# Background: Why consultations?

<table>
<thead>
<tr>
<th>Consultation</th>
<th>Oversight Agency</th>
<th>Operation</th>
<th>Purpose</th>
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<tr>
<td>Endangered Species Act</td>
<td>USFWS &amp; NMFS</td>
<td>Federal actions (including oil spill response) may affect protected (T&amp;E) resources and their designated critical habitat</td>
<td>All Federal agencies are to carry out programs for the conservation of threatened and endangered plants and animals and the habitats in which they are found. Through Federal action and by encouraging the establishment of state/commonwealth programs, the 1973 ESA provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend.</td>
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<td>Magnuson-Stevens Act (16 U.S.C. 1801-1884) Essential Fish Habitats (EFH) (50 CFR § 600, 1996).</td>
<td>NMFS</td>
<td>Federal actions, including oil spill response, that may adversely affect EFH</td>
<td>To protect the capability of EFH designated under the Magnuson-Stevens Act to produce managed fishery resources. EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.</td>
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<tr>
<td>Cultural and Historic Resources, Section 106 of the National Historic Preservation Act (NHPA)</td>
<td>National Park Service &amp; Advisory Council on Historic Preservation (ACHP)</td>
<td>Federal undertakings (including oil spill response) that affect historic properties</td>
<td>Federal agencies must address the likely effect an undertaking may have on historic properties (as defined in NHPA). The main purposes for the establishment of the Section 106 review process is to minimize potential harm and damage to historic properties and cultural resources, and to ensure a stakeholder voice in decisions affecting those properties. Federal undertakings are projects, actions, or programs that are funded whole or in part under direct or indirect jurisdiction of a federal agency, including funding, permits or license, or on behalf of a federal agency.</td>
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<tr>
<td>Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments</td>
<td>Department of Interior Bureau of Indian Affairs</td>
<td>Federal policies and actions affecting federally recognized tribes.</td>
<td>Federal agencies must consult in a government to government fashion with tribes on actions and policies which may affect tribes, including Tribal lands or that have Tribal implications.</td>
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<tr>
<td>Native American Graves Protection and Repatriation Act (NAGPRA), Section 13</td>
<td>Department of the Interior &amp; National Parks Service</td>
<td>Federal actions (including oil spill response) that affect Native American human remains, funerary objects, sacred objects and items of cultural patrimony on Federal or Tribal lands.</td>
<td>NAGPRA requires that Indian tribes, Alaska Native Village, or Native Hawaiian organizations be consulted whenever projects encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on Federal or Tribal lands. The law includes a “cease work” requirement unless a negotiated Plan of Action is in effect.</td>
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**NOTE:** There are other Acts that carry their own regulatory requirements such as the Marine Mammal Protection Act, and the Marine Sanctuaries Act and while they require that activities be coordinated to protect resources of those management entities, they do not specifically identify consultation mandates as do the mandates listed in the table.

Also: Essential Fish Habitat
Proposed Plan for Subcommittee Workgroup

• Form an RRT 5 ESA Consultation Workgroup
• Get species lists
• Complete response action matrix
• Formulate best management practices
• Draft biological evaluation
• Submit to services for determination
• Incorporate into ACPs
Workgroup composition

• RRT 5 Planning Subcommittee Workgroup
  ❑ Core group requested: USCG (reps from each FOSC), EPA R5, NOAA, DOI, USFW
  ❑ Recommended: State reps, tribal reps
  ❑ Open: anyone interested & willing

• Expected Commitment
  ❑ Monthly conference call
  ❑ One two-day session (in-person/webinar)
  ❑ Limited “outside homework” (species lists, review of products)
Get species lists

- Each area or sub-area identify geographic bounds via GIS – “action areas”

- Work with services (USFW & state agencies) to:
  - Identify federally-listed species in area or sub-area (federal partners)
  - Identify state listed species in area or sub-area (state partners)

- Produce species lists for areas or sub-areas
Complete Response Action Matrix

- A two-day workshop envisioned
- Intended to develop the body of knowledge where expertise of biologists & responders intersect – actionable information for responders
Formulate best management practices

- Formulate Conservation Measures & Best Management Practices – to reflect previous and ongoing consultation with the services
  - Existing Conservation Measures and Best Management Practices Documented in Contingency Plans
  - Conservation Measures and Best Management Practices Agreed to as Part of this Consultation (may include common practices not previously identified in contingency plans)
Draft biological evaluation (BE)

- Compile information obtained to date
- Utilize national ESA workgroup’s BE template
- Draft BE – coastal, inland or combined inland/coastal?
- USCG seeking Reserve support to active duty to accomplish
- Other support?
Submit to services for determination

• Submit BE(s) (federal partners) to services for determination per the Section 7 MOU

• Processes for state partners?

Appendix G: Effects Determination

To make a response action effects determination, the action agency needs to think about the proposed action including the direct, indirect, interdependent and interrelated effects on threatened and endangered (T&E) individuals and critical habitat. Determinations are made at the individual level, not the species level.

The standard approach used by the Services is to consider exposure, response and risk. Exposure includes the behavior and distribution of individuals in the proposed action area and whether they would likely be exposed to the action. A response to the action can be caused by exposure to direct, indirect, interdependent and interrelated effects. Response includes how individuals of a T&E species would be expected to react when exposed to the effects of the action. Risk considers individuals and their fitness if they respond due to exposure to the proposed action.
Incorporate into ACPs

- BE results will be incorporated into RCP, ACPs for areas & sub-areas
- Appendix?
- Response action matrices should remain valuable references/working tools for PRs & GRS