

Update on Revisions to the Regional Contingency Plan & RRT Guidance Documents

NY/NJ RRT Meeting
Edison, NJ
November 4–5, 2015

RCP Revisions:

- ▶ Reviewed revisions at last 2 Meetings:
 - Cross-regional incident-specific RRT
 - Endangered Species Act consultations
 - Essential Fish Habitat consultations
- ▶ Posted on the new RRT2 website, should go live shortly

Section 3.C. “Multi–Area Responses”

The following tenets apply to boundary situations:

- One OSC
- Incident Origin is the initial determinant of the OSC
- OSC use of NIMS and Unified Command
- Single Incident Specific RRTs
- Disagreements addressed by RRT then NRT

Specific Boundaries:

- Intra–Regional Boundaries
- Inland–Coastal Zone Boundary
- Coastal Area Contingency Plan/Coast Guard Sector Boundary
- Regional Boundary:
 - Regional boundary with Canada
 - Coastal Region I/Region II Boundary
 - Inland Region I/Region II Boundary

ESA Consultations:

Procedures outline how ESA consultations will be conducted within Region 2, in accordance with the ESA MOA:

- DURING RESPONSE
- POST RESPONSE

MOU Procedures were reviewed/revised with NMFS

EFH Consultations:

It is recognized that *oil and other hazardous materials* discharged into the marine and estuarine environment *can result in significant adverse effects to the marine and estuarine environment including habitats identified and described as EFH* in accordance with the Magnuson–Stevens Act. It is further recognized that *response actions* undertaken by the USCG and EPA *are intended to limit or prevent discharges and/or their adverse effects on the environment.*

Nonetheless, various *response activities have the potential to adversely affect marine and estuarine habitats* identified as EFH. *To obviate the need to conduct emergency consultations during every incident occurring in its area of responsibility, the RRT intends to initiate EFH consultation with NOAA Fisheries' Habitat Conservation Division to assess the effects of most response activities on EFH, through the development of Best Management Practices (BMPs) to minimize and avoid adverse effects on identified categories of EFH. These BMPs will be included as an appendix to the RCP as they are finalized.*

On-Going/Future Efforts:

- ▶ FWS & NMFS emergency consultation checklists for ESA & EFH (NMFS GAR is receptive)
- ▶ Bioremediation Guidance:
 - Comments received from NYS DEC
 - ERT commitment to develop further revisions
 - Other pressing priorities have delayed action
- ▶ RRT Guidance for Emergency Ocean Dumping during Pollution Response Actions
 - *Morris J. Berman; M/V Jireh* groundings in PR
 - Draft document under development
- ▶ Regional guidance on protecting historical properties (NHPA Section 106)

ESA Consultations for Preauthorization Agreements

NMFS, Chemical Countermeasures (1993)

- Not likely to adversely affect those species listed:
 - Right, humpback, fin, sei and sperm whales
 - Kemp's ridley, leatherback, green, hawksbill and loggerhead (T) sea turtles
 - Shortnose sturgeon
 - Harbor porpoise (proposed as threatened) and bottlenose dolphin (depleted under MMPA, but not ESA)

Subsequently listed species:

- Blue Whale, Atlantic Sturgeon

ESA Consultations for Preauthorization Agreements

NMFS, In-Situ Burning (1996)

- Not likely to adversely affect ESA-listed species:
 - Blue, right, humpback, fin, sei and sperm whales
 - Kemp's ridley, leatherback, green and loggerhead (T) sea turtles (not hawksbill)
 - Shortnose sturgeon
 - Harbor and bottlenose dolphins (proposed at the time, but subsequently not ESA-listed)

Subsequently listed species:

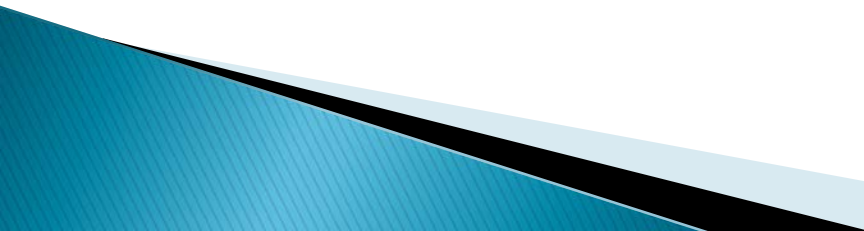
- Atlantic Sturgeon

ESA Consultations for Preauthorization Agreements

FWS:

