

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 **seek to conserve** endangered and threatened species and shall **utilize their authorities** in furtherance of the purposes of this Act.”





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>



NMFS and the ESA

- Responsible for 63 **domestic** marine and anadromous species and **9 foreign** species
 - 21 marine mammals
 - 8 marine turtles
 - 38 marine and anadromous fish
 - 4 marine invertebrates
 - 1 marine plant
- Of this number, 35 are threatened and 37 are endangered

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





Proposed, candidates, species of concern

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





Listing process

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



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 (see handout).



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.



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; subjective



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.



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.



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.



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



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



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 30 completed recovery plans and 30 plans under development (including Pacific salmon)
 - Marine turtles may have separate plans for each ocean basin.





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



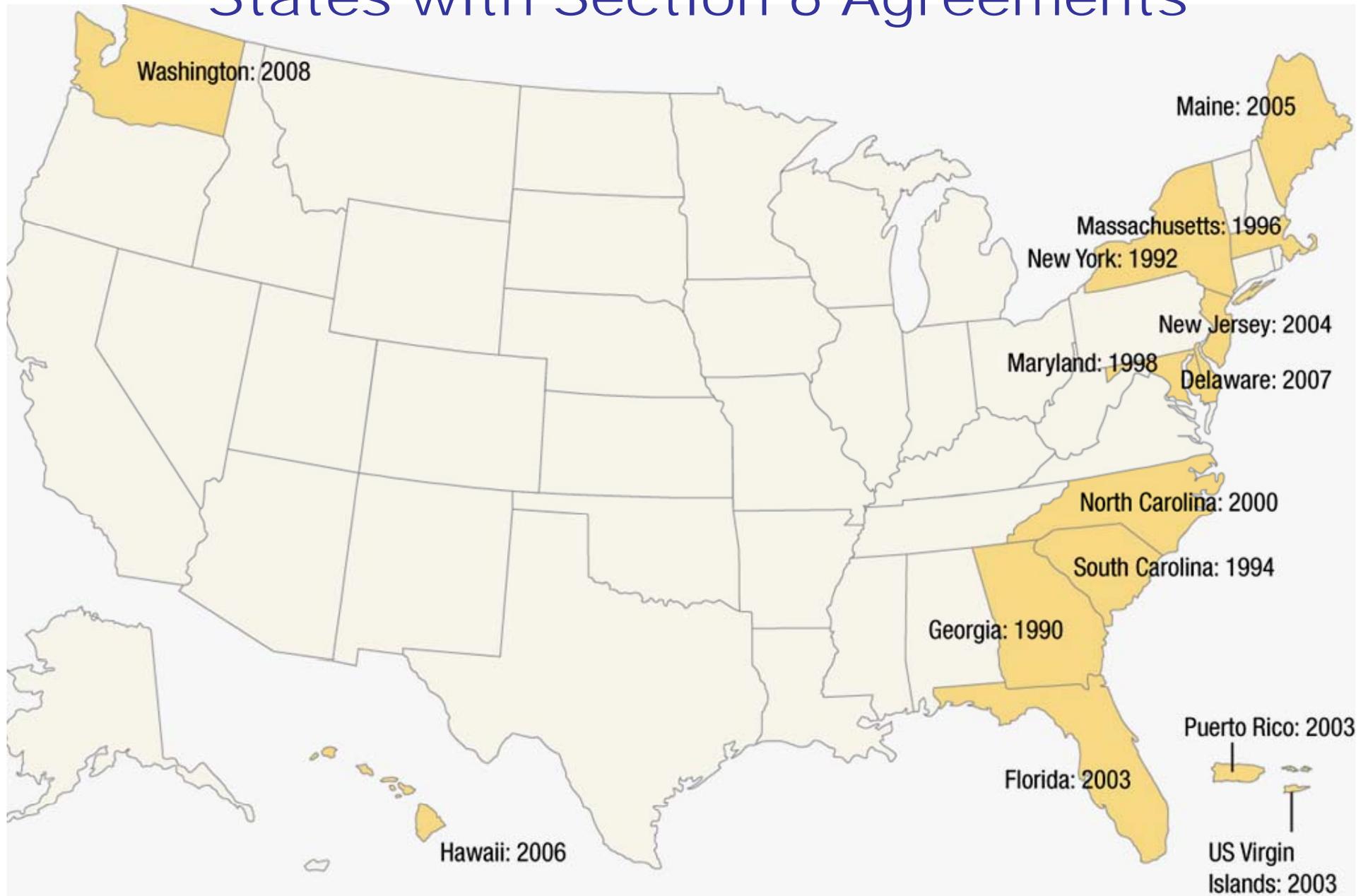
A Brief History...

