

<Licensee>

<Date>



**LICENSE AGREEMENT BETWEEN
NATURESERVE AND [LICENSEE]
Version 09.07.22**

Cover Page

This LICENSE AGREEMENT (“Agreement”) is made and entered as of the Effective Date (defined below), by and between NatureServe, a Virginia nonstock corporation located at 2550 South Clark Street, Suite 930, Arlington, VA 22202 (“NatureServe”) and the Licensee (listed below).

This Agreement consists of:

- (1) This Cover Page, and
- (2) The attached Terms and Conditions incorporated by reference.

Licensee Name	[Name] (“Licensee”)
Address	
Main Contact Name & Title	
Main Contact Email	
Main Contact Phone Number	
Licensed Dataset	The data provided to Licensee under this License Agreement includes <add geographic area and scope of elements provided both for EOs, SFs, and habitat models> (“Licensed Dataset”). Further details about the data provided is described in Attachment 1.
Intended Use of Licensed Dataset	[What the Licensee will use the dataset for]
Fees per Year	
Effective Date	
Term	12 months from Delivery of Licensed Dataset

<Licensee>

<Date>

Accepted and agreed to as of the last signature date below by the authorized representative of each party:

NatureServe

Signature

Printed Name

Title

Date

[Licensee]

Signature

Printed Name

Title

Date



LICENSE AGREEMENT BETWEEN NATURESERVE AND [LICENSEE]

Terms and Conditions

WHEREAS, NatureServe is organized and operated for charitable purposes, which include promoting charitable, educational, and scientific endeavors to protect and preserve biodiversity and the global environment (“Exempt Purposes”);

WHEREAS, NatureServe, working in collaboration with a network of local agencies and organizations across the Western Hemisphere (“Network Programs”), develop and manage precise occurrence data for species and ecosystems, predictive maps of species habitat suitability, and/or other biodiversity location-based data products derived therefrom;

WHEREAS, Licensee will further NatureServe’s Exempt Purposes by [how use of the data furthers conservation];

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

I. DEFINITIONS.

- a. **“Agreement”** refers to these Terms and Conditions and the Cover Page.
- b. **“Cover Page”** refers to the executed cover page to these Terms and Conditions attached and incorporated hereto.
- c. **“Data User”** refers to Licensee employees or contractors selected by Licensee to have access to the Licensed Dataset for the uses described in this Agreement subject to the terms and conditions contained herein. [A description of Data Users is included in Attachment 1.]
- d. **“Effective Date”** refers to the date identified as the Effective Date in the Cover Page.
- e. **“Licensed Dataset”** refers to the data provided to the Licensee under this Agreement as described on the Cover Page.
- f. **“Licensee”** refers to the party to this Agreement identified on the Cover Page as the Licensee.

- II. TERM. This Agreement shall be effective as of the Effective Date, and shall expire 12 months after the Licensed Dataset has been delivered. This Agreement may be renewed annually thereafter upon the mutual written agreement of the parties for additional 12-month terms (“Renewal Term(s”).

<Licensee>

<Date>

III. FEES & PAYMENT SCHEDULE.

Licensee will pay NatureServe a license fee in the amount of [\$\$\$\$] in accordance with the payment terms set forth herein:

- a. [portion of fee & time fee to be paid]
- b. [optional: add payment schedule with at least 30% provided upon signature of Licensee]

NatureServe reserves the right to adjust the Fee in any Renewal Term(s) by providing notice to Licensee within thirty (30) days of any Renewal Date(s).

[Except as otherwise exempt from taxes, Licensee shall be responsible for paying all applicable taxes resulting from its receipt of access to the Licensed Dataset and/or any integration and connection services pursuant to this Agreement, except for any taxes that may be based on income of NatureServe.]

