

# **GLOSSARY OF KEY REGULATORY TERMS FOR ENVIRONMENTAL ANALYSIS OF TRANSMISSION PROJECTS (INTERIM GUIDANCE)**

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## Introduction

Projects involving electric transmission lines may trigger reviews under multiple environmental laws. The laws that are most commonly applicable to electric transmission lines include the National Environmental Policy Act (NEPA, 42 U.S. Code [USC] 4321 *et seq.*), Section 106 of the National Historic Preservation Act (NHPA, 54 USC 306108, formerly 16 USC 470f), and Section 404 of the Clean Water Act (CWA, 33 USC 1344), although other laws and regulations may be applicable to particular projects. Further, if transmission projects may affect protected species, they could also require agency compliance with the Endangered Species Act (ESA, 16 USC 1531 *et seq.*), Bald and Golden Eagle Protection Act (BGEPA, 16 USC 668-668d), Migratory Bird Treaty Act (MBTA, 16 USC 703-712), or other laws.<sup>1</sup>

This glossary provides a selection of defined statutory and regulatory terms and phrases under NEPA, NHPA, ESA, and CWA Section 404, and a regulatory crosswalk that compares and contrasts the ways in which these terms are used in these four statutes.<sup>2</sup> Neither the glossary nor the crosswalk is a comprehensive list of all terms that may apply to electric transmission projects. Instead, each focuses on key terms that are likely to arise in the review of electric transmission projects and terms that are the same or similar in multiple statutes and regulations. For example, “action” is used in both NEPA and ESA reviews but is defined differently in the two statutes, and NHPA uses the term “undertaking” in a similar manner. Practitioners should also consider other potentially applicable requirements under federal, state, local, and Tribal laws and regulations.

Links to documents used to compile this glossary and the accompanying crosswalk are:

NEPA, as amended (42 USC 4321 *et seq.*): <https://www.govinfo.gov/content/pkg/COMPS-10352/pdf/COMPS-10352.pdf>

CEQ NEPA Implementing Regulations (40 Code of Federal Regulations [CFR] parts 1500-1508): [eCFR :: 40 CFR Chapter V Subchapter A -- National Environmental Policy Act Implementing Regulations](#)

DOE NEPA Implementing Regulations (10 CFR part 1021): [eCFR :: 10 CFR Part 1021 -- National Environmental Policy Act Implementing Procedures](#)

Advisory Council on Historic Preservation (ACHP or Council) NHPA Implementing Regulations (36 CFR part 800): [36CFRPart800\\_as\\_amended2004\\_web.doc \(achp.gov\)](#)

NEPA and NHPA Handbook for Integrating NEPA and Section 106 (“NEPA/NHPA Handbook”): [NEPA-106 26feb13.pub \(energy.gov\)](#)

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<sup>1</sup> This glossary focuses on land-based electric transmission projects, and does not include environmental laws that may apply to underwater transmission projects (including marine transmission projects), such as the Marine Mammal Protection Act (16 USC 1361 *et seq.*), Coastal Zone Management Act (16 USC 1451 *et seq.*), and Outer Continental Shelf Lands Act (43 USC 1331 *et seq.*).

<sup>2</sup> A comparison limited to NEPA and NHPA Section 106 is found in Attachment A of the NEPA and NHPA Handbook for Integrating NEPA and Section 106, published in March 2013 by the Council on Environmental Quality (CEQ), Executive Office of the President, and the ACHP, but has not been updated (as of publication of this glossary) following updates to CEQ’s NEPA regulations effective July 1, 2024.

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ESA regulations on interagency cooperation, implementing ESA Section 7 (jointly issued by the U.S. Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)): [50 CFR part 402](#)

FWS and NMFS, Endangered Species Consultation Handbook: [Endangered Species Consultation Handbook \(fws.gov\)](#)

## NEPA Key Terms

This list of defined terms is followed by two terms that are regularly used in NEPA practice but are not defined in NEPA or its implementing regulations (“practicable” and “environmental baseline”). Underlined terms are terms that are defined in NEPA or CEQ or DOE NEPA regulations (40 CFR parts 1500-1508; 10 CFR part 1021).

This guidance document is intended only as a reference and does not list the full text of all defined terms included in this glossary, nor does it list all terms defined in NEPA or its implementing regulations (CEQ or DOE). For the full text of the definitions, please refer to the official U.S. Code and the Code of Federal Regulations.

“Action” or “major Federal action” “means an action that the agency which carries out the action determines to be subject to substantial Federal control and responsibility.” [42 USC 4336e\(10\)\(A\)](#); [40 CFR 1508.1\(w\)](#). Examples of major Federal actions include:

- (i) “Granting authorizations, including permits, licenses, rights-of-way, or other authorizations.”
- (ii) “Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act ... or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency’s policies that will result in or substantially alter agency programs.”
- (iii) “Adoption of formal plans, such as official documents prepared or approved by Federal agencies ... upon which future agency actions will be based.”
- (iv) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and related agency decisions allocating agency resources to implement a specific statutory program or executive directive.”
- (v) “Approval of or carrying out specific agency projects, such as construction or management activities.” or
- (vi) “Providing more than a minimal amount of financial assistance ... where the agency has the authority to deny in whole or in part the assistance due to environmental effects, has the authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which the agency is providing the financial assistance.” [40 CFR 1508.1\(w\)\(1\)\(i\)-\(vi\)](#).

