

SIDEBOARDS FOR THE GEOGRAPHIC SCOPE ANALYSIS

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	ITP/HCP	Biological Opinion	EIS
General	Applicant document	FWS prepares the BiOp; FWS, however, expects the applicant to provide the information necessary to prepare a biological opinion	NEPA compliance is an obligation of the Federal agency. Thus, the EIS is a FWS document, but FWS expects the applicant to prepare the draft EIS
Geographic Scope	Permit or Conservation Plan Area	Action Area	Effects
Definition or meaning	The permit area defines the geographic scope of the incidental take protection as well as the scope of mitigation. "HCP boundaries should encompass all areas ... within which any permit or planned activities likely to result in incidental take are likely to occur" ¹	The action area means "all areas to be affected directly or indirectly ² by the Federal action and not merely the immediate area involved in the action."	NEPA requires a statement on the environmental impact of the proposed action. The NEPA analysis must consider direct, indirect, and cumulative impacts or effects. ³
Implications	Whether "take" is likely to occur requires an evaluation of scientific data. Even if a listed species is not included in the HCP, FWS, nonetheless, must consult under § 7 of the ESA regarding the effects of the proposed action on all listed species in the "action area" that may be affected by the action. ⁴ "[A]lthough the consultation responsibility is not the permit applicant's, the applicant should help assure that those considerations required of the Services by section 7 have been addressed in the HCP." ⁵	An agency cannot issue an HCP if the proposed action in that HCP is likely to result in jeopardy or adverse modification of critical habitat for any listed species in the action area. ⁵ The determination of the geographic scope of the action area as well as the effects of the action all require and evaluation of scientific information that FWS expects the applicant to provide as part of the HCP.	The NEPA process does not impose substantive requirements. It simply must identify and discuss all impacts or effects. Thus, its scope tends to be broad.

¹ HCP Handbook at 3-11

² "Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur." 50 C.F.R. § 402.02. "Cumulative effects 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 C.F.R. § 402.02.

³ "Direct effects are those that are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). Indirect effects are those caused by the action, but occurring later in time or farther removed in distance, yet still reasonably foreseeable." 40 C.F.R. § 1508.8(b). "Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

⁴ 50 C.F.R. § 402.14. The agency must prepare a biological opinion unless the action "may affect, but is not likely to adversely affect" a listed species. 50 C.F.R. § 402.14.

⁵ HCP Handbook at 3-7.

⁶ HCP Handbook at 3-15.