

**A Compilation of Terms Used During
Consultation Under Section 7 of the
Endangered Species Act**

March 2022



Section 7 Training, LLC

Note to the Reader

This compilation does not replace or supersede any statutory, regulatory, guidance, or policy definitions. In the case of any confusion regarding a definition – the original source should be consulted. This compilation is simply intended to gather many of the common words, phrases, and acronyms that are encountered when consulting under Section 7 of the Endangered Species Act in one place.

When exact quotes are used, the source of the quote is noted. That is important when trying to determine whether a definition originated from the statute (Endangered Species Act), regulations, guidance, or policy.

If a word or phrase is not specifically a defined term in statutory, regulatory or policy documents, the definition or explanation is noted as a “working definition”. In these cases, the compiler composed a working definition by drawing contextual quotes and information from the statutes and regulations or by using various non-statutory and non-regulatory sources (e.g., dictionaries, Service websites, court cases, etc.) to construct a commonly held meaning for the phrase or word.

The term “Act”, where used in a definition in this Glossary (unless within a definition for another Act of Congress), refers to the Endangered Species Act.

If you have comments, suggestions, or corrections please contact me at doug@section7training.com

- Compiler

Action – “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.”

Source: Regulations (1986) codified as 50 CFR 402.02.

Action Agency – generally means a Federal agency engaging in an activity fitting the definition of an action and responsible for ensuring its action does not violate the mandate under 7(a)(2) and 7(a)(3) of the ESA.

Source: Working definition

Note: See also **Federal Agency, Lead Agency** and **Federal Action Agency**.

Action Area – “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Not to be confused with the term “affected environment” which is a term of art used in the NEPA process.

Activities Reasonably Certain to Occur – a phrase used to describe activities that are caused by the proposed action or activities reviewed under effects of the action and cumulative effects.

Source: Working definition

Note: Not specifically defined in the regulations, but described in the preamble (FR Vol. 84, No. 166, August 27, 2019). Factors to consider when evaluating whether activities are reasonably certain to occur are listed at CFR 402.17.

Addendum – a word used to refer to various documents altering, amending, or modifying a biological assessment, biological opinion, or other consultation document.

Source: Working definition

Note: Not described in the statute, regulations, or policy. Used most notably in a court case regarding the Service’s use of an addendum to complete reinitiation of consultation [(*Mayo v. Jarvis*, 177 F. Supp. 3d 91 (D.D.C. 2016))]. See also **Amend** and **Amendment**.

Administrative Procedure Act (APA) – An act of Congress enacted in 1946 that governs the way in which administrative agencies of the Federal government of the United States propose and establish regulations. The APA also sets up the process for the Federal courts to review agency decisions.

Source: Working definition

Note: See also **Arbitrary or Capricious**.

Administrative Record – these are the records of an agency decision assembled for a specific court action that a court reviews as part of a legal proceeding.

Source: Working definition

Note: This phrase has a very specific legal meaning and practitioners should be cautious when using it. See also **Decision File** and **Consultation Record**.

Adverse Modification (or “Adverse Mod”) – A shortened phrase often used by practitioners to represent the Act’s full phrase **Destruction or Adverse Modification**.

Source: Working definition

Note: Full phrase is from Section 7(a)(2) of the Act. Depending on context of use, this is a potentially confusing fragment. See **Adversely Modify** and **Destruction or Adverse Modification**.

Adversely Affect – See **May Affect, Likely to Adversely Affect**

Adversely Modify – This is a phrase that can have two very different meanings. In Section 4(b)(8) of the Act (and in many Service documents) this phrase represents the verb form of **Destruction or Adverse Modification** [from 7(a)(2) and (4)]. However, in Action Agency documents the phrase is sometimes used generally to describe impacts from a project to proposed or designated critical habitat. In this latter case it is not intended to represent the Act’s 7(a)(2) meaning for **Destruction or Adverse Modification** (a determination the Services make in a biological opinion), but to describe only action area-scale situations where a portion of critical habitat is destroyed or modified by a project, usually resulting in an adverse effect determination.

Source: Working definition

Note: See also **Destruction or Adverse Modification**.

Affect/effect – "...to affect (a verb) is to bring about a change ("The proposed action is likely to adversely affect piping plovers nesting on the shoreline"). The effect (usually a noun) is the result ("The proposed highway is likely to have the following effects on the Florida scrub jay"). "**Affect**" appears throughout Section 7 regulations and documents in the phrases "may affect" and "likely to adversely affect." "**Effect**" appears throughout Section 7 regulations and documents in the phrases "adverse effects," "beneficial effects," "effects of the action," and "no effect."..."

Source: 1998 Handbook, p. x

"After the fact" Consultations – A phrase used once in the preamble to the 1986 regulations to describe consultations conducted on an action agency's response to emergencies. The concept is codified in the regulations for emergencies at 50 CFR 402.05. Consultations after the fact are limited to emergencies.

Source: Working definition

Note: FR, June 3, 1986, Vol. 51, No. 106, p. 19937.

Allowable – See **Anticipated/allowable/authorized**

Alternative Consultation Agreement (ACA) – A formal agreement with the Services on an alternate process for informal consultation. It has been used two times. In 2004, it was a component of the *Joint Counterpart Endangered Species Act Section 7 Consultation Regulations* for projects under the National Fire Plan. It allowed the Service to provide training, oversight, and monitoring to an Action Agency, which enabled the Action Agency to make a Not Likely to Adversely Affect determination for a project implementing the National Fire Plan without informal consultation or written concurrence from the Service (FR December 8, 2003, Vol. 68, No. 235, p. 68254-65, codified as 50 CFR 402.30 and 402.33). In 2011, the ACA was revoked, and the regulations are no longer in effect (FR October 3, 2011, Vol. 76, No. 191, p. 61090). Also, in 2004, an ACA was used to establish counterpart regulations with the EPA for consultations on pesticides under FIFRA (FR August 5, 2004 Vol. 69, No. 150, p. 47732-62). In 2006, courts vacated key provisions in those counterpart regulations.

Source: Working definition

Note: Term should not be confused with the terms, **Consultation Agreement, Alternative Consultation Process, or Alternative Consultation Procedures**. See also **Expedited Consultations and Optional Collaborative Process**.

Alternative Consultation Procedures – a phrase sometimes used to capture situations where an action agency and the Service establish specific methods for completing a consultation. These are usually codified in a **Consultation Agreement**.

Source: Working definition

Note: See also **Alternate Consultation Agreement, Consultation Agreement, Streamlined Consultation Procedures, Expedited Consultation, and Optional Collaborative Process**.

Alternative Consultation Process – a specific phrase found only in the 2004 *Joint Counterpart Endangered Species Act Section 7 Consultation Regulations* (for projects under the **National Fire Plan**) to describe the new consultation process. Those regulations are no longer in effect.

Source: Working definition

Note: See also **Alternative Consultation Agreement and Optional Collaborative Process**. Term should not be confused with the terms **Expedited Consultations, or Alternative Consultation Procedures**.

Amend or Amendment – terms used by practitioners to refer to any consultation document (including biological assessments) that are subsequently modified by letter or memorandum. Though not used with this broad connotation in the Act or regulations, the 1998 Handbook uses the word in section 4.6 to discuss modifications to biological opinions or incidental take statements.

Source: Working definition

Note: See also **Addendum**.

Analytical Framework – See **Jeopardy Analysis Framework**

ANILCA (Alaska National Interest Lands Conservation Act) – Though the acronym stands for an act of Congress, in Section 7 practice the acronym (ANILCA) is commonly used to refer to an agreement with the

Forest Service, Bureau of Land Management, and NOAA Fisheries regarding authorizations for access to non-Federal land across lands administered by FS or BLM. The agreement dealt specifically with situations involving compliance with the Endangered Species Act when access is authorized pursuant to the Alaska National Interest Lands Conservation Act or the Federal Land Policy and Management Act. The agreement was announced in an April 13, 2003, Memo from the Director of the Service to the Regional Directors. A clarification memo was issued on July 1, 2005.

Source: Working definition

Note: This acronym is also used broadly in discussions of Section 7 analyses that include a Federal nexus and associated private land or actions.

Anticipated/allowable/authorized – "... in incidental take statements, the Services determine the amount or extent of incidental take "anticipated" (expected) due to the proposed action or an action modified by reasonable and prudent alternatives. When writing incidental take statements, use only the phrase "anticipated" rather than "allowable" or "authorized," as the Services do not allow or authorize (formally permit) incidental take under Section 7. [Clarification of usage]"

Source: 1998 Handbook, p. x

Note: See the 1998 Handbook pp. 4-45 to 4-49. Incidental take for non-Federal actions can be authorized through Section **10(a)(1)(B)** permits.

AOI (Area of Influence) – see **Section 7 Range**

APA – see **Administrative Procedure Act**

Appended Consultation – generally viewed as a form of a Programmatic Consultation (concurrence or biological opinion). In appended consultations, typically a larger, programmatic consultation is completed, and then when specific projects/activities are identified and proposed, site-specific consultation documents are completed and appended to the programmatic consultation document.

Source: Working definition

Note: There is tremendous variation in the understanding and application of this concept. See also **Tiered Consultation, Step-down Consultation** and **Programmatic Consultation**.

Applicant – "refers to any person, as defined in section 3 of the Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action."

Source: Regulations (1986) codified as 50 CFR 402.02

Note: The Act uses the word applicant in relation to **Permit or License Applicant** (see that definition). See also the definition for **Person**, and the 1998 Handbook pp. 2-12, 2-13.

Applicant Committed Conservation Measures (ACCM) – a phrase used by some action agencies to identify specific activities within the proposed action that applicants will implement in order to reduce impacts to affected listed species.

Source: Working definition

Note: See **Conservation measures**.

Appreciably Diminish the Value – "to considerably reduce the capability of designated or proposed critical habitat to satisfy requirements essential to both the survival and recovery of a listed species. [Clarification of usage]"

Source: 1998 Handbook, p. x

Note: The phrase "appreciably diminish" is used in the regulatory definition of destruction or adverse modification. Its only definition is from the 1998 Handbook, but a larger discussion regarding its meaning is included in the preamble to the final rule defining **Destruction or Adverse Modification** (FR, February 11, 2016, Vol. 81, No. 28), the preamble to the revision of that definition (FR Vol. 84, No. 166, August 27, 2019), and the 1998 Handbook at 4-34.

Appreciably Reduce – a phrase used in Section 10(a)(1)(B) of the Act regarding the impact of taking on a species "... the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;..." but not defined further.

Source: Working definition.

Note: Quotes in text above taken from the Act, Section 10(a)(2)(B)(iv). It is also mentioned on pages 2-5 and 4-34 of the 1998 Handbook. The reverse phrase - **Reduce Appreciably** - is used in the regulatory definition of **Jeopardize the Continued Existence of**.

Arbitrary – “...Based on or subject to individual judgment or discretion...”

Source: Working definition

Note: Quote from Webster’s II New Riverside University Dictionary (1988). Usually seen in the phrase “**arbitrary or capricious**”, a phrase used to describe the criteria with which a court reviews an agency’s decision under the **Administrative Procedure Act**.

Arbitrary or Capricious – phrase used by courts to describe situations where the Service’s action (1) relied on factors which Congress did not intend the Service to consider, (2) entirely failed to consider an important aspect of the problem, (3) offered an explanation for the conclusion that runs counter to the evidence before the court, (4) offered a conclusion that is so implausible that it could not be ascribed to a difference in view or the product of expertise, or (5) failed to articulate a satisfactory explanation for a conclusion.

Source: Working definition

Area of Influence – along with the phrase “Section 7 Range”, this phrase was used In the Environmental Conservation Online System (ECOS) and the Information for Planning and Consultation (IPaC) system to assist users in determining which listed species to consider when planning projects. In 2021, the new phrase Species List Area” became the phrase used for that purpose in those systems.

Source: Working definition

Note: See also **Species List Area**, **Current Range** and **Geographic Range Occupied by the Species**.

Avian and Bat Protection Plan (ABPP) – a document that describes a program to reduce risks to birds and bats from electric utility equipment and facilities.

Source: Working definition

Note: Similar to an **Avian Protection Plan**, but this term is most often associated with wind energy. See: <https://www.fws.gov/ecological-services/energy-development/wind.html>. Also known as **Bird and Bat Conservation Strategy (BBCS)**.

Avian Protection Plan (APP) – “...is a utility-specific document that delineates a program designed to reduce the operational and avian risks that result from avian interactions with electric utility facilities.”

Source: Working definition

Note: Quote taken from Avian Protection Plan (APP) Guidelines, 2005. APP guidelines were the product of the Avian Power Line Interaction Protection Committee (APLIC) - a cooperative effort by the utility industry and Service.

Bald and Golden Eagle Protection Act (BGEPA) – The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) enacted in 1940, and amended several times since then, prohibits anyone without a permit issued by the Secretary of the Interior, from "taking" bald or golden eagles, including their parts, nests, or eggs.

Source: Working definition

Note: Take under the Bald and Golden Eagle Act is defined differently than take under the ESA. Beginning in 2009, various regulations and guidelines have been put in place for permits related to incidental take of bald and golden eagles.

