

# **The Endangered Species Act and Our Nation's Fisheries**

Office of Protected Resources  
NOAA Fisheries Service



# The Endangered Species Act

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- Sec. 2**      **Purpose & Policy**
- Sec. 3      Definitions
- Sec. 4**      **Listing, Recovery, and Monitoring**
- Sec. 5      Land Acquisition
- Sec. 6      Cooperation with the States
- Sec. 7**      **Interagency Cooperation**
- Sec. 8      Convention Implementation [CITES]
- Sec. 9      Prohibited Acts
- Sec. 10     Exceptions
- Sec. 11     Penalties and Enforcement

# The Purposes and Policy

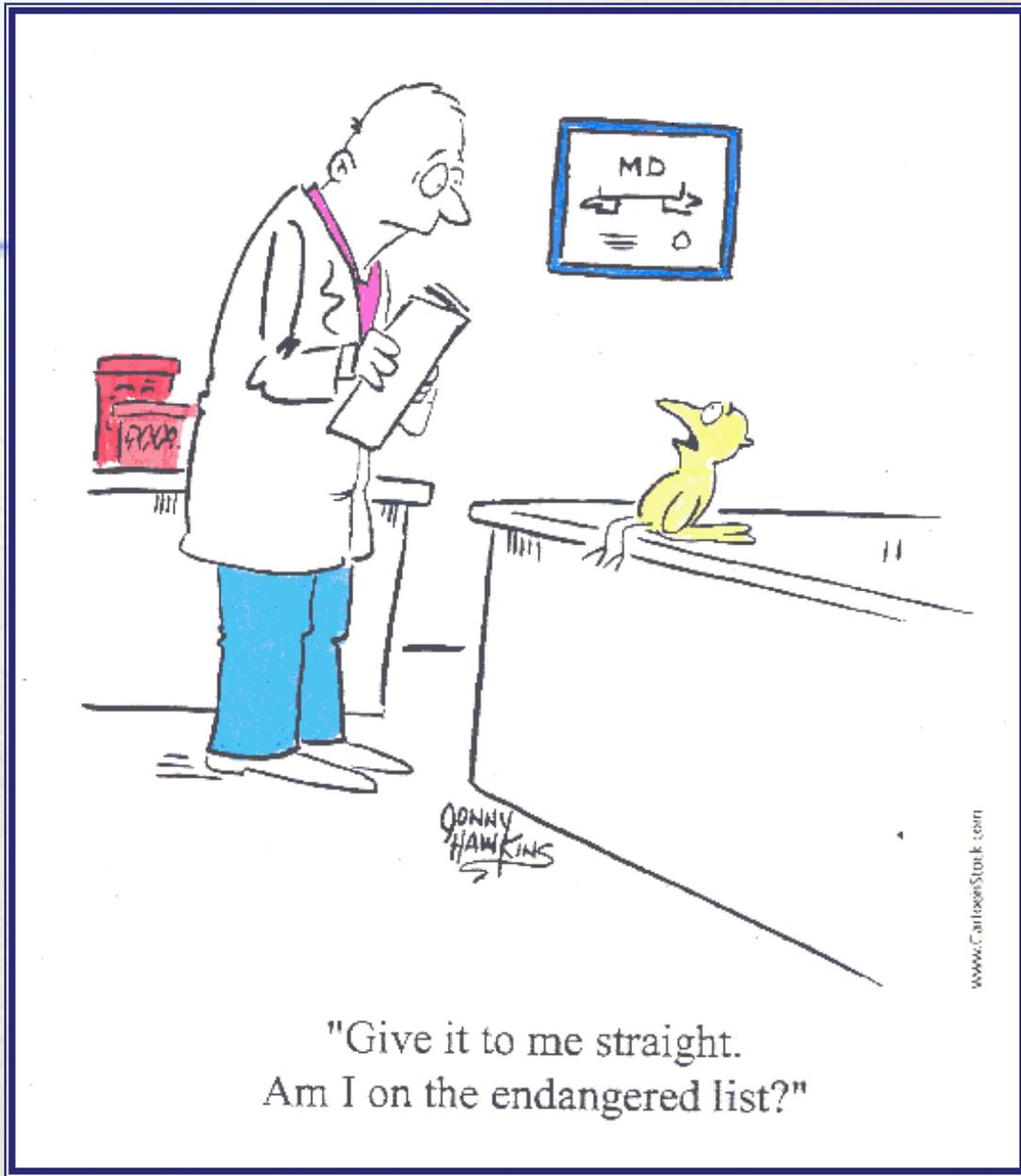
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- Purposes-...to provide a means whereby the **ecosystems** upon which endangered species and threatened species depend may be **conserved**
- Policy-...**all** Federal departments and agencies shall **seek to conserve** endangered species and threatened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

# Listing, Critical Habitat, & Recovery Plans

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- ESA only protects “listed” species
- Listing involves about 15 month review
  - Process begins with petition to list or is self initiated
  - 90- day finding that the action may be warranted
  - Status review
  - 12-month finding
  - Final determination
- Emergency listings



"Give it to me straight.  
Am I on the endangered list?"

