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

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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. If the reader finds errors or confusing text, they are encouraged to contact the compiler.

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.

Special Note – On April 5, 2024, the Services published a final rule revising some aspects of the regulations at 50 CFR 402 (Federal Register/Vol. 89, No. 67/Friday, April 5, 2024). Those revisions went into effect May 5th, 2024, and are incorporated in this compilation where appropriate. They have been challenged in the U.S. District Court for the Northern District of California. As of this writing, I’m not aware of any resolution to the case. The 2024 regulation revisions are still in effect.

- Doug Laye, Chief Instructor, Section 7 Training, LLC

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.
Note: In 1986 the 1978 definition of “Activities or programs” was changed to Action.

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. See also **Analysis Area, Study Area and Project Area** as terms that can cause confusion in consultation documents when used instead of Action Area.

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 well described in the preamble of the 2019 regulation revisions (FR, August 27, 2019, Vol. 84, No. 166). See also **Reasonably Certain to Occur**.

Adaptive Management [NEPA] – “A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or re-evaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.”
Source: 36 CFR 220.3
Note: There is no specific definition for adaptive management for consultation under section 7 of the Act.

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. It establishes that courts “To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall— (2) hold unlawful and set aside agency action, findings, and conclusions found to be— (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.”
Source: Working definition
Note: Quotes in text above taken from USC Title 5, Part 1 Chapter 7 [706] Scope of Review. See also **Arbitrary/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 term 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 term that can have two very different meanings. In Section 4(b)(8) of the Act (and in many Service documents) this term represents the verb form of **Destruction or Adverse Modification** [from 7(a)(2) and (4)]. However,

in Action Agency documents the term 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

Affected Environment [NEPA] – A term used in the NEPA process of evaluating the effects of projects. "The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s)."

Source: 40CFR 1502.15

Note: Term is not used in consultation under section 7 of the Act, but some may confuse it with **Action Area**.

"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 and National Fire Plan**.

Alternative Consultation Procedures – a term 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 term 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**.

Analysis Area – a non-standardized term used variously in species effects analysis. It is not defined or found in the Act, 50 CFR 402 regulations or 1998 Handbook.

Source: Working definition

Note: Use of this term by practitioners can result in confusion around its relationship to the regulatory term **Action Area**. Unlike the delineation of the **Action Area** which uses the areas (land, air, water [See **Action**]) impacted by the action,

Analysis Area is generally delineated using some type of ad hoc species-centric polygon (e.g. home ranges, species management units, recovery units, buffers, etc.). See also **Project Area, Action Area, and Affected Area**.

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 term "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 – a non-standardized term traditionally viewed as a form of consultation (concurrence or biological opinion). Characterized by a consultation that is completed for a program of activities, and then when specific projects/activities consistent with that program are identified and proposed, site-specific consultation documents are completed and appended to the original consultation document.

Source: Working definition

Note: There is wide and confusing variation in the use of non-standardized names and procedures associated with consultations on the programmatic actions proposed by the action agency. This is largely due to high variability in what type of **Follow Up Process** (if any) is negotiated and required for each subsequent activity under the larger program. See **Programmatic Consultation [1998 Handbook]** for more information.

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. Applicants have certain privileges when it comes to extension of the 90-day consultation period (50 CFR 402.14 (e), submitting comments on the draft biological opinion (50CFR 402.24(d), extension of 45-day BO delivery (50 CFR 402.14(g)(5) and approval of non-federal designated federal representative (50 CFR 402.08).

Applicant Committed Conservation Measures (ACCM) – a term 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 – a word used in the definitions of Likely to Jeopardize and Destruction or Adverse Modification. It is not defined in the Act, Regulations, or Handbook. The Services discussed the meaning of this word in the preamble to the 2014 proposal for a new definition for Destruction or Adverse Modification. "To determine the appropriate meaning of the term "appreciably," we ultimately found it helpful to look at the definition of "appreciate," which means to "recognize the quality, significance, or magnitude" or "grasp the nature, worth, quality or significance." This usage makes more sense to us in the actual application of the phrase "appreciably diminish." The relevant question, then, becomes whether we can recognize the quality, significance, or magnitude of the diminishment. In other words, is there a diminishment to the value of the critical habitat that has some relevance because we can recognize or grasp the quality, significance, magnitude, or worth of the diminishment in a way that affects the conservation value of the critical habitat."

Source: Working definition

Note: Quote in text taken from FR, May 12, 2014, Vol. 79, No. 91, p. 27063. Though preamble language from proposed or final rules are not regulation, policy or guidance, it often does give perspective on the thought process used by the Services. See **Destruction or Adverse Modification, Likely to Jeopardize and Preamble**.

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 term “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). It is also discussed in the Handbook at 4-34 and in the preamble to the regulation revisions in 2019 (FR, August 27, 2019, Vol. 84, No. 166).

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 reference to the criteria with which a court reviews an agency’s decision under the **Administrative Procedure Act**.

Arbitrary/Capricious – words used as shorthand to refer to a larger set of criteria in the Administrative Procedures Act used by a court reviewing an agency’s decisions. “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;”

Source: Working definition

Note: See also **Administrative Procedure Act**

Area of Influence – along with the term “Section 7 Range”, this term 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 term “Species List Area” became the term 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**.

At-risk Species – “... is a non-listed species the status of which is declining and that is at risk of becoming a candidate for listing under the Act; at-risk species may include, but are not limited to, State-listed species, species identified by States as species of greatest conservation need, or species with State heritage ranks of G1 or G2.

Source: 50 CFR 17.3

Note: Quote taken from 50 CFR 17.3 within definition of **Covered Species**. See also **Candidate (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.

BA – See **Biological Assessment**

BAER – See **Burned Area Emergency Response**

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 non-standardized term not found in the Act, regulations, or the 1998 Handbook, but used to generally describe a circumstance where multiple proposed actions are combined into a single document. The typically are of similar type, size, scope, and impact. Often the actions are combined for analysis efficiency for the National Environmental Policy Act (NEPA) process.

Source: Working definition

Note: Though referred to as if they are a consultation type, they are more accurately considered a **Consultation Approach**.

BE – See Biological Evaluation

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**. Confusingly, the 1998 Handbook offers a different phrasing of the definition on page 4-25. “Are those effects that are wholly positive, without any adverse effects, on a listed species or designated critical habitat.”

“Benefit of the doubt to the species...” – a phrase used once in the U. S. House of Representatives conference report regarding discussions on final amendment (1978) language 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). 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. Concept can be misinterpreted to suggest using an unsupported bias such as a “erring on the side of the species”, “precautionary principle”, “worst case scenario”, etc. when dealing with uncertainty. Courts have generally rejected this concept in 7(a)(2) analysis. See review in the Micosukee Tribe vs. USFWS. (11th Circuit Court of Appeals, May 5, 2009) and Main Lobsterman’s Association vs. NMFS. (District of Columbia Circuit Court of Appeals, June 16, 2023). See also **Err on the Side of the Species**.

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 (BA) – “...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 term 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 Evaluation (BE) – Typically, this term refers to a document prepared by the U. S. Forest Service to assess effects of an action on certain species of fish, wildlife or plants. There is some variation in what species are included. It may be limited to species that are not listed by the ESA but are of agency concern (i.e. Forest Service Sensitive Species) or in some cases may also include discussion of effects to listed species under the ESA.

Source: Working definition

Note: This term is not found in the Act or 50 CFR 402 regulations. It may be encountered being used by other agencies or groups, but is most commonly encountered in Forest Service project assessments.

