

**Supplemental Environmental Assessment
to the Final Programmatic Environmental Assessment
for Recurring Activities in Arizona, California, and Nevada**

Federal Emergency Management Agency

1. INTRODUCTION

The U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA) administers Federal grant programs to assist with the preparedness, response, recovery, and mitigation for natural and human-caused disasters. To comply with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321–4327), FEMA completed a *Final Programmatic Environmental Assessment for Recurring Activities in Arizona, California, and Nevada* (PEA), for use when an environmental assessment (EA) is the appropriate level of NEPA documentation for actions that would be conducted directly by FEMA, are proposed for funding, or are conducted through a mission-assignment to another Federal agency (FEMA 2014a). FEMA made a Finding of No Significant Impact (FONSI) conclusion on December 10, 2014, on the environmental impacts of the actions described in the PEA (FEMA 2014b).

FEMA has prepared this Supplemental Environmental Assessment (SEA) to provide necessary updates to the PEA. This SEA updates the PEA with the following items:

- References to FEMA's most current NEPA implementing procedures.
- Summaries of complementary compliance related to FEMA Region IX's programmatic consultations under Section 7 of the Endangered Species Act (ESA) and Programmatic Agreements under Section 106 of the National Historic Preservation Act (NHPA).
- A summary of the coordination steps outlined in the Memorandum of Understanding (MOU) among the U.S. Army Corps of Engineers (USACE), FEMA Region IX, the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS) regarding environmental compliance activities and Federal agency responsibilities for FEMA actions on non-tribal lands that occur in waters of the United States or navigable waters of the United States (FEMA 2015a).

The PEA is incorporated into this SEA by reference in accordance with 40 CFR § 1508.28. The PEA and the associated FONSI are available at: <https://www.fema.gov/media-library/assets/documents/99470>. The actions and the environmental consequences described in the PEA remain relevant and sufficiently specific, and it contains adequate information to require no additional evaluation. This SEA does not alter the conclusions or the analysis contained in the PEA.

2. UPDATES TO NEPA PROCEDURES

FEMA's NEPA procedures are described jointly in FEMA Directive 108-1, *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*, and FEMA Instruction 108-1-1, *Instruction on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program Requirements* (FEMA 2018a, 2018b). The FEMA

Directive 108-1 and FEMA Instruction 108-1-1 constitute FEMA's supplemental Environmental and Historic Preservation procedures as authorized by DHS Instruction Manual 023-01-002-01, Revision 01, *Implementation of the National Environmental Policy Act*, issued on November 6, 2014 (DHS 2014). FEMA Directive 108-1 and FEMA Instruction 108-1-1 were issued on August 22, 2016, and re-issued on October 10, 2018, and they replaced FEMA's previous NEPA procedures contained in 44 CFR Part 10. FEMA Directive 108-1 and FEMA Instruction 108-1-1 are available online at: <https://www.fema.gov/media-library/assets/documents/118323>. The DHS Instruction Manual 023-01-002-01, Revision 01 is available online at: https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508compliantversion.pdf.

3. COMPLEMENTARY PROGRAMMATIC CONSULTATIONS

FEMA is committed to expediting and unifying interagency Environmental and Historic Preservation compliance review processes to facilitate its mission and ensure compliance with applicable laws in accordance with Section 429 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by the Sandy Recovery Improvement Act of 2013. FEMA Region IX has executed and is preparing programmatic documents that support its compliance with the ESA and NHPA that function congruently with the PEA. The following is a summary of these documents.

3.1 PROGRAMMATIC CONSULTATIONS WITH USFWS

FEMA has executed and continues to execute programmatic consultations with the USFWS to streamline compliance and consultations under Section 7 of the ESA (16 U.S.C. § 1536) for applicable proposed projects, as follows:

- On April 27, 2016, FEMA received a Tier 1 Programmatic Biological Opinion (PBO) from the USFWS for typical activities taken or funded under FEMA's disaster, mitigation, and preparedness programs in Arizona, California, and Nevada (USFWS 2016).
 - On April 10, 2018, the USFWS in Arizona issued a Tier 2 programmatic letter of concurrence to FEMA covering FEMA programs in the State of Arizona (USFWS 2018a).
- On June 20, 2018, FEMA submitted a programmatic ESA consultation to the USFWS for typical activities taken or funded under FEMA's disaster, mitigation, and preparedness programs in California, which resulted in a programmatic letter of concurrence from the USFWS Arcata and Yreka offices dated September 7, 2018 (FEMA 2018c; USFWS 2018b). The USFWS Sacramento, Ventura, and Carlsbad offices are each preparing PBOs.