IV. LICENSE.

- a. License Grant. Subject to these Terms, NatureServe hereby grants to Licensee a non-exclusive, non-transferable, limited license to access and use the Licensed Dataset in furtherance of the Exempt Purposes. Licensee shall not display, disseminate, or otherwise use the Licensed Dataset in any way that (i) is false or misleading; (ii) may negatively affect the reputation or goodwill of NatureServe; (iii) violates any law or regulation; (iv) mischaracterizes the relationship between Licensee and NatureServe (including but not limited to implying that Licensee is legally part of NatureServe); (v) conveys support or opposition to any candidate for public office; or (vi) otherwise jeopardizes the tax exemption of NatureServe.
- b. No Sublicense. Nothing in this Agreement shall be construed to authorize Licensee to sublicense, sell, trade, or otherwise convey any rights in or the Licensed Dataset to any third party.
- c. Third Party Misuse of Intellectual Property. Licensee shall assist NatureServe in protecting against the misuse by third parties of Intellectual Property. Specifically, Licensee shall promptly notify NatureServe in writing no more than thirty (30) days after learning of any actual or potential infringements of any rights granted to Licensee under this Agreement or any unlawful use by others of Intellectual Property.
- d. Prohibited Uses.
 - i. The Licensed Dataset, in whole or in part, is not to be distributed to or accessed by other agencies, organizations, companies, or individuals that are not defined as Data Users within this Agreement without prior written consent of NatureServe. Requests received from other organizations or individuals for copies of the Licensed Dataset, in whole or in part, in any format, should be directed to NatureServe's Products and Services Team:

<Licensee>

<Date>

ProductsandServices@natureserve.org (e-mail);
<https://www.natureserve.org/access-data> (website).

- ii. Licensee agrees that it shall not use the Licensed Dataset in a manner other than what has been explicitly authorized under this Agreement.
 - iii. Licensee and its Data Users may not make any portion of the Licensed Dataset available for access to, display to, or use by anyone who is not a Data User, or otherwise transfer the Licensed Dataset to anyone who is not a Data User, except as explicitly provided in Section IV(e) of this Agreement.
 - iv. Licensee and its Data Users may not use the Licensed Dataset in any manner that is inconsistent with the mission of NatureServe.
- e. Permitted Uses.
- i. Internal Use. Data Users may develop and share products derived from the Licensed Dataset such as maps, reports, analyses, and assessments, internally with other employees and contractors of the Licensee, provided all such data, documents, reports, maps or other products (in paper, hardcopy, electronic, or any formats) will be marked “Confidential and Proprietary -- For Internal Use Only” unless such products display or describe species at geographic scales expressly defined as allowable for external parties in Attachment 2 below.
 - ii. External Uses. In the case where Licensee develops products that are derived from the Licensed Dataset and are to be shared externally, Licensee shall ensure that all such products shared in any form present the data in a way that will not compromise any imperiled species. If Licensee uses the Licensed Dataset to create reports, publications, or other GIS modeling outputs for external use, Licensee must notify NatureServe and, as mutually agreed upon, provided a copy of these final products. The following are the allowable formats for sharing with external parties:
 1. **Groups of Species:** Images that include the precise mapped locations or precise model outputs for Level 2 groups of species (see list of Level 2 groups below) can be shared externally at any scale or precision. If Licensee requires reporting on species groups not included below please contact NatureServe.
- LEVEL_2
- Vertebrates
 - Mussels, Snails, & Other Molluscs
 - Crayfish, Shrimp, & Other Crustaceans
 - Insects - Bees

- Insects - Beetles
- Insects - Butterflies and Moths
- Insects - Caddisflies, Mayflies, and Stoneflies
- Insects - Damselflies and Dragonflies
- Insects - Flies
- Other Invertebrates - Terrestrial/Freshwater
- Invertebrates - Marine
- Vascular Plants - Ferns and relatives
- Vascular Plants - Conifers and relatives
- Vascular Plants - Flowering Plants
- Nonvascular Plants

2. **Single Species:** Images that include the precise mapped locations or precise model outputs for a single species can be shared externally at a fixed scale of 1:5,000,000 or coarser scale, and if the scientific and common names, and other identifying information (e.g., species type) for the species, are excluded from the image it can be shared externally at any scale. Images of maps that display presence/absence of individual species at the scales of U.S. County, 8-digit Hydrologic Units, or any type of grid cell units larger than or equal to a 343 square mile area can be shared externally.
3. **Model Outputs (if applicable):** Precise habitat models can be shared externally at any resolution when the model is upscaled to 7 square mile hexagons, or larger unit. **<include only after network permissions are confirmed>**

**Examples of allowable external uses are shown in Appendix 2.

- iii. Additional Permitted Uses. Licensee may propose additional use(s) of Licensed Dataset to NatureServe in writing for review and approval, which will be granted or denied in the sole discretion of NatureServe.

