

**Documentation Guide for: ENDANGERED AND THREATENED SPECIES****BACKGROUND**

Endangered and Threatened (E&T) Species are those plants or animals, which after a review of the species' status, the Secretary of the Interior classifies as "endangered" or "threatened," based on the best available scientific and commercial data. The U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration - National Marine Fisheries Service (NMFS) publish comprehensive notices containing the names of species, which are considered to be candidates for listing as "endangered" or "threatened" under the Endangered Species Act of 1973. The National Oceanic and Atmospheric Administration (NOAA) is charged to protect marine and anadromous fish species.

The Endangered Species Act of 1973, as amended, (PL 93-205, 87 Stat. 884 (16 U.S.C. 1531 et seq.)) provides a means whereby the ecosystems upon which threatened and endangered species depend, may be maintained, as well as a program for the conservation of such species.

The Endangered Species Act provides that in addition to the Department of the Interior, all other Federal departments and agencies in consultation with and with the assistance of the Secretary of the Interior shall utilize the departments' and agencies' authorities to advance the purposes of the Act by executing programs for the conservation of threatened and endangered species that are listed.

Section 7 of the Act requires that all Federal agencies, in consultation with and with the assistance of the Secretary of the Interior, shall ensure that its agency actions and activities authorized, funded or carried out do not jeopardize the continued existence of endangered and threatened species or result in the destruction or adverse modification of the species' critical habitat. The extent of a particular species' critical habitat is determined by the U.S. Fish and Wildlife Service, or in the case of marine or anadromous fish species, the National Marine Fisheries Service. Consult the USFWS or NMFS or their website concerning the extent of a species' critical habitat.

The principal hazard to endangered and threatened species is the destruction of their habitats by human activities associated with industrialization, urbanization, agriculture, lumbering, recreation and transportation.

Endangered and threatened species are those U.S. plant and animal species that are reduced in numbers, making extinction a high probability. The disappearance of these species would be a biological, cultural and in some cases an economic loss to the nation. The species' continued existence contributes to scientific knowledge and understanding, adds to recreational and commercial pursuits, and provides interest, purpose and variety to human existence.

**POLICY****The NRCS policy (GM 190 Part 410.22(c)(1)) states:**

- The NRCS, as a component Federal agency within USDA, has both the authority and the obligation under the ESA to protect and conserve plant and animal species listed or proposed for listing as endangered or threatened, as well as those habitats determined critical by the Department of the Interior, Fish and Wildlife Service (FWS) or the Department of Commerce, NOAA Fisheries - National Marine Fisheries Service.

**The NRCS policy (GM 190 Part 410.22(c)(3)) states:**

NRCS regulations at 7 CFR 650.22 require that the NRCS concern for species and habitats will not be limited to those Federally listed or proposed under the ESA, but will include those designated by State and Tribal agencies as rare, endangered, threatened, or species of concern.

Further:

NRCS Policy.

(1) NRCS is committed to supporting its customers and partners by providing technical and financial assistance to conserve and improve natural resources on private lands. Within this framework and consistent with legal requirements, the implementation of conservation programs through planning and application of conservation practices and measures shall also provide for the conservation of

Federally listed and proposed species and designated and proposed critical habitat to the extent practicable, as well as State species of concern.

(2) NRCS will provide conservation technical assistance to its customers and partners in a manner consistent with the conservation of all Federally listed, proposed, (candidate species where resources permit) and State species of concern within its existing authorities and programs.

(3) As resources allow, as determined by the State Conservationist, Federal candidate species may be considered within the scope of NRCS conservation planning and implementation activities.

(4) Section 7(a)(1) of the ESA.

NRCS, in consultation with the Services, will utilize its authorities in furthering the purposes of ESA by carrying out programs that include benefiting the conservation of listed species.

(5) Section 7(a)(2) of the ESA.

(i) NRCS is required to consult with FWS or NOAA Fisheries when NRCS financial assistance will be provided to landowners (or land users) for implementing planned practices for which a "may affect" determination has been made. This obligation to consult continues throughout the life of the agreement under which financial assistance was provided.

(A) Before initiating consultation with the Services, NRCS must obtain the consent of the recipient of assistance and landowner (if different), to disclose information to the Services. If consent is not given, NRCS must cease to provide assistance.

(B) If the action may adversely affect a listed species:

- Financial assistance will only be provided if NRCS is willing to undertake formal consultation and the participant agrees to comply with the terms of the Biological Opinion or the participant complies with Section 10 of the ESA.
- NRCS State Conservationists have the option of refusing to undertake formal consultation when there is likely to be an adverse effect on a listed species or critical habitat and the resources are not available to enter into formal consultation.

