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**GUIDANCE FOR ENDANGERED SPECIES ACT COMPLIANCE  
AND THREATENED AND ENDANGERED SPECIES CONSERVATION IN MARYLAND**  
*For NRCS Planning and Program Implementation*

**BACKGROUND**

The National Environment Policy Act (NEPA) was 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. Endangered and threatened species is one of several categories NRCS must evaluate for impacts on the environment. Endangered and threatened species are also protected by both federal and state law.

The NEPA process applies to all levels of planning and implementation. The NRCS National Headquarters prepares NEPA documentation resulting from broad analysis of NRCS programs and policies. The NRCS field offices are responsible for applying the NEPA process for site-specific activities at the local level. Departmental and NRCS policy for complying with NEPA directs NRCS personnel to conduct an environmental evaluation (EE) as part of the planning process to determine the potential effects on the environment of alternative solutions to resource problems. The results of the evaluation are documented on form MD-CPA-52, "Environmental Evaluation Worksheet", including the appropriate finding.

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 or Secretary of Commerce<sup>1</sup>, to insure that its agency actions and activities do not jeopardize the continued existence of threatened and endangered species and species proposed for listing, or result in the destruction or adverse modification of the species' critical habitat. 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. It also states that NRCS's concern for these species will not be limited to federal-listed species, but will include species designated by state agencies as rare, threatened, or endangered. In addition, the ESA states that NRCS will use its authorities in furtherance of the purposes of this act by carrying out programs for the conservation of listed species.

The EE process is used at all levels of planning and program implementation to determine if additional environmental analyses, such as environmental assessments (EA) or environmental impact statements (EIS), are required. The consultation process is used to determine the effects of proposed activities on listed species. For most site-specific activities planned by NRCS, the consultation process provides the guidance necessary to avoid the need for an EA or EIS for potential effects on endangered and threatened species.<sup>2</sup> In some cases, the consultation may result in a decision to *not conduct* an activity.

The NRCS NEPA rules categorize activities as *project* and *nonproject actions*. *Project-type actions* are formally planned undertakings carried out within a specified area by sponsors for the benefit of the general public (e.g. watershed projects). These projects usually require an EA and/or EIS because of their

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<sup>1</sup> The National Marine Fisheries Service (NMFS), under the Department of Commerce, has authority under the ESA for protection of marine and anadromous species.

<sup>2</sup> EA's and EIS's are NEPA documents that are applicable to all significant natural and cultural resources.

size and scope, and will be reviewed by the NRCS state biologist. *Nonproject-type actions* are those carried out by individual landowners with technical and/or financial assistance provided by NRCS.

**For nonproject actions, conservation planners will follow the guidance and standard operating procedure in this document to ensure compliance with the ESA and NEPA.**

## ESA COMPLIANCE GUIDANCE FOR CONSERVATION PLANNING ACTIVITIES

Conservation planners determine if planned conservation practices will have an effect on any listed species or critical habitat, and document the findings on the MD-CPA-52 (Environmental Evaluation). The objective of conducting an effects determination is to ensure that recommended and/or cost-shared practices do not adversely affect T&E species. The goal of the effects determination is to arrive at either a “no effect” (NE) or “not likely to adversely affect” (NLTA) determination; otherwise, consultation is required.<sup>3</sup>

Planners should become familiar with listed species and their locations and habitats in the areas for which they conduct planning and program activities. See the section *Sources of Information* for references and guidance documents.

## STANDARD OPERATING PROCEDURE

The following is the standard operating procedure for determining potential effects of NRCS practices on T&E species. Refer to the *Maryland NRCS Practice Effects* document and the accompanying *decision diagram* when applying this procedure.

1. During the planning process for any practice, the planner should review the T&E information sources to determine if a listed species may be present in the *area of impact*<sup>3</sup>. If a species is not indicated on maps or GIS data layers as being *present*, the planner should assess the potential for species occurrence based on habitat requirements. (See *Sources of Information* below.)
2. If the species or habitat is determined to be *absent* from the area of impact<sup>3</sup>, indicate this on the EE and cite the referenced information sources. *No further action is required.*
3. If a listed species or habitat for a listed species is determined to be *present* in the area of impact<sup>3</sup>, review the *NRCS Practice Effects* document or informally consult with the appropriate agency<sup>4,5,6</sup> to determine if the proposed practice may affect the listed species.
4. If the *NRCS Practice Effects* document or informal consultation<sup>4</sup> indicates *no effect*, indicate this on the EE and cite the referenced information sources. *No further action is required.*
5. If the *NRCS Practice Effects* document or informal consultation<sup>4</sup> indicates the practice *may affect* the species, either beneficially or adversely, determine the type of effect, and whether adverse effects can

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<sup>3</sup> The *area of impact* must be considered broadly as the area in which effects on a species may occur. For example, the area of impact for aquatic species is often adjacent to or downstream of the proposed location for the practice.

<sup>4</sup> Consent to consult must be obtained from the operator and landowner prior to informal or formal consultation. If the operator or landowner refuses consent to consult, then discontinue planning and document in the case file.

<sup>5</sup> When *presence* of a listed species is indicated or likely, and the species is not included in the *NRCS Practice Effects* document, informal consultation with the appropriate agency is required.

