

Effects Determination Supplemental Guidance for Section 7:

Specifics on how to evaluate candidate and proposed species

Use the Section 7 Effects Determination Flowchart below to make effects determinations based on potential impacts from project actions within the project area. This flowchart can be used to make effect determinations for Endangered Species Act (ESA) listed species, candidate and proposed species, proposed and designated critical habitat, and essential fish habitat. Also included below, is more detailed information on what triggers surveys, how to appropriately evaluate potential impacts, and resources for candidate and proposed species as of August 2022.

US Fish and Wildlife Service (USFWS) Definitions

All definitions below are excerpted directly from the 1998 USFWS Endangered Species Consultation Handbook (<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>)

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.

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).

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).

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.

No Effect (NE): the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat.

Not Likely to Adversely Affect (NLAA): 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.

Likely to Adversely Affect (LAA): 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, an "is likely to adversely affect" determination should be made. An "is likely to adversely affect" determination requires the initiation of formal Section 7 consultation.

No Jeopardy: the appropriate conclusion when the action agency determines its proposed action will not jeopardize a candidate or proposed species or proposed critical habitat.

Jeopardize the continued existence: 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.

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.

For National Environmental Policy Act (NEPA) Documentation:

No Effect

A No Effect (NE) can be appropriate for projects documented with a Categorical Exclusion (Cat Ex or CE). If an NE is determined, the Cat Ex Biological Resources Analysis Sheet is used to document reasoning and rationale for how the determination was made. No consultation or conferencing is required if a NE determination is made for all species.

May Affect, Not Likely to Adversely Affect

If any species may be affected, but is not likely to be adversely affected (NLAA), a Biological Evaluation (BE)* is required for informal consultation or conference with the Services. The BE may be used as a biological technical document for either a Cat Ex or an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

May Affect, Likely to Adversely Affect

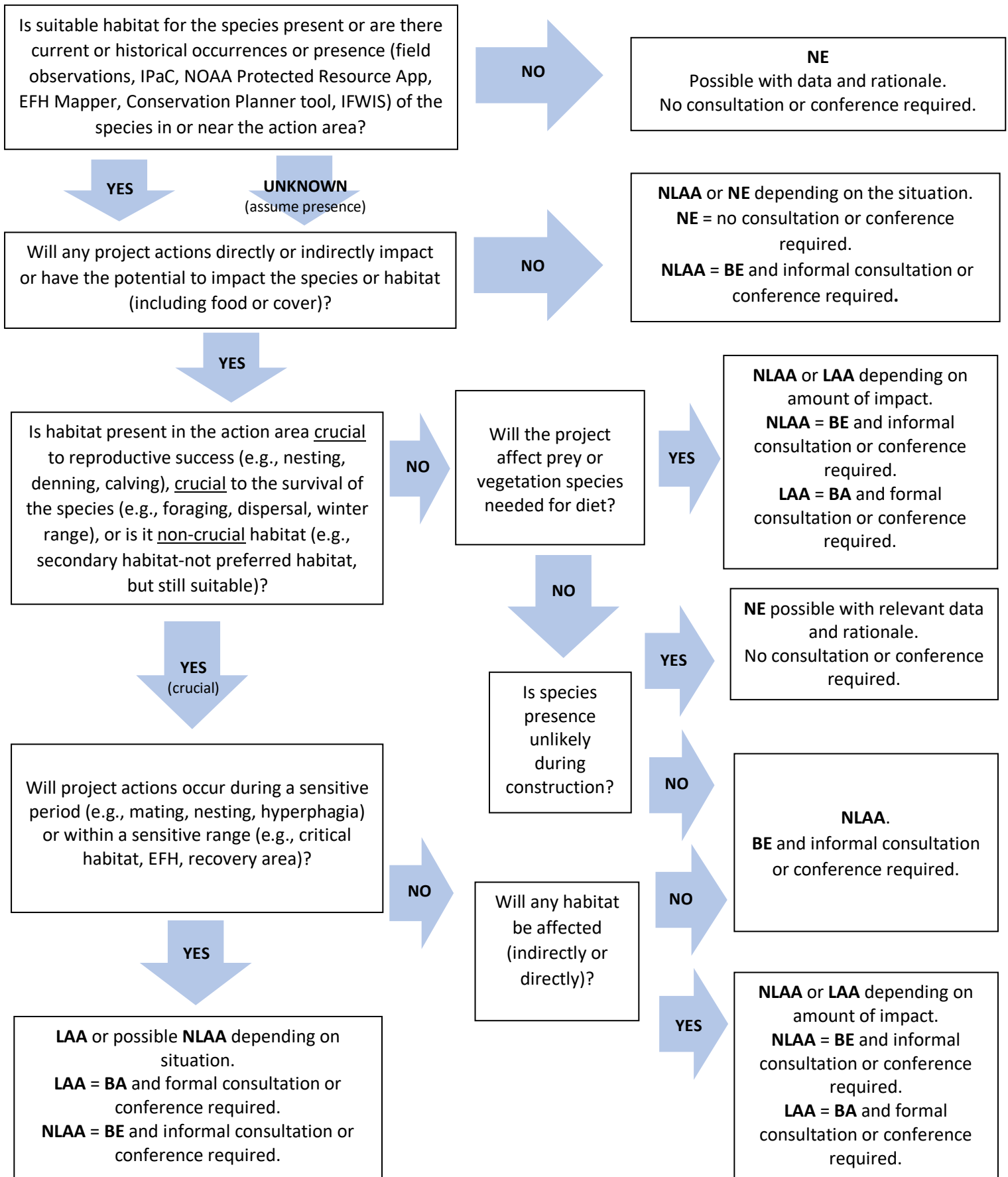
If any species may be affected, and is likely to be adversely affected (LAA), a Biological Assessment (BA)* is required for formal consultation or conference with the Services. The BA may be used as a biological technical document for either a Cat Ex, an EA, or an EIS. Any LAA determination, regardless of NEPA documentation, must be reviewed and approved by FHWA.

