

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Submission of Conservation Efforts to Make Listings Unnecessary under the Endangered Species Act
OMB Control No. 0648-0466

Abstract

This request is for extension of a current information collection under the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE), which was finalized jointly by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) in 2003 (see 68 FR 15100, March 28, 2003). There are no changes or revisions to this collection request.

The Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 et seq.), specifies the process by which NMFS and FWS (the Services) can list species as threatened or endangered. When considering whether to list a species, the ESA requires the Services 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 have yet to be implemented or demonstrate their effectiveness at the time the Services must make a listing decision. In such instances, the Services use the criteria identified in the PECE to evaluate the conservation efforts. The development of such an agreement or plan that has the specific intention of making listing unnecessary constitutes a new information collection. One of the criteria identified in PECE 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 new information collection, in addition to the agreement.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

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 ESA. The [PECE](#) established criteria for evaluating the certainty of implementation and effectiveness of as-yet to be implemented or effective conservation efforts. The Services developed this policy to ensure consistent and adequate evaluation of such agreements and plans in making listing decisions and to help States and other interested parties develop agreements and plans that would contribute to making it unnecessary for the Services to list a species under the ESA.

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. The Services 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 the Services, 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. 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.

Any entity may develop a conservation plan. The criteria in the policy would be used by the Services to determine if implementation of the plan is likely to result in making a listing under the ESA unnecessary. This policy is necessary because the Services 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 we provide some certainty by publishing the criteria by which the Service would 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 the relevant Service, 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 the relevant Service, 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. The relevant Service would retain control over the information and safeguard it from improper access, modification, and destruction, consistent with Federal law and regulations, and 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 would 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 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.

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. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2.

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 impacts small businesses or other small entities, describe any 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 ESA. The requirements announced in the policy are the minimum criteria for all efforts.

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.

If a plan is not developed and submitted, NMFS would not be able to verify that actions are being taken that will contribute to making a listing unnecessary. If monitoring is not conducted, NMFS would 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 would cause an information collection to be conducted in a manner inconsistent with OMB guidelines.

NMFS would typically ask States and other entities to submit monitoring reports annually, since most monitoring consists of measuring variables or indicators over longer time-periods (e.g., annual vegetation growth or population growth). In addition, agreements and plans are likely to be funded on an annual basis. However, NMFS may ask that certain accomplishments or conditions be reported 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. If applicable, provide a copy and identify the date and page number of publications 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 describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A notice was published in the *Federal Register* on September 22, 2021 (86 FR 52643) solicited public comment on this renewal.

We received one comment from the Western Governors' Association.

Comment Summary: The Western Governors' Association supports all reasonable proactive management efforts to conserve species and the ecosystems upon which they depend to: sustain populations of diverse wildlife and habitats; preclude the need to list a species under the ESA; and retain the West's wildlife legacy for future generations. They also support the use of best available science in ESA decisions. Western Governors believe that federal agencies, working with the states, should establish consistent criteria to assess modeling related to projected scientific information. Additional details on Western Governors' policy related to species conservation are articulated in the WGA Policy Resolution 2021-04, *Species Conservation and the Endangered Species Act*, which was attached to the comment.

Response: NMFS appreciates the comment and the support expressed for proactive conservation measures, the ESA, and the use of the best available science in ESA decisions. However, as this comment does not address the submission of information under PECE, it is outside the scope of this Paperwork Reduction Act renewal request.

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 decision to provide any payment or gift 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 the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

NMFS has authority to protect confidential information to the extent provided under the [Freedom of Information Act](#). However, all monitoring reports would be made 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 or 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.

No sensitive questions are asked.

12. Provide estimates of the hour 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 one agreement will be developed over three years** with the intent of making listing unnecessary and that at it would 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 one successful agreement 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 \$74.49 per hour, we estimate that the cost to a State or other entity to develop the agreement will average \$186,225.

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 \$74.49 per hour, we estimate the cost to a State or other entity to conduct the monitoring and to prepare a report to average \$23,837 and \$5,959.

States and other entities often have management responsibility for the species that 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.

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

Information Collection	Type of Respondent (e.g., Occupational Title)	# of Respondents/year (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate* (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Developing agreement with intent to preclude listing (onetime burden)	Natural Science Manager (11-9121)	1	1	1	2,500	2,500	\$74.49	\$186,225
Monitoring (annual)	Natural Science Manager (11-9121)	1	1	1	320	320	\$74.49	\$23,837
Report preparation (annual)	Natural Science Manager (11-9121)	1	1	1	80	80	\$74.49	\$5959
Totals				3		0		216,021

*Mean hourly wage data obtained from the U.S. Bureau of Labor Statistics May 2020 National Occupational Employment Wage Estimates for the occupational group of Natural Science Manager (11-9121).

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

We do not anticipate any costs to applicants beyond those described above except for copying and mailing plans and reports should the option of submitting materials electronically not be used. We estimate that each plan would cost about \$50.00 for copying and mailing and each annual report would cost about \$50.00 for copying and mailing with a total annual cost of about \$100.00 (one plan and one report).

Information Collection	# of Respondents (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Cost Burden / Respondent (h)	Total Annual Cost Burden (i) = (c) x (h)
Developing agreement with intent to preclude listing (onetime burden)	1	1	1	\$50	\$50
Monitoring (annual)	1	1	1	0	0
Report preparation (annual)	1	1	1	\$50	\$50
TOTALS			3		\$100

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.

NMFS estimates it would 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 one entity reporting information annually totals 2 hours. The cost of 162 hours of review is estimated at \$42.00 per hour, or a total of \$6,480.00.

Cost Descriptions	Grade/Step	Loaded Salary /Cost	% of Effort	Fringe (if Applicable)	Total Cost to Government
Federal Oversight	GS12/1	\$87,198	8%		6,792
Other Federal Positions					
Contractor Cost					
Travel					
Other Costs:					
TOTAL					\$6,792

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

There are no changes to the information collection since the last OMB approval.

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.

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 that display would be inappropriate.

This collection does not have any forms on which to display the expiration date.

18. Explain each exception to the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).