

Glossary of Terms Relating to the ESA

(Assembled from the Endangered Species Act, 50 CFR Part 402: Interagency Cooperation regulations; 1996 HCP Handbook; 1998 Consultation Handbook; and USFWS web page.)

Act - The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

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 [50 CFR ' 402.02].

Action area - 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].

Adverse modification – See “Destruction or adverse modification of critical habitat” below.

Affect/effect - To affect (a verb) is to bring about a change, e.g., "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."

Anticipated/allowable/authorized take - 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.

Applicant - Any person (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 other entity subject to the jurisdiction of the United States) [ESA ' 3(12)] who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action [50 CFR ' 402.02].

Beneficial effects - Contemporaneous positive effects without any adverse effects to the species.

Best available scientific and commercial data - To assure the quality of the biological, ecological, and other information used in the implementation of the Act, it is the policy of the Services to: (1) evaluate all scientific and other information used to ensure that it is reliable, credible, and represents the best scientific and commercial data available; (2) gather and impartially evaluate biological, ecological, and other information disputing official positions,

decisions, and actions proposed or taken by the Services; (3) document their evaluation of comprehensive, technical information regarding the status and habitat requirements for a species throughout its range, whether it supports or does not support a position being proposed as an official agency position; (4) use primary and original sources of information as the basis for recommendations; (5) retain these sources referenced in the official document as part of the administrative record supporting an action; (6) collect, evaluate, and complete all reviews of biological, ecological, and other relevant information within the schedules established by the Act, appropriate regulations, and applicable policies; and (7) require management-level review of documents developed and drafted by Service biologists to verify and assure the quality of the science used to establish official positions, decisions, and actions taken by the Services during their implementation of the Act [59 FR 34271 (July 1, 1994)].

Biodiversity - The variety of life and its processes, including the variety of living organisms, the genetic differences among them, and the communities and ecosystems in which they occur.

Biological assessment - Information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments must be prepared for "major construction activities." See 50 CFR ' 402.02. The outcome of this biological assessment determines whether formal consultation or a conference is necessary [50 CFR ' 402.02, 50 CFR ' 402.12].

Biological opinion – A document which includes: (1) the opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat [50 CFR ' 402.02, 50 CFR ' 402.14(h)].

Candidate species - Plant and animal taxa considered for possible addition to the List of Endangered and Threatened 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 [61 FR 7596-7613 (February 28, 1996)]. Prior to 1996, these species were referred to as category 1 candidate species. Candidate species receive no protection under the ESA.

Category 2 candidate species - A term no longer relevant to the ESA. Previously referred to species for which the Service had some indication that listing as threatened or endangered might be warranted, but there were insufficient data available to justify a proposal to list them.

Category 3 candidate species - A term no longer relevant to the ESA. Previously referred to species which once were category 1 or 2 candidate species, but for which subsequent data indicated that listing as threatened or endangered was not appropriate.

Candidate Conservation Agreement with Assurances (CCAA) - Voluntary agreements with private property owners who agree to manage their lands or waters to remove threats to candidate or proposed species, giving them assurances that their conservation efforts will not result in future regulatory obligations in addition to those in their agreements.

CITES - The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora, restricting international commerce between participating nations for plant and animal species believed to be harmed by trade.

Common name - The nonscientific name of an animal or plant most widely used and accepted by the scientific community.

Conference - A process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Services pursuant to section 7(a)(4) of the Act regarding the likely impact of an action on proposed species or proposed critical habitat. Conferences are: (1) required for proposed Federal actions likely to jeopardize proposed species, or destroy or adversely modify proposed critical habitat; (2) designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning; and (3) designed to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat [50 CFR ' 402.02, 50 CFR ' 402.10].

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 [ESA ' 3(3)].

Conservation measures - Actions that 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.

Conservation plan - Under section 10(a)(2)(A) of the ESA, a planning document that is a mandatory component of an incidental take permit application, also known as a Habitat Conservation Plan or HCP.

Conservation recommendations - The Services' 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 [50 CFR ' 402.02].

Constituent elements - Physical and biological features of designated or proposed critical habitat essential to the conservation of the species, including, but not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and (5) habitats that are protected from disturbance or are representative of the historic geographic and ecological distributions of a species [ESA ' 3(5)(A)(i), 50 CFR ' 424.12(b)].

Covered species - Listed or unlisted species that have been adequately addressed in a habitat conservation plan, and are therefore included on the incidental take permit and are subject to "no surprises" assurances.

