

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

Doug Laye - Eastern Idaho Field Office – March 2011

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
No Effect <u>Definition -</u> "Proposed action will not affect listed species"	None	"Action won't pose any effects to listed species or designated critical habitat." (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.)	No Effect (NE)	Document rationale for findings in project file	None
May Affect <u>Definition -</u> "A proposed action that may pose any effect to listed species or designated critical habitat"	May affect - Not Likely to Adversely Affect (NLAA)	"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 (even short term) 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 assessments - they issue a concurrence letter. If FWS does not concur, discussions and consultation between agencies continues
	----- Or -----	"...the effect is <u>not insignificant, discountable or beneficial...</u> " [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) as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. 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.