United States Department of Agriculture

NRCS Natural Resources Conservation Service

National Environmental Compliance Handbook

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PREFACE

The National Environmental Compliance Handbook (NECH) provides guidance to Natural Resource Conservation Service (NRCS) officials about how to comply with Federal environmental requirements when delivering technical and financial assistance.

The objectives of this Handbook are to:

- Improve the quality of plans and decisions by integrating environmental considerations into the planning process;
- Promote efficiency in preparing environmental documentation;
- Provide a systematic framework for integrating the NRCS planning process and environmental requirements; and
- Serve as a reference for NRCS environmental compliance procedures.

TABLE OF CONTENTS

[Link to printable copy]

PREFACE

SUBPART A – THE NATIONAL ENVIRONMENTAL POLICY ACT

610.10 – Overview of NEPA Requirements

610.11 – Framework for Compliance

610.12 – NEPA Flowchart

SUBPART B – APPLYING THE NEPA PROCESS

610.20 – Roles and Responsibilities

610.21 – Determining Appropriate Documentation

610.22 – Categorical Exclusions

610.23 – The NRCS Planning Process and NEPA

610.24 – Lead Agencies and Cooperating Agencies

610.25 – Consultation

610.26 – Getting Started Preparing an EA or EIS

610.27 – Writing a Purpose and Need Statement

610.28 - Alternatives

610.29 – Scoping

610.30 – Determining the Scope of Analysis

610.31 – Public Participation

610.32 – Describing the Affected Environment

610.33 – Impact Analysis

610.34 – Mitigation

610.35 – Monitoring

610.36 – Determining Significance

610.37 – Making the Decision

610.38 – Distribution and Publication of Environmental Documents

610.39 – Administrative Record

610.40 – Reviewing Other Agencies' Environmental Documents

SUBPART C – REQUIREMENTS OF NEPA DOCUMENTS

610.50 – Findings

610.51 – Environmental Assessment (EA)

610.52 – Finding of No Significant Impact (FONSI)

610.53 – Notice of Intent (NOI)

610.54 – Environmental Impact Statement (EIS)

610.55 – Record of Decision (ROD)

SUBPART D – NEPA TOOLS FOR EFFICIENCY AND CLARITY

610.60 – Using Plain English

610.61 – Rules of Thumb

610.62 – Incorporating by Reference

610.63 – Tiering

610.64 – Supplementing an Existing EIS

610.65 – Adopting Another Agency's EIS

SUBPART E – NEPA APPENDICES

610.70 – Environmental Evaluation Worksheet

610.71 – Evaluation Procedures

610.72 – Categorical Exclusions

610.73 – Sample "Notice of Intent" (Reserved)

610.74 – Technical Note on "Analyzing Effects of Conservation Practices"

610.75 – Technical Note on "Considering the Cumulative Effects of NRCS Activities" (Reserved)

SUBPART F – OVERVIEW OF OTHER ENVIRONMENTAL REQUIREMENTS

610.80 – Introduction

610.81 - Air Quality and the Clean Air Act

610.82 – Clean Water Act/Waters of the U.S.

610.83 – Coastal Zone Management Areas

610.84 – Coral Reefs

610.85 – Cultural Resources

610.86 – Endangered and Threatened Species

610.87 – Environmental Justice

610.88 – Essential Fish Habitat

610.89 – Fish and Wildlife Coordination

610.90 – Floodplain Management

610.91 – Invasive Species

610.92 – Migratory Birds

610.93 – Natural Areas

610.94 – Prime and Unique Farmlands

610.95 – Riparian Areas

610.96 – Scenic Beauty

610.97 – Wetlands

610.98 – Wild and Scenic Rivers

SUBPART G – ENDANGERED SPECIES ACT (ESA)

610.100 – Overview of ESA Provisions

610.101 – ESA Section 4 – Determination of Endangered and Threatened Species

610.102 – ESA Section 7 – Consultation and Conference Responsibilities

610.103 – ESA Section 9 – Prohibited Acts

610.104 – ESA Section 10 – Exceptions

610.105 – ESA Section 11 – Penalties and Enforcement

610.106 – ESA Exhibits (Reserved)

SUBPART A – THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

610.10 – Overview of NEPA Requirements

610.11 – Framework for Compliance

610.12 – NEPA Flowchart

Part 610 – National Environmental Compliance

Subpart A - The National Environmental Policy Act (NEPA)

610.10 Overview of NEPA Requirements

The National Environment Policy Act (NEPA) is a law 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.

This chapter of the handbook describes the purposes of NEPA and provides an overview of its requirements. The purposes of NEPA are:

- To declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- To promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- To enrich the understanding of the ecological systems and natural resources important to the nation; and
- To establish a Council on Environmental Quality (CEQ) which is responsible for implementing NEPA governmentwide.

Governmentwide NEPA Requirements

The 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.

If the Federal agency can demonstrate that a category of actions will have no significant environmental impact either individually or cumulatively, the agency may define it as a caTtegorical exclusion. CEQ does not establish specific documentation requirements for categorically excluded activities. CEQ does, however, require a review of individual actions for extraordinary circumstances. (See Section 610.22, "Categorical Exclusions.")

If the Federal action is not a categorically excluded activity, the agency must prepare either an environmental assessment (EA) or an environmental impact statement (EIS). The agency prepares an EA to determine the need for an EIS. If, after a review of the EA, the decisionmaker determines that the proposed action will not significantly affect the environment, a finding of no significant impact (FONSI) is issued. If the decisionmaker determines the proposed action may significantly affect the environment, an EIS must be prepared.

When an EIS is required, the agency must publish a notice of intent (NOI) announcing the agency's intent to prepare an EIS and outlining the scoping process the agency will use to obtain public input. The NOI is usually published in the Federal Register and a local newspaper. The scoping process includes meetings with other Federal, state and tribal agencies with expertise and the opportunity for the public to submit written comments on the issues and environmental concerns that should be addressed in the EIS. In addition, at least one public meeting is often held to inform the public about the proposed action and alternatives and to obtain comments. (See section 610.24, "Coordination," section 610.25, "Consultation," section 610.29, "Scoping," section 610.31, "Public Participation," and Appendix 610.72, "Sample Notice of Intent.")

The draft EIS (1) addresses the direct, indirect and cumulative environmental impacts of the proposed action and alternative actions; (2) outlines unavoidable adverse environmental effects; (3) identifies the relationship between short-term uses of the environment and long-term productivity; (4) includes alternatives to the proposed action; and (5) describes resources that will be committed. The public is offered an opportunity to comment on the draft EIS. After all comments, oral and written, have been considered, the agency prepares the final EIS. Comments and agency responses to those comments are included in the final EIS. Finally, the agency issues a record of decision (ROD) announcing the course of action to be taken.

NRCS Implementation of CEQ NEPA Requirements

NRCS regulations and policy implementing NEPA identify categories of activities that are categorically excluded, normally require an EA and normally require an EIS. (See regulations at 7 CFR Part 650 and policy in the General Manual Title 190, Part 410.) These are identified and discussed in later sections of the handbook. (See, for example, Section 610.12, “NEPA Flowchart.”) In addition, NRCS is required to conduct an environmental evaluation (EE) to determine the need for an EA or an EIS. The results of the EE are documented on an NRCS-CPA-52, “Environmental Evaluation Worksheet.” Among other things, the NRCS-CPA-52 is used to document the appropriate use of a categorical exclusion and existing environmental analysis. (See Section 610.11, "Framework for Compliance.") During the EE process, a conclusion may be reached that no EA or EIS is required because

- There is no federal action occurring that requires a NEPA document (see “Helpful Tips” in Section 610.21, “Determining Appropriate Document”);
- The action is categorically excluded so no further documentation is needed; or
- There is an existing NRCS State, programmatic or areawide EA or EIS that analyzes the effects of the action.

610.11 Framework for Compliance

This section describes NRCS's strategy for complying with NEPA documentation requirements at National Headquarters, State and field offices.

Requirements

National Headquarters

In support of Federal actions it proposes, the NRCS National Headquarters office will prepare programmatic, policy, legislative, and other EAs or EISs as necessary to meet NEPA requirements. These documents should, to the extent feasible, include a broad analysis of the effects of conservation practices and systems of practices used most frequently across the Nation to address the resource concerns affected by the proposed action. This will:

1. Reduce the workload for State and local NRCS offices;
2. Provide an analytic base to which State and local offices can tier their analysis of more specific actions;
3. Contribute to consistency in the conclusions reached about the effects of NRCS actions; and
4. Enable NRCS to efficiently comply with NEPA.

State Offices

State offices will prepare Statewide, priority area, or other areawide or project EAs and EISs, as appropriate, to support NRCS program, policy and project decisions, to inform decisions made by State Conservationists about implementation of NRCS authorities, and to eliminate the need for site-specific EAs to support delivery of conservation programs. To reduce the analysis the State must conduct, these documents should, when feasible,

1. Be tiered to NEPA documents prepared by NRCS National Headquarters; and
2. Reference other existing analysis of effects that is relevant to the proposed action, including NEPA documents prepared either by other NRCS offices or other Federal agencies.

To minimize field office workload and protect the privacy of information related to individual landowners, include in State office analysis as much as possible about

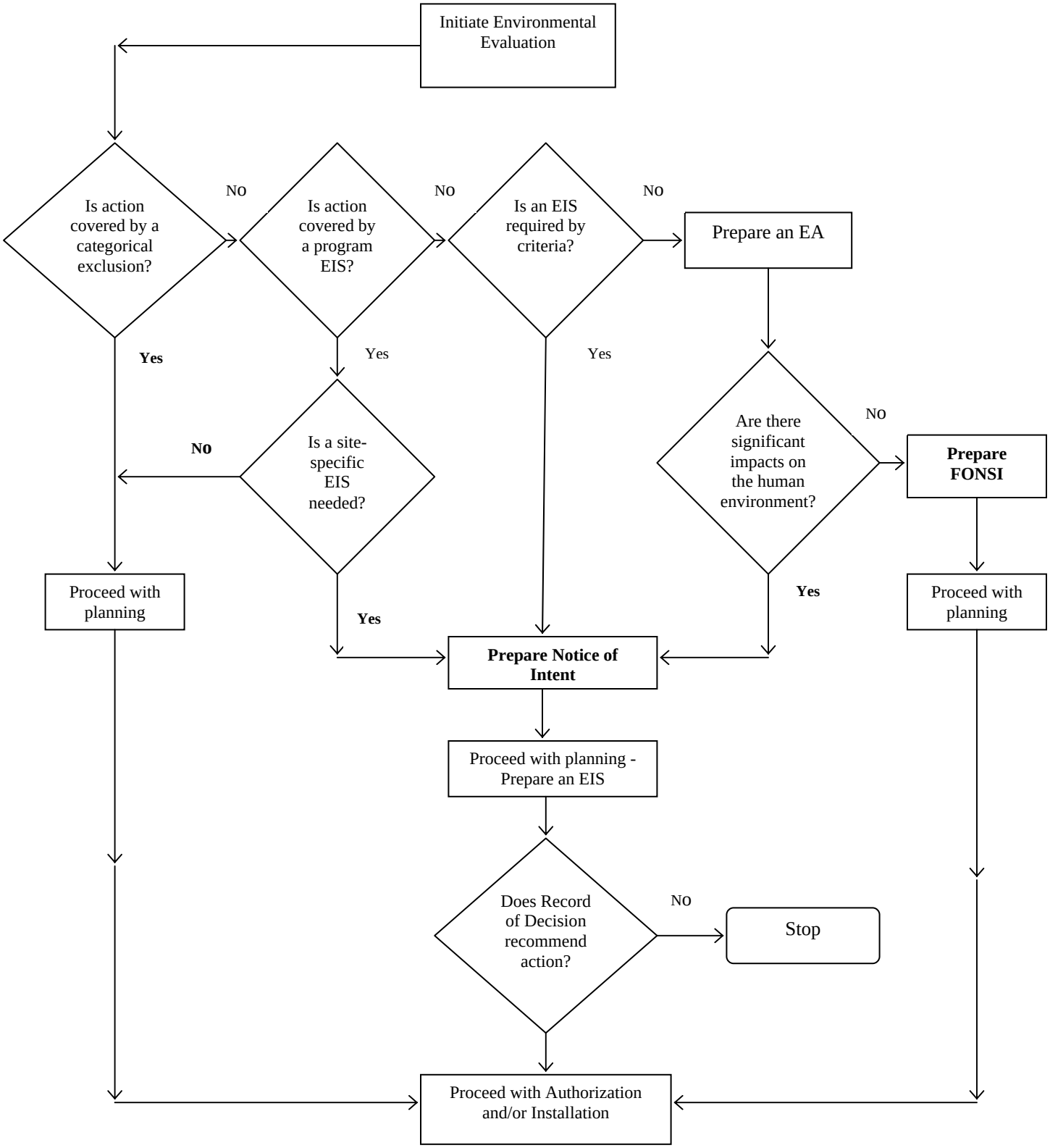
1. Resource conditions to be addressed;
2. Effects of practices and systems of practices likely to be implemented; and
3. Issues likely to be encountered and how they will be resolved.

Field Offices

NRCS field offices will conduct an Environmental Evaluation to determine the potential effects of alternative solutions to resource problems for all planning activities and document the results of the evaluation on form NRCS-CPA-52, "Environmental Evaluation Worksheet" (Exhibit 610.70) or State equivalent, including the appropriate finding. Use the following table to determine whether additional documentation is needed.

IF …	THEN …
the action is not a Federal action	No additional documentation is needed.
the action fits one of the NRCS or USDA categorical exclusions	Review the action for extraordinary circumstances (section L, NRCS-CPA-52). If there are no extraordinary circumstances, no additional documentation is needed. If there are extraordinary circumstances and the action has not been sufficiently analyzed in an existing NEPA document, contact the State Environmental Liaison indicating an EA may be needed and for instructions on how to proceed.
the action has been sufficiently analyzed in an existing NEPA document	No additional analysis is required. Reference the analysis on the NRCS-CPA-52 or State equivalent.
it is unknown or not likely that the action will result in a significant impact on the quality of the human environment	Contact the State Environmental Liaison indicating an EA may be needed and for instructions on how to proceed.
it is likely the action will result in a significant impact on the quality of the human environment	Modify the action so the impact will not be significant or contact the State Environmental Liaison indicating an EIS may be needed and for instructions on how to proceed.
the action will likely result in a significant impact on the quality of the human environment	Modify the action so that the impact will not be significant or contact the State Environmental Liaison indicating an EIS may be needed and for instructions on how to proceed.

610.12 NEPA Flowchart



The preceding flowchart is from the NRCS regulations implementing NEPA (7 CFR Part 650) and the NRCS policy at General Manual Title 190, Part 410. The EE begins the process and is used to determine whether an EA or EIS needs to be prepared when a Federal action has been proposed, or whether no additional documentation is needed because the action is categorically excluded or already sufficiently analyzed. Thus, the flowchart illustrates the decisions that must be made to determine the appropriate NEPA documentation to be prepared once it is determined there is a Federal action.

SUBPART B – APPLYING THE NEPA PROCESS

610.20 – Roles and Responsibilities

610.21 – Determining Appropriate Documentation

610.22 – Categorical Exclusions

610.23 – The NRCS Planning Process and NEPA

610.24 – Lead Agencies and Cooperating Agencies

610.25 – Consultation

610.26 – Getting Started Preparing an EA or EIS

610.27 – Writing a Purpose and Need Statement

610.28 – Alternatives

610.29 – Scoping

610.30 – Determining the Scope of Analysis

610.31 – Public Participation

610.32 – Describing the Affected Environment

610.33 – Impact Analysis

610.34 – Mitigation

610.35 – Monitoring

610.36 – Determining Significance

610.37 – Making the Decision

610.38 – Distribution and Publication of Environmental Documents

610.39 – Administrative Record

610.40 – Reviewing Other Agencies' Environmental Documents

Part 610 – National Environmental Compliance

Subpart B - Applying the NEPA Process

610.20 Roles and Responsibilities

The NEPA process requires the involvement of other individuals, agencies and organizations, each of which has a specific role to play and specific responsibilities.

The purpose of this section is to identify and explain the roles and responsibilities of the agencies and individuals involved in the NEPA process. See also, section 610.11, "Framework for Compliance."

Council on Environmental Quality (CEQ)

The CEQ was established by Title II, Section 202 of NEPA. One of CEQ's roles is to issue regulations and guidance for implementing the policies and requirements of NEPA. In addition, CEQ is responsible for issuing an annual Environmental Quality Report, and for fostering investigations, studies, surveys, research, and analyses relating to the impact of new technologies on ecological systems and environmental quality. The CEQ also serves as the referral body when there are unresolved conflicts between agencies concerning environmental impacts analyzed in EIS's.

Environmental Protection Agency (EPA)

The EPA is directed to review and comment on the environmental impacts of Federal activities and to rate EIS's on both environmental impacts and sufficiency of analysis. If EPA determines the EIS is "unsatisfactory from the standpoint of public health or welfare or environmental quality," the matter is to be referred to the CEQ. Federal agency EIS's are filed with EPA, which publishes a notice in the Federal Register each week of the EIS's filed during the preceding week. The date of this notice is used to determine the minimum time periods for review periods and final decisionmaking.

Other Agencies

Other Federal, State, Tribal, or local agencies may have jurisdiction by law or special expertise in resource concerns affected by NRCS planning activities. See section 610.24, "Coordination," and section 610.25, "Consultation" for further guidance in interagency interactions required by NEPA.

Chief

The NRCS Chief is the Responsible Federal Official (RFO) for NEPA compliance regarding proposed legislation, programs, legislative reports, regulations, policy, and program EA's/EIS's.

State Conservationist

The State Conservationist (STC) in each State is the RFO for NEPA compliance and policy in all activities and programs within the State. This includes all NEPA documents developed for (PL-566) projects, Resource Conservation and Development (RC&D) projects using Federal funds, and NRCS conservation programs delivered in the State.

District Conservationist

The District Conservationist (DC) is the RFO for NEPA compliance in all field level activities and programs within the local district. The DC will normally be the lead person assigned by the STC to coordinate NEPA compliance in projects and other multilandowner planning activities occurring within the local area.

Technical Service Provider (TSP)

TSP's will conduct an environmental evaluation and document the results of that evaluation on a CPA-52 or State equivalent. Such information is integral to the planning process.

TSP's will not conduct consultations under the National Historic Preservation Act, Endangered Species Act, Magnussen-Stevens Act, or any other Act that imposes such a responsibility on Federal Agencies. NRCS will have to conduct those consultations itself based on information provided in the CPA-52 and that NRCS gathers elsewhere.

610.21 Determining Appropriate Documentation

NEPA requires agencies to identify whether a Federal action is categorically excluded from the requirements to prepare an EA or EIS, normally requires an EA, or normally requires an EIS. NRCS activities normally requiring an EA and those normally requiring an EIS are set forth in NRCS regulations implementing NEPA (7 CFR Part 650) and in NRCS policy (GM 190, parts 410.7 and 410.8).

Requirements

NEPA applies to any action over which NRCS has control and responsibility, including development or changes to programs, plans, policies or projects. Certain actions are categorically excluded from the requirements to prepare NEPA documents. These are discussed in section 610.22, "Categorical Exclusions." Other actions are identified as normally requiring preparation of an EA or an EIS and are listed below. The Environmental Evaluation (EE) process is used to determine if an EA or EIS is required. The results of the EE are documented on a NRCS-CPA-52, "Environmental Evaluation Worksheet" (Exhibit 610.70).

Actions Normally Requiring an EA

Land and water resource projects that don’t require an EIS for which State and local units of government receive NRCS technical and financial assistance; or

Other actions not included in a program EIS nor categorically excluded that may be major Federal actions significantly affecting the quality of the human environment.

Note: NRCS can prepare an EA anytime to aid decisionmaking or to determine the need for an EIS.

Actions Normally Requiring an EIS

- Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists;
- Projects requiring Congressional action;
- Broad Federal assistance programs administered by NRCS when there may be significant cumulative impacts on the human environment; or
- Other “major Federal actions” significantly affecting the quality of the human environment. If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to prepare an EA in order to decide if an EIS is required.

Timing of the NEPA Process Relative to Decisionmaking

The purpose of NEPA is to inform decisionmakers of the consequences of actions before they are taken, so applicable NEPA documentation must be completed before a decision is made.

NEPA is to begin early in the planning process, but not before there is a proposal for action. (See section 610.23, "The NRCS Planning Process and NEPA.”)

The ROD or FONSI must be available for at least 30 days before an action requiring an EA or EIS is implemented. (See section 610.38, "Distribution and Publication of Environmental Documents.")

Helpful Tips

Federal Actions

Federal actions do not include situations in which NRCS is only providing technical assistance because NRCS cannot control what the client ultimately does with that assistance. Thus, there is no Federal action when NRCS:

- Makes HEL or wetland conservation determinations;
- Provides technical designs where there is no Federal financial assistance; and
- Provides planning assistance or other technical advice and information to individuals, organizations, States, tribes, or other units of local government where there is no Federal financial assistance.

Note: It is NRCS policy to conduct an environmental evaluation as a part of every planning activity, even if it is not considered a federal action for purposes of NEPA. The results of this process are documented on a NRCS-CPA-52, "Environmental Evaluation Worksheet" or State equivalent form, to:

- Inform the landowner of the plan's impacts; and
- Provide a record that the environmental evaluation was conducted.

Determining Significance for Purposes of Preparing an EIS

NRCS State Conservationists must prepare an EIS when the action will result in any significant adverse impacts, even if on balance the action will have a beneficial effect. The State Conservationist must exercise discretion in determining the appropriate level of documentation when there are significant positive impacts, recognizing that it may be advisable to prepare an EIS in certain situations, such as when there is controversy over the action or effects.

610.22 Categorical Exclusions

Some NRCS activities are categorically excluded from the requirement to prepare an EA or an EIS. They are excluded because NRCS or USDA published the categorical exclusions in the Federal Register based on a determination that the activities do not, either individually or cumulatively, significantly affect the quality of the human environment. Since neither an EA nor an EIS is required for categorically excluded activities unless there are extraordinary circumstances, categorical exclusions reduce paperwork and speed implementation of decisions.

Requirements

Two findings are required to be able to rely on a categorical exclusion. They are

1. That the proposed action fits within a category of actions that has been categorically excluded in NRCS's or USDA's published NEPA procedures; and
2. There are no extraordinary circumstances.

Invoking Categorical Exclusions

1. Determine whether the activity is included in the list of NRCS or USDA categorical exclusions. (See Appendix 610.71.)
2. Review the action's potential effects and follow the instructions below in "Extraordinary Circumstances" to determine whether there are extraordinary circumstances that could result in a significant impact to the quality of the human environment.
3. Document your findings on a NRCS-CPA-52, "Environmental Evaluation Worksheet" (Exhibit 610.70) or State equivalent.
4. Take the following actions:

IF there are…	**Then…**
No extraordinary circumstances	Check the box on the NRCS-CPA-52 next to the finding that a categorical exclusion applies and there are no extraordinary circumstances that could significantly affect the quality of the human environment. Continue with planning.
Extraordinary circumstances and it is questionable whether there is likely to be a significant effect on the quality of the human environment.	Prepare an EA to assist in determining the need for an EIS. If this determination is made by a District Conservationist, contact the State Environmental Liaison for instructions on how to proceed.
Extraordinary circumstances and there is likely to be a significant effect on the quality of the human environment	Prepare an EIS. If this determination is made by a District Conservationist, contact the State Environmental Liaison for instructions on how to proceed.

Note: An EA may be prepared for categorically excluded actions whenever the decisionmaker thinks an EA would be helpful in planning or decisionmaking.

Extraordinary Circumstances

Extraordinary circumstances usually involve impacts on environmental concerns such as wetlands, floodplains, cultural resources, or endangered or threatened species. The

circumstances that may lead to a determination of extraordinary circumstances are the same factors used to make determinations of significance and include:

1. Impacts that may be both beneficial and adverse and that significantly affect the quality of the human environment.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be controversial.
5. The degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represent a decision I principle about a future consideration.
7. Individually insignificant but cumulatively significant activities that have not been analyzed on a broader level, such as on a programwide or priority area basis.
8. Adverse effects on areas listed in or eligible for listing in the National Register of Historic Places, or that may result in loss or destruction of significant scientific, cultural, or historical resources.
9. Adverse effects on an endangered or threatened species or its designated critical habitat.
10. Circumstances threatening the violation of Federal, State or local law or requirements imposed for the protection of the environment.

If one or more extraordinary circumstances are found to apply to the proposed action, determine whether the proposal can be modified to mitigate the adverse effects and prevent the extraordinary circumstances. If this can be done and the proponent agrees to the change, then the proposed action may be modified and categorically excluded. If the proposed action cannot be modified or the proponent refuses to accept a proposed change, prepare an EA or EIS as indicated above.

If none of the extraordinary circumstances are determined to apply to the proposed action (or modified action), then it may be categorically excluded.

Background

Categorical exclusions may be established only with the concurrence of the National Headquarters office and the approval of CEQ. There must be some evidence or information from which to conclude that the activity will result in no significant impact on the quality of the human environment, either individually or cumulatively. Published FONSI's for EA's that include public involvement can be used to support a categorical exclusion. State offices wishing to establish a categorical exclusion should contact the NRCS National Environmental Coordinator.

610.23 The NRCS Planning Process and NEPA

NRCS provides conservation planning assistance on individual land units and to groups through a variety of programs. As a Federal agency, NRCS must assure that its assistance is provided in compliance with all applicable Federal, State, and local laws, program rules, policy statements, Executive Orders, and international agreements. Satisfying NEPA requirements, therefore, is an integral part of the NRCS planning process and should not be viewed as a separate process. Both NEPA and the planning process are iterative and allow for "tiering" analyses and decisions.

All NRCS planning activities are concerned with the effects on the environment. The purpose of NRCS assistance is to improve the condition and function of natural resources, increase the sustainability of agriculture and, when feasible, improve the economic well-being of NRCS clients. All NRCS planning begins with an Environmental Evaluation (EE). The EE is a preliminary scoping process, which identifies the ecological, social, and economic factors that the proposed action is likely to affect. The results of the EE are documented on form NRCS-CPA-52 "Environmental Evaluation Worksheet" or State equivalent. The finding of the EE determines the level of environmental analysis to be conducted.

Requirements

Once it is determined a Federal action is involved, NRCS must integrate the NEPA process with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays in the process, and to head off potential conflicts. When an EA or EIS is required, it may be combined with any other NRCS document to reduce duplication and paperwork. However, when a document does not meet the normal organization and contents of an EA or EIS (see Subpart C, "Requirements of NEPA Documents"), it will help the public's understanding if there is a table identifying which sections of the document are intended to address particular NEPA requirements.

The Nine-Step Planning Process

The nine-step planning process outlined in the National Planning Procedures Handbook is the process used for all planning. When a NEPA document is required, the NEPA process must be integrated as early as possible into planning, and the concept of how to do this is similar for all programs.

Areawide Planning

If NRCS fully documents each of the nine steps of the planning process, all the information required for an EA will be available. The following table correlates NEPA requirements and NRCS planning products.

NEPA REQUIREMENTS	NRCS PLANNING PRODUCTS
A statement of the purpose of the proposed action.	The client's or sponsor's objectives.
A statement of the need to be met.	The problems and opportunities.
Alternative ways to meet the underlying need, including a “no action” alternative. The no action alternative describes the conditions that will result if the underlying need is not met.	Alternatives developed as part of the nine step planning process. The no action alternative is a description of the benchmark conditions, focusing on the problem or the need to be met.
Impacts of the proposed action and alternatives.	Evaluation of alternatives referenced in the nine step planning process.
List of persons and agencies consulted.	This is not specifically identified as one of the nine steps in the NRCS planning process. However, it is often necessary to consult or coordinate with other persons and agencies to fully understand the impacts of proposed actions and alternatives and to comply with other environmental requirements, such as with the Endangered Species Act or the National Historic Preservation Act. Therefore, this information should already be included in the case file.
A discussion of the public participation that has occurred.	Public involvement occurs as a normal part of the NRCS planning process, though it is often done at an areawide level, particularly when planning for the delivery of conservation programs. (See "Public Participation" for a discussion of the public participation requirements).

Individual Conservation Planning

When NRCS provides planning assistance,, field offices must conduct an EE and document the results on a form NRCS-CPA-52, "Environmental Evaluation Worksheet" or State equivalent to ensure consideration of all resource concerns, including those that are specially protected.

When NRCS provides financial assistance to implement a conservation plan, an EA or EIS is required if the action is not categorically excluded and has not already been analyzed in an NRCS State, areawide or programmatic EA or EIS. (See Section 610.63, “Tiering.”)

Watershed Planning

The planning process described in the National Watershed Manual contemplates development of alternatives and analysis of the impacts of these alternatives consistent

with NEPA and the "Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies." The documentation generated during this process is intended to meet the requirements for an EA or an EIS as appropriate.

Locally Led Planning

Locally led actions are those planned by private or non-Federal entities, including conservation districts. When watershed groups, conservation districts, or other locally led groups begin a process to identify natural resource concerns, establish goals, and identify actions to meet those goals, they may or may not ask NRCS for assistance with their planning process. When they begin their planning process, these groups often do not know whether they will eventually seek Federal financial assistance to implement their plans. As soon as NRCS financial assistance is foreseeable, NRCS should take steps to ensure that private parties and State, local, and Tribal entities initiate environmental studies. For this reason, NRCS must educate conservation districts and recipients of NRCS financial assistance about NEPA's applicability to NRCS, the environmental studies or other information that will be required, and what mitigation requirements are likely.

Sometimes, to facilitate project implementation or program delivery, other individuals or organizations are willing to develop NEPA documentation for NRCS or to provide portions of the analysis. If they do, NRCS must independently evaluate environmental issues and take responsibility for the NEPA process and content of NEPA documents.

State "NEPA-like" Requirements

Some non-Federal governments have laws that are similar to NEPA in that they require consideration of the environmental effects of actions before those actions are implemented. Often, compliance with NEPA will also satisfy these other requirements. There may also be cases when the requirements are similar enough that compliance with the non-Federal requirement will allow NRCS to adopt existing analysis to satisfy NEPA. If such a law or other requirement applies in the action area, be sure to coordinate with the appropriate government officials as early in the planning and NEPA processes as possible to avoid duplication and delays.

610.24 Lead Agencies and Cooperating Agencies

CEQ and NRCS regulations include specific provisions for lead and cooperating agencies to ensure that Federal agencies

- Rely on existing expertise when assessing impacts; and
- Coordinate related permit, funding and approval processes early in the planning process.

Requirements

Provisions for lead and cooperating agencies are:

- Required for EIS's.
- Optional but encouraged for EA's.

CEQ regulations do not explicitly discuss lead and cooperating agencies in the context of EA's because of the expectation that EA's will normally be brief, concise documents that would not warrant use of formal cooperating agency status. However, there are times when designation of cooperating agencies might be useful in the context of EA's. In such cases, apply the guidelines applicable to EIS's.

Whether or not formal cooperating agency status is required

- Coordinate with other agencies to ensure appropriate consideration of plans and activities in an area, to appropriately analyze cumulative effects, and to avoid duplication of effort and delays. (See section 610.31, "Public Participation," for information on coordination with individuals and nongovernmental organizations.)
- To the extent possible, coordinate all planning that addresses the same resource concerns or impacts the same resources to produce one overall plan, rather than several plans which may overlap or be in conflict.
- Identify requirements for Federal, State, Tribal, and local permits.
- Assure that all agencies with review or permit functions are involved early, even if extra attention is necessary to obtain their participation. Consider inviting them to be cooperating agencies.
- Establish and maintain good working relationships with those requiring frequent coordination.

EIS Requirements

Lead Agency

A Federal agency may participate as a joint lead agency with other Federal, State, Tribal, or local agencies, but usually only one Federal agency is the lead agency and other agencies are cooperating agencies. NRCS is the lead agency and will prepare the EIS or supervise its preparation when NRCS is the agency most responsible for the Federal action based on the following factors:

- Magnitude of NRCS’s involvement
- Whether NRCS has project approval/disapproval authority
- NRCS’s expertise concerning the action’s environmental effects
- Duration of NRCS’s involvement
- Sequence of NRCS’s involvement

When NRCS provides all or most of the Federal financial assistance for a project or to implement a plan, it is considered the lead agency for purposes of carrying out the NEPA

process and preparing NEPA documents. NRCS may also be the lead agency when it is responsible for the planning and analysis and there will be a number of small Federal funding sources. In these cases, however, NRCS should serve as the lead agency only with the agreement of other Federal funding agencies.

It is the responsibility of the lead agency to:

1. Request the participation of each cooperating agency at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible.
3. Meet with a cooperating agency at their request.

Cooperating Agencies

Upon request of the lead agency, any Federal agency having jurisdiction by law shall be a cooperating agency. In addition, any Federal agency which has special expertise with respect to any environmental issue which should be addressed in the EIS may be a cooperating agency.

Federal, State, local and Tribal agencies having specific expertise or jurisdiction by law over an action being proposed or another alternative, such as a permitting authority, should be invited in writing to be cooperating agencies when preparing an EIS. Agencies may request NRCS designate them as cooperating agencies if NRCS does not do so on its own initiative, but such designation is not required for NRCS to coordinate efforts. Any agency may request to be designated as a cooperating agency.

Before preparing an EIS, identify permits that are required and invite those agencies, as well as agencies with jurisdiction by law or special expertise, to become cooperating agencies as early in the NEPA planning process as possible. Use the environmental analysis and proposals of cooperating agencies to the maximum extent possible consistent with NRCS responsibility as lead agency.

NRCS as Cooperating Agency

When NRCS is not the lead agency, it may be invited by another Federal agency to be a cooperating agency, particularly for issues involving effects on prime farmland and soil quality, or in other areas in which NRCS has expertise. In such cases, NRCS should make every effort to participate to the fullest extent possible. Lead agencies may request NRCS to develop information and prepare environmental analyses, including portions of the EIS, or to make staff support available to enhance the lead agency's interdisciplinary capability. Requests for such NRCS assistance should be received in writing. If the lead agency expects major participation or analyses from NRCS, the lead agency should reimburse NRCS for these major activities. If NRCS is asked in writing to be a cooperating agency and is unable to participate or is unable to participate to the extent requested because of other program commitments, NRCS must respond in writing with a copy to CEQ and the NRCS National Environmental Coordinator.

610.25 Consultation

Consultation is the process of seeking, discussing, and taking into account the views of others when required by law or policy.

The purpose of consultation is to ensure compliance with other environmental requirements. Consultation ensures that planning and decisions reflect environmental values, avoids delays later in the process, and heads off potential conflicts.

Requirements

To the fullest extent possible, NRCS must prepare NEPA analysis concurrently with environmental analyses and related surveys and studies required by other laws and policies. The results of these other studies should be integrated into the NEPA document to ensure decisionmakers take into account the full range of impacts on the quality of the human environment.

Consultation Guidance

A number of laws, regulations and Executive Orders, such as the Endangered Species Act, the National Historic Preservation Act, and the Fish and Wildlife Coordination Act, require consultation. See Subpart G, "Other Environmental Requirements" for a more complete discussion of these and other environmental requirements that reference the need for consultation.

For purposes of NEPA, NRCS shall

- Consult early with appropriate State and local agencies, and Indian tribes, and interested private persons and organizations when NRCS financial assistance or control over some or all of the action is reasonably foreseeable.
- As part of the scoping process NRCS shall identify other environmental review and consultation requirements so that NRCS and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the NEPA document.

Tips for Consultation

- Include in the Notice of Intent and other scoping documents a reference to any consultation that is occurring. During scoping meetings, report on the status and outcome of the consultation, and solicit comments on issues related to the consultation.
- In internal scoping meetings, obtain input from other individuals, agencies and organizations about the amount of consultation required and how it will occur relative to the NEPA process.
- Include the outcome of the consultation process in EE and NEPA documentation as a part of the conclusion of effects. Include a reference to consultation as a basis for the conclusions.
- Reference in EE and NEPA documentation any studies conducted and documents prepared during the consultation process. Include these documents in the appendix.

610.26 Getting Started Preparing an EA or EIS

The first step in preparing an EA or EIS is to make decisions about lead and cooperating agencies, timeframes to guide the process, and the interdisciplinary process. This section discusses setting time limits and identifying interdisciplinary team members. See section 610.24 for a discussion of lead and cooperating agencies.