(C) If new species are listed or critical habitat is designated after an agreement has been signed and NRCS determines that actions under the agreement may affect that species or habitat, implementation of activities under this agreement must cease, and consultation with the Services must be reinitiated. Revision of the original agreement resulting in a no effect determination eliminates the need to consult.

(D) NRCS will inform the landowner (or land user) of their responsibilities under Section 10 and the possible need to obtain a Habitat Conservation Plan and incidental take permit before the proposed action is implemented, if the agency decides not to consult with the Services under Section 7(a)(2).

(ii) NRCS technical assistance does not require consultation under 7(a)(2) of the ESA. **NOTE:** If NRCS technical assistance provides the basis for NRCS financial assistance, NRCS must consult if the action may affect an endangered or threatened species.

(A) NRCS technical assistance does not compel, prohibit, fund or otherwise give NRCS control of an action.

(B) When NRCS is providing site-specific technical assistance, conservationists will utilize existing maps, partner databases, and other scientifically based information or criteria to determine whether there may be an effect on a listed species.

(C) If a potential effect upon a listed species is identified, NRCS will recommend alternative conservation treatments which avoid the effect.

- (D) Should the recipient of technical assistance refuse to apply the recommended alternative conservation treatment to avoid impacts to listed species, NRCS will not proceed with the technical assistance needed to apply the practice. NRCS will inform the individual of the ESA implications and their responsibilities under Section 10 of the ESA and the possible need to obtain a Habitat Conservation Plan and incidental take permit.
- (E) A “no effect” determination made by NRCS requires no consultation, but does require documentation of the best scientific and commercial data available to support this determination.

Project: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Technician: \_\_\_\_\_

**Casefile Documentation: ENDANGERED & THREATENED SPECIES**

***This correctly and completed form this will provide adequate documentation for compliance with the ESA. Attach to OR-EVT-1 when completed.***

**STEP 1.** Obtain from landowner “Authorization for NRCS Release of Conservation Plan File Information”. If the landowner chooses not to consent, they may work directly with USFWS/NMFS and when the need arises provide assurance of ESA compliance to NRCS prior to implementation of the planned project.

YES, Consent Provided                      Make a copy of the form for the files and Go to Step 2  
 NO, Consent Denied                      NRCS will provide no financial assistance until the consultation process has been completed by the landowner.

**STEP 2.** Does the project occur in a county with Endangered Species Act (ESA) Endangered or Threatened (E&T) Species or Designated Critical Habitat (DCH)? [Review County List in Section II of the eFOTG].

NO                      YES

- a. If your answer is “No”, go to step 3.
- b. If your answer is “Yes”, Fill out the “**Request For Cultural Resource Review and T&E Species List**” form (OR-EVT-1CR/TE) and fax or mail it to the designated E&T database coordinator, then go to step 3.

**STEP 3.** Does the project occur in a watershed with Essential Fish Habitat for either Coho or Chinook salmon species covered under the Magnuson-Stevens Act (MSA)? [Review Table included in T&E response or in Section II of eFOTG]

NO                      YES

- a. If your answer is “No”, continue with the conservation planning process. On the OR-EVT-1, Special Environmental Concerns section, document that you have no Essential Fish Habitat that would require Magnuson-Stevens Act consultation based on the MSA table. *However, if you answered “Yes” to Step 2, Complete Step 3a documentation and Go to Step 4.*
- b. If your answer is “Yes”, go to step 4.

**STEP 4.** What is the effect of the proposed action or activity on the Endangered or Threatened species, its critical habitat and/or Essential Fish Habitat?  
 To make this determination, complete a **Biological Evaluation**. Information needed to complete a Biological Evaluation (BE) is located in the *Oregon NRCS ESA Guidance Handbook*.

*No Effect (NE)*  
*Not Likely to Adversely Affect (NLAA)*  
*Likely to Adversely Affect (LAA)*

- a. If your answer in the BE is “No Effect”, (no positive or adverse effects), document that decision on the OR-ET-1 under Special Environmental Concerns and proceed with planning. Attach additional documentation and reasoning for a “No Effect” decision (if necessary).  
**No Effect:** the appropriate conclusion when the action agency determines its proposed action will not affect listed species or DCH (*no consultation required*).

b. If your answer in the BE is “Not Likely to Adversely Affect” and the effects are consistent with the goals and aims of maintaining, protecting and preserving threatened and endangered species and their habitat (including ecosystem functions), document the determination on the OR-EVT-1 Special Environmental Concerns and proceed with planning. Short-term adverse affects with long-term beneficial effects for ESA species and/or habitat falls into this category; HOWEVER Take of species will not occur. Informal Consultation with USFWS and/or NMFS will still be required for positive effects. Go to Step 5.

