

# Endangered Species MOA



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# First Things First, the ESA is NOT the Only Trustee Resource

## Other Natural Resource Trustee Resources:

- ❑ Government Managed Lands (Refuges, National Parks, etc), including military bases.
- ❑ Migratory birds and their habitats
- ❑ State, Commonwealth or Territorial natural resources
- ❑ Coastal Wetlands and Essential Fish Habitat
- ❑ Historic or Cultural sites (SHPO Sec. 106)

- It all started with a boat and a bird
- The Western snowy plover and the New Carissa
- In 1999 the New Carissa ran aground in the Pacific Northwest during plover season
- In order to mitigate the situation, the Unified Command decided to set the fuel tanks on fire in order to burn off the oil. The first attempt was made on February 10. Napalm and other incendiary devices were used to ignite the fuel, but only one of the fuel tanks burned effectively. A second attempt was made by US Navy explosive experts who placed 39 shaped charges to breach the top of the fuel tanks from within the cargo holds. 2,280 liters of napalm and nearly 180 kg of plastic explosives were also used to ignite the fuel on board. The ship burned for approximately 33 hours.





- ❑ The structural stress caused by the fire and explosives combined with continued severe weather, caused the vessel to break into two sections.
- ❑ The bow section was towed out to sea and it came back to shore
- ❑ All during the response up and down the coast, the Coast Guard was aware of the snowy plover situation
- ❑ FWS and state personnel captured and relocated plovers to keep them out of harms way
- ❑ Between four to eight plovers were lost throughout the response.

- The bow was again towed out to sea and was sunk by two US Navy ships, the destroyer USS David R. Ray and the submarine USS Bremerton. Four hundred pounds of high explosives were attached to the bow and detonated. Sixty-nine rounds of gunfire from the David R. Ray's 5-inch deck guns then punctured the hull. After 40 minutes, the ship was still afloat with darkness and a storm approaching. To expedite the sinking, the Bremerton fired a Mark 48 torpedo at the underside of the ship. Within ten minutes, the bow section flooded and sank stern-first, trapping the remaining oil.
- The stern section remained aground until 2008
- FWS, USCG and others got sued by NGO groups for not following ESA during the response
- Its not that ESA was not considered, its just that the procedures were not followed and a Sec 7 consultation was not documented
- This brings us to today's presentation