Setting Time Limits

The only time limits applicable to the NEPA process are the following:

- For an EIS,
  - No decision on the proposed action shall be made or published until the later of:
    - 30 days after publication in the Federal Register of a Notice of Availability of a Final EIS.
    - 90 days after publication in the Federal Register of a Notice of Availability of a Draft EIS.
  - NRCS must allow at least 45 days for comment on a draft EIS.
- For an EA, implementing action is not to be initiated for 30 days after the notice of availability of the FONSI has been published in the Federal Register.

There are no required time limits for the overall NEPA process, but Federal agencies are encouraged to set time limits appropriate to individual actions. When NRCS is the lead agency, time limits shall be set if an applicant for the proposed action requests them, provided that the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

NRCS may consider the following factors in determining time limits:

1. Potential for environmental harm.
2. Size of the proposed action.
3. State of the art of analytic techniques.
4. Degree of public need for the proposed action, including the consequences of delay.
5. Number of persons and agencies affected.
6. Degree to which relevant information is known and if not known the time required for obtaining it.
7. Degree to which the action is controversial.
8. Other time limits imposed on the agency by law, regulations, or Executive Order.
9. Timing or seasonal requirements needed to perform specialized field surveys, such as those associated with endangered species or wetlands.

NRCS may also set overall time limits or limits for each constituent part of the NEPA process, which may include the following:

- Decision on whether to prepare an environmental impact statement (if not already decided);
- Determination of the scope of the environmental impact statement;
- Preparation of the draft environmental impact statement;
- Review of any comments on the draft environmental impact statement from the public and agencies;
- Preparation of the final environmental impact statement;

- Review of any comments on the final environmental impact statement; and
- Decision on the action based in part on the environmental impact statement.

A person should be designated (such as the project manager or a person in the NRCS office with NEPA responsibilities) to expedite the NEPA process.

State or local agencies or members of the public may request a Federal agency to set time limits.

Identifying the Interdisciplinary Team Members

CEQ regulations require EIS's to be prepared using an interdisciplinary approach. In addition, NRCS requires the use of an interdisciplinary planning approach in which specialists and groups having different technical expertise act as a team to jointly evaluate existing and future environmental quality. At a minimum, provide for interdisciplinary review of EA's.

When preparing an EIS or when interdisciplinary preparation of an EA is warranted, identify and recruit potential team members as soon as NRCS determines a team will be assembled. The disciplines of the team members shall be appropriate to the scope and issues identified in the scoping process. Thus, the initial composition of the team may need to be modified after the scoping is completed. The ability of team members to work together and communicate is essential. The interdisciplinary team may consist of individuals within and outside of NRCS, especially in the case of Areawide Planning.

610.27 Writing a Purpose and Need Statement

The statement of purpose and need is a section of an EA or EIS that describes the underlying need to be met and the other factors relevant to the choice between alternatives.

The statement of purpose and need defines the range of reasonable alternatives to be considered in an environmental document.

Requirements

A need is a problem or an opportunity. An example of a need may be improvement of the quality of runoff water from a farm into an adjacent stream. For NRCS conservation programs, the need is usually related to improving the condition of one or more natural resources the program is authorized to address.

The purpose of an action is the goal to be attained, or an end or aim to be kept in view while meeting an underlying need. These are other objectives being pursued. An example may be to keep the farming operation economically viable or to meet total maximum daily load (TMDL) requirements.

The NEPA process starts when an action is proposed to meet an underlying need. This action supplies something that is lacking, or takes away something that is not wanted. The action fixes a problem, or seizes an opportunity. The action does not have to completely meet the underlying need, or be the only way to meet the underlying need, or even be the best way to meet the underlying need. But there is a connection between the proposal for action and the underlying need to which NRCS is responding in proposing the action.

Alternatives that meet both the underlying need and the purposes are the most reasonable alternatives and the ones that should be analyzed in greatest detail.

Careful statement of the purpose and need for an action is important because there may be many reasonable alternatives to analyze or a limited number depending on the breadth of the statement of need.

Example: If there is a need to prevent flooding of the community in Mary's Valley, then alternatives would likely include building a dam, building other floodwater-retarding structures, or relocating the community. But if the need is to prevent floodwaters from reaching Mary's Valley, then relocating the community is no longer an alternative that meets the underlying need and does not have to be analyzed.

Environmental Assessments

Document a statement of need. Purposes may be documented, but are not required.

Environmental Impact Statements

Document a statement of purpose and need.

Helpful Tips

Ensure there is a succinct statement of need, which should be made in the form of a “finding.”

- The ultimate conclusion is the statement of need(s) to be addressed (and also the authority to take action).

- The basic conclusions and evidence proving the existence of the need are found in a description of the problems and opportunities.
- Purposes are goals to be attained while taking action to meet an underlying need. Purposes fall into 3 general categories: (1) environmental, (2) economic, and (3) technical (including legal).
- Purposes are decision factors and are used (1) in the environmental analysis process to evaluate the alternatives, and (2) again at the time of decision to choose between alternative courses of action.
- Divide “purpose” and “need” into 2 separate concepts. Needs as the first factor guarantees a hard look at all possible ways to deal with a problem or solution. Purposes as the second factor guarantees that only the more reasonable alternatives get the attention of a detailed analysis.

When challenged in court, agencies have won every case where the need statement was narrowly stated, and lost every case where the need statement was broadly stated or absent.

610.28 Alternatives

Alternatives are approaches to achieving a desired condition or meeting an underlying need that are different from the proposed action. Alternatives always include the no-action alternative as a way to measure or describe changes expected from implementing the proposed action or an alternative.

The purpose of alternatives is to ensure decisionmakers are aware of the choices available to them to meet a need that has been identified or to achieve a desired condition. Alternatives provide a basis for understanding the impacts of those choices.

Requirements

Alternatives Meet a Need for Action. An action is proposed to meet some underlying need or to achieve a desired future condition. This action is one alternative that must always be considered, along with the no action alternative. The underlying need is the rational basis for taking Federal action, so other reasonable ways to meet the underlying need must also be considered, particularly when the proposal involves unresolved conflicts concerning alternative uses of available resources.

Alternatives Can Do More than Meet a Need. Alternatives may do more than just address the need that has been identified. To the extent possible, they should also prevent additional problems from occurring and take advantage of available opportunities. They may also achieve other client, NRCS, and stakeholder objectives and should include measures that mitigate potential adverse effects and have potential to help clients address regulatory requirements.

No-Action Alternative

The no-action alternative projects the current conditions if the need is not met. It constitutes the baseline from which effects of other alternatives are determined. The no-action alternative must be considered in every EA and EIS, as well as all EE documentation.

Alternatives for Individual Conservation Planning

The NRCS National Planning Procedures Handbook (NPPH) states, “The purpose of formulating alternatives is to provide the most effective, efficient, and economical conservation treatments that meet quality criteria and are acceptable to the client in solving problems, addressing opportunities, and meeting stated objectives. These alternatives relate to identified problems and are developed in view of the cultural, social, ecological, and economic conditions of the planning area."

For individual conservation plans, NRCS typically develops resource management systems to address specific natural resource concerns and achieve desired natural resource conditions. These are presented to landowners and operators as alternative ways to meet the underlying needs they and NRCS or others have identified during the early steps of the planning process. The EE process and documentation helps these clients understand the environmental effects of their decisions about which conservation alternatives to implement and any tradeoffs that may result.

Alternatives in an EA or EIS

Number of Alternatives. There must be a minimum of a proposed action and a no-action alternative. If there are conflicts in alternative uses of resources, additional alternatives that meet the underlying need are required. There should generally be no more than five alternatives including the proposed action and no action alternative.

Reasonably Limiting the Number of Alternatives. The statement of underlying need defines a reasonable range of alternatives, so this statement should be neither too broadly nor too narrowly stated. The statement of purposes defines the alternatives that are analyzed in the greatest detail. (See section 610.27, "Writing a Purpose and Need Statement.") Thus, there are 4 kinds of alternatives, those that:

1. Meet the underlying need and purposes;
2. Meet the underlying need but not the purposes;
3. Meet the purposes but not the underlying need; and
4. Do not meet the underlying purpose or need.

Alternatives that do not meet the underlying need can be eliminated from the EA or EIS. Alternatives that meet the underlying need but do not meet the stated purposes must be present in the EA or EIS but can be eliminated from detailed analysis.

Environmental Impact Statements

The Alternatives section is the heart of the EIS. It is based on the information and analysis presented in the sections on the Affected Environment and the Environmental Consequences. The Alternatives section should present the environmental impacts of the proposal and the alternatives in comparative form, to sharply define the issues and provide a clear basis for choice among options by the decisionmaker and the public. In this section:

1. Rigorously explore and objectively evaluate all reasonable alternatives; for alternatives eliminated from detailed study, briefly discuss the reasons they were eliminated.
2. Devote substantial treatment to each alternative considered in detail, including the proposed action, so reviewers may evaluate their comparative merits.
3. Include reasonable alternatives not within the jurisdiction of the lead agency.
4. Include the alternative of no action.
5. Identify the agency’s preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such preference.
6. Include appropriate mitigation measures not already included in the proposed action or alternatives.
7. Take no action concerning the proposal that would limit the choice of reasonable alternatives until a final decision is made and a ROD is published.
8. Use a format for EISs that will encourage good analysis and clear presentation of the alternatives including the proposed action.
9. In the record of decision (ROD), identify all alternatives considered, specifying the environmentally preferable alternative(s).

Helpful Tips

- The statement of underlying need – a problem or opportunity – determines the range of alternatives in an environmental document. Any alternative course of action that would meet the stated need must be present in an environmental document. Conversely, any alternative that would not meet the need can be safely left out of an environmental document. Don't examine:
    - Every conceivable alternative or speculative alternatives.
    - Alternatives that won’t work, are not reasonable, or are infeasible, unrealistic, impractical, or not economical.

    - Alternatives that would have similar effect, or greater adverse effect.
    - Alternatives that weren't raised to NRCS in the administrative process.
    - Any alternatives to the proposed action if NRCS is properly using a Categorical Exclusion.
- A less extensive search for alternatives is required if impacts are not significant.
- Lack of authorization to implement does not automatically eliminate an alternative.
- A narrowly scoped EA or EIS is easier to write than one that is broadly scoped. Precise definition of the underlying need limits the range of alternatives to those that could reasonably meet that underlying need.
- Eliminate alternatives that do not meet the underlying need, but if a member of the public has raised them, address that alternative and state why it was eliminated.
- Think and write in terms of "alternative ways to meet the underlying need" rather than "alternatives to the proposed action," for which there may be no limit.

610.29 Scoping

Scoping is an early and open process used to identify the range of actions, alternatives, and impacts to be evaluated.

It directs focus on the issues to be analyzed in depth. Scoping affords other agencies and interested publics an opportunity to participate in the planning/NEPA process. It is intended to ensure that problems are identified early and appropriately studied, and that issues of little importance do not consume time and effort. Scoping results in a draft plan and environmental analysis that is thorough and balanced, and helps avoid the delays occasioned by inadequate planning and analysis.

Requirements

During the scoping process, NRCS must identify the laws, rules, and regulations, including State, Tribal and local agency requirements, which need to be addressed during planning and evaluation, such as those protecting endangered species, wetlands, and cultural resources. The scoping process is open to the public, and to State, Tribal and local governments, as well as affected Federal agencies. Scoping occurs on three levels:

1. **Intra-Agency:** NRCS requests advice or assistance from other NRCS offices with special expertise.
2. **Inter-Agency:** NRCS requests advice or assistance from other Federal, State, Tribal or local government agencies with special expertise and regulatory or permit responsibilities as well as those which may ultimately be involved in the proposed action, including Soil and Water Conservation Districts. This may include designating cooperating agencies. (See section 610.24, "Lead and Cooperating Agencies.")
3. **Members of the Public and Non-Governmental Organizations:** In addition to the broader public, this includes nongovernmental members of State Technical Committees and participants in locally-led processes.

Individual Planning

On individual land units, scoping generally occurs by determining with the landowner which resource concerns will be addressed in the conservation plan. As part of this process, NRCS must request assistance from Federal agencies with jurisdiction by law or special expertise to determine the scope of issues to be addressed and identifying the important issues related to a proposal. Most often this is necessary for resources of special concern for which consultation or permits are required, even when the activity is categorically excluded from the requirements to prepare an EA or EIS or has been analyzed in a broader environmental document. (See Section 610.25, "Consultation.")

Areawide EA's and EIS's

For watershed, Statewide, programmatic and other area-wide EA's and EIS's, NRCS uses a formal scoping process that includes public notice and at least one public meeting. (See section 610.31, "Public Participation.") Federal, State, Tribal, and local agencies with special expertise or jurisdiction in affected resources are requested to participate. For an EIS, ensure the Notice of Intent includes a description of the proposed scoping process, including whether, when, and where any scoping meeting(s) will be held. (See Section 610.53, "Notice of Intent.")

Set time and page limits for EISs as part of the scoping process and in consultation with sponsors and others according to the projected availability of resources. (See Section 610.26,

"Getting Started Preparing an EA or EIS.") Make the sponsor and other interested persons aware of the possible need for changing time and page limits because of changes in resources or new issues that are raised during the scoping process.

Helpful Tips

Carefully consider when to start the formal scoping process. Integrate scoping meetings with other early planning meetings, but keep in mind that scoping cannot be effective until NRCS knows enough about the proposed action to identify most of the affected parties and to present a description of the problems and opportunities. There should also be an initial list of environmental issues and potential alternatives. Emphasize that the preliminary alternatives and issues are just that – they are only used to begin scoping discussions.

Appropriate local NRCS and Conservation District officials should have a visible and important role in the scoping process, especially in locally led and areawide plans.

All agencies that will have a review or permit function for the plan should be included in the process, even if they will not be cooperating agencies and extra attention is necessary to obtain their participation. Invite participation of all interested persons, including those who might not be in accord with the action on environmental or other grounds.

Scoping is the time for building confidence and trust on all sides of a proposed activity. This is the time when there is a sense of common enterprise. It is important to foster goodwill by LISTENING to what is said during scoping meetings. It is very possible that measures may be investigated or recommendations may be made that can turn a controversy into an acceptable proposal.

Scoping can directly speed up the planning process in several ways:

- The single most important result of good scoping can be eliminating (or at least reducing) surprises late in the development of the plan. An early scoping process is the ideal time and forum for discovering differences of opinion. Accommodations can often be made without costly disruptions.
- There is a time-saving advantage to early identification of persons, agencies and organizations that will be concerned or affected. Interaction is optimized and the opportunities for misinformation are minimized.
- A well-directed scoping process will identify and eliminate those items that are (by consensus) not important. It can also eliminate unacceptable alternatives and save considerable time and effort. Document issues and alternatives eliminated from consideration and the rationale for doing so to reduce delays later in the planning process.
- Scoping allows the lead and cooperating agencies to reach agreement on the level of intensity of studies and identify points and events indicating further scoping is needed, such as discovery of the presence of an endangered species or cultural resource.

Background

Scoping is often the first contact between planners and the public. The public learns how the planners see their problems, how they will investigate and evaluate them, and what they propose as solutions. The planners hear the public’s interpretation of the situation, their expectations, concerns, and ideas. Scoping often uncovers surprises on both sides.

When it is conscientiously and innovatively conducted, scoping is one of the planner's most powerful tools for efficient and effective planning.

610.30 Determining the Scope of Analysis

The scope of analysis refers to the range of actions, alternatives and impacts to be considered in an EIS. Closely related to this is the need to define the geographic area and timeframes to be covered by the analysis. Making these determinations focuses the analysis on the relevant issues and makes the analysis more meaningful for decisionmakers.

Requirements

Types of Actions

Include connected actions in the same EIS. These are actions that are closely related to the proposed action and include actions that

- Are automatically triggered by the proposed action and may require an EIS.
- Cannot proceed unless other actions are taken previously or simultaneously.
- Are part of a larger action and depend on the larger action for their justification.

Include actions that result in a significant impact on the quality of the human environment when taken together, but which do not have such an impact when considered separately.

Include similar actions if they will occur in the same geographic area or timeframe and it is reasonable to cover them in the same EIS.

Types of Alternatives

See Section 610.28, "Alternatives."

Types of Impacts (Effects)

Analyze direct, indirect and cumulative impacts. Direct impacts are caused by the action and occur at the same time and place. Indirect impacts are caused by the action, but are later in time or farther removed in distance. Cumulative impacts are those that occur as a result of the past, present and reasonably foreseeable future actions, regardless of that agency (Federal or non-Federal) or person takes the other actions.

Helpful Tips

Analyze only those actions and impacts that are reasonably foreseeable

Don't speculate about what might happen. For example, if NRCS is proposing to build a dam to meet a need for drinking water and recreation, it may be reasonably foreseeable that traffic will increase in the area and additional housing or other structures will be built, particularly if this has occurred in other similar locations. Additional housing may not, however, be considered reasonably foreseeable, particularly if there are zoning restrictions in place to prevent such an occurrence.

Actions may be foreseeable even if they are other agencies, nongovernmental organizations, or members of the public. For example, actions included in approved zoning plans, areawide conservation plans, Forest plans, and other relevant planning documents would likely be reasonably foreseeable and should be included in the NRCS EIS if they affect the same resources or geographic areas or will contribute to cumulative impacts on a particular resource. If the proposal can be aggregated with other proposals similar in nature, timing, or location and assessed in an EA or EIS without causing schedule problems, do so.

Address concerns raised during scoping process.

If members of the public or other agencies comment that other actions or impacts should be analyzed, consider including them in the EIS. However, if the impacts or actions are not reasonably foreseeable, or the actions do not contribute to a cumulative effect on the resources being examined, do not include them in the scope of the NEPA analysis. Instead, acknowledge in the NEPA document the concerns that were raised, and state why NRCS does not consider those actions or impacts to be reasonably foreseeable or to affect the resources under consideration.

Use information obtained during the scoping process to help define the reasonable geographic area and how far out in time to trace the chain of impacts.

Ask these questions:

- What issues and concerns need to be addressed?
- What resources are present and likely to be affected?
- What timeframe and issues is it reasonable to analyze?

Note: Issues or concerns that do or do not need to be addressed at this time must be carefully considered and then included or excluded *in the analysis.*

610.31 Public Participation

Public participation is the part of the scoping process during which affected parties and interested persons and organizations are provided the opportunity to provide their views, values, and opinions about actions. Public views help NRCS to make informed decisions about actions it should take and, when feasible, modify actions to address concerns and avoid adverse impacts. Public participation also provides information to assist NRCS identify the scope of issues, alternatives and impacts to be analyzed in NEPA documents. The interested public includes individuals, groups, organizations, and government agencies.

Requirements

NRCS has discretion in how to involve the public. The Responsible Federal Official (RFO), after consultation with the sponsors, will determine when public meetings or hearings are held.

Public participation must be appropriate to the proposed action. Planning intensity, public involvement, and documentation vary according to the scope of the proposed action.

Individual Conservation Planning. Public participation for non-project technical and financial assistance on non-Federal lands is normally limited and occurs as part of conservation district meetings, State Technical Committee meetings, and locally-led planning meetings related to the broader implementation of the program. However, if the EE reveals a high degree of controversy over the proposed action or it is particularly large, and the action has not been addressed in a Statewide or area-wide EA, preparation of an EA and the opportunity for public involvement should be strongly considered. (See Section 610.11, "Framework for Compliance.") Environmental documents and EE documentation supporting financial assistance on private lands should reference the manner in which public participation occurred.

Areawide Environmental Assessments. Extensive public participation is required for new program or project actions. At a minimum, if development of the EA follows a locally led planning process that is already complete, and no public meetings will be held, reference information discussed during the locally-led planning meetings, conservation district meetings, and State Technical Committee meetings. (See also the discussion below concerning requirements for PL–566 and PL–534 watershed projects.)

Environmental Impact Statement. Reference relevant information discussed during conservation district meetings, State Technical Committee meetings, and locally-led planning meetings or other listening sessions or hearings. Hold additional meetings as deemed appropriate. (See also the discussion below concerning requirements for PL–566 and PL–534 watershed projects.) Request comments from the public on the draft EIS before preparing a final environmental impact statement, particularly requesting comments from persons or organizations who may be interested in or affected by the action, as well as those who have requested copies of the draft EIS.

Watershed Projects. The National Watershed Manual requires

- At least one public informational meeting to be held before or during interagency review of the draft EA or EIS.
- The public meeting to be called by the project sponsor jointly with NRCS or according to established State procedure.
- Anyone with interest in the watershed to be invited to participate.

Public Notices

If the effects are primarily of local concern, notice should be:

- Submitted to State and areawide clearinghouses;
- Submitted to Indian tribes if they are interested;
- Published in local newspapers;
- Distributed through other local media;
- Provided to potentially interested community organizations, including small business associations;
- Published in newsletters that may be expected to reach potentially interested persons;
- Mailed directly to owners and occupants of nearby or affected property; and
- Posted onsite and offsite in the area where the action is to be located.

If the effects of an action are of national concern, notice is to be published in the Federal Register and mailed to national organizations reasonably expected to be interested.

Integrating NEPA Public Participation with Public Participation Requirements of Other Environmental Mandates

In addition to NEPA, there are other laws, regulations and Executive Orders for the protection of the environment that include public participation provisions. For example, Executive Order 11990, "Protection of Wetlands" requires that agencies provide an opportunity for early public review of any plans or proposals for actions involving draining, dredging, channelizing, filling, diking, impounding or related actions occurring in wetlands. The National Historic Preservation Act (NHPA) implementing regulations require that interested persons be invited to consult with the action agency, taking into account the scale and nature of the proposed project. American Indian Tribes as sovereign Nations also have special status, both under NHPA and Executive Orders, and must be consulted on a Nation-to-Nation basis. Simple notification is not enough. For purposes of NHPA, interested persons may include, but are not limited to the following:

- Historical organizations;
- Historic preservation organizations;
- Civic and business organizations;
- Community organizations;
- Individuals;
- Neighbors;
- Local, State, and county government;
- The head of local government;
- Partners;
- Applicants for and holders of grants, permits, and licenses involved in the action, and owners of affected lands;
- Representatives of Indian Tribal governments; and
- Others, when agency, State Historic Preservation Officers, and the Advisory Council on Historic Preservation deem it appropriate.

Consult Title 400 of the General Manual (GM), Part 400.3-400.5, for policy and guidelines on public participation. See also the National Planning Procedures Handbook (NPPH), the National Watershed Manual (NWM), and the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (Principles and Guidelines or P&G). Also see the Handbook on "Cultural Resources" and Subpart G of this Handbook, "Other Environmental Requirements."

Helpful Tips

1. Begin the public participation process early.
2. Provide public notice of NEPA-related hearings, public meetings or other public forums, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected. Explain where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.
3. Solicit relevant information from the public concerning alternatives and issues, including potential effects of NRCS-assisted actions on environmental resources such as wetlands, flood plains, cultural values, endangered species, and important farmland.
4. At meetings, present and discuss environmental information along with other appropriate information.
5. In addition to public meetings, other forms of public forums have come to be accepted practice, including:
    - open houses
    - newsletters
    - telephone hotlines
    - internet communications
    - tours
    - workshops
6. When public meetings are held, keep in mind that:
    - Public meetings are often the first contact between NRCS and the public, and probably the most important.
    - The public learns how NRCS see their problems, and how NRCS will investigate and evaluate them.
    - NRCS will learn the public's interpretation of the situation, their expectations, concerns, and ideas.
    - One of the primary objectives of public involvement is to earn the confidence of public participants by being honest, open, and responsive.
7. Identify relevant information, including potentially controversial issues that could motivate litigation, and seek resolution with the appropriate parties.
8. Pertinent information should be provided to attendees before the meetings.
9. Maintain a reviewable record of public participation in the planning process.
10. Seek out members of the "interested public" consisting of, but not limited to individuals, groups, organizations, and government agencies. Encourage them to participate in and contribute to interdisciplinary planning and analysis of environmental effects. In addition to participating in public meetings, Federal, State, Tribal, and local governmental organizations may be separately consulted or be cooperating agencies. (See Section 610.29, "Scoping.")
11. Invitations, public notices, and detailed meeting arrangements need adequate and experienced handling. Seek assistance if needed. It is important that top NRCS management in the State assure there is proper attention to meeting arrangements. Meetings may be held by conservation districts or local sponsors, but ensure announcements and agendas are specific enough for the public to understand the purpose of the meeting is to provide input into a Federal decision.
12. Ensure adequate preparation for the first meeting. Visual aids should be simple and to the point. Information packets should be well organized and easy for the publics to follow - it should not be lengthy or highly technical and should be written in plain language. Avoid the use of agency acronyms. Packets should be available to the invited publics and agencies prior to the meeting. First impressions are critical.

13. Take the time to assure the meetings are documented. Flipcharts can be used effectively to record comments from the floor as they are given and for reference during and after the meeting.
14. Participants/Stakeholders may include:
    - Community action groups;
    - Environmental advocacy organizations;
    - Special interest groups;
    - Local government; and
    - Individuals whose homes, livelihood, or neighborhoods may be affected by the action.
15. In diverse communities, make written materials available in Spanish or other languages as appropriate.

610.32 Describing the Affected Environment

The affected environment is the area impacted by the proposed alternatives. It includes the area of ecological, cultural, social, aesthetic and economic resources affected by the alternatives and impacts. The purpose of describing the affected environment is to define the context in which the impacts will occur.

Requirements

Environmental Assessments

There is no requirement that EAs include a separate section describing the affected environment. However, impacts cannot be analyzed without discussing the context in which they occur. Context is one factor analyzed in determining the significance of an action. Therefore, either include an affected environment section or, in describing the impacts of an action, be certain to include a discussion of the resources that are present and how they are affected by the proposed action and alternatives.

Environmental Impact Statements

- EISs must succinctly describe the environment of the area(s) to be affected or created by the proposed action and alternatives.
- The descriptions shall be no longer than is necessary to understand the effects of the proposed action and alternatives.
- Data and analyses shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.
- Avoid useless bulk and concentrate attention on important issues. Verbose descriptions of the affected environment are no measure of the adequacy of an environmental document.
- Describe resources, including those protected by Federal, State, Tribal, or local requirements. Include references to any limited resource areas, individuals, or protected groups, particularly those impacted by the proposed action and alternatives.
- Describe all areas directly or indirectly affected by the proposed action and alternatives, including the area necessary to understand the cumulative impacts on the affected resources and groups.

Social and Economic Considerations

The human environment includes the natural and physical environment and the relationship of people with that environment. To understand those relationships, the social and economic components affected by NRCS activities need to be considered and described in the EA or EIS.

Descriptions of the social and economic aspects of the affected environment might include the following:

1. Demographics, including the local facilities and services that support those demographics, the neighborhood cohesion, and community stability.
2. Economics of the area, including employment patterns, average income, the financial stability of residents, municipal tax base, and the viability of local business and social service organizations. Include references to existing economic goals or plans of the area.
3. Resources on which people depend for subsistence, employment or recreation.

4. Community institutions, traditions and values, and the way of life of individuals in communities, including such things as the flow of foot traffic and transportation routes.

Background

The Affected Environment section of a NEPA document describes the physical and social conditions of the geographic area in which the impacts of a proposed action are expected to occur. To make an informed decision about what actions to implement, it is necessary to first understand what is being affected by the alternatives and what those impacts are. The affected environment section should provide the basis for this understanding. In an EA, enough information should be included to provide an understanding of the context and intensity of impacts, so the RFO can make a determination about their significance. NRCS has a variety of tools it can use, such as maps, photos, graphs, and tables, to clearly and concisely describe the affected environment so the impacts are understandable by the public.

610.33 Impact Analysis

The description of the impacts of the proposed action and alternatives is the heart of the NEPA document.

For purposes of NEPA, the terms "impacts" and "effects" are synonymous.

Requirements

Analyze all direct, indirect, and cumulative impacts of proposed actions and alternatives.

- Direct impacts are caused by the action and occur at the same time and place.
- Indirect impacts are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.
- Cumulative impacts are those that have resulted from all past, present, and reasonably foreseeable similar future actions, including those under the control of other entities. They can result from individually minor but collectively significant actions taking place over a period of time. This analysis is best done on an area wide, watershed, or larger area level to put the proposal into perspective.
- Effects can be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social or health.
- Effects include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the effect will be beneficial.

Impacts must be reasonably foreseeable. It is not necessary to forecast impacts beyond the technical and scientific capability to do so.

EA's

Provide enough detail to determine whether effects are significant. (See Section 610.36, "Determining Significance.") Analysis will be commensurate with the importance of the issue.

EIS's

For a decision-maker to make an informed decision about taking a particular action or the alternatives to it, the full range of impacts of each action needs to be known; not the positives or negatives but rather description and quantity, if possible.

- Include discussions of the environmental impacts of each alternative, including the proposed action. Discuss:
    - Any adverse environmental effects which cannot be avoided should the proposal be implemented;
    - The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity;
    - Any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented;
    - Possible conflicts between the proposed action and the objectives of other land use plans and controls for the area concerned;
    - Energy requirements and conservation potential;
    - Natural or depletable resource requirements and conservation potential;

    - Urban quality, historic and cultural resources, and the design of the build environment, including the reuse and conservation potential;
    - Identify any risks associated with the actions or their impacts; and
    - Means to mitigate adverse environmental impacts if not already included as an alternative.
- Devote substantial treatment to each alternative (including the no-action alternative) so readers may evaluate the comparative merits;
- State the reasons for the conclusions;
- State how alternatives considered in it and decisions based on it will or will not achieve the requirements of NEPA and other laws and policies;
- Include citations for all source material and technical references in the references cited section.

Impacts need to be quantified in units that can be easily understood by the publics and the decision maker(s), and reproducible.

Analytical Approaches

Data for analysis may be drawn from research, professional judgment, or other sources that depict the environmental effect that resulted when a given action was applied to a given set of environmental conditions. In addition to information prepared by NRCS, include data and analysis available from sources other than NRCS. Data sources may include the following:

- Technical reports;
- Professional journals;
- Monitoring reports;
- Study results;
- Professional judgment;
- Computer model results;
- Textbooks;
- Professional articles;
- Inventory data;
- Symposium papers/proceedings;
- Historical records;
- Resource Management Systems (RMS) Guide Sheets;
- Ecological Site Descriptions; and
- Analysis by other agencies.

Section 610.73 describes a sound, scientific methodology for documenting the effects of NRCS conservation practices and systems of practices. However, it is not the only methodology available. SWAPA resource concerns all have quality criteria in Section III of the Field Office Technical Guide (FOTG). Each should have recommended measurement methods. For example, soil loss is measured by the Revised Uniform Soil Loss Equation (RUSLE). Wildlife habitat quality is measured either by Habitat Evaluation Procedures (HEP) or by Habitat Appraisal Guides.

When impacts cannot be quantified, objectively describe the impacts qualitatively. Try to avoid describing impacts as negative or positive or as beneficial or adverse. Instead, state that the impacts will increase or decrease a particular resource or an indicator of the quality of the resource or ecosystem. Be certain to state the reasons, or cite the basis, for reaching conclusions about what the effects will be. For example, reference the model that was used, scientific research, tests, or the basis for best professional judgment such as limited demonstration projects.

This is to ensure that NRCS is not arbitrarily reaching conclusions without having a reasonable basis for doing so, as well as to identify gaps in scientific research. Where there is a conflict in research or information, NRCS can reach its own conclusion about what the impacts will be, but be sure to state why NRCS is accepting one position over another.

Section V of the FOTG contains impact information related to common resource management systems (RMS's) in the local area (Guidance Documents), as well as the Conservation Practice Physical Effects (CPPE). These documents should be updated whenever better impact information becomes available.

Data Sources and Gaps

When incomplete information is essential to a reasoned choice between alternatives with reasonably foreseeable significant adverse effects on the human environment, NRCS must obtain the information and include it in the EIS unless the costs of doing so are exorbitant or the means to obtain it are not known. If it can not be obtained for one of these reasons, include in the EIS a statement that the information is not available and why it is relevant to evaluate reasonably foreseeable significant adverse impacts. Also, summarize existing credible, relevant scientific evidence and describe the conclusions reached about impacts based on that evidence.

Social and Economic Analysis

The human environment includes the natural and physical environment and the relationship of people with that environment. To understand those relationships, the social and economic components affected by NRCS activities need to be considered and described. Social and economic analyses are valuable planning tools because they identify areas of potential conflict and options for decision making that might not otherwise be apparent. That is why NRCS planning policy always requires a review of social and economic impacts in addition to environmental impacts. A social impact assessment should be included for all EIS’s to determine how people will be affected.

Data describing the human aspects of the affected environment and changes to that environment include

1. Demographics – Describe the effects of an increase or decrease in population growth on local facilities and services, neighborhood cohesion, and community stability.
2. Economically related changes – Describe the effects of new patterns of employment and income on the financial stability of residents, municipal tax base, and the viability of local business and social service organizations.
3. Resource-related changes – Describe the effects on natural resources upon which people depend for subsistence, employment or recreation.
4. Cultural – Describe the effects of demographic, economic and resource-related changes on community institutions, traditions and values and on the way of life of individuals in communities, including such things as the flow of foot traffic and transportation routes.

Detailed information on data collection for social components is found in the National Social Sciences Manual, Section 500, Subpart D.

Use the social and economic components described in the Affected Environment section to direct assessments of impacts of a given activity on the people involved. Specific guidance on assessing impacts is found in the National Social Sciences Manual, Section 500, Subpart F.

NRCS should note that the intensity and view of whether an impact is beneficial or adverse will vary according to the affected populations, geographic location, and community

economic conditions. For example, an increase in population might be beneficial in one area and adverse in another, depending on the availability of employment and housing and the size of the community infrastructure.

Special Environmental Concerns

Human considerations and special environmental concerns that are protected by law or Executive Order (EO) will generally need to be analyzed according to the laws, regulations, or EO's established to protect them. For example, a description of wetland impacts should describe not only the acres involved, but the functions and values of those wetlands (based on an HGM model), and perhaps their value as wildlife habitat (according to the results of a HEP or Habitat Appraisal Guides), as well. There might also be a need to discuss and support impacts on downstream water quality, and any other effects the wetland may have within the ecosystem.

Helpful Tips

Before beginning the impact analysis, ask

- What information is needed to assess the proposed action?
- Is the information already available or must it be obtained? From what sources?
- Which disciplines are needed on the interdisciplinary team?

Begin to determine information and data needs early in the process. Determine what data is needed and what is already available. Generally this task involves

- Reviewing and organizing existing data;
- Deciding what other data is needed and on what level of detail;
- Getting more data; and
- Deciding if information is incomplete or unavailable.

The level of detail and types of information needed are mainly determined by the types of impacts and the extent to which the proposed action and alternatives are likely to affect the quality of the human environment. Gather enough information about the proposed action, alternatives, and the environmental setting to identify issues and analyze impacts.

Information from existing NEPA documents or other analyses should be used whenever possible to reduce the amount of new analysis needed and to increase consistency between documents. (See SubPart D, "Tools for Efficiency" for methods available to reduce the need for new analysis.) Also consider using analysis prepared by State, Tribal or nongovernmental organizations.

Describe assumptions and assessment guidelines used in analyzing the environmental consequences, either in a separate section or before the discussion of impacts. This information gives the reader a basis for understanding and judging the reliability of the impact analysis. List any criteria, timeframes, rates of change, and other common data or ground rules for analysis that team members used in conducting the analysis. Clearly explain the methodology and assumptions used when information critical to the analysis is incomplete or unavailable.

Document the reasons or evidence on which conclusions about effects are based. This may include scientific research, demonstrations, or personal or agency experience, but others must understand what the conclusions are based on. Establish the cause and effect relationship for the impacts of the proposed action and each alternative. All actions have a cause and corresponding effects or consequences. By identifying the causes and then “tracing out” all the associated consequences, adequate analysis of the impacts will be achieved. Quantify the impacts to the extent possible.

610.34 Mitigation

Mitigation means to avoid, minimize, rectify, reduce, or compensate for the impact of an action or alternative on a quality or condition. Its purpose is to reduce undesired impacts of an action.

Requirements

NEPA requires that mitigation measures be considered that minimize adverse environmental impacts.

Environmental Assessments

There may be mitigation measures or alternatives that would be desirable to consider and adopt even though the effects or impacts of the proposal will not be significant. In such cases, documentation for the EE or the EA should discuss these measures or alternatives to assist NRCS planning and decisionmaking. The appropriate mitigation measures can be imposed as enforceable permit conditions, where applicable, or adopted as part of NRCS's final decision in the same manner mitigation measures are adopted in the formal ROD in the case of an EIS.