Baseline – See **Environmental Baseline**

Batched Consultation – a term not found in the Act, regulations, or the 1998 Handbook, but used to generally describe a consultation on multiple actions often of similar type, size, scope, and impact. Batched consultations are sometimes referred to as a type of Programmatic Consultation.

Source: Working definition

Note: See also **Programmatic Consultation**.

BAER – see **Burned Area Emergency Response**

Beneficial Effects – “are contemporaneous positive effects without any adverse effects to the species.”

Source: 1998 Handbook, p. xv

Note: Practitioners should note the use of the word contemporaneous in this definition. This is one of the three possible conditions for an effects determination of **May Affect**, **Not Likely to Adversely Affect**.

“Benefit of the doubt to the species...” – a phrase used once in the U. S. House of Representatives conference report regarding discussions on language amendments to Section 7 of the ESA. “...As currently written,

however, the law could be interpreted to force the Fish and Wildlife Service and the National Marine Fisheries Service to issue negative biological opinions whenever the action agency cannot guarantee with certainty that the agency action will not jeopardize the continued existence of the listed species or adversely modify its critical habitat. The amendment will permit the wildlife agencies to frame their Section 7(b) opinions on the best evidence that is available or can be developed during consultation. If the biological opinion is rendered on the basis of inadequate information then the federal agency has a continuing obligation to make a reasonable effort to develop that information. This language continues to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate to the consulting agency that its action will not violate Section 7(a)(2).”

Source: Working definition

Note: Quote taken from the 1979 conference report (No. 96-697). Concept can be misinterpreted to suggest using an unsupported bias when dealing with uncertainty. It is mentioned in the preamble to the 1986 regulations (p. 19951) and the Services briefly discuss this concept in the 1998 Handbook, p. 1-6. Also reviewed in the court case *Miccosukee Tribe vs. USFWS*. (11th Circuit Court of Appeals, May 5, 2009)

Best Scientific and Commercial Data Available – this phrase is mentioned seven times in the Act (Section 4 and 7) and represents the standard for the information used to support actions taken by the Services during implementation of the Act.

Source: Act, Section 4 and 7

Note: In several places, the preamble to the 1986 regulations errantly alters the Act’s word order to “best available scientific and commercial data”. See also **Information Standards under the Endangered Species Act**.

Biological Assessment – “...information prepared by, or under the direction of, a Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation [of] potential effects of the action on such species and habitat.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: The phrase first appears in the Act, but is defined in the regulations. Biological assessments must be prepared for "major construction activities" (see 50 CFR 402.02). The outcome of the biological assessment determines whether formal consultation or a conference is necessary (50 CFR 402.02 and 402.12). Biological Assessments are required for projects seeking exemption from 7(a)(2) of the Act through the Endangered Species Committee [Act, Section 7 (c)(2)]. Though the term has a specific definition in the regulations, practitioners often use the term broadly to indicate any document(s) used by an action agency to initiate consultation.

Biological Opinion – “...the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: A list of the items that must be included in a biological opinion is at CFR 402.14(h).

Blanket 4(d) rule – a phrase used to describe a Fish and Wildlife Service rule promulgated in 1978. That rule under 4(d) of the Act, extended the Act’s Section 9 prohibitions on endangered species to all future species listed as threatened.

Source: Working definition

Note: This blanket rule was terminated in 2019 (FR Vol. 84, No. 166, August 27, 2019). Species listed as threatened after the August 2019 revised regulations will not be subject to Section 9 prohibitions unless a species-specific 4(d) rule is promulgated outlining applicable prohibitions, exceptions to prohibitions, or other protective regulations. NMFS did not promulgate a similar “blanket rule”

Burned Area Emergency Response (BAER) – A U.S. Forest Service program used “...to identify imminent post-wildfire threats to human life and safety, property, and critical natural or cultural resources on National Forest System lands and take immediate actions, as appropriate, to manage unacceptable risks.”

Source: Working definition

Note: Quote taken from 2013 Interim Directive (No. 2520-2013-1, June 6, 2013). Program is most commonly used immediately after, or even during, suppression of wildfires to reduce potential future damage caused by erosion.

“But for” Test – The first of a two-part test to determine if an activity or consequence is caused by an action and should be considered an effect of the action under consultation. To be considered an effect of the action,

the activity or consequence must also be “reasonably certain to occur”. “If the agency fails to take the proposed action and the activity would still occur, there is no ‘but for’ causation”

Source: Working definition

Note: Quote above taken from larger discussion in the preamble of FR Vol. 84, No. 166, August 27, 2019, p. 44977. See also **Reasonably Certain to Occur** and **Two-part Test**.

Candidate – “any species being considered by the Secretary for listing as an endangered or threatened species, but not yet the subject of a proposed rule.”

Source: Regulations, 50 CFR 424.02

Note: Candidate is first mentioned in the Act, but not defined there. The Service commonly adds an explanatory phrase when referencing candidate species: “These are taxa for which the Fish and Wildlife Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority listing actions.” (1998 Handbook p. xi). By policy for intra-service conferencing purposes, the Service treats candidates as if they were proposed for listing (1998 Handbook p. 1-5).

Candidate Conservation Agreement (CCA) – “... an Agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or non-Federal citizens, that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species.”

Source: Working definition

Note: Quote from policy on Candidate Conservation Agreements with Assurances published in the FR, June 17, 1999, Vol. 64, No. 116, p. 32734.

Candidate Conservation Agreement with Assurances (CCAA) – This agreement provides incentives for non-federal property owners to engage in voluntary conservation activities that provides a net conservation benefit to a species. A CCAA provides participants with a permit containing assurances that if the species is listed, participants will not be required to implement additional conservation measures beyond those in the CCAA.

Source: Working definition

Note: A policy on Candidate Conservation Agreements with Assurances was published in the FR, June 17, 1999, Vol. 64, No. 116, p. 32734. The assurances included in these agreements provide greater certainty (and most include a 10(a)(1)(A) **Enhancement of Survival Permit** for take) if the species becomes listed. Assurances cannot be extended to Federal agencies.

Candidate Notice of Review (CNOR) – The yearly appraisal of the current status of plants and animals considered candidates for protection under the Act. Noticed is published in the **Federal Register** typically near the end of the fiscal year.

Source: Working definition

Capricious – “...Characterized by or subject to whim...”

Source: Working definition

Note: Usually seen in the phrase “arbitrary or capricious”, a phrase used to describe the criteria with which a court reviews an agency’s decision under the **Administrative Procedure Act**. Quote from Webster’s II New Riverside University Dictionary (1988).

Categorical Exclusion (“Cat X”) – a NEPA phrase (not Section 7) that “...means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedure adopted by a Federal agency in implementations of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required...”

Source: Regulations, 40 CFR 1508.4

Note: Quote taken from the full definition at 40 CFR 1508.4. A “Cat X” does not change a federal agency’s responsibilities under 7(a)(2) of the Act.

CCA – See **Candidate Conservation Agreement**

CCAA – See **Candidate Conservation Agreement with Assurances**

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) – a 1980 act of

Congress intended to eliminate risks to human health and the environment posed by contamination, usually at closed and abandoned hazardous wastes sites, and recoup the cost of cleanup from responsible parties.
Source: Working definition

CFR – See **Code of Federal Regulations**

CITES – See **Convention on International Trade in Endangered Species of Wild Flora and Fauna**

Clean Water Act – a 1972 act of Congress which acts as the primary Federal law in the United States governing water pollution. Sections of the law are implemented by the Environmental Protection Agency (**EPA**) and the Army Corps of Engineers.
Source: Working definition

Code of Federal Regulations (CFR) – The Code of Federal Regulations is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.
Source: Working definition

Concurrence – an affirmative response by the Services to an action agency’s request for concurrence with a may affect, not likely to adversely affect project determination. A concurrence completes informal consultation [CFR 402.13].
Source: Working definition

Concurrence Letter – a letter issued by the Service (usually after **informal consultation**) concurring on the action agency’s determination that the effects from their proposed action fall into the not likely to adversely affect determination category.
Source: Working definition
Note: First mentioned in the preamble of 1986 regulations, and at 50 CFR 402.13. The 1998 Handbook discusses the subject in chapter 3. This document is also commonly referred to as a Letter of Concurrence or LOC.

Confer – term first mentioned in Section 7(a)(4) of the Act regarding action agency’s requirements for proposed species or proposed critical habitat. “... (4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.”
Source: Working definition
Note: Quote taken from the Act, Section 7 (a)(4). See also **Conference**.

Conference – noun form of the word **confer** from Section 7(a)(4) of the Act. Defined in the regulations as “a process which involves informal discussions between a Federal agency and the Service under Section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.” (50 CFR 402.02). Discussed further in the regulations at 50 CFR 402.10: “Federal agencies shall confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.”
Source: Regulations (1986) codified as 50 CFR 402.02 and 402.10
Note: Conferences required under section 7(a)(4) are concluded with either a Conference Report or (if requested) a Conference Opinion. Conference Opinions may be adopted as a biological opinion by the Service after listing, under certain conditions (402.10). Adoption, by the Service, of the conference opinion should be requested in writing. Many agencies voluntarily request to conference on projects that they determine only “may affect” proposed species, critical habitat (402.10), or candidate species. Because of the wide variety of actions taken by the Service and action agency relative to a “voluntary” conference, the process and terminology can become confusing. See also **Voluntary Conference** and chapter 6 of the 1998 Handbook.

Conference Concurrence – a phrase sometimes used by consultation practitioners to identify a letter concurring with an action agency’s determination that a project may affect, but is not likely to adversely affect a proposed species, proposed critical habitat, or candidate species. If the species is listed or the critical habitat designated, the action agency can request adoption of the document as a concurrence letter.

Source: Working definition

Conference Notice – a term generally used to describe a letter or memorandum from the Service requesting that a Federal agency conference. This request follows the Service’s determination, after a review of available information, that conference is required (e.g., the proposed action is likely to jeopardize a proposed species or result in destruction or adverse modification of proposed critical habitat).

Source: Working definition from discussion 50 CFR 402.10 and p. 6-2 of the 1998 Handbook

Note: These notices are rare and advisory only. They are often included in consultation documents (biological opinion or concurrence letter) for other species affected by project.

Conference Opinion – the document analyzing the effects of a Federal agency’s action on a proposed species or proposed critical habitat, and documenting the Service’s conclusion regarding whether a proposed action is likely to jeopardize a proposed species or cause destruction or adverse modification of proposed critical habitat.

Source: Working definition from discussion 50 CFR 402.10 and pp. 6-4 through 6-6 of the 1998 Handbook.

Note: A conference opinion uses the same format as a biological opinion and may be adopted, by the Service, as a biological opinion after listing, under certain conditions (402.10). An incidental take statement may be included, but is not in effect until the species is listed. Adoption of the conference opinion should be requested in writing. See discussion in Chapter 6 of the 1998 Handbook.

Conference Report – a term sometimes used to describe the document prepared after informal discussions with an action agency, containing recommendations for reducing adverse effects to proposed species or proposed critical habitat. The recommendations are advisory. If the species is listed, or critical habitat is designated prior to project completion, standard consultation procedures apply.

Source: Working definition from discussion 50 CFR 402.10(c) and p. 6-1 of the 1998 Handbook

Note: A report is prepared in the cases where an action agency has not requested that the conference be documented in a formal format. Because a report does not follow the same format as a biological opinion, it typically cannot be simply adopted as a biological opinion after listing. See **Conference Opinion**.

Conserve, Conserving and Conservation – “the terms “conserve,” “conserving” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the] Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.”

Source: Act, Section 3

Note: Definition from the regulations at 50 CFR 424.02 adds the words “*i.e.*, the species is recovered in accordance with § 402.02 of this chapter.” after “...no longer necessary.”

Conservation Bank – a “...conservation bank is a parcel of land containing natural resource values that are conserved and managed in perpetuity, through a conservation easement held by an entity responsible for enforcing the terms of the easement, for specified listed species and used to offset impacts occurring elsewhere to the same resource values on non-bank lands.”

Source: Working definition

Note: Quote taken from May 2, 2003, Director’s memo regarding Guidance for Establishment, Use, and Operation of Conservation Banks.

Conservation Framework – a legacy term describing a document that synthesized threats and management information within all or a portion of a species range. Those frameworks informed the early development of the software for Effects Pathway Manager and Species Status Assessments. The term is no longer in use.

Source: Working definition

Note: See **Effects Pathway Manager and Species Status Assessments**.

Conservation Measures – “are actions to benefit or promote the recovery of listed species that are included by the Federal agency as an integral part of the proposed action. These actions will be taken by the Federal agency or applicant, and serve to minimize or compensate for project effects on the species under review. These may include actions taken prior to the initiation of consultation, or actions which the Federal agency or applicant have committed to complete in a biological assessment or similar document.”

Source: 1998 Handbook, p. xii

Note: In CFR 50 402.14(c)(1)(i) described as “...measures intended to avoid, minimize or offset effects of the action...” Not to be confused with **Conservation Recommendations**.

Conservation Needs – a phrase used generally to describe the aspects of a species’ biology that the species requires to thrive and/or those items that need improvement to enhance the long-term biological condition of the species. In consultation, conservation needs are often derived from information in the listing notice and then the project’s effects are measured for their impact to those conservation needs.