“Major Federal actions do not include the following:

- (i) Non-Federal actions:
  - (A) With no or minimal Federal funding; or
  - (B) With no or minimal Federal involvement where the Federal agency cannot control the outcome of the project;
- (ii) Funding assistance solely in the form of general revenue sharing funds that do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

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- (iii) Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action;
- (iv) Business loan guarantees provided by the Small Business Administration...;
- (v) Judicial or administrative civil or criminal enforcement actions;
- (vi) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside the jurisdiction of the United States;
- (vii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority; and
- (viii) Activities or decisions for projects approved by a Tribal nation that occur on or involve land held in trust or restricted status by the United States for the benefit of that Tribal Nation or by the Tribal Nation when such activities or decisions involve no or minimal Federal funding or other Federal involvement." 40 CFR 1508.1(w)(2)(i)-(viii).

"Action" means a project, program, plan, or policy, as discussed at 40 CFR 1508.18 [note: this is an outdated reference to the CEQ NEPA regulations; the current citation is 40 CFR 1508.1(w)], that is subject to DOE's control and responsibility. Not included within this definition are purely ministerial actions with regard to which DOE has no discretion. For example, ministerial actions to implement congressionally mandated funding for actions not proposed by DOE and as to which DOE has no discretion (i.e., statutorily mandated, congressionally initiated "passthroughs"). [10 CFR 1021.104\(b\)](#)

"Project" means a specific DOE undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4)." [10 CFR 1021.104\(b\)](#)

The "affected environment" must be described in an environmental impact statement, and is "the environment of the area(s) to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s)." [40 CFR 1502.15](#).

"Connected actions" are "closely related Federal activities or decisions that should be considered in the same NEPA review that:

- (1) Automatically trigger other actions that may require NEPA review;
- (2) Cannot or will not proceed unless other actions are taken previously or simultaneously; or
- (3) Are interdependent parts of a larger action and depend on the larger action for their justification." [40 CFR 1501.3\(b\)](#).

A "cooperating agency" means "any Federal, State, Tribal or local agency that has been designated as a cooperating agency under section 107(a)(3) [[42 USC 4336a\(a\)\(3\)](#)]," [42 USC 4336e\(2\)](#), OR "any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency." [40 CFR 1508.1\(g\)](#); see also [42 USC 4336a7\(a\)\(3\)](#).

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“**Effects**” and “**impacts**” are synonymous terms under NEPA, and mean “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable.” They include direct effects, indirect effects, and cumulative effects. [40 CFR 1508.1\(i\)](#). Effects can be beneficial or adverse; the magnitude, duration, and timing of effects on different aspects of the human environment are evaluated in the impact section of a NEPA document for their significance. ([NEPA/NHPA Handbook](#).)

“**Direct effects**” are effects “which are caused by the action and occur at the same time and place.” [40 CFR 1508.1\(i\)\(1\)](#).

“**Indirect effects**” are effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” [40 CFR 1508.1\(i\)\(2\)](#). These are sometimes referred to as “downstream” impacts, and may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. ([NEPA/NHPA Handbook](#).)

“**Cumulative effects**” are “effects on the environment that result from the incremental effects of the action when added to the effects of other past, present and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from actions with individually minor but collectively significant effects taking place over a period of time.” [40 CFR 1508.1\(i\)\(3\)](#). “Effects” and “impacts” are often used interchangeably in NEPA practice, and prior to 2020, “cumulative impacts” was used in 40 CFR 1508.7.

A “**lead agency**” “means the Federal agency that proposes the agency action or is designated pursuant to [40 CFR] 1501.7(c) for preparing or having primary responsibility for preparing the environmental impact statement or environmental assessment.” [40 CFR 1508.1\(u\)](#).

“**Mitigation**” “means measures that avoid, minimize, or compensate for adverse effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a connection to those adverse effects.

Mitigation includes, in general order of priority:

- (1) Avoiding the adverse effect altogether by not taking a certain action or parts of an action.
- (2) Minimizing the adverse effect by limiting the degree or magnitude of the action and its implementation.
- (3) Rectifying the adverse effect by repairing, rehabilitating, or restoring the affected environment.
- (4) Reducing or eliminating the adverse effect over time by preservation and maintenance operations during the life of the action.
- (5) Compensating for the adverse effect by replacing or providing substitute resources or environments.” [40 CFR 1508.1\(y\)](#).

A “**programmatic environmental document**” means “an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.” [40 CFR 1508.1\(ee\)](#).

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A “proposal” means “a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects.” [42 USC 4336e\(12\)](#); [40 CFR 1508.1\(ff\)](#). “A proposal may exist in fact as well as by agency declaration that one exists.” [40 CFR 1508.1\(ff\)](#).

“DOE proposal (or proposal)” “means a proposal, as discussed at 40 CFR 1508.23 [now 40 CFR 1508.1(ff)] (whether initiated by DOE, another Federal agency, or an applicant), for an action, if the proposal requires a DOE decision.” [10 CFR 1021.104\(b\)](#)

“Reasonable alternatives” means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action. [40 CFR 1508.1\(hh\)](#). Agencies preparing environmental impact statements are required to “[r]igorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.” The document must discuss alternatives in detail to allow reviewers to evaluate their comparative merits, include a “no action alternative,” identify the agency’s preferred alternative(s), include appropriate mitigation measures not already included in the proposed action or alternatives, and identify the environmentally preferable alternative. [40 CFR 1502.14](#).

