

ESA and Emergency Consultations for National Defense

The following information explains U.S. Fish and Wildlife Service guidance and regulations related to emergencies involving acts of national defense or security emergencies and the conservation of candidate, threatened and endangered species as required under the Endangered Species Act.

- \$ Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884) directs all Federal agencies to use their existing authorities to conserve threatened and endangered species and, in consultation with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service, to ensure that their actions do not jeopardize listed species or destroy or adversely modify proposed critical habitat. While sections 7(a)-(d) continue to apply to agency responses to acts of God, disasters, casualties, **national defense or security emergencies**, etc., the regulations implementing these sections (described below) provide for expedited procedures to accommodate the need for Federal agencies to respond promptly to emergencies.
- \$ The Final Rulemaking on Interagency Cooperation under the ESA is located at 50 CFR Part 402 [http://www.access.gpo.gov/nara/cfr/waisidx_00/50cfr402_00.html]. Section 402.05 provides a modified consultation procedure for the Fish and Wildlife Service to respond to emergency situations under Section 7 of the Endangered Species Act. [Attachment 1]
- \$ Detailed guidance for handling emergency consultations is provided to Service personnel in the Fish and Wildlife Service's ESA Section 7 Consultation Handbook's Sections 8.1 and 8.2. The primary point of the emergency procedures is for those situations where using the standard procedures does not allow for the action agency to carry out the emergency response activities in a timely way. [Attachment 2]
- \$ During emergency consultation, the Service may provide recommendations for how to minimize or avoid adverse effects to listed species during the emergency response. Such recommendations are strictly advisory and are to be implemented at the discretion of the emergency response personnel. Emergency response personnel should NOT wait for ESA Approvals@before implementing actions they believe are necessary to protect human lives.
- \$ The key step is **early contact** with your local FWS Ecological Services office or the FWS Endangered Species Chief in your region. They will work with you to determine the best procedures for handling your situation. [Attachment 3]