**Is not likely to adversely affect:** the appropriate conclusion when effects on listed species expect to be discountable, or insignificant, or completely beneficial.

- 1) **Beneficial Effect** is the appropriate conclusion for those effects of an action that are wholly positive without any adverse effects on a listed species or DCH.
- 2) **Insignificant effects** relate to the size of the impact and should never reach the scale where take occurs.
- 3) **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 (*Informal Consultation required*).

c. If your answer is “Likely to Adversely Affect” document that determination on the OR-EVT-1 Special Environmental Concerns. Formal consultation with USFWS and/or NMFS will be required for adverse effects (this includes short-term adverse affects with long-term beneficial effects, but Take is probable). Contact the appropriate State Office specialist to review your BA. Go to Step 5.

**Is likely to adversely affect:** the appropriate conclusion if any adverse effect to listed species may occur as a direct or indirect result of the proposed action.

- 1) **Direct effects:** the direct or immediate effects of the project on the species or its habitat.
- 2) **Indirect effects:** are caused by or result from the proposed action, are later in time, and are reasonable certain to occur. (*Formal Consultation required*).

**STEP 5.** Does the proposed action or activity occur in a CMU with an ephemeral, intermittent or perennial stream in it or adjacent to it **and** have the potential for adverse effects on MSA species? If you do not have a stream in your CMU, you do not have to address MSA. If you do have a stream and will have adverse effects, the BE will include effects to Essential Fish Habitat (EFH). (If unsure of what the effects will be, contact appropriate State Specialist/State Biologist for assistance).

Yes

No

a. If Yes, MSA Consultation will be required regardless of ESA effects determinations on other species. Go to Step 7.

b. If No, MSA Consultation is not required. Document how you reached that decision in the BE and proceed with planning. Go to Step 6. *However, if you did not answer “NE” in Step 4, ESA consultation is still required. If you answered “NLAA” go to Step 7 or “LAA” go to step 8*

**STEP 6.** If you answered "NE" in Step 4 and "No" in Step 5, then you can continue with the planning process without ESA or MSA Consultation. On the OR-EVT-1, Special Environmental Concerns form, make a note that there is a "No Effect" determination for the listed ESA species and critical habitat and/or Essential Fish Habitat (MSA). You do not need to fill out the rest of this form.

**STEP 7.** At least Informal Consultation is required based on the above information. Use the NRCS Project Numbering Convention (3-digit county code-last two digits of the year-Tract # or OP ID, or stream name – Do not use the landowner’s name) as the Project Name. Go to Step 8.

**STEP 8.** Does the project have the potential for: a) long-term adverse effects to ESA species or their critical habitat or Essential Fish Habitat (if unsure, contact State Specialist), b) will work occur within a stream, c) will a water control structure within a floodplain be proposed or d) will work “take” a listed species or adversely modify designated critical habitat? These types of activities typically require formal consultation; however, these are not the only activities that may trigger formal consultation.

Yes

No

a. If Yes, Formal Consultation will be required. Additional time will be needed to complete consultation. Inform the landowner of the additional time requirement. There are ways to mitigate some long-term effects or ways to redesign the project to change the above answer. Early involvement with USFWS and/or NMFS is required. Go to Step 9.

b. If No, Informal Consultation will be completed. Go to Step 9

**STEP 9.** Does the project have ESA E&T plants associated with the T, R, and S? [Use E&T Species Response].

Yes

No

a. If Yes, a plant survey may be required. Go to Step 10

b. If No, continue with the conservation planning process. On the OR-EVT-1, Special Environmental Concerns section, document that you have no E&T plant species present that would require consultation. *However, if you answered "Yes" to Step 2, and did not answer "NE" ESA consultation is still required. If you answered "NLAA" go to Step 12 or "LAA" go to step 14*

**STEP 10** Have you had the ESA E&T plant survey training provided by NRCS?

Yes

No

a. If Yes, Go to Step 11

b. If No, You will need to find a person in your basin (or in an adjoining basin) who will assist you with the plant survey. Go to Step 11

**STEP 11.** Will a plant survey occur during the plant's flowering period for proper identification of each species prior to project Implementation (see ESA Listed Plant Species; See Section II in eFOTG; D. Threatened and Endangered Species; 1. References; Oregon T&E Plant List, look under "Survey/Flowering Timing" for dates that surveys need to occur.)?

