

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

01/10/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 11/14/2005.

TITLE: Submission of Conservation Efforts to Make
Listings Unnecessary under the Endangered Species
Act

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0466

EXPIRATION DATE: 01/31/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	5	3,300	0
New	5	3,300	0
Difference	0	0	0
Program Change		0	0
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

SUPPORTING STATEMENT
Submission of Conservation Efforts to Make Listings Unnecessary Under the
Endangered Species Act (Policy for Evaluation of Conservation Efforts When
Making Listing Decisions)
OMB Control No. 0648-0466

September 2005

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 (Service) can list species as threatened or endangered. The ESA requires the Service, 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 the Service 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, the Service 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, the Service will use the criteria identified in this policy to evaluate formalized conservation efforts when making listing decisions. 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.

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 the Service will evaluate such plans. This policy identifies criteria for evaluating the certainty of implementation and effectiveness of a conservation effort. The Service developed this draft 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. The Service 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 Service, 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 the Service to determine if implementation of the plan is likely to result in making a listing unnecessary. This policy is necessary because the Service has not had any express criteria for judging whether a plan will be implemented and will be effective. We have lost some recent court cases concerning conservation plans, and several states have requested the Service to provide some certainty by publishing the criteria by which the Service will evaluate the likelihood of implementation and effectiveness of a conservation effort.

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 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.

The information collected through monitoring is very valuable to the 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.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. 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.

The Service 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 the Service 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, the Service, as well as the developer of an agreement or plan, ensures that there is no duplication of effort within an individual monitoring plan.

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, the Service may not be able to verify that actions are being taken that will contribute to making a listing unnecessary. If monitoring is not conducted, the Service may not be able to verify that the conservation efforts are being implemented, or are effective. The Service may then determine that,

based on the best available information, listing the species is warranted.

The Service 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.

The Service 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, the Service 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.

The Service 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 a copy of 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.

The Service 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. The Service 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.

The public was given an opportunity to comment on the information collection associated with this policy when we solicited comments in a July 12, 2005, Federal Register notice. We did not receive any comments.

9. Explain any decisions to provide payments or gifts to respondents, other than

remuneration of contractors or grantees.

The Service 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.

The Service 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, the Service 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.

The information collection associated with the development of a plan and monitoring does not require answering any questions about a person's private life.

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

Since 1997, the Service 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, and that at least every other one 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.

The Service 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. The burden to the estimated one entity that chooses to develop an agreement in a given year totals 2,500 hours. Therefore, the total cost of developing agreements to preclude listing under this policy is \$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. The annual burden to 2 States or other entities to complete monitoring and reporting totals 800 hours. The total cost of monitoring and reporting associated with this policy is, therefore, \$40,000.

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

Type of activity	Number Per Year	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

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, 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 an agreement or plan which relies primarily on protection or preservation of an area of habitat may involve a simple site inspection to verify that the habitat has not been vandalized or otherwise adversely modified. Monitoring of other conservation 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.

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.

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).

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

The Service estimates it will take an average of 160 hours for the Service to review each agreement or plan. Therefore, the annual burden to the Service resulting from one entity submitting agreements or plans with the intention of precluding the need to list a species totals is also 160. The Service estimates it will take an average of 2 hours per report for the Service to review the monitoring information collected on the species. Therefore, the annual burden to the Service resulting from 2 entities reporting information totals 4 hours. The cost of this review is estimated at \$30.00 per hour, or a total of \$120.00.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a renewal request, but 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 identified in Item 19 of the OMB 83-I.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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

Sec. 1533. Determination of endangered species and threatened species

- (a) Generally
 - (1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:
 - (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
 - (B) overutilization for commercial, recreational, scientific, or educational purposes;
 - (C) disease or predation;
 - (D) the inadequacy of existing regulatory mechanisms; or
 - (E) other natural or manmade factors affecting its continued existence.
 - (2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 -
 - (A) in any case in which the Secretary of Commerce determines that such species should -
 - (i) be listed as an endangered species or a threatened species, or
 - (ii) be changed in status from a threatened species to an endangered species,
he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;
 - (B) in any case in which the Secretary of Commerce determines that such species should -
 - (i) be removed from any list published pursuant to subsection (c) of this section, or
 - (ii) be changed in status from an endangered species to a threatened species,
he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and
 - (C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.
 - (3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable -
 - (A) shall, concurrently with making a determination under

preferred the rulemaking petition. The coordinates for Channel 287C3 at Alamo are 32–19–29 North Latitude and 82–43–23 West Longitude. This allotment has a site restriction of 20.4 kilometers (12.7 miles) north of Alamo.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–111, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202 863–2893, facsimile 202 863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Alamo, Channel 287C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–7470 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–629; MB Docket No. 02–120; RM–10442]