- First received dedicated funding in FY 2003
- Funding level since 2003 at ~\$980K
- Rate of new agreements: 1- 2 per year

Then in FY 2010....

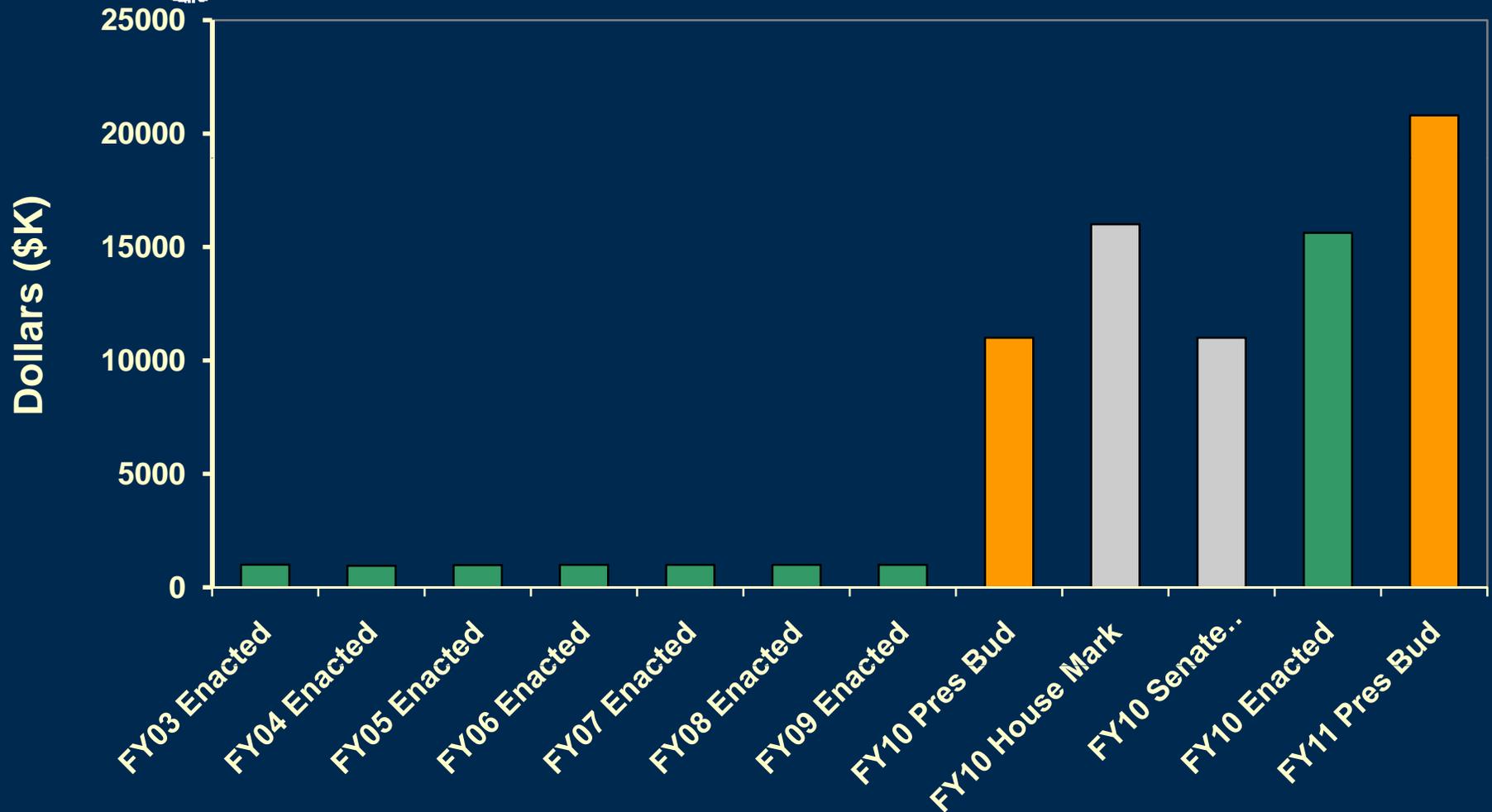
- **Funding increased to \$15.6M**
- **Eight new agreements established**
- **Tribal grant program initiated (\$1M)**

