

SUPPORTING STATEMENT
SUBMISSION OF CONSERVATION EFFORTS TO MAKE LISTINGS UNNECESSARY
UNDER THE ENDANGERED SPECIES ACT UNDER THE POLICY FOR
EVALUATION OF CONSERVATION EFFORTS WHEN MAKING LISTING
DECISIONS
OMB CONTROL NO. 0648-0466

This request is for extension of a current information collection. The title is also being changed from “Submission of Conservation Efforts to Make Listings Unnecessary Under the Endangered Species Act” to “Submission of Conservation Efforts to Make Listings Unnecessary Under the Endangered Species Act under the Policy for Evaluation of Conservation Efforts When Making Listing Decisions”.

Background

The [Endangered Species Act of 1973](#), as amended (ESA) (16 U.S.C. 1531 et seq.), specifies the process by which the National Marine Fisheries Service (NMFS) can list species as threatened or endangered. The ESA requires NMFS, when considering whether to list a species, to take into account “those efforts, if any, being made by any State . . . or any political subdivision of a State . . . to protect such species.” Conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or other similar documents and are often developed with the specific intent of making the listing of species as threatened or endangered unnecessary. Sometimes these agreements or plans are not fully implemented or their results are not fully achieved at the time NMFS must make a listing decision. These agreements or plans sometimes rely on future voluntary participation by private landowners, as opposed to enacted protective legislation or regulations. When an agreement or plan has not been fully implemented, its results have not been fully achieved, or it relies on future voluntary conservation efforts, NMFS must assess the likelihood that the efforts will be implemented and effective.

The development of an agreement or plan by a State or other entity is completely voluntary. When a State or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing the subject species unnecessary, NMFS will use the criteria identified in the [Policy for Evaluation of Conservation Efforts When Making Listing Decisions](#) (PECE), finalized in 2003 and incorporated into [50 CFR Chapter IV](#). The development of an agreement, with NMFS’ involvement, that has the specific intention of making listing unnecessary constitutes a new information collection. One of the criteria identified in this policy is that such agreements and plans contain a provision for monitoring and reporting the progress and results of implementation of conservation efforts. This criterion also constitutes a separate information collection, in addition to the agreement.

A. JUSTIFICATION

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

The development of conservation plans could prevent some species from becoming so imperiled that the only recourse is to add them to the list of threatened and endangered species

under the Endangered Species Act. The purpose of this policy is to encourage such plans and to give applicants guidance about how NMFSs will evaluate such plans. This policy identifies criteria for evaluating the certainty of implementation and effectiveness of a conservation effort. NMFS developed this policy to ensure consistent and adequate evaluation of agreements and plans in making listing decisions and to help States and other entities develop agreements and plans that will be adequate to make listing species unnecessary.

In addition, conservation professionals have long considered monitoring and reporting to be an essential component of scientifically sound agreements and plans and currently incorporate monitoring and reporting into all agreements and plans. NMFS included a criterion in this policy for monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness. Monitoring is the mechanism for confirming success, detecting failure, and detecting changes in conditions requiring modifications to the agreement or plan or possibly emergency conservation efforts by NMFS, States, or others. In addition, monitoring is sometimes incorporated in agreements or plans as part of implementation of experimental measures. Including provisions for monitoring and reporting is necessary to demonstrate that the conservation efforts are likely to be implemented and effective.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

Any entity may develop a conservation plan. The criteria in the policy will be used by NMFS to determine if implementation of the plan is likely to result in making a listing unnecessary. This policy is necessary because NMFS did not previously have any express criteria for judging whether a plan would be implemented and would be effective. We had lost some court cases concerning conservation plans, and several states had requested NMFS to provide some certainty by publishing the criteria by which NMFSs will evaluate the likelihood of implementation and effectiveness of a conservation effort. The information in a conservation plan that a member of the public submits has utility in that it will be used to determine whether a species should be listed as threatened or endangered.

The responsibility for monitoring the progress and results of implementation of an agreement or plan is determined and agreed to during the development of the agreement or plan. In most cases, the State or other entity which is leading development of the agreement or plan will conduct the monitoring. However, specific efforts may be implemented and monitored by NMFS, property owners, or other entities.

