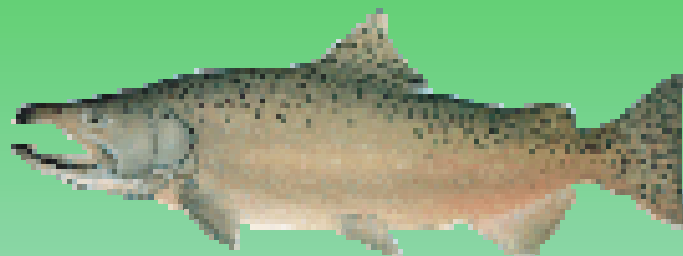


US EPA ARCHIVE DOCUMENT

Endangered Species and the use of a Biological Opinion During Spill Response



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Biological Opinion on:

- All Listed Salmon and Steelhead ESUs Within Washington, Oregon and Idaho.



- ESA-Listed Whales and Steller Sea Lions.
- All Proposed Oil Spill Response Activities.



Why did the USCG/EPA consult with NOAA?

- Section 7(a)(2) of the ESA requires Federal agencies to consult with NOAA Fisheries, to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or to adversely modify or destroy their designated critical habitats. The Biological Opinion is the product of an interagency consultation pursuant to section 7(a)(2) of the ESA and implementing regulations found at 50 CFR Part 402.

DEVELOPMENT OF THE BIOLOGICAL OPINION

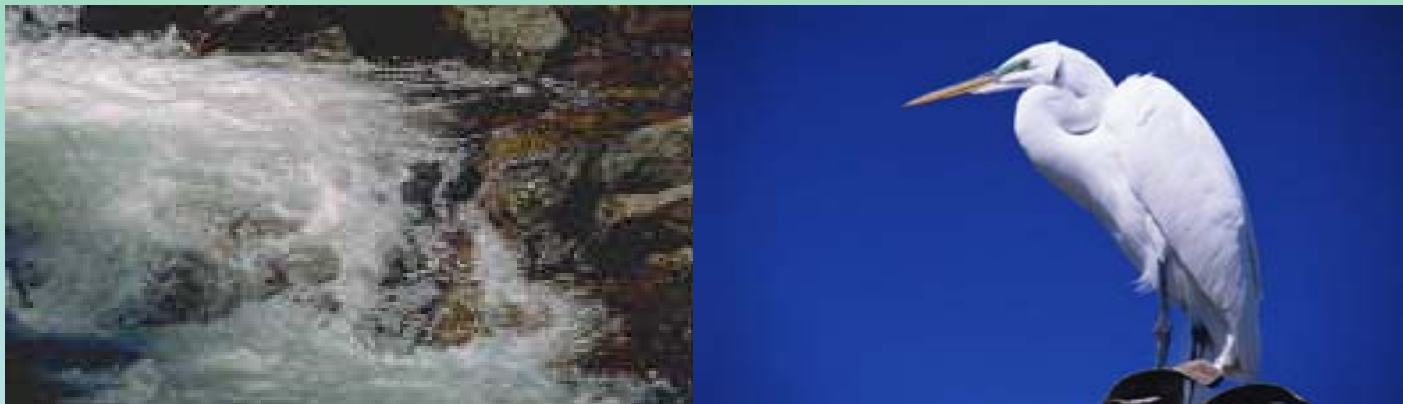
The USCG initiated formal consultation (pursuant to 50 CFR 402.14(c)) with the Northwest Regional Office of NOAA Fisheries on November 12, 2002, and submitted a programmatic biological assessment (BA). The BA assessed the effects of most response activities on ESA-listed species that may be present in the inland waters of Oregon, Washington, and Idaho (salmonids) and the offshore waters out to 200 nautical miles (salmonids, large whales, Steller sea lion, and sea turtles). On November 6, 2003, NOAA Fisheries completed and signed the nation's first programmatic biological opinion (BO) on oil spill response activities.

The Action Area: waters within the EEZ, including streams and rivers.



SO WHAT IS THE BIOLOGICAL OPINION?