Source: Working definition

Note: See **Resource Needs**

Conservation Plan – “means the plan required by section 10(a)(2)(A) of the ESA that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as “habitat conservation plans” or “HCPs.” Incidental take is authorized through a 10(a)(1)(B) permit.

Source: Regulations, codified as 50 CFR 17.3

Note: First mentioned, but not defined, in the Act (Section 10). The incidental take permit is for non-Federal entities.

Conservation Recommendations – “are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: “The Service may provide with the biological opinion a statement containing discretionary conservation recommendations. Conservation recommendations are advisory and are not intended to carry any binding legal force.” [50 CFR Part §402.14 (j)]. The 1998 Handbook (p. xii) expressed the regulatory definition this way: “...non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, or designated or proposed critical habitat; and (3) include suggestions on how an action agency can assist species conservation as part of their action and in furtherance of their authorities under Section 7(a)(1) of the Act.” See also the 1998 Handbook p. 4-59.

Consequences – “...are a result or effect of an action...”

Source: Working definition

Note: Quote taken from FR, August 28, 2019, Vol. 84, No. 166, p. 44977. This term was introduced into the definition of “**Effects of the Action**” partially as a way to avoid using the term being defined, (“effects”) in the definition.

Considerably Reduce – a phrase in the 1998 Handbook’s definition of Appreciably Diminish the Value of (p. x) but not defined there. The phrase’s meaning is discussed in the preamble to the final rule defining Destruction or Adverse Modification (FR, February 11, 2016, Vol. 81, No. 28, p. 7218).

Source: Working definition

Consultation – See **Section 7(a)(1)** and **7(a)(2)**

Consultation Agreement – refers generally to formal agreement between the Services and an action agency to use agreed upon timelines, cooperative steps, structured reviews, data sources, document templates, etc., to either move through a single, complex consultation or establish a process for use on all consultations.

Source: Working definition

Note: “Programmatic agreements” and “structured consultation agreements” are other, synonymous terms. Consultation Agreement is not to be confused with **Alternative Consultation Agreement**. See also **Expedited Consultations**.

Consultation Package Builder –Term is used specifically to describe capacity of the IPaC system to assist in developing documents to support 7(a)(2) consultation.

Source: Working definition

Note: See **Consultation Package and IPaC**.

Consultation Package – a general term often used to describe the information submitted to the NMFS or FWS to support consultation under 7(a)(2). Term is used specifically to describe capacity of the IPaC system to assist in developing those documents.

Source: Working definition

Note: See **Consultation Package Builder and IPaC**.

Consultation Record – a collection of all the pertinent documents and information used in completing consultation with a Federal action agency.

Source: Working definition

Note: See **Decision File and Administrative Record**.

Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) – a convention entered in force in 1975 to ensure that international trade in plants and animals does not threaten their survival in the wild.

Source: Working definition

Note: Under the ESA, the Service is designated to carry out the provisions through the Division of Management Authority and Division of Scientific Authority.

Cooperating Agency – mentioned on page 19938 of the preamble to the 1986 regulations, but not in the Act, regulations, or 1998 Handbook. The phrase is used generally to refer to an agency that has a connection to the proposed action and/or has special skills or expertise that it can contribute to the **lead agency** to promote an effective consultation.

Source: Working definition

Note: For the **NEPA** process, the Council for Environmental Quality (CEQ) has published a specific description of cooperating agency. "...*Cooperating agency* means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment." (40 CFR 1508.5).

Cooperator – generally used to mean any agency, state, private group, or person that is working with a lead Federal agency to assist in promoting an effective consultation or action.

Source: Working definition

Cooperative Agreements – Cooperative agreements are agreements between the Service and a private group or person providing funding for a conservation action. They are used when the Service will be substantially involved in the activity for which the funding or in-kind service is being provided.

Source: Working definition

Council on Environmental Quality – a council under the Executive Branch established as part of the National Environmental Policy Act of 1969 to coordinate environmental policies among Federal agencies.

Source: Working definition

Counterpart Regulations – alternate regulations that can supersede the regulations on interagency cooperation (50 CFR 402) for a particular Federal agency by agreement and promulgation of joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service.

Source: Working definition

Note: Most recent examples were for pesticide registration (2004; 50 CFR subpart D) and the **National Fire Plan** (2004; 50 CFR 402 subpart C); both are no longer in effect. See **FIFRA** and **Alternate Consultation Agreement**.

Critical Habitat – In the regulations "refers to an area designated as critical habitat listed in 50 CFR parts 17 or 226."

Source: Regulations (1986) codified as 50 CFR 402.02

Critical Habitat – In the Act “the term “critical habitat” for a threatened or endangered species means - (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.”

Source: Act, Section 3

Note: The regulations at CFR 424.12(b) discuss the exact manner in which critical habitat is designated. In some cases, not all areas occupied by a species are designated as critical habitat.

Cumulative – “... Enlarging or increasing by successive addition...”

Source: Working definition

Note: Quote from Webster’s II New Riverside University Dictionary (1988). This is a word often used without precision, which then can cause confusion (see **Cumulative Effects** and **Cumulative Impact**). To avoid confusion when using the concept of cumulative in a context not directly related to Cumulative Effects and Cumulative Impact, words such as ‘additive’, ‘aggregated’ or ‘synergistic’ should be substituted as appropriate.

Cumulative Effects – Section 7 definition: “...are those effects of future State or private activities, not involving Federal activities that are reasonably certain to occur within the action area of the Federal action subject to consultation.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: This specific definition applies only to Section 7 analyses and should not be confused with similar terms used more generally. The word “cumulative” is a term used in everyday speech and has been used to generally indicate additive or aggregate impacts. This common usage does not have the same meaning or context as the specific section 7 regulatory definition of “cumulative effects”. See also the 1998 Handbook pp. 4-30 and 4-31.

Cumulative Impact – a term formerly used in NEPA analyses. Term was removed in 2019 revisions of 40 CFR 1508 by EPA to their implementing regulations.

Source: Regulations, 40 CFR 1508

Current Range – “The general geographic area where we know or suspect that a species currently occurs. Current range can include areas that have suitable habitat that have not been surveyed for presence of the species, but are within the range of the species and are considered by experts likely to be occupied during all or part of the annual cycle or life cycle of the species. However, it is not limited to locations for which there are data on species known occurrence. Mapped current range can reflect species occurrence where other supporting evidence indicates that the species has a moderate to high probability of being present. Current range includes seasonally used areas as well as areas used year-round. The time frame covered by the term “current” varies by species and needs to be updated as appropriate.”

Source: Working Definition

Note: Quote above from a Service document entitled One Range Concept dated October 2020. Not to be confused with **Geographical Area Occupied by the Species** (50 CFR 424.02). See also **Species List Area**.

CWA – See **Clean Water Act**

DKey – See **Determination Key**

Deconstruction or Deconstructing the Action – terms describing the process of breaking down a large proposed action into subtasks, describing the types of tools/equipment/methods to accomplish those subtasks, and describing the probable effects to the land, water, or air from each subtask. This can be performed using tables, charts, or diagrams to memorialize the results; this can also be captured in **EPM**.

Source: Working definition

Note: A powerful tool typically used early in the project planning and technical assistance phase of consultation, this process becomes the foundation for informing the **Action Area**. It provides a framework for focused discussions about probable exposure, response, and effects for listed species, and “connects the dots” in **Biological Assessments**, **Biological Opinions**, **Incidental Take Statements**, and **Reasonable and Prudent Measures**.

Decision File (or Decision Record) – important and substantive information that people involved in the decision used, relied on, or that was reasonably available or presented to them when making a decision, finding, or determination.

Source: Working definition

Note: See also **Administrative Record** and **Consultation Record**.

Designated non-Federal Representative – “refers to a person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: See 50 CFR 402.08 for specific information regarding written notification and the role of applicants in the designation process.

Destruction or Adverse Modification – “*Destruction or adverse modification* means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.”

Source: Regulations (2016), revised (2019), codified as 50 CFR 404.02

Note: This is a determination made by the Service in a Biological Opinion regarding a project’s effects to proposed or designated critical habitat. The phrase is used in the Act (Section 7), but not defined there. The Services promulgated a definition in 1978 and modified it in 1986, but that definition was found invalid by circuit courts in 2001 and 2004. A new regulatory definition was promulgated in 2016 and that definition was revised in 2019 (FR Vol. 84, No. 166, August 27, 2019). This phrase and similar phrases such as **Adversely Modify** and **Adverse Modification** can create confusion if used by action agencies, or the Service, to generally describe an adverse effect to critical habitat as a result of being physically destroyed or modified in an action area by a project. Those situations are focused at an action area scale which is rarely the same scale at which the 7(a)(2) determination regarding critical habitat is made. Simplistically and broadly, **Destruction or Adverse Modification** can be thought of as parallel in scale to a Jeopardy Analysis. See the 1998 Handbook p. 4-34 and **Listed Entity Scale**.

Determination Key (DKey) – A consultation streamlining tool delivered through IPaC. A DKey consists of a logically-structured set of questions which assists an IPaC user in determining whether a project qualifies for a predetermined consultation outcome based on an existing programmatic consultation or internal standing analysis.

Source: Working definition

Note: DKeys provide consistent and transparent responses to requests for consultation, and automate responses on projects that are similar in nature. For qualifying projects, using a DKey in **IPaC** results in either a consistency letter or final consultation documents. See also **IPaC**.

Director – “refers to the Assistant Administrator for Fisheries for the National Marine Fisheries Service, or his or her authorized representative; or the Director of the U.S. Fish and Wildlife Service or his or her authorized representative.

Source: Regulations (1986), revised (2019), codified as 50 CFR 402.02

Direct Effects – “...the direct or immediate effects of the project on the species or its habitats...”

Source: 1998 Handbook, p. 4-25

Direct Interaction – a non-regulatory term used in EPM and IPaC. It means the mechanism by which an activity, structure, or stressor acts directly upon individuals of a species (e.g., crushing, electrocution, vehicle strikes, burial, depredation, or shooting), regardless of when the interaction occurs in time. Direct interactions can occur during a project or over time due to the project’s long-term effects.

Source: Working definition

Note: Working definition from **EPM**.

Discountable Effects – “are those extremely unlikely to occur. Based on best judgment a person would not... (2) expect discountable effects to occur. [Clarification of usage]”

Source: 1998 Handbook, p. xv

Note: This is one of the three possible conditions for an effects determination of **May Affect, Not Likely to Adversely Affect**.

Distinct Population Segment – a phrase first used (but not defined) in the Act within the definition of “species” (Section 3). The phrase is used to define and describe vertebrate populations that are eligible for listing,

reclassification, and delisting as a “species” under the Act. In 1996 the Fish and Wildlife Service and the National Marine Fisheries Service (Services) adopted a policy to clarify their interpretation of the phrase. The concepts of discreteness, significance, and status inform the use of the phrase.

Source: Working definition

Note: See Act, Section 3, and FR, February 7, 1996, Vol. 61, No. 26, pp. 4722-4725.

Early Consultation – “...a process requested by a Federal agency on behalf of a prospective applicant under Section 7(a)(3) of the Act.”

Source: Regulations (1986) codified as 50 CFR 402.02 and 402.11

Note: First mentioned in the Act, but not defined there. The resulting consultation document is referred to as a **Preliminary Biological Opinion**. It can be confirmed as a final opinion by written request. See details at 7(a)(3) of the Act, 50 CFR 402.11, and chapter 7 of the 1998 Handbook for specific process. Actual “Early Consultations” are exceedingly rare. The specific 7(a)(3) process can be confused with the generally recommended practice of meeting informally early in the planning process to assist an action agency in preparing for consultation.

EA (Environmental Assessment) – under the National Environmental Policy Act “...(a) Means a concise public document for which a Federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary. (3) Facilitate preparation of a statement when one is necessary. (b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.”

Source: Working definition

Note: Quote taken from 40 CFR 1508.9. If, after assembly of the environmental assessment no substantial effects on the environment are found, the Federal agency may produce a Finding of No Significant Impact (**FONSI**) document. This finding is not a 7(a)(2) determination for consultation purposes.

ECOS (Environmental Conservation Online System) – “...a gateway web site that provides access to data systems in the U.S. Fish and Wildlife Service (Service) and other government data sources. This central point of access assists Service personnel in managing data and information, and it provides public access to information from numerous Service databases.”

Source: ECOS website January 2020

Note: See <https://ecos.fws.gov/ecp/about>

Effects of the Action – “...are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. (See § 402.17).”

Source: Regulations (1986), revised (2019), codified as 50 CFR 402.02

Note: Discussion on pp. 4-25 through 4-29 of the 1998 Handbook and extensive discussion in preamble to FR Vol. 84, No. 166, August 27, 2019 (pp. 44988-44992).

Effects Determination – the Federal action agency’s determination regarding which category (**No Effect, Not Likely to Adversely Affect, or Likely to Adversely Affect**) the effects of their proposed action fall into.

Source: Working definition

Note: The Effects Determination is based on the most impactful effect from any impact of the proposed action to any individual of listed species or elements of designated critical habitat – not the net effect, or effect to a population as a whole. A separate analysis and determination is needed for listed species and critical habitat, if they are both are impacted.

