

CHAPTER 7

**SPECIES AND CRITICAL HABITAT NOT LIKELY TO BE ADVERSELY AFFECTED, SPECIES AND
CRITICAL HABITAT LIKELY TO BE ADVERSELY AFFECTED**

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7 EPA SPECIES AND CRITICAL HABITAT EFFECT DETERMINATIONS

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. 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). A ‘No Effect’ (NE) determination would be the appropriate conclusion when the action agency determines its proposed action will not affect a listed species or designated critical habitat.

Consistent with the definition of “Not Likely to be Adversely Affected” (NLAA), the National Marine Fisheries Service (NMFS) uses two primary analytical steps to identify the species or designated critical habitat that are NLAA by the Federal agency’s proposed action. The first step is exposure, or some reasonable potential for co-occurrence, between one or more potential stressors associated with the proposed activities and Endangered Species Act (ESA)-listed species or designated critical habitat.

The second step is the likelihood of a response given exposure estimates and known toxicological end-points at concentrations that elicit a response. If we conclude that an ESA-listed species or designated critical habitat may be exposed to a potential stressor but is not likely to undergo a response to such exposure, an NLAA determination can be made.

An action warrants a NLAA finding when its potential effects or consequences are wholly *beneficial*, *insignificant* or *discountable*. *Beneficial* effects have an immediate positive effect without any adverse effects to the species or critical habitat. Beneficial effects are usually addressed when the project has a clear link to the ESA-listed species or its specific habitat needs and consultation is required because the species or its critical habitat may be affected.

Insignificant effects relate to the size or severity of the impact and include those potential effects that are undetectable, not measurable, or so minor that they cannot be meaningfully evaluated. Insignificant is the appropriate effect conclusion when effects are plausible, but are not sufficient to be determined to occur. That means the ESA-listed species will not be harmed or harassed and the conservation value of a physical or biological feature will not be diminished.

Discountable consequences are those that are extremely unlikely to occur. For a consequence to be discountable, there must be a plausible potential adverse effect (i.e., a credible possible effect that could result from the action and that would be an adverse effect if it did impact a listed species), but it is very unlikely to occur. The recently adopted ESA regulations clarify that where a potential consequence of the action is not “reasonably certain to occur”, it is not considered an

“effect” of the action (See 50 CFR 402.02). Therefore, the term “discountable consequences” is more appropriate here than the term “discountable effects” that has been used by NMFS in earlier guidance and consultation documents.

‘Likely to adversely affect’ (LAA) is the appropriate conclusion when any effects of the action are not: discountable, insignificant, or wholly beneficial (not NLAA) and, therefore, adverse effects are possible to listed species or designated critical habitat as a result of the proposed action. If incidental take is anticipated (e.g. individuals may be harmed or harassed) as a result of the proposed action or the conservation value of a physical and biological feature may be diminished, an LAA determination should be made.

This section identifies the ESA-listed salmonid species and designated critical habitats for which the Environmental Protection Agency (EPA) has made the following effects determinations for this action (approval/registration of prometryn and bromoxynil labelled uses and use sites) in its biological evaluations (BEs): no effect (NE), may affect but not likely to adversely affect (NLAA), or likely to be adversely affected (LAA).

EPA made NE and NLAA determinations in BEs for prometryn in 2002 and bromoxynil in 2004. However, for both compounds, label information and approved use sites have changed in the interim. While EPA did provide new labels to NMFS for this Opinion, EPA indicated they will not otherwise be providing updates to their 2002 and 2004 BE’s. Additionally, two species of salmon were listed as threatened after those BEs were developed. These are the Lower Columbia River Coho, and the Puget Sound Steelhead. Therefore, all of the species listed in Table 2, (regardless of EPA’s earlier effect determinations) will be carried forward in this Biological Opinion for further analysis of effects of the action, the potential for jeopardy to the species, or destruction or adverse modification of critical habitat for these two compounds using the analyses described in Chapter 4. NMFS’s determinations on effects to listed species and critical habitats listed in Table 2 will be presented in Chapters 12 and 15 of this Opinion.