Sometimes an EA may indicate that the environmental effects of a proposal are significant but that, with mitigation, those effects may be reduced to less than significant levels. In such a case, an EIS is required unless the proposed action is modified to include mitigation as an integral part of the proposal. If the proposed action is modified to include mitigation after a FONSI has been published, a new EA and FONSI must be made available for 30 days before taking action.

Environmental Impact Statements

Include appropriate mitigation measures not already included in the proposed action or alternatives. Cooperating agencies expressing reservations about the proposal on environmental grounds may specify the mitigation measures it considers necessary to allow the agency to grant or approve an applicable permit, license or related concurrences. If mitigation is not included in the proposed action or alternatives, include discussions of the means to mitigate adverse environmental impacts in the environmental consequences section of the EIS.

In the Record of Decision, state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program must be adopted and summarized for any mitigation.

Background

Mitigation includes:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree of magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

610.35 Monitoring

Monitoring means to scrutinize, check, or watch systematically by collecting certain specific categories of information. The purpose of monitoring is to determine baseline conditions, whether actions were implemented, and if implemented actions achieved a desired condition; to validate assumptions, and to document the findings.

Requirements

EA

If mitigation is used to reduce impacts to less than significant (mitigated FONSI), a monitoring program must be used to assure that the mitigation was implemented, and that it achieved the reduction of impacts.

EIS

If mitigation was adopted in the Record of Decision, a monitoring and enforcement program must be implemented by the lead or cooperating agencies. (See 40 CFR 1505.2(c).)

Application

Monitoring is a critical part of conservation planning and implementation. Our knowledge about ecosystem functions is often provisional and incomplete therefore, we should view conservation practice application and management decisions as hypothesis that need to be evaluated. Monitoring allows us to adapt our management decisions to ensure success in achieving conservation objectives.

Status reviews are a very simple approach to monitoring. If conducted properly they not only provide information on program compliance but the success of conservation practices. However, the Wetland Reserve Program requires more detailed annual monitoring because restoring ecosystems is a complex undertaking that often takes decades to establish the targeted functions and values.

Monitoring should be documented using the same techniques and measurement units each time, so that all data are comparable.

The following types of monitoring should be considered when developing any monitoring plan:

Implementation Monitoring. Answer the question: was the mitigation or practice installed according to the agreement or decision document?

Baseline Monitoring. Establish the pre-installation condition in the same units and with the same techniques as will be used for future monitoring.

Validation Monitoring. Answer the question: were the assumptions made during the planning process correct?

Effectiveness Monitoring. Answer the question: were the objectives of the mitigation or practice achieved?

Background

Adaptive management is a concept that allows us to learn about the effects of the actions we take, and to modify the actions to achieve the desired conditions. Adaptive management recognizes that monitoring provides critical information on the progress and success of conservation

practices. Resource managers and conservation planners must remain flexible or “adaptive” to adjust future management recommendations or decisions based on monitoring results.

The National Planning Procedures Handbook discusses monitoring as Step 9 (Evaluate the Plan). In addition, it defines the concept of “follow-up” that NRCS refers to while working with customers. The definition embodies the concepts of monitoring and adaptive management.

“Follow-up is the act of maintaining contact with the client to provide timely assistance in implementing decisions, keeping current with new technology, encouraging continued implementation, updating objectives and decisions in a conservation plan, and determining the conservation effects experienced.”

The most critical stage of implementing monitoring is not data collection, presentations, or interpretation, but rather design. Many years of data can be useless unless the monitoring plan was given careful consideration. When designing a monitoring plan, attention must be given to the questions that need to be answered. For example, if you wanted to monitor a wetland restoration project you must consider the components that drive wetland systems, such as hydrology and vegetation. Each of these components requires different kinds of data to be collected. Determining re-vegetation success would probably require an analysis of species diversity (i.e., what plants are on the site) as well as density (i.e., percent cover of each species). If only species occurring on the site were collected, it would not tell you which species were dominant which may be critical to achieving species objectives such as habitat for migratory songbirds.

Designing a monitoring plan should involve the appropriate technical expertise. This knowledge may reside outside of NRCS, therefore our partners should be sought for their inputs. In addition, collaborative efforts with our partners, ARS, USGS, and Universities can enhance the quality of our monitoring and ensure success in meeting conservation objectives.

610.36 Determining Significance

Determining significance is to decide if the impacts of an action or alternative are of consequence.

A test of ***significance*** is used to determine when an action requires an EIS, and which issues require in-depth study.

Application

It is up to the Responsible Federal Official to determine whether an action, individually or cumulatively, will have significant effects on the quality of the human environment. However, it is important that the RFO have reasons for the decision about the significance of the action. These reasons should be based on the criteria for significance.

CEQ regulations define two classes of criteria for significance: ***context*** and ***intensity***.

Context

Context means that the significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action.

Intensity

Intensity refers to the severity of impact. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area.
4. The degree to which the effects of the action are likely to be highly controversial.
5. The degree to which to effects of the action are highly uncertain or involve unique risk.
6. The degree to which the action may establish a precedent for future actions with significant effects.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, etc., of significant scientific, cultural, or historic value.
9. The degree to which the action may adversely affect species or habitat covered by the Endangered Species Act.
10. Whether the action violates Federal, State, or local laws or requirements imposed for protection of the environment.

The presence of one or more of the above criteria does not necessarily trigger significance. The determination is a responsibility assigned to RFO's and requires supporting rationale.

610.37 Making the Decision

NEPA requires decisionmakers to consider the environmental impacts of their actions before those actions are implemented, to choose between alternatives when there are conflicts in alternative uses of available resources, and to make that information available to the public. NEPA also requires decisionmakers to prepare a public record of their decision when it may result in significant impacts to the quality of the human environment.

Requirements

Relevant environmental documents, comments, and responses must accompany the proposal through existing agency review processes so agency officials can reference the document(s) in making decisions.

The decisionmaker must actually consider the full range of alternatives discussed in the NEPA document.

Timing of Decision and Implementation of Action

EIS

When an EIS has been prepared, no decision on the proposed action can be made or recorded until the later of the following dates:

1. Ninety (90) days after publication of the notice of availability of the draft EIS in the Federal Register.
2. Thirty (30) days after publication of the notice of availability of the final EIS in the Federal Register.
3. If the final EIS is filed within 90 days after a draft EIS is filed with EPA, the minimum 30-day period and the minimum 90-day period may run concurrently.
4. NRCS must allow not less than 45 days for comments on draft EISs.
5. Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of the CEQ regulations, NRCS should consult with the CEQ about alternative arrangements.

EA

The EA and FONSI must be made available for a 30-day review and comment period before implementation of the action can begin. There is no prescribed waiting period before a decision can be made about which action to implement, though if there are controversial circumstances, NRCS should consider allowing a 30-day review and comment period when feasible.

Note: Certain programs may provide for a public review and comment period for draft EA's. For example, the National Watershed Manual provides for a 45-day review and comment period on draft EA's to support PL–566 projects is 45 days.

Documenting the Decision

After an EIS has been made available for the required period of time, the decision must be documented in a concise public record of decision (ROD). See Section "Record of Decision" for the specific documentation requirements. There is no requirement for a separate decision document when an EA and FONSI are prepared.

Helpful Tips

When NRCS assists with individual conservation planning, the client selects conservation alternatives based on NRCS technical advice. This involves comparing alternatives and selecting one or more for implementation based on the client's understanding of the environmental and economic impacts. However, when NRCS is asked for financial assistance to implement an alternative, NRCS makes a decision whether or not to fund that alternative or to offer to fund a different alternative. NEPA documentation is required to support this funding decision, because that is the action that NRCS controls. Funding of the client's selected alternative becomes the proposed action for NEPA purposes, but NRCS must not agree to fund that alternative if it is not consistent with NRCS conservation objectives and other environmental requirements.

610.38 Distribution and Publication of Environmental Documents

Requirements

Notice must be published of the availability of all environmental documents. If the effects of the proposed action are of local concern only, the notice need be published only locally. If the effects are of national concern, the notice must be published in the Federal Register. NEPA documents include NOI, EIS, ROD, EA, and FONSI.

Publishing documents in the Federal Register

Notices are not to be mailed directly to the Federal Register. Instead, documents to be published in the Federal Register must be sent to the:

Director, Management Services Division

USDA, Natural Resources Service

5601 Sunnyside Avenue Mail Stop 5460

Beltsville, Maryland 20705-5000

All requests for publication in the Federal Register need to include a signed original and two signed copies of the document, along with a diskette saved in WordPerfect format.

Notice of Intent to Prepare an EIS

This notice is published in the Federal Register in most cases, as well as in statewide and local newspapers in the affected area.

Environmental Impact Statements

The entire EIS is to be circulated unless it is unusually long, in which case only the summary may be circulated. The entire EIS will be furnished to the following:

1. Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.
2. The applicant, if any.
3. Any person, organization or agency requesting the entire EIS.
4. In the case of the final EIS, any person, organization or agency which submitted substantive comments on the draft.
5. Notice of the availability of the EIS is to be published in statewide and local newspapers in the affected area. Specific requirements of State laws concerning legal notices will be followed.

File Draft, Final and Supplemental EIS's with EPA

Federal agencies are required to file draft, final and supplemental EIS's with EPA as specified in CEQ regulations at 40 CFR 1506.9. The EIS's must be filed no earlier than they are transmitted to commenting agencies and made available to the public.

If an EIS is hand-carried to EPA, the person delivering the document must complete a form stating that transmittal to all agencies is being made simultaneously with the filing with EPA. This will assure that the EIS is received by all interested parties by the time the EPA Notice of Availability appears in the *Federal Register*, and therefore allows for the full minimum review periods prescribed in CEQ regulations at 40 CFR 1506.10.

NRCS files draft, final and supplemental EIS's with EPA by providing EPA with five (5) copies, including appendices. Material which is incorporated into the EIS by reference is not required to be filed with EPA. NRCS should prepare a letter of transmittal to accompany the five copies of the EIS. The letter should identify the name and telephone number of the official responsible for both the distribution and contents of the EIS, should state that the transmittal has been completed.

Once received by EPA, each EIS is stamped with an official filing date and checked for completeness and compliance with 1502.10 of the CEQ Regulations. If the EIS is not "complete" (i.e., if the documents do not contain those elements outlined in 1502.10 of the CEQ Regulations), EPA will contact the lead agency to obtain the omitted information or to resolve any problems prior to publication of the Notice of Availability in the *Federal Register*.

Agencies often publish (either in their EIS's or individual notices to the public) a date by which all comments on an EIS are to be received. NRCS should ensure that the date used is based on the date of publication of the Notice of Availability in the *Federal Register*. If the published date gives reviewers less than the minimum review time computed by EPA, then EPA will send the NRCS contact a letter explaining how the review period is calculated and the correct date by which comments are due back to NRCS. This letter will also encourage NRCS to notify all reviewers and interested parties of the corrected review periods.

Where to Submit (or "File") an EIS with EPA

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Mail Code 2252-A, Room 7241
Ariel Rios Building (South Oval Lobby)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For all deliveries by courier, including express delivery services other than the US Postal Service, please use 20004 as the zip code. EIS's, including comments and responses are to be filed with EPA's Office of Federal Activities no earlier than they are transmitted to commenting agencies and made available to the public.

Note: The public review and comment period for PL–566 projects is 45 days from the date of publication in the Federal Register by EPA.

Record of Decision

The ROD cannot be prepared until the EIS has been available at least 30 days. Notice of the ROD's availability is published in the Federal Register and should also be published in the same newspapers in which the NOI was published.

Environmental Assessments

EA's and FONSI's are concise public documents which must be made available to the public. Notice of the availability of an EA and FONSI is to be published in the Federal Register and in one or more newspapers serving the area of the proposed action. Consider publication in appropriate newsletters and other media, as well, in order to inform those persons and agencies who may be interested or affected. Provide notice by mail to persons, agencies and organizations reasonably expected to be interested in the matter. EA's and FONSI's should be distributed for review and comment to all cooperating agencies and others who assisted in

the preparation of the document, and all others who specifically request a copy. Single copy requests for the document are to be filled without charge.

Note: Certain programs may have specific requirements for distribution and publication of NEPA documents. For example, EA's developed for the PL–566 watershed program must be distributed and published in the same manner as EIS's.

610.39 Administrative Record

The administrative record is a set of documents that supports the decisionmaking process. This is the agency's collection of the evidence that proves that decisionmakers:

1. Understood the law applying to the decision;
2. Considered all the relevant factors; and
3. Made a reasoned decision.

Its purpose is to reflect what the agency did and why it did it. It should reflect the process the agency used to arrive at its decision, as well as what the decision was. It should reflect factors that support the decision, and should reflect factors that are contrary to the decision and how the agency handled them.

Requirements

An administrative record should show that the agency considered the relevant factors and articulated a rational connection between the facts found and the choice made. An administrative record should support the agency's action by substantial evidence. Evidence is substantial if a reasonable mind might accept it as adequate to support a conclusion. Evidence is not substantial if it is overwhelmed by other evidence, or if it constitutes mere conclusion. See National Food Security Act Manual and other appropriate program manuals for more specific information on what should be included in the administrative record. See also the topic "Conservation Planning and Application" in General Manual Title 120, Part 408.63(b) for information on disposition of records related to conservation planning.

Application

You are authorized to keep as much as you need. The Federal Records Act is broad enough to support your keeping any documents you need to keep in order to do your job.

Keep what you need to keep; don't keep documents unintentionally. What you don't wish to keep should be destroyed effectively. Stacks and piles and boxes of documents may wind up in the Administrative Record if they are still around when the final Record is collected.

What you keep goes into the Administrative Record. If it's important enough to keep it, it probably will be deemed important enough to put it into the Record. Eliminate duplicates to keep the size of your administrative record more manageable.

You might wish to create documents. If it's not in the Administrative Record, it probably does not exist. Written proof is usually the only proof, and the Administrative Record is the only place for the proof.

Copies on computer disks are copies, as well. Whether you intend to keep it or destroy it, remember that there may be a copy on your hard drive, backup tape, archival disk, server, floppy in the bottom of the drawer, on that disk you sent to a colleague early in the project.

Background

The biggest mistake made in putting together administrative records is omission. Omission generally means there is a lack of explanation of the reasons for an action or decision. When the basis for decisions is not explicitly disclosed by the agency, the court is free to draw its own conclusions, including the conclusion that the agency acted arbitrarily. When a particular law or regulation requires the consideration of specific factors, the administrative record must reflect those factors and how they were considered. Otherwise, if the decision is challenged in court, omission of a single factor can mean the agency's decision will be overturned.

610.40 Reviewing Other Agencies' Environmental Documents

Federal agencies may request NRCS to review their environmental documents.

The purpose of this section is to establish a method for NRCS reviewers to examine other agencies' EIS's. The intent is for this method to be based on consistent criteria, which will deliver uniformity in responses across the country.

Requirements

Section 102 (2) (C) of NEPA obligates an agency preparing an EIS to "consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved," and to make the EIS and agency comments available to interested parties. The review process provides opportunities for a full scrutiny and critique of the lead agency's environmental analysis methods and its rationale for selecting a proposed action. It also provides a forum for opposing views and can be a source of new information (Ortolano, 1997).

Application

Specific to NRCS, the following are the minimum concerns to which reviewers must respond:

- Soil suitability and limitations;
- Provisions for erosion, sediment, and dust control;
- Considerations for soil and water conservation management systems;
- Water discharges;
- Effects of disruption to the natural drainage patterns and severance of private land units;
- Impact on previously installed soil and water conservation management systems;
- Impacts on prime and unique farmland;
- Impacts on ecosystems; and
- Impact on other NRCS-related projects.

To provide the NRCS reviewer with the best possible tools to consistently address environmental consequences with the proposed project outlined in the EIS's, interpretations of these concerns are provided below in greater deal. These examples are in the form of questions that the reviewer can use to help answer what the environmental impacts could be. These questions are aids and are by no means all-inclusive. Remember that these nine categories were established based on the NRCS's expertise at the time NEPA was being strengthened in scope. Each State office will more than likely have this expertise and more, on staff. Hiring "experts" is not the intent of these reviews nor are funds readily available to do so.

Soil suitability and limitations for the proposed action. Would the alternatives being proposed have another route, location, or layout that could minimize land use problems and adverse environmental impacts related to soils? Have the soils' productivity, capability, and erodibility been adequately considered in this EIS?

Provisions for erosion, sediment, and dust control prior to and during project construction. Are there resources downstream that would be affected by sediment from the construction area? Does the EIS provide for adequate control measures? Will lack of erosion or dust control cause air pollution or visibility problems? Is the stockpiling of topsoil for future use considered? Are seeding periods outlined and non-seeding times? Are air resources adequately considered in this EIS?

Considerations for soil and water conservation management systems and measures on project and adjacent lands. Typically these areas would be rights-of-way (ROW), access roads, and borrow areas. Does the EIS indicate that long-lasting soil and water conservation practices are to be installed and maintained? Are there conservation measures that can be recommended to reduce negative environmental impacts?

Water discharges from project area to off-site locations. What effect (consider positive and negative) will water leaving the site or a nearby area, have once the project is completed? What happens if the project isn't installed? Will those discharges cause erosion, flooding, or pollution problems? Is there an environmental impact to water quality, streamflow, floodplains, wetlands, groundwater recharge, or irrigation systems?

Effects of disruption to the natural drainage patterns and severance of private land units. Does the EIS indicate that drainage patterns will be maintained, altered, enhanced, or negatively affected? Will bridges, culverts, or other structures if installed, cause flooding problems or restrict nearby land use in some fashion? Does this EIS consider that private land ownership units could be severed from contiguous tracts?

Impact on previously installed soil and water conservation management systems. To what extent will conservation systems be altered or severed? Will outlet structures or features be inoperable if this project is installed? Will new and better conservation systems be installed? Will livestock operations/facilities affect or be affected by this project? Will the project affect or be affected by a livestock operation?

Impacts on prime and unique farmland. Would an alternative location or route require less prime farmland to be converted? Does the EIS consider secondary effects on prime farmland? In other words, if prime farmland is not directly converted, but the project is installed, will the project make farming impractical or impossible? What benefits or consequences are anticipated if the prime farmland is converted?

Impacts on ecosystems. Does the EIS describe impacts on major plant communities, and terrestrial and aquatic ecosystems? Are vegetation components considered (forest, range, threatened and endangered plants, biodiversity, noxious weeds, and fuel load for prescribed and wildfires?

Impact on other NRCS-related projects. Does NRCS have any current or planned projects in this project area that will or could be impacted? Does this EIS consider those NRCS projects? Are there any NRCS projects within the watershed that could be impacted by this action? Are you aware of cultural resources that are in the vicinity of the project area?

Note: A reply should be made within 30 days or the time period provided for comments.

NRCS might be asked to review and comment on environmental assessments or other documents received from other agencies. NRCS is not required to comply with that request according to NEPA requirements. However, NRCS's response should be based upon staff availability, project location, applicability, or interest.

Background

NRCS employees that are assigned to review environmentally related documents, in this case EIS's, are to be familiar with NRCS policies and guidelines related to NEPA. When responding to EIS's, comments should be objective with the intent to offer suggestions that help minimize adverse impacts. Here it is important for NRCS to make sure the lead agency has considered all areas of environmental impact. The expertise that NRCS has in many natural resource areas is why the agency is required to review EIS's.

The Field Office Technical Guide, soil surveys, field investigation reports, as well as other resource material developed by NRCS and other groups should be used and cited. It is not intended that special surveys or investigations be conducted to acquire additional information for use in preparing comments. It is important to reference or cite materials used when responding to EIS's.

SUBPART C – REQUIREMENTS OF NEPA DOCUMENTS

610.50 – Findings

610.51 – Environmental Assessment (EA)

610.52 – Finding of No Significant Impact (FONSI)

610.53 – Notice of Intent (NOI)

610.54 – Environmental Impact Statement (EIS)

610.55 – Record of Decision (ROD)

Part 610 – National Environmental Compliance

Subpart C - Requirements of NEPA Documents

610.50 Findings

A finding is a decision on a question of fact reached as the result of examination or investigation. Determinations or conclusions reached by making a reasonable inference from the evidence or information available.

Purpose

To ensure that NRCS decisions are not overturned for being considered arbitrary, it is important to appropriately document the reasons for the decisions after fully and reasonably considering the facts.

Requirements

Findings must be made as part of the NEPA process. A finding consists of three parts: evidence, basic conclusions about the evidence, and the ultimate conclusion about what that evidence means in terms of a legal obligation, which results in a legal effect. A statement of reasons between each level shows how the lower level leads to the higher level (Figures 1, 2, 3).

Figure 1

Aspects of a finding	**Also called …**	**Federal action example**	**FONSI example**	**EIS example**
1. Evidence	Facts, etc.	NRCS provides planning assistance. No federal financial assistance.is used to implement the plan.	(1) Context. Consultation letter from the FWS, etc. (2) Intensity. No species present, etc.	NRCS proposes to fund a new flood control structure. Construction will destroy 25 acres of wetlands; 45 acres of this wetland type remain in the region. There is opposition to the action. Some groups believe the functions and values of the wetland type cannot be replaced or mitigated. A study supports their position. Downstream flows will decrease and water temperatures will rise 5 degrees during most of the year. A downstream cold water fishery brings $5 million into the area annually.
2. Basic conclusions	Conclusions of fact, findings of fact, supporting conclusions, intermediate conclusions, etc.	No Federal agency has control or responsibility for the action that is implemented..	"I find that the proposed action will not affect species listed under the Endangered Species Act as endangered or threatened."	"I find a major portion of a rare wetland type will be eliminated by the proposed action. It is likely the functions and values of this wetland type cannot be replaced. I further find that a cold water fishery is likely to be adversely impacted by the action and the area will lose a significant portion of revenues."
3. Ultimate conclusion	Conclusion of law, ultimate legal finding, finding, etc.	The planning assistance is not a federal action under NEPA.	"I find the proposed action will not significantly affect the quality of the human environment." (Note: Assumes other facts and basic conclusions also exist to support this.)	"I find that the impacts of the proposed action are likely to be significant."
4. Legal effect	Legal result, etc.	No EA or EIS is needed.	No EIS is needed	An EIS is needed.

Figure 2

Significance Factors	**NRCS asks …**	**And makes these findings…**
Environmental effects	Are there beneficial or adverse effects on land, air, or water?	No “significant” impact
(2) Public health or safety	Are there effects on public health or safety?	No “significant” impact
(3) Unique characteristics of the area	Are there effects on historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas, etc?	No “significant” impact
(4) Controversy	Are the effects controversial?	No “high” controversy
(5) Uncertainty	Are the effects uncertain?, Do they involve unique or unknown risk?	None
(6) Precedent	Will the action establish a precedent for future actions with significant effect; will the action represent a decision in principle about a future consideration?	None
(7) Cumulative impact	Is the action related to other actions with individually insignificant impact but cumulatively significant impacts?	None
(8) Properties on or eligible for the National Register of Historic Places; significant resources	Will the action adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places? Will the action cause the loss or destruction of significant scientific, cultural, or historical resources?	No “significant” impact
(9) Endangered or threatened species; critical habitat	Will the action affect a listed species or critical habitat?	None on listed species or critical habitat, or, if may affect, not likely to adversely affect
(10) Legal requirements for environmental protection	Will the action threaten a violation of Federal, State, or local law or requirement imposed for the protection of the environment?	No “significant” impact

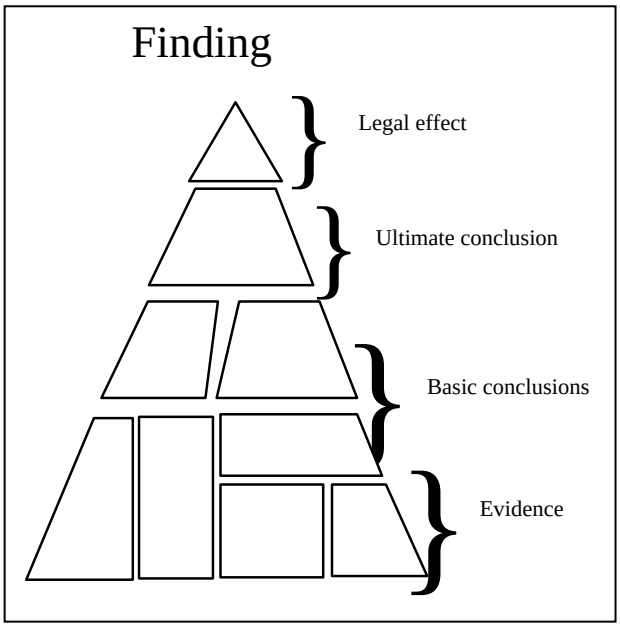
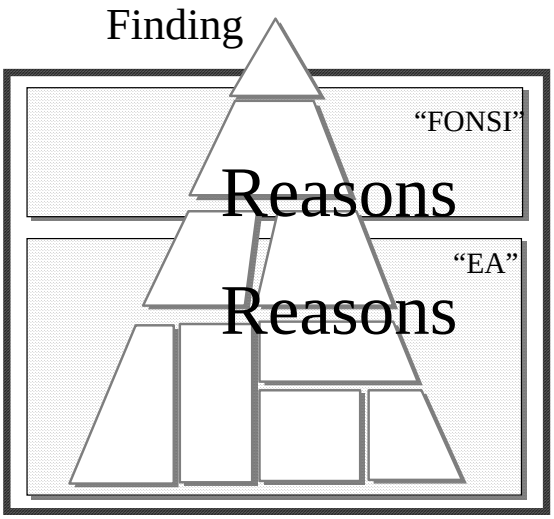
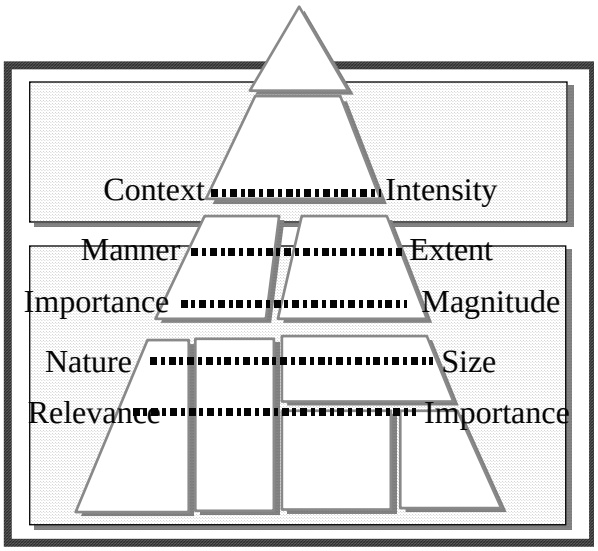
The basic anatomy of a finding: (1) Evidence supports (2) Basic conclusions, which in turn support (3) An ultimate conclusion, which in turn (4) Has a legal effect. A finding may consist of many tiers of intermediate findings, or "basic conclusions," before ultimate conclusions can be reached. Only a decision-level official can make ultimate conclusions.	
The concept of a finding has been split in its NEPA application. The EA typically contains the evidence and basic conclusions (along with the reasons that tie the evidence to the basic conclusions); the FONSI typically contains the ultimate conclusion and reasons that tie the basic conclusions to the ultimate conclusion. This has evolved because a FONSI must include the EA or a summary of it and note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.	

Figure 3

Synonyms….	

Application

The finding in environmental documents must be in writing as part of the administrative record, must be clear and concise (not left to inference), and must be couched in exact language. There is no room for creative writing. It is insufficient to find no *substantial* impact, or no *substantive* impact. It must be no *significant* impact.

The only staff authorized to reach an ultimate conclusion is a decision level staff who has been given authority under a statute or delegation. This is the Responsible Federal Official (RFO). The NRCS RFO is the Chief of NRCS, the State Conservationist, or other designated individual.

Background

A finding is a reasonable inference based on all the relevant evidence. We make findings because we need to resolve things. We need to make final decisions. We need decisions without perfect information. We live in a world where perfect information is never attainable. And so we have to make do with a finding — an assumption, a determination — a way to resolve facts in lieu of getting perfect information. These findings tell the public that NRCS is not acting arbitrarily.

Environmental documents are expected to be chock-full of findings: findings about the environmental effects of proposed actions, consistency of proposed actions with laws and regulations, or consistency with other actions.

Without the requirement for structure — conclusions based on reasons, reasons based on evidence — agencies would have no boundaries to their powers. Agencies would be unrestrained, and would be unchecked even if they acted arbitrarily.

Findings are really reasons. They reveal the reasoning process of agencies. That is why findings are so important and so powerful.

- Reasons are the antidote to arbitrariness and thus are a fundamental part of the decisionmaking process. Government works best when decisions are well thought out.

- Reasons encourage public confidence in the Government. The giving of reasons shows a measure of impartiality — a freedom from bias and arbitrariness — that gives legitimacy to Government action.
- Reasons are essential to the functioning of the appeals process. Reasons enable affected persons to know whether there are grounds to challenge a decision.
- Reasons reveal the basis for decisions, and thus inform both affected persons and appellate authorities.

610.51 Environmental Assessment (EA)

An environmental assessment (EA) is a concise public document for which a Federal agency is responsible and which serves to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact. The EA aids an agency's compliance with NEPA when no EIS is necessary, and facilitates the preparation of an EIS when one is necessary.

Requirements

Each of the following elements must be included in an EA.

Statement of Need

Include a brief discussion of the need for the proposal. This is a statement of the need to which NRCS is responding in proposing action. You may also include the purpose of the proposed action, but it is optional in an EA.

Alternatives Including the Proposed Action

Describe the proposed action and alternatives, including the no action alternative. Answer the questions: What would it mean not to meet the need? What are the expected direct, indirect, and cumulative impacts of not taking any action to address the identified need? Briefly describe the alternatives considered, in the same level of detail and in comparative format to allow the reader to note the differences. To avoid the necessity for a mitigated FONSI, include any mitigation measures needed to reduce or eliminate adverse environmental impacts.

Environmental Impacts

Briefly describe the environmental impacts of the proposed action and the alternatives. This is usually best done in a comparative table. List the impacts on the factors that will be used in making the decision between alternatives. List impacts from direct, indirect, and cumulative effects. Include information which will allow the reader to understand both the context and intensity of the impacts in order to determine significance.

List of Persons and Agencies Consulted

List the persons and agencies consulted during development of the environmental assessment, such as representatives of the U.S. Fish and Wildlife Service or the State Historic Preservation Office.

Helpful Tips

Length. CEQ advises that an EA should generally be no longer than 10 to 15 pages exclusive of appendices. Detailed information from other studies and documents should simply be referenced or summarized briefly.

Outcome of an EA. An EA always results in either the preparation of an EIS or a Finding of No Significant Impact (FONSI).

610.52 Finding of No Significant Impact (FONSI)

The Finding of No Significant Impact (FONSI) is a document prepared by the RFO briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared. It shall include the environmental assessment (EA) or a summary of it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Requirements

Include the following elements in every FONSI.

Evidence

The FONSI must either include the EA or a summary of it. It contains the evidence that supports the basic and ultimate conclusions. Whatever the ultimate conclusion, it will not stand up if there is not evidence in the EA to support it.

Basic Conclusions

These are the reasons why an action, not otherwise excluded, will not have a significant effect on the quality of the human environment. A determination of significance requires consideration of the context and intensity of the action so these should be discussed in any FONSI. The following ten factors should be considered:

1. Impacts that may be both beneficial and adverse, considered together;
2. Effects on public health or safety;
3. Effects on unique geographic characteristics;
4. Effects that may be highly controversial;
5. Effects are highly uncertain or involve unique or unknown risks;
6. The action may establish a precedent for future actions;
7. The action is related to other actions with individually insignificant but cumulatively significant impacts;
8. Effects on properties listed on the National Register of Historic Places;
9. Effects on Threatened and Endangered Species or their habitats; and
10. The action threatens a violation of Federal, State, or local law or requirements for the protection of the environment.

Ultimate Conclusion

Always include the following language in a FONSI: “I find that neither the proposed action nor any of the alternatives is a major Federal action significantly affecting the quality of the human environment.” This statement is the legal basis for not preparing an EIS. If one or more alternatives may be major federal actions significantly affecting the quality of the human environment, modify the language to reference only the alternative being selected.

If the RFO can conclude the action will have “no significant impact on the quality of the human environment” NRCS does not have to prepare an EIS.

Notice of the availability of the FONSI is to be published in the Federal Register and one or more newspapers serving the area of the proposed action (See GM 410.12(c)3).

610.53 Notice of Intent (NOI)

The Notice of Intent (NOI) is a public notice issued prior to the development of an Environmental Impact Statement.

Requirements

Include the following elements in a notice of intent to prepare an EIS.

Proposed Action

Describe the proposed action and possible alternatives.

Scoping Process

Describe whether, when, and where any scoping meeting will be held.

Identify which of the following questions the scoping will help to answer:

- What kinds of issues should be addressed;
- What types of “actions” are considered “related”;
- What alternatives should be considered;
- What impacts and associated research should be considered; and
- If no meeting is to be held, describe how information will be obtained.

Name and Address of Contact Person

Identify the program manager or other NRCS employee who can answer questions about the proposed action and the EIS.

Other Requirements

The notice must invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, and other interested persons. In addition to Federal Register publication, the notice must also be mailed to national organizations reasonably expected to be interested in the matter. Mail or e-mail notices to those who have requested them.

Inform the public how it can provide information relevant to the proposed action, alternatives, and effects. Explain where interested persons can get information or status reports on EIS and other elements of the NEPA process.

610.54 Environmental Impact Statement (EIS)

An Environmental Impact Statement (EIS) is a detailed written statement required by Sec. 102(2)(c) of NEPA whenever an action may have a significant effect on the quality of the human environment.

Requirements

Include the following elements in every EIS.

Cover Sheet [one page only]

1. Lead Agency (e.g., Natural Resources Conservation Service).
2. Cooperating Agencies (e.g., U.S. Army Corps of Engineers; Environmental Protection Agency; U.S. Fish and Wildlife Service; National Marine Fisheries Service; The Oneida Tribe; Oregon State Department of Natural Resources).
3. Title of Proposed Action (e.g., Implementing Improvements in the Emergency Watershed Program in [name the State or other jurisdiction where the action will be implemented]).
4. Name, Address, and Phone Number (of person at Agency who can supply further information).
5. ENVIRONMENTAL IMPACT STATEMENT (indicate the type of EIS, i.e., draft, final, draft supplemental, or final supplemental).
6. Abstract (a one-paragraph abstract of the EIS).
7. Date By Which Comments Must Be Received (at least 60 days after publication).

Summary

The summary must:

- Stress the major conclusions of the EIS;
- Identify areas of controversy (especially those raised by other agencies and the public);
- Identify the issues to be resolved, including choices among alternatives;
- Not exceed 15 pages; and
- Adequately and accurately summarize the EIS so it can stand on its own if circulated without the rest of the EIS.

Table of Contents

Make sure it’s accurate.

Purpose and Need for Action

State the purpose and need to which NRCS is responding in proposing the alternatives, including the proposed action. Answer the questions: Why is the action being proposed? What factors will be used in making the decision between alternatives, including those which may not be environmental?

Specify the underlying need to which NRCS is responding. Need is defined as the lack of something required, desired, or useful; a condition. Specify the purposes for action, the goal or end result to be attained by the proposed action and/or alternatives e.g., “The purpose of this action is to implement the Emergency Watershed Program in a manner which is environmentally and economically sound and enables prompt responses necessary to protect life and property from imminent loss as a result of a natural disaster.” Keep it brief, 1 to 2 pages maximum.

Alternatives

No Action – Answer the question: What would it mean not to meet the need?

Proposed Action – Presumably this is also the preferred alternative. It should also be identified as such. Answer the question: What action is proposed?

Alternative 1 – Answer the question: What other action would meet the same need?

Alternative 2 – Include all reasonable alternatives, including those not within NRCS authority, addressing the purpose and need. Identify all alternatives eliminated from detailed study and state why they were eliminated. Give the reasons.

Present the environmental impacts of the proposal and the alternatives in a comparable format so it is easy for the reader and decisionmaker to see the differences. Identify the preferred alternative. Include any mitigation measures that are not already included. When the alternatives are eliminated from detailed study, briefly say what they were and why they were eliminated. Describe each relevant alternative in substantial detail. Answer the question: What are the effects of the proposed action and alternative actions? Describe in a comparative format (Base this on the summary of analysis in the affected environment and environmental consequences sections.)