Critical habitat - For listed species consists of: (1) 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 (constituent elements) (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) 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 [ESA ' 3 (5)(A)]. Designated critical habitats are described in 50 CFR ' 17 and 226.

Cumulative effects (ESA) - 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 [50 CFR ' 402.02]. This definition applies only to section 7 analyses and should not be confused with the broader use of this term in the National Environmental Policy Act or other environmental laws.

Cumulative effects (NEPA) - The incremental environmental impact or effect of the action together with impacts of past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions [40 CFR 1508.7].

Delist - To remove from the Federal list of endangered and threatened species [50 CFR 17.11 and 17.12] because such species no longer meets any of the five listing factors provided under section 4(a)(1) of the ESA and under which the species was originally listed (i.e., because the species has become extinct or is recovered).

Destruction or adverse modification of critical habitat - A direct or indirect alteration that appreciably diminishes the value of critical 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 [50 CFR ' 402.02].

Director - The Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration; or the Fish and Wildlife Service Regional Director; or their respective authorized representative [50 CFR ' 402.02].

Discountable effects – Effects that are extremely unlikely to occur.

Distinct Population Segment - "Population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete population of vertebrate animal that may be added or deleted from the list of endangered and threatened species (i.e. considered a “species” under the ESA). The use of the term "distinct population segment" will be consistent with the Services' population policy [61 FR 4722-4725 (February 7, 1996)].

Downlist - To reclassify an endangered species to a threatened species based on alleviation of any of the five listing factors provided under section 4(a)(1) of the ESA.

Early consultation - A preliminary consultation requested by a Federal agency on behalf of a prospective permit or license applicant prior to the filing of an application for a Federal permit or license [50 CFR ' 402.11].

Ecosystem – A dynamic and interrelating complex of plant and animal communities and their associated nonliving (e.g., physical and chemical) environment.

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 [50 CFR ' 402.02]. These effects are considered along with the environmental baseline and the predicted cumulative effects to determine the overall effects to the species for purposes of preparing a biological opinion on the proposed action. The environmental baseline covers past and present impacts of all Federal actions within the action area. This includes the effects of existing Federal projects that have not yet come in for their section 7 consultation.

Emergency (consultation) – An emergency is a situation involving acts of God, disasters, casualties, national defense or security emergencies, etc., [50 CFR ' 402.05], and includes response activities that must be taken to prevent imminent loss of human life or property (1998 Consultation Handbook, p. 8-1).

Endangered species - Any species which is in danger of extinction throughout all or a significant portion of its range [ESA ' 3(6)].

Endemic species - A species native and confined to a certain region; having comparatively restricted distribution.

Environmental baseline - The past and present impacts of all Federal, State, or private actions and other human activities in an action area, the anticipated impacts of all proposed Federal projects in an action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions that are contemporaneous with the consultation in process [50 CFR ' 402.02].

ESA - The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Evolutionary Significant Unit - A sub-portion of a species that is defined by substantial reproductive isolation from other conspecific units and represents an important component of the evolutionary legacy of the species. It is generally applied to certain fish population groups.

Extinct species - A species no longer in existence.

Extirpated species - A species no longer surviving in regions that were once part of their range.

Federal action agency - Any department or agency of the United States proposing to authorize, fund, or carry out an action under existing authorities.

FWS - Acronym for the U.S. Fish and Wildlife Service.

Federal agency - Any department, agency, or instrumentality of the United States [ESA ' 3(7)].

Fish or wildlife - Any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, 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 [ESA ' 3(8)].

Formal consultation - A process between the Services and a Federal agency or applicant that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submittal of a complete initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat) [50 CFR ' 402.02, 50 CFR ' 402.14].

Habitat - The location where a particular taxon of plant or animal lives and its surroundings (both living and nonliving) and includes the presence of a group of particular environmental conditions surrounding an organism including air, water, soil, mineral elements, moisture, temperature, and topography.

Habitat Conservation Plan - Under section 10(a)(2)(A) of the Act, a planning document that is a mandatory component of an incidental take permit application, also known as a Conservation Plan.

Harm/Harass - See ATake@ below.

Historic range - Those geographic areas the species was known or believed to occupy in the past.

Incidental take - Take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant [50 CFR ' 402.02].

Incidental take permit - A permit that exempts a permittee from the take prohibition of section 9 of the ESA issued by the FWS or NMFS pursuant to section 10(a)(1)(B) of the ESA.