“Environmentally preferable alternative” “means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA.” [40 CFR 1508.1\(n\)](#).

“Reasonably foreseeable” means “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.” [40 CFR 1508.1\(ii\)](#).

“Significant effects” means “adverse effects that an agency has identified as significant based on the criteria in [40 CFR] 1501.3(d),” [40 CFR 1508.1\(mm\)](#), i.e., the context of the action and intensity of the effect. According to [40 CFR 1501.3\(d\)](#), significance is analyzed in several contexts, including “the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns ... [and] potential global, national, regional, and local contexts as well as the duration, including short-term and long-term effects.” [40 CFR 1501.3\(d\)\(1\)](#). Agencies must analyze the intensity of effects considering eight factors listed in [40 CFR 1501.3\(d\)\(2\)\(i\)-\(viii\)](#).

The terms “practicable” and “environmental baseline” are not defined in NEPA or CEQ’s NEPA regulations, but are commonly used in NEPA practice. For example, CEQ regulations state that agencies should begin scoping of NEPA reviews “as soon as practicable” ([40 CFR 1502.4\(a\)](#)) and shall “[s]tate whether the agency has adopted all practicable means to mitigate environmental harm from the alternative selected” in its record of decision ([40 CFR 1505.2\(c\)](#)). Environmental baseline is often used as shorthand for the regulations’ statement that “[t]he no action alternative should serve as the baseline against which the proposed action and other alternatives are compared.” [40 CFR 1502.16\(a\)](#). These terms are included in this document and in the regulatory crosswalk below to aid practitioners in understanding how the terms are used in implementing other relevant statutes (e.g., CWA, ESA).



## NHPA Section 106 Key Terms

This list of key statutory and regulatory terms under Section 106 of the NHPA ([54 USC 306108](#), formerly 16 USC 470h) is in alphabetical order, except that general terms are followed by the specific terms that are a subset of the more general term (i.e., “effects” is followed by definitions of “Area of potential effects,” “adverse effect,” etc.). This document is intended only as a reference and does not list the full text of all defined terms included in this glossary, nor does it list all terms defined in NHPA or its implementing regulations. For the full text of the definitions, please refer to the official U.S. Code and the Code of Federal Regulations. Underlined terms are terms that are defined in the statute or implementing regulations ([36 CFR part 800](#)).

“Consultation” under the NHPA “means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.” [36 CFR 800.16\(f\)](#). Further guidance on NHPA consultation is found in the Secretary of Interior’s “[Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act](#).”

Consulting parties are parties that have consultative roles in the Section 106 process, including State Historic Preservation Officers (SHPOs); Tribal Historic Preservation Officers (THPOs); Indian tribes; Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; the ACHP; other individuals and organizations with a demonstrated interest in the undertaking or the affected historic properties; and the public. [36 CFR 800.2\(c\)](#).

An “effect” under the NHPA means “alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register [of Historic Places].” [36 CFR 800.16\(i\)](#).

The “Area of Potential Effects” means “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” [36 CFR 800.16\(d\)](#).

An “adverse effect” under the NHPA “is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” [36 CFR 800.5\(a\)\(1\)](#). This includes qualifying characteristics of a historic property that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. “Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” *Id.* Examples of adverse effects are included in [36 CFR 800.5\(a\)\(2\)](#).

According to the [NHPA/NEPA Handbook](#), a direct effect to a historic property would include demolition of a historic building, major disturbance of an archaeological site, or any other actions that occur to the property itself.

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According to the [NHPA/NEPA Handbook](#), indirect effects may change the character of the historic property's use or physical features within the property's setting that contribute to its historic significance; are often audible, atmospheric, and visual effects; and may relate to viewshed issues.

Section 106 regulations do not define "cumulative effects" or "reasonably foreseeable," but do state that "[a]dverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." [36 CFR 800.5\(a\)\(1\)](#). According to the [NEPA/NHPA Handbook](#) (Attachment A), CEQ's definition of "cumulative impact" "is analogous and instructive," indicating that NHPA consultation will generally use a similar definition for these two terms in the NHPA and NEPA contexts.

"The term '[eligible for inclusion in the National Register](#)' includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria." [36 CFR 800.16\(l\)\(2\)](#). This may include properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations. [54 USC 302706](#). The criteria for listing a property on the National Register are listed at [36 CFR 60.4](#).

"[Historic property](#)" means "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria." [36 CFR 800.16\(l\)\(1\)](#).

Mitigation is not a defined term under the NHPA or its implementing regulations, but the NEPA/NHPA Handbook expresses the view that mitigation is a measure to resolve specific adverse effects to identified historic property or properties by avoiding, minimizing, or offsetting such effects. A nexus is required between the mitigation measure(s) and the adverse effects to historic properties. ([NEPA/NHPA Handbook](#).)

"[Programmatic agreement](#)" means "a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with [36 CFR] 800.14(b)." [36 CFR 800.16\(t\)](#).

