Science, Service, Stewardship

ESA Overview

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Endangered Species Act Purposes and Policy

- Purposes – "…to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved"
- Policy – "…all Federal departments and agencies shall conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."

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ESA programs

- Listing and Designating Critical Habitat (Section 4)
- Recovery (Section 4)
- Cooperation with States (Section 6)
- Interagency Cooperation (Section 7)
- International Cooperation (Section 8)
- Enforcement of the ESA (Section 9)
- Permits & Habitat Conservation Plans (Section 10)

http://www.nmfs.noaa.gov/pr/programs.htm

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NMFS and the ESA

- Responsible for 74 **domestic** marine and anadromous species and **20 foreign** species
  - — 29 marine mammals
  - — 16 marine turtles
  - — 44 marine and anadromous fish
  - — 4 marine invertebrates
  - — 1 marine plant
- Of this number,
  46 are threatened and
  48 are endangered

http://www.nmfs.noaa.gov/pr/species/

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Proposed, candidates, species of concern

- 75 species are proposed for listing under the ESA
- 16 species are candidate species
- 37 species are species of concern
- The Caribbean monk seal was declared extinct and delisted

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Listing process

- Petition or self-initiation
- 90-day finding
- Status review
- 12-month finding
- Final determination
- Critical habitat designation

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Petition or self-initiation

- If a petition was received, review petition to determine whether it contains substantial information indicating that the petitioned action may be warranted.
- If self-initiated, begin a review of the status of the species.
- Statutory deadlines apply when we are petitioned to list a species under the ESA.

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Definitions of species, E, and T

- “Species” includes subspecies and distinct population segments of vertebrate species that interbreed when they are mature
- Endangered species = any species in danger of extinction throughout all or a significant portion of its range;
- Threatened species = any species likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

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90-day finding

- If the petition presents substantial information indicating that the petitioned action may be warranted, publish a 90-day finding initiating a status review.
- If not warranted, publish a 90-day finding denying the petition.
- 90-day findings must be made, to the maximum extent practicable, within 90 days from receipt of a petition.

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Determination of Status

- Agencies must determine whether any species is endangered or threatened because of any of the following factors:
  - The present or threatened destruction, modification, or curtailment of its habitat or range;
  - Overutilization for commercial, recreational, scientific, or educational purposes;
  - Disease or predation;
  - The inadequacy of existing regulatory mechanisms; or
  - Other natural or manmade factors affecting its continued existence.
- No quantitative definition; based on the best available scientific and commercial information

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12-month finding

- Within 12 months of receipt of a petition to list, delist, or reclassify a species, we must make one of the following findings:
  - The petitioned action is not warranted, in which case we promptly publish the finding in the *Federal* Register and notify the petitioner;
  - The petitioned action is warranted, in which case we promptly publish a proposed regulation in the *Federal Register* to implement the action
  - The petitioned action is warranted, but precluded because of other pending proposals to list, delist, or reclassify species.

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Final determination

- Within one year of publication of proposed rule, must publish:
  - A final rule to implement such determination;
  - A finding that such revision should not be made;
  - A notice withdrawing the proposed rule; or
  - A notice extending such 1-year period by 6 months (maximum) because there is substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

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Section 9 take prohibitions

When a species is listed as endangered, it is illegal for any person subject to the jurisdiction of the United States to:

- Import it into or export it out of the U.S.;
- Take the species within the U.S., the territorial sea of the U.S., or upon the high seas;
- Possess, sell, deliver, carry, transport, or ship the species in interstate or foreign commerce
- Sell or offer the species for sale

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Section 4(d): Protective regulations

- If a species is listed as T, Secretary shall issue regulations to provide for the conservation of the species
- NMFS must adopt a special rule with each listing to offer these same protections – not automatic

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Recovery

- Goal of ESA is to recover species so that they are no longer at risk of extinction
- To do this, NMFS develops and implements Recovery Plans, conducts interagency consultations, and coordinates and provides grants to states
- NMFS has 37 completed recovery plans and 14 plans under development (including Pacific salmon)
  - Marine turtles may have separate plans for each ocean basin.

