



Consultations

National Oceanic and Atmospheric Administration
NOAA Ocean Service
Office of Response and Restoration





Federally Mandated Consultations for Federal Actions

Sector Miami Training

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Purpose:

- 1) To minimize RESPONSE related impacts to high priority protected & managed resources
- 2) To ensure coordination and input from trustees and resource management agencies
- 3) To obtain authorization for “takes” if needed
- 4) To document RESPONSE related effects to determine if a formal or informal consultation will be needed at the response conclusion
- 5) To provide lessons learned that will improve response actions for the future and update the Area Contingency Plan with Best Management Practices

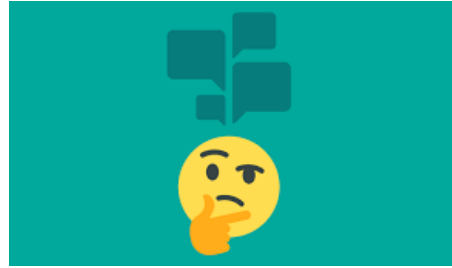


WHAT

1. **Endangered Species Act (ESA Section 7)**
2. **Magnusen Stevens Fisheries Conservation Act (Essential Fish Habitat EFH)**
3. **National Historic Preservation Act (section 106) – administered by the State Historic Preservation Office (SHPO)**
4. **Tribal Interest administered by the Tribal Historic Preservation Office with each federally recognized tribe-Coordination thru Bureau of Indian Affairs (BIA) or the Dept of the Interior (DOI) representative to the Regional Response Team (RRT)**
5. **Native American Graves Protection & Repatriation Act – Coordinate like number 4 above.**



WHY?



1. ITS MANDATED by FEDERAL REGULATION



What are Consultations?

- A discussion with a resource agency about how to carry out various activities with minimal adverse effects on the trust resources of that agency
- Legally mandated under certain statutes, such as the Endangered Species Act (ESA) and the National Historical Preservation Act (NHPA)

Do no more harm than good

How do the Consultations Affect SCAT or Other Response Activities?

- Usually result in one or more guidelines, known as Best Management Practices (BMPs), which affect how SCAT activities are conducted
- May drive selection of cleanup endpoints, or methods of achieving them
- Potential addition of a resource specialist to the SCAT team or as an observer during response operations

Endangered Species Act (ESA)

- Administered by U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
- Consultation is required by Section 7
- “Take” is prohibited by Section 9
- During response, FOSC conducts an emergency consultation, in accordance with the Memorandum of Agreement (MOA)
- NOTE! The EMERGENCY consultation process is NOT for planned activities

What is Take?

- To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct
- By regulation, harm includes activities which significantly impair essential behavioral patterns, including breeding, feeding, or sheltering.
- Also cannot destroy or adversely modify designated critical habitat

Best Management Practices and Conservation Measures

Developed in consultation with the individual resource management agency to guide and sometimes limit operations to minimize, reduce, or eliminate any response associated resource impacts



Typical BMPs to Address Listed Species Concerns for *SCAT Activities*

- Limitations on speed of vehicles or vessels
- Specific “no-entry” locations
- Restrictions on hours of operation

Partial Best Management Practices



RESOURCES AT RISK
Best Management Practices (BMP) Master Checklist
Texas City Y Spill Response