- V. RELATIONSHIP BETWEEN THE PARTIES. The relationship between the parties is that of independent contractors. Nothing in this Agreement shall be construed to create any association, partnership, joint venture, employment, or agency relationship between the parties. Unless explicitly provided by this Agreement, neither party has any power to assume or incur any obligation on behalf of the other party.
- VI. LEGAL COMPLIANCE. Licensee covenants that it is and shall remain in full compliance with all applicable laws and regulations that may affect its performance under this Agreement. Licensee covenants that it shall at all times maintain all required permits, licenses, and other government approvals that may be required to perform its obligations under this Agreement.

<Licensee>

<Date>

VII. CONFIDENTIALITY.

Both parties acknowledge that they may come in contact with information, data or documentation that is considered confidential or proprietary to the other party, including the Licensed Dataset (“Confidential Information”). If Licensee is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Licensed Dataset is exempt from disclosure as confidential commercial information or in the case of an equivalent state law, any similar exemptions that may be applicable. Both parties agree to hold Confidential Information in strictest confidence, and not to make use thereof other than for the performance of this License Agreement. Neither party will copy or disclose the terms any documents or data (in electronic or hard copy) of the other party labeled as “confidential” or “proprietary” except as may be authorized in writing by the disclosing party or required by court or regulatory order. The obligation to protect Confidential Information will survive the termination or expiration of this Agreement.

These confidentiality obligations will not apply to information that: (i) was previously available on a non-confidential basis; (ii) is now or becomes a part of the public domain other than as a result of a violation of this License Agreement; (iii) is independently developed not in violation of this License Agreement; or (iv) becomes available on a non-confidential basis from a third party, provided that such third party is under no obligation of confidentiality to Licensee or NatureServe. Neither party may use the other party’s name in publicity releases, referrals, advertising, or similar activities without the prior written consent of the other.

VIII. DELIVERY.

<Define how all datasets will be delivered – Explorer Pro vs download, etc.>

NatureServe will provide the Licensee all necessary metadata, and support necessary to ensure proper use of the Licensed Dataset. However, this license does not ensure that NatureServe, or the NatureServe Network Programs, will agree with Licensee’s interpretation of the data.

IX. REQUIREMENTS OF DATA USERS.

Any individuals handling or viewing the data are required to complete NatureServe’s online Data Use Training (DUT) before accessing the Licensed Dataset. Individuals who have completed DUT will be registered as Data Users by NatureServe. Individuals can access this training at:

<https://www.natureserve.org/data-use-training>.

Licensee is responsible for ensuring that the Data Users are informed of, and adhere to, all provisions and terms and conditions of this License Agreement. Licensee is responsible for any violation of the terms and conditions of this License Agreement by the Data Users defined in this Agreement, including any unauthorized disclosure or use of the data as outlined in this Agreement.

X. INTELLECTUAL PROPERTY.

NatureServe shall own and retain ownership of all materials or intellectual property owned by NatureServe as of the Effective Date of these Terms, including, without limitation, all NatureServe trademarks, patents, copyrights, trade secrets, know-how, materials, standards, brochures, logos, or other intellectual property or proprietary rights, and all rights, title, and interest in and to the Licensed Dataset ("NatureServe Pre-Existing IP"). NatureServe shall also own and retain ownership of and any and all modifications, improvements, continuations, continuations in part, enhancements, or derivatives thereof created from NatureServe Pre-Existing IP during the Term of this Agreement. No interest whatsoever is conveyed to Licensee(s) in right, title, and interest in the NatureServe Pre-Existing IP. All publication, dissemination and other rights in the Licensed Dataset are reserved to NatureServe in all languages, formats and throughout the world for the sole and exclusive use or any other disposition by NatureServe or their assignees or grantees at any time and from time to time without any obligation or liability to any user.

XI. OTHER AVAILABLE DATA AND RESOURCES.

NatureServe Network Programs are located in each U.S. and Canadian jurisdiction (states, provinces, territories, and the Navajo Nation), and employ staff that have expertise on the status and location of imperiled species and ecosystems occurring in their local jurisdiction. In addition, these Network Programs may have other data resources not available in the Licensed Dataset (e.g., migratory routes, observations for wide-ranging and widely distributed species, etc.), therefore NatureServe strongly recommends consulting with contributing Network Programs (<https://www.natureserve.org/ns-network-directory>) when making conservation management decisions, especially when they impact species or habitats at a local site.

