



### Basic Information

SOP Title:	<b>Environmental Emergency Procedures</b>	Date	11/27/2023
Preparer:	Wendy Terlizzi	Preparer's Title	Environmental Manager
Short Description of Procedure:	Environmental procedures for state and federally funded emergency infrastructure repairs		

### Related Document Links

Title of Document	Location
Defining and Managing Emergency Relief Repair Activities Eligible for 100 Percent Federal Funding (Revised)	<a href="https://www.fhwa.dot.gov/specialfunding/er/220307.cfm">https://www.fhwa.dot.gov/specialfunding/er/220307.cfm</a>
Emergency Relief Manual Section 7 MOA	<a href="#">Emergency Relief Manual May 31, 2013 (dot.gov)</a>
Emergency Repair email template	

### Procedure

For purposes of Emergency Projects, Idaho Transportation Department (ITD) uses the “emergency repairs” (ER) definition per 23 CFR 668.103: “[t]hose repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of: (1) [m]inimizing the extent of the damage, (2) [p]rotecting remaining facilities, or (3) [r]estoring essential traffic.” The term “[e]mergency repairs” is also defined for the ERFO program under 23 CFR 668.203.

Prior to the enactment of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the “Bipartisan Infrastructure Law”), emergency repairs, when accomplished within the first 180 days of an emergency event, were eligible for 100 percent Federal funding. Section 11107 of the IIJA amended the Federal Share provision in 23 U.S.C. 120(e)(1). Pursuant to the revised statutory language, emergency repairs, when accomplished within the first 270 days of an emergency event, are now eligible for 100 percent Federal funding.

To qualify for 100-percent Federal share as an emergency repair on Federal-aid highways<sup>1</sup>, the repair must meet the following two conditions:

1. Emergency repairs must meet any one of the following three criteria in accordance with the definition in 23 U.S.C. 120(e) (and codified in 23 CFR 668.103):
  - Minimizing the extent of the damage;
  - Protecting remaining facilities; or
  - Restoring essential traffic.

These three criteria are not examples, but rather are eligibility conditions under 23 U.S.C. 120(e) that are demonstrated and documented as part of an ER application under 23 CFR 668.111, 668.113(a) and 668.213(b).

2. Emergency work was accomplished within the first 270 days following the event or within the allowable time extension due to the inability to access a site to evaluate damages and repair costs (23 U.S.C. 120(e)(1)-(3)).

*Note: Federal emergency repair funding is only available if the following criteria are met: The Governor makes an emergency or disaster declaration and the event generally must have caused at least \$700,000 (Federal share) in eligible damage.*

*ITD must submit an application that includes a comprehensive list of all eligible project sites and repair costs no later than 2 years after the natural disaster or catastrophic failure. Any project sites that are not identified in this application will not be eligible for ER funding.*

## Emergency Repair Environmental Process:

### Step 1a: Report the Event

Notification must occur within 24 hours regardless of funding source.

**Use the “*Emergency Repair email template*” to contact the following agencies:** ITD Headquarters Environmental inboxes (NEPA and Cultural), Idaho Department of Environmental Quality (IDEQ), Idaho Department of Lands (IDL); Idaho Department of Water Resources (IDWR), Idaho State Historic Preservation Office (SHPO), National Marine Fisheries Service (NMFS)<sup>2</sup>, U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Services (USFWS)<sup>2</sup>, and any pertinent land agencies (U.S. Forest Service [USFS], Bureau of Land Management [BLM]). If emergency work is on a Reservation, notify the Tribe.

Photos – Assemble available photos: If possible, take photographs to document site conditions before, during, and after an event.

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<sup>1</sup> Federal-aid highways eligible for ER funding are defined as public roads that are classified as arterial, urban collectors and major rural collectors. Highways that are classified as minor rural collectors or local roads are not eligible for ER funding even if other Federal-aid funds have been used on those roads. (<https://www.fhwa.dot.gov/reports/erm/er.pdf>). To determine Idaho roadway classification please see Idaho's Statewide Systems Map ([arcgis.com](http://arcgis.com))

<sup>2</sup> Consultation with NMFS and USFWS begins when sending the email reporting the event. The project must be completed to finalize the consultation.

Field Notes – Record events and observations as they occur, including the location, time, type of emergency, species and habitat per IPaC and NOAA resources, potential impacts as a result of the repair, who is on site, when the event occurred (was it 1 day, 2 days ago?). Assemble notes from on-site personnel if available.

If permits are needed, then follow up with a phone call to the respective agency.

### **Step 1b: 401 and 404 Emergency Permitting**

The District/Local Agency Environmental Planner shall work with the USACE transportation liaison to obtain the pertinent permit if the emergency project involves in-water work and the 401 certifications from IDEQ

### **Step 1c: Other Water Related Permitting**

- IDL
- IDWR
- U.S. Coast Guard

### **Step 1d: Tribal**

- **Cultural Resources:** HQ Cultural Resources staff will work with SHPO, THPO and Tribes.
- **Water Quality:** District/LHTAC will contact Tribal Watershed Managers when project is on tribal lands or area of interest.

## **Tasks to Complete after Event Occurrence**

**Step 2: Biological** - Emergency consultation is an expedited consultation process that considers impacts to Endangered Species Act (ESA) listed species and/or designated critical habitats, it is not an exemption from the ESA nor is it an “after-the-fact” consultation. Once all the project actions are completed, there is a 30-day timeline to submit the closeout document (Biological Assessment [BA] or Programmatic Biological Assessment [PBA])

- Evaluate impacts to listed species or designated critical habitat per ESA Section 7 or Section 10 regardless of funding source.
- Determine whether the project requires a BA or it can be covered under the PBA.

BA: The District/Local Agency Environmental Planner (with the assistance of consultants, if warranted) will prepare a BA for submittal to the Services (USFWS and/or NMFS). Refer to the ITD Section 7 MOA for details on process.

PBA: If the emergency project action falls under the PBA, the PBA Emergency Consultation form (ITD-0291) will be completed. Refer to the ITD Section 7 MOA for details on process.

### **Step 3: Cultural Resources**

Funding source and resources present will determine the compliance process (if required) that will need to be followed. This step will be completed by HQ Cultural Resources staff.

**Step 4: Other Environmental** – Other applicable environmental permitting need to be complied with as applicable.

- Tribal Lands: CGP NOI through the U.S. EPA is required for projects of an acre or more.
- Non-Tribal Lands: CGP NOI through IDEQ is required for projects of an acre or more.

## Step 5a: NEPA

**Federal Nexus Projects:** Complete the ITD-654 for Categorical Exclusion (CE) determination and submit to [NEPA@itd.idaho.gov](mailto:NEPA@itd.idaho.gov)

- *If federal funds and a USACE permit are anticipated, then FHWA is lead agency. ITD/local agency develops document and FHWA or ITD approves the environmental document.*
- *If state funds and a USACE permit are anticipated, then USACE is lead agency. ITD/local agency complete ESA Section 7 and NHPA Section 106 and provides documentation to the USACE for NEPA compliance.*

**Step 5b:** Project is officially closed when USFWS and/or NMFS provide acceptance on the BA or PBA submitted.