The programmatic ESA consultations between FEMA and the USFWS that have already occurred have simplified and expedited the ESA consultation process for FEMA activities, including the actions described in the PEA. The pending PBOs will provide a similar simplification and expedited ESA Section 7 consultation process for FEMA activities for multiple USFWS jurisdictions in California.

3.2 PROGRAMMATIC CONSULTATIONS WITH NMFS

FEMA has executed a programmatic consultation with NMFS under Section 7 of the ESA (16 U.S.C. §1536) and under Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for projects that result from implementation of FEMA's disaster, mitigation, and preparedness programs in California. This programmatic consultation addresses 13 threatened and endangered species and their critical habitats under NMFS jurisdiction, and it includes consultation for Essential Fish Habitat (EFH) designated in four Fisheries Management Plans (FMPs) as required by the MSA. On September 25, 2018, NMFS issued a PBO to FEMA for such projects. The proposed projects must meet the specific criteria and the terms and conditions of the PBO for FEMA to utilize this PBO. These criteria include, but are not limited to, design requirements regarding fish passage, the use of bioengineering in bank stabilization, and requirements for pile-driving methods. For FEMA projects to be covered under this PBO, FEMA submits a completed form to NMFS, and NMFS would respond with a statement regarding the coverage of the proposed project under the PBO, which may include additional measures (NMFS 2018).

3.3 CONSULTATIONS AGREEMENTS WITH SHPO

FEMA has executed Programmatic Agreements with the State Historic Preservation Officers (SHPOs) in the States of Arizona, California, and Nevada that replace and streamline the process of compliance with Section 106 of the NHPA for all of FEMA's grant programs. The Programmatic Agreements establish a coordination and scoping process at the beginning of a disaster, exclude the review of routine activities from SHPO review, and shorten timeframes for review by the SHPO. The Programmatic Agreement among FEMA, the Arizona SHPO, the Arizona Division of Emergency Management, and the Arizona Department of Homeland Security was executed on October 4, 2015, and is scheduled to terminate on October 4, 2020 (FEMA 2015b). The Programmatic Agreement among FEMA, the California SHPO, and the California Governor's Office of Emergency Services was executed on October 30, 2014, and is scheduled to terminate on October 30, 2019 (FEMA 2014c). The Programmatic Agreement among FEMA, the Nevada SHPO, and the Nevada Division of Emergency Management was executed on January 15, 2016, and is scheduled to terminate on January 15, 2023 (FEMA 2016a).

3.4 PROGRAMMATIC AGREEMENTS WITH TRIBES

FEMA has executed a Programmatic Agreement with one Federally-recognized tribe in Region IX. Programmatic Agreements with the tribes are used when the tribes have assumed the responsibilities of the SHPO on their tribal lands; therefore, FEMA consults with the Tribal Historic Preservation Officer (THPO) in lieu of the SHPO for Undertakings occurring on those lands. Similar to the Programmatic Agreements with the States, tribal Programmatic Agreements streamline the Section 106 process and consultation with the THPO. The Programmatic Agreement between FEMA and the Middletown Rancheria of Pomo Indians of California was executed on February 25, 2016, and is scheduled to terminate on February 25, 2021 (FEMA 2016b).

4. MEMORANDUM OF UNDERSTANDING

On February 15, 2015, FEMA, Region IX; the USACE, South Pacific Division; the USFWS, Pacific Southwest Region and Southwest Region; and the NMFS, West Coast Region (Signatory Agencies) executed an MOU regarding compliance with NEPA, ESA, MSA, the Fish and Wildlife Coordination Act (FWCA), and NHPA. The MOU was developed to minimize potential duplication of efforts and possible conflicts between FEMA and the USACE when FEMA proposes to fund a project in California, Nevada, and Arizona and the FEMA grant applicant or subapplicant must obtain a permit from the USACE for the proposed project pursuant to Section 404 of the Clean Water Act (CWA) and/or Section 10 under the Rivers and Harbors Act (RHA) (FEMA 2015a).

The MOU reduces potential duplication of efforts and possible conflicts by:

- Establishing a communication protocol between the Signatory Agencies
- Formalizing their roles and responsibilities
- Assisting in the determination of Lead Federal Agency (LFA) status between FEMA and USACE for compliance with NEPA, ESA, FWCA, and NHPA
- Streamlining each Signatory Agency's environmental regulatory responsibility

Additionally, the MOU establishes annual (or more frequent) communication between the Signatory Agencies to discuss the effectiveness of the implementation and utilization of the MOU, improves information sharing, and allows for improvements to the implementation of the MOU.