*The biological study shall be labeled BA if the study supports consultation for a major Federal-aid project (defined by 40 CFR 1508.27) as an action that significantly affects the quality of the human and natural environment and requires formal consultation and may result in the preparation of an EIS. A BA is required for major construction activities with a federal nexus and if listed species or designated critical habitat may be affected in the action area (50 CFR Ch. IV Section 402.12). The BA is prepared in accordance with 50 CFR Ch. IV Section 402.14(c), information required to initiate formal consultation. The BA analyzes all potential effects reasonably certain to occur from a proposed project on listed species and designated critical habitat and provides scientific-based rationale and supporting information used to develop an effects determination for each listed species and/or designated critical habitat addressed.

A BE is a generic term for all other types of analyses and requires informal consultation and may result in the preparation of an EA.



Effects Determination Flowchart



Guidance on Threatened and Endangered Species, Proposed and Designated Critical Habitat, and Essential Fish Habitat

What triggers the need for an impact analysis for listed species? If the species or habitat appears on the USFWS Information for Planning and Consultation (IPaC) species list, NOAA Protected Resources App, or Essential Fish Habitat (EFH) mapper and potential physical and biological features (PBFs) exist on or near the project area, staff should use the best scientific data available (resources below) in order to determine if an impact analysis is warranted for that species. An impact analysis and effect determinations, including conservation measures should be prepared.

Listed Species, Critical Habitat, and EFH Resources

Environmental Conservation Online System (ECOS) – IPaC

<https://ipac.ecosphere.fws.gov/>

National Oceanic and Atmospheric Administration (NOAA) Protected Resources App

<https://www.webapps.nwfsc.noaa.gov/portal/apps/webappviewer/index.html?id=7514c715b8594944a6e468dd25aaacc9>

Essential Fish Habitat Mapper

https://www.habitat.noaa.gov/apps/efhmapper/?page=page_4

Idaho Department of Fish and Game (IDFG) Roadkill Data

<https://data-idfggis.opendata.arcgis.com/datasets/roadkill-observations/explore?location=43.806242%2C-114.465680%2C11.00>

IDFG Observational Data

<https://idfg.idaho.gov/species/observations/list>

ECOS – Life History and Home Range

<https://ecos.fws.gov/ecp/>

ECOS – Proposed and Designated Critical Habitat (ArcGIS)

<https://ecos.fws.gov/ecp/report/critical-habitat>

Also contact Regional Forest Service and Bureau Land Management Biologists or local tribes for additional species or habitat data, if applicable.



