

## MN PLANNING POLICY - THREATENED AND ENDANGERED SPECIES

### What is the role of NRCS with regard to the Endangered Species Act (ESA) and MN Endangered Species Statute?

NRCS procedures for implementing the ESA are contained in the General Manual 190, Part 410, as part of the NRCS procedures for compliance with the National Environmental Protection Act (NEPA) and related environmental concerns.

NRCS will assist in the conservation of threatened and endangered species and avoid or prevent activities detrimental to such species. NRCS' concern for these species includes the species listed by the Secretary of the Interior (as published in the Federal Register) and species designated by state agencies as threatened and endangered (MN Statutes, Section 84.0895 and MN Rules, Parts 6212.1800 to 6212.2300).

All activities, for which NRCS provides technical or financial assistance or authorization, leases, contracts, easements, etc., are subject to NRCS ESA policy.

The state conservationist has responsibility for ensuring that current lists of threatened and endangered species, along with related information, is provided to the NRCS field and field support offices.

### Purposes of the ESA?

The purposes of the ESA of 1973, as amended, are to provide a means whereby the ecosystems on which threatened and endangered species depend may be conserved and to provide a program for the conservation of such species.

Section 7 of the ESA mandates all Federal agencies to "utilize their authorities" to conserve endangered and threatened species, and requires that all Federal agencies consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that actions that they fund, authorize, or carry out do not jeopardize endangered and threatened species or adversely modify their critical habitat.

### What are Endangered, Threatened and Candidate species?

An endangered species is any species in danger of extinction throughout all, or a significant portion of its range.

A threatened species is any species likely to become an endangered species within the near future throughout all or a significant portion of its range.

Federal candidate species are any species which, in the opinion of either the Secretary of the Interior or the Secretary of Commerce, qualify as either threatened or endangered but listing is precluded by other priorities. To increase efficiency and to avoid unnecessary project delays, NRCS will address Federal proposed and candidate species **as if they were listed** when consulting on a proposed action.

### What are state special concern species?

State special concern species are uncommon in Minnesota, or have unique or highly specific habitat requirements and deserve careful monitoring of its status. While there is no formal protection for these species, consideration of these species during conservation planning can aid in their recovery or possibly avoid future listing.

**Note: State special concern species are not subject to ESA requirements.**

### What is critical habitat?

Critical habitat includes the areas of land, water, and air required by an endangered or threatened species for normal needs and survival and has been formally designated and codified in federal law, either at listing or as a separate action. ESA only requires that Federal actions do not destroy or adversely modify designated critical habitat. Non-federal actions are not subject to this prohibition, but must comply with state requirements and not result in the take of listed species without a permit.

### **What kinds of effects need to be considered?**

Direct effects are caused by the action and occur at the same time and place.

Indirect effects are caused by the action but occur later in time or farther in distance but are still reasonably foreseeable.

Cumulative impacts are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably near future actions, regardless of what agency (federal or nonfederal) or person undertakes such actions.

### **What species are threatened and endangered in Minnesota?**

The current list of federal and state threatened, endangered, and special concern species, along with designated critical habitats, that may occur in Minnesota are in Section II of the NRCS Electronic Field Office Technical Guide (EFOTG).

### **What is the Natural Heritage Database?**

The MDNR Natural Heritage Database is a state listing of the observed and reported locations of Federal and state threatened, endangered, and special concern species. Each field office has been provided with, or has access to, the corresponding list of threatened and endangered species observations from this database. ***The information in this database is not available to the public through NRCS.*** Any person inquiring about this or similar data should be directed to the Department of Natural Resources for information.

Not all of the available Federal information, such as critical habitat designations, will be found in the DNR Natural Heritage Database. Therefore, NRCS staff will need to look at both the natural heritage database and the USFWS web site.

### **What are project and non project actions?**

A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having legal authority and resources to install, operate, and/or maintain works of improvement. Examples include NRCS PL-566 Program, RC&D and River Basin Studies.

Non-project actions include technical and/or financial assistance provided to an individual, group, or local unit of government, primarily through the local soil and water conservation district (SWCD). These actions may include consultations, advice, engineering, and other technical assistance that land users usually cannot accomplish themselves.

### **What is the role of the district conservationist (DC)?**

The DC provides technical assistance to clients, including units of government, to develop and implement resource plans on land they own or control. The DC is to examine the conservation district program and NRCS operations to evaluate their effects on threatened and endangered species and recommend to district officials and the state conservationist any action needed for their protection.

The DC should be acquainted with the listed species, candidate species, and state species of concern that may occur in the county, their habitats, and the sites within the county where these species have already been documented.

