National Contingency Plan
Requirements for
Area Contingency Plans

Fish and Wildlife and Sensitive Environments Plan Annexes

May 2014
Important: The National Contingency Plan (40 CFR Parts 9 and 300) is a regulation, not guidance.

§300.210 Three levels of contingency plans
• National (NCP)
• Regional (RCP) – Includes information on useful facilities and resources in the region from government, commercial, academic and other sources, and information on the demarcation between inland and coastal zones
• Area (ACP) – developed by the Area Committee for its designated area and contain provisions to adequately remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge from a vessel, offshore or onshore facility operating in or near the area
Region 6 has:
- Regional Contingency Plan (RCP)
- Inland Area Contingency Plan (ACP) with the RRT functioning as the Area Committee
- 5 Coastal ACPs each with an Area Committee
- MEXUS Plans (Gulf of Mexico and Inland Border Region)

§ 300.210(4)(i) In order to provide for coordinated, immediate and effective protection, rescue and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the NCP and RCP.
• The annex shall be prepared in consultation with the USFWS and NOAA and other interested natural resource management agencies and parties. (States/Tribes??)

• It shall address fish and wildlife resources and their habitat, and **shall include other areas considered sensitive environments** in a separate section of the annex, *based upon Area Committee recommendations*.

• The annex will provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge.
Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge, protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(ii) The annex shall:
(A) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant, or otherwise designated protected areas.
(B) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (e)(4)(iii).
(C) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to: Disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.
(D) **Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (c)(4)(ii)(B) and (C) of this section and subpart J requirements, and must have the concurrence of the natural resource trustees.**

(E) **Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include “set-aside” or “control” areas, where no mitigative actions are taken.**
(F) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations.
(G) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, and release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.
(H) Identify and secure the means for providing, if needed, the minimum required OSHA and EPA training for volunteers, including those who assist with injured wildlife.

(I) Define the requirements for evaluating the compatibility between this annex and non-federal response plans (including those of vessels, facilities, and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.
Identifying Federally-Listed Species and Critical Habitats

Information, Planning, and Conservation System (IPaC)

http://ecos.fws.gov/ipac

Data Layers
- Endangered and Threatened Species and Critical Habitat
- National Wildlife Refuges
- Non-Game Birds of Conservation Concern
- National Wetlands Inventory
- Wetlands Land Ownership
Gypsum wild buckwheat (*Eriogonum gypsophilum*)
Only known from Eddy County, New Mexico
• Current FWSEP dates back to about 2004
• Not currently any species-, habitat-, or location-specific information in the Regional Inland Contingency Plan FWSEP.

How do we include other than Federal lands and Federally-listed species and critical habitats (e.g., park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks, national monuments) in the FWSEP? Examples: State parks, State wildlife management areas, State-listed species, tribal interests of the 66 Federally-recognized Tribes in Region 6, sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); and other ecologically significant or critical areas.

• Suggest using IPaC as a first screening tool for Federal resources and include instructions in the Regional Inland Contingency Plan FWSEP for using the tool
How do we organize to efficiently proceed to the next step, inclusion of State and Tribal sensitive resources and protection strategies? Points of contact, level of detail? Ideas?? Need a leader.