

REFERENCE GUIDE

For

**U.S. ARMY CORPS OF ENGINEERS (CORPS) CLEAN WATER ACT
SECTION 404 & RIVERS AND HARBORS ACT SECTION 10 PERMITS**

**U.S. Army Corps of Engineers
Walla Walla District**

Regulatory Division

2024

U.S. ARMY CORPS OF ENGINEERS' REGULATORY MISSION

The mission of the Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources while allowing reasonable development through fair, flexible, and balanced permit decisions. The Corps evaluates permit applications for all construction activities that take place in the Nation's waters, including wetlands. The Corps also issues permits for any work, including construction and dredging, in the Nation's navigable waters.

REGULATORY PROGRAM GOALS:

- Protect the aquatic environment.
- Enhance regulatory program efficiency.
- Make fair, reasonable, and timely decisions.
- Achieve No Net Loss of Aquatic Resources.

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1 INTRODUCTION

1.1 PURPOSE OF THIS GUIDE

The Regulatory Program is one of the oldest initiatives in the Federal Government. Initially it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters. Time, changing public needs, evolving policy, case law, and new statutory mandates have changed the complexion of the program, adding to its breadth, complexity, and authority.

The purpose of this Permit Reference Guide (Guide) is to assemble the guidance necessary to assist U.S. Army Corps of Engineers (Corps), Walla Walla District (NWW) Regulatory Division (RD) Project Managers (PMs) and applicants or their agents/consultants in preparation and submittal of sufficient information for the Corps to make Clean Water Act (CWA) Section 404 and Rivers and Harbors Act (RHA) Section 10 Department of the Army (DA) (Section 404 and Section 10) permit decisions.

The guide seeks to provide an overview of the permit process with guidance pertaining to the required elements in a permit application so that the review process completed by the Corps can be as streamlined as possible.

1.2 INTENDED AUDIENCE

The intended primary users of this guide include Corps PMs, applicants, their agents/consultants, and any other local authorities requiring Section 404 or Section 10 permits in Idaho.

1.3 ABOUT THIS GUIDE

This guide provides guidance to help users determine if they need a permit from the Corps and, if one is required, it should help to navigate the permit process. If a permit is necessary, the guide will help guide the user through the Corps Section 404 and Section 10 permitting process from early investigation and coordination, pre-application, and submitting complete applications, to providing information sufficient for a permit decision. Permitting can be a complex process. This handbook is intended to be an overview and not a substitute for knowledge of the laws, regulations, and guidance governing permit decisions. Applicants are encouraged to contact the Corps for specific information, early and throughout the process.

Wetland policy and guidance regarding the implementation of the CWA is continually evolving. For this reason, it is expected that this guide will be periodically updated to reflect those changes, therefore the most recent version of the guidance should be consulted when planning a project. Comments and suggestions for improving the guide are welcome. See Appendix G for agency contact information.

Permit-related resources and other information is available on the NWW Regulatory website located here: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/>.

1.4 LEGISLATIVE AUTHORITY

33 CFR 320 identifies the various federal statutes which require that permits be issued before these activities can be lawfully undertaken; and related Federal laws and the general policies applicable to the review of those activities. These include:

- [Section 10 of the Rivers and Harbors Act \(RHA\) of 1899](#) (33 U.S.C. 401, 403, 407) is the statutory authority for requiring a permit to work in, over, or under a navigable water. The Corps has jurisdiction over all navigable waters of the U.S.
- [Section 404 of the Clean Water Act \(CWA\)](#) (33 CFR Parts 320-332) authorizes the Corps to issue permits for the discharge of dredged or fill material into navigable waters. Jurisdictional waters were later expanded to include “waters of the United States” for section 404 purposes.
- A Corps permit is a “federal action” and therefore requires compliance with other federal laws and rules. The following are a subset of some regulations to comply with:
 - Clean Water Act (CWA) Section 401 certification (33 CFR Chapter 26)
 - Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470 et seq.)
 - Section 7 of the Endangered Species Act (ESA) coordination (Title 50 of CFR)
 - Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) coordination (Title 50 of CFR)
 - Section 7 of the Wild and Scenic Rivers Act
 - National Environmental Policy Act (NEPA) (42 USC§ 4321 et seq.)
 - CWA Section 404(b)(1) guidelines (40 CFR)
 - Public Interest review (33 CFR Part 325)

33 CFR parts 321 through 330 prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Section 404/10 permits for controlling certain activities in waters of the United States or the oceans. Parts 321 through 324 and 330 address special policies and procedures applicable to the following specific classes of activities:

- 1) Dams or dikes in navigable waters of the United States (part 321);
- 2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (part 322);
- 3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (part 322);
- 4) Construction of artificial islands, installations, and other devices on the outer continental shelf (part 322);
- 5) Discharges of dredged or fill material into waters of the United States (part 323);

- 6) Activities involving the transportation of dredged material for the purpose of disposal in ocean waters (part 324); and
- 7) Nationwide general permits for certain categories of activities (part 330).

2 WATERS OF THE UNITED STATES

2.1 WATERS OF THE U.S. AS DEFINED IN 33 CFR 328.3

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a [final rule](#) to amend the final [“Revised Definition of ‘Waters of the United States’” rule](#), published in the Federal Register on January 18, 2023. This final rule conforms the definition of “waters of the United States” to the U.S. Supreme Court’s May 25, 2023, decision in the case of Sackett v. Environmental Protection Agency. Parts of the January 2023 Rule are invalid under the Supreme Court’s interpretation of the Clean Water Act in the [Sackett decision](#). Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court’s decision. The conforming rule, "Revised Definition of 'Waters of the United States'; Conforming," published in the Federal Register and became effective on September 8, 2023.

As a result of ongoing litigation on the January 2023 Rule, the agencies are implementing the January 2023 Rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states (including Idaho) and for certain parties, the agencies are interpreting "waters of the United States" consistent with the [pre-2015 regulatory regime](#) and the Supreme Court's decision in Sackett until further notice.

Idaho is interpreting “waters of the United States” consistent with the [pre-2015 regulatory regime](#) and the Supreme Court's decision in Sackett until further notice.

Categories of Jurisdictional Waters under the pre-2015 regulatory regime

(a)(1) Traditional Navigable Waters

(a)(2) Interstate Waters

(a)(3) Other Waters

(a)(4) Impoundments

(a)(5) Tributaries

(a)(6) The Territorial Seas

(a)(7) Adjacent Wetlands

2.1 SPECIAL AQUATIC SITES

Special aquatic sites (33 CFR 330.1) means wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries, and refuges as defined at 40 CFR 230.40 through 230.45. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. (See § 230.10(a)(3)). See 40 CFR Subpart E for more information on “Potential Impacts to Special Aquatic Sites.”

- 40 CFR 230.40 Sanctuaries and refuges
- 40 CFR 230.41 Wetlands
- 40 CFR 230.42 Mid flats
- 40 CFR 230.43 Vegetated shallows
- 40 CFR 230.44 Coral reefs
- 40 CFR 230.45 Riffle and pool complexes

While the Corps regulates all waters of the U.S., which include streams and rivers and all special aquatic sites, wetlands have historically been the subject of most questions regarding the Section 404/10 programs.

3 REGULATORY AND COORDINATING AGENCIES

The Section 404/10 permit process is the responsibility of the U.S. Army Corps of Engineers with some influence from the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service and the Idaho Department of Environmental Quality. Other state and local authorities also have influence over wetland and water impacts in Idaho and separate permits may be required to satisfy their programs. Since the purpose of this guide is to provide guidance regarding the section 404/10 programs, any reference to other state and local programs is for informational purposes only.

3.1 U.S. ARMY CORPS OF ENGINEERS (CORPS)

Under the CWA, the Corps has been delegated authority to issue permits for dredge or fill impacts to a WOTUS. The Corps also issues permits for Section 10 waters. Section 10 of the RHA requires permits for work in, over or under a navigable water.

You may contact your NWW Regulatory Office by visiting the contact information page: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Contact-Us/>

Refer to the online map to determine which office to contact. Please use the general email inboxes, vs. emailing or calling a specific Corps Project Manager you may have previously worked with. The map is located here:

[https://media.defense.gov/2024/Jan/16/2003376912/-1/-1/1/UPDATEDREGMAP%20\(1\).PDF](https://media.defense.gov/2024/Jan/16/2003376912/-1/-1/1/UPDATEDREGMAP%20(1).PDF)

3.2 U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

As part of its mission to protect human health and the environment, the EPA has oversight authority over the Corps Section 404 program. EPA was required to develop the Section 404(b) (1) Guidelines that the Corps must use in deciding whether to issue or deny a permit. The EPA and the Corps also developed the 2008 compensatory mitigation rule (Appendix D). The EPA makes comments for larger environmental projects that require an Environmental Impact Statement (EIS) or Environmental Assessment (EA) through the NEPA process. They also can comment on the permit during the Public Notice process. They have the ability to elevate a Corps decision under 404(q) procedures or assume responsibility for permitting in special circumstances.

3.3 U.S. FISH AND WILDLIFE SERVICE (USFWS)

The U.S. Fish and Wildlife Service (USFWS) has jurisdiction over species listed and critical habitat designated under the Endangered Species Act (ESA) in Idaho. The ESA requires consultation with USFWS for any Section 404 or Section 10 permit activity that might affect ESA-listed species or designated critical habitat. The consultation process can vary depending on the complexity of the project or action.

The Corps has entered into an MOU with the Department of the Interior to formalize coordination of the Section 10 and 404 programs, the Endangered Species Act and the Fish and Wildlife Coordination Act. Generally, the US Fish and Wildlife Service (USFWS) provides comments to the Corps to aid the decision-making process. In case of disagreement, there is a process to elevate the review to higher levels in the respective agencies. The 404(q) MOA can be found at:

<https://www.fws.gov/media/clean-water-act-section-404q-memorandum-agreement>

The Corps incorporates any conditions from USFWS that fall within the authority of the Corps into a Section 404/10 permit, as necessary.

3.4 NATIONAL MARINE FISHERIES SERVICE (NMFS)

The National Oceanic and Atmospheric Administration's (NOAA) NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), has jurisdiction over ESA-listed marine species or designated critical habitat, as well as Essential Fish Habitat (EFH) in Idaho. The ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require consultation with NMFS for any Section 404 or Section 10 permit activity that might affect ESA-listed species, designated critical habitat, or EFH. The consultation process can vary depending on the complexity of the project or action.

The Corps incorporates any conditions from NMFS that fall within the authority of the Corps into a Section 404/10 permit, as necessary.

3.5 NATIONAL PARK SERVICE (NPS)

Section 7 is a key provision of the Wild and Scenic Rivers Act that directs federal agencies to protect the free-flowing condition, water quality, and outstandingly

remarkable values of designated wild and scenic rivers and congressionally authorized study rivers. It requires evaluation of federally assisted water resources projects and determination of effects by the river-administering agencies.

The Act prohibits federal agencies from assisting in the construction of any water resources project that would have a direct and adverse effect on a designated river or congressionally authorized study river. The Act also includes a standard that governs water resources projects below, above or on a stream tributary to a designated river or congressionally authorized study river.

For more information, please visit: <https://www.rivers.gov/>

3.6 IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY (IDEQ)

Corps permits for discharging dredged or fill material into waters of the United States, including wetlands, require a Section 401 water quality certification (WQC) for the work activities before the Corps can issue a permit. As part of the permit review process, the Corps will notify the appropriate agency of your project and request an individual 401 WQC.

WQC under Section 401 of the CWA has been delegated to the states and authorized tribes. The Idaho Department of Environmental Quality (IDEQ) is the certifying authority in Idaho for projects not located on tribal lands.

EPA, Region 10, is the certifying agency for activities located within established tribal boundaries when the tribe lacks certification authority. If a tribe wishes to have certifying authority, the tribes can request Treatment as State (TAS) approval if they develop their own water quality standards. EPA lists Tribes approved for TAS here: <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>

As of 2023, the Coeur d'Alene Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Shoshone-Paiute Tribes of the Duck Valley Reservation were approved for the CWA §§ 303(c) / 401 - Water Quality Standards (WQS) Program.

The Corps incorporates any conditions from IDEQ, Tribes, or EPA in a water quality certification into a Section 404/10 permit in accordance with 401(d), as necessary.

3.7 IDAHO DEPARTMENT OF FISH AND GAME (IDFG)

The Idaho Department of Fish and Game (IDFG) mission is to protect, preserve, perpetuate, and manage Idaho's wildlife resources. The Corps carefully considers comments from IDFG related to fish and wildlife impacts in permitting decisions and conditions.

3.8 IDAHO DEPARTMENT OF LANDS (IDL) AND IDAHO DEPARTMENT OF WATER RESOURCES (IDWR)

The Corps, the Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) have established a joint application process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and the State of Idaho. The same application is used by the Walla Walla District Corps of

Engineers, IDWR, and IDL. You only need to fill out the application once; you can send the same copy to all agencies as needed.

The Corps may incorporate conditions from IDL and IDWR into a Section 404/10 permit, as necessary.

3.9 FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEMA provides tools and resources to help communities navigate National Flood Insurance Program (NFIP) requirements and implement higher standards of floodplain management. State and federal agencies, tribal governments, local communities and property owners have a role in reducing flood risk and helping communities become more resilient.

From states providing strong model ordinances, to communities adopting and enforcing higher-standard building practices, to property owners elevating their homes, everyone can play a part in making communities safer and more resistant to flood disasters.

3.10 IDAHO STATE HISTORIC PRESERVATION OFFICE (SHPO) AND TRIBAL HISTORIC PRESERVATION OFFICES (THPO)

The National Historic Preservation Act (NHPA) requires all federal agencies to consider what effects their actions may have on historic properties, including archaeological sites and the built environment. The National Register of Historic Places (NRHP) is the official national list of properties considered important in our past and worthy of preservation. The Idaho SHPO consults with these federal agencies and their applicants to speak for the historic resources of Idaho.

Under Section 101(d) of NHPA, each tribal government can designate a Tribal Historic Preservation Officer (THPO) and establish a tribal historic preservation program. If a Tribe has a THPO as defined under Section 101(d), Federal projects that take place on that Tribe's reservation lands are reviewed only by the THPO, with no SHPO involvement. According to the SHPO, as of 2023, the Nez Perce and the Coeur d'Alene Indian Tribes are Idaho's only recognized THPOs.

The Corps fulfills NHPA requirements, other applicable historic preservation laws, and Presidential directives as they relate to the Corps' regulatory program by following the procedures set forth in Appendix C to 33 CFR 325—Procedures for the Protection of Historic Properties. During the permitting process, applicants and the Corps consult with the involved parties to discuss and consider possible alternatives or measures to avoid or minimize any adverse effects of a proposed activity.

The Corps incorporates any conditions from the consultation process into a Section 404/10 permit, as necessary.

4 PROCESS GUIDANCE

4.1 TYPES OF CORPS PERMITS

Department of Army permits are required by Section 10 of the Rivers & Harbors Act (1899) and Section 404 of the Clean Water Act. The Section 404 permit covers discharge of dredged or fill material into all waters of the United States, including wetlands. Section 10 permits are required under section 10 for structures and/or work in or affecting navigable waters of the United States. State permits are not necessarily covered in this guidance, but are required under the State of Idaho, Stream Protection Act, Title 42, Chapter 38, Idaho Code and the Lake Protection Act, Section 58, Chapter 13 et seq., Idaho Code.

While a project may require more than one permit or approval when affecting waters/wetlands this guide only addresses the Corps permits for Section 10 and Section 404 of the CWA. The Corps, the Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) have established a joint application process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and the State of Idaho. The same application is used by the Walla Walla District Corps of Engineers, IDWR, and IDL. You only need to fill out the application once; you can send the same copy to all agencies as needed.

In rare cases, the Corps may use its discretionary authority to require a higher level of permit review for any activity eligible for authorization under a general permit based on concern for the aquatic environment or for any other factor of the public interest.

If a permit application is denied and a permit is not issued, the project cannot proceed. There is an administrative appeals process (33 CFR 331).

4.1.1 Letters of Permission

Letters of permission (LOP) may be used where, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. In such situations, the proposal is coordinated with Federal and state resource agencies, and in most cases, adjacent property owners who might be affected by the proposal. However, the public at large is not notified. The public interest review process is central to the decision-making process for letters of permission.

In Idaho, LOPs are typically, used to authorize Section 10 structures when there is no Section 10 general permit.

4.1.2 General Permits

Another form of authorization is the **general permit (GP)**. There are three types of GPs:

- nationwide permits,
- regional general permits, and
- programmatic general permits.

GPs are not normally developed for an individual applicant, but authorize activities the Corps has identified as being substantially similar in nature and causing only minimal individual and cumulative environmental impacts. GPs may authorize activities in a limited geographic area (e.g., county or state), a particular region of the country (e.g., group of contiguous states), or the nation. The issuance process for a GP closely parallels the issuance process for individual permits, with a public notice, opportunity for a public hearing and detailed decision documentation. Activities that qualify for GP authorization may proceed, provided the terms and conditions of the GP are met. However, some GPs may require review of the proposed work by the Corps before the project proponent can begin construction of the project.

A **nationwide permit (NWP)** is a type of general permit that authorizes activities on a nationwide basis, unless specifically limited through regional conditions or revoked by Corps' division or district engineers. Division engineers can add regional conditions to nationwide permits to restrict their use to ensure that those activities result in minimal adverse environmental effects. Additionally, some NWPs require a pre-construction notification (PCN). You should contact the appropriate [Corps office](#) to determine what conditions may apply for the nationwide permits. More information on NWPs can be found on NWW's RD website here: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>.

Regional conditions for Idaho are provided on RD's website here:

https://media.defense.gov/2021/Feb/28/2002590306/-1/-1/1/2021%20NWP_NWW%20Regional%20Conditions_Final_20210315.PDF

A **regional general permit (RGP)** is a type of general permit that authorizes activities in a particular state or other geographic region. Idaho has RGP 27: Structures in Lake Pend Oreille. The Corps has already completed NEPA analysis during the issuance of the RGP. Information provided by the project sponsor is used to confirm the project meets the requirements of RGP 27. More information on RGP 27 can be found on the NWW RD website here: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>.

A **programmatic general permit** is based on an existing state, local or other Federal agency program and is designed to avoid duplication with that program. Idaho has no programmatic general permits.

Verification of a GP does not require the applicant to pay a fee to the Corps.

Cautionary Note: In some cases, a project that otherwise would qualify for a non-reporting GP may still require additional coordination for other issues such as section 106 (NHPA) or ESA or due to the presence of a special aquatic site.

4.1.3 Standard Permits

Standard Permits (SP) are a type of Individual Permit. The other type of Individual Permit is an LOP (mentioned above). SP's are necessary for projects that do not qualify for NWPs or GPs, either because of their nature or the extent and/or location of their impacts. Unlike NWPs and GPs, SPs have not already been issued for authorization. Because of this, IPs are subject to a more rigorous environmental review. IPs require the Corps to write an environmental assessment (EA), full 404(b)(1) analysis

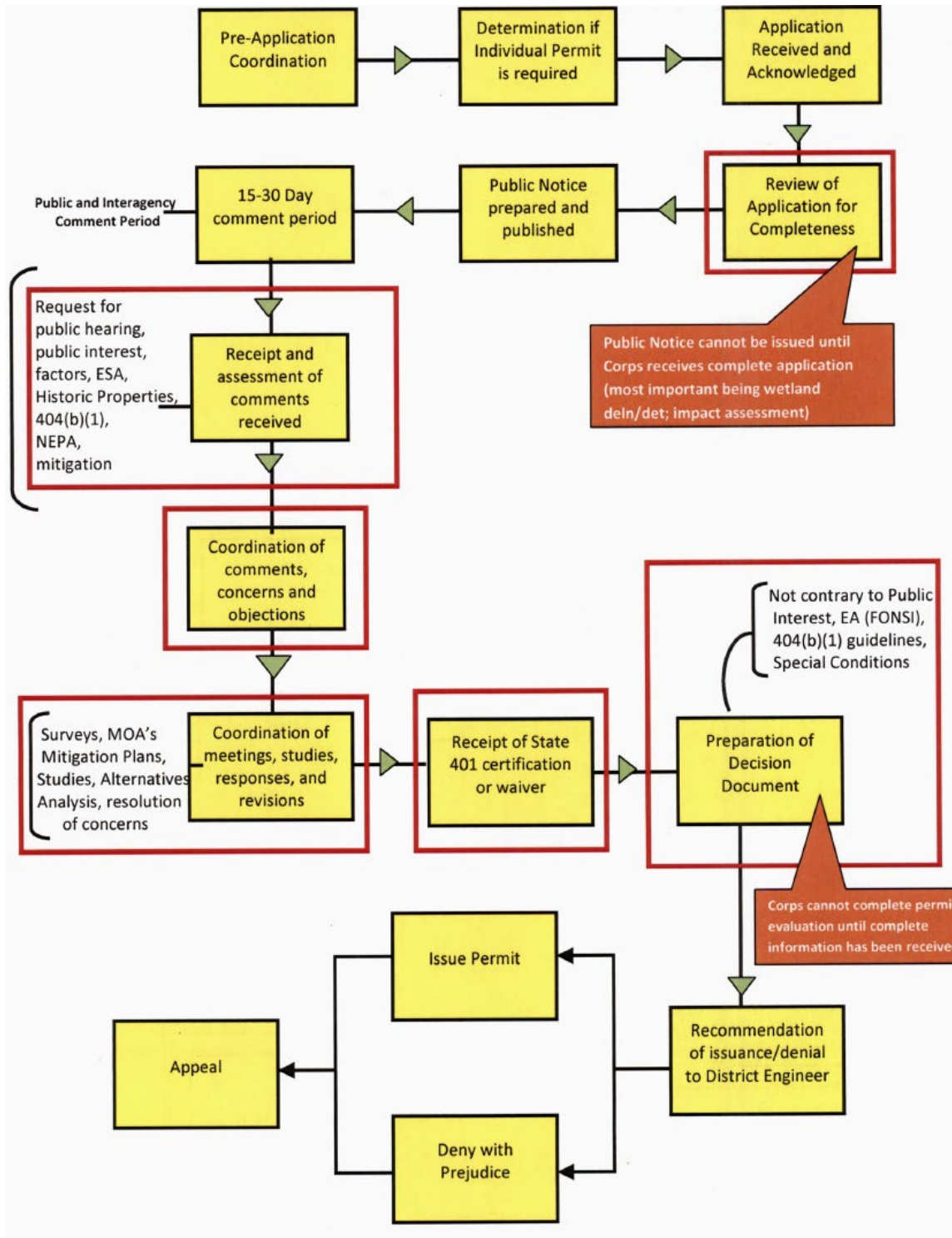
and public interest review. It also means that when the application is received by the Corps, the proposed work must first be advertised in a Public Notice to give citizens and agencies the opportunity to comment.

After evaluating all comments and information received, final decision on the application is made. The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments in addition to compliance with the 404(b)(1) guidelines.

Issuance of an SP may require the applicant to pay a fee to the Corps.

The general SP process is shown in Figure 1, and discussed in other sections of this document.

Figure 1. General SP process.



More information on SPs can be found on the NWW RD website here: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>.

4.1.4 Section 10

A list of the Section 10 Navigable Waters in Idaho is published on the NWW RD website: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Section-10-Waters/>. Work over, under, or in these waters requires authorization under Section 10. A Section 404 permit may also be needed if there are discharges of dredged or fill material for the project. For larger projects in Section 10 waters an individual permit may be necessary.

Activities such as maintenance of existing structures, temporary construction, minor dredging or encroachment into Section 10 waters may be authorized by GP.

4.1.5 Permit Issuance Timeline Goals

Based on Corps national performance standards, the following permit issuance timelines are an average goal for planning purposes: 120 days for an SP or LOP and 60 days for a GP. It is recommended that the project applicant have a dialog with the Corps to address anticipated timelines for specific projects. Pre-application meetings with the Corps can help the process to go more smoothly.

Cautionary Note: All types of wetland impacts may be considered in calculating thresholds. Also, if projected impacts approach one of the upper permit thresholds, consider the consequences of actual impacts exceeding the threshold later in the process; changing permit types could lead to increased review times and delays in public noticing.

4.2 EXEMPT ACTIVITIES

In general, Section 404 of the Clean Water Act requires permits for the discharge of dredged or fill material into waters of the United States, including wetlands. However, under Section 404(f)(1), certain activities are exempt from permit requirements. This includes:

- Established (ongoing) farming, ranching, and silviculture activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices
- Maintenance (but not construction) of drainage ditches
- Construction and maintenance of irrigation ditches
- Construction and maintenance of farm or stock ponds
- Construction and maintenance of farm and forest roads, in accordance with best management practices
- Maintenance of structures such as dams, dikes, and levees

Keep in mind that 33 CFR 323.4 and 40 CFR 232.3 provide additional information on exemptions that must be considered, such as recapture provisions. To find out whether or not a specific activity is exempt, please contact your Regulatory Office by visiting the contact information page: <https://www.nww.usace.army.mil/Business-With->

[Us/Regulatory-Division/Contact-Us/](#). Regulatory Guidance Letter (RGL) No. 07-02 helps the Corps conduct exemption determinations. That RGL is posted here: <https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll9/id/1463>

Cautionary Note: Exempt activities may be self-determined. The project proponent should be aware of the risk they potentially accept in doing so.

4.3 FEDERAL VS NON-FEDERAL FUNDING

The source of funding for projects can create some confusion, relative to permitting. Non-Federally funded projects such as State Aid Projects (SAP) or locally funded projects are not required to follow the NEPA process. However, if a Corps permit is necessary, the project, or portions thereof, becomes a “federal action” and applicants must comply with Corps permitting requirements. This includes compliance with the [Section 404\(b\) \(1\) Guidelines](#) and the National Environmental Policy Act of 1969 (NEPA) [Implementation Procedures](#) for the Regulatory Program.

The source of funding does not change the permit requirements. The Corps permit application requirements will essentially require the same information as is usually provided in a federal NEPA document; however, if a different federal agency is involved in the project, they may be responsible for the NEPA review, instead of the Corps.

4.4 NEPA AND OTHER REQUIREMENTS

Transportation, infrastructure, and other projects require multiple Federal permits and reviews, including reviews under NEPA, to ensure that projects are built in a safe and responsible manner and that adverse impacts to the environment and communities are avoided, minimized, or mitigated. The NEPA review, which includes analysis and appropriate documentation, takes into account the potential impacts of the proposed action and investigates reasonable alternatives. It also provides a framework for meeting other environmental review requirements, such as those under the Endangered Species Act of 1973 (ESA), the National Historic Preservation Act of 1966 (NHPA), the Clean Water Act (CWA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and more.

A NEPA document is prepared for all federally funded projects or non-federal projects that require a federal permit. The “level” of documentation is situationally dependent and could be a categorical exclusion determination (CAT-EX), environmental assessment (EA), or environmental impact statement (EIS). It should be noted that the Corps rarely is able to utilize CAT-EXs for permitting actions. NEPA for NWP’s is done at the time the NWP’s are issued. Further, Nationwide Permits (NWPs) generally do not require separate NEPA documents, but require documentation to be prepared by the Corps to document other compliance, NWP applicability, etc. Individual permits (IPs) require at least an EA.

The NEPA document usually provides sufficient information to assist in the Corps permit review (especially documenting project purpose and need and alternatives required by both NEPA and the 404(b)(1) guidelines) and is recommended to be submitted to the Corps early in the process. All projects that require a federal permit must comply with other federal laws, such as Section 106 of the NHPA and Section 7 of the ESA. The

Corps may require the applicant to furnish appropriate information necessary for the preparation of the NEPA document, the permit, or for compliance with other requirements.