Affected Environment

Succinctly describe the environment of the area(s) to be affected or created by the alternatives. The description must be no longer than is necessary to understand the effects of the alternatives. Data and analysis should be consistent with importance of the impact with the less important information summarized, consolidated, or referenced.

Environmental Consequences

Sharply define the issues associated with each alternative and provide a clear basis for choice among options, rigorously exploring and objectively evaluating all reasonable alternatives.

This forms the scientific and environmental basis for the comparisons of alternatives in the previous section. It includes the following:

1. Environmental impact of the proposed action and alternatives;
2. Any adverse environmental effects which cannot be avoided if the proposal is implemented;
3. The relationship between local short-term uses of man's environment and the enhancement of long-term productivity; and
4. Any irreversible or irretrievable commitments of resources which would be involved in the proposed action if implemented.

Discuss:

1. Direct effects of the proposed action or alternatives and their significance;
2. Indirect effects and their significance, including cumulative effects;
3. Possible conflicts between the proposed action and objectives of Federal, regional, State, and local or Tribal land use plans, policies and controls for the area concerned;
4. Environmental effects of proposed action and alternatives (comparisons in "Alternative" section are based on these);
5. Energy requirements and conservation potential of various alternatives and mitigation measures;
6. Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;

7. Urban quality, historic and cultural resources, and the design of the built environment, including reuse and conservation potential of alternatives and mitigation measures;
8. Means to mitigate. If mitigation is not already included in the proposed action or alternatives, include it separately. Answer the question: Are there any ways to mitigate adverse effects?; and
9. How alternatives will or will not achieve the requirements of §101 and §102(1) of NEPA and other environmental laws and policies.

Monitoring

If monitoring is incorporated into the proposal, alternatives, or mitigation measures, this is a good place to discuss it. Answer the question: What monitoring will be conducted as part of the proposed action or alternative action and how will it be used?

List of Preparers

Names of persons primarily responsible for preparing the EIS and supporting analysis. Include information on who they work for (e.g., the Agency, university, or other organization & address) and their qualifications (expertise, experience, professional disciplines relevant to their contribution to the EIS).

List of Agencies, Organizations, and Persons

List all agencies, organizations, and persons to whom copies of the statement are sent.

Index

Appendices

Length Considerations

Text should be less than 150 pages. If more than 150 pages, include in the Affected Environment section the reasons why the EIS is of unusual scope or complexity. These sections must be less than 300 pages.

If document is…	**Then…**	**And…**
<100 pages	Circulate entire EIS	No additional explanation is needed
>100 pages and < 300 pages	Explain in EIS why it is of unusual scope or complexity and note that only the summary will automatically be circulated to all interested parties	Circulate only the summary and make the whole EIS available upon request

To shorten the EIS, ask yourself:

- Is the EIS concise? Is the EIS longer than the length set during the scoping process?
- Is the EIS no longer than is absolutely necessary to meet CEQ and NEPA requirements?
- Is the EIS length proportional to the potential environmental problems and project size?

The EIS is always followed by the preparation of a Record of Decision. No action may be taken for 30 days following the publication of the ROD.

610.55 Record of Decision (ROD)

The Record of Decision (ROD) is the administrative decision document that always follows the preparation of an EIS.

Requirements

Include the following elements in any ROD.

The Decision

State what the decision was. The decision is the choice between alternatives in the final EIS, plus any mitigation measures that were not part of the alternative selected, plus any monitoring and enforcement measures that were not part of the alternative selected.

Alternatives

Identify all alternatives considered by the agency in reaching its decision. These are all of the alternatives analyzed in detail in the final EIS.

Specify the alternative or alternatives that were considered to be environmentally preferable, and why the environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.

State whether the environmentally preferred alternative was selected; if not selected, why.

Mitigation

State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

State whether any practicable means to avoid or minimize environmental harm were identified in the EIS but were not adopted; include why each was not adopted.

Monitoring and Enforcement

State whether a monitoring and enforcement program is applicable for any mitigation, and, if so, summarize any programs that have been adopted.

Reasons

State the reasons for the choice between alternatives, discuss preferences among alternatives based on relevant factors, including economic and technical considerations and agency statutory missions. Identify and discuss all such factors, including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

Reasons checklist:

1. The reasons for the choice between alternatives (see paragraph above);
2. The reasons for specifying the environmentally preferred alternative;

3. The reasons for not choosing the environmentally preferred alternative (if it is not chosen); and
4. The reasons for not adopting practicable mitigation measures identified in the EIS (if not adopted).

SUBPART D – NEPA TOOLS FOR EFFICIENCY AND CLARITY

610.60 – Using Plain English

610.61 – Rules of Thumb

610.62 – Incorporating by Reference

610.63 – Tiering

610.64 – Supplementing an Existing EIS

610.65 – Adopting Another Agency's EIS

Part 610 – National Environmental Compliance

Subpart D – NEPA Tools for Efficiency and Clarity

610.60 Using Plain English

Write clearly, succinctly, and plainly, without using unnecessary jargon or technical terms.

Environmental documents are to be written in plain language and may use appropriate graphics to relate the analysis effects. Writing clearly, succinctly, and plainly, without using unnecessary jargon or technical terms is important so that decisionmakers and the public can readily understand them.

Requirements

Include relevant graphics, maps, and pictures in environmental documents to illustrate the concepts being discussed, but ensure they can be legibly reproduced, even if in black and white.

To the extent feasible, allow skilled editors to write, review, or edit environmental documents.

Helpful Tips

1. Coordinate with all team members to ensure clear communication and consistency in writing. For example, if the fisheries biologist and the hydrologist do not coordinate, the two might present conflicting analyses.
2. Place discussions in the proper place within a document. For example, impacts should be discussed in the environmental consequences section of an EIS, not in the description of the affected environment.
3. Carefully document sources of information. Each reference should include all the information the reader will need to locate it. Systematically check every reference cited to ensure it appears in the list of references.
4. Avoid vague and meaningless statements. For example, the statement, "Deer habitat would be heavily affected," is meaningless without further elaboration on how the habitat would be affected.
5. While a document is still being developed, save electronic or paper copies of all drafts. You never know when important information might be inadvertently deleted from a draft.
6. Maintain consistency in spelling, abbreviations, capitalization, compound words, and use of numbers.
7. Whenever possible, use short and simple words rather than multisyllable words.
8. Place subjects and verbs as close as possible to each other in a sentence and place adjectives and adverbs as close as possible to the words they modify. In the following sentence a misplaced modifier is printed after the second comma: “Overgrazing would also threaten streambank stability, especially where cattle water, by reducing vegetative root mass.” This statement could be better communicated as follows: “Overgrazing would also threaten streambank stability by reducing vegetative root mass, especially where cattle water.”
9. Keep your sentences and paragraphs short. Sentences of more than 20 – 30 words may be too confusing or have too many ideas for the reader to grasp. Long paragraphs are hard on the reader's eyes. For example, the sentence above might be made even clearer to individuals not familiar with livestock operations by breaking it into two sentences, such as: Cattle tend to overgraze areas next to the streams from which they frequently drink. This overgrazing reduces vegetative root mass and then threatens streambank stability."
10. Write so as not to attract the reader's attention to your writing style and divert it from your message. Unusual grammar or spelling, for example, may distract the reader.

11. Use strong, vigorous verbs in your writing. Write, “They decided to…” instead of, “They made a decision to….“ Write, "They monitored the condition of the vegetation" instead of, "Monitoring of vegetation condition was done.” Write, “There would be no disturbance of solitude…” instead of, “Disturbance of solitude would not occur.
12. Avoid vague verbs. Verbs such as identify, indicate, and develop have so many meanings that at times the reader can't tell the precise meaning. What precisely does "identify" mean in the following sentence? The lands along Bitter Creek have been identified for treatment. Have the lands been selected, proposed, or approved for treatment? Does the sentence mean that lands along Bitter Creek will be treated?
13. Avoid meaningless modifiers. Certain adjectives and adverbs have little if any meaning in many contexts: applicable, appropriate, available, basically, substantially, truly, typically, various, very, and many others. If you use one of these modifiers and think it might not be needed, read the sentence without the modifier. If the sentence makes sense, then the modifier is not needed.
14. Avoid ambiguous pronouns. Be careful when you use pronouns such as it, this, these, those, they, she, and he, so that the reader can readily tell what the pronoun refers to.
15. Use the words "will" and "shall" in reference to things for which a decision has already been made (e.g., standard operating procedures, etc.) and the words "would" and "could" in reference to things for which a decision has not been made (e.g., mitigation measures, etc.).
16. For a good reference on spelling, punctuation, capitalization, abbreviation, hyphenation, and the use of numbers, see the Government Printing Office (GPO) Style Manual.

610.61 Rules of Thumb

General Rules of Thumb

1. Avoid characterizing impacts as adverse or beneficial unless necessary to comply with a particular requirement. Some people may consider an impact to be beneficial, while others may consider that same impact to be adverse. Characterizing impacts can cause more controversy and create the impression NRCS is not objective in its assessment of impacts.
2. Avoid characterizing impacts as "insignificant." The determination of significance is made only in a FONSI.
3. Where a standard exists, a finding must be made. For example, because of the Endangered Species Act, NRCS must make a finding about impacts to any designated critical habitat that is present in the action area.
4. To limit the length of NEPA documents, include only information that is essential to making a reasoned choice among alternatives.
5. Always have a supporting record that documents the process followed and all data and factors considered during analysis. (See Section 610.39, "Administrative Record.")
6. The Responsible Federal Official is responsible for assuring the adequacy of NEPA documents and may not delegate this role.
7. To avoid the need for a mitigated FONSI, incorporate mitigation in the description of the proposed action and alternatives whenever possible.

Rules of Thumb Specific to EA-Level Analysis

1. CEQ and NRCS NEPA policy do not contemplate supplemental EAs. Avoid using this terms when possible.
2. An EA should be brief, generally 10 to 15 pages excluding appendices.
3. Although an EA may be prepared in only a few days, the typical timeframe consists of 60 – 180 days.
4. There’s no need to sign an EA. Every effect discussed in an EA should be accounted for in the FONSI.
5. Only the Responsible Federal Official can sign the FONSI.
6. Never characterize an impact as significant in an EA. This is a determination reserved for the decisionmaker in a FONSI and "significance" is an indicator that an EIS should be prepared.
7. The List of Agencies and Persons Consulted is for external contacts.

Rules of Thumb Specific to EIS-Level Analysis

1. The body of an EIS should normally not exceed 150 pages (excluding appendixes) or, in a complex case, not exceed 300 pages.
2. An EIS may be as short as 25 pages.
3. The typical time for preparing an EIS should be 9 – 18 months.
4. The minimum time for preparing an EIS should never be less than 7 months in order to satisfy "timing of agency action" requirements.
5. The EIS is an analytical document, not a decision document.
6. NRCS employees are placed on the List of Preparers.

610.62 Incorporating by Reference

Incorporation by reference is a technique used to avoid redundancies in description or analysis and to reduce the bulk of a NEPA document.

Requirements

- Material incorporated by reference shall be cited in the NEPA document.
- Briefly describe the content of the document being referenced.
- No material may be incorporated by reference unless it is reasonably available for inspection within the time allowed for comment.
- Proprietary data shall not be incorporated by reference.

Application

1. The EA or EIS must name documents that are incorporated by reference and should state where the public may review them or obtain copies of them. A full bibliographic citation of all materials incorporated by reference should be presented in the references cited section.
2. Relevant portions of the incorporated analysis must be referenced by page number and summarized in the EA or EIS to the extent needed to give the decisionmaker and the public an understanding of the significance of the referenced material to the current analysis. Incorporation by reference should not result in a loss of comprehension to the reader. The NEPA document must be able to stand alone; it must provide enough analysis to allow the reader to follow the analysis and arrive at a conclusion.
3. Material incorporated by reference must be reasonably available for inspection by potentially interested persons within the time allowed for comment. The manager responsible for preparing the EA or EIS must determine how to satisfy this "reasonably available" standard. If the document is not or cannot be made readily available, then it may not be incorporated by reference. Material based on proprietary data may not be incorporated by reference.

Background

Both EA’s and EIS’s may incorporate previous material by reference. Materials or analyses incorporated by reference are not limited to NEPA documents. Special technical or professional studies and analyses prepared by NRCS; by other Federal agencies; by State, local, or Tribal governments; or by private interests may be incorporated by reference.

610.63 Tiering

Tiering is the coverage of general matters in broader EIS's or EA's (such as national, State or areawide program or policy NEPA documents) with subsequent narrower documents or environmental analyses (such as regional or basinwide program NEPA documents or ultimately site-specific NEPA documents). In such cases, incorporate by reference the general discussions and concentrate solely on the issues specific to the statement subsequently prepared.

The purpose of tiering is to eliminate repetitive discussions of the same issues and avoid duplication of paperwork.

Requirements

NEPA does not require tiering. However, NRCS is strongly encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review. Whenever a broad EA or EIS has been prepared and a subsequent statement or assessment is then prepared on an action included within the entire program or policy (such as a site-specific action):

Summarize the issues discussed in the broader NEPA document

Incorporate discussions from the broader NEPA document by reference

Concentrate on the issues specific to the subsequent action

State where the earlier document is available or attach a copy of the document

Tiered documents must thoroughly analyze actions or impacts not already analyzed in the previous EA or EIS. Discuss similarities and differences in actions and document the reasons for concluding the impacts will be similar.

Application

Tiering is appropriate when the sequence of NEPA documents or analyses is as follows:

1. From a program, plan, or policy EA or EIS to a program, plan, or policy NEPA document or analysis of lesser scope or to a site-specific NEPA document or analysis.
2. From an EA or EIS on a broad action (such as an NRCS program, policy or areawide NEPA document) to a subsequent EA or EIS on an action included within the entire program, policy or areawide document (such as a site-specific action). Tiering in such cases is appropriate when it helps the lead agency to focus on issues which are ripe for a decision and exclude from consideration issues already decided or not yet ripe for a decision.
3. From an EA or EIS on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent NEPA document or analysis at a later stage (such as environmental mitigation).

Purpose and Need

Include a brief statement of the need for the proposal. This is the purpose and need to which NRCS is responding in proposing the action.

Actions Already Analyzed

If the proposed action is…	**And the impacts already analyzed are…**	**Then cite the other NEPA document and …**
The same as an action already analyzed and discussed in an existing NEPA document	The same as those discussed in the existing NEPA document	Indicate that the action is the same as one described in an existing NEPA document, that the impacts of the proposed action are expected to be the same as those discussed in the other document, and discuss the reasons for expecting the same impacts.
The same as an action already analyzed and discussed in an existing NEPA document	Similar to but NOT the same as impacts discussed in an existing NEPA document for the same action	Indicate that the action is the same as one described in an existing NEPA document, identify the impacts that were already discussed, and analyze and discuss differences in the impacts and reasons for the differences. Consider preparing an EA.
Similar to but NOT the same as an action discussed in an existing NEPA document	The same as those discussed in the existing NEPA document	Indicate how the proposed action is similar to but not the same as the action discussed in an existing NEPA document, state that the impacts are expected to be the same, and discuss the reasons for expecting the same impacts.
Similar to but NOT the same as an action discussed in an existing NEPA document	Similar to but NOT the same as impacts discussed in an existing NEPA document for the same action	Indicate how the proposed action is similar to but not the same as the action discussed in an existing NEPA document, identify the impacts that were already discussed and analyze and discuss differences in the impacts and the reasons for the differences. Consider preparing an EA.

Citation and Summary of Issues

Cite the document being tiered to by naming the document, identifying the authors, and the date it was issued. Attach the document or relevant pages. Briefly summarize the relevant issues discussed in the existing NEPA document.

Persons and Agencies Consulted

List the persons and agencies contacted or consulted about the proposed action so it is clear appropriate environmental reviews have occurred.

Certification

Sign and date the certification that the action is the same or similar to one or more actions described in the existing NEPA document and that the impacts of the proposed action are similar to those disclosed in the existing NEPA document.

610.64 Supplementing an Exiting EIS

An existing EIS may be supplemented to provide additional information, analysis, and material to an existing draft or final Environmental Impact Statement (EIS). The purpose of supplementing is to analyze actions, alternatives, or relevant information not analyzed in an existing draft or final EIS.

Requirements

Supplements shall be prepared to either draft or final EIS if:

- NRCS makes substantial changes in the proposed action that are relevant to environmental concerns;
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or
- Prepare, circulate, and file a supplement to an EIS in the same fashion (exclusive of scoping) as the draft or final statement.

Application

Supplementing Guidelines

1. Name the draft or final EIS being supplemented and say why the supplement is needed (e.g., significant new circumstances or information relevant to environmental impacts, or substantial changes to the original proposed action).
2. The ROD on the Supplement should define its relationship to the previous ROD.
3. If the public raises concerns that a supplemental EIS is needed and NRCS disagrees, document the reasons a supplement is not needed and make a finding of no significant change in actions, circumstances, or information.
4. When NRCS supplements a draft EIS, incorporate the supplement into the text of the final EIS.

Examples of Supplementing

The following are examples of circumstances under which supplementing an EIS may be appropriate:

- NRCS prepares an EIS to support a proposal to riprap an extensive length of streambank to address a need to reduce the severe streambank erosion concerns. However, the work does not progress immediately. Strong public support develops for using bioengineering instead of riprap. NRCS did consider bioengineering techniques as one of the alternatives in the original EIS, but at the time there was little information about the stability of those techniques. Now there is substantial new information about the effects of bioengineering techniques, as well as the effects of riprap on stream temperature and aquatic habitat. Rather than starting the NEPA process from the beginning, NRCS may supplement the previous EIS to incorporate the new information that has become available and document the changed circumstances.
- NRCS prepares a programmatic EIS to support wetland restoration efforts within a watershed and makes certain assumptions based on its understanding of the hydrology of wetlands and their connection to groundwater and surface water flows. New HGM models become available that show the assumptions are not correct. NRCS should supplement the existing EIS.

Background

There is no such thing as a "Supplemental EA," though there may be an EA that's revised based on comments received before a FONSI is issued.

610.65 Adopting Another Agency's EIS

Another agency's EIS may be adopted to improve efficiency and reduce expenditures of resources by utilizing existing EISs where applicable.

Requirements

Adoption procedures depend on whether NRCS was a formal cooperating agency for preparing the EIS.

If NRCS was…	**Then…**
a cooperating agency	the lead agency's analysis may be adopted without further analysis or public review so long as the final EIS and process followed meet NRCS standards
NOT a cooperating agency	treat the original draft or final EIS as a draft, recirculate it for public review and comment, and prepare a new final EIS

Note: For NRCS to be a cooperating agency, an MOU must have been signed and NRCS should have been named as a cooperating agency in the NOI, draft EIS, and final EIS.

NRCS must assume full responsibility for information contained in environmental documents it adopts and be able to make referenced material available to the public. NRCS must also prepare its own ROD based on the analysis in the EIS.

Application

Part or all of another agency's environmental document may be used for NEPA compliance if both of the following criteria are met:

- The document meets CEQ and NRCS standards.
- NRCS has independently reviewed the document and concluded that it has addressed NRCS concerns and suggestions. This review must be documented in the official files or in the decision document.

Part 610 – National Environmental Compliance

SUBPART E – NEPA EXHIBITS

610.70 – Environmental Evaluation Worksheet

610.71 – Evaluation Procedures

610.72 – Categorical Exclusions

610.73 – Sample "Notice of Intent" (Reserved)

610.74 – Technical Note on "Analyzing Effects of Conservation Practices"

610.75 – Technical Note on "Considering the Cumulative Effects of NRCS Activities" (Reserved)

610.70 Environmental Evaluation Worksheet

U.S. Department of Agriculture NRCS-CPA-52 Natural Resources Conservation Service 10-03 **Environmental Evaluation Worksheet**	**A.** Client:	
	B. Plan ID No:	
	C. CMU/Fields:	
	D. Client's objective	**E.** Purpose and need for action

F. Resource Considerations	**H.** Alternatives and Effects (Attach additional pages as necessary)			
	Proposed Action	No Action	Alt 1	Alt 2
SOIL				
Erosion				
Condition				
Deposition				
WATER				
Quantity				
Quality				
AIR				
Quality				
Condition				
PLANT				
Suitability				
Condition				
Management				
ANIMAL				
Habitat				
Management				

G. Economic and Social Considerations	**I.** Effects			
	Proposed Action	No Action	Alt 1	Alt 2
Land use				
Capital				
Labor				
Management level				
Profitability				
Risk				

J. Special Environmental Concerns (See "Evaluation Procedure Guide Sheets")	**K**. Effects			
	Proposed Action	No Action	Alt 1	Alt 2
Clean Water Act/Waters of the U.S .				
*Coastal Zone Management Areas				
Coral Reefs				
*Cultural Resources				
*Endangered and Threatened Species				
Environmental Justice				
*Essential Fish Habitat				
*Fish and Wildlife Coordination				
Floodplain Management				
Invasive Species				
Migratory Birds				
Natural Areas				
Prime and Unique Farmlands				
Riparian Area				
Scenic Beauty				
Wetlands				
*Wild and Scenic Rivers				

* These items may require consultation or coordination between the lead agency/RFO and another governmental unit.

L. Easements, permissions, or permits. _____

M. Mitigation _____

_____

N. The information recorded above is based on the best available information:

_____ _____ _____
Signature Title Date

O. Agencies, persons, and references consulted _____

P. Findings. Indicate which of the alternatives from Section H is the preferred alternative. _____

I have considered the effects of this action and the alternatives on the Resource, Economic, and Social Considerations; the Special Environmental Concerns; and the extraordinary circumstances criteria in the instructions for form NRCS-CPA-52. I find, for the reasons stated in (Q) below, that the selected alternative:

_____ is **not a federal action**. No additional analysis is required.

_____ is **categorically excluded** from further environmental analysis and there are no extraordinary circumstances. No additional analysis is required.

_____ has been **sufficiently analyzed** in an existing NRCS environmental document. No additional analysis is required.

_____ may require preparation of an EA or EIS. The action will be referred to the State Office.

Q. Rationale supporting the finding_____

_____

_____

R. _____ _____ _____
Signature Title Date

Instructions for Completing Form NRCS-CPA-52, "Environmental Evaluation Worksheet"

COMPLETING THE FORM

The form NRCS-CPA-52 is the instrument used to summarize the effects of conservation practices and systems. It also provides summary documentation of the environmental evaluation (EE) of the planned actions. The EE is “a concurrent part of the planning process in which the potential long-term and short-term impacts of an action on people, their physical surroundings, and nature are evaluated and alternative actions explored” (NPPH-Amendment 3 January 2000). The EE applies to all assistance provided by NRCS (GM190 Part 410.5).

The following are instructions for completing form NRCS-CPA-52:

A Record the client's name.

B Enter the conservation plan identification number.

C Enter the conservation management unit to which this evaluation applies. This may be done by field, pasture, tract, landuse (i.e. cropland, rangeland, woodland etc.), by resource area (i.e. riparian corridor or wetland area) or any other suitable geographic division.

D Briefly summarize the client’s objective(s).

E Briefly identify the purpose and need for action. Reference the resource concern(s) to be addressed.

F, G Use the provided resource, economic, and social considerations or list considerations identified during scoping or by any existing areawide, watershed or other resource document appropriate for the planning area. The list of considerations may be expanded by listing subcategories, such as wind erosion, sheet erosion, gully erosion etc. Refer to the applicable quality criteria.

H, I Briefly summarize the practice/system of practices being proposed, as well as any alternatives being considered. Document the effects of the proposed action for the considerations listed in E and F. Reference applicable quality criteria, information in the CPPE, and quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects which may be individually minor but cumulatively significant at a larger scale or over an extended time period. At the request of the client, additional alternatives may be developed and their effects evaluated. This may be done in order to more fully inform the client about the decision to be made. In these cases, briefly describe alternatives to the proposed action, including the “no action” alternative. The no action alternative is the predicted future condition if no action is taken. Clearly define the differences between proposed action, no action, and the other alternatives if applicable.

J, K See the Special Environmental Concerns Evaluation Procedure Guide Sheets in Appendix 610.70 of the National Environmental Compliance Handbook. Completion of Help Sheets is not required, but may provide additional documentation that the appropriate processes have been followed. Complete section J by documenting the effects of each alternative on the special environmental concerns listed in I. Quantify effects whenever possible. Consider both long-term and short-term effects. Consider any effects, which may be individually minor but cumulatively significant at a larger scale or over an extended time period.

L List any necessary easements, permissions, or permits (i.e. 404, ESA section 10, State or county permits or requirements).

M Describe mitigation to be applied that will offset any adverse impacts. Attach documentation from other agencies.

N The individual responsible for completing the CPA-52 must sign and date the Form indicating they have used the best available information. This signature is particularly important when a TSP is completing the CPA-52 or when NRCS is providing technical assistance on behalf of another agency.

O Document contact and communications with USFWS, NOAA Fisheries, COE, EPA, NRCS State Biologist, State Environmental Agencies, or any others consulted. Include public participation activities, if applicable.

P Check the applicable finding being made.

Q Explain the reasons for making the finding identified in P. Cite any references, analysis, data, or documents which support the finding. Add additional pages as necessary. To find that an action has been sufficiently analyzed in an existing NRCS environmental document, the document must cover the area in which the action is being implemented.

R NRCS responsible official must sign and date for NRCS actions. The FSA or other federal agency responsible official must sign and date for FSA or other agency funded activities.

CRITERIA FOR IDENTIFYING EXTRAORDINARY CIRCUMSTANCES

Extraordinary circumstances usually involve impacts on environmental concerns such as wetlands, floodplains, or cultural resources. The circumstances that may lead to a determination of extraordinary circumstances are the same factors used to make determinations of significance and include

1. Impacts that may be both beneficial and adverse and that significantly affect the quality of the human environment.
2. The degree to which the proposed action affects public health or safety.

3. Unique characteristics of the area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be controversial.
5. The degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.
7. Individually insignificant but cumulatively significant activities that have not been analyzed on a broader level, such as on a program-wide or priority area basis.
8. Adverse effects on areas listed in or eligible for listing in the National Register of Historic Places, or that may result in loss or destruction of significant scientific, cultural, or historical resources.
9. Adverse effects on an endangered or threatened species or its designated critical habitat.
10. Circumstances threatening the violation of Federal, State or local law or requirements imposed for the protection of the environment.

If one or more extraordinary circumstances are found to apply to the proposed action, determine whether the proposal can be modified to mitigate the adverse effects and prevent the extraordinary circumstances. If this can be done and the client agrees to the change, then the proposed action may be modified and categorically excluded. If the proposed action cannot be modified or the client refuses to accept a proposed change, prepare an EA or EIS as indicated above.

If none of the extraordinary circumstances are determined to apply to the proposed action (or modified action), then it may be categorically excluded. Document the rationale for the determination in Q.

610.71 Evaluation Procedures

CLEAN WATER ACT AND WATERS OF THE U.S.

STEP 1. Will the planned action or activity involve or likely result in, the discharge of dredged or fill material or other pollutant into “waters of the United States,” or is the project in proximately of a water that has been listed by the state as “impaired” under Section 303(d)?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No,” document this on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes,” go to step 2.
c. If your answer is "Unknown,” meaning that you do not know if the action will involve the discharge of dredged or fill material or other pollutant into waters of the United States, or if the project is in proximately to a Section 303(d) water, the client should contact the appropriate Corps or state water quality office for a determination. Repeat step 1.

STEP 2. Has the client obtained a Section 404 and/or a NPDES (Section 402) permit or a determination of an exemption?

YES [ ] NO [ ] UNKNOWN [ ]

a. If your answer is "Yes,” document this on form NRCS-CPA-52 or equivalent and proceed with planning. The final plan should not be contrary to the provisions of the permit authorization or exemption. Changes made during the planning process that may impact the applicability of the permit, such as amount or location of fills or discharges of pollutants should be coordinated with the Corps.
b. If your answer is "no,” determine if the client has applied for a permit. If a permit has been applied for, document this, and continue the planning process in consultation with the client and the regulatory agencies. If a permit has not been applied for, the client should apply. Continue the planning process in consultation with the client and the regulatory agencies. The permit authorization should reflect the final plan and documentation.
c. If your answer is "Unknown,” meaning that you do not know if authorization has been obtained or applied for, consult the client and repeat step 2.

COASTAL ZONE MANAGEMENT AREAS

STEP 1. Is the proposed action or activity in an officially designated "Coastal Zone Management Area"?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning coastal zones. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult Section II of the FOTG for a listing of Coastal Zone Management Areas and repeat step 1.

STEP 2. Is the proposed action or activity "consistent" with the goals and objectives of the State's Coastal Zone Management Plan?

NO [ ] YES [ ]

a. If your answer is "No," go to step 3.
b. If your answer is "Yes," no additional evaluation is needed concerning coastal zones. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.

STEP 3. Can the proposed action or activity be modified so it will be consistent with the State's Coastal Zone Management Plan?

NO [ ] YES [ ]

a. If your answer is "No," document and describe the inconsistency on the NRCS-CPA-52 or equivalent and go to step 4.
b. If your answer is "Yes," modify the action or activity and go to Step 2 and repeat.

STEP 4. Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

NO [ ] YES [ ]

a. If your answer is "No," go to step 5.
b. If your answer is "Yes," recommend that the funding or controlling agency consult with the State Coastal Zone Management Office before the action is implemented. Proceed with planning.

STEP 5. Is NRCS providing financial assistance or otherwise controlling the action?

NO [ ] YES [ ]

a. If your answer is "No," an alternative conservation system that does not result in a violation of enforceable policies of a State's Coastal Zone Management Plan must be identified as the proposed action or NRCS must discontinue assistance. If assistance is terminated, indicate the circumstances on the NRCS-CPA-52 or equivalent or contact the NRCS State office for assistance.
b. If your answer is "Yes," the NRCS District Conservationist or an NRCS State office employee must consult with the State's Coastal Zone Management Office before the action is implemented. NRCS shall not provide assistance if the proposed action or activity would result in a violation of enforceable policies of a State's Coastal Zone Management Plan. A consistency determination must be provided to the State agency no later than 90 days before final approval of the activity. When consultation is complete,

document the agreements reached, and reference them or attach them to the NRCS-CPA-52 or equivalent.

CORAL REEFS

STEP 1. Are coral reefs or associated water bodies (e.g. embayment areas) present in or near the planning area?

No [ ] Yes [ ]

a. If your answer is "No," additional evaluation is not needed concerning coral reefs. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.

STEP 2. Is there a potential for the proposed action or alternative to degrade the conditions of the coral reef ecosystem?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning coral reefs. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 3.

STEP 3. Can the action or alternative be modified to reduce or avoid degradation to the coral reef ecosystem?

NO [ ] YES [ ]

a. If your answer is "No," identify the component(s) of the system which will cause the potential impacts. Document the effects, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning. If degradation to the reefs is unavoidable, provide landowner/landuser with information regarding the current status of US coral reefs and the documented causes of degradation (including sedimentation and nutrient runoff), and the beneficial aspects of maintaining coral reefs. The significance of the impact shall be determined when all effects are documented and analyzed for direct, indirect, and cumulative effects.
b. If your answer is "Yes," modify the action or alternative and repeat step 2.

CULTURAL RESOURCES

STEP 1. Is the proposed action or activity (i.e. "undertaking") funded in whole or part or under the control of NRCS? To make this determination, answer the following:

Is it carried out by or on behalf of NRCS?

YES[ ] NO [ ] UNKNOWN [ ]

Is it carried out with NRCS financial assistance?

YES [ ] NO [ ] UNKNOWN [ ]

Does it require Federal permit license, or approval with NRCS as the lead agency?

YES [ ] NO [ ] UNKNOWN [ ]

Is it a joint project with another Federal or state entity with NRCS functioning as lead agency?

YES [ ] NO [ ] UNKNOWN [ ]

Does the undertaking have the potential to affect cultural resources?

YES [ ] NO [ ] UNKNOWN [ ]

a. If all responses are “No,” document this decision and proceed with planning.
b. If any responses are “Yes,” go to step 2.
c. If “Unknown,” consult with your State Cultural Resources Coordinator or Specialist (CRC/CRS) to determine if this is an action/undertaking that requires review and then complete Step 1.

STEP 2. Has the Area of Potential Effect (APE) been determined? (Include all areas to be altered or affected: access and haul roads, equipment lots, borrow areas, surface grading areas, locations for disposition of sediment, streambank stabilization areas, building removal and relocation sites, disposition of removed concrete, as well as the area of the actual conservation practice. In some cases, larger areas of potential effect must be considered, such as when a practice could cause audible, visual or atmospheric effects on cultural resources that are outside of the area of direct effects.)

NO [ ] YES [ ] UNKNOWN [ ]

a. If “No” or “Unknown,” consult with your CRC/CRS to determine the area of potential effect.
b. If “Yes,” go to step 3.

STEP 3. Have the appropriate National, State and local registers and lists been checked to determine whether any known cultural or historic resources are within or in close proximity to the proposed APE/project area?

National Register of Historic Places?

YES [ ] NO[ ] UNKNOWN [ ]

State Register of Historic Places?

YES [ ] NO [ ] UNKNOWN [ ]

The SHPO's statewide inventory/data base?

YES [ ] NO [ ] UNKNOWN [ ]

Local/county historical society and/or commission lists?

YES [ ] NO [ ] UNKNOWN [ ]

a. If any responses are “No” or “Unknown,” work with your CRC/CRS to be sure these files are checked (sometimes the SHPO will let only the CRS or CRC review the files).
b. If all responses are “Yes,” document and go to step 4.

STEP 4. Has consultation with appropriate and interested parties been completed and documented?

State Historic Preservation Officer?

YES [ ] NO[ ] UNKNOWN [ ]

Tribal Historic Preservation Officer(s)?

YES [ ] NO[ ] UNKNOWN [ ]

Other Federally recognized tribes with traditional interest in the area?

YES [ ] NO[ ] UNKNOWN [ ]

Local Governments, historical societies & commissions?

YES [ ] NO[ ] UNKNOWN [ ]

All interested parties who have requested consultation?

YES [ ] NO[ ] UNKNOWN [ ]

a. If any responses are “No” or “Unknown,” continue consultation or ensure that consultation has been completed (by the appropriate NRCS official) with each interested party prior to implementation or installation.
b. If all responses are “Yes,” document each consultation and proceed with the project.

ENDANGERED AND THREATENED SPECIES

STEP 1. Do endangered or threatened species, designated critical habitat, or species that have been proposed for listing as endangered or threatened exist, or could they exist, in the area of the proposed action or activity or the area of potential effects?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning endangered and threatened species. Document the finding, including the basis for the determination, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult Section II of the FOTG for a listing of endangered and threatened species and repeat step 1. If you are still uncertain about the status of endangered or threatened species in the planning area, consult your State Biologist or contact the FWS/NOAA Fisheries, as appropriate.

STEP 2. What are the short and long-term impacts of the proposed action or activity on the endangered or threatened species, designated critical habitat or species or habitat proposed for listing? More than one may apply.

NO EFFECT [ ]

MAY AFFECT BUT NOT LIKELY TO ADVERSELY AFFECT (e.g., beneficially affect) [ ]

MAY ADVERSELY AFFECT [ ]

EFFECTS ARE UNKNOWN [ ]

a. If your answer is "No effect," additional evaluation is not needed concerning endangered and threatened species. Document the finding, including the reasons for your determination on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your only answer is "May affect but not likely to adversely affect" document the finding, including the reasons, on form NRCS-CPA-52 or equivalent. Go to step 3.
c. If your answer includes "May adversely affect," modify the action if possible to avoid adverse effects. If the action can be modified, repeat step 2. If the action can not be modified, go to step 3.
d. If your answer is "Effects are unknown," contact the NRCS State Biologist for assistance and repeat step 2.

STEP 3. Will a Federal agency other then NRCS provide funding or otherwise control implementation of the action?

NO [ ] YES [ ]

a. If your answer is "No," go to step 4.
b. If your answer is "Yes," ensure that potential adverse effects are avoided to the extent feasible, document and describe the effects on the NRCS-CPA-52 or equivalent. 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) or conference (if proposed species or habitat are likely to be adversely affected) with the FWS/NOAA Fisheries, as appropriate. Inform the client and continue planning.

STEP 4. Is NRCS providing financial assistance or otherwise controlling the action?

