



United States Department of Agriculture  
Natural Resources Conservation Service



# Working Lands for Wildlife

## Southwestern Willow Flycatcher (Endangered)

### ESA Predictability Frequently Asked Questions

**What is Working Lands for Wildlife?** Working Lands for Wildlife (WLFW) is a partnership between the USDA Natural Resources Conservation Service (NRCS), the U.S. Fish and Wildlife Service (FWS), and private landowners. The effort provides farmers, ranchers, and forest managers with Endangered Species Act (ESA) predictability for their voluntary conservation efforts. These efforts will help restore populations of specific declining species and strengthen rural economies by protecting the productivity of working lands.

**Why should I enroll?** WLFW provides technical and financial assistance for landowners who voluntarily choose to implement conservation practices for the southwestern willow flycatcher while continuing to manage their property as working lands. These conservation practices and associated conservation measures were selected cooperatively by NRCS and FWS to benefit this endangered species. WLFW also provides landowners with ESA predictability in regard to use of these practices.

**Where do I go to get started?** Contact your local NRCS service center. An NRCS planner will determine if your property has habitat that is suitable or can be improved (or created) to benefit the southwestern willow flycatcher. If so, the NRCS planner and the landowner will jointly develop a conservation plan that will include a combination of conservation practices and measures.



Photo: USGS

Southwestern Willow flycatcher

**What am I responsible for if I create more habitat for the southwestern willow flycatcher?** Through WLFW, landowners receive the predictability that ESA issues connected to the WLFW conservation practices and associated conservation measures will have been addressed for a 20-year period ending July 24, 2032. The length of the ESA predictability is tied to the duration of the NRCS conservation plan. By providing this predictability, FWS encourages the long-term implementation of the conservation practices and measures.

For the duration of the WLFW contract, the landowner must follow conservation measures tied to each conservation practice and maintain all existing or created habitat. There are no additional ESA actions or responsibilities required for the WLFW conservation practices and measures.

Before the ESA regulatory predictability ends, the landowner will have the option of entering into a Safe Harbor Agreement (see Question #7 on back).

**What habitat management responsibilities would I have for habitat and the southwestern willow flycatcher after my contract with NRCS expires?** You are not required to continue the conservation practices and measures after the contract expires. If you voluntarily choose to continue using the WLFW conservation practices and measures beyond the contract duration, you will have no additional responsibilities under the ESA for a 20-year period ending July 24, 2032. If you change the management of your land that supports the flycatcher and stop following the WLFW conservation practices and measures, you will not be covered by the ESA predictability developed by the NRCS–FWS WLFW partnership. You may want to discuss anticipated management changes with the local NRCS service center.



Photo: USDA NRCS

*If a bird or its habitat is harmed or injured, the landowner is covered for that incidental take*

For more information about WLFW, visit <http://goo.gl/mE74va> or contact your local NRCS service center. Visit [www.nrcs.usda.gov](http://www.nrcs.usda.gov), to learn more about NRCS conservation programs.

***What if I want to do activities that aren't covered by WLFW?*** The specific conservation practices covered under WLFW relate to routine ranching and agricultural operations and actions that benefit working landscapes and species conservation. WLFW does not cover activities such as development for residential or industrial land uses, conversion to intensive commercial timber management, installation of energy-related infrastructure, or any other non-traditional ranching and agricultural activity. If you have specific questions, please contact your local NRCS service center.

***How is the predictability provided to me under WLFW different from the assurances received under a Safe Harbor Agreement?*** A SHA is a voluntary agreement between a landowner and FWS that benefits a particular listed species through specific conservation measures that are usually related to all management actions occurring on a property that can impact the species. Through a SHA, FWS agrees not to ask for more than the agreed-to conservation actions, provides a certain level of incidental take related to the specified management actions, and allows the landowner to return the habitat maintained or created to the original (baseline) condition at the end of the agreement.

The predictability through the WLFW agreement conveys the same protections to landowners as would a SHA for the southwestern willow flycatcher and extends it for 99 years. If a bird or its habitat is harmed or injured, the landowner is covered for that incidental take. Under a SHA, if the landowner does not want to maintain additional habitat, that landowner can exit the SHA and the additional habitat can be removed. A SHA may cover more types of activities and land uses than WLFW.

***What is incidental take? "Take" is defined as:*** To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct; may include significant habitat modification or degradation if it kills or injures wildlife by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering.

***"Incidental take" is defined as:*** Take that results from, but is not the purpose of, carrying out an otherwise lawful activity.

***Does my participation in WLFW preclude my participation in a SHA?*** No. The SHA is being developed to extend the ESA predictability to interested landowners, should they wish to participate. The enrollment process in the SHA should be done prior to the expiration of the NRCS WLFW contract. FWS expects the SHA to be completed within three years (by 2015), and the enrollment process for WLFW participants will be streamlined to facilitate enrollments in the programmatic SHA. By providing this option, both NRCS and FWS hope to encourage the implementation of the conservation practices, conservation measures, and resulting benefits to the southwestern willow flycatcher well into the future.

***Does WLFW offer predictability with regard to state regulations?*** No. The predictability offered under WLFW applies only to the ESA and not to any other state or federal law or regulation.