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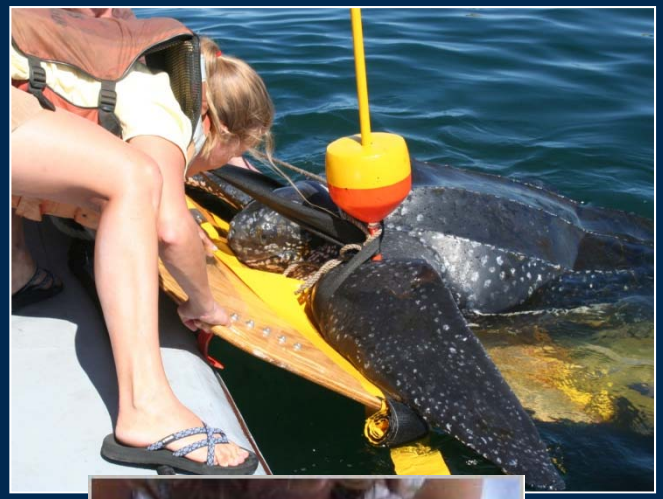
Cooperation with States (Section 6)



- Conservation partnerships between NMFS and States can be formalized by entering into agreements pursuant to section 6 of the ESA

- Grant funding supports recovery through management, research, monitoring, and outreach activities, or any combination thereof

http://www.nmfs.noaa.gov/pr/conservation/section6.htm

Program History

- First received dedicated funding in FY03
- Funding level from FY03-FY09 at ~$980K
- Rate of new state agreements: 1- 2 per year

Then, in FY 2010….

- Funding increased to $15.6M
- Eight new agreements established
- Tribal grant program initiated ($1M)