Biological Evaluation Form – This form is specific to the U.S. Fish and Wildlife Service and “...provides the outline of information needed for intra-Service consultation.”

Source: Working definition

Note: Quote taken from 1998 FWS **Intra-Service Consultation** Handbook presented as Appendix E of the 1998 Consultation Handbook, pg. E-28.

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).

Birds of Conservation Concern (BCC) – a list maintained by the USFWS that “...identifies the migratory and non-migratory bird species (beyond those already designated as federally threatened or endangered) that represent our highest conservation priorities. The list is based on an assessment of several factors, including population abundance and trends, threats on breeding and nonbreeding grounds and size of breeding and nonbreeding ranges. Bird species considered for the BCC

include: nongame birds gamebirds without hunting seasons subsistence-hunted nongame birds in Alaska ESA candidate, proposed, and recently delisted species.”

Source: Working definition

Note: Quote above taken from <https://www.fws.gov/media/birds-conservation-concern-2021> on March 25, 2025.

Blanket 4(d) rule – a term used to describe a Fish and Wildlife Service rule initially 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 unless an exception is made.

Source: Working definition

Note: The 1978 blanket rule was terminated in 2019 by a revision to the regulation (FR, August 27, 2019, Vol. 84, No. 166.). However, In June of 2023, the Service proposed to reinstate the rule (FR, June 22, 2023, Vol. 88, No. 119, p. 40742) and on April 5, 2024, this proposed revision was made final (FR, April 5, 2024, Vol. 89, No. 67). **NMFS** never promulgated a “blanket rule” and issues 4(d) rules individually when listing a species as threatened. See also **Section 4(d)**

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). The 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 effect 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 to the 2019 regulation revisions (FR, August 27, 2019, Vol. 84, No. 166, p. 44977). Also discussed in the 1998 Handbook p. 4-26. See also **Reasonably Certain to Occur** and **Two-part Test**.

Candidate (species) – “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 Federal Register, 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. Notice 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: Quote from Webster's II New Riverside University Dictionary (1988). Usually seen in reference to the criteria with which a court reviews an agency's decision under the **Administrative Procedure Act**.

Categorical Exclusion (“Cat X”) – a NEPA term (not Section 7) that “...means a category of actions that the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not have a significant effect on the human environment.”

Source: Regulations, 40 CFR 1508.1(d)

Note: Quote taken from the definition at 40 CFR 1508.1(d). 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

Clear and substantial [2019 – 2024] – a phrase from 50 CFR 402.17(b) regarding the type of information needed to support conclusions regarding consequences caused by the proposed action.

Source: Working definition

Note: The subsection (402.17) containing this phrase was a new section included in the revisions to the regulations in 2019 and then removed from the regulations in the 2024 revisions to 50 CFR 402. See also **Effects of the Action**.

Climate Change – See **Greenhouse Gas Memo**

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

Collaborative Approach – A term used to describe an optional approach to assist in consultation. Its focus is establishing coordination procedures to use existing documents from an action agency to support consultation. **Consultation Agreements** are sometimes used to establish procedures.

Source: Working definition

Note: Term does not appear in the Act, or 1998 Handbook. It was introduced and described in the regulations as part of the 2019 revisions. It is described at 50 CFR 402.14(h)(4).

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

Note: Timeline for delivery of a concurrence letter after agency request varies depending on whether the action is a **Major Construction Activity** (30 days – 50 CFR 402.12(j)) or non-major Federal construction activity (60 days with possible extensions not to exceed 120 days – 50 CFR 402.13(c)(2)).

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.

Condition-Based Management – Generally, an approach for implementing project scale actions as part of a larger scale program. At the larger scale, the environmental conditions are assessed along with various management actions to achieve the goals of the program, and the agency decision is made on the analysis of that program of work. When projects consistent with that program of work are proposed, the current site conditions are confirmed, and the appropriate management activities are assigned.

Source: Working definition

Note: See **Programmatic Action and Consultation/Stand alone**

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 [Required] – 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: Required Conferences are extremely rare. Conferences required under **Section 7(a)(4)** are concluded by either using an informal format of a Conference Report or (if requested by the action agency and agreed to by the Services) the formal format of a Conference Opinion. Conference Opinions may be adopted as a biological opinion by the Service after listing, under certain conditions (50 CFR 402.10). Adoption, by the Service, of the conference opinion should be requested in writing. See also **Conference [Voluntary]**.

Conference [Voluntary] – a term sometimes used to differentiate between a required conference under 7(a)(4) of the Act (likely to jeopardize a species and/or likely to destroy or adversely modify critical habitat) and requests from agencies to voluntarily conference on projects that they determine only “may affect” proposed species, critical habitat (402.10), or **candidate** species.

Source: Working definition

Note: The vast majority of conferences performed by the Services are of the voluntary type – not the type required by 7(a)(4) of the Act. Because of the wide variety of actions taken by the Service and action agency relative to voluntary conferencing and misleading nomenclature and processes described in chapter 6 of the 1998 Handbook, the actual process and terminology can be confusing to practitioners.

Conference Concurrence – a term sometimes used by consultation practitioners during voluntary conferencing 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 under 50 CFR 402.13.

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 under 7(a)(4) of the Act (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 the project. The term is also sometimes used if the Services are recommending the agency voluntarily conference.

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.

Note: A conference opinion applies in both required and voluntary conferences. It 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.

Conference Report – a term used in required conferences to describe the document prepared by the Services 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)

Note: During required conferencing a conference report is prepared in 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 by the Services as a biological opinion after species listing. Chapter 6 of the 1998 handbook errantly conflates the informal nature of a conference report under 7(a)(4) during a required conference with a conclusion of a may affect not likely to adversely affect under 7(a)(2) after informal consultation. The term “informal” in relation to required conferencing indicates formal vs. informal format of the document prepared by the Services - not the process of informal consultation and concurrence under 50 CFR 402.13.

Connected Actions – A term from the National Environmental Procedures Act (NEPA) process. Not defined in the NEPA regulations, but described thusly. “...The agency also shall consider whether there are connected actions, which are closely related Federal activities or decisions that should be considered in the same NEPA review that: (1) Automatically trigger other actions that may require NEPA review; (2) Cannot or will not proceed unless other actions are taken previously or simultaneously; or (3) Are interdependent parts of a larger action and depend on the larger action for their justification.”

Source: Working definition

Note: Quote in text above is from 40 CFR 1501.3(b). This term is similar to, but should not be confused with the section 7

consultation concept of "...activities that are caused by the proposed action but that are not part of the action" in the definition of the **Effects of the Action**.

Conserve, Conserving and Conservation [Act] – "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."

Conserve, Conserving and Conservation [Regulations] – "To use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary, *i.e.*, the species is recovered in accordance with § 402.02 of this chapter. 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: Regulations, codified as 50 CFR 424.02

Note: Not defined in the interagency consultation regulations at 50 CFR 402.02, but defined at 50 CFR 424.02 the section on listing threatened and endangered species and critical habitat. This definition adds a phrase to the Act's definition. The phrase is "*i.e.*, the species is recovered in accordance with § 402.02 of this chapter." after the Act's phrase "...are 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: Not to be confused with **Conservation Recommendations**.

Conservation Needs – a term 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**” in the revisions of 2019 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

Consistency Letter – a non-standardized term used to describe a document in the **Follow Up Process** to a consultation on programmatic actions.

