

# A Working Glossary for Practitioners of Consultation under Section 7 of the Endangered Species Act



Lead Agency

May Affect

Status of the Species - Effect - Incidental Take - Critical Habitat - Programmatic Consultation

FR NE  
HCP RPA  
LAA CFR  
NEPA MBTA  
National Fire Plan

Action Agency - Informal Consultation - Reasonable and Prudent Measures - Take - Confer  
Minor Change Rule - Categorical Exclusion - Jeopardy - Federal Nexus - Recovery Plan - WUI

**Cover Art by Dani Thomson**

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## **Preface to the 2<sup>nd</sup> Edition**

Since the release of this glossary's 1<sup>st</sup> edition in June of 2013, many practitioners have suggested additions and some minor corrections to the original work. The most significant correction was in the Service's definition of Harm where the incorrect phrase "such as" was replaced by the correct word "including".

In addition to the additions and corrections, two events relating to definitions made this 2<sup>nd</sup> edition timely.

- ◆ On May 15, 2015 the Service published a final rule on incidental take statements establishing definitions for Framework Programmatic Action and Mixed Programmatic Action, and formally discussing the use of surrogates for incidental take.
- ◆ On February 11, 2016 the Service published its new definition for Destruction or Adverse Modification, and modified definitions related to designation of critical habitat.

Those important changes are now included in this 2<sup>nd</sup> edition. As with the 1<sup>st</sup> edition, the compiler appreciates suggestions and corrections for consideration in future editions or printings.

## **Note to the Reader**

This working glossary does not replace or supersede any statutory, regulatory, or policy definitions. In the case of any confusion regarding a definition – the original source should be consulted. This glossary 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 and compile them in one place. Previously, practitioners needed to locate and examine many different source documents to find those definitions.

When exact quotes are used, the origin of the quote is noted. This is important when trying to find the definition in the original source. It is also important when trying to determine whether a definition originated from the statute (Endangered Species Act), regulations or policy so as to inform an understanding of the level of legal authority.

Working definitions: If a word or phrase is not a defined term in statutory, regulatory or policy documents, the glossary's 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, etc.) to construct a commonly held meaning for the phrase or word.

The reader will notice redundancy in listing and cross referencing of phrases and acronyms. This is intentional, because it makes it more likely for a user to find their way to the correct wording and definition regardless of what wording or phrase is used to begin their search.

## Acknowledgments

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And, special appreciation is extended to Dani Thomson, who is responsible for the cover art and patiently endured unrequested updates on the progress of this project and tiresome discussions of fonts, formats, grammar and Section 7 minutia.

**ABPP** – See **Avian and Bat Protection Plan**

**ACA** – See **Alternative Consultation Agreement**

**Act** – See **Endangered Species Act**

**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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Action Agency** – when used in the context of Section 7 consultation, it generally means a Federal agency engaging in an activity fitting the definition of an action.

**Origin:** Working definition

**Additional information:** See also **Federal 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Administrative Record** – these are the records assembled for a court action that a judge reviews to determine if a final agency decision is legally sufficient and supportable.

**Origin:** Working definition

**Additional information:** See also **Decision File**.

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

**Origin:** Working definition

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

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

**Adversely Modify** – This is a phrase that can have two very different meanings. In section 4(a)(8) of the Act (and in many Service documents) this phrase represents the verb form of **Destruction or Adverse Modification** [from 7(a)(2)]. However, in Action Agency documents the phrase is sometimes used generally to describe impacts from a project to proposed or designated critical habitat. In this latter case it is not intended to represent the Act’s 7(a)(2) meaning for **Destruction or Adverse Modification**, (a determination the Services makes 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.

**Origin:** Working definition

**Additional information:** 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.”...”

**Origin:** Handbook, p. x

**“After the fact” Consultations** – A phrase used once in the preamble to the 1986 regulations to describe consultations conducted on an action agency’s response to emergencies. The concept is codified in the regulations for emergencies at 50 CFR 402.05.

**Origin:** Working definition

**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 that 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 (Federal Register 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 (Federal Register 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 (Federal Register August 5, 2004 Vol. 69, No. 150, p. 47732-62). In 2006, courts vacated key provisions in the regulations.

**Origin:** Working definition

**Additional information:** Term should not be confused with the terms **Consultation Agreement, Alternative Consultation Process** or **Alternative Consultation Procedures**.

**Alternative Consultation Procedures** – a general phrase meant to capture situations where an action agency and the Service recognize that a consultation may not be likely to move to conclusion in typical manner. In those cases variations on the typical process can be agreed upon and a **Consultation Agreement** can be established.

**Origin:** Working definition

**Additional information:** Phrase is not found in Act, regulations or the Handbook. Term should not be confused with the terms **Alternate Consultation Process, Consultation Agreement** or **Alternative Consultation Agreement**.

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

**Origin:** Working definition

**Additional information:** See also **Alternative Consultation Agreement**. Term should not be confused with the more general term **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 Handbook uses the word in section 4.6 to discuss modifications to biological opinions or incidental take statements.

**Origin:** Working definition

**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. There was also a clarification memo issued on July 1, 2005.

**Origin:** Working definition

**Additional information:** Acronym is also used broadly in discussions of Section 7 analyses that include a federal nexus and associated private land or actions.

**Anticipated/allowable/authorized** – "... in incidental take statements, the Services determine the amount or extent of incidental take "anticipated" (expected) due to the proposed action or an action modified by reasonable and prudent alternatives. When writing incidental take

statements, use only the phrase "anticipated" rather than "allowable" or "authorized," as the Services do not allow or authorize (formally permit) incidental take under Section 7. [Clarification of usage]"

**Origin:** Handbook, p. x

**Additional Information:** See the Handbook pp. 4-45 to 4-49. Incidental take for non-federal actions can be authorized through section **10(a)(1)(B)** permits.

**APA (Administrative Procedure Act)** – An act of Congress 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 was enacted in 1946.

**Origin:** Working definition

**Additional information:** See also **Arbitrary and Capricious**.

## **APP – Avian Protection Plan**

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

**Origin:** Working definition

**Additional information:** There is tremendous variation in the understanding and application of this concept. See also **Tiered Consultation**

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

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

**ACCM (Applicant Committed Conservation Measures)** – a phrase used by some action agencies to identify actions in the proposed action that applicants have committed to implement to reduce impacts to affects listed species.