- It is a tool that allows spill response to occur from the start in a fashion that will keep NOAA ESA listed species from being unnecessarily harmed.



WHAT THE BIOLOGICAL OPINION IS NOT

- It does not cover US Fish & Wildlife species
- It is not a cart blache for clean-up around ESA species but can be used within the limits of the terms and conditions



The Consultation now allows two paths for ESA S.7 coverage

- Follow the Terms and Conditions (when applicable and practicable).
- Or, follow the provisions in the Nation-wide MOU.



What Kind of Actions Does the Consultation Address?

- Booming
- Skimming
- Sorbent Use
- In-Situ burning
- Chemical Dispersants



What Kind of Actions Does the Consultation Address? (continued)

- Oiled Debris Removal/Vegetation Cutting
- Trenching/Recovery Wells
- Berms/Barriers
- Manual removal of oil



What Kind of Actions Does the Consultation Address? (continued)

- Oiled Sediment Removal
- Flushing w/ambient Water
- Associated Vessel/Aircraft and Vehicle Use



The consultation analyzed the effects of response actions, not the spill itself. WHY?

- The proposed action is not the oil spill, but USCG & EPA directed *response* to spills.

(Similarly - NOAA Fisheries does not consult on wildfires but does consult on fire suppression activities with USFS and BLM)

- No implied ESA incidental take exemption for parties responsible for the spill itself.



Tiered Consultation

- What is it?

For select actions, the USCG/EPA can contact NOAA Fisheries for site specific discussions.



Why Tiered Consultation?

- Because of the large action area, some limited circumstances may need additional review.
- “The purpose of tiered consultation is to determine methods that further minimize effects from (some) spill response (actions) based on site-specific conditions and species use.”



TIERED CONSULTATION ACTIONS

- In-Situ Burning
- Chemical Dispersants
- Berms and Barriers – within rivers and streams
- Oiled Debris Removal
- Oiled Sediment Removal, Reworking, and Removal with Replacement
- Flushing with Warm or Hot Water
- Steller Sea Lions -- prior to oil spill response work within 500 feet of rookeries or major haulouts
- Booming – within rivers and streams with out-migrating/rearing ESA species

Does Tiered Consultation Limit the Response “Tool Box”?

- NO. It's simply a mechanism to explore options to further protect listed species where warranted and practicable.
- Is applicable in limited circumstances.



What if there is no time or site limitations for following the Tiered Consultation and other Terms and Conditions?

- Nothing within the consultation limits the application of spill response actions needed to protect public health and safety and the environment.
- By all means, do the work necessary to control and recover the spill as directed in the ESA-MOU!

But What About ESA Coverage?

- Follow the provisions in the MOU to determine if after-the-fact consultation is warranted.

What are Terms and Conditions?

- They are required by Section 7 of the ESA, and are actions NOAA Fisheries considers necessary to minimize the potential for incidental take of listed species.

Terms and Conditions

- Draft Terms and Conditions were shared with the USCG and the EPA.
- Most T&C's were derived from USCG & EPA proposed BMPs identified in the biological assessment.

Terms and Conditions

- Common Practices: NOAA believes that most of the Term and Conditions are already being used by responders.

Spill Response Review

- For each spill response, the USCG/EPA shall review the response action(s) to ensure that effects were consistent with the range of effects considered in the Biological Opinion.
- The Biological Opinion covers oil spills up to 250,000 gallons offshore, and up to 10,000 gallons inland of the coastal zone.

Spill Monitoring and Reporting

- For each spill where the USCG/EPA exercise the authority of OPA and/or the CWA, summarize:
 - Listed species affected.
 - Volume and type of habitat affected by the spill and response methods.
 - Anticipated of observed temporal extent of impacts by the spill and response methods.

Annual Reporting to NOAA

- By January 31 of each year, summarize USCG/EPA efforts towards carrying out the Biological Opinion. Include:
 - monitoring reports from spills.
 - assessment of program activities and cumulative effects.

QUESTIONS?



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