

Definitions

Definition of “Destruction or Adverse Modification”

The Services are removing confusing language from the existing definition without changing the substance of the standard. We support this proposal.

Definition of “Effects of the Action”

Clarifying the definition of “effects of the action” will reduce confusion about terms in the existing definition and help decrease the resources needed for federal agencies and applicants to describe the effects of their actions to listed species or critical habitat when engaged in section 7 consultation. We support this approach, and agree that the proposed changes will help federal agencies focus on assessing the effects of a proposed action, rather than spending time categorizing the effects of a proposed action.

Definition of “Environmental Baseline”

Water managers correctly believe that pre-existing infrastructure like dams, including the ongoing operation of that infrastructure, should be part of the environmental baseline included in ESA consultation processes. Unfortunately, that is not how others view it. Critics argue that the mere existence of dams should be considered an agency action, and therefore subject to ESA section 9 liability.

The fact is, the dams exist. They are not the subject of proposed construction or other action capable of modification. Proposed operations are separate from the existence of the structures. In other words, were federal agencies like Reclamation take no action whatsoever, the dams would continue to exist.

Other activities where the environmental baseline is a consideration include the continuing operation of other federal water projects, administration of the National Flood Insurance Program, and implementation of resource management plans by the Forest Service.

The proposed agency regulations have identified a stand-alone definition of “environmental baseline”, which makes it clear that establishing the baseline for a consultation is a separate consideration from describing the effects of the action.

Clarifying the environmental baseline with respect to ongoing agency activities or existing agency facilities addresses issues that have caused confusion in the past, particularly with regard to impacts from ongoing agency activities or existing agency facilities that are not within the agency’s discretion to modify.