**Origin:** Working definition.

**Additional information:** See **Conservation measures**

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

**Origin:** Handbook, p. x

**Additional information:** The phrase “appreciably diminish” is used in the regulatory definition of destruction or adverse modification. Its only definition is from the Handbook, but a larger discussion regarding its meaning is included in the preamble to the final rule defining.

**Destruction or Adverse Modification** (Federal Register, February 11, 2016, Vol. 81, No. 28).

**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. Webster’s dictionary defines appreciably as “...capable of being noticed, estimated or measured...” and appreciate as “recognize the quality, significance, or magnitude of”.

**Origin:** Working definition.

**Additional information:** Quotes in text above taken from the Act, section 10(a)(1)(b)], and Webster’s II New Riverside University Dictionary (1988). It is also mentioned on pages 2-5 and 4-34 of the 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...”

**Origin:** Working definition

**Additional Information:** Quote from Webster’s II New Riverside University Dictionary (1988).

Usually seen in the phrase “arbitrary and capricious” a phrase used to describe the criteria with which a court reviews an agency’s decision.

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

**Origin:** Working definition

**Area of Influence** – See **Section 7 Range**

**Authorized** – See **Anticipated/allowable/authorized**

**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.

**Origin:** Working definition

**Additional information:** Similar to an **APP**, but term is most often associated with wind energy. See: [Http://www.fws.gov/habitatconservation/wind.html](http://www.fws.gov/habitatconservation/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.”

**Origin:** Working definition

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

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

**Origin:** Working definition

**Additional information:** Take under the Bald and Golden Eagle Act is defined differently than take under the ESA. Since 2009, regulations and guidelines were put in place for permits related to incidental take of bald and golden eagles.

**Baseline** – See **Environmental Baseline**

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

**Origin:** Working definition

**Additional Information:** See also **Programmatic Consultation**.

**BAER (Burned Area Emergency Response)** – 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.”

**Origin:** Working definition

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

**BBCS – Bird and Bat Conservation Strategy**

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

**Origin:** Handbook, p. xv

**Additional Information:** Practitioners should note the use of the word contemporaneous in this

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

**“Benefit of the doubt to the species...”** – a concept first mentioned in the 1979 conference report (No. 96-697) of the U. S. House of Representatives documenting discussions on amendments to the ESA. Report included brief discussion regarding approach to consultation in the face of limited information regarding effects to a species. The Service discusses its use of this concept in the Handbook.

**Origin:** Working definition

**Additional Information:** Handbook, p. 1-6

**Best Available Scientific and Commercial Data** – this phrase is not defined, but the Service has a policy on its use and consideration. “...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.”

**Origin:** 1994 Federal Register notice July 1, 1994, Vol. 59, No. 126, p. 34271, and Handbook, p. xi.

**Additional Information:** This phrase (in this order) does not appear in the Act. The Act orders the phrase “best scientific and commercial data available” [Act, Section 4(b)].

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

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

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** The biological opinion shall include: (1) a summary of the information on which the opinion is based; (2) a detailed discussion of the effects of the action on listed species or designated critical habitat; and the Service's opinion on whether the action is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat (a “no jeopardy” biological opinion). A “jeopardy” biological opinion shall include reasonable and prudent alternatives, if any. If the Service is unable to develop such alternatives, it will indicate that the best of its knowledge there are no reasonable and prudent alternatives [50 CFR 402.14(h)].

## **Bird and Bat Conservation Strategy (BBCS) – another phrase for Avian and Bat Protection Plan.**

**“But for” Test** – a simple causation test used to inform whether actions and their resulting effects are interrelated and/or interdependent with the proposed action. “If ... the activity in question would not occur “but for” the proposed action, then the activity is interrelated or interdependent and should be analyzed with the effects of the action. If ...the activity in question would occur regardless of the proposed action under consultation, then the activity is not interdependent or interrelated and would not be analyzed with the effects of the action under consultation.”

**Origin:** Working definition

**Additional information:** Quote above is from the Handbook page 4-26. 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 the Handbook pg. 4-26 through 4-28, and **Interrelated and Interdependent Actions**.

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

**Origin:** Regulations, 50 CFR 424.02

**Additional Information:** 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.” (Handbook p. xi) By policy for intra-service conferencing purposes, the Service treats candidates as if they were proposed for listing (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.”

**Origin:** Working definition

**Additional Information** – Quote taken from policy on Candidate Conservation Agreements with Assurances published in the Federal Register, June 17, 1999, Vol. 64, No. 116, p. 32734.

**Candidate Conservation Agreement with Assurances (CAA)** – “... a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the non-Federal property owner with the assurances described in this policy.”

**Origin:** Working definition

**Additional Information** – Quote taken from policy on Candidate Conservation Agreements with Assurances 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) permit for incidental take) if the species becomes listed. Assurances cannot be extended to federal agencies.

**Candidate Conservation Assurances** – “are assurances provided to a non- Federal property owner in a Candidate Conservation Agreement with assurances that conservation measures and land, water, or resource use restrictions in addition to the measures and restrictions described in the Agreement will not be imposed should the covered species become listed in the future. Candidate Conservation Assurances will be authorized by an **Enhancement of Survival Permit**. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement.”

**Origin:** Working definition

**Additional Information:** Quote taken from policy on Candidate Conservation Agreements with Assurances published in the Federal Register, June 17, 1999, Vol. 64, No. 116, p. 32734. Permit mentioned is issued under 10(a)(1)(A). The assurances provide greater certainty if the species becomes listed. Assurances cannot be extended to federal agencies.

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

**Origin:** Working definition

**Capricious** – "...Characterized by or subject to whim..."

**Origin:** Working definition

**Additional Information:** Usually seen in the phrase "arbitrary and capricious" a phrase used to describe the criteria with which a court reviews an agency's decision. Quote from Webster's II New Riverside University Dictionary (1988).