Effects Pathway Manager (EPM) – a component of the Information for Planning and Consultation (IPaC) system that contains information on the cause and effect relationship between project actions and effects to a species (exposure → response → effect), and how conservation measures may change that effect.

Source: Working definition

Note: See **IPaC**.

EIS – See **Environmental Impact Statement**

EPM – See **Effects Pathway Manager**

Emergency – “...situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.”

Source: Working definition

Note: Not defined explicitly in the definition section of the regulations, quote above taken from section of regulations on Emergencies at 50 CFR 402.05(a). The 1998 Handbook (p. 8-1) adds the phrase “...and includes response activities that must be taken to prevent imminent loss of human life or property.”

Emergency Consultation – a phrase used generally to describe an expedited consultation (informal or formal) on the effects to a listed species or critical habitat from an agency’s response to an emergency. Portions of the coordination at the beginning of the incident and final consultation are often done in an expedited manner.

Source: Working definition

Note: The process might better be described as a “Consultation on Emergency Responses”. See Regulations (1986) codified as 50 CFR 402.05(a) and Chapter 8 of the 1998 Handbook.

Endangered Species – “...any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.”

Source: Act, Section 3

Endangered Species Act (ESA) – an act of Congress signed into law in 1973 (as amended, 16 U.S.C. 1531 et seq.). “...purposes...are to provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.”

Source: Act, Section 2(b)

Endangered Species Committee – A committee established to review projects seeking an exemption from 7(a)(2) of the Act. Sometimes referred to as the “god squad”.

Source: Working definition

Note: See Section 7(e)(1) of the Act.

Enhancement of Survival Permit – “...means a permit issued under section 10(a)(1)(A) of the Act that, as related to this policy, authorizes the permittee to incidentally take species covered in a Candidate Conservation Agreement with Assurances.”

Source: Working definition

Note: Quote taken from the policy on Candidate Conservation Agreements with Assurances published in the FR, June 17, 1999, Vol. 64, No. 116, p. 32734.

Entity – “... something that exists as a particular and discrete unit...”

Source: Working definition

Note: Quote from Webster’s II New Riverside University Dictionary (1988). The word is most commonly heard associated with “**Listed Entity**” or “**Listable Entity**”.

Environmental Baseline – “...refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline.”

Source: Regulations 2019, codified as 50 CFR 402.02

Note: Previously this was not a stand-alone definition, but contained within the 1986 definition for effects of the action. In 2019, it was separated and revised. See the 1998 Handbook p. 4-22 for general principles and FR Vol. 84, No. 166, August 27, 2019 (pp. 44993-44996) for extensive discussion.

Environmental Impact Statement (EIS) – “*Environmental impact statement* means a detailed written statement as required by section 102(2)(C) of the Act.” [Act referred to is NEPA]

Source: 40 CFR 1508.11

Note: More generally, an EIS is the document required for certain actions that may significantly affect the quality of the human environment. Used in the NEPA decision making process, it outlines the environmental effects of a proposed action and any alternatives to the proposed action.

Environmental Protection Agency (EPA) – an agency created in 1970 for the purpose of protecting human health and the environment by writing and enforcing regulations based on acts of Congress such as the Clean Air and Clean Water Acts.

Source: Working definition

EPA – See **Environmental Protection Agency**

EPM – See **Effects Pathway Manager**

ESA – See **Endangered Species Act**

Essential Experimental Population – “...means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as nonessential”

Source: Regulations, 50 CFR 17.80

Note: The applicability of Section 9 to individuals of experimental populations is governed by special rules (10(j) rules) published with the experimental population designation.

Expedited Consultation – described in the regulations (402.14(l)) as “an optional formal consultation process that a Federal agency and the Service may enter into upon mutual agreement. To determine whether an action or a class of actions is appropriate for this type of consultation, the Federal agency and the Service shall consider the nature, size, and scope of the action or its anticipated effects on listed species or critical habitat and other relevant factors. Conservation actions whose primary purpose is to have beneficial effects on listed species will likely be considered appropriate for expedited consultation.”

Source: Working definition

Experimental Population (Act) – “For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.”

Source: Act, Section 10 (j)(1)

Note: Regulations discussed in FR 49, Aug. 27, 1984. Consultation requirements vary regarding experimental populations depending upon whether they are designated as essential or non-essential and whether or not the populations occur on lands within the National Park System or National Wildlife Refuge System (Act, Section 10(j)(C)). See **Non-essential Experimental Population** for details.

Experimental Population (Regulations) – “The term *experimental population* means – an introduced and/or designated population (including any off-spring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart but only when, and at such times as the population is wholly separate geographically from nonexperimental populations of the same species. Where part of an experimental population overlaps with natural populations of the same species on a particular occasion, but is wholly separate at other times, specimens of the experimental population will not be recognized as such while in the area of overlap. That is, experimental status will only be recognized outside the areas of overlap. Thus, such a population shall be treated as experimental only when the times of geographic separation are reasonably predictable; e.g., fixed migration patterns, natural or man-made barriers. A population is not treated as experimental if total separation will occur solely as a result of random and unpredictable events.”

Source: Regulations, 50 CFR 17.80

Note: Regulations discussed in FR 49, Aug. 27, 1984. Consultation requirements vary regarding experimental populations depending upon whether they are designated as essential or non-essential and whether or not the populations occur on lands within the National Park System or National Wildlife Refuge System (Act, Section 10(j)(C)). See **Non-essential Experimental Population** for information regarding consultation.

FACA – See **Federal Advisory Committee Act**

Federal Action Agency – though this phrase appears several times in the 1998 Handbook, it is not defined in the Act or 1986 regulations. The Service does define the phrase in its 1981 policy on mitigation as “... a department, agency, or instrumentality of the United States which plans for or approves a permit, lease, or license for projects or manages Federal lands.” The Act does use and define the phrase “**Federal Agency**”.

Source: Working definition

Note: Quote in text above taken from FR Vol. 46, No. 15, January 23, 1981. The words, “department, agency, or instrumentality” also appear in the Act’s definition of **Federal Agency**. “Department and instrumentality” appear in the Act’s definition of **Person**.

Federal Advisory Committee Act (FACA) – a 1972 act of Congress governing the establishment of groups that advise or make recommendations to government agencies.

Source: Working definition

Note: The act focuses on open meetings, public involvement, and reporting. Groups made up entirely of Federal employees are not governed by FACA.

Federal Agency – “...any department, agency, or instrumentality of the United States.”

Source: Act, Section 3

Federal Energy Regulatory Commission (FERC) - “... is an independent agency that regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas pipelines as well as licensing hydropower projects.”

Source: Working definition

Note: Quote taken from the FERC website, <http://www.ferc.gov/>.

Federal Land Policy and Management Act (FLPMA) – a 1976 act of Congress governing the way in which public lands are administered.

Source: Working definition

Federal Nexus – phrase used to indicate an activity’s connection to a Federal agency as a result of that agency authorizing, funding, or carrying out the activity, or any portion of it.

Source: Working definition

Federal Register (FR) – the official journal of the Federal government that contains most routine publications and public notices of government agencies. The Federal Register is compiled by the Office of the Federal Register (within the National Archives and Records Administration) and is printed by the Government Printing Office.

Source: Working definition

FERC – See **Federal Energy Regulatory Commission**

FIFRA (Federal Insecticide, Fungicide and Rodenticide Act) – The Federal statute that governs the registration, distribution, sale, and use of pesticides in the United States. Enacted in 1947 and amended in 1972 and 2003.

Source: Working definition

Note: See **Counterpart Regulations**.

Fish or Wildlife – “...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.”

Source: Act, Section 3

Fish and Wildlife – “Wildlife or fish and wildlife means any member of the animal kingdom, including without limitation any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, offspring thereof, or the dead body or parts thereof”

Source: Regulations 50 CFR 424.02

Note: Definition was created in 1984 to interpret and implement those portions of the Endangered Species Act that pertain to the listing of species and the determination of critical habitats.

Fish and Wildlife Coordination Act (FWCA) – an act of Congress enacted March 10, 1934 (and amended several times since enactment) to protect fish and wildlife when Federal actions result in the control or modification of a natural stream or body of water. The FWCA provides the basic authority for the involvement of the Service in evaluating impacts to fish and wildlife from proposed water resource development projects.
Source: Working definition

Fish and Wildlife Service (FWS) – an agency within the Department of Interior that is responsible for many activities under the Endangered Species Act including listing, protection, and recovery of listed wildlife and plant species. The Service is also responsible for managing national wildlife refuges, national fish hatcheries, and programs pertaining to migratory birds among other duties.
Source: Working definition

Five Factor Analysis – phrase used to indicate the five factors that are reviewed to determine if a species is to be listed or re-classified pursuant to Section 4 of the Act. The Factors are “... (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) Over utilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) The inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence.”
Source: Working definition
Note: Quote taken from 50 CFR 424.11. Since the implementation of the **Species Status Assessment** framework as the scientific basis for classification decisions, the five-factor analysis for a species is described in terms of resiliency, redundancy, and representation (collectively known as the 3Rs).

Five Year Review – a common phrase used to describe a review required by the Act, to determine if listed species should be removed from the list or have its status as endangered or threatened changed. This is also referred to as “5 year status review” because the Act requires the review to occur “...at least once every five years...”
Source: Working definition
Note: Quote taken from the Act, Section 4 (c). Not to be confused with the yearly appraisal of the current status of plants and animals considered candidates for protection under the Act referred to as the **Candidate Notice of Review**.

FLPMA – See **Federal Land Policy and Management Act**

FOIA – See **Freedom of Information Act**

FONSI (Finding of No Significant Impact) – under the procedures for the National Environmental Policy Act, a “*Finding of no significant impact* means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.”
Source: Working definition
Note: Quote taken from 40 CFR 1508.13. This finding is not a 7(a)(2) determination for consultation purposes.

Formal Consultation – “...is a process between the Service and the Federal agency that commences with the Federal agency’s written request for consultation under Section 7(a)(2) of the Act and concludes with the Service’s issuance of the biological opinion under Section 7(b)(3) of the Act.”
Source: Regulations (1986) codified as 50 CFR 402.02 and detailed in 402.14
Note: 50 CFR 402.14 and Chapter 4 of the 1998 Handbook. See also **Informal Consultation** and **Technical Assistance**, which can be important steps in the overall consultation process.

FR – See **Federal Register**

Freedom of Information Act (FOIA) – a 1966 act of Congress allowing for the release of information and documents controlled by government agencies.
Source: Working definition

Framework Programmatic Action – “...means, for purposes of an incidental take statement, a Federal action that approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation.”

Source: Regulations (2015) codified as 50 CFR 402.02

Note: Regulatory change to allow for conducting a 7(a)(2) analysis and producing a consultation document without necessarily exempting incidental take. See the preamble to the final rule of this regulatory change for complete explanation at FR, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845. Consultations on Framework Programmatic Actions are typically considered a form of **Programmatic Consultation**.

FWS – See **Fish and Wildlife Service**

General Conservation Plan (GCP) – A type of HCP consisting of a completed landscape level conservation plan and NEPA compliance document.

Source: Working definition

Note: No permit is issued at the time the conservation plan is approved. The GCP is made available for adoption and use by numerous applicants who will receive individual ITPs when they can demonstrate compliance with the conservation plan and mitigation requirements of the GCP. Director’s Memo of October 5, 2007 *Final General Conservation Plan Policy* and Habitat Conservation Plan Handbook (December 21, 2016).

Geographical Area Occupied by the Species – “An area that may generally be delineated around species’ occurrences, as determined by the Secretary (i.e., range). Such areas may include those areas used throughout all or part of the species’ life cycle, even if not used on a regular basis (e.g., migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).”

Source: Regulations, 50 CFR 424.02

Note: Term is used in the context of revising the Lists of Endangered and Threatened Wildlife and Plants and designating or revising the critical habitats of listed species.

Habitat Conservation Plan (HCP) – See **Conservation Plan**

Handbook – The 1998 Endangered Species Consultation Handbook developed by the Services reflecting the policy and practice of implementing the 1986 Interagency Cooperation Regulations and consultation under Section 7 of the Act.

Source: Working definition

Harass (FWS) – “Harass in the definition of “take” in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” **Note:** The definitions of Harass on pages xix, 4-46, and E-15 of the 1998 Handbook are incomplete due to a missing portion of the complete definition.

Source: Regulations, codified as 50 CFR 17.3

Note: FR, September 26, 1975, Vol. 40, No. 188, p. 544413. In 1998, additional language was added for circumstances involving captive wildlife. “...*This definition, when applied to captive wildlife, does not include generally accepted: (1) Animal husbandry practices that meet or exceed the minimum standards for facilities and care under the Animal Welfare Act, (2) Breeding procedures, or (3) Provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife.*” FR September 11, 1998, Vol. 63, No. 176, p. 48639.

Harass (NMFS) – the National Marine Fisheries Service has never promulgated a regulatory definition for Harass under the ESA. NMFS guidance interprets harass as “Create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”

Source: Working definition

Note: Quote taken from December 21, 2016 NMFS Procedural instruction No. 02-110-16 from Director, Office of Protected Resources. NMFS has promulgated a definition for Harass under the **Marine Mammal Protection Act (MMPA)**. See the MMPA (and 1994 amendments) for that definition.

