



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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<https://www.fws.gov/office/new-england-ecological-services>

March 01, 2023

David Robbins
Federal Emergency Management Agency
99 High Street, 6th Floor
Boston, Massachusetts 02110

Re: Advance Planning for FEMA Emergency Actions; measures to minimize effects on listed species

Dear David Robbins:

This letter is an extension of the early, informal consultation that the Federal Emergency Management Agency (FEMA) and the US Fish and Wildlife Service (Service) regularly conduct in preparation for, or response to, emergency events that require action from the FEMA. We are providing this information pursuant to the implementing regulations for section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C 1531, et seq.) (ESA), specifically 50 CFR 402.05, 50 CFR 402.11, and 50 CFR 402.13; as well as Chapter 8, Emergency Consultation, of the 1998 Final ESA Section 7 Consultation handbook. The Service's New England Field Office in Concord, New Hampshire, and Maine Field Office in East Orland, Maine, jointly prepared this letter, as both field offices regularly coordinate with the FEMA's Region 1 staff on emergency consultation.

A traditional emergency consultation scenario generally follows these steps:

1. An action agency notifies the Service of an expected action to prevent imminent loss of human life or property in response to an emergency event where the potential response action(s) may affect one or more species listed under the ESA.
2. The Service provides measures the action agency and emergency responders could implement to avoid or minimize impacts on listed species that may occur in the action area, provided those measures do not affect safety or delay or obstruct the necessary response to the emergency.
3. The emergency response proceeds, implementing the AMMs, as time and safety allow.

4. The action agency monitors the activities, to the extent possible, and determines if, and to what extent, the activities impacted listed species.
5. Interagency consultation pursuant to section 7 of the ESA occurs after-the-fact if listed species may have been affected.

Presidential declarations of emergency create a Federal nexus between the FEMA and the emergency response activities and trigger the FEMA's obligation to comply with section 7(a)(2) of the ESA. Due to the typical nature and timing of these declarations, the FEMA's involvement in an emergency response may occur after the on-the-ground emergency response is complete, when the ability to recommend and incorporate measures to minimize impacts to species listed under the ESA is limited. To support the FEMA's continuing efforts to proactively consider, and minimize impacts to, listed species pursuant to section 7(a)(1) of the ESA, Appendix 1 contains an advance list of generally applicable avoidance and minimization measures (AMMs) that could be implemented during an emergency response to avoid or minimize impacts to, or benefit, listed species in New England¹.

In effect, this letter and the enclosed measures programmatically complete steps 1 and 2 above, although we also are available to consult with the FEMA on specific emergency actions and provide additional project-specific measures, if there is time before and during the emergency response. The measures in Appendix 1 and any other AMMs we recommend during an emergency response should be implemented only if they do not affect safety or delay or hinder activities to secure human life and property.

In preparation for step 3, the FEMA could share appropriate AMMs with FEMA staff, state emergency management agency staff, and other entities responsible for emergency actions in advance of emergency response actions. This would allow consideration of AMMs regardless of the timing of a Presidential declaration of emergency. In step 4, the FEMA would monitor the activities, to the extent possible, and determine if, and to what extent, the activities impacted listed species. In step 5, the FEMA would initiate after-the-fact consultation with the Service pursuant to section 7 of the ESA if one or more listed species may have been affected directly or indirectly by the response actions.

Post-response consultation could take different forms. First, the Service developed, or is developing, determination keys (dkey) that provide a streamlined process for initiating and completing consultation. These dkeys are available in the Service's Information for Planning and Consultation (IPaC) website (<https://ipac.ecosphere.fws.gov/>) and cover most of the listed species in the FEMA's Region 1 service area. Projects that meet certain criteria can receive automated letters of consistency or compliance from IPaC, indicating that the FEMA's obligations under section 7 of the ESA have been met and no additional coordination is needed because the action had no effect or did not adversely affect a listed species. Alternatively, the

¹ This list does not include listed species for which the National Marine Fisheries Service has management responsibility.