XII. CITATIONS AND WARRANTY STATEMENT.

Licensee agrees to use one of the following citations and warranty statement on all products, publications, and media announcements derived from the Licensed Dataset, whether for internal or external use.

- a. For Data received outside of NatureServe Explorer or Explorer Pro:
NatureServe. YYYY. NatureServe Network Biodiversity Location Data. NatureServe, Arlington, Virginia. NatureServe. YYYY.
- b. For Data obtained through NatureServe Explorer or Explorer Pro:
NatureServe. YYYY. NatureServe Network Biodiversity Location Data accessed through NatureServe Explorer [web application]. NatureServe, Arlington, Virginia. Available <https://explorer.natureserve.org/>. (Accessed: Month DD, YYYY).
- c. Warranty Statement (included on data products as appropriate): These data are dependent on the research and observations of many scientists and institutions and reflect our current state of knowledge. Many areas have never been thoroughly surveyed, however, and the absence of known occurrence data in any particular geographic area does not necessarily mean that species or ecological communities of concern are not present. Likewise, data that indicate a low probability of occurrence do not guarantee that a species or ecological community of concern is not present. These data should not be regarded as a substitute for on-site surveys required for

<Licensee>

<Date>

environmental assessments. If ground-disturbing activities are proposed on a site, the appropriate NatureServe Network Program should be contacted for a site-specific review of the project area. For contact information, go to the NatureServe Network Directory at: <https://www.natureserve.org/ns-network-directory>.

NatureServe's logo (included here) should also be used on publications and products where the Licensed Dataset was used. Contact NatureServe at productsandservice.org for further guidance if there is a need to share NatureServe Data externally.

Use NatureServe's NatureServe Network logo on external products that include Data.



XIII. LIQUIDATED DAMAGES.

If Licensee breaches its obligations under Sections IV.d. ("Prohibited Uses"), VII ("Confidentiality"), or XV.c. ("Consequences of Termination") of this Agreement (the "Breach"), Licensee shall pay to NatureServe an amount equal to the percentage of the data misappropriated multiplied by the cost of the agreement for each instance of data misappropriation, (the "Liquidated Damages") for each year in which the Breach occurs. The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that NatureServe's harm caused by a Breach would be impossible or very difficult to accurately estimate at the time of agreement, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Breach. This provision shall also apply in the event that an employee or representative of Licensee breaches the above-mentioned Sections. Such damages shall be in addition to injunctive relief or any other relief available to NatureServe under law or in equity.

XIV. WARRANTIES.

- a. NatureServe will obtain the required consent from the cooperating NatureServe Network Programs to license to Licensee access and use of the Licensed Dataset.
- b. NatureServe warrants that the data in the Licensed Dataset has been accurately compiled and reviewed to ensure compliance with quality control standards.

<Licensee>

<Date>

- c. These data are dependent on the research and observations of many scientists and institutions and reflect our current state of knowledge. Many areas have never been thoroughly surveyed, however, and the absence of known occurrence data in any particular geographic area does not necessarily mean that species or ecological communities of concern are not present. Likewise, data that indicate a low probability of occurrence do not guarantee that a species or ecological community of concern is not present. These data should not be regarded as a substitute for on-site surveys required for environmental assessments. If ground-disturbing activities are proposed on a site, the appropriate NatureServe Network Program should be contacted for a site-specific review of the project area. For contact information, go to the NatureServe Network Directory at: <https://www.natureserve.org/ns-network-directory>.

XV. TERMINATION AND EXPIRATION

a. Termination for Cause

In the event that the either party breaches any one or more of its obligations under this Agreement, the non-breaching party may terminate the License Agreement with thirty (30) days' prior written notice to the breaching party specifying any such breach, unless within the period of such notice, all breaches specified therein have been remedied to the reasonable satisfaction of the non-breaching party.

b. Termination for Convenience

NatureServe may terminate this Agreement without cause by giving sixty (60) days' prior written notice to Licensee.

c. Consequences of Termination

For precise location datasets, upon termination or expiration of this Agreement, Licensee shall (i) immediately cease using the Licensed Dataset; (ii) delete the Licensed Dataset and/or any duplicates of such materials from all computer systems; (iii) return or destroy all copies of the Licensed Dataset; (iv) abstain from generating new maps, risk assessments, data analyses or other products from the Licensed Dataset; (v) not use the Licensed Dataset to support any new decisions or analyses after its expiration; and (vi) upon request of NatureServe, confirm in writing that Licensee has complied with these obligations. NatureServe may take whatever reasonable steps it deems appropriate to terminate all active use of the Licensed Dataset.

