

ENDANGERED SPECIES ACT

GLOSSARY OF KEY TERMS

[Derived from the Endangered Species Act of 1973]

Act

The Endangered Species Act of 1973, as amended (U.S.C. 1531 et seq.).

action area

All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action

applicant

An abbreviated term including all permit or license applicants, may include states or tribes. Any person, as defined in section 3(13) of the Endangered Species Act, who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.

biological evaluation

Information prepared by EPA 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.

biological opinion

The document that states the Service's opinion as to whether the Federal action is likely to jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat.

Note: The Federal agency shall determine whether and in what manner to proceed with the action in light of its obligations under sections 9 and 7 of the ESA along with the Service's biological opinion.

conservation

The use of all methods and procedures necessary to recover the endangered or threatened species to the point at which the measures provided pursuant to the Endangered Species 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.

conservation recommendations

Recommendations for actions to be voluntarily undertaken by the action agency, usually suggested by the Services, to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.

These recommendations may assist agencies in meeting their section 7(a)(1) responsibilities. They are nonbinding suggestions, and the Federal agency may elect to implement them in its proposed action

critical habitat

The (i) 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 Endangered Species 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 Endangered Species Act, upon a determination by the Secretary of the Interior or Department of Interior, as appropriate that such species are essential for the conservation of the species.

designated non-Federal representative

A person designated by the Federal agency as its representative to conduct informal consultation and/or to prepare any biological assessment.

destruction or adverse modification

A direct or indirect alteration to critical habitat that appreciably diminishes the value of the habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

effects of the action

The direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. 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 that are contemporaneous with the consultation in process. Indirect effects are those which are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those which are part of a larger action and depend on the larger action for their justification. Interdependent actions are those which have no independent utility apart from the action under consideration.

endangered species

Any species that is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insect as determined by the Secretary to constitute a pest whose protection under the provisions of the Endangered Species Act would present an overwhelming and overriding risk to man.

Federal 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.

Federal agency

Any department, agency, or instrumentality of the United States.

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.

formal consultation

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.

incidental take

Taking a listed species that results from, but is not the purpose of, carrying out a lawful activity conducted by the Federal agency.

incidental take statement

This statement operates to exempt the Federal agency and any permit or license applicant involved from the section 9 "taking" prohibitions under the Endangered Species Act if the subsequent implementation of the action is consistent with the terms and conditions of the incidental take statement.

informal consultation

An *optional* process that includes all discussions, correspondence, etc., between the Service, Federal agency, or the designated non-Federal representative prior to formal consultation. Through informal consultation, a Federal agency may determine that formal consultation is not required.

“jeopardize the continued existence of”

Engaging 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. The "continued existence" of the species is the key to the jeopardy standard, placing an emphasis on injury to a species' "survival." However, significant impairment of recovery efforts or other adverse effects which rise to the level of "jeopardizing" the "continued existence" of a listed species can also be the basis for issuing a "jeopardy" opinion. The very concept of "jeopardy" is that a Federal agency should not authorize, fund, or carry out an action that would injure a listed species' chances for survival to the point that recovery is not attainable.

listed species

Any species of fish, wildlife, or plant that has been determined to be endangered or threatened under section 4 of the Endangered Species Act. Listed species are found in 50

CFR 17.11-17.12.

“May Effect”

Term used when a proposed action by a Federal agency could have an impact (either positive or negative) on a listed species or its critical habitat.

reasonable and prudent alternatives

Alternative actions identified during formal consultation that can be implemented in a manner 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.

An alternative is considered reasonable and prudent only if it can be implemented by the Federal agency and any applicant in a manner consistent with the intended purpose of the action, and if the Director believes it would avoid the likelihood of jeopardizing the continued existence of the listed species or resulting in the destruction or adverse modification of critical habitat of such species. If there are no alternatives that meet the definition of "reasonable and prudent alternatives," the Service will issue a "jeopardy" biological opinion without alternatives.

reasonable and prudent measures

Those actions the Services believe necessary and appropriate to minimize the impacts (i.e., amount or extent, of incidental take) of the federal action. These are provided in an incidental take statement. Reasonable and prudent measures were intended to minimize the level of incidental taking, but Congress also intended that the action go forward essentially as planned. These should be minor and within the scope of the action. For instance, if an approval is the federal action, any reasonable and prudent measures should be centered around the approval action.

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 Endangered Species Act.

section 7 consultation

Analyzes whether the "effects of the action" on listed species, plus any additional, cumulative effects of state and private actions that are reasonably certain to occur in the action area, are likely to jeopardize the continued existence of that species. Based on this analysis, the Federal agency determines whether it can proceed without exceeding the jeopardy standard. If the jeopardy standard is exceeded, the proposed Federal action may be provided with an exemption. The purpose of consultation is to identify conflicts between proposed Federal actions and the "jeopardy" standard of section 7(a)(2).

Service(s)

The U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

species

Includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife that interbreeds when mature.

state agency

Any state agency, department, board, commission, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

take

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

threatened species

Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.