Harm (FWS) – “Harm in the definition of “take” in the Act means an act which actually kills or injures wildlife. Such [an] act may include significant habitat modification or degradation where it actually kills or injures wildlife

by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” **Note:** The template language for Harm on page 4-46 of the 1998 Handbook is incomplete and also incorrectly substitutes “listed species” for “wildlife”.

Source: Regulations, codified as 50 CFR 17.3

Note: See 1981 Final Rule, FR November 4, 1981, Vol. 46, number 213, p. 54750.

Harm (NMFS) – NMFS promulgated its own definition of Harm under the ESA. It is very similar to the FWS definition. “*Harm* in the definition of “take” in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.”

Source: Regulations, codified as 50 CFR 222.102

Note: See also FR, November 8, 1999, Vol. 64, No. 215, pp. 60727-60731.

HCP – See **Conservation Plan**

HFRA – Healthy Forest Restoration Act of 2003; a law originally proposed in response to the widespread forest fires during the summer of 2002. The main thrust of the law was to facilitate thinning overstocked stands, clear away vegetation and trees to create shaded fuel breaks, provide funding and guidance to reduce or eliminate hazardous fuels in National Forests, improve forest fire fighting, and research new methods to halt destructive insects.

Source: Working definition

Incidental Take – “...takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Depending on the presence or absence of a **Federal Nexus**, incidental take can be exempted through Section 7 or Section 10 of the Act. See also 50 CFR 402.14(i-iv) and the 1998 Handbook pp. 4-43 through 4-49.

Incidental Taking – “means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.”

Source: 50 CFR 17.3

Note: Depending on the presence or absence of a **Federal Nexus**, incidental take can be exempted through Section 7 or Section 10 of the Act, respectively.

Incidental Take Statement – A section after the conclusion of a Biological Opinion, or document provided with the Biological Opinion, that “...(i) specifies the impact of such incidental taking on the species, (ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact, (iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and (iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).”

Source: Working definition

Note: Quote in text above taken from Section 7(b)(4)(C) of the Act. The 1986 regulations describe it this way “...(i) Specifies the impact, i.e., the amount or extent, of such incidental taking of the species; (ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact; (iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under (ii) above; and (iv) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.” [50 CFR 402.14(i-iv)] See also pp. 4-42 through 4-53 of the 1998 Handbook.

Incorporate by Reference – the process of relying on discussions from other documents to build information summaries for biological assessments.

Source: Working definition

Note: 50 CFR 402.12(g), and pages 4-15 of the 1998 Handbook. Though initially referring to biological assessment documents, the practice has been carried over to the Service’s consultation documents. This concept is also used in the NEPA process (40 CFR 1502.20 and 1502.21).

Incremental Step Consultation – A consultation conducted on the incremental steps of an agency action.

Source: Working definition

Note: There are several conditions and considerations that must be taken into account in conducting these consultations. See the 1998 Handbook section 5.5 - Incremental Step Consultations.

Indirect Effects – A term previously defined within the 1986 definition of “Effects of the action”, but eliminated in the 2019 revisions to the 402 regulations. While no longer uniquely defined, these types of consequences are still wholly encompassed by the revised 2019 definition of “Effects of the action”.

Source: Previous 1986 regulations

Note: See **Effects of the action**. For the purpose of NEPA documents, there is a definition at 40 CFR 1508.8.

Indirect Interaction – a non-regulatory term used in EPM and IPaC. It means the mechanism by which a stressor acts upon the resources required by a species to fulfill its life cycle (see Resource Needs), thus resulting in effects to the species itself (e.g., a decrease in vegetation results in a decrease in seeds that are required by the species for food, which results in decreased foraging success for the species). Indirect interactions can occur during a project or over time due to the project’s long-term effects.

Source: Working definition

Note: Working definition from **EPM**. These are not to be confused with **Indirect Effects**.

Informal Consultation – “...is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: The phrase “**informal consultation**” is sometimes misused to refer specifically to the request for a **concurrence letter**. A concurrence letter may be the final step in completing informal consultation, but informal consultation encompasses a much broader coordination between the Services and the action agency before the concurrence request. See 50 CFR 402.13 and Chapter 3 of the 1998 Handbook.

Information Standards under the Endangered Species Act – A policy established in 1994 which gives guidance on applying the Act’s standard of best scientific and commercial data available. “[T]o assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of the Services to: (1) evaluate all scientific and other information used to ensure that it is reliable, credible, and represents the best scientific and commercial data available; (2) gather and impartially evaluate biological, ecological, and other information disputing official positions, decisions, and actions proposed or taken by the Services; (3) document their evaluation of comprehensive, technical information regarding the status and habitat requirements for a species throughout its range, whether it supports or does not support a position being proposed as an official agency position; (4) use primary and original sources of information as the basis for recommendations; (5) retain these sources referenced in the official document as part of the administrative record supporting an action; (6) collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies; and (7) require management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act.”

Source: 1994 FR notice July 1, 1994, Vol. 59, No. 126, p. 34271, and 1998 Handbook, p. xi

Note: See also **Best Scientific and Commercial Data Available**.

Injury – “... to cause damage to...”

Source: Working definition

Note: Quote from Webster’s II New Riverside University Dictionary (1988). This word is used several times in the preamble to the 1986 regulations, and the 1998 Handbook, but not defined there.

INRMP (Integrated Natural Resources Management Plan) – These are natural resource management plans specific to a military installation.

Source: Working definition

Note: See also **Sikes Act**.

Insignificant Effects – “relate to the size of the impact and should never reach the scale where take occurs. ...Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; ...”

Source: 1998 Handbook, p. xv

Note: This is one of the three possible conditions for a project effects determination of **May Affect, Not Likely to Adversely Affect**.

Intra-Service Consultation – Consultations completed within the Services for effects to listed species and designated critical habitat resulting from actions that the Services authorize, fund, or carry out. Examples include issuance of Section 10 permits and grants.

Source: Working definition

Note: By policy for intra-service conferencing purposes, the Fish and Wildlife Service treats a **Candidate** species as if it were proposed for listing (1998 Handbook p. 1-5). See also the 1998 Handbook Appendix E.

Interagency Cooperation – The title of Section 7 of the Act and the regulations at CFR 402 describing the process for completion of consultation under 7(a)(2) of the Act.

Source: Working definition

Note: The regulations at 50 CFR 402 were promulgated first in 1978 then substantially revised in 1986 (FR Vol. 51, No. 106, June 3, 1986). Another revision of the regulations was made in December of 2008, but was set aside in January 2009. In 2015, additional revisions were made related to incidental take statements, surrogate species for take statements, and definitions for **Framework Programmatic Action**, and **Mixed Programmatic Action** were established (FR Vol. 80, No. 90, May 11, 2015). The definition of **Destruction or Adverse Modification** was revised in 2016 (FR Vol. 81, No. 28, February 11, 2016) and, in 2019, substantial revisions to the 402 regulations were promulgated (FR Vol. 84, No. 166, August 27, 2019). See also **Preamble**.

Interdependent Actions – A term previously defined within the 1986 definition of “Effects of the action”, but eliminated in the 2019 revisions to the 402 regulations. These types of activities and their consequences are still wholly encompassed by the 2019 revised definition of effects of the action.

Source: Previous 1986 regulations

Note: See **Effects of the action**.

Interrelated Actions – A term previously defined within the 1986 definition of “Effects of the action”, but eliminated in the 2019 revisions to the 402 regulations. These types of activities and their consequences are still wholly encompassed by the 2019 revised definition of effects of the action.

Source: Previous 1986 regulations

Note: See **Effects of the action**.

IPaC – **IPaC** is the Service’s online **Information for Planning and Consultation** platform designed to provide easy, public access to information on natural resources for which the Service has trust or regulatory responsibility. One of the primary goals of the system is to help streamline the Section 7 consultation process. The IPaC system also helps with early project planning and provides information regarding natural resource conservation, helping achieve more effective and efficient results for both the project proponents and natural resources.

Source: Working definition

Note: <https://ecos.fws.gov/ipac/>.

IRAC – Acronym that stands for “Issue, Rule, Analysis, and Conclusion”. It represents a structure of argument that is often used in legal analysis, but also an organization of logic that can be used in “connecting the dots” for narrative in consultation documents.

Source: Working definition

Irreversible or Irretrievable Commitment of Resources – used in the Act (Section 7) but further described in the 1986 regulations. “After initiation or reinitiation of consultation required under Section 7(a)(2) of the Act, the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating Section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of Section 7(a)(2) are satisfied. This provision does not apply to the conference requirement for proposed species or proposed critical habitat under Section 7(a)(4) of the Act.”

Source: Regulations (1986) codified as 50 CFR 402.09

Note: See also **Section 7(d)** of the Act, and p. 2-7 of the 1998 Handbook.

Jeopardy – See **Jeopardize the Continued Existence of**

Jeopardy Analysis – The process of evaluating the effects of the proposed Federal action, the species current status, and cumulative effects, to determine if, given the aggregate of all of these effects, implementation of the proposed action reasonably would be expected to jeopardize the continued existence of a listed species.

Source: Working definition

Note: See **Jeopardize the continued existence of**, CFR 402.14 (g)(1-4), and discussion on pages 4-33 through 4-37 of the 1998 Handbook.

Jeopardy Analysis Framework – a phrase associated with a 2004 paper by NMFS staff. The paper explored a method to “... make the consultation process — the premises, evidence, analyses, and decision-making process — transparent, replicable, and supported by a complete series of well-reasoned arguments.” Paper was used as a study guide in the National Conservation Training Center’s (NCTC) Advanced Section 7 course.

Source: Working definition

Note: Quote taken from *An Assessment Framework for Conducting Jeopardy Analyses Under Section 7 of the Endangered Species Act* (2004, p. 1). Phrase is often worded slightly differently, for example “**Analytical Framework**”.

Jeopardize the Continued Existence of – a phrase used in the Act, but only defined in the regulations. “...to engage in an action that reasonably 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.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: “The determination of **jeopardy** or **adverse modification** is based on the effects of the action on the continued existence of the **entire** population of the listed species or on a listed population...” [Emphasis in original] (1998 Handbook, pp. 4-33 and 4-34). See also **Listed Entity Scale**.

LAA – acronym commonly used for **May Affect, Likely to Adversely Affect**

Lead Agency – Explained in the section on designation of a lead agency. “When a particular action involves more than one Federal agency, the consultation and conference responsibilities may be fulfilled through a lead agency. Factors relevant in determining an appropriate lead agency include the time sequence in which the agencies would become involved, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action. The Director shall be notified of the designation in writing by the lead agency.”

Source: Regulations (1986) codified as 50 CFR 402.07

Note: Sometimes referred to as “lead Federal agency”. The EPA has a more specific definition for Lead Agency in regard to NEPA at 40 CFR 1508.16.

Letter – “refers to all written correspondence, such as letters, memoranda, or electronic mail messages, relating to a formal or informal consultation. [Clarification of usage]”

Source: 1998 Handbook, p. xvi

Letter of Concurrence (LOC) – See **Concurrence Letter**

Likelihood – a word used once in the Act, several times in the regulations, and many times in the 1998 Handbook, but not defined in those sources. Webster’s describes it as “... 1. The state of being likely or probable... 2. Something probable...”

Source: Working definition

Note: Quote from Webster’s II New Riverside University Dictionary (1988).

Likely to Adversely Affect – See **May Affect, Likely to Adversely Affect**

Likely to Jeopardize Proposed Species/Adversely Modify Proposed Critical Habitat – “...the appropriate conclusion when the action agency or the Services identify situations where the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this conclusion is

reached, conference is required. [Clarification of usage]"

Source: 1998 Handbook, p. xvi

Note: See also **Listed Entity Scale, Confer and Conference.**

Listable Entity – a phrase used to indicate that an organism fits the requirement under the definition of “species” in Section 3 of the Act to be considered for listing as threatened or endangered.

Source: Working definition

Note: See also **Distinct Population Segment**

Listed Entity – a phrase used to define (biologically) and/or delineate (spatially) the range of an organism when listed as threatened or endangered under the Act.

Source: Working definition

Listed Entity Scale – a phrase used loosely to describe the biological or spatial range (expressed in the listing document) of an organism (species) or geographic extent of critical habitat being listed. This scale is used most often to describe the appropriate scale for Jeopardy and Destruction or Adverse Modification analyses and determinations.

Source: Working definition

Note: See the 1998 Handbook pp. 4-34 through 4-36 for a complete discussion on the scale of analysis and determinations.

Listing – the statutory (Section 4 of the Act) and regulatory process for designating a species as threatened or endangered, and designating the critical habitat essential to the conservation of that species.

Source: Working definition

Listed Species – “...any species of fish, wildlife or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11-17.12”

Source: Regulations (1986) codified as 50 CFR 402.02

LOC – Letter of Concurrence (See **Concurrence Letter**)

“M” Opinion – a generic acronym used to identify any memorandum from the Department of Interior’s Solicitor regarding the legal basis for a Department of Interior position. Usually denoted with a specific number such as M-3700, etc.

Source: Working definition

Magnuson–Stevens Fishery Management and Conservation Act – A 1976 Act of Congress establishing that “a national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation’s fishery resources.” And that “[a] national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.” Authority for implementing this Act is within the Department of Commerce - NOAA.