Table 1. Summary of EPA's effect determinations to ESA listed Pacific Salmon from registering the uses for prometryn and bromoxynil from BE’s provided in 2002 and 2004. Because the BE determinations are dated, NMFS treated all species as LAA in this Opinion.

Common Name	Evolutionarily Significant Unit / Distinct Population Segment	EPA 2002 BE Prometryn Effect Determination	EPA 2004 BE Bromoxynil Effect Determination
Chum	Columbia River	NE	LAA
Chum	Hood Canal summer-run	NE	NLAA
Chinook	California Coastal	NE	NE

Chinook	CA Central Valley spring-run	NE	NLAA
Chinook	Lower Columbia River	NE	NLAA
Chinook	Puget Sound	NE	NLAA
Chinook	Sacramento River winter-run	NE	NLAA
Chinook	Snake River fall-run	LAA	LAA
Chinook	Snake River spring/summer run	LAA	LAA
Chinook	Upper Columbia River spring-run	LAA	LAA
Chinook	Upper Willamette River	NE	LAA
Coho	Central California Coast	NE	NE
Coho	Lower Columbia River	*	*
Coho	Oregon Coast	NE	NLAA
Coho	S. Oregon N. Calif. coasts	NE	NLAA
Sockeye	Ozette Lake	NE	NE
Sockeye	Snake River	NE	LAA
Steelhead	CA Central Valley	LAA	NLAA
Steelhead	Central Calif. Coast	NE	NLAA
Steelhead	Lower Columbia River	NE	NLAA
Steelhead	Middle Columbia River	LAA	LAA
Steelhead	Northern California	NE	NE
Steelhead	Puget Sound	*	*
Steelhead	Snake River Basin	LAA	LAA
Steelhead	South-Central Calif. Coast	LAA	NLAA
Steelhead	Southern California	LAA	NLAA
Steelhead	Upper Columbia River	LAA	LAA
Steelhead	Upper Willamette River	NE	LAA

* Lower Columbia River Coho and Puget Sound Steelhead were not yet listed at the time the BEs were delivered.

Table 2. Listed Species Status and Designated Critical Habitat within the action area.

Species	ESA Status	Critical Habitat Designated?
Chum Salmon, Columbia River	Threatened	Yes
Chum Salmon, Hood Canal summer-run	Threatened	Yes

Chinook Salmon, California Coastal	Threatened	Yes
Chinook Salmon, Central Valley spring-run	Threatened	Yes
Chinook Salmon, Lower Columbia River	Threatened	Yes
Chinook Salmon, Puget Sound	Threatened	Yes
Chinook Salmon, Sacramento River winter-run	Endangered	Yes
Chinook Salmon, Snake River fall-run	Threatened	Yes
Chinook Salmon, Snake River spring/summer run	Threatened	Yes
Chinook Salmon, Upper Columbia River spring-run	Endangered	Yes
Chinook Salmon, Upper Willamette River	Threatened	Yes
Coho Salmon, Central California Coast	Endangered	Yes
Coho Salmon, Lower Columbia River	Threatened	Yes
Coho Salmon, Oregon Coast	Threatened	Yes
Coho Salmon, South Oregon and North Calif. Coast	Threatened	Yes
Sockeye Salmon, Ozette Lake	Threatened	Yes
Sockeye Salmon, Snake River	Endangered	Yes
Steelhead, California Central Valley	Threatened	Yes
Steelhead, Central California coast	Threatened	Yes
Steelhead, Lower Columbia River	Threatened	Yes
Steelhead, Middle Columbia River	Threatened	Yes
Steelhead, Northern California	Threatened	Yes
Steelhead, Puget Sound	Threatened	Yes
Steelhead, Snake River Basin	Threatened	Yes
Steelhead, South Central California Coast	Threatened	Yes
Steelhead, Southern California	Endangered	Yes
Steelhead, Upper Columbia River	Endangered	Yes
Steelhead, Upper Willamette River	Threatened	Yes
Total species and designated critical habitats	28 Species	28 Designated Critical Habitats