Indirect effects - Those effects that are caused by or will result from the proposed action and are later in time, but are still reasonably certain to occur [50 CFR ' 402.02].

Informal consultation - An optional process that includes all discussions and correspondence between the Services and a Federal agency or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action which could avoid potentially adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat) [50 CFR ' 402.02, 50 CFR ' 402.13].

Insignificant effects - Those of such minor impact to the species that they cannot be meaningfully measured, detected, or evaluated. These should never reach the scale where take occurs.

Interdependent actions - Actions having no independent utility apart from the proposed action [50 CFR ' 402.02].

Interrelated actions - Actions that are part of a larger action and depend on the larger action for their justification [50 CFR ' 402.02].

Is 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 (see definition of "is not likely to adversely

affect"). 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.

Is 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.

Is not likely to adversely affect - The appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. **Discountable effects** are those extremely unlikely to occur. **Insignificant effects** - relate to the size of the impact and should never reach the scale where take occurs. **Beneficial effects** - contemporaneous positive effects without any adverse effects to the species. 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.

Jeopardize the continued existence of - 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 [50 CFR ' 402.02].

Lead region - The Fish and Wildlife Service Region that is responsible for coordinating all actions taken to study, propose, list, conserve, and de-list a species.

Lead office - The field office that has been given the responsibility for coordinating all or most actions taken to study, propose, list, conserve, and de-list a species within the boundaries of the region. If Region 7 is the lead region for a particular species, the lead office has these responsibilities over the entire range of that species.

Listed species - Any species, including subspecies and distinct vertebrate populations, of fish, wildlife or plant which has been determined to be endangered or threatened under section 4 of the Act [50 CFR ' 402.02].

Listing - The formal process through which the Service adds species to the Federal List of Endangered and Threatened Wildlife and Plants.

Listing priority - A number from 1 to 12 indicating the relative urgency for listing a species as threatened or endangered. The criteria used to assign this number reflect the *magnitude* and *immediacy* of threat to the species, as well as the relative distinctiveness or isolation of their genetic material. This latter criterion is applied by giving a higher priority number to species which are the only remaining species in their genus (monotypic genus), and a lower priority

number to subspecies and varieties. These listing priorities are described in detail in the Federal Register on September 21, 1983, on pages 43098-43105.

Major construction activity - A construction project (or other undertaking having similar physical effects) which requires preparation of an Environmental Impact Statement – i.e. 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)) [50 CFR ' 402.02].

May affect - The appropriate conclusion made by a Federal action agency 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" [see definition above] listed species.

Minor change rule - When preparing incidental take statements, the Services must specify reasonable and prudent measures and their implementing terms and conditions to minimize the impacts of incidental take that do not alter the basic design, location, scope, duration, or timing of the action, and that involve only minor changes [50 CFR ' 402.14(i)(2)].

NMFS – Acronym for the National Marine Fisheries Service.

National Environmental Policy Act (NEPA) - Federal legislation establishing national policy that environmental impacts will be evaluated as an integral part of any major Federal action. NEPA requires the preparation of an EIS for all major Federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321-4327).

No effect - The appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat.

Petition (listing) - A formal request, with the support of adequate biological data, suggesting that a species, with the support of adequate biological data, be listed, reclassified, or de-listed, or that critical habitat be revised for a listed species.

Plant - Any member of the plant kingdom, including seeds, roots, and other parts thereof [ESA ' 3(14)].

Population - "Population," or "distinct population segment," are terms with specific meaning when used for listing, delisting, and reclassification purposes to describe a discrete vertebrate stock that may be added or deleted from the list of endangered and threatened species. The term "population" will be confined to those distinct population segments officially listed, or eligible for listing, consistent with section 4(a) of the Act and the Services' population policy [61 FR 4722-4725 (February 7, 1996)].

Preliminary biological opinion - The opinion issued as a result of early consultation [50 CFR ' 402.02].

Programmatic consultation - Consultation addressing one or more categories of agency actions, within which multiple individual actions may occur.

Propose - The formal process of publishing a proposed Federal regulation in the Federal Register and establishing a comment period for public input into the decision-making process. Plants and animals must be proposed for listing as threatened or endangered species, and the resulting public comments must be analyzed, before the Service can make a final decision.

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 [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 [50 CFR ' 402.02]. Proposed species receive limited protection under section 7 of the ESA.

Range - The geographic area a species is known or believed to occupy.