Source: Working definition

Note: Quote taken from Section 2 of the Magnuson-Stevens Fishery Management and Conservation Act. As part of the responsibilities under the Act, NOAA establishes Essential Fish Habitat (EFH) and analyzes impacts to that EFH through a consultation process (not the same as ESA consultation).

Major Construction Activity – “...a construction project (or other undertaking having similar physical effects) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(2)(C)).”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: In regulations guiding NEPA actions, the similar phrase Major Federal Action is defined at 40 CFR 1508.18.

Major Federal Action – A term used in the NEPA process. “(q) Major Federal action or action means an activity or decision subject to Federal control and responsibility subject to the following:...” [Partial definition]

Source: 40 CFR 1508.1(q)

Note: The definition at 40 CFR 1508.1(q) includes much more text related to the term.

May Affect – “... the appropriate conclusion when a proposed action may pose **any** effects on listed species or designated critical habitat. When the Federal agency proposing the action determines that a "may affect" situation exists, then they must either initiate formal consultation or seek written concurrence from the Services that the action "is not likely to adversely affect...listed species. [Clarification of usage]" (Emphasis in the original)

Source: 1998 Handbook, p. xvi

MALAA – acronym occasionally used for **May Affect, Likely to Adversely Affect**

May Affect, Likely to Adversely Affect – “...the appropriate finding in a biological assessment (or conclusion during informal consultation) if any adverse effect to listed species may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not: discountable, insignificant, or beneficial. ...In the event the overall effect of the proposed action is beneficial to the listed species, but is also likely to cause some adverse effects, then the proposed action is “likely to adversely affect” the listed species. If incidental take is anticipated to occur as a result of the proposed action, a “likely to adversely affect” determination should be made. A “likely to adversely affect” determination requires the initiation of formal Section 7 consultation. [Clarification of usage]”

Source: 1998 Handbook, p. xv

MANLAA – acronym occasionally used for **May Affect, Not Likely to Adversely Affect**

May Affect, Not Likely to Adversely Affect – a phrase first mentioned and described in the preamble of the 1986 regulations and in the regulations under the description of informal consultation (but not defined there). “...If during informal consultation it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary.” (50 CFR 402.13(a)). The 1998 Handbook further defined the criteria for what effects would fit into this category: “...the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. **Beneficial effects** are contemporaneous positive effects without any adverse effects to the species. **Insignificant effects** relate to the size of the impact and should never reach the scale where take occurs. **Discountable effects** are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur.” [1998 Handbook, p. xv.]

Source: Regulations (1986) codified as 50 CFR 402.13(a) and the 1998 Handbook, p. xv

Note: The phrase “not likely to adversely affect” is used in the regulations at (50 CFR 402.13 (c); 402.14(b); and 402.14 (m)(3)).

Marine Mammal Protection Act (MMPA) – A 1972 Act of Congress for natural resource management and conservation. The Act prohibits the taking of marine mammals (sea otters, seals, whales, etc.) and enacts a moratorium on the import, export, and sale of any marine mammal, along with any marine mammal part or product within the United States. The MMPA provides for enforcement of its prohibitions, and for the issuance of regulations to implement its legislative goals. Authority for the MMPA falls to both FWS and NOAA (FWS – dugongs, manatees, polar bears, sea otters, marine otters, and walrus; NOAA – whales, dolphins, seals, and sea lions).

Source: Working definition

Note: Take under the MMPA is not identical to take under the ESA. The MMPA has been amended numerous times since its signing.

MBTA – See **Migratory Bird Treaty Act**

Migratory Bird Conservation Plan – A plan to reduce impacts to migratory birds from private or Federal projects.

Source: Working definition

Migratory Bird Treaty Act – A 1918 Act of Congress implementing the 1916 Convention between the U.S. and Great Britain (for Canada) for the protection of migratory birds. Later amendments implemented treaties between the U.S. and Mexico, the U.S. and Japan, and the U.S. and the Soviet Union (now Russia). Generally, the Act makes it unlawful to pursue, hunt, take, capture, kill, or sell birds listed as a migratory bird. This includes live or dead birds and also bird parts including feathers, eggs, and nests without a permit.

Source: Working definition

Note: Take under the Migratory Bird Treaty Act is defined differently than take under the ESA.

Minor Change Rule – phrase used to refer to the regulatory limits on Service changes (through reasonable and prudent measures) to a proposed action under consultation. “Reasonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.”

Source: Regulations (1986) codified as 50 CFR 402.14(i)(2)

Note: Quote taken from 50 CFR 402.14(i)(2).

Mitigation – in 1981, the Service adopted the Council on Environmental Quality definition, which includes “... (a) Avoiding the impact altogether by not taking a certain action or parts of an action. (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment. (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (e) Compensating for the impact by replacing or providing substitute resources or environments.”

Source: Regulations, 40 CFR 1508.4

Note: The use of the word mitigation related to Sections 10(a)(1)(B), 7(a)(1), and 7(a)(2) can be a confusing topic and must be explored thoughtfully. Overall Service policy on mitigation is found in FR Vol. 46, No. 15, January 23, 1981. On December 27, 2016, the Service published a notice of a final Compensation Mitigation Policy for the ESA. That policy was withdrawn in July of 2018 (FR Vol. 83, No. 146, July 30, 2018). The 1981 policy remains in effect.

Mixed Programmatic Action – “...means, for purposes of an incidental take statement, a Federal action that approves action(s) that will not be subject to further section 7 consultation, and also approves a framework for the development of future action(s) that are authorized, funded, or carried out at a later time, and any take of a listed species would not occur unless and until those future action(s) are authorized, funded, or carried out and subject to further section 7 consultation.”

Source: Regulations (2015) codified as 50 CFR 402.02

Note: Regulatory change to allow for producing a 7(a)(2) consultation document and incidental take statement that exempts take for activities that are authorized by the proposed action, but not exempt take for activities that will undergo additional consultation. See the preamble to the final rule of this regulatory change for complete explanation at FR, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845. Consultations on certain parts of a **Mixed Programmatic Action** are typically considered a form of **Programmatic Consultation**.

National Environmental Policy Act – a 1969 act of Congress “To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.”

Source: Working definition

Note: Quote in text above taken from the National Environmental Policy Act (42 U.S.C. 4321 et seq. as amended). See also **Council on Environmental Quality**.

National Fire Plan – a 2001 plan jointly developed by the Secretaries of Agriculture and Interior to respond to severe wildland fires, reduce their impacts on communities, and to assure sufficient firefighting capabilities for the future.

Source: Working definition

Note: See also **Alternative Consultation Agreement**, **HFRA**, and **Counterpart Regulations**.

National Forest Management Act (NFMA) – a 1976 act of Congress governing the administration of national forests.

Source: Working definition

National Historic Preservation Act (NHPA) – a 1966 act of Congress “to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes.”

Source: Working definition

Note: Quote taken from NHPA, 1966 (16 U.S.C. 470 et seq. as amended).

National Marine Fisheries Service (NMFS) – The Federal agency within the National Oceanic and Atmospheric Administration responsible for regulating commercial fish harvest, the protection and recovery of listed fish (ocean fish and salmon), and marine mammals. Sometimes referred to as **NOAA** fisheries.

Source: Working definition

National Oceanic and Atmospheric Administration (NOAA) – an administration under the U.S. Department of Commerce. The National Marine Fisheries Service is an agency within NOAA.

Source: Working definition

Nationwide Permits – permits established by the U.S. Army Corps of Engineers under the Clean Water Act to authorize activities that are similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effects on the aquatic environment.

Source: Working definition

Natural Resource Damage Assessment (NRDA) – a process to assess injury to natural resources (including fish, wildlife, vegetation, air, and water) resulting from the release of hazardous substances, and to achieve a monetary settlement that funds restoration of those injuries. By law, these funds must be used to restore, replace, or acquire the equivalent of injured resources, and to compensate the public for their lost use of those natural resources.

Source: Working definition

Note: See the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (**CERCLA**), (42 U.S.C. §9601 et seq.).

NE – See **No Effect**

NEPA – See **National Environmental Policy Act of 1969**

Nexus – a word typically used in the phrase **Federal Nexus**, which is meant to indicate an activity's connection to a Federal agency as a result of that agency authorizing, funding, or carrying out the activity, or portions of the activity.

Source: Working definition

NFMA – See **National Forest Management Act**

NHPA – See **National Historic Preservation Act**

NLAA – acronym for **May Affect, Not Likely to Adversely Affect**

NMFS – See **National Marine Fisheries Service**.

NOAA – see **National Oceanic and Atmospheric Administration**

No Effect – "...the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat."

Source: 1998 Handbook, p. xvi

Non-Essential Experimental Population – Definition is described within the definition of essential experimental population. "...essential experimental population means an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are to be classified as nonessential."

Source: Regulations, 50 CFR 17.80(b)

Note: Consultation requirements vary regarding experimental populations depending upon whether they are designated as essential or non-essential and whether the population occurs within the National Park System or National Wildlife Refuge System (See Act, Section 10(j)(C). Regulations discussed in FR 49, Aug. 27, 1984. See **Essential Experimental Population**.

Non-Federal Representative – See **Designated non-Federal Representative**

No Surprises – The FWS provides "No Surprises" assurances to non-Federal landowners through the Section 10(a)(1)(B) process - **HCP**. Essentially, State and private landowners are assured that if "unforeseen

circumstances” arise, the FWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permit holder. The government will honor these assurances as long as permit holders are implementing the terms and conditions of the HCPs, permits, and other associated documents in good faith, and as long as continuing the permit does not jeopardize a listed species.

Source: Working definition

Note: See FR, February 23, 1998, Vol. 63, No. 35, pp. 8859 – 8873 for a final set of regulations for No Surprises, and FR December 10, 2004, Vol. 69, No. 237, pp. 71723 – 71731 regarding changes to permit revocation.

Not Likely to Adversely Affect – See May Affect, Not Likely to Adversely Affect

NRDA – see Natural Resource Damage Assessment

Optional Collaborative Process – a phrase used in 50 CFR 402.14(h)(4) referring to collaboration for developing and adopting action agency documents in consultation.

Source: Working definition

Note: See also **Alternate Consultation Process, Consultation Agreement, Expedited Consultations, or Alternative Consultation Agreement, and Streamlined Consultation Procedures.**

PBF – See Physical or Biological Features essential to the conservation of the species

PCE – See Primary Constituent Elements

PECE – Policy for Evaluation of Conservation Efforts when making listing decisions. A joint NOAA and FWS policy published in 2003 to ensure consistent and adequate evaluation of future or recently implemented conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents when making listing decisions.

Source: Working definition

Note: FR, March 28, 2003, Vol. 68, No. 60, p. 15100.

Person – “means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any foreign government; or any other entity subject to the jurisdiction of the United States”.

Source: Act, Section 3

Permit or License Applicant – “... when used with respect to an action of a Federal agency for which exemption is sought under Section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of Section 7(a) to such agency action.”

Source: Act, Section 3

Note: See also **Applicant.**

Physical or Biological Features essential to the conservation of the species – Often abbreviated to simply “Physical or Biological Features” (PBF), these are “The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.”

Source: Regulations, 50 CFR 424.02

Note: Phrase used in the Act’s definition of critical habitat, but not defined there. Defined in CFR 424 in 2016 and revised in 2019. A description of these attributes is required in Federal Register notices when designating critical habitat. See also **Critical Habitat** and **Primary Constituent Elements.**

Plan Level Consultation – a term sometimes used to describe a consultation on various action agency plans for guiding implementation of activities under their authority. Plan level consultations are also included in the

general class of Programmatic Consultations.

Source: Working definition

Note: See also **Programmatic Consultation**.

Plant – “...any member of the plant kingdom, including seeds, roots, and other parts thereof.”

Source: Act, Section 3

Population – “means a group of fish or wildlife in the same taxon below the subspecific level, in common spatial arrangement that interbreed when mature”

Source: Regulations, 50 CFR 17.3

Note: See **Experimental Populations** and **Distinct Population Segment**.

Preamble – word used generally to describe the first (and largest) portion of final rules promulgating or revising the Interagency Cooperation regulations at 50 CFR 402. It documents responses to public comments, is organized in the same order as the final regulations, and contains a fuller discussion of the rationale of the Services during development of the final regulations. The preamble in the notice for each final rule on the 402 regulations contains valuable insight into the Services’ view regarding how to implement those regulations.

Source: Working definition

Note: See **Interagency Cooperation**.

Preliminary Biological Opinion – “refers to an opinion issued as a result of early consultation.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Preliminary Biological Opinions can be confirmed as final biological opinions, but the request to the Service must be in writing. See **Early Consultation**, the Act 7(a)(3), 50 CFR 402.11 and Chapter 7 of the 1998 Handbook. Preliminary biological opinions and **Early Consultations** under 7(a)(3) of the Act are extremely rare.

Primary Constituent Elements (PCEs) – A term used previously to describe biological or physical elements essential to the conservation of the species.

Source: Regulations, 50 CFR 424.12(b)

Note: With the 2016 and 2019 revisions to the 424 regulations, including a regulatory definition for **Physical or Biological Features** (50 CFR 424.02), the term PCE has been removed from the regulations and is a phrase no longer used in the designation of **Critical Habitat**.