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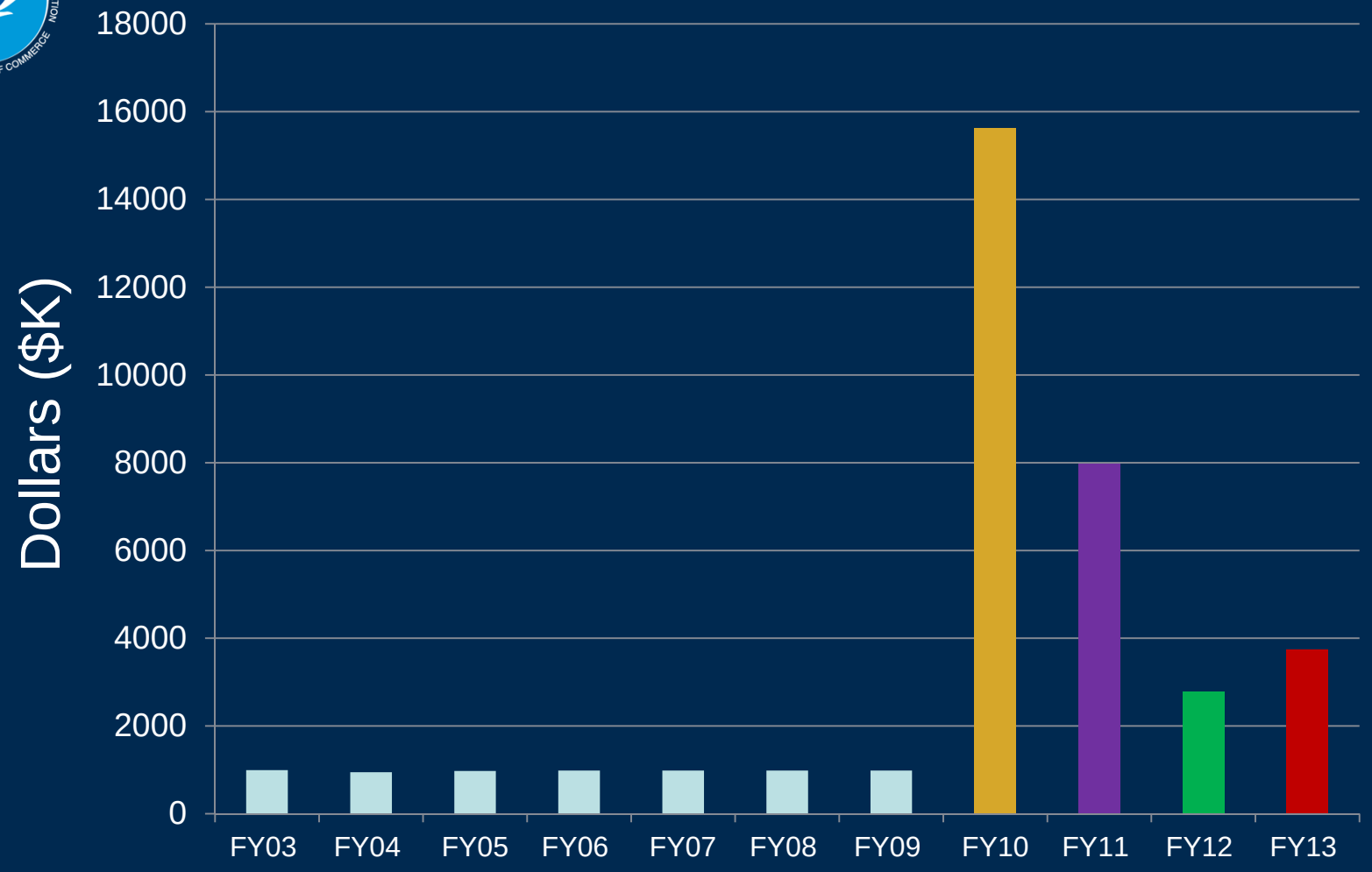