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

**Origin:** Regulations, 40 CFR 1508.4.

**Additional information:** Quote taken from the full definition at 40 CFR 1508.4.

**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.

**Origin:** Working definition

**CFR** – See **Code of Federal Regulations**

**Clean Water Act** – 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.

**Origin:** Working definition

**CNOR** – See **Candidate Notice of Review**

**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.

**Origin:** Working definition

**Concurrence Letter** – a letter issued by the Service (usually after **informal consultation and technical assistance**) concurring on the action agency's determination the effects from their proposed action fall into the not likely to adversely affect determination category.

**Origin:** Working definition

**Additional Information:** First mentioned in the preamble of 1986 regulations, and at 50 CFR 402.13. The Handbook discusses the subject in chapter 3. This document is also commonly referred to as a Letter of Concurrence or LOC, though that form of the term is used only in the Handbook and only once (p. 3-12).

**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."

**Origin:** Working definition

**Additional information:** Quote taken from the Act, Section 7 (a)(4). See also **Conference**.

**Conference** – noun form of the word **confer** from Section 7(a)(4) of the Act. Defined in the regulations as "a process which involves informal discussions between a Federal agency and the Service under Section 7(a)(4) of the Act regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects." (50 CFR 402.02) Discussed further in the regulations at 50 CFR 402.10 "Federal agencies shall

confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02 and 402.10

**Additional information:** Conferences are concluded with either a Conference Report or (if requested) a Conference Opinion. Conference Opinions may be adopted as a biological opinion after listing, under certain conditions (402.10). Many agencies voluntarily request to conference on projects that they determine “may affect” (as opposed to the likely to jeopardize) proposed species, critical habitat (402.10) or candidate species. Adoption of the conference opinion should be requested in writing. Because of the wide variety of actions taken by the Service and action agency relative to a “voluntary” conference, the process and terminology can become confusing. See Chapter 6 of the Handbook.

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

**Origin:** Working definition

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

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

**Additional Information** – These notices are extremely rare and advisory only.

**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.

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

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

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

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

**Additional information:** Because a report does not follow the same format as a biological opinion, it typically can’t be simply adopted as a biological opinion after listing. See **Conference Opinion**.

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

**Origin:** Act, Section 3

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

**Conservation Bank** – "...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."

**Origin:** Working definition

**Additional information:** Quote taken from May 2, 2003 Director's memo regarding Guidance for Establishment, Use, and Operation of Conservation Banks.

**Conservation Framework** – a phrase used commonly in relation to the **IPaC** (Information, Planning and Consultation system). It refers to a document that synthesizes threats and management information within all or a portion of a species range.

**Origin:** Working definition

**Additional information:** <http://www.fws.gov/ipac/index.html>

**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."

**Origin:** Handbook, p. xii

**Additional information:** Not to be confused with **Conservation Recommendations**.

**Conservation Needs** – a phrase used generally to express 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 projects impacts are measured for their impact to those conservation needs.

**Origin:** Working definition

**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 10(a)(1)(B) permit.

**Origin:** Regulations, codified as 50 CFR 17.3

**Additional information:** First mentioned, but not defined, in the Act (Section 10). This 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."

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** "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 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 Handbook p. 4-59.

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

**Origin:** Working definition

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

**Consultation Agreement** – refers generally to formal agreement between the Services and an action agency that lays out the consultation process, products and timelines related to a specific project (usually a complex or difficult one).

**Origin:** Working definition

**Additional information:** Consultation Agreement is not to be confused with **Alternative Consultation Agreement**.

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

**Origin:** Working definition

**Additional information:** See **Decision File**

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

**Origin:** Working definition

**Additional information:** 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.

**Origin:** 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.

**Origin:** 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.

**Origin:** Working definition

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

**Origin:** Working definition

**Additional information:** Most recent examples were for pesticide registration (2004) and the **National Fire Plan** (2004); both are no longer in effect. See **FIFRA** and **Alternate Consultation Agreement**.

**Critical Habitat** – "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 and (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."

In some cases, not all areas occupied by a species are designated as critical habitat.

**Origin:** Act, Section 3

**Additional information:** The regulations discuss designation further. "... (b) In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to

the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species.”

“When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.” [50 CFR 424.12(b)] Designated critical habitats are described in 50 CFR 17 and 226.

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

**Origin:** Working definition

**Additional information:** Quote from Webster’s II New Riverside University Dictionary (1988).

This is a word often used without precision which then can cause confusion (see

**Cumulative Effects** and **Cumulative Impact**). To avoid confusion when using the concept of cumulative in a context not directly related to Cumulative Effects and Cumulative Impact, words such as ‘additive’, ‘aggregated’ or ‘synergistic’ should be substituted as appropriate.

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** This definition applies only to Section 7 analyses and should not be confused with the use of the term **Cumulative Impact** in the National Environmental Policy Act or other environmental laws. See also the Handbook pp. 4-30 and 4-31.

**Cumulative Impact** – NEPA definition “...Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

**Origin:** Regulations, 40 CFR 1508.7

**Additional information:** This definition applies only to NEPA analyses and should not be confused with the use of the term **Cumulative Effects** in the consultation regulations.

**CWA** – See **Clean Water Act**

**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 the decision.

**Origin:** Working definition

**Additional information:** 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

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

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

**Origin:** Regulations (2016) codified as 50 CFR 404.02

**Additional information:** This is a determination made by the Service in a Biological Opinion regarding a project’s effects to proposed or designated critical habitat. The phrase is used in

the Act (Section 7), but not defined there. The Services promulgated a definition in 1978 and modified it in 1986, but that definition was found invalid by circuit courts in 2001 and 2004. A new regulatory definition was promulgated in 2016 (Federal Register, February 11, 2016, Vol. 81, No. 28). This phrase and similar phrases such as **Adversely Modify** and **Adverse Modification** can create confusion if used by action agencies, or the Service, to generally describe an adverse effect to critical habitat as a result of being physically destroyed or modified in an action area by a project. Those situations are focused at an action area scale which is rarely the same scale at which the 7(a)(2) determination regarding critical habitat is made. Simplistically and broadly, **Destruction or Adverse Modification** can be thought of as parallel in scale to a Jeopardy Analysis. See the Handbook p. 4-34 and **Listed Entity Scale**.