When another Federal Agency is involved or is the “lead” on an action, the Corps may be able to utilize that agency’s NEPA document to confirm that the information is sufficient for their NEPA responsibilities, or even adopt the agency’s EA and FONSI or EIS. The Corps can also review information provided by an applicant or another Federal agency to see if it is sufficient to document compliance with the Section 404 (b)(1) guidelines, Section 106 of the NHPA, the ESA, etc. and fulfil the Corps’ responsibilities associated with the permit.

When general permits (GPs) are authorized, the NEPA process is completed as part of the approval process. For reporting type GPs, the Corps will verify eligibility for the permit based on submitted information. Note that additional coordination, information, conditions, etc. may be needed in some cases.

The Corps then follows the regulations outlined in 33 CFR Part 320 and 33 CFR Part 325 in determining the need for a permit and the processing of permits.

4.5 PERMIT APPLICATION

Any person, firm, or agency (including Federal, state, and local government agencies) planning to work in navigable waters of the United States, or discharge dredged or fill material in waters of the United States, must first obtain a permit from the Corps of Engineers. Permits, licenses, variances, or similar authorization may also be required by other Federal, state and local statutes; however, not all GPs require the applicant to notify the Corps prior to work being done. Look at the GP description to see what the notification requirements are prior to submitting a permit application. Additionally, some areas require that all permits require a pre-construction notice (PCN), refer to NWW’s website for a map of these areas:

<https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll10/id/11873>

The Corps has information posited online to help applicants apply for a Section 404 and/or Section 10 permit. That information is located here:

<https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>.

Additionally, a State of Idaho Instruction Guide for Joint Application for Permits is provided here:

<https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll11/id/3110>

Applicants will also find other information on topics discussed throughout this document in the resources provided online. This information is intended to aid in the application process.

While a project may require more than one permit or approval when affecting waters/wetlands this guide only addresses the Corps permits for Section 10 and Section 404 of the CWA. The Corps, the Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) have established a joint application process for activities impacting jurisdictional waterways that require review and/or approval of both

the Corps and the State of Idaho. The same application is used by the Walla Walla District Corps of Engineers, IDWR, and IDL. You only need to fill out the application once; you can send the same copy to all agencies as needed.

There is an instruction guide for assisting the applicant in completing the joint application for permits on the District's website here: <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/3110> and in IDL's website here: <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/01/InstructionGuide-3.pdf>

The following is a general description of the step-by-step procedure the Corps uses to evaluate a typical standard permit application. More information regarding these general steps is provided in this guide.

1. A pre-application consultation is recommended.
2. The applicant submits ENG Form 4345 and plans through the Corps web site (above) or by the submission of a Joint Application for Permits (also sending to IDWR and IDL as needed).
3. The Corps receives the application, assigns it an identification number, and emails the applicant and/or agent to acknowledge that the application has been received.
4. The Corps notifies the applicant if additional information is required to make the application complete (possibly in the acknowledgement email).
5. For IPs, a public notice is issued within 15 days of receipt of a complete application, to solicit comments from the public, adjacent property owners, interested groups and individuals, local agencies, state agencies, and Federal agencies.
 - i) The public notice comment period is 15 to 30 days, depending upon nature of activity.
 - ii) The Corps provides the applicant an opportunity to respond to comments received in response to the public notice.
6. The Corps may ask the applicant to provide additional information to assess environmental impacts or resolve public interest concerns. The Corps may also ask the applicant to modify the project to reduce environmental impacts.
7. The Corps considers all comments and the applicant's responses to those comments, including any proposed modifications of the project. The Corps may discuss project modifications with state and Federal agencies and other interested parties.
8. A public hearing is held, if necessary.
9. The Corps conducts a public interest review evaluation and a section 404(b)(1) guidelines evaluation.
10. The Corps makes a decision on the permit application and explains its decision in a combined decision document. This decision document may include an environmental assessment or environmental impact statement, a statement of

findings or record of decision, a Section 404(b)(1) guidelines evaluation and a public interest review evaluation.

11. If the Corps decides to issue the permit, a copy of the permit is sent to the applicant for his or her signature. If the applicant signs the permit, he or she agrees to the terms and conditions of the permit. If the permit is denied, the Corps will explain to the applicant why the permit was denied.
12. If the applicant refuses to sign the permit because he or she does not agree with the conditions in the permit, or if the permit is denied, the applicant can request an administrative appeal of the permit decision.

4.6 EARLY COORDINATION

Early coordination or pre-application consultation (33 CFR 325.1(b)) is a discussion and information exchange that benefits both applicant and regulator. It usually involves one or more meetings between an applicant, Corps staff and interested resource agencies (Federal, state, or local). The basic purpose of such meetings is to provide for informal discussions about a proposed activity before an applicant makes irreversible commitments of resources (funds, detailed designs, etc.). The pre-application process is intended to provide the applicant with an assessment of the viability of some of the more obvious alternatives available to accomplish the project purpose, to discuss measures for reducing the impacts of the project, and to inform the applicant of the factors the Corps must consider in its decision-making process.

The applicant benefits from finding out what aspects of the project are important for the permit process. The regulator benefits by becoming familiar with the project. Both parties benefit by having major issues discussed before a permit application is actually submitted. Early coordination can be used to generate a project and permitting timeline so that expectations of both the regulator and applicant are better understood. Generally, the need for early coordination increases with the amount and nature of the proposed WOTUS impact or if the project is controversial.

Early coordination can involve meetings, phone conversations, email exchanges or direct mailing of layouts or plans. Especially for large projects, the Corps may request revisions to satisfy Section 404 requirements including a thorough assessment of the project purpose and need, avoidance alternatives and minimization measures. It may be beneficial to hold joint early coordination meetings with the Corps and other regulating or coordinating agencies. In some cases, road authorities already conduct annual meetings with the Corps that could be considered part of the early coordination process.

4.7 PRELIMINARY REVIEW

The Corps will notify the applicant of additional information needs after receipt of an application and preliminary review, such as survey requirements, which would be the responsibility of the applicant. If a survey is completed, the report and any correspondence with other agencies (e.g., IDWR, USFWS, NMFS, the State Historic Preservation Officer - SHPO, etc.) should be provided to the Corps so they can assess

additional needs and move towards completion of ESA, Section 106, or other requirements.

While the Corps remains responsible for all findings and determinations, applicants often carry out some of the tasks for completing an ESA, 106, or other review. In some cases, that means the Corps would document an applicant, or their representative, as a “non-federal representative.” If an applicant is involved and is not the designated non-Federal representative, then the applicant and the Corps must agree on the choice of the designated non-Federal representative.

4.7.1 Items for Applicant to Identify During Early Review

An in-office review of available supporting documentation, which may be provided by the applicant, is the first step to help decide what level of effort needs to be expended to document impacts and to determine preliminary permit requirements

- Presence of Waters of the United States (WOTUS) within the project area (wetlands, streams, lakes, rivers, etc.).
- Project impacts to special aquatic sites: cut, fill, temporary, conversion.
- Cultural Resources/Historical Properties.
- Biological resources: federal, state, or tribal listed or sensitive species.
- Potential minimization/mitigation measures.
- Water quality certification requirements.

Some resources available to identify the above elements include:

- National wetland inventory maps (NWI). Cautionary Note: The NWI maps are an approximation, not a regulatory determination and consequently should not be relied upon to represent field conditions.
- Web soil survey or county soil survey.
- USGS topographic maps.
- Aerial photography.
- Precipitation records.
- Previous wetland delineations.
- Environmental documentation/Preliminary plans.

Please note that personally identifiable information (PII) may be included in some information and may need to be redacted by the applicant in some instances.

4.7.2 Field Review

Projects often require some sort of field review to verify the findings of the office review. At a minimum, an onsite review of the project can usually verify what was assumed during the office review or demonstrate the need for additional on-site investigations or data collection. Field reviews can also be used to make estimations of potential impacts

for projects that can't be immediately delineated. It is recommended that the reviewer note any other site issues that may be relevant to the permit review, NEPA documentation or public interest review, such as sensitive wetland resources, migratory birds, fishery resources, historic properties, or anticipated construction complications.

4.8 WETLAND DELINEATION

Wetland delineations may be required for any project that will affect a wetland, either temporarily or permanently, however, the level of delineation should be commensurate with the level of impacts associated with the project. The delineation must be completed in a manner consistent with the [Corps of Engineers Wetlands Delineation Manual](#) (1987 Manual) and appropriate [Regional Supplements](#). These and other delineation resources can be found on the NWW RD website here:

<https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Wetlands/>.

Regional supplements for in Idaho are:

- Regional Supplement to the Corps of Engineers Delineation Manual: Arid West Region
- Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region

The 1987 Manual uses two terms interchangeably, delineation and determination. Both terms relate to a prescribed methodology to determine the presence or absence of wetlands. The prescribed methods range from a Level 1 routine delineation where no on-site inspection is necessary and documentation is minimal, to a comprehensive determination where extensive on-site data collection and documentation is required.

Wetland delineation is a discipline that requires application of the sciences (parameters) of botany, soils, and hydrology. It is important to have qualified people performing the work, either by

- developing internal expertise,
- hiring a qualified consultant,
- or through an agreement with another local government office to perform delineations.

Appropriate training, and practice in the application of the 1987 Manual and Regional Supplements are the keys to successful wetland identification. Regional ecological differences within the state create a complicated matrix that requires wetland delineators working in different parts of the state to be aware of.

All of the approaches described below are taken from the 1987 Manual and can be used as appropriate, based on the complexity of the project being proposed. A description of the methodology used to identify wetland edges is recommended to be submitted to the Corps project manager. Also, all wetlands within the project work areas should be identified even if they will not be affected. This has become a standard condition of many permits. Those areas may be able to be mapped using vegetation breaks and will require very little effort.

The 1987 Manual discusses two general types of delineation/determination approaches, routine and comprehensive. The routine approach is used in the vast majority of situations.

Note that a wetland delineation is not required if the applicant and Corps agree on the amount of wetland that is present.

4.8.1 Routine Approach

There are three levels of routine delineations requiring different levels of effort.

- **Level 1:** Onsite Inspection Unnecessary.
 - Used when there is sufficient offsite information available to make a determination.
 - Exact wetland edge determination is not critical.
 - Involves review of mapping resources such as soils maps, air photos, NWI maps and personal knowledge of the site. It is recommended that a field review be implemented where a vegetation break can be mapped.
 - Briefly describe how determination was made.

Used for temporary impacts such as in-kind culvert replacements (same size, length and elevation), maintenance activities that restore a previous condition (culvert cleaning or ditch restoration to original design dimensions), permanent impacts where the edge is not critical (toe of roadway slope is edge or entire impact is within a wetland). **Cautionary Note:** While not required by the 1987 Manual, a field review of Level 1 delineations is recommended to verify offsite conclusions. The visit may be necessary to complete mapping of the wetlands.

- **Level 2:** Onsite inspection Necessary.
 - Most common type of delineation performed.
 - Includes collecting data on soils, vegetation and hydrology in the field.
 - Used when the wetland boundary is critical to determine extent of permanent wetland impacts.
- **Level 3:** Combination of Levels 1 and 2.
 - A portion of the site is delineated utilizing using offsite methods and another portion is delineated using onsite data collection.
 - Used when the exact boundary for only a portion of the site or project is relevant, such as, on linear projects where only a portion of the wetland is within the right of way, or the ends of large wetlands bounded by road fills for long stretches.

4.8.2 Comprehensive Approach

Comprehensive delineations apply quantitative procedures and are usually completed by a team of experts. They are typically completed by a team of experts in each parameter, and may be necessary when:

- A project is extremely complex or controversial.
- Severe disagreements over a completed delineation cannot be resolved.
- A project is likely to be litigated.

4.9 WETLAND DOCUMENTATION

4.9.1 Computations

Once delineations have been completed, maps of the delineated boundaries should be created and impacts quantified. This preliminary estimate of impacts should consider all types of impacts to wetlands as discussed in [Appendix C](#). Be prepared to re-compute impacts as the project plans progress and be prepared to adjust the project timeline if nearing any thresholds.

4.9.2 Wetland Delineation Report

The level of effort in preparing documentation for wetland impacts is commensurate with the scale of the project. For instance, a small impact project where only Level 1 delineations were performed will be sufficiently documented with a short description of the methods used and a photo of the project area. Larger projects should include more information. While a formal delineation report is not required, the following elements will assist in preparation of the permit application:

- Cover letter, including a short description of the work involved.
- A short description of methods used to identify wetlands (level of delineation, etc.).
- Location maps, including specific location data with enough detail to drive to the project.
- A good map of the delineated wetlands showing boundaries, flow direction arrows, impact areas, and wetland types.
- A table with information for each wetland including:
 - Location (major watershed, section, township, range).
 - Wetland types.
 - Wetland impacts.
 - Dominant vegetation.
- The data sheets from any Level 2 delineations. (If requested).
- Photos.

- Plan sheets showing proposed construction in wetlands, if available.

Cautionary Note: In areas of Idaho where the season is short, it is sometimes necessary to perform delineations outside the growing season. Verifying wetland delineations is difficult in the late fall or winter. If the delineation is in a difficult area where the determination is based on soils, slight topographical differences, or seasonal vegetation; it may be impossible to assess the validity of the work and delay approval. The reasons for completing delineations outside the growing season along with methodology used should be documented.

Additionally, it may be better for some sites if some criteria are evaluated during different times of the year.

4.10 JURISDICTIONAL DETERMINATIONS

While delineations determine if an area is wetland or a water, the Jurisdictional Determination (JD) is a determination made by the Corps identifying the presence or absence of waters of the United States on a property, parcel, or review area.

JDs are case specific and usually made in response to a request. Currently in NWW, we rely on section 10 of the Rivers and Harbors Act of 1899 (RHA), the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 1.a. and 1.b. respectively), the 2008 Rapanos-Carabell guidance (reference 1.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the Sackett decision (reference 1.d.) in evaluating jurisdiction.

REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986)
https://archives.federalregister.gov/issue_slice/1986/11/13/41202-41260.pdf
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
<https://nepis.epa.gov/Exe/ZyNET.exe/200054D3.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C91thru94%5CTxt%5C00000008%5C200054D3.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150q16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#>
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States (December 2, 2008).
https://www.epa.gov/sites/default/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf

- d. Sackett v. EPA, 598 U.S. __, 143 S. Ct. 1322 (2023)
https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf

There are two types of JDs used to determine whether an area is subject to Corps jurisdiction: preliminary or approved.

4.10.1 Preliminary JD

- Assumes that all aquatic resources within the area of review are subject to CWA jurisdiction.
- Not appealable.
- Result in an expedited review by the Corps since each resource does not have to be evaluated.

4.10.2 Approved JD

- Corps individually assesses each aquatic resource to determine CWA jurisdiction.
- Decision is appealable.
- Potentially time-consuming process that could slow project approval.
- May be desirable if there are a limited number of wetlands on a project and they may all be determined to be non-jurisdictional. Infrequently used for road projects.

To assist the Corps Project Manager in making an approved JD, the following information, at a minimum, needs to be submitted:

- Aquatic Resource boundaries identified in a delineation report.
- Data Forms to support the mapping of Aquatic Resources in a delineation report.
- National Wetland Inventory Map.
- Soils Map.
- USGS map.
- Aerial photos of the site.
- Floodplain information.
- Drainage flow arrows.
- National Hydrography Data (NHD).
- Locations of navigable waters near the project area.

4.11 PERMIT APPLICATION SUBMITTALS

4.11.1 Amount of Supporting Documentation

General requirements for permit applications are specified in [33 CFR 325, Processing of Department of the Army Permits](#). Additionally, 40 CFR 230, [Section 404\(b\) \(1\) Guidelines](#) for Specification of Disposal Sites for Dredged or Fill Material describes additional information needed for permit evaluation. Consistent with NEPA, 33 CFR, and the Section 404(b)(1) Guidelines, the amount of information required by the Corps to make a permit decision is directly proportional to the complexity of the project and the level of impacts anticipated – more information is required for large and complex projects.

The table below shows a check (✓) for information that is required at each permit level . Additional information required to make a permit decision is indicated with text. Within 15 days of the receipt of an application, the district engineer will determine if the application is complete (33 CFR part 325.2).

4.11.2 Required Information to be included in a Permit Application

	NWP/RGP (PCN)	LOP	IP
Name, address, telephone, date of application	✓	✓	✓
Signature of applicant or agent	✓	✓	✓
Location of activity (map, sect, twp, range, UTM)	✓	✓	✓
Pre-application consultation	Informal	Recommended	Highly recommended
Complete description of proposed activity and scope of work	✓	✓	✓
Drawings/plans showing delineations and impact areas	✓	✓	✓
All direct/indirect adverse environmental impacts of project	✓	✓	✓
Identification of all aquatic resources in project area	✓	✓	✓
Purpose and need statement	✓	✓	✓
Project schedule			✓
Alternative analysis	Avoidance and Minimization	Possible	✓
Description of work already completed		✓	
Description of fill- type, quantity, locations	✓		✓
Adjoining landowners name/address		✓	✓
List of authorizations required by agencies	✓	✓	✓
Wetland Sequencing (Avoidance and minimization measures)	General condition	✓	✓
Mitigation strategy/plan	✓	Possible	✓
Aquatic Resource Delineation (In accordance with 1987 manual and supplements, see Section 4.4)	May be required	May be required	Probably required
USFWS coordination (T&E Species)	Possible	Possible	Possible
Historic/cultural resources Letter of no effect, or potential effect and mitigation	Possible	Possible	Possible
Tribal consultation	Possible	Possible	Possible
Timeline (goal)	60 days	120 days	120 days

Note: The NWP/RGP may require a pre-construction notification (PCN), which is a Corps term that is roughly equivalent to an application. The content of a PCN is specified in the permit. In practice, most applicants submit a combined Joint Application for Permits to all of the required permitting agencies to simplify the process.

The checked boxes (✓) above indicate the minimum amount of information that must be provided for a complete application according to 33 CFR 325.3 that is sufficient to issue a public notice. Additional information will likely be required to make a permit decision. For instance, the Corps must determine that a proposed activity complies with the terms of the permit for NWP/RGP type projects. That may require a wetland delineation at a level sufficient to make that decision. At the LOP level, more information may be needed, such as more detailed plans. For IP level projects, the most detailed information must be provided to assure that the Least Environmentally Damaging Practicable Alternative (LEDPA) is chosen, in accordance with [Section 404\(b\) \(1\) Guidelines](#).

For any level of project, if ESA-listed species, historic/cultural resources or tribal lands are present, there will be additional work required to make the permit decision and consequently more time should be budgeted for these projects. It is usually possible to calculate reasonable time frames for permit approval by “working back” from the proposed project letting date through early coordination with the Corps. For more detailed pre-application checklist see [Appendix A](#).

4.12 CORPS EVALUATION

Once a complete application is received, the review process begins. Corps districts operate under what is called a project manager (PM) system, where one individual is responsible for handling an application from receipt to final decision. The project manager prepares a public notice, evaluates the impacts of the project and all comments received, negotiates necessary modifications of the project, and prepares appropriate documentation to support a recommended permit decision.

The decision to issue or deny a permit is based on the public interest review and, where applicable, a Section 404(b)(1) guidelines analysis. The public interest review involves an analysis of the foreseeable impacts the proposed work would have on public interest factors, such as navigation, general environmental concerns, wetlands, economics, fish and wildlife values, land use, floodplain values, and the needs and welfare of the people. The benefits and detriments to all public interest factors relevant to each case are carefully evaluated. The permit decision document includes a discussion of the environmental impacts of the project, the findings of the public interest review process, and any special evaluation required by the type of activity, such as determining compliance with the Section 404(b)(1) guidelines or ocean dumping criteria.

4.12.1 The Corps Evaluation of a Permit Application Involves Three Analyses:

- **NEPA:** Evaluating the proposal’s impacts in accordance with the [National Environmental Policy Act \(NEPA\)](#) as specified in 33 CFR 325.
- **Public Interest Review:** Determining the probable impact the proposal may have on the public interest in accordance with [33 CFR 320.4\(a\)](#).

- **404(b)(1):** Determining whether the proposal complies with the [Section 404\(b\)\(1\) Guidelines](#) (40 CFR Part 230). These implementing guidelines for the CWA restrict discharges of dredged or fill material where less environmentally damaging practicable alternatives exist.

In very rare cases, the Corps could determine that a proposal is contrary to the public interest and a permit will be denied. If the proposed work involves discharges of dredged or fill material into waters of the United States, no permit is granted if the proposed activity is found to be contrary to the Section 404(b)(1) guidelines.

4.12.2 The Goal of the Process is to Assure That:

- The Least Environmentally Damaging Practicable Alternative (LEDPA) is chosen.
- Impacts are avoided where feasible.
- Potential effects are minimized.
- Unavoidable impacts are mitigated/compensated.

5 SUPPORTING DOCUMENTATION FOR PERMIT APPLICATIONS

The following subjects are required to be addressed with Corps permit applications in accordance with the Section 404(b)(1) Guidelines and 33 CFR. As described in sections above, a NEPA document usually provides sufficient information to assist in the Corps permit process. It is suggested that project NEPA and other pertinent documents be submitted to the Corps early in the permit process to assist in the NEPA review.

Cautionary note: In some cases, the NEPA document that satisfies the FHWA for a federally funded project may not meet the Corps requirements for its NEPA analysis. For example, a federally funded project with a Categorical Exclusion (CAT-EX) NEPA document or check list may not provide sufficient information for the Corps analysis and may require the Corps to prepare its own Environmental Assessment. The Corps will most likely require information from the applicant to prepare their EA.

5.1 PURPOSE AND NEED

Clearly defining the “purpose and need” for a project early in the process is critical for both NEPA and 404(b)(1) analyses. Need and purpose are inter-dependent terms which are critical to the alternative analysis. They should be articulated individually since the project’s purpose is framed in relation to addressing a need.

The purpose and need explains the reason that the action being proposed is needed and serves as the basis for developing a reasonable range of alternatives.

The NEPA purpose and need statement for Corps permitting actions is defined in relation to the Corps’ NEPA scope of analysis, as outlined in 33 CFR Part 325, Appendix B, Section 9.b.(4).

The Corps also needs to identify the basic project purpose to determine a project’s water dependency, and overall project purpose to identify and evaluate practicable

alternatives as part of the analysis done under the Section 404(b)(1) guidelines [40 CFR 230.10(a)(2)]. While not defined in regulation, in practice, the basic project purpose is the fundamental, essential, or irreducible purpose of the project. Examples of a basic project purpose could include transportation, energy generation, or housing. The overall project purpose builds upon the basic project purpose to consider the applicant's specific project.

The demonstration of purpose and need for the project is the responsibility of the applicant. The purpose and need statement is then used by the Corps to complete the 404(b)(1) evaluation of the project. The purpose and need discussion for a project is in many ways the most important part of an environmental document. It answers questions such as:

- Why are public dollars being expended?
- What is the problem to be fixed?
- What are the goals of the proposal?

A purpose and need statement should be a simple statement of why the project is proposed and describe what deficiencies and/or problems need to be addressed. It should clearly demonstrate that a "need" exists.

Need is typically the problem or opportunity that the applicant is proposing to meet with their project. It can normally be quantified or measured. Information collected or developed relative to project need is important in the framing of the project purpose. The need for projects is often driven by deterioration of the current facility or design deficiencies causing safety or operational problems. Common needs include things like:

- Erosion
- Levee rehabilitation
- Restoration
- Culvert deficiencies
- Drainage – flooding, ice
- Inslope or ditch deficiencies
- System continuity/capacity
- Stormwater treatment

There may be more than one way to address the problem or need, but the purpose should not identify how the problem will be solved. Based upon the need, the applicant should develop their project purpose and clearly state it. The project purpose statement should be carefully considered and developed, as it will define and drive the complexity of the alternatives analysis, including constraints and practicability considerations. The purpose should not be defined in such a restrictive manner to unduly restrict or preclude other alternatives, nor should it be so broad that a reasonable search of options cannot be accomplished. The applicant is to define the project purpose from their perspective.

The purpose statement is used to identify the range of alternatives for a project and is used in the Corps as the basis for analysis of practicable alternatives. The applicant's proposed overall project purpose will be carefully considered, but if the Corps cannot concur with it as submitted, the statement will be modified.

The purpose and need also is important in selecting the preferred alternative and/or LEDPA, especially in cases where the project is subject to other legal or regulatory requirements that implicate project purpose.

Purpose and need statements may be reexamined and updated as appropriate throughout the project development process. A purpose statement is used by the Corps in any subsequent permit evaluation.

5.2 ALTERNATIVES ANALYSIS

The applicant should list all alternatives that were initially considered (the "universe" of options) that could meet the overall project purpose. A brief description of each alternative should also be included. The maximum number of alternatives to study will vary and typically depends on the nature and scope of the proposed project. The number evaluated should typically be greater for projects involving greater impacts. The list, at a minimum, should include:

- The No Action Alternative(s)
- Offsite Locations
- Onsite Alternatives.

The Corps must consider and evaluate all practicable alternatives for water dependent activities for both NEPA and 404(b)(1) purposes, including a "no action" alternative. For example, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences.

The Corps is neither an opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the applicant's preferred alternative. See 33 CFR 320.1(a)(4) and 325 Appendix B for more information.

The Corps must also identify the least environmentally damaging practicable alternative (LEDPA). In accordance with the 404(b)(1) Guidelines, a permit cannot be issued if a practicable alternative exists and is available "that would have less adverse impact on the aquatic ecosystem" (LEDPA), provided that the LEDPA "does not have other significant adverse environmental consequences" to other natural ecosystem components. The LEDPA documents that the alternative with the least impact to the aquatic environment has been chosen.

Per 40 CFR 230.10(a)(3), "where the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special

aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise.”

For simple projects, the alternatives could conceivably consist of a build and a no build. Typically, the no build option will not satisfy the purpose and need of the project, but it needs to be retained for comparison purposes. As proposed projects become more complex, the alternative analysis also becomes more comprehensive. The alternative chosen for construction must satisfy the purpose and need defined for the project.

The decision option to deny a permit results in the “no action” alternative (i.e., no activity requiring a Corps permit).

5.3 MITIGATION SEQUENCING

Mitigation sequencing refers to the process of first **avoiding** impacts, then **minimizing** impacts to the extent possible, and finally replacing whatever can't be avoided or minimized (unavoidable impacts) through compensatory **mitigation**. The underlying assumption is that permits will only be issued for unavoidable impacts.

5.3.1 Avoidance

Avoidance is the first step in the mitigation sequence. Avoidance means designing your project to avoid impacting aquatic resources during and after construction. It also means that there is no direct loss of an aquatic resource or function(s) associated with the resource. It should be one of the first considerations in project design. Too often, project designers move quickly past the avoidance step and begin looking for ways to compensate for impacts that could be reasonably avoided.

Most avoidance measures include either moving the construction to a new location, shifting or eliminating a portion of the project to eliminate an impact, or similar. Listed below are some general examples related to lot design:

- Configure the lots to completely avoid aquatic resource encroachment.
- Reduce the number of lots to avoid aquatic resource disturbance.
- Provide adequate yard space for future homeowners to add a deck, shed, or pool to their property without impacts to aquatic resources.
- Avoid subdividing lots such that they create a self-imposed hardship.