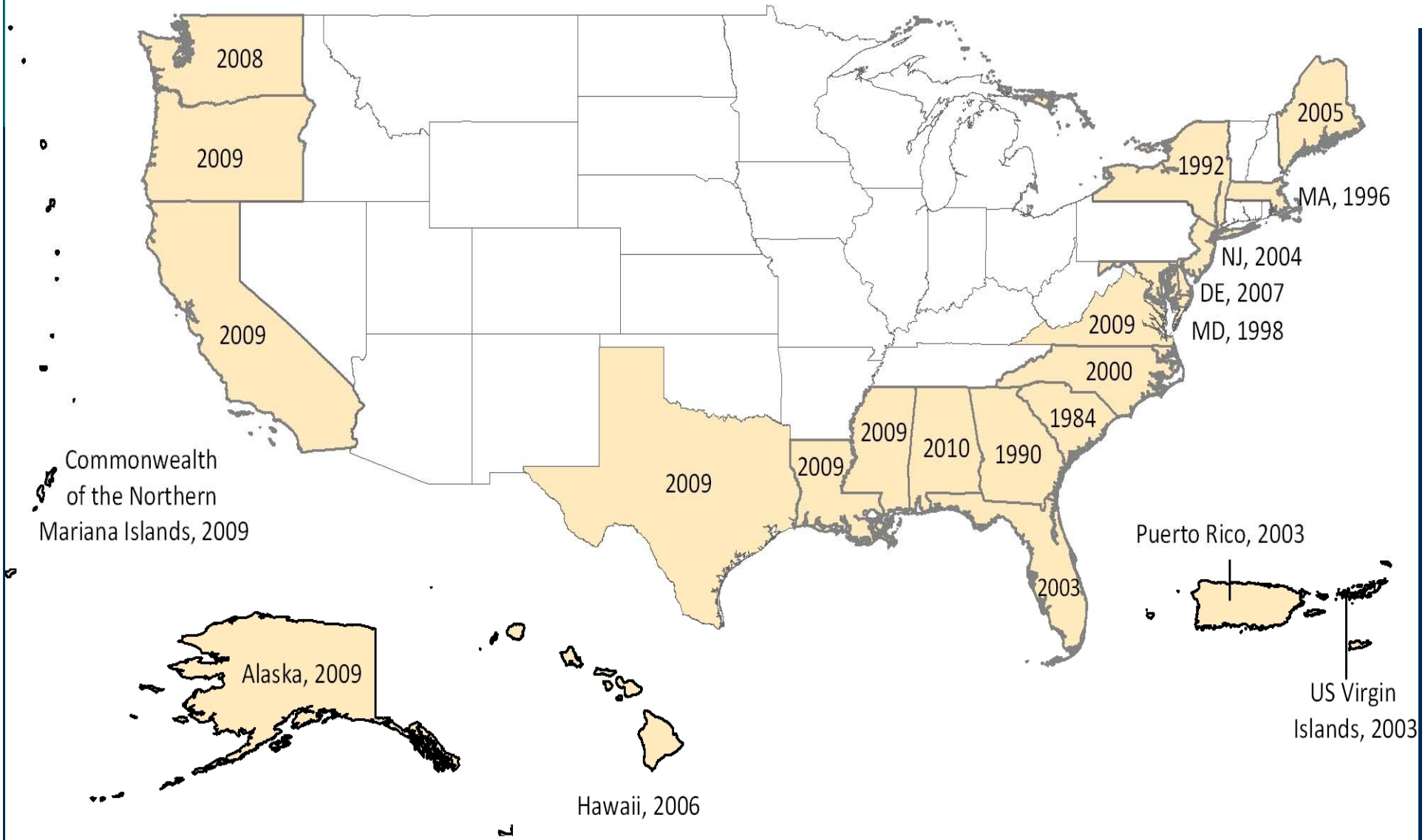
Funding History

