



# Frequently Asked Questions and Guidance for:

## Biological Evaluation (BE) Form

*U.S. Coast Guard Actions in Alabama, Florida, Louisiana, Mississippi, and Texas  
U.S. Fish and Wildlife Service and National Marine Fisheries Service*

### Overview:

The updated [BE form](#), 1 June 2022 version has been distributed. We worked with the Services and USCG field commands to improve the form and processing. The BE form still covers USCG pre-spill and emergency response actions in Alabama, Florida, Louisiana, Mississippi, and Texas (the entire Eighth District coastal zone). The revised form (fillable PDF version) is fully functional in each of these states and supported by all appropriate entities. These FAQs (version 2) are provided to assist in the use of the BE form and will be updated as necessary to support those who utilize it.

It is impossible to answer every possible question pertaining to utilizing the referenced form and the process of pre-spill and emergency consultation as required under [§7 of the Endangered Species Act \(ESA\)](#), but this document serves the purpose of providing guidance to make the referenced form more readily usable to USCG personnel that might not be overly familiar with the process. In all cases, when in doubt, always reach out to your servicing representative from the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator (SSC), USCG District Eight (D8) District Response Advisory Team (DRAT) or Incident Management and Preparedness Advisor (IMPA) for guidance and any clarifying information. This FAQ document will address common questions that arise from real-world implementation as well as those questions brought up during training sessions.

For the purposes of these FAQs, consultation will refer collectively to all required consultations under [§7 of the ESA](#) and as required for [Essential Fish Habitats \(EFH\)](#). Each FOSCR should fill out the BE form to the best of their ability and use every attempt to select pre-determined categories prior to using the “other” category. Keep in mind that you are [requesting a consultation regarding the effect of response actions on a listed species or designated critical habitat](#) so always do your best to identify potential species that [could be](#) present in the established response action area.

If you are using this form for technical assistance or to determine if further consultation is required, please inform the servicing representative from the respective Service **in a clearly worded email** that you are requesting technical assistance to determine whether further consultation (informal or formal) is required. This will indicate to them that the form is not complete and that you are requesting additional guidance. [Please coordinate with the NOAA SSC and the District Eight DRAT or IMPA prior to submitting for technical assistance.](#)

Ref. No	Questions	Answers
1.	When is consultation required?	<p><b>1a. ESA Consultation:</b>  The FOSC must comply with consultation requirements for <a href="#">ESA §7</a> pursuant to <a href="#">50 Code of Federal Regulations (C.F.R.) § 402.05</a>. There are three questions to ask that will help determine the appropriate level of consultation. These questions are:</p> <ul style="list-style-type: none"> <li>• Are response actions occurring?</li> <li>• Are protected species or habitats present in the response action area?</li> <li>• Could these species or habitats be impacted by the response actions?</li> </ul> <p>As you go through these questions, answering yes to each individual question can increase the need for consultation. The important thing to remember is that these are not questions asked only once, but should be considered <u>throughout</u> the response.</p> <p>For example, if <b>NO</b> response actions are occurring then there is <b>NO</b> need for consultation. If there are <b>NO</b> protected species or habitats in the response action area then <b>NO</b> consultation is needed.</p> <p>If protected species <i>could be present</i> in the response action area, <b>and response actions are occurring</b>, then the consultation process needs to begin and the ESA/EFH BE Form <b>must</b> be utilized.</p> <p>Consultation should begin with an email and/or conversation before filling out the BE form and sending to the Services. That email and/or conversation should begin with the NOAA SSC and progress to each applicable Service Representative (USFWS and/or NMFS).</p> <p><b>1b. EFH Consultation:</b>  The FOSC must comply with consultation requirements for EFH pursuant to <a href="#">50 Code of Federal Regulations (C.F.R.) § 600.920</a>. In addition to the three questions to determine appropriate level of consultation under ESA §7, for EFH consultation, also ask if Best Management Practices (BMPs) can be applied.</p> <p>If protected habitats <i>could be present</i> in the response action area, <b>and response actions are occurring, and BMPs cannot be used to mitigate impacts from response actions</b> then the consultation process needs to begin and the ESA/EFH BE Form <b>must</b> be utilized.</p> <p>If the EFH BMPs can be applied to the response actions then emergency consultation regarding EFH <i>may</i> not be needed. The BMP document specifies emergency consultation for ESA and EFH should occur in the following instances:</p> <ul style="list-style-type: none"> <li>• Any Spill of National Significance</li> <li>• When no BMPs are identified for a response method or BMPs are specifically not recommended for category(ies) of EFH</li> <li>• Any proposed use of: <ul style="list-style-type: none"> <li>○ Barriers, Berms, and Underflow Dams</li> <li>○ Dispersants not in accordance with a pre-approval plan</li> <li>○ In-Situ Burning not in accordance with a pre-approval plan</li> <li>○ Solidifiers not in accordance with a pre-approval plan</li> <li>○ Nutrient Enrichment</li> <li>○ Natural Microbe Seeding</li> </ul> </li> </ul>