BMP 10		Use low-pressure tire vehicles (e.g. ATVs, Gators) where allowed or consult with a qualified biologist to minimize impact
BMP 11		If feasible and per appropriate guidance, restore beach topography, if altered, to natural beach profile by 20:00 each day
BMP 12		Minimize removal of clean sediments and organic matter. Document amounts and types of materials being removed from the beach.
BMP 13		Avoid hovering or landing of aircraft near posted bird sites.
BMP 22		No flights below 500 feet over wildlife refuges/management areas/bird rookeries / National Parks
BMP 25		Staging areas and waste collection areas should be examined prior to set up and should be located off beaches, dunes, scrub and other vegetated areas.
BMP 26		All heavy equipment should be as low on the beach as possible and avoid the high tide/wrack (seaweed) line while conducting clean-up activities. Keep heavy equipment away from wrack line unless oiled.
BMP 28		Remove anything (e.g. trash) that would attract wildlife from work areas daily.
BMP 29		If a sea turtle is spotted, maintain at least 200 feet between the turtle and any beach cleanup activities.
BMP 30		Stakes or flagging should not be removed or destroyed anywhere on the beach or dune.
BMP 32		Avoid posted/marked bird nesting areas and rookeries and minimize activities in critical habitat areas for Endangered Species. All land and water crafts, when operated near these areas shall be controlled to minimize noise and speed. Airboats shall not be used unless all other reasonable means have been tried and then pre-approval must be obtained from the Trustee/landowner(s). If it is determined that an air boat is the only viable means of transportation then a distance of 1000 feet should be maintained from critical habitats, marshes, wetlands, rookeries and other high bird use areas.
BMP 34		Work area surveyed ahead of working equipment (approximately 200 feet) for evidence of sea turtles and shorebirds via Wildlife Observer pedestrian surveys. UTV/ATVs should only be used to travel between work areas. (Daytime and Nighttime Operations)
BMP 35		Sea turtle crawls should not be disturbed until nest sites have been appropriately documented by the applicable authorized permit holder and/ DOI representatives. (Daytime and Nighttime Operations)
BMP 38		Equipment operated at appropriate speeds (< 5mph). (Daytime and Nighttime Operations)
BMP 40		Night time work should be authorized by FWS. (Nighttime Operations Only)
BMP 46		Minimize ruts.
BMP 47		If a sea turtle nest is identified, nests are to be marked to avoid interaction with cleanup crews and facilitate relocation.
BMP 48		Inspect areas around vehicles and equipment for resting birds prior to moving them.
BMP 49		Keep a summary of how much piping plover critical habitat has been disturbed. Document disturbance to piping plovers. If flushed note distance and duration and disturbance type (vehicle type and number).
BMP 50		Minimize noise impacts.
BMP 51		If a whooping crane is observed, maintain a 1,000 feet buffer from the crane and notify a FWS representative or the Whooping Crane Coordinator,

Manatee Guidelines

To reduce potential impacts to the manatee to discountable and insignificant levels, the Service recommends implementing the Standard Manatee Project Conditions, which are as follows:

The permittee will comply with the following manatee protection conditions:

a. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees.

All construction personnel must monitor water-related activities for the presence of manatee(s).

b. The permittee shall advise all personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973.

c. Any siltation barriers used during the project shall be made of material in which manatees cannot become entangled and must be properly secured, and regularly monitored to avoid manatee entrapment.

d. All vessels associated with the project shall operate at “no wake/idle” speeds at all times while in the work area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

e. If manatee(s) are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the manatee.

These precautions shall include the operation of all moving equipment no closer

than 50 feet to a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will



Importance

THE EXTINCTION CRISIS

It's frightening but true: Our planet is now in the midst of its sixth mass extinction of plants and animals — the sixth wave of extinctions in the past half-billion years. **We are currently experiencing the worst state of species die-offs since the loss of the dinosaurs 65 million years ago.** Although extinction is a natural phenomenon, it occurs at a natural “background” rate of about one to five species per year. **Scientists estimate we are now losing species at 1,000 to 10,000 times the background rate, with literally dozens going extinct every day [1].** It could be a scary future indeed, with as many as **30 to 50 percent of all species possibly heading toward extinction by mid-century [2].**



1. THE ENDANGERED SPECIES ACT: A WILD SUCCESS

The Endangered Species Act is the strongest law for protecting biodiversity passed by any nation. **Its purpose is to prevent the extinction of our most at-risk plants and animals, increase their numbers and effect their full recovery — and eventually their removal from the endangered list.**

Currently the **Act protects more than 1,600 plant and animal species in the United States and its territories**, many of which are successfully recovering. Over the past four-plus decades, the Endangered Species Act has repeatedly demonstrated that — when used to the full extent of the law — it works. The Act has been more than 99 percent successful at preventing extinction. **Were it not for the Act, scientists have estimated, at least 227 species would have likely gone extinct since the law's passage in 1973.**



(cont)

But the Act isn't just keeping species from extinction — it's also helping hundreds of species recover. A 2012 Center study **documented 110 species that have seen tremendous recovery** while protected under the Act, with the great majority meeting or exceeding recovery timelines set by federal scientists. This study built on Center work showing that of all species listed in the northeastern United States, 93 percent are stable or improving and more than 80 percent are meeting the recovery targets established in federal recovery plans.

In sum, here's a handy list of key quantitative measures of the Act's success:

☐ From 1973 to 2013, the Act prevented extinction 99 for percent of species under its protection.

☐ The Act has shown a 90 percent recovery rate in more than 100 species throughout the United States.



(cont)

The Act has allowed the designation of millions of acres of critical habitat, which is crucial to species' survival and recovery. In fact, imperiled species with federally protected critical habitat are twice as likely to be recovering as those without. Center for Biological Diversity fact: Just since 2008, the Center has won designation of 233 million acres of critical habitat, 95 percent of all critical habitat acres set aside between 2008 and 2013 — an area larger than the entire national forest system (191 million acres), twice as large as California (105 million acres), and almost three times the size of the national park system (84 million acres).