"[Program comment](#)" is not a defined term under the NHPA but is included as a Program Alternative at 36 CFR 800.14(e) and in the [NEPA/NHPA Handbook](#). A "program comment" is an alternative method of NHPA Section 106 compliance which allows for federal agencies to fulfill compliance responsibilities by tailoring the Section 106 review process to meet the needs of a specific project or program through a request to the Council to comment on a category of undertakings in lieu of conducting individual reviews. "Comment" means "the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106." (36 CFR 800.16(e))

"Significant" is not a defined term under the NHPA or its implementing regulations, but is used in NHPA practice to describe the historic resource and the characteristics that make it historically

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significant and eligible for inclusion on the National Register of Historic Places. See [NEPA/NHPA Handbook, 36 CFR 60.4](#).

Under Section 106 of the NHPA, an “undertaking” is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including-

- (1) those carried out by or on behalf of a the Federal agency;
- (2) those carried out with Federal financial assistance;
- (3) those requiring a Federal permit, license, or approval; and
- (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.”

[54 USC 300320](#); see *also* [36 CFR 800.16\(y\)](#). Federal agencies with jurisdiction or authority to license any undertaking “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property.” [54 USC 306108](#).

## ESA Key Terms

This list of key statutory and regulatory terms under the ESA (16 USC 1563 *et seq.*) is in alphabetical order, except that general terms are followed by the specific terms that are a subset of the more general term (i.e., “effects” is followed by definitions of “Area of potential effects,” “adverse effect,” etc.). Underlined terms are terms that are defined in the statute or implementing regulations ([50 CFR part 402](#)).

This document is intended only as a reference and does not list the full text of all defined terms included in this glossary, nor does it list all terms defined in NHPA or its implementing regulations. For the full text of the definitions, please refer to the official U.S. Code and the Code of Federal Regulations.

An “action” under the ESA means “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](#).

A “major construction activity” under the ESA “is a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the [NEPA].” [50 CFR 402.02](#).

The “action area” under the ESA means 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](#).

“Consultation” is the process by which Federal agencies carry out the mandate of ESA 7(a)(2) that “[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species ...” [16 USC 1532\(a\)\(2\)](#). ESA consultation may include conferences, informal consultation, formal consultation, and/or programmatic consultation, and is described in more detail in the [Endangered Species Consultation Handbook](#), jointly published by FWS and NMFS.

A “conference” under the ESA “is a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the [ESA] regarding the impact on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.” [50 CFR 402.02](#).

“Formal consultation” under the ESA “is 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 ESA and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the ESA. [50 CFR 402.02](#).”

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“Informal consultation” under the ESA “is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.” [50 CFR 402.02](#).

“Programmatic consultation” is a consultation addressing an agency's multiple actions on a program, region, or other basis. Programmatic consultations allow the Services to consult on the effects of programmatic actions such as:

- (1) Multiple similar, frequently occurring, or routine actions expected to be implemented in particular geographic areas; and
- (2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions. [50 CFR 402.02](#)

“Effects of the action” under the ESA “are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.” [50 CFR 402.02](#).

“Cumulative effects” under the ESA “are those 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](#).

(Note that the definitions of “effects of the action” and “cumulative effects” both refer to effects that are “reasonably certain to occur,” not “reasonably foreseeable.”)

The “environmental baseline” “refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. 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 which are contemporaneous with the consultation in process. The impacts to listed species or designated critical habitat from Federal agency activities or existing Federal agency facilities that are not within the agency's discretion to modify are part of the environmental baseline.” [50 CFR 402.2](#).

“Reasonable and prudent alternatives” under the ESA “refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented 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.” [50 CFR 402.02](#).

“Reasonable and prudent measures” “refer to those actions the Director considers necessary or appropriate to minimize the impact of the incidental take on the species.” [50 CFR 402.02](#).

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“Conservation measures” is not a defined term in the ESA or its implementing regulations, but the Endangered Species Consultation Handbook describes them as “actions to 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 has committed to complete in a biological assessment or similar document.”

[Endangered Species Consultation Handbook](#).

“Conservation recommendations” “are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.” [50 CFR 402.02](#). They are “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 [ESA].” [Endangered Species Consultation Handbook](#).

FWS maintains the [IPaC](#) (Information for Planning and Consultation) website as a tool to assist project proponents in planning for the environmental review process with FWS. IPaC allows potential project sponsors to use mapping tools to explore federally listed species, critical habitats, and other natural resources in an area (e.g., bald and golden eagles, migratory birds, wetlands), conduct an online ESA review process, and build a consultation package to submit to the FWS. IPaC can provide an official species list, assist with consultation for certain species and activities, provide conservation measures and conservation recommendations, and assist in preparing analysis of listed species.

## CWA Section 404 Key Terms

This glossary includes a selection of terms used in CWA Section 404 (33 USC 1344) and its implementing regulations (40 CFR parts 230-233). Several of these terms are not defined in the regulations, and the meaning of those terms must be understood based on the context(s) in which they appear. Several terms that are regularly used in CWA Section 404 practice are not defined in the statute, or their definitions do not appear in the statute's implementing regulations.

Under the Army Corps of Engineers' (Corps') CWA 404 implementing regulations, permitting authorities "shall determine ... the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological characteristics of the aquatic environment ..." [40 CFR 230.11](#) (emphasis added). Note that "effects" does not have a separate definition in the CWA 404 implementing regulations.

"Secondary effects" are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. [40 CFR 230.11\(h\)\(1\)](#).