Ref. No	Questions	Answers
2.	What is considered a Response Action?	<p>Action – <a href="#">50 C.F.R. 402.02</a> – “Means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.”</p> <p>This goes well beyond just “Federalized” response cases and includes all cases that the Coast Guard has been made aware of that include response actions. This does not include actions that were conducted prior to the notification of the Coast Guard.</p> <p>For example, the Coast Guard was informed by a Responsible Party that they had spilled 5 bbl of crude, but had hired an OSRO and were actively cleaning the crude from the surface of the water and from the marsh. Upon investigation, it appears that the RP is taking appropriate action and Coast Guard monitoring is all that is required. The cleanup will take a few days, and response actions include boom, sorbents, response vessels, and a skimmer. The RP’s oil removal tactics (boom, sorbents, response vessels &amp; skimmer) meet the definition for Response Actions for which the Coast Guard is responsible for consultation, because they were made aware as part of the FOSC authority and responsibility.</p> <p>In another example, the Coast Guard was informed that a grain barge that has run aground and needs specialized equipment to come in and refloat the barge. This would constitute response actions under these regulations even though no oil or hazardous substance was on board the barge. <b>Note:</b> The presence of oil does <b>NOT</b> dictate the consultation requirement; it’s the <b>response actions</b> – and the potential presence/impact to listed species or designated critical habitat.</p>
3.	What is considered the Response Action Area?	<p>Action Area – <a href="#">50 C.F.R. 402.02</a> – “Means all areas to be affected directly or indirectly by the Federal action (<i>see definition of Response Action above, not just Coast Guard actions</i>) and not merely the immediate area involved in the action.” This would include all areas transited to arrive at the response location and other places like staging areas set up to facilitate getting resources to the response.</p>
4.	What is the scope of consultation?	<p>The scope of consultation is focused on the agency’s response actions (<i>see definition of Response Action above, not just Coast Guard actions</i>) during an emergency, not the emergency itself. In the example cited above, an RP led response efforts for a 5 bbl discharge of crude, we are consulting on the equipment that is needed to clean the oil from the water’s surface and nearby marsh. If the decision had been made to leave the 5 bbl and allow for natural dissipation then there would be no need for consultation because the agency had no response actions. If there are impacts from the discharge/release and not the response actions, those would be covered under Natural Resource Damage Assessment (NRDA)</p>

Ref. No	Questions	Answers
5.	<p>When do you start consultation? and How is the flow and process of communication with the Services as it relates to the BE Form?</p>	<p>If the FOSC (or FOSCR acting on behalf of FOSC), in communication with the NOAA SSC or Service ESA representative, determines that emergency response actions “may affect” ESA listed species and/or designated Critical Habitat—that is, species or designated Critical Habitats are likely to be exposed to the response actions—then the FOSC <i>shall</i> follow the consultation processes identified in <a href="#">50 C.F.R. § 402</a> during and following the emergency operations. The FOSC (or FOSCR acting on behalf of FOSC) <i>shall</i> engage in emergency consultation with USFWS and/or NMFS as soon as practicable once they become aware that these species or habitats <i>are likely</i> to be exposed to the response actions. The initial method of communicating with the Services should be a conversation (normally via email) to ensure both the USCG and the Services are in agreement with the request and path forward. The NOAA SSC can assist with these initial conversations and may serve as a bridge between the Service biologist and USCG emergency responders (FOSCRs).</p> <ul style="list-style-type: none"> <li>• If “No Effect” is determined due to no species of concern in the action area, then nothing further is required.</li> <li>• If “No Effect” is determined due to tactics being non-invasive and low probability of species in the area then BE form can be filled out by USCG unit and filed in the unit-specific Admin record. Do <b>not</b> send the BE form to the Service representatives (the Services do not consult or concur on No Effect determinations).</li> <li>• If “May Affect, Not Likely to Adversely Affect” is determined, informal consultation begins and use of the BE form is required. Utilize NOAA SSC and Service biologists under the umbrella of technical assistance to fill out the form to the best of your ability. Please see FAQ#34 for some example email text that may be utilized to communicate with the Services for sharing initial BE form.</li> </ul> <p>If while response actions are taking place, a tactic changes or a species/habitat is observed, revisit conversations with NOAA SSC and the Service representative.</p> <p>Upon completion of the response, review BE form and ensure the form has complete and accurate information (including the USCG FOSC <b>effects determination</b>) to the best of your knowledge. Have the FOSC sign the completed BE form and <a href="#">send separate emails</a> to both USFWS and NOAA NMFS (if applicable). Please see FAQ #35 for an example of email text for final BE form submission and FAQ #33 for routing and signature process.</p>
6.	<p>What do I do if I suspect listed species or habitats <i>may be present</i> in the response action area, that they are likely to be exposed, but I have not been able to get advice or guidance from the SSC or the Services?</p>	<p>Continue to try to get in contact with the Services (USFWS and NMFS) and/or the SSC. Work to employ known Best Management Practices (BMPs)/Conservation Measures, and work to take the most prudent measures possible to protect listed species and habitats.</p> <p><b>You do not need to (nor should you) delay the emergency response in the absence of information or guidance.</b></p> <p>Emergency response actions are not impeded, but will need to be documented for follow-up conversations/consultations with the Services. In these cases, work with the best information available and be prepared to implement changes as more information and guidance becomes available.</p>