**Director** – "...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."

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Direct Effects** – "...the direct or immediate effects of the project on the species or its habitats..."

**Origin:** Handbook, p. 4-25

**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]"

**Origin:** Handbook, p. xv

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

**Distinct Population Segment** – a phrase first used (but not defined) in the Act within the definition of "species" (Section 3). The phrase is used to define and describe a species (vertebrates only) for the purposes of listing under the Act. In 1996 the Fish and Wildlife Service and the National Marine Fisheries Service (Services) adopted a policy to clarify their interpretation of the phrase. The concepts of discreteness, significance and status inform the use of the phrase.

**Origin:** Working definition

**Additional information:** See Act, Section 3, and Federal Register, 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."

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

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

**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."

**Origin:** Working definition

**Additional information:** Quote taken from 40 CFR 1508.9. If after assembly of the environmental assessment no substantial effects on the environment are found the 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 Endangered Species and Fisheries and Habitat Conservation program areas, as well as other FWS and Government data sources. ECOS provides a central point of

access to assist FWS personnel in managing data and information as well as provide general public access to information from numerous FWS databases.”

**Origin:** ECOS website October 2012

**Additional information:** See <http://ecos.fws.gov/ecos/indexPublic.do>

**Effects of the Action** – “...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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Discussion on pp. 4-25 through 4-29 of Handbook.

**Effects Determination** – the 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.

**Origin:** Working definition

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

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

**Origin:** 40 CFR 1508.11

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

**EPM** – See **Effects Pathway Manager**

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

**Origin:** Working definition

**Additional information:** 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 Handbook (p. 8-1) adds the phrase “...and includes response activities that must be taken to prevent imminent loss of human life or property.”

**Emergency Consultation** – a phrase used generally to describe an expedited consultation (informal or formal) on the effects to a listed species 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.

**Origin:** Working definition

**Additional information:** 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 Handbook.

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

**Origin:** 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.”

**Origin:** Act, Section 2(b)

**Endangered Species Committee** – A committee established to review projects seeking an exemption from 7(a)(2) of the Act.

**Origin:** Working definition

**Additional Information:** 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.”

**Origin:** Working definition

**Additional Information** – Quote taken from policy on Candidate Conservation Agreements with Assurances published in the Federal Register, June 17, 1999, Vol. 64, No. 116, p. 32734.

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

**Origin:** Working definition

**Additional information:** 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** – term explained 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional Information:** See the Handbook p. 4-22.

**EPA (Environmental Protection Agency)** – 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.

**Origin:** Working definition

**Effects Pathway Manager (EPM)** – a component of the Information, Planning and Conservation system (IPaC) 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.

**Origin:** Working definition

**Additional Information:** See IPaC

**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”

**Origin:** Regulations, 50 CFR 17.80

**Expedited Consultation** – a phrase 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.

**Origin:** Working definition

**Additional Information:** Expedited consultations were specifically anticipated in emergency situations. See **Emergency Consultation**.

**Experimental Population** – “means an introduced and/or designated population (including any offspring arising solely therefrom) that has been so designated in accordance with the procedures of this subpart ( 50 CFR subpart H, 17.8) but only when, and at such times as the population is wholly separate geographically from nonexperimental populations of the same species...”

**Origin:** 50 CFR 17.80

**Additional Information:** First described in the Act (section 10 (j)(1) as follows, “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.” Regulations discussed in Federal

Register 49, Aug. 27, 1984. Consultation requirements vary regarding experimental populations. See **Non-essential Experimental Population** for details.

**FACA (Federal Advisory Committee Act)** – an act of Congress signed into law in 1972 governing the establishment of groups that advise or make recommendations to government agencies.

**Origin:** Working definition

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

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

**Origin:** Working definition

**Additional information:** 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 Agency** – “...any department, agency, or instrumentality of the United States.”

**Origin:** Act, Section 3

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

**Origin:** 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.

**Origin:** Working definition

**FERC** – Federal Energy Regulatory Commission “... 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.”

**Origin:** Working definition

**Additional information:** Quote taken from FERC website, <http://www.ferc.gov/>

**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.

**Origin:** Working definition

**Additional information:** See **Counterpart Regulations**

**Fish or Wildlife** – “...any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement) amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.”

**Origin:** Act, Section 3

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

**Origin:** Regulations 50 CFR 424.02

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

**Fish and Wildlife Coordination Act** – 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 Act provides the basic authority for the involvement of the United States Fish and Wildlife Service (Service) in evaluating impacts to fish and wildlife from proposed water resource development projects.

**Origin:** Working definition

**Fish and Wildlife Service** – 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. Also responsible for managing national wildlife refuges, national fish hatcheries, and programs pertaining to migratory birds among other duties.

**Origin:** Working definition

**Five Factor Analysis** – phrase used to indicate the five factors that are reviewed to determine if a species is to be listed or re-classified pursuant to section 4 of the Act. The Factors are “...(1) The present or threatened destruction modification or curtailment of its habitat or range; (2) Over utilization for commercial, recreational, scientific, or educational purposes; (3) Disease or predation; (4) The inadequacy of existing regulatory mechanisms; or (5) Other natural or manmade factors affecting its continued existence.”

**Origin:** Working definition

**Additional information:** Quote taken from 50 CFR 424.11.

**Five Year Review** – a common phrase used to describe a review required by the Act, to determine if listed species should be removed from the list or have its status as endangered or threatened changed. This is also referred to as “5 year status review” because the Act requires the review to occur “...at least once every five years...”.

**Origin:** Working definition

**Additional information:** Quote taken from the Act, Section 4 (c). The yearly appraisal of the current status of plants and animals considered candidates for protection under the Act is referred to as the **Candidate Notice of Review**.

**FOIA** – See **Freedom of Information Act**

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

**Origin:** Working definition

**Additional information:** 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02 and 402.14

**Additional information:** 50 CFR 402.14 and Chapter 4 of the 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.

**Origin:** 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.”

**Origin:** Regulations (2015) codified as 50 CFR 402.02

**Additional information:** Regulatory change to allow for producing a 7(a)(2) consultation document without exempting incidental take. See the preamble to the final rule of this regulatory change for complete explanation at Federal Register, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845.