NO [ ] YES [ ]

a. If your answer is "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 to threatened or endangered species, designated critical habitat or species or habitat proposed for listing, continue with planning but ensure the client is aware of the effects.

b. If your answer is "No," and your answer in step 2 was "May adversely affect," 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 species or their habitat. Further NRCS assistance will be provided only if one of the alternative conservation is selected that avoids adverse effects or the landowner obtains a "take" permit from the FWS/NOAA Fisheries, as appropriate.

c. If your answer is "Yes," and your answer in step 2 was "May affect but not likely to adversely affect" and the effects are to species or habitat that has been **proposed for listing**, continue with planning. Neither consultation nor conferencing is required.

d. If your answer is "Yes," and your answer in step 2 was either "May affect but not likely to adversely affect" or "May adversely affect," inform the client that the NRCS District Conservationist or the NRCS State Biologist must consult or conference with FWS/NOAA Fisheries, 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 or equivalent.

ENVIRONMENTAL JUSTICE

STEP 1. In the area affected by the NRCS action, are there low-income populations, minority populations or Indian tribes?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning environmental justice. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If yes, then go to Step 2.

STEP 2. Is the proposed action the type that might have a disproportionately adverse environmental or human health effect on any population?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning environmental justice. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If yes, then go to step 3.

STEP 3. Initiate community outreach to affected and interested parties that are categorized as low-income, minority, or as Indian Tribes. The purpose of this is to encourage participation and input on the proposed program or activity and any alternatives or mitigating options. Participation of these populations may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historic, or other potential barriers to effective participation. Go to step 4.

STEP 4. Considering the results of the outreach initiative together with other information gathered for the decision making process, will the proposed activity have a disproportionately high and adverse effect on the human health or the environment of minority, low-income, or Indian populations?

NO [ ] YES [ ]

a. If "No," then go to Step 6.
b. If "Yes," then go to Step 5.

STEP 5. Consider the feasibility and appropriateness of alternatives or mitigating options and their effects.

STEP 6. Notify interested and affected parties of agency decision.

ESSENTIAL FISH HABITAT

STEP 1. Is the proposed action or activity in an area designated as Essential Fish Habitat (EFH) or in an area where effects could indirectly or cumulatively affect EFH?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning essential fish habitat. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult section II of the FOTG for a list or the location of essential fish habitat areas and repeat step 1.

STEP 2. Will the proposed action or activity result in short-term or long-term disruptions or alterations (i.e., may adversely affect) of essential fish habitat?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning essential fish habitat. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 3.

STEP 3. Can the proposed action or activity be modified to avoid the potential adverse effect?

NO [ ] YES [ ]

a. If your answer is "No," document the effects, including the reasons, on form NRCS-CPA-52 or equivalent. Go to step 4.
b. If your answer is "Yes," modify the action or activity and repeat step 2.

STEP 4. Is NRCS providing financial assistance or otherwise controlling the action?

NO [ ] YES [ ]

a. If your answer is "No," go to step 5.
b. If your answer is "Yes," inform the client the NRCS District Conservationist or NRCS State Biologist must consult with NOAA Fisheries before further action or activity can proceed. When consultation is complete, document on the NRCS-CPA-52 the agreements reached, and reference or attach them.

STEP 5. Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

NO [ ] YES [ ]

a. If your answer is "No," an alternative conservation system that avoids the adverse effect must be identified as the proposed action or NRCS must discontinue assistance. If assistance is terminated, indicate the circumstances in the Remarks section of the NRCS-CPA-52 or equivalent or contact the NRCS State office for assistance.
b. If your answer is "Yes," document on the NRCS-CPA-52 that the lead Federal agency should consult with NOAA Fisheries before the action is implemented. Inform the client and proceed with planning.

FISH AND WILDLIFE COORDINATION

STEP 1. Does the action or activity propose or authorize any stream or other body of water to be impounded, diverted, the channel deepened, controlled or otherwise modified for any purpose?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning Fish and Wildlife Coordination. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.

STEP 2. Is the proposed action to impound water with a surface area less than 10 acres?

NO [ ] YES [ ]

a. If your answer is "No," go to step 3.
b. If your answer is "Yes," document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.

STEP 3. Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

NO [ ] YES [ ]

a. If your answer is "No," the NRCS District Conservationist or NRCS State office employee must initiate consultation with the FWS and the State agency that administers wildlife resources. NRCS shall give full consideration to the recommendations and those recommendations shall be referenced in or attached to the NRCS-CPA-52 and made an integral part of the plan.
b. If your answer is "Yes," indicate on the NRCS-CPA-52 that consultation with the FWS and the State agency that administers wildlife resources may be required before the action is implemented. Proceed with planning.

FLOODPLAIN MANAGEMENT

This determination criterion is intended for non-project technical and financial assistance only. For project assistance criteria, consult (GM-190, Part 410.25(c) 2).

STEP 1. Is a base (100–year) floodplain present in or near the planning area?

N0 [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning floodplain areas. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," review the FEMA flood insurance rate maps or make an onsite determination and repeat step 1.

STEP 2. Does the floodplain have an agricultural area that has been used to produce food, fiber, feed, forage or oilseed for at least 3 of the last 5 years before the request for assistance?

NO [ ] YES [ ]

a. If your answer is "No," the land user is not eligible for technical and/or financial assistance from the NRCS for the area of the floodplain.
b. If your answer is "Yes," document the crop history and go to step 3.

STEP 3. Is the floodplain's agricultural production in accordance with official state or designated area water quality plans?

NO [ ] YES [ ]

a. If your answer is "No," the land user is not eligible for technical and/or financial assistance from the NRCS for the area of the floodplain
b. If your answer is "Yes," document the finding, including the reasons. The land user is eligible to receive technical and/or financial assistance. Go to step 4.

STEP 4. Will the proposed action or alternative likely result in an adverse effect, incompatible development, or an increased flood hazard?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning floodplain areas. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," The District Conservationist shall determine and inform the land user of alternative methods of achieving the objective, as well as alternative locations outside of the base floodplain. If the action involves building a structure, inform the participant of the hazards of locating actions in the floodplain. Document the effects of all alternatives on form NRCS-CPA-52 or equivalent and go to step 5.

STEP 5. Is one or more of the alternative methods or locations practical?

NO [ ] YES [ ]

a. If your answer is "No," the District Conservationist will determine whether to continue to providing assistance. Go to step 6.

b. If your answer is "Yes" and the landuser agrees to implement the alternative, no additional evaluation is needed concerning floodplain areas. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning. If otherwise, go to step 6.

STEP 6. Will assistance continue to be provided?

NO [ ] YES [ ]

a. If your answer is "No," written notification of the decision to terminate assistance shall be provided to the land user and the local conservation district. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent.
b. If your answer is "Yes," the proposed action should be designed or modified to minimize the adverse effects to the extent possible. A written public notice shall be locally circulated explaining why the action is proposed to be located in the base flood plain. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.

INVASIVE SPECIES

STEP 1. Is the proposed action or activity in an area where invasive species are known to occur or where risk of an invasion exists?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning invasive species. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult Section II of the FOTG for a listing of invasive species in the area and/or the appropriate technical specialist to determine the potential for introduction of new invasive species into the area.

STEP 2. Conduct an inventory of the invasive species and identify areas at risk for future invasions. Delineate these areas on the conservation plan map. Have all appropriate tools, techniques, management strategies, and risks for invasive species prevention, control, and management been considered in the planning process?

NO [ ] YES[ ]

a. If your answer is "No," you must consider and include all appropriate factors relating to the existing and potential invasive species for the planning area and repeat step 2.
b. If your answer is "Yes," document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and go to step 3.

STEP 3. Is the proposed action or alternative consistent with the Invasive Species Management Plan and in cooperation with the stakeholders?

NO [ ] YES[ ]

a. If your answer is "No," modify the action and repeat step 3.
b. If your answer is "Yes," document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.

MIGRATORY BIRDS

STEP 1. Will the proposed action or activity result in a migratory bird or any part, nest or egg of the bird, being pursued, hunted, taken, captured, or killed, or will it result in an attempt to take, capture kill or possessed a migratory bird or any part, nest or egg?

NO [ ] YES [ ]

a. If your answer is “No,” additional evaluation is not needed concerning migratory birds. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes,” go to step 2.

STEP 2. Can the proposed action be modified to avoid the effects?

NO [ ] YES [ ]

a. If your answer is "No,” document the effects, including the reasons, on form NRCS-CPA-52 or equivalent. After discussing the situation with the client, indicate on the NRCS-CPA-52 which of the following options will be pursued:

- the client will obtain a permit from FWS before the action is implemented; or
- an alternative conservation system will be implemented that avoids the effect; or
- NRCS will terminate assistance. If assistance is terminated, indicate the circumstances on the NRCS-CPA-52 or equivalent or contact the NRCS State office for assistance.

b. If your answer is "Yes,” modify the alternative and repeat step 1.

NATURAL AREAS

STEP 1. Are natural areas present in or near the planning area?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional documentation is not needed concerning natural areas. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult section II of the FOTG for a list or the location of designated natural areas and repeat step 1.

STEP 2. Will the land user's proposed action or any alternative activity affect the natural area?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning natural areas. Document the finding, including the reasons on form NRCS-CPA-52, or equivalent, and proceed with planning.
b. If your answer is yes, you must inform the land users about the effects of the proposed action or alternatives on natural areas. You must also encourage the land user to consult with concerned parties to arrive at a mutually satisfactory alternative [GM 190, part 410.23(c) 4]. Document the effects of the alternatives and communications with the land user on form NRCS-CPA-52, or equivalent, and proceed with planning.

PRIME & UNIQUE FARMLANDS

STEP 1. Are prime or unique farmlands or farmlands of statewide or local importance present in or near the area that will be affected by the proposed action or activity?

NO [ ] YES [ ] UNKNOWN [ ]

If your answer is "No," additional evaluation is not needed concerning prime and unique farmlands. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.

a. If your answer is "Yes," go to step 2.
b. If your answer is "Unknown," consult section II of the FOTG and repeat step 1. If you are still uncertain about the effects of prime and unique farmlands in your planning area, consult your State Environmental Coordinator.

STEP 2. Using the criteria found in (658.5), does the proposed action convert farmland to a Nonagricultural use?

Note: Conversion does not include construction of on-farm structures necessary for farm operations.

NO [ ] YES[ ]

a. If your answer is "No," additional evaluation is not needed concerning prime and unique farmlands. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is Yes, go to step 3.

STEP 3. Can the proposed action be modified to avoid the adverse effect or conversion?

NO [ ] YES [ ]

a. If your answer is "No," document the adverse effects on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "YES," repeat Step 2.

RIPARIAN AREA

STEP 1. Is a riparian area present in or near the planning area?

NO [ ] YES [ ]

a. If your answer is "No," additional evaluation is not needed concerning Riparian Areas. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.

STEP 2. Do the land user's objectives conflict with the conservation needs of the riparian area?

NO [ ] YES [ ]

a. If your answer is "No," go to step 3.
b. If your answer is "Yes," alternatives must be developed which resolve the conflicts. Repeat step 2

STEP 3. Does the planned action or alternatives maintain or improve water quality and quantity benefits provided by the riparian area?

NO [ ] YES [ ]

a. If your answer is "No," alternatives must be developed which maintain or improve water quality and quantity benefits. Repeat step 3.
b. If your answer is "Yes," no additional evaluation is needed concerning Riparian Areas. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.

SCENIC BEAUTY

STEP 1. In the planning area are there unique or high-quality scenic landscapes?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning scenic beauty. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult Section II of the FOTG for a listing of identified as areas of scenic beauty and repeat step 1.

STEP 2. Will the proposed action or activity affect the scenic quality of the landscape?

NO [ ] YES[ ]

a. If your answer is "No," No additional evaluation is needed concerning scenic beauty. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 3.

STEP 3. Can the proposed action be modified to avoid the adverse effect on the scenic quality of the landscape?

YES[ ] NO [ ]

a. If your answer is "Yes," modify the alternative and repeat step 2.
b. If your answer is "No," document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.

WETLANDS

STEP 1. Are wetlands present in or near the planning area?

NO [ ] YES [ ]

a. If your answer is "No," document this on the NRCS Environmental Effects Worksheet (NRCS-CPA-52). (If the area could qualify as an "other water of the U.S." such as lakes, streams, channels, or other impoundment or conveyances a CWA Section 404 permit may be required from the Corps of Engineers. Refer to the Waters of the U.S./Clean Water Act Help Sheet).
b. If your answer is "Yes," document and go to step 2.

STEP 2. Will the proposed activity impact any wetland areas?

NO [ ] YES [ ]

a. If your answer is "No," document this on the NRCS Environmental Effects Worksheet (NRCS-CPA-52) and proceed with planning.
b. If your answer is "Yes," describe (on the CPA -52) the effects of the proposed activity on the wetland area. Proceed to Step 3.

STEP 3. Do practicable alternatives exist which either enhance wetland functions and values, or avoid or minimize harm to wetlands?

NO [ ] YES [ ]

a. If your answer is "No," meaning that the findings of the environmental evaluation show that no practicable alternatives exist, NRCS may provide technical assistance which allows for the conversion of the wetland and develop a mitigation plan for compensation of the functions and values that were lost through the conversion activity. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands.
b. If your answer is "Yes" meaning that a practicable alternative exists, inform the client, and advise them of the available options and the benefits of those options. Proceed to Step 4.

STEP 4. Does the client wish to pursue an identified practicable alternative that enhances wetland functions and values, or avoids or minimizes harm to wetlands?

NO [ ] YES [ ]

a. If the answer is "No" meaning the client chooses to pursue an activity other than an identified practicable alternative, advise the client regarding eligibility criteria under the FSA as amended, and that the NRCS may assist with the development of an acceptable associated mitigation plan, but can not offer further financial or technical assistance for the wetland conversion activity itself. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands.
b. If the answer is "yes," meaning the client selects one of the alternative options, continue with planning and technical assistance for the conversion activity, as well as the development of an associated mitigation plan and document effects on form NRCS-CPA-52. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands.

WILD & SCENIC RIVERS

STEP 1. Is there a designated Wild, Scenic, or Recreational River segment in or near the planning area?

NO [ ] YES [ ] UNKNOWN [ ]

a. If your answer is "No," additional evaluation is not needed concerning wild and scenic rivers. Document the finding on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," go to step 2.
c. If your answer is "Unknown," consult section II of the FOTG for a list or the location of Wild, Scenic or Recreational Rivers and repeat step 1.

STEP 2. Will the proposed action or activity have an effect on the natural, cultural and recreational values of the Wild, Scenic, or Recreational River?

NO [ ] YES [ ]

a. If your answer is "No, additional evaluation is not needed concerning wild and scenic rivers. Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and proceed with planning.
b. If your answer is "Yes," Document the finding, including the reasons, on form NRCS-CPA-52 or equivalent and go to step 3.

STEP 3. Will a Federal agency other than NRCS provide funding or otherwise control implementation of the action?

NO [ ] YES [ ]

a. If your answer is "No, the NRCS District Conservationist or an NRCS State office employee must consult the agency responsible for management of the Wild, Scenic, or Recreational River. The consultation is to determine if the action or activity requires a permit and if it is compatible with the management plan for the river. Further assistance may be provided only with the concurrence of the regulatory agency.
b. If your answer is "Yes," indicate on the NRCS CPA-52, or equivalent, that the lead agency should consult with the agency responsible for management of the Wild, Scenic, or Recreational River to determine if the action or activity requires a perm

610.72 Categorical Exclusions

NRCS Categorical Exclusions

1. Soil Survey
2. Snow Survey and Water Supply Forecasts
3. Plant Materials for Conservation
4. Inventory and Monitoring
5. River Basin Studies under Section 6 of Public Law (PL) 83–566 as amended

USDA Categorical Exclusions

1. Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;
2. Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;
3. Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;
4. Educational and informational programs and activities;
5. Civil and criminal law enforcement and investigative activities;
6. Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation; and
7. Activities related to trade representation and market development activities abroad.

610.73 Sample “Notice of Intent" (Reserved)

610.74 Technical Note on "Analyzing Effects of Conservation Practices"

United States
Department of
Agriculture

Natural
Resources
Conservation
Service (NRCS)

WATERSHED SCIENCE INSTITUTE REPORT, CED-WSSI-2002-2

Analyzing Effects of Conservation Practices

A Prototypical Method for Complying with National Environmental Policy Act (NEPA) Requirements for Farm Bill Implementation

Overview:

Table of Contents 3
Purpose 4
Background 4
Introduction to the Methodology 5
The Methodology - An Example 7
- **Step 1 - Practices Identification** 8
- **Step 2 - Network Diagram** 9
- **Step 3 - Literature Review** 13
- **Step 4 - Attributed Effects** 14
- **Step 5 - Findings** 15
- **Step 6 - Effects Analysis** 16
- **Notes About Conducting a Regional, State or Local Analysis** 17

References 18
Appendix - Useful Definitions 19

Figure 1. Croplands in Conservation. The effects of growing food and fiber cause pronounced change to economic systems, hydrology, habitat connectivity, air emissions, and discharges of pollutants to receiving waters. NRCS conservation planning and practice implementation is intended to lead to positive change. But it remains important to analyze and document these effects at an appropriate scale over a relevant time period.

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Table of Contents

Purpose 4

Background 4

Introduction to the Methodology 5

The Methodology – An Example 7

Step 1 – Practices Identification 8

Step 2 – Network Diagram of Effects 9

Step 3 – Literature Review 13

Step 4 – Attributed Effects 14

Step 5 – Findings 15

Step 6 – Effects Analysis 16

Notes about Conducting a Regional, State or Local Analysis 17

References 18

Appendix – Useful Definitions 19

Purpose

The purpose of the guidance in this document is to provide:

- An approach for identifying and organizing the effects of Farm Bill-emphasized conservation practices that relies on agency expertise and available scientific literature.
- A methodology for making generalized and specific (cited) effects useful at national, regional and statewide levels that clearly illustrates the chain of causation for the effects of the proposed actions.
- Documentation of NRCS's direct, indirect and cumulative effects for environmental compliance and disclosure to clients and the public.

The methodology is intended for use by planners and specialists responsible for developing Environmental Assessments for Farm Bill Programs whether 1) for geographic priority areas or 2) to address issues that arise during or after the implementation of conservation treatments related to the effects of those treatments.

The outcome for using the guidance presented herein is to better achieve the agency's mission "to provide leadership in a partnership effort to help people conserve, improve, and sustain our natural resources and environment" especially as this mission will be advanced through Farm Bill Program implementation. The specific goals are:

1. To thoroughly understand and anticipate issues likely to arise due to Farm Bill Program implementation related to effects.
2. Provide a methodology for developing the effects analysis required for compliance with NEPA and other environmental requirements.
3. To identify gaps in scientific support.
4. To increase NRCS's strength as a technical agency.
5. To enable NRCS to focus its resources to achieve resource goals in a cost-efficient, effective manner.

Background

The agency's understanding and careful analyses of planned actions and their anticipated effects at the site and landscape levels have become increasingly important to convey how NRCS conservation practices achieve their predicted effects. The methodology presented in this document is one way for the agency to conduct analyses to verify that the intended results will occur and inadvertent adverse impacts will not occur. An integral part of the process is a mindset that on-the-ground implementation must be continually monitored for intended effects with evaluations and improvements promptly fed back to agency and partner decision-makers and the technology transfer system. This follow-through is called "adaptive management."

From the standpoint of environmental requirements, NEPA requires that direct, indirect and cumulative effects be analyzed in the context of actions, alternatives and effects. Cumulative effects are studied concurrently with indirect effects. The alternatives normally considered at a state, geographic priority area, watershed or other areawide level include the resource management systems and pertinent practices that are designed to address identified resource concerns and achieve desired resource goals. In some cases, there may also be a need to consider program alternatives, such as how to prioritize applications for participation within a particular program. These program alternatives will likely affect where and how many of the resource management systems or practices actually get put on the ground. In all cases, the no-action alternative is also examined as a baseline option including all the connected and similar actions that could contribute to effects.

The objective of effects analysis is to make sure decision-makers take into account the full range of consequences of their proposed actions. Conclusions about effects are to be scientifically supported or to identify gaps in science. Analysis will involve assumptions and uncertainties but must be conducted with the best techniques and data available. The need for better techniques and data can be identified, but is not justification for avoiding or delaying analysis of effects. Where substantial uncertainties initially exist, proposed actions and their implementation can be modified over time as new methodologies and data emerge.

Introduction to the Methodology

The steps that follow explain the effects analysis methodology. The methodology is intended for *initial* use at a national or regional level on a programmatic basis. Subsequently, the results can be used as templates for state and local analyses.

1. **Practices Identification** - The first step in the methodology is to identify the critical or featured practices identified or anticipated for use to achieve Farm Bill Program natural resources goals. Figure 2 depicts the EA or environmental assessment requirements and relationship to practices and environmental impacts. At the national level, the spatial focus is a generalized setting consisting of the expected major land use(s) and typical landscape features. A later section in the guide deals with refining the spatial scale to regional, state and local areas and climates. The temporal or time scale generally encompasses:
   - pre-implementation condition (typically a time period that bounds the trends that led to current conditions)
   - immediate future during which the majority of the featured practices installation will occur
   - time needed for the practices or system to become fully functional in their effects.

When effects analysis supports national and sometimes state programmatic decisions, alternatives will include different program delivery approaches such as varying cost-share rates or financial allocation methods. These alternatives will alter the amount and location of practice implemented. The effects of these alternatives must be analyzed in concert with the effects of the conservation practices used to achieve the particular resource goals. However, this paper focuses on a methodology for analyzing the effects of conservation practices, not policy choices.

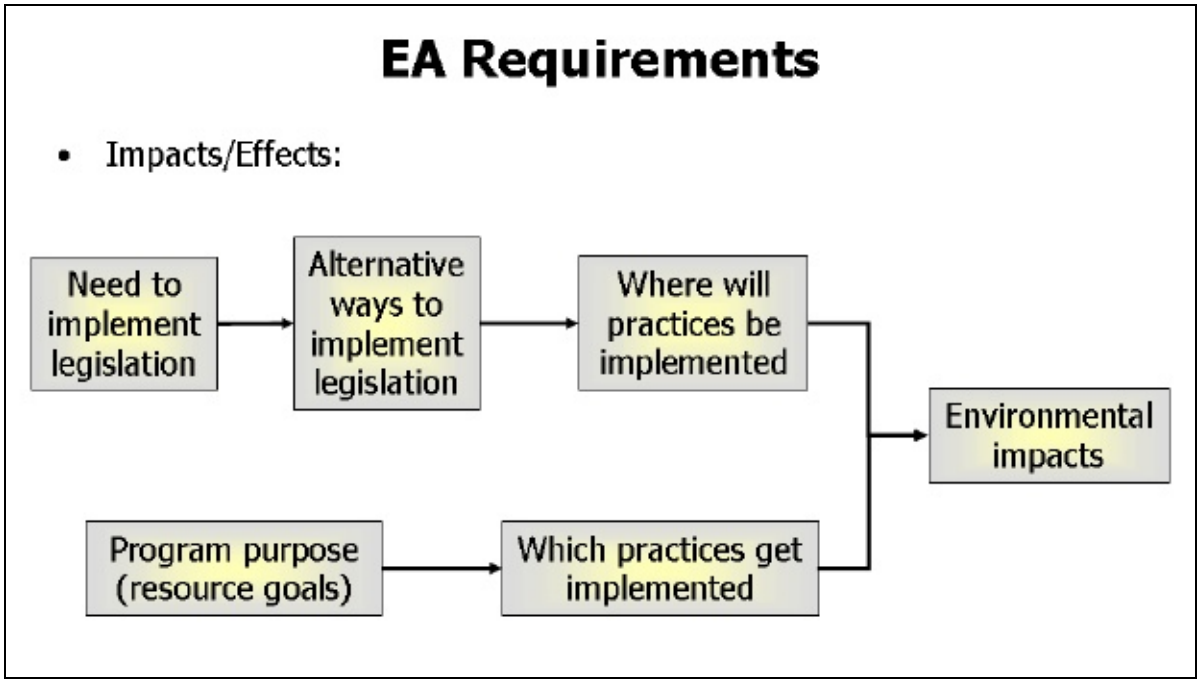


Figure 2. EA (environmental assessment) requirements and relationship to practices and environmental impacts.

2. **Network Diagram of Effects** - A network diagram is prepared for featured practices or a related set of practices that act together to achieve desired purposes. It is essentially a flow chart of direct, indirect and cumulative effects resulting from the practices being installed throughout the landscape. A complete cumulative effects analysis includes consideration of other ongoing and planned activities in the area that affect the same resources. National Practice Standards and Conservation Practice Physical Effects matrix (CPPE) are the main references for identifying direct effects and beginning the effects network diagram. A question approach is used to begin the diagram: 1) What is physically created by the practice or practice set?, 2) After the practices are installed, what are the direct effects?, 3) After direct effects occur, what indirect effects result?, and 4) As the practices are applied throughout the landscape and community at expected levels of participation and takes effect directly and indirectly, what are the cumulative effects? A completed network diagram represents an overview of expert consensus on the kinds and magnitude (i.e., positive or negative) of direct, indirect and cumulative effects of proposed actions which can be used as a reference point for the next step as well as a communication device with partners and the public.

   The network diagrams in this document do not depict effects on resources of special environmental concerns such as endangered or threatened species or cultural resources. However, these effects should be included when analyzed at a relevant regional, state or local level.

3. **Literature Review** - A literature review of all network diagram nodes and pathways is conducted. Standard literature searches and services are used and the results are collated. This step of the process may be the most time consuming, but is essential to verify the consensus reached in the preceding step

4. **Attributed Effects** - An attributed listing of specific, quantified effects related to key nodes and pathways are summarized using understandable graphs, tables, charts, etc.

5. **Findings** - Documentation is recorded for:
   a) effects based on research consistencies,
   b) inconsistent or contradictory studies, and
   c) gaps in research.

6. **Effects Analysis** - A summary is prepared and distributed for broader interdisciplinary review. The summary provides: 1) revised network diagrams, 2) highlights of the findings, 3) mitigation recommendations for anticipated adverse impacts. This information will be useful as the foundation for the programmatic or geographic priority area Environmental Assessments or Environmental Impact Statements.

Before reviewing an example of the methodology presented in the next section, it is important to again note the goals of the process: 1) to thoroughly understand and anticipate effects issues likely to arise due to Farm Bill Program implementation, and 2) to comply with NEPA in a cost and time-effective manner. Varying conditions within the nation at regional, state and local levels influence effect outcomes and require additional analyses. However, completing this work at a regional, state or programmatic level will provide a tier that more detailed analysis can be nested within. In some cases, areawide analysis may eliminate the need for additional site specific evaluation. The effort also provides templates that can expedite assessments and statements for specific areas and eliminate repetitive discussions and analyses.

The Methodology - An Example

An example of one of two primary practices used extensively in the "Continuous Conservation Reserve Program" or CCRP illustrates the effects analysis methodology. As background, continuous sign-up for high priority conservation practices began in 1996 as a provision of the amended Food Security Act of 1985. As this Farm Bill provision was implemented, two practices out of ten "buffer" practices predominated: 1) Filter Strip and 2) Riparian Forest Buffer. During the period October 1, 2000 to September 30, 2001, the NRCS Performance and Results Measurement System (NRCS 2002) indicates about 200,000 acres of filter strip were installed, primarily in the Midwest. During this same period riparian forest buffers were installed on about 100,000 acres, primarily in the Midwest and Southeast regions. The cumulative national extent for the two practices is about 1 million acres.

Figure 3. A filter strip (top) and a riparian forest buffer (bottom).

The following pages provide an example of effects analysis for the featured practice, Riparian Forest Buffer. This practice is defined as "an area of predominantly trees and/or shrubs located adjacent to and up-gradient from watercourses or water bodies." Purposes for this practice are quite varied and include the following:

- Reduce excess amounts of sediment, organic material, nutrients and pesticides in surface runoff and reduce excess nutrients and other chemicals in shallow ground water flow.
- Create wildlife habitat and establish wildlife corridors.
- Create shade to lower water temperatures to improve habitat for aquatic organisms.
- Provide a source of detritus and large woody debris for aquatic and terrestrial organisms.
- Provide a harvestable crop of timber, fiber, forage, fruit, or other crops consistent with other intended purposes.
- Provide protection against scour erosion within the floodplain.
- Restore natural riparian plant communities.
- Moderate winter temperatures to reduce freezing of aquatic overwintering habitats.
- To increase carbon storage.

While all purposes are important, the first two in the preceding list were principal goals of the CCRP.

The following example is organized in a slide format so it can be easily incorporated into training packages and other presentations. Slides follow the methodology steps outlined earlier. Note that certain steps are only partially completed or described. There are 9 slides.

Step 1
Practices Identification.

"CCRP" Practices (NRCS Practice Code)

Alley cropping, 311
Contour buffer strip, 332
Cross wind trap strip, 589C
Field border, 386
Filter strip, 393
Grassed waterway, 412
Herbaceous wind barrier, 422A
Riparian forest buffer, 391
Vegetative barrier (grass hedge), 601
Windbreak/shelterbelt/living snow fence, 380

Example Follows

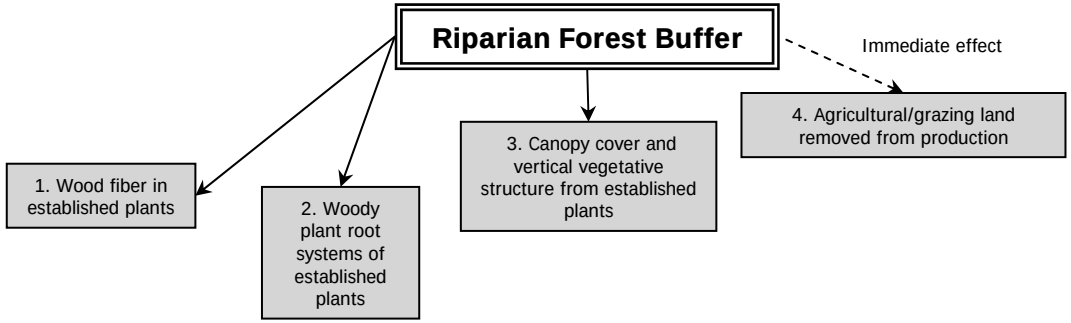
Slide 1

Example … Riparian Forest Buffer

Step 2
Network Diagram of Effects.

First

For the practice, what is physically created*?

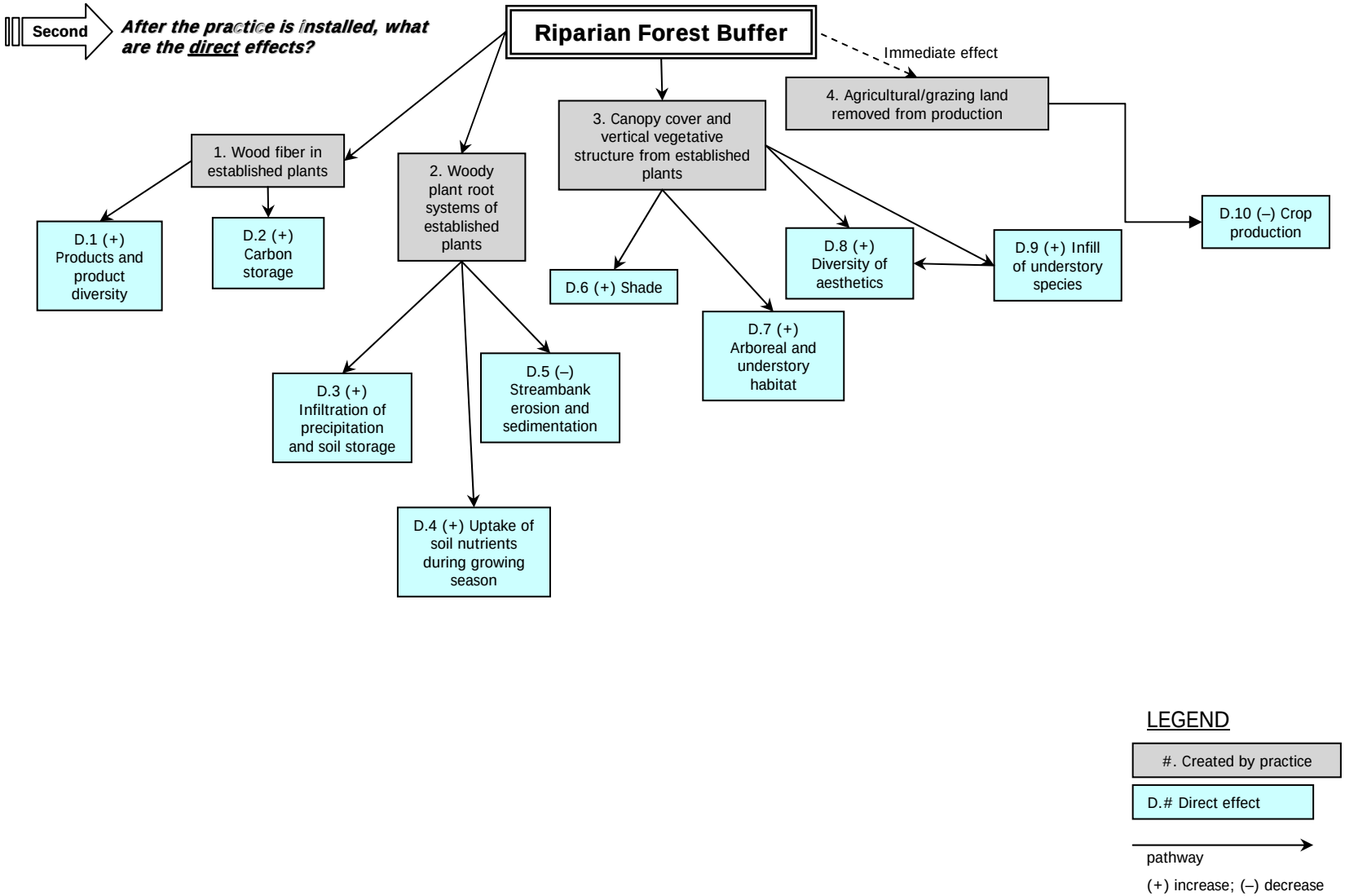


LEGEND

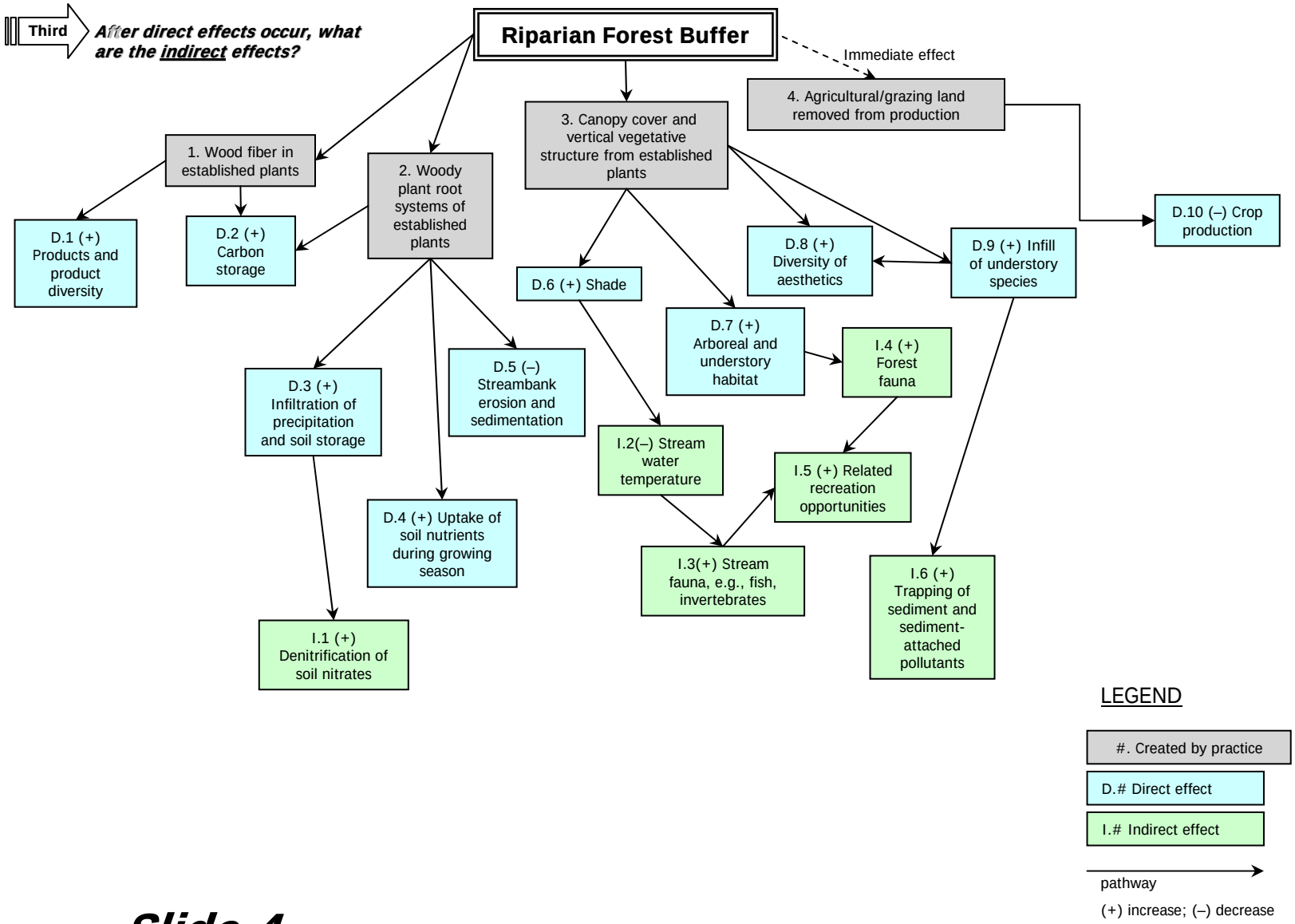
#. Created by practice

*The physical state of what's at the site at the conclusion of installation of the practice or shortly after the practice is considered to be established. The national practice standard is the basis for answering this question.