States with Section 6 Agreements



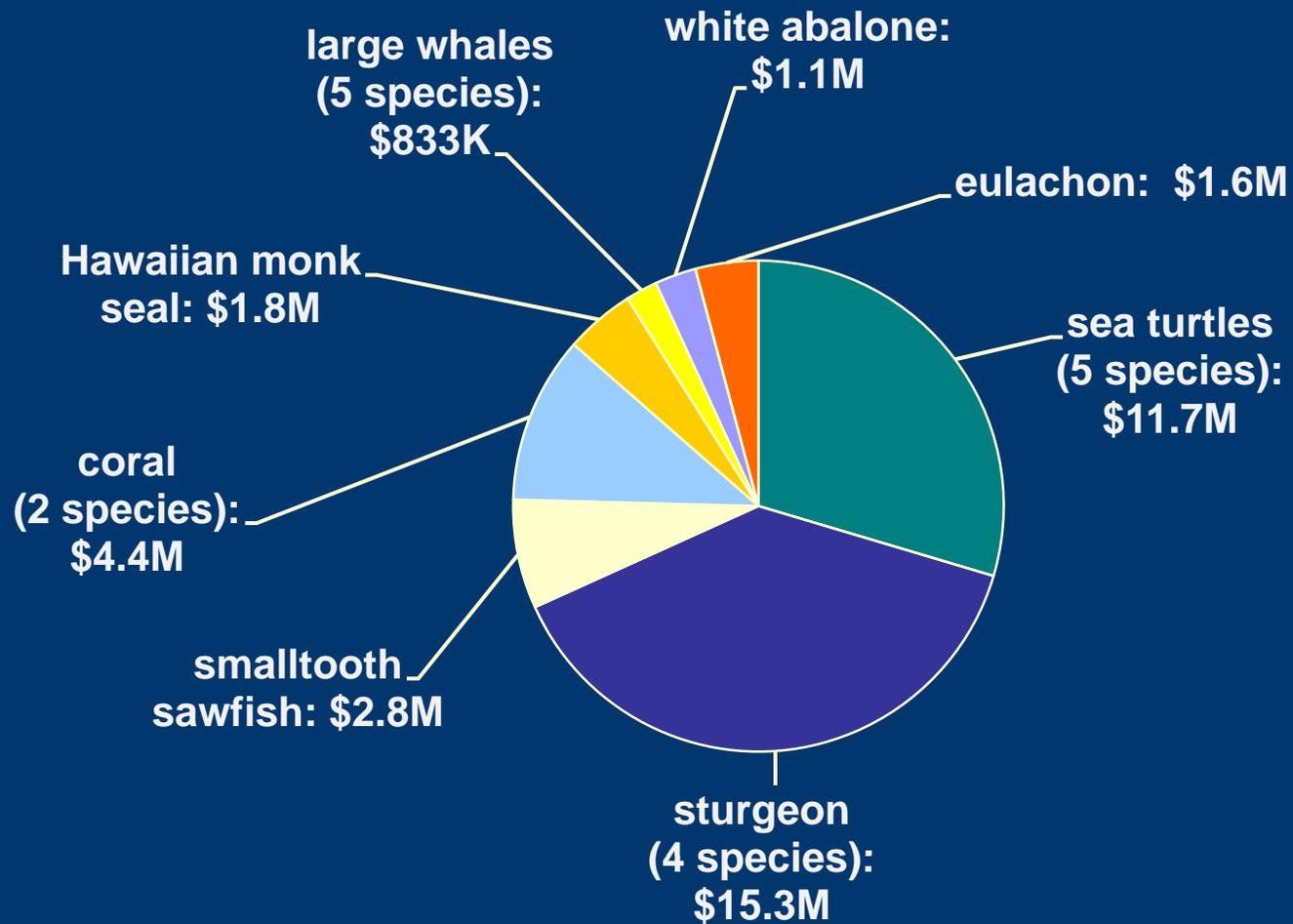


Funding History...and Future



Federal Funding by Taxa

(FY03-10, including out-years)