**FWS** – U.S. Fish and Wildlife Service

**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).”

**Origin:** Regulations, 50 CFR 424.02

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

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

**Origin:** Working definition

**Harass (FWS)** – is defined by the FWS as “... 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 Handbook are incorrect due to a missing portion of the complete definition.

**Origin:** Regulations, codified as 50 CFR 17.3

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

**Harass (NMFS)** – the National Marine Fisheries Service has never promulgated a definition for Harass under the ESA. Harass (when used in a NMFS Biological Opinion for ESA listed species) is commonly described as an intentional or unintentional human act or omission that creates the probability of injury to an individual animal by disrupting one or more behavioral patterns that are essential to the animal’s life history or its contribution to the population the animal represents.

**Origin:** Working definition

**Additional information:** NMFS has promulgated a definition for Harass under the **Marine Mammal Protection Act**. See that Act (and 1994 amendments) for that definition.

**Harm (FWS)** – is defined by FWS to mean “an act which actually kills or injures wildlife. Such 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.”

**Origin:** Regulations, codified as 50 CFR 17.3

**Additional information:** See 1981 Final Rule, Federal Register November 4, 1981, Vol. 46, number 213, p. 54750.

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

**Origin:** Regulations, codified as 50 CFR 222.102

**Additional information:** See also Federal Register, November 8, 1999, Vol. 64, No. 215, pp. 60727-60731.

**HCP – See Conservation Plan**

**H-E-A-T** – a tool for organizing written narrative that encourages coherent supported conclusions.  
H= Hypothesis, E= Evidence, A= Analysis, and T= Thesis.

**Origin:** Working definition

**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.

**Origin:** 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Depending on the presence or absence of a **Federal Nexus**, incidental take can be exempted through Section 7 or section 10 of the Act. See also 50 CFR 402.14(i-iv) and the Handbook p. 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.”

**Origin:** 50 CFR 17.3

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

**Incidental Take Statement** – A section after the conclusion of a 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).”

**Origin:** Working definition

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

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

**Origin:** Working definition

**Additional information:** 50 CFR 402.12(g), and page 4-15 of the 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. However, this is only appropriate when a statute authorizes an agency to complete an action in incremental steps. Additionally there are several conditions and considerations that must be taken into account, including the 9<sup>th</sup> Circuit Court ruling from *Conner v. Burford* (1988).

**Origin:** Working definition

**Additional information:** See the Handbook section 5.5 Incremental Step Consultations.

**Indirect Effects** – "...Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur."

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Quote in text above taken from discussion within the definition of "Effects of the action". For NEPA purposes there is a fuller definition at 40 CFR 1508.8

**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."

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** The phrase "**informal consultation**" is sometimes misused to refer to a **concurrence letter**. While a concurrence letter may be the result of completing informal consultation - they are not the same. See 50 CFR 402.13 and Chapter 3 of the Handbook.

**Injury** – "... to cause damage to..."

**Origin:** Working definition

**Additional information:** 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 Handbook, but not defined there.

**INRMP** – Acronym that stands for Integrated Natural Resources Management Plan. These are natural resource management plans specific to a particular military installation.

**Origin:** Working definition

**Additional information:** See also **Sikes Act**.

**IPaC (Information, Planning and Conservation system)** – This is an internet-based system designed for easy, public access to the natural resources information for which the U.S. Fish and Wildlife Service has trust or regulatory responsibility. One of the primary goals of the system is to provide information that assists people in planning activities within the context of natural resource conservation. The IPaC system also assists people through the various regulatory consultation, permitting and approval processes administered by the Fish and Wildlife Service, helping achieve more effective and efficient results for both the project proponents and natural resources.

**Origin:** Working definition

**Additional information:** <http://www.fws.gov/ipac/>

**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; ..."

**Origin:** Handbook, p. xv

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

**Intra-Service Consultation** – Consultations done within the Fish and Wildlife Service for effects to listed or proposed species and proposed or designated critical habitat resulting from actions that the Fish and Wildlife Service authorizes, funds, or carries out. Examples include issuance of Section 10 permits and grants.

**Origin:** Working definition

**Additional information:** By policy for intra-service conferencing purposes, the Service treats a **Candidate** species as if they were proposed for listing (Handbook p. 1-5). See also the Handbook Appendix E.

**Interagency Cooperation** – The title of the regulations describing the process for completion of consultation under 7(a)(2) of the Act. Also known as the "1986 regulations". The preamble in the notice for the regulations contains valuable insight into the Services' view regarding how to implement the regulations.

**Origin:** Working definition

**Additional information:** A substantial revision of the regulations was made final and published in December 16, 2008 (Federal Register December 16, 2008, Vol. 73, No. 242, pp 76272-87), but was set aside by the incoming administration in January 2009. Additional

revisions related to incidental take statements were made in 2015 and the definition of **Destruction or Adverse Modification** in 2016. See also **Framework Programmatic Action, Mixed Programmatic Action** and **Preamble**.

**Interdependent Actions** – “... those [actions] that have no independent utility apart from the action under consideration.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Quote taken from discussion in definition of “Effects of the action”. 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.

**Interrelated Actions** – “...those [actions] that are part of a larger action and depend on the larger action for their justification.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Quote taken from discussion in definition of “Effects of the action”. To determine if an action (and its effects) is an interrelated 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 p. 4-26 through 4-28, and “**But for**” Test.

**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.

**Origin:** 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.09

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

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

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

**Origin:** Working definition

**Additional information:** See **Jeopardize the continued existence of** and discussion on pages 4-33 through 4-37 of the Handbook.

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

**Origin:** Working definition

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

**Jeopardize the Continued Existence of** – a phrase used in the Act, but only defined in the regulations. “...to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** “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] (Handbook, pp. 4-33 and 4-34)  
See also **Listed Entity Scale**.

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

**LCC (Landscape Conservation Cooperatives)** – a program using applied conservation science partnerships to provide the science and technical expertise needed to support conservation planning at landscape and to develop the tools, methods, and data managers need to design and deliver conservation using the **Strategic Habitat Conservation** approach. The program is also intended to promote collaboration among the members in defining shared conservation goals. There are 22 individual LCCs based on geographical and ecosystem attributes.

