

**1 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 evaluating conservation efforts that have already been signed by the entities and approved by the Service at the time we are making a listing determination, but 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 criterion 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) Conduct a species status review under a 12-month petition finding,
- (4) Issue proposed listing rules, or
- (5) 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.

The collection of information under PECE is infrequent because the Service rarely needs to use PECE as part of a listing determination. Due to the timing and status of conservation efforts, only a small subset of conservation efforts requires evaluation under PECE as part of a listing determination. There must be at least one conservation effort in place at the same time we are making a listing determination. *If* there is a conservation effort in place at the same time we are making a listing determination, then of these conservation efforts, *only* those that: (1) are signed by the entities participating in the conservation effort *and* (2) are approved by the Service *and* (3) have not been implemented or demonstrated effectiveness would need to be evaluated under PECE. A conservation effort must meet all of these criteria in order to require analysis under PECE.

Service biologists review the monitoring and annual report information provided under conservation efforts. 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 15, 2011, we published in the Federal Register (76 FR 70748) 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 17, 2012. We received two comments in response to this notice.

### **Necessity of Collection**

*Commenter 1* agreed that the collection of information is necessary. As to the practicality of the information collection, the commenter stated that this is the Service's determination. The commenter recommends that the PECE policy be vetted with nongovernment organizations (NGOs), States, and Federal agencies so that when these groups are developing conservation efforts for species that may be petitioned to be listed under the ESA, they understand the evaluation bar that must be met in order for their conservation efforts to be considered as part of the Service's listing determination.

*Response:* On June 13, 2000, we published a Federal Register notice (65 FR 37102) soliciting public comments on the draft policy. We received comments from 44 entities, primarily States and NGOs. We evaluated these comments and incorporated them into the final policy, which includes a section on the evaluation criteria that conservation efforts must meet. In addition, the final policy is posted on our Candidate Conservation Webpage at <http://www.fws.gov/angered/what-we-do/candidate-conservation-process.html> and on our Laws and Policies Webpage at <http://www.fws.gov/angered/laws-policies/regulations-and-policies.html> so the evaluation criteria can be referenced at any time.

*Commenter 2* objected to paying for the collection of information, and said that funding should be eliminated. The commenter also said its purpose is not explained very well.

*Response:* Evaluation of conservation actions as part of our listing decision is required by the ESA, and therefore cannot be eliminated. An explanation of the policy and the policy itself are posted on our Candidate Conservation Webpage. The policy is also posted on our Laws and Policies Webpage. In addition, our 30-day Federal Register notice for this information collection request includes a link to our Candidate Conservation Webpage. The commenter did not provide comments on the burden estimate; ways to enhance the quality, utility, and clarity of information; or on the ways to minimize the burden.

## **Burden Estimates**

*Commenter 1* agreed that the PECE policy will not have a \$100 million annual effect or adversely affect an economic sector, productivity, jobs, the environment, or other units of government in the collection of data. However, the commenter stated that the implementation of conservation efforts measures associated with the listing under the ESA will certainly meet both the monetary bar and the adverse impacts bar.

*Response:* The burden estimates for implementing conservation actions covered by this information collection are limited to the amount of time needed to prepare the conservation agreements and to conduct the monitoring and reporting. The burden estimates do not cover the monetary cost of implementing the conservation measures themselves. The ESA specifies that we must base listing determinations *solely on the basis of the best scientific and commercial data available* (emphasis added) 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. The PECE policy describes how we will evaluate, as part of the listing determination, the extent which these conservation actions reduce the threats facing a species. Under the requirements of the ESA, we cannot use economic impacts as part of our listing determination.

## **Ways to Enhance the Quality, Utility, and Clarity of Information.**

*Commenter 1* indicated that the PECE policy is not well distributed or understood and that finding the most recent PECE was difficult. The commenter suggested that we provide a link to the most recent version for future review. They also suggested that better dissemination and explanation of the policy would bolster the quality, utility and clarity of the information.

*Response:* See above for links to the policy.

## **Ways to Minimize Burden.**

*Commenter 1* stated that it is in the State's best interest to have conservation programs be successful and to allow activities that have and will occur across the landscape to continue. The commenter does not mind providing this information, provided that they know the Service will be acting in good faith to advance the conservation program to an approved State.

*Response:* We coordinate closely with State wildlife management agencies in the conservation and management of endangered and threatened species under the ESA. State wildlife agencies are our primary conservation partners, and we routinely share data with them. In addition, under section 6 of the ESA, we provide grants to States and territories to participate in a wide array of voluntary conservation projects for candidate, proposed, and listed species. The grant program provides funding to States and territories for species and habitat conservation actions on non-Federal lands. A State or territory must currently have, or enter into, an approved cooperative agreement with the Secretary of the Interior to receive grants. Most States and territories have entered into these agreements for both plant and animal species.