Ref. No	Questions	Answers
7.	Is consultation always required?	<p>Yes, if listed species or habitats are present in the response action area and response actions <i>may</i> affect those species or habitats.</p> <p>The FOSC can determine that consultation is not practicable during emergency response operations. If the FOSC determines consultation is not practicable during emergency response operations, refer to the <a href="#">NRT's Post-Response Procedures guidance for ESA Section 7 and EFH compliance requirements</a>. In these cases, the consultation must be initiated as soon as practicable.</p> <p>Consultation does not need to be completed for every NRC report. As mentioned above, the consultation requirements are specific to <b>response actions</b> – and the potential effects to listed species or designated critical habitat.</p> <p>Examples of when you might expect to conduct consultations:</p> <ul style="list-style-type: none"> <li>• Multiday response,</li> <li>• Known or observed species or habitat in the area of response actions</li> <li>• BMPs not able to be followed</li> </ul> <p>Examples of when you may not expect to conduct consultations:</p> <ul style="list-style-type: none"> <li>• No species in the area of response actions</li> <li>• Species listed, but through communication with the Services, their presence is highly unlikely in the area of response action.</li> <li>• Response actions non-invasive and species highly unlikely in area of response (e.g., stinging partially submerged vessel from residential boat dock).</li> <li>• Response actions complete within a few hours (e.g., boom a submerged vessel in marina, while stinging tanks)</li> </ul> <p>In cases where EFH BMPs can be employed, refer to answer 1b and the EFH BMP guidance (Section I, 5.b. Attachment II: <a href="#">EFH BMPs for Certain Response Activities in the NMFS Southeast Region provides the recommended BMPs for EFH</a> of the BE Form). Use the emergency consultation point of contact to discuss lessons learned and recommendations to improve future BMP lists.</p> <p>After-the-fact consultation with the Habitat Conservation Division (HCD) are also required when response activities <i>result</i> in unexpected or unanticipated adverse effects to listed species or habitats.</p>
8.	Who initiates consultation?	<p>The Federal Action Agency <i>shall</i> initiate all required consultations in writing. This means that for response actions under the jurisdiction of the Coast Guard, the Coast Guard <i>shall</i> initiate these required consultations. The referenced consultation form is part of this process, but in order to best articulate need, conversations with both the NOAA SSC and the applicable Service representative are important. These conversations (phone and/or email) will better serve the development of BE form content and the transmittal email to initiate informal consultation, if required. This is a requirement of the FOSC, which they can delegate to their FOSCR to initiate.</p> <p>The SSC provides vital support to the process, but the consultation <i>must</i> be initiated by the Coast Guard representative to the respective Service representative [US Fish and Wildlife Service (USFWS) under the Department of the Interior (DOI) and National Marine Fisheries Service (NMFS) under the Department of Commerce (DOC)].</p>

Ref. No	Questions	Answers
9.	Who can provide support for consultation?	<p>The best source of support is the assigned Service representative listed on the BE form for USFWS or NMFS (ESA and EFH); but it is <b>highly</b> recommended that you begin with the NOAA SSC.</p> <p>The NOAA SSC can <b>facilitate</b> consultation, but is <b>not</b> the person initiating consultation. If you are even considering consultation, you should be having conversations with your SSC and often they will be the person to suggest that consultation may be required.</p> <ul style="list-style-type: none"> <li>• The District Response Advisory Team (DRAT) and the Incident Management and Preparedness Advisor (IMPA) can also provide support to this process and are available 24/7 to answer any questions or concerns that arise throughout the process.</li> <li>• There are other people that are available to support the process but we recommend you begin with the sources listed and then you will be provided additional support in the rare chance your issue cannot be resolved by any of the listed sources.</li> </ul>
10.	What type of supporting documentation should I provide?	<p>The form prompts you at times for certain documentation, but remember the more detail you give the Services, the better they can support you. ICS forms are highly recommended because they require a great level of detail for the response actions that will provide detail often left out to the Services (e.g., 201 or small IAP; in general a large IAP will be too much -- unless a Service representative requests). Maps/charts of the response action area will help them know exactly which areas are of concern. When providing a list of response actions and resources, it is helpful to provide clarifying information about those resources if they have the <b>potential</b> to modify the environment, e.g., dredge, barges/vessels that spud down, anchoring boom versus just letting it free float, etc.</p>
11.	The form asks for existing compliance documentation. What do I do if I don't know anything about this?	<p>Do your best. If you don't know of any existing compliance documentation then just put that. It is recommended that as you use this BE form you come up with a process to document the use of this form and any compliance activity that is conducted by your unit.</p> <p>Long-term, D8 will be conducting a pre-spill ESA/EFH programmatic consultation for all potential response actions for the entire D8 coastal zone AOR. Once this is complete (potentially by 2025), this information, including the Letter of Concurrence or Biological Opinion from the Services, will provide the basis for our future compliance.</p>
12.	When filling out the referenced form, what do I do if I am unsure about what to put in the form?	<p>Before filling out the form, speak with the NOAA SSC to ensure they concur with need to conduct informal consultation with the Services. If the potential exists reach out to the respective Service representative and/or SSC to help fill it out. The DRAT and IMPA are also available to assist. The more information contained in the form, the better the support the Services will be able to provide. It is recommended that you update the form as more information becomes available as the response progresses. If there is no change in the status of the response then there is no need to update the form. Also, upon completion of all the response actions, address any changes and final outcomes (including the USCG FOSC effects determination) as it pertains to "no sightings" of species or if BMPs were able to be adhered to.</p>
13.	What if I am unsure what phase I am in?	<p>If you haven't already reached out to your SSC, reach out to your SSC for support. You can also contact the DRAT/IMPA for support. If you are still unsure, you can start with technical assistance from the Services and then you can update the BE form if the situation changes. Don't get too caught up in the details; do your best to provide as much detail as possible.</p>
14.	What if I am unsure how to label the response action?	<p>Do your best to label the response action within the predesignated items and use the "other" category to add detail if necessary. Feel free to attach other information that is pertinent to the response that will help the Service representative understand the action in relation to the species more clearly. Feel free to provide a description in the <b>agency-specific</b> email, and if you are uncertain of exactly what the response actions will entail, make sure and annotate that as well.</p>