The nature of the monitoring and reporting component of an agreement or plan will vary according to the species addressed, land ownership, specific conservation efforts, expertise of participants, and other factors. 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. Monitoring of other efforts may involve more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys annually for several years. In addition, some species are easy to survey while others are difficult.

The information collected through monitoring is very valuable to NMFS, the States and other entities implementing agreements and plans, and to others concerned about the welfare of the species covered by the agreements and plans. Because the effectiveness of conservation efforts is determined through monitoring, monitoring is essential for improving future conservation efforts.

It is anticipated that the information collected (i.e., conservation plan) will be disseminated to the public or used to support publicly disseminated information. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with Federal law and regulations, and NOAA standards for confidentiality, privacy and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

NMFS does not require, but will accept, plans and reports electronically. We have not developed a form to be used for submission of plans or reports. In the past, we have made plans and annual reports from states available through the Internet, and plan to continue this practice.

4. Describe efforts to identify duplication.

Developing and submitting an agreement is necessary in order for NMFS to determine if it meets the criteria included in the policy. Monitoring individual agreements and plans is necessary because they are species- and site-specific. As a matter of practice, NMFS, as well as the developer of an agreement or plan, ensures that there is no duplication of effort within an individual monitoring plan. Since these plans and agreements are submitted to us, we can ensure that duplication is not an issue.

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

Although conservation efforts that are capable of making the listing of a species as threatened or endangered unnecessary are usually developed by States or other units of government, small businesses or small entities may develop agreements or plans or may agree to implement certain conservation efforts identified in a State agreement or plan. However, the burden for developing a plan or monitoring conservation efforts will be the same for small entities since the purpose of each plan and monitoring is to conserve a species so that it does not require the protections of the Endangered Species Act. The requirements announced in the policy are the minimum criteria for all efforts.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If a plan is not developed and submitted, NMFS may not be able to verify that actions are being taken that will contribute to making a listing unnecessary. If monitoring is not conducted, NMFS may not be able to verify that the conservation efforts are being implemented, or are effective. NMFS may then determine that, based on the best available information, listing the species is warranted.

NMFS does not require more monitoring than necessary to accomplish the objective of the plan, which is to be effective. If this level of effort was reduced, the agreement or plan would provide less certainty that the efforts will be effective.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

NMFS generally asks States and other entities to submit monitoring reports annually, since most monitoring consists of measuring annual vegetation growth or species population growth. In addition, many agreements and plans are funded on an annual basis; monitoring annual progress in implementation is most appropriate. However, NMFS may ask the State or other entity to report certain accomplishments or conditions before the scheduled submittal of an annual report, such as completion of construction of a habitat feature, the increase in severity of a threat, the detection of a new threat, and other factors that may have important consequences for the conservation of the species.

NMFS does not require States or other entities to retain monitoring reports or data. However, States and other entities generally consider monitoring reports and data as important for planning future conservation actions. Also, State law, regulations, or practices may require State agencies to retain records for auditing purposes.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the 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.

A Federal Register Notice published on March 1, 2012 (77 FR 12567) solicited public comment on this renewal.

We received one comment letter from the State of Alaska, stating:

- 1) NMFS and the U.S. Fish and Wildlife Service have largely ignored its input regarding programs that are not formal, species-specific conservation agreements developed in cooperation with either Service.
- 2) The proposed collection of information is necessary for the proper performance of the agency, and the information does have practical utility. However, NMFS's practice under PECE of considering only formalized, species-specific conservation agreements and plans ignores the

clear requirement to “take into account” conservation efforts by states and other non-federal entities to protect species at risk.

- 3) The information definitely has practical utility: it informs listing decisions and contributes to more efficient implementation of efforts to reduce threats to species at risk.
- 4) NMFS should maximize flexibility, within scientifically defensible sidebars, of the format of conservation plans or similar documents that it takes into account in making listing determinations. By not requiring electronic submission or a specific submission form, it does appear that NMFS is somewhat flexible in the means by which it will accept such plans.

