

**National Environmental Policy Act
NEPA
Guidance Document For Endangered Species Act Compliance In Vermont**

The National Environment Policy Act (NEPA) was signed into law on January 1, 1970. NEPA requires Federal agencies to be accountable to the public for the environmental impacts of their actions. The Council on Environmental Quality (CEQ) has written regulations that establish the procedures NRCS and other Federal agencies must follow to meet NEPA requirements. These regulations require Federal agencies to follow a systematic process when a Federal action is proposed. Federally listed threatened and endangered species (T&E species) fall in one of several categories NRCS must evaluate for impacts.

United States Department of Agriculture (USDA) and Natural Resources Conservation Service (NRCS) has established policy for complying with NEPA. Under this policy, NRCS field offices will conduct an Environmental Evaluation to determine the potential effects of alternative solutions to resource problems for all planning activities and document the results of the evaluation on form NRCS-CPA-52, "Environmental Evaluation Worksheet" (Exhibit 610.70) or State equivalent, including the appropriate finding.

The Endangered Species Act (ESA) was signed into law in 1973 to protect rare, threatened and endangered in the US and worldwide through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES regulates and prohibits international commerce of plant and animal species believed to be harmed by or that may be harmed by international trade.

Section 7(a)(1) of the ESA directs other Federal agencies to utilize their authorities to carry out programs for the conservation and recovery of federally listed threatened or endangered species. NRCS uses its authorities by carrying out programs for the conservation and recovery of listed species, many of which are addressed below. Section 7a(2) of the ESA requires NRCS, in consultation with and with the assistance of the Secretary of the Interior, to insure that its agency actions and activities do not jeopardize the continued existence of threatened and endangered species or result in the destruction or adverse modification of the species' critical habitat. The Services designate the extent and location of a particular species' critical habitat. Critical habitats identify areas essential to the conservation of federally listed species.

The NRCS policy for T&E species can be found in the General Manual 190 Part 410.22 and the National Planning Procedures Handbook section 600.45. It states that NRCS will assist in the conservation of threatened and endangered species and consistent with legal requirements, avoid or prevent activities detrimental to such species.

NRCS Project Type Activities (ie. PL-566, Emergency Watershed Program)

NRCS must initiate formal consultation with the United States Fish and Wildlife Service (USFWS) as outlined in Title 50, Chapter IV, Part 402, Code of Federal Regulations, when the NRCS-CPA-52 (Environmental Evaluation) indicates that a NRCS project type activity may adversely affect a listed species or their critical habitat. Informal consultations, as outlined below under non-project type activities, shall be pursued with the USFWS prior to initiating a formal consultation.

NRCS Non-project Type Activities (Includes all conservation planning and program activities even if only Technical Assistance is being provided.)

For non-project type activities, conservation planners will follow the following guidance to ensure compliance with the ESA and NEPA.

Conservation planners must determine if planned conservation practices will have an effect on or potentially affect any listed species or on critical habitat. Their findings are to be documented on the VT-CPA-52 (Environmental Evaluation). To help conservation planners in making these determinations and outline required actions, the following information is provided in section 2 of Vermont's Field Office Technical Guide (FOTG).

- 1) **Vermont Threatened and Endangered Species List By Town and County (SPECIES TOWN LIST)** – This list provides information on what species exist in each town by county. More detailed information is also provided such as specific locations, habitats and season of use. This list will be updated on an annual basis or more frequently if needed. The current version is located in section 2 of Vermont's eFOTG.
- 2) **NRCS Practice Effects on Threatened and Endangered Species (PRACTICE EFFECTS DOCUMENT)** – This list provides information on whether a NRCS practice could potentially effect a listed species or it's habitat. It also provides a course of action for field office personnel to take when an adverse impact is indicated. This information will be updated as needed. The current version is located in section 2 of Vermont's eFOTG.
- 3) **U. S. Fish and Wildlife Service Threatened and Endangered Species Fact Sheets (USFWS FACT SHEET)**- These documents provide detailed information concerning T & E species life histories, species descriptions, map ranges and additional information concerning NRCS practices and effects on these species. Recommendations associated with this document should be used to determine specific threats on species, range of species, and positive actions that benefit the recovery of the species. Positive recovery efforts could lead to the removal of a species from the Endangered Species List. These publications are currently being developed.

