

Specific terms, definitions, criteria and wording for use in section 7 consultation documents.

Doug Laye - Eastern Idaho Field Office - June 2008

Effects Category	Effects Sub - category	Criteria necessary for inclusion in category or sub-category	Effects Determination wording/phrase	Action Needed by Action Agency	Response from FWS
<b>No Effect</b>  <u>Definition</u> - Proposed action will not affect listed species  ----- Or -----  <b>May Affect</b>  <u>Definition</u> - A proposed action that may pose any effect to listed species or designated critical habitat  ----- Or -----  <b>May Affect - Likely to Adversely Affect (LAA)</b>		"Action won't pose <u>any</u> effects to listed species or designated critical habitat."  <i>(Remember that effects are measured at the individual scale not population scale. And don't forget to consider whether any effects could occur through an indirect mechanism e.g. changes to its habitat, etc.)</i>	No Effect (NE)	Document rationale for findings in project file	None
	<b>May affect - Not Likely to Adversely Affect (NLAA)</b>	"Effects on listed species are expected to be discountable, insignificant or beneficial."  <u>Discountable</u> = those effects that are extremely unlikely to occur. Based on best judgment a person would not expect discountable effects to occur  <u>Insignificant</u> = based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects. Insignificant effects should never reach the level where take* occurs  <u>Beneficial</u> = are contemporaneous positive effects without any adverse effects ( <i>even short term</i> ) to the species	May affect - Not Likely to Adversely Affect (NLAA)	After informal consultation. discussions and preparation of a biological assessment on impacts to the species - request a concurrence letter from the FWS	If the FWS agrees with action agency's assessment and determinations - they issue a concurrence letter. If FWS does not concur, discussions and consultation between agencies continues
	<b>May Affect - Likely to Adversely Affect (LAA)</b>	Any adverse effect that is not insignificant or discountable [see definitions above]	May Affect - Likely to Adversely Affect (LAA)	Submit biological assessment and request formal consultation from the FWS	Issue a biological opinion, and if adverse effects are likely to result in Take* - issue an Incidental Take Statement with Terms and Conditions

\* Take (Section 9 of the Act) is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct". Harm is further defined by the Service (50 CFR, §17.3 ) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service (50 CFR, §17.3 ) as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.

Protection of Plants under the ESA

	Endangered	Threatened
Section 9	<p>Unlawful to:</p> <ul style="list-style-type: none"> <li>• Import into or export from the U.S.</li> <li>• Remove and reduce to possession from areas under Federal jurisdiction</li> <li>• Maliciously damage or destroy on areas under Federal jurisdiction</li> <li>• Remove, cut, dig up, or damage or destroy in knowing violation of any state law or regulation or in the course of any violation of a state criminal trespass law</li> <li>• Deliver, received, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity</li> <li>• Sell or offer for sale in interstate or foreign commerce</li> </ul> <p><i>Ref: ESA, as amended, section 9(a)(2) 50 CFR 17.61</i></p>	<p>Unlawful to:</p> <ul style="list-style-type: none"> <li>• Import into or export from the U.S.</li> <li>• Remove and reduce to possession from areas under Federal jurisdiction</li> <li>• Deliver, received, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity</li> <li>• Sell or offer for sale in interstate or foreign commerce</li> </ul> <p><i>Ref: 50 CFR 17.71</i></p>
Section 7	<p>Subject to full consultation requirements for any Federal activity that may affect endangered or threatened species. Standard for jeopardy determination is identical to wildlife. However, no incidental take statement is provided (even for activities on Federal Land.) Use standard plant paragraph for biological opinions in Section 7 Handbook, page 4-47.</p>	
Section 10	<ul style="list-style-type: none"> <li>• Section 10(a)(1)(A) permits (or State authorization under 50 CFR 17.61(c)(2) or 17.71(b)) needed for scientific or enhancement of survival activities that involve removal and reduction to possession from Federal lands.</li> <li>• Section 10(a)(1)(B) permits do not include listed plants. However, applicants are encouraged to consider impacts on plants because intra-Service section 7 consultation on the permit application must consider whether issuance of the permit will, directly or indirectly, jeopardize any listed plants. <i>Ref: HCP Handbook, page 3-8</i></li> </ul>	