

National Environmental Policy Act Threatened and Endangered Species

Ecological Sciences Technical Note



Houston toad – photo take at the Houston Zoo by Chuck Kowaleski, Texas Parks and Wildlife Department

Background

The National Environmental Policy Act (NEPA) was signed into law in 1970. According to the Council on Environmental Quality (CEQ), the basis for NEPA was “to balance environmental concerns with the social, economic and other requirements of present and future generations of Americans.” NEPA established that, while each person has the responsibility to care for the environment, the Federal Government should lead the role in this effort. As cited by CEQ, “the heart of NEPA is helping Federal agencies act as responsible stewards of America’s vast natural resources.” To fulfill the requirement of the NEPA, NRCS must conduct an environmental evaluation (EE) for all planning and financial assistance provided.

Purpose

NEPA requires that NRCS take into account the effects of its actions on all aspects of the environment. One of the Special Environmental Concerns that NRCS must consider effects of conservation alternatives on is the Endangered Species Act of 1973. This law provides for the “listing” of plant and animal species as Endangered, Threatened, Proposed for listing, Critical Habitat Species and Species of Concern. This note is not meant to replace Agency guidance rather provide clarifications relative to Agency employee responsibilities. Employees are encouraged to review NEPA guidance found in the [General Manual, Title 190 \(Ecological Sciences\), Part 410](#) (Compliance with NEPA.)

Agency Activities Relative to the ESA

NRCS conducts an EE as required by our NEPA implementing regulations, 7 CFR Section 650.5, during the conservation planning process, which incorporates environmental considerations throughout planning, installation, and operation for all actions where NRCS may have control (i.e., be the decision maker). Conducting the EE should coincide with our conservation planning process and should not be considered a separate activity once actions have been decided and planned. In this way, potential impacts from a proposed alternative that may require mitigation and that may require consultation, permitting, or both can be identified and addressed in a timely manner. As a federal agency, NRCS is authorized and obligated to protect and conserve endangered or threatened plants, animals and/or their critical habitats as determined by the US Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). Our basic responsibility is to ensure that planned actions do not jeopardize the continued existence of threatened and endangered species or result in the destruction or adverse modification of the species' critical habitat. In complying with this obligation, NRCS conducts EEs during the conservation planning process on private lands. It is during the planning process that NRCS determines the effect (if any) there will be on the species(s) or critical habitat listed under ESA (if present) as a result of the application of conservation measures.

When analyzing the effect, if it is determined that there is “no effect” on the species and habitats, NRCS will provide documentation supporting the determination and will proceed with the planning/application of the conservation measure. This documentation will be placed in the client’s confidential case file, using the NRCS-CPA-52 Environmental Evaluation form

If it is determined that the planned action “may affect” species covered under any aspect of the ESA, , there are two courses of actions NRCS must take. These courses are determined if NRCS is providing technical assistance only or NRCS action (practice application.) For Technical Assistance Only, should NRCS determine that a proposed action “may affect” federally listed species or designated critical habitat, NRCS will recommend alternative conservation treatments that will avoid adverse effects to the species of concern. If the client chooses to continue with a practice that causes adverse effect, NRCS shall terminate assistance for the action or portion of the action affecting the species or habitat of concern. If the adverse effect is a result of NRCS actions, NRCS shall consult with the FWS or NMFS, as appropriate. More details about this action can be found in the General Manual Title 190 Part 410.

NRCS Client Involvement

NRCS was created and exists to provide voluntary technical assistance on private lands. This involvement also extends during the EE phase of the planning process.

Confusion is created when clients learn about the potential involvement with a regulatory agency. Due to this confusion, NRCS clients may question the confidentiality of their personal information.

It is understandable that NRCS clients may not want to share with regulatory agencies that species of concern may be present on their property. This information is treated much like all other client information, confidentially. It is **NRCS's policy to not share any personally identifiable client information** to any individual or other government agency unless the client provides written consent.

NRCS staff must assure landowners of this policy. Additionally, NRCS must always guard the confidentiality of all information relative to our client's operation. Without the trust of the landowner, our Agency will fail.

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References

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