- ▶ Chemical countermeasures (1993)
 - “...not likely to adversely affect the Federally listed **Piping Plover** or **Roseate Tern**. Therefore, ***no Biological Assessment*** or further Section 7 consultation under the ESA is required with the service at this time.”
- ▶ In-Situ Burning (1996)
 - “Not likely to adversely affect Federally listed species under our jurisdiction”
- ▶ Subsequently listed: Red knot (Jan 2015)
- ▶ Do we need to address Sea Turtle nesting habitat?

Why Reinitiation of ESA Consultations?

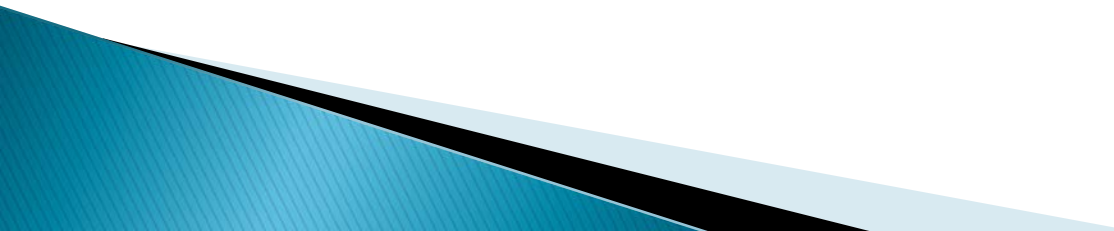
- ▶ “We clearly recognize that little or no data has been gathered on the effects of oil and dispersants on marine mammals and sea turtles.”
 - ▶ “Similarly, no studies have been conducted relative to the effects of oil and the oil/dispersant mix on the prey species of these endangered species.”
 - ▶ “Ideally, more research is necessary to quantify the toxicity levels, standing time of threshold levels, and location of those levels for oil–dispersant mixtures against the same levels for oil alone.”
 - ▶ “Listed species may come in contact with residue which is not retrieved. The effects of the contact are unknown;”
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Why Reinitiation of ESA Consultations?

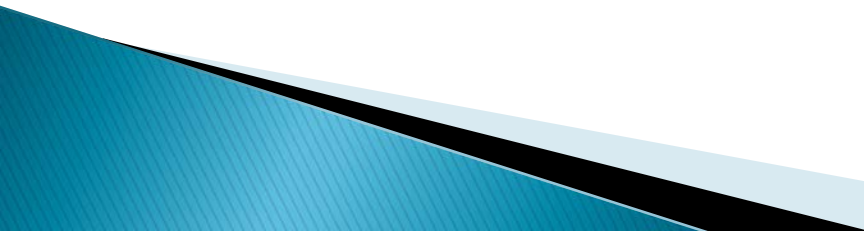
- ▶ “...if chemical countermeasures other than Corexit 9527 become available and likely to be used...or if additional information on listed or proposed species becomes available, this determination may be reconsidered.”
- ▶ “...Corexit 9527 is the only dispersant currently available for use...USCG has acknowledged that should any additional chemical countermeasures become available and likely to be used, they would be evaluated to determine the potential for any adverse effects on T/E species. The result of that evaluation should be provided to this office to determine the need for further Section 7 consultation prior to their use under this MOU.”

Framework for Programmatic Consultation

CRRT ESA Biological Assessment & EFH Evaluation for Dispersants and In-Situ Burning

- ▶ Submitted to NMFS SERO on 10/6/2015
 - ▶ 115 Total Pages
 - ▶ 23 Pages of Literature Cited
 - ▶ Separate Attachment: CRRT Best Management Practices for Oil Spill Response Operations
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Contents of the Programmatic Consultation

- ▶ Description of Proposed Actions/NCP
Concurrence & Consultation Requirements
 - ▶ Dispersant & ISB Preauthorization Agreements
 - ▶ Description of Dispersants
 - Chemical Constituents
 - Toxicity of Dispersants
 - Toxicity of Chemically Dispersed Oil
 - Biodegradation of Dispersants & Dispersed Oil
 - ▶ Description of In-Situ Burning
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Contents of the Programmatic Consultation (cont.)