[40 CFR part 230](#) uses the terms cumulative impacts and cumulative effects. "Cumulative impacts [of a discharge of dredged or fill material] are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material." [40 CFR 230.11\(g\)\(1\)](#). "Cumulative effects attributable to the discharge of dredged or fill material on waters of the United States should be predicted to the extent reasonable and practicable." [40 CFR 230.11\(g\)\(2\)](#).

40 CFR part [230 Subpart H](#) describes numerous actions that may be taken to minimize adverse effects of discharges of dredged or fill material. Adverse effects is not a defined term in the regulation, but the actions described in Subpart H illustrate the nature of adverse effects by identifying methods of avoiding or minimizing them.

"Best management practices" (BMPs) "means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States from discharges of dredged or fill material." [40 CFR 232.2](#).

40 CFR part [230 Subpart J](#) also defines requirements for compensatory mitigation, which "means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved." [40 CFR 230.92](#).

A "discharge of dredged material" means "any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States." [40 CFR 232.2](#). 40 CFR 232.2 contains additional language that provides further context for the definition, and gives examples of activities that are included within and excluded from the definition.

"General permit" means "a permit authorizing a category of discharges of dredged or fill material under the [CWA]. General permits are permits for categories of discharge which are similar in

## CWA Section 404 Key Terms

nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.” [40 CFR 232.2](#).

A “Nationwide Permit” or “NWP” “is a type of general permit which authorizes activities on a nationwide basis unless specifically limited. [40 CFR 330.2\(b\)](#).”

A “Regional Permit” or “RGP” is similar to a NWP, but is issued by a Corps division or district engineer for the specific geographic area within their jurisdiction. See [40 CFR 325.2\(e\)\(2\)](#).

“Least environmentally damaging practicable alternative” or “LEDPA” is not a defined term in the CWA or its implementing regulations, but is the shorthand used by practitioners to describe the requirements of 40 CFR 230.10 in permitting under CWA section 404 (33 USC 1344), that “no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.” [40 CFR 230.10\(a\)](#) (emphasis added).

“Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. [40 CFR 230.3\(l\)](#).

“Waters of the United States” (WOTUS) is a defined term under the Clean Water Act’s implementing regulations, [40 CFR part 328 \(2023 version\)](#) (see also 40 CFR [120.2](#), [232.2](#)) that has been the subject of substantial litigation, including the May 25, 2023, Supreme Court decision in [Sackett v. Environmental Protection Agency](#). As of the date of this document, the current regulatory definition of WOTUS effective on September 8, 2023; however, litigation relating to the January 2023 version of the rule is ongoing, resulting in application of different versions of the rule in different states (a status update on the rule and litigation is available from [EPA’s website](#)). In some states, the September 2023 rule is in effect; in other states, the pre-2015 version of the rule defining WOTUS is in force consistent with the *Sackett* decision. Practitioners should consult with their local district(s) of the Corps and verify which definition is applicable to a transmission project or the portion(s) thereof in specific states.



Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

Statutory and Regulatory Crosswalk

| TERM/PHRASE  | NEPA   | NHPA   | ESA   | CWA 404 |
|--|--|--|---|---------|
| <p>Action or major Federal action (NEPA)</p> <p>Undertaking (NHPA Section 106)</p> <p>Action (ESA)</p> | <p>An action or “major Federal action” is an action that the agency which carries out the action determines to be subject to substantial Federal control and responsibility, and generally includes:</p> <ul style="list-style-type: none"> <li>(i) granting authorizations, including permits, licenses, or rights-of-way;</li> <li>(ii) adoption of official policies such as rules or regulations; adopting formal plans, such as official documents prepared or approved by Federal agencies;</li> <li>(iii) adoption of programs;</li> <li>(iv) approving or carrying out projects; or</li> <li>(v) providing more than a minimal amount of financial assistance, where the agency has the authority to deny in whole or in part the assistance due to environmental effects, has the authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which assistance is provided.</li> </ul> <p><a href="#">40 CFR 1508.1(w).</a></p> | <p>A project, activities, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of an agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.</p> <p><a href="#">36 CFR 800.16(y).</a></p> | <p>All activities or programs of any kind authorized, funded, or carried out, in whole or in part, by the 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.</p> <p><a href="#">50 CFR 402.02.</a></p> |         |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

| TERM/PHRASE | NEPA   | NHPA | ESA | CWA 404 |
|-------------|--|------|-----|---------|
|             | <p>“<u>Action</u>” means a project, program, plan, or policy, as discussed at 40 CFR 1508.18 [note: this is an outdated reference to CEQ NEPA regulations as DOE has not updated its regulations since CEQ’s 2024 final rule], that is subject to DOE’s control and responsibility. Not included within this definition are purely ministerial actions with regard to which DOE has no discretion. For example, ministerial actions to implement congressionally mandated funding for actions not proposed by DOE and as to which DOE has no discretion (i.e., statutorily mandated, congressionally initiated “passthroughs”).”</p> <p>“<u>Project</u>” “means a specific DOE undertaking including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities, which may include design, construction, and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).”</p> <p><a href="#">10 CFR 1021.104(b)</a></p> |      |     |         |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

