitat. The NOAA SSC and/or FWS RRC may assist as appropriate.

### **No Impacts on Listed Species or Critical Habitat**

If the Federal OSC determines that the response resulted in no impacts to listed species or critical habitat, then the emergency consultation is complete. At this point, the Federal OSC records lessons learned and advises the Area Committee of any necessary changes to the ACP.

If the Services disagree with the Federal OSC's determination, they will provide a letter stating that the Services believe there were affects on listed species and/or critical habitat. The Federal OSC can then choose to act on the response provided, or simply document the response.

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

If the Federal OSC determines that response activities did, in fact, impact listed species or critical habitat, then he/she must determine whether or not those impacts were adverse.

This determination is important, and its focus on RESPONSE *ACTIVITIES* is significant. The consultation process outlined in the MOA is for response activities only.

#### ***No Adverse Effect***

If the impacts were not adverse, or were beneficial, then no action needs to be taken and the consultation is complete.

#### ***Adverse Effect***

If the action adversely affected listed species and/or critical habitat, then the Federal OSC is responsible for initiating a formal consultation.

### **Step 2 - Completing Emergency Consultation Checklist (Appendix B, MOA)**

Once the response effort closes, the Services assist the Federal OSC in determining impacts on listed species and/or critical habitat that resulted from response activities. The Emergency Consultation Checklist (Appendix B of the MOA), or another type of pre-agreed upon documentation, should be complete. If the Services assisted in gathering information for Appendix B during the spill, they should assist the Federal OSC in preparing the resulting documentation.

To initiate formal consultation, the Federal OSC, with assistance from the Services' response representative(s), will compile the information from the Emergency Con-

sultation Checklist (MOA) and submit it to the Services with a cover letter requesting formal consultation.

### **Step 3 - Is the Information in the Checklist complete?**

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

Once the information in the Checklist is complete, the Services will make their final determination, generally in the form of a Biological Opinion. This document is generally produced within 135 days of receipt of the initiation package.

The Services will forward their determination to the Federal OSC, FWS RRC or NOAA SSC, DOI and DOC RRT representatives, and the Area Committee. 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.

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

The answer to this question lies in the outcome of the Federal OSC and Services' determination on impacts. If the response jeopardized listed species or destroyed or adversely modified critical habitat, the Area Committee could consider adjusting the plans in the ACP. The Federal OSC should bring these considerations to the attention of the Area Committee at the next ACP meeting. Alternatively, the Federal OSC could convene a special

meeting to discuss the issue(s), or include it as a topic during a hotwash session following a spill.

If changes are made to the ACP as a result of the Services' opinion, the Services 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 documenting approval of the new measures, as in the planning phase.

### Step 5 - Which procedures worked?

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 all the responders from that spill.

If the procedures in the ACP worked and the spill response went smoothly – i.e., everyone was able to contact the appropriate people, collect necessary information, produce the required documentation, etc. – congratulations! Your area planned and responded successfully!

If the ACP procedures did not produce a smooth response process, the spill responders should start a discussion to figure out where the holes are and how to fix them so that the next response will go smoothly. Consider these possibilities:

- Was the information in the ACP complete?
- Was the information in the ACP accurate?
- Was everyone able to contact the appropriate experts?

- Was the spill of a size or nature that the Area Committee did not anticipate?
- Was the spill in a location that Area Committee did not anticipate?

Each spill responder should develop some other questions that will help in an assessment of the area's oil spill response efforts. If possible, the group should meet or create a bulletin board or some other forum in which to discuss these issues.



### **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 should work

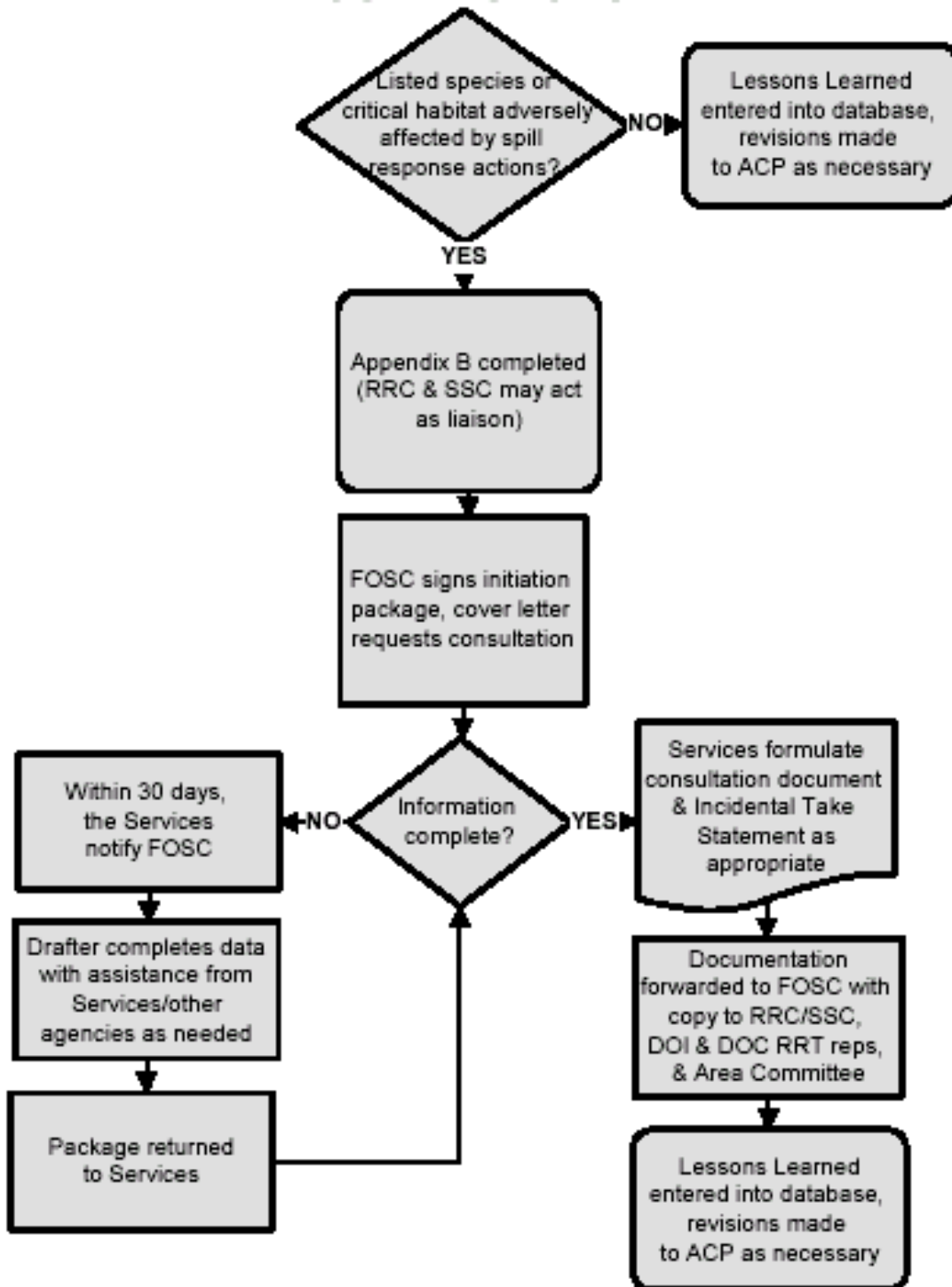


Figure 8-1. Post Incident Procedures



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