As an integral part of NRCS planning policy, an evaluation of social, cultural, economic, and environmental resources, including endangered species, will be made by NRCS when providing technical or financial assistance for non-project and project actions. The first step is a review of resources on the action area, including the presence of any listed species or their habitat.

The second step is to determine if any impacts may occur to these species or their critical habitat as a result of NRCS technical or financial assistance.

Refer to the **NRCS CPA-52 “Environmental Evaluation Worksheet”** and the NRCS National Environmental Compliance Handbook for additional guidance on completing the environmental evaluation.

### **NON PROJECT ACTIONS:**

#### **STEP 1:**

Determine whether the proposed practice “may affect” listed species or designated critical habitat. If the practice is not listed in **Table 1** the practice will result in a no-effect determination on the listed species or identified critical habitat. Document on the NRCS-CPA-52 "**No Effect**" and proceed with practice application.

#### **STEP 2:**

If the proposed practice is listed in **Table 1** as having the potential to affect listed species or designated critical habitat, the NRCS field office will review the current MDNR Natural Heritage Database and USFWS web site to determine if there are known locations of threatened, endangered and candidate species or designated critical habitat in the vicinity. The review will identify all listed species or designated critical habitat within 1 mile of the proposed practice.

- If the review identifies no listed species or designated critical habitat within 1 mile of the proposed practice, the practice will result in a no-effect determination. Document on the NRCS-CPA-52 "**No Effect**" and proceed with practice application.
- If the review identifies federal or state listed species or designated critical habitat within 1 mile of the proposed practice, NRCS will determine what effect the practice will have on the listed species or designated critical habitat.

Review **Table 2**, to identify those practices that may potentially adversely affect the

identified listed species or designated critical habitat. These practices will be denoted by an asterisk.

1. If no asterisk is denoted, the practice will result in a no-effect determination. Document on the NRCS-CPA-52 "**No Effect**" and proceed with practice application.
2. If an asterisk is denoted, the selected practice may adversely affect the identified species or designated critical habitat. Evaluate the feasibility of selecting other practices that will achieve a no-effect determination. If no alternative is selected, then proceed to Step 3.

#### **STEP 3:**

NRCS will advise the land user of the requirements of federal and state endangered species laws. NRCS will forward a written request to USFWS or MDNR as appropriate requesting a determination regarding the proposed practice affect. Refer to **Appendices 1 and 2** for a listing of USFWS and MDNR regional contacts.

- For "not likely to adversely affect" responses, document on CPA-52, "**No Effect**", maintain a copy of the concurrence letter in the case file, and proceed with practice application.
- For "likely to adversely affect" responses, the DC shall withhold assistance and document on CPA-52 "**May Effect**" and refer the request to the State Conservationist through the ASTC(OP) for further action. NRCS may at this point:
  1. Recommend alternative conservation treatments that achieve "no effect" or "not likely to adversely affect" or,
  2. At the request of the landowner, the State Conservationist may initiate formal consultation or,
  3. Terminate assistance.

### **PROJECT ACTIONS:**

A file will be developed by the Water Resources Section to address the formal or informal consultation done to review and evaluate effects on threatened and endangered species.

The state conservationist will initiate formal consultation when the environmental evaluation (EE) identifies NRCS project-type activities that may affect a listed species or their critical habitat. When the EE indicates that NRCS project-type activities will not affect listed species or their critical habitat, formal consultation generally will not apply and will not be initiated unless requested by USFWS or MNDNR.

#### **What is the role of the state conservationist if a listed species or its critical habitat may be affected?**

The state conservationist will make full use of informal consultation with the USFWS and MDNR, not as a substitute for formal consultation, but as a vehicle to maintain constructive communication on all aspects of endangered species protection. Examples of activities considered informal consultation include requests for lists and/or proposed species that may be present in a planning area, and informal discussions on topics such as data needs, potential impacts, and alternatives.

It is the responsibility of the state conservationist to make the final decision regarding impacts to listed species after completing coordination and consultation with USFWS, MDNR and other species experts.

#### **Where can NRCS employees learn more about the threatened, endangered, rare, and other special concern species in their work area?**

Minnesota listings of federal and state threatened, endangered and special concern species is included in Section II of the EFOTG.

Additional habitat information is available in the DNR online publication "Minnesota's Rare Species Guide" for at [www.dnr.state.mn.us/rsg/index.html](http://www.dnr.state.mn.us/rsg/index.html).

#### **What options exist for land users who have listed species, critical habitat, or proposed or candidate species on their land?**

In many cases, actions can be modified to avoid adverse effects to listed species. If adverse effects cannot be avoided, landowners may apply for incidental take permits.