Programmatic Consultation – “is a consultation addressing an agency’s multiple actions on a program, region, or other basis. Programmatic consultations allow the Services to consult on the effects of programmatic actions such as: (1) Multiple similar, frequently occurring, or routine actions expected to be implemented in particular geographic areas; and (2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions”.

Source: Regulations (2019) codified as 50 CFR 402.02

Note: Though defined now in the regulations, the phrase was used for several decades and has been used to describe a wide variety of formats for consultations, which can lead to confusion. Other terms used previously such as **Plan Level Consultations**, **Batched Consultations**, **Appended Consultations**, **Tiered Consultations**, **Step-down Consultations** and consultations on **Framework Programmatic Action** and **Mixed Programmatic Actions** are encompassed, generally, under the new definition.

Proposed Critical Habitat – “...habitat proposed in the Federal Register to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under section 4 of the Act for any listed or proposed species.”

Source: Regulations (1986) codified as 50 CFR 402.02

Proposed Species – “...any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under section 4 of the Act.”

Source: Regulations (1986) codified as 50 CFR 402.02

Reasonable and Prudent Alternatives (RPAs) – “...refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that

is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.”

Source: Regulations (1986) codified as 50 CFR 402.02; see also the 1998 Handbook pp. 4-41 and 4-42

Note: RPAs are developed when the original proposed action is found to be likely to **Jeopardize the continued existence of a listed species** or cause the **Destruction or Adverse Modification** of designated critical habitat.

Reasonable and Prudent Measures – the Act describes them as “...those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact” [from incidental take]. The regulations define them as “...those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.”

Source: The Act, 7(b)(4) ii, and Regulations (1986) codified as 50 CFR 402.02

Note: Reasonable and prudent measures must be consistent with the **Minor Change Rule** [50 CFR 402.14(i)(2)], and are implemented through specific **Terms and Conditions**. See the 1998 Handbook p. 4-50.

Reasonably Certain to Occur – this phrase is part of the two-part test used when evaluating whether a consequence is caused by a proposed Federal action. In addition, it is the likelihood standard used when evaluating an activity as a cumulative effect.

Source: Working definition

Note: Though not defined in 402 regulations, it is described in the preamble as “...the “reasonably certain to occur” determination must be based on clear and substantial information, using the best scientific and commercial data available.” “... By clear and substantial, we mean that there must be a firm basis to support a conclusion that a consequence of an action is reasonably certain to occur.” And, this “... is not intended to require a certain numerical amount of data...must be based on solid information and should not be based on speculation or conjecture.” “...This added term also does not mean the nature of the information must support that a consequence or activity is guaranteed to occur.” (FR Vol. 84, No. 166, August 27, 2019, p. 44993). The practitioner is strongly advised to read the preamble to the 2019 rule for a full discussion on this phrase.

Also, the Service specifically notes that this phrase is not the same as “reasonably foreseeable” which is used in NEPA. “The Services view “reasonably certain to occur” to be a higher threshold than “reasonably foreseeable,” a term that is more in line with the scope of effects analysis under NEPA...” “The Act’s prohibitions against Federal actions that are likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat calls for a stricter standard than “reasonably foreseeable.” (FR Vol. 84, No. 166, August 27, 2019 p. 44992). See also **Activities Reasonably Certain to Occur**.

Record of Decision (ROD) – “The ROD is the final step for agencies in the EIS process. The ROD is a document that states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.”

Source: Working definition

Note: Quote taken from *A Citizen’s Guide to NEPA, Having Your Voice Heard*, Council on Environmental Quality, 2007, 49 p.

Recovery – “...improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Term is mentioned several times in the Act, but not defined there. The regulatory definition is similar to the Act’s definition for **Conserve, Conserving and Conservation**.

Recovery Outline – Recovery outlines are intended to provide interim guidance for conservation of a listed species until a formal recovery plan is developed. Recovery outlines carry no regulatory authority.

Source: Working definition

Recovery Plan – a term first used in the Act, but not specifically defined. “...The Secretary shall develop and implement plans (hereinafter in this subsection referred to as “recovery plans”) for the conservation and survival of endangered species and threatened species listed pursuant to this section...” The Act does describe elements that should be included in the plans, establishment of recovery teams, public notice of the plans, and reporting on the status of the plans and the species for which plans have been developed.

Recovery plans carry no regulatory authority.

Source: Working definition

Note: Quote taken from the Act, Section 4(f)(1).

Recovery Unit – “...management subsets of the listed species that are created to establish recovery goals or carrying out management actions. To lessen confusion in the context of Section 7 and other Endangered Species Act activities, a subset of an animal or plant species that needs to be identified for recovery management purposes will be called a "recovery unit" instead of a "population. [Clarification of usage]”

Source: 1998 Handbook, p. xvii

Reduce Appreciably – this phrase is found in the regulatory definition of “...jeopardize the continued existence of...” (50 CFR 402.02), but is not further defined.

Source: Working definition

Note: This phrase is very similar to the phrase (“**Appreciably Reduce**”) used in Section 10(a)(1)(B) of the Act regarding the impact of taking on a species, but the word order is reversed.

Redundancy – a term used in the **SSA** Framework. “The ability of a species to withstand catastrophes.

Catastrophes are stochastic events that are expected to lead to population collapse regardless of population health and for which adaptation is unlikely (Mangel and Tier 1993, p. 1083).”

Source: Glossary - U.S. Fish and Wildlife Service. 2016. USFWS Species Status Assessment Framework: an integrated analytical framework for conservation. Version 3.4 dated August 2016.

Reinitiating Consultation – the act of requesting that a previously completed consultation (concurrence or opinion) for an action be reviewed for possible modification. The request is typically due to a determination or concern that one of the **Reinitiation Triggers** has been met.

Source: Working definition

Note: The Service’s document completing a reinitiated consultation can vary depending on facts specific to the situation (*Mayo v. Jarvis*, 177 F. Supp. 3d 91 (D.D.C. 2016)). See also **Reinitiation Triggers**.

Reinitiation Triggers – four conditions that require reinitiation of consultation. “Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) If a new species is listed or critical habitat designated that may be affected by the identified action.”

Source: Regulations (1986), revised (2019) codified as 50 CFR 402.16(a)

Note: In the 2019 revision to 402.16 (FR Vol. 84, No. 166, August 27, 2019), an exception to (4) for some land management plans was created. See the regulations at CFR 402.16(b) and the FR notice preamble language for information on those specific circumstances.

Representation – a term used in the **SSA** Framework. “The ability of a species to adapt to both near-term and long-term changes in its physical (climate conditions, habitat conditions, habitat structure, etc.) and biological (pathogens, competitors, predators, etc.) environments.

Source: Glossary - U.S. Fish and Wildlife Service. 2016. USFWS Species Status Assessment Framework: an integrated analytical framework for conservation. Version 3.4 dated August 2016.

Resiliency – a term used in the **SSA** Framework. “The ability of a species to withstand environmental stochasticity (normal, year-to-year variations in environmental conditions such as temperature, rainfall), periodic disturbances within the normal range of variation (fire, floods, storms), and demographic stochasticity (normal variation in demographic rates such as mortality and fecundity) (Redford et al. 2011, p. 40).”

Source: Glossary - U.S. Fish and Wildlife Service. 2016. USFWS Species Status Assessment Framework: an integrated analytical framework for conservation. Version 3.4 dated August 2016.

Resource Needs – a term used in EPM and IPaC. Resource needs are the physical and biological features a species requires to fulfill its life cycle.

Source: Working definition

Note: In **EPM**, specific details about how a species uses a resource need can be documented (e.g., which species life stage uses that resource need, a specific resource function that the resource need supports)

and resource need attributes can be supported with references. See **Conservation Needs**.

ROD – See **Record of Decision**

RPA – See **Reasonable and Prudent Alternative**

RPMs – See **Reasonable and Prudent Measures**

Safe Harbor Agreement (SHA) – is a voluntary agreement under Section 10(A)(1)(a) involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as threatened or endangered under the Endangered Species Act. The agreement is between cooperating non-Federal property owners and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

Source: Working definition

Note: See FR, June 17, 1999, Vol. 64, No. 116, pp. 32771 – 32726 for the Service's Safe Harbor policy.

Section 4 – "...the section of the Endangered Species Act of 1973, as amended, outlining procedures and criteria for: (1) identifying and listing threatened and endangered species; (2) identifying, designating, and revising critical habitat; (3) developing and revising recovery plans; and (4) monitoring species removed from the list of threatened or endangered species [ESA §4]".

Source: 1998 Handbook, p. xviii

Section 4(d) – that section of Section 4 (of the Act) that relates to protective regulations the Secretary deems necessary and advisable to provide for the conservation of such [threatened] species.

Source: Working definition

Note: See Section 4(d) of the Act and **Section 9** and **Blanket 4(d)** rule.

Section 6 – the section of the Act that sets out the way the Services cooperate with the individual states to conserve endangered or threatened species (e.g., management agreements, cooperative agreements, allocation of funds, etc.).

Source: Working definition

Note: See Section 6 of the Act. Additionally, a June 13, 2012, Director's memo describes the relationship between these agreements and take prohibited under **Section 9** of the Act.

Section 7 – the section of the Act that outlines the mandate for Federal agencies to use their authorities to conserve listed species and habitat designated as critical [(7(a)(1)], requires FWS and NMFS to prepare biological opinions, and issue incidental take statements [(7(a)(2)], allows applicants to request early consultation [7(a)(3)], and establishes the requirement to conduct conferences on proposed species [7(a)(4)]. Section 7 also establishes procedures for seeking exemptions from the requirements of Section 7(a)(2) from the **Endangered Species Committee**.

Source: Working definition

Note: See Section 7 of the Act, Section **7(a)(1)** and Section **7(a)(2)**.

Section 7(a)(1) – that part of Section 7 requiring Federal agencies to use their authorities to further the conservation of listed species. "...Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in the furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act."

Source: Working definition

Note: Quote in text from the Act, Section 7(a)(1). This is an important conservation mandate for Federal agencies that is often overlooked.

Section 7(a)(2) – that part of Section 7 that requires Federal agencies to consult with the Services. "...Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter 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, after consultation as appropriate with affected States, to be critical..."

Source: Working definition

Note: Quote taken from Act, Section 7(a)(2).

Section 7(d) – that part of Section 7 regarding limitation on commitment of resources. "After initiation of

consultation required under subsection 7(a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection 7(a)(2).”

Source: Act, Section 7(d)

Note: See Section 7(d) of the Act and 50 CFR 402.09 and 1998 Handbook p. 2-7.

Section 7 Range – along with the phrase “Area of Influence”, this phrase was used In the Environmental Conservation Online System (ECOS) and the Information for Planning and Consultation (IPaC) system to assist users in determining which listed species to consider when planning projects. In 2021, the new phrase “**Species List Area**” became the phrase used for that purpose in those systems.

Source: Working definition

Note: See also **Species List Area** and **Geographic Range Occupied by the Species**.

Section 9 – the section of the Act that describes the prohibited acts regarding endangered fish, wildlife, and plants. Prohibited acts related to fish and wildlife (not plants) include a subset of acts referred to as “take”.

Source: Working definition

Note: Plants are not subject to take, but certain acts regarding plants are prohibited by Section 9. See the Act Section 9 and 1998 Handbook p. 4-47. See also **Take, Blanket 4(d) rule** and **Section 4(d)**.

Section 10 – “...the section of the Endangered Species Act of 1973, as amended, that provides exceptions to section 9 prohibitions. The exceptions most relevant to Section 7 consultations are takings allowed by two kinds of permits issued by the Services: scientific take permits [**10 (a)(1)(A)**] and incidental take permits [**10 (a)(1)(B)**]. The Services can issue permits to take listed species for scientific purposes, or to enhance the propagation or survival of listed species. The Services can also issue permits to take listed species incidental to otherwise legal activity. [ESA §10]”.

Source: 1998 Handbook, p. xviii

Note: Section 10(a)(1)(A) **Enhancement of Survival Permits** are used for **Candidate Conservation Agreements with Assurances**.

Section 10(j) – that portion of Section 10 regarding **Experimental Populations** [essential and non-essential].

Source: Working definition

Note: Act, Section 10(j). Consultation requirements vary regarding 10(j) populations. See **Non-essential Experimental Population** for details. Also, the ESA’s 10(j) is not to be confused with 10(j) of the Federal Power Act of 1920 (as amended) which requires that each hydropower license contain protections related to fish and wildlife. The Fish and Wildlife Service, NMFS, and state wildlife agencies provide recommendations to inform protections incorporated into the license.

Service – “means the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: The plural “Services” is often used to indicate that both agencies are acting together.

SHA – See **Safe Harbor Agreement**

SHC – See **Strategic Habitat Conservation Framework**

SHPO – See **State Historic Preservation Office**

Significant – there is no statutory, regulatory, or policy definition of “significant” specifically related to Section 7 of the Act. Webster’s dictionary defines it as “...1. Having or expressing a meaning: Meaningful”.

Source: Working definition

Note: Quote in text from Webster’s II New Riverside University Dictionary (1988).