Radio Broadcasting Services; Owen, Wisconsin

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Starboard Broadcasting, Inc.,

allots Channel 242C3 at Owen, Wisconsin, as the community's first local FM service. Channel 242C3 can be allotted to Owen, Wisconsin, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 km (8.0 miles) northeast of Owen. The coordinates for Channel 242C3 at Owen, Wisconsin, are 45–03–08 North Latitude and 90–29–21 West Longitude. A filing window for Channel 242C3 at Owen, WI, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

DATES: Effective April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–120, adopted March 12, 2003, and released March 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Owen, Channel 242C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–7472 Filed 3–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter IV

[Docket No. 000214043–2227–02; I.D. 011603A]

RIN 1018–AF55, 0648–XA48

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: We, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (the Services), announce a final policy for the evaluation of conservation efforts when making listing decisions (PECE) under the Endangered Species Act of 1973, as amended (Act). While the Act requires us to take into account all conservation efforts being made to protect a species, the policy identifies criteria we will use in determining whether formalized conservation efforts that have yet to be implemented or to show effectiveness contribute to making listing a species as threatened or endangered unnecessary. The policy applies to conservation efforts identified in conservation agreements, conservation plans, management plans, or similar documents developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals.

DATES: This policy is effective April 28, 2003.

ADDRESSES: Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service at the above address, telephone 703/358–2171 or facsimile 703/358–1735, or Margaret Lorenz, Endangered Species Division, National Marine Fisheries Service at the

above address, telephone 301/713-1401 or facsimile 301/713-0376.

SUPPLEMENTARY INFORMATION:

Background

This policy provides direction to Service personnel in determining how to consider a conservation agreement when making a decision on whether a species warrants listing under the Act. It also provides information to the groups interested in developing agreements or plans that would contribute to making it unnecessary for the Services to list a species under the Act.

On June 13, 2000, we published in the *Federal Register* (65 FR 37102) a draft policy for evaluating conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness when making listing decisions under the Act. The policy establishes two basic criteria: (1) The certainty that the conservation efforts will be implemented and (2) the certainty that the efforts will be effective. The policy provides specific factors under these two basic criteria that we will use to direct our analysis of the conservation effort. At the time of making listing determinations, we will evaluate formalized conservation efforts (i.e., conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document) to determine if the conservation effort provides certainty of implementation and effectiveness and, thereby, improves the status, as defined by the Act, of the species such that it does not meet the Act's definition of a threatened or endangered species.

When we evaluate the certainty of whether the formalized conservation effort will be implemented, we will consider the following: Do we have a high level of certainty that the resources necessary to carry out the conservation effort are available? Do the parties to the conservation effort have the authority to carry it out? Are the regulatory or procedural mechanisms in place to carry out the efforts? And is there a schedule for completing and evaluating the efforts? If the conservation effort relies on voluntary participation, we will evaluate whether the incentives that are included in the conservation effort will ensure the level of participation necessary to carry out the conservation effort. We will also evaluate the certainty that the conservation effort will be effective. In making this evaluation, we will consider the following: Does the effort describe the nature and extent of the threats to the species to be addressed and how these threats are reduced by

the conservation effort? Does the effort establish specific conservation objectives? Does the effort identify the appropriate steps to reduce threats to the species? And does the effort include quantifiable performance measures to monitor for both compliance and effectiveness? Overall, we need to be certain that the formalized conservation effort improves the status of the species at the time we make a listing determination.

This policy is important because it gives us a consistent set of criteria to evaluate formalized conservation efforts. For states and other entities that are developing agreements or plans, this policy informs them of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guides States and other entities that wish to develop formalized conservation efforts that may contribute to making listing unnecessary.