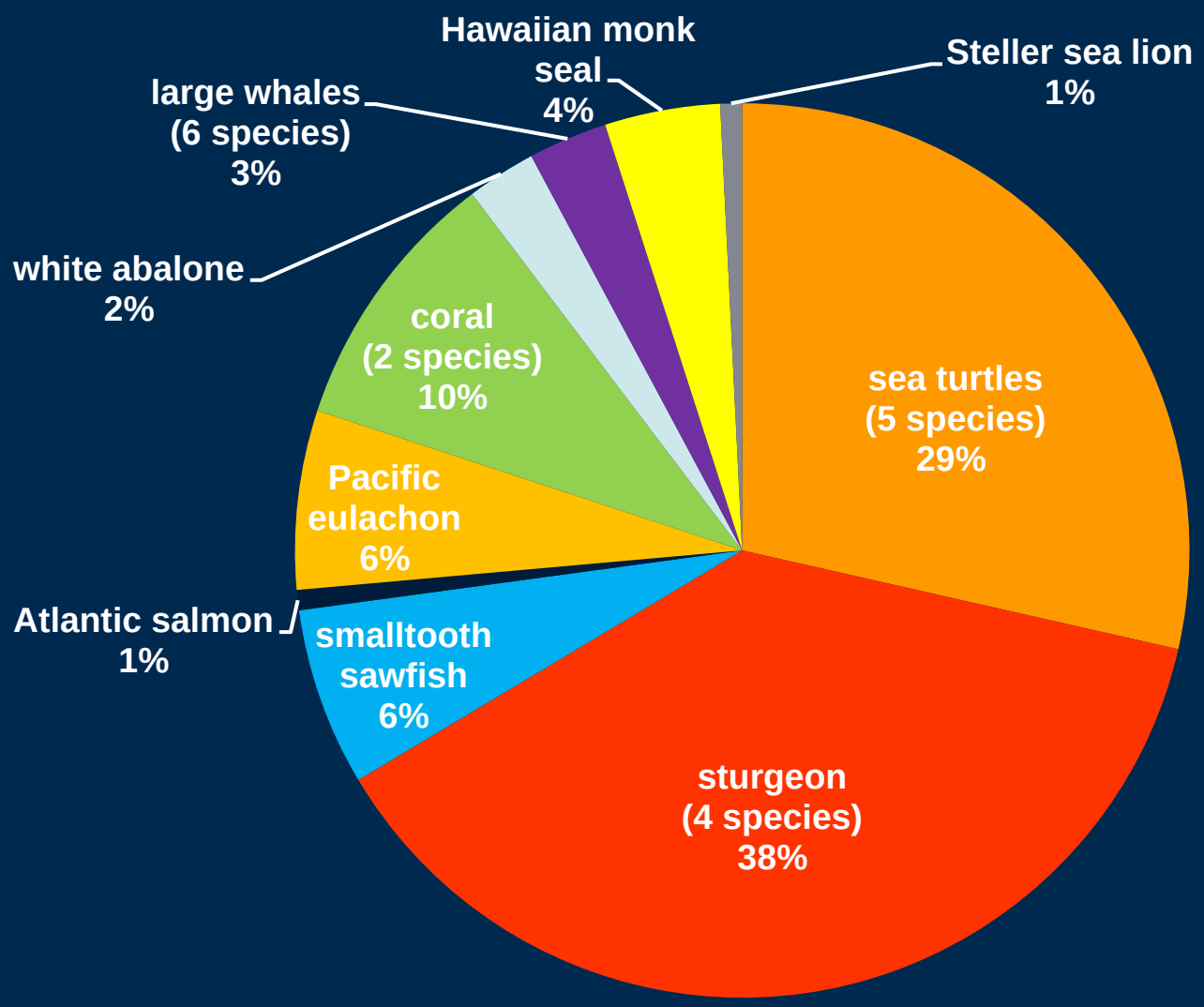


Section 6 States



Federal Funding by Taxa

(FY03-12)



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Interagency Cooperation (50 CFR Part 402)

- Federal agencies shall utilize their authorities to further the purposes of the ESA (i.e., recover species to a point where they no longer warrant listing) by carrying out programs to recover species (sec.7(a)(1))
- Consult to insure that any action authorized, funded, or carried out by such agency "is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification" of designated critical habitat ... (sec.7(a)(2))
- Requires the use of the best scientific and commercial data available

http://www.nmfs.noaa.gov/pr/laws/esa/policies.htm

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Jeopardy and Adverse Modification

- "Jeopardy" – an action that would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species

- "Destruction or Adverse Modification" – a direct or indirect alteration that appreciably diminishes the conservation value of critical habitat for a species

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Informal Consultation

- Optional process: includes discussions and correspondence between the Action Agencies and the Services to determine if formal consultation is necessary
- Often used to identify modifications to the action that would avoid adverse effects to listed species or critical habitat

