

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.106 Endangered and Threatened Species Evaluation Procedure Guide Sheet

ENDANGERED AND THREATENED SPECIES EVALUATION PROCEDURE GUIDE SHEET

If species listing or status changes prior to implementation, go back and analyze the affects in the appropriate section as dictated in Step 1.

STEP 1

Are there any endangered or threatened species, designated critical habitats, proposed species or habitats, candidate species, or State or Tribal species of concern protected by State or Tribal law or regulation present, or potentially present, in the area of potential effect?

If "No," additional evaluation is not needed. Document the finding on the NRCS-CPA-52 and proceed with planning

If "Unknown," consult section II of the FOTG for a listing of threatened and endangered species and associated critical habitats, and State or Tribal species of concern, **then repeat Step 1.** If you are still uncertain about the status of threatened, endangered, proposed, or species of concern in the planning area, ask your State biologist or contact the USFWS or NMFS, as appropriate.

If "Yes," then proceed to the applicable sections listed below:

- Federally listed **endangered or threatened** species or habitats. **Go to Step 2.**
- Federally listed **proposed** species or habitats. **Go to Step 5.**
- **State or Tribal listed** species of concern protected by law or regulation. **Go to Step 9.**
- **Federal candidate species, proceed as follows:** In accordance with Title 190, General Manual (GM), Part 410, Subpart B, Section 410.22, NRCS must contact the Services, State agencies, and Tribal governments to identify Federal candidate, State and Tribal designated species, and NRCS actions that have the greatest potential to affect those species and their habitats. NRCS must determine which candidate species and species of concern are to be considered during planning and implementation of NRCS actions. When NRCS concludes that a proposed action "may adversely affect" Federal candidate species, NRCS will recommend only alternative conservation treatments that will avoid or minimize adverse effects and, to the extent practicable, provide long-term benefit to the species. If the species becomes federally listed, proposed for listing, or the critical habitat is federally designated or proposed prior to the completion of the action, the project will be halted while the necessary consultation or conferencing requirements are met.

Federally Endangered or Threatened Species/Habitats

STEP 2

What are the short- and long-term impacts (beneficial and adverse) of the proposed action or alternative on endangered or threatened species or their designated critical habitat?

If **"No effect,"** additional evaluation is not needed concerning endangered and threatened species or designated critical habitat. **Document the finding, including the reasons for your determination on the NRCS-CPA-52 and proceed with planning.**

If **"May affect but not likely to adversely affect,"** document the finding, including the reasons, on the NRCS-CPA-52. This determination may require concurrence from USFWS and NMFS. **Go to Step 3.**

If **"May adversely affect,"** modify the action if possible to avoid adverse effects. If the action can be modified, **repeat Step 2.** If the action cannot be modified, **go to Step 3.**

If **"Effects are unknown,"** contact the NRCS State biologist for assistance and **repeat Step 2.**

STEP 3

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

If **"No,"** go to Step 4.

If **"Yes,"** ensure that potential adverse effects are avoided to the extent feasible; document and describe the effects on the NRCS-CPA-52. Include both short-term and long-term effects. Document on the NRCS-CPA-52 the need for the lead Federal agency to consult (if listed species or habitat may be affected beneficially or adversely) with the USFWS or NMFS, as appropriate. Inform the client and continue planning. However, make the client aware that the action cannot be implemented without first attaining the appropriate concurrence.

STEP 4

Is NRCS providing financial assistance or otherwise controlling the action?

If **"No" and your answer in Step 2 was "May affect but not likely to adversely affect"** and there is no possibility of any short-term or long-term adverse effects, then **continue with planning but ensure the client is aware of the effects.**

If **"No" and your answer in Step 2 was "May adversely affect,"** then inform the client of NRCS's policy concerning endangered and threatened species and the need to use alternative conservation treatments to avoid adverse effects on these species or their habitat. **Further NRCS assistance will be provided only if one of the conservation alternatives is selected that avoids adverse effects (then repeat from Step 2) or the landowner obtains a take permit from the USFWS/NMFS, as appropriate.** Refer the client to USFWS and NMFS to address their responsibilities under sections 9 and 10 of the ESA, for federally listed species.

If **"Yes" and your answer in Step 2 was either "May affect but not likely to adversely affect" or "May adversely affect,"** then **inform the client that the NRCS must consult on listed species with USFWS or NMFS, as appropriate.** The action will only be implemented according to the terms of the consultation. When consultation is complete, reference or attach the consultation documents to the NRCS-CPA-52 and proceed with planning.

Federally Proposed Species and Habitats

For proposed species and their proposed critical habitats, ESA regulations give the action agency (NRCS) the responsibility of determining if the action “is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of the proposed critical habitat” (see 190-GM, Part 410, Subpart B, Section 410.22E(6)). Also see chapter 6 in the Endangered Species Consultation Handbook for more information. Further, NRCS policy states that, “when NRCS concludes that a proposed action ‘may adversely affect’ species proposed for listing or habitat proposed to be designated as critical, NRCS will recommend alternative conservation treatments that will avoid adverse effects, and to the extent practicable, provide long-term benefits to species and habitat” (190-GM, Part 410, Subpart B, Section 410.22E(6)).

