

# Endangered Species Act Obligations During and After Emergency Response

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# ESA Authorities

- Take (Section 9)
  - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct
    - Harm can include significant habitat modification or degradation
    - Harass includes activity that significantly disrupts normal behavior patterns (i.e., feeding, nesting, breeding, etc.)



# ESA Section 7

- Each federal agency shall insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of listed species
- Requires consultation with FWS and NOAA Fisheries (Informal or Formal determined by adverse effects)

# Emergency Consultation

- Seldom used and poorly understood
- Often occurs as the disaster is in progress, or after the fact.
- Expedited consultation in response to natural disasters, national defense emergencies, or other calamities.
- Can also make management recommendations for consulting agency to follow if they choose.



...really confusing?!!!!

....fix the problem!!!!

# Memorandum Of Agreement

Signed by Response and Trustee Agencies

- NCP
- ESA





# Memorandum of Agreement

- Signed by USCG, EPA, DOI, USFWS, NOAA & NMFS in July 2001
- Provides a framework for cooperation & participation among Services & Agencies
- Integrates ESA consultation with NCP requirements



# Emergency

- ESA – A situation involving an act of God, disasters, casualties, national defense, or security; includes actions taken to prevent loss of human life or property.
- MOA – The FOOSC knows it when he sees it and decides when its over. (When the spill starts until the case is closed).



# Implementation

- Utilized 4 times since 2001
- Utilized in Cosco Busan
- Good time to test the MOA?

# Basic Steps

- Are listed species and/or critical habitat potentially affected?
- Emergency (Spill) happens
- Action Agency requests technical assistance from FWS and/or NOAA Fisheries
- Response team makes recommendations to minimize adverse effects



# More Basic Steps

- Response team documents effects of response actions
- Action Agency determines if there are adverse effects (BA)
- Action Agency requests FWS/NMFS concurrence on BA finding of NLAA

# Do WHAT????

- Environmental Unit was tasked with “implementing the MOA”
- Developed matrix for response actions
- A new tool to focus thought and recommendations to minimize adverse effects
- Recommendations inserted in Incident Action Plan



Response Actions	California Clapper Rail	Salt Marsh Harvest Mouse	Tidewater Goby	Tidewater Goby Critical Habitat	Marbled Murrelet	California Least Tern	Southern Sea Otter
<b>On-water Oil Recovery - Coastal Waters</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	Not Likely to Adversely Affect (Beneficial)	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>On-water Oil Recovery - Bay Waters</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Shoreline Protection - Coastal Waters</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Shoreline Protection - Bay Waters</b>	Not Likely to Adversely Affect (Beneficial)	Not Likely to Adversely Affect (Beneficial)	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Sand Berm -- construct sand berm at entrance to tidal channel (Rodeo Beach)</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect (Beneficial) <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Hand placement of boom and sorbent material (Rodeo Lagoon)</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	Not Likely to Adversely Affect	Not Likely to Adversely Affect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Manual removal, shoreline cleanup – shovel and bagging, light equipment (small bobcats front end loaders)</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	Not Likely to Adversely Affect	No Effect <sup>1</sup>
<b>Temporary wrack displacement</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>High Pressure Washing</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Vegetation Removal (Bolinās Lagoon)</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	Not Likely to Adversely Affect	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Peat Dusting (Vegetation)</b>	Not Likely to Adversely Affect (Beneficial)	Not Likely to Adversely Affect (Beneficial)	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Surf Washing (Rodeo Beach)</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>SCAT/Rapid Assessment Teams</b>	Not Likely to Adversely Affect	Not Likely to Adversely Affect	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Wildlife Recon, and Wildlife Search and Recovery</b>	Not Likely to Adversely Affect	Not Likely to Adversely Affect	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Cultural Resources Identification/Investigation</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Deconn—large vessels</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Beach Access Construction</b>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect	No Effect <sup>1</sup>	No Effect <sup>1</sup>	No Effect <sup>1</sup>
<b>Air Operations</b>	Not Likely to Adversely Affect	Not Likely to Adversely Affect	No Effect <sup>1</sup>	No Effect	Not Likely to Adversely Affect	No Effect <sup>1</sup>	No Effect <sup>1</sup>

<b>Response Actions</b>	<b>California Clapper Rail</b>	<b>Salt Marsh Harvest Mouse</b>	<b>Tidewater Goby</b>	<b>Tidewater Goby Critical Habitat</b>	<b>Marbled Murrelet</b>	<b>California Least Tern</b>	<b>Southern Sea Otter</b>
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# Wildlife Response

- Any take issues???
- Permitted activities
- Western snowy plover capture



# Effects Determination

- Matrix formed basis of Biological Assessment
- Emergency ended
- BA completed by Environmental Unit
- Included Recommendations from IAP
- FOSC submitted Request for Concurrence of Not Likely to Adversely Affect listed species



# Lessons Learned

- Start immediately in a response
- Use matrix tool
- Get the species experts involved early
- Recommendations needed early in response
- Need adequate monitoring of response actions to determine affects
- Matrix and recommendations could form basis for response plan modifications

# Questions?

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- ESA MOA:  
[http://www.uscg.mil/npfc/docs/PDFs/urg/App/ESA\\_MOA\\_AppA\\_04.pdf](http://www.uscg.mil/npfc/docs/PDFs/urg/App/ESA_MOA_AppA_04.pdf)