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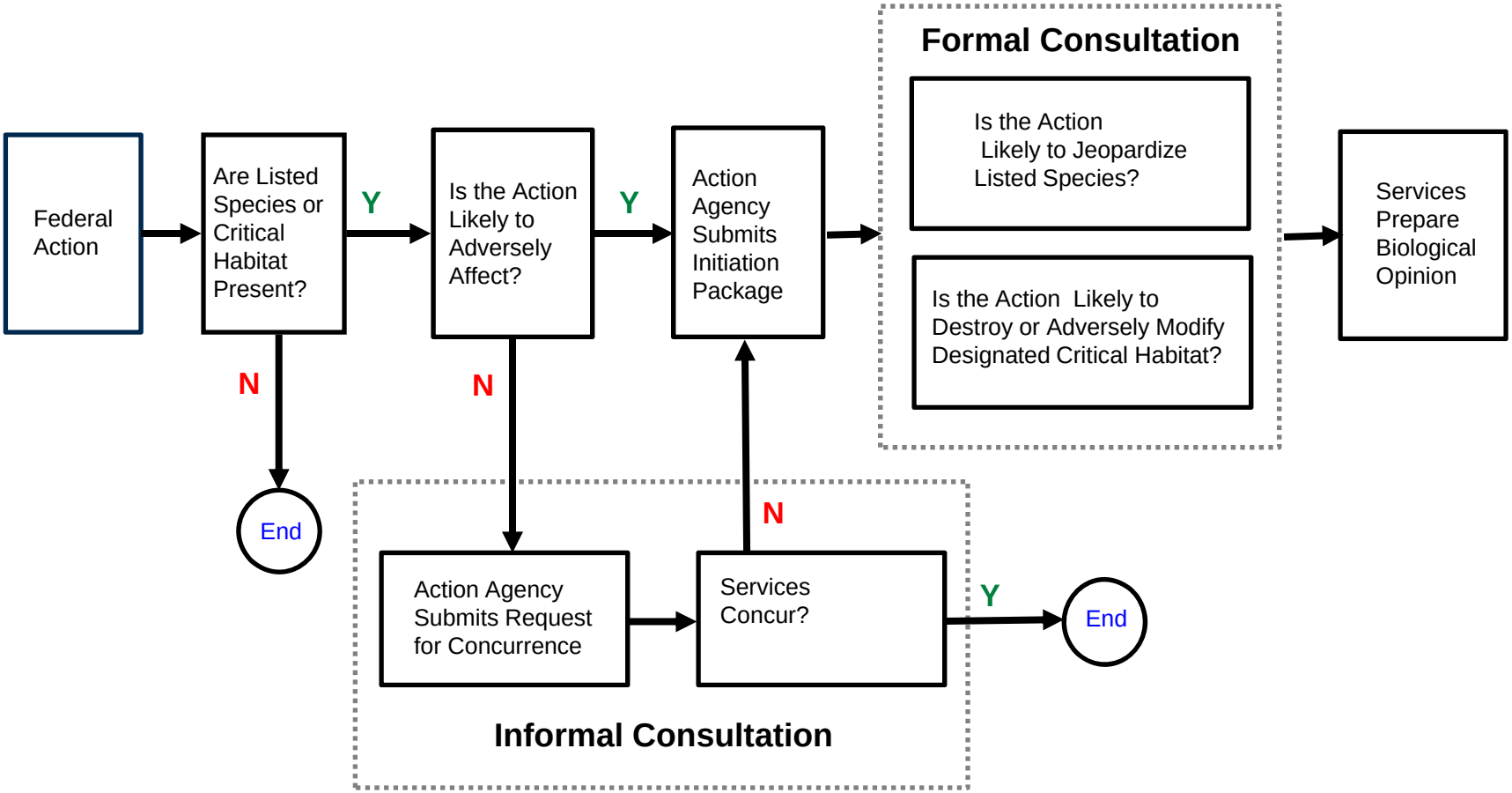
Formal Consultation

- During formal consultation, the Services help action agencies insure that an Action:
  - Is not likely to jeopardize the continued existence of threatened or endangered species
  - Is not likely to result in the destruction or adverse modification of critical habitat

Fishery Management Actions and Section 7(a)(2)

Action	NMFS' approval and implementation of the FMP, FMP amendment (framework adjustments, individual fishing quotas, experimental fisheries), regulations, TAC, and others
Action Agency	NMFS Sustainable Fisheries
Consulting Agency	NMFS Protected Resources
Outcome	"Biological Opinion" or "Concurrence Letter" that contains an assessment of the impacts of the action on threatened and endangered species

The Consultation Process



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Duration of Consultation

- Formal consultation can last 135 days (once initiated) unless extended by mutual agreement
  - Concludes within 90 days after initiation
  - Services deliver biological opinion within 45 days after consultation concludes
- Technical Assistance Period and Informal Consultation varies by action
  - Not defined by statute or regulation

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Example of a Deconstructed Fishery Action

Western Pacific Pelagic FMP

Management Measures

American Samoa-based Fisheries	Guam-based Fisheries	CNMI-based Fisheries	PRIA-based Fisheries	Hawaii-based Fisheries
Longline	Charter	Charter	Troll	Troll
Troll	Troll	Troll	Handline	Longline
				Handline
				Pole and Line

Deep-set

Shallow-set

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Risk Characterization

- Identify probable changes in an individual's fitness
- Translate risk to population that results in changes to:
  - Abundance
  - Population trend
  - Population structure
  - Live births per female
  - Fragmentation
  - Age composition
- Translate probable changes in population attributes to the species level