Source: Working definition

Note: There is wide and confusing variation in the use of non-standardized names and procedures associated with consultations on the programmatic actions proposed by the action agency. This is largely due to high variability in what type of **Follow Up Process** (if any) is negotiated and required for each subsequent activity under the larger program. See **Programmatic Consultation [1998 Handbook]** for more information.

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 Approach – refers generally to various optional methods for making the consultation process more efficient and/or reducing completion times.

Source: Working definition

Note: See also **Expedited Consultations**, **Streamlined Consultation**, **Expedited Consultation**, **Batched Consultation**, **Optional Collaborative Process**, and **Restoration and Recovery Projects**.

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 also used specifically to describe capacity of the IPaC system to assist in developing those documents.

Source: Working definition

Note: See also **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 also **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 term 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 – that section of the regulations (50 CFR 402.04) allowing for alternate regulations that can supersede the regulations on interagency cooperation 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: Sometimes referred to as **Joint Counterpart Regulations**. Most recent examples were for pesticide registration (2004; 50 CFR subpart D) and the **National Fire Plan** (2004; 50 CFR 402 subpart C, 402.30 – 402.34); both are no longer in effect. The **Alternate Consultation Agreement** for use of the counterpart regulations for the **National Fire Plan** was revoked in 2011 (FR October 3, 2011). See also **FIFRA** and **Alternate Consultation Agreement**.

Covered species – “... means any species that are included in a conservation plan or agreement and for which take is authorized through an incidental take or enhancement of survival permit. (1) Covered species include species listed as endangered or threatened. (2) Covered species may include species that are proposed or candidates for listing, at-risk species, or species that have other Federal protective status. An at-risk species is a non-listed species the status of which is declining and that is at risk of becoming a candidate for listing under the Act; at-risk species may include, but are not limited to, State-listed species, species identified by States as species of greatest conservation need, or species with State heritage ranks of G1 or G2. (3) An incidental take or enhancement of survival permit need not include a listed species.”

Source: 50 CFR 17.3

Note: Notice **At-risk species** description under point (2). Practitioners sometimes refer to species addressed in a consultation as “covered species”, but this can be misleading and should be avoided since covered species are defined in regard to **Section 10** permits only.

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 also **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 Effects [NEPA definition] – “... are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.”

Source: Regulations 40 CFR 1508.1(g)(3)

Note: Definition is very different than definition of cumulative effects for consultation at 50 CFR 402.02

Cumulative Impact – a term formerly used in NEPA analyses. Term was removed in revisions of 40 CFR 1508 by the EPA.

Source: FR/ Vol. 85, No. 137 / Thursday, July 16, 2020, p. 43343

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 [2019 -] – “*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 402.02

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 term is used in the Act (Section 7), but not defined there. This revised definition was the result of the 2019 regulation revisions. This term and similar terms 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 Handbook p. 4-34 and **Listed Entity Scale**

Destruction or Adverse Modification [2016 - 2019] – “*Destruction or adverse modification* means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.”

Source: Regulations (2016) codified as 50 CFR 404.02

Note: 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 (FR, February 11, 2016, Vol. 81, No. 28) and revised in 2019.

Destruction or Adverse Modification [1986 - 2004] – “Destruction or adverse modification” means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.”

Source: Regulations (1986) codified as 50 CFR 404.02

Note: The Services’ 1986 definition was found invalid by circuit courts in 2001 and 2004. A new regulatory definition was promulgated in 2016 (FR, February 11, 2016, Vol. 81, No. 28).

Destruction or Adverse Modification [1978 - 1986] – “*Destruction or adverse modification*” means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 402.05(b). There may be many types of activities or programs which could be carried out in critical habitat without causing such diminution.” (FR, January 4, 1978, Vol. 43, No. 2)

Source: Regulations (1978) codified as 50 CFR 404.02

Note: The Services promulgated the first definition in 1978 and modified it in 1986.

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 [2019 -] – “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

Note: This definition was the result of the 2019 regulation revisions.

Director [1986 - 2019] – “...the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his authorized representative; or the Fish and Wildlife Service Regional Director; or his authorized representative, for the region where the action would be carried out.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: In 1986 the definition of Director from the original 1978 regulations was modified.

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**.

Discretionary Action – generally understood to mean that the action proposed to be implemented is within the authority granted by statute or regulation to the agency.

Source: Working definition

Distinct Population Segment – a term first used (but not defined) in the Act within the definition of “species” (Section 3). The term 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 term. The concepts of discreteness, significance, and status inform the use of the term.

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 402.11

Note: First mentioned in the Act at Section 7(a)(3) 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 **Section 7(a)(3)** of the Act, 50 CFR 402.11, and chapter 7 of the 1998 Handbook for more details. 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 [2024 -] – “...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 but that are not part of the 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.

Source: Regulations (1986), revised (2019 and 2024), codified as 50 CFR 402.02

Note: The latest revision was published as a final rule (FR, April 5, 2024, Vol. 89, No. 67)

Effects of the Action [2019 - 2024] – “...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: This definition was the result of the 2019 regulation revisions.

Effects of the Action [1986 - 2019] – “... refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. 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. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. **Interrelated actions** are those that are part of a larger action and depend on the larger action for their justification. **Interdependent actions** are those that have no independent utility apart from the action under consideration.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Discussion on pp. 4-25 through 4-29 of Handbook.

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 are needed for listed species and critical habitat, if they are both 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 also IPaC.

EFH – See **Essential Fish Habitat** and **Magnuson-Stevens Fishery Management and Conservation Act**

EIS – See **Environmental Impact Statement**

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 term 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.

Important Point – Policy of the Department of Interior “In the event of an emergency, no emergency response is to be delayed or obstructed because of Endangered Species Act considerations.” (Secretary memorandum from August 20, 2001, entitled Protection of Firefighter and Public Safety.) Also, page 8-1 of the Handbook “**DO NOT** stand in the way of the response efforts” [Emphasis in original].

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 [2024 -] – “...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 impacts to listed species or designated critical habitat from Federal agency activities or existing Federal agency facilities that are not within the agency’s discretion to modify are part of the environmental baseline.”

Source: Regulations (1986), revised (2019 and 2024), codified as 50 CFR 402.02

Note: The latest revision was published as a final rule (FR, April 5, 2024, Vol. 89, No. 67). Discussion in the preamble to that notice is valuable for insight into the Services’ viewpoint on the topic.

Environmental Baseline [2019 - 2024] – “...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: This definition was the result of the 2019 regulation revisions.

Environmental Baseline [1986 - 2019] – term described within the regulatory definition of “Effects of the Action” as “... the past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early Section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: See the 1998 Handbook p. 4-22 for general principles. Also, the discussion in the preamble to the 2019 revisions in FR, August 27, 2019, Vol. 84, No. 166, (pp. 44993-44996) is valuable for insight into the Services’ viewpoint on the topic.

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**

Err on the side of the species – a phrase not found in the Act, regulations, or policy. It is sometimes used as a companion phrase to “benefit of the doubt”. The most likely source of this phrase is from the court’s opinion in *Natural Resources Defense Council, et al., Plaintiffs, v. Dirk Kempthorne*. United States District Court, E.D. California. May 25, 2007.

Source: Working definition

Note: Quote from court’s opinion - “*Conner* does not directly support the broader interpretation urged by Plaintiffs, that the agency should err on the side of the species when evaluating uncertain evidence.” Many practitioners mistakenly see this phrase as direction for dealing with uncertainty, but it is not. See important discussion **at Benefit of the Doubt**.