Habitat model data can be downloaded and continue to be used indefinitely. However, as NatureServe habitat models will continually be refined and/or updated as newer data inputs become available, Licensee is responsible for contacting NatureServe on the status of updates after 3 years, at most, to ensure use of best available models. All use of the habitat model data is subject to the terms and conditions contained herein and shall remain in effect after the expiration of this License Agreement.

The obligations of Licensee and their respective employees and agents, with respect to the authorized use of products derived from the Licensed Dataset, shall survive, and continue after the expiration of the License Agreement or termination of rights. Such obligations shall not

<Licensee>

<Date>

extend to any data, information or technical data relating to the Licensed Dataset which is available to the general public or which later becomes available to the general public by acts not attributable to Licensee, or its employees, or agents.

XVI. INDEMNIFICATION.

Licensee agrees to defend, indemnify, and hold harmless NatureServe and its officers, directors, employees, representatives, volunteers, and agents against any and all claims, damages, demands, actions, causes of action, penalties, judgments, losses, settlements, expenses, and liabilities (including without limitation costs of investigation, court costs, and reasonable attorneys' fees) in connection with Licensee's use of Licensed Dataset, or arising from or related to any act, omission, negligence, misconduct, or breach of any material condition of this Agreement by Licensee or its officers, directors, subcontractors, employees, representatives, servants, agents, licensees, or invitees.

XVII. NOTIFICATION.

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered (a) upon receipt if delivered personally in writing, (b) upon receipt if transmitted by email with confirmation of receipt by the receiving party, (c) one business day after deposit with a recognized overnight courier service, or (d) three business days after deposit in U.S. mail as certified or registered mail. All such notices shall be addressed to the respective party at the address set forth below:

For NatureServe:

NatureServe
Attn: Shara Howie, Biodiversity Location Data Program Manager
2550 South Clark Street, Suite 930
Arlington, VA 22202

Email: shara_howie@natureserve.org
Phone: 703.797.4811

For Licensee

Licensee contact information provided on Cover Page.

XVIII. LIABILITY.

- a. Limitation on Damages. Except in Connection with any Indemnification requirements of these terms, in no event shall either party be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost revenues, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to these terms, regardless of the legal theory under

<Licensee>

<Date>

which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss.

- b. Limitation of Liability. In no event shall the amount of damages of any type owed by NatureServe for any claim arising in connection with the Agreement exceed the amount Licensee paid to NatureServe under this Agreement during the twelve (12) months prior to the date on which notice of the claim is provided to NatureServe.
- c. Infringement Claims. NatureServe shall have no liability for any claim of infringement or rights by third parties based on any use of the Licensed Dataset in combination with programs, software, hardware, or equipment not designated by NatureServe, without prior written approval by NatureServe, if such infringement could have been avoided had the Licensed Dataset not been so used.

XIX. MISCELLANEOUS PROVISIONS

- a. Entire Agreement. This Agreement, including the Cover Sheet and any attachments hereto, represents the entire agreement of the parties and supersedes all prior written or oral understandings with respect to the subject matter of this Agreement.
- b. Governing Law. The construction and performance of this license shall be governed by the laws of the Commonwealth of Virginia, USA, and applicable U.S. federal law (or other laws as appropriate) without regard to conflicts of laws issues.
- c. Amendments. Any amendment or modification of this Agreement must be in a writing signed by both parties.
- d. No Assignment. Licensee may not assign, subcontract, or sublicense this Agreement or any of Licensee's rights or obligations under these Terms, whether by operation of law or otherwise, without the prior written consent of NatureServe. Any attempted assignment or other transfer in violation of the foregoing shall be void and of no force or effect. This Agreement shall be fully binding upon, inure to the benefit of, and be enforceable by the parties and their permitted successors and assigns.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- f. Survivability. The rights and obligations of Licensee and their respective employees, members, contractors, and agents, provided in this Agreement (including but not limited to those articulated in the clause entitled "Confidentiality" and "Indemnification") that do not expressly terminate pursuant to this Agreement, shall survive beyond the Term of this Agreement, and shall continue in full force and effect in perpetuity.