NEW FY10 AWARDS

Monk seals (\$493,761): HI

Sturgeon (\$5,335,436): ME, CT, NY, NJ, DE, MD, VA, NC,
SC, GA, FL, MS, WA, OR

Sawfish (\$779,985): FL, TX

Eulachon (\$561,579): WA, OR

Corals (\$1,432,320): FL, PR

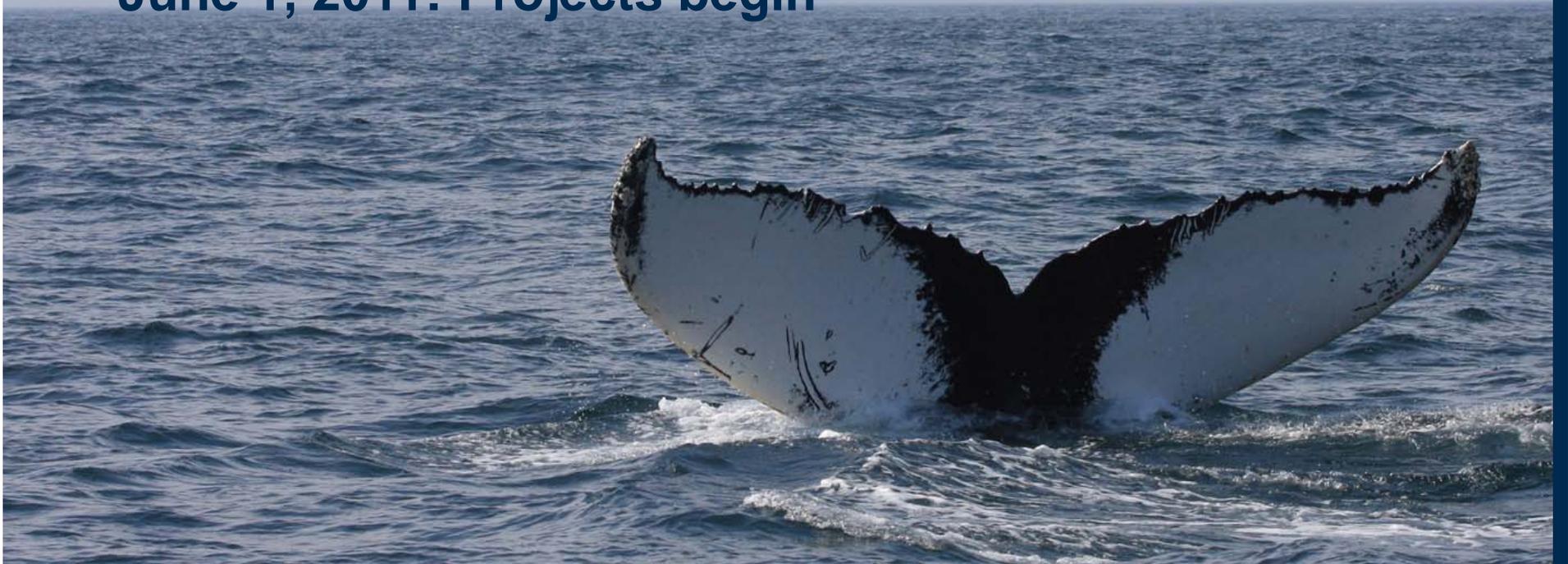
White Abalone (\$442,510): CA

Sea turtles (\$4,395,120): MA, MD, VA, NC, SC, GA, FL

<http://www.nmfs.noaa.gov/pr/conservation/states/funded.htm>

FY11 Timeline

- **July 16, 2010: Grant announcement published**
- **October 4, 2010: Proposals due**
- **December 2010: Reviews completed, proposals selected**
- **March/April 2011: Awards forwarded to Grants Office**
- **June 1, 2011: Projects begin**