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: For consultation “...any experimental population that, pursuant to § 17.81(c)(2), has been determined to be essential to the survival of the species..., will be treated for purposes of section 7 of the Act as a threatened species.” (50 CFR 17.83(b) The applicability of Section 9 to individuals of experimental populations is governed by special rules (10(j) rules) published with the experimental population designation.

Essential Fish Habitat [Statute] – “The term “essential fish habitat” means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”

Source: Section 3 of the Magnuson-Stevens Fishery Management and Conservation Act as Amended Through January 12, 2007.

Note: See also **Magnuson–Stevens Fishery Management and Conservation Act**

Essential Fish Habitat [Regulations] – “means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of essential fish habitat: “Waters” include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; “substrate” includes sediment, hard bottom, structures underlying the waters, and associated biological communities; “necessary” means the habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem; and “spawning, breeding, feeding, or growth to maturity” covers a species’ full life cycle.”

Source: Regulations, 50 CFR 600.10

Note: See also **Magnuson–Stevens Fishery Management and Conservation Act**

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

Note: This description was part of the regulation revisions in 2019. Prior to 2019 the term was a non-standardized term used to broadly describe situations where an action agency requests and/or the Services agree to complete consultation more quickly than the time allowed for by statute and regulations. It was mentioned regarding emergency situations (402.05(a)). See also **Emergency Consultation, Restoration and Recovery Projects, Optional Collaboration Process and Consultation Approach**.

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: Consultation requirements vary see **Experimental Population [Regulations]**, **Non-Essential Experimental Population** and **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 nonexperimental 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. Discussed in FR 49, Aug. 27, 1984.

Note: "For purposes of section 7 of the Act, any consultation or conference on a proposed Federal action will treat any experimental and nonexperimental populations as a single listed species for the purposes of conducting the analyses and making agency determinations pursuant to section 7(a) of the Act." 50 CFR 17.83(c). Other consultation requirements vary. See also **Non-Essential Experimental Population** and **Essential Experimental Population**.

FACA – See Federal Advisory Committee Act

Federal Action Agency – though this term appears several times in the 1998 Handbook, it is not defined in the Act or 1986 regulations. The Service does define the term 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 term "**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 – term 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 also **Counterpart Regulations**.

Fire Plan – See also National Fire Plan

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

Note: See also **Prohibited Acts**.

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. See also **Prohibited Acts**.

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 – term 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 term 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**

Follow Up Process – a term used to represent the myriad possible steps, documents or processes required for each subsequent activity under a **Programmatic Action and Programmatic Consultation/Stand alone**. They can range from no steps at all to a substantial document that includes project-level apportioning of incidental take. The process does not represent a new 7(a)(2) determination or analysis.

Source: Working definition

Note: This process is unique to each **Programmatic Action and Programmatic Consultation/Stand Alone** and is represented by many colloquial, non-standardized terms such as step-down document, compliance check, conformance document, consistency check, consistency document, secondary, project notification, project report, etc. These terms can produce confusion in practitioners when comparing across consultations. See also **Programmatic Consultation [1998 Handbook]**.

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.

Greenhouse Gas Memo – A title used to refer to a memorandum from H. Dale Hall, Director, U.S. Fish and Wildlife Service titled “Expectations for Consultations on Actions that Would Emit Greenhouse Gases”. The memo was signed on May 14, 2008. Attached was a memorandum from Mark D. Myers, Director, U.S. Geological Survey titled “The Challenges of Linking Carbon Emissions, Atmospheric Greenhouse Gas Concentrations, Global Warming, and Consequential Impacts”.

Source: Working definition

Habitat Conservation Plan (HCP) – This term is potentially confusing. Actual regulatory term is “**Conservation Plan**” and is defined by regulation at 50 CFR 17.3.

Note: 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. [See FR, September 26, 1975, Vol. 40, No. 188, p. 544413]

Note: 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) [1981 -] – “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, No. 213, p. 54750. On April 17, 2025, the Services proposed a rule to remove this definition of Harm from 50 CFR Part 17.3 and Part 222.102 (FR April 17, 2025, Vol. 90, No. 73, p. 16102)

Harm (FWS) [1975 - 1981] – “Harm in the definition of “take” in the Act means an act or omission which actually injures or kills wildlife. Including acts which annoy it to such an extent as to significantly disrupt essential behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering; significant environmental modification or degradation which has such effects is included within the meaning of “harm”.”

Source: Regulations, codified as 50 CFR 17.3

Note: See 1975 Final Rule, FR September 26, 1975, Vol. 40, No. 188, p. 44416. This definition was revised in 1981.

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 FR, November 8, 1999, Vol. 64, No. 215, pp. 60727-60731. On April 17, 2025, the Services proposed a rule to remove this definition of Harm from 50 CFR Part 17.3 and Part 222.102 (FR April 17, 2025, Vol. 90, No. 73, p. 16102)

HCP (Habitat Conservation Plan) – The Acronym HCP is potentially confusing. Actual regulatory term is “Conservation Plan” and is defined by regulation at 50 CFR 17.3.

Note: 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**, the prohibition on incidental take can be removed 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**, the prohibition on incidental take can be removed through Section 7 or Section 10 of the Act, respectively.

Incidental Take Statement [Act] – 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.

Incidental Take Statement [Regulations 2024 -] – A section after the conclusion of a Biological Opinion, or document provided with the Biological Opinion. “...(i)(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that: (i) Specifies the impact of incidental taking as the amount or extent of such taking. A surrogate (e.g., similarly affected species or habitat or ecological conditions) may be used to express the amount or extent of anticipated take, provided that the biological opinion or incidental take statement: Describes the causal link between the surrogate and take of the listed species, explains why it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species, and sets a clear standard for determining when the level of anticipated take has been exceeded; (ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact of incidental taking on the species; (iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking; (iv) 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 paragraphs (i)(1)(ii) and (iii) of this section; and (v) Specifies the procedures to be used to handle or

dispose of any individuals of a species actually taken.”

Source:

Note: Quote in text above taken from 50 CFR 402.14(i)(1)(i-iv). Regulations (1986) revised (1989, 2015, and 2024). The latest revision was published as a final rule (FR, April 5, 2024, Vol. 89, No. 67)

Incidental Take Statement [Regulations 2015 - 2024] – A section after the conclusion of a Biological Opinion, or document provided with the Biological Opinion. “...(i)(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that: (i) Specifies the impact, *i.e.*, the amount or extent, of such incidental taking on the species (A surrogate (*e.g.*, similarly affected species or habitat or ecological conditions) may be used to express the amount or extent of anticipated take provided that the biological opinion or incidental take statement: Describes the causal link between the surrogate and take of the listed species, explains why it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species, and sets a clear standard for determining when the level of anticipated take has been exceeded.); (ii) Specifies those reasonable and prudent measures that the Director 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 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking; (iv) 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 paragraphs (i)(1)(ii) and (i)(1)(iii) of this section; and (v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.”

Source: Working definition

Note: Quote in text above taken from 50 CFR 402.14(i)(1)(i-iv). Regulations (1986) revised in (1989 and 2015). See also pp. 4-42 through 4-53 of the 1998 Handbook. In 2015 a few text changes were made to the 1989 regulations at 402.14(i)(1) and 402.14 (i)(1)(i) including description of how to use a **Surrogate** for incidental take.