David Robbins
February 27, 2023

3

FEMA could initiate consultation with the Service through a letter sent to the appropriate Service field office. This option would apply if the species that may have been affected are not covered by a dkey or if the emergency response likely adversely affected a listed species and formal consultation is needed. 50 CFR 402.14(c), which describes the information required to initiate consultation, applies to post-emergency consultations as well.

We appreciate the FEMA's efforts to avoid and minimize impacts to listed species under difficult circumstances, and we look forward to working with you in the future. Please contact us with questions or if we otherwise can be of assistance. For activities in Maine, please contact the Maine Field Office at 207-469-7300 or mainefieldoffice@fws.gov. For activities in any other New England state, contact the New England Field Office at 603-223-2541 or newengland@fws.gov.

Sincerely yours,

Amanda Cross
Field Supervisor
Maine Field Office

Audrey Mayer
Field Supervisor
New England Field Office

CC:

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Patrick_dockens@fws.gov

Appendix 1

Advance planning for FEMA emergency actions: a list of measures to avoid and minimize effects on listed species in New England

These measures should be implemented only if they do not affect safety or hinder activities to secure human life and property. Any suggested measures for avoidance and minimization of impacts to listed species during the emergency response should be taken only when doing so does not delay or impede the emergency response.

For all species

1. Use existing access routes and previously disturbed areas to move and stage equipment. Avoid or minimize ground disturbance in undisturbed/undeveloped habitat.
2. Document the area affected by emergency response activities and, to the extent possible, effects on listed species and their habitat. This will be important information to inform post-response consultation, if it is necessary.

MAMMALS

Indiana bat and northern long-eared bat

1. Limit tree clearing to the minimum amount necessary, especially between April 15 and October 31.
2. Contact the State wildlife agencies to determine if any known hibernacula or roost trees are present in the action area.
3. Avoid or minimize clearing trees within 150 feet of roost trees and within ¼ mile of hibernacula.
4. For tree work between April 15 and October 31, cut trees in the evening after bats that may be present have exited the tree.

Canada lynx

1. Instruct vehicle operators to drive carefully, especially when travelling at dawn and dusk in remote areas in northern New Hampshire, and northern and western Maine, to minimize risk of lynx-vehicle collisions.

BIRDS

Piping plover, red knot, and roseate tern

1. Avoid or minimize work in coastal habitats including sandy or gravelly beaches, intertidal zones, and mudflats between April 1 and September 30.

2. If work must occur during this time window, minimize vehicles and machinery in these habitats and maintain speeds of 5 miles per hour or lower. Employ a qualified individual(s) to monitor bird behavior and impacts, identify nesting areas, and direct work vehicles and crews around nests/broods.
3. Avoid or minimize sand fencing in coastal habitats between April 1 and September 30.

TURTLES

Bog turtle and northern red-bellied cooter (Plymouth redbelly turtle)

1. Avoid or minimize work in bogs, fens, wetlands, ponds, lakes, streams, and riverine habitat.
2. Avoid or minimize ground disturbance within 400 meters of these aquatic habitats from late March to late October.
3. Implement measures to prevent discharge of sediment or other pollutants to aquatic habitat.

Sea turtles

1. Avoid or minimize ground disturbance in sandy coastal habitats of Cape Cod and southern Massachusetts islands.

FISH

Atlantic salmon and other migratory fish

1. Replace culverts, bridges, and other water conveyances with Stream Smart (maineaudubon.org/projects/stream-smart/) or Stream Simulation (<https://www.fws.gov/project/usfws-programmatic-stream-crossing-consultation>) alternatives. In Atlantic salmon habitat in Maine, replacement crossings should be at least 1.2 times the bankfull width of the stream.
2. Use standard erosion and sediment control measures for work in or adjacent to waterways to avoid or minimize sediment reaching streams, ponds, and lakes.
3. Conduct instream work between July 15 and September 30 during low stream flows to minimize impacts from instream sedimentation.
4. Conduct instream work in the dry (e.g., inside a dewatered cofferdam) to minimize impacts from instream sedimentation.
5. If a project with instream work is located within an area where juvenile Atlantic salmon are likely present, and work will occur when stream temperatures are between 6 and 22 degrees Celsius (43 and 72 degrees Fahrenheit), contact the Maine Field Office to discuss the possibility of fish evacuation before instream work begins.