<p>15.</p>	<p>What tools are available to assist with consultation?</p>	<p>There are many tools available and this list is not exhaustive but should be some that each FOSCR is very familiar with:</p> <ul style="list-style-type: none"> <li>• The USFWS <a href="#">Information for Planning and Consultation (IPaC)</a> – applicable <i>only</i> for USFWS -- provides a list of species and habitats that can be determined by a set geographic region. This will help you determine if the species are present in the response action area and will list times of the year that the species are more prevalent. This is one of the first tools to use in determining if consultation is required. This is just a starting point to help you fill out the form and make an initial determination, but it is recommended that you coordinate with your SSC and USFWS to validate the information.</li> <li>• USFWS Ecological Services Offices: <ul style="list-style-type: none"> <li>○ <a href="#">Alabama</a></li> <li>○ <a href="#">Florida</a></li> <li>○ <a href="#">Louisiana</a></li> <li>○ <a href="#">Mississippi</a></li> <li>○ <a href="#">Texas</a></li> </ul> </li> </ul> <p><b>Note:</b> - The above links contain conservation measures for several federally listed species that occur in the respective state, as well as conservation measures for non-listed migratory birds (which are protected under the Migratory Bird Treaty Act) that may breed/nest in and/or migrate through a particular state. These conservation measures should be the same as the ones you may find in IPaC, but they are readily available online if the IPaC system is not available.</p> <ul style="list-style-type: none"> <li>• NOAA Environmental Response Management Application (<a href="#">ERMA</a>) provides information on species listed in the area that can be searched by geographic region. ERMA also can link directly to IPaC and can provide Geographic Response Strategies (GRS) if listed. Work with your SSC to validate the information.</li> <li>• Area Contingency Plans (ACP) can have detailed information in them that are specific to your area that can help quickly identify sensitive areas. Often, BMPs are listed in your ACP. The ACP should also have up to date contact information for people that can provide appropriate support. <b>The Eighth Coast Guard District has developed a comprehensive spreadsheet (RRT-6 <a href="#">Annex 29a</a>) that provides listed species and designated CHs for the coastal zone in each state and the offshore Gulf of Mexico; it is available on the RRT-6 website and is incorporated by reference in each respective ACP (Section 10302).</b> This will be updated by CGD 8 staff annually.</li> <li>• Regional Response Team (RRT) – The <a href="#">RRT-6</a> (for LA and TX) and <a href="#">RRT-4</a> (for AL, MS, and NW FL) has documents available to support the attached form for many different actions. An example would be getting the documentation for preauthorization for surface washing agents, in-situ burn or other response methods to provide with the form.</li> <li>• RRT-6 has an all-inclusive contact spreadsheet (<a href="#">Annex 28b</a>) that captures anything related to Fish and Wildlife and Sensitive Environments plan (<a href="#">Annex 28</a>) and Wildlife Response Plan (<a href="#">Annex 28a</a>), including SHPO and tribal representatives within Louisiana and Texas (will expand eastward over time). <b>This information is incorporated by reference into relevant D8 coastal ACPs (Section 10303).</b></li> <li>• National Response Team (NRT) – The NRT provides guidance at the national level and has supporting information to help facilitate the consultation process. Look for the <a href="#">NRT’s National Environmental Compliance (NEC) Subcommittee ESA guidance</a> on the <a href="#">NRT page</a>.</li> <li>• The referenced consultation form itself has links to many of the appropriate BMPs so these should be reviewed and implemented regularly.</li> <li>• CG-MER-1 works on national level policy pertaining to consultation and there are many products available on their <a href="#">portal page</a> as well.</li> </ul>
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Ref. No	Questions	Answers
16.	What if I am unsure how to classify the habitat?	Work with your SSC and talk with the response personnel on scene. If overflights have occurred, feel free to attach pictures of the response action area. Remember, greater detail will lead to a better finished product.
17.	What are the outcomes of consultation?	<p>There are three different outcomes for ESA and two different outcomes for EFH. The intent of the referenced BE form is to replace the need for drafting a No Effect and NLAA Memorandums. A memorandum signed by the FOSC is still required for LAA determinations. All referenced memorandums shall be stored in the unit’s Administrative Record (please refer to FAQ #31 to learn more). If you utilize one of these memorandums, each unit <b>shall</b> also save a copy of the finished BE form in their Administrative Record. It is also encouraged that you save any correspondence that helped you come to this determination in your Administrative Record, i.e., emails, IPaC/ERMA reports, Annex 29a, ICS forms, etc. The different outcomes are:</p> <p><b>ESA:</b></p> <ul style="list-style-type: none"> <li>• <b>No Effect</b> – This determination can be made by the FOSC and is used to document that there was no effect to a listed species. Work with the NOAA SSC if a No Effect determination seems likely; they can help guide/articulate this determination for both decision-making purposes and documentation. It can be used when there is no doubt pertaining to whether or not a species could have been present in the action area or was present in the action area but there was no effect. The BE form will be used to document USCG FOSC No Effect determinations (Section C of the BE form). <b>A No Effect determination does not require concurrence from the Services</b>, and the BE Form for a No Effect should <b>not</b> be sent to the Services. The Services do not consult or concur on No Effect determinations.</li> <li>• <b>May Affect; Not Likely to Adversely Affect (NLAA)</b> – This BE form can provide the necessary information and concurrence from the Services to make this determination and replaces the need for an effects determination memorandum when utilized and signed by all parties (can be separate signed forms). This occurs when we know species were present in the response action area but the response actions were not likely to adversely affect the species. The majority of response actions, when species are <b>known</b> to be present, will fall into this determination.</li> <li>• <b>May Affect; Likely to Adversely Affect (LAA)</b> – This determination moves us into the formal consultation process. The FOSC <b>must</b> submit an initiation package and/or a request for a biological evaluation to begin the formal consultation process. The FOSC <b>shall</b> submit a post response biological evaluation package for all formal consultations. These will be rare; contact the DRAT/IMPACT if you believe you’re in a LAA determination.</li> </ul> <p><b>EFH:</b></p> <ul style="list-style-type: none"> <li>• <b>No Adverse Effect</b> – Follow the same guidance listed above in ESA for No Effect.</li> <li>• <b>May Adversely Affect</b> – Utilize the referenced form and follow guidance given by the NMFS. Adverse Effects are anything that changes the quality or quantity of Essential Fish Habitat.</li> </ul>
18.	What is the placeholder for Phase II and when do I know to start using this section?	IF YOU STILL HAVE THIS SECTION YOU ARE USING AN OBSOLETE VERSION. The BE form is fully operational for pre-spill and emergency response actions. We will continue to work with the Services to further streamline this process and make it even easier for field personnel to get the information they need and reduce the administrative burden on field personnel. We will update these FAQs and provide clear communication when an updated BE form is available for use.
19.	What does the referenced form mean by “terrestrial” location?	A terrestrial ecosystem is a land-based community of organisms and the interactions of biotic and abiotic components in a given area. The key for this is it’s “land-based.”