# Listing, Critical Habitat, & Recovery Plans

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- Critical Habitat
  - Specific areas **within** the geographical area occupied by the species at the time of listing, that contain the **physical or biological features essential to conservation**, and may require special management considerations or protection
  - Specific areas **outside** the geographical area occupied by the species **if the agency determines that the area** itself is essential for conservation

# Listing, Critical Habitat, & Recovery Plans

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- Recovery Plans
  - Describe site-specific management actions necessary to achieve conservation and survival
  - Identifies objective, measurable criteria, that when met, would result in the species “delisting”
  - Estimates the time and cost to carry out the measures

# Listing, Critical Habitat, & Recovery Plans

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- About 1,900 species are listed (~1300 are entirely within the US and its waters)
- Listed species under NMFS' jurisdiction
  - 20 marine mammals (3 CH, 5 RP)
  - 8 sea turtles (3 CH, 11 RP)
  - 32 marine/anadromous fish (5 CH, 3 RP)
  - 3 invertebrates (0 CH/RP)
  - 1 plant (1 CH/RP)

# Consultation (Interagency Cooperation)

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- Applies to Federal Agencies
  - Agencies shall review and use programs to promote the purpose of the ESA (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 species 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**

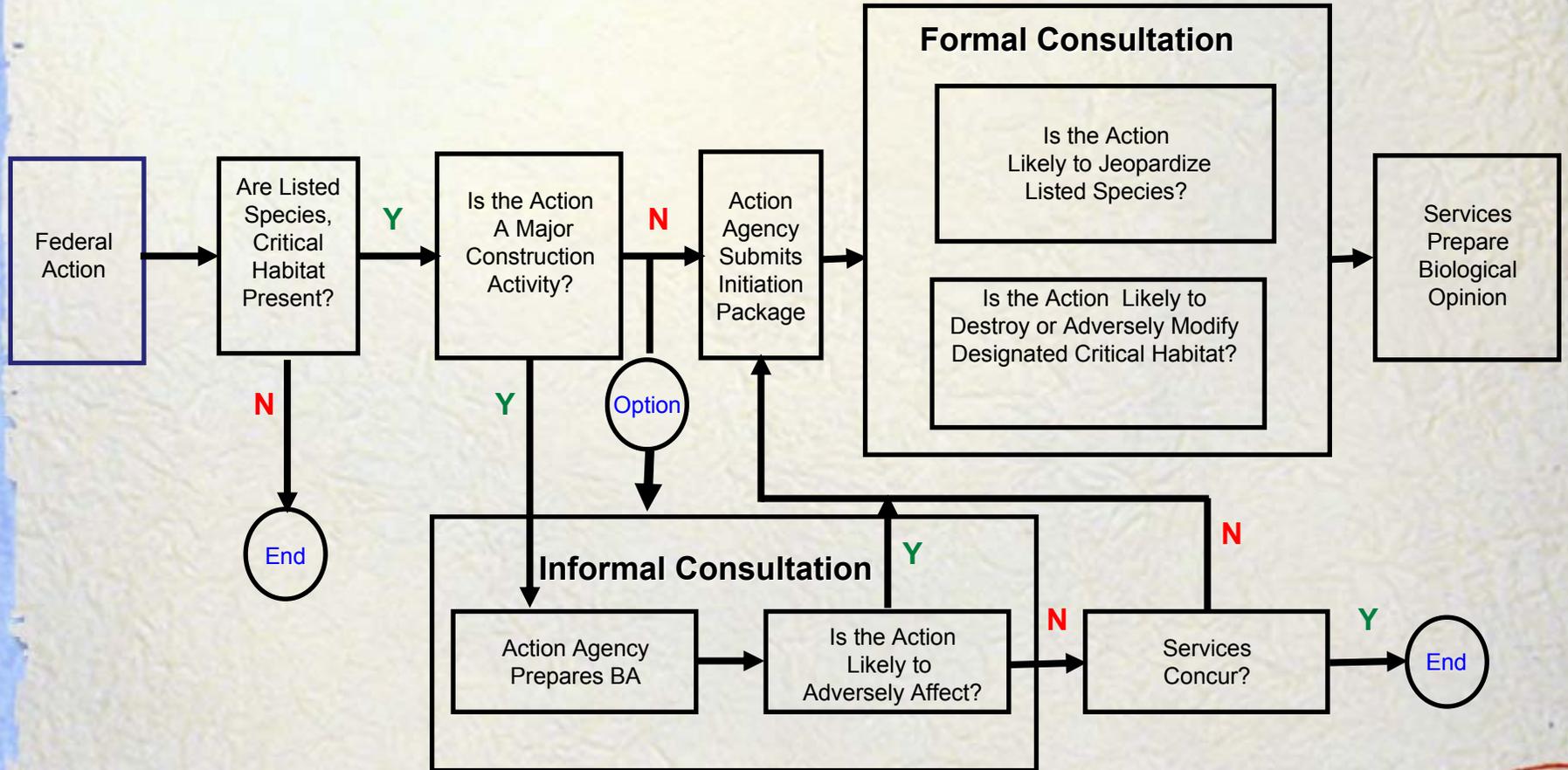
# Interagency Cooperation

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- Requires the Secretary provide Federal agencies an incidental take statement if:
  - That **specifies the impact** of taking the listed species,
  - Specifies the **reasonable and prudent measures** necessary to minimize the impact,
  - And if the taking involves a listed marine mammal, **is authorized under the MMPA** (Section 1371(a)(5))

Section 7(b)(4)

# The Generalized Consultation Process



# Informal Consultation

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- Optional process that includes discussions & correspondence between the Federal 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 T/E species or critical habitat

# Formal Consultation

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- Unavoidable adverse effects?
  - Action Agencies and the Services initiate formal consultation to determine whether the Action
    - Is likely to jeopardize the continued existence of threatened or endangered species
    - Is likely to destroy or adversely modify critical habitat that has been designated for listed species

# Threshold for Formal Consultation

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- Must be set sufficiently low to allow Federal agencies to satisfy their duty to “insure” under section 7 (a)(2)
  - ...burden on Federal agency to show the absence of likely, adverse effects to listed species or critical habitat

# The Initiation Package

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By regulation requires a written request for consultation must include:

- A description of the action
- A description of the specific area affected by the action
- A description of the listed species/critical habitat that may be affected by the action
- A description of the manner in which they may be affected
- Any relevant reports (e.g., NEPA documents & others)
- Other relevant studies or available information