5.3.2 Minimization

Minimization is the second step in the mitigation sequence. Minimization means reducing the amount of impacts to the extent practicable when impacts cannot be avoided in step one of the mitigation sequence. After determining that there is no practicable alternative that meets the project purpose and avoids impacts an applicant is required to minimize impacts. Most avoidance techniques can also be used to minimize impacts. Minimization reduces the degree to which impacts to aquatic resources affect an area, ecological functions, or both. Minimization measures can be incorporated in many steps of the design process. Examples are enumerated in the 404(b)(1) guidelines at 40 CFR 230 Subpart H (230.7)

Incorporating impact minimization design features when they are practicable and meet the project purpose is required. Design features that are not available because they don't meet safety standards and/or would otherwise be in conflict with other legal and regulatory requirements are not considered practicable. Also consider the need for engineering judgment for some methods. Listed below are some general examples of project design features that have been employed to minimize wetland impacts.

- Design roads and driveways to be as narrow as possible.
- Avoid or limit the number of wetland crossings. If a crossing is unavoidable, design it so that the narrowest section of wetland is traversed or so that it crosses in a previously destroyed or degraded area. (See Chapter 9 for Crossing BMPs).
- Consider shared driveways for entrance and exit to small subdivisions.
- Decrease impervious surfaces and maintain existing drainage patterns.
- Reduce stormwater runoff from impervious surfaces and allow infiltration to compensate for loss of groundwater recharge.
- Span (with a bridge, culvert, etc.) as much of a wetland as possible if crossing is necessary in order to maintain connections between wetland systems.
- Design shared easements, reducing the number of wetland crossings.
- Reconfigure lot shapes to maintain vegetated buffers and protecting wetland functions and values.
- Reduce ditch widths.
- Reduce muck excavation with light weight fill, geotextile, surcharges, etc.
- Narrow road shoulders (unless needed for bikes or pedestrians).
- Use roadway minimum safe sight distances to minimize the need for cut and fill.
- Ensure that the location or design does not significantly reduce the contributing watershed of a wetland, resulting in changes to the hydrologic regime.
- Use bridges rather than culverts.

Contact your local [Corps Field Office](#) for further information.

5.3.3 Compensatory Mitigation

Compensatory Mitigation involves the replacement of lost function(s) resulting from the unavoidable impacts of a project on wetlands and other waters. According to the Clean Water Act, all proposed activities and projects must make every effort to avoid or minimize impacts to wetlands, streams, lakes, rivers, etc.

If impact avoidance and minimization cannot be completely accomplished, then mitigation requirements must be considered, as outlined in the Compensatory Mitigation for Losses of Aquatic Resources Final Rule (33 CFR Part 325 and 332; 40 CFR Part 230) in April 2008.

Several forms of compensatory mitigation are available including restoration, enhancement, creation, and preservation. Restoration involves restoring degraded functions on a site, while enhancement involves improving one or several functions at a degraded site in preference of other functions. For instance, stream enhancement may involve targeting enhancement of functions to improve the fishery, without necessarily improving other aquatic functions. Creation involves development of a wetland or stream where one didn't previously exist, and preservation involves long-term protection of a site that is likely already of high quality (function) and/or is under threat of development. Compensatory mitigation requirements may be satisfied as part of a permittee responsible plan, purchase of credits from a mitigation bank, or in from an in-lieu-fee program.

The Corps reviews each application package for its potential to adversely impact aquatic resources. The [Mitigation Memorandum of Agreement](#) (MOA) between the Corps and EPA was set forth in February 1990 and provides the guidance for the 404(b)(1) guidelines. For projects evaluated under Section 404 of the Clean Water Act, no discharge of dredge or fill materials into waters of the United States shall be approved that does not meet the requirements of the 404(b)(1) guidelines.

When developing a mitigation plan for a proposed activity or project, assistance from a qualified environmental consultant may be necessary, but is not required for the application package to be accepted and reviewed. Contact your local [Corps Field Office](#) for further information.

5.4 401 WATER QUALITY CERTIFICATION

Any permit that involves a discharge into Waters of the U.S. cannot be issued until a Section 401 Water Quality Certification has been issued or waived. States and authorized Tribes have the responsibility of issuing water quality certifications. In cases where a state or tribe does not have authority, EPA is responsible for issuing certification.

Under Section 401 of the Clean Water Act, certificates of compliance with state or tribal water quality standards are required for any discharge of dredge and fill material into waters of the United States.

The water quality agency for the State of Idaho is the Idaho Department of Environmental Quality (IDEQ). As of 2023, the Coeur d'Alene Tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Shoshone-Paiute Tribes of the Duck Valley Reservation issue Section 401 Water Quality Certificates (WQC) for a project located within their tribal reservation boundaries. EPA administers Section 401 Water Quality Certification for tribes that do not have water quality certifying authority within the NWW boundaries.

All individual, nationwide, or regional permits issued by the Corps of Engineers under Section 404 of the Clean Water Act require a Water Quality Certification. If a Section 401 Water Quality Certification is required and not issued by the appropriate agency, then a Department of Army permit cannot be issued. Many NWP and RGP already have certification granted or partially granted.

Section 401(a)(2) of the CWA requires the Corps to notify EPA when they receive a permit application to conduct any activity which may result in any discharge into the navigable waters and a water quality certification for that license or permit from the state in which the discharge originates has been issued. 33 U.S.C. 1341(a)(2).

If, within thirty days of the date of that notice, EPA determines that the discharge “may affect. . . the quality of the waters of any other neighboring jurisdictions, ie, another State or Tribe, EPA is required to notify that “neighboring jurisdiction”, the Corps, IDEQ, and the applicant. The neighboring jurisdiction then has sixty days from receiving EPA’s notification to determine whether the certified discharge “will affect” the quality of its waters so as to violate any of its water quality standards, notify EPA and the licensing or permitting agency in writing of its objection to the issuance of the license or permit, and request a public hearing on its objection. If requested, the federal licensing or permitting agency must hold a public hearing on the neighboring jurisdiction’s objection. At the hearing, EPA is required to submit its evaluation and recommendations concerning the objection. The Corps, based upon the recommendations of the neighboring jurisdiction, EPA, and any additional evidence presented at the hearing, shall condition the permit as necessary to ensure compliance with applicable water quality requirements. If the imposition of such conditions cannot ensure compliance, the Corps shall not issue the license or permit.

5.5 HISTORIC PROPERTIES ON NON-FEDERAL PROJECTS

Whenever a Corps permit is required, a Section 106 review under the National Historic Preservation Act (NHPA) will be completed. Applicants should consider historic properties at the earliest practical time in the planning process. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Historic properties can include archaeological sites or artifacts and historic districts, buildings, or structures. The Corps Project Manager (PM) should begin the Section 106 review as early as possible to keep the project on schedule.

The Corps fulfills the requirements set forth in the National Historic Preservation Act (NHPA), other applicable historic preservation laws, and Presidential directives as they relate to the regulatory program of the Corps of Engineers (33 CFR parts 320–334) by following the procedures set forth in Appendix C to 33 CFR 325—Procedures for the Protection of Historic Properties. The process generally includes these broad steps:

- Initiate the process.
- Identify historic properties.
- Assess effects.
- Achieve resolution.

Early coordination between the Corps and the applicant will help determine if studies and coordination are required. If a survey is required, the Corps will notify the applicant as early as possible. The applicant will then initiate the work and provide findings to the Corps for their consultation with the SHPO and/or THPO.

Upon receipt of a completed permit application, the first step is to determine if the proposed activity, or “undertaking,” is a type of activity that could affect historic properties. The Corps is solely responsible for determining the undertaking. A permit area is constrained by the extent of Federal control and responsibility over a particular project, ie, the undertaking.

If there is no undertaking, or the undertaking is a type of activity that has no potential to affect historic properties, the agency has no further Section 106 obligations. Note that the Corps must concur with this determination.

If the activity does have the potential to affect historic properties, or the Corps doesn't concur with the applicant on a suggested “no potential” determination, then the Corps will determine, in consultation with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), if historic or archeological properties are present, or if a survey is needed in order to determine if such properties exist within the project area.

If there are historic properties present, then a determination must be made: “no historic properties affected,” or “historic properties affected.” For “no historic properties affected,” the SHPO/THPO is notified, and documentation is provided, completing Section 106. For “historic properties affected,” an assessment of the effects must be made. That results in a determination of “no adverse effect,” or “adverse effect.” For “no adverse effect,” the SHPO/THPO is notified, and documentation is provided, completing Section 106.

If there is a determination of “adverse effect,” then the applicant and Corps must each agree with the SHPO/THPO about ways to avoid, minimize, or mitigate adverse effects. If agreement is reached, then the agreement is typically formalized in a Memorandum of Agreement (MOA). If agreement cannot be reached, the Corps must obtain formal advisory comments from the Advisory Council on Historic Preservation (ACHP), which are sent to the head of the agency, who then must consider them in making a final decision about whether the project will proceed.

Once this process is complete, then the NHPA Section 106 requirements have been fulfilled. It should be noted that the process may result in additional permit conditions, which may include such things as site monitoring.

A few things to note:

- Typically, an IP public notice starts the process.
- A GP type project may still need to go through 106 coordination even though there is no public notice. This would become apparent during the verification process the Corps completes for reporting type GPs.
- Although the applicant may initiate the historical review process and may receive a letter back from the SHPO, the letter does not satisfy the Section 106 coordination process.

More information on the 106 process can be found here:

<https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section->

[106#:~:text=Section%20106%20gives%20the%20ACHP,historic%20properties%20in%20their%20communities.](#)

The Idaho SHPO has provided an interactive map showing Idaho's National Register of Historic Places (NRHP):

<https://idaho.maps.arcgis.com/apps/webappviewer/index.html?id=4b31337013a84095a598d4e3e1bdb3e2>

The Idaho SHPO also provides a consultant list as a reference for applicants "seeking professional consultants with expertise in the varied fields of historic preservation." That list is posted online here: https://history.idaho.gov/wp-content/uploads/Idaho_HP_Consultants_List.pdf

5.6 SECTION 10 NAVIGABLE WATERS IN IDAHO

The Rivers and Harbors Act of 1899 requires a Department of Army permit be issued for specific activities on navigable waters of the United States. Navigable waters have been designated based on their past, present, or potential use for transportation or interstate commerce. Examples of permitted activities include construction, excavation, deposition of materials in, over or under navigable waters, or any work that would affect the course, location, condition or capacity of navigable waters.

Under the Rivers and Harbors Act, NWW is responsible for the following navigable waters within the State of Idaho:

- Bear Lake: Portion within the State of Idaho
- Clark Fork River: Mouth upstream to River Mile 4.0
- Clearwater River: Confluence with the Snake River upstream to River Mile 40.5 (mouth of North Fork Clearwater River)
- North Fork of Clearwater River: Confluence with the Clearwater River, including Dworshak Reservoir, upstream to River Mile 57.9
- Kootenai River: Bonners Ferry to the Canadian border
- Lake Pend Oreille: Albeni Falls Dam to elevation 2062.5 NGVD
- Pack River: Mouth upstream to River Mile 1.5
- Pend Oreille River: Idaho-Washington border upstream to Albeni Falls Dam
- Salmon River: Confluence with the Snake River upstream to River Mile 259 (City of Salmon)
- Snake River: Idaho-Washington border to River Mile 445.5

A map showing these waters is available here:

<https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Section-10-Waters/>.

5.7 ENDANGERED SPECIES COORDINATION

Section 7(a)(2) of the Endangered Species Act (ESA) requires Federal agencies to consult with USFWS and/or NMFS to ensure that actions they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitats.

When the project site is located in an area of known federally listed species or habitat, the Corps review will include a determination regarding compliance with Section 7 of the ESA before authorizing the activity. Project proposers should understand that federal or state endangered species regulations may apply whether or not a Corps permit is required.

Applicants and the Corps typically use USFWS' Information for Planning and Consultation (IPaC) (<https://ipac.ecosphere.fws.gov/>) for preliminary identification of any USFWS managed resources and suggested conservation measures for projects. Information on NMFS species and critical habitats, including maps, can be found here: <https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast>. Idaho is split into two geographic areas for NMFS' ESA consultations: Snake River North, and Snake River South.

There are two possible determinations: “no effect” and “may affect.” A determination of “no effect” is (in general) based on presence of an ESA-listed species and/or designated critical habitat, and the potential effects a proposed permit action may have on the species or critical habitat. A determination of “no effect” should be documented and maintained in a written record that describes the supporting rationale. In general, “no effect” determinations are infrequent for permit actions in Idaho where ESA-listed species or designated critical habitats are present.

The Corps must consult with the USFWS and/or NMFS when any Section 404 or Section 10 permit activity “may affect” a listed species or designated critical habitat.

The consultation process can vary depending on the complexity of the project or action. Both USFWS and NMFS work with the applicant or their consultant as the “non-Federal representative” and the Corps to develop the documentation needed to initiate and complete consultation.

For a “may affect” determination, the applicant must develop and provide a biological assessment (BA). There are tools available to help an applicant with development of a BA, including (but not limited to):

- 50 CFR 402.12, available online at: <https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402>
- The “Endangered Species Consultation Handbook” (handbook), available online at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Historically a BA was not necessarily required for “informal consultation, but both USFWS and NMFS practices now require a BA for both “informal” and “formal” consultations.

The outcome of consultation will be: written concurrence from USFWS and/or NMFS that the permit action may affect, but is not likely to adversely affect ESA-listed species and/or designated critical habitat(s); or, when the action may affect and is likely to adversely affect ESA-listed species and/or designated critical habitat(s), issuance of a biological opinion with terms and conditions from USFWS and/or NMFS.

In cases where USFWS or NMFS finds that the action could jeopardize the continued existence of a species or result in the destruction or adverse modification of designated critical habitat, they would issue a “jeopardy” or “adverse modification” biological opinion, which would include a reasonable and prudent alternative (RPA) to the proposed action under review for permit. Early coordination with USFWS and/or NMFS is critical in these cases.

Additional tools have been provided by USFWS’s North Idaho Office to assist applicants with preparing a sufficient BA. Those tools can be found in Appendix H.

5.8 ESSENTIAL FISH HABITAT

The consultation requirement of Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) directs Federal agencies to consult with NMFS on proposed actions, including Section 404/10 permitting actions, that may adversely affect Essential Fish Habitat (EFH). The Pacific Fishery Management Council (PFMC), one of eight regional fishery management councils established by the MSA, has designated current and historic EFH for Chinook, and historic EFH for Coho salmon in Idaho.

An 'adverse effect' is any impact that reduces the quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

Applicants should determine if there is EFH in their project area, and document whether it’s present or not. NMFS’ [EFH Mapper tool](#) is helpful when trying to determine if the proposed action is located within or adjacent to EFH. Applicants should also include an analysis of effects to EFH, as well as any documentation and coordination efforts with NMFS with their application package.

A consultation is required if:

1. A federal agency has authorized, funded, or undertaken part or all of a proposed activity. For example, a Section 404/10 permit.
2. The action will “adversely” affect EFH. An adverse effect includes direct or indirect physical, chemical, or biological alterations.

Early coordination helps applicants integrate habitat conservation measures into their plans and may eliminate the need for a full consultation. If an action will not adversely

affect EFH, and NMFS agrees, no consultation is required. If an action will adversely affect EFH, then:

1. The applicant/Corps implementing (action) agency/applicant/Corps provides notification of the action to NMFS.
2. An EFH assessment is submitted to NMFS.
3. NMFS reviews the EFH assessment, and, if necessary, provides EFH conservation recommendations to the Corps within 30-60 days.
4. The Corps responds to NMFS within 30 days with information on how the applicant will proceed with the action. How the conservation recommendations will be met become a permit condition.

In Idaho, EFH generally overlaps with ESA-listed fish distribution and/or designated critical habitat under NMFS jurisdiction. Because of this, EFH consultations are generally conducted at the same time as ESA consultations with NMFS.

More information on the consultation process can be found here:

[https://www.fisheries.noaa.gov/national/habitat-conservation/consultations-essential-fish-habitat#:~:text=The%20Consultation%20Process,-When%20a%20federal&text=The%20implementing%20\(action\)%20agency%20provide,s,agency%20within%2030%2D60%20days.](https://www.fisheries.noaa.gov/national/habitat-conservation/consultations-essential-fish-habitat#:~:text=The%20Consultation%20Process,-When%20a%20federal&text=The%20implementing%20(action)%20agency%20provide,s,agency%20within%2030%2D60%20days.)

5.9 TRIBAL CONSULTATION

The Corps Regulatory Program recognizes the sovereign status of American Indian and Alaska Native Tribal Governments (Tribes), and our obligation for meaningful consultation on a Government-to-Government basis. Consultation can occur if a federal action may affect historic properties, including sites of traditional religious or cultural significance to Tribes, in accordance with the NHPA. Additionally, the Corps as a federal agency has Tribal Trust Responsibilities including the protection of Tribal Treaty Rights. The Walla Walla District fully supports tribal self-governance and government-to-government relations between federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Walla Walla District on a government-to-government basis.

The views of each Tribe regarding protected rights and resources will be accorded due consideration. Tribes are invited to actively participate in the Federal decision-making process regarding protected tribal rights and resources. Depending on the location and scope of work, the Corps may have to consult with one or more Tribes as part of the application review process. To help applicants, the Corps posted a Tribal Areas of Interest (AOI) map for Idaho here:

<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll10/id/11871>

Consultation is defined in the Corps Tribal Consultation Policy as, “Open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect and shared responsibility. To the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the

earliest planning stages, before decisions are made and actions are taken; an active and respectful dialogue concerning actions taken by the USACE that may significantly affect tribal resources, tribal rights (including treaty rights) or Indian lands.”

Consultation may be informal or a formal process of negotiation, cooperation or discussions between an American Indian Tribe and the Corps. Once initiated, consultation must be completed before the Corps can finalize a permit decision. Corps PMs work with the Walla Walla District Tribal Liaison for these consultation efforts.

The Corps will make every effort to avoid delays in the permit evaluation, but large or controversial projects may require complicated consultation and extended timeframes. If additional cultural resource investigations result from tribal consultation, the applicant may be required to initiate additional survey work or involve tribal staff in field investigations.

There is additional policy and other information on the Corps Headquarters website here: <https://www.usace.army.mil/Missions/Civil-Works/Tribal-Nations/>

5.10 WILD AND SCENIC RIVERS

Applicants that need verification if a project is not on, or will not impact, a designated wild and scenic river, or a river on the Nationwide Rivers Inventory (NRI), contact the appropriate National Park Service office provided by NPS here:

<https://www.rivers.gov/project-review>

Rivers listed in Idaho can be found here <https://www.rivers.gov/map> and include:

- Battle Creek
- Big Jacks Creek
- Bruneau River
- Cottonwood Creek
- Deep Creek
- Dickshooter Creek
- Duncan Creek
- Jarbidge River
- Little Jacks Creek
- Middle Fork Clearwater River
- Middle Fork Salmon River
- North Fork Owyhee River
- Owyhee River
- Rapid River
- Red Canyon
- Saint Joe River

- Salmon River
- Sheep Creek
- Snake River
- South Fork Owyhee River
- West Fork Bruneau River
- Wickahoney Creek

5.11 OTHER ISSUES

5.11.1 Disposal of Excess Material

Some projects, especially those requiring major grading in less than ideal soils, may result in excess materials to be disposed of outside of the immediate project area. The Corps may request the location of any off-project disposal sites. Typically, these unsuitable soils become the property of the applicant, contractor, etc., and must be disposed of properly. Special provisions and specifications for the project should prohibit the disposal in special aquatic sites or other sensitive areas, but the applicant, contractor, etc. should be monitored to assure compliance. There may also be local ordinances or permits required to place material on private property.

5.11.2 Borrow Sources

A standard condition of most permits requires a cultural resources survey if borrow material does not come from a licensed commercial source. This becomes an issue when common borrow is excavated from private landowner sources to save on haul distances. The applicant must inform the Corps of the location of any new, unlicensed borrow sources and the Corps will determine whether additional cultural resources investigation or surveys are necessary.

5.11.3 Emergency Situations

Corps Division engineers are authorized to approve special processing procedures in emergency situations. An emergency is a situation that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process and application under standard procedures (33 CFR part 325). It is recommended that an applicant coordinate with the Corps to determine the best course of action, which often is a GP.

5.11.4 State and Local Permits/Approvals

Although this document only addresses the Corps permit process, all projects need to also assure compliance with state and local permit processes. Some examples include (but are not limited to):

- The Idaho Stream Channel Protection Act requires that the stream channels of the state and their environment be protected against alteration for the protection

of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. The Idaho Department of Water Resources (IDWR) must approve in advance any work being done within the beds and banks of a continuously flowing stream.

- Idaho's Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho require an encroachment permit from the Idaho Department of Lands (IDL) prior to building an encroachment (ex., dock, marina, or shoreline stabilization) on a navigable lake. Encroachments on navigable lakes are regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment.

In some cases, the process has been streamlined for the applicant. For example, the Corps, the Idaho Department of Water Resources (IDWR), and Idaho Department of Lands (IDL) have established a joint application process for activities impacting jurisdictional waterways that require review and/or approval of both the Corps and the State of Idaho. The same application is used by the Walla Walla District Corps of Engineers, IDWR, and IDL. You only need to fill out the application once; you can send the same copy to all agencies as needed.

5.11.5 Permanent Type Conversions

When a wetland will be permanently converted to a new type, for instance when a scrub shrub wetland will be converted to a fresh meadow to allow for sight distance improvements, the need must be demonstrated. A wetland mitigation sequencing process should be followed that shows the engineering need for the permanent conversion. See [Appendix C](#).

6 SUMMARY

This guidance was developed to help an applicant through the Section 404 and Section 10 permit process. It did not address other state or local permits or approvals that may be necessary before a project can be constructed. There are, however, several points that should be re-emphasized here:

- Non-federally funded projects that receive a federal permit must still comply with NEPA, ESA, NHPA, etc.
- Early coordination/communication with the Corps is strongly encouraged.
- Wetland delineations should be completed as early as possible so permit decisions can be based on complete information.
- Wetland delineations can be reviewed and approved in advance of a permit application.

- Permit application packages need to have all required information and be submitted early.
- When the Corps has determined that sufficient information has been submitted, the applicant should be assured of a timely response by the Corps.

APPENDIX A: PRE-APPLICATION CHECKLIST

The following information is intended to provide guidance to help fill out and complete the Joint Application for Permit. This is provided in addition to what is found on the District's "Information on Applying for Permits" website: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Joint-Application-for-Permit/>

Attachment A: Information Required for a Complete Application for a GP, NWP, LOP or IP

The following is a list of information that is needed, at a minimum, for a general permit (GP) review pursuant to Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (RHA). GPs include Nationwide Permits (NWP), Regional General Permits (RGP), and Programmatic General Permits (PGP), etc. This list of information is referred to as the pre-construction notification (PCN) requirements. The Corps uses the PCN to ensure that the proposed activity is eligible for GP authorization, and will have no more than minimal adverse effects, individually and cumulatively. While PCN requirements will vary depending on the permit type utilized (particularly for RGPs and PGPs) the PCN requirements for NWPs are defined in General Condition 32 of the NWPs (*See the final rule published in the January 13, 2021, issue of the Federal Register at 86 FR 2867–2874 for the text of section C, General Conditions*).

Individual Permits (Standard Permits and Letters of Permission) do not have specific PCN requirements, but rather information necessary for a complete application as defined in the regulations at 33 CFR 325.1(d) and 33 CFR 325.3(a).

See Attachment B for a comprehensive list of the information that may ultimately be needed to complete a permit evaluation. Attachment C provides supplemental guidance for work in waters associated with transportation projects.

PCN Information Required for a General Permit Authorization^{1,2}. The PCN must be in writing and include the following information. The joint permit application form can be used as long as it contains all the information listed.

- Name, address, and telephone numbers of prospective permittee;
- Location of the proposed project;
- Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- A description of the proposed project and scope of work;

¹ This list is specific to NWPs. Other general permits will vary in their information requirements depending on location and District where the GP is to be utilized.

² The list of items below is not exhaustive. Additional items may be required depending on the location of the project, type of project, regional conditions added to the NWP, etc.

- All direct and indirect adverse environmental effects the project would cause;
- Drawings or sketches should be provided as necessary to show that the activity complies with the terms of the general permit;
- Identification of aquatic resources in the project area (in some cases the Corps may require a delineation of the project area prepared in accordance with the current Corps of Engineers Wetland Delineation Manual);
- A statement regarding compensatory mitigation (33 CFR 325.1(d)(7));
- For non-federal permittee's a statement about the potential for the project to affect ESA listed species and/or the critical habitat. Federal permittee's must provide documentation demonstrating compliance with the ESA.
- For non-federal permittee's a statement about the potential for the project to affect historical properties. Federal permittee's must provide documentation demonstrating compliance with the Section 106 of the National Historic Preservation Act.
- Any other general or individual permits used or intended to be used to authorize the project.

Information Necessary for a Complete Application for an LOP or IP. The following list of information should be submitted if an applicant's proposed activity is not eligible for authorization under the GP and must be evaluated under the Letter of Permission (LOP) or Individual Permit (IP) evaluation process, or if the applicant does not know what type of permit would be required. The Joint Application for Permits utilized by Idaho Department of Water Resources (IDWR), Idaho Department of Lands (IDL), and the Corps-Walla Walla District may be used as long as it contains all the information listed below.

- Applicable statutory authority or authorities;
- The name and address of the applicant;
- The location of the proposed activity;
- A brief description of the proposed activity, its purpose and intended use
- Drawings/plans showing ALL proposed and related activities. Three types of drawings are required to accurately depict work activities:
 - the vicinity map,
 - the plan view drawing, and
 - the sectional view drawing
- the names and addresses of adjoining property owners;
- the location and dimensions of adjacent structures;
- Proposed schedule for completion of the activity;

- Name/address of adjoining property owners;
- Description of any planned dredging activities and any filling activities, including type, composition, quantity, and locations;
- List of all authorizations required for the proposed activity, including all approvals received/denied;
- Applicant signature and date.

Attachment B: Comprehensive Permit Application Checklist

An application for a Department of the Army Individual permit under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 will be determined to be complete when the U. S. Army Corps of Engineers (Corps) receives sufficient information to issue a public notice. The application should address all activities that the applicant plans to undertake that are reasonably related to the same project and for which a Department of the Army permit would be required. See Attachment A for a list of information that is needed, at a minimum, for a complete application and/or a general permit review. Attachment C provides supplemental guidance for work in waters associated with transportation projects. The following is a comprehensive list of the information that may ultimately be needed for a permit evaluation pursuant to Section 404 of the Clean Water Act.

Contact Information:

- Name, address, telephone and email and fax numbers of the applicant.
- Name, title, address, telephone and fax numbers of the authorized agent, if applicable.

Project Location:

- Project street address, municipality, county, and state.
- Location/Vicinity map indicating project location and driving directions to the site.
- Legal description of property (Section, Township and Range).
- USGS Topographical Quadrangle map labeled with quad name and project location.
- Aerial photos indicating project location
- Latitude and Longitude in degrees, minutes, and seconds.

Project Description:

- Project name.
- Project purpose, need, and intended use.
- Name of nearest waterbody.

- _ If a transportation project, the ITD Key No.
- _ The anticipated letting date and/or anticipated date of construction.
- _ Description of the existing land use.

Aquatic Resources Delineation/Wetland Delineation report, conducted in accordance with 1987 Corps of Engineers Wetland Delineation Manual and any supplemental guidance, as applicable, including presence/absence and type of wetlands and stream/rivers for the entire project site (Field verification by the Corps of the delineation may be required). If no report has been prepared, include a description of the methods used to identify aquatic resources for the project site.

