

U.S. Fish and Wildlife Service

Emergency Consultation Procedures

Summarized from the
Final Endangered Species Act (ESA) Section 7 Consultation Handbook, March 1998

Emergency: A situation involving an act of God, disasters, casualties, national defense, or security emergencies, etc. (50 CFR 402.05) and includes response activities that must be taken to prevent imminent loss of human life or property (Final ESA Section 7 Consultation Handbook, March 1998, chapter 8; <http://www.fws.gov/endangered/esa-library/pdf/CH5-9.PDF>).

Emergency consultation: what it is:

Emergency consultation is an expedited consultation process that considers endangered species concerns while allowing an action agency to respond to an emergency situation.

Emergency consultation: what it isn't:

It is not an exemption from the ESA. It is not an “after-the-fact consultation.” Consultation (informal) occurs at the beginning and throughout the emergency, followed by formal consultation, and a biological opinion after the emergency has subsided *if adverse effects have occurred* and as outlined in the procedures below.

When is emergency consultation initiated?

Emergency consultation is initiated as soon as possible upon the onset of an emergency situation, within 48 hours, if possible. This initial contact is typically done by telephone, fax, or email. This first contact should be followed with written correspondence as soon as practicable in order to provide both the action agency and the Service with a written record and to minimize the likelihood of any misunderstandings that may arise because events are transpiring rapidly.

What is the procedure for emergency consultation?

- Step 1: Initial Contact

As mentioned above, as soon as possible, the action agency should contact the Service and notify us that an emergency exists, followed by written correspondence as soon as practicable. *This contact initiates informal emergency consultation.* The Service will offer any recommendations possible to minimize the effects of the emergency response actions on listed species or critical habitat. These recommendations are advisory and should be followed unless doing so hinders emergency response or creates a threat to human safety. This informal contact should continue as needed and as events allow, for the duration of the emergency. The action agency has the responsibility to monitor the effects of their actions during the emergency to the maximum extent

possible in order to determine whether adverse impacts occur and to document any “take”* of threatened or endangered species or adverse modification of designated critical habitat. Note: the Service does not interfere with response efforts during the emergency.

- Step 2: Initiating Formal Consultation

As soon as practicable after the emergency is under control and if listed species or critical habitats have been adversely affected, the action agency should request initiation of formal consultation pursuant to section 7 of the ESA. This initiation request must include the following information:

1. A description of the emergency, including the impact of the event (e.g., road destroyed) and species potentially affected;
2. A justification for the expedited consultation, including imminent threats to life or property; why normal time frames are unworkable; and any special limitations or conditions that may affect the conservation status of the species; and
3. A Biological Assessment containing an evaluation of the response to and the impacts of the emergency on affected species and their habitats, documentation of how the Service’s recommendations were implemented, and the results of implementation in minimizing take of listed species.

- Step 3: Finalize Formal Consultation

From this point, emergency formal consultation is conducted in the same procedural manner as any other formal consultation. If necessary, the Service will issue a biological opinion documenting the recommendations that the Service provided to the action agency and the results of the agency’s implementation of those recommendations on listed species and containing an Incidental Take Statement.

*“Take” is defined in Section 3 of the ESA as “harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” “Harass” is further defined by the Service (50 CFR §17.3) as “an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.”