

**National Environmental Policy Act
NEPA**

Guidance Document For Endangered Species Act Compliance In Kentucky

The National Environment Policy Act (NEPA) is a law passed by Congress in 1969 and signed into law on January 1, 1970. NEPA makes Federal agencies 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. T&E species is one of several categories NRCS must evaluate for impacts.

Departmental and NRCS policy for complying with NEPA establishes policy whereby 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. Use the following table to determine whether additional documentation is needed.

Section 7a(2) of the Endangered Species Act (ESA) of 1973 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. In addition, the ESA states that NRCS will use it's authorities in furtherance of the purposes of this act by carrying out programs for the conservation of listed species.

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

NRCS must initiate formal consultation 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 or beneficially affect a listed species or their critical habitat.

NRCS Non-project Type Activity (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 Threatened and Endangered Species Act and National Environmental Policy Act (NEPA).

Conservation planners must determine if planned conservation practices will have an effect on any listed species or on critical habitat. Their findings are to be documented on the KY-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 Kentucky's Field Office Technical Guide (FOTG).

- 1) **Kentucky Threatened and Endangered Species List By County (SPECIES COUNTY LIST)** – This list provides information on what species exist in each counties. More detailed information is provided on aquatic species such as watershed, stream name, and/or stream order. This list will be updated on an annual basis or more frequently if needed. The current version is located in section 2 of Kentucky’s eFOTG.
- 2) **NRCS Practice Effects on Threatened and Endangered Species (PRACTICE EFFECTS DOCUMENT)** – This list provides information on whether an 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 Kentucky’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 so check the SPECIES COUNTY LIST to determine which species publications are available.
- 4) **Kentucky’s Threatened and Endangered Species (KDFWR PUBLICATION)** – This Kentucky Department of Fish and Wildlife Resources (KDFWR) publication provides detailed species descriptions, ranges, habitat types, life histories, and cause of declines. This publication should be used to help identify species and their habitat requirements. The current version is located in section 2 of Kentucky’s eFOTG.

CONSERVATION PLANNER COURSES OF ACTION

Conservation planners should become familiar with listed species in the counties they serve by reviewing the SPECIES COUNTY LIST. Habitat types for the species that reside in a planers work area should be reviewed in the USFWS Species Fact Sheet and KDFWR Publication. Conservation Planners shall follow the process below to complete the Threatened and Endangered Species portion of the KY-NRCS-CPA-52 and to determine required course of action when working with Threatened and Endangered Species.

1. During the planning process for any practice, the planner should review the SPECIES COUNTY LIST to determine if a listed species may be present in the area.
2. If a species is indicated as possibly being present in the area, the planner should review the applicable USFWS Species Specific Fact Sheet and the KDFWR PUBLICATION to determine if suitable habitat is present for the listed species.
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.
4. If no listed species are identified in the proposed work area or if no effect is indicated by the PRACTICE EFFECTS DOCUMENT, then indicate no affect for question 4 on the KY-

NRCS-CPA-52 and document what supports your decision of “no affect”. This indicates that no further action is required for the T&E species resource under the ESA or NEPA.

5. If a species is indicated to be present by the SPECIES COUNTY LIST and if a beneficial effect is noted by the PRACTICE EFFECTS DOCUMENT then question 4 on the KY-NRCS-CPA-52 shall be checked “yes”. Upon checking yes for a beneficial effect, the planner shall document the beneficial effect in the rationale section of the KY-NRCS-CPA-52. The species or species type shall also be named.
6. If a listed species is likely present according to the SPECIES COUNTY 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, indicate no affect for question 4 on the NRCS-KY-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. If the potential adverse effect can not be avoided using the guidance in the PRACTICE EFFECTS DOCUMENT, question 4 on the NRCS-KY-CPA-52 shall be checked “yes” by the planner. Upon checking yes for an adverse effect, the planner shall document in the notes section of the KY-NRCS-CPA-52 the species or group of species that may be affected.
7. When an adverse effect is noted on the KY-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-KY-CPA 52c (maintained in the case file or contract folder). This document is a consent form that allows NRCS to consult with the USFWS, KDFWR, and/or KSNPC and is required if the landowner wants to continue with the planned practice(s). At this point, the planner shall contact the NRCS State Biologist using the “Request For Threatened and Endangered Species Review” form (NRCS-KY-CPA-52b). The completed NRCS-KY-CPA-52b and any supporting pictures will be sent to the State Biologist via email.
8. Once the State Biologist receives the NRCS-KY-CPA-52b from the field office, the State Biologist or other NRCS state office biologist may informally consult with the USFWS 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 will 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-KY-CPA-52b back from an NRCS state office biologist indicating project approval. The NRCS state office biologist will 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, field offices should not provide practice specific information including contract folders to the clients until receiving project approval from the state office.
9. Further 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.
10. If the landowner requests formal consultation 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 assessment 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.

11. 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 STATE OFFICE

The following provides guidance on how the NRCS Kentucky State Office shall coordinate activities with the Kentucky Field Office of the USFWS regarding threatened and endangered species.

1. The NRCS State Biologist will work with the USFWS to update the Kentucky Threatened and Endangered SPECIES COUNTY LIST at least once a year. Other updates will be done as needed when new populations of threatened and endangered species are identified or if a new species is listed as a candidate species or threatened and endangered species.
2. The NRCS State Biologist will also coordinate with the USFWS to modify the PRACTICE EFFECTS DOCUMENT when needed.
3. The NRCS State Biologist will serve as the point of contact for all NRCS field and area offices regarding Threatened and Endangered Species Act and NEPA compliance for threatened and endangered species. The NRCS State Biologist will coordinate all activities including site visits, and informal and formal consultation with the USFWS.
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