Yes

No

a. If Yes, conduct the appropriate plant survey(s) and attach the survey report to the BE. Go to Step 12 (Informal Consultation) or Step 14 (Formal Consultation).

b. If No, you will have to conduct the plant survey **next season** and the project may have to be postponed until next year, after the plant survey is completed. Discuss the situation with the State Plant Materials Specialist and inform the landowner of the situation. Make arrangements for a plant survey next year. Planning activities can continue, with the realization that presence of E&T plants may change your Alternatives. However, implementation will not commence until the determination is made and consultation (if needed) is completed.

**STEP 12. Informal Consultation:** The BE will be sent in to the USFWS and/or the NMFS under the State Conservationist's cover letter. A copy of the final BE and cover letter will be sent to you. Go to Step 13.

**STEP 13.** A Letter of Concurrence (LOC) will be sent to the State Conservationist regarding your project. USFWS and NMFS try to return a LOC to NRCS within 30 days; however, there is no fixed time limit. A copy of the LOC will be sent to you and your Basin Team Leader (BTL) along with a cover letter from the State Office that will let you know whether project implementation can begin based on the project file.

**STEP 14 Formal Consultation:** is required for this project based on the answers above. Contact with the appropriate State E&T Coordinators and USFWS and/or NMFS personnel early in the process will help to expedite consultation. Set up a meeting with the appropriate person from the USFWS and/or NMFS and the appropriate State E&T Coordinators. Follow the format on writing a Biological Assessment (BA) and send it to the appropriate State E&T Coordinators for review. It will then be sent to the USFWS and/or NMFS contact person. At the meeting, the project can be discussed, alternatives to the proposed project will be suggested that will minimize effects of the action. USFWS and/or NMFS will suggest ways to make the project more E&T friendly. Go to Step 15.

**STEP 15.** The alternatives presented by USFWS and/or NMFS need to be presented to the landowner. If the landowner accepts these changes, the consultation may move back into the Informal Consultation arena. The landowner may accept these changes and it still remains in the Formal Consultation area; however, USFWS and/or NMFS may not impose additional Terms and Conditions to the project.

Does the landowner accept the changes to the design to minimize effects?

Yes

No

a. If Yes, Go to Step 17

b. If No, Go to Step 16

**STEP 16.** If the landowner does not accept the ideas to minimize the effects, Formal Consultation can occur as long as the USFWS and/or NMFS feel that the action will **Not Jeopardize** the E&T species or destroy critical habitat.

Does the USFWS and/or NMFS feel that the project will jeopardize the E&T species or destroy critical habitat?

Yes

No

a. If Yes, Go to Step 19

b. If No, Got to Step 17

**STEP 17.** If the USFWS and/or NMFS feel that our action will not Jeopardize the species or destroy critical habitat, the planner and State E&T Coordinator will finish writing the BA incorporating the alternatives agreed upon by the landowner and USFWS and/or NMFS. The USFWS and/or NMFS will concur with our decision of "May Effect, Likely to Adversely Affect" in a Biological Opinion (BiOp). Within the BiOp the USFWS and NMFS will provide Terms and Conditions to our project. The USFWS and/or NMFS have 135 days in which to review our BA and return a BiOp to the State Conservationist. A copy of the BiOp will be sent to you along with a cover letter from the State Office that will let you know whether project implementation can begin based on the project file.

The BiOp contains Terms and Conditions from the USFWS and/or NMFS. These terms and conditions must be carried out in order for NRCS to meet its ESA obligations, unless they **significantly** change the scope of the project and/or cost of the project. Go to Step 18.

**STEP 18.** The Terms and Conditions will contain monitoring requirements. NRCS must have a third party complete the monitoring. If NRCS cannot get a third party to complete the monitoring, we **cannot** implement the project. Is a third party willing to do the monitoring?

Yes

No

- a. If Yes, agree on the monitoring requirement with the third party and continue with project implementation.
- b. If No, NRCS can not implement the project.

**STEP 19.** If USFWS and/or NMFS feel that our actions will Jeopardize the species existence or destroy or adversely modify critical habitat, they will not concur with our decision of "May Effect, Likely to Adversely Affect" and we will not be able to implement the project as designed. Go to Step 14 or stop assistance to the landowner.