*****CONSERVATION PLANNER COURSES OF ACTION *****

Conservation planners should become familiar with listed species in the counties they serve by reviewing the SPECIES TOWN LIST. Planners should also review the basic habitat descriptions for the species located in their work area. The habitat utilized by each species is included in the USFWS Species Fact Sheets where available. Conservation Planners shall follow the process below to complete the Threatened and Endangered Species portion of the VT-NRCS-CPA-52 and to determine the required course of action when working with Threatened and Endangered Species.

1. During the planning process for any practice, the planner will review the SPECIES TOWN LIST to determine if a listed species may be present in the area. This will be used in conjunction with the GIS analysis (biotics layer) of the Nongame and Natural Heritage Program (NNHP) Database. The Biotics Layer will likely not have every occurrence of these threatened or endangered species so it is important to look at all potential towns in the SPECIES TOWN LIST.

2. If a species is indicated as possibly being present in the area, the planner will review the PRACTICE EFFECTS DOCUMENT and applicable USFWS FACT SHEET to determine if suitable habitat is present for the listed species. If there is any question as to suitability of the habitat, the planner will consult with the NRCS State Biologist, the USFWS contact, or the Nongame and Natural Heritage Program (NNHP) biologists or botanists. If divulging specific location information and landowner name is necessary for this informal consultation be sure to get landowner consent (see #8 below) before proceeding.
3. Once a planner has determined that a listed species is likely present in the area and that suitable habitat types are present, the planner should review the PRACTICE EFFECTS DOCUMENT to determine if the proposed practice(s) has the potential to impact the listed species. They will also consult with the aforementioned biologists/botanists concerning the proposed practice(s).
4. If no listed species or habitats utilized by the species are identified in the proposed work area or if no effect is indicated by the PRACTICE EFFECTS DOCUMENT, then indicate no effect under section **K. Effects** on the VT-NRCS-CPA-52 and document what supports your decision of “no effect”. This indicates that **no further action is required** for the T&E species resource concern under the ESA or NEPA.
5. If a listed species is likely present in or near the proposed work area according to the SPECIES TOWN LIST but the PRACTICE EFFECTS DOCUMENT indicates the practice will have **No Effect or Not Likely to Adversely Affect T+E Species** then further consideration could be warranted. If there is no possible link between the practice being proposed and the T+E Species then indicate no effect under section **K. Effects** on the VT-NRCS-CPA-52 and document what supports your decision of “no effect”. This would be the most typical scenario based upon the nature of these practices. If the proposed work area or type of practice provides a beneficial effect or makes an effect possible but not likely then indicate “not likely to adversely effect” T+E Species under section **K. Effects** (note: abbreviated in form to “NLTA”) on the VT-NRCS-CPA-52 and document what supports your decision. The effects should be discountable and/or insignificant.¹ **No further action is required.**
6. If a listed species is likely present according to the SPECIES TOWN LIST and a beneficial effect is noted by the PRACTICE EFFECTS DOCUMENT then select either “**Slight +, Mod +, or Signif +**” in section **K. Effects** on the VT-NRCS-CPA-52. Upon selecting a beneficial effect, the planner shall document the beneficial effect in the **Q. Rationale** section of the VT-NRCS-CPA-52. The species or species type shall also be named. **No further action is required.**
7. If a listed species is likely present according to the SPECIES TOWN LIST and a potential adverse effect is indicated on the PRACTICE EFFECTS DOCUMENT, use the guidance in the PRACTICE EFFECTS DOCUMENT to avoid the potential effect. If an alternative avoiding the effect is selected for planning, select “no effect” or “not likely to adversely affect” under section **K. Effects** on the NRCS-VT-CPA 52. The alternative shall be briefly outlined on the 52 and incorporated into the conservation plan via the practice narrative and other applicable locations. The “not likely to adversely effect” should be used where an

¹ Beneficial effects are contemporaneous positive effects without any adverse effects to the species. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. 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.

adverse effect is possible but unlikely. An example of “not likely to adversely effect” designation would be a proposed patch cut in the town of Weybridge in a young forest stand of sapling sized trees (3 inch DBH or less) to maintain the early successional habitat. While this is within a known town for Indiana bats it is not typical habitat. However, this is next to other more mature forests (trees 8 inch DBH and larger) and there is a slight chance that this young forest area is used by bats. This would be a situation where “not likely to adversely affect T&E species” should be selected. If there are any questions, consult with the State Biologist or the USFWS. **No further action is required.**

If the potential adverse effect can not be avoided using the guidance in the PRACTICE EFFECTS DOCUMENT, then select either “**Slight -, Mod -, or Signif -**” in section **K. Effects** on the VT-NRCS-CPA-52. Upon selecting an adverse effect, the planner shall document in the **Q. Rationale** section of the VT-NRCS-CPA-52 the species or group of species that may be affected.