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 [1986 – 2019] – A term eliminated by the 2019 revisions to the regulations – “...Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Quote in text above taken from discussion within the definition of “**Effects of the action 1986 - 2019**”. This definition was eliminated in the 2019 revisions to the 402 regulations and wholly encompassed in the revised definition of “Effects of the action”. The discussion in the preamble to those revisions in FR, August 27, 2019, Vol. 84, No. 166, (pp. 44988-44992) is valuable for insight into the Services' viewpoint on the topic. Not to be confused with National Environmental Policy Act regulation 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 term “**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, February 11, 2016, Vol. 81, No. 28) and, in 2019, substantial revisions to the 402 regulations were promulgated (FR, August 27, 2019, Vol. 84, No. 166). See also **Preamble**.

Interdependent Actions [1986 – 2019] – A term eliminated by the 2019 revisions to the regulations. “... those [actions] that have no independent utility apart from the action under consideration.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Quote in text above taken from discussion within definition of **“Effects of the Action 1986 -2019”**. To determine if an action (and its effects) is an Interdependent Action the “but for” test is used. See also the Handbook pp. 4-26 through 4-28, and **“But for” Test**. This definition was eliminated in the 2019 revisions to the 402 regulations and wholly encompassed in the revised definition of “Effects of the action”. The discussion in the preamble to those revisions in FR, August 27, 2019, Vol. 84, No. 166 (pp. 44989-44994) is valuable for insight into the Services’ viewpoint on the topic.

Interrelated Actions [1986 – 2019] – A term eliminated by the 2019 revisions to the regulations. – “...those [actions] that are part of a larger action and depend on the larger action for their justification.”

Source: Regulations (1986) codified as 50 CFR 402.02

Note: Quote in text above taken from discussion within definition of **“Effects of the Action 1986 - 2019”**. To determine if an action (and its effects) is an Interdependent Action the “but for” test is used. The Handbook makes an important point regarding the regulation’s use of the terms “larger action” in discussing interrelated actions and the confusion that can cause. See also the Handbook pp. 4-26 through 4-28, and **“But for” Test**. This definition was eliminated in the 2019 revisions to the 402 regulations and wholly encompassed in the revised definition of “Effects of the action”. The discussion in the preamble to those revisions in FR, August 27, 2019, Vol. 84, No. 166, (pp. 44989-44994) is valuable for insight into the Services’ viewpoint on the topic.

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: Working definition

Note: Quote above from Regulations (1986) codified as 50 CFR 402.09. See also **Section 7(d)** of the Act, and p. 2-7 of the 1998 Handbook. A phrase also used but not defined in implementing the **National Environmental Policy Act (NEPA)** at (40 CFR 1502.16(a)(4) and 1508.1(ii)). As of this writing, the implementing regulations for NEPA are in flux and are likely to change.

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 also **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 term 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). Term is often worded slightly differently, for example “**Analytical Framework**”.

Jeopardize the Continued Existence of [1986 -] – 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**.

Jeopardize the Continued Existence of [1978 - 1986] – “...to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute “jeopardy” would be expected to vary among listed species.” (FR, January 4, 1978, Vol. 43, No. 2)

Source: Regulations (1978) codified as 50 CFR 402.02

Note: The 1978 definition was revised in 1986.

Joint Counterpart Regulations – See **Counterpart Regulations**

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

Land Management Plans [Reinitiation] – “(b) An agency shall not be required to reinitiate consultation after the approval of a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604 upon listing of a new species or designation of new critical habitat if the land management plan has been adopted by the agency as of the date of listing or designation, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. This exception to reinitiation of consultation shall not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if: (1) Fifteen years have passed since the date the agency adopted the land management plan prepared pursuant to 16 U.S.C. 1604; and (2) Five years have passed since the enactment of Public Law 115-141 [March 23, 2018] or the date of the listing of a species or the designation of critical habitat, whichever is later.”

Source: 2019 regulations codified as 50 CFR 402.16 (b)

Note: This was new text in the 2019 revisions to 50 CFR 402.16.

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: The Handbook neglects to include “destroy” in the title of its entry or the definition. See **Destruction or Adverse Modification** for full definition. See also **Listed Entity Scale, Confer** and **Conference**.

Listable Entity – a term 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 term 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 term 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 (a); 402.14(b); and 402.14 (l)(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 – term 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 – a common term with many definitions. The Services view its meaning for policy purposes as “...In the context of impacts to environmental resources resulting from proposed actions, “mitigation” is a general label for measures taken to avoid, minimize, and compensate for those impacts.”

Source: Working definition

Note: Quote taken from U.S. Fish & Wildlife Service Mitigation Policy Appendix 1, 501 FW 2, May 2023. See also **Mitigation (Compensatory), Mitigation Policy, Offsets, and Reasonable and Prudent Measures [Application, 2024 -]**

Mitigation (Compensatory) – the Services view its meaning for ESA purposes as “...compensatory mitigation” (or “compensation”) is compensation or offsets for remaining unavoidable impacts after all appropriate and practicable avoidance and minimization measures have been applied, by replacing or providing substitute resources or environments through the restoration, establishment, enhancement, or preservation of resources and their values, services, and functions.”

Source: Working definition

Note: Quote taken from U.S. Fish & Wildlife Service Endangered Species Act Compensatory Mitigation Policy Appendix 1, 501 FW 3, May 2023, as amended July 3, 2023. See also **Mitigation, Mitigation Policy, Offsets, and Reasonable and Prudent Measures [Application, 2024 -]**

Mitigation Policy – the Service has two mitigation policy documents. The Fish and Wildlife Service Mitigation Policy and the Fish and Wildlife Service Endangered Species Act Compensatory Mitigation Policy. Both were released to the public on May 15, 2023. They can be found by searching the Fish and Wildlife Service library <https://www.fws.gov/library>

Source: FR Vol. 88, No. 93 May 15, 2023

Note: Both policies have a history of being written, published, withdrawn, amended and published again since first being published in 2016. They are the first updated policy since the Fish and Wildlife Service adopted the Council on Environmental Quality definition for mitigation in 1981. The use of the word mitigation and compensation related to Sections **10(a)(1)(B), 7(a)(1), 7(a)(2), Incidental Take, and Reasonable and Prudent Measures** can be a confusing topic and must be explored thoughtfully. See also **Mitigation (Compensatory), Offsets, and Reasonable and Prudent Measures [Application, 2024 -]**.

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**.

Monitor(ing) – a term not used in section 7 of the Act, but used twice in the regulations (50 CFR 402.14 (i)(1)(i) and (i)(4)). In both cases it is used to refer to monitoring the impacts of incidental take identified in the incidental take statement.

Source: Working definition

Note: The specifics regarding the method of monitoring of **Incidental Take** are often listed as **Terms and Conditions** in the **Incidental Take Statement**. See also **Report**.

Multi Species Conservation Plan (MSCP) – term used to refer to a conservation plan under Section 10 of the Act that covers more than one species and potentially multiple sub-permittees.

Source: Working definition

Note: See also **Conservation Plan, Section 10, and Section 10(a)(1)(B)**.

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: In 2004 a set of counterpart regulations was added to 50 CFR 402 (Subpart C) to implement projects under the

National Fire Plan. Use of those regulations relied on an **Alternative Consultation Agreement**. That alternate consultation agreement was terminated in 2011 (FR, October 3, 2011, Vol. 76, No. 191, p. 61090. See also **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 also **CERCLA** the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (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 term **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

No Impact – a term that is often misapplied to an action that has been determined to have no effect to a listed species or critical habitat.

Source: Working definition

Note: It is likely an error in language coming from practitioners accustomed to working with the National Environmental Policy Act (NEPA) process. See also **No Effect**.