Interagency Cooperation (50 CFR Part 402)

- Applies to Federal Agencies
- Agencies shall review and use **programs** to promote the purpose of the ESA (sec.7(a)(1))
- Consult to **ensure** 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>



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
- Adverse modification – a direct or indirect alteration that **appreciably diminishes the conservation value** of critical habitat for a species

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



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

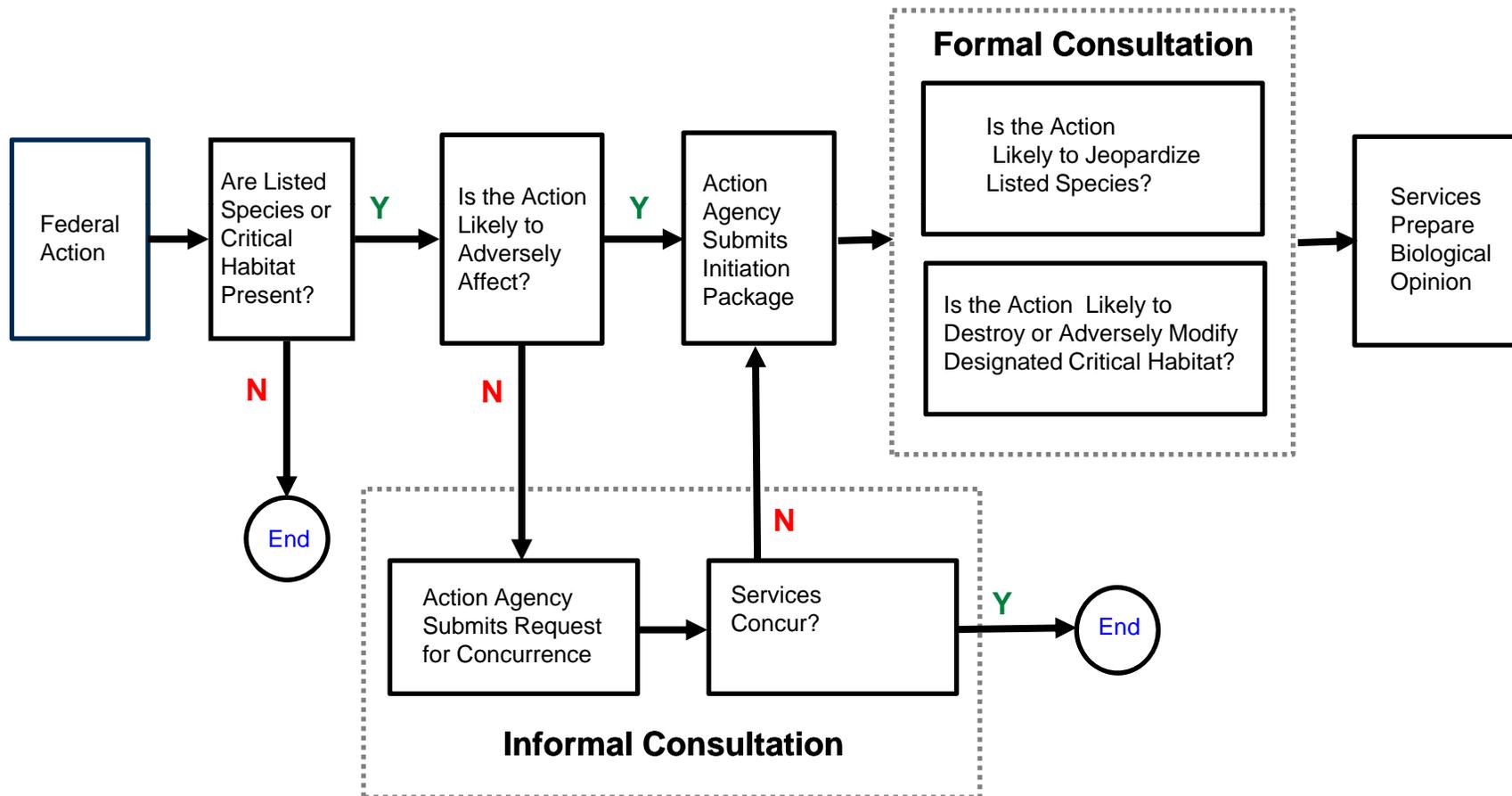




Formal Consultation

- 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 designated critical habitat