Significant Portion of its Range (SPR) – a phrase used (but not defined) in the Act’s definition of Threatened Species and Endangered Species (Section 3). The phrase is an important one in the process of determining whether to list a species under Section 4 of the Act. The Services published a final joint policy on the interpretation (definition) and use of the phrase in the Federal Register (July 1, 2014, Vol. 79, No. 126, pp. 37578-37612).

Source: Act, Section 3

Sikes Act - 1960 act of Congress providing for the cooperation by the Departments of the Interior and Defense with State agencies in planning, development, and maintenance of fish and wildlife resources on military reservations throughout the United States. The National Defense Authorization Act of 2004 amended Section 4 of the ESA to allow for the exclusion of military lands from critical habitat designation if those lands are subject to an **INRMP** and it provides a benefit to the listed species.

Source: Working definition

Note: See also **INRMP**.

Small Federal Handle – a phrase used to identify 7(a)(2) consultations where the Federal agency’s action and involvement is limited to making a permitting decision for a small component of a larger project.

Source: Working definition

Note: Concept most often used to describe circumstances around U.S. Army Corps of Engineers’ (USACE) permitting actions. A November 3, 2017, memo, from the Assistant Director, Ecological Services describes the situations and an approach to consultation with the USACE.

Species – “...includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.”

Source: Act, Section 3

Species List – first described (but not defined) in the Act [Section 7(c)], but more thoroughly described in the 1986 regulations in the section regarding biological assessments. “The Federal agency or the designated non-Federal representative shall convey to the Director either (1) a written request for a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area; or (2) a written notification of the species and critical habitat that are being included in the biological assessment.”

Source: Working Definition

Note: Quote taken from 50 CFR 402.12(c). See further details in 402.12(c), (d), and (e).

Species List Area – “The area within which a species will be included on species lists generated through IPaC.”

Source: Working Definition

Note: Quote above from a Service document entitled One Range Concept dated October 2020. See also **Section 7 Range** and **Area of Influence**.

SSA (Species Status Assessment Framework) – “an analytical approach used by the Service to deliver foundational science for informing all ESA decisions.” “[A]n SSA uses the conservation biology principles of **Resiliency**, **Redundancy**, and **Representation** (collectively known as the “3Rs”) as a lens to evaluate the current and future condition of the species.”

Source: Working Definition

Note: Quotes above are from U.S. Fish and Wildlife Service. 2016. USFWS Species Status Assessment Framework: an integrated analytical framework for conservation. Version 3.4 dated August 2016.

Standing Analysis – an informal term sometimes used to describe a biological effects analysis to support various consultation documents, biological evaluations, or **Determination Keys**. They may be structured similar in format to that used in biological opinions.

Source: Working definition

State Historic Preservation Office (SHPO) – created in 1966 under the National Historic Preservation Act. The purposes of the SHPO includes surveying and recognizing historic properties, reviewing nominations for the National Register of Historic Places, etc. Each state is responsible for establishing their individual office.

Source: Working definition

Status – for 7(a)(2) analysis, this term is used in two different sections of a biological opinion. In the “Status” section, it is used to present the biological or ecological information relevant to formulating the biological opinion. This information is generally at the rangewide scale. In the “Environmental Baseline” section, the term is used as a subsection to describe the specific distribution and condition of the species or critical habitat in the action area (typically much smaller than the rangewide scale).

Source: Working definition

Note: Status is mentioned in 50 CFR 402.14(g)(2) and (4) regarding the information the Services have a responsibility to review during consultation. Also discussed in the 1998 Handbook, pp. 4-19 through 4-22.

Status Review – a phrase used to describe an assessment of a species' biological condition, population trends, and risk factors. That information is used to inform a determination as to whether listing that species under the Act is warranted.

Source: Working definition

Note: See also **Five Factor Analysis**, **Five Year Review**, and **Candidate Notice of Review**.

Step-down Consultation – mentioned once in the 1998 Handbook, the phrase is generally used to refer to consultation documents that are prepared subsequent to a consultation performed at a larger scale.

Source: Working definition

Note: 1998 Handbook, Section 5.3, Regional or Ecosystem Consultations. Not to be confused with **Incremental Step Consultations**. See also terms associated with **Programmatic Consultation**.

Strategic Habitat Conservation Framework – a phrase typically meant to describe a scientific framework for determining, implementing, and evaluating conservation priorities. It focuses on using adaptive management to deal with large-scale challenges like changing climate.

Source: Working definition

Note: See also **Landscape Conservation Cooperatives (LCC)**.

Streamlined Consultation – a phrase used generally to mean any method to reduce time involved in completing consultation.

Source: Working definition

Note: See 1998 Handbook, p. 5-6, **Expedited Consultations**, **Optional Collaborative Process** and **Consultation Agreements**.

Streamlined Consultation Procedures – a phrase most notably used to refer to the jointly-developed consultation timeline and streamlining process for accomplishing timber projects (later expanded to other projects) in Washington, Oregon, Idaho, and California (later expanded to other areas of the U.S.). Initiated in 1995, it was a cooperative approach to consultation by the FWS, NMFS, Forest Service, and the Bureau of Land Management. In February of 1997 the procedures were revised (*Streamlined Consultation Procedures for Section 7 of the Endangered Species Act*). Term is also used to refer to Streamlined Consultation Guidance for Restoration/Recovery Projects introduced in November 2016 through a deputy Director memorandum.

Source: Working definition

Stressor – a term used broadly to describe any change in the environment that can elicit a response from a species or features of critical habitat. A species may respond to a stressor when the stressor (1) impacts the resources the species requires to fulfill its life cycle or (2) directly interacts with the species itself (e.g., increase in vehicle traffic [stressor] results in crushing a species). The response may be negative, neutral, or positive.

Source: Working definition

Note: In the context of **EPM**, stressors are typically only described if they can lead to a negative individual response, which in turn can result in population and/or species level responses.

Structured Coordination Process – a phrase used to describe a coordination process for potentially streamlining consultations. It consists of four distinct steps; early project planning, pre-consultation, consultation, and project implementation/post project reporting.

Source: Working definition

Note: Details on its use and process are contained in the attachment to the Assistant Director's Memo "Section 7 Structured Coordination Process" signed December 11, 2009.

Supplemental – a word that is sometimes used to describe a document updating a previous consultation document (biological assessment, biological opinion, etc.). The word does not appear in the Act, regulations, or 1998 Handbook. Its use can be confused with the more specific meaning and use of the term in the **NEPA** process.

Source: Working definition

Surrogate – a term describing an alternative way to express the level of take anticipated from an action when the take to the individuals of the species is difficult to detect or enumerate. Correct application is important since exceeding anticipated/exempted take is one of the consultation **Reinitiation Triggers**.

Source: Working definition

Note: The term originated in the 1998 Handbook, then its use was codified in the 2015 revision to 50 CFR 402.14 (i), but not defined. Practitioners should note that, several requirements exist for its use including establishing a causal link between the surrogate and the take of the listed species (50 CFR 402.14 (i)(1)(i)). See also 1998 Handbook pp. 4-47 and 4-49, and extensive discussion in preamble to final rule for Incidental Take Statements, Framework Programmatic Action, and Mixed Programmatic Action (FR, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845).

Survival – “... for determination of jeopardy/adverse modification: the species' persistence as listed or as a recovery unit, beyond the conditions leading to its endangerment, with sufficient resilience to allow for the potential recovery from endangerment. Said another way, survival is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized by a species with a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter. [Clarification of usage]”

Source: 1998 Handbook, p. xviii

Note: Mentioned several times in the Act, but not defined there.

TAILS (Tracking and Integrated Logging System) – is a Fish and Wildlife Service Internet-based Field Office activity tracking system. It is designed to promote and provide consistent recording and reporting of Field Office activities. It is part of the Environmental Conservation Online System (**ECOS**).

Source: Working definition

Take (ESA) – “...means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

Source: Act, Section 3

Note: Take is a subset of prohibited acts, under Section 9 of the Act. It applies to listed fish and wildlife only. Plants are not subject to take, but certain acts regarding plants are prohibited. Exceptions to take and other prohibited acts are sometimes formalized through species-specific **4(d)** rules. The **Bald and Golden Eagle Act**, the **Migratory Bird Treaty Act**, and **Marine Mammal Protection Act** have different take definitions than the **ESA**. See also **Blanket rule** and **Section 9**.

T and Cs – See **Terms and Conditions**

Technical Assistance – a term originating in the 1998 Handbook discussing a broad category of information and actions. While not specifically defined, it is described as “Technical assistance from the Services may take a variety of forms; it includes the species list provided by the Service, information on listed, proposed, and candidate species, as well as names of contacts having information on other sensitive species or State listed species.”

Source: Working definition

Note: Quote taken from the 1998 Handbook p. 3-7. A general coordination term, it is not defined or discussed in the ESA or regulations, is not required, and does not have any particular initiation point or required timeline for conclusion. There can be a great deal of potential overlap in the information shared during technical assistance and the period of informal consultation.

Terms and Conditions – identified in the regulations, but not specifically defined there. Generally, they are actions designed to implement Reasonable and Prudent Measures (including reporting requirements).

Source: Working definition

Note: See regulations (1986) codified as 50 CFR 402.14(i)(2). See also the 1998 Handbook pp. 4-51 and 4-52.

TESS (Threatened and Endangered Species System) – An Intra-Service online web application that tracks various aspects of individual species. This includes recovery plans, grants, petition tracking, species information etc. TESS is imbedded in the ECOS application, which also houses TAILS.

Source: Working definition

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.”

Source: Act, Section 3

Tier – a word used once in the 1998 Handbook (p. xxii) where it refers to the potential streamlining as it relates to an action agency's individual projects and guidelines for a larger program.

Source: Working definition

Note: More specifically than the 1998 Handbook's reference, the term is often used to refer to the practice of tiering site-specific consultations to a larger programmatic consultation. See also **Tiered Consultation**.

Tiered Consultation – generally viewed as a form of a Programmatic consultation. In tiered consultations, typically a larger, programmatic consultation is completed, and then when specific projects/activities are identified and proposed, site-specific consultation documents are completed. These site-specific documents are generally shorter in length because they incorporate by reference ("tier to") information in the primary or original consultation document.

Source: Working definition

Note: There is tremendous variation in the understanding and application of this concept. The 1998 Handbook mentions the word tier only on page xxii, using it in reference to potential streamlining as it relates to an action agency's individual projects and guidelines for a larger program. See also **Appended Consultation** and **Programmatic Consultation**.

Tribal Consultation – a term used to describe government-to-government discussions between government departments and bureaus, and Indian Tribal Governments. The term is most closely associated with a November 6, 2000, Executive Order (No. 13175) establishing the need for "...meaningful consultation and collaboration with tribal officials... [on] the development of Federal policies that have tribal implications..."

Source: Working definition

Note: Consultations pursuant to this Executive Order are not the same as consultations under Section 7(a)(2) of the Act.

Two-part Test – A test providing a transparent description of how the Service identifies effects of the action. The first part of the test is "but for". The second part of the test is "reasonably certain to occur". Both tests must be satisfied for an activity or consequence to be considered an effect of the action.

Source: Working definition

Note: There is extensive discussion of the two-part test in the preamble to the 2019 revision to 402 (FR Vol. 84, No. 166, August 27, 2019). See also **But For** and **Reasonably Certain to Occur**.

Type 1 and Type 2 Error – simply stated, a type 1 error can be thought of as a false positive. A type 1 error is concluding that your hypothesis is correct when really it is not. A type II error can be considered a false negative, one that leads to a conclusion that your hypothesis is false when it is actually correct. Research hypothesis-testing generally sets a significance value that substantially reduces the chance of making a Type 1 error, but increases the chance of making a Type 2 error. In exploring impacts to listed species, the errors can have very different risks associated with them.

Source: Working definition

Umbrella – a term found only in the 1998 Handbook (p. 4-48) where it refers to an action agency's larger planning document for which a programmatic consultation is prepared.

Source: Working definition

Note: In contrast to the 1998 Handbook's use, in practice the term is often used to refer to the Service's programmatic consultation documents for a larger planning document. See also **Appended Consultation** and **Tiered Consultation**.

Voluntary Conference – a term sometimes used to describe conferencing between the Services and an action agency for a proposed species or proposed critical habitat, based on a "may affect" determination, rather than upon a determination of a "likely to jeopardize [proposed species] or "likely destroy or adversely modify" [proposed critical habitat] which is the threshold for required conferences under the ESA section 7(a)(4)

Source: Working definition

Note: See also **Conference**.

WSFR (Wildlife and Sport Fish Restoration) – This program of the U.S. Fish and Wildlife Service works with states to conserve, protect, and enhance fish, wildlife, their habitats, and the hunting, sport fishing and recreational boating opportunities they provide. They administer a large number of grants to fund program activities.

Source: Working definition

Wildlife – “Wildlife or fish and wildlife means any member of the animal kingdom, including without limitation any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, offspring thereof, or the dead body or parts thereof”

Source: Regulations 50 CFR 424.02

Note: Definition was created in 1984 to interpret and implement those portions of the Endangered Species Act that pertain to the listing of species and the determination of critical habitats.

WUI – Wildland Urban Interface, a term describing an area where forests or brushlands with potential for wildfire are near structures or developed areas.

Source: Working definition