# Duration of Consultation

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- 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
- Preconsultation & Technical Assistance Period (Informal Consultation) – Varies by action, not defined by regulation or statute

# **Fisheries and Section 7**

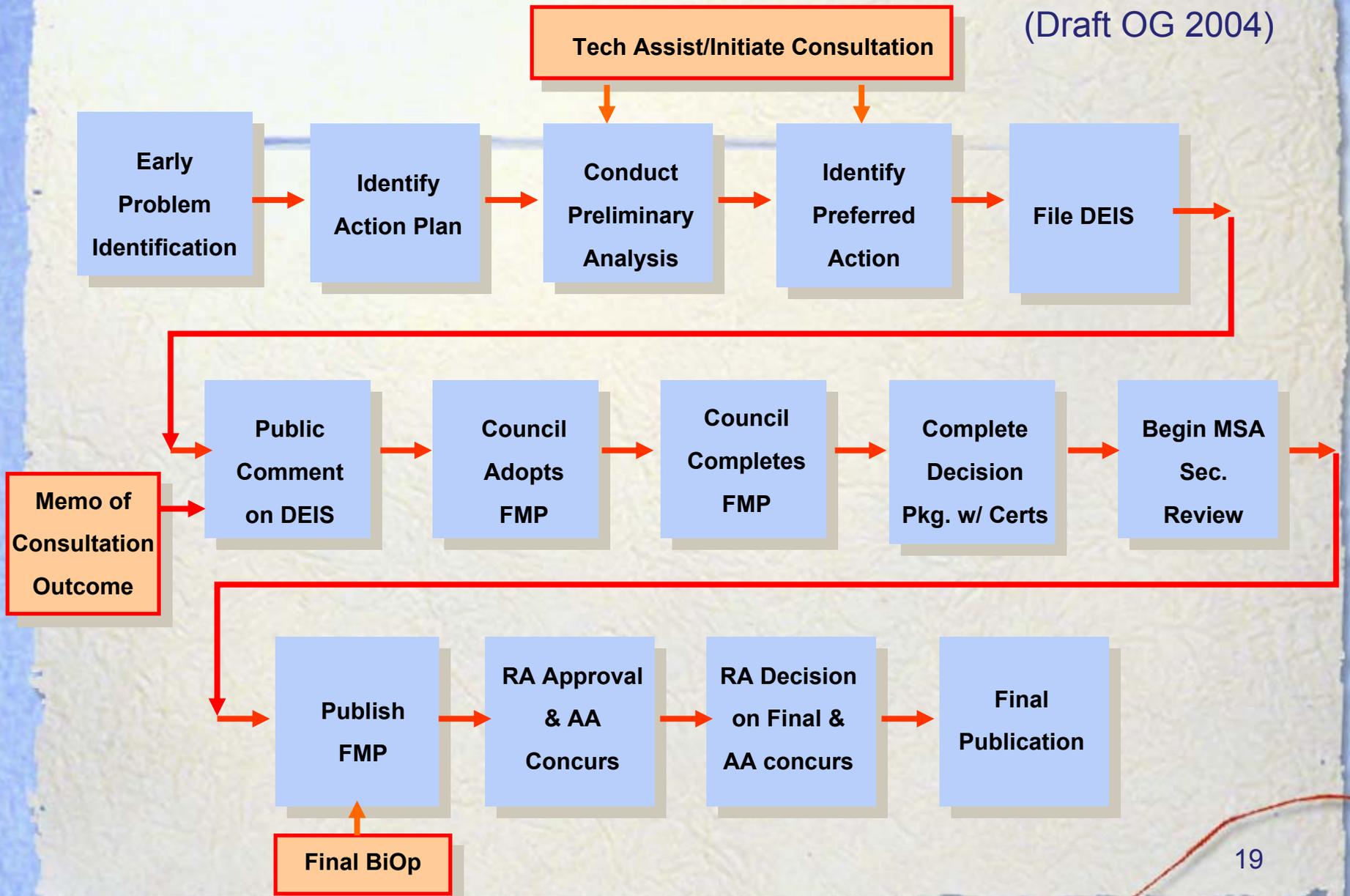


# Fishery Management Plans and Section 7(a)(2)

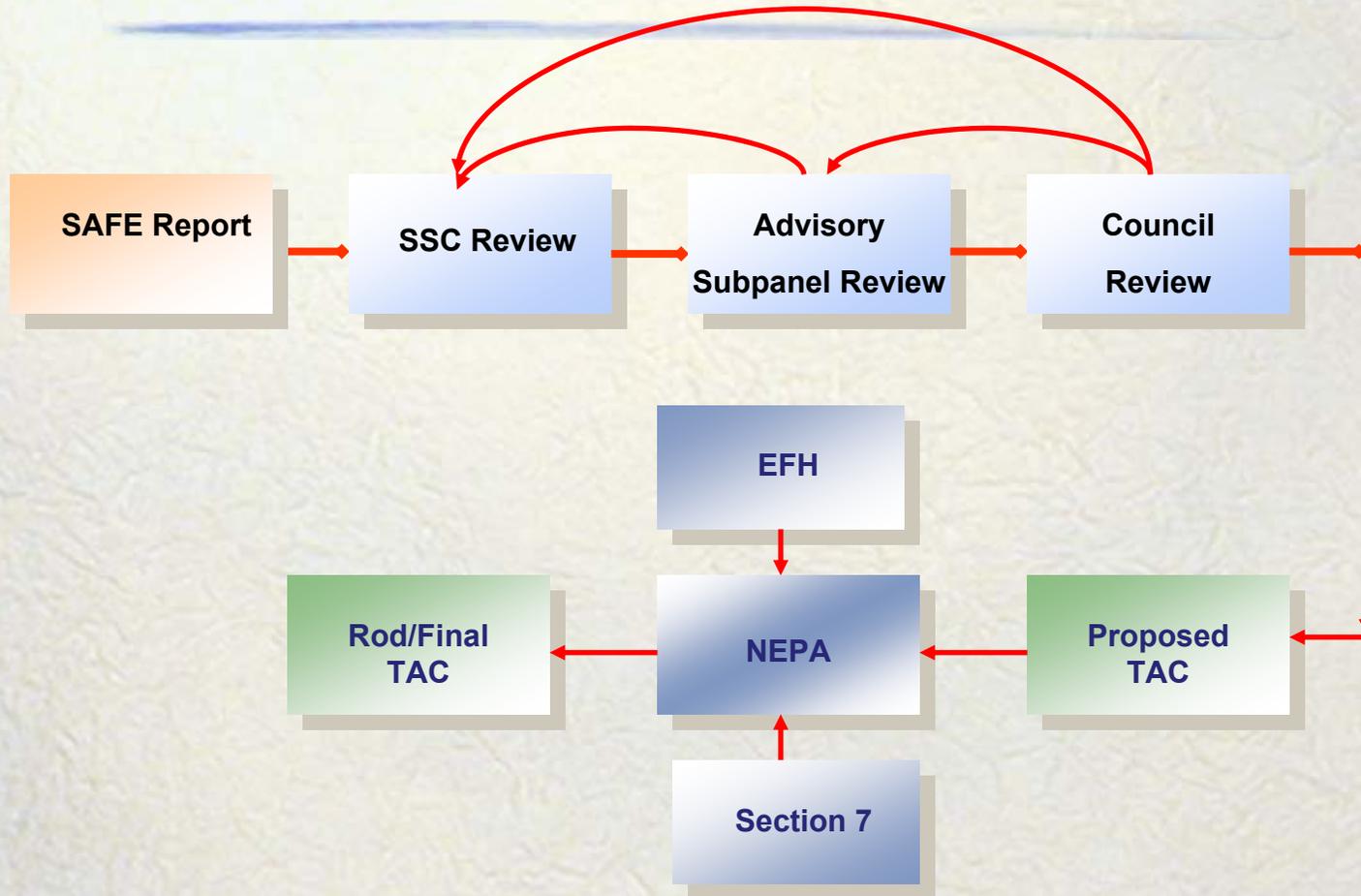