Ref. No	Questions	Answers
20.	What do I do if I am unsure if a critical habitat is present in the response action area?	Reference the 2022 updated threatened and endangered species list and designated critical habitat spreadsheet from RRT-6 ( <a href="#">Annex 29a</a> ). Work with the Services, the SSC, and utilize the tools to verify. If you are unsure if a critical habitat is present then make sure you fill that portion of the referenced form out just in case. When in doubt, fill out the form and send it off to the Services.
21.	Do I have to ensure all recommended BMPs and/or Conservation Measures are implemented?	In ideal circumstances, all recommended BMPs/Conservation Measures will be implemented. We recognize that each response has unique characteristics and sometimes it will not be practicable to implement a given BMP. In these cases, coordinate with the SSC and the Services to make sure that the response is making the greatest effort to protect these species and habitats. Document every deviation and the reasoning behind it thoroughly as these will have to be addressed in the post response consultation process and stored in the USCG unit-maintained Administrative Record.
22.	What should I put in our Unit's Administrative Record?	Documentation that pertains to the consultation process. Any documentation that helps you clarify if a species was present in the response action area. <b>Remember</b> , just because you don't "see it" doesn't mean that it's not present. Any documentation that helps clarify the impact on the species or habitats. This documentation can consist of emails, ICS forms, decision memorandums, outcome memorandums as listed earlier in the FAQs, IPaC/ERMA reports, <a href="#">Annex 29a</a> , support documentation from the SSC or the Services, or any other piece of documentation that you want preserved in the record.
23.	What can I do if I feel that a topic wasn't addressed in these FAQs, but adding it would make the referenced form easier to use and further clarify the process?	Reach out to the DRAT and/or IMPA. We plan to update these FAQs periodically to fill any gaps that might've been missed. We want to make the process as easy as possible for both seasoned and newly reported field personnel. Our goal is to ensure a consistent, accurate, and repeatable process.
24.	Where else do I document all the work that I put into this consultation process?	Make sure that all the work performed in support of consultation and consultation efforts are reported during semi-annual RRT meetings and documented on the existing D8 Combined MER Consultations spreadsheet; ensure the spreadsheet is submitted to D8 DRAT ( <a href="mailto:Todd.M.Peterson@uscg.mil">Todd.M.Peterson@uscg.mil</a> ) no later than 15 Dec every year for the previous fiscal year that ends on 30 Sep. We're required to document <b>all</b> USCG personnel time and cost associated with " <b>all</b> " consultations – <i>including</i> National Historic Preservation Act (NHPA Section 106). <b>Note:</b> This BE form does <b>not</b> apply to NHPA Section 106 consultation.
25.	How can I better implement this form and these practices?	Review the form often and learn about all the different sections. Review the links and study the BMPs/Conservation Measures provided so that you know what to implement and in what situations to implement it. Review responses to the form from other cases and learn what actions were recommended. Conduct training at the unit and discuss the form. In some cases, you will not get an immediate response from the Services and/or the SSC, and it is in these cases that you will want to be familiar with recommendations so you can act in the most prudent manner until additional guidance is provided.