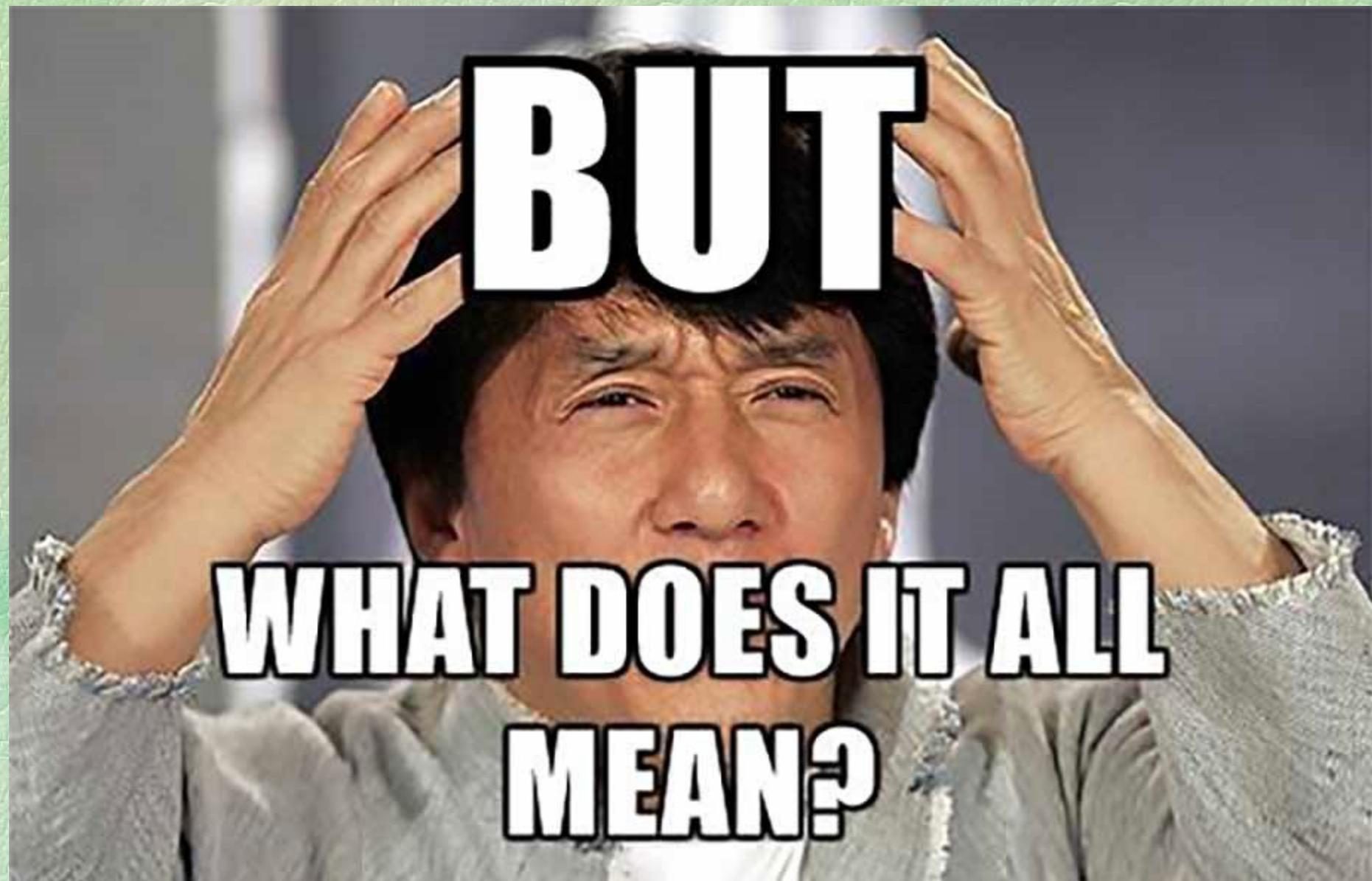
## SEC. 7. (a) 1 of the Endangered Species Act – FEDERAL AGENCY ACTIONS AND CONSULTATIONS

All Federal agencies shall, in consultation with the Secretary, utilize their authorities in furtherance of the purpose of this chapter by carrying out programs for the conservation of endangered and threatened species.

This is part of the reason why we consult on pre-spill planning.

## SEC. 7. (a) 2 of the Endangered Species Act - FEDERAL AGENCY ACTIONS AND CONSULTATIONS

Each Federal agency shall, in consultation with and with the assistance of the Secretary of Interior, insure that any action authorized, funded, or carried out by such agency (here in after in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.