<b>Action</b>	NMFS' <i>approval and implementation</i> of the FMP, FMP Amendment (framework adjustments, individual fishing quotas, experimental fisheries), Regulations, Annual TAC
<b>Action Agency</b>	Sustainable Fisheries
<b>Consulting Agency</b>	Protected Resources
<b>Outcome</b>	“Biological Opinion” or “Concurrence Letter” that contains an assessment of the impacts of the fishery on T/E Species

# Process for Developing & Amending FMPs

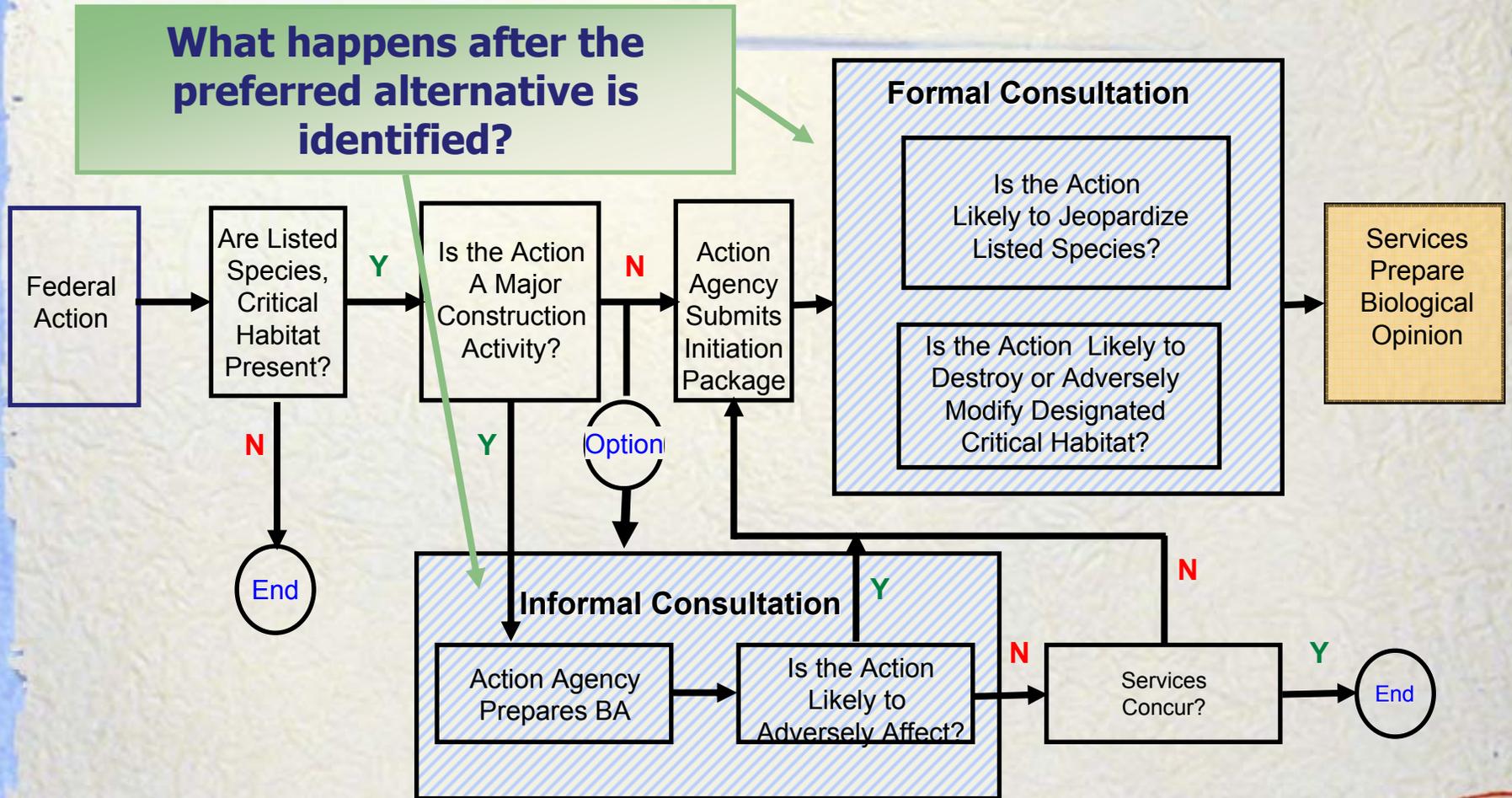
(Draft OG 2004)



