

**Supporting Statement A for
Paperwork Reduction Act Submission
OMB Control Number 1018-0119**

**Policy for Evaluation of Conservation Efforts
When Making Listing Decisions**

Terms of Clearance. None.

1. Explain the circumstances that make the collection of information necessary.

The Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.), specifies the process by which the Fish and Wildlife Service (Service, we) can list species as threatened or endangered. Section 4(a)(1) of the ESA requires that we determine whether any species is endangered or threatened (as defined by the ESA) because of any of five factors (e.g., the present or threatened destruction, modification, or curtailment of its habitat or range). The ESA further specifies that we must base the listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those conservation practices, if any, being made by any State or any political subdivision of a State to protect such species. In making a listing determination, we also consider the conservation efforts of entities other than States and political subdivisions of States.

States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or other similar documents. In some cases, the entity will develop these agreements/plans with the specific intent of trying to provide sufficient reduction or elimination of threats to a species so that listing is unnecessary. Sometimes, we must make a listing decision before these agreements/plans are implemented fully or their results are achieved. The agreements/plans may rely on future voluntary participation in various conservation efforts by private landowners or other entities, as opposed to enacted protective legislation or regulations.

The National Marine Fisheries Service and the Fish and Wildlife Service jointly developed and adopted the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100) to ensure consistent and adequate evaluation of conservation efforts in agreements/plans when making listing decisions. Court rulings had found that in making certain listing determinations, both Services had inappropriately relied on conservation efforts that had not been implemented or had not yet demonstrated effectiveness in having reduced or eliminated one or more threats to a species. PECE applies specifically to conservation efforts that to date have not been implemented or have not demonstrated effectiveness. It provides criteria for evaluating the certainty of implementation and effectiveness of “formalized conservation efforts” (defined as conservation efforts identified in agreements/plans and similar documents), and a standard that must be met for the Service to consider, as part of a listing determination, the contribution that such efforts make to reducing or removing one or more threats to a species.

When a State or other entity voluntarily decides to develop a conservation agreement or plan with the specific intent of making listing the subject species unnecessary, the criteria in PECE

can be construed as a requirement placed on the development of that agreement or plan, as these criteria must be satisfied to obtain and retain the desired benefit (i.e., making listing of a species as threatened or endangered unnecessary). The development of an agreement or plan containing conservation efforts that satisfy the PECE criteria and standard, with the involvement of the Service, constitutes an information collection.

One criteria in PECE is whether there are provisions for monitoring and reporting progress of a conservation effort. Monitoring is the mechanism for confirming the effectiveness of an effort, detecting failure, and detecting changes in conditions requiring modifications to the effort and/or the underlying agreement/plan, or possibly emergency conservation efforts by the Service, States, or others. In addition, monitoring sometimes is incorporated in agreements or plans as part of implementation of experimental measures. Under PECE, including provisions for monitoring and reporting is one of the criteria for demonstrating a high level of certainty that a conservation effort is likely to be effective. PECE also specifies that if the Service makes a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of formalized conservation efforts that were subject to the policy, we must track the status of the effort including the progress of implementation and effectiveness of the efforts, and if necessary, reevaluate the status of species and consider whether initiating the listing process is necessary. Thus, monitoring and reporting also constitute an information collection.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

We may use the information as part of the basis for making findings on petitions to list species and for making decisions on whether to:

- (1) assign a species candidate status (meaning that a proposal to list it is warranted but precluded by other higher priority listing actions),
- (2) remove candidate status,
- (3) issue proposed listing rules, or
- (4) finalize or withdraw proposed listing rules.

PECE specifies that to consider that a conservation effort contributes to forming a basis for a decision that listing is not necessary or a decision to list a species as threatened rather than endangered, we must find the effort is “sufficiently certain” to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species. Under PECE, the phrase “sufficiently certain” refers to having a high level of certainty. To gauge whether or not this standard has been met, we use the criteria in PECE to evaluate the certainty of implementation and the certainty of effectiveness of individual formalized conservation efforts (contained in conservation agreements/plans) that have not been implemented or have been implemented but have not demonstrated effectiveness. In evaluating whether a species is endangered or threatened, we consider those conservation efforts that meet the standard in PECE along with other applicable information.

