



## National Marine Fisheries Service's (NMFS) Guidance for Endangered Species Act (ESA) Emergency Consultations for Hurricane Response Activities in the Southeast United States (updated June 13, 2018)

During any emergency, NMFS' primary objective is to provide technical assistance and recommendations for minimizing adverse effects to listed species during the emergency response activities. During emergency events, the primary objective of the responding agency must be to protect human life and property and this objective takes precedence if there is a conflict with protective measures for listed species under the Endangered Species Act (ESA). Measures to protect ESA-listed species and designated critical habitat should be implemented when it will not interfere with the emergency response to protect human life and property.

ESA consultation responsibilities during an emergency can be conducted informally through alternative procedures (50 CFR 402.05). The purpose of this guidance is to provide responding agencies advice on how best to plan their response activities and meet their consultation responsibilities as efficiently as possible to support recovery from hurricanes. Also, because many of NMFS consulting offices may be in areas impacted by the hurricanes, NMFS staff may be unavailable for direct consultation, responding agencies are requested to use this guidance as a first resource for their emergency consultations.

Activities that would be considered as emergency response include, but are not limited to:

- Marine debris removal and vessel salvage
- Repair and/or protection of oil and gas pipelines, communication cables, energy cables, etc.
- Dredging, beach nourishment, or shoreline protection
- Repair and/or reconstruction of coastal infrastructure within the previous design footprint

When responding to emergency situations, please carry out your response activities under existing, applicable ESA Section 7 consultations. Existing consultations could include:

- For dredging and beach nourishment type projects:
  - GRBO - Gulf of Mexico Regional Biological Opinion on Hopper Dredge use for Maintenance Dredging of Channels and Sand Mining by the four USACE Gulf of Mexico Districts
  - SARBO - Regional Biological Opinion Concerning the use of Hopper Dredges in Channels and Borrow Areas along the Southeast U.S. Atlantic Coast
- For general in-water construction (Docks, seawalls, minor dredging, marine debris removal, etc.) in Florida, the USVI, and Puerto Rico:
  - [U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological Opinion \(JAXBO\) "Authorization of Minor In-Water Activities throughout the Geographic Area of the Jurisdiction of the USACE Jacksonville District, including Florida and the U.S. Caribbean"](http://sero.nmfs.noaa.gov/protected_resources/section_7/freq_biop/documents/reg_bo/jaxbo2017.pdf)<sup>1</sup>

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**For all other in-water emergency response activities, please implement the following NMFS General Recommendations to the best of your abilities where possible and when feasible:**

**Vessel Traffic and Construction Equipment:**

All vessel operators must watch for and avoid collision with species protected under the ESA and the Marine Mammal Protection Act (MMPA). Vessel operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:

1. *Construction Equipment:* All vessels associated with emergency response activities shall operate at “Idle Speed/No Wake” at all times while operating in water depths where the draft of the vessel provides less than a 4-foot (ft.) clearance from the bottom, and after a protected species has been observed in and has departed the area.
2. All vessels will follow marked channels and/or routes using the maximum water depth whenever possible.
3. Stop operating mechanical construction equipment, including vessels, immediately if a protected or ESA-listed species is observed within a 50-ft. radius of construction equipment and resume after the species has departed the area of its own volition.
4. If the detection of species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.
5. All Vessels:
  - a. Sea turtles: Maintain a minimum distance of 150 ft.
  - b. North Atlantic right whale: Maintain a minimum 1,500-ft. distance (500 yards).
  - c. Vessels 65 ft. in length or longer must comply with the Right Whale Ship Strike Reduction Rule (50 CFR 224.105) which includes reducing speeds to 10 knots or less in Seasonal Management Areas (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales>).
  - d. Mariners shall check various communication media for general information regarding avoiding ship strikes and specific information regarding right whale sightings in the area. These include NOAA weather radio, USCG NAVTEX broadcasts, and Notices to Mariners.
  - e. Marine mammals (i.e., dolphins, whales [other than North Atlantic right whales], and porpoises): Maintain a minimum distance of 300 ft.
  - f. When these animals are sighted while the vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal’s course. Avoid excessive speed or abrupt changes in direction until they have left the area.
  - g. Reduce speed to 10 knots or less when mother/calf pairs or groups of marine mammals are observed, when safety permits.
6. Anchor in unconsolidated sediment only and avoid all hardbottom and seagrass beds.