8. When an adverse effect is noted on the VT-NRCS-CPA-52, advise the land user of NRCS’s responsibilities regarding the Endangered Species Act. Have the recipient of assistance and the landowner (if different) complete the NRCS-VT-CPA 52c (maintained in the case file or contract folder). This document is a consent form that allows NRCS to consult with the USFWS and Vermont Fish and Wildlife Department (VTFWD) NNHP and is required if the landowner wants to continue with the planned practice(s). After consent has been given, the planner shall contact the USFWS using the “Request For Threatened and Endangered Species Review” form (NRCS-VT-CPA-52b). The completed NRCS-VT-CPA-52b, practice location/extent map, and any supporting pictures will be sent to the USFWS via mail. GIS shapefiles will be supplied by NRCS should they be requested by the USFWS. Mail to:

Supervisor
USFWS
70 Commerical Street, Suite 300
Concord, NH 03301

9. Once the USFWS receives the NRCS-VT-CPA-52b from the field office, the USFWS will informally consult with the field office to identify potential impacts, specific species locations, alternative conservation treatments, or additional practice requirements to avoid and minimize adverse effects to listed species. In most cases, additional measures may be identified that avoid or minimize effects to threatened and endangered species thereby allowing practice implementation. Practice implementation shall not begin until the field office receives the NRCS-VT-CPA-52b back from the USFWS indicating that there no longer are adverse effects or that the project is “not likely to adversely affect” the listed species. The USFWS may include additional practice requirements to avoid species effects on the 52 and attachments if necessary. To ensure practice implementation does not begin until after project approval by the USFWS, field offices will not provide practice specific information including plans, contracts or practice designs to the clients..
10. NRCS assistance will be provided only if alternative conservation treatments that do not adversely affect a listed species are identified and selected for installation or; at the request of the landowner, NRCS may initiate formal consultation with the USFWS as outlined in Title 50, Chapter IV, Part 402, Code of Federal Regulations.
11. If the landowner requests that NRCS consult formally with the USFWS, the State Biologist may work with the field office and the landowner to initiate the formal consultation with the USFWS according to Title 50, Chapter IV, Part 402, Code of Federal Regulations. This process begins with NRCS’s request and submittal of a complete formal consultation

initiation package, including a biological evaluation and concludes with the issuance of a biological opinion and incidental take statement by the USFWS. The NRCS State Conservationist has 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 resources are not available to enter into formal consultation.

12. NRCS assistance must be halted until formal consultation is completed and the client agrees to comply with the terms of the biological opinion. The USFWS must render a biological opinion within 135 days of receiving the consultation initiation package and biological assessment from NRCS. If the client complies with the biological opinion, continue planning. If the client does not want to comply with the biological opinion, discontinue planning.

NRCS RESPONSIBILITIES

The following provides summary guidance on how the NRCS in Vermont shall coordinate activities with the New England (Concord, New Hampshire) Field Office of the USFWS regarding threatened and endangered species.

1. The NRCS State Biologist will work with the USFWS to update the Vermont Threatened and Endangered SPECIES TOWN LIST at least once a year. Other updates will be completed as needed when new populations of threatened and endangered species are identified or if a new species is proposed as a candidate species or listed as threatened and endangered.
2. The NRCS State Biologist will also coordinate with the USFWS to modify the PRACTICE EFFECTS DOCUMENT when needed.
3. NRCS field offices will correspond directly with the USFWS regarding Threatened and Endangered Species Act and NEPA compliance for threatened and endangered species. The District Conservationist or designee will coordinate all activities including site visits and informal consultation with the USFWS. The NRCS State Biologist will serve a supporting role and be responsible for formal consultations should they be undertaken.
4. The NRCS State Biologist will coordinate with the USFWS to conduct threatened and endangered species trainings for NRCS employees.

NRCS Procedure For Complying with Section 7 of the ESA - Flowchart

