

**U.S. Fish and Wildlife Service Clearance to Proceed with  
Emergency Conservation Program (ECP), Emergency Forest Restoration Program  
(EFRP), Farm Storage Facility Loan (FSFL), Tree Assistance Program (TAP), and FSA  
Loan Activities to Include New Ground Disturbance and/or Construction**

**A. Purpose and Need**

This guidance and clearance is formulated to establish an effective and cooperative process upon which consultations pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), may be conducted by the USDA Farm Service Agency (FSA) and Tennessee Ecological Services, U.S. Fish and Wildlife Service (Service) within the Tennessee Ecological Services Field Office's geographic area of responsibility. It addresses consultations on all federally threatened species and endangered species and their designated critical habitat, as well as species that have been proposed for listing under the Endangered Species Act (ESA), and species that have been identified as candidates for listing under the ESA that may be affected by the FSA action as described below.

This guidance will facilitate the fulfillment of FSA's and the Service's statutory obligations under section 7(a)(2) of the ESA. Specifically, this guidance will focus on FSA's Farm Programs, including: Emergency Conservation, Emergency Forest Restoration, Farm Storage Facility Loan, Tree Assistance, and Farm Loan activities that include new ground disturbance, construction, or both.

**B. Consultation Background**

This guidance was developed to ensure FSA's implementation of their programs achieve efficient, consistent, and effective compliance with section 7(a)(2), benefitting both FSA and the Service. By adopting and implementing this guidance, Farm Programs and Farm Loan activities that require informal consultation with the Service and meet the criteria specified below can receive a programmatic concurrence from the Service and complete informal consultation.

To acquire a species list for the area where the project is proposed, please access and follow the instructions at the Information for Planning and Conservation (IPaC) website (<https://ecos.fws.gov/ipac/>). The "Official Species List" report that is generated by IPaC contains a list of federally listed threatened and endangered species, critical habitats, migratory birds, wildlife refuges, fish hatcheries, and/or wetlands that may be on or near the project footprint and can help identify trust resources in the general area of the subject property.

**C. Consultation Action**

1. **FSA activities NOT eligible for programmatic concurrence under this guidance.** The following FSA actions will continue to require a separate ESA consultation with the Service. These separate consultation requests should follow our [project review submission guidance](#) and should be sent via email to [TennesseeES@fws.gov](mailto:TennesseeES@fws.gov).
  - Actions that require cutting of trees or otherwise (including timber operations) that result in clearing or disturbance of land not currently in agricultural production including -- forested and shrub-scrub areas as they support several ESA-listed plants and provide shelter, foraging sites, and breeding sites for federally protected bats, reptiles, amphibians, and migratory birds.

- Actions that impact wetlands, stream systems, or riparian buffers. This includes direct fill of wetlands or stream channels, wetland or channel excavation, stream channel straightening, installation of culverts or fords, and other actions that would affect wetland hydrology, stream stability, or fish passage. These habitats support multiple endangered and threatened fish, mussels, snails, reptiles, amphibians, and birds.
- Actions that occur in areas with the following plants given on the IPaC species list that disturb non-developed or non-agricultural sites:
  - o Leafy prairie-clover (*Dalea foliosa*)
  - o Pyne's ground-plum (*Astragalus bibullatus*)
  - o Price's potato-bean (*Apios priceana*)
  - o Short's bladderpod (*Physaria globosa*)
  - o Spring Creek bladderpod (*Lesquerella perforata*)
  - o White fringeless orchid (*Platanthera integrilabia*)
  - o Large-flowered skullcap (*Scutellaria montana*)
  - o Whorled sunflower (*Helianthus annuus*)
  - o Tennessee yellow-eyed grass (*Xyris tennesseensis*)

2. **FSA activities ELIGIBLE for programmatic concurrence.** Eligible activities covered by this guidance includes programs and loans for the following landowner actions that **do not** require new clearing or disturbance of lands, and/or **do not** impact streams, wetlands, riparian buffers, or granite outcrops:

- Construction of barns, poultry houses, grain bins, and other farm-related structures on non-forested lands
- Repair, improvement, or minor modifications (fence installation and repair, farm-related structure improvement or repair)
- Conversion from one agricultural product to another
- Well drilling, with or without heavy use area
- Debris removal, with or without stump removal
- Fence replacement

#### **Additional Considerations for non-federally listed species:**

**Bald Eagles:** If any of the above-referenced activities are proposed to occur within 660 feet of an active or alternate bald eagle (*Haliaeetus leucocephalus*) nest during the nesting season (October 1 through May 15), we recommend the applicant, or their designated agent coordinate with the Tennessee Wildlife Resources Agency, who is responsible for managing wildlife in Tennessee. For additional information, please visit our web page at <https://www.fws.gov/program/eagle-management>.

**Migratory Birds:** If any native birds are using the structures for nesting, actions should be taken to avoid disturbing adults, nests, eggs, or chicks as this could lead to a potential violation of the Migratory Bird Treaty Act. If nests are present or any birds are using the structures regularly for roosting purposes, we recommend the applicant, or their designated agent coordinate with the Southeast Regional Migratory Bird Permit Office and visit our Migratory Bird Program website at <https://www.fws.gov/program/migratory-birds> for recommendations on how impacts can be avoided and minimized.

**Clearance to Proceed** – The FSA has determined that the activities covered under this guidance, as described in Section C2, will not disturb or alter habitat used by federally listed terrestrial or aquatic species in Tennessee and will either have (1) no effect, or (2) a beneficial, insignificant, or discountable effect on these species. Based on the criteria referenced above, we believe that effects to species protected under the ESA and resulting from these types of activities (1) should never reach the scale where take occurs, (2) are extremely unlikely to occur, or (3) will have a contemporaneous positive effect without any adverse effect to the species or habitat. Therefore, for ALL projects that FSA finds meeting the criteria described in section C2 above, the Service concludes that the requirements of section 7(a)(2) of the ESA have been fulfilled, and NO further coordination with the Service is necessary. Include this letter with your documentation of how you ensure your activity complied with section 7 of the ESA.

Reinitiation of consultation on any eligible activity that is covered by this guidance may be necessary if: (1) the project is modified in a manner not considered in this assessment; (2) a new species that may occur in previously disturbed areas is listed or critical habitat is determined that may be affected by the project; or (3) new information indicates that the project may affect listed species or critical habitat in a manner not considered.

For projects that do not meet the specific criteria above, please provide us with the following information and documents via email ([TennesseeES@fws.gov](mailto:TennesseeES@fws.gov)):

- Memo outlining the proposed activity
- Species list from IPaC website and habitat requirements of listed species
- Location map
- Drawings of project location or design plans, as appropriate

If you have any questions or require further information, please email [TennesseeES@fws.gov](mailto:TennesseeES@fws.gov) .

Sincerely,

**DANIEL  
ELBERT**

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DANIEL ELBERT

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Field Supervisor

Tennessee Field Office