**BUT**

**WHAT DOES IT ALL  
MEAN?**

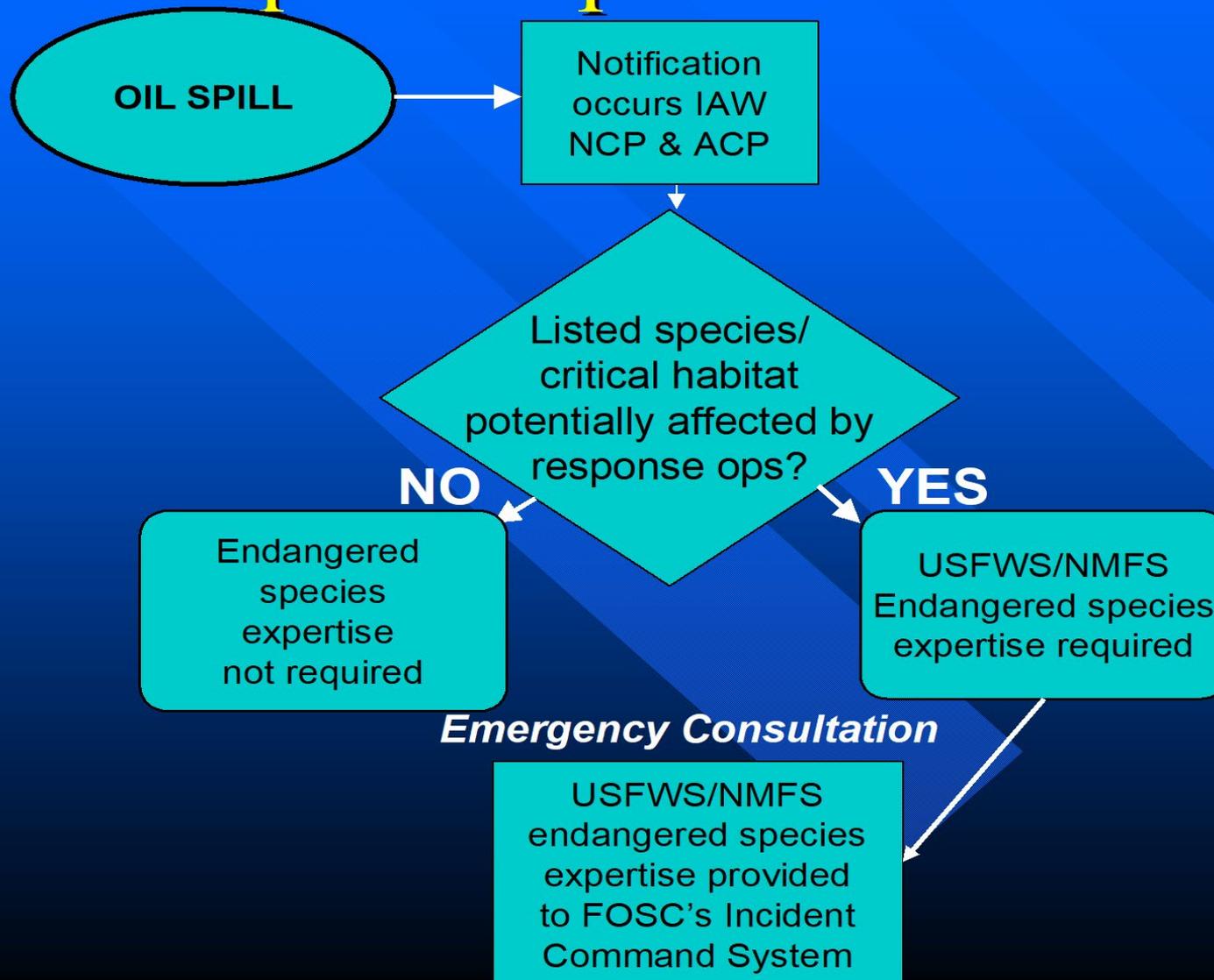
# The MOA

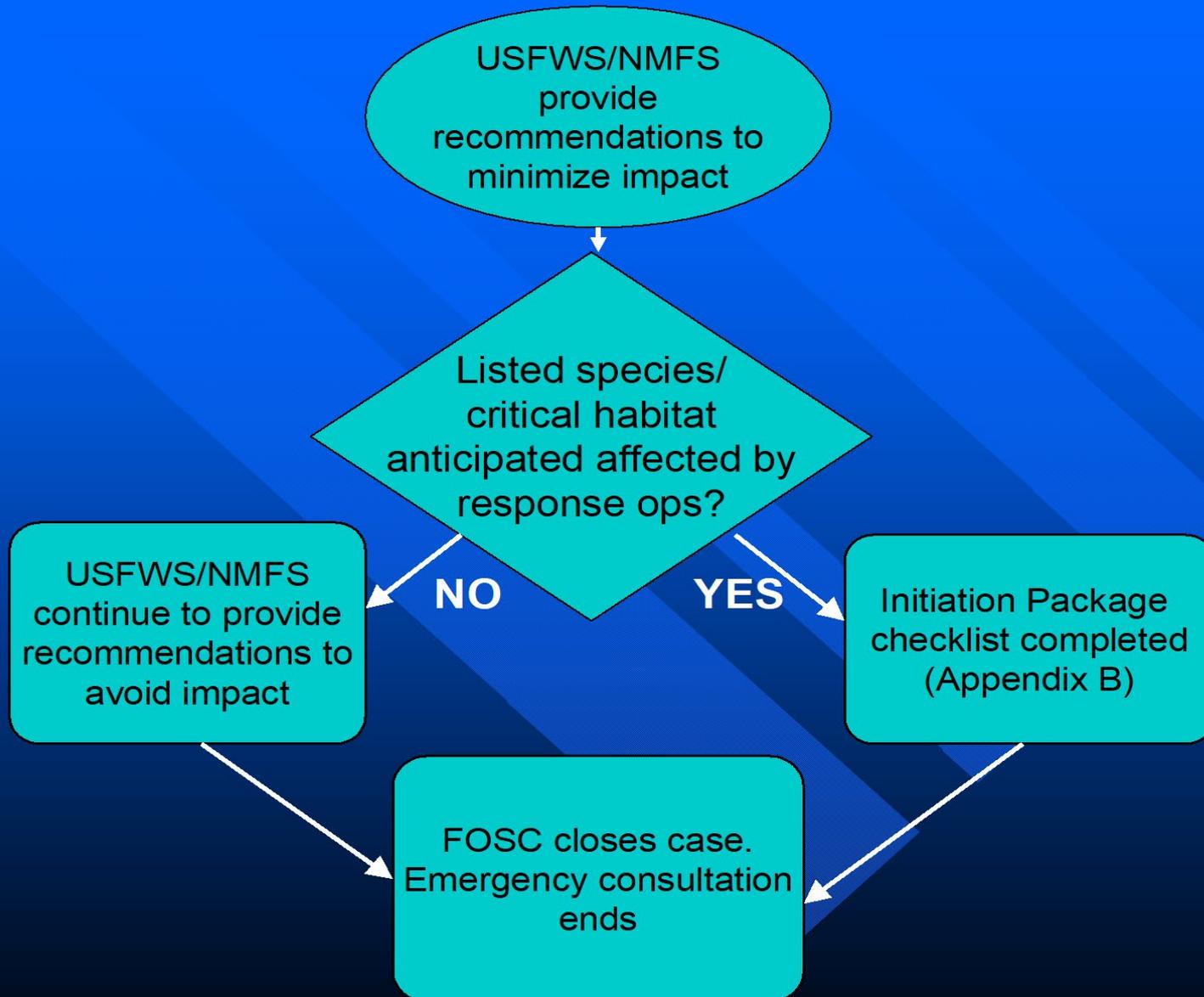
- The MOA is to provide a framework and guidance for cooperation and participation among the ESA Natural Resource Trustees (FWS & NMFS) in oil spill planning and response
- The other agencies involved are USCG and EPA
- It calls for cooperation with FWS and NMFS in pre- spill planning such as ACPs, etc
- The MOA does not limit the authority of the FOSC nor is it meant to stop the response
- Safety of human life continues to be the top priority during every response

- We are to help the FOSC and provide timely information to help reduce or avoid impacts of the spill response on listed species and critical habitat
- This is not part of an NRDA, it deals with just the response, however data can be used for NRDA later
- Emergency consultation is carried out in an informal manner
- Endangered Species issues should be identified during the pre-spill planning process, Section 7 consultation is required for ACP's and other planning documents
- Formal consultation occurs only after incident is closed, and only if a "take" has occurred.
- Formal consultation is a structured process which ends in a Service's Biological Opinion

The process is a simple one

# Spill Response Procedures





## **APPENDIX B**

### **EMERGENCY CONSULTATION** **INFORMATION CHECKLIST IN ANTICIPATION OF FOLLOW-UP FORMAL** **CONSULTATION (50 CFR 402.05)**

As soon as practicable after the emergency is under control, which occurs when the case is closed, the FOSC initiates consultation (either formal or informal, as appropriate) with the Services if listed species and/or critical habitat have been affected. The FOSC should ensure that the following checklist is completed before the case is closed. After the case is closed, this information along with a cover letter requesting consultation will be sent to the Services.