<sup>6</sup> The *appropriate agency* is typically USFWS or DNR.

be avoided or consultation/coordination is required. Use the *decision diagram* or informal consultation<sup>3</sup> to assist with making the determination.

6. If the determination is NLTAA, then document the determination and continue planning. NLTAA determinations can result from either of the following:
  - a. The proposed practice is determined to have a beneficial effect on T&E species, without any adverse effects.
  - b. The practice can be implemented in a manner that avoids adverse effects on T&E species.
7. If adverse effects cannot be avoided or required best management practices (BMP's) cannot be implemented, but alternative practices can be adopted, review the potential effects of the alternative (back to step 4).
8. If consultation or coordination is required, suspend planning until recommendations are made and agreed to by the client.<sup>4</sup> If the client declines to follow the recommendations, discontinue planning and document in the case file.

#### **NRCS STATE OFFICE RESPONSIBILITIES**

The following provides guidance on how the NRCS Maryland State Office shall coordinate activities with the USFWS – Chesapeake Bay Field Office regarding threatened and endangered species.

1. The NRCS State Biologist will work with the USFWS to maintain and update T&E species information, including geospatial data.
2. The NRCS State Biologist will coordinate with the USFWS to make appropriate modifications to the *NRCS Practice Effects* document, as needed.
3. The NRCS State Biologist will serve as the NRCS point of contact for the Endangered Species Act (ESA) and NEPA compliance for threatened and endangered species.
4. The NRCS State Biologist will facilitate consultations and coordination with the USFWS, as necessary, to assure compliance with the ESA.
5. The NRCS State Biologist will coordinate with the USFWS to conduct threatened and endangered species training for NRCS employees.

#### **SOURCES OF INFORMATION**

In addition to training materials and consultations with USFWS and MDNR biologists, consult the following sources for information on threatened and endangered species:

##### *Determination of Effects*

- **NRCS Practice Effects on Threatened and Endangered Species (NRCS Practice Effects)** – This document provides information on the potential affect of NRCS practices on federal-listed species. Included in the list are recommendations for avoiding adverse effects, the potential for

the practice to provide beneficial effects, and management recommendations for species conservation.

- **Decision Diagram for Maryland NRCS Practice Effects on Threatened and Endangered Species (Decision Diagram)** – This diagram provides a process for determining potential effects on T&E species, and is referenced to the *NRCS Practice Effects* document.

#### *Maps and GIS Data*

- **Maps of Threatened and Endangered Species Locations** – NRCS field offices have been supplied with paper and/or electronic maps showing important known locations of listed species occurrence. These maps do not include all known listed species locations or potential occupied areas.
- **Sensitive Species Project Review Areas (SSPRA) GIS Data Layer** – Shows areas that primarily contain habitat for federal- and state-listed threatened and endangered species, rare species, and rare natural community types. This layer was developed for initial screening of potential impacts to T&E species, and provides an indication of known and historical occurrence. Species occurrence is not restricted to areas identified in the layer. It does not contain species-specific information.
- **Species-specific GIS Data for Threatened and Endangered Species** – NRCS field offices will be provided with GIS data identifying known locations of occurrence in their counties for selected species. Only planners that have had formal training in the use and sensitivity of the data will be provided with access.

#### *Species Lists*

- **Listed Animals of Maryland** – This list provides all the federal- and state-listed animals in Maryland, which are included in the Maryland Code of Regulations (COMAR) section 08.03.08. (In Maryland eFOTG, Section II.)
- **Rare, Threatened and Endangered Animals of Maryland** – This list provides federal- and state-listed animals in Maryland, as well as those considered *rare* by the Maryland Department of Natural Resources. Both listing and conservation status is provided. (In Maryland eFOTG, Section II.)
- **Rare, Threatened and Endangered Plants of Maryland** – This list provides federal- and state-listed plants in Maryland, as well as those considered *rare* by the Maryland Department of Natural Resources. Both listing and conservation status is provided. (In Maryland eFOTG, Section II.)
- **Threatened and Endangered Species List By County** – These lists provide the known historical occurrence of federal- and state-listed species in each county. The absence of a listed species in the county list does not necessarily mean a species will not occur in the county, nor does it infer a lack of protection for the species. (In Maryland eFOTG, Section II.)

#### *Species Descriptions and Habitats*

- **Selected Rare, Threatened and Endangered Species of Maryland by County** – This list contains selected federal- and state-listed, and rare species and their habitats. The species in this

list occur in habitats that can often be created, restored, or enhanced by NRCS conservation practices. (In Maryland eFOTG, Section II.)

- **NatureServe Explorer** – NatureServe Explorer is a collection of species conservation information and data that is provided by State natural heritage programs and other conservation organizations. (Available at <http://www.natureserve.org/explorer/>)
- **U.S. Fish and Wildlife Service Threatened and Endangered Species Fact Sheets** – These documents provide detailed information concerning T&E species life histories and species descriptions. Fact sheets for most species are currently in development. (Available at <http://www.fws.gov/endangered/pubs/index.html>)
- **Federal-Listed Threatened and Endangered Plants in Maryland (NRCS)** – This document provides short descriptions of the federal-listed T&E plants that planners in Maryland would most likely encounter.

The Maryland *eFOTG* is available at <http://www.nrcs.usda.gov/technical/efotg/>.