Jurisdictional Determination (JD) Form. The Corps typically uses a preliminary jurisdictional determination when beginning a permit evaluation. Applicants generally receive a preliminary JD form from the Corps as part of the review. Upon receipt we ask that the form be signed and returned to the designated Corps PM. Approved JDs will be completed and provided at the request of the applicant or when the Corps determines that an approved JD is necessary.

Project narrative describing all project features and anticipated temporary, permanent, and indirect environmental impacts, including method(s) of construction:

- A complete description of the proposed activity. Include sufficient information concerning the nature of the activity to allow a complete review of potential impacts. The application must include all activities the applicant plans to undertake that are reasonably related to the project and other project related areas within the overall permit area(s) (examples: fill activities, coffer dams, borrow and disposal sites, access roads, equipment ramps, temporary work or staging areas, dredging, in stream work, ditch maintenance or construction, etc.). Include impacts associated with borrow pits, disposal areas, staging areas, etc. The application must include a description of the type of structures, if any, to be constructed or culverts to be installed or replaced and a description of the type, composition, and quantity of material to be discharged. A description of the proposed work should include such information as the height, width, and length of structures and fills; widths of cleared rights-of-way, location of all impacted waters, and the size and spacing of culverts, bridges and other water crossings.
- Type(s) and amount of fill material (cubic yardage) proposed for discharge into and/or excavated from WOUS including below OHW of streams.
- Surface area of wetlands (by wetland type) or other waters filled in square footage/acreage.
- Surface area of wetlands (by wetland type) cleared and method of clearing. The purpose of the wetland clearing. Will the clearing be a temporary or permanent wetland conversion?
- Information on hydrology or hydraulics.

- Location and description of any dredged material disposal site.
- For activities involving dredging in navigable waters of the United States, a description of the type, composition, and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

Environmental Documentation:

___ For General Permits, provide an impact assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

___ For Individual Permits, submit any federal or state environmental analyses that have been prepared to address the proposed work, such as an environmental impact statement, an environmental assessment.

___ Include any analyses or studies to determine effects, such as hydrology, hydraulics, lateral drainage, effects on factors such as fish and wildlife values, water flow and circulation, or other public interest factors.

Project Plans/Drawings

___ Include plans, profiles, and cross-sectional views (8.5 x 11-inch sheets) of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters and wetlands. Include bridge and culvert plans. Plan-view drawings must clearly indicate the direction of water flow and must clearly show a delineation of wetlands and water features within the permit area that are potential waters of the United States. Plan-view drawings should show the limits of any temporary or permanent impacts in wetlands and waterways. A cross-section/elevation/profile must show existing and proposed water depths and land elevations relative to the ordinary high water mark when applicable.

A written statement regarding aquatic resource avoidance and minimization:

___ A written discussion of the alternatives considered and the rationale for selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. Also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

___ Discuss any alternatives considered that would avoid or have less impact on aquatic resources.

___ Discuss measures that will be taken to avoid and/or minimize aquatic resource impacts.

Compensatory Mitigation³

___ Discuss any actions that will be taken to compensate for unavoidable impacts to wetlands or waters.

___ A compensatory mitigation plan for unavoidable adverse impacts to the aquatic environment may be required. This plan should include a description of

³ A draft or conceptual compensatory mitigation plan may be submitted with the initial application for permits and is sufficient to issue a public notice, however a final mitigation plan will need to be submitted to the Corps prior to issuance of a permit.

proposed appropriate and practicable actions that would restore, enhance, protect, and/or replace the functions and values of the aquatic ecosystem unavoidably lost in the project area because of the proposed work.

A mitigation plan should include:

1. Objectives or goals of the project
2. Site selection rationale
3. Site protection instrument
4. Baseline information
5. Determination of credits
6. Mitigation work plan
7. Maintenance plan
8. Performance standards
9. Monitoring requirements
10. Long-term management plan
11. Adaptive management plan
12. Financial assurances

Endangered Species Act

___ Provide any information that addresses whether any species listed as endangered or threatened under the Endangered Species Act (ESA) or designated critical habitat might be affected by and/or found in the vicinity of the proposed project. Direct coordination with the United States Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) concerning the potential impact of the entire project on endangered and threatened species is strongly encouraged prior to submitting a permit application. Provide any FWS correspondence concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. If the project is funded by a federal agency (e.g., FHWA) provide that agency's documentation of compliance with the ESA. In the absence of other federal agency documentation of compliance or in the case of state or locally funded projects, the Corps maybe required to consult with the FWS and/or NMFS prior to issuing any authorization.

Section 106 of the National Historic Preservation Act

___ Provide any information that documents whether any cultural resources or historic structures, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of the proposed project. Include the results of any cultural resource surveys.

___ Provide any letters or information from the State Historic Preservation Office (SHPO) indicating whether the project is located on property listed or eligible for listing on the NRHP, and/or the presence of historic or archaeological resources. If the project is funded by a federal agency (e.g., FHWA) provide that agency's documentation of compliance with Section 106 of the National Historic Preservation Act. In the absence of other federal agency documentation of compliance or in the case of state or locally funded projects, the Corps maybe required to consult with the

SHPO prior to issuing authorization. If the project involves a bridge replacement or improvement and the existing structure is over 50 years old, it is likely that at a minimum, a historic structure evaluation to determine the structure's potential historical significance would be required.

Tribal Consultation and Corps Trust Responsibilities

___ Provide any information addressing the potential to affect tribal interests and the needed level of coordination and or consultation with the appropriate Tribal governments.

Other information:

___ Copies of previous Federal or State approvals and any other permits applied for, used, or intended to be used to authorize any part of the proposed project or related activity.

___ Letters or information from the State agency(s) indicating results of research from the Natural Heritage Database.

___ Information regarding compliance with CWA Section 401 water quality certification requirements.

___ Project review timelines. Include a discussion of the planned time frame for completing the proposed project. The Corps will compare this time frame to the time required to complete the permit evaluation, based on the applicable permit type (GP or IP), any required noticing, receipt of information requests, the possibility of receiving public comments, timelines for required coordination (106, ESA), any environmental analyses, and provide feedback regarding the permit evaluation time frame.

Attachment C: Additional Application Guidance for Transportation Projects

Purpose & Need for the Project The reason why the project is needed (Check all that apply)

- Infrastructure Deficiency (Structurally deficient bridge, Poor Pavement, etc.):
- Geometric Deficiency (Functionally obsolete or narrow bridge, Inadequate vertical clearance, Narrow shoulders, sidewalks not meeting ADA requirements, etc.):
- Safety (Describe problem or feature contributing to safety issue):
- Inadequate Capacity (Traffic volume exceeds existing capacity):
- Legislative Mandate (Provide copy of the mandate)
- Other (Economic development, Connectivity, Emergency Repair, etc. Describe).

Proposed Work: (Check all that apply)

- Roadway Capacity Expansion (e.g., from 2 lanes to 4 or 6 lanes)

- _ New or offset alignment
- _ Add/improve shoulders
- _ Overlay Pavement repair
- _ Vertical horizontal curve corrections
- _ Signalization Auxiliary/Turn lanes Sidewalks
- _ Bridge replacement
- _ Bridge rehabilitation
- _ Other (Describe)

Description of Existing facility (Roadway):

No. lanes:

Shoulders: /type (Sod, Paved, etc)

Functional classification

Traffic: Present ADT

Future ADT (20 year Projection)

Description of Existing facility

(Bridge): Bridge No.:

Location: Existing Bridge Width:

Name of water body or facility crossed (RR, etc):

Date Bridge was constructed:

Type of bridge:

On MnDOT historic bridge list?

Description of Proposed Improvement Work

Proposed Typical:

No of Lanes

Width of Driving Lanes ft

Type of Driving Surface (Paved, Gravel, etc.)

Width of Shoulder ft

Type of Shoulder (paved, Gravel, Sod, etc.)

Proposed Bridge:

Proposed Structure (Span, RCB, etc.)

Proposed Bridge Width ft

Project Description:

PROVIDE A BRIEF DESCRIPTION OF THE PROPOSED WORK (e.g., Adding shoulders & turn lanes from Sec Line EW 65 to EW 66 on NS 467, Bridge replacement on EW 67 over Coon Creek, Reconstruction of Rock Creek Road from 2 to 4 lane section from 24th Street to 36th Street, etc.)

APPENDIX B: CASE STUDIES/EXAMPLES

Example #1: General Permit (GP, RGP)

The vast majority of proposals are for minor, routine activities that have minor impacts to the aquatic environment. According to the 404 (b) (1) Guidelines, “It is generally not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in routine cases.”

The following is a scenario that has been repeated multiple times over the past several years in an effort to make government more accountable, or to provide an economic stimulus to the economy by providing construction jobs. The project had been scheduled for construction in three years, but due to special federal funding, it must be advanced and construction started within six months.

Project Description: Mill and overlay six miles of a two-lane roadway with the addition of four right turn lanes.

Wetland Impacts: 0.21 acre of various wetland types.

Project Development: First, determine the level of wetland delineation that will be required. For many small projects a limited delineation may be sufficient for minor impacts. If delineations have already been completed, plan views of the impact areas should be provided. If not, a close approximation is acceptable. For instance, if a new turn lane is added, an impact estimate could be as simple as computing width times length of a typical lane (12 x 480 = 5760 sf). Determine if final delineations can be completed in time for a permit application or if some of the work must be eliminated in order to deliver the project.

Project Timeline: A field review of the project during the growing season should be built into the timeframes listed below to allow the Corps to view the delineated wetlands and other concerns. The following timeline represents the minimum times to allow for public interest review and permit processing. If additional information is requested, permit processing could be delayed and ultimately, project development schedules lengthened. Ideally, all work will be completed as early as possible to prevent any delays to the letting and construction schedule.

6 months prior to bid opening: Make early contact with the Corps project manager to explain compressed schedule, discuss purpose and need and what will be required for a complete application.

5 months prior to bid opening: Complete delineations, submit to Corps for review and begin plan preparation. Assure that the project will stay within NWP and/or RGP thresholds.

4 months prior to bid opening: Submit permit application. Final impacts will not be known yet, since the design plans haven't been completed, however, close approximations will allow the Corps to begin their review.

2 months prior to bid opening: Contact the Corps project manager with the final impact amounts and confirm that the project will qualify for a NWP and/or RGP. Permit needs to be obtained by the bid opening date, which under normal circumstances is about two months before construction. Additional concerns such as compliance with Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Individual Section 401 Water Quality Certification, Tribal Coordination/Consultation, Compensatory Mitigation, etc., may stretch timelines substantially.

Construction: Road authority monitors the construction to assure compliance with the permit conditions.

If impact totals, or minor revisions to the proposal occur late in the process, they can usually be handled with a letter to revise the respective Corps files and the project files.

Example #2: Letter of Permission (LOP)

A typical LOP project may include construction of a dock in a water that is considered navigable under Section 10 of the Rivers and Harbors Act (RHA). The LOP in Idaho is a form of an individual permit for minor Section 10 activities that do not also require a Section 404 Clean Water Act permit. Public Notice is not necessary, however the activity will be coordinated with State and Federal Agencies.

Project Description: Construct a 350 square foot pile supported private dock in a Section 10 “navigable” water.

Wetland Impacts: None

Project Development: It is recommended to allot up to 4-6 months to complete the necessary coordination for permitting in Idaho for a project such as this given that many of the Section 10 waters in Idaho are inhabited by ESA listed fish. ESA Section 7 consultation is therefore likely. To streamline this consultation it is recommended that applicants provide a Biological Assessment with their application. Additionally, many of these areas are also located in culturally sensitive areas where cultural resources may be located. Seasonal limitations (snow) may preclude the performance of archaeological surveys until spring. Even during snow covered conditions, however, a survey may still be possible if the ground is not frozen and snow is not too deep.

The proposer needs to be aware that the state of Idaho, Idaho Department of Lands (IDL), also often regulates the installation of structures and has specific design and size limitations.

Project Timeline: The following timeline represents the minimum times to allow for coordination and permit processing. If additional information is requested, permit processing could be delayed and ultimately, project development schedules lengthened. Ideally, all work will be completed as early as possible to prevent any delays to the schedule.

4-6 months months prior to construction: Make first contact with the Corps project manager to discuss information that will be needed for the permit review process. This

may include a Biological Assessment for ESA consultation and/or a cultural resources survey under Section 106 of the NHPA. Complete preliminary investigations to determine potential impacts and confirm applicability of the LOP. Decide when final wetland delineations need to be completed, taking into account seasonal limitations and the project schedule.

4 months: Submit a complete permit application to the Corps and/or IDL. In addition you'll want to submit a Biological Assessment and/or cultural resource survey as indicated above. Failure to submit these items may lead to project delays. Reach out to the Corps Project Manager assigned to your action and ensure your application is complete and they all necessary information to proceed.

Construction: Monitor the construction to assure compliance with the permit conditions.

Example #3: Individual Permit (IP)

These are typically major construction projects where a road is reconstructed in place or a new road is constructed on a new alignment. These projects are complicated enough and have substantial enough impacts to warrant a fully comprehensive review and public noticing to ensure that all measures have been taken to assure that the Least Environmentally Damaging Practicable Alternative has been chosen and impacts are limited to only what is necessary to achieve the project purpose and need.

Project Description: Regrade four miles of county highway, including deepening and widening ditches, expanding the roadway to twelve foot lanes and eight foot shoulders.

Wetland Impacts: **9.69** acre of permanent; **3.30** acres of temporary.

Project Development: There will be new right of way acquired, including some farmland. A project of this magnitude will take from one to two years for project development up through permit issuance.

Project Timeline: A field review of the project during the growing season should be built into the timeframes listed below to allow the Corps to view the delineated wetlands and other concerns. The following timeline represents the minimum times to allow for public interest review and permit processing. If additional information is requested, permit processing could be delayed and ultimately, project development schedules lengthened. Ideally, all work will be completed as early as possible to prevent any delays to the letting and construction schedule.

Up to a year prior to construction: Early coordination is definitely strongly recommended for a project of this magnitude. Hold a pre-application meeting with the Corps. Larger impacts will translate into a more in depth scrutiny of alternatives and the purpose and need. Confirm the need for an individual permit and begin preliminary assessment of wetlands within the corridor. Right of way process begins and preliminary construction limits are computed. Complete wetland delineations at least one summer prior to construction. Prepare maps of the impact areas and supporting documentation. Schedule a Corps field review of delineations during the growing season as necessary.

6 months prior to construction: Submit permit application at least six months prior to construction so the Corps project manager can request any required additional information necessary for the public notice. Contact the Corps project manager to confirm that all necessary information has been received.

2 months prior to construction: Check-in with the Corps Project Manager assigned to confirm timelines and ensure other associated actions are in progress and/or nearing completion, i.e., issuance of Section 401 Water Quality Certification by IDEQ, Tribal coordination/consultation, ESA consultation, NHPA Section 106 consultation, etc.

1 month prior to construction: A final permit should be obtained before bid packages are distributed to contractors.

Construction: Road authority monitors the construction to assure compliance with the permit conditions.

Example #4: Exempt Project

These projects are typically relatively minor construction activities where the bulk of the work is confined to the roadway surface.

Project Description: Mill and inlay six miles of rural highway and repair eight culverts. The culvert repairs include replacing aprons, cleaning and minimal ditch restoration activities. One culvert will be cleaned and a liner placed to extend its life.

Wetland Impacts: **0.05** acre of temporary impacts.

Project Development: This work should be exempt from Section 404 permitting, however, it is prudent to document the work and have the project reviewed by the Corps project manager for concurrence. Document that the temporary impacts are for the “maintenance of drainage ditches” and repair of “currently serviceable transportation structures” and therefore should not require a permit. Make sure that the maintenance of the ditches only returns the ditch to its original dimensions by removing accumulated sediment. Temporary impacts may be estimated using abbreviated and/or remote procedures. It is possible to self-determine an exempt activity, however Corps staff are available to verify an exempt activity if requested.

Project Timeline: Project timelines for these types of projects are highly variable. There may be years of development time or an emergency repair may need to be completed within days or even hours. The best advice is to provide as much information as possible, as early as possible to the Corps so that the exemption can be confirmed and good working relationships are maintained.

APPENDIX C: Types of Impacts

There are several situations that lead to wetland impacts for road projects. While the information that follows is relative to a road project many of the impact types discussed are also seen in other project types, i.e., residential and commercial development, bank stabilization, utility line installation and maintenance, etc.

Road improvements often include driving lane and shoulder widening, flattening of inslopes and ditch modifications. In some cases new roads are constructed on new alignments causing impacts. Several types of impacts can occur: Fill, Cut, Temporary, Type conversions, and Lateral effect. Impacts must be minimized to the greatest extent feasible.

The types of impacts are further categorized as direct, secondary or temporary. Direct impacts are the most commonly encountered and must be replaced at standard replacement ratios and/or functional units. Secondary impacts are the result of a related action such as a cut or drainage activity and may be compensated at lower ratios. Temporary impacts usually don't require replacement as long as the area is totally restored within certain time parameters, however, they may contribute to permit impact thresholds.

Fill Impacts: For purposes of reporting wetland fill impacts, calculate the difference between the toe of the proposed inslope to the toe of existing inslope, or the intersection with the existing backslope. In situations where the road is being widened, but the ditch cross section remains the same, fill impact may be the only impact requiring mitigation. Other impacts must still be reported, however. Fill impacts are the most direct and easily measured type of wetland affect and must be mitigated at the standard ratio for the area.

Cut Impacts: Cut impacts may actually result in either a conversion to non-wetland or a type conversion (i.e. converting a scrub-shrub community to a shallow marsh). Cut impacts will receive increased scrutiny when ditches are new, deeper than existing or a source of borrow. Increased impacts from ditch construction may require mitigation. Mitigation ratios will be determined by the actual effect of the cut. Cut impacts are generally considered to be direct effects, but secondary drainage impacts may also be a result of cuts.

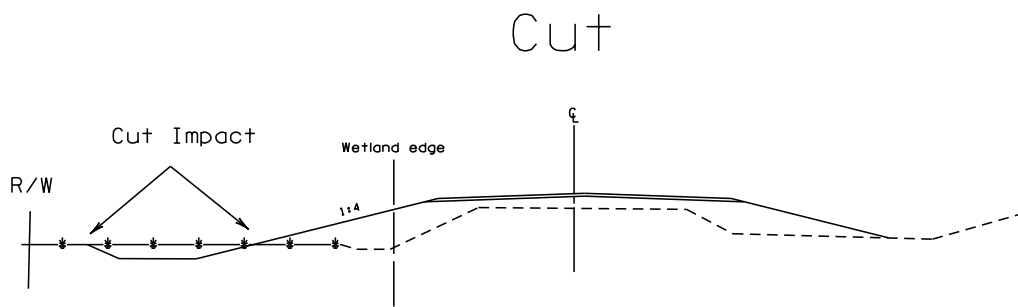
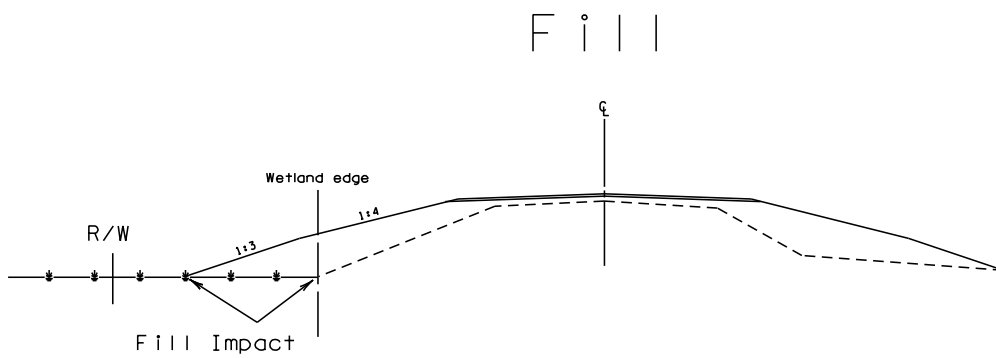
Temporary Impacts: Temporary impacts occur when wetlands are cleared for temporary minor topsoil storage or to allow for equipment movement within the right of way. These impacts must be minimized to the greatest extent possible. Temporary impacts are nearly impossible to quantify accurately but should be estimated. Typically, replacement is not required. A type conversion (below) can be temporary if the area is allowed to revegetate to its pre-conversion state.

Type Conversions: Type conversions occur when one wetland type is changed to a different type permanently. An example would be converting a wooded wetland to a shallow marsh. It is essential to demonstrate the necessity of the conversion and minimize the area. Mitigation will be required and the impact will contribute to the permit threshold limits. Type conversions may be either direct impacts (vegetation removal for

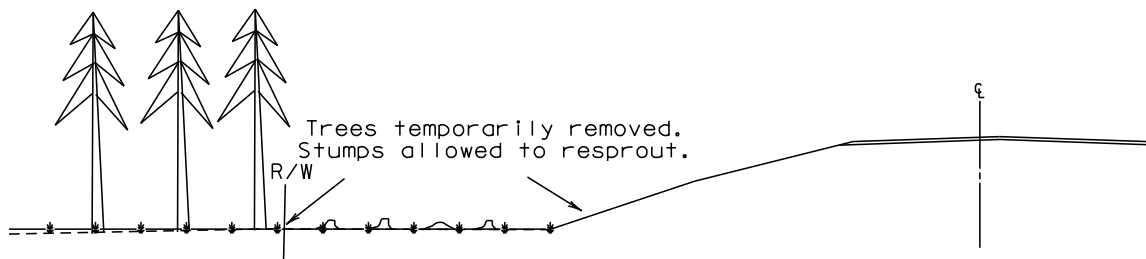
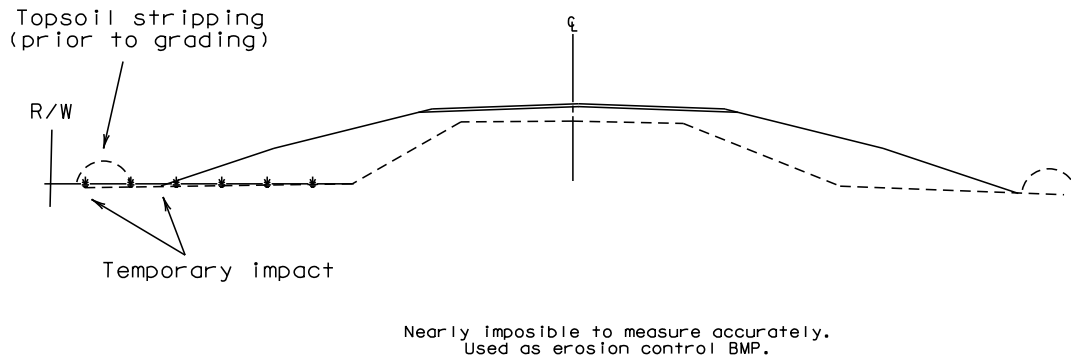
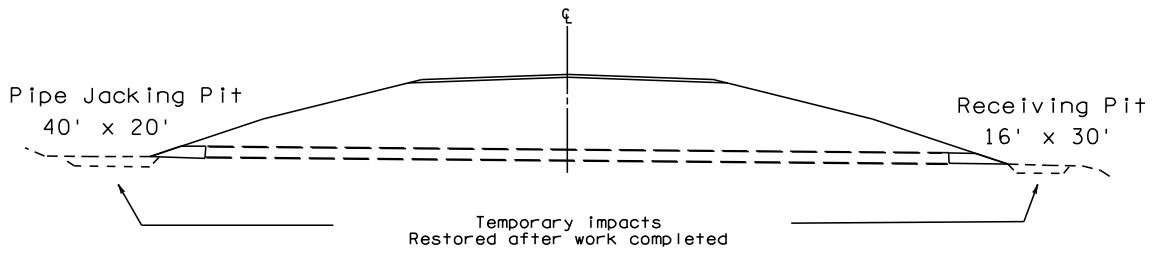
sight corners) or secondary (a change in vegetation type as the result of partial drainage). Temporary type conversions (see above) will not require replacement as long as the area is allowed or encouraged to revert to the pre-impact condition. Conversion of wooded wetlands to some other type, however, will likely require compensatory mitigation regardless of the intent to allow the area to revert given the long period of time it takes to establish wooded wetlands and the rarity of the type in Idaho.

Lateral Drainage Effect: There are a variety of methods used to calculate lateral effect. Use of lateral effect is only one piece of information used to determine the impacts of ditches. The lateral effect calculation must be corroborated with a field visit after construction. Calculations should not be used exclusively to determine impacts- it must be verified either by observation of altered hydrology or by changes in vegetation. The actual drained area will require replacement, but the amount may need to be determined after the fact. Lateral effect is considered a secondary wetland impact.

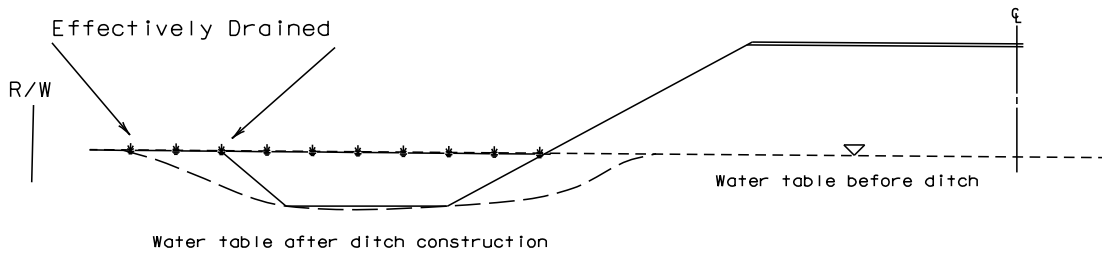
Other Issues: There are impacts that could require additional review. Borrow sites that are new or expanded require clearance from the SHPO prior to disturbance. The Corps must be notified. Disposal of excess material in wetlands will also trigger Federal review. Any soil that leaves a job site must not be disposed of in wetlands without a permit.



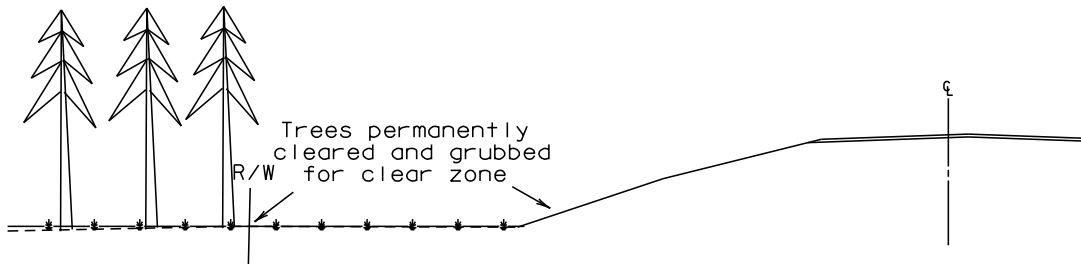
Temporary Impacts



Lateral Effect



Type Conversion



APPENDIX D: USEFUL LINKS

[Clean Water Act \(CWA\) \(33 U.S.C. 1251 et seq\)](#)

Originally passed in 1972 as the Water Pollution Control Act, and later amended by the Clean Water Act of 1977 and the Water Quality Act of 1987, this is the major federal law governing water pollution in the US. It regulates both point source and non-point source discharges to “navigable waters” and waters that have a “significant nexus” to navigable waters.