## **Outreach**

There have been no new conservation efforts fully evaluated under our PECE policy since our previous information collection renewal request. We recently initiated a PECE analysis of two new conservation efforts as part of one listing determination, but that analysis has not been completed. Therefore, we conducted the required outreach by soliciting input from the following persons/entities involved in conservation efforts previously evaluated under the PECE policy:

(1) James R. Lee, Biologist, The Nature Conservancy, Camp Shelby Field Office, CSJFTC-ENV Building 6530, Camp Shelby, Mississippi 39407. Phone: 601-558-2797. Species protected under the 2004 conservation agreement: Camp Shelby burrowing crayfish.

## **Necessity of Collection**

*Comment:* The commenter stated that the collection data is necessary and that it has a practical utility because it helps determine what areas are in need of habitat management (e.g. prescribed fire, thinning efforts, etc), and greatly influences management recommendations. For example, pitcher plant wetlands within the range of the species that have a dense herbaceous understory, a fire suppressed mid-story, and a relatively open canopy will contain more Camp Shelby burrowing crayfish.

*Response:* We agree with the comment.

## **Burden Estimates**

*Comment:* The commenter was not involved in the creation of the conservation agreement and could not provide an accurate burden estimate for creating the conservation agreement. However, the commenter did provide the following burden estimate for the monitoring and reporting requirement. They estimated that it would take 140-175 person hours for monitoring and 70 person hours for the data analysis, report preparation, and presentations. Although these estimates are lower than the national estimates for monitoring and reporting, the commenter indicated that this is likely an artifact of the species' limited geographic distribution and their monitoring protocol.

*Response:* The Camp Shelby burrowing crayfish is only found locally in the Camp Shelby area of Mississippi. Naturally, the amount of time needed to prepare the monitoring and reporting under this one conservation agreement for a localized species will be smaller in comparison to that for a wide ranging species having multiple conservation agreements. We believe that our existing burden estimates represent a reasonable average of the burden estimates under this information collection.

## **Ways to Enhance the Quality, Utility, and Clarity of Information.**

*Comment:* The commenter indicated that monitoring plots may need to be added to limit the possibility of Type 2 statistical errors.

*Response:* Given the limited geographic distribution of this species, any increase in the time needed for the monitoring and reporting that may result from increased monitoring plots will still be covered under our existing burden estimates. The commenter did not provide any information on the ways to minimize the burden of the information collection.

(2) Rick Cables, Director, Colorado Parks and Wildlife, 1313 Sherman Street, Denver, Colorado 80203. Phone: 303- 866-3311. Species protected under the 2006 conservation agreement: Gunnison sage grouse. We did not receive a response to our inquiry.

We have not made any changes to our information collection requirements. Based on the feedback and our experience since 1993, we believe our estimates of average burden hours (see paragraph 12) are correct.

**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.**

Under the PECE policy, we evaluate conservation efforts as part of our listing determinations made via candidate species status assessments, 12-month petition findings, proposed listings, and final listings. We made a total of 312 listing determinations in FY 2009, 577 determinations in FY 2010, and 356 determinations in FY 2011 for a total of 1,245 listing determinations over 3 years. This includes listing determinations made for candidate species in our annual Candidate Notice of Review, which is completed and published in the Federal Register in the Fall each year. At this time, we expect to make approximately 178 listing determinations by the end of FY 2012, not including listing determinations that will be made for candidate species in our FY 2012 Candidate Notice of Review. To date, only one of these determinations have required a PECE analysis in progress). Given the infrequent use of the PECE policy, we believe that our existing burden estimates represent a reasonable average of the burden estimates that could occur under this information collection.

We estimate that the total annual burden is 13,040 hours and the total estimated annual dollar value of the burden hours is \$ 490,826.

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	\$ 37.64	\$ 301,120
Monitoring (annual)	7	600	4,200	\$ 37.64	158,088
Report preparation (annual)	7	120	840	\$ 37.64	31,618
Total	18		13,040		\$ 490,826

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 existing/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 \$ 37.64 (\$25.09 X 1.5). To obtain the wage rate for State/local/tribal governments, we used data from the Bureau of Labor Statistics, May 2011 Occupational Employment Statistics ([http://www.bls.gov/oes/current/naics4\\_999200.htm](http://www.bls.gov/oes/current/naics4_999200.htm)). Table 19-1023 estimates the mean hourly wage of a State wildlife biologist to be \$25.09. To account for benefits, we multiplied the mean hourly wage by 1.5, for a total hourly wage of \$37.64. We calculated the benefits in accordance with the Bureau of Labor Statistics news release USDL 12-0450 entitled "Employer Costs for Employee Compensation – December 2011" (<http://www.bls.gov/news.release/pdf/ecec.pdf>) released on March 14, 2012.

**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 \$46,388 (696 hours X \$ 66.65 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/reports submitted for an agreement. Therefore, the annual burden to the Service is 56 hours (7 monitoring/information reports x 8 hours). We base the cost on the average wage of a GS-13/step 5. We used the Office of Personnel Management's Salary Table 2012-RUS to determine the hourly wage (\$44.43) and multiplied the hourly wage by 1.5 to account for benefits, for a total hourly wage of \$66.65. We calculated benefits in accordance with the Bureau of Labor Statistics news release USDL 12-0450 entitled "Employer Costs for Employee Compensation – December 2011" (<http://www.bls.gov/news.release/pdf/ecec.pdf>) released on March 14, 2012.

**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).