| TERM/PHRASE  | NEPA   | NHPA  | ESA  | CWA 404  |
|--|--|---|--|--|
| <p>Effects or Impacts (NEPA)</p> <p>Effect/Adverse Effect (NHPA)</p> <p>Effects of the Action (ESA)</p> <p>Effect/Adverse Effect (CWA)</p> | <p>Effects and impacts are synonymous terms under NEPA, and mean changes to the human environment from the proposed action or alternatives that are reasonably foreseeable. They include direct effects, indirect effects, and cumulative effects.</p> <p><a href="#">40 CFR 1508.1(i)</a>.</p> <p>The magnitude, duration, and timing of effects on different aspects of the human environment are evaluated in the impact section of a NEPA document for their significance. Effects can be beneficial or adverse, and direct, indirect, or cumulative. <a href="#">NEPA/NHPA Handbook</a></p> | <p>An “effect” means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. <a href="#">36 CFR 800.16(i)</a>.</p> <p>An “adverse effect” is alteration to the characteristics of a historic property that qualify it for inclusion in the National Register of Historic Places in a manner that would diminish its integrity.</p> <p><a href="#">36 CFR 800.5(a)(1)</a>.</p> <p>This includes qualifying characteristics of a historic property that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. “Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” <i>Id.</i> Examples of adverse effects are included in <a href="#">36 CFR 800.5(a)(2)</a>.</p> | <p>“Effects of the Action” are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.</p> <p><a href="#">50 CFR 402.02</a>.</p> | <p>Under the Corps’ CWA 404 implementing regulations, permitting authorities “shall determine ... the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological characteristics of the aquatic environment ....”</p> <p><a href="#">40 CFR 230.11</a></p> <p>The implementing regulations do not include a definition of “adverse effects,” but 40 CFR part <a href="#">230 Subpart H</a> describes numerous actions that may be taken to minimize adverse effects of discharges of dredged or fill material, and the actions described in Subpart H illustrate the nature of adverse effects by identifying methods of avoiding or minimizing them.</p> |
| <p><u>Types of Effects/Impacts:</u></p>  |  |   |  |  |
| <p>Direct Effects</p>  | <p>Effects “which are caused by the action and occur at the same time and place.”</p> <p><a href="#">40 CFR 1508.1(i)(1)</a>.</p>  | <p>According to the <a href="#">NHPA/NEPA Handbook</a>, a direct effect to a historic property would include demolition of a historic building, major disturbance of an archaeological site, or any other actions that occur to the property itself.</p>  |  |  |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

| TERM/PHRASE   | NEPA  | NHPA  | ESA  | CWA 404   |
|---|---|---|--|---|
| <p>Indirect Effects (NEPA)</p> <p>Secondary Effects (CWA)</p> | <p>Effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”</p> <p><a href="#">40 CFR 1508.1(i)(2).</a></p> <p>These are sometimes referred to as “downstream” impacts.</p> <p><a href="#">NEPA/NHPA Handbook.</a></p> | <p>According to the <a href="#">NHPA/NEPA Handbook</a>, “[i]ndirect effects may change the character of the property’s use or physical features within the property’s setting that contribute to its historic significance; are often audible, atmospheric, and visual effects; and may relate to viewshed issues.”</p> | <p>The “effects of the action” for ESA purposes “include[e] the consequences of other activities that are caused by the proposed action but that are not part of the action” and “may occur later in time and may include consequences occurring outside the immediate area involved in the action.”</p> <p><a href="#">50 CFR 402.02.</a></p> | <p>Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material.</p> <p><a href="#">40 CFR 230.11(h)(1).</a></p>  |
| <p>Cumulative Effects</p> <p>Cumulative Impacts</p>           | <p>“effects on the environment that result from the incremental effects of the action when added to the effects of other past, present and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from actions with individually minor but collectively significant effects taking place over a period of time.”</p> <p><a href="#">40 CFR 1508.1(i)(3).</a><sup>3</sup></p>  | <p>According to the <a href="#">NHPA/NEPA Handbook</a>, “While the Section 106 regulations do not define ‘cumulative effects,’ the CEQ regulation definition of ‘cumulative impact’ is analogous and instructive.”</p>  | <p>“those effects on listed species or critical habitat 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.”</p> <p><a href="#">50 CFR 402.02.</a></p>   | <p>“Cumulative impacts [of a discharge of dredged or fill material] are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material.” <a href="#">40 CFR 230.11(g)(1).</a> “Cumulative effects attributable to the discharge of dredged or fill material on waters of the United States should be predicted to the extent reasonable and practicable.” <a href="#">40 CFR 230.11(g)(2).</a></p> |

<sup>3</sup> (Prior to 2020, cumulative effects were referred to as “cumulative impacts” in 40 CFR 1508.7.)