[Section 10 of the River and Harbors Act \(33 U.S.C. 403\)](#)

Requires that regulated activities conducted below the Ordinary High (OHW) elevation of navigable waters of the United States be approved or permitted by the Corps.

[Corps Regulatory Program Regulations](#)

33 CFR Part 320 through Part 332.

Sections of particular interest:

33 CFR Part 320, General Regulatory Policies

33 CFR Part 323, Permits for Discharges of Dredged or Fill Material Into Waters of the US

33 CFR Part 325, Processing of Department of the Army Permits

33 CFR Part 328, Definition of Waters of the United States

33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources

Other:

33 CFR Part 230, Procedures for Implementing NEPA

<https://www.ecfr.gov/current/title-33/chapter-II/part-230>

[Section 404\(b\) \(1\) Guidelines \(40 CFR 230\)](#)

These guidelines for Specification of Disposal Sites for Dredged or Fill Material form the basis for all wetland fill and dredge permit decisions.

[National Environmental Policy Act of 1969 \(NEPA\) \(42 U.S.C. 4321-4347\)](#)

NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA must be followed whenever an action is funded, sponsored, permitted or approved by a federal agency.

[Endangered Species Act \(ESA\) \(16 U.S.C. 1531 et seq.\)](#)

The ESA was designed to protect critically imperiled species from extinction. It is administered by two federal agencies, The United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA). ESA must be considered on any project requiring a Corps Section 404 permit.

[Section 106 of the National Historic Preservation Act](#)

[The Importance of Purpose and Need in Environmental Documents](#)

FHWA guidance letter 1990

[Wetland Delineation Resources](#) for the Walla Walla District.

[Protection of Wetlands, Presidential Executive Order 11990](#) (EO)

Signed in 1977 by President Jimmy Carter, the EO directs federal agencies to avoid, to the extent possible, the long and short term impacts to wetlands. Agencies are directed to avoid new construction in wetlands wherever there is a practicable alternative.

[Corps of Engineers Wetlands Delineation Manual](#) (1987 Manual)

The accepted delineation guidance document, and along with the appropriate Regional Supplements for Minnesota, provides the accepted methodology for completing wetland edge determinations (delineations).

[Regional Supplements](#)

Regional supplements to the 1987 Manual provide technical guidance and address regional wetland characteristics to improve the accuracy and efficiency of wetland delineation procedures. Two supplements apply to Idaho.

- [Western Mountains, Valleys, and Coast \(2014\)](#)
- [Arid West \(2008\)](#)

[Regulatory Guidance letter 16-01, October 2016, Jurisdictional Determinations](#)

[2008 compensatory mitigation rule](#)

[Walla Walla District US Army Corps of Engineers](#)

APPENDIX E: ABBREVIATIONS AND ACRONYMS

ACHP	Advisory Council on Historic Preservation
CATEX	Categorical Exclusion
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers, also USACE
CWA	Clean Water Act
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
EPA	Also USEPA, Environmental Protection Agency
EQB	Minnesota Environmental Quality Board
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
GP	General Permit
IDEQ	Idaho Department of Environmental Quality
IDFG	Idaho Department of Fish and Game
IDL	Idaho Department of Lands
IDWR	Idaho Department of Water Resources
IP	Individual Permit
JD	Jurisdictional Determination
LEDPA	Least Environmentally Damaging Practicable Alternative
LOP	Letter of Permission
LGU	Local Government Unit (WCA)

MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
NMFS	National Marine Fisheries Service
NWI	National Wetlands Inventory
NWP	Nationwide Permit
PCN	Pre-construction Notification
RGP	Regional General Permit
RHA	Rivers and Harbors Act of 1899
ROD	Record of Decision
PI	Point of Intersection, where the road surface intersects the inslope
SHPO	State Historic Preservation Officer
SWCD	Soil and Water Conservation District
TAS	Treatment as State
USACE	U.S. Army Corps of Engineers, also Corps or COE
USEPA	U.S. Environmental Protection Agency
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey

APPENDIX F: GLOSSARY

Categorical exclusion (CATEX). Actions considered individually and cumulatively that do not have significant effects on the quality of the human environment and are “categorically excluded” from NEPA documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a “categorical exclusion”, that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS. See 33 CFR 230.9.

Delineated wetlands – Wetlands whose boundaries have been identified by an experience delineator using standard delineation methodology evaluating soils, vegetation and hydrology.

Early coordination – Contact between an applicant and the Corps prior to the submittal of an application. Provides for informal discussions concerning the viability of a proposal.

Federal action - an action that is implemented, funded, or permitted directly by the U. S. Government.

Federal nexus – A connection or link to a federal permit, regulation, action or funding.

Hydrology – The science that studies the occurrence, properties, and movement of water on the earth. It includes water found in oceans, lakes, wetlands, streams and rivers as well as in upland areas, above and below ground, and in the atmosphere.

Jurisdictional wetlands – All wetlands determined by current case law, and other laws, rules and guidance to be under the regulation of the USACE.

Navigable waters – Those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce. Section 10 and/or Section 404 permits are required for construction activities in these waters.

Non-Federal Representative. the person, agency, or organization designated by the applicant as their representative in the permitting process.

Non-jurisdictional wetlands – Wetlands determined by current case law and other laws, rules and guidance to be exempt from regulation by the USACE.

Pre-application conference –One or more meetings between members of the Corps staff and an applicant or the applicant’s agent. A pre-application conference is usually related to a larger project and may involve the discussion of alternatives, environmental documents, NEPA compliance and permit requirements. This is a more formal process than early coordination.

Waters of the United States – Essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

Wetland - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetland mitigation - The practice of compensating for the destruction or degradation of wetlands in one location by creating or restoring wetlands in another location with the goal of a no net loss of wetland functions.

APPENDIX G: AGENCY CONTACTS

U.S. Army Corps of Engineers

- Corps Project Managers, Idaho: <https://www.nww.usace.army.mil/Business-With-Us/Regulatory-Division/Contact-Us/>
- Corps regional email inbox map: https://media.defense.gov/2021/Apr/23/2002627005/-1/-1/1/NWW-RD_AOREMAILINBOXMAP_20210421.PDF

U.S. Fish and Wildlife Service

- <https://www.fws.gov/office/idaho-fish-and-wildlife>
- Idaho Fish and Wildlife Office

(208) 378-5243

1387 South Vinnell Way

Suite 368

Boise, ID 83709-1657

- Idaho Fish and Wildlife Office Coeur d'Alene
(208) 378-5243

3232 W. Nursery Road

Coeur d'Alene, ID 83815

- Idaho Fish and Wildlife Office Chubbuck
(208) 237-6975

4425 Burley Drive

Suite A

Chubbuck, ID 83202

National Marine Fisheries Service

- <https://www.fisheries.noaa.gov/west-coast/consultations/esa-section-7-consultations-west-coast>
- Snake River (north)

Johnna Sandow

(208) 378-5737

johnna.sandow@noaa.gov

- Snake River (south)

Bill Lind

(208) 378-5697

bill.lind@noaa.gov

U.S. Environmental Protection Agency (EPA)

- <https://www.epa.gov/aboutepa/epa-idaho>
- Idaho Operations Office

950 West Bannock, Suite 900

Boise, Idaho 83702

208-378-5746

National Park Service (NPS)

- The current Wild and Scenic Rivers NPS POC for Idaho is Susan Rosebrough, (206) 220-4124, susan_rosebrough@nps.gov.

Idaho Department of Environmental Quality (IDEQ)

- <https://www.deq.idaho.gov/about-us/contact-us/>

(208) 373-0502

Idaho Department of Lands (IDL)

- <https://www.idl.idaho.gov/contact-us/>
- Boise Staff Office
300 N. 6th Street, Suite 103

Boise, ID 83702

Phone: (208) 334-0200

Fax: (208) 334-5342 or (208) 334-3698
- Coeur d'Alene Staff Office
3284 W. Industrial Loop

Coeur d'Alene, ID 83815

Phone: (208) 769-1525

Fax: (208) 769-1524

Idaho Department of Water Resources (IDWR)

- <https://idwr.idaho.gov/contact-us/>
- State Office
IDAHO WATER CENTER, 322 E FRONT ST STE 648, BOISE ID 83702-7371
Phone: (208) 287-4800
Fax: (208) 287-6700
idwrinfo@idwr.idaho.gov
- Western Regional Office
2735 W AIRPORT WAY, BOISE ID 83705-5082
Phone: (208) 334-2190
Fax: (208) 334-2348
westerninfo@idwr.idaho.gov
- Northern Regional Office
7600 N MINERAL DR STE 100, COEUR D ALENE ID 83815-7763
Phone: (208) 762-2800
Fax: (208) 762-2819
northerninfo@idwr.idaho.gov
- Southern Regional Office
650 ADDISON AVE W STE 500, TWIN FALLS ID 83301-5858
Phone: (208) 736-3033
Fax: (208) 736-3037
southerninfo@idwr.idaho.gov
- Eastern Regional Office
900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718
Phone: (208) 525-7161
Fax: (208) 525-7177
easterninfo@idwr.idaho.gov

- Salmon Field Office
1301 MAIN STREET, STE 10, SALMON ID 83467-4435
Phone: (208) 742-0658
Fax: (208) 287-6700
- Preston Field Office
325 EAST 600 SOUTH, STE 300, PRESTON ID 83263-4921
Phone: (208) 701-7200
Fax: Not available at this location
Email: prestoninfo@idwr.idaho.gov

Idaho State Historic Preservation Office (SHPO)

- <https://history.idaho.gov/shpo/>
- Contact the SHPO by visiting their Section 106 contact page:
<https://history.idaho.gov/section-106/>

APPENDIX H: BIOLOGICAL ASSESSMENT (BA) TOOLS

The U.S. Fish and Wildlife Service (USFWS) developed the following general biological assessment (BA) tools for activities that “may affect” Endangered Species Act (ESA) listed species or designated critical habitats and require consultation under the ESA in northern Idaho. The intent of providing these tools is to help applicants see what kinds of information BAs include, and to help streamline the development of complete BAs. This may not be a comprehensive or all-encompassing list, but these and other components of a BA could apply to all ESA-listed species.

6.1 ATTACHMENT 1: BA CHECKLIST

_____ **Cover Page:** Name of project, project and key numbers, location (city, county)

_____ **Table of Contents** (all pages must be numbered)

A. Executive Summary

_____ 1. Brief summary of project (2 or 3 sentences)

_____ 2. Species Table with effect determinations

_____ 3. Retrieve an Information for Planning and Consultation (IPaC) Species List and provide IPaC number.

B. Project Description

_____ 1. Location: description and vicinity map (appropriate scale); include coordinates

_____ 2. Definition of Action Area

_____ 3. Proposed Action:

_____ a. Detail how the action will occur (anticipated steps and diagrams)

_____ b. Best Management Practices and other measures designed to minimize effects

_____ c. Sideboards and/or project design criteria

_____ d. Monitoring and reporting plan

C. Description of each ESA-listed species and their habitat

_____ 1. Consultation with local Fish and Game and/or Natural Heritage database

_____ 2. Literature reviews

_____ 3. Consultation with experts on species, as necessary

_____ 4. Descriptions of the species and general habitat requirements

_____ 5. Relationship of habitat in the project area to local populations

_____ 6. Photographs keyed to locations labeled on the project map

_____ 7. Species and habitat information in the Action Area including current and historical conditions, population survey protocols used, and by whom, etc.

_____ 8. Identify designated or proposed critical habitat.

D. Status of the Species in the Action Area & Environmental Baseline

_____ Detailed descriptions

E. Effects of the Action

_____ 1. Effects to bull trout (describe stressors, exposure, response, biological response, and determination)

_____ 2. Effects to Physical and Biological Features (PBFs; describe the stressors, exposure, response, and determination for each PBF)

_____ 3. Cumulative Effects

F. Determination of Effect Project Description

_____ A clear statement of effect for each species and critical habitat

G. References and personal communications cited

_____ Correctly Annotated

6.2 ATTACHMENT 2: STRESSORS

Stressors → Exposure → Response → Biological Effect → Effects of the Action

Stressors: are impacts/changes to the environment (land, water, and air) caused by the proposed action.

The action area is all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. The action area should encompass the farthest reaching **physical, chemical, and biotic stressors of the action on the environment**. Consider **impacts/changes/stressors to land, air, and water caused by the action** over time.

Exposure: Are there individuals of a listed species or critical habitat in that area that could be exposed to the stressors/impacts?

Response: is how individuals and/or habitat react when exposed to a stressor. (Response is usually a **verb**)

Examples: a perched bird **flies** to a nearby tree to perch, a bird **abandons** its nest, a bear **stops** using a prime foraging location, a bear **moves** further east in similar habitat, a trout **moves** out of a turbidity plume to similar habitat, a trout **stops** using a spawning area

Biological Effect: depends on the intensity and scale of the response by the individual. (Biological effect is usually a **noun**)

Using the examples above:

Response → Biological Effect

a perched bird **flies** to a nearby tree to perch there → minor **behavior modification**, slight increase in **energy use**

a bird **abandons** its nest → **reproductive failure**

a bear **stops** using a prime foraging location → decreased **foraging success**, reduced **growth rate**

a bear **moves** further east in similar habitat → minor behavior modification, slight increase in energy use

a trout **moves** out of a turbidity plume to similar habitat → minor **behavior modification**, slight increase in **energy use**

a trout **stops** using a spawning area → reduced **reproductive success**

Effects of the Action are all **consequences to the individuals** of a listed species or critical habitat caused by the proposed action.

Using the examples again, but knowing that the effects of the action determinations could vary based on the particular circumstances of the action, area, and individuals:

Response → Biological Effect → Effects of the action

a perched bird flies to a nearby tree to perch there → minor behavior modification, slight increase in energy use → insignificant effect

a bird abandons its nest → reproductive failure → adverse effect

a bear stops using a prime foraging location → decreased foraging success, reduced growth rate → adverse? Insignificant? I need more of the details

a bear moves further east in similar habitat → minor behavior modification, slight increase in energy use → insignificant effect

a trout moves out of a turbidity plume to similar habitat → minor behavior modification, slight increase in energy use → probably insignificant effect

a trout stops using a spawning area → reduced reproductive success → probably adverse effect

The following sections are USFWS' documents, and attached at the end of this guide.

6.3 ATTACHMENT 3: IDAHO CPB USER GUIDE

6.4 ATTACHMENT 4: DECONSTRUCTING AN ACTION

6.5 ATTACHMENT 5: 2021 SECTION 7 GLOSSARY

Idaho Consultation Package Builder User Guide
Prepared by the Idaho Fish and Wildlife Service Office
August 2023

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Document Purpose

Information for Planning and Consultation (IPaC) is a nationwide action planning tool that streamlines the U.S. Fish and Wildlife Service (Service) environmental review process. It can be accessed at: <https://ipac.ecosphere.fws.gov/>. The Consultation Package Builder (CPB) is a new tool in IPaC that provides an interactive, step-by-step process to help action agencies prepare a full Biological Assessment (BA) or Biological Evaluation (BE) using information from IPaC (see Figure 1). The system is designed to leverage Service data and recommendations, including optional conservation measures that may help avoid or minimize effects to listed species. CPB can be used for any listed entity, including candidate and proposed species. The Service may not have entered information yet for each of these entities, but the CPB user is able to enter any missing information themselves. This document is a guide that walks users through the steps used in CPB. Use of the CPB tool is not required; whether or not the CPB tool is used, we recommend following these steps when writing a BA/BE in Idaho. This format ensures consistency across our consultations and enables faster evaluation by the Service consultation biologists. We use the terminology and definitions from IPaC and CPB for consistency with Service-wide tools and describe how the BA/BE steps are accomplished using these tools. The CPB is a semi-automated tool and the user will be prompted at specific points to describe information such as the environmental baseline, including having the option to upload supplementary documentation (e.g., survey data), as appropriate.

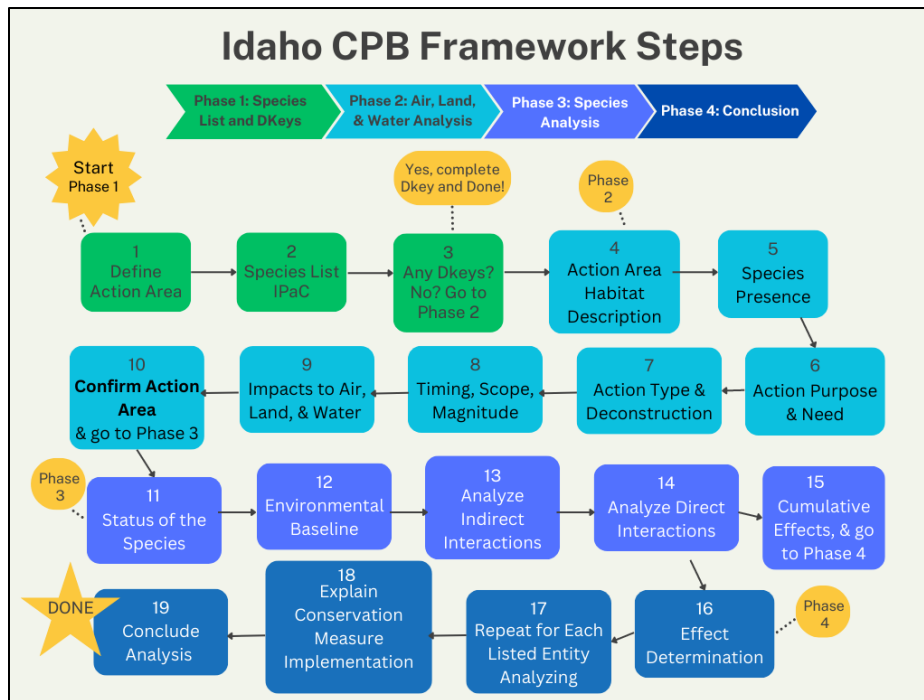


Figure 1. Steps for following the CPB framework within or outside of the online tool.

Phase 1. Species List IPaC, Programmatic Biological Opinions, and Determination Keys

This first phase of the CPB framework is using IPaC to generate a species list and checking for any programmatic consultations and determination keys (Dkey) that may be available and relevant to your proposed action (see Figure 2).

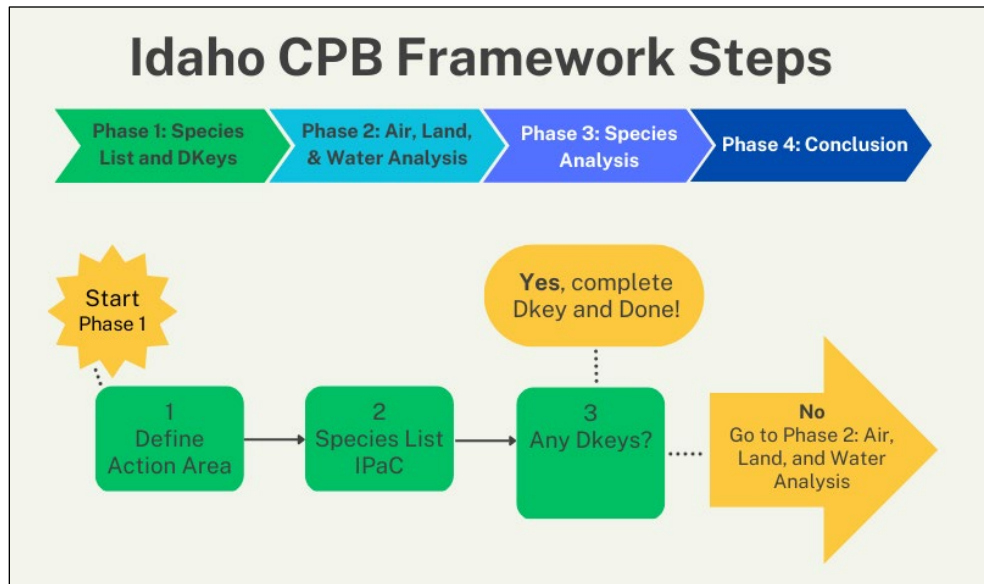


Figure 2. Phase 1 shows the first steps of the CPB process.

Step 1. Action Area

The action area includes all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 Code of Federal Regulations [CFR] 402.02). In delineating the action area, the farthest reaching physical, chemical, and biotic effects of the action on the environment should be identified. The first step is to enter the proposed action area into IPaC. Although IPaC asks the user to define the 'area where activities will occur', we recommend that the user attempt to delineate the action area. The action area can be either drawn or uploaded as a shapefile and then you will be provided with a list of resources that overlaps your proposed action area (listed entities, bald and golden eagles, migratory birds, facilities, and wetlands). Next you will be asked to define the proposed action using a project name and providing a description of the location, size, scope, and timing of the action. The action is now saved to your IPaC profile and will include the list of species and critical habitats that may be present in the action area. The action area for the entire proposed action should be clearly described in the BA/BE. The action area encompasses the geographic extent of the physical, chemical, and biotic effects of the proposed action and of those other activities caused by the proposed action. All potential effects of the action are considered, including those that may occur later in time, those that may occur outside the immediate area involved in the action, and effects of those activities that would not occur but for the proposed action, such as access roads. It is recommended that you contact your local Service field office early in the process if you have questions about the action area as it is foundational to the analysis.

Some action agencies delineate areas for analysis and/or management of a species. Although these analysis/management units are useful for tracking baseline conditions changes over time, guiding management, and may inform the effects analysis, they are not equivalent to the action area, which is specific to where the proposed action modifies the land, water, or air (see Figure 2 and Figure 3). BA/BEs that refer to analysis/management units in the action area section are often confusing, and it is important to understand the distinction between the two. As demonstrated in Figure 3, the action area may not include all a species' nearby habitat or encompass entire analysis/management units. Though caused by the action, biological effects of the action to the species may in some cases be realized/expressed far beyond the action area (e.g., number of fish available in orca feeding grounds from a project based on the Salmon River in Idaho). Though these biological ramifications should be adequately described in the effects of the action section, the action area does not expand to encircle those areas. The scope of the action area as it relates to ESA-listed entities is made clear by: 1) drawing the action area based on the effects to the land, water, or air, 2) confirming the action area after defining all the proposed structures and activities (Step 10), and 3) only then determining if the action area overlaps the ranges/habitats for any listed or proposed species.

Keeping the above in mind, management units may sometimes be included in whole within the action area. For example, if an action agency's management decision in one area of an analysis unit causes a change in the action agency's management direction in another area (e.g., allowable treatments or road access), those changes are design features and/or consequences of the proposed action that are reasonably certain to occur. Both areas would be considered part of the action area. Thus, the action area may include one or more management units if the units are defined in the relevant land management plan. The action area may include areas outside the management units (i.e., is not limited to them).

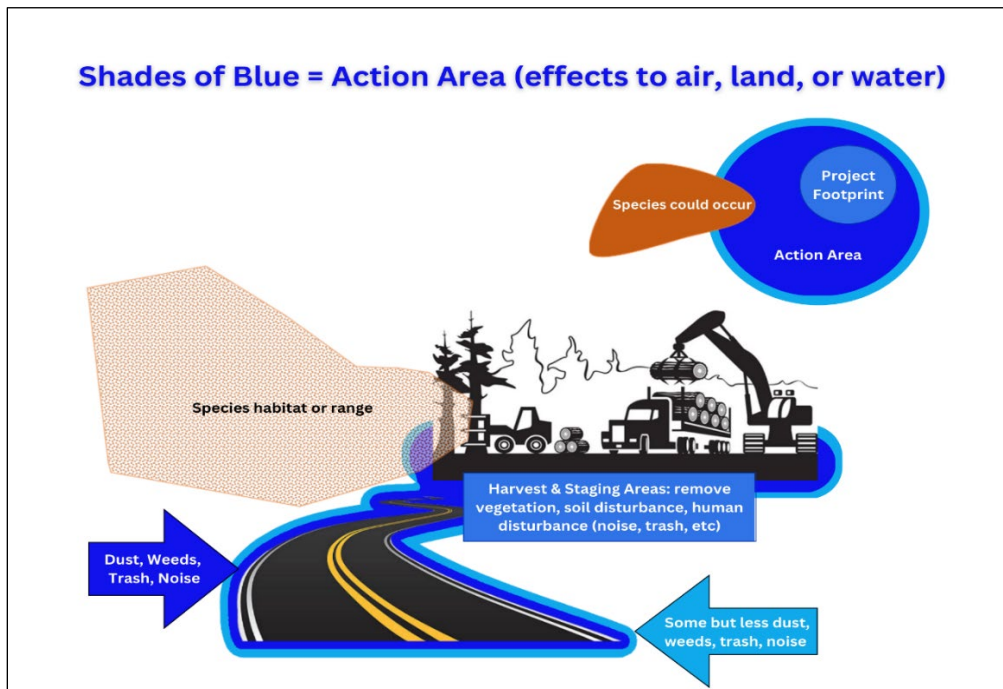


Figure 3. The action area as it relates to the project footprint and overlaps listed or proposed species, habitat, or critical habitat.

Step 2. Official Species List

In Idaho, the Service recommends requesting all official species lists using the IPaC system. When using CPB, you may request an official species list at this step, or you may skip this step until you are ready to obtain a species list for the action. Regulations require that the action agency verifies the accuracy of the species list every 90 days from the first date they obtained a species list, if they have not completed and submitted the BA/BE within that time period [CFR §402.12(e)]. Maintaining an accurate, up-to-date species list assures the consultation considers effects to species that may be present in the action area based on the best available information, minimizing or avoiding the risk of delays or reinitiation of consultations following updates to species range maps.

Step 3. Programmatic Biological Opinions & Dkeys

Some action types have already undergone consultation through a programmatic consultation or standing analysis¹. Check with your local Service field office to determine if there are any standing analyses or programmatic consultations in effect that cover the action type. To analyze your proposed action under an existing standing analysis or programmatic, the proposed action in your BA/BE should align with the programmatic consultation or standing analysis using the design criteria, including any conservation measures considered in that programmatic or standing analysis. Design criteria should be described with enough detail to ensure consistency with the programmatic consultation or standing analysis.

There also may be a Dkey available for your proposed action type, such as the Dkey for the Streams Crossings programmatic. The system will notify you if a Dkey may be available for your proposed action. If the proposed action may qualify, you will be instructed to complete the Dkey to ensure consistency and will receive an automated consistency letter that your proposed action will be reviewed by the Service. You also may skip any Dkeys if you know the proposed action will not meet the criteria identified in the associated programmatic consultation or standing analysis. If you make a no effect determination through the Dkey, you will receive a letter that acknowledges we received your determination and that you determined the project was consistent with an existing analysis. However, this letter does not provide Service concurrence with your determination, as the Service does not have the authority to concur with no effect determinations. Continue to Phase 2, step 4 if there are no programmatic consultations, standing analyses, or Dkeys available for the proposed action type.

¹ The standing analysis is a consultation tool designed to reduce the time necessary to complete consultation [including biological opinions] for a particular set of projects. It operates similarly to a programmatic or batched consultation, without dependence on a programmatic or batched biological assessment (BA) from an action agency to initiate the analysis.

Phase 2. Air, Land, & Water Analysis

The second phase of the CPB framework involves deconstructing the proposed action's activities and structures, analyzing the impacts to the air, land, and water from those activities and structures, and confirming the action area (see Figure 4). You will complete the species analysis in Phase 3.