**Reporting of interactions with protected species:**

1. Any collision(s) with and/or injury to any sea turtle, sawfish, whale, or sturgeon occurring during emergency response activities, shall be reported as soon as possible to NMFS’s Protected Resources Division (PRD) by email to [takereport.nmfs@noaa.gov](mailto:takereport.nmfs@noaa.gov).
2. Smalltooth sawfish: Report sightings to 1-844-4SAWFISH (844-472-9347) or email [Sawfish@MyFWC.com](mailto:Sawfish@MyFWC.com)
3. Sturgeon: Report dead sturgeon to 1-844-STURG 911 (1-844-788-7491) or email [nmfs.ser.sturgeonnetwork@noaa.gov](mailto:nmfs.ser.sturgeonnetwork@noaa.gov)
4. Sea turtles and marine mammals: Report stranded, injured, trapped, entangled, or dead animals to 1-877-WHALE HELP (1-877-942-5343). Trapped animals may include those that are out of their natural habitat and/or washed inland due to storm surge.

5. North Atlantic right whale: Report injured, dead, or entangled right whales to the USCG via VHF Channel 16.
6. If an ESA-listed coral is likely to be affected by emergency response activities, and can be safely relocated prior to conducting the activity, please contact Jennifer Moore at [jennifer.moore@noaa.gov](mailto:jennifer.moore@noaa.gov) or 727-551-5797.

### **Turbidity Control Measures During Construction:**

Turbidity must be monitored and controlled. Prior to initiating any of the work, turbidity curtains should be installed as described below. In some instances, the use of turbidity curtains may be waived if the project is deemed too minimal to generate turbidity (e.g., certain aids to navigation (ATON) installation, scientific survey device placement, and marine debris removal) or if the current is too strong for the curtains to stay in place. Turbidity curtains specifications:

1. Install floating turbidity barriers with weighted skirts that extend to within 1 ft. of the bottom around all work areas that are in, or adjacent to, surface waters.
2. Use these turbidity barriers throughout construction to control erosion and siltation and ensure that turbidity levels within the project area do not exceed background conditions (i.e., the normal water quality levels from natural turbidity).
3. Position turbidity barriers in a way that does not block species' entry to or exit from designated critical habitat.
4. Monitor and maintain turbidity barriers in place until the authorized work has been completed and the water quality in the project area has returned to background conditions.
5. In the range of ESA-listed corals (St. Lucie Inlet, Martin County south to the Dry Tortugas and the U.S. Caribbean) and Johnson's seagrass (Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida): all turbidity controls identified above shall be followed, except turbidity barriers should be secured to the seafloor, but avoid contact with all corals or seagrasses, if feasible.

### **Entanglement:**

1. All turbidity curtains and other in-water equipment must be properly secured with materials that reduce the risk of entanglement of marine species (described below). Turbidity curtains likewise must be made of materials that reduce the risk of entanglement of marine species.
2. In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water.
3. Turbidity curtains and other in-water equipment must be placed in a manner that does not entrap species within the construction area or block access for them to navigate around the construction area.

### **Measures for Reducing Entrapment Risk to Protected Species:**

Marine Mammals (dolphins), and other protected species (sea turtles, sturgeon, smalltooth sawfish, etc.) are known to inhabit coastal waters of the Gulf of Mexico, Atlantic Ocean, and Caribbean Sea. Because of the potential for these protected species to become entrapped within coastal waters of construction sites, projects that enclose shallow open water areas (for example, filling breaches in dikes or other water control structures that would prevent animals from returning to open water) during emergency response activities should follow the following measures to minimize the potential for entrapment:

1. **Pre-construction planning.** During response design, the Federal Action Agency or project proponents must incorporate at least one escape route into the proposed retention structure(s) to allow any protected species to exit the area(s) to be enclosed. Escape routes must lead directly to open water outside the construction site and must have a minimum width of 100 feet. Escape

routes should also have a depth as deep as the deepest natural entrance into the enclosure site and must remain open until a thorough survey of the area, conducted immediately prior to complete enclosure, determines no Protected Species are present within the confines of the structure (see item 5 below for details).