#### **FEDERAL PERMITS**

Landowners may apply to USFWS for incidental take permits along with the development of a Habitat Conservation Plan or a Safe Harbor Agreement.

Habitat Conservation Plans that allow for incidental take during the development process. To obtain the permit, the applicant must develop a Habitat Conservation Plan with USFWS. The plan is designed to offset any harmful effects the proposed activity might have on the species. These are available only to nonfederal entities.

Safe Harbor Agreements with assurances address the incentives for nonfederal landowners to manage their land for the benefit of listed species. Under these agreements nonfederal landowners are encouraged to maintain or enhance existing endangered species habitat, to restore listed species habitat, or to manage their land in a manner that benefits endangered species.

In return, USFWS provides assurances that future activities would not be subject to restrictions above those applicable to the property, at the time of enrollment in the program. Any endangered species occupying a landowner's property at the time of enrollment in the program would remain protected. Similar agreements are available for candidate species.

## STATE OF MINNESOTA PERMITS

Minnesota's endangered species law and associated rules impose a variety of restrictions, a permit program, and several exemptions pertaining to species designated as endangered or threatened.

The law and rules specify conditions under which the Commissioner of the Department of Natural Resources may issue permits to allow taking and possession of endangered or threatened species.

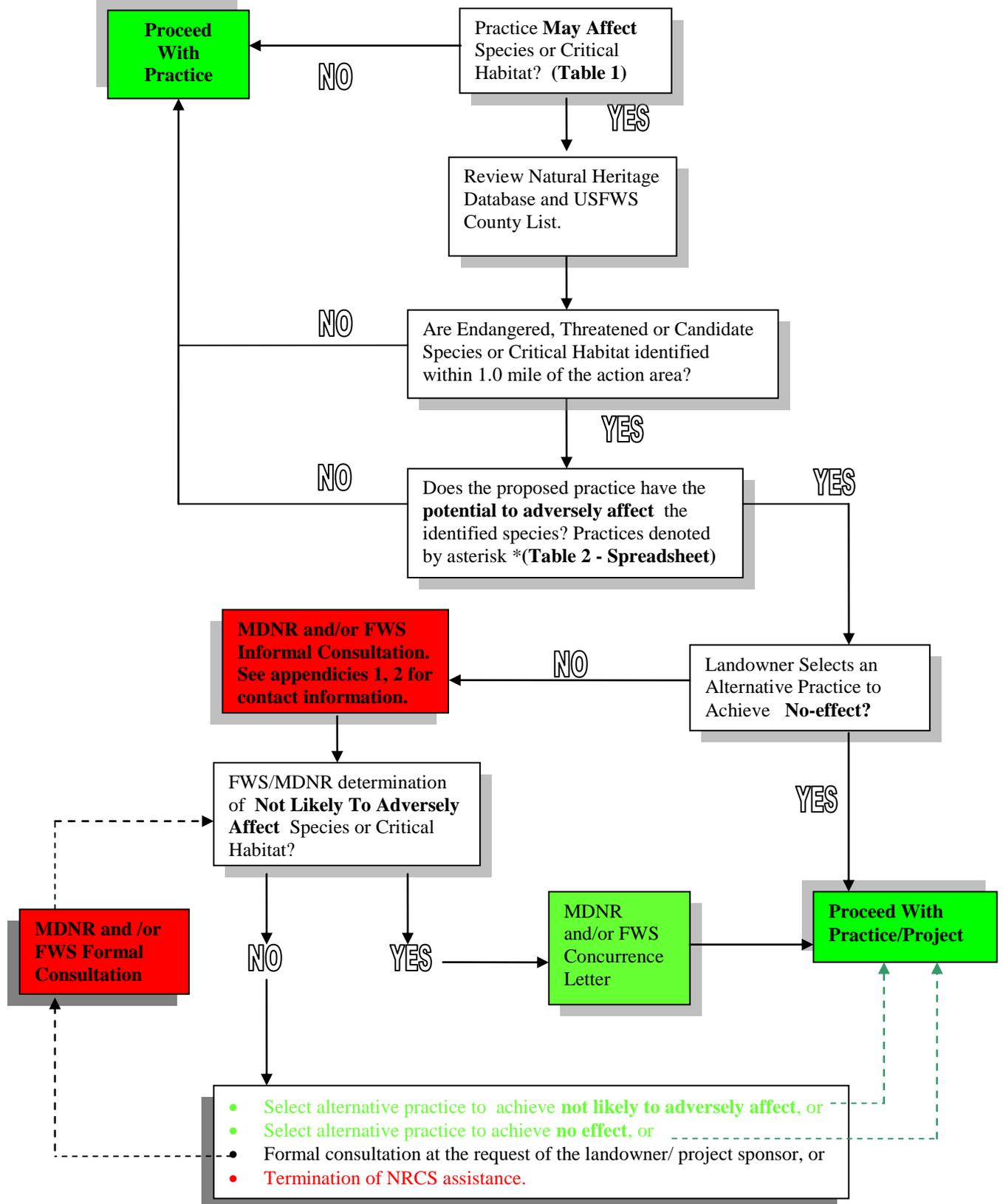
Permits may be issued for taking only under certain conditions:

- for scientific study,
- for educational programs,
- enhance propagation/ survival of the species,
- to prevent injury to people or property, or
- when the social and economic benefit of the taking outweigh the harm caused by it.

See the following MDNR web site for specific requirements:

[www.dnr.state.mn.us/rsg/index.html](http://www.dnr.state.mn.us/rsg/index.html)

## MN-NRCS Non-Project Consideration - Federal and State Endangered Species Acts



**Table 1: May Affect Conservation Practices/Activities.**

<b>MAY AFFECT CONSERVATION PRACTICES / ACTIVITIES BY PRACTICE CODE</b>	
	Technical Assistance - Plan Development (HEL, CRP Conversion etc)
313	Waste Storage Facility
314	Brush Management
326	Clearing and Snagging
338	Prescribed Burning
350	Sediment Basin - <b>Non-cropland</b>
356	Dike
362	Diversion - <b>Non-cropland</b>
378	Pond
380	Windbreak/Shelterbelt Establishment
391	Riparian Forest Buffer
394	Firebreak
395	Stream Habitat Improvement and Management
396	Fish Passage
402	Dam
410	Grade Stabilization Structure - <b>Non-cropland</b>
412	Grassed Waterway - <b>Non-cropland</b>
457	Mine Shaft and Adit Closing
490	Forest Site Preparation - <b>Non-cropland</b>
500	Obstruction Removal
511	Forage Harvest Management
512	Pasture and Hay Planting
527	Sinkhole and Sinkhole Area Treatment
528	Prescribed Grazing
560	Access Road
572	Spoil Spreading - <b>Non-cropland</b>
574	Spring Development
575	Animal Trails and Walkways
578	Stream Crossing
580	Streambank and Shoreline Protection
584	Stream Channel Stabilization
595	Pest Management - <b>Non-cropland</b>
606	Subsurface Drain
607	Surface Drainage, Field Ditch
608	Surface Drainage, Main or Lateral
612	Tree/Shrub Establishment
614	Watering Facility
642	Water Well
644	Wetland Wildlife Habitat Management
645	Upland Wildlife Habitat Management - Tree/shrub Planting
647	Early Successional Habitat Development/Mgt.
655	Forest Trails and Landings
657	Wetland Restoration
658	Wetland Creation
659	Wetland Enhancement
666	Forest Stand Improvement