1. Provide a description of the emergency (the oil spill response).
2. Provide an evaluation of the emergency response actions and their impacts on listed species and their habitats, including documentation of how the Services' recommendations were implemented, and the results of implementation in minimizing take.
3. Provide a comparison of the emergency response actions as described in #2 above with the pre-planned countermeasures and information in the ACP.

- During a Spill, all ESA actions are considered emergency consultations, document all communication with FOSC
- Although not directly stated, we are to help the FOSC in making an ESA determination, this may require an SE (RAR/SE) specialist in the Environmental Unit
- The NOAA SSC is not a Section 7 specialist; however, in the new USCG IAM the SSC coordinates Section 7 with other agencies
- Formal consultation is required post emergency **ONLY** if listed species or habitat were impacted (take occurred)
- The term Formal Consultation has a specific meaning under the ESA, do not use it unless a “take” or adverse modification of critical habitat has occurred.

# Legalese

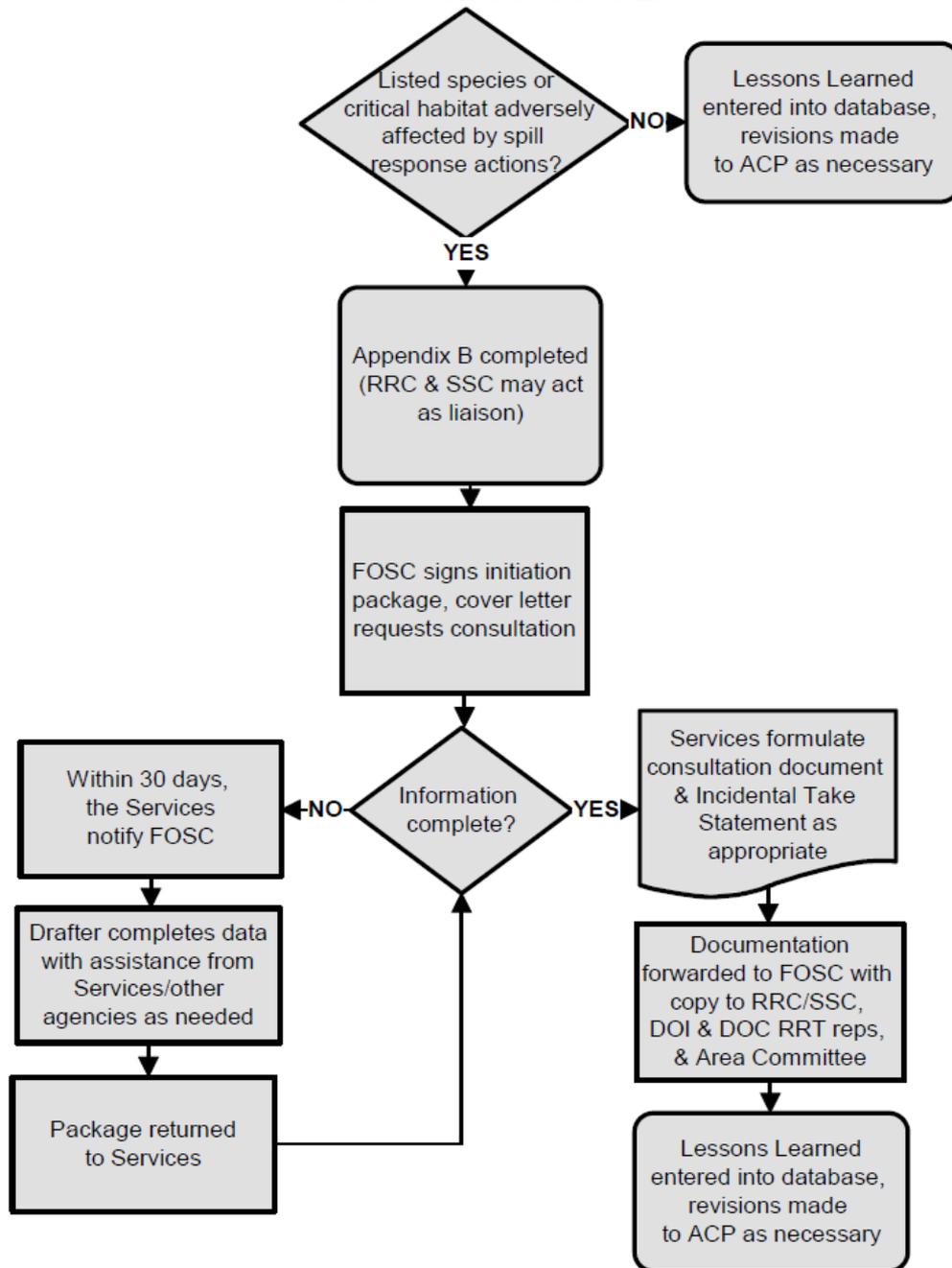
The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The term "harm" includes any act which actually kills or injures fish or wildlife, and such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife. So habitat modification or degradation may harm listed species and, therefore, constitutes a take under the ESA.

