

## **Endangered Species Act Emergency Response Process**

The Fish and Wildlife Service is ready to offer our assistance in helping you to comply with section 7 of the Endangered Species Act (ESA) of 1973, as amended, during emergency events such as fire, tornado, hurricane, flooding, levee failure or other catastrophe. During any emergency, our primary objective is to provide recommendations for minimizing adverse effects to listed species during the emergency response. During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence over considerations for minimizing adverse effects to listed species under the ESA. The protection of listed species and designated critical habitat is initiated when it would not interfere with the emergency response to protect human life and property. Consequently, the first action is to initiate a response to the emergency and then to determine if there are actions that can be taken to protect or reduce effects to listed species.

The ESA process for handling emergencies follows:

### **STEP 1 (Initiating Contact)**

During any emergency response, the Federal agency will contact the Fish and Wildlife Service (Service) by telephone or facsimile (as quickly as possible following the onset of the emergency). Hopefully, the responding agency would have previously established a list of emergency contacts that includes the appropriate Service office responsible for the area where the emergency exists. The Federal agency will provide the Service the project location, a description of the emergency response action and timelines.

### **STEP 2 (Service Recommendations)**

During this initial contact, the Service will recommend actions that may be implemented to minimize the impacts to any listed species or critical habitat in the area. The emergency response agency will proceed with all necessary actions to stop the imminent threat to human life or property. At the same time, the Service will provide the agency, within 48 hours, a letter to explain the protective procedures that were identified during the initial contact.

### **STEP 3 (Service Evaluation)**

The Service will continue to evaluate the emergency. If this evaluation indicates that the emergency response procedures may result in jeopardy/adverse modification, and no means of reducing or avoiding this impact are available, the Service will advise the responding agency of this and document this conclusion. The agency will not stop or delay their emergency response because of this notification. In such a situation, the Federal agency and the Service will discuss actions to remediate the effects following conclusion of the emergency.

### **STEP 4 (Emergency Over)**

Once the emergency is under control, the action agency will identify any incidental take of a species or an adverse effect to critical habitat that resulted from the emergency response action and initiate formal consultation. This formal consultation follows

standard procedures, includes a description of what action the agency took to respond to the emergency, and identifies the final impacts to listed species.

**STEP 5 (Consultation Completed)**

The Service will prepare an after-the-fact biological opinion to cover any incidental take that occurred during the emergency response and document the final impacts to the listed species. This biological opinion could contain suggestions for after-the-fact remediation in the form of reasonable and prudent alternatives, or reasonable and prudent measures when incidental take of listed species or adverse modification of critical habitat attributable to the emergency response occurred. With the finalization of the biological opinion, the action agency has completed their compliance with the ESA.

The compliance with the ESA for an emergency action only requires a short telephone call at the beginning of the emergency. After that, the response agency does not have to contact the Service until the emergency is over. We are currently working with Federal agencies to provide technical assistance, coordination, and, in some instances, section 7 consultation for proactive projects to reduce the need for contacts prior to emergency events. These efforts will eliminate the need for the Federal agency to contact the Service following the onset of an emergency response activity because we will have already provided them with needed species information and the means to avoid or minimize adverse affects to listed species/critical habitats. In these situations, the Federal agency will only contact the Service after the emergency is over.