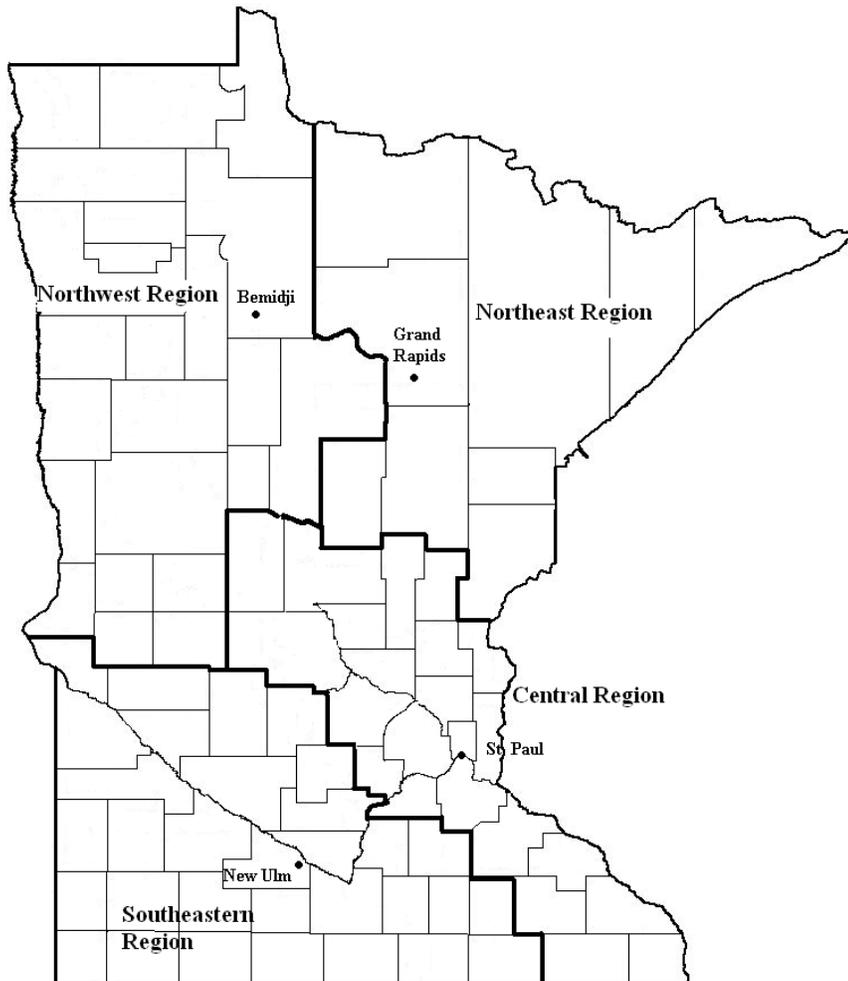
<b>MAY AFFECT CONSERVATION PRACTICES / ACTIVITIES - ALPHABETICAL</b>	
Access Road	560
Animal Trails and Walkways	575
Brush Management	314
Clearing and Snagging	326
Dam	402
Dike	356
Diversion - <b>Non-cropland</b>	362
Early Successional Habitat Development/Mgt.	647
Firebreak	394
Fish Passage	396
Forage Harvest Management	511
Forest Site Preparation - <b>Non-cropland</b>	490
Forest Stand Improvement	666
Forest Trails and Landings	655
Grade Stabilization Structure - <b>Non-cropland</b>	410
Grassed Waterway - <b>Non-cropland</b>	412
Mine Shaft and Adit Closing	457
Obstruction Removal	500
Pasture and Hay Planting	512
Pest Management - <b>Non-cropland</b>	595
Pond	378
Prescribed Burning	338
Prescribed Grazing	528
Riparian Forest Buffer	391
Sediment Basin - <b>Non-cropland</b>	350
Sinkhole and Sinkhole Area Treatment	527
Spoil Spreading - <b>Non-cropland</b>	572
Spring Development	574
Stream Channel Stabilization	584
Stream Crossing	578
Stream Habitat Improvement and Management	395
Streambank and Shoreline Protection	580
Subsurface Drain	606
Surface Drainage, Field Ditch	607
Surface Drainage, Main or Lateral	608
Technical Assistance - Plan Development (HEL, CRP Conversion etc)	
Tree/Shrub Establishment	612
Upland Wildlife Habitat Management - Tree/shrub Planting	645
Waste Storage Facility	313
Watering Facility	614
Water Well	642
Wetland Creation	658
Wetland Enhancement	659
Wetland Restoration	657
Wetland Wildlife Habitat Management	644
Windbreak/Shelterbelt Establishment	380

**Table 2 – See spreadsheet EFOTG Section II, or in the CPA-052.**

**Appendix 1 - US Fish and Wildlife Service informal consultation contact:**

Richard Davis  
U.S. Fish and Wildlife Service  
Twin Cities Field Office  
4101 American Blvd. East  
Bloomington, MN 55425  
(612) 725-3548 ext. 214  
[Richard.Davis@FWS.gov](mailto:Richard.Davis@FWS.gov)

**Appendix 2 - MDNR informal consultation contacts:**



**ANIMALS**

Northwest Region Non-game Specialist  
2115 Birchmont Beach Rd. NE  
Bemidji, MN 56601  
(218) 308-2641

Northeast Region Non-game Specialist  
1201 E. Hwy 2  
Grand Rapids, MN 55744  
(218) 327-4518

Central Region Non-game Specialist  
1200 Warner Road  
St. Paul, MN 55106  
(651) 259-5772

Southern Region Non-game Specialist  
261 Hwy 15 South  
New Ulm, MN 56073  
(507) 359-6033

**PLANTS**

Northwest Region Ecologist  
2115 Birchmont Beach Rd. NE  
Bemidji, MN 56601  
218-308-2658

Northeast Region Ecologist  
4805 Rice Lake Road  
Duluth, MN 55803  
218-723-4763x225

Central Region Ecologist  
1200 Warner Road  
St. Paul, MN 55106  
651- 259-5811

Southern Region Ecologist  
261 Hwy 15 South  
New Ulm, MN 56073  
507- 359-6079