

Glossary of Consultation Terms Endangered Species Act

Act - the Endangered Species Act of 1973, as amended, 16 United States Code 1531 *et seq.*

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:

- (1) actions intended to conserve listed species or their habitat;
- (2) the promulgation of regulations;
- (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
- (4) actions directly or indirectly causing modifications to the land, water, or air.

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

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. The Service does not allow or authorize (formally permit) incidental take under section 7.

Applicant - any person (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) who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

Best available scientific and commercial data - to 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.

Biological assessment - Biological assessments are prepared for "major construction activities." The assessment is prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to:

- (1) adversely affect listed species or designated critical habitat;
- (2) jeopardize the continued existence of species that are proposed for listing;
or
- (3) adversely modify proposed critical habitat.

The outcome of this biological assessment determines whether formal consultation or a conference is necessary.

Biological opinion - document, which includes:

- (1) the opinion of the Fish and Wildlife Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat;
- (2) a summary of the information on which the opinion is based; and
- (3) a detailed discussion of the effects of the action on listed species or designated critical habitat.

Candidate species - plant and animal species considered for possible addition to the List of Endangered and Threatened Species. These are species 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.

Conference - a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Services under section 7(a)(4) of the Act on the likely impact of an action on proposed species or proposed critical habitat. Conferences are:

- (1) required for proposed Federal actions likely to jeopardize proposed species, or destroy or adversely modify proposed critical habitat;
- (2) designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and
- (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat.

Conservation measures – (as opposed to “conservation recommendations”) These are actions to benefit or promote the recovery of listed species by the Federal agency as part of the proposed action. The Federal agency or applicant will take these actions 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.

Conservation recommendations – (as opposed to “conservation measures”) These are the Services' non-binding suggestions resulting from formal or informal consultation. Generally, these come from the tasks identified in the Recovery Plan 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

Critical habitat - for listed species consists of:

- (1) 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 (constituent elements)
 - (a) essential to the conservation of the species and
 - (b) which may require special management considerations or protection; and
- (2) 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.

Cumulative effects - 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.

Destruction or adverse modification of critical habitat - 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.

Early consultation - a preliminary consultation requested by a Federal agency on behalf of a prospective permit or license applicant prior to the filing of an application for a Federal permit or license.

Effects of the action - the direct and indirect effects of an action on the species or critical habitat because of that action. These effects are considered along with the environmental baseline and the predicted cumulative effects to determine the overall effects to the species for purposes of preparing a biological opinion on the proposed action. The environmental baseline covers past and present impacts of all Federal actions within the action area. This includes the effects of existing Federal projects that have not yet come in for their section 7 consultation.

Environmental baseline – This baseline is a snap-shot of the environmental conditions when the action is proposed.

Federal action agency – An action agency may be any department or agency of the United States proposing to authorize, fund, or carry out an action under existing authorities.

Formal consultation - a process between the Service and a Federal agency or applicant that:

- (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species, or destroy or adversely modify designated critical habitat;
- (2) begins with a Federal agency's written request and submittal of a complete initiation package; and
- (3) concludes with the issuance of a biological opinion and incidental take statement by the Service.

If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat).

Harm/Harass - see **ATake@** below.

Incidental take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant.

Incidental take permit - A permit that exempts a non-federal entity from the take prohibition of section 9 of the Act issued by the FWS under section 10(a)(1)(B) of the Act

Indirect effects - These effects, within the action area, are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur.

Informal consultation – This optional process includes all discussions and correspondence between the Service and a Federal agency or designated non-Federal representative, prior to formal consultation. This process determines whether a proposed Federal action may affect listed species or critical habitat. It also allows the Federal agency to use the Service's expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications, which could avoid adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Service concurs, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat).

Interdependent actions – These are actions having no independent use apart from the proposed action.

Interrelated actions - These actions are part of a larger action and depend on the larger action for their justification.

Is likely to adversely affect - any adverse effect to listed species that 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 (see definition of "is not likely to adversely affect"). An "is likely to adversely affect" determination requires the initiation of formal section 7 consultation.

Is likely to jeopardize proposed species/adversely modify proposed critical habitat - the appropriate conclusion when the action agency or the Service identifies situations where the proposed action is likely to jeopardize the proposed species or adversely modify the proposed critical habitat. If this is the conclusion, conference is required.

Is not likely to adversely affect - 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. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects

Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not expect discountable effects to occur.

Jeopardize the continued existence of - 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.

Listed species – Any species, sub-species, population or distinct population segment that is listed under section 4 of the Act.

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.

May affect – This is the determination when a proposed action may cause **any** impacts to 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.

Minor change rule - when preparing incidental take statements, the Service must specify reasonable and prudent measures and their implementing terms and conditions to minimize the impacts of incidental take that does not alter the basic design, location, scope, duration, or timing of the action, and that involve only minor changes.

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

Preliminary biological opinion - the opinion issued because of early consultation.

Programmatic consultation - consultation addressing multiple actions on a program, regional or other basis.

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.

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.

Reasonable and prudent alternatives - recommended alternative actions identified during formal consultation that:

- (1) can be implemented in a manner consistent with the intended purpose of the action;
- (2) can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
- (3) are economically and technologically feasible; and

- (4) the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat.

Reasonable and prudent measures - actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take.

Recovery - improvement in the status of listed species to the point at which listing is no longer appropriate under section 4(a)(1) of the Act. ALSO, the process by which the decline of an endangered or threatened species is arrested or reversed, or threats to its survival neutralized so that its long-term survival in nature can be ensured.

Recovery plan - A document drafted by the Service or other knowledgeable individual or group, that serves as a guide for activities to be undertaken by Federal, State, or private entities in helping to recover and conserve endangered or threatened species.

Recovery unit - management subsets of the listed species that are created to establish recovery goals or carrying out management actions.

Section 7 - the section of the Act outlining procedures for interagency cooperation to conserve Federally listed species and designated critical habitats.

Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species.

Section 7(a)(2) requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

Section 7 (g-l) establishes procedures for seeking exemptions from the requirements of section 7(a)(2) from the Endangered Species Committee.

Section 9 - the section of the Endangered Species Act of 1973, as amended, that prohibits the taking of endangered species of fish and wildlife. Additional prohibitions include:

- (1) import or export of endangered species or products made from endangered species;
- (2) interstate or foreign commerce in listed species or their products; and
- (3) possession of unlawfully taken endangered species.

Survival - For determination of jeopardy/adverse modification: survival is the species' persistence as listed, 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 is characterized by a species represented by all necessary age classes, genetic heterogeneity, and number of breeding individuals in

an environment providing the requirements for completion of the species' entire life cycle, including reproduction, food, and shelter.

Take - to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. Harm is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.