In field offices with lead responsibility for the technical analyses involved in a listing decision,

Service biologists conduct the initial evaluation of the status of a species, including consideration of conservation efforts that are subject to PECE, and prepare the draft listing determination. Regional and Washington office staff in the Endangered Species program, solicitors in the Department of the Interior, and the Assistant Secretary for Fish, Wildlife, and Parks review the draft determination and supporting documentation, including the evaluations conducted under PECE. If a determination results in a proposal to list a species under the ESA, the proposed rule and the supporting documentation are subject to public review and comment before we make a final listing determination. The Service Director signs listing determinations based on a delegation from the Secretary.

Service biologists review the monitoring and annual report information. They use this information to track the status of the conservation effort, including the progress of implementation and effectiveness. If monitoring or other new information indicates a possible substantial negative change in the status of the species, we may reevaluate the status of the species to determine if initiating the listing process is necessary.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.].

We typically receive agreements/plans and reports electronically.

4. Describe efforts to identify duplication.

We do not collect duplicate information in relation to this information collection. Conservation agreements/plans and the efforts they contain are species- and site-specific. As a matter of practice, we work with the parties to an agreement/plan to ensure that there is no duplication of effort within a monitoring plan.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

We do not believe this information collection will have a significant impact on small businesses. States or other units of government usually develop conservation efforts; however, small businesses or small entities could develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement/plan. Since the purpose of each plan and monitoring is to conserve a species so that it does not require protections of the ESA, the burden for developing a plan or monitoring conservation efforts will be the same for small entities as it is for State or other government entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The ESA requires that we base listing determinations on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those conservation efforts, if any, being made to protect such species. PECE applies only to conservation efforts that are planned but not yet implemented, or to those that have

been implemented but have not yet demonstrated effectiveness. If we do not collect information under PECE, we would have to base listing determinations on a review of the status of the species that takes into account only conservation efforts that have been implemented and have demonstrated effectiveness. Conservation efforts that meet the standard in PECE occasionally are an important factor in decisions that listing is unnecessary. Absent that information, a different determination might be made and the involved species could become listed. In those circumstances, various restrictions and prohibitions on the activities of Federal and non-Federal entities would go into effect that we otherwise avoid.

If monitoring is not conducted and reported, we would not be able to meet our obligation to track the status of conservation efforts involved in a decision not to list a species (or to list the species as threatened rather than endangered). We do not require more monitoring than is necessary to accomplish the objectives of the conservation efforts and the agreements/plans. If we reduce the frequency of monitoring and reporting, there would be less information on which to confirm that the status of the species remains secure and listing is not necessary. Also, reducing the frequency of monitoring and reporting could result in failing to identify changes needed in conservation efforts.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * **requiring respondents to report information to the agency more often than quarterly;**
- * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * **requiring respondents to submit more than an original and two copies of any document;**
- * **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- * **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- * **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that require us to collect this collection in a manner inconsistent with OMB guidelines.

8. Provide the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and

recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

On November 24, 2008, we published in the Federal Register (73 FR 71041) a notice of our intent to request that OMB renew authority for this information collection. In that notice, we solicited public comments for 60 days, ending January 23, 2009. We received one comment in response to this notice. The commenter did not address the information collection requirements, but did object to the continuation of this program. We have not made any changes to our information collection requirements as a result of this comment.

We solicited input from the following persons entities previously involved in conservation agreements:

Robert A. Lemire, MAJ, EN, MSARNG, Director, Environmental Programs, 601-313-622

James R. Lee, Biologist, The Nature Conservancy, Camp Shelby Field Office, CSJFTC-ENV; building 622. Camp Shelby, MS 39407, 601-558-2797

Mr. Jeff Jones - email (jjones18@blomand.net) and phone (931-212-0170)