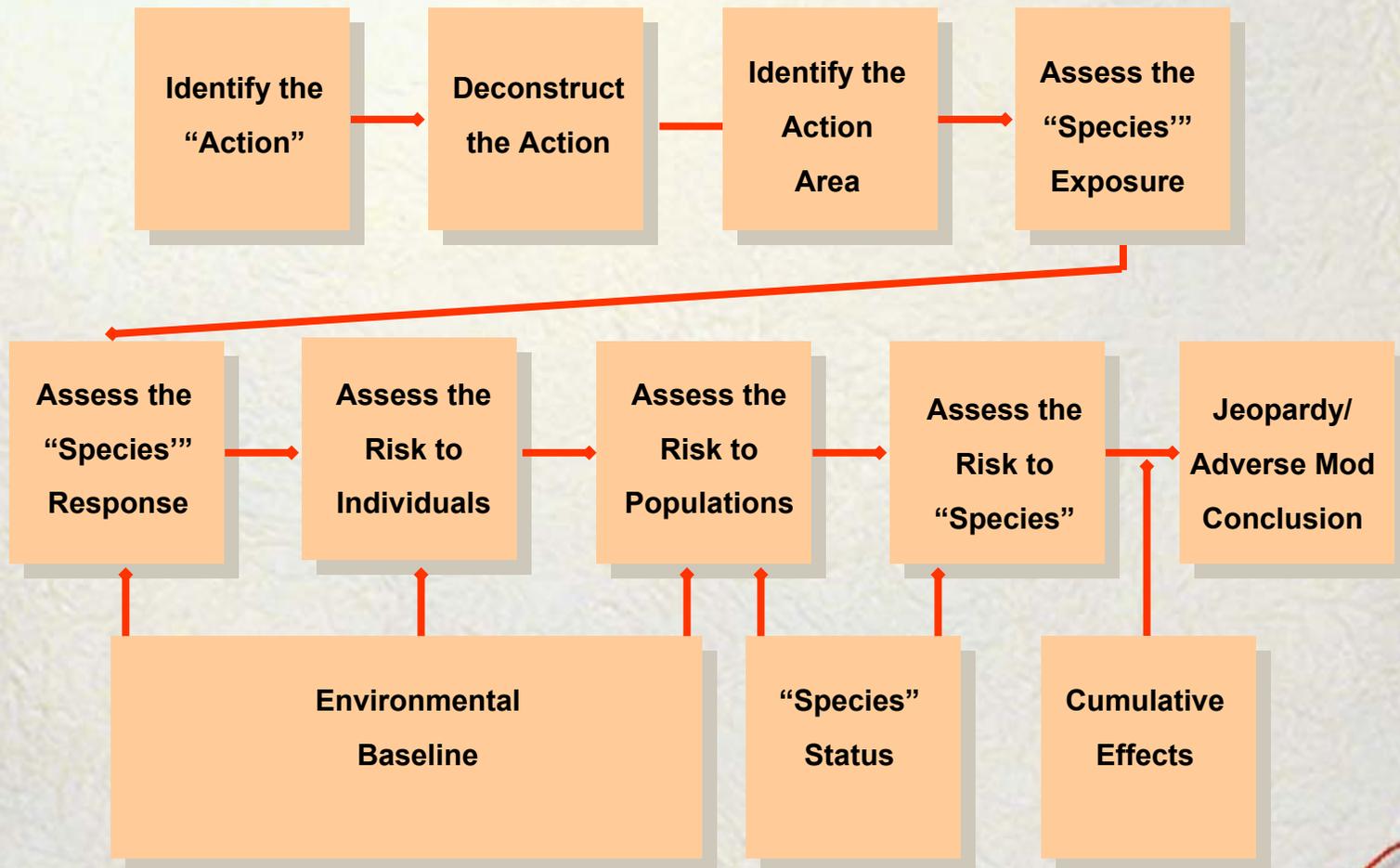
# Process for Establishing Annual Harvest Levels