Ref. No	Questions	Answers
26.	What consultation actions are required if a species that is proposed for listing under ESA is/or may be present in the response action area?	Section 7(a)(4) requires Federal agencies to confer with the Services on any agency action that is likely to jeopardize the continued existence of any species <i>proposed</i> for listing or result in the adverse modification of critical habitat <i>proposed</i> to be designated. A conference may involve informal discussions between the Services, the action agency, and the applicant. Following informal conference, the Services issue a conference report containing recommendations for reducing adverse effects. These recommendations are discretionary, because an agency is not prohibited from jeopardizing the continued existence of a proposed species or from adversely modifying proposed critical habitat. However, as soon as a listing action is finalized, the prohibition against jeopardy or adverse modification applies, <i>regardless</i> of the stage of the action. <a href="https://www.fws.gov/program/endangered-species/what-we-do">https://www.fws.gov/program/endangered-species/what-we-do</a>
27.	What is a Critical Habitat?	Critical habitat (CH) is designed to protect the essential physical and biological features of a landscape and essential areas in the appropriate quantity and spatial arrangement that a species needs to survive and reproduce and ultimately be conserved. Service rules normally exclude developed areas such as buildings, roads, airports, parking lots, piers, and other such facilities. When the Service designates critical habitat for a listed species, that habitat is divided into critical habitat units within each State. Critical Habitat Units are typically labeled with the State acronym and a number; for example, Unit LA-3. <ul style="list-style-type: none"> <li>• All things Critical Habitat: <a href="https://ecos.fws.gov/ecp/report/critical-habitat">https://ecos.fws.gov/ecp/report/critical-habitat</a> (May need to explore this website to find the best way to access which CH Unit is being affected. Thankfully, there is a search engine where you just type in the species name and a link to the final CH rule pops up along with a link to download the GIS shapefile.)</li> <li>• Online Mapper: <a href="https://fws.maps.arcgis.com/home/webmap/viewer.html?webmap=9d8de5e265ad4fe09893cf75b8dbfb77">https://fws.maps.arcgis.com/home/webmap/viewer.html?webmap=9d8de5e265ad4fe09893cf75b8dbfb77</a> (Unfortunately, the CH units are not labeled in the mapper info for each unit.)</li> </ul>
28.	What if I am unsure how to categorize the environment?	Work with your NOAA SSC to get a better description of the environment and use the pre-designated categories to help determine the environment. Feel free to reach out to DRAT/IMPA to help get more information. If still uncertain, make sure and document the BE form appropriately and request more clarification on the characteristics of the environment in question.
29.	What do I do if I only want technical assistance or am unsure if consultation is required?	Work with your NOAA SSC and DRAT/IMPA to help determine the appropriate steps. Before submitting the BE form for technical assistance it is important that you communicate with the Service representative(s) to clarify what you are in need of. This can be a conversation over the phone, possibly with the NOAA SSC or an email with questions that fall in the Services' purview. You can use this form for technical assistance, but you need to make sure that it is clear that you are not conducting informal or formal consultation by checking the box indicated in Section C of the BE form labeled Technical Assistance. The BE form will aid you in what/how you need technical assistance and may not need to be emailed. Do <b>NOT</b> submit a mostly blank BE form with technical assistance checked, and no other communication and expect to receive good feedback. If you are unsure whether consultation is required, check the box for technical assistance and inform the Service representative in the email that you are unsure regarding the necessity of consultation, but wanted to start with the form in case they were required. You can use the same form later simply by including another checked box in Section C, if appropriate.
30.	What do I do if I am unsure what species could be impacted?	Use the tools listed in FAQ #15 and work with your NOAA SSC, DRAT/IMPA to get assistance. You can also reach out to your Service representative for guidance on what species could be present, but in these cases you should either do that prior to sending the form or indicate in the email that you are unsure what species could be present. Sending the BE form without an indicated species should <b>not</b> be done on a regular basis.