**Origin:** Working definition

**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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.07

**Additional information:** Sometimes referred to as “lead federal agency”. The EPA has a more specific definition for Lead Agency at 40 CFR 1508.16.

**LEAP (Landscape-scale Energy Action Plan)** – an online decision support tool for energy developers and conservation managers. This tool is being developed by FWS Region 6 largely to provide information to energy project developers early in their project planning regarding siting facilities to reduce potential conflicts with conservation goals.

**Origin:** Working definition

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

**Origin:** 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 Handbook, but not defined in those sources. Webster’s describes it as “... 1. The state of being likely or probable... 2. Something probable...”

**Origin:** Working definition

**Additional information:** 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]”

**Origin:** Handbook, p. xvi

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

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

**Origin:** Working definition

**Additional information:** See also **Distinct Population Segment**

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

**Origin:** 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 analysis and findings.

**Origin:** Working definition

**Additional information:** See the Handbook page 4-34 through 4-36 for a complete discussion on the scale of analysis and findings.

**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.

**Origin:** 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"

**Origin:** 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 as M-3700, etc.

**Origin:** Working definition

**Magnuson-Stevens Fishery Management and Conservation Act** – A 1976 Act of Congress establishing "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 "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.

**Origin:** Working definition

**Additional information:** 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 (not same as ESA) process.

**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))."

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** In regulations guiding NEPA actions the phrase Major Federal Action is defined at 40 CFR 1508.18

**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)

**Origin:** 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]"

**Origin:** 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 Handbook defined the criteria for what effects would fit into that category of effect. "...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." [50 CFR 402.13(a)]

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

**Additional information:** The phrase "not likely to adversely affect" is used in the regulations at (50 CFR 402.13 (a); 402.14(b); and 402.14 (k)(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.)

**Origin:** Working definition

**Additional information:** 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.

**Origin:** 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.

**Origin:** Working definition

**Additional information:** Take under the Migratory Bird Treaty Act is defined differently than take under the ESA.

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

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

**Additional information:** Quote taken from 50 CFR 402.14(i)(2).

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

**Origin:** Regulations, 40 CFR 1508.4.

**Additional information:** The use of the word mitigation related to sections 10(a)(1)(B), 7(a)(1) and 7(a)(2) can be a confusing topic and must be explored thoughtfully. Overall Service policy on mitigation is found in FR Vol. 46, No. 15, January 23, 1981. At the time of this 2<sup>nd</sup> edition, the Service has published a proposed policy updating the 1981 policy (Federal Register March 8, 2016).

**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.”

**Origin:** Regulations (2015) codified as 50 CFR 402.02

**Additional information:** Regulatory change to allow for producing a 7(a)(2) consultation document and incidental take statement that exempts take for some, but not all activities.

See the preamble to the final rule of this regulatory change for complete explanation at Federal Register, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845.

**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.”

**Origin:** Working definition

**Additional information:** 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.

**Origin:** Working definition

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

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

**Origin:** Working definition

**Additional information:** Quote taken from National Historic Preservation Act, 1966 (16 U.S.C. 470 et seq. as amended).

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

**Origin:** 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.

**Origin:** Working definition

**NE** – See **No Effect**

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

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

**Origin:** Working definition

**NHPA** – See **National Historic Preservation Act**

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

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

**NOAA** – National Oceanic and Aeronautic Administration; an administration under the U.S. Department of Commerce. The National Marine Fisheries Service, now commonly referred to as NOAA fisheries, is an agency within NOAA.

**Origin:** Working definition

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

**Origin:** Handbook, p. xvi

**Non-Essential Experimental Population** – "A nonessential experimental population" is a reintroduced population whose loss would not be likely to appreciably reduce the likelihood of the survival of the species in the wild." See **Essential Experimental Population**.

**Origin:** Working definition

**Additional information:** Quote taken from the Handbook page 2-5. See 50 CFR 17.80 - 83. For Section 7 consultation processes nonessential experimental populations are treated as if they are proposed (conference procedures). However, when they are on National Park Service Lands or National Wildlife Refuges, they are treated as if they are a threatened species. Regulations discussed in Federal Register 49, Aug. 27, 1984. See section 10(j) of the Act and page 2-5 of the Handbook.

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

**No Surprises** – The FWS provides "No Surprises" assurances to non-Federal landowners through the section 10(a)(1)(B) process - **HCP**). Essentially, State and private landowners are assured that if "unforeseen circumstances" arise, the FWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permit holder. The government will honor these assurances as long as permit holders are implementing the terms and conditions of the HCPs, permits, and other associated documents in good faith, and as long as continuing the permit does not jeopardize a listed species.

**Origin:** Working definition

**Additional information:** See Federal Register, February 23 1998, Vol. 63, No. 35, pp. 8859 – 8873 for a final set of regulations for No Surprises, and Federal Register 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 (Natural Resource Damage Assessment)** – 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.

**Origin:** Working definition

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

**Occupied Critical Habitat** – "...critical habitat that contains individuals of the species at the time of the project analysis. A species does not have to occupy critical habitat throughout the year for

the habitat to be considered occupied (e.g. migratory birds). Subsequent events affecting the species may result in this habitat becoming unoccupied. [Clarification of usage]"

**Origin:** Handbook, p. xvi

## **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.

**Origin:** Working definition

**Additional Information:** Federal Register, March 28, 2003, Vol. 68, No. 60, p. 15100.

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

**Origin:** 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.”

**Origin:** Act, Section 3

**Additional information:** See also **Applicant**

**Physical or Biological Features** – “The features that 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.

**Origin:** Regulations, 50 CFR 424.02

**Additional information:** Phrase used in the Act’s definition of critical habitat, but not defined there. A description of these attributes is used in federal register notices when designating critical habitat. See **Critical Habitat** and **Primary Constituent Elements**.

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

**Origin:** Working definition

**Additional Information:** See also **Programmatic Consultation**.

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

**Origin:** Act, Section 3

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

**Origin:** Regulations, 50 CFR 17.3

**Additional information:** See **Experimental Populations** and **Distinct Population Segment**.

**Preamble** – word used generally to describe the first (and largest) portion of the 1986 Final Rule (Federal Register, June 3, 1986, Vol. 51, No. 106, pp. 19926-19956) for the regulations on Interagency Cooperation consultation procedures. It documents responses to public comments. It 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.

