

# Candidate Species and Candidate Conservation Agreements With Assurances For Non-Federal Property Owners

## What is a candidate species?

Candidate species are plants and animals for which the Fish and Wildlife Service (Service) has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. The National Marine Fisheries Service (NMFS), which has jurisdiction over most marine species, defines candidate species more broadly to include species whose status is of concern but more information is needed before they can be proposed for listing.

## How does the public know what species are candidates for listing?

The Service annually publishes a Notice of Review in the *Federal Register* that provides an updated list of plants and animals native to the United States that are regarded as candidates for possible listing. While there is no requirement under the ESA to publish such a list, the Service believes that it is important to advise other Federal agencies, State and Tribal governments, local governments, industry, and the public of those species that are at risk and may warrant ESA protection. Advance notice of potential ESA listings can assist environmental planning efforts allowing resource managers to alleviate threats and thereby possibly remove the need to list these taxa. In publishing the candidate species list, the Service also solicits any new information that may be available on the biology, status, and distribution of and threats to these species or other potential candidates. NMFS periodically publishes in the *Federal Register* a list of the species it regards as candidates.

## What protection does the ESA provide to candidate species?

Candidate species receive no statutory protection under the ESA. However, the Service encourages the formation of partnerships to conserve these species since they are by definition species that may warrant future protection under the ESA.

## How do species become candidates?

Identification of potential candidates is a cooperative effort. The Service's Endangered Species specialists work closely with staff from other Service resource programs, such as fisheries, refuges, and migratory birds, as well as representatives of other Federal and State natural resource agencies, local and Tribal governments, business and industry, academia, and other private interests to identify potential candidate species. The Association for Biodiversity Information's Natural Heritage Central Databases system, which ranks species' status at State, National, and global levels based on their relative imperilment, also is an important tool for identifying potential candidate species. Called NatureServe®, this database is available via the Internet at <http://www.natureserve.org>. It provides information on more than 50,000 plants, animals, and ecological communities of the U. S. and Canada.

When sufficient information is developed to make well documented, biologically sound determinations about a species' status, the Service's Field Offices consider whether it meets the criteria for listing under the ESA. The Service's Regional Offices then provide recommendations for additions to the candidate list to the Service's Director, whose concurrence is necessary before a species becomes an official candidate species. Species are assigned a listing priority from 1 to 12 based on the magnitude of threats they face, the

immediacy of the threats, and taxonomic uniqueness (for example, full species have higher priority than subspecies). The species' listing priority dictates the relative order in which proposed listing rules are prepared, with the species at greatest risk (listing priority 1 through 3) being proposed first. We review the listing priority number for each species yearly.

## How many species are currently candidates for listing?

As of September 2001, 237 species were candidates for listing and 38 species were proposed for listing.

## What is the advantage of conserving species that are already candidates or proposed for listing?

An effective program for the conservation of endangered species requires a means of addressing species that have not yet been listed but that face immediate, identifiable risks. Early conservation preserves management options, minimizes the cost of recovery, and reduces the potential for restrictions on land use in the future. Addressing the needs of species before the regulatory restrictions associated with listed species come into play often allows greater management flexibility to stabilize or restore these species and their habitats. In addition, as threats are reduced and populations are increased or stabilized, priority for listing can be shifted to those species in greatest need of the ESA's protective measures. Ideally, sufficient threats can be removed to eliminate the need for listing.

## What are Candidate Conservation Agreements?

Candidate Conservation Agreements are formal agreements between the Service and one or more parties to address the conservation needs of

proposed or candidate species, or species likely to become candidates, before they become listed as endangered or threatened. The participants voluntarily commit to implementing specific actions that will remove or reduce the threats to these species, thereby contributing to stabilizing or restoring the species so that listing is no longer necessary. The Service has entered into many Candidate Conservation Agreements over the years, primarily with other Federal agencies, State and local agencies, and conservation organizations, such as The Nature Conservancy. Some of these have successfully removed threats and listing was avoided.

### **What are Candidate Conservation Agreements with Assurances?**

Conservation of fish and wildlife resources on private lands is critical to maintaining our Nation's biodiversity. However, private property owners may face land use restrictions if species found on their lands are listed under the ESA in the future. The potential for future land use restrictions has led some property owners to manage their lands to prevent or discourage colonization of their property by these species. One incentive property owners need to voluntarily promote candidate conservation on their lands and waters is future regulatory certainty. Therefore, the Service and NMFS have finalized a policy to establish standards and procedures for developing Candidate Conservation Agreements with Assurances for private and other non-Federal property owners. This final policy and associated regulations were published in the *Federal Register* on June 17, 1999.

This new approach to Candidate Conservation Agreements provides non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species assurances that their conservation efforts will not result in future regulatory obligations in excess of those they agree to at the time they enter into the Agreement. The Service would provide technical assistance in the development of these Agreements. Property owners may protect and enhance existing populations and habitats, restore degraded habitat, create new habitat, augment existing populations, restore historic populations, or undertake other activities on their lands to improve the

*The lesser prairie-chicken is a candidate species that will benefit from several Candidate Conservation Agreements under development in Oklahoma and New Mexico. Photo by John Shackford*



status of candidate or proposed species. The management activities included in the Agreement must significantly contribute to elimination of the need to list the target species. Although a single property owner's activities alone may not be sufficient to eliminate the need to list, the activities, if conducted by other property owners on other necessary properties throughout the range of the species, must be sufficient to eliminate the need to list.

In return for the participant's proactive management, the Service and NMFS provide take authorization through the section 10(a)(1)(A) process of the ESA, which authorizes issuance of permits that will enhance the survival of the species. The permit would allow participants to take individuals or modify habitat to return population levels and habitat conditions to those agreed upon and specified in the Agreement.