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Incidental Take Statements & Conservation Recommendations

- Incidental take statements (ITS) specify the amount or the extent of incidental take & the reasonable and prudent measures (RPMs) that minimize impact of the take on listed species.
  - Set forth terms and conditions (including reporting requirements) to implement the RPMs
  - Complying with the terms and conditions of an ITS exempts the Federal agency from the take prohibitions
- Conservation Recommendations are recommendations for using authority to help conserve endangered and threatened species or species of concern

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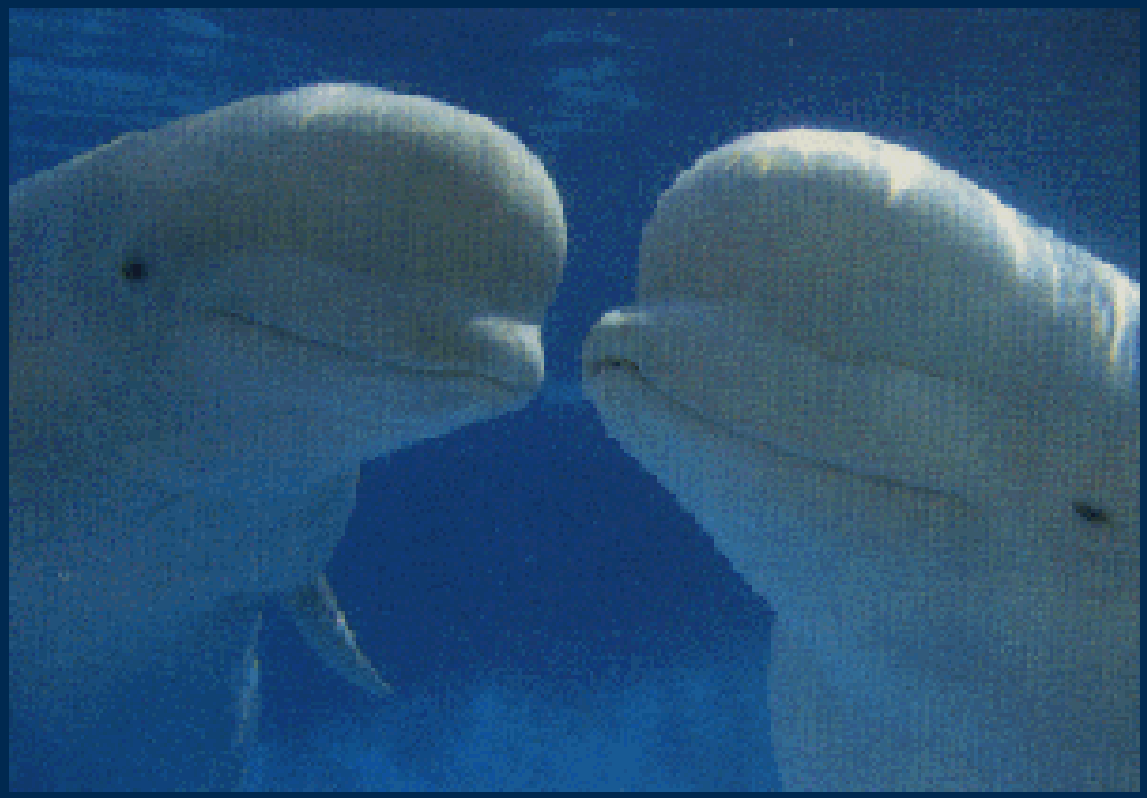
Post-Opinion Requirements

When the Services issue a jeopardy or adverse modification biological opinion, Action Agencies have the following options:

- Implement one of the reasonable and prudent alternatives (RPAs)
- Disagree with the biological opinion and proceed with the proposed action (but this risks legal exposure)
- Apply to the Secretary of Interior for an exemption
- Decide not to undertake the action
- Initiate consultation on a modified action

Questions?