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: for consultation or conferencing, non-essential experimental populations occurring within the National Park System or National Wildlife Refuge System are considered threatened, in all other areas they are considered proposed. See Act,

Section 10(j)(C) and 50 CFR 17.81(c)(2). Regulations discussed in FR 49, Aug. 27, 1984. See **Experimental Population** and **Essential Experimental Population**.

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

Non-Standard Consultation – a term sometimes used to describe a consultation for programmatic actions, emergency actions or any other atypical action.

Source: Working definition

Note: See also **Standard Consultation**

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 term used in 50 CFR 402.14(h)(4) referring to collaboration for developing and adopting action agency documents in consultation.

Source: Working definition

Note: This term was introduced in the 2019 revisions to the 402 regulations. The manner of establishing the process for the process can take many forms. See also **Alternate Consultation Process, Consultation Agreement, Expedited Consultations, Alternative Consultation Agreement, Consultation Approach, and Streamlined Consultation Procedures**.

Offsets – a general term that has taken specific meaning in section 7 consultation relative to the breadth of required reasonable and prudent measures found in incidental take statements. This is a result of the 2024 revisions to the 50 CFR 402 regulations. Those regulations reflected the Services' new interpretation of language in the Act that reasonable and prudent measures in an incidental take statement can require mitigation for incidental take. “Accordingly, offsets may minimize the impacts of incidental take on the species through measures that counterbalance the loss of individuals taken as a result of the action subject to consultation (e.g., through restoration of habitat anticipated to result in the replacement of the individuals that were taken).”

Source: Working definition

Note: Quote taken from FR, April 5, 2024, Vol. 89, No. 67, p. 24283. See also **Mitigation (Compensatory), Mitigation Policy, and Reasonable and Prudent Measures [Application, 2024 -]**.

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.

Penalties and Enforcement – The title of section 11 of the Act. Section 11 outlines civil and criminal penalties and the citizen suit provision.

Source: Working definition

Note: See also **Section 11**.

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. 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 broad class of **Programmatic Consultation**.

Source: Working definition

Note: See also **Framework Consultation** and **Mixed Programmatic Consultation**.

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

Source: Act, Section 3

Note: See also **Prohibited Acts**.

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 also **Experimental Populations** and **Distinct Population Segment**.

Preamble – word used generally by practitioners to describe the first (and largest) portion of Federal Register documents rules proposing or finalizing revisions to 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 proposed and 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 also **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 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 term no longer used in the designation of **Critical Habitat**.

Program Action and Programmatic Consultation/Stand alone – See **Programmatic Consultation/Stand alone**

Programmatic Consultation [Regulations] – “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: This definition was included as a new definition in the 2019 revisions to the 402 regulations. It is extremely broad to capture the broad range of approaches to consultation on programs of actions by practitioners over several decades. See explanation in **Programmatic Consultation [1998 Handbook]**

Programmatic Consultation [1998 Handbook] – “...consultation addressing an agency’s multiple actions on a program, regional or other basis. [Clarification of usage]”

Source: Handbook, p. xvii

Note: Though only defined in the Handbook until the regulation revision in 2019, the phrase was used for several decades. In that time period, there has been tremendous variation and non-standardized names and formats developed for the types of consultation on these actions. This is largely due to high variability in what **Follow Up Process** is negotiated and required for each subsequent activity under the program. See also **Plan Level Consultations**, **Batched Consultations**,

Appended Consultations, Umbrella, Tiered Consultations, Step-down Consultations and the standardized terms **Programmatic Consultation [Regulations], Programmatic Action and Consultation/Stand alone, Framework Programmatic Action, Mixed Programmatic Actions and Streamlining Guidance.**

Programmatic Consultation/Stand alone – A standardized term (though sometimes the terms are reversed as Stand alone/Programmatic Consultation) used by the Fish and Wildlife Service in categorizing a consultation type for an internal consultation tracking system. It is a programmatic consultation that does not require additional 7(a)(2) analysis for future projects anticipated and analyzed in its consultation. It may however require some type of **Follow Up Process**.

Source: Working definition

Note: The term is one of three standardized terms for programmatics (Framework, Mixed Programmatic, and Programmatic /Stand alone) used in the Fish and Wildlife Service's consultation tracking system. It has been the most common type of programmatic action and consultation used in the last 30 years, but there is tremendous variation and non-standardized names used for this type of consultation. This is largely due to high variability in what **Follow Up Process** is negotiated and required for each subsequent project/activity. Not to be confused with consultations on **Framework Actions** or **Mixed Programmatic Actions**. See also **Appended Consultations, Tiered Consultations, Step-down Consultations**.

Prohibited Acts – The title of section 9 of the Act. Section 9 outlines the prohibited acts for plants and a different set of prohibited acts for fish and wildlife (including take).

Source: Working definition

Note: Section 9 outlines prohibited acts for endangered fish and wildlife and plants only. Prohibited acts for threatened fish, wildlife and plants are established through a **Section 4(d) Rule**. See also **Section 4(d), Section 9** and **Take**. Prohibited acts for both endangered and threatened fish, wildlife and plants are also described at 50 CFR 17.21, 17.31, 17.61 and 17.71

Project Area – a non-standardized term used variously in consultation documents. It is not defined or found in the Act, or 50 CFR 402 regulations, but is used several times without definition in the 1998 Handbook.

Source: Working definition

Note: Use by practitioners can result in confusion around its relationship to the regulatory term **Action Area**. See also **Analysis Area**.

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 [Definition - Act] – The Act describes them as "...those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact" [from incidental take]. See also **Incidental Take Statement**.

Source: Act, 7(b)(4)(ii)

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

Reasonable and Prudent Measures [Definition - Regulations, 2024 -] – "...refer to those actions the Director considers necessary or appropriate to minimize the impact of the incidental take on the species."

Source: Regulations (1986), revised (2024), codified as 50 CFR 402.02

Note: The latest revision was published as a final rule (FR, April 5, 2024, Vol. 89, No. 67). See also **Incidental Take Statement**.

Reasonable and Prudent Measures [Definition - Regulations, 1986 - 2024] – "...those actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take."

Source: 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**.

Reasonable and Prudent Measures [Application, 2024 -] – "... (2) 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, may

involve only minor changes, and may include measures implemented inside or outside of the action area that avoid, reduce, or offset the impact of incidental take. (3) Priority should be given to developing reasonable and prudent measures and terms and conditions that avoid or reduce the amount or extent of incidental taking anticipated to occur within the action area. To the extent it is anticipated that the action will cause incidental take that cannot feasibly be avoided or reduced in the action area, the Services may set forth additional reasonable and prudent measures and terms and conditions that serve to minimize the impact of such taking on the species inside or outside the action area...."

Source: Regulations (1986) revised (2024) codified as 50 CFR 402.14(i)

Note: The revision in 2024 added the substantial text at 402.14 (i)(3) and moved the previous text at (3) to (4). 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**

Reasonable and Prudent Measures [Application, 1986 - 2024] – "... (2) 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. (3) ..."

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

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**

Reasonably Certain to Occur – this phrase is part of the two-part test ("**But For**" Test) used when evaluating whether an effect 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 to the 2019 regulation revisions 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." (FR, August 27, 2019, Vol. 84, No. 166, p. 44993). Also, the Service notes that this phrase is stricter (narrower) than the standard of "reasonably foreseeable" which is used in NEPA. (FR, June 3, 1986, Vol. 51, No. 106, p. 19932). See also **Activities Reasonably Certain to Occur** and "**But For**" Test.

