

Unified Plan/Endangered Species Act Compliance Workgroup Charter

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Workgroup Name: Unified Plan/Endangered Species Act Compliance

Workgroup Members:

Marcia Combes, U.S. Environmental Protection Agency (EPA), Chairperson
Mark Everett, U.S. Coast Guard (USCG)
Catherine Berg, U.S. Fish and Wildlife Service (USFWS)
Amy Cox, National Marine Fisheries Service (NMFS)

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Background: In November 2010, the Center for Biological Diversity (CBD) served the Commandant of the Coast Guard and the Administrator of the EPA (the 'Action Agencies') with a 60-Day Notice of Intent to Sue (NOI) under the Endangered Species Act (16 USC 1531 *et seq.* as amended; ESA) for alleged violations of that Act. Specifically, that the *Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases* (the 'Unified Plan') is not in compliance with the ESA requirement for consultation with the USFWS and NMFS (the 'Services') under Section 7.¹

Objective: The responsible Action Agencies' representatives, in consultation with the ARRT, have chartered this workgroup to ensure the Unified Plan complies with ESA consultation requirements.²

Expectations:

Agencies participating in this effort should ensure adequate staff support as necessary to complete the consultation within agreed-upon time frames. Beyond that, the workgroup:

1. Will consist of appropriate representatives of the Action Agencies and the Services.
2. Will develop a process, a plan, and a timeline for bringing the Unified Plan into compliance with the ESA. The process, plan, and timeline must be approved by the ARRT Co-Chairs prior to execution.
3. May involve other resources (e.g., OGA, technical specialists, contractors, etc.) necessary to fulfill the charter. When such outside support involves costs, the Action Agencies will develop and propose a plan for meeting those expenses.
4. May consider other statutory (e.g., NEPA, MMPA, MBTA) and regulatory requirements (e.g., EFH) and conditions and information which may impact the Unified Plan or the workgroup's efforts, but must focus on the primary objective of ESA Section 7 compliance.
5. Action Agencies' representatives will keep their respective agency's legal representatives posted on all relevant progress/developments.
6. Action Agencies' representatives will keep the State of Alaska's representative to the ARRT, or other such representative assigned by the State, apprised of all relevant progress/developments.
7. Will, through the Workgroup Chair, apprise the ARRT Co-Chairs of progress and barriers to progress on a regular basis and as conditions warrant. These updates are to be part of the regular ARRT semi-annual meeting agenda as well as once monthly during the bi-weekly ARRT Co-Chairs teleconferences, at a minimum.
8. Will review and comply with this charter. The Workgroup Chair will seek any required/requested

¹ As required under the National Contingency Plan (40 CFR 300), the Unified Plan is the Area Contingency Plan (ACP) for Alaska and is co-signed by the State of Alaska, the USCG, and the EPA. However, ESA requirements are binding only on the federal agency signatories.

² This workgroup is not an entity of the ARRT *per se*. Rather, because the CBD NOI is addressed to USCG and EPA, this workgroup is a cooperative effort of those two federal action agencies—which happen to be the ARRT Co-Chairs—to comply with the terms of the *Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act* (2001 MOA) with the active support of the Services (the federal resource trustees).

modifications to this charter through the signatories.

Deliverables:

Pursuant to the Objective, the workgroup:

1. Action Agencies' representatives will provide the workgroup with a Biological Assessment (BA) to evaluate the impacts of spill planning and response actions on ESA listed species and critical habitat. This will include an assessment of impacts on Essential Fish Habitat (EFH).
2. Will maintain a record of workgroup proceedings useful by other workgroups similarly tasked.
3. Will provide workgroup meeting summaries/minutes/reports to DOI and DOC representatives of the ARRT.
4. Services' representatives, through their participation on this workgroup, will provide separate Biological Opinions (BO) of the Unified Plan to determine whether that plan is or is not likely to jeopardize the continued existence of an ESA-listed species or destroy or adversely modify designated critical habitat.
5. Will produce and distribute a final report.

Signatories:

For EPA



Chris D. Field
Emergency Management Program Manager
Environmental Protection Agency Region X
Alaska RRT Co-Chair

For USCG



Mark L. Everett
Commander, USCG
Seventeenth Coast Guard District
Alaska RRT Co-Chair

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