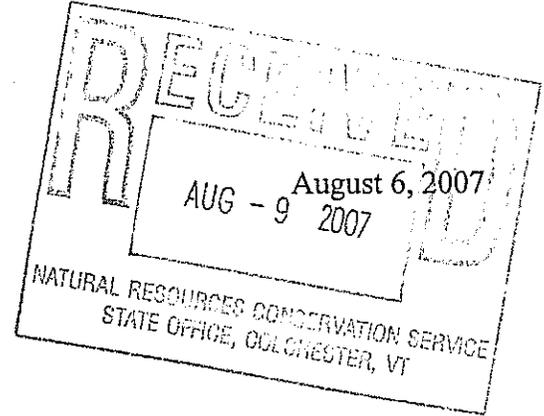




United States Department of the Interior



FISH AND WILDLIFE SERVICE
New England Field Office
70 Commercial Street, Suite 300
Concord, New Hampshire 03301-5087



Judith Doerner, State Conservationist
Natural Resources Conservation Service
356 Mountain View Drive, Suite 105
Colchester, VT 05446

Dear Ms. Doerner:

This is in response to your July 3, 2007 request for concurrence with your determination of “not likely to adversely affect” federally-listed threatened or endangered species for various practice standards promoted by the Natural Resources Conservation Service’s (NRCS) Vermont State Office. Our comments are provided in accordance with Section 7 of the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531-1533).

The “National Environmental Policy Act Guidance Document for NRCS Compliance with the Endangered Species Act” (NEPA Guidance), “Vermont Threatened and Endangered Species by Town and County List” and the “Vermont Practices Effects on Threatened and Endangered Species” (Practices Effects) describe practices funded by the NRCS that have no effect, may beneficially affect, are not likely to adversely affect or may affect the following federally-listed species:

Bald eagle (<i>Haliaeetus leucocephalus</i>)	Delisted effective August 8, 2007
Dwarf wedgemussel (<i>Alasmidonta heterodon</i>)	Endangered
Indiana bat (<i>Myotis sodalis</i>)	Endangered
Northeastern bulrush (<i>Scirpus ancistrochaetus</i>)	Endangered
Jesup’s milk-vetch (<i>Astragalus robbinsii</i> var. <i>jesupii</i>)	Endangered

The NEPA Guidance and the Practices Effects documents also describe measures that should be taken in order to avoid adversely affecting federally-listed species and/or their habitats. The effects determinations and avoidance measures were reached as a result of a January 25, 2007 meeting between Kip Potter and Toby Alexander of the NRCS and Susi von Oettingen of this office. The Practices Effects document enclosed in your July 3, 2007 letter lumped “not likely to adversely affect” activities with “no effect” activities. Subsequently, we revised the Practices Effects document in collaboration with Vermont NRCS state office staff to separate “no effect”

from “not likely to adversely affect” activities (enclosed). The revised Practices Effects document has been reviewed and accepted by Vermont NRCS state office staff.

The Eastern cougar (endangered), Puritan tiger beetle (threatened), small whorled pogonia (threatened),¹ and the New England cottontail (a candidate for federal listing, 176 FR 53757) are no longer extant in Vermont and effects are not anticipated to occur as a result of NRCS practices. The threatened Canada lynx and endangered gray wolf are also considered extirpated from Vermont. Although individual lynx and wolves may occasionally disperse into Vermont, adverse effects to these species are not expected from NRCS practices.

Of the 102 practices provided for review, 48 practices will have no effect on federally-listed species, 38 practices are not likely to adversely affect federally-listed species, 19 practices may adversely affect listed species if recommendations for avoiding adverse effects are not implemented, and 23 practices may beneficially affect listed species. It should be noted that a practice may incur different effects. For example, implementing the channel bank vegetation practice (code 322) within a listed species’ habitat will improve habitat and water quality in the long-term, but may cause short-term adverse effects as a result of earth-moving equipment (see pages 1 and 3 of the Practices Effects document). The conclusion for a programmatic “not likely to adversely affect” determination was reached based on the implementation of recommendations to avoid adverse effects. However, should the applicant for NRCS funding not wish to implement the recommendations or if short-term adverse effects are unavoidable in order to provide long-term beneficial effects, NRCS has the option to discontinue assistance for the project or initiate formal consultation with the U.S. Fish and Wildlife Service (Service). Therefore, any project-specific practice that ultimately results in an adverse effect will undergo formal consultation on an individual basis and will not be considered as part of this “not likely to adversely affect” determination.

Recently, the Service published a Final Rule (130 FR 37346) to remove the bald eagle from the federal list of endangered and threatened wildlife (50 CFR Part 17), effective August 8, 2007. Although the bald eagle will no longer be protected by the ESA, the eagle will continue to be protected under the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). The Service has developed National Bald Eagle Management Guidelines (enclosed) to assist landowners and others in determining whether an activity may be subject to the provisions of the Eagle Act, and has identified measures to avoid disturbance. The measures identified in the NRCS NEPA Guidelines for activities that could adversely affect bald eagles are equally applicable under the Eagle Act and the MBTA. Actions occurring after August 8, 2007 that may adversely affect bald eagles will not require formal consultation; however, should NRCS fund practices that result in disturbance to bald eagles, the landowner may need to pursue a permit under the Eagle Act and MBTA. Please contact Anthony Tur at the address above or call 603-223-2541, extension 24, for further information.

Based on the information we were provided and in view of your commitment to implement the procedures identified in the NEPA Guidance document, we concur that the NRCS procedures will have no effect or are not likely to adversely affect federally-listed species in Vermont.

¹ The small whorled pogonia was not identified as a species in Vermont in the Threatened and Endangered Species list included in the July 3, 2007 letter.

Preparation of a Biological Assessment or further consultation with us under Section 7 of the Endangered Species Act is not required. Should project plans change, or should additional information on listed or proposed species become available, this determination may be reconsidered.

We appreciate the opportunity to assist the NRCS with this consultation and are available for future coordination for site-specific practices or as new practices are adopted. Please contact Susi von Oettingen at 603-223-2541, extension 22, if we can be of further assistance.

Sincerely yours,



Michael J. Bartlett
Supervisor
New England Field Office

Enclosures

CC: Reading file
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Kip Potter, VT NRCS
ES: SvonOettingen:8-6-07:603-223-2541, ext. 22