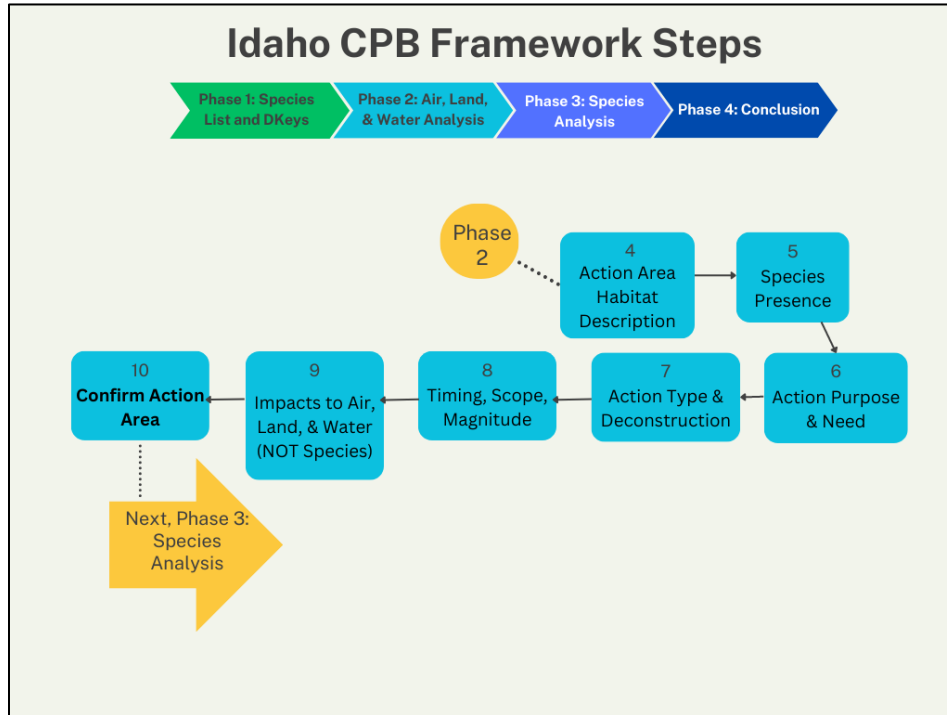


Figure 4. Phase 2 of the CPB

Step 4. Habitat Description.

In the CPB text box, describe the habitat types present in the action area (e.g., coniferous forest, wetland and riparian areas, meadows, avalanche chutes, burned areas, logged areas, etc.), including habitat quality and distribution. This is the habitat in general, not specific to listed entities. For example, 'The action area is comprised of high-elevation mid to late succession mixed coniferous forests in large, disjunct patches owing to a recent 500-acre fire that burned at mid to high severity. Several pristine alpine meadow complexes are present, as well as several 3rd and 4th order fish bearing streams with moderately burned riparian areas.' Describe the habitat across the entire action area. Consider elevation, slope and aspect, soil types, dry versus wet forest types, and multiple land uses such as recreation or grazing.' If appropriate, refer to surveys or assessments related to this information; these can be uploaded in CPB.

Step 5. Species Presence.

Determine the probable presence of each species identified in the species list, considering the entire duration of the effects from the proposed action to air, land, and water, including effects that are likely to occur later in time. The combination of effects occurring during the proposed action's implementation and those effects occurring later in time can be thought of as a "lifetime of action effects." In CPB, all species that are included on the IPaC species list for the action area are available on

the left side of the screen. Include any surveys for species or habitat and, if the species is known or likely to be present, describe how the species is likely to use the habitat in the action area during the lifetime of action effects. If a listed entity is not likely to be present during the entire duration of the effects from your action, including effects that are likely to occur later in time, CPB will ask you to provide a justification for excluding the entity from the effects analysis. IPaC also includes candidate species for informational purposes only. Consultation is not required for candidate species. CPB will ask for a justification to exclude any candidate species included in the species list, but this can be very simple including stating that it is a candidate species and consultation is not required.

Step 6. Purpose and Need

Explain the purpose and need for the proposed action, including a brief description of all proposed activities and structures (physical structures such as staging areas, roads, etc.) in relation to the defined purpose and need. Also describe any authorities or program under which the proposed action is being developed (e.g., Healthy Forest Initiative). The purpose and need should include the reason for the proposed action and the anticipated goal or outcome of the proposed action.

Step 7. Action Type and Deconstruction

Describe the proposed action type, associated activities, and associated structures. A menu of activities are available for selection in IPaC. An example of the selections that action agencies can make include:

Action Type: timber harvest,
Activities: road construction, yarding, etc., and
Structures: haul roads, staging areas, etc.

Describe the location of each activity and structure identified during the deconstruction. In CPB, simply select the relevant activity type and associated activities and structures. CPB associates suggested activities and structures with action types, select all that are applicable. You also can add additional activities and structures beyond those provided. Draw the location of each activity and structure. In CPB, you can clone/copy the original action area or other action structures or activities, if appropriate. As you deconstruct the action, consider:

- a) site preparation (including surveys),
- b) access and staging,
- c) post-project activities (including operation, maintenance, monitoring, and restoration), and
- d) activities and structures associated with conservation measures.

Step 8. Timing, Scope, and Magnitude

Describe the timing, scope (size or extent), and magnitude (relative size or extent) of activities and associated potential stressors/impacts to air, land, or water (not species). Include design features such as timing and sequencing (e.g., seasons, years, frequency, duration, and rest periods). To consider the effects of each structure or activity on listed species later in the analysis, you will need to first determine its timing and scope along with the elements of the land, air, and water that could be impacted. This information will form the basis of the species impact analysis you will complete in Phase 3.

In CPB, you can select the relevant stressors that are automatically populated, e.g., access road construction → decrease in vegetation, then select 'may occur' or 'will not occur'. You can manually create custom stressors if they are not included in the CPB list. It is the action agency's responsibility to

ensure all stressors are included and if one is missing, to add a custom stressor as well as include temporary and permanent stressors. Do not forget to fill out the text box for the timing, scope, and magnitude of these stressors on the air, land, and water generally, which should include information such as phasing or seasonality of activities or structures. Entering the implementation and completion dates is optional, but they should be included if the activity or structure is relatively certain to occur and the timeline is more reliable.

Step 9. Impacts to Air, Land & Water (Not Species)

Describe the potential impacts from each stressor (e.g., decrease in vegetation) to air, land, and water (not species). In the description, include any design features or conservation measures that will completely avoid the stressor. In CPB, select conservation measures, if available, or manually create them. If a stressor is completely avoided by a conservation measure, describe how the conservation measure accomplishes the avoidance to the air, land, or water; this stressor will not be carried forward in the rest of the analysis, including the species analysis (Phase 3), because it has been completely avoided. If a stressor is not completely avoided, describe where and how much of the stressor will still occur on site (e.g., how much vegetation will be removed) and to what degree (complete removal? impacts to seed trees?)? If a stressor is reduced, but not completely avoided², draw the location of the remaining impacts. In CPB, you can clone the entire action location, a specific structure, or an activity location, if appropriate. All avoidance and minimization conservation measures related to the proposed action should be included when delineating the action area (including off-site conservation measures).

Step 10. Confirm Action Area

The action area includes all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02) (see Figure 3). Considering the proposed structures, activities, and their stressors to air, land, and water as well as the proposed conservation measures, i.e., everything related to the proposed action, **confirm** the final action area. Do not consider species presence or use of the action area when confirming the action area. Once you confirm the final action area you may need to go back through some previous steps and confirm the analysis remains correct or edit the analysis, as appropriate.

The action area and deconstruction are extremely important steps for streamlining your analysis thought process. You will find that your analysis efforts are more straightforward later in the process if you clearly identify the action area and proposed activities/structures in the initial stages before moving on to the next stage.

² The analysis in CPB focuses on stressors to land, water, or air first and then any conservation measures that avoid any additional stressors to land, water, or air. If any of the stressors will remain (i.e., not avoided), it is carried forward into the listed entity analysis where the user can select whether or not each remaining stressor may impact the listed entity being analyzed. If so, the user is then able to include any conservation measures that avoid or minimize the stressor to the listed entity. At the end of the analysis, the user is asked to explain how they will implement the conservation measure (e.g., timing, etc.).

Phase 3. Species Analysis

The third phase of CPB focuses on the direct and indirect interactions between the species and the impacted environment from the proposed action's deconstructed activities and structures (see Figure 5).

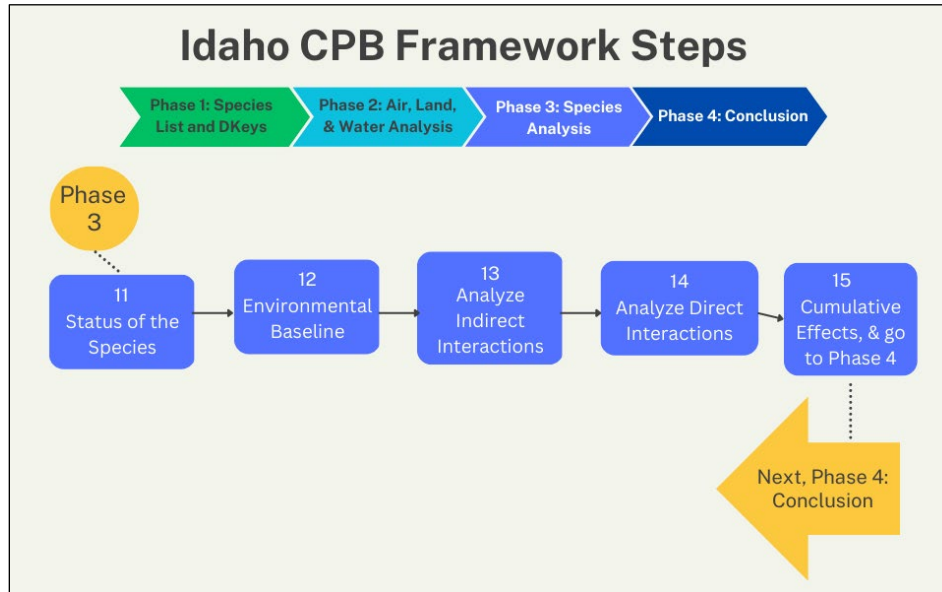


Figure 5. Phase 3 of the CPB

[Step 11. Status of the Species \(including Climate Change\)](#)

In this step, you will describe the following:

- a. the legal status of the species,
- b. available recovery plans,
- c. the species life history,
- d. the species resource needs (the physical and biological features of air, land, and water that a species depends on to fulfill its life cycle), and
- e. the species' rangewide conservation needs.

Effects of fire and climate changes to the listed entity should be discussed in this section as well. In CPB, (a) the legal status of the species, (b) available recovery plans and (c) and the species life history) are automatically filled out for each species. The species rangewide conservation needs (e) can be summarized from the recovery plans, listing notices, or the most current status assessments. For (d), species-specific resource needs also may be available in CPB and will appear under the species name on the left. If resource needs are not yet entered, you will need to add species-specific resource needs manually. Resource needs are features that are on the landscape (e.g., prey or forage), not the lack of specific attributes (e.g., noise or pollutants). Identifying the resources needed by a species is a fundamental step in developing an impact analysis. Impacts to the resources that species rely upon can lead to effects to the species. This information is helpful for connecting the dots between action's impacts, conservation needs in the action area (see below), and the proposed conservation measures.

Reach out to your local Service field office if you need assistance identifying and entering resource needs.

Step 12. Environmental Baseline (Resource Needs and Species)

Describe the condition of the listed species or its designated critical habitat in the action area contemporaneous with the proposed action, without the effects of the proposed action. The environmental baseline should include:

- a. the listed entity's presence and use of the action area,
- b. the listed entity's conservation needs for survival and recovery specifically within the action area,
- c. the general condition of the listed entity's habitat (refer to resource needs described in Step 11),
- d. any influences that might be contributing to the current environmental baseline of the species (including prior consulted on effects),
- e. The species ability to disperse through or travel through the action area, and
- f. any other additional baseline information.

Topics (a) through (e) above are each separate sections with their own required text boxes. You will primarily fill out (b) and (d). Topic (a) will be automatically filled from information you previously entered (Step 5), while (c) will be completed later in the CPB analysis.

(a) CPB automatically uses the species presence and use in the action area entered earlier. You can refer back to the section where you initially described it and provide a brief summary if you are not using CPB.

(b) Describe the species conservation needs for survival and recovery specifically within the action area, and the role and importance of the action area in meeting these needs. Include any conservation strategies from the recovery plan or other documents that pertain to the action area. If the action area overlaps a designated management or analysis unit, recovery unit, core area, etc., remember to discuss the role and condition of that specific unit to the species.

(c) Habitat condition will be automatically completed in the CPB analysis after you have identified which species' resource needs are present in the action area. You can go back and add additional information **by clicking on the "Habitat condition (general)" step on the workflow panel (left side of screen)**, if needed. If you are not using CPB, you can refer back to the section you first described the habitat and briefly summarize the condition of the resource needs in the action area.

(d) Describe any past, present, or ongoing activities or influences that have affected the reproduction, numbers, or distribution of the species within the action area, considering the threats identified in the listing, recovery, or SSA documents that are available at: <https://www.fws.gov/species/search>. Influences include both anthropogenic (e.g., hunting, baiting, and infrastructure) and natural sources (e.g., disease, predation, fire, and climate change).

(e) If you have more information about the environmental baseline for this species in your action area that would increase the general understanding of it, provide that information in this section.

Step 13. Analyze Indirect Interactions

Indirect interactions consider action-related impacts to resource needs of a species that indirectly affect individuals of a species.³ Identify which resource needs are present in the action area and explain your rationale if you determine a resource is not present. In CPB, you will select whether each resource need is present in the action area.

- Make sure that you consider the subcategories within each resource need. For example, if the resource need is cover, then the subcategories might be vegetation, rock overhangs, caves, etc.).
 - For resource needs that are present, describe the distribution, location, quantity, and quality of each resource need in the action area.
- Describe which stressors may impact the resource need (i.e., decrease in vegetation). In CPB, the stressors will be automatically populated from your air, land, and water analysis (see Phase 2). Select which stressors are likely to impact the resource needs (i.e., increase in permanent roads reduces cover).
 - If effect pathways (the chains of effects from stressors that lead to each resource need) are not yet available in CPB for a listed species in your action area, you will be provided a list of potential pathways that could apply to any species (i.e., not species-specific). The pathways leading to these suggestions also are provided for your information.
- Include any conservation measures to avoid or minimize impacts to the resource need. The Species Status Assessment or other status review documents can be used to assist with identifying appropriate conservation measures if none are available in CPB.
- You will then be asked if there will be any remaining impacts to the resource need, given the conservation measures, and, if so, to describe the size, scope, magnitude, and location of the remaining impacts.
- CPB also will ask you to describe the number of individuals that might be exposed to the stressor. If it is impractical to express this in terms of individuals, a surrogate may be used. Describe why a surrogate is necessary, as well as its causal and quantitative links to individuals of the species. For example, if you cannot estimate the number, describe the density of the species relative to other areas or any other information you can provide.
- CPB will take the selections and text box answers you have provided to populate a table that looks like Table 1 below.

³ The reference in CPB to indirect and direct interactions (effects to individuals) is not the same as direct and indirect impacts to the environment referred to in the action area definition. In CPB, the analysis is focused on direct interactions with individuals and indirect interactions with individuals via habitat impacts.

Table 1. An example resource need interactions table is provided in CPB with potential chain of effects.

RESOURCE NEED	STRESSORS*	CONSERVATION MEASURES	AMOUNT OF RESOURCE IMPACTED	INDIVIDUALS IMPACTED (exposed to stressor)
e.g. Vegetation – forage	Decrease in vegetation used for forage	Phased activity allowing forage to remain in adjacent habitat	50 acres	Estimated individuals exposed to reduced forage or surrogate (if appropriate) – effective habitat

*Stressors in this table are indirect (i.e., impact resource needs). Direct impacts to the species will be addressed later.

The habitat condition section (c) from Step 12, will automatically be entered from the resource needs that you identified as present in the action area. You can go back to this section from the left-hand panel and provide details on the condition of the habitat in your action area, such as the quality, distribution, etc. if they are not already described elsewhere (e.g., influences or additional baseline information).

[Step 14. Analyze Direct Interactions](#)

Identify the direct interactions to individuals of the listed entity that may occur (e.g., deters movement, disturbance, collisions, etc). Analyze each direct impact by describing any conservation measures that are part of the action’s design features and how many individuals (or surrogate amount) could be exposed to that direct impact.

You will be provided with a list of potential impacts that could apply to any species (i.e., not species-specific) if potential direct impacts have not been created in CPB by the Service. If potential direct impacts have been created, you will be provided with a list of potential species-specific impacts and you will select ‘may occur’ or ‘will not occur’. The pathways leading to these suggestions also are provided for your information. However, the suggestions provided are not exhaustive. It is the action agency’s responsibility to ensure all impacts are included, and if one is missing, to add a custom interaction. The table in CPB will look like Table 2 below. You will then be asked if you are implementing any conservation measures and whether there will be remaining direct impacts after the conservation measures.

Table 2. Example direct interactions table provided in CPB.

DIRECT IMPACT	CONSERVATION MEASURES	INDIVIDUALS IMPACTED (exposed to stressor)	IMPACT EXPLANATION
e.g., Disturbance	Phased activity allowing secure conditions in adjacent habitat	Estimated individuals exposed to disturbance or surrogate, XXXX total acres, XXXX acres in phase 1, XXXX acres in phase 2, etc.	Disturbance can cause [species] to startle and/or flee a preferred habitat area. Long-term displacement (under-use or avoidance) from preferred habitat could lead to [explain reasonably certain to occur consequences to breeding, feeding, or sheltering].

Step 15. Cumulative Effects

Identify and provide information on any anticipated future state or private activities (not involving Federal activities/funding) that are reasonably certain to occur within the action area. These activities are considered cumulative effects under the Endangered Species Act. Provide information about the specific predicted effects from each cumulative effect on the individuals or habitat within the action area using the text box in CPB. Use the same level process describing impact-exposure-response-effect as you did in the effects of the action section for this proposed action (i.e., Steps 9 to 14). In the cumulative effects section, it is important to include known, relevant-to-the species information about private activities on non-Federal lands within the action area as well as explain any future reasonably certain to occur activities (e.g., future road plans or development on some non-Federal lands).

Phase 4. Conclusion

In Phase 4, the action agency wraps up the analysis by making the effect determination, discussing how conservation measures will be implemented, and concluding the analysis (see Figure 6).

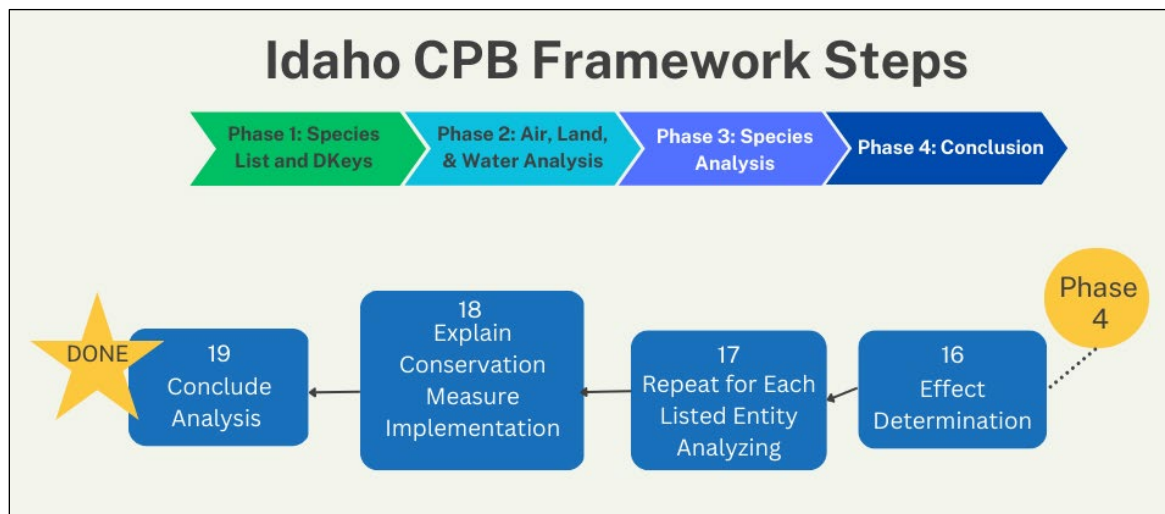


Figure 6. Phase 4 of the CPB.

Step 16. Effect Determination

Review the remaining indirect and direct interactions from the stressors associated with the proposed action's activities and structures to the species resource needs and individuals (or surrogate) and make your effect determination. CPB provides a list of the indirect (resource needs affected) and direct (individuals affected) interactions you identified as well as your description of cumulative effects to assist with the effects determination. You will select one of the effect determinations (described below). In addition, you also will have the option to describe any 7(a)(1) or other measures that avoid, minimize, or offset the consequences of the action, if you would like to highlight efforts the action agency is implementing for the recovery of the species.

No Effect – If you have indicated in earlier steps that there is the potential for any of the proposed activities or structures to interact with the species (i.e., any exposure), you will not be able to make a no effect determination for the species in CPB. If this is the case, this effect determination is not available to select because in your analysis you have determined that the

action will have some effect on listed species. The language in CPB will be as follows: “This effect determination is not available because you have determined in your analysis that the project [action] will have effects on listed species.”

Not Likely to Adversely Affect – All effects are beneficial, insignificant, or discountable. Beneficial effects have contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, and they include those effects that are undetectable, not measurable, or cannot be evaluated. Discountable effects are those that are extremely unlikely to occur.

Likely to Adversely Affect – This determination is appropriate for all actions where the effects do not fit in the 'No Effect' or 'Not Likely to Adversely Affect' category. This determination requires formal consultation with the Service and the BA/BE document produced from CPB will facilitate this consultation.

Step 17. Repeat for each Listed Entity Identified

Conduct a Phase 3 analysis (Steps 11 through 16) for each listed entity that may be present in your action area. Critical habitat is considered a separate listed entity.

Step 18. Explain Conservation Measures Implementation

At the end of CPB, you are asked to review and explain how the action agency will implement any conservation measures that you identified, if you did not do that earlier. This will give you an opportunity to craft language for the conservation measures and add details relevant to the listed entity.

Step 19. Conclude Analysis

- (1) Summary Discussion - Summarize the overall effects the proposed action will have to species and critical habitat within the action area.
- (2) Conclusion – Provide clear statements connecting the dots of your analysis that will help us understand your findings.
- (3) Executive Summary - Based on the information you provided, write a short, high-level summary of the action. Ideally, this should be around one paragraph.

Phase 5. Submit BA/BE to the Service

If using CPB, download the document from CPB. Submit your draft BA/BE to the Service by email: fw1idahoconsultationrequests@fws.gov. Please note that you can add Service biologists to CPB at any step in the process to assist with development of the BA/BE, if desired. We recommend that you discuss their workload capacity with your local Service office prior to adding anyone to a proposed action in CPB. Similar to a regular consultation process, the biologist reviewing your draft BA/BE may have follow-up questions or requests of additional information for the submitted draft BA/BE. Adding the Service to the document in CPB is intended to help reduce additional information requests.

Deconstructing an Action

- A method to develop more efficient, transparent, and defensible Biological Assessments and Biological Opinions

Biological Assessments (BAs) and Biological Opinions (BOs) must describe the pathway connecting impacts of a proposed action to the environment, exposure of individuals to those impacts, the response to that exposure, and the biological effects from that response (e.g. sound - birds flush off nest- chicks die due to exposure). This logic is referred to as “connecting the dots” or effects pathway¹ (Figure 1). Deconstructing an action facilitates discovery of the pathway and produces a natural logic and organization for writing the BA and BO. A failure to think and write with this pathway in mind, results in documents vulnerable to critical scrutiny or court review.

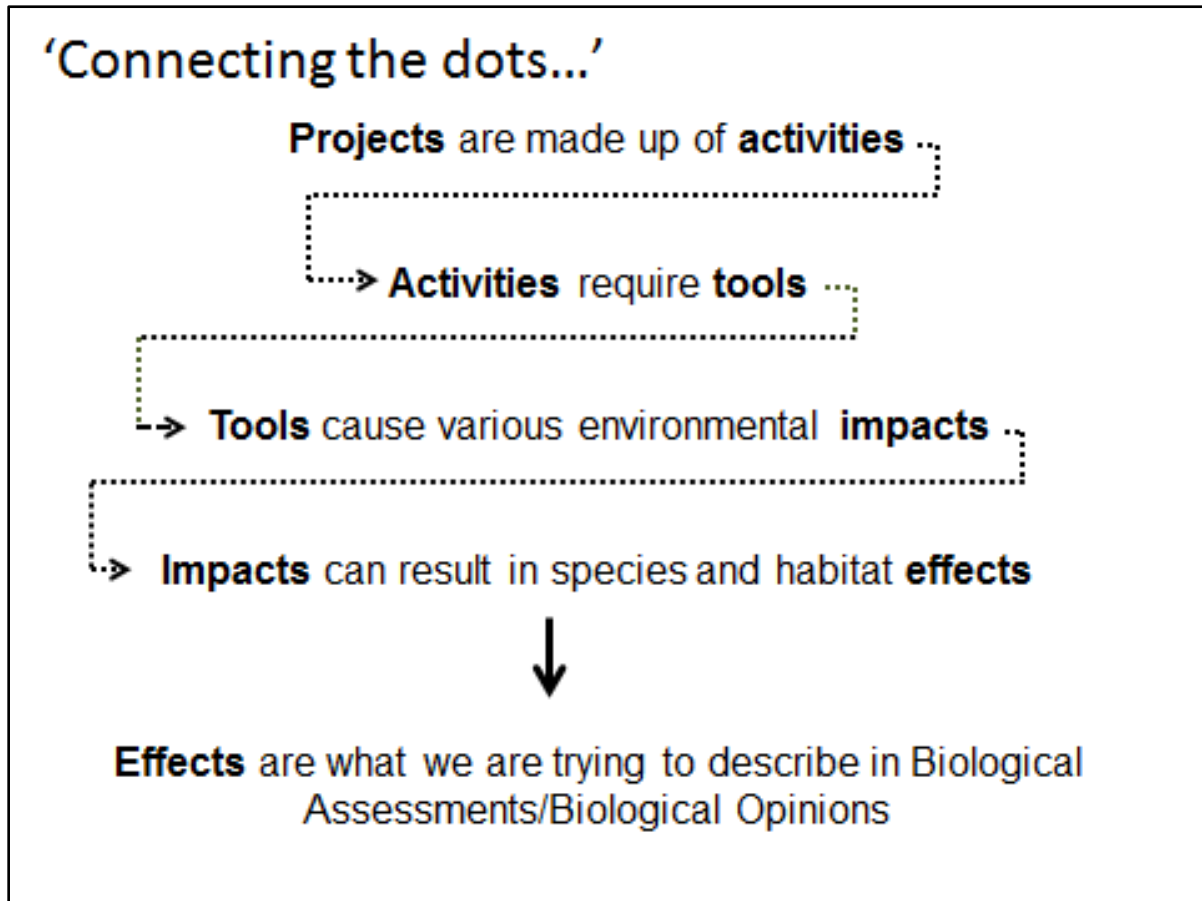
Deconstructing an action is best done cooperatively between the Service, Action Agency and Applicant (if any). It should occur early in a project’s development and can be considered technical assistance, or the start to informal consultation. It should use an interdisciplinary team, or any group of people most knowledgeable about all phases and implementation of the project. Deconstructing is applicable to any process that must follow a project’s impacts to their resulting biological effects such as Candidate Conservation documents or Habitat Conservation Plans.