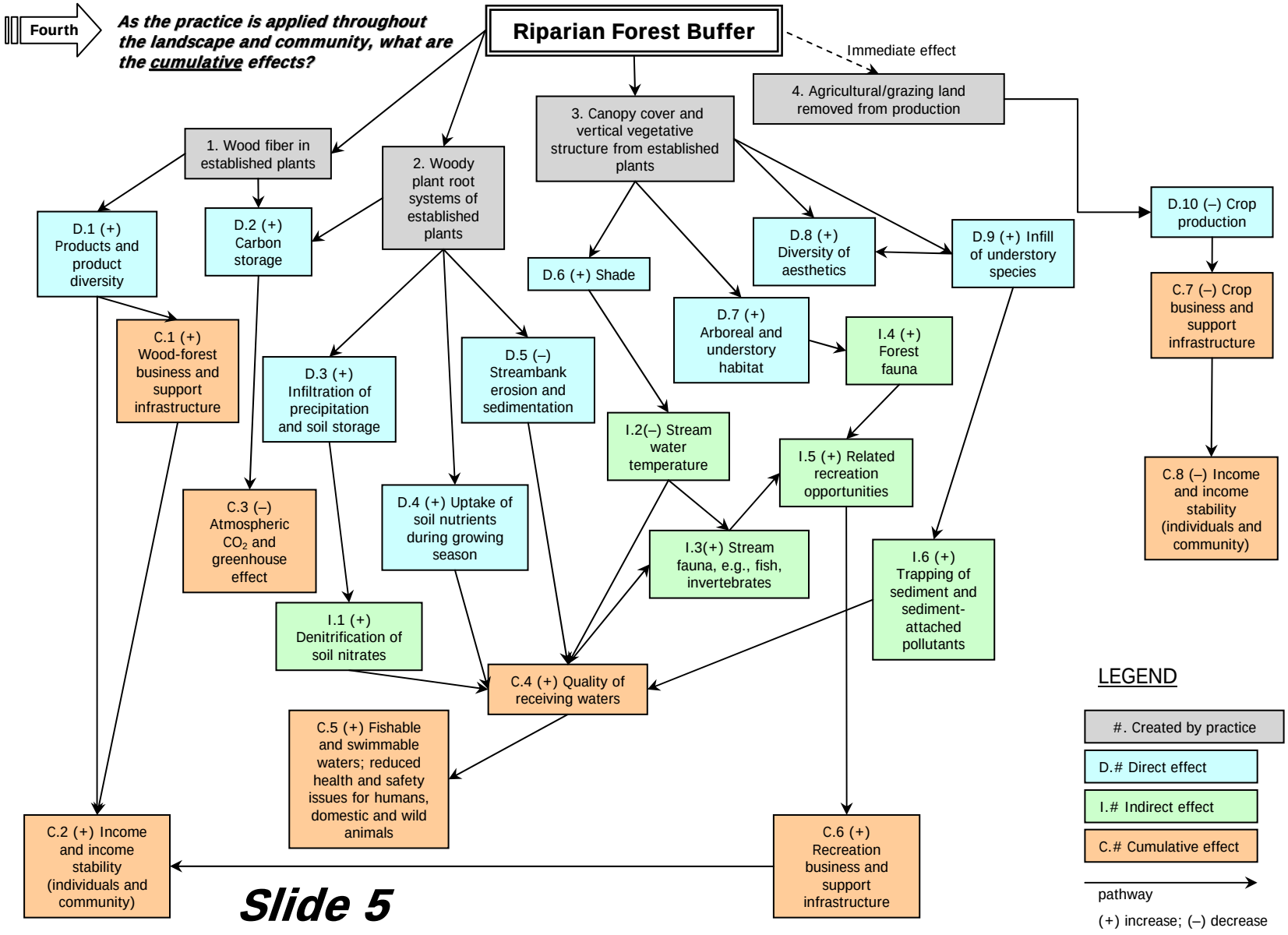
Slide 2


Second
After the practice is installed, what are the direct effects?
Riparian Forest Buffer
Immediate effect
1. Wood fiber in established plants
2. Woody plant root systems of established plants
3. Canopy cover and vertical vegetative structure from established plants
4. Agricultural/grazing land removed from production
D.1 (+) Products and product diversity
D.2 (+) Carbon storage
D.3 (+) Infiltration of precipitation and soil storage
D.4 (+) Uptake of soil nutrients during growing season
D.5 (–) Streambank erosion and sedimentation
D.6 (+) Shade
D.7 (+) Arboreal and understory habitat
D.8 (+) Diversity of aesthetics
D.9 (+) Infill of understory species
D.10 (–) Crop production
LEGEND
#. Created by practice
D.# Direct effect
pathway
(+) increase; (–) decrease

Slide 3


Third
After direct effects occur, what are the indirect effects?
Riparian Forest Buffer
Immediate effect
4. Agricultural/grazing land removed from production
3. Canopy cover and vertical vegetative structure from established plants
1. Wood fiber in established plants
2. Woody plant root systems of established plants
D.1 (+) Products and product diversity
D.2 (+) Carbon storage
D.10 (–) Crop production
D.8 (+) Diversity of aesthetics
D.9 (+) Infill of understory species
D.6 (+) Shade
D.7 (+) Arboreal and understory habitat
I.4 (+) Forest fauna
D.3 (+) Infiltration of precipitation and soil storage
D.5 (–) Streambank erosion and sedimentation
I.2(–) Stream water temperature
I.5 (+) Related recreation opportunities
D.4 (+) Uptake of soil nutrients during growing season
I.3(+) Stream fauna, e.g., fish, invertebrates
I.6 (+) Trapping of sediment and sediment-attached pollutants
I.1 (+) Denitrification of soil nitrates
LEGEND
#. Created by practice
D.# Direct effect
I.# Indirect effect
pathway
(+) increase; (–) decrease

Slide 4

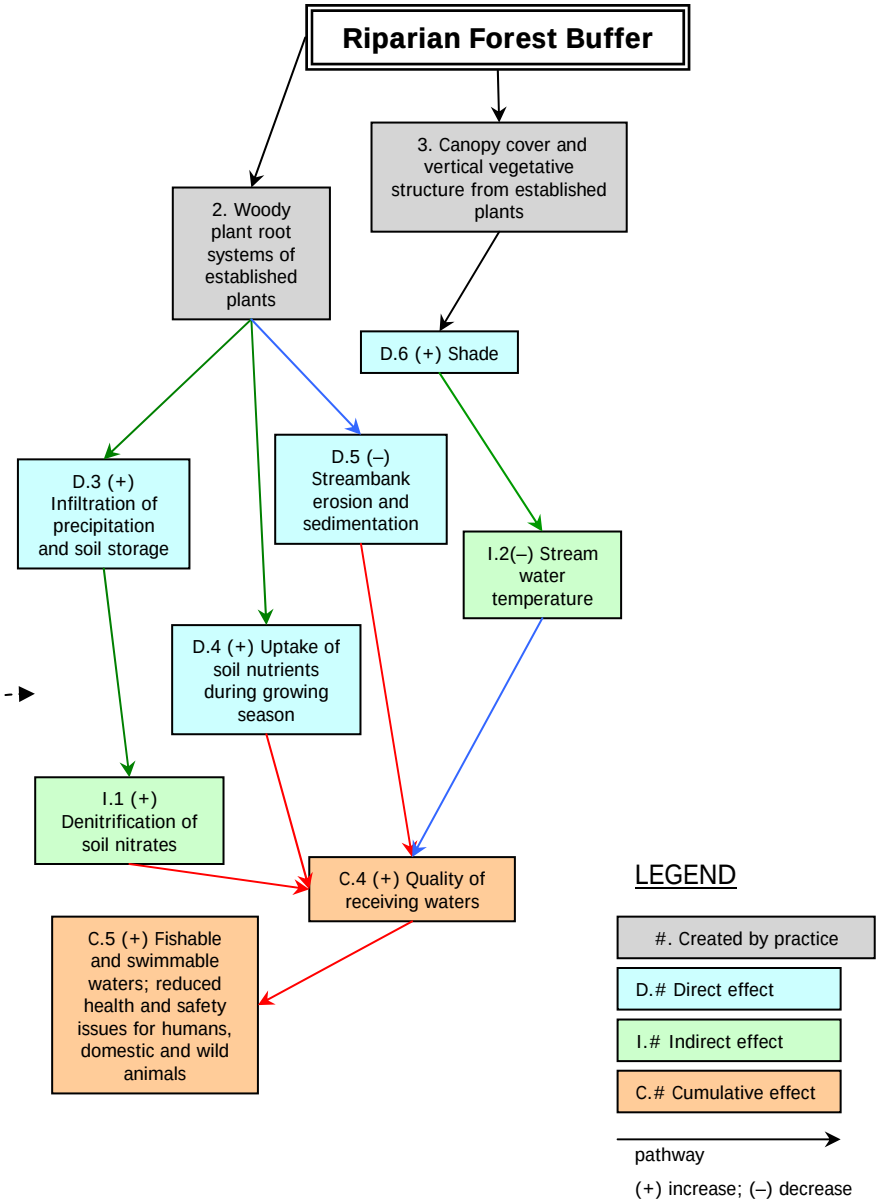

Fourth
As the practice is applied throughout the landscape and community, what are the cumulative effects?
Riparian Forest Buffer
Immediate effect
4. Agricultural/grazing land removed from production
3. Canopy cover and vertical vegetative structure from established plants
1. Wood fiber in established plants
2. Woody plant root systems of established plants
D.10 (–) Crop production
D.1 (+) Products and product diversity
D.2 (+) Carbon storage
D.8 (+) Diversity of aesthetics
D.9 (+) Infill of understory species
D.6 (+) Shade
C.7 (–) Crop business and support infrastructure
D.7 (+) Arboreal and understory habitat
I.4 (+) Forest fauna
C.1 (+) Wood-forest business and support infrastructure
D.3 (+) Infiltration of precipitation and soil storage
D.5 (–) Streambank erosion and sedimentation
I.2(–) Stream water temperature
I.5 (+) Related recreation opportunities
C.8 (–) Income and income stability (individuals and community)
C.3 (–) Atmospheric CO_2 and greenhouse effect
D.4 (+) Uptake of soil nutrients during growing season
I.3(+) Stream fauna, e.g., fish, invertebrates
I.6 (+) Trapping of sediment and sediment-attached pollutants
I.1 (+) Denitrification of soil nitrates
C.4 (+) Quality of receiving waters
C.5 (+) Fishable and swimmable waters; reduced health and safety issues for humans, domestic and wild animals
C.2 (+) Income and income stability (individuals and community)
C.6 (+) Recreation business and support infrastructure
Slide 5
LEGEND
#. Created by practice
D.# Direct effect
I.# Indirect effect
C.# Cumulative effect
pathway
(+) increase; (–) decrease

Step 3
Literature Review.

What effects have been researched? … green lines

What effects are currently being researched? … blue lines

What effects are not yet supported? … red lines



Note: Only part of the network diagram is shown.

Slide 6

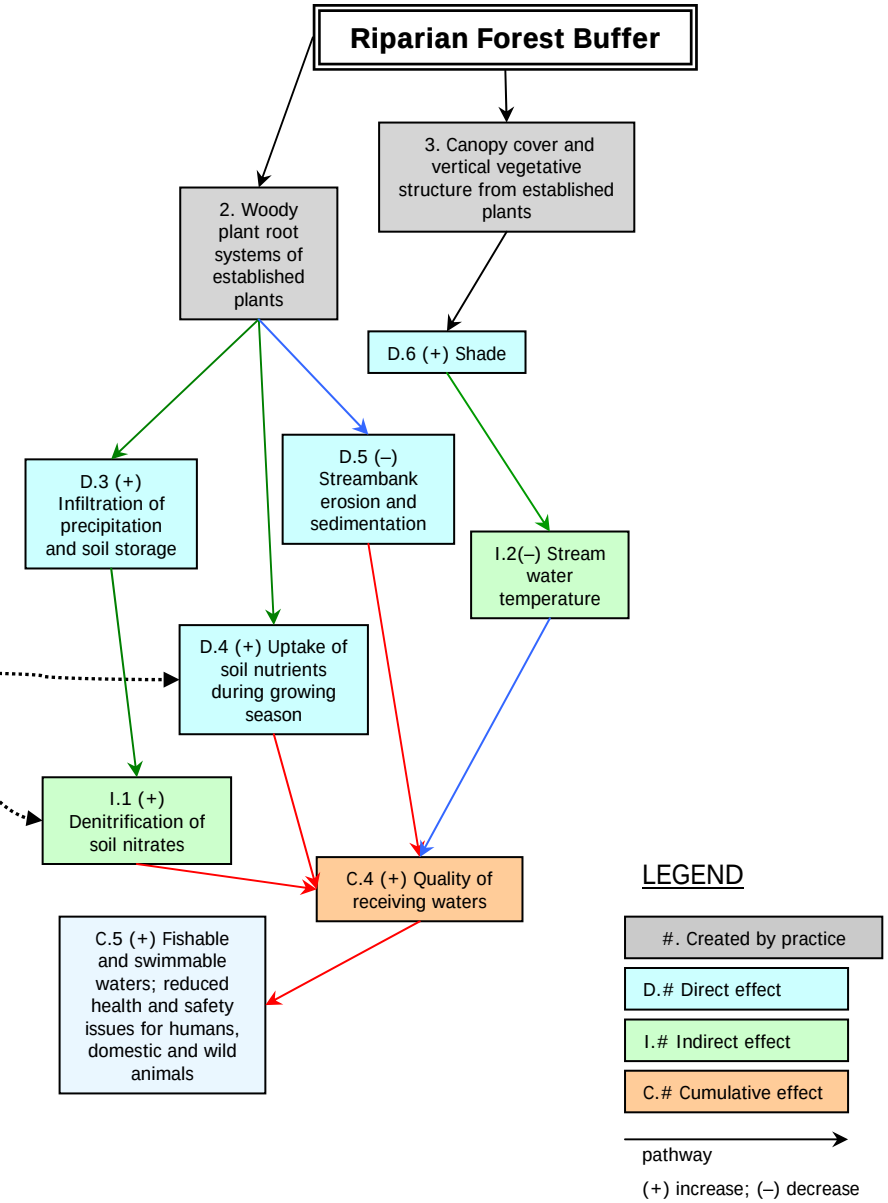
Step 4
Attributed Effects.

Examples

PHOSPHORUS – surface runoff removals - 6 studies
- ***Attributes: Mixed forest and herbaceous buffers; widths 5–28 meters; 18–96 % reductions***

NITROGEN – subsurface nitrate removals - 10 studies
- ***Attributes: Mixed forest and herbaceous buffers; widths 16–60 meters; 78–100 % reductions***

SEE FIGURES AND LITERATURE CITATIONS NEXT SLIDE ...

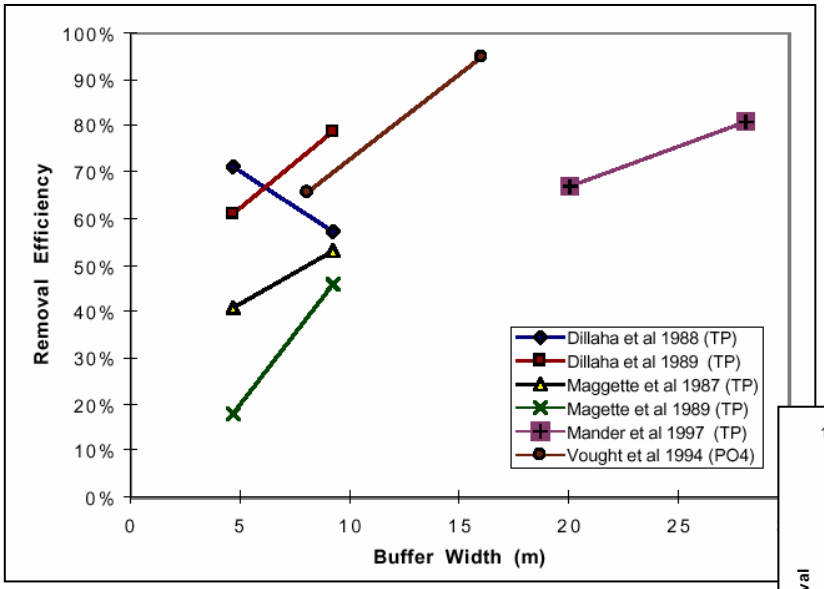


Slide 7

Step 5

Findings:

a) effects based on research consistencies,
b) inconsistent or contradictory studies, and
c) gaps in research.



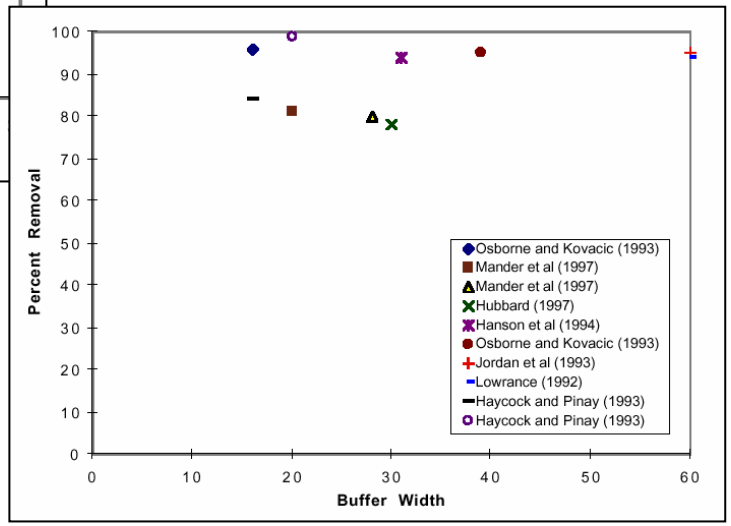
Phosphorus Removal from Surface Runoff (Wenger 1999*).

Effects:

Buffers of 5 meters in width or greater are significantly effective in reducing phosphorus and nitrates for many agricultural settings ...

Inconsistencies/Gaps in Research:

- ***Subsurface flows in many settings bypass riparian buffer root systems***
- ***Early studies indicate buffers can remove pesticides, organics, metals***
- ***Limited studies on pathogen removals are inconsistent***



Subsurface Nitrate Removal (Wenger 1999*).

***Wenger, S. 1999. A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation. Institute of Ecology, University of Georgia, Athens, GA.**

Slide 8

Step 6
Effects
Analysis.

Example

A completed effects analysis can nest within and support required assessments and statements.

Elements of an *Environmental Assessment* are as follows*:*

- Purpose and need
- Title of the proposed action
- Alternatives
- Environmental impacts
- Mitigation measures
- Agencies and persons consulted

Elements of an *EIS* are as follows:

- Purpose and need
- Alternatives including proposed action and no action
- Affected environment
- Environmental consequences
- List of preparers
- List of agencies, organizations, and persons to whom copies of the statement are sent

Summary

The NRCS and partner organizations are planning and installing riparian forest buffers throughout all regions of the country under CCRP.

Over 140 articles and books were reviewed to establish the effects of riparian forest buffers and provide adequate scientific documentation of the public expenditures for this form of conservation.

The network diagrams, findings, and recommended mitigation are presented in this summary ...

Slide 9

Notes about Conducting a Regional, State or Local Analysis

An effects analysis should ideally be completed first at the national or programmatic level so that a regional, state or local analysis can be tiered to that 'upper' level. But practically, a specific-area evaluation or assessment can be conducted in isolation and still be very effective. The method presented earlier in this document provides a template process useful for a locally defined area to allow analysts to focus on and capture unique characteristics such as state and local environmental issues, climate, cultural diversity in farming techniques, and physiography.

An important aspect in a local analysis is "bounding" the effects of the applicable farm bill program provision spatially and temporally. Important factors in bounding the spatial scale are

- anticipated levels and locations of program participation,
- typical settings where primary practices are installed,
- nonprogrammatic but related activities and effects and their extent,
- areas having a "sense of community,"
- hydrological connectivity, and
- ecological similarity and connectivity.

The temporal bounding will generally encompass

- a fairly short past time period under which current conditions and trends have established (i.e., the baseline or benchmark conditions),
- the immediate future during which the majority of the featured practices installation will occur, and
- a longer yet reasonable future time period needed for the practices to become fully functional in its effects.

Modification of the templates presented should be done carefully with an eye towards truly unique characteristics and issues to reducing repetitive discussion and unnecessary focus on 'micro-scales.' Under most circumstances, the local analysis should proceed rapidly presuming that the major processes and effects are identified and supported by either scientific literature (preferred evidence) or in the case where none exists, best professional judgment.

Figure 4. Conservation district members and an NRCS conservationist discuss local conservation issues that will help "bound" spatial and temporal scales during effects analysis.

References

CEQ (Council on Environmental Quality), 1997. *Considering Cumulative Effects Under the National Environmental Policy Act.* Washington DC

NRCS (Natural Resources Conservation Service, USDA), 1992. Notice 113, *National Handbook of Conservation Practices.* Title 450, Part 406, Washington, DC

NRCS (Natural Resources Conservation Service, USDA), 2000a. *National Planning Procedures Handbook.* Amendment 3, Title 180, Part 600, Washington, DC

NRCS (Natural Resources Conservation Service, USDA), 2001a. *CEQ terminology and index.* Subpart C of the General Manual, Compliance with NEPA, Title 190, Part 410, Washington, DC

NRCS (Natural Resources Conservation Service, USDA), 2002. *Field Office Technical Guide.* General Manual, Title 450, Part 401, Washington, DC

NRCS (Natural Resources Conservation Service, USDA), 2002. *Performance and Results Measurement System*. (at http://pmproductsvr.nrcs.usda.gov/prmsproducts/buffers.asp), Washington, DC

U.S. Congress, 1970. *National Environmental Policy Act of 1969.* PL 91–190, 42 USC § 4321–4347 as amended by PL 94–52, 94–83, 97–258, § 4(b), Washington, DC

USF&WS (U.S. Fish and Wildlife Service), 2001. *Endangered Species Glossary.* Southeast Region, http://es.southeast.fws.gov/ glossary.html, Atlanta, GA

Appendix

Useful Definitions

(Footnotes are listed at the end of the appendix.)

Affected Environment. The affected environment in a NEPA analysis that addresses direct, indirect and cumulative effects includes all potentially affected resources (soil, water, air, plants, animals), ecosystems, and human communities.[1]

Areawide Conservation Planning. The 3-phase, 9-step iterative process used by NRCS to help clients plan and apply conservation treatments for a watershed or other geographical area (referred to as the planning area) defined by the clients and stakeholders. The areawide conservation plan addresses all resource problems identified including effects issues, contains alternative solutions that meet the minimum quality criteria for each resource, and addresses applicable laws and regulations.[2]

Baseline Conditions. Conditions of resources, ecosystems and human communities used as the bases or levels of comparison for analyzing effects of proposed actions. These may be established or estimated from historical or current day conditions.[1]

Biological Assessment. A document prepared for the Endangered Species Act Section 7 process to determine whether a proposed major construction activity under the authority of a Federal action agency is likely to adversely affect listed species, proposed species, or designated critical habitat.[3]

Benchmark Condition. The status or quality of one or more current planning area situations, circumstances, or settings projected over a future specified time period. Status and quality are usually measured and defined by using one or more relevant indicators and target values. The projection of benchmark condition accounts for reasonably foreseeable future actions as well as past and present actions but does not include the effects of alternatives (proposed actions) being contemplated by the planning group. The benchmark condition is used as a point of reference to 1) compare against projected resource conditions anticipated for an alternative, and 2) measure change in resource conditions resulting from applied conservation treatment.[2]

Bounding. The process of establishing spatial and temporal boundaries to encompass the consequences of proposed action as well as additional effects on the resources, ecosystems, and human communities of concern during an effect analysis.[1]

Candidate species. Plants and animals that have been studied and the US Fish and Wildlife (FWS) or National Marine Fisheries Service (NMFS), as appropriate, has concluded that they should be proposed for addition to the Federal endangered and threatened species list.[3]

Common Resource Area (CRA). A geographical area where resource concerns, problems, and treatment needs are similar. Landscape conditions, soil, climate, human considerations, and other natural resource information is used to determine the geographical boundaries of the common resource area.[2]

Conservation Practice. A specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed.[2]

Conservation Practices Physical Effects (CPPE) matrix. The matrix in the FOTG, Section V, that gives the physical effects of many conservation practices on soil, water, air, plants, and animals.[2]

Conservation Practice Standards. National standards commonly used by NRCS to treat natural resource problems. Each practice standard includes the following components: name, unit of measurement, code number, definition, purpose, condition where practice applies, criteria, considerations, plans and specifications, and operation and maintenance.[4]

Council on Environmental Quality (CEQ). A three-member council appointed by the President that reviews and appraises the various programs and activities of the Federal Government to ensure they are in compliance with NEPA.[5]

Critical habitat. Specific geographic areas, whether occupied by listed species or not, that are determined to be essential for the conservation and management of listed species, and that have been formally described in the Federal Register.[3]

Cumulative Effects. The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other action (40 CFR § 1508.7).[1] See Types of Cumulative Effects.

Cumulative Effects Analysis. A procedure with an objective to account for the full range of consequences from proposed actions. The process will involve assumptions and uncertainties but must be conducted with the best techniques and data available.[1]

Direct effects. Caused by a proposed action that occurs at the same time and place.[6]

Ecosystem. Dynamic and interrelating complex of plant and animal communities and associated nonliving (e.g. physical and chemical) environment.[3]

Endangered. The classification provided to an animal or plant in danger of extinction within the foreseeable future throughout all or a significant portion of its range.[3]

Endangered Species Act of 1973, as amended (ESA). Federal legislation intended to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, and provide programs for the conservation of those species, thus preventing extinction of native plants and animals.[3]

Environmental Assessment (EA). A concise public document that briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact.[2]

Environmental Evaluation (EE). A concurrent part of the planning process in which the potential long-term and short-term impacts of an action on people, their physical or social surroundings, and nature are evaluated and alternative actions explored.[2]

Environmental Impact Statement (EIS). A document detailing the environmental impact of a proposed law, construction project, or other major action that may significantly affect the quality of the environment. EIS's are required by the National Environmental Policy Act (NEPA) and various state environmental laws.[2]

Field Office Technical Guide (FOTG). The official NRCS guidelines, criteria, and standards for planning and applying conservation treatments.[2]

Impacts. The difference between the anticipated effects of alternative treatment in comparison to existing or benchmark condition effects. Differences may be expressed by narrative, quantitative, visual, or other means. Impacts are used as a basis for making informed conservation decisions.[2]

Indicator. The description or measurement of a resource concern that, when observed periodically, indicates or demonstrates trends. Directly linked to indicators are target values which identify a specific quantitative or qualitative estimate for the desired state of the resource concern.

Indirect effects. Caused by a proposed action that occurs later in time or is further removed in distance.[6]

Long-term Impacts. Impacts that occur during or after an action and may take the form of delayed changes or changes resulting from the cumulative effects of many individual actions.[8]

Minimizing Significant Cumulative Effects. Avoiding, altering or mitigating adverse effects by modifying, eliminating or adding alternatives to the proposed actions. Mitigation involves applying treatment to counter significant effects from applied actions.[1]

National Environmental Policy Act (NEPA). The 1970 Act that requires federal agencies to consider the effects on the environment of proposed federal actions. This Act established the requirement for conducting environmental evaluations and for the preparation of environmental assessments and environmental impact statements.[2]

Proposed species. Any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under Section 4 of the Endangered Species Act.[3]

Resource Management System (RMS). A conservation system that meets or exceeds the quality criteria in the FOTG for resource sustainability for all identified resource concerns for soil, water, air, plants and animals.[2]

Scoping. The early, up-front and open process to determine the extent of the significant issues, such as resource problems and concerns, regulatory requirements, etc., to be addressed in the planning process. The process determines 1) whether the resources, ecosystems and human communities have already been affected by past or present activities and 2) whether other agencies or the public have plans that may affect the resources in the future.[2]

Short-term Impacts. Temporary changes occurring during or immediately following an action and usually persisting for a short while.[8]

Target value. Identifies a specific value to be used in conjunction with an indicator.

Threatened. The classification provided to an animal or plant likely to become endangered within the foreseeable future throughout all or a significant portion of its range.[3]

Threshold. The status or quality of a condition tied to a spatial and temporal scale where effects from a proposed action are anticipated to have a conspicuous or evident beneficial or adverse impact on a resource, ecosystem or human community. The impact is usually scientifically or legally based. Example: Clearing of riparian vegetation over the next 5 years on a 25,000-acre watershed is anticipated to increase water temperatures above the upper limit for a cold-water fishery (acceptable range is 5 to 18°C).[1]

Tiering. Refers to the coverage of general matters in broader environmental impact statements (i.e. national policy statements) with subsequent narrower statements or environmental analysis (i.e. basinwide program statements) incorporating by reference the general discussions and concentrating solely on the issues specific to statement subsequently prepared.[6]

Types of Cumulative Effects (Types 1, 2, 3 and 4).[1]

- Type 1 - Repeated "additive" effects from a single proposed project, e.g., construction of a new road through a national park resulting in continual draining of road salt onto nearby vegetation.
- Type 2 - Stressors (e.g., substance, compound or material) from a single source that interacts with receiving organisms to have an "interactive" net effect, e.g., toxic compounds that build up disproportionately at higher levels within food chains.
- Type 3 - Effects arising from multiple sources that affect environmental resources additively, e.g., agricultural irrigation throughout a community that draws down a groundwater aquifer.
- Type 4 - Effects arising from multiple sources that affect environmental resources in a countervailing or synergistic fashion, e.g., discharges of nutrients and heated water to a river that cause an algal bloom and subsequent loss of dissolved oxygen that is greater than the additive effects of either pollutant.

[1]CEQ 1997
[2]NRCS 2002
[3]USF&WS 2001
[4]NRCS 1992
[5]U.S. Congress 1970
[6]NRCS 2001a
[7]NRCS 2000b
[8]USPS 1991

610.75 Technical Note on "Considering the Cumulative Effects of NRCS Activities" (Reserved)

SUBPART F – OVERVIEW OF OTHER ENVIRONMENTAL REQUIREMENTS

610.80 – Introduction

610.81 – Air Quality and the Clean Air Act

610.82 – Clean Water Act and Waters of the U.S.

610.83 – Coastal Zone Management Areas

610.84 – Coral Reefs

610.85 – Cultural Resources

610.86 – Endangered and Threatened Species

610.87 – Environmental Justice

610.88 – Essential Fish Habitat

610.89 – Fish and Wildlife Coordination

610.90 – Floodplain Management

610.91 – Invasive Species

610.92 – Migratory Birds

610.93 – Natural Areas

610.94 – Prime and Unique Farmlands

610.95 – Riparian Areas

610.96 – Scenic Beauty

610.97 – Wetlands

610.98 – Wild and Scenic Rivers

PART 610 – National Environmental Compliance

Subpart F – Overview of Other Environmental Requirements

610.80 Introduction

There are many requirements for protection of natural and cultural resources and the environment that are separate from NEPA. NRCS must ensure it complies with all applicable laws, regulations, and Executive Orders, as well as its own policy, when it develops conservation plans, provides technical assistance, and carries out its program authorities.

NEPA requires that NRCS take into account the effects of its actions on all aspects of the environment, but merely describing the effects of an action for purposes of complying with NEPA, and sometimes even providing for mitigation, does not satisfy these separate requirements. Therefore, this section provides an overview of Federal environmental requirements in addition to NEPA with which NRCS must be concerned whenever it provides assistance. Additional State and local requirements may apply in addition to those referenced here. In such cases, State Conservationists are responsible for ensuring appropriate consideration is given to those requirements, as well.

610.81 Air Quality and the Clean Air Act*

**The following text is either taken directly or paraphrased from materials on the EPA website.*

Overview of Clean Air Act Application to Agricultural Operations

While the 1990 Clean Air Act is a Federal law, much of the work done to carry out the Act is done by the States. The Environmental Protection Agency (EPA) sets the limits on acceptable levels of pollutants in the air and thus ensures a common level of health and protection for the environment. States are allowed to have equal or more stringent pollution controls—not weaker ones. The 1990 Clean Air Act sets deadlines for EPA, States, local governments and businesses to reduce air pollution.

States have to develop State implementation plans (SIPs) that explain how each State will do its job under the Clean Air Act. A SIP is a collection of the regulations a State will use to clean up polluted areas. The States must involve the public, through hearings and opportunities to comment, in the development of each state implementation plan. EPA must approve each SIP, and if a SIP isn't acceptable, EPA can take over enforcing the Clean Air Act in that State.

The United States government, through EPA, assists the States by providing scientific research, expert studies, engineering designs and money to support clean air programs.

The 1990 Clean Air Act encourages efficient and inexpensive clean-up of air pollution and allows businesses to determine for themselves what the best method would be for reaching their pollution reduction goals. These market-based approaches have resulted in trading of pollution credits within different industries.

Criteria Pollutants

Criteria pollutants are pollutants that EPA has determined can cause injury to health, environment and property. These pollutants have been identified by EPA through use of health-based, scientifically determined guidelines. Criteria pollutants include ozone, particulates, carbon monoxide and volatile organic carbons. EPA sets limits, or primary standards, on the amount of each pollutant that is allowed to be present in the air. A geographic area with air quality that is as good as or better than the primary standard is called an **attainment area**; areas that don't meet the primary standard are called **non-attainment** areas.

Although EPA has been regulating criteria air pollutants since the 1970 Clean Air Act was passed, many urban areas are classified as non-attainment for at least one criteria air pollutant. It has been estimated that about 90 million Americans live in non-attainment areas.

Ozone

Ground-level ozone is produced by the combination of pollutants from many sources, including smokestacks, cars, paints and solvents. When a car burns gasoline, releasing exhaust fumes, or a painter paints a house, smog-forming pollutants rise into the sky. Weather and geography determine where smog goes and how bad it is. When **temperature inversions** occur (warm air stays near the ground instead of rising) and winds are calm, smog may stay in place for days at a time.

Particulates (PM10, PM2.5)

Particulate matter, generated from soot, dust, smoke, and some agricultural operations, will require pollution controls on power plants and care not to exceed standards on smaller sources such as wood stoves, agricultural burning, and dust from fields and roads.

Volatile Organic Compounds (VOCs)

VOCs, precursors to smog, are found in gasoline and many consumer products, from hair spray to charcoal starter fluid to plastic popcorn packaging.

How the Act Works

The 1990 Clean Air Act requires reduction of criteria air pollutants in the following way. First, EPA and State governors cooperate to identify non-attainment areas for each criteria air pollutant. Then, EPA classifies the non-attainment areas according to how badly polluted the areas are.

The 1990 Clean Air Act uses this classification system to tailor clean-up requirements to the severity of the pollution and set realistic deadlines for reaching clean-up goals. If deadlines are missed, the law allows more time to clean up, but usually a non-attainment area that has missed a clean-up deadline will have to meet the stricter clean-up requirements set for more polluted areas. Not only must non-attainment areas meet deadlines, States with non-attainment areas must show EPA that they are making reasonable progress towards their goals before the deadline.