The Consultation Process





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 regulation or statute

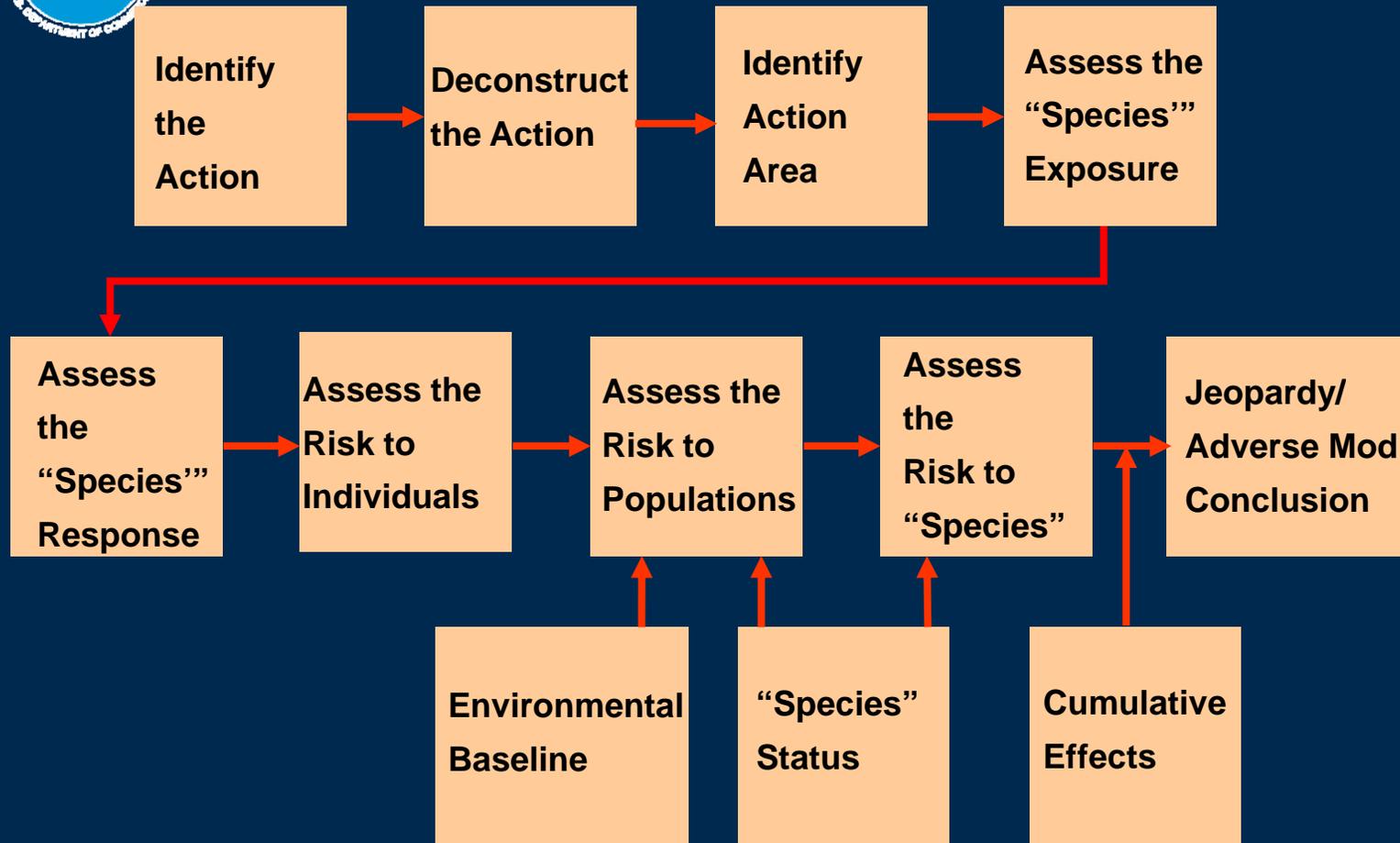


The Initiation Package

- Regulation requires a written request for consultation and the following information:
 - Description of the action
 - Description of the specific area affected by the action
 - Description of the listed species/critical habitat that may be affected by the action
 - Description of the way in which they may be affected
 - Any relevant reports (e.g., NEPA & others)
 - Other relevant studies or available information