(cont)

The Act has poll-proven **strong public support**. A national poll commissioned by the Center in 2013 found that **2 out of 3 Americans want the Endangered Species Act strengthened or left alone, but not weakened**. **More recent polls have found even greater support, with 9 out of 10 people polled supporting a strong Endangered Species Act.**





Listed Species *On the Beach*



Sea Turtles



Piping Plover



Seabeach Amaranth



Listed Species *In Wetlands*



Frosted Flatwoods Salamander



Red Knot

Listed Species *In the Water*



West Indian manatee



Shortnose Sturgeon



North Atlantic Right Whale

Other “Critter” Statutes

- Magnuson-Stevens Fishery Conservation and Management Act (MSA) – Essential Fish Habitat
- Marine Mammal Protection Act (MMPA)
- Bald and Golden Eagle Protection Act
- Migratory Bird Treaty Act
- National Marine Sanctuaries Act

2. EFH

Fish and other marine species depend on their habitat to survive and reproduce. Congress improved the nation's primary fisheries law in 1996 to recognize the importance of healthy habitat for commercial and recreational fisheries.

Protecting and restoring Essential Fish Habitat (EFH) has **helped to maintain productive fisheries and rebuild depleted fish stocks in the United States.** NOAA Fisheries has used EFH authorities to support the \$200 billion U.S. fishing industry while protecting more than 800 million acres of habitat. Our economy and fishing industry benefit from sustainable fisheries supported by productive habitats that provide high-quality seafood.





National Historical Preservation Act (NHPA)

- Protects historical properties, cultural resources, and artifacts
- Under Section 106, Federal agencies must consult on undertakings which might affect historical properties
- Consultation is technically with the Advisory Council on Historic Preservation, but in practice carried out with State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO)

Important Notes

- Like ESA, there is a Memorandum of Agreement covering emergency consultations for response activities
- Many sites are un-surveyed, and/or the specific location is not publicly available

3. National Historic Preservation Act, Section 106, Tribal Interests (THPO), NAGPRA

Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties

and to provide the Advisory Council on Historic Preservation (ACHP) with a reasonable opportunity to comment.

In addition, Federal agencies are required to consult on the Section 106 process with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), Indian Tribes (to include Alaska Natives) [Tribes], and Native Hawaiian Organizations (NHO).

What are historic properties?

Historic properties are any prehistoric or historic districts, sites, buildings, structures, or objects that are eligible for or already listed in the National Register of Historic Places. Also included are any artifacts, records, and remains (surface or subsurface) that are related to and located within historic properties and any properties of traditional religious and cultural importance to Tribes or NHOs



What NHPA Covers

- Artifacts
- Historical districts or structures
- Shipwrecks
- Funeral objects or grave sites
- Pre-contact sites





Pre-Contact Sites

Fig Island. Aerial
View of Shell Ring.
Edisto Island, S.C.





Typical Section 106 Recommendations

- No Known Cultural Concern – Work can proceed without monitoring.
- Potential Cultural Concern – Archeological survey required before work can proceed.
- 250 Meter Sensitivity Zone – Work area within 250 m of known cultural resource requires on-site monitoring
- Resource observer/consultant/archaeologist onsite during operations if known or suspected resources exist

If objects not previously known to exist are discovered, stop work, and report to SCAT Coordinator.

Typical BMPs to Address Historical & Cultural Concerns for *SCAT Activities*

- Specific “no-entry” locations
- Limitations on areas where pits or trenches can be dug
- Seasonal access restrictions

Tribal Consultations

- Interaction with Federally-recognized Tribes is a nation-to-nation interaction
- Although Tribes may not currently own or occupy the land, they may still have historical or cultural interests
- Currently, no established procedure for coordination during response (DOI and BIA)
- DHS Policy – Solicit input, notify, incorporate input, communicate decisions

Authorities

- Tribal matters administered by Department of Interior
- Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a
- Currently 566 recognized tribes, 2 in South Atlantic coastal areas
 - FL 2
 - Administered by several different agencies within Bureau of Indian Affairs

Take Home Messages

- Be aware of species and/or artifacts possibly present in survey area
- Comply with Best Management Practices (BMPs) if provided
- Communicate if BMPs make work unsafe or impractical
- Report any new sightings
- Document compliance and/or take

EMERGENCY CONSULTATION FOR ENDANGERED SPECIES AND

ESSENTIAL FISH HABITAT

This form is intended for documentation of emergency consultation with the National Marine

Fisheries Service (NMFS) for:

- species listed as endangered RU WKUHDWHQHJ under the Endangered Species Act (ESA),
- critical habitat designated under the ESA, and
- fishery habitat designated as essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

This form is intended to initiate contact and streamline consultation when emergency spill response activities may adversely affect ESA listed species or designated critical habitat or habitats designated as EFH.