States will usually do most of the planning for cleaning up criteria air pollutants, using a permit system to make sure power plants, factories and other pollution sources meet their clean-up goals. The comprehensive approach to reducing criteria air pollutants covers many different sources and a variety of clean-up methods. Also, as the pollution gets worse, pollution controls are being required for increasingly smaller sources.

Permits

Operating permits are legally enforceable documents that permitting authorities issue to air pollution sources after the source has begun to operate. These permits fall under Title V of the Clean Air Act Amendments of 1990.

Most Title V permits are issued by State and local permitting authorities. In fact, many States were issuing operating permits before Title V was enacted. The EPA also issues Title V permits to sources on tribal lands and elsewhere as necessary. Although Tribes may develop these permitting programs and issue permits, none of these permits currently are administered by Tribes.

The purpose of Title V permits is to reduce violations of air pollution laws and improve enforcement of those laws. Title V permits do this by

- Recording in one document all of the air pollution control requirements that apply to the source. This gives members of the public, regulators, and the source a clear picture of what the facility is required to do to keep its air pollution under the legal limits.
- Requiring the source to make regular reports on how it tracks its emissions and the controls it uses to limit them.
- Adding monitoring, testing, or record keeping requirements, where needed to assure that the source complies with its emission limits or other pollution control requirements.
- Requiring the source to certify annually whether or not it has met the air pollution requirements in its title V permit.
- Making the terms of the Title V permit federally enforceable. This means that EPA and the public can enforce the terms of the permit, along with the State.

Agricultural sources may be required to obtain an air permit under Federal, State, or local laws and regulations. These permit requirements may include the following:

- **New Source Review**. To ensure that emissions from new facilities will not exceed thresholds triggering additional permitting requirement or additional air pollution control.

- **State Operating Permit**. In states that have been delegated authority to implement the Clean Air Act (have an approved SIP), this permit codifies the applicable regulations and operating restrictions placed on major sources or other designated sources.
- **Federal Operating Permit**. In states that have not been delegated authority to implement the Clean Air Act (do not have an approved SIP), this permit codifies the applicable regulations and operating restrictions placed on major sources or other designated sources.

610.82 Clean Water Act and Waters of the U.S.

Overview and Definitions

The Federal Water Pollution Control Act of 1972, now known as the Clean Water Act (CWA), established several programs to regulate and reduce discharges of pollutants into "waters of the United States" (including wetlands). The list of "pollutants" is long, however, those pollutants that are most frequently associated with water quality impairment include sediment, excess nutrients, and harmful bacteria.

Waters of the United States include essentially all surface waters such as navigable waters and their tributaries, interstate waters and their tributaries, most natural lakes, wetlands adjacent to these waters, and impoundments of these waters. This may include lakes, rivers, streams (including intermittent and ephemeral streams), natural ponds, mudflats, playa lakes, sloughs, wet meadows, swamps, bottomland hardwood wetlands, and other kinds of watercourses, wetlands, and aquatic areas. The term "other waters of the U.S." is sometimes used simply to describe those jurisdictional waters such as streams and other aquatic sites that do not meet the definition of "wetlands."

"Special Aquatic Sites" are a subset of waters of the United States that are large or small areas possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. Special aquatic sites include wetlands (see wetlands help sheet), sanctuaries and refuges, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes. These sites are generally recognized as significantly influencing or positively contributing to the overall environmental health of the entire ecosystem and receive special attention under EPA's Section 404 (b) (1) guidelines. This results in increased protection under the Section 404 permit process including a more stringent alternative analysis and emphasis on avoidance and mitigation.

Section 404 of the CWA established a permit program to regulate the discharge of dredged and fill material into waters of the United States. Discharge of dredged or fill material into waters of the U.S. is prohibited unless the action is exempted or is authorized by a permit issued by the U.S. Army Corps of Engineers (Corps) or by the State in a few cases. Under Section 401 of the CWA, before a Section 404 permit can be issued for an activity, the State (or Tribe) in which the activity will occur must certify that the activity will not violate State water quality standards (Section 401 State Water Quality Certification). Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) program, which the States also administer. Section 402 requires a permit for sewer discharges and stormwater discharges from developments, construction sites, or other areas of soil disturbance. Section 303 requires states, territories, and tribes to identify "impaired waters" and to establish Total Maximum Daily Loads (TMDL's). "Impaired waters" are waters that do not meet the water quality standards after existing regulatory programs have been applied. The TMDL specifies the maximum amount of a pollutant that the impaired waterbody can receive and meet water quality standards, and allocates pollutant loadings among point and nonpoint sources.

The purpose of this help sheet is to provide an overview of the CWA and to encourage close and early coordination with state and federal regulatory agencies in your area. The Corps and the states administer the various sections of the CWA with the oversight of the Environmental Protection Agency (EPA). Court decisions, differences in state laws and interpretation of regulations and other factors impact how regulatory agencies implement the permit programs from state to state and district to district. Close coordination throughout the planning process can

prevent significant delays in processing the permit application. The Section 404 program is discussed in more detail since this program most often affects NRCS activities.

Regulated Activities in Waters of the U.S. under Section 404 of the CWA

Activities in waters that are typically regulated under Section 404 include fills for development, water resource projects (e.g., dams and levees), infrastructure development, and conversion or manipulation of wetlands. Additional activities in waters of the U.S. that usually require permit authorization include (but are not limited to) mechanized land clearing, land leveling, bank stabilization, stream realignment, road and bridge construction, fills for building pads, ditch construction projects, and materials associated with excavation and backfilling operations. Generally, fill material typically consists of earthen materials such as soil, gravel, or rocks, or other construction materials such as concrete.

Agricultural Activities in Waters of the U.S. Exempt from Section 404 of the CWA (see Section 404(f))

Some agricultural activities are exempted from the Section 404 permitting process. Exempted activities include normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. In order to be exempt, the activities must be part of an established farming, silviculture, or ranching operation. An operation ceases to be "established" when the area has been converted to another use or has been abandoned so long that modifications to the hydrologic regime are necessary to resume operations. (Note that unlike the provisions of the Food Security Act, prior converted cropland (PC), where wetland conditions have returned and the area has not been cropped for 5 successive years, is considered "abandoned" and may be subject to CWA jurisdiction.) Further, in order to be considered exempt, the proposed activity must not be a part of an activity that would convert any area of the waters of the U.S. into a use to which it was not previously subject and impair the flow and circulation or reduce the reach of waters of the U.S. Only the Corps can make this determination. Clients should be advised to contact the Corps.

Types of Section 404 Permits

Activities that are not exempted from the permit process may require permit authorization. There are two categories of permits, general and individual.

General Permits

General permits typically reduce the time required for applicants to receive authorization for projects. There are two types of general permits, regional and nationwide.

Nationwide Permits

A Nationwide Permit (NWP) authorizes a category of activities throughout the nation that have been determined to have minor impacts. These permits are valid only if the conditions applicable to the permits are met. Several of the NWP's require notification to the Corps before beginning work and some require mitigation. In addition, several regional conditions and/or Section 401 State Water Quality Certification conditions may apply to any part or all of the NWP within a Corps district.

Regional General Permits

Regional General Permits (RGP) are issued by the Corps for categories of activities that are similar in nature and cause minimal environmental impact (both individually and cumulatively) within a geographic region. The permits may apply to one Corps district or

apply to several or parts of several States. NRCS personnel should contact the appropriate Corps office for a complete listing of regional permits within their area. (As with the NWPs, mitigation may be required with some RGPs.)

Individual Permits

Individual permits are required for discharges that are not either exempt or covered by a NWP or RGP. The individual permit process involves a full public interest review. A Public Notice is distributed to all known interested persons including state and federal agencies. After evaluating all comments and information received, the Corps completes an EA or EIS and a final decision on the application is made. The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest. Processing may take up to 120 days or longer.

610.83 Coastal Zone Management Areas

Coastal Zone Management Areas are areas located within or near the officially designated "coastal zone" of a state. Generally, this includes the Atlantic, Gulf of Mexico and Pacific coastal areas, but also includes the Great Lakes. However, the National Oceanic and Atmospheric Administration's Office of Coastal Zone Management approves coastal programs and not all coastal states have a coastal zone management area.

Coastal zone management areas are:

1. The coastal waters and adjacent shorelines, including the lands or waters inside and under those zones; and

2. Areas that strongly influence adjacent coastal zones of the 35 states that have coastal zone management programs.

Specific examples of areas included in the coastal zone are "transitional" and intertidal areas, such as salt marshes, fresh-water wetlands, and beaches. Also included in coastal zone management areas are the connecting waters, harbors, and estuarine areas, such as bays, shallows and marshes as well as those waters adjacent to the shorelines, including but not limited to sounds, bays, lagoons, bayous, ponds and the estuaries themselves.

The coastal zone management area extends seaward to the outer limit of the United States territorial sea, generally 200 miles. Inland, the coastal area extends only to the extent necessary to control land uses, which have a direct and significant impact (effect) on coastal waters.

Section 307 of the Coastal Zone Management Act specifies that actions or activities within the Coastal Zone done by a Federal agency or on behalf of or through a Federal agency must be "consistent" with the State's Coastal Zone Management Plan. That is, any Federal activity cannot be in opposition to the goals and objectives that exist in an approved Coastal Zone Management Plan. The US Supreme Court has upheld the so-called "consistency provision" of the Act. Therefore, Natural Resources Conservation Service (NRCS) planning must be "consistent" with the State's Coastal Plan and be in concert with the goals, tenets, and objectives of that plan.

On March 9, 1993, a letter was jointly signed by the Soil Conservation Service, the Agricultural Stabilization and Conservation Service, and the Extension Service setting forth the policies for enforcement and adoption of science and technology based land-management measures that eliminate or control nonpoint sources of pollution. Guidance on Nonpoint source pollution matters in the coastal zone is contained in EPA's "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (EPA 840-B-92-002), issued in response to the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990. The guidance covers among other areas: agricultural sources, forestry sources, urban sources, marinas & recreational boating sources, and channel, dam, streambank & shoreline sources..

610.84 Coral Reefs

Coral reefs are defined as the species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g. Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean. Coral reefs are also “waters of the United States” as defined in the Clean Water Act.

Coral reefs are among the most diverse and valuable ecosystems on earth. Reef systems are storehouses of immense biological wealth and provide economic and environmental services to millions of people as shoreline protection, areas of natural beauty, recreation and tourism, sources of food, pharmaceuticals, jobs and revenues.

Coral reefs are vulnerable to harmful environmental changes, particularly those resulting from human activities. One of the primary threats to U.S. coral reefs is pollution from land-based sources, including runoff of nutrients and sediments from watersheds adjacent to nearshore coral reef ecosystems. Present estimates are that 10% of all coral reefs are degraded beyond recovery; 30% are in critical condition and may die within 10 to 20 years and, if current conditions continue unabated, another 30% may perish completely by 2050.

Executive Order 13089, Coral Reef Protection was issued in 1998 in recognition of the importance of conserving coral reef ecosystems. The Executive Order created a Coral Reef Task Force whose membership is comprised of 11 Federal agencies, including the Secretary of Agriculture. The Executive Order policy states that agencies will utilize their programs and authorities to protect and enhance the conditions of such ecosystems and, to the extent permitted by law, ensure that any actions authorized, funded, or carried out by the agency will not degrade the conditions of coral reef ecosystems.

NRCS actions that affect U.S. coral reef ecosystems, subject to the availability of appropriations, shall provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing. These measures shall be developed in cooperation with the U.S. Coral Reef Task Force, and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

610.85 Cultural Resources

Cultural Resources, as used by NRCS, are considered equivalent to "historic properties" as defined by the National Historic Preservation Act (NHPA, 16 U.S.C. Sec. 470 et seq.) and regulations for compliance with Section 106 of the NHPA (36 CFR Part 800). They include any prehistoric or historic district, site, building, structure or object listed in or eligible for listing in the National Register of Historic Places (NRHP—maintained by the Secretary of the Interior). They also include all records, artifacts and physical remains associated with the NRHP eligible historic properties. The term also includes properties of traditional cultural and religious importance to an Indian tribe or Native Hawaiian organization that also meet National Register criteria. They may consist of the traces of the past activities and accomplishments of people.

The Secretary of the Interior, through the National Park Service, maintains the list of NRHP properties; the State Historic Preservation Officer (SHPO) maintains a list of NRHP properties and properties that have already been determined eligible during federal agency project planning. These lists are very incomplete, based upon incidental survey and research. Only a small fraction of the nation's cultural resources (historic properties) have been identified and evaluated.

NEPA requires that all Federal agencies, including NRCS, "…preserve important historic, cultural and natural aspects of our natural heritage, and maintain, wherever possible, an environment which supports diversity…"

The implementing regulations for NEPA (1502.25(a)) state that:

> "To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by…the National Historic Preservation Act of 1966…"

Thus, whenever possible, NHPA compliance should be coordinated with NEPA review.

The NHPA, the Advisory Council on Historic Preservation's regulations for compliance with Section 106 of the NHPA (36 CFR Part 800) and GM 420, Part 401, require NRCS to consider the effects of our actions and undertakings on NRHP eligible cultural resources/historic properties in consultation with specific parties. Consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPO) and Federally recognized tribes that want to consult on agency projects, as well as other interested parties (such as the Conservation District, the applicant), is required.

According to 800.16, "Consultation means the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process." Thus, consultation is more than simple notification and takes place throughout the project/program planning process. NRCS has developed some State Level Agreements and tribal consultation protocols that outline the who, when, where, why and how's of consultation.

POLICY: Governmentwide

The National Historic Preservation Act of 1966, as amended (Section 2), states it is:

> …the policy of the Federal government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations to: …use measures…to foster conditions under which our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations; … provide leadership in the preservation of the prehistoric and historic resources of the United States…and in the administration of the national preservation

> program in partnership with States, Indian tribes, Native Hawaiians, and local governments; … contribute to the preservation of nonfederally owned prehistoric and historic resources … encourage the public and private preservation…; assist State and local governments, Indian tribes and Native Hawaiian organizations…to expand and accelerate their historic preservation programs and activities….

POLICY: NRCS

NRCS recognizes its responsibilities as a Federal agency for historic preservation. NRCS will ensure that cultural resources are appropriately considered in all NRCS actions and programs.

NRCS will identify and protect cultural resources early in the planning and environmental evaluation process for all actions, activities or programs (i.e. undertakings) that have the potential to affect cultural resources/historic properties listed in or eligible for listing in the NRHP.

NRCS will protect cultural resources in their original location to the fullest extent practicable by avoiding impacts to resources.

NRCS will consider cultural resources that may be significant under authorities in addition to or apart from Section 106 of the NHPA (e.g., American Indian Religious Freedom Act). When such resources (e.g. contemporary cultural properties, traditional cultural values, landscape, or features having religious importance) may be impacted, NRCS will consult with concerned parties to determine what practices or treatments, if any, are acceptable to the concerned parties and will document the outcome of such consultation according to the statutes and authorities under which they are considered.

If agreement among consulting parties regarding acceptable treatment of identified cultural resources cannot be reached, NRCS will complete documentation of compliance and determine if continued assistance is warranted. If NRCS does determine such assistance it appropriate, we will seek consultation with the ACHP and, upon receipt of their recommendations and completion of additional compliance requirements, make a final decision on how to proceed.

NRCS will inform participants about the importance of the cultural environment and, as appropriate, provide information on opportunities beyond simple compliance to enhance the understanding of the Nation's heritage.

610.86 Endangered and Threatened Species

Endangered and threatened species are those plant and animal species which are reduced in numbers, making extinction a high probability. The disappearance of these species would be a biological, cultural and in some cases an economic loss to the Nation. The species' continued existence contributes to scientific knowledge and understanding, adds to recreational and commercial pursuits, and provides interest, purpose and variety to human existence.

Endangered Species Act of 1973 authorized the Secretaries of Interior and Commerce to classify… based on best science and commercial data… those plants or animals, which the Secretary of the Interior classifies as "endangered" or "threatened" based on the best available scientific and commercial data. The term "endangered species" means any species in danger of extinction throughout all or a significant portion of its range. The term "threatened species" means any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The US Fish and Wildlife Service (FWS) publishes comprehensive notices containing the names of species which are proposed for listing as "endangered" or "threatened" under the Endangered Species Act of 1973. The National Marine Fisheries Service (NMFS), now known as NOAA Fisheries, is charged with protecting marine and anadromous species.

Section 7a(1) of the Act requires NRCS, in consultation with and with the assistance of the Secretary of the Interior, to utilize the departments' and agencies' authorities to advance the purposes of the Act by implementing programs for the conservation of endangered and threatened species.

Section 7a(2) of the Act requires NRCS, in consultation with and with the assistance of the Secretary of the Interior, to insure that its agency actions and activities do not jeopardize the continued existence of threatened and endangered species or result in the destruction or adverse modification of the species' critical habitat. The Services designate the extent and location of a particular species' critical habitat. Critical habitats identify areas essential to the conservation of federally listed species.

The principal hazard to endangered and threatened species is the destruction or modification of their habitats by human activities associated with industrialization, urbanization, agriculture, lumbering, recreation and transportation.

The NRCS policy (GM 190 Part 410.22(b)) states:

NRCS will assist in the conservation of threatened and endangered species, and consistent with legal requirements, avoid or prevent activities detrimental to such species. NRCS's concern for these species will not be limited to those listed by the Secretary of the Interior and published in the Federal Register, but will include species designated by State agencies as rare, threatened, endangered, etc.

610.87 Environmental Justice

Environmental Justice means that, to the greatest extent practicable and permitted by law, all populations are provided the opportunity to comment before decisions are rendered on proposed federal actions. Furthermore, the principles of environmental justice require that populations are allowed to share in the benefits of, are not excluded from, and are not affected in a disproportionately high and adverse manner by, government programs and activities affecting human health or the environment.

Executive Order 12898 issued February 11, 1994 requires each Federal Agency to make Environmental Justice a part of its mission. Agencies are to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations, low-income populations, and Indian Tribes. Environmental Justice must be applied throughout the United States, its territories and possessions, the District of Columbia, the Commonwealths of Puerto Rico and the Mariana Islands.

Environmental Justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and related social, cultural, and economic impacts. A social impact assessment can be an important way to identify environmental justice issues.

The primary means to attain compliance with environmental justice considerations is through the inclusion of low-income, minority, and tribal populations in the planning process and by translating documents into other languages when members of the affected area are not English-speaking.

610.88 Essential Fish Habitat

Essential Fish Habitats (EFH) are areas identified as being vital for sustaining marine or anadromous fish populations. They include the waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

The Magnuson-Stevens Act of 1996 calls for heightened consideration of fish habitat in resource management decisions and direct action to stop or reverse the continued loss of fish habitats. The National Marine Fisheries Service (NMFS), now known as NOAA Fisheries, implements and enforces the management measures through Fisheries Management Plans. As amended in 1986, the Magnuson Act requires Regional Fisheries Management Councils (Councils) to evaluate the effects of habitat loss or degradation on their fishery stocks and take actions to mitigate such damage. In 1996, this responsibility was expanded to ensure additional habitat protection. The Act requires cooperation among NMFS (NOAA Fisheries), the Councils, fishing interests, Federal and state agencies, and others in achieving the EFH goals of habitat protection, conservation, and enhancement.

NRCS must consult with NMFS (NOAA Fisheries) regarding any action or proposed action that may adversely affect EFH. NMFS (NOAA Fisheries) currently participates in interagency environmental coordination or consultation processes under the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Endangered Species Act, the Federal Power Act, and the Clean Water Act for many of the actions that will be covered under the EFH mandate. Where these existing processes can satisfy the requirements of EFH consultations, such procedures will be used to meet the consultation requirements of the Magnuson-Stevens Act. In order to use an existing environmental review or consultation process NRCS must obtain a finding from NMFS (NOAA Fisheries) that the existing, or modified, process satisfies the EFH consultation requirements of the Act. Findings can be developed at the national, regional or state-specific level. The regulations strongly encourage using existing procedures for environmental reviews in order to streamline this process.

In the absence of an existing process, the regulations establish procedures to accomplish the mandated consultations.

- Any Council(s) may comment and make recommendations to NMFS (NOAA Fisheries) and any Federal agency undertaking actions that may adversely affect the habitat, including EFH, of any fishery resource under its authority; and must comment if, in the view of the Council, the action is likely to substantially impact the habitat, including EFH, of an anadromous fishery resource under its authority.
- After receiving information from a Council or Federal or state agency concerning an action or proposed action that would adversely affect any EFH, NMFS (NOAA Fisheries) must recommend measures to the Federal or state agency to conserve such habitat.
- Within 30 days of receiving an EFH recommendation from NMFS (NOAA Fisheries), a Federal agency must respond in writing to NMFS (NOAA Fisheries) and any commenting Council(s). The response should detail the measures that will be taken to avoid, mitigate, or offset the adverse effects to EFH and explain the reasons for any actions inconsistent with the NMFS (NOAA Fisheries) EFH recommendations.

610.89 Fish and Wildlife Coordination

The Fish and Wildlife Coordination Act (FWCA), as amended, proposes to assure that fish and wildlife resources receive equal consideration with other values during the planning of water resources development projects and programs. The Act was passed because the goals of water-related actions (e.g., flood control, irrigation, hydroelectric power) may conflict with the goal of conserving fish and wildlife resources.

The FWCA requires NRCS to consult with the U.S. Fish and Wildlife Service (FWS) whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever. The Act also requires consultation with the head of the state agency that administers wildlife resources in the affected state. The purpose of this process is to promote conservation of wildlife resources by preventing loss of and damage to such resources and to provide for the development and improvement of wildlife resources in connection with the action.

Although the recommendations of the FWS and State officials are not binding, NRCS must give them full consideration. Any recommendations made by those officials shall become an integral part of any plan prepared by NRCS that is subject to authorization or approval by any agency or person. The plan must also include an estimate of the wildlife benefits or losses to be derived from the proposed project and a description of the conservation measures that NRCS finds should be adopted to obtain maximum overall project benefits.

Two general types of activities exempt from the Act are (1) water impoundments with a surface area of less than ten acres and (2) programs for land management and use carried out by Federal agencies on land under their jurisdiction. In addition, the provisions of the Act do not apply to the Tennessee Valley Authority.

610.90 Floodplain Management

Floodplains are defined as lowlands or relatively flat areas adjoining inland or coastal waters, including at a minimum areas subject to a one percent or greater chance of flooding in any given year.

The "base" floodplain is set equal to the "100-year" floodplain, the so-called "one percent chance floodplain." The "critical action" floodplain is defined as the 500-year floodplain (the 0.2 percent chance floodplain) where there is the presence of a facility, such as a school, hospital, nursing home, utility or a facility producing volatile, toxic or water-reactive materials. Floodplains may be shown on maps produced by the Federal Emergency Management Agency (FEMA) and on the Natural Resources Conservation Service (NRCS) Watershed Plans and Floodplain Management Studies.

NRCS policy on floodplains is found in the General Manual (GM 190, Part 410.25) and reflects Executive Order 11988, which was signed by President Jimmy Carter on May 24, 1977. The E.O. requires that decisions by Federal agencies must recognize that floodplains have unique and significant public values. Federal agencies are instructed to consider the natural and beneficial values of floodplains and the public benefits to be derived from floodplain restoration or preservation.

The objectives of E.O. 11988 are to avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development where there is a practical alternative.

Through proper planning, floodplains can be managed to reduce the threat to human life, health and property in ways that are environmentally sensitive. Most floodplains contain areas with valuable assets that sustain and enhance human existence. Some of these assets are agricultural and forest food and fiber, fish and wildlife, temporary floodwater storage, parks and recreation, and environmental values.

The Natural Resources Conservation Service provides leadership, and takes actions, where practicable, to conserve, preserve and restore existing natural and beneficial functions and values in base (100-year) floodplains as part of the technical and financial assistance program that it administers.

610.91 Invasive Species

An invasive species is an alien species whose presence does or is likely to cause economic or environmental harm or harm to human health. Alien species means species not native to a particular ecosystem. Invasive species may include all terrestrial and aquatic life forms including plants, animals, and fungi.

Executive order 13112, 1999 – Invasive Species – directs Federal agencies to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause.

NRCS shall not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

All NRCS actions and activities shall be planned and implemented with the cooperation of stakeholders. Stakeholders include, but are not limited to, State, Tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

610.92 Migratory Birds

The Migratory Bird Treaty Act of 1918, as amended, is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle).

Migratory birds are all common wild birds found in the United States, except the house sparrow, starling, feral pigeon, and resident game birds such as pheasant, grouse, quail, and wild turkeys. Resident game birds are managed separately by each State. A list of migratory birds is found in Title 50 of the Code of Federal Regulations, Part 10.

The framers of the Migratory Bird Treaty Act were determined to put an end to the commercial trade in birds and their feathers that, by the early years of the 20th century, had wreaked havoc on the populations of many native bird species.

The Migratory Bird Treaty Act decreed that all migratory birds and their parts (including eggs, nests, and feathers) were fully protected. Thus, the Act makes it unlawful, unless permitted by regulation, for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird, including feathers, parts, nests, or eggs. This prohibition applies to Federal agencies as well as private individuals.

The Act authorizes the Secretary of the Interior to determine when the “taking” of migratory birds is compatible with the terms of the Migratory Bird Treaty. This is why the U.S. Fish and Wildlife Service prescribes season and bag limit restrictions to State game agencies for migratory game species such as waterfowl and doves. The Act is also the law that makes it unlawful to take migratory game birds over a baited area. Activities such as falconry and control of depredating birds are allowed by issuance Migratory Bird Permits from the US Fish and Wildlife Service.

In addition to the Migratory Bird Treaty Act, Executive Order 13186 “Responsibilities of Federal Agencies to Protect Migratory Birds” requires NRCS to consider the impacts of planned actions on migratory bird populations and habitats for all planning activities.

There are other requirements protecting certain migratory birds in addition to the Migratory Bird Treaty Act and the Executive Order. The Bald Eagle Protection Act provides protection to all Bald and Golden Eagles by prohibiting all commercial activities and some non-commercial activities involving Bald or Golden Eagles, including their feathers or parts. The Endangered Species Act protects endangered migratory bird species such as the Peregrine falcon, the Northern spotted owl, and the Bald Eagle and makes it illegal to sell, harm, harass, possess or remove protected animals from the wild.

As a result, conservation alternatives should be designed and implemented in a manner that avoids or minimizes, to the extent practicable, adverse impacts on migratory bird resources.

610.93 Natural Areas

Natural areas are defined as land and water units where natural conditions are maintained. Natural conditions result when ordinary physical and biological processes operate with a minimum of human intervention. Manipulations of natural areas may be needed to maintain or restore features where degradation or change of those natural features has occurred (GM 190 Part 410.23).

Natural areas may be designated areas of the Federal Government, nonfederal government, or privately controlled land. Designation may be formal, as provided under Federal regulations, or by foundations or conservation organizations specifically created to acquire and maintain natural areas. Designation may be informal in the case of private landowners that specify an area as a natural area and manage it accordingly.

It is the policy of the NRCS to support the designation of appropriate natural areas and to recognize dedicated natural areas as a land use.

Natural Resources Conservation Service (NRCS) employees who provide technical assistance to land users must inform them about the impact their decisions may have on adjacent or nearby natural areas. Land users will be encouraged to consult with concerned agencies, societies, and individuals to arrive at mutually satisfactory land use and treatment.

610.94 Prime and Unique Farmlands

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary of Agriculture. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage.

Unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables.

Farmland, other than prime or unique farmland, is land that is of statewide or local importance for the production of food, feed, fiber, forage, or oilseed crops, as determined by the appropriate State or unit of local government agency or agencies, and that the Secretary of Agriculture determines should be considered the same as prime or unique farmland for the purposes of this evaluation.

The purpose of the Farmland Protection Policy Act and 7 CFR Part 658 are to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.

NRCS shall use the criteria provided in regulations found at 7 CFR 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. With the help of NRCS, Federal agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects on farmland conversion to nonagricultural uses.

610.95 Riparian Areas

Riparian areas are ecosystems that occur along watercourses or water bodies. They are distinctively different from the surrounding lands because of unique soil and vegetative characteristics that are strongly influenced by free or unbound water in the soil. Riparian ecosystems occupy the transitional area between the terrestrial and aquatic ecosystems. Typical examples would include floodplains, streambanks, and lakeshores. Riparian areas may exist within all land uses, such as cropland, hayland, pastureland, rangeland, and forestland.

Although riparian areas constitute only a fraction of the total land area, they are generally more productive in terms of plant and animal species, diversity and biomass. Riparian areas are vital components of the ecosystems in which they occur and are extremely important for flood control and hydrologic function (water quantity, quality, and timing). It is important to recognize that not all riparian areas have the same potential or react to management in the same way; therefore, they should be managed according to their unique characteristics.

An understanding of watershed scale processes is necessary to fully understand how riparian areas function. The attributes of a watershed system such as soils, geology, landuse, and topography directly influence riparian area structure, function, and values.

Conservation planning in riparian areas requires special considerations. A resource problem within the riparian zone may be the manifestation of upland management decisions. Planners working with riparian areas should consider soils, the present plant community, the site potential, geomorphology of both the stream and the watershed, the stage of stream evolution, fish and wildlife needs, the management of the upland areas of the watershed and the producer's objectives.

Federal law does not specifically regulate riparian areas. However, portions of riparian areas, such as wetlands and other waters of the U.S., may be subject to federal regulation under provisions of the Food Security Act, the Clean Water Act, the National Environmental Policy Act and state and local legislation.

NRCS policy (190 GM, part 411.03(d)) for riparian areas requires:

- riparian area management to be integrated into plans and alternatives
- plans to maintain or improve water quality and quantity benefits
- development of alternatives when land user's objectives are in conflict with conservation of the riparian area resources.

610.96 Scenic Beauty

Scenic beauty can be defined as the viewer's positive perceived value of the special, unique and memorable physical elements of a landscape. A beautiful landscape scene has definable visual elements that combine to provide a high-quality visual resource. A landscape with a high visual quality generates emotional impacts within the viewer's mind and links to sense of place and quality of life. Retaining people's connection to a beautiful natural environment affects their well-being. Through proper planning, the visual characteristics of a scenic landscape can be protected, maintained and improved.

Management of the visual landscape is the process of manipulating the physical elements and functions of the landscape to achieve specific resource objectives. The landscape has a consistently definable appearance that can be described by the measurable visual elements of landform, water, vegetation, structures and sky. Four of the visual elements (landform, water, vegetation, and structures) provide a ready basis for describing the changing countryside landscape as altered by human decisions.

Landform

The shape of the land (topography, slope, and aspect) seems to be the most noticeable element, particularly as it relates to the horizon. For example, the horizontal nature of crop landscapes makes them especially sensitive to the presence of vertical elements, such as streamside vegetation, shelterbelt trees, farmstead structures and utility poles. When agricultural activities, such as tree rows and fences are aligned with the topography, they tend to emphasize and enhance the landform. In flat or rolling areas the horizontal line is the most conspicuous landscape element because it is so uniformly horizontal.

Water

Water can add to aesthetic quality, modify temperatures, serve as a buffer between use areas, and direct attention from undesirable views. Its characteristics are gurgling, rushing, spurting, falling, calm or placid, It’s shape, whether water course or waterbody, also adds value to the landscape.

Vegetation

Vegetation within the landscape includes agricultural crops, which can vary widely in size, form, color, texture, and planting pattern. Shelterbelt and drainageway trees are visually significant in landscapes where low crops or pastures are present. When that pattern is repeated year after year, often the trees provide the only spatial differentiation in an otherwise horizontal landscape. Row crops create visually strong lines to the viewer on the ground or from the air, so any curved (nonlinear) pattern that is located among the straight lines will be prominent.

Structures

From a human emotional standpoint, structures evoke the most obvious and describable of our mental images of "countryside." Farmhouses, barns, silos, wooden fences, stone walls, windmills and two-lane roads are some of the agriculturally related structures that fulfill our romantic notion of countryside. Today's countryside is more likely to be populated with highways, transmission lines, steel and. concrete bridges, warehouses, subdivisions, theme parks, and airports, few of which evoke any images directly related to agriculture. New technologies, such as metal farm buildings and silos and prefabricated houses, are part of today's countryside landscape. When all of the above elements are combined, they form patterns or images that collectively we label as the "landscape." While the identified "landscape" will vary from region to region, the recognition

that a particular landscape pattern is characteristic of a certain part of the country is obvious to everyone who lives there or who passes through the region.

Contributions to the scenic beauty of the landscape are part of providing planning assistance to landowners and land users. Emphasis should be given to natural resource conservation practices that contribute to the attractiveness of the landscape while increasing agricultural efficiency and productivity.

610.97 Wetlands

Wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Generally, wetlands include swamps, marshes, bogs or similar areas. Many wetlands serve significant natural biological functions such as food chain production, general habitat and nesting, spawning, and rearing sites for aquatic and land species. Wetlands may also serve important water quality functions, serve as flood water storage areas, and protect areas from wave action, erosion, or storm damage.

It is the policy of the NRCS to protect and promote wetland functions and values in all NRCS planning and application assistance. NRCS recognizes the beneficial and varied functional attributes of the different wetland types, and as such, strives to reconcile the need for wetland protection with that of promoting viable agricultural enterprises. NRCS supports the restoration, enhancement, creation, and preservation of wetlands as important and realistic components of comprehensive conservation plans, not only on a farm-by-farm basis, but also on a watershed or landscape basis. When providing technical assistance, NRCS will conduct an environmental evaluation, considering the objectives of the client in the context of environmental, economic, and other pertinent factors. NRCS activities must comply with Executive Order 11990, “Protection of Wetlands”, and with Revised NRCS Wetland Technical Assistance Policy at 7 CFR Part 650, dated November 17, 1997.

If wetlands will be impacted by a proposed activity, the NRCS will identify whether practicable alternatives exist that either enhance wetland functions and values, or avoid or minimize harm to wetlands. If such alternatives exist, the client will be given the opportunity to select one of those alternatives. If the client selects the practicable alternative, the NRCS may continue technical assistance for the conversion activity as well as the development of the mitigation plan. However, if the practicable alternative is not selected, the NRCS may assist with the development of an acceptable mitigation plan, but no further financial or technical assistance for the wetland conversion activity may be provided.

In addition to NRCS requirements, activities that impact wetlands and “other waters of the U.S.” often require a Section 404 permit from the Corps of Engineers prior to beginning work. Early coordination with the appropriate Corps Regulatory Office to determine possible permit requirements is highly recommended. (Refer to the Clean Water Act Help Sheet.) Many states also have laws restricting activities in wetlands. Prior to or concurrent with NRCS assistance, the client should obtain all necessary permits or approvals related to work in wetlands.

Since wetlands are highly variable and can be dry for most of the year, they can be difficult to recognize and require special training to identify. Interagency Wetland Delineation Training courses (sometimes referred to as Reg IV) outline the wetland determination procedures in the NRCS Food Security Act (FSA) manual, and the Corps of Engineers' Wetlands Delineation Manual (Technical Report Y-87-1, Corps of Engineers, Washington DC) also referred to as the Corps '87 Manual.

Activities in wetlands that occur in base (100 yr. or 500 yr.) floodplains are subject to review under NRCS Floodplain Management Policy at GM-190.410.25 and Executive Order 11988. (See Section 97, "Floodplain Management.")

610.98 Wild and Scenic Rivers

A Wild and Scenic River is a free-flowing river or river-segment that has outstanding scenic, recreational, geologic, fish-and-wildlife, historic, cultural, or other similar values. National wild and scenic rivers are designated by act of Congress (PL 90-542) or by the Secretary of the Interior at the request of a governor as part of the National Wild and Scenic Rivers System.

The designation of a river under the Wild and Scenic Rivers Act provides legal protections from adverse development and provides a mechanism for management of the river's resources. The principal effect of the Act is to preclude or to severely limit the construction of dams and other water resources projects that might affect the free-flowing character of the river or adversely affect the values for which a river was designated.

The designation affects the management of federal lands in the river's corridor. Rights to future development of private lands can be purchased under land acquisition authorities. Boundaries of Wild and Scenic Rivers are limited to no more than 320 acres per river mile and purchase of fee title within this boundary is limited to no more than 100 acres per mile.

Management standards or requirements have been developed for three classes of rivers: (1) Wild, (2) Scenic, and (3) Recreational. These labels refer to the degree of development along a river, not necessarily to the type of river or how scenic or heavily used it is. The definitions of wild, scenic and recreational from the law are:

- "Wild" River areas: Those rivers or sections of rivers that are free of impoundment’s and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.
- "Scenic" River areas: Those rivers or sections of rivers that are free of impoundment’s, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.
- "Recreational" River areas: Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

Ongoing regular uses of private lands, particularly those existing at the time of the river's designation, are not directly affected. Most private land uses, such as homes and farms, are compatible with Wild, Scenic and Recreational River management. The river's management plan identifies the types of land uses and developments that are considered compatible or incompatible with the river's wild and scenic values.