# The Generalized Consultation Process



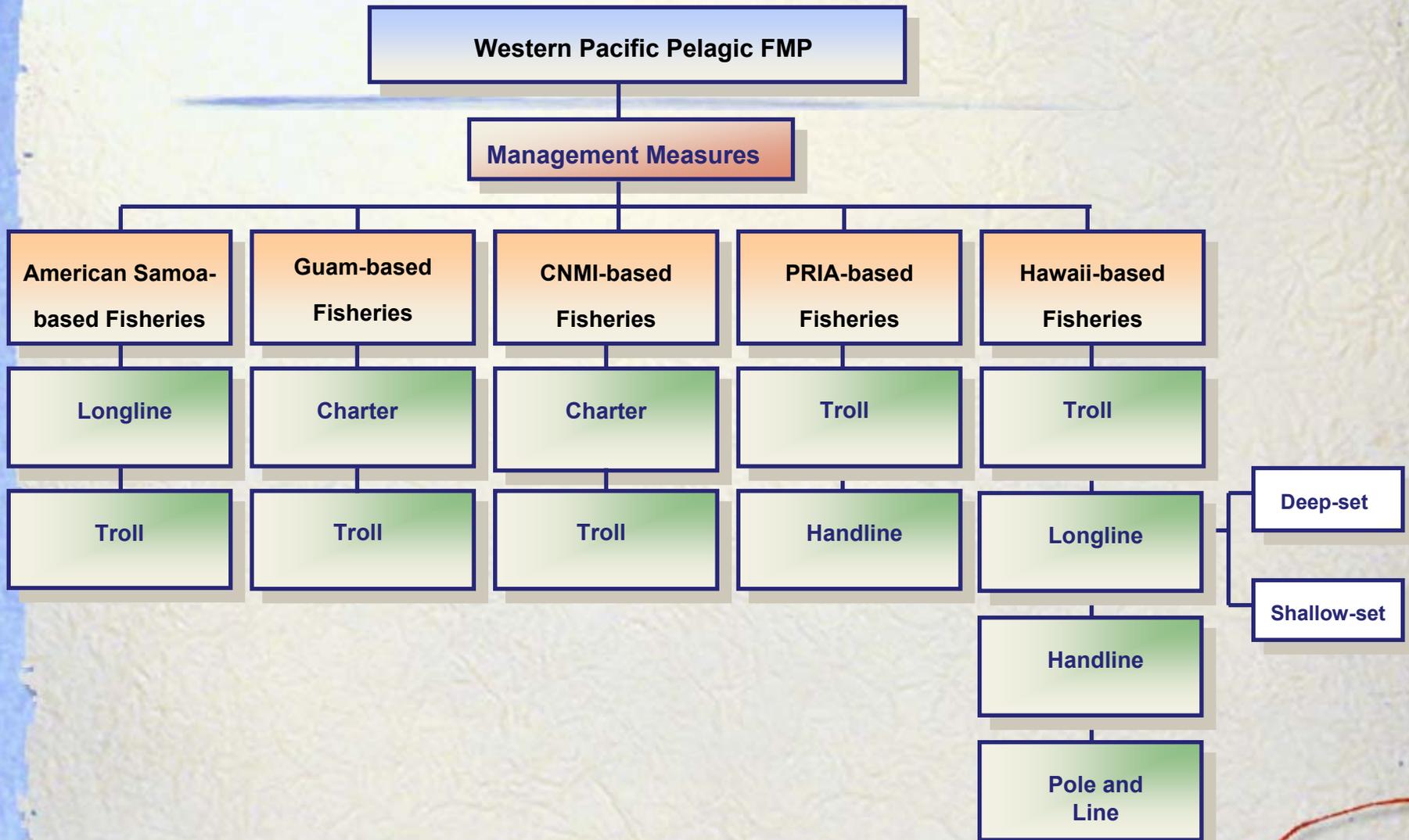
# Structure of the Section 7 Assessment



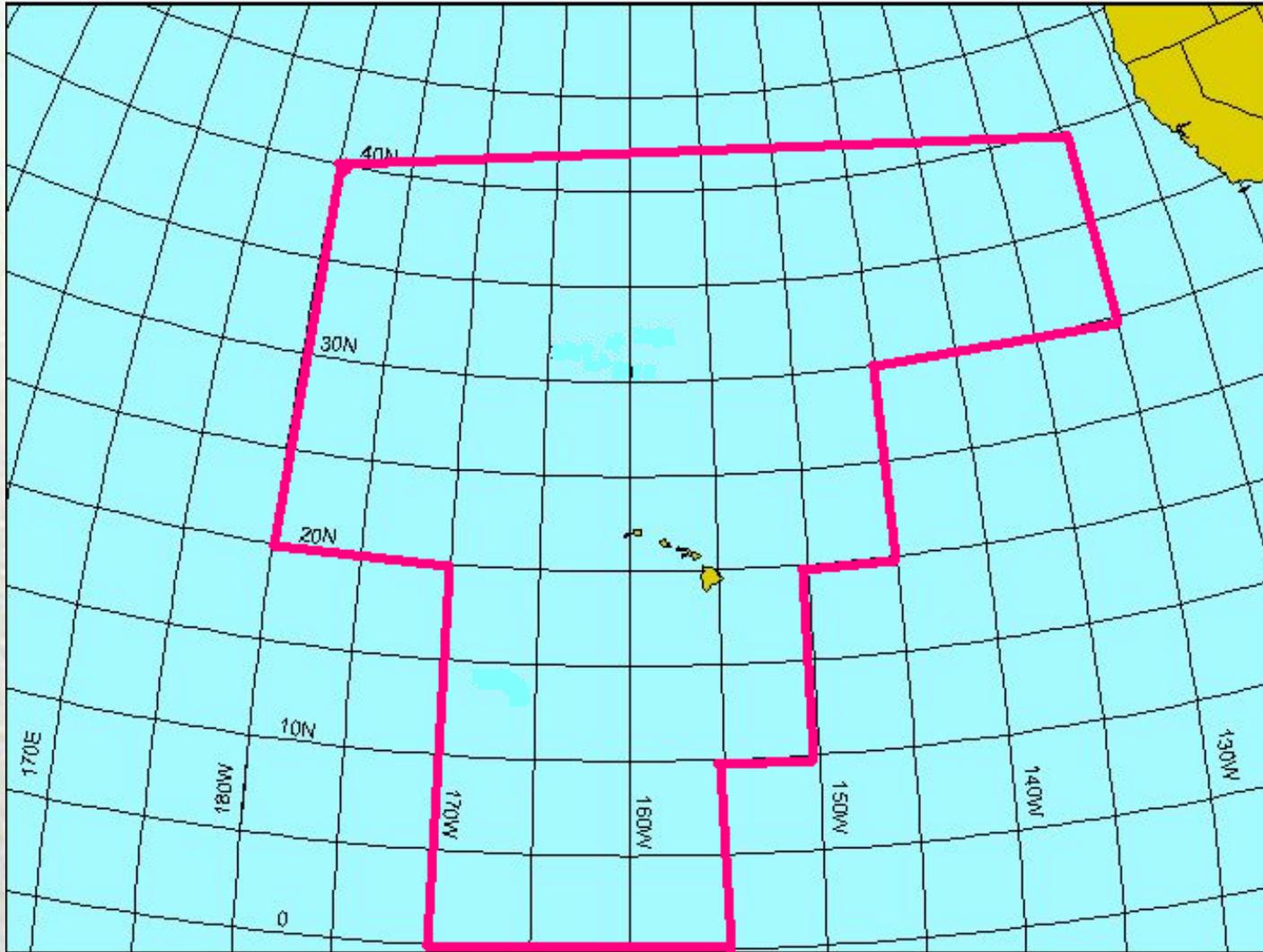
# Informal Consultation

Identify the Action	Deconstruct the Action	Identify the Action Area
The Federal Agency & applicant(s), if any	Describe each part or phase of the action	Geographic area defined by physical, chemical, and biotic phenomena (direct and indirect effect)
Describe the purpose of the proposed action		
Describe the statutory authority for the action		Determines extent of Environmental Baseline
Describe any interrelated and interdependent actions		Determines the actions included in the cumulative effects
