

# ***Endangered Species Act***

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**US Army Corps of Engineers**  
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**San Francisco District**

# Topics

- Introduction
- Endangered Species Act
- Interagency Cooperation
- Types of consultations
- Effect determinations
- Application Information
- Questions

# USACE Permit Action

- Administrative Authorities: Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
  
- Compliance with applicable federal laws:
  - ▶ Magnuson-Stevens Act (Essential Fish Habitat – EFH)
  - ▶ National Historic Preservation Act (NHPA)
  - ▶ Coastal Zone Management Act
  - ▶ Section 401 of the Clean Water Act
  - ▶ **Endangered Species Act (ESA)**

# Endangered Species Act of 1973



California Red-legged Frog  
(*Rana draytonii*, *Threatened*)

## Legal Intent of the Act

Sec. 2(b) – The purposes of [the] Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species...



# Endangered Species Act

- **Endangered species** - any species which is in danger of extinction throughout all or a significant portion of its range. [ESA §3(6)]
- **Threatened species** - any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [ESA §3(20)]
- **Listed species** - any species of fish, wildlife or plant which has been determined to be endangered or threatened under the ESA. [50 CFR §402.02]
- **Critical Habitat** - specific areas within the geographic range of a listed species which support physical and biological features essential to the conservation of the species, and which may require special management. [ESA §3(5)(A)]



# 50 CFR Part 402

*Interagency Cooperation* - Endangered Species Act of 1973, As Amended



- **Sec. 7(a)(1)** of the Act directs federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for listed species.



# 50 CFR Part 402

*Interagency Cooperation* - Endangered Species Act of 1973, As Amended



- **Sec. 7(a)(2)** of the Act requires every federal agency to consult with the Services in order to insure that it does not authorize, fund, or carry out actions in the United States or upon the high seas, that are likely to jeopardize the continued existence of any listed species or result in the destruction of adverse modification of critical habitat.

# Services



Marine species, sea turtles  
and anadromous fish



Terrestrial species,  
freshwater species,  
sea turtles,  
and  
anadromous fish

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# Federally Listed Species: California

- Listed species in California:
  - ▶ 127 animal species
  - ▶ 184 plant species



Salt marsh harvest mouse  
(*Reithrodontomys raviventris*,  
*Endangered*)



Northern spotted owl  
(*Strix occidentalis caurina*,  
*Threatened*)



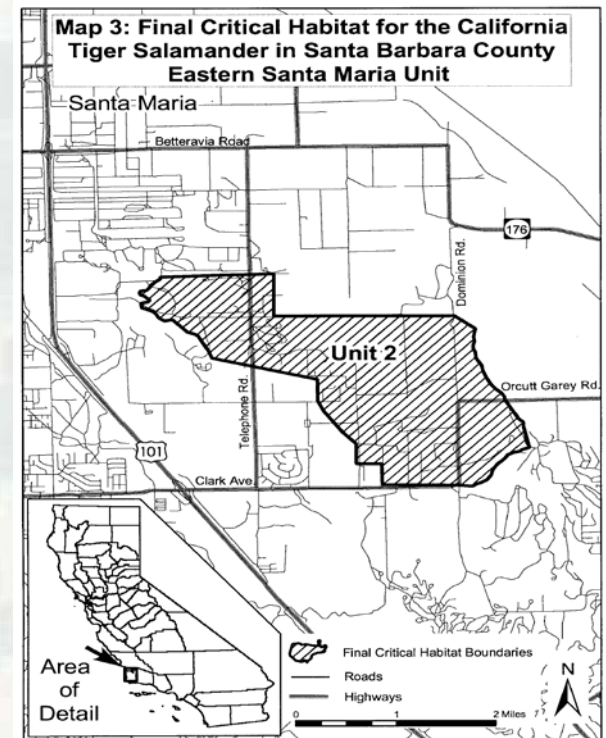
Contra Costa wallflower  
(*Erysimum capitatum* var. *angustatum*,  
*Endangered*)

# Federally Listed Species: California

- Critical Habitat for listed species in California
  - ▶ 123 plant and animal species have designated or proposed critical habitat in the State of California