Guidance on Monarch Butterfly (Candidate)

What triggers the need for a milkweed/monarch survey? Initially, since potential habitat for the monarch butterfly is statewide, staff should use the best scientific data available (resources below) to determine if plant surveys are even warranted. If you do not have access to one of the websites below, please contact your Idaho Transportation Department (ITD) District Environmental Planner or the Headquarters (HQ) Subject Matter Expert (SME) Julie Hausknecht (Julie.hausknecht@itd.idaho.gov). If the best milkweed and monarch butterfly scientific data available suggest the project area is within an area crucial for monarch butterfly or milkweed or monarch have been observed or documented within the project area, plant surveys should be conducted by a qualified biologist or botanist. Effect determinations can be made contingent upon findings of a future plant survey. NOTE: This process may change if/when ITD becomes enrolled in the Candidate Conservation Agreement with Assurances (CCAA) for monarch butterfly.

Who made the decision? With the potential enrollment in the CCAA and potential listing of the monarch butterfly in 2024, ITD HQ Environmental made the decision to request conference on this candidate species. This decision was based on the risk to project schedules and the potential future level of effort for documentation and reinitiating conference/consultation.

Milkweed/Monarch Resources

Western Monarch Milkweed Mapper

<https://www.monarchmilkweedmapper.org/>

Monarch Chat

<https://monarchchat.org/>

IDFG Conservation Planner Tool (Login Required)

https://idfg.idaho.gov/ifwis/conservationplanner/?code=0HB9m6_FHdGdYQASgsYSpo-oTZ-QT2l2codKwsj_W_Q&scope=openid%20profile%20role&state=7e93f7ce09554d64ba372bb9951fc6c3&session_state=qmlIIIVAR8z9WpH0ULb6lU9cnaqOtqXnL6HEDQdrU68A.CPJdJtnxNW7Z3z7TJVRpAw

Roadside Vegetation Guide (Login Required-Access Limited)

<https://experience.arcgis.com/experience/1180a8760a904769a6286cc6b5e97500/page/Monarch-Habitat/>

IDFG Observational Data

https://idfg.idaho.gov/species/observations/list?species_id=21608

Also contact Regional Biologists from other agencies or non-governmental organizations for observational data, if applicable.



Guidance on Whitebark Pine (Proposed Threatened)

What triggers the need for a whitebark pine survey? If whitebark pine is listed on IPaC and there is potential habitat for whitebark pine on or near the project area, staff should use the best scientific data available (resources below) to determine if rare plant/tree surveys are warranted. If whitebark pine observation data suggest the project area is within an area or elevational range crucial for whitebark pine, rare plant/tree surveys should be conducted by a qualified biologist or botanist. Effect determinations can be made contingent upon findings of a future rare plant/tree survey.

Who made the decision? With the potential listing of whitebark pine in the near future, ITD HQ Environmental made the decision to request conference on this proposed species. This decision was based on the risk to project schedules and the potential future level of effort for documentation and reinitiating conference/consultation.

Whitebark Pine Resources

IDFG Observational Data

https://idfg.idaho.gov/species/observations/list?category=All&species_id=39642&county_id=All&field_datetime_value%5Bmin%5D%5Bdate%5D=&field_datetime_value%5Bmax%5D%5Bdate%5D=®ion_id=All&gmu_id=All&items_per_page=25

ECOS – Whitebark pine

<https://ecos.fws.gov/ecp/species/1748>

Also contact Regional Forest Service and Bureau Land Management Biologists for field plant survey data, if applicable.



Guidance on Wolverine (Proposed Threatened)

What triggers the need for an impact analysis for wolverine? If wolverine is listed on IPaC and there is potential habitat for wolverine on or near the project area, staff should use the best scientific data available (resources below) to determine if an impact analysis is warranted. An impact analysis and effect determinations, including conservation measures should be prepared. Conservation measures should be similar to those of the grizzly bear listed in the PBA.

Who made the decision? With the potential fast-track listing of wolverine in December 2023, ITD HQ Environmental made the decision to request conference on this proposed species. This decision was based on the risk to project schedules and the potential future level of effort for documentation and reinitiating conference/consultation.

Wolverine Resources

IDFG Roadkill Data

<https://data-idfggis.opendata.arcgis.com/datasets/roadkill-observations/explore?location=43.806242%2C-114.465680%2C11.00>

IDFG Wolverine Observational Data

https://idfg.idaho.gov/species/observations/list?species_id=17557

ECOS – Wolverine

<https://ecos.fws.gov/ecp/species/5123>

Also contact Regional Forest Service and Bureau Land Management Biologists or local tribes for wolverine data, if applicable.