Additional benefits of deconstructing an action are listed below.

- Helps to define and describe the extent of the action area
- Creates efficiencies through development of a BA “blueprint” that can be a shared (common understanding) work product before official consultation documents are drafted
- Promotes earlier coordination between the action agency and the Service and consensus on exposure-response-effect lines of reasoning
- Makes it easier to identify which project activities/tasks/equipment will have the greatest effects to the species
- Provides transparency in thought process for documents and decision record
- Focuses conversations regarding disagreements on specific elements of the action, rather than ambiguous generalities
- Reduces time required for Service review of draft BA because the BA is clearer, more concise and complete

¹ Connecting the dots means using narrative to explain the connection between the Project and its sub activities, the tools used for the activities, the environmental impacts from the tools, and finally, the effects to the species from those environmental impacts.

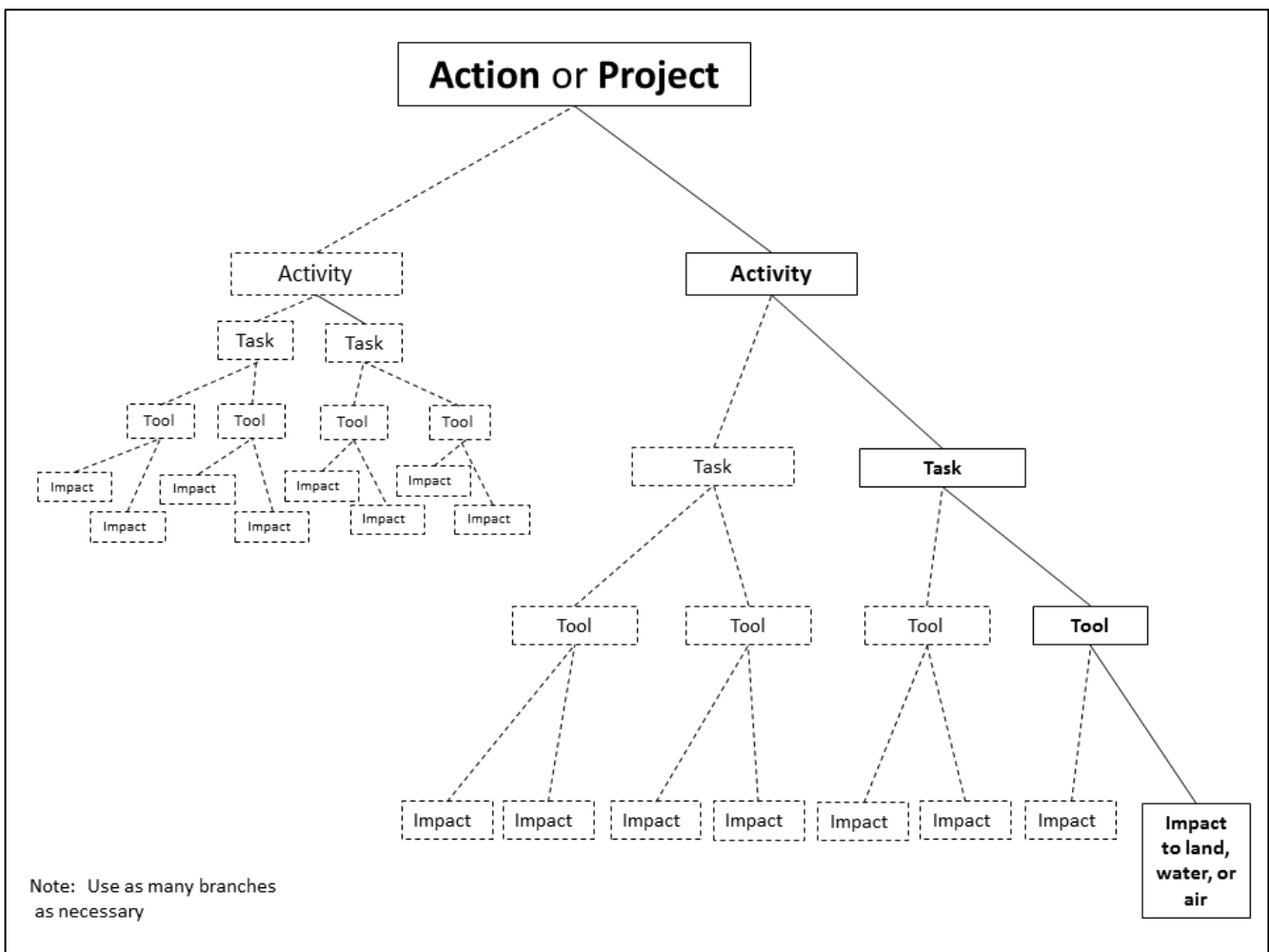
Figure 1. Connecting the dots



What does deconstruction look like?

Simply described, deconstructing an action is the process for breaking a large project into its smaller activities or tasks, so that we can follow the chain of logic to probable impacts. Figure 2 below shows the generic structure that can be used, but format (table, spreadsheet, diagram, etc.) is less important than explicitly working through the thought process and writing it down.

Figure 2. Generic Deconstruction Tree



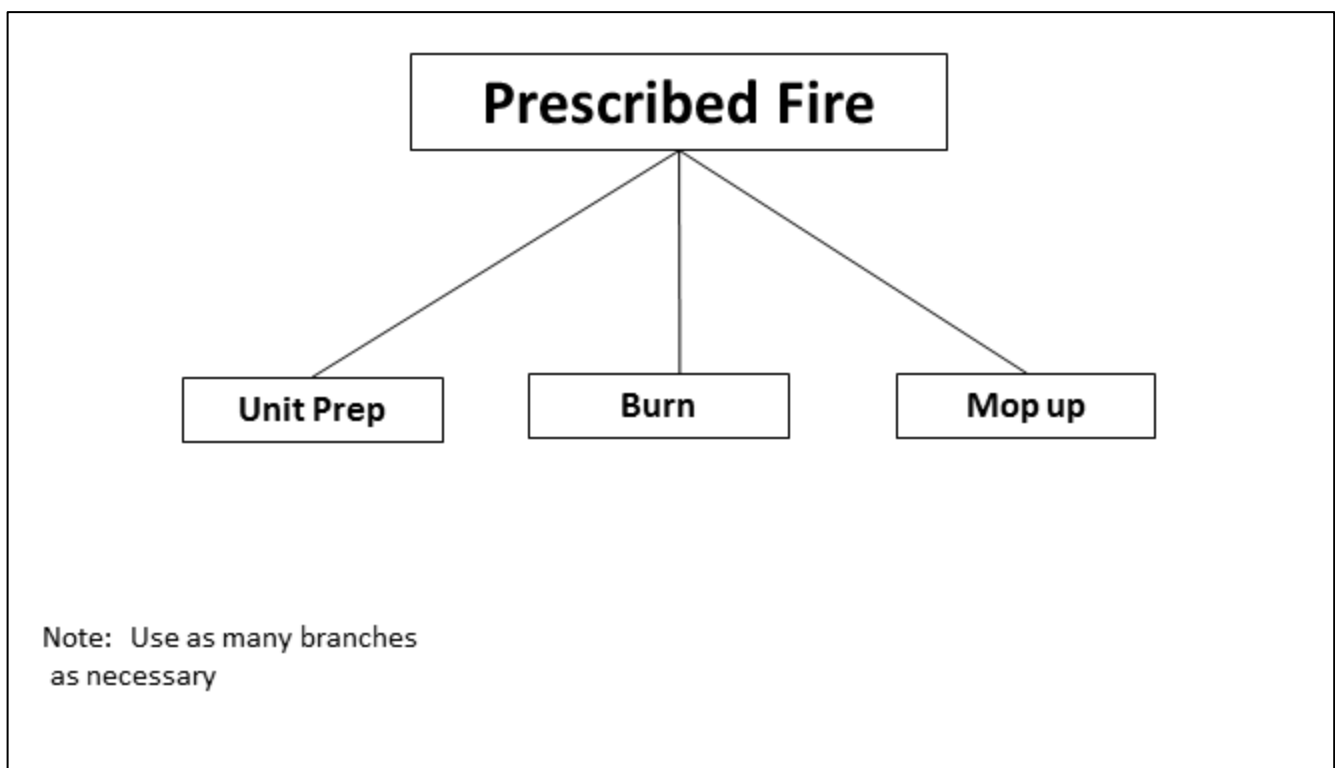
Here is how deconstruction might look using a proposal for prescribed fire as an example.

Step One: Identifying activities

Brainstorm and identify all the activities that are a part of the larger project. For our example we have identified three major activities.

- Unit Preparation
- Burning the unit
- Mop Up after the burn

Figure 3. Identifying major activities

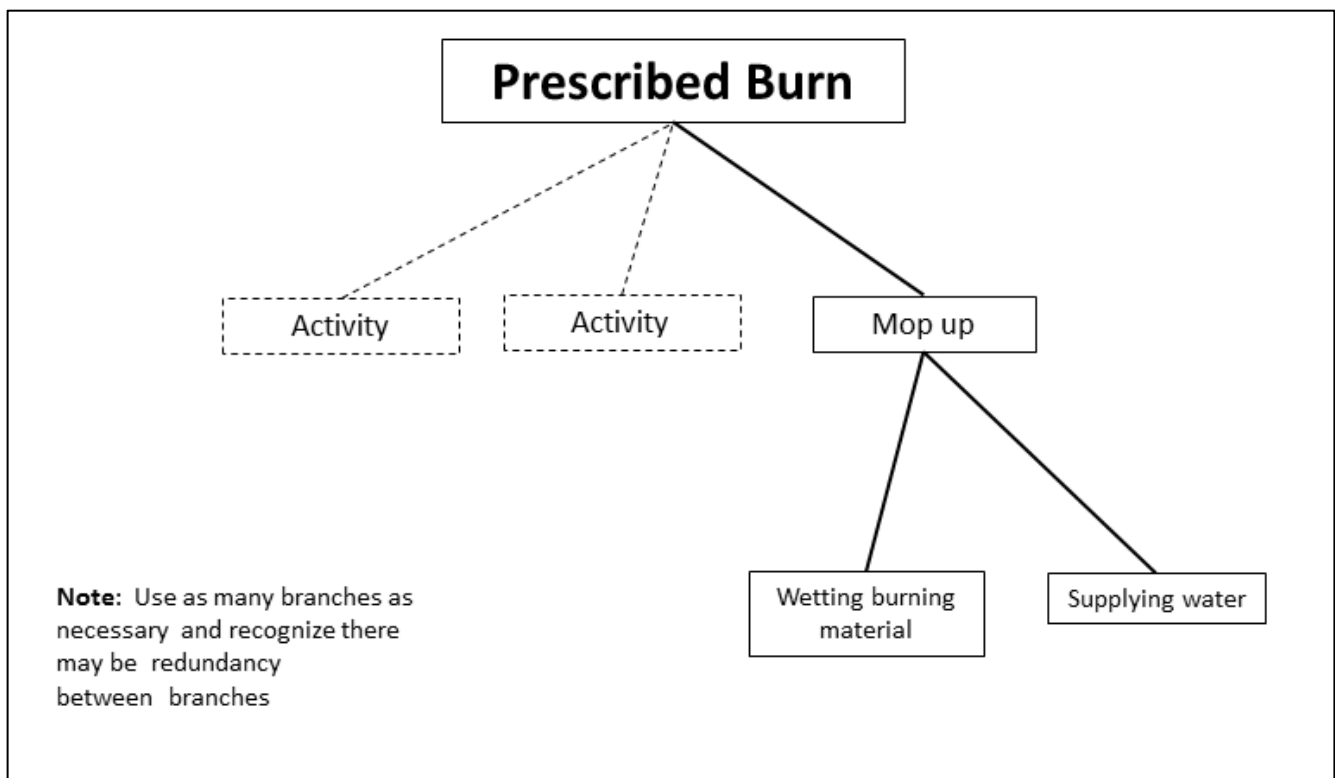


Step Two: Identifying tasks

Break those three activities into any number of tasks necessary to complete the activities. For our example we will use only one of our activities – the Mop up Activity. We'll give it two tasks.

Wetting burning material
Supplying water for mop up

Figure 4. Identifying Tasks



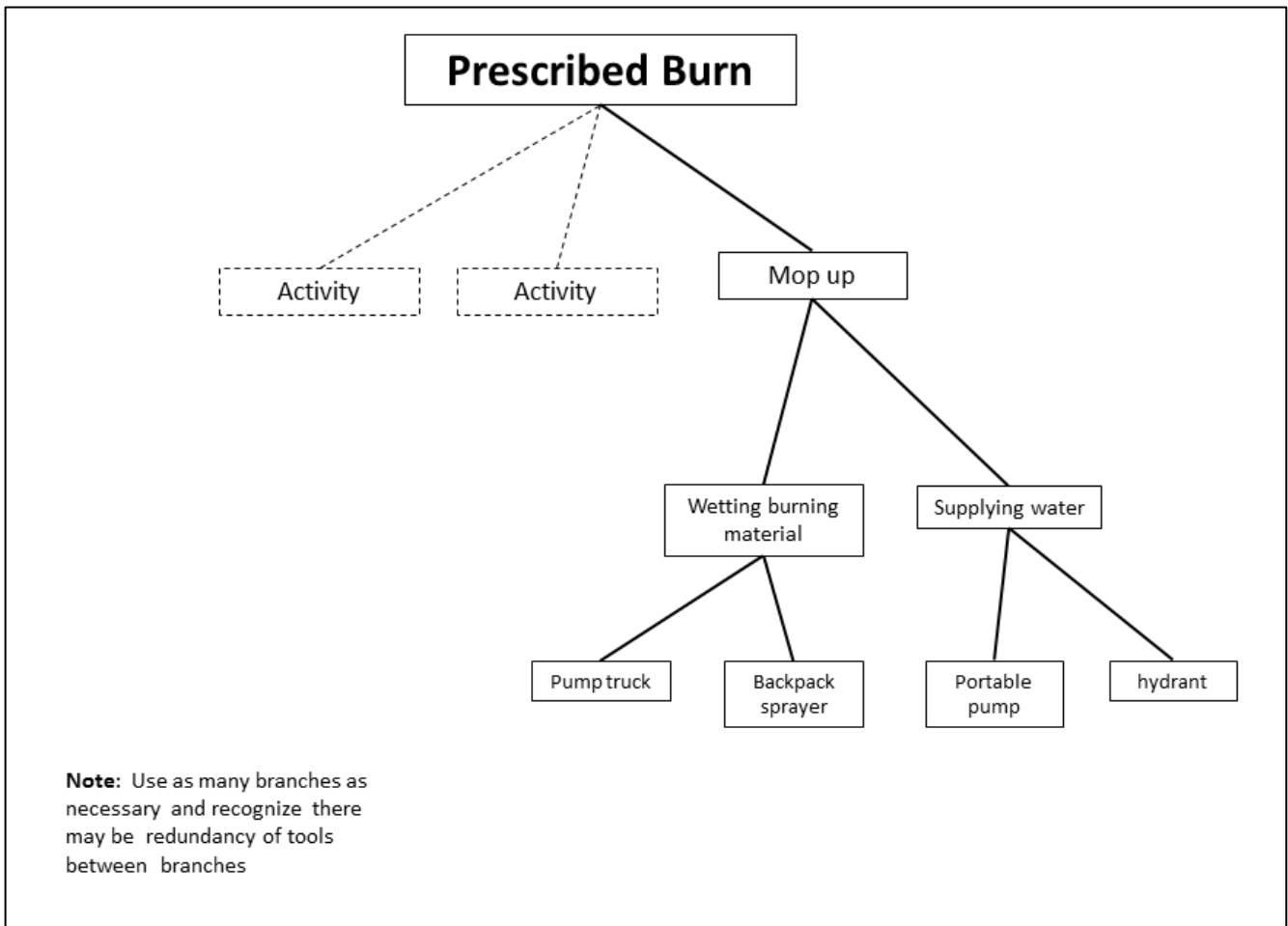
Step Three: Identifying the Tools or Equipment used in Tasks

Identifying the general size or type of tools used is necessary to understand their potential impacts to the environment (and indirectly - the species); however, an exhaustive list (hammer, nails, crowbar, etc.) isn't necessary. In other words, will the task be completed using hand tools and a small backhoe? Or will it take large earthmoving tools like a bulldozer, rock drills, explosives, and heavy earth moving equipment?

In our example we have identified four "tools" that will be used to complete our tasks.

- Pumper truck
- Backpack sprayer
- Water hydrant
- Portable pump

Figure 5. Identifying Tools/Equipment



Step Four: Identifying Impacts to Land, Water, or Air caused by the Tools or Equipment

The final step in the deconstruction process is describing the type of environmental impacts (to land, water or air) the tools are likely to cause. We have shown a few impacts that might come from the tools identified. There could easily be more, or different, impacts than shown.²

Pumper truck - ground compaction, water run-off , soil disturbance from force of water

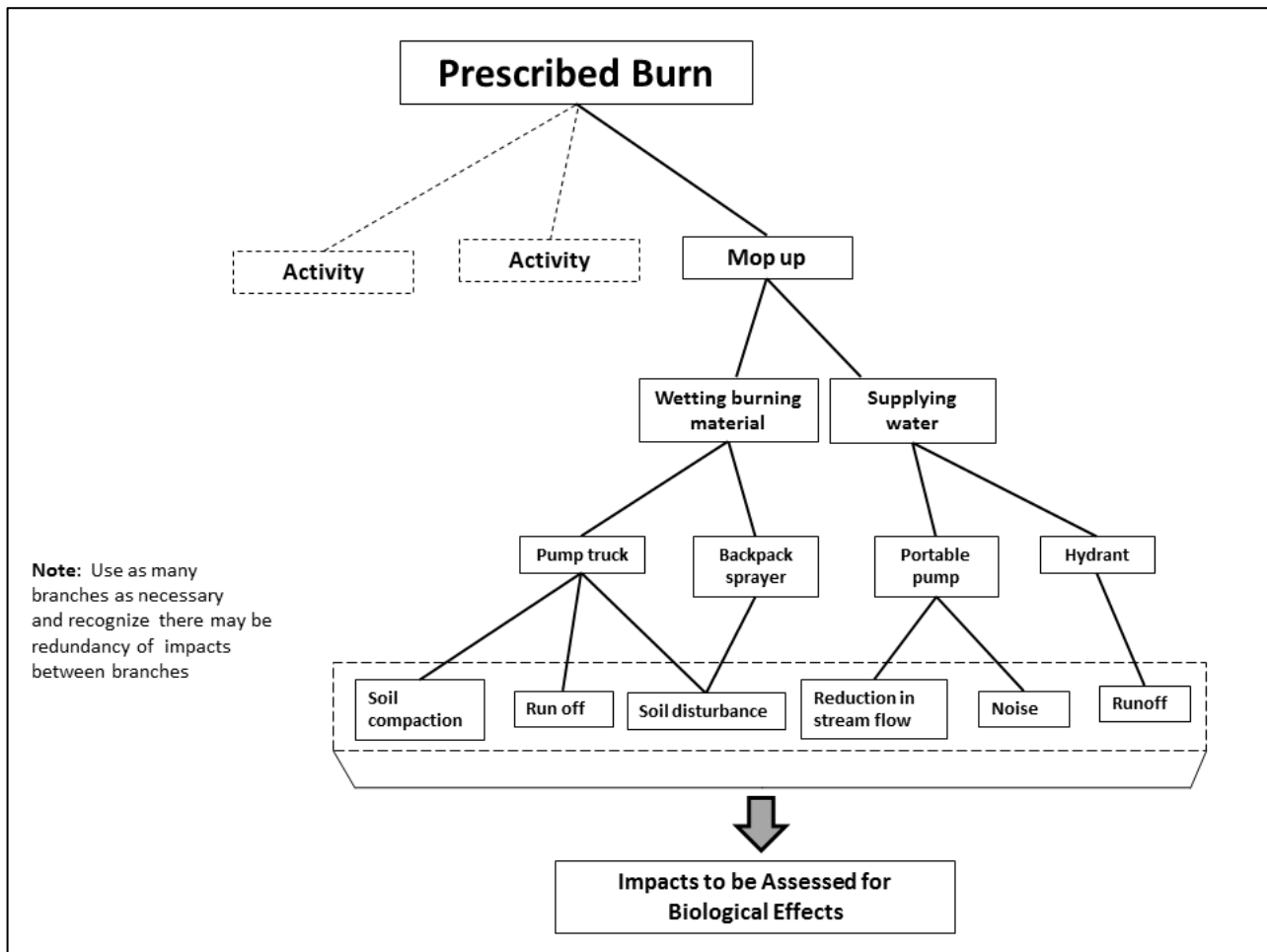
Backpack sprayer - water runoff , soil disturbance from spray,

Hydrant - water run-off from hose connect and disconnect,

Portable pump - reduced stream flow from pumping, noise, contamination from fuel,

Notice that at this point in deconstruction, you will have a much clearer, better organized and “connected” view of all the elements that are a part of the **Proposed Action** than is often found in consultation documents. Using this approach makes the BA and BO’s description of the proposed action more complete, and by brainstorming with a team before beginning the BA or BO writing process, activities (and their possible effects) are less likely to be missed.

Figure 6. Identifying Impacts to Land, Water or Air



² Different tools might produce the same impact. It is OK to show that duplication at this stage of the process. Later impacts might be lumped for discussion in consultation documents, if they produce similar effects to the species of habitat.

How does Deconstruction help describe the Action Area?

The Action Area is described in the regulations as “... all areas to be affected directly or indirectly by the Federal action...”). Deconstruction provides a logical process for identifying the discernable impacts to land, water, or air from our action. By examining the area (spatial extent) where those impacts can reasonably be perceived, we are describing our Action Area.

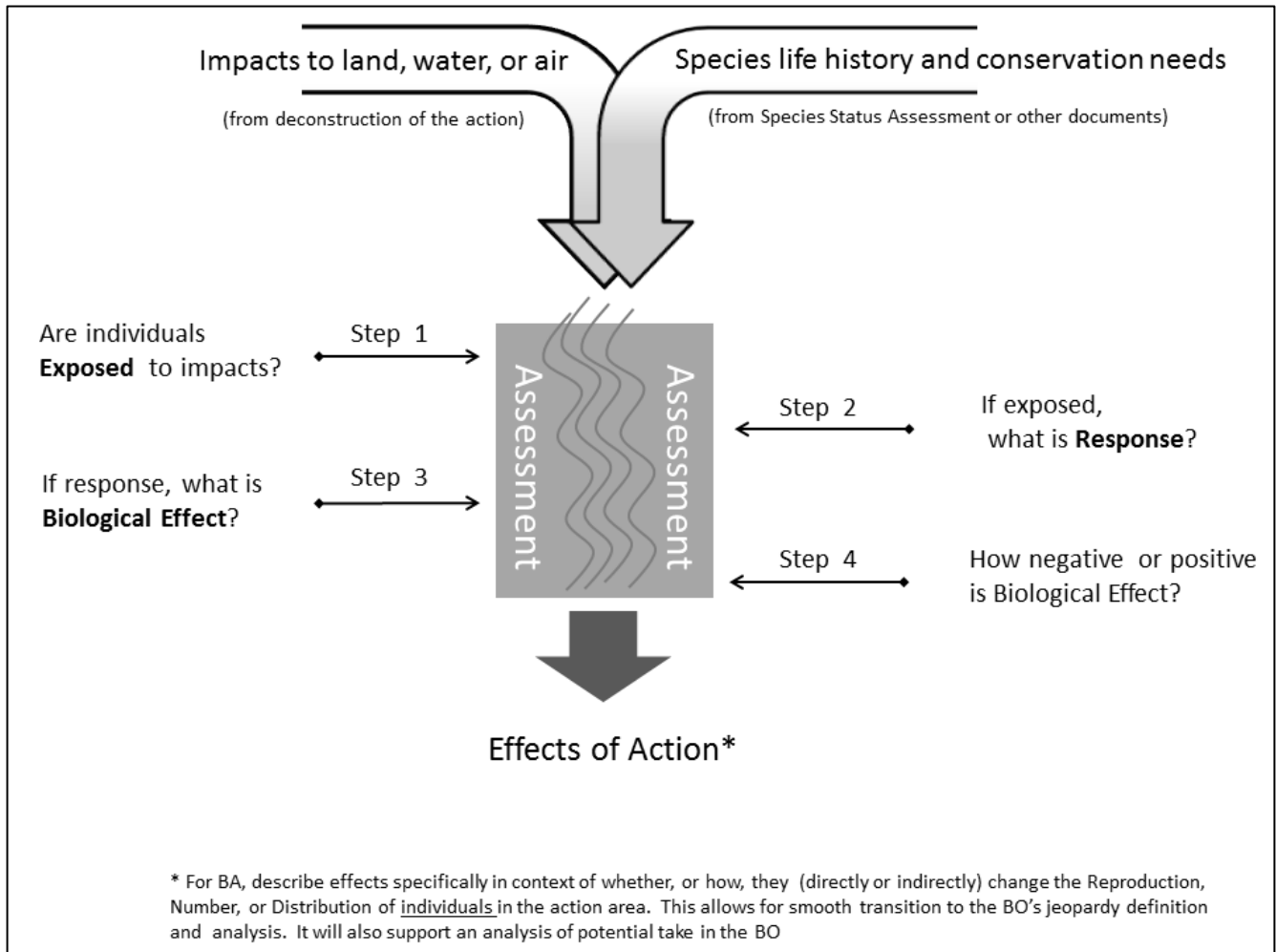
How does the process bring efficiency to consultation?

The Service encourages coordination and collaboration to make consultation go more smoothly. As a part of that collaboration we stress early coordination before official documents are constructed and projects are completely designed. By engaging in the deconstruction process (this simple brainstorming exercise with the action agency and applicants if applicable), all parties leave the early meeting(s) with a shared work product (chart, tree diagram, spreadsheet, table, etc.) that promotes a thorough understanding of the **proposed action**, a structured method to accurately and defensibly describe the **action area**, and a start to the thought process for the **effects of the action to important resources**. This work product can be reviewed (and potentially modified) informally early in the process, before there is agency investment in more formal documents. It eventually represents a shared view or “blueprint” to be used by writers for organizing the sections of the BA and BO. This consistency makes for efficient writing and builds a common thread between the action agency documents and the Service documents.

How does Deconstruction support better effects analyses?

Earlier we described building a pathway from environmental impacts to biological effects as “connecting the dots”. It can also be thought of as an Exposure – Response – Effects pathway. The work done in deconstruction leads naturally to exploring that effects pathway. Taking the identified impacts to the environment (land, water, or air) we can then logically step through an assessment of what effects to the species are likely to occur. Figure 7 below shows the relationship and stepwise process for developing information to inform the **effects of the action section in a** biological assessment or biological opinion.

Figure 7. Process for Translating Impacts to the Environment to Effects to the Species



Deconstruction Summary

The collaborative exercise of deconstructing the proposed action, informs the extent of the action area, creates an early start to understanding the source of impacts, and insures a better narrative supporting a consultation document's conclusion. The table below shows one way to organize all of these concepts together as a "blueprint" for a written narrative for effects of the action in BA or BO. Used for this purpose, deconstruction is an indispensable tool for consultation. Following Table 1 is a simplistic example of a summary connecting the dots from exposure to the impacts (from one activity) through to the likely biological effect to the aquatic species. This is a summary only; it would rely on more thorough discussion earlier in the BA or BO for full support and explanation.