Emergency Contact: nmfs.ser.emergency.consult@noaa.gov

NMFS ESA and EFH biologists may be contacted by telephone:

For ESA concerns: Protected Resources Division at (727) 824-5312

For EFH concerns: Habitat Conservation Division at (727) 824-5317

NOTE: These numbers are RQO\ staffed GXULQJ RSHUDWLQJ KRXUV.

NMFS should be contacted as soon as possible.

Consultation may be completed by email or telephone however this document details the necessary guidance and information to initiate consultation and receive a written response.

NMFS will be available for further coordination and consultation as requested.

The responding agency should implement any conditions of pre-approved response methods until NMFS provides further recommendations.



Emergency Consultation for Endangered Species and Essential Fish Habitat

Email completed form to: nmfs.ser.emergency.consult@noaa.gov

Name of Incident

Date of Incident

Name and Title (FOOSC Designee for ESA/EFH Consultation)

Today's Date

E-mail

Telephone

Incident Location

Waterbody

City (or County/Parish), State

Latitude

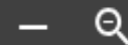
(Check All That Apply)

Riverine

Inshore/Estuarine

Coastal/State

Offshore/Federal

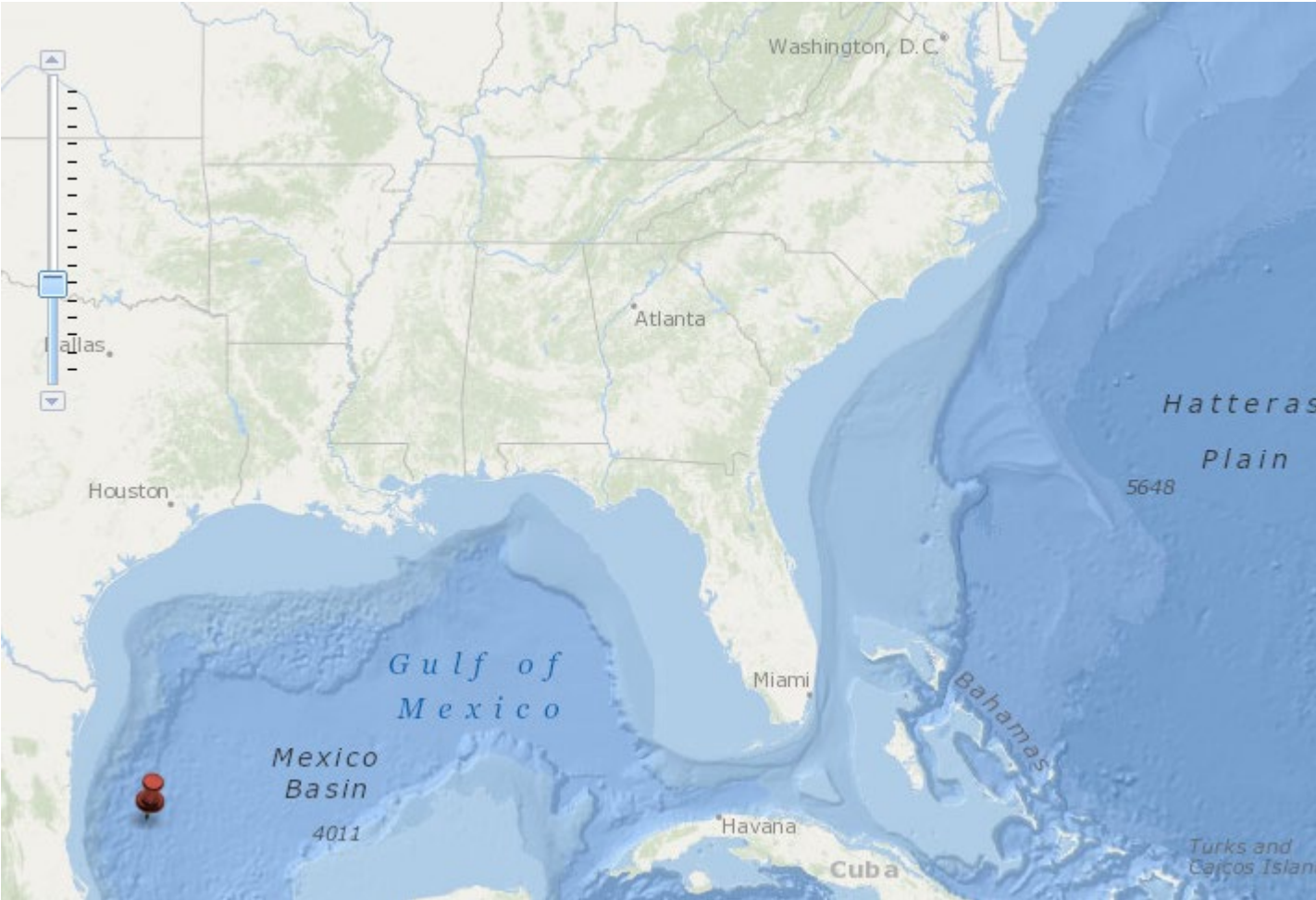


<https://www.habitat.noaa.gov/protection/efh/efhmapper>

The purpose of this interactive, online mapping application is to provide the public and other resource managers an interactive platform for viewing a spatial representation of EFH, or those habitats that NMFS and the regional fishery management councils have identified and described as necessary to fish for spawning, breeding, feeding or growth to maturity.



EFH QUERY TOOL





U.S. Fish & Wildlife Service

LOG IN

IPaC Information for Planning and Consultation

Powered by ECOS - the Environmental Conservation Online System

IPaC is a project planning tool which streamlines the USFWS environmental review process

GET STARTED

LOG IN

[Need an updated species list?](#)



Who does the Consultations?

- Consultations are the responsibility of the Federal action agency, as represented by the Federal On-Scene Coordinator (FOOSC)
- In a response, typically are delegated to the Environmental Unit, with assistance from the SSC
- Depending on size of response, appropriate resource agency representatives may be on-scene



U.S. DEPARTMENT OF
HOMELAND SECURITY

U.S. COAST GUARD



INCIDENT
MANAGEMENT
HANDBOOK

May 2014

U.S. Coast Guard
COMDTSPUB P3120.17B



A. Command Staff.