Implementation of the MOU for a proposed project involves specific coordination steps between the Signatory Agencies. Each Signatory Agency has responsibilities with defined timeframes to respond to notifications from FEMA or the USACE during the different MOU coordination steps. The steps include an initial notification by FEMA to the Signatory Agencies of a potential FEMA action that would occur in waters of the United States or navigable waters of the United States that are under the jurisdiction of the USACE. The initial notification triggers a defined communication timeline for determining the LFA between FEMA and the USACE; sharing by the Signatory Agencies of any specific concerns about a proposed project or other relevant project-specific information, such as specific ESA avoidance and minimization measures or applicable pertinent programmatic compliance documents; and exercising the ability for a Signatory Agency to opt-out of participation in the MOU for a specific project. The coordination described in the MOU is not required for emergency actions taken by FEMA or the USACE. The MOU is not applicable on tribal lands. A summary for implementing the MOU is included in Appendix A.

5. LIST OF PREPARERS

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6. REFERENCES

- DHS. 2014. *Implementation of the National Environmental Policy Act (NEPA)*. Instruction Manual 023-01-001-01, Revision 01. November 6. https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508compliantversion.pdf.
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- FEMA. 2014c. *Programmatic Agreement among the Federal Emergency Management Agency, the California State Historic Preservation Officer, and the California Governor's Office of Emergency Services*. October.
- FEMA. 2015a. Memorandum of Understanding Among U.S. Department of Homeland Security's Federal Emergency Management Agency, Region IX and U.S. Army Corps of Engineers, South Pacific Division and U.S. Department of the Interior's U.S. Fish and Wildlife Service, Pacific Southwest Region and Southwest Region and U.S. Department of Commerce's National Oceanic and Atmospheric Administration's National Marine Fisheries Service, West Coast Region Regarding National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, National Historic Preservation Act, Rivers and Harbors Act Section 10 permits, and Clean Water Act Section 404 Permits for Federal Emergency Management Agency Projects in California, Nevada, and Arizona. February 10.
- FEMA. 2015b. *Programmatic Agreement among the Federal Emergency Management Agency, the Arizona State Historic Preservation Officer, the Arizona Division of Emergency Management, and the Arizona Department of Homeland Security*. August.
- FEMA. 2016a. *Programmatic Agreement among the Federal Emergency Management Agency, the Nevada State Historic Preservation Officer, and the Nevada Division of Emergency Management*. January.
- FEMA. 2016b. *Programmatic Agreement between the Federal Emergency Management Agency and the Middletown Rancheria of Pomo Indians of California*. February.
- FEMA. 2018a. *Environmental Planning and Historic Preservation Responsibilities and Program Requirements*. FEMA Directive 108-1. October 10. <https://www.fema.gov/media-library/assets/documents/118323>.
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- FEMA. 2018c. *Programmatic Biological Assessment for USFWS: Disaster, Mitigation, and Preparedness Programs in California*. June.

- NMFS. 2018. *Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response and Fish and Wildlife Coordination Act Recommendations for the Disaster, Mitigation, and Preparedness Programs in California*. Memorandum from Barry A. Thorn, Regional Administrator, National Marine Fisheries Service to Alessandro Amaglio, Environmental Officer, Federal Emergency Management Agency, Region IX. September 25.
- Section 429 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, as amended by the Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-2. <https://www.fema.gov/sandy-recovery-improvement-act-2013>.
- USFWS. 2016. *Tier 1 Programmatic Biological Opinion (PBO) for FEMA's Disaster, Mitigation, and Preparedness Programs in Arizona, California, and Nevada*. Memorandum from Michelle Shaughnessy, Assistant Regional Director, U.S. Fish and Wildlife Service – Southwest Region 2 to Alessandro Amaglio, Regional Environmental Officer, Federal Emergency Management Agency. April 27.
- USFWS. 2018a. Arizona Ecological Services Office. Tier 2 Letter of Concurrence for FEMA's Disaster, Mitigation, and Preparedness Programs in Arizona from Brenda H. Smith, Acting Field Supervisor, Arizona Ecological Services to Alessandro Amaglio, Regional Environmental Officer, Federal Emergency Management Agency. April 10.
- USFWS. 2018b. Arcata Fish and Wildlife Office. *Informal Consultation on the Federal Emergency Management Agency's (FEMA) Programmatic Biological Assessment for Disaster, Mitigation, and Preparedness Programs in California for Four Species within the Jurisdictions of the Arcata and Yreka Fish and Wildlife Offices, California*. Memorandum from Dan Everson, Field Supervisor, Arcata Fish and Wildlife Office and Gina Glenne, Acting Field Supervisor, Yreka Fish and Wildlife Office. September 7.