<Licensee>

<Date>

**ATTACHMENT 1:
Licensed Dataset Properties**

The following provides more details on that Licensed Dataset being provided under this License Agreement as described above. (or details can be provided in above sections of agreement especially page 1)

<Add here details about EO data being provided including geographic scope, element scope, and spatial data scope (EOs, observations, vs models), and notes on known generalizations and exclusions of data or known data gaps. Include a list of network program contributing data.>

<Add names of companies and/or list or summary of staff that will be accessing the data>

ATTACHMENT 2: Examples of Products Derived from Licensed Dataset that are Acceptable for External Publication

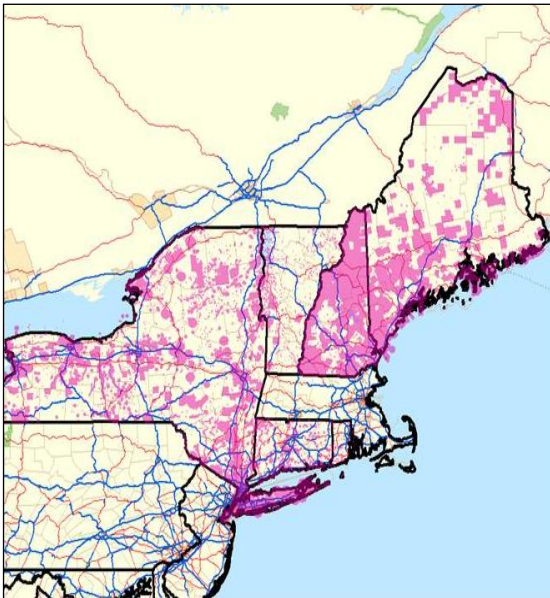
Restrictions on external publication are to help ensure that the presentation of the data will not compromise any imperiled species or ecosystems. More information on NatureServe’s data use restriction terms can be found in this license agreement.

Examples of Precise Species Location Approved for External Use

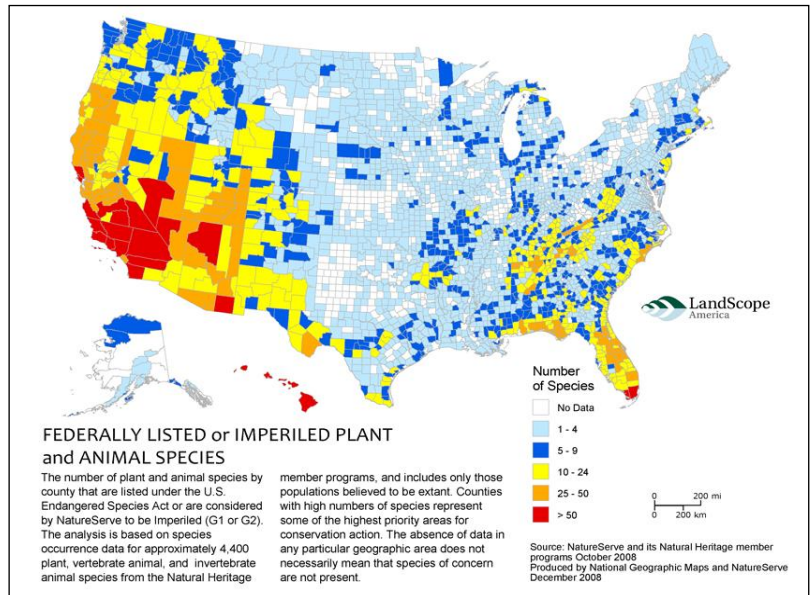
The example 1 map below shows the precise locations of all species; however, it would be acceptable to display a single species at this scale (1:5,000,000) or coarser, too. In Example 2, the map depicts the number of U.S. federally listed or imperiled species in each county; it would also be acceptable to display the known presence of a single species at a county, watershed (8-digit Hydrologic Unit), or unit that is larger than or equal to 343 square miles in area.

In addition, it is acceptable to show a single species map at more precise scales if the name of the species is excluded from the map image.