**Origin:** Working definition

**Additional information:** See **Interagency Cooperation**

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional information:** Preliminary Biological Opinions can be confirmed as final biological opinions, but the request to the Service must be in writing. See **Early Consultation**, 50 CFR 402.11 and Chapter 7 of the Handbook.

**Primary Constituent Elements (PCEs)** – “...When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.”

**Origin:** Regulations, 50 CFR 424.12(b)

**Additional information:** With the 2016 revisions to the 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 no longer used in the designation of **Critical Habitat**.

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

**Origin:** Handbook, p. xvii

**Additional information:** Though defined in the Handbook, the phrase “programmatic consultation” has come to mean a wide variety of formats for consultations which can lead to confusion. Other more specific types of consultations are also sometimes generally referred to as “programmatic”, such as consultations on “plans” (**Plan Level Consultations**) and consultations on groups of similar “batched” activities (**Batched Consultations**). See also **Appended Consultations, Tiered Consultations, Framework Programmatic and Mixed Programmatic Actions**.

**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.”

**Origin:** 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.”

**Origin:** 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.”

**Origin:** Regulations (1986) codified as 50 CFR 402.02. See also the Handbook pp. 4-41 and 4-42.

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

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

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

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

**Reasonably Certain to Occur** – this phrase is found throughout the regulations and the Handbook (cumulative and indirect effects, etc.), but is never specifically defined. The Handbook

discusses it most expansively on page 4-30. In addition, the Director's memo on the **ANILCA** agreement in 2003 also discusses the meaning as it applies to that agreement. In the preamble to the 1986 regulations (FR June 3, 1986, Vol. 51, No. 106, pp. 19931) The Service specifically notes that this phrase is not the same as "reasonably foreseeable" which is used in NEPA.

**Origin:** Working definition

**Additional information:** Because there is no clear definition, this phrase can be a troublesome concept for both Service and action agency biologists.

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

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

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

**Origin:** 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.

**Origin:** Working definition

**Additional information:** Quote taken from 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]"

**Origin:** 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. Webster's dictionary defines appreciably as "...capable of being noticed, estimated or measured..." and appreciate as "recognize the quality, significance, or magnitude of".

**Origin:** Working definition.

**Additional information:** Quote in text from Webster's II New Riverside University Dictionary (1988). This word order is reversed from the word order ("Appreciably Reduce") used in section 10(a)(1)(B) of the Act regarding the impact of taking on a species.

**Reinitiation Triggers** – four conditions that require reinitiation of consultation. "Reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (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."

**Origin:** Regulations (1986) codified as 50 CFR 402.16

**ROD (Record of Decision)** – "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."

**Origin:** Working definition

**Additional information:** Quote taken from *A Citizen's Guide to NEPA, Having Your Voice*

**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 Oceanic and Atmospheric Administration.

**Origin:** Working definition

**Additional information:** See Federal Register, June 17, 1999, Vol. 64, No. 116, pp. 32771 – 32726 for Service's Safe Harbor policy.

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

**Origin:** 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.

**Origin:** Working definition

**Additional information:** See section 4(d) of the Act.

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

**Origin:** Working definition

**Additional information:** 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 outlining the mandate for Federal agencies to use their authorities to conserve listed species and habitat designated as critical [(7(a)(1))] establish the requirement to conduct conferences on proposed species, allow applicants to initiate early consultation, require FWS and NMFS to prepare biological opinions, and issue incidental take statements [(7(a)(2))]. Section 7 also establishes procedures for seeking exemptions from the requirements of Section 7(a)(2) from the **Endangered Species Committee**.

**Origin:** Working definition

**Additional information:** See section 7 of the Act, section **7(a)(1)** and section **7(a)(2)**.

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

**Origin:** Working definition

**Additional information:** Quote in text from the Act section 7(a)(1). This is an important conservation mandate for Federal agencies that is often overlooked.

**Section 7(a)(2)** – that part of Section 7 that requires Federal agencies to consult with the Services. "...Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical..."

**Origin:** Working definition

**Additional information:** Quote taken from Act, Section 7(a)(2).

**Section 7(d)** – that part of Section 7 regarding limitation on commitment of resources. “After initiation of consultation required under subsection 7(a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection 7(a)(2).”

**Origin:** Act, Section 7(d)

**Additional information:** See Section 7(d) of the Act and 50 CFR 402.09 and Handbook p. 2-7.

**Section 7 Range** – “identifies the *area within which, if an action is proposed, potential effects to the species should be considered.*” This phrase was developed for use on the Environmental Conservation Online System (ECOS) and the Information, Planning and Consultation (IPaC) system to assist users in determining which listed species to consider when planning projects. Beginning in 2013 this phrase was dropped in favor of the phrase “**Area of influence**”. This range should not be confused with (and does not supersede) the official geographic range expressed in the Federal Register (FR) notice listing the species as threatened or endangered.

**Origin:** Working definition

**Additional information:** Quote taken from Section 7 *Range Edit User Manual* in the **ECOS** website (2012). See also **Geographic Range Occupied by the Species**

**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. [ESA §9]”

**Origin:** Handbook, p. xviii

**Additional information:** Plants are not subject to take, but certain acts regarding plants are prohibited by section 9. See the Act section 9 and Handbook p. 4-47. Though the Act applied section 9 prohibited acts to only endangered fish, wildlife and plants, in 1977-78 the Service under 4(d) authority, promulgated a regulation extending those protections to species then listed as threatened and from that point forward. This protection is sometimes modified by a species-specific **4(d)** rule.

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

**Origin:** Handbook, p. xviii

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

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

**Origin:** Working definition

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

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

**Origin:** Regulations (1986) codified as 50 CFR 402.02

**Additional Information:** 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** – **State Historic Preservation Office**

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

**Origin:** Working definition

**Additional Information:** Quote in text from Webster's II New Riverside University Dictionary (1988).

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

**Origin:** 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 Act 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.