Appendix A
FEMA/USACE MOU SUMMARY



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Region IX



US Army Corps of Engineers

U.S. Department of Defense
U.S. Army Corps of Engineers
South Pacific Division

Memorandum of Understanding (MOU) among the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS)—executed in 2015

FACT SHEET: October 2018

As part of its disaster recovery and mitigation efforts, FEMA often funds activities in California, Nevada, and Arizona that require a permit from the USACE under Section 404 of the Clean Water Act and/or Section 10 under the Rivers and Harbors Act. Both agencies must ensure that appropriate compliance has occurred under NEPA, Section 106 of the NHPA, Section 7 of ESA, Section 305(b) of the MSFCMA, and the FWCA¹ before taking their independent federal actions (funding or authorization of a permit). The MOU documents the roles and responsibilities of the Signatory Agencies (i.e., FEMA, USACE, USFWS, NMFS) for Applicable Projects as they relate to NEPA, NHPA, ESA, MSFCMA, and FWCA to provide for increased efficiency, coordinated environmental review, and expedited decision-making. The purpose of this MOU is to foster agreement among the Signatory Agencies, and to facilitate coordinated compliance with applicable environmental laws for Applicable Projects.

Applicability—The MOU applies to any FEMA action on non-tribal lands that occurs in Waters of the United States under the jurisdiction of the USACE pursuant to Section 404 of the CWA or Navigable Waters of the United States under the jurisdiction of the USACE pursuant to Section 10 of the RHA².

Communication Protocol—the MOU established key points in FEMA's grant obligation process when the Signatory Agencies/LFA are **required** to communicate and coordinate with the other Signatory Agencies: Disaster declaration, Initiation of FEMA's EHP compliance, substantial scope of work change, and Conclusion of EHP compliance by the LFA.

Benefits of the MOU—the MOU provides the following benefits to the Signatory Agencies:

Flexibility to use existing compliance mechanisms, if available (e.g. Programmatic Biological Opinion);
Early opportunity for Signatory Agencies to provide input to ESA/MSCA compliance for a project;
Signatory Agency may opt out of the MOU for a specific project; and
Continual improvements through annual meetings between the Signatory Agencies to coordinate, discuss, and improve the process of implementing the MOU.

¹ NEPA: National Environmental Policy Act; NHPA: National Historic Preservation Act; ESA: Endangered Species Act; MSFCMA: Magnuson-Stevens Fishery Conservation and Management Act; FWCA: Fish and Wildlife Coordination Act

