



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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Atlanta, Georgia 30345

In Reply Refer To:
FWS/R4/ES

MAY 30 2012

To: Federal Agencies within the Southeast Region

Subject: Emergency Preparedness and the Endangered Species Act

Emergencies can happen at any time and certainly the Southeast Region has experienced many over the last several years including floods, fires, hurricanes, and hazardous spills. As agencies and individuals begin to prepare for the 2012 hurricane season, the U.S. Fish and Wildlife Service (Service) would like to take this opportunity to reach out to our Federal partners regarding compliance with the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) prior to implementation of emergency response procedures. Emergency response procedures include all response activities that may be taken to prevent imminent loss of human life or property.

To better assist our partners, we recently updated our Southeastern Region web pages for emergency consultation under the Act. These updates include revised contact numbers and additional sample materials with a template to record information the Service will need in order to develop recommendations. The site also contains flow charts and written descriptions of procedures and processes to facilitate information gathered during preparedness and emergency responses. These materials may be accessed via a link on the Southeast Region homepage at: <http://www.fws.gov/southeast/> or directly at: http://www.fws.gov/southeast/es/emergency_consult.html.

During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence over normal consultation requirements. Emergency response actions should begin immediately and should not be delayed. If the emergency is: (1) in a *Presidentially Declared Disaster Area* and (2) *public facilities have been damaged or destroyed*, the public facility may be *restored substantially as it existed prior to the disaster* (not improvements, footprint changes, etc.). When these two conditions are met, emergency consultation is not needed. Instead, an emergency exemption from the taking prohibitions of the Act is granted.

For all other emergency response activities, the responding agency should contact the Service as soon as possible via telephone or facsimile and provide a description of the emergency response, location, and timeline. During the initial contact, the Service will provide the responding agency recommendations for minimizing adverse effects to listed species and designated critical habitat areas that may be adversely affected by emergency response activities. Within 48 hours, the Service will provide a letter to explain the protective procedures that were identified during the initial contact. Again, emergency response actions should not be delayed while waiting upon a response from the Service.

The Service will continue to evaluate the emergency as it relates to the conservation of listed species. If this evaluation indicates that the emergency response procedures may result in jeopardy/adverse modification of designated critical habitat, and no means of reducing or avoiding this impact are available, the Service will advise the responding agency and document this conclusion. The Federal 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.

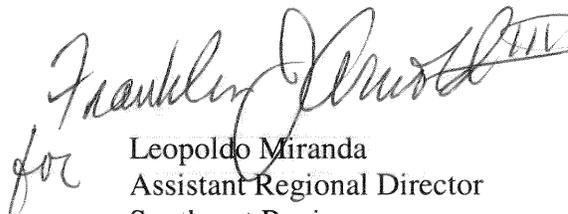
Once the emergency concludes, the action agency shall identify any incidental take of a species or an adverse effect to critical habitat that resulted from the emergency response action and initiate formal consultation. This formal consultation follows standard procedures, includes a description of what action the agency took to respond to the emergency, and identifies the final impacts to listed species.

Upon receipt of the action agency information outlined above, the Service will prepare an after-the-fact biological opinion identifying any incidental take or adverse effect to critical habitat that occurred during the emergency response and document the final impacts resulting from the action. This biological opinion may contain recommendations for after-the-fact remediation in the form of reasonable and prudent measures, or reasonable and prudent alternatives when incidental take of listed species or jeopardy or adverse modification of critical habitat attributable to the emergency response occurred. With the finalization of the biological opinion the action agency will have completed their compliance with the Act.

Our local Field Offices are available for immediate assistance during emergencies. We also encourage you to contact our local Field Offices during your preparedness and planning activities. Field Office representatives can help identify any trust resources that could be adversely affected by response activities and work with you to establish avoidance and minimization measures prior to the onset of an emergency.

For general questions regarding Endangered Species Act section 7 compliance or emergency consultation procedures, the following individuals serve as the points of contact for the Southeast Region: Ken Graham, Section 7 Coordinator, at (404) 679-7358; Holly Herod, Emergency Section 7 Coordinator, at (404) 679-7089; and Janet Mizzi, Chief, Endangered Species Division, at (404) 679-7169.

Sincerely yours,


for Leopoldo Miranda
Assistant Regional Director
Southeast Region