One person provided burden estimates that were considerably lower than our estimates. The burden for development of plans and the subsequent monitoring and reporting varies according to several factors, such as the species addressed, the number of land ownerships involved, and the number and nature of the specific conservation efforts that require monitoring. Monitoring and reporting implementation of some efforts, such as the removal of a structural hazard to the species, may involve a single and simple task-- documenting the removal of the hazard. In contrast, monitoring of other conservation efforts may involve much more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys on multiple occasions at multiple locations annually for several years. In addition, some species are relatively easy to survey while others require more time to locate. States and other entities often have management responsibility for the species that become the subject of conservation agreements or plans and they routinely conduct monitoring and reporting of these species and conservation efforts for these species as a part of ongoing management. In these cases, monitoring and reporting for purposes of compliance with this policy is not an added burden for the State or other entity. Based on the feedback and our experience since 1993, we believe our estimates of average burden hours (see paragraph 12) are correct. We did not receive any comments on the clarity of our instructions.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information associated with the development of an agreement/plan as well as monitoring and reporting does not include any questions of a sensitive or personal nature.

12. Provide estimates of the hour burden of the collection of information.

We estimate that the total annual burden is 13,040 hours and the total estimated annual dollar value of the burden hours is \$471,657.

ACTIVITY	NO. OF ANNUAL RESPONSES	TIME REQUIRED (HRS)	ANNUAL BURDEN (HRS)	ESTIMATE D RATE/HR	TOTAL ANNUAL COST
Develop agreement (one-time burden)	4	2,000	8,000	\$36.17	\$289,360
Monitoring (annual)	7	600	4,200	\$36.17	151,914
Report preparation (annual)	7	120	840	\$36.17	30,383
Total			13,040		\$471,657

The time needed to prepare conservation agreements varies substantially (200 to 4,000 hours), due to differences in the size of the areas covered, the number of entities involved, and the complexity and scope of the conservation issues that need to be addressed for a given species. The nature of the monitoring and reporting component also varies substantially, depending on the species addressed, the number of land ownerships involved, and the number and nature of the specific conservation efforts that require monitoring.

We estimate that respondents will develop four agreements/plans annually, with an average burden of 2,000 hours for each. The annual burden to the respondents is approximately 8,000 hours.

Based on our outreach and consideration of the scope and scale of pending draft agreements/plans, we estimate that respondents will spend an average of 600 hours to conduct monitoring and 120 hours to prepare reports associated with monitoring for each agreement, for a total of 720 hours annually per agreement.

We estimate the dollar value of a burden hour to be \$36.17 (\$24.11 X 1.5). To obtain the wage rate for State/local/tribal governments, we used data from the Bureau of Labor Statistics, Occupational Employment Statistics (http://www.bls.gov/oes/current/naics4_999200.htm). Table 19-1023 estimates the mean hourly wage of a wildlife biologist to be \$24.11. To account for benefits, we multiplied the mean hourly wage by 1.5. We calculated the benefits in accordance with BLS news release USDL 07-1883, December 11, 2007.

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

There are no nonhour burden costs to respondents except for those few who elect not to submit plans and reports electronically. Those respondents would incur a minimal cost to copy and mail the documents.

14. Provide estimates of annualized costs to the Federal Government.

We estimate that the total annual cost to the Federal Government to manage this information collection will be \$40,041 (696 hours X \$57.53 per hour). We estimate that it will take an average of 160 hours for us to review each agreement or plan. Therefore, the annual burden to the Service is 640 hours (4 agreements X 160 hours). We estimate that it will take an average of 8 hours for us to review the monitoring information/report submitted for an agreement (7), for an annual burden of 56 hours. We base the cost on the average wage of a GS-13/step 5. We used the Office of Personnel Management Salary Table 2009-GS to determine the hourly wage (\$38.35) and multiplied the hourly wage by 1.5 to account for benefits, for a total hourly wage of \$57.53. We calculated benefits in accordance with BLS news release USDL 07-1883, December 11, 2007.

15. Explain the reasons for any program changes or adjustments.

There are no program changes or adjustments.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

While we do not formally publish this information in publications or reports, we make agreements/plans and annual reports from States or other entities available through the Internet.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date on appropriate materials.

18. Certification.

There are no exceptions to the certifications required by 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).