Reasonably Foreseeable [NEPA] – "...means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision."

Source: 40 CFR 1808.1(ii)

Note: This phrase is used in the implementation of the **National Environmental Policy Act** (NEPA) but not **Section 7** of the Act. In section 7 the phrase **Reasonably Certain to Occur** is used. They are not synonymous. As of this writing, the implementing regulations for NEPA are in flux and are likely to change.

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 [1986 -] – "...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 [1978-1986] – "...means improvement in the status of listed species to the point at which listing is no longer required." (FR, January 4, 1978, Vol. 43, No. 2)

Source: Regulations (1978) codified as 50 CFR 402.02

Note: Term was revised in 1986.

Recovery Implementation Strategy (RIS) – a short-term, flexible operational document focused on implementing actions needed to recover listed species.

Source: Working definition

Note: The RIS is a response to the circumstances where a **Recovery Plan** has become outdated and/or a species' biological condition, threats to its existence, and how to address these stressors has changed since publication of the recovery plan. Information taken from <https://www.fws.gov/project/recovery-planning-and-implementation> on March 6, 2025.

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

Note: See **SSA**.

Regulations – in section 7 consultation these are the rules promulgated by the National Marine Fisheries Service or Fish and Wildlife Service that set the process for implementing section 7 of the Act. These rules are proposed in the **Federal Register**, for public comment and then issued as a final rule in the federal register. They then become a part of the **Code of Federal Regulations (CFR)** and become legally binding. The first set of rules for the process of section 7 consultation were established in 1978. They were then revised in 1986, 1988, 2003 (**National Fire Plan** counterpart regulations), 2004 (**FIFRA** counterpart regulations), 2013, 2015, 2016, 2019, and 2024.

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 [2024 -] – “(a) Reinitiation of consultation is required and shall be requested by the Federal agency, 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 and 2024) codified as 50 CFR 402.16

Note: The minor revision to (a) was published as a final rule (FR, April 5, 2024, Vol. 89, No. 67)

Reinitiation Triggers [2019 - 2024] – four conditions that require reinitiation of consultation. “ (a) Reinitiation of 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

Note: In the 2019 revision to 402.16 (FR, August 27, 2019, Vol. 84, No. 166), along with some minor text and numbering changes, an exception to (4) for some land management plans was created and the FR notice preamble discussed those circumstances. See also **Land Management Plans [Reinitiation]**

Reinitiation Triggers [1986 - 2019]– 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: (a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) 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; (c) 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 (d) If a new species is listed or critical habitat designated that may be affected by the identified action.”

Source: Regulations (1986) codified as 50 CFR 402.16

Note: In the 2019 revision to 402.16 (FR, August 27, 2019, Vol. 84, No. 166), an exception to (d) for some land management

plans was created and the FR notice preamble discussed those circumstances.

Report – a term used in section 7(b)(4)(C)(iv) of the Act, to describe one type of term and condition related to implementation of reasonable and prudent measures in an incidental take statement. Also mentioned in the regulations at 50 CFR 402.14(i)(1)(iv) and (i)(4).

Source: Working definition

Note: See **Monitor(ing)**, **Incidental Take**, **Terms and Conditions**, and **Incidental Take Statement**.

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.

Note: See **SSA**.

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.

Note: See **SSA**.

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 also **Conservation Needs**.

Restoration and Recovery Projects (RRP) – a consultation approach using “...an approved method for streamlining Endangered Species Act section 7 consultation for certain projects whose primary purpose is the conservation of listed species.”

Source: Working definition

Note: Quote taken from November 16, 2016, memorandum from Stephen Guertin, Deputy Director for the Fish and Wildlife Service. Memorandum included document templates.

RIS – See **Recovery Implementation Strategy**.

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.

Screens – a non-standardized term associated with a programmatic activity and a **Programmatic Consultation (Stand alone)**. The screen is a set of questions used for determining if a potential project is consistent with the intended scope of the programmatic activity and consultation. It can also be used as part of the decision process for which conservation measures will apply to the proposed project.

Source: Working definition

Scope – a non-standardized term used many times in the regulations and 1998 Handbook but not in the Act. Used generally to indicate extent of something such as a project, authority, area, analysis, or discretion.

Source: Working definition

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 4(d) Rule – a specific rule published in the Federal Register setting forth the prohibited acts regarding a threatened species.

Source: Working definition

Note: A 4(d) rule does not alter the responsibility or process for consulting on the threatened species if a Federal project **May Affect** it.

Section 4(e) – a portion of section 4 of the Act where a species can be treated as an endangered species or threatened species even though it is not listed pursuant to section 4 of the Act. “The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that— (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.”

Source: Working definition

Note: Quote in text above from Section 4(e) of the Act but similar text is codified in the regulations at 50 CFR 17.50. See also **Similarity of Appearance**.

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 sub section 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 sub section 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(a)(3) – that subsection of Section 7 that allows for early consultation when requested by an applicant. “... Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.”

Source: Working definition

Note: Quote taken from Act, Section 7(a)(3). The phrase early consultation is sometimes used generally by practitioners to simply mean discussing information about a proposed action and consultation early in the planning process. See **Early Consultation**, **Preliminary Biological Opinion**, **Informal Consultation** and **Technical Assistance**.

Section 7(a)(4) – that sub section of Section 7 that requires Federal agencies to conference with the Services. “...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. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

Source: Working definition

Note: Quote taken from Act, Section 7(a)(4). Not to be confused with a **Voluntary Conference**.

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. There are no specific regulations regarding 7(d). Unlike 7(a)(2) consultation, the requirements under 7(d) are directed to the action agency alone and the Services are not involved in developing, concurring or agreeing with an agency's 7(d) determination.

Section 7 Range – along with the term "Area of Influence", this term 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 term "**Species List Area**" became the term 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 Act that gives authority to the Services to issue permits for prohibited acts described in section 9 of the Act or established through a 4(d) rule.

Source: working definition

Section 10(a)(1)(A) – the area of Section 10 of the Act, that gives authority to the Services to issue permits for "...scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j)";

Source: Working definition

Note: Quote in text from Section 10(a)(1)(A) of the Act. **Enhancement of Survival Permits** are used for **Candidate Conservation Agreements with Assurances**

Section 10(a)(1)(B) – the area of Section 10 of the Act, that gives authority to the Services to issue permits to non-Federal entities for incidental take of fish and wildlife from actions with no section 7 Federal nexus. A conservation plan is the foundation of the permit.

Source: Working definition

Note: See also **Conservation Plan**. Relief from the prohibitions of **Incidental Take** for Federal agencies comes through an **Incidental Take Statement** attached to a **Biological Opinion**.

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** and **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.

Section 11 – the section of the Act that outlines civil and criminal penalties and enforcement for violations of prohibited acts. It also describes the citizen suit provision (g).

Source: Working definition

Note: See also **Penalties and Enforcement and Prohibited Acts**.

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 term used (but not defined) in the Act's definition of Threatened Species and Endangered Species (Section 3). The term 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 term

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**.

Similarity of Appearance – A circumstance allowed for under section 4(e) of the Act where a species is treated as an endangered species or threatened species even though it is not listed pursuant to section 4 of the Act.