Elements relevant to effects (specific physical, chemical and biotic phenomena [stressors/subsidies])		Determine what listed resources occur in the area
Spatial & temporal distribution, & intensity of stressors		

# Example of a Deconstructed Fishery Action



# Hawaii Longline Fisheries



0 200 400 Miles

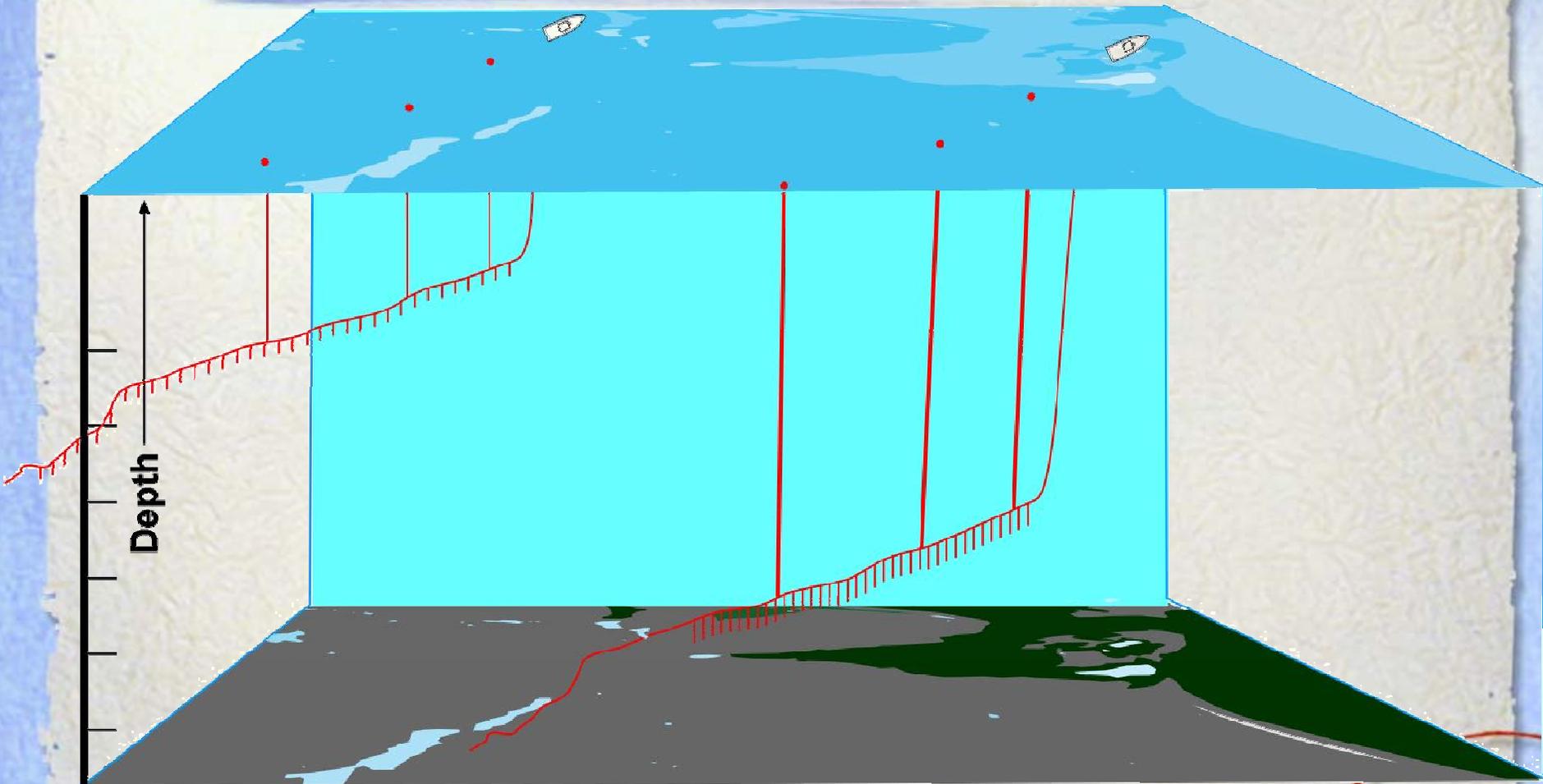


# Exposure Analysis

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- How many listed individuals and what critical habitat would be exposed?
- Which populations do those species represent?
- What are the specific stressors associated with exposure?
- Where exposure would occur?
- When exposure would occur?
- How long exposure would occur?
- What is the frequency of the exposure?