1. Legal specialist. 2. Senior Enlisted Technical Specialist. 3. Senior CG Auxiliary Technical Specialist. (Recommended when 15 or more CG Auxiliary members/units are activated to support the incident). 4. Chaplain. 5. Sexual Assault Response Coordinator. Volunteer Coordinator. 7. Scientific Support Coordinator. 8. Source Control Support Coordinator. 9. NIMS/National Response Framework (NRF) Technical Specialist.



SSC Role Coordinating Consultations From IMH

F. Facilitate in the Endangered Species Act consultation process. G. Develop a prioritized list of resources at risk, including threatened and endangered species, in conjunction with Natural Resource Trustee Representatives and the FOSC's Historical/Cultural Resources THSP



Key Contacts for Coordinating Consultations

ESA-NOAA Trustee Representative (SSC), NMFS protected Species Division

ESA-DOI RRT Representative, USFWS

EFH- NOAA Trustee Representative (SSC), NMFS Habitat Conservation Division

NHPA- DOI RRT Representative, SHPO

THPO & NAGPRA –DOI RRT Representative, Bureau of Indian Affairs, Affected Federally Recognized Tribes



Other Resource Coordination Requirements

Migratory Bird Act

National Marine Sanctuary Act

Marine Mammal Protection Act

Special Managed Areas

etc



Permitting Considerations

USACOE-any impacts to navigable waterways, water bottoms, wetlands

States-Varies, habitat, wetlands impacts, etc

NMS-Impacts to their managed resources/coral, seagrass, wetlands, etc

Other Special Managed Areas, sanctuaries, preserves, parks, etc



CLOSEOUT PROCEDURES

As a conclusion to the consultation process, the FOSC is providing notification that the response was completed in accordance with the emergency consultations (use (a) or (b)).

There were no response associated incidents resulting in a take of protected species or reportable impacts to critical habitat requiring a formal consultation.

The following removal operation(s) resulted in an incident requiring a formal consultation as indicated in the branch specific “Operational Activity Transition Memorandum” and as described below:



For More In Depth Reading on the Subject of Consultations:

Addressing the Uncertainty and Requirements for Oil Spill Response Consultations

A comprehensive paper presented at IOSC 2014
By Benggio et al

<https://ioscproceedings.org/doi/abs/10.7901/2169-3358-2014.1.1881>



QUESTIONS?

**“We do not inherit the Earth from our Ancestors,
we borrow it from our Children.”**

Native Proverb