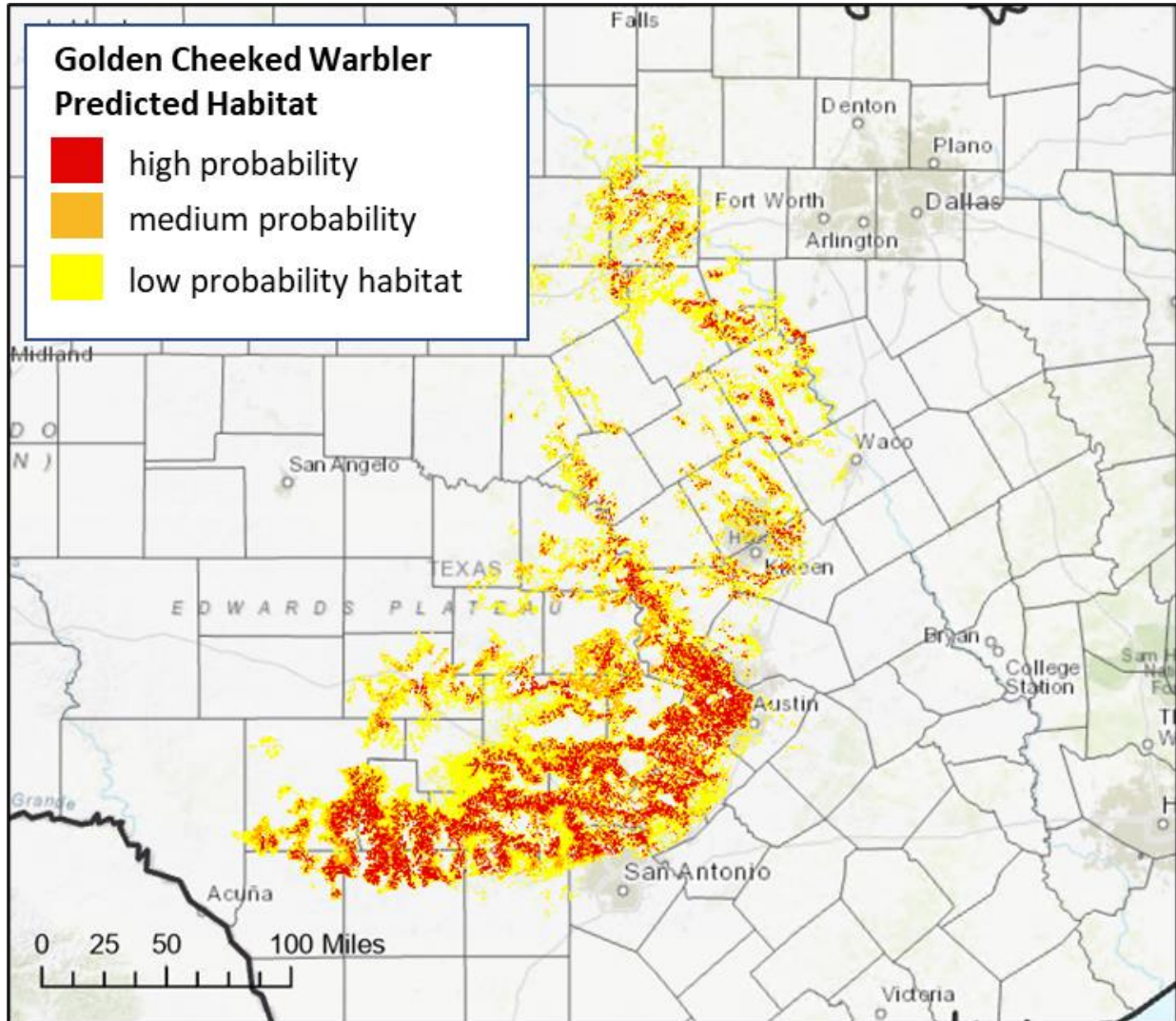
Example 1. Map of all species locations zoomed to 1:5,000,000 scale.