### **What species can be included in a Candidate Conservation Agreement with Assurances?**

Candidate Conservation Agreements may include plants and animals that have been proposed for listing or are candidates for listing. Species that are likely to become candidate or proposed species in the near future may also be included in an Agreement.

### **In a Candidate Conservation Agreement with Assurances, what benefits must the species receive?**

The ultimate goal of Candidate Conservation Agreements is to remove enough threats to the target species to eliminate the need for protection under the ESA. Before entering into a Candidate Conservation Agreement and providing regulatory assurances, the Service must reasonably expect and make a written finding that the species included in the Agreement will receive

a sufficient conservation benefit from the activities conducted under the Agreement. "Sufficient conservation benefit" means that the management actions to be taken would remove the need to list the covered species, when combined with actions carried out on other necessary properties. "Other necessary properties" are those on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

Conservation benefits may include reduction of habitat fragmentation rates, restoration or enhancement of habitats, increase in habitat connectivity, maintenance or increase of population numbers or distribution, reduction of the effects of catastrophic events, establishment of buffers for protected areas, and areas to test and develop new and innovative conservation strategies. Recognizing that while a species is a candidate, a property owner is under no obligation to avoid take, the assessment of benefits would include consideration for what the property owner agrees *not* to do as well as any enhancement measures he or she agrees to undertake. If the Service and the property owner cannot agree on what constitutes benefits, the Service would not enter into the Agreement.

### **What assurances does the property owner receive?**

The Service will provide assurances that, in the event a species covered in the Agreement is subsequently listed as endangered or threatened, the Service will not assert additional restrictions or require additional actions above those the property owner voluntarily committed to in the Agreement. At the time the parties enter into the Agreement, the Service would

issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA authorizing the property owner to take individuals or modify habitat to return the property to the conditions agreed upon and specified in the Agreement, provided that the take is at a level consistent with the overall goal of precluding the need to list. The effective date on the permit would be tied to the date any covered species becomes listed.

### **What must the Candidate Conservation Agreement with Assurances include?**

The Candidate Conservation Agreement must include:

- a description of the population levels (if available or determinable) of the covered species existing at the time the parties negotiate the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use by the covered species on lands or waters owned by the property owner; and/or the existing characteristics of the property owner's lands or waters included in the Agreement that support populations of covered species on lands or waters not on the participating owner's property;
- a description of the conservation measures that the property owner is willing to undertake to conserve the species covered by the Agreement;
- an estimate of the expected conservation benefits as a result of conservation measures (e.g., increase in population numbers, enhancement, restoration, or preservation of suitable habitat; removal of threats) and the conditions that the property owner agrees to maintain;
- assurances that the Service will not require additional conservation measures or impose additional take restrictions beyond those agreed to if a covered species is listed in the future;
- a monitoring provision that may include measuring and reporting progress in implementation of the conservation measures described above and changes in habitat conditions and the species' status resulting from the measures; and
- a notification requirement, to provide the Service or appropriate State agencies with a reasonable opportunity to rescue individuals of the covered species before any authorized take occurs.

### **Who can participate in a Candidate Conservation Agreement with Assurances?**

A Candidate Conservation Agreement with Assurances will involve the Service, one or more non-Federal property owners, and possibly other cooperators. State fish and wildlife agencies, which have primary jurisdiction over species that are not federally listed, may be a cooperator in any Candidate Conservation Agreement. Other potential cooperators include neighboring property owners, State or local agencies, Tribal governments, or Federal property owners. Only non-Federal property owners may receive regulatory assurances under the Agreement.

### **Will there be any public notification of Candidate Conservation Agreements With Assurances?**

As with other section 10 permits, the Service will publish a notice in the *Federal Register* when it receives the permit application. The Service will announce receipt and availability of the application and Agreement and will accept and consider comments from the public before making a final decision on issuance of the permit.

### **What if I already have listed species on my lands?**

If a private property owner already has listed species occurring permanently or seasonally on his lands and he wishes to voluntarily undertake management activities on his lands or waters that enhance, restore, or maintain habitat benefiting such species, the Service and the property owner may enter into a "Safe Harbor Agreement" for the listed species. A Safe Harbor Agreement and associated permit authorizes take of listed species provided the property owner carries out the activities and maintains the conditions agreed upon in the Agreement. If both listed and candidate species occur on the property owner's property, both a Safe Harbor Agreement and a Candidate Conservation Agreement with Assurances might be appropriate.

In other situations, if a property owner has listed species occurring on his lands and proposes an activity that would result in take of the listed species, he can apply for an incidental take permit. Incidental take permits are issued under section 10(a)(1)(B) of the ESA, and their purpose is to authorize take that is

incidental to, and not the purpose of, an otherwise lawful activity. To obtain an incidental take permit, the landowner must develop a Habitat Conservation Plan that describes how the take will be avoided, minimized, and mitigated. If the landowner also has candidate species on his property, conservation measures to minimize and mitigate take of those candidates could be included under the Habitat Conservation Plan, and if listed, those species would be covered by the associated incidental take permit.

### **What if I sell my land? Is the CCAA transferable?**

If a property owner who is party to a Candidate Conservation Agreement with Assurances transfers ownership of the lands included in the Agreement, the Service will regard the new owner as having the same rights with respect to the subject lands as the original property owner if the new property owner agrees to become part of the original Agreement.

### **Whom should I contact to initiate a Candidate Conservation Agreement?**

Interested parties should contact the nearest Fish and Wildlife Service Field Office in their State to discuss potential cooperative opportunities. For information on the final policy and regulations, contact our Headquarters Office at the address below. More information and office addresses can also be found by visiting the Service's website at <http://www.fws.gov>.

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