

SUPPORTING STATEMENT A FOR PAPERWORK REDUCTION ACT SUBMISSION

Policy for Evaluation of Conservation Efforts When Making Listing Decisions OMB Control Number 1018-0119

Terms of Clearance: None.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

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 based 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 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 requiring 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, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

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. We estimate we will receive 100% of submissions electronically.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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 any methods used to minimize burden.

We do not believe this information collection has 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 is 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 were 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. If applicable, provide a copy and identify 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 and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On May 20, 2021, we published in the *Federal Register* ([86 FR 27461](#)) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on July 19, 2021. We received the following comment in response to that notice:

Comment 1: Email dated July 19, 2021, from Thomas R. Jones, Amphibians and Reptiles Program Manager, Arizona Game and Fish Department. Mr. Jones confirmed the Service's time burden estimates are accurate.

Agency Response to Comment 1: The commenter agreed with our time burden estimates, so we did not make any changes to the estimates.

In addition to the Federal Register Notice, we consulted with the three (3) individuals identified in Table 8.1 who are familiar with this collection of information in order to validate our time burden estimate and asked for comments on the questions below:

Table 8.1

Organization	Title
Nevada Association of Counties	Executive Director
Bodie Hills Conservation Partnership	Director
Fivepoint	Vice President, Environmental Resources

“Whether or not the collection of information is necessary, including whether or not the information will have practical utility; whether there are any questions they felt were unnecessary”

“The accuracy of our estimate of the burden for this collection of information”

“Ways to enhance the quality, utility, and clarity of the information to be collected”

And

“Ways to minimize the burden of the collection of information on respondents”

Despite multiple attempts to solicit feedback via email and phone calls, two of the individuals did not respond to our request for feedback. After two email messages to the remaining individual twice, we were successful in reaching them via phone call. On that call, they referred us to their colleague, but that colleague did not respond back to us. Subsequently, we followed up with that individual via email a third time, but we did not receive a response from them.

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. Information is collected and protected in accordance with the Freedom of Information Act (5 U.S.C. 552).

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. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

Under PECE, 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 58 determinations in FY 2018, 57 determinations in FY 2019, and 94 determinations in FY 2020 for a total of 209 listing determinations over 3 FYs. This includes listing determinations made for candidate species in our annual Candidate Notice of Review. In the past three fiscal years (2018-2020), only 2 of these determinations have used a PECE analysis to evaluate conservation programs or plans for a particular listing determination. It is important to note the infrequent nature of our use of PECE compared to the actual number of determinations.

NOTE: In the Supporting Statement for the previous information collection renewal, we stated that we used a PECE analysis in 7 determinations in FY 2016 – 2018. Since we used a PECE analysis 2 times in FY 2018 – 2020, we are revising the hour burden downward to reflect that trend.

We estimate **9 annual responses** totaling **8,160 annual burden hours** and the total estimated annual dollar value of the burden hours is **\$351,261 (rounded)**.

We used the Bureau of Labor Statistics (BLS) News Release [USDL-21-1647](#), September 16, 2021, Employer Costs for Employee Compensation—June 2021, to calculate the total annual burden.

- Individuals. Table 1 lists the hourly rate for all workers \$38.91, including benefits.
- Private Sector. Table 5 lists the hourly rate for all workers as \$36.64, including benefits.
- Government. Table 3 lists the hourly rate for all workers as \$53.59, including benefits.

Activity	Annual No. of Respondents	Number of Submissions Each	Total Annual Responses	Completion Time per Response (Hours)	Annual Burden Hours	Hourly Labor Costs Incl. Benefits	Dollar Value of Annual Burden Hours
PECE - Reporting							
Individuals	1	1	1	120	120	\$38.91	\$4,669.20
Private Sector	1	1	1	120	120	36.64	4,396.80
Government	1	1	1	120	120	53.59	6,430.80
PECE - Monitoring							
Individuals	1	1	1	600	600	\$38.91	\$23,346.00
Private Sector	1	1	1	600	600	36.64	21,984.00
Government	1	1	1	600	600	53.59	32,154.00
PECE - Development of Conservation Plan/Agreement (One-time Burden)							
Individuals	1	1	1	2,000	2,000	\$38.91	\$77,820.00
Private Sector	1	1	1	2,000	2,000	36.64	73,280.00
Government	1	1	1	2,000	2,000	53.59	107,180.00
Total	9		9		8,160		\$351,260.80

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of

any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

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 cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate that the total annual cost to the Federal Government to manage this information collection will be **\$67,327 (rounded)**.

We used Office of Personnel Management Salary Table [2021-DCB](#) to obtain the most up-to-date hourly rates for a GS-13/05 staff member (\$56.31). We used BLS News Release [USDL-21-1647](#), September 16, 2021, Employer Costs for Employee Compensation—June 2021, and multiplied the hourly wage by 1.59 to account for benefits resulting in a fully burdened rate of \$89.53.

Activity	Number of Submissions	Time per Submission (Hours)	Total Time Required (Hours)	Hourly Rate	Total Cost
Review Agreement or Plan	4	160	640	\$ 89.53	\$ 57,299.20
Monitoring / Reports	14	8	112	89.53	10,027.36

Total:	18		752		\$ 67,326.56
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We estimate that it will take an average of 160 hours for us to review each agreement or plan. We estimate that it will take an average of 8 hours each for us to review the monitoring information and reports submitted for an agreement.

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

With this submission, we are reporting a **reduction of -9 responses and -4,880 burden hours** associated with a change due to adjustment in agency estimate (see "NOTE" in question 12 above).

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

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