Example 2. Known Federally Listed or Imperiled Bird Species Presence by County



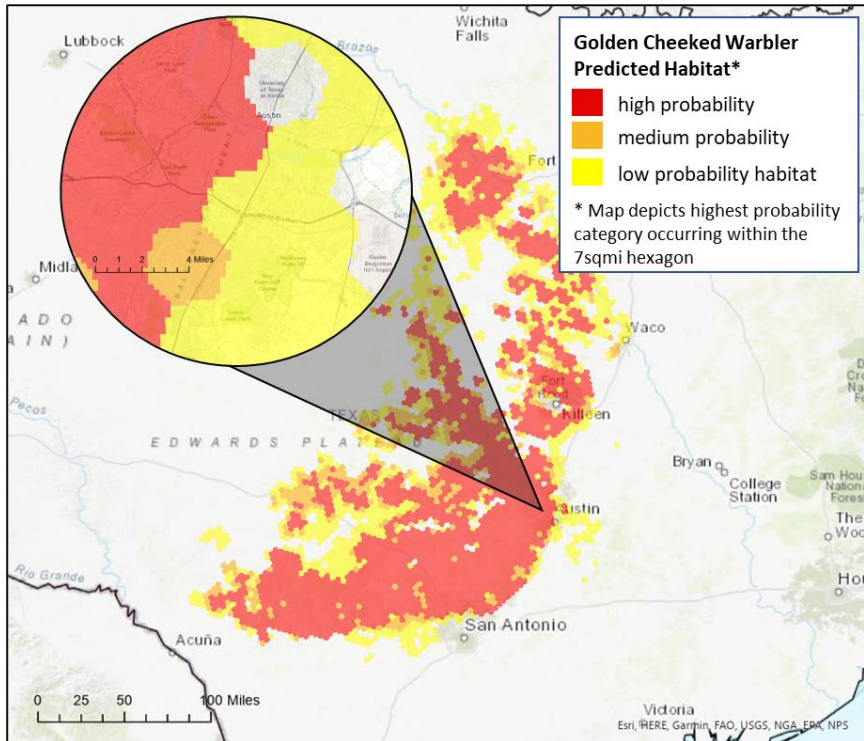
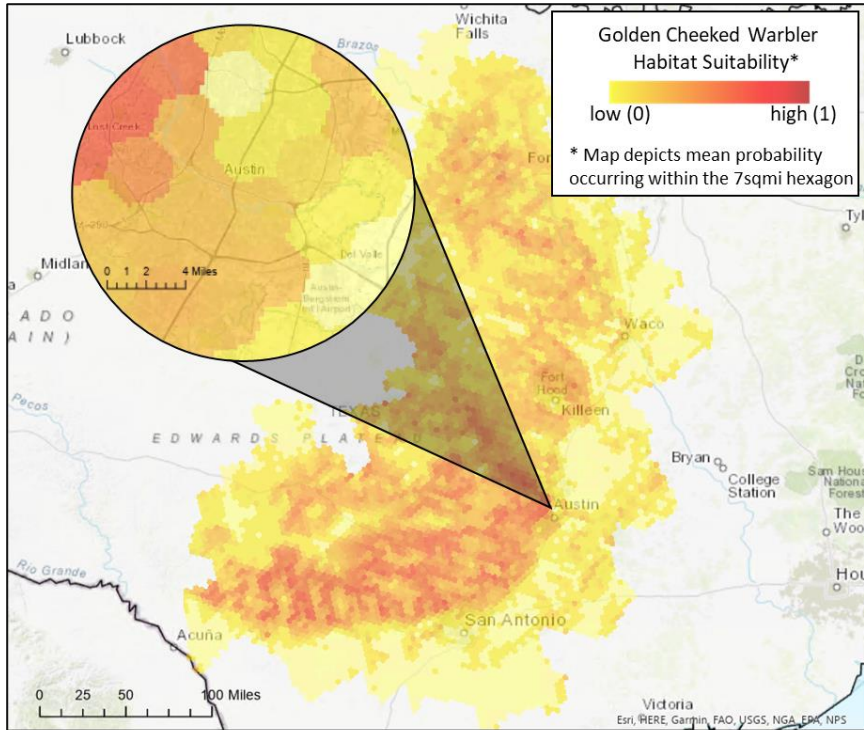
Examples of Habitat Models Approved for External Use (if applicable)



Example 3: Model displayed at 1:5,000,000 scale, showing categorical data.

<Licensee>

<Date>



Example 4: Model upscaled to 7-square mile hexagons showing the continuous prediction (top) and categorical prediction (bottom).