- ▶ **Description of ESA-listed Species Present**
 - Loggerhead, Green, Leatherback, Hawksbill sea turtles
 - Humpback, Fin, Sei, Sperm, Blue whales
 - Scalloped hammerhead shark, Nassau grouper, corals

- ▶ **Description of Essential Fish Habitat**
 - Specific Areas that may be affected by Dispersant & ISB Operations
 - Life histories of designated EFH

Contents of the Programmatic Consultation (cont.)

Analysis of the Effects of the Proposed Actions

- ▶ Potential Effects of Oil
 - Marine Mammals, Sea Turtles, Corals
- ▶ Effects of Oil on Habitat
 - Coral, Seagrass, Mangroves
- ▶ Potential Impacts of Dispersants / Dispersed Oil
 - Overview, Sea Turtles, Marine Mammals, Corals, Fish, Habitat
- ▶ Potential Impacts of In-Situ Burning

Framework for Programmatic Consultation (cont.)

- ▶ **Potential Impacts of In-Situ Burning**
 - Inhalation
 - Floating/Stranded burn residue contact hazards
 - Burn residue properties, toxicity & sinking hazards
 - Habitat effects

- ▶ **Physical Impacts of Response Operations**
 - Vessel Operations
 - Physical (mechanical) Removal Equipment

Framework for Programmatic Consultation (cont.)

Avoidance & Minimization Procedures:

- ▶ Best Management Practices
 - Protect species during Dispersant & ISB Operations
 - Protocols for field observers
- ▶ Will maintain compilation of BMPs as an Appendix in the RCP, update and revise

Framework for Programmatic Consultation (cont.)

Effects Determinations:

- ▶ Effects of Dispersants / Dispersed Oil
- ▶ Effects of In-Situ Burning
- ▶ Effects of Associated Response Operations

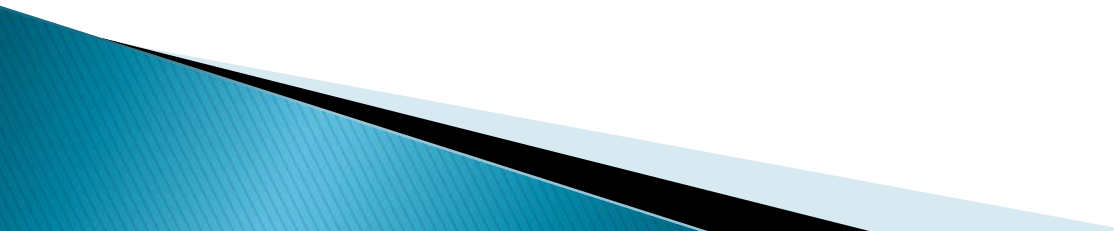
Conclusions:

- ▶ ESA: *May affect, but are not likely to adversely affect, listed species or critical habitat.*
- ▶ EFH: *May affect EFH because of direct and indirect impacts; however, local, short-term and minor.*

“Stealing Shamelessly” for RRT2– ESA

- ▶ Whales:
 - Add North Atlantic Right Whale
 - All others are the same
- ▶ Sea Turtles:
 - Add Kemp’s Ridley Sea Turtle
 - All others are the same
- ▶ Fish:
 - Add Shortnose and Atlantic Sturgeon
 - No common listed species
- ▶ No Corals or Mangroves!

“Stealing Shamelessly” – EFH

- ▶ 31 of EFH 36 Species identified by NMFS Northeast Regional Office are present off the coast of NY and NJ
 - ▶ None in common with Caribbean, but some research/language is applicable
 - ▶ Need feedback from NMFS on how much life stage information is necessary to include
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Next Steps:

- ▶ FWS: Send letter to reaffirm determination that dispersants and in-situ burning are *not likely to adversely affect* Federally listed species under FWS jurisdiction
- ▶ NMFS ESA/EFH Consultation/Evaluation:
 - Began removing CRRT species/habitat not present in RRT2 waters
 - Bookmarked areas that need modification for RRT2
 - Evaluate Effects Determinations
 - Need to review/modify BMPs
- ▶ Need Workgroup members for input, review and comment. Volunteers?