# POST RESPONSE



**This procedure provides legal protection for the FOSC and closes the consultation loop**

# Listed Species in the Caribbean



# There's Even a Manual and a Form

## Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

A Guidebook  
Version 2002



United States Coast Guard



United States Environmental Protection Agency



Department of the Interior's Fish and Wildlife Service



National Oceanic and Atmospheric Administration's National Marine Fisheries Service



National Oceanic and Atmospheric Administration's National Ocean Service



Department of the Interior

CRRT EMERGENCY RESPONSE ESA AND EFH CONSULTATION FOR RESPONSES IN COASTAL AND MARINE AREAS, PUERTO RICO AND U.S. VIRGIN ISLANDS

Date of Transmittal

FROM:		NAME:		Tel:	
		E-MAIL:		Fax:	
TO: NMFS		nmfs.ser.emergency.consult@noaa.gov		787-851-3700(PRD); 727-824-5317(HCD)	Fax: 787-851-5588(PRD); 727-824-5300(HCD)
TO: USFWS, Caribbean Ecological Services Field Office		marelisa_rivera@fws.gov		787-851-7297, -7273	Fax: 787-851-7440

Date of Incident:

Center Location (NAD 83)	Latitude	Longitude
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Approximate Distance from Shore

Location Type	Check All That Apply	Name/Landmarks
Industrial/Canal	<input type="checkbox"/>	
Port	<input type="checkbox"/>	
Riverine	<input type="checkbox"/>	
Inshore/Estuarine	<input type="checkbox"/>	
Nearshore/Coastal	<input type="checkbox"/>	
Offshore/EEZ	<input type="checkbox"/>	