Source: Working definition

Note: Practitioners should note for consultation “The treatment of a species as an endangered or threatened species due to similarity of appearance under section 4(e) of the Act does not extend other protections of the Act, such as consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f), that apply to species that are listed as endangered or threatened species under section 4(a) of the Act. All applicable prohibitions and exceptions for species listed under section 4(e) of the Act due to similarity of appearance to an endangered or threatened species are set forth in a species-specific rule issued under section 4(d) of the Act.” Quote from (FR July 12, 2024, Vol. 89, No. 134 pg. 57231). See also **Section 4(e)**.

Small Federal Handle – a term 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 [Act] – “...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 [Regulations] – “...Includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. Excluded is any species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.”

Source: 50 CFR 424.02

Species at risk – See **At-risk Species**.

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.”

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

Species of Concern – a non-standardized term sometimes used for **At-risk Species**.

Source: Working definition

Note: use of this term can be confusing since it is not standardized.

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 – a 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

Note: On July 12, 2024, the Fish and Wildlife Service issued a memo and guidance document regarding “Guidance on Developing

and Using Standing Analyses for Informal Consultations Under Section 7 of the Endangered Species Act”. The memo title uses slightly imprecise language. The guidance is aimed at only projects for which a **May Affect, Not Likely to Adversely Affect**, determination is made, not **Informal Consultation** generally.

Standard Consultation – a term describing a consultation for a typical project-level action.

Source: Working definition

Note: Standard consultations are not associated with programmatic actions or emergency response actions. See **Non-Standard Consultation**.

Stand alone/Programmatic Consultation – See **Programmatic Consultation/Stand alone**

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 [Biological Opinion] – 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 [Biological Assessment] – Similar to its use in a **Biological Opinion**, this term describes the section in a **Biological Assessment** (or similar action-agency document supporting consultation), that gives the reader information on the life history and ecological information of the species or critical habitat. The information must be sufficient to support the discussion for the **Effects of the Action** discussion and any resulting determination or conclusion.

Source: Working definition

Status Review – a term 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 (Section 5.3, Regional or Ecosystem Consultations), the non-standardized term is generally used to refer to consultation documents that are prepared subsequent to a consultation performed at a larger scale.

Source: Working definition

Note: Not to be confused with **Incremental Step Consultations**. The word step-down is mentioned in the preamble of the 2019 regulation Revisions in response to public comments regarding programmatic actions and consultations. It is used without specific definition or direction. “...*Response: As described in the proposed rule, and in the 2015 incidental take statement final rule (80 FR 26832, May 11, 2015), programmatic consultations may require section 7(a)(2) analyses at both the program level as well as at the **tiered or step-down**, [Emphasis added] site-specific level to insure compliance with section 7(a)(2) of the Act. Regardless of the exact process required to complete the consultation for the proposed program activities, all consultations are required to fully satisfy section 7(a)(2) of the Act.*” (FR, August 27, 2019, Vol. 84, No. 166, p. 44996).

There is wide and confusing variation in the use of non-standardized names and procedures associated with consultations on the programmatic actions proposed by the action agency. This is largely due to high variability in what type of **Follow Up Process** (if any) is negotiated and required for each subsequent activity under the larger program. See also **Tiered Consultation** and **Programmatic Consultation [1998 Handbook]** for more information.

Strategic Habitat Conservation Framework – a term 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 non-standardized term used generally to mean any method to reduce time involved in completing consultation.

Source: Working definition

Note: See 1998 Handbook, p. 5-6, Though referred to as if they are a consultation type, they are more accurately considered a **Consultation Approach**. See also **Expedited Consultations**, **Optional Collaborative Process** and **Consultation Agreements**.

Streamlined Consultation Procedures – a term 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

Note: See also **Optional Collaborative Process** and **Consultation Agreements**

Streamlining Guidance – a term most recently referring to June 26, 2024, guidance developed by the USFS, NMFS, and FWS “...to ensure effective implementation of the USFS Wildfire Crisis Strategy and other Bipartisan Infrastructure Legislation.”

Source: Working definition

Note: This guidance also discusses various types of **Programmatic Consultations**. See also **Programmatic Consultation [1998 Handbook], and Streamlined Consultation Procedures**. The guidance is described as being limited to USFS Regions 1-6; FWS Regions 1,2,6 & 8; and NOAA West Coast Region, but the principles have been in use for decades and are broadly applicable.

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 term 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.

Study Area – a non-standardized term used occasionally in consultation documents. It is not defined or found in the Act, 50 CFR 402 regulations or the 1998 Handbook.

Source: Working definition

Note: Use by practitioners can result in confusion around its relationship to the regulatory term **Action Area**. See also **Analysis Area** and **Project Area**.

Sunset Clause – a term sometimes found final consultation documents issued by the National Marine Fisheries Service or Fish and Wildlife Service. It is used to indicate when that consultation document expires.

Source: Working definition

Note: This term is not found in the Act, Regulations or Handbook. It came into sporadic use in the early 2000's in response to litigation.

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). Practitioners should be careful not to default to the amount of habitat coextensive with the acreage of the project. (See the 9th Circuit court of appeals 2007 decision in Oregon Natural Resources Council v. Allen.)

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 4(d) rule**, **Section 4(d)** 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. The term “conditions” as it relates to **Reasonable and Prudent Measures** is also mentioned in the Act at 7(a)(4)(C)(iv).

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 an approach for 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 actions and consultation. See also **Tiered Consultation**.

Tiered Consultation – a non-standardized term associated with consultation on programs of work. Typically, a larger, programmatic consultation is completed, and then when specific projects/activities are identified and proposed, site-specific documents are completed. These site-specific documents are generally shorter in length because they incorporate by reference (“tier to”) information in the earlier consultation document.

Source: Working definition

Note: The word tiered is mentioned several times in the preamble of the 2019 regulation Revisions in response to public comments regarding programmatic actions and consultations. It is used without specific definition or direction.

*“...Response: As described in the proposed rule, and in the 2015 incidental take statement final rule (80 FR 26832, May 11, 2015), programmatic consultations may require section 7(a)(2) analyses at both the program level as well as at the **tiered or step-down**, [Emphasis added] site-specific level to insure compliance with section 7(a)(2) of the Act. Regardless of the exact process required to complete the consultation for the proposed program activities, all consultations are required to fully satisfy section 7(a)(2) of the Act.”* (FR, August 27, 2019, Vol. 84, No. 166, p. 44996).

There is wide and confusing variation in the use of non-standardized names and procedures associated with consultations on the programmatic actions proposed by the action agency. This is largely due to high variability in what type of **Follow Up Process** (if any) is negotiated and required for each subsequent activity under the larger program. See **Step-down Consultation** and **Programmatic Consultation [1998 Handbook]** notes for more information.

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, August 27, 2019, Vol. 84, No. 166). 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 concludes 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 non-standardized 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 concept of Programmatic Consultation. There is wide and confusing variation in the use of non-standardized names and procedures associated with consultations on the programmatic actions proposed by the action agency. This is largely due to high variability in what type of **Follow Up Process** (if any) is negotiated and required for each subsequent activity under the larger program. See **Programmatic Consultation [1998 Handbook]** for more information.

Variance Process – a term typically associated with programmatic actions and their consultations. The process is used to determine that minor changes to proposed activities are consistent with similar projects in the program of work, the effects are within the scope of the effects analyzed and the change still meets other commitments of the final consultation documents.

Source: Working definition

Note: This term is not found in the Act, Regulations or Handbook. The process is best developed by both the action agency and the consulting agency and then included in the action agency’s proposed action. It is memorialized in the final consultation document.

Voluntary Conference – See **Conference [Voluntary]**

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