**Origin:** Working definition

**Additional information:** See also **INRMP**.

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

**Origin:** Act, Section 3

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

**Origin:** Working Definition

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

**SSA (Species Status Assessment)** – an analytical approach by the Service to deliver foundational science for information all ESA decisions. It uses the conservation biology principles of resiliency, redundancy, and representation ("3Rs") to evaluate the current and future condition of the species.

**Origin:** Working Definition

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

**Origin:** Working definition

**Status Review** – a phrase used to describe an assessment of a species' biological status and threats. That information is used to inform a determination as to whether listing that species under the Act is warranted.

**Origin:** Working definition

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

**Status of the Species** – a phrase used in two different sections of the standard format of a biological opinion. In the Status of the Species section it is used to present the biological or ecological information relevant to formulating the biological opinion. Appropriate information on the

species' life history, its habitat and distribution, and other data on factors necessary to its survival, is included to provide background for analyses in later sections. This information is generally at the rangewide scale. In the Environmental Baseline section, the phrase is used as a subsection to describe the specific condition of the species at the action area scale (generally much smaller than the rangewide scale).

**Origin:** Working definition

**Additional information:** Handbook, pp. 4-19 through 4-22

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

**Origin:** Working definition

**Additional information:** Handbook, section 5.3, Regional or Ecosystem Consultations. Not to be confused with **Incremental Step Consultations**. See also terms associated with **Programmatic Consultation**.

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

**Origin:** Working definition

**Additional information:** See also **Landscape Conservation Cooperatives (LCC)**.

**Streamlined Consultation** – a phrase most notably used to refer to the jointly-developed consultation timeline and streamlining process for accomplishing timber projects (later expanded to other projects) in Washington, Oregon, Idaho, and California (later expanded to other areas of the U.S.). Initiated in 1995 it was a cooperative approach by the FWS, NMFS, Forest Service, and the Bureau of Land Management. In February of 1997 revised procedures for streamlining were released. The process utilizes interagency teams working together in the early stages of project planning. Consultation occurs simultaneously with project planning and development under NEPA by the action agency. Informal consultations are to be completed within 30 days, and formal consultations within 60 days of submission of an agreed-upon biological assessment.

**Origin:** Working definition

**Additional information:** Phrase is also used more generally to mean any method to reduce time involved in completing consultation. See Handbook, p. 5-6 and **Expedited Consultations** and **Consultation Agreements**.

**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 Handbook. Its use can be confused with the more specific meaning and use of the term in the **NEPA** process.

**Origin:** Working definition

**Surrogate** – a term originating in the Handbook 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. This is critically important since exceeding anticipated/exempted take is one of the consultation **Reinitiation Triggers**.

**Origin:** Working definition

**Additional information:** Practitioners should note that if a surrogate is used, the relationship between it and the listed species must be well established in the Biological Opinion before its use in the Incidental Take Statement. Handbook (p. 4-47 and 4-49). See also discussion in preamble to final rule for Mixed and Framework Programmatic Action (Federal Register, May 11, 2015, Vol. 80, No. 90, pp. 26832-26845).

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

sustenance, and shelter. [Clarification of usage]"

**Origin:** Handbook, p. xviii

**Additional Information:** 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**).

**Origin:** Working definition

**Take** – "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct."

**Origin:** Act, Section 3

**Additional information:** Plants are not subject to take, but certain acts regarding plants are prohibited. See the Act section 9 and Handbook p. 4-47. Though the Act applied section 9 prohibited acts to only endangered fish, wildlife and plants, in 1977-78 the Service under 4(d) authority, promulgated a regulation extending those protections to species then listed as threatened and from that point forward. This protection is sometimes modified by a species-specific **4(d)** rule. Take prohibited under the **Bald and Golden Eagle Act** and the **Migratory Bird Treaty Act** have different definitions than the Endangered Species Act definition.

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

**Technical Assistance** – a term originating in the 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."

**Origin:** Working definition

**Additional Information:** Quote taken from the Handbook p. 3-7. The term's relationship to **informal consultation** is often the source of confusion and debate due to the Handbook's broad description.

**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).

**Origin:** Working definition

**Additional Information:** See regulations (1986) codified as 50 CFR 402.14(i)(1)(iii). See also the Handbook pp. 4-51 and 4-52.

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

**Origin:** 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."

**Origin:** Act, Section 3

**Tier** – a word used once in the Handbook on page xxii where it refers to the relationship between an action agency's individual projects and their larger program.

**Origin:** Working definition

**Additional information:** In contrast to the Handbook's use, the term is often used to refer to the practice of tiering site-specific consultations to a larger programmatic consultation. See also **Tiered Consultation**.

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

original consultation document.

**Origin:** Working definition

**Additional information:** There is tremendous variation in the understanding and application of this concept. The Handbook mentions the word tier only on page xxii, but uses it to suggest the relationship and action agency's individual projects and a larger program. See also **Appended Consultation**.

**Tribal Consultation** – a term used to describe required government-to-government discussions between government departments and bureaus, and Indian Tribal Governments. The requirement stems from 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..."

**Origin:** Working definition

**Additional information:** Consultations pursuant to this Executive Order are not the same as consultations under Section 7 of the Act.

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

**Origin:** Working definition

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

**Origin:** Working definition

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

**Unoccupied Critical Habitat** – "...critical habitat not occupied (i.e., not permanently or seasonally occupied) by the listed species at the time of the project analysis. The habitat may be suitable, but the species has been extirpated from this portion of its range. Conversely, critical habitat may have been designated in areas unsuitable for the species, but restorable to suitability with proper management, if the area is necessary to either stabilize the population or assure eventual recovery of a listed species. As recovery proceeds, this formerly unoccupied habitat may become occupied. Some designated, unoccupied habitat may never be occupied by the species, but was designated since it is essential for conserving the species because it maintains factors constituting the species' habitat. For example, critical habitat may be designated for an upstream area maintaining the hydrology of the species' habitat downstream. [Clarification of usage]"

**Origin:** Handbook, p. xix

**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.

**Origin:** 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"

**Origin:** Regulations 50 CFR 424.02

**Additional Information:** 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 in close proximity to structures or developed areas.

**Origin:** Working definition