Ref. No	Questions	Answers
31.	What is an Administrative Record?	<p>This is a record that is <b>legally required</b> for all consultation activities. It is not the same as the file that you have for your day-to-day cases. It should be specifically labeled “Administrative Record for Consultations” and contain the documents that were used to develop the BE form, the BE form and any documents associated with consultation. These documents <b>must</b> be saved as part of the case and also filed within the unit-specific consultation Administrative Record. The Administrative Record <b>must</b> be a shared folder (versus someone’s personal file). If the USCG were ever questioned about their consultation efforts, e.g., if the USCG were sued, the entire process focuses on what’s in the agency’s Administrative Record (the agency would be required to provide the Administrative Record to the Federal judge; no witnesses are called/involved).</p> <p>You may save all consultation related material within the MISLE case related to a specific response as well, but pulling this data out of MISLE has proven problematic. The unit shared folder allows for simpler access to meet D8 annual consultation reporting and if it were ever required by an outside entity – and it’s required.</p> <p>Although the BE form and these FAQs deal with only ESA/EFH consultations, the Eighth Coast Guard District strongly recommends that <b>all</b> relevant consultation documents – for all consultation types (i.e., with tribal and state historic preservation offices) be placed into the unit-specific Administrative Record. The DRAT/IMPA and District legal staff can assist with any questions/concerns.</p>
32.	What do I do if conducting pre-spill consultation?	<p>This form is now operational for pre-spill consultation as an important component of the overall pre-spill consultation package. Pre-spill consultations are different from emergency consultations because there is not the same urgency to take action. It is important to start developing this form for pre-spill actions at the earliest convenience so that all parties can make informed decisions.</p> <p>For example, a unit/Area Committee that wanted to establish or expand their surface washing agent preauthorization would be required to develop and submit a BE form (and other components) to the Services in advance. At the conclusion of the pre-spill consultation, the Services would issue a Letter of Concurrence via memorandum (if they concurred).</p> <p>Please ensure you work closely with your DRAT/IMPA for <b>any</b> proposed pre-spill consultation; communicate early and often – we’re here to assist.</p>

Ref. No	Questions	Answers
33.	What is the process for getting the BE form signed?	<p>When the USCG FOSC, or designated FOSCR, has determined the form and process complete (pre-spill or emergency response actions), they will take the following steps to ensure adequate review and electronic signature by all relevant Service representative(s):</p> <ol style="list-style-type: none"> <li>1. <b>USCG FOSC</b> or <b>FOSCR</b> will send the completed BE form (signed by the USCG FOSC) as an attachment to an agency-specific email to the USFWS ESA POCs (see Section O of BE form) and NMFS ESA and EFH POCs (use <a href="#">NMFS joint email</a>), as applicable, for review and concurrence.</li> <li>2. The <b>agency POCs</b> for USFWS ESA, NMFS ESA, and NMFS EFH will review the form and make their selections identified in Section Q – entire row, including selecting their name and electronically signing under the “POC” column of the form.</li> <li>3. The <b>agency approving official</b> will review and complete relevant portions of Section Q, including their Concurrence. They will then make their selection from the drop down choices under Consultation Complete, before adding their name and electronically signing the form. <b>Note:</b> There are two rows for USFWS ESA to accommodate a two state response.</li> <li>4. Once each agency has completed their portion of Section Q (all entities have made all their selections within their respective row, including the “POC” segment), they will forward the BE form to the USCG FOSC or FOSCR and copy: <a href="mailto:Michael.K.Sams@uscg.mil">Michael.K.Sams@uscg.mil</a>, <a href="mailto:Brandon.L.Todd@uscg.mil">Brandon.L.Todd@uscg.mil</a> and <a href="mailto:Todd.M.Peterson@uscg.mil">Todd.M.Peterson@uscg.mil</a>. <b>Note:</b> There is no <i>requirement</i> to get all signatures from all the agencies on one BE form. It is acceptable to obtain individually signed forms from the Service representatives (file each of them separately, along with all email correspondence).</li> <li>5. Upon receipt of completed/signed BE form from each applicable Service representative, the USCG FOSCR will file in the unit’s Administrative Record.</li> </ol> <p><b>Note:</b> Please also note the simplified signature process for those instances where the USCG FOSC makes a <b>No Effect determination</b>. In this instance the USCG FOSC signs/files in the unit-specific Administrative Record (<b>the Services do not consult or “concur” on No Effect determinations</b>).</p> <p>We recognize this seems a bit complicated, but it’s the most efficient way to capture all the information necessary – without having to generate one or more agency specific memorandums.</p> <p>Please direct any questions to the DRAT/IMPA.</p>