² CWA: Clean Water Act; RHA: Rivers and Harbors Act



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Region IX



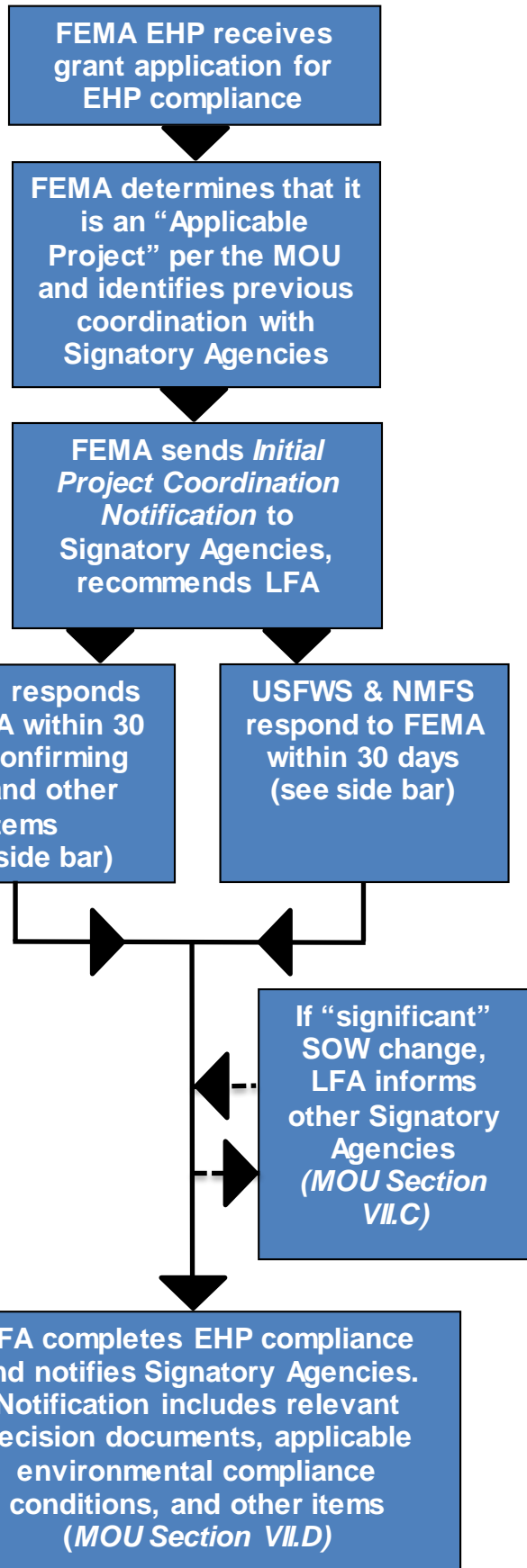
US Army Corps of Engineers

U.S Department of Defense
U.S. Army Corps of Engineers
South Pacific Division

Each Signatory Agency has responsibilities (with defined timeframes) to respond to notification from FEMA or the USACE during the different MOU coordination steps. These responsibilities are summarized below in Table 1 and shown in the attached flow chart. Note that coordination described in the MOU is not required for emergency actions. Responses from the Signatory Agencies to the Initial Project Notification or notification of substantial scope of work change are critical to efficiently define and streamline the EHP compliance process and ensure all Signatory Agencies engage with applicants/permittees in a unified federal voice. Initial Project Notifications and responses do not replace formal consultation but provide early engagement to streamline the overall compliance process.

Table 1. MOU Coordination Steps, Roles, and Responsibilities

	FEMA	USACE	USFWS	NMFS
Initial Disaster Coordination (MOU Section VII.A)	Initiates meeting	Required to participate	Required to participate	Required to participate
Initial Project Coordination Notice from FEMA (MOU Section VII.B)	Initiates and sends to notify Signatory Agencies	Respond with information within 30 days	Respond with information within 30 days	Respond with information within 30 days
Scope of Work Change (MOU Section VII.C)	Notifies Signatory Agencies if Grant Applicant submits substantial scope change to FEMA; informs Applicant to cease any activities that may affect the environment or historic properties until LFA completes its review of the project <i>or</i> Responds to USACE notice with information within 30 days	Notifies Signatory Agencies Permit Applicant submits substantial scope to USACE informs applicant to cease any activities that may affect the environment or historic properties until LFA completes its review of the project <i>or</i> Responds to FEMA notice with information within 30 days	Respond with information within 30 days	Respond information within 30 days
Final Project Coordination (MOU Section VII.D)	If LFA, notifies Signatory Agencies of EHP review completion with 2 weeks of completion.	If LFA, notifies Signatory Agencies of EHP review completion with 2 weeks of completion.	NA	NA
Annual Coordination (MOU Section VII.E)	Requests updated contact list from Signatory Agencies and offers to host meeting to discuss implementation of the MOU.	Required to respond to FEMA	Required to respond to FEMA	Required to respond to FEMA



Signatory Agency Coordination at Project Level (Summary)

Signatory Agency responses to FEMA's Initial Project Coordination Notification should include the following:

From USACE:

- Provide confirmation or disagreement of FEMA's LFA recommendation
- Confirm applicable permit-type and applicable NEPA documentation for the permit
- Provide notice of desire to opt out of the MOU for a specific project
- Provide information that USACE may have about the project, or provide information in accordance with a process established in a PBO, if applicable
- Provide information about existing agreements in place that may be pertinent for the project
- Provide a list of avoidance and minimization measures that should be considered for the project
- Provide, if appropriate, compensatory mitigation (e.g., type of mitigation, availability of banks) that may be pertinent
- Identify project-specific issues or concerns
- Provide a statement requesting or declining a project-specific meeting to discuss concerns in more detail
- Request to be notified of completion of environmental review, if applicable
- Request for additional info or extended review time

From USFWS and NMFS:

- Provide confirmation or disagreement of FEMA's LFA recommendation
- Provide notice of desire to opt out of the MOU for a specific project
- Provide information about the project or available information in accordance with a process established in a PBO, if applicable
- Provide information about existing agreements in place that may be pertinent for the project
- Provide a list of avoidance and minimization measures that should be considered for the project
- Provide, if appropriate, information regarding compensatory mitigation (e.g., type of mitigation, availability of banks) that may be pertinent for the project
- Identify project-specific issues or concerns
- Provide a statement requesting or declining a project-specific meeting to discuss concerns in more detail
- Request to be notified of completion of environmental review, if applicable
- Request for additional info or extended review time