# Hawaii Longline Fisheries



# Response Analysis

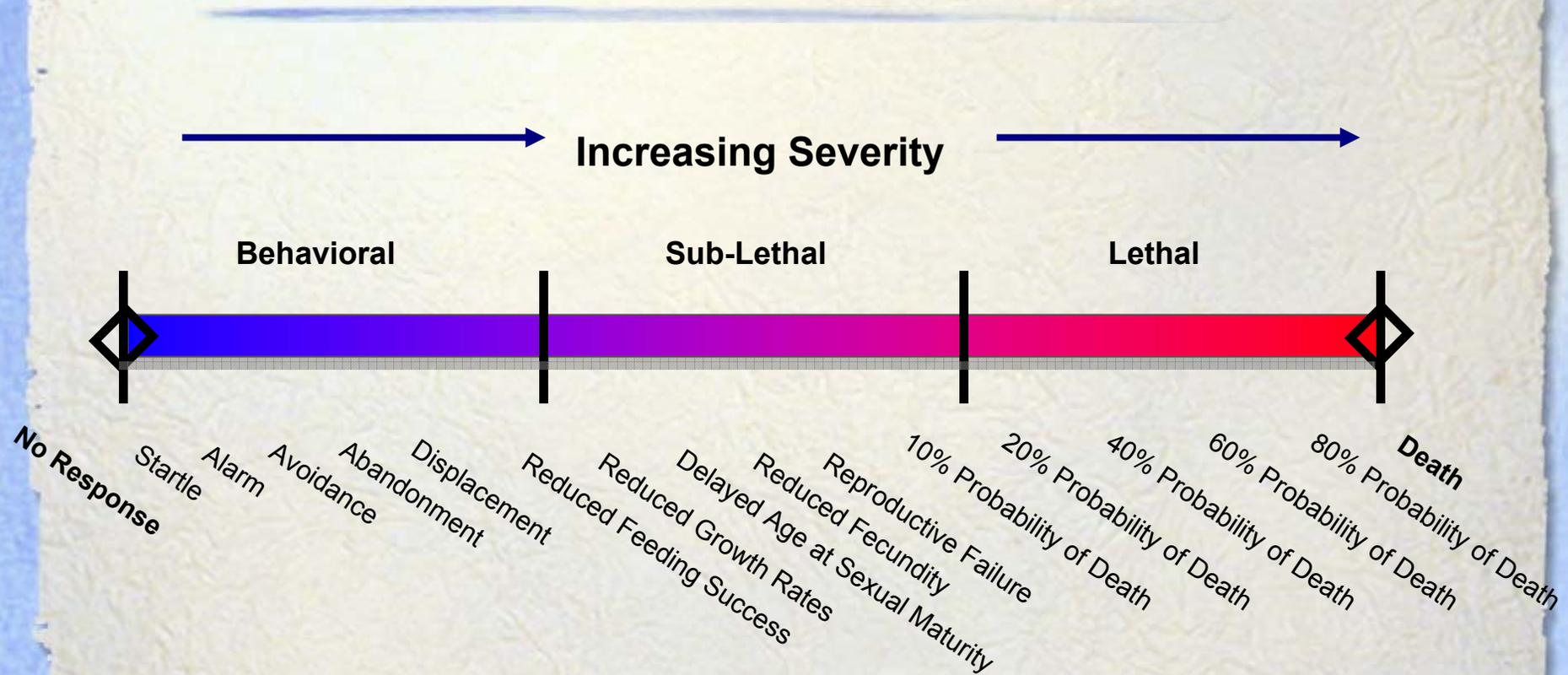
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- Establish causal relationships between exposure and the probable responses of individuals that have been exposed

Includes responses to

- Changes in habitat quality, quantity
  - Barriers, fragmentation to movement
  - Changes in trophic relationships
  - Changes in ecological processes that create and maintain particular conditions
- Duration, timing, intensity, severity, frequency

# Range of Responses



# Risk Characterization

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- Identify probable changes in an individual's fitness
- Translate risk to population
  - Changes in
    - Population abundance
    - Population trend
    - Population structure
    - Live Births per Female
    - Fragmentation
    - Age Composition
- Translate probable changes in population attributes to the species

# Jeopardy and Adverse Modification

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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

Adverse modification – a direct or indirect alteration that **appreciably diminishes the value** of critical habitat for **both the survival and recovery** of a species

# Incidental Take Statements & Conservation Recommendations

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- Incidental take statements** -Specify the amount or the extent of incidental take & the reasonable and prudent measures (RPMs) that minimize the 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 prohibitions on take
- Conservation Recommendations**- Recommendations for using authority to help conserve endangered and threatened species

# 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;
- Disagree with the biological opinion and proceed with the proposed action;
- Apply to the Secretary of Interior for an exemption
- Decide not to undertake the action
- Initiate consultation on a modified action

# Reinitiating Consultation

By regulation, Action Agencies or the Services shall reinitiate formal consultation if:

Discretionary Federal involvement or control over the action has been retained or is authorized by law, and

1. incidental take is exceeded
2. new information reveals effects not considered
3. the action is modified to produce effects not considered in consultation or
4. new species or critical habitat is listed.