NOAA response: The State of Alaska’s stated issues lie within the ESA and its implementing regulations and cannot be addressed through this exercise of PRA compliance of the PECE policy. The State of Alaska refers to conservation efforts that have been in place and have already had an opportunity to prove whether they are effective. Therefore, these efforts are not analyzed under the PECE policy. The PECE policy was meant to evaluate conservation efforts that have not yet been implemented or shown to be effective, and the criteria for evaluating these efforts involve the degree of certainty that the plan will be implemented and the degree of certainty that the plan will be effective.

NMFS has consulted with outside entities to obtain their views on information collection associated with this policy. As stated above, monitoring and reporting the progress and results of implementation of conservation efforts is considered an essential component of scientifically sound agreements and plans by conservation professionals and are currently routinely incorporated in agreements and plans. NMFS included a criterion in this policy requiring agreements and plans to include monitoring and reporting provisions to ensure consistency with sound biological and conservation principles and for completeness.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

NMFS does not provide payments or gifts to those submitting monitoring reports.

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

Respondents are not provided specific information about confidentiality. NMFS has authority to protect confidential information to the extent provided under the [Freedom of Information Act](#). However, all monitoring reports are available for public review. Sometimes a State may be concerned about releasing sensitive information such as species locations on private lands. However, if collecting and or reporting sensitive information is necessary for assessing the progress and results of implementation of the agreement or plan, and the State is unwilling or legally unable to collect and/or report this information, NMFS may determine that the agreement or plan does not provide a high enough level of certainty that it will be implemented and effective and that, therefore, listing is warranted.

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.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

Since 1997, NMFS has entered into three conservation agreements which at the time we determined contributed to removing the need to list the covered species as threatened or endangered. For purposes of this exercise, we will assume that at least **one agreement will be developed annually** with the intent of making listing unnecessary (total of 3 over three years), and that at least fifty percent of these will be successful in making listing unnecessary, and in this case, the States or other entities who develop these agreements will carry through with their monitoring commitments in order to keep the covered species off the list. Therefore, we estimate that **two successful agreements will be in place over the next three years, with annual monitoring and reporting required.**

NMFS estimates the States and other entities will spend an average of 1,000 to 4,000 person hours, with an average of 2,500 person hours, to complete each agreement or plan that has the intention of making listing unnecessary. This is a one-time burden for each agreement developed. Based on a rate of \$50 per hour, we estimate that the cost to a State or other entity to develop the agreement will average \$125,000.

We further estimate that for the agreements that the States or other entities develop that are successful in precluding listing, they will spend an average of 320 hours to conduct the monitoring and 80 hours to prepare a report. Based on a rate of \$50 per hour, we estimate the cost to a State or other entity to conduct the monitoring and to prepare a report to average \$20,000, or \$40,000 for two States.

Burden Estimates for Reporting Requirements for the Policy for Evaluation of Conservation Efforts in Making Listing Decisions

Type of activity	Number	Average time required (hours)	Burden hours
Developing agreement with intent to preclude listing (onetime burden)	1	2,500	2,500
Monitoring (annual)	2	320	640
Report preparation (annual)	2	80	160
Total	5		3,300

States and other entities often have management responsibility for the species which become the subject of agreements or plans. States and other entities routinely conduct monitoring and reporting of these species and conservation efforts for these species as a part of on-going 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.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

We do not anticipate any costs to applicants beyond those described above except for copying and mailing plans and reports. We estimate that each plan will cost about \$50.00 for copying and mailing and each annual report will cost about \$50.00 for copying and mailing with a total annual cost of about \$150.00 (one plan and two reports). There is no such cost for monitoring.

14. Provide estimates of annualized cost to the Federal government.

NMFS estimates it will take an average of 160 hours for NMFS to review each agreement or plan. Therefore, the annual burden to NMFS resulting from one entity submitting agreements or plans with the intention of precluding the need to list a species totals is also 160. NMFS estimates it will take an average of 2 hours per report for NMFS to review the monitoring information collected on the species. Therefore, the annual burden to NMFS resulting from 2 entities reporting information totals 4 hours. The cost of the 164 hours is estimated at \$30.00 per hour, or a total of \$4,920.00.

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

There have not been any changes to the program.

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

Depending on public interest, publication of plans and reports may be made available through the Federal Register or the Internet.

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

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

There is no statistical sampling or other respondent selection involved in this process.