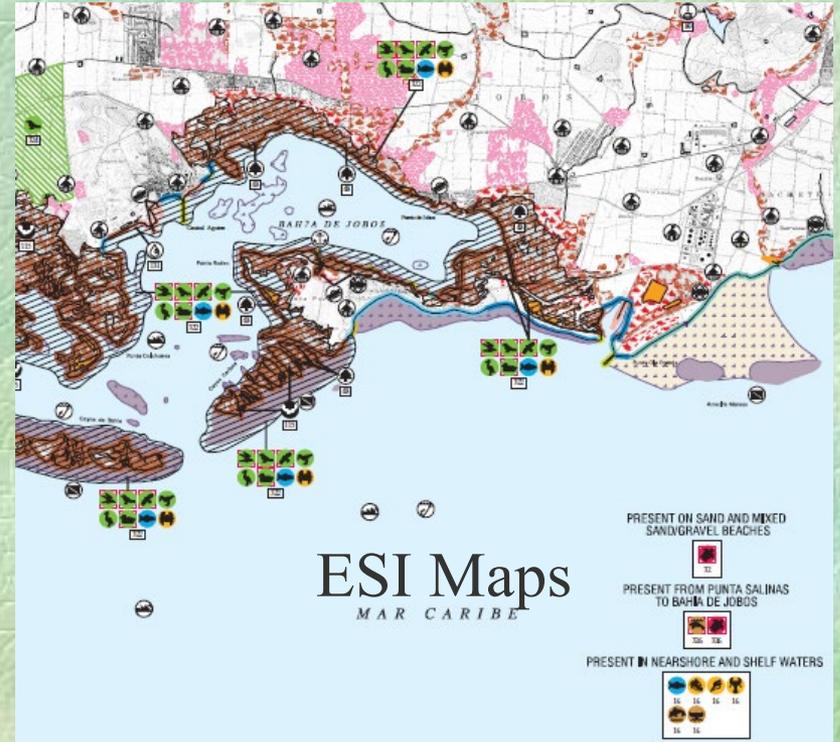
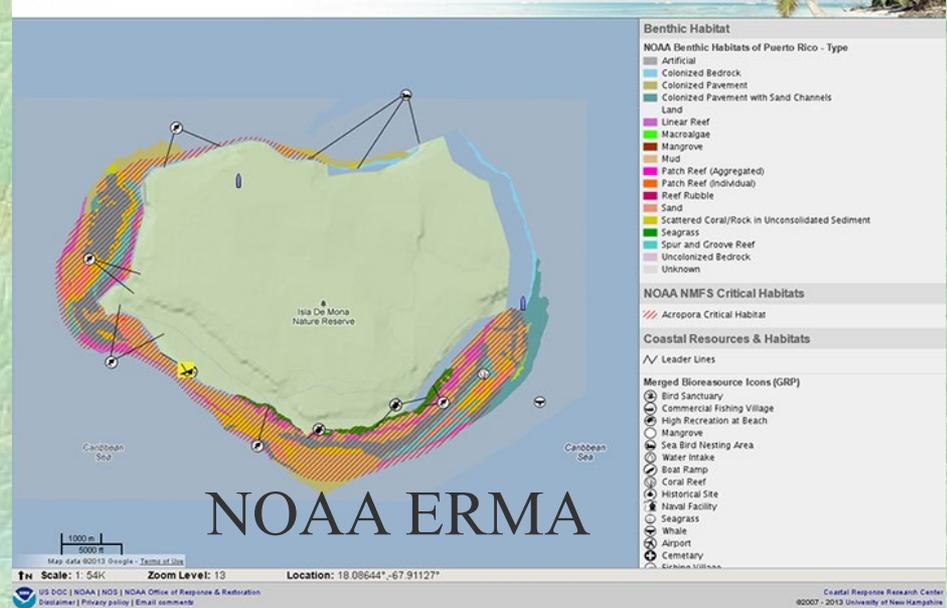
Description of Incident: (Please be as specific as possible and include information on the type and amount of material spilled and/or the nature of the emergency, and any other relevant information.)

# Other Tools

## IPaC Trust Resource Report

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This report is for informational purposes only and should not be used for planning or analyzing project-level impacts. For projects that require FWS review, please return to this project on the IPaC website and request an official species list from the Regulatory Documents page.



*Caribbean Regional Response Team  
Information and Lessons Learned  
During Emergency Response Operations  
For Vessel Groundings Over Coral Reefs*



BMPs are being developed for CRRT spill response to ensure that impacts to listed species is minimized.



- ❑ Remember, the MOA is not meant to stop an oil spill response
- ❑ The MOA is designed to give the Natural Resource Trustees and opportunity to provide up front information on T&E species, so the FOSC and the Unified Command can make informed decisions on what response actions to take
- ❑ FWS and NMFS SE biologists become a participant in the planning and response to oil and hazardous material spills