2. **Pre-construction compliance meeting.** Prior to construction, the Federal Action Agency, project proponents, the contracting officer representative, and construction personnel should conduct a site visit and meeting to develop a project-specific approach to implementing these preventative measures.
3. **Responsible parties.** The responding agency will instruct all personnel associated with the project of the potential presence of protected species in the area and the need to prevent entrapment of these animals.
4. **Monitoring during retention structure construction.** It is the responsibility of construction personnel to monitor the area for protected species during shoreline hardening, dike, or levee construction. If protected species are regularly sighted over a 2 or 3 day period within the enclosure area during retention structure assembly, construction personnel must notify the Federal Action Agency. It is the responsibility of the Federal Action Agency to then coordinate with the National Marine Fisheries Service (NMFS) Marine Mammal Health and Stranding Response team (1-877-WHALE HELP [1-877-942-5343]) or the appropriate State Coordinator for the Sea Turtle Stranding and Salvage Network to determine what further actions may be required ([http://www.sefsc.noaa.gov/species/turtles/stranding\\_coordinators.htm](http://www.sefsc.noaa.gov/species/turtles/stranding_coordinators.htm)). Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area.
5. **Pre-closure final clearance.** Prior to completing any retention structure by closing the escape route, the Federal Action Agency will ensure that the area to be enclosed is observed for protected species. Surveys must be conducted by experienced marine observers during daylight hours beginning the day prior to closure and continuing during closure. This is best accomplished by small vessel or aerial surveys with 2-3 experienced marine observers per vehicle (vessel/helicopter) scanning for protected species. Large areas (e.g. >300 acres) will likely require the use of more than one vessel or aerial survey to ensure full coverage of the area. These surveys will occur in a Beaufort sea state (BSS) of 3 feet or less, as protected species are difficult to sight in choppy water. Escape routes may not be closed until the final clearance determines the absence of protected species within the enclosure sight.
6. **Post-closure sightings.** If protected species become entrapped in an enclosed area, the Federal Action Agency and NMFS must be immediately notified. If observers note entrapped animals are visually disturbed, stressed, or their health is compromised then the Action Agency may require any pumping activity to cease and the breaching of retention structures so that the animals can either leave on their own or be moved under the direction of NMFS.
  - a. In coordination with the location stranding networks and other experts, NMFS will conduct an initial assessment to determine the number of animals, their size, age (in the case of dolphins), body condition, behavior, habitat, environmental parameters, prey availability and overall risk.
  - b. If the animal(s) is/are not in imminent danger they will need to be monitored by the stranding network for any significant changes in the above variables.
  - c. Construction personnel may not attempt to scare, herd, disturb, or harass the protected species to encourage them to leave the area. Coordination by the Federal Action Agency with the NMFS SER Stranding Coordinator may result in authorization for these actions.
  - d. NMFS may intervene (catch and release and/or rehabilitate) if the protected species are in a situation that is life threatening and evidence suggests the animal is unlikely to survive in its immediate surroundings.

- e. Surveys will be conducted throughout the area at least twice or more in calm surface conditions (BSS 3 feet or less), with experienced marine observers, to determine whether protected species are no longer present in the area.

**Measures to avoid, if possible**

1. Use of in-water explosives
2. Trawling for debris removal
3. Deployment of anchored items that do not employ stiff, taut, and non-looping anchor lines
4. Dragging derelict vessels, debris, or other items across coral, hardbottom, or seagrass areas – Items should be hoisted or refloated if possible.

**Non-standard emergency response:**

If you have response activities that are large scale or unique and wish to discuss your plans with NMFS staff, please reach out to the contacts below.

**Once the emergency is over:**

Once the emergency is under control, the action agency will evaluate the emergency consultation measures. The action agency will identify any incidental take of a species or critical habitat, and initiate a post emergency consultation with NMFS via email: [nmfs.ser.emergency.consult@noaa.gov](mailto:nmfs.ser.emergency.consult@noaa.gov). NMFS will prepare an after-the-fact biological opinion to cover any incidental take that occurred and document the final impacts to the ESA-listed species.

If no take occurred, please notify NMFS of the activities that were carried out in response to the emergency including the statement that no take occurred. If multiple actions were carried out, please send a list of all activities and the NMFS recommendations that were implemented to [nmfs.ser.emergency.consult@noaa.gov](mailto:nmfs.ser.emergency.consult@noaa.gov) so we can learn more about emergency responses to be better prepared in the future.

Points of contact are Karla Reece at (727) 824-5348 ([karla.reece@noaa.gov](mailto:karla.reece@noaa.gov)) for North Carolina to Texas and Jennifer Moore at (727) 551-5797 ([jennifer.moore@noaa.gov](mailto:jennifer.moore@noaa.gov)) for the Florida Keys and the Caribbean. Please note that during hurricanes or tropical storm events that impact the St Petersburg, Florida area, responses to email or telephone inquiries may be delayed.