INVERTEBRATES

Dwarf wedgemussel

1. Avoid or minimize work in riverine habitat in the Connecticut River watershed.

2. Implement measures to prevent discharge of sediment or other pollutants to aquatic habitat.
3. Employ a qualified individual to survey for, and relocate, dwarf wedgemussels that may be adversely affected.

Karner blue butterfly

1. Use existing access routes and previously disturbed areas to move and stage equipment. Avoid or minimize ground disturbance in undisturbed/undeveloped habitat.
2. Employ a qualified individual(s) to survey for wild blue lupine (*Lupinus perennis*), the host plant for the butterfly, prior to ground disturbance, mark occurrences of the species, and direct work vehicles and crews around occurrences.

Northeastern beach tiger beetle

1. Avoid or minimize ground disturbance in sandy coastal habitats of Cape Cod and southern Massachusetts islands.

Puritan tiger beetle

1. Avoid or minimize ground disturbance in sand bars, sandy beaches, cutbanks, and mud flats in the Connecticut River, including tidally-influenced areas.

American burying beetle

1. On Block Island, Rhode Island, and Nantucket, Massachusetts, use existing access routes and previously disturbed areas to move and stage equipment. Avoid or minimize ground disturbance in unforested, undeveloped, upland habitat.

Rusty-patched bumblebee

1. Avoid or minimize disturbance in vegetated areas in High Potential Zones, Low Potential Zones, and Uncertainty Zones depicted on this map:
<https://fws.maps.arcgis.com/apps/mapviewer/index.html?webmap=2716d871f88042a2a56b8001a1flacae>.

PLANTS

Eastern prairie fringed orchid

1. Avoid or minimize ground disturbance to Little Crystal Fen, Aroostook County, Maine. If disturbance cannot be avoided, coordinate with The Nature Conservancy in Maine (eben.sypitkowski@tnc.org) and the Maine Ecological Services Field Office (mael_glon@fws.gov).

Jesup's milk vetch

1. Avoid or minimize ground disturbance to rocky ledges along the Connecticut River in Claremont, NH; Plainfield, NH; Cornish NH; and N. Hartland, VT. If disturbance cannot be avoided, coordinate with the New England Field Office

(margaret_harrington@fws.gov) and the Native Plant Trust (bbrumback@nativeplanttrust.org).

Furbish Lousewort

1. Avoid or minimize disturbance to the banks of a 225-kilometer (km) section of the St. John River extending from the confluence of the St. John and Big Black Rivers in northern Maine to the confluence with the Aroostook River, approximately 10 km North of Perth-Andover, New Brunswick. If disturbance cannot be avoided, coordinate with biologists from the Maine Natural Areas Program (don.s.cameron@maine.gov) and the Maine Ecological Services Field Office (mael_glon@fws.gov).

Small whorled pogonia

1. For projects outside of Maine, employ a qualified individual(s) to survey for this species prior to ground disturbance, mark occurrences of the species, and direct work vehicles and crews around occurrences, when possible. For projects in Maine, coordinate with biologists from Maine Natural Areas Program (don.s.cameron@maine.gov) and Maine Ecological Services Field Office (mael_glon@fws.gov) to obtain survey data and guidance.

American chaffseed, sandplain gerardia, seabeach amaranth, and northeastern bulrush

1. Employ a qualified individual(s) to survey for these species prior to ground disturbance, mark occurrences of the species, and direct work vehicles and crews around occurrences.