Reasonable and prudent alternatives - Recommended alternative actions identified in a jeopardy biological opinion that can be implemented in a manner consistent with the intended purpose of the action, are within the scope of the Federal agency's legal authority and jurisdiction, and are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical habitat [50 CFR ' 402.02].

Reasonable and prudent measures - Actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent of incidental take [50 CFR ' 402.02].

Reauthorization - A term referring to periodic action taken by Congress to reauthorize the Endangered Species Act. By reauthorizing an act, Congress extends it and may also amend it.

Reclassify - The process of changing a species' official threatened or endangered classification.

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 [50 CFR ' 402.02].

Recovery outline - The first Service recovery document provided for a listed species. While very brief, the document serves to direct recovery efforts pending the completion of the species' recovery plan.

Recovery permit - Permits issued under Section 10(a)(1)(A) of the ESA for scientific research and other activities benefiting the recovery of Federally listed species.

Recovery plan - A document drafted by the Service or other knowledgeable individual or group that serves as a guide for activities to be undertaken by Federal, State, or private entities in helping to recover and conserve endangered or threatened species.

Recovery priority - A number, ranging from a high of 1C to a low of 18, whereby priorities to listed species and recovery tasks are assigned. The criteria on which the recovery priority number is based are: degree of threat; recovery potential; taxonomic distinctiveness; and presence of an actual or imminent conflict between the species and development activities.

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."

Safe Harbor Agreements - Voluntary agreements under which a non-Federal landowner agrees to carry out specified improvements to benefit a listed species, and the Federal government authorizes the landowner to remove the improvements at a future time and to take listed species incidental to doing so.

Section 4 - The section of the ESA 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].

Section 4(d) rule - A special regulation developed by the Service under authority of Section 4(d) modifying the normal protective regulations for a particular threatened species when it is determined that such a rule is necessary and advisable to provide for the conservation of that species.

Section 6 - The section of the ESA that authorizes the Service to provide financial assistance to States through cooperative agreements supporting the conservation of endangered and threatened species.

Section 7 - The section of the ESA outlining procedures for interagency cooperation to conserve Federally listed species and designated critical habitats. Section 7(a)(1) requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(2) requires Federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Other paragraphs of this section establish the requirement to conduct conferences on proposed species; allow applicants to initiate early consultation; require FWS and NMFS to prepare biological opinions and issue incidental take statements. Section 7 also establishes procedures for seeking exemptions from the requirements of section 7(a)(2) from the Endangered Species Committee [ESA ' 7].

Section 7 consultation - The various section 7 processes, including both formal and informal consultation for listed species or critical habitat and conference for proposed species [50 CFR '402].

Section 9 - The section of the Endangered Species Act of 1973, as amended, that prohibits the taking of endangered species of fish and wildlife. Additional prohibitions include: (1) import or export of endangered species or products made from endangered species; (2) interstate or foreign commerce in listed species or their products; and (3) possession of unlawfully taken endangered species [ESA '9].

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: (1) scientific take permits and (2) incidental take permits. 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].

Section 10(a)(1)(A) - That portion of section 10 of the ESA that allows for permits for the taking of threatened or endangered species for scientific purposes or for purposes of enhancement of propagation or survival.

Section 10(a)(1)(B) - That portion of section 10 of the ESA that allows for permits for incidental taking of threatened or endangered species.

Service(s) - The Fish and Wildlife Service or the National Marine Fisheries Service (or both).

Similarity of Appearance - Any species that is treated as an endangered species or threatened species even though it is not listed pursuant to section 4 of the Act if it is found that - (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act [ESA '4(e)].

Species - 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 [ESA '3(15)].

Species of Concern - An informal term that refers to those species that may be in need of concentrated conservation actions. Such conservation actions vary depending on the health of the populations and degree and types of threats. At one extreme, there may only need to be periodic monitoring of populations and threats to the species and its habitat. At the other extreme, a species may need to be listed as a Federal threatened or endangered species. Species of concern receive no legal protection and the use of the term does not imply that the species will eventually be proposed for listing as a threatened or endangered species.

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.

Take - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. [ESA ' 3(19)] **Harm** is further defined by FWS to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. **Harass** is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering [50 CFR ' 17.3].

Terms and Conditions - Set out the specific methods by which the reasonable and prudent measures are to be accomplished. These must include reporting and monitoring requirements that assure adequate action agency oversight of any incidental take.

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 [ESA ' 3(20)].

Wildlife - See "fish or wildlife."