STEP 5

What are the short- and long-term impacts of the proposed action or alternative on proposed species or their proposed critical habitat?

If “No adverse effect,” additional evaluation is not needed concerning proposed species or proposed critical habitat. **Document the finding, including the reasons for your determination on the NRCS-CPA-52 and proceed with planning.**

If “Potential adverse effect,” go to Step 6.

If “Effects unknown,” contact the NRCS State biologist for assistance and then **repeat Step 5**

STEP 6

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

If “No,” go to Step 7.

If “Yes,” ensure that potential adverse effects that are likely to jeopardize the continued existence of the proposed species or destroy or adversely modify proposed critical habitat are avoided. Coordinate with the lead Federal agency and provide any assistance needed for them to make the required “jeopardy” determination. **Document on the NRCS-CPA-52 the potential need for the lead Federal agency to conference with the USFWS or NMFS, as appropriate. Inform the client and continue planning. However, make the client aware that the action cannot be implemented without first attaining the appropriate concurrence.**

STEP 7

Is NRCS providing financial assistance or otherwise controlling the action?

If “No,” inform client of NRCS policy for proposed species and the need to use alternative conservation treatments to avoid adverse effects to the proposed species or destruction or adverse modification to proposed critical habitat. **Contact NRCS State biologist to make the effects determination. Go to Step 8.**

If “Yes,” then **inform the client that the NRCS must conference on proposed species with USFWS or NMFS, as appropriate.** The action will only be implemented according to the terms of the conference. When the conference is complete, reference or attach the conference documents to the NRCS-CPA-52 and proceed with planning.

STEP 8

After receiving guidance from the NRCS State biologist, has it been determined that the proposed action or alternative is likely to adversely affect the proposed species or destroy or adversely modify proposed critical habitat?

If “No,” document the finding on the NRCS-CPA-52 and proceed with planning.

If “Yes,” further NRCS assistance will be provided only if one of the conservation alternatives that avoids adverse effects is selected (then repeat from Step 5). If the client is unwilling to modify the action, NRCS assistance must be discontinued. Although a take permit is not required for proposed species, there may be cases where the proposed species or habitats become formally listed as endangered or threatened or critical habitat is designated prior to project implementation. In this case, advise the client that a take permit from the USFWS or NMFS would be needed prior to project implementation if it is determined that the action may have an adverse affect on the listed species or habitat.

State or Tribal Species of Concern Protected by Law or Regulation

Steps 9 to 11 address State and Tribal species of concern only. Consult section II of your State's FOTG for a listing of State and Tribal species of concern that are protected by law or regulation that may need to be evaluated, or ask your State biologist for assistance.

STEP 9

What are the short- and long-term impacts of the proposed action or alternative on the State or Tribal species of concern?

If “No adverse effect,” additional evaluation is not needed concerning State and Tribal species of concern, unless otherwise specified by State procedures or the State biologist. **Document the finding, including the reasons for your determination, on the NRCS-CPA-52 and proceed with planning.**

If “May adversely affect,” modify the action if possible to avoid adverse effects. If the action can be modified, repeat Step 9. **If the action cannot be modified, go to Step 10.**

If “Effects are unknown,” contact the NRCS State biologist for assistance and **repeat Step 9.**

STEP 10

Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

If “No,” go to Step 11.

If “Yes,” ensure that potential adverse effects are avoided or minimized to the extent possible; document and describe the effects on the NRCS-CPA-52. Include both short-term and long-term effects. **Document on the NRCS-CPA-52 the need for the lead Federal agency to address State and Tribal species of concern as appropriate under State and Tribal laws and regulations. Inform the client and continue planning.**

STEP 11

Is NRCS providing financial assistance or otherwise controlling the action?

If “No” and your answer in Step 9 was “May adversely affect,” inform the client of NRCS's policy regarding State and Tribal species of concern and the need to use alternative conservation treatments to avoid or minimize adverse effects on species. Provide alternative measures to client for consideration. Advise the client to contact the appropriate State or Tribal resource agency for additional guidance to avoid any penalties applicable under State or Tribal law. **Further NRCS assistance will be provided only if one of the conservation alternatives is selected that avoids or minimizes adverse effects (then repeat from Step 9).** If the client is unwilling to modify the action, NRCS assistance must be discontinued.

If “Yes” and your answer in Step 9 was “May adversely affect,” inform the client of NRCS's policy concerning State and Tribal species of concern and the need to use alternative conservation treatments to avoid or minimize adverse effects on species. **Further NRCS assistance will be provided only if one of the conservation alternatives is selected that avoids or minimizes adverse effects (then repeat from Step 9).** If the client is unwilling to modify the action, NRCS assistance must be discontinued. Follow policy and procedures in your State for addressing State and Tribal species of concern. Consultation with the appropriate State or Tribal resource agency may be needed.