Table 1. Simple Example Table for Organizing Impact-Exposure-Response-Effect Concepts in Preparation for Writing a Biological Assessment or Biological Opinion. (Species is a hypothetical aquatic organism – the Deconstruction Darter.)

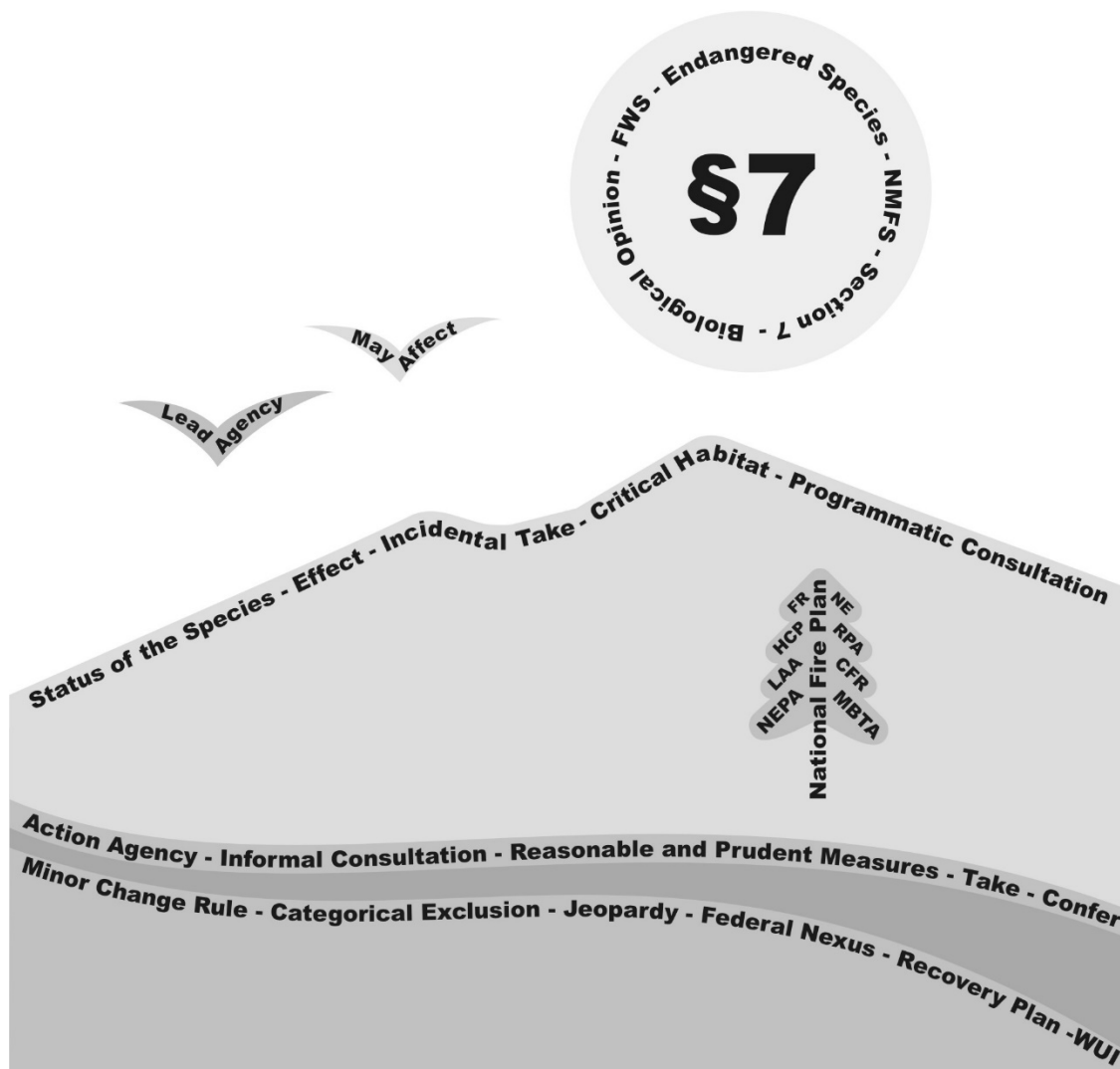
Tools or Equipment	Impact (sometimes referred to as a stressor)	Exposure to Impact Yes or No and why	Response Yes or No If yes, what is likely response	Effect If response, what is likely biological effect	Degree of effect
Pump truck	Soil compaction increases	No Compaction not in occupied habitat.	No	None	None
Pump truck Hydrant	Run off increases	Yes. Run off reaches occupied habitat.	No. Increase in flow and accompanying sediment is small enough that given information on organism's life history, no response by any life stage is expected.	None	None
Pump truck Backpack sprayer	Soil disturbance increase	Yes. Exposed through sediment in run off (See above)	(See above)	(see above)	(See above)
Portable pump	Stream flow decreases	Yes. Decrease is in stream stretch that is occupied by species.	Yes. Decrease is substantial and is likely to expose nests and eggs.	Eggs in affected stretch of stream will die from desiccation	Mortality
Portable pump	Noise produced	Yes. Occupied habitat near to noise source.	Yes. Sound increase perceptible in occupied habitat is low; given information on life history, response is merely attention to sound.	Awareness of sound	Insignificant. can't meaningfully measure, detect or evaluate

Simplistic Effects Summary (connecting the dots)

Activity - Mop Up

The proposed action will use a pump truck, hydrant, backpack sprayer, and portable pump. Use of this equipment is likely to result in impacts to the action area including soil compaction/disturbance, increased surface run-off to nearby streams, decreases in streamflow from water withdrawal, and an increase in noise levels due to pumping activities. Of these impacts, we expect nearby occupied habitat of the Deconstruction Darter (Darter) to be exposed to increased surface run-off, water withdrawals, and increased noise levels. Based the project design and the life history of the species, no biological effects to the Darter are expected from sedimentation on aquatic habitat, as a result of surface run-off. Biological effects from an increase in noise levels from pumping activities are expected to be insignificant. However, water withdrawals from pumping will reduce water levels in the stream causing exposure of Darter nests and eggs. Exposure of the nests to air will dry the eggs and cause their death. As described in the effects section, we expect this to occur to 10 nests in the action area and only during the year of the prescribed burn.

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



February 2021

Cover Art by Dani Thomson

**A Working Glossary
for Practitioners of
Consultation
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Endangered Species Act**

Compiled by

Doug Laye
U.S. Fish and Wildlife Service

February 2021

Note to the Reader

This working glossary does not replace or supersede any statutory, regulatory, guidance, or policy definitions. In the case of any confusion regarding a definition – the original source should be consulted. This 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 multiple source documents to find those definitions.

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.

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, guidance, or policy.

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, court cases, etc.) to construct a commonly held meaning for the phrase or word.

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

The first version of this document was originally compiled in 2013 and updated as needed. This version is current as of February 2021. It includes consideration of the revisions to 50 CFR parts 17, 402, and 424 up to and including those published in August of 2019.

This is a shared work "in progress" for practitioners; suggestions are welcome.

- Compiler

Acknowledgments

Before and after its initial debut in 2013, many people helped make this working document a useful tool for practitioners.

Special thanks are given to Peg Romanik for her enthusiastic assistance with this project from its inception and a shared interest in the art of words and Stewart Reid for his advice that accuracy and understanding begins with examination of original sources.

Recognition of Sandi Fisher, Ty Matthews, Richard Bulavinetz, Bridget Fahey, Nathan Darnall and Rebecca Migala for support, ideas, reviews and edits.

Thanks to Tori Foster for voluntarily taking on the painstaking and large role of final editor for this edition.

And, special appreciation is extended to Dani Thomson, who is responsible for the cover art and patiently endured years of 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 and responsible for ensuring its action does not violate the mandate under 7(a)(2) and 7(a)(3) of the ESA.

Origin: Working definition

Additional information: See also **Federal Agency, Lead Agency** and **Federal Action Agency**.

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

Origin: Regulations (1986) codified as 50 CFR 402.02

Additional information: Not to be confused with the term “affected environment” which is a term of art used in the NEPA process. Affected environment is not a term used under the 402 Interagency Cooperation regulations.

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

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

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: 1998 Handbook, p. x

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

Origin: Working definition

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

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

Amend or Amendment – terms used by practitioners to refer to any consultation document (including biological assessments) that are subsequently modified by letter or memorandum. Though not used with this broad

connotation in the Act or regulations, the 1998 Handbook uses the word in section 4.6 to discuss modifications to biological opinions or incidental take statements.

Origin: Working definition

Additional information: See also **Addendum**.

Analytical Framework – See **Jeopardy Analysis Framework**

ANILCA (Alaska National Interest Lands Conservation Act) – Though the acronym stands for an act of Congress, in Section 7 practice the acronym (ANILCA) is commonly used to refer to an agreement with the Forest Service, Bureau of Land Management, and NOAA Fisheries regarding authorizations for access to non-Federal land across lands administered by FS or BLM. The agreement dealt specifically with situations involving compliance with the Endangered Species Act when access is authorized pursuant to the Alaska National Interest Lands Conservation Act or the Federal Land Policy and Management Act. The agreement was announced in an April 13, 2003, Memo from the Director of the Service to the Regional Directors. A clarification memo was issued on July 1, 2005.

Origin: Working definition

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

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

Origin: 1998 Handbook, p. x

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

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

APA – see **Administrative Procedure Act**

APP – see **Avian Protection Plan**

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

Origin: Working definition

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

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

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 1998 Handbook pp. 2-12, 2-13.

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

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: 1998 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 1998 Handbook, but a larger discussion regarding its

meaning is included in the preamble to the final rule defining **Destruction or Adverse Modification** (FR, February 11, 2016, Vol. 81, No. 28), the preamble to the revision of that definition (FR Vol. 84, No. 166, August 27, 2019), and the 1998 Handbook at 4-34.

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

Origin: Working definition.

Additional information: Quotes in text above taken from the Act, Section 10(a)(1)(b). It is also mentioned on pages 2-5 and 4-34 of the 1998 Handbook. The reverse phrase - **Reduce Appreciably** - is used in the regulatory definition of **Jeopardize the Continued Existence of**.

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

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 under the **Administrative Procedure Act**.

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

Origin: Working definition

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

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

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

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. Beginning in 2009, various regulations and guidelines have been put in place for permits related to incidental take of bald and golden eagles.

Baseline – See **Environmental Baseline**

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

Origin: Working definition

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

BAER – see **Burned Area Emergency Response**

BBCS – see **Bird and Bat Conservation Strategy**

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

Origin: 1998 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 phrase used once in the U. S. House of Representatives conference report regarding discussions on language amendments to Section 7 of the ESA. “This language continues to give the benefit of the doubt to the species, and it would continue to place the burden on the action agency to demonstrate to the consulting agency that its action will not violate Section 7(a)(2).”

Origin: Working definition

Additional Information: Quote taken from the 1979 conference report (No. 96-697). Concept is mentioned in the preamble to the 1986 regulations (p. 19951) and the Services briefly discuss this concept in the 1998 Handbook, p. 1-6.

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

Origin: Act, Section 4 and 7

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

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

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 the Biological assessment determines whether formal consultation or a conference is necessary (50 CFR 402.02 and 402.12). Biological Assessments are required for projects seeking exemption from 7(a)(2) of the Act through the Endangered Species Committee [Act, Section 7 (c)(2)]. Though the term has a specific definition in the regulations, practitioners often use the term broadly to indicate any document(s) used by an action agency to initiate consultation.

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

Origin: Regulations (1986) codified as 50 CFR 402.02

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

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

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

Origin: Working definition

Additional information: This blanket rule was terminated in 2019 (FR Vol. 84, No. 166, August 27, 2019). Species listed as threatened after the August 2019 revised regulations will not be subject to Section 9

prohibitions unless a species-specific 4(d) rule is promulgated outlining applicable prohibitions, exceptions to prohibitions, or other protective regulations. NMFS did not promulgate a similar “blanket rule”.

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

Origin: Working definition

Additional information: Quote taken from 2013 Interim Directive (No. 2520-2013-1, June 6, 2013).

Program is most commonly used immediately after, or even during, suppression of wildfires to reduce potential future damage caused by erosion.

“But for” Test – The first of a two-part test to determine if an activity or consequence is caused by an action and should be considered an effect of the action under consultation. To be considered an effect of the action, the activity or consequence must also be “reasonably certain to occur”. “If the agency fails to take the proposed action and the activity would still occur, there is no ‘but for’ causation”

Origin: Working definition

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

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

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.” (1998 Handbook p. xi). By policy for intra-service conferencing purposes, the Service treats candidates as if they were proposed for listing (1998 Handbook p. 1-5).

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

Origin: Working definition

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

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

Origin: Working definition

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

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

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 under the **Administrative Procedure Act**. Quote from Webster’s II New Riverside University Dictionary (1988).

Categorical Exclusion (“Cat X”) – a NEPA phrase (not Section 7) that “...means a category of actions which do

not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedure adopted by a Federal agency in implementations of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required..."

Origin: Regulations, 40 CFR 1508.4

Additional information: Quote taken from the full definition at 40 CFR 1508.4. A "Cat X" does not change a federal agency's responsibilities under 7(a)(2) of the Act.

CCA – See **Candidate Conservation Agreement**

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

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) – a 1980 act of Congress intended to eliminate risks to human health and the environment posed by contamination, usually at closed and abandoned hazardous wastes sites, and recoup the cost of cleanup from responsible parties.

Origin: Working definition

CFR – See **Code of Federal Regulations**

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

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

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

Origin: Working definition

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

Origin: Working definition

Additional information: First mentioned in the preamble of 1986 regulations, and at 50 CFR 402.13. The 1998 Handbook discusses the subject in chapter 3. This document is also commonly referred to as a Letter of Concurrence or LOC, though that form of the term is used only in the 1998 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 required under section 7(a)(4) are concluded with either a Conference Report or (if requested) a Conference Opinion. Conference Opinions may be adopted as a biological opinion by the Service after listing, under certain conditions (402.10). Adoption, by the Service, of the conference opinion should be requested in writing. Many agencies voluntarily request to conference on projects that they determine only "may affect" proposed species, critical habitat (402.10), or candidate species. Because of the wide variety of actions taken by the Service and action agency relative to a "voluntary" conference, the process and terminology can become confusing. See also **Voluntary Conference**.

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

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

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

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

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

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

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

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

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

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

Origin: Act, Section 3

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

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

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

Origin: Working definition

Additional information: See **Effects Pathway Manager and Species Status Assessments**.

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

Origin: 1998 Handbook, p. xii

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

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

Origin: Working definition

Additional information: See Resource Needs

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

Origin: Regulations, codified as 50 CFR 17.3

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

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

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 1998 Handbook (p. xii) expressed the regulatory definition this way: “...non-binding suggestions resulting from formal or informal consultation that: (1) identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or proposed species, or designated or proposed critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or proposed species, or designated or proposed critical habitat; and (3) include suggestions on how an action agency can assist species conservation as part of their action and in furtherance of their authorities under Section 7(a)(1) of the Act.” See also the 1998 Handbook p. 4-59.

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

Origin: Working definition

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

Considerably Reduce – a phrase in the 1998 Handbook’s definition of Appreciably Diminish the Value of (p. x) but not defined there. The phrase’s meaning is discussed in the preamble to the final rule defining Destruction

or Adverse Modification (FR, February 11, 2016, Vol. 81, No. 28, p. 7218).
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 to use agreed upon timelines, cooperative steps, structured reviews, data sources, document templates, etc., to either move through a single, complex consultation or establish a process for use on all consultations.

Origin: Working definition

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

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

Origin: Working definition

Additional information: See **Consultation Package and IPaC**.

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

Origin: Working definition

Additional information: See **Consultation Package Builder and IPaC**.

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

Origin: Working definition

Additional information: See **Decision File and Administrative Record**.

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

Origin: Working definition

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

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

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; 50 CFR subpart D) and the **National Fire Plan** (2004; 50 CFR 402 subpart C); both are no longer in effect. See **FIFRA** and **Alternate Consultation Agreement**.

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

Origin: Regulations (1986) codified as 50 CFR 402.02

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

Origin: Act, Section 3

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

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

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

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

Origin: Regulations, 40 CFR 1508

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

Origin: Working Definition

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

CWA – See **Clean Water Act**

DKey – See Determination Key

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

Origin: Working definition

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

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

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 the role of applicants in the designation process.

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

Origin: Regulations (2016), revised (2019), 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 and that definition was revised in 2019 (FR Vol. 84, No. 166, August 27, 2019). This phrase and similar phrases such as **Adversely Modify** and **Adverse Modification** can create confusion if used by action agencies, or the Service, to generally describe an adverse effect to critical habitat as a result of being physically destroyed or modified in an action area by a project. Those situations are focused at an action area scale which is rarely the same scale at which the 7(a)(2) determination regarding critical habitat is made. Simplistically and broadly, **Destruction or Adverse Modification** can be thought of as parallel in scale to a Jeopardy Analysis. See the 1998 Handbook p. 4-34 and **Listed Entity Scale**.

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

Origin: Working definition

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

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

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

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

Origin: 1998 Handbook, p. 4-25

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

interactions can occur during a project or over time due to the project's long-term effects.

Origin: Working definition

Additional information: Working definition from **EPM**.

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

Origin: 1998 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 vertebrate populations that are eligible for listing, reclassification, and delisting as a “species” under the Act. In 1996 the Fish and Wildlife Service and the National Marine Fisheries Service (Services) adopted a policy to clarify their interpretation of the phrase. The concepts of discreteness, significance, and status inform the use of the phrase.

Origin: Working definition

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

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

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 1998 Handbook for specific process. Actual “Early Consultations” are exceedingly rare. The specific 7(a)(3) process can be confused with the generally recommended practice of meeting informally early in the planning process to assist an action agency in preparing for consultation.

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

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 Federal agency may produce a Finding of No Significant Impact (**FONSI**) document. This finding is not a 7(a)(2) determination for consultation purposes.

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

Origin: ECOS website January 2020

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

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

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

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

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

Origin: Working definition

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

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

Origin: Working definition

Additional Information: See IPaC.

EIS – See **Environmental Impact Statement**

EPM – See **Effects Pathway Manager**

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

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 1998 Handbook (p. 8-1) adds the phrase “...and includes response activities that must be taken to prevent imminent loss of human life or property.”

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

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 1998 Handbook.

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

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

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

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

Origin: Regulations 2019, codified as 50 CFR 402.02

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

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

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 NEPA decision making process, it outlines the environmental effects of a proposed action and any alternatives to the proposed action.

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

Origin: Working definition

EPA – See **Environmental Protection Agency**

EPM – See **Effects Pathway Manager**

ESA – See **Endangered Species Act**

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

Origin: Regulations, 50 CFR 17.80

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

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

Origin: Working definition

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

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

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

Experimental Population (Regulations) – “The term *experimental population* means an introduced and/or

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

Origin: Regulations, 50 CFR 17.80

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

FACA – See **Federal Advisory Committee Act**

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

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 Advisory Committee Act (FACA) – a 1972 act of Congress 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 Agency – “...any department, agency, or instrumentality of the United States.”

Origin: Act, Section 3

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

Origin: Working definition

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

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

Origin: Working definition

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

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 – See **Federal Energy Regulatory Commission**

FIFRA (Federal Insecticide, Fungicide and Rodenticide Act) – The Federal statute that governs the registration,

distribution, sale, and use of pesticides in the United States. Enacted in 1947 and amended in 1972 and 2003.

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

Origin: Working definition

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

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. Since the implementation of the **Species Status Assessment** framework as the scientific basis for classification decisions, the five factor analysis for a species is described in terms of resiliency, redundancy, and representation (collectively known as the 3Rs).

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

Origin: Working definition

Additional information: Quote taken from the Act, Section 4 (c). Not to be confused with the yearly appraisal of the current status of plants and animals considered candidates for protection under the Act referred to as the **Candidate Notice of Review**.

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

FOIA – See **Freedom of Information Act**

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

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 detailed in 402.14

Additional information: 50 CFR 402.14 and Chapter 4 of the 1998 Handbook. See also **Informal Consultation** and **Technical Assistance**, which can be important steps in the overall consultation process.

FR – See **Federal Register**

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

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

FWCA – See **Fish and Wildlife Coordination Act**

FWS – See **Fish and Wildlife Service**

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

Origin: Working definition

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

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

Origin: Regulations, 50 CFR 424.02

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

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

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

Origin: Working definition

Harass (FWS) – "Harass in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering." **Note:**

The definitions of Harass on pages xix, 4-46, and E-15 of the 1998 Handbook are incomplete due to a missing portion of the complete definition.

Origin: Regulations, codified as 50 CFR 17.3

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

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

Origin: Working definition

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

Harm (FWS) – "Harm in the definition of "take" in the Act means an act which actually kills or injures wildlife. Such [an] act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." **Note:** The template language for Harm on page 4-46 of the 1998 Handbook is incomplete and also incorrectly substitutes "listed species" for "wildlife".

Origin: Regulations, codified as 50 CFR 17.3

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

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

Origin: Regulations, codified as 50 CFR 222.102

Additional information: See also FR, 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

Additional information: See **IRAC**.

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 1998 Handbook pp. 4-43 through 4-49.

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

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, respectively.

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Previous 1986 regulations

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

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

Origin: Working definition

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

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

Origin: Regulations (1986) codified as 50 CFR 402.02

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

Information Standards under the Endangered Species Act – A policy established in 1994 which gives guidance on applying the Act's standard of best scientific and commercial data available. “[T]o assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of

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

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

Additional Information: See also **Best Scientific and Commercial Data Available**.

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 1998 Handbook, but not defined there.

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

Origin: Working definition

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

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

Origin: 1998 Handbook, p. xv

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Previous 1986 regulations

Additional information: See **Effects of the action**.

Interrelated Actions – A term previously defined within the 1986 definition of “Effects of the action”, but eliminated

in the 2019 revisions to the 402 regulations. These types of activities and their consequences are still wholly encompassed by the 2019 revised definition of effects of the action.

Origin: Previous 1986 regulations

Additional information: See **Effects of the action**.

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

Origin: Working definition

Additional information: <https://ecos.fws.gov/ipac/>.

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

Origin: Working definition

Additional information: See **HEAT**.

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 1998 Handbook.

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

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

Origin: Working definition

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

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

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] (1998 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 scale 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 in regard to NEPA at 40 CFR 1508.16.

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

Origin: 1998 Handbook, p. xvi

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

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

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: 1998 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 analyses and determinations.

Origin: Working definition

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

Listing – the statutory (Section 4 of the Act) and regulatory process for designating a species as threatened or

endangered, and designating the critical habitat essential to the conservation of that species.
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 with a specific number such as M-3700, etc.

Origin: Working definition

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

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 process (not the same as ESA consultation).

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

Origin: Regulations (1986) codified as 50 CFR 402.02

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

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

Origin: 40 CFR 1508.1(q)

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

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

Origin: 1998 Handbook, p. xvi

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

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

Origin: 1998 Handbook, p. xv

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

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

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

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

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

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. On December 27, 2016, the Service published a notice of a final

Compensation Mitigation Policy for the ESA. That policy was withdrawn in July of 2018 (FR Vol. 83, No. 146, July 30, 2018). The 1981 policy remains in effect.

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

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

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

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

Origin: Working definition

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

Origin: Working definition

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

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

Origin: Working definition

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

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

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

Origin: Working definition

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

NE – See **No Effect**

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

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

Origin: Working definition

NFMA – See **National Forest Management Act**

NHPA – See **National Historic Preservation Act**

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

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

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

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

Origin: 1998 Handbook, p. xvi

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

Origin: Regulations, 50 CFR 17.80(b)

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

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

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

Origin: Working definition

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

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

NRDA – see **Natural Resource Damage Assessment**

Optional Collaborative Process – a phrase used in 50 CFR 402.16(h)(4) referring to collaboration for developing and adopting action agency documents in consultation.

Origin: Working definition

Additional information: See also **Alternate Consultation Process, Consultation Agreement, Expedited**

Consultations, or Alternative Consultation Agreement, and Streamlined Consultation Procedures.

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

PCE – See **Primary Constituent Elements**

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

Origin: Working definition

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

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

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

Origin: Regulations, 50 CFR 424.02

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

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

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

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**, the Act 7(a)(3), 50 CFR 402.11 and Chapter 7 of the 1998 Handbook. Preliminary biological opinions and **Early Consultations** under 7(a)(3) of the Act are extremely rare.

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

Origin: Regulations, 50 CFR 424.12(b)

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

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

Origin: Regulations (2019) codified as 50 CFR 402.02

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

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

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 1998 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 “...those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact” [from incidental take]. The regulations define them as “...those actions the Director believes necessary or appropriate to minimize the impacts, *i.e.*, amount or extent, of incidental take.”

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 1998 Handbook p. 4-50.

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

evaluating an activity as a cumulative effect.

Origin: Working definition

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

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

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

Origin: Working definition

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

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

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 the Act, Section 4(f)(1).

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

Origin: 1998 Handbook, p. xvii

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

Origin: Working definition

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

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

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

Origin: Glossary - U.S. Fish and Wildlife Service. 2016. USFWS Species Status Assessment Framework: an

integrated analytical framework for conservation. Version 3.4 dated August 2016.

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

Origin: Working definition

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

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

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

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

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

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

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

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

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

Origin: Working definition

Additional information: In **EPM**, specific details about how a species uses a resource need can be documented (e.g., which species life stage uses that resource need, a specific resource function that the resource need supports) and resource need attributes can be supported with references. See **Conservation Needs**.

ROD – See **Record of Decision**

RPA – See **Reasonable and Prudent Alternative**

RPMS – See **Reasonable and Prudent Measures**

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

Origin: Working definition

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

Section 4 – "...the section of the Endangered Species Act of 1973, as amended, outlining procedures and criteria for: (1) identifying and listing threatened and endangered species; (2) identifying, designating, and revising

critical habitat; (3) developing and revising recovery plans; and (4) monitoring species removed from the list of threatened or endangered species [ESA §4].

Origin: 1998 Handbook, p. xviii

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

Origin: Working definition

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

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

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

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 1998 Handbook p. 2-7.

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: 1998 Handbook, p. xviii

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

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

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 license contain protections related to fish and wildlife. The Fish and Wildlife Service, NMFS, and state wildlife agencies provide recommendations to inform protections incorporated into the license.

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

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 – See **State Historic Preservation Office**

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

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 ESA to allow for the exclusion of military lands from critical habitat designation if those lands are subject to an **INRMP** and it provides a benefit to the listed species.

Origin: Working definition

Additional information: See also **INRMP**.

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

Origin: Working definition

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

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

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).

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

Origin: Working Definition

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

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

Origin: Working Definition

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

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

Origin: Working definition

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

Origin: Working definition

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

Origin: Working definition

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

Survival – "... for determination of jeopardy/adverse modification: the species' persistence as listed or as a recovery unit, beyond the conditions leading to its endangerment, with sufficient resilience to allow for the potential recovery from endangerment. Said another way, survival is the condition in which a species continues to exist into the future while retaining the potential for recovery. This condition is characterized

by a species with a sufficient population, represented by all necessary age classes, genetic heterogeneity, and number of sexually mature individuals producing viable offspring, which exists in an environment providing all requirements for completion of the species' entire life cycle, including reproduction, sustenance, and shelter. [Clarification of usage]"

Origin: 1998 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 (ESA) – "...means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

Origin: Act, Section 3

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

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

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

Origin: Working definition

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

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

original consultation document.

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

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

Origin: Working definition

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

Origin: Working definition

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

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

Origin: Working definition

Additional Information: See also **Conference**.

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

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 near structures or developed areas.

Origin: Working definition