Ref. No	Questions	Answers
34.	<p>What should I include in the emails to the Service representative(s) when using the BE form?</p>	<p>Example of initial email for <b>each applicable</b> Service (USFWS/NMFS). Please be sure to tailor <b>each</b> email to the individual Service, e.g., IPaC is a USFWS tool – only. Remember to send a tailored email to <b>each</b> applicable Service (USFWS and NMFS) <b>separately</b>:</p> <div style="border: 1px solid black; padding: 10px;"> <p>Subject: Incident Name (date of incident) - Request for Emergency Consultation (ESA and/or EFH with NMFS)</p> <p>Good Day,</p> <p>As the predesignated Federal On-Scene Coordinator or their Representative carrying out Phase II &amp; III emergency response operations per 40 CFR 300.305/310 of the National Contingency Plan (40 CFR 300), and in accordance with the National Response Priorities (40 CFR 300.317), it has been determined that an oil discharge/release occurred or substantial threat exists. For that reason I am requesting Emergency Consultation (ESA Section 7) National Marine Fisheries Service / Essential Fish Habitat per 50 CFR 402.05 and 600.920 as we are/intend to respond to this active oil/chemical discharge/release with proactive steps to assess, prevent, minimize, or mitigate threat(s) to the public health or welfare of the United States or the environment.</p> <p>I am attaching a Biological Evaluation (BE) Form and Annex 29a/IPaC (list of T&amp;E species and designated CH), for your review and initial discussion. We welcome any additional recommendations and/or BMPs to minimize potential impacts to listed species or designated CH. Although this is our initial engagement to initiate emergency consultation, we believe that our Action Agency approved response actions will ultimately result in a determination of “May Affect/Not Likely to Adversely Affect.” Based on your preference communicated via email, we will submit an updated BE Form to you if the information currently contained within this initial BE Form significantly changes as this response may take several days to complete. Once all response actions are complete, we will submit the final BE Form with our effects determination. We will request your concurrence at that time.</p> <p>Sector X is currently working with a local salvage/OSRO company to formulate a response plan, which can best address safety and environmental concerns. Removing the potential of 10,000 gallons of thick viscous black oil in nearly 90 feet of water is hazardous work and in order to ensure the National Response Priority of Safety, every precaution has to be accounted for prior to operations.</p> <p>BMPs have been attached to the 204’s and included on the 202 for critical reporting.</p> <p>Please contact POC for any further clarification or information regarding any of the above. I look forward to your response and/or recommendation(s).</p> </div>

Ref. No	Questions	Answers
35.	<p>When all response actions are complete and we are ready to route the BE form to the Services for concurrence and signature, what should I send?</p>	<p>Example of final email for concurrence from the Services. Remember to send a tailored email to <b>each</b> applicable Service (USFWS and NMFS) <b>separately</b>:</p> <div style="border: 1px solid black; padding: 10px;"> <p>Subject: Incident Name (date of incident – date complete) - Request for Concurrence (NLAA)</p> <p>Good Day,</p> <p>Unit X has completed all response actions in regard to the Oil/Chem Discharge/release federally led response. CAPT X, the USCG predesignated FOSC, has made an effects determination of “May Affect, Not Likely to Adversely Affect”. The completed BE Form (attached Annex 29) is ready for your review, concurrence, and signature to officially complete the ESA/EFH emergency consultation. This completed/signed form and any relevant associated email documents will be filed within our unit’s official consultation administrative record.</p> <p>You will find that during the 15-day response, no species were observed, specifically the Kemp Ridley Sea Turtle (NMFS)/West Indian Manatee (USFWS) for which the FOSC has sought emergency consultation under ESA Section 7.</p> <p>The majority of response work was completed on the RESPONSE OPERATION by personnel with the exception of utilizing two response vessels 29’ and 15’ and a 60’ spud barge. All applicable BMPs were followed with no known negative impacts to listed species.</p> <p>Thank you for your time and assistance!</p> <p>Please contact LT X (copied) or myself for any further clarification or information regarding this matter.</p> </div>
36.	<p>What is the End State GOAL of all this work?</p>	<p>We understand this process is somewhat time consuming and requires a lot of attention to detail, but there is an end goal for all the work being conducted toward D8’s consultation process. At some point in the future, the District and Service representatives will have collected enough data to conduct pre-spill consultation on the majority of oil spill response actions for the areas the Coast Guard operates in (entire D8 coastal zone). This pre-spill consultation will address the typical response actions needed, which will likely fall into a “May Affect, Not Likely to Adversely Affect” determination.</p> <p>After the pre-spill consultation work is completed and this determination is made (perhaps in 2025), the vast majority of IMD responses will be covered under this determination. At that point, emergency consultation will only need to be conducted if the area or response actions are not covered under the pre-spill consultation.</p> <p>Examples of response actions that will likely not be covered are in-situ burn, dispersant use etc. There is a light at the end of the tunnel, but we cannot reach this goal without the data from the field unit responses.</p>