

Iowa NRCS Threatened and Endangered Species

Policy and Consultation Training

May 27th, June 1st and 2nd, 2011

According to Congress, two
resources have higher priority
than NRCS assistance:

- Cultural Resources
- Endangered, Threatened, Proposed, or Candidate Species and their habitat.

When to Assess Affects to Species and Designated Critical Habitat

- Any time NRCS Technical or Financial Assistance is being provided
 - Not just in cases where permits are needed or when another agency may view the plans.

This is required via NRCS Policy, the Endangered Species Act, and the National Environmental Policy Act.

- Consultation may require surveys over long periods of time
 - It is crucial that T&E species affects are evaluated very early in the planning process and before design.
 - May require the development of alternative means to addressing resource concerns.

State Listed Species and Federally Listed and Proposed Species and Designated Critical Habitat

NRCS Technical Assistance Only

- When NRCS concludes that a proposed action “may affect” listed species or designated critical habitat, NRCS will
 - Recommend alternative conservation treatments that will avoid adverse effects and, to the extent practicable, provide long-term benefit to species.

State Listed Species and Federally Listed and Proposed Species and Designated Critical Habitat

NRCS Technical Assistance Only

- Should the recipient of technical assistance choose an alternative that results in adverse effect:
 - NRCS shall terminate assistance for the action or portion of the action affecting listed fish, wildlife, or plant species and/or their habitats.
 - For federally listed fish and wildlife species, NRCS will inform the individual of ESA implications and their responsibilities under Section 10 of ESA and the possible need to obtain a Habitat Conservation Plan and incidental take permit.
 - NRCS may proceed with the technical assistance if the client/landowner obtains a permit to lawfully implement actions under Section 10 of ESA.
 - A copy of the permit shall be included in the NRCS case file.
 - When it is anticipated that technical assistance will result in NRCS action, NRCS may follow requirements in section (e) 5(ii) NRCS Action.
 - For federally listed plant species, NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance. No take permit for plants under ESA Section 10.

Federal Candidate Species

~~NRCS Technical Assistance or NRCS Action~~

When NRCS concludes that a proposed action “may adversely affect” Federal candidate species, NRCS will

- Recommend only alternative conservation treatments that will avoid or minimize adverse effects, and to the extent practicable, provide long-term benefit to the species.
- If the species becomes federally listed, proposed for listing, or the critical habitat is federally designated or proposed prior to the completion of the action, the project will be halted while the necessary consultation or conferencing requirements are met.

State and Tribal Designated Species of Concern

- NRCS shall fully incorporate the species protection requirements identified during State and Tribal coordination into NRCS conservation plans and contracts when required by State law or regulation. NRCS shall ensure that NRCS funded or controlled actions do not violate State or Tribal law or regulations.

State and Tribal Designated Species of Concern

NRCS technical assistance only

When NRCS concludes that a proposed action “may adversely affect” State or Tribal designated species of concern, NRCS will

- recommend only alternative conservation treatments that will avoid or minimize adverse effects to the extent practicable.
- Should the client or landowner refuse to apply the recommended alternative conservation treatment
 - NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance for the action or portion of the action affecting the species of concern.

State and Tribal Designated Species of Concern

NRCS Action

- When NRCS has authority controlling the implementation of actions which may affect State or Tribal designated species of concern, NRCS shall
- coordinate with the appropriate State or Tribal government and receive concurrence on recommended alternatives when required by State law or regulation.
 - Any needed permits shall be obtained by the landowner or their designee.
 - Should the client or landowner refuse to apply the recommended alternatives
 - NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance for the action or portion of the action affecting species of concern.

Landowner or Client Consent to Consult

- Prior to any required consultation, conference, or other contact with entities outside of NRCS that may identify information about an NRCS client or landowner, NRCS must obtain written consent from the client and the landowner to release personally identifiable information.
- If consent is not given, NRCS shall not pursue outside contact and must cease to provide assistance for the action or portion of the action affecting the species or their habitat.
- NRCS may contact outside entities to gather information, such as species life history or habitat requirements that do not reveal the location of the action, client, or landowner identity.

HEL and Wetlands

- Determinations can be made without consultation
 - If species or suitable habitat is found while making determinations, the USFWS considers enrolling land in the Farm Program a Federal Action subject to Section 7 of the ESA
 - On the AD1026, note that consultation may be required by FSA or the client/landowner.
- HEL or mitigation plans cannot be completed by NRCS unless consultation has been sought and NRCS receives copies of USFWS concurrence and permits.
 - Program participants must maintain acceptable levels of soil loss and adhere to wetland provisions of the FSA on all lands farmed to stay in compliance, not just those enrolled in the Farm Program.

What if habitat is destroyed prior to consultation?

- If a client destroys potential habitat prior to consultation, NRCS will cease all TA and FA on those acres and the portion of the project that will affect those acres.
 - NRCS may resume TA and FA if the client consults with the USFWS or Iowa DNR
 - A copy of the USFWS Biological Opinion (BO) and/or the DNR equivalent along with permits must be documented in the file.

What if NRCS is improving species habitat?

- ◎ Improving habitat is a *May Affect* situation
 - requires consultation with and concurrence from the USFWS or Iowa DNR.