Structure of the Assessment



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	Deep-set
				Handline	Shallow-set
				Pole and Line	



Exposure Analysis

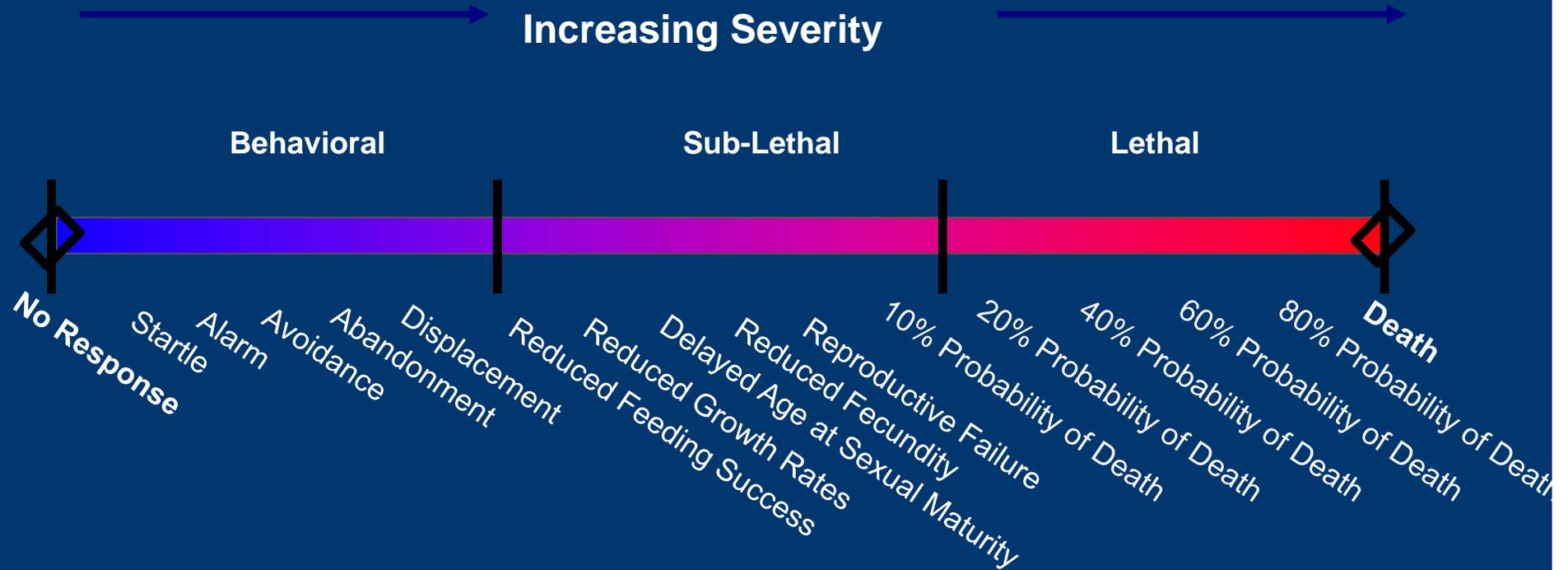
- How many listed individuals and what critical habitat would be exposed?
- Which populations do those individuals represent?
- What are the specific stressors associated with exposure?
- Where would exposure occur?
- When would exposure occur?
- How long would exposure occur?
- What is the frequency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



Response Analysis

- Establish causal relationships between exposure and the probable responses of individuals that have been exposed; include responses to
 - Changes in habitat quality, quantity
 - Barriers to movement
 - Changes in trophic relationships
 - Changes in ecological processes that create and maintain particular conditions
- Duration, timing, intensity, severity, frequency

Range of Responses





- Identify probable changes in an individual's fitness
- Translate risk to population that result 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



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



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



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
 - Incidental take is exceeded
 - New information reveals effects not considered
 - The action is modified to produce effects not considered in consultation, or
 - New species or critical habitat is listed