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

| TERM/PHRASE   | NEPA   | NHPA   | ESA | CWA 404 |
|---|--|--|-----|---------|
| <p>Significant Effects/<br/>Significance (NEPA)</p> <p>Significant (NHPA)</p> | <p>“Significant effects” means “adverse effects that an agency has identified as significant based on the criteria in [40 CFR] 1501.3(d),” <a href="#">40 CFR 1508.1(mm)</a>, i.e., the context of the action and intensity of the effect.</p> <p>According to <a href="#">40 CFR 1501.3(d)</a>, significance is analyzed in several contexts, including “the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns ... [and] potential global, national, regional, and local contexts as well as the duration, including short-term and long-term effects.” <a href="#">40 CFR 1501.3(d)(1)</a>.</p> <p>Agencies must analyze the intensity of effects considering eight factors listed in <a href="#">40 CFR 1501.3(d)(2)(i)-(viii)</a>.</p> | <p>“Significant” in NHPA is used to describe the historic resource and the characteristics that make it historically significant and eligible for inclusion on the National Register of Historic Places.</p> <p>See <a href="#">NEPA/NHPA Handbook</a>, <a href="#">36 CFR 60.4</a>.</p> |     |         |
| [End of types of effects]   |  |  |     |         |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|   |   |  |  |  |
|---|---|--|--|--|
| <p>Affected Environment (NEPA)</p> <p>Area of Potential Effects (NHPA Section 106)</p> <p>Action Area (ESA)</p> | <p>The “affected environment” means the environment of the area(s) to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).</p> <p><a href="#">40 CFR 1502.15.</a></p> | <p>The “Area of Potential Effects” means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.</p> <p><a href="#">36 CFR 800.16(d).</a></p> | <p>“Action area” means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.</p> <p><a href="#">50 CFR 402.02.</a></p> |  |
| <p>Reasonably Foreseeable (NEPA)</p> <p>Reasonably certain to occur (ESA)</p>                                   | <p>“Reasonably foreseeable” means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.</p> <p><a href="#">40 CFR 1508.1(ii).</a></p>   | <p>“Reasonably foreseeable” is not defined in the NHPA implementing regulations, but the NHPA regulations defining “adverse effect” state that “[a]dverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.”</p> <p><a href="#">36 CFR 800.5(a)(1).</a></p>  | <p>ESA regulations require consideration of effects of the action, including cumulative effects, that are “reasonably certain to occur.”</p> <p><a href="#">50 CFR 402.02.</a></p>               |  |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|  |  |  |   |  |
|--|--|--|---|--|
| <p>Reasonable Alternatives (NEPA)</p> <p>Reasonable and prudent alternatives (ESA)</p> | <p>“Reasonable alternatives” means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.</p> <p><a href="#">40 CFR 1508.1(hh)</a>.</p> <p>Agencies preparing environmental impact statements are required to “[r]igorously explore and objectively evaluate <u>reasonable alternatives</u> to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.” The discussion must discuss alternatives in detail to allow reviewers to evaluate their comparative merits, include a “no action alternative,” identify the agency’s preferred alternative(s), include appropriate mitigation measures not already included in the proposed action or alternatives, and identify the environmentally preferable alternative.</p> <p><a href="#">40 CFR 1502.14</a>.</p> |  | <p>“Reasonable and prudent alternatives” refer to alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented 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.</p> <p><a href="#">50 CFR 402.02</a>.</p> |  |
|--|--|--|---|--|

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|  |  |  |  |  |
|--|--|--|--|--|
| <p>Environmentally preferable alternative (NEPA)</p> <p>Least environmentally damaging practicable alternative (“LEDPA”) (CWA)</p> | <p>“Environmentally preferable alternative”<br/>“means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA.”</p> <p><a href="#">40 CFR 1508.1(n)</a>.</p>   |  |  | <p>“least environmentally damaging practicable alternative,” or LEDPA, is the term usually used to describe the requirements of 40 CFR 230.10 in permitting under CWA section 404 (33 USC 1344), that “no discharge of dredged or fill material shall be permitted if there is a <u>practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem</u>, so long as the alternative does not have other significant adverse environmental consequences.”</p> <p><a href="#">40 CFR 230.10(a)</a> (emphasis added).</p> |
| <p>Practicable (NEPA)</p> <p>Practicable (CWA)</p>   | <p>“Practicable” is not defined in NEPA or its implementing regulations, but CEQ’s NEPA regulations express certain requirements in terms of practicability, such as the requirement to begin scoping of NEPA reviews “as soon as practicable” (<a href="#">40 CFR 1502.4(a)</a>) and to “[s]tate whether the agency has adopted all practicable means to mitigate environmental harm from the alternative selected” in its record of decision (<a href="#">40 CFR 1505.2(c)</a>).</p> |  |  | <p>Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.</p> <p><a href="#">40 CFR 230.3(l)</a>.</p>  |



Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|   |  |   |   |   |
|---|--|---|---|---|
| <p>Mitigation (NEPA/NHPA/CWA)</p> <p>Reasonable and prudent measures (ESA)</p> <p>Conservation measures (ESA)</p> <p>Conservation recommendations (ESA)</p> | <p>Mitigation means measures that avoid, minimize, or compensate for adverse effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a connection to those adverse effects.</p> <p>Mitigation includes, in general order of priority, avoiding the adverse effect altogether; minimizing the adverse effect; rectifying the adverse effect by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the adverse effect over time; and compensative for the adverse effect by replacing or providing substitute resources.</p> <p><a href="#">40 CFR 1508.1(y).</a></p> | <p>A measure to resolve specific adverse effects to identified historic property or properties by offsetting such effects. A nexus is required between the mitigation measure(s) and the adverse effects to historic properties.</p> <p><a href="#">NEPA/NHPA Handbook.</a></p> | <p>Reasonable and prudent measures refer to those actions the Director considers necessary or appropriate to minimize the impact of the incidental take on the species.</p> <p><a href="#">50 CFR 402.02.</a></p> <p>“Conservation measures are actions to 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 has committed to complete in a biological assessment or similar document.” <a href="#">Endangered Species Consultation Handbook</a></p> <p>Conservation recommendations are suggestions of the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information.</p> <p><a href="#">50 CFR 402.02.</a></p> | <p>40 CFR part <a href="#">230 Subpart H</a> describes numerous actions that may be taken to minimize adverse effects of discharges of dredged or fill material.</p> <p>40 CFR part <a href="#">230 Subpart J</a> also defines requirements for compensatory mitigation, which is the restoration, establishment, enhancement, and/or preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.</p> <p><a href="#">40 CFR 230.92.</a></p> |
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Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|  |  |  |  |  |
|--|--|--|--|--|
| <p>Environmental baseline (NEPA/ESA)</p> | <p>The environmental baseline is not a defined term in NEPA or its implementing regulations, but is often used as shorthand for the regulations' admonition that "[t]he no action alternative should serve as the baseline against which the proposed action and other alternatives are compared."</p> <p><a href="#">40 CFR 1502.16(a).</a></p> |  | <p>"<b>Environmental baseline</b>" "refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. 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 which are contemporaneous with the consultation in process. The impacts to listed species or designated critical habitat from Federal agency activities or existing Federal agency facilities that are not within the agency's discretion to modify are part of the environmental baseline."</p> <p><a href="#">50 CFR 402.2.</a></p> |  |
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Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|  |  |   |  |  |
|--|--|---|--|--|
| <p>Public involvement (NEPA)</p> <p>Consultation (NHPA)</p> <p>Consultation (ESA) (50 CFR 402.2)</p> | <p>Agencies shall provide notice of NEPA-related public hearings or meetings and other opportunities for public engagement, and the availability of environmental documents. They shall solicit information and comments from the public, and make EISs and their supporting documentation available subject to the Freedom of Information Act.</p> <p><a href="#">40 CFR 1501.9</a> (located at 40 CFR 1506.6 prior to 2020).</p>   | <p>The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding the NHPA Section 106 process. <a href="#">36 CFR 800.16(f)</a>.</p> <p>Agencies are required to consult with certain parties (see <a href="#">NEPA/NHPA Handbook</a>) and give the public an opportunity to comment.</p>   | <p>The process by which Federal agencies carry out the mandate of ESA 7(a)(2) that “[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species ...”</p> <p><a href="#">16 USC 1532(a)(2)</a>.</p> |  |
| <p>Cooperating agency (NEPA)</p> <p>Consulting party (NHPA)</p>                                      | <p>A “<a href="#">cooperating agency</a>” means “any Federal, State, Tribal or local agency that has been designated as a cooperating agency under section 107(a)(3) [<a href="#">42 USC 4336a(a)(3)</a>],” <a href="#">42 USC 4336e(2)</a>, OR “any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency.”</p> <p><a href="#">40 CFR 508.1(g)</a>; see also <a href="#">42 USC 4336a7(a)(3)</a>.</p> | <p>Parties that have consultative roles in the Section 106 process, including SHPOs; THPOs; Indian tribes; Native Hawaiian organizations; representatives of local governments; applicants for Federal assistance, permits, licenses, and other approvals; the ACHP; and other individuals and organizations with a demonstrated interest in the undertaking or the affected historic properties.</p> <p><a href="#">36 CFR 800.2(c)</a>.</p> |  |  |

Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|   |  |  |  |  |
|---|--|--|--|--|
| <p>Programmatic environmental document (NEPA)</p> <p>Programmatic agreement (NHPA)</p> <p>Program comment (NHPA)</p> <p>Programmatic consultation (ESA)</p> | <p>A “programmatic environmental document” means an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.</p> <p><a href="#">40 CFR 1508.1(ee).</a></p> | <p>“Programmatic agreement” means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with [36 CFR] 800.14(b).</p> <p><a href="#">36 CFR 800.16(t).</a></p> <p>“<u>Program comment</u>” is an alternative method of NHPA Section 106 compliance which allows for federal agencies to fulfill compliance responsibilities by tailoring the Section 106 review process to meet the needs of a specific project or program through a request to the Council to comment on a category of undertakings in lieu of conducting individual reviews.</p> <p>“Comment” means “the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.” (36 CFR 800.16(e))</p> | <p>“Programmatic consultation” is a consultation addressing an agency's multiple actions on a program, region, or other basis. Programmatic consultations allow the Services to consult on the effects of programmatic actions such as:</p> <p>(1) Multiple similar, frequently occurring, or routine actions expected to be implemented in particular geographic areas; and</p> <p>(2) A proposed program, plan, policy, or regulation providing a framework for future proposed actions.</p> <p><a href="#">50 CFR 402.02.</a></p> |  |
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Statutory and Regulatory Crosswalk

(Not all terms in the glossary above are included, as this crosswalk is intended to explain how similar terms are used under each statute and its implementing regulations):

|  |  |  |  |  |
|--|--|--|--|--|
| <p>Historic or cultural resources (NEPA)</p> <p>Historic Properties (NHPA)</p> | <p>Historic or cultural resources are listed among the “unique characteristics of the geographic area” that should be considered when determining the significance of effects.</p> <p><a href="#">40 CFR 1501.3(d)(2)(ii).</a></p> <p>Effects considered under NEPA include historic and cultural effects.</p> <p><a href="#">40 CFR 1508(i)(4).</a></p> | <p>“[A]ny prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”</p> <p><a href="#">36 CFR 800.16(l)(1).</a></p> |  |  |
|--|--|--|--|--|