*California tiger salamander (Ambystoma californiense)*

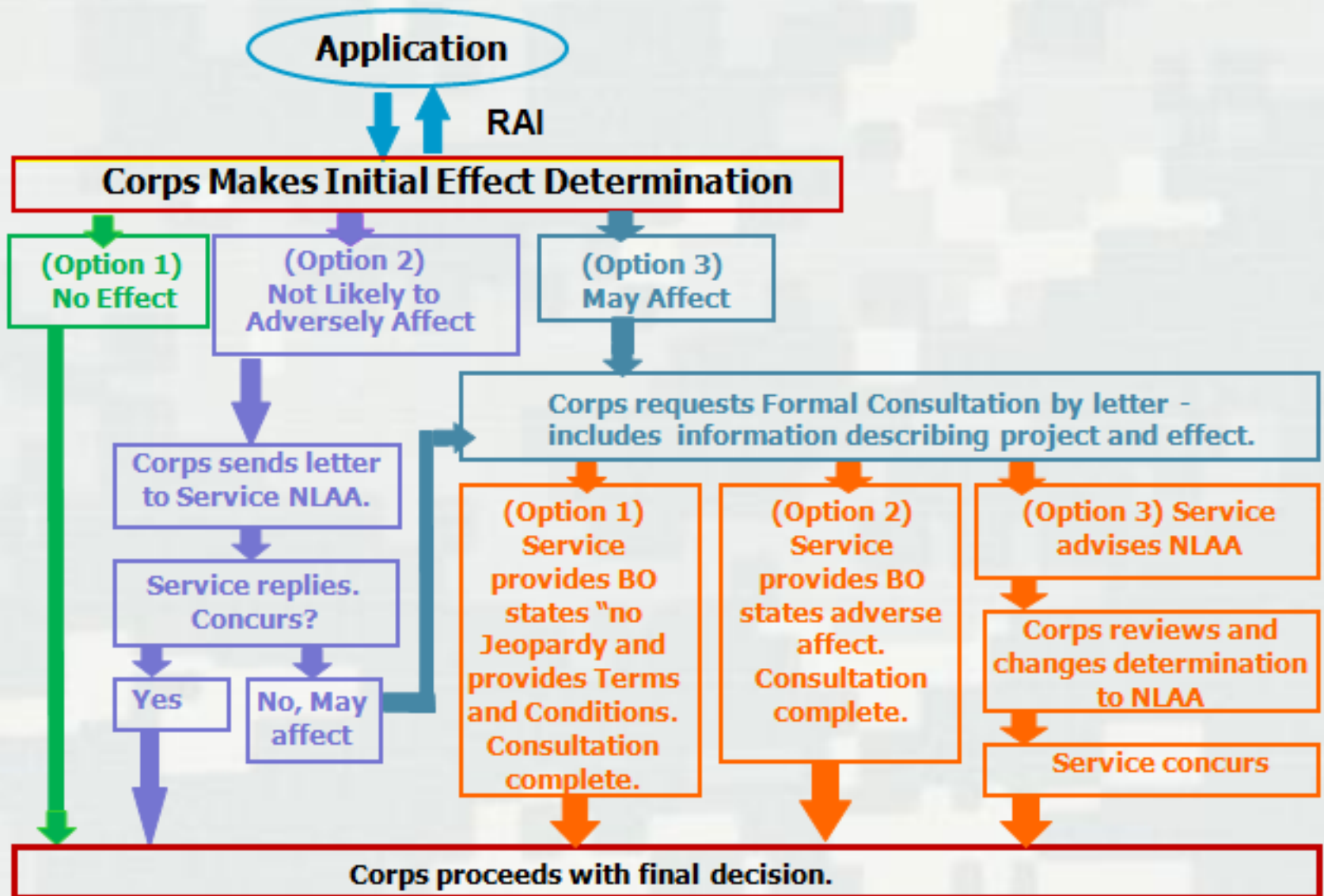


# Consultation

- Informal
- Formal
- Conference

USACE makes an **Effects Determination** and requests to initiate the appropriate type of consultation with the responsible agency





# Consultation

- *Effects Determination Categories*

- ▶ **No Effect**

- The agency's determination when the proposed action will not affect listed species or critical habitat.

- **No Consultation**

- ▶ **Not Likely to Adversely Affect**

- The agency's determination when a proposed actions effects on listed species are expected to be discountable, insignificant, or beneficial.

- **Informal Consultation / Service Concurrence Required**



# Consultation

- *Effects Determination Categories*
  - ▶ **Likely to Adversely Affect**
    - The appropriate conclusion if any adverse effects to listed species may occur as a direct or indirect result of a proposed action.
    - **Formal Consultation** / Biological Opinion / Incidental Take Permit
  
  - ▶ **Jeopardy**
    - The appropriate conclusion when the proposed action is expected to Jeopardize the continued existence of a listed species.
    - **Take is Prohibited**
  
  - ▶ **Adverse Modification of Critical Habitat**
    - The appropriate conclusion when the proposed action is expected to result in the destruction or adverse modification of critical habitat.
    - **Adverse Modification is Prohibited**



# Consultation

- *Effects Determination Categories: Proposed Species*

- ▶ **Jeopardy**

- The appropriate conclusion when the proposed action is expected to Jeopardize the continued existence of a proposed species.
- **Conference** / Conference Opinion

- ▶ **Adverse Modification of Critical Habitat**

- The appropriate conclusion when the proposed action is expected to result in the destruction or adverse modification of proposed critical habitat.
- **Conference** / Conference Opinion



# Making Effect Determinations

- Be proactive...You can influence the consultation...
  - Consider the federal process in your design/application
  - List the species and designated critical habitat you considered
  - Consider direct/indirect effects, survey data, habitat suitability, species consultation areas
  - Use resources to accurately project effects
  - Remember there are limited survey windows for some species



# Determination Tools

- Consultation Handbook (March 1998)
- Section 7 Regulations (50 CFR Part 402)
- Technical Assistance
  - ▶ From USFWS or NOAA
- Websites
  - ▶ USACE, NOAA, USFWS
- Programmatic Bo's
  - ▶ Coming soon to our website!



# Formal Consultation\*

- A written request to initiate formal consultation shall:
  - Describe proposed action
  - Describe affected area
  - List affected species or critical habitat
  - Describe the affect on listed species or critical habitat and analyze cumulative effects
  - Include relevant reports, environmental impact statement, environmental assessment or biological assessment
  - Include other relevant available information on the action, the affected listed species or critical habitat

***\*(50 CFR 402.14)***

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# Application Information

- A completed ENG 4345 application form does not satisfy the consultation requirement of Section 7 of the ESA.
  
- Nationwide Permits General Condition 18:
  - ▶ **Pre-Construction Notifications** must include:
    - Name(s) of listed species that might be affected
    - Documentation demonstrating compliance with ESA
  
  - ▶ No work shall start until Section 7 is satisfied



# Questions

**WE THE PEOPLE**  
insure domestic Tranquillity, provide for the common  
and our Posterity, do ordain  
and establish this Con