Designation has no effect on existing water rights or irrigation systems or other existing developed facilities. New projects and alterations to existing systems, which require federal permits, may be allowed when they will not have an adverse effect on the values for which the river was designated.

Generally, timber harvests and agricultural operations on privately owned lands are unaffected in Wild, Scenic and Recreational River designations. However, some activities may require permits or may be covered under special provisions of the management plan.

Every river in the National System is required to have a manager responsible for assuring protection. The federal river manager can assist and cooperate with states or local organizations, landowners, and individuals to plan, protect, and manage river resources. The assistance can include limited financial assistance. Management of natural and cultural values is emphasized rather than public purchasing and owning of land. A great deal of cooperation

may be required as management may include local zoning, restrictions on land use, donations of development rights to land trusts, and other methods.

SUBPART G – ENDANGERED SPECIES ACT (ESA)

610.100 – Overview of ESA Provisions

610.101 – ESA Section 4 – Determination of Endangered and Threatened Species

610.102 – ESA Section 7 – Consultation and Conference Responsibilities

610.103 – ESA Section 9 – Prohibited Acts

610.104 – ESA Section 10 – Exceptions

610.105 – ESA Section 11 – Penalties and Enforcement

610.106 – ESA Exhibits (Reserved)

Part 610 – National Environmental Compliance

Subpart G - Endangered Species Act (ESA)

610.100 Overview of ESA Provisions

Endangered and threatened species are those plant and animal species which are reduced in numbers, making extinction a high probability. The term "endangered species" means any species in danger of extinction throughout all, or a significant portion, of its range. The term "threatened species" means any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

NRCS has the reputation of providing technical and financial assistance to landowners through voluntary participation. NRCS also has a responsibility, as an agency of the federal government, to uphold the laws and regulations of the government and to protect the interests of the public. With the assistance of NRCS, landowners can apply conservation alternatives that avoid adversely affecting protected species or their habitats. An awareness of habitat locations and an understanding of the impacts of conservation practices, including the long and short-term effects on habitat, are key to NRCS being able to fulfill its responsibilities under the ESA.

In addition to species and habitat protected by the ESA, the NRCS policy (GM 190 Part 410.22(b)) requires consideration of State species of concern. The policy states:

> "NRCS will assist in the conservation of threatened and endangered species, and consistent with legal requirements, avoid or prevent activities detrimental to such species. NRCS's concern for these species will not be limited to those listed by the Secretary of the Interior and published in the Federal Register, but will include species designated by state agencies as rare, threatened, endangered, etc."

The ESA sections discussed below are those that are most relevant to NRCS and private landowner's activities. Additional information on the ESA is available on the internet, from the U.S. Fish and Wildlife Service (FWS) and NOAA Fisheries (previously known as the National Marine Fisheries Service or NMFS), as well as from numerous other sources.

ESA Provisions

When Congress enacted the ESA in 1973, it made several findings regarding the disappearance of various plant and animal species of the United States, the importance of these species to the Nation and its people, and the obligation of the Federal government to conserve to the extent practicable the various species of fish, wildlife, or plants facing extinction.

Specifically, Congress declared in the Act that:

1. Various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;
2. Other species of fish, wildlife, and plants have been so depleted in numbers that they are endangered of or threatened with extinction;

3. These species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people;
4. The United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction in accordance with international agreements;
5. States and other interested parties should be encouraged through federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards which is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens the Nation's heritage in fish, wildlife, and plants.

The facts on which these statements of declaration were based in 1973 have not changed today. However, the recognition of the causal relationships between problem sources and their effects on the environment, and the awareness of the opportunities to address those sources are changing. The science continually tries to catch up to the policy-making to confirm theories and hypotheses. NRCS has always based its technical standards on the best science available. Certain cause and effect relationships are more evident in the environment while others are subtle. Sensitive ecosystems cannot, however, wait for all the science to prove or disprove all the theories identifying these causal relationships. Many of the conservation activities NRCS assists landowners with have the potential to immediately and directly impact specific designated critical habitats and, depending on the extent of these practices, larger ecosystems.

In passing the ESA, Congressional policy was established. The ESA states that:

> "It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.
>
> "It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."

The purposes of the Endangered Species Act are to:

1. Conserve the ecosystems on which endangered and threatened species depend;
2. Provide a program for the conservation of such endangered species and threatened species; and
3. Take such steps as may be appropriate to achieve the purposes of international treaties.

NRCS works to conserve ecosystems on which endangered and threatened species depend. Section 7 of the ESA provides the means "whereby the ecosystems on which endangered and threatened species depend may be conserved". Technical and financial assistance programs afforded to NRCS customers provide a number of opportunities to carry out the ESA policies established by Congress.

General Agency Roles and Responsibilities

The U.S. Fish and Wildlife Service (FWS) is a Federal land management and regulatory agency within the Department of Interior. The Secretary of the Interior has the delegated responsibility for implementing the Endangered Species Act and coordinating with other Federal and State agencies in the effort to conserve endangered and threatened species. As part of the Fish and

Wildlife Services' (FWS') stewardship role, it implements the ESA for terrestrial, freshwater, and some anadromous species.

NOAA Fisheries is a regulatory agency within the Department of Commerce. It is responsible for stewardship of the Nation's living marine resources. The Secretary of Commerce has the delegated responsibility for implementing the ESA and coordinating with other Federal and State agencies in the effort to conserve most anadromous and marine species endangered and threatened species.

The Natural Resources Conservation Service (NRCS) is an agency that provides technical and financial assistance to private land users on a voluntary basis. NRCS is required by the ESA to protect and conserve federally listed species and species proposed for listing. This responsibility extends to the conservation and, where possible, the enhancement of habitat.

610.101 ESA Section 4 – Determination of Endangered and Threatened Species

Section 4 of the ESA describes the "determination of endangered species and threatened species" as the process by which the Secretary of the Interior or the Secretary of Commerce ("the Secretary") determines whether any species is an endangered or threatened species and the basis for making such determinations. Determinations of a species' status can be based on several factors. These factors include the present or potential destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence.

Section 4 of the ESA requires the Secretary to publish in the Federal Register a list of all species determined to be endangered or threatened. This is done to disseminate information on the protective regulations afforded these species and to develop and implement recovery plans for the conservation and survival of listed species. Section 4 also contains a mechanism by which citizens may petition to force a listing determination.

Listing and Delisting

The process for listing species as endangered or threatened, or for removing them from this status, includes publication of several notices in the Federal Register. Any interested person can petition the Secretary to add a species to the list of endangered or threatened species. Interested persons can also petition the Secretary to delist a species. For each petition, the Secretary must make a finding within 90 days as to whether the petition presents substantial scientific and commercial information indicating the petitioned action may be warranted and this finding must be published in the Federal Register. If the petition does present such information, the Secretary must initiate a review of the status of the species concerned, and within one year from the date of the petition, publish in the Federal Register one of the following findings:

- The petitioned action is not warranted. This finding is then published in the Federal Register.
- The petitioned action is warranted. A notice of this finding is published in the Federal Register, along with the text of a proposed regulation to implement the action. In this case, species are considered to have a "proposed" (for listing) status.
- The petitioned action for listing or delisting is warranted but
    - It is precluded by pending proposals to determine whether other species should be listed or delisted. In this case, the species remains a "candidate" species and its status is reviewed annually.
    - Expeditious progress is being made to add or remove the qualified species from the respective list to which the petitioned action refers.

At least 90 days before the effective date of a regulation, the Secretary must publish a general notice and the complete text of the proposed regulation in the Federal Register. In addition, within one year from the date the general notice is published, the Secretary must publish in the Federal Register:

- A final regulation to implement the proposal;
- Notice that the one-year period is being extended; or
- Notice that the proposed regulation is being withdrawn, together with the finding on which the withdrawal is based.

There are limited exceptions to these time periods when there is substantial disagreement about the sufficiency or availability of existing data or it is essential to the conservation of a species to implement a rule more quickly.

The NRCS State Biologist should obtain Federal Register notices for species within the state and provide any appropriate comments on the proposed listing or delisting of species.

Critical Habitat

Concurrently with making a designation for a species as endangered or threatened, the Secretary is to designate any habitat of that species that at that time is considered to be "critical habitat." The Secretary may also revise this designation as appropriate.

The term ''critical habitat'' for a threatened or endangered species means—

1. The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features:
    a. Essential to the conservation of the species; and
    b. Which may require special management considerations or protection.
2. Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Designation of critical habitat and revisions of that designation are based on the best scientific data available, as well as consideration of economic and other relevant impacts of specifying designated critical habitat. Any area may be excluded from a critical habitat designation if the benefits of the exclusion outweigh the benefits of including the area as part of the critical habitat. However, if the Secretary determines, based on the best scientific and commercial data available, that the failure to designate an area as critical habitat will result in the extinction of the species concerned, it will be given critical habitat status.

Any interested person can petition the Secretary to revise a designation of critical habitat. Within 90 days after receiving such a petition, the Secretary must make a finding as to whether the petition includes substantial scientific information indicating that the revision may be warranted. This finding must be published in the Federal Register.

If there is substantial scientific information indicating the revision may be warranted, within one year of receiving the petition the Secretary must determine how to proceed with the requested revision, and publish in the Federal Register a notice of his intention.

If the Secretary's intention is to publish a regulation implementing a designation or revision of critical habitat, then at least 90 days before the effective date of a regulation, the Secretary must publish a general notice and the complete text of the proposed regulation in the Federal Register. In addition, within one year from the date the general notice is published, the Secretary must publish in the Federal Register:

1. A final regulation to implement the proposal;
2. Notice that the one-year period is being extended; or
3. Notice that the proposed regulation is being withdrawn, together with the finding on which the withdrawal is based.

There are limited exceptions to these time periods when there is substantial disagreement about the sufficiency or availability of existing data or it is essential to the conservation of a species to implement a rule more quickly.

The NRCS State Biologist should obtain Federal Register notices for species within the state and provide any appropriate comments on the proposed designation or revision of critical habitat.

Recovery Plans

Section 4 of the ESA states that recovery plans shall be developed by the Secretary (Department of the Interior) for species listed as endangered or threatened unless it is determined that a plan will not promote the conservation of the species. At a minimum, recovery plans should include the following:

1. Numbers and distribution of the listed species;
2. Basic life history of the species and its relationships to its supporting habitat;
3. Natural and human-related factors affecting the species or its habitat, including elements of the species' critical habitat, whose alterations can lead to the species' decreased capability for survival;
4. Any distinction in species' behavior or required habitat needs if the species has a different area or need for another life cycle period such as, breeding, non-breeding, migrating or over wintering period; and
5. The tolerance of the species or essential elements of its habitat to human activities.

Interrelationships exist between management actions outlined in recovery plans and the consultation process. The FWS representative assisting in the development of recovery plans (with species experts) should be able to ensure that any reasonable and prudent alternative or any reasonable and prudent measures developed through the consultation process are consistent with recovery plan goals. Further, management actions identified in a recovery plan can be used as Terms and Conditions of an incidental take statement. If recovery plans identify specific habitats as essential for species survival and recovery, then throughout the consultation process, close attention should be given to recommended practices or alternative actions that may affect that habitat.

NRCS participation in development of recovery plans can be considered part of exercising its section 7(a)(1) responsibilities to consult with FWS and use NRCS resources for the conservation of species.

610.102 ESA Section 7 – Consultation and Conference Responsibilities

ESA Section 7 Provisions

Section 7(a)(1)

Section 7(a)(1) requires NRCS, in consultation with and with the assistance of FWS or NOAA Fisheries, as appropriate, to utilize NRCS authorities in furtherance of ESA purposes by carrying out programs for the conservation of listed endangered and threatened species. To do this, NRCS, when appropriate, should consult with the FWS and NOAA Fisheries to ensure it has a "program," or a group of concerted actions, utilizing NRCS authorities to further the purposes of the ESA.

NRCS can meet much of its Section 7(a)(1) responsibilities to carry out programs for the conservation of endangered and threatened species on a programmatic basis by involving FWS and NOAA Fisheries in NRCS State Technical Committee meetings and in local work group meetings. Their participation with these groups augments other discussions that NRCS has with the FWS and NOAA Fisheries regarding the conservation of protected species. Examples of such activities include:

1. Inviting Service officials to field demonstrations to observe how the conservation planning process is conducted and how conservation practices are implemented with funding provided through conservation programs.
2. Discussions with the FWS and NOAA Fisheries regarding the potential to modify conservation practices in the Field Office Technical Guide to better address the needs of protected species and ways to provide technical assistance in a manner that furthers the conservation of threatened and endangered species.
3. Identification of NRCS program priority areas that benefit listed species or designated critical habitat.

On a site-specific basis, NRCS can also use its authorities to support Section 7(a)(1) requirements by implementing conservation recommendations the Service makes during the Section 7(a)(2) consultation process. Conservation recommendations are non-binding suggestions the FWS or NOAA Fisheries make during formal or informal consultation.

Section 7(a)(2)

ESA Section 7(a)(2) requires NRCS to consult with FWS and NOAA Fisheries to ensure that any action NRCS authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical by the Secretary of the Interior.

It is important to maintain good communication with FWS and NOAA Fisheries to ensure that NRCS appropriately evaluates the effects of proposed actions on listed species and their habitats. Much of this communication is considered part of the informal consultation process and should be documented in notes to the file or by other appropriate means. On a site-specific basis, NRCS field personnel must consider the effects of actions and alternatives on listed and proposed species and designated critical habitat as part of the environmental evaluation process. These effects, as well as other relevant informal communications, should be documented on the NRCS-CPA-52 or State equivalent.

Programmatic consultation can be used to identify situations in which site-specific consultation is or is not required. It may reduce the workload associated with site-specific actions. Any agreements or other conclusions reached through this process should be thoroughly documented.

In site-specific consultations, if NRCS determines there will be no effect on any protected species or habitat, consultation is not required. Document this determination on the NRCS-CPA-52, "Environmental Effects for Conservation Plans and Areawide Conservation Plans," or equivalent. Include in the notes the reasons for reaching this conclusion and reference any relevant information.

Section 7(a)(3)

Section 7(a)(3) states that NRCS shall consult with the Secretary of the Interior on any prospective agency action at the request of and in cooperation with the prospective permit or license applicant if the applicant has reason to believe that an endangered or threatened species may be present in the area affected by a proposed project and that implementation of the project will likely affect the listed species.

Section 7(a)(4)

Section 7(a)(4) states that NRCS shall confer with the Secretary of the Interior on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

Technical Assistance

There is no requirement to consult on a site-specific basis when NRCS provides technical assistance only. NRCS technical assistance activities provide information and advice to recipients regarding the utilization of their resources. In such cases, NRCS does not control the action that is ultimately taken, and therefore technical assistance does not fall within the parameters of an agency action subject to section 7(a)(2) consultation.

When providing site-specific technical assistance, NRCS personnel shall refer to Section 2 of the Field Office Technical Guide, other existing maps, habitat criteria, and other available information to determine whether protected species or designated critical habitat is present. NRCS personnel shall also refer to this information to determine whether proposed or State-listed species of concern or the habitats on which they depend, are also present.

If NRCS determines that there may be an adverse impact on a listed species or designated critical habitat as a result of the recipient voluntarily implementing a conservation system, NRCS will recommend an alternative conservation treatment that avoids the adverse impact. If the landowner pursues a conservation system that adversely affects a protected species, NRCS field staff will inform the client about their obligation to contact the FWS or NOAA Fisheries, as appropriate, to determine whether there is a need for a Habitat Conservation Plan (HCP) (see Section 610.104) to avoid violating the ESA. NRCS will not provide assistance for those conservation practices or systems that will cause an adverse effect unless the landowner obtains an HCP and an incidental take permit.

Financial Assistance

If a proposed action funded by NRCS may affect a listed species or designated critical habitat, NRCS must initiate consultation with the FWS or NOAA Fisheries, as applicable. Consultation may be formal or informal depending on the circumstances and shall be conducted whether the effect is beneficial or adverse. The consent of the landowner and land user shall be obtained before initiating site-specific consultation. If the landowner or land user is unwilling to consent to NRCS initiating the consultation process, and decides to implement conservation measures that will result in adverse effects to listed species or will modify designated critical habitat, NRCS will not provide financial or technical assistance for those conservation practices or systems that will cause the adverse effects.

Consultation

NRCS personnel are responsible for determining whether or not a proposed action will have an effect on listed species or designated critical habitats. In making an "effect" determination, field staffs should utilize existing resources such as maps identifying protected species' ranges and designated critical habitats, information from the FWS and NOAA Fisheries regarding listed species and designated critical habitats, and any other appropriate, reliable information. The "best scientific and commercial data" must be considered in making this determination. Before initiating site specific consultation, NRCS must obtain the written consent of the landowner and land user, or just the land user when the land user provides written indication of having complete control over the land.

"No Effect" Determinations: No Consultation

If an NRCS representative makes a "no effect" determination after thoroughly assessing the proposed project's impacts on listed species or designated critical habitat, then no consultation with the FWS or NOAA Fisheries is necessary. However, if a "no effect" determination is made, it must be supported by sound evidence and documented on the CPA-52 or State equivalent, or in a separate document referenced by the CPA-52 or State equivalent. Although not required, NRCS may request written concurrence from the FWS or NOAA Fisheries, as appropriate, that the proposed action will have no effect on listed species or designated critical habitat. This concurrence is sometimes useful for the administrative record.

"May Affect" Determinations: Informal Consultation

If an NRCS representative determines an action "may effect" an endangered or threatened species or designated critical habitat, either positively or adversely, then NRCS must enter into informal consultation unless formal consultation is initiated instead. Before any consultation begins, however, the landowner's and land user's written approval must first be obtained.

Most situations can be resolved through informal consultation. Informal consultation is a term referring to the discussions, correspondence, and related contact that occurs when NRCS is attempting to obtain the concurrence of the FWS or NOAA Fisheries that the action may proceed. Informal consultation is used when

- An action is likely to benefit an endangered or threatened species or designated critical habitat;

- When an action that is likely to adversely affect a species can be modified to avoid the adverse affects; or
- To assess whether the parties need to enter into formal consultation.

Normally, informal consultation is initiated when NRCS sends a letter to the FWS or NOAA Fisheries, as applicable, requesting their concurrence that the proposed action may affect, but is not likely to adversely affect, an endangered or threatened species or designated critical habitat. The analysis supporting the NRCS conclusion that the direct, indirect and cumulative effects of the action are not likely to adversely affect the species or designated critical habitat must be documented in the letter requesting concurrence with the NRCS determination. If an action is likely to adversely affect a threatened or endangered species or designated critical habitat, and NRCS does not anticipate being able to avoid the adverse effect, NRCS may undertake formal consultation without first concluding informal consultation.

Informal consultation concludes when NRCS receives a letter from FWS or NOAA Fisheries

- Concurring the action may affect but is not likely to adversely affect an endangered or threatened species or designated critical habitat;
- Stating that adverse effects cannot be avoided and formal consultation is necessary; or
- Recommending ways to avoid adverse effects.
    - If the recommendations are adopted, then FWS or NOAA Fisheries may issue a determination, or letter of concurrence, that the action may affect but is not likely to adversely affect a threatened or endangered species or designated critical habit.
    - If the recommendations are not adopted, then NRCS must proceed to formal consultation.

When it is not clear what effects the proposed action will have on the protected species or designated critical habitat, the FWS and NOAA Fisheries will give the benefit of the doubt to the species.

"Likely to Adversely Affect" Determinations: Formal Consultation

The NRCS must enter formal consultation with the FWS or NOAA Fisheries, as applicable, if an action is likely to adversely affect listed species or modify designated critical habitat. The landowner and land user's approval must be obtained in writing before consultation or preparation of a biological assessment begins (see paragraph entitled "Biological Assessment" below). Inform both the landowner and the land user about what the formal consultation process involves and the requirement to comply with the terms of the biological opinion (see paragraph entitled "Biological Opinions" below). If the landowner or land user does not agree to the consultation process, further technical assistance will not be provided. Financial assistance to implement conservation systems or practices that will adversely affect threatened or endangered species or modify designated critical habitat will not be provided.

To initiate formal consultation, an NRCS representative must prepare a biological assessment (see paragraph entitled "Biological Assessment" below) and forward it to the FWS or NOAA Fisheries, as appropriate. Following receipt of the biological assessment, the FWS or NOAA Fisheries, as applicable, has 45 days in which to review the biological assessment and another 90 days to write the biological opinion, for a total of 135 days before NRCS is likely to receive the biological opinion (see paragraph entitled "Biological Opinions" below). Formal consultation concludes within 90 days after its initiation unless extended by mutual

agreement, not to exceed an additional 60 days when there is an applicant for Federal assistance.

Once consultation has begun, NRCS may make no irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative or measures. This provision does not apply when NRCS is conferring with the Services about species that have been proposed for listing. (See paragraph entitled “Conference” below.)

Upon completion of consultation, the FWS or NOAA Fisheries, as applicable, must provide to NRCS a written statement setting forth the FWS’ or NOAA Fisheries’ biological opinion and a summary of the information on which the opinion is based, detailing how the NRCS actions affect the listed species or its designated critical habitat. If the FWS or NOAA Fisheries determines the proposed action will result in jeopardy to the species or adverse modification of designated critical habitat, the FWS or NOAA Fisheries must suggest reasonable and prudent alternatives which would not jeopardize the continued existence of the listed species or result in the destruction or adverse modification of its designated critical habitat.

If jeopardy or adverse modification is not found, the Secretary will suggest reasonable and prudent measures with terms and conditions that the Federal agency must follow. The opinion and any reasonable and prudent measures constitute a Section 7 "incidental take statement" applicable to the NRCS action and any private landowner actions covered by the consultation.

Conference

While consultations are required when the proposed action may affect a listed species, a conference is required only when the proposed action is likely to jeopardize the continued existence of a proposed species or to result in the destruction or adverse modification of proposed critical habitat. These conferences include all discussions between the NRCS and the FWS or NOAA Fisheries regarding the impact of the agency action and include both an informal and formal process similar to the consultation process on listed species or designated critical habitat.

Informal Conference

Conferences may involve informal discussions among the FWS or NOAA Fisheries, as appropriate, NRCS, and the NRCS client (if any). During the conference, the FWS or NOAA Fisheries, as appropriate, may assist NRCS in determining effects and may advise NRCS about ways to avoid or minimize adverse effects to proposed species or proposed critical habitat. Although not required by the Act, the FWS and NOAA Fisheries also encourage the formation of partnerships to conserve candidate species since these species by definition may warrant future protection under the Act.

Following informal conferencing with NRCS, the FWS and NOAA Fisheries, as appropriate, will issue a conference report containing recommendations for reducing adverse effects. These recommendations are advisory because the action agency is not prohibited from jeopardizing the continued existence of a proposed species or destroying or adversely modifying proposed critical habitat until the species is listed or critical habitat is designated. However, as soon as a listing becomes effective, the prohibition against jeopardy or adverse

modification applies regardless of the action's stage of completion. Therefore, NRCS should use the conference report's recommendations to avoid future conflicts.

Formal Conference

NRCS may request formal conference on a proposed action. Although the regulations permit the FWS and NOAA Fisheries to decide whether formal conference is appropriate, generally, formal conferences will be provided if requested.

Formal conferences follow the same procedures as formal consultation. NRCS shall prepare a biological assessment. The opinion issued at the end of a formal conference is called a conference opinion. It follows the contents and format of a biological opinion. However, the incidental take statement provided with a conference opinion does not take effect until the FWS or NOAA Fisheries adopt the conference opinion as a biological opinion on the proposed action – after the species is listed.

Section 7 regulations provide no specific schedule for conferences. However, by FWS policy, formal conferences follow the same timeframes as formal consultations. The timing of a formal conference can be affected by a final listing action. If a proposed species is listed during the conference, and the proposed action still may affect the species, the formal conference ends and formal consultation begins. The subsequent formal consultation timeframes begin with the request from the action agency for initiation of formal consultations.

Biological Assessments

A biological assessment is information NRCS prepares to determine whether a proposed action is likely to

- Adversely affect listed species or designated critical habitat;
- Jeopardize the continued existence of species that are proposed for listing; or
- Adversely modify designated critical habitat.

Biological assessments must be prepared for "major construction activities." Major construction activities include dams, pipelines, roads, water resource developments, channel improvements and other such projects that modify the physical environment and constitute major Federal actions. As a rule of thumb, if an Environmental Impact Statement is required for the proposed action and construction-related impacts are involved, it is considered a major construction activity. A biological assessment is also necessary to initiate formal consultation. Biological assessments may be prepared for informal consultation not involving a major construction activity, but are not required.

A biological assessment is optional if only proposed species or proposed critical habitat is involved. However, if both proposed and listed species are present, a biological assessment is required and must address both proposed and listed species.

When NRCS prepares a biological assessment, it may be necessary to include information that the landowner or land user considers private. This is the reason NRCS must obtain a written agreement from the landowner and land user before NRCS begins consultation or a biological assessment. If such agreement is not obtained, NRCS cannot continue to provide assistance in areas where listed species are located or which are designated critical habitat.

The contents of a biological assessment are discretionary and may vary in detail and scope as appropriate to the action and site conditions. However, the biological assessment or a cover letter enclosing the assessment must include the following:

1. A description of the action to be considered.
2. A description of the specific area and species that may be affected by the action.
3. A description of the manner in which the action may beneficially or adversely affect any listed species or critical habitat and an analysis of any cumulative effects the action may have on those species. Scientific or demonstration studies or other evidence supporting the conclusions about effects should be referenced when possible.
4. Reference or append relevant reports, including any environmental impact statement or environmental assessment.
5. Any other relevant information about the action, the affected listed species, or critical habitat.
6. Particular FWS or NOAA Fisheries field offices may require specific formats or specific information for biological assessments. Check with the local field office staff before beginning the Assessment to reduce the need for later revisions.

Biological Opinions

A biological opinion is a document which includes

- A description of the proposed action and the action area;
- Status of the species/critical habitat;
- The environmental baseline;
- Effects of the action;
- Cumulative effects;
- The FWS' or NOAA Fisheries' conclusion of
    - Jeopardy/no jeopardy and/or
    - Adverse modification /no adverse modification; and
- Reasonable and prudent alternatives, as appropriate.

If jeopardy to a species or adverse modification of designated critical habitat is found, the FWS or NOAA Fisheries, as applicable, must suggest reasonable and prudent alternatives or specify that none exist. Reasonable and prudent alternatives are those that—

- Are consistent with the intended purpose of the action,
- Are within the scope of NRCS authority and jurisdiction,
- Are economically and technologically feasible, and
- In the FWS or NOAA Fisheries Director's considered opinion [or belief] would avoid the likelihood of jeopardizing the continued existence of listed species or avoid in the destruction or adverse modification of designated critical habitat.

Biological opinions also often contain conservation recommendations, which are optional but may assist NRCS in meeting its obligations under Section 7(a)(1). Biological opinions are to be delivered within a maximum of 135 days from delivery of the biological assessment.

When the FWS or NOAA Fisheries concludes that an action will not result in jeopardy or destroy or adversely affect designated critical habitat, it will issue an incidental take statement as part of its biological opinion. This incidental take statement exempts NRCS and its clients from the ESA's Section 9 prohibitions. If the FWS or NOAA Fisheries identifies in the biological opinion reasonable and prudent alternatives, the "no jeopardy" opinion will effectively be conditioned on

adoption of one of those reasonable and prudent alternatives. In addition, the incidental take statement will include nondiscretionary measures that minimize the impact of incidental take to a reasonable and prudent extent, known as "reasonable and prudent measures." Such measures are included in an incidental take statement when a proposed action or reasonable and prudent alternative can be implemented without jeopardizing the continued existence of the species but will still have an adverse effect on protected species or critical habitat. Reasonable and prudent measures can include only actions that occur within the area, involve only minor changes to the project, and reduce the level of take associated with the project.

In addition, the FWS and NOAA Fisheries will identify “terms and conditions” which set out the specific methods by which the reasonable and prudent measures are to be accomplished. Terms and conditions of an incidental take statement will include procedures to be used to handle or dispose of any individuals of a species actually taken, as well as reporting and monitoring requirements that assure adequate NRCS oversight of any incidental take.

Monitoring

When incidental take is anticipated, the terms and conditions set forth in the incidental take statement developed by the FWS or NOAA Fisheries during formal consultation generally include provisions for monitoring. This monitoring may be done by NRCS or the program participant. State Conservationists can provide monitoring assistance if resources and technical expertise allow. A monitoring program will be designed to:

1. Detect adverse effects resulting from a proposed action;
2. Assess the actual level of incidental take in comparison with the anticipated incidental take level documented in the biological opinion;
3. Detect when the level of anticipated incidental take is exceeded; and
4. Determine the effectiveness of reasonable and prudent measures and their implementing terms and conditions.

In general, monitoring programs should include well developed objectives; a description of the subject area being monitored; the variables to be measured and how data will be collected; the detail of frequency, timing, and duration of sampling; how the data are to be analyzed and who will conduct the analyses, and the relationship between the monitoring program included in the consultation and any other environmental monitoring program being conducted in that area. Managing collected information efficiently makes it easier to; evaluate cumulative effects over time, identify when consultations need to be potentially reinitiated as a result of new species listings, and determine when incidental take levels are being approached.

If NRCS is responsible for monitoring and it has been determined, after conservation follow-up measures, that detrimental impacts are occurring to designated or proposed critical habitats or listed or proposed species and State species of concern as a result of implemented conservation measures, then

1. Alert the State Conservationist to the issue;
2. Reinitiate informal consultation with the FWS or NOAA Fisheries, as appropriate, to identify alternative conservation measures; and
3. Proceed with implementing adaptive management measures to rectify the situation.

When nonproject technical assistance activities take place as a result of conservation planning activities and only informal consultation occurs, or if a “no-effect” determination is made, then a formal monitoring program is not required. However, conservation follow-up measures should occur as part of the conservation planning process. As part of the follow-up procedures, an

evaluation should be conducted on the effects that implemented conservation practices or systems are having on designated or proposed critical habitats or on listed species or species proposed for listing.

610.103 ESA Section 9 – Prohibited Acts

Under Section 9, it is a criminal offense for any person, including Federal agency personnel, to "take" an endangered fish or wildlife species. The Secretaries of Interior and Commerce have defined "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Section 9 also makes it unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in the ESA.

Section 9 does not provide this same level of protection to plants located on private lands, unless a State law does. Specifically, Section 9 provides that it is unlawful to remove and reduce to possession, or maliciously damage or destroy any endangered species of plants from areas under Federal jurisdiction. Section 9 also makes it unlawful to remove, cut, dig up, or damage or destroy an endangered plant species "in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law."

In situations when the FWS or NOAA Fisheries does not concur with the NRCS determination that an action is not likely to adversely affect a threatened or endangered species or critical habitat, NRCS:

- Must respect the determination of the Service(s).
- Need not conduct additional studies to identify the effects of actions unless the State Conservationist considers such studies to be in NRCS's interests.

NRCS personnel remain responsible for determining whether to enter into consultation with the FWS or NOAA Fisheries, as appropriate, though FWS and NOAA Fisheries do have authority to request agencies to consult under Section 7. If NRCS fails to consult when it has such a duty, its personnel may incur Section 9 liabilities if NRCS proceeds without an incidental take statement and its actions result in the take of a listed species or modification of designated critical habitat. (See paragraph 610.105.) The land owner, land user or any other individual contributing to the take may also incur this liability. NRCS programs may also be shut down until consultation is completed in the event NRCS is sued by a third party for failure to comply with ESA. NRCS must withdraw from providing assistance if it exercises its option not to undertake consultation when such consultation is required.

610.104 ESA Section 10 – Exceptions

Section 10 of the ESA authorizes the Secretaries of Interior and Commerce to allow a "take" of endangered species when the take is for scientific purposes or to enhance the propagation or survival of the affected species, or when the take is incidental to an otherwise lawful activity.

Habitat Conservation Plans

Unless a Section 7 incidental take statement applies to an action, private landowners must obtain a permit from the FWS or NOAA Fisheries, as applicable, before a take is permissible. An incidental take permit will only be issued to a landowner upon the submission and approval of a Habitat Conservation Plan (HCP) and after the opportunity has been provided for the public to comment on the permit and related conservation plan. However, incidental takes associated with NRCS actions are covered under ESA Section 7. Since NRCS consults under Section 7 when it provides financial assistance to implement an action, there is no need for the landowner to develop an HCP or obtain a separate Section 10 incidental take permit. However, if an action is beyond the scope of the activities on which NRCS has consulted with the FWS or NOAA Fisheries, and such action will have an adverse affect upon federally listed animal species or adversely affect critical habitat, an approved habitat conservation plan and Section 10 permit must be obtained.

Safe Harbor Agreements

The main purpose of Safe Harbor Agreements is to protect landowners from future ESA restrictions when they cooperate with the FWS or NOAA Fisheries, as applicable, to benefit listed species on their land. Under these agreements, private landowners are encouraged to maintain or enhance existing endangered species habitat, to restore listed species' habitats, or to manage their lands in a manner that benefits listed species. In return, landowners receives assurances that they will not be subjected to increased property-use restrictions if their efforts attract listed species to their properties or increase the numbers or distribution of listed species already present on their properties. Although any listed species occupying a landowner's property at the time of enrollment in the program would remain protected (baseline conditions), should the numbers or range of those species increase, the landowner would have the option to "take" the excess without penalty.

Before entering into a Safe Harbor Agreement, the FWS or NOAA Fisheries, as applicable, must make a finding that the covered endangered or threatened species will receive a "net conservation benefit" from the Agreement's management actions. Examples of such benefits include:

- Reduction of habitat fragmentation;
- Maintenance, restoration, or enhancement of existing habitats;
- Increase in habitat connectivity;
- Maintenance or increase of population numbers or distribution;
- Reduction of the effects of catastrophic events;
- Establishment of buffers for protected areas; and

- Areas to test and develop new management techniques.

To implement the "Safe Harbor" program, the FWS or NOAA Fisheries, as applicable, authorizes incidental take by issuing an enhancement of survival permit (ESA Section 10(a)(1)(A)) for all listed species on an enrolled property in excess of those lands or animals that were already protected at the time of signing the agreement. This permit is issued based on the written Safe Harbor Agreement between the landowner and the FWS or NOAA Fisheries, as appropriate.

Candidate Conservation Agreements with Assurances

Candidate Conservation Agreements with Assurances (CCAA's) are formal agreements between the FWS or NOAA Fisheries, as applicable, and one or more parties to address the conservation needs of proposed or candidate species or species likely to become candidates, before they become listed as endangered or threatened. The participants voluntarily commit to implementing specific actions that will remove or reduce threats to these species, thereby contributing to stabilizing or restoring the species so that listing is no longer necessary.

CCAA's provide assurances to owners of non-Federal property when they voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species. The assurances are that conservation efforts will result in no future regulatory obligation, should the species become listed, in excess of those that were agreed upon at the time they entered into the CCAA. The FWS or NOAA Fisheries, as applicable, would provide technical assistance in the development of these agreements. Property owners may protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations, restore historic populations, or undertake other activities on their lands to improve the status of candidate or proposed species.

In return for the participant's proactive management, the landowner receives a permit to take individuals or modify habitat to return population levels and habitat conditions to those agreed upon and specified in the agreement in the event the species is listed in the future. Before the FWS or NOAA Fisheries will enter into a CCAA, they must make a finding that the species will benefit such that, if the activities conducted under the agreement were undertaken by other property owners similarly situated, the cumulative benefit to the species would be significant enough to remove the need to list the covered species.

610.105 ESA Section 11 – Penalties and Enforcement

Section 11 provides for both civil and criminal enforcement of ESA provisions, citizen suits, and coordination with other laws. The NRCS and its employees are included in the ESA definition of "person" and remain subject to ESA proscriptions, including but not limited to the imposition of civil or criminal liability for engaging in any activity prohibited under Section 9.

State agencies may provide legal protection for species that are not listed as endangered or threatened under the ESA, as well as those that are listed. Although NRCS employees should consider these species during conservation planning and implementation, private landowners remain responsible for compliance with state laws protecting such species or habitat.

610.106 ESA Exhibits (Reserved)