In the notice of the draft policy, we specifically requested comments on the criteria that we would use to evaluate the certainty that a formalized conservation effort will be implemented. Also, we requested comments on the timing of the development of conservation agreements or plans. We have learned that timing is the most critical element when developing a successful conservation agreement or plan. Encouraging and facilitating early development of conservation agreements or plans is an important objective of this policy. Last-minute agreements (i.e., those that are developed just before or after a species is proposed for listing) often have little chance of affecting the outcome of a listing decision. Once a species is proposed for listing under the Act, we may have insufficient time to include consideration of a newly developed conservation plan in the public notice and comment process and still meet our statutory deadlines. Last-minute efforts are also less likely to be able to demonstrate that they will be implemented and effective in reducing or removing threats to the species. In addition, there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary. Accordingly, we encourage the early development of formalized conservation efforts before the threats become too extreme and imminent and when there is greater flexibility in sufficiently improving a species' status to the point

where listing the species as threatened or endangered is unnecessary.

Summary of Comments and Recommendations

In response to our request for comments on the draft policy, we received letters from 44 entities. Thirty-five were in support of the policy and nine were against. We reviewed all comments received and have incorporated accepted suggestions or clarifications into the final policy text. Because most of these letters included similar comments (several were form letters) we grouped the comments according to issues. The following is a summary of the relevant comments and our responses. We also received comments that were not relevant to the policy and, therefore, outside the policy's scope. We responded to some of these comments where doing so would clarify the process for determining whether a species is endangered or threatened (the listing process) or clarify the nature of conservation plans, agreements, and efforts.

Policy Scope Issues

Issue 1: Many commenters felt that this policy should also apply to downlisting species from endangered to threatened status and delisting actions, or else parties to an agreement where the final decision is to list the species would not have any incentives to take action on a listed species until a recovery plan is developed. In addition, one commenter suggested that the policy scope should be expanded to include the process of designating critical habitat.

Response 1: We believe that the immediate need is to develop criteria that will guide consistent and predictable evaluation of conservation efforts at the time of a listing determination. We may consider such a policy for downlisting or delisting actions in the future. However, we note that a recovery plan is the appropriate vehicle to provide guidance on actions necessary to delist a species. Also, we may consider developing a similar policy for critical habitat designations.

Issue 2: Two commenters stated that our estimates of time needed to develop, implement, monitor, and report on conservation efforts are underestimated.

Response 2: We agree that our original estimates were too low. We have increased our estimate to an average of 2,500 person-hours to complete a conservation agreement (with a range of 1,000 to 4,000 person-hours). We also increased our estimate of the average number of person-hours to conduct monitoring and to prepare a report to

320 and 80 hours, respectively. We expect the amount of time will vary depending on several factors including, but not limited to, the number of species addressed, amount of biological information available on the species, and the complexity of the threats. Therefore, we have provided an average to assist interested parties in their planning efforts.

Issue 3: One commenter questioned whether we would evaluate proposed agreements or plans using the stated criteria automatically or only upon request. The commenter also questioned whether we will consider agreements or plans that we previously determined were not sufficient to prevent the need for listing in combination with "new" proposed agreements or plans when we evaluate whether to list a species.

Response 3: If a listing proposal is under review, we will consider any conservation effort. We will evaluate the status of the species in the context of all factors that affect the species' risk of extinction, including all known conservation efforts whether planned, under way, or fully implemented. However, for formalized conservation efforts not fully implemented, or where the results have not been demonstrated, we will consider the PECE criteria in our evaluation of whether, and to what extent, the formalized conservation efforts affect the species' status under the Act.

Issue 4: One commenter asked the length of time for which a plan is approved.

Response 4: The PECE is not a plan-approval process, nor does it establish an alternative to listing. PECE outlines the criteria we will consider when evaluating formalized conservation efforts that have not yet been fully implemented or do not yet have a record of effectiveness at the time we make a listing decision. Should the status of a species decline after we make a decision not to list this species, we would need to reassess our listing decision. For example, there may be situations where the parties to a plan or agreement meet their commitments, but unexpected and/or increased threats (e.g., disease) may occur that threaten the species' status and make it necessary to list the species.

Issue 5: One commenter asked if the "new information" reopener is operative at any time.

Response 5: Yes, because section 4(b)(1) of the Act requires us to use the best available scientific and commercial data whenever making decisions during the listing process. In making a decision whether to list a species, we will take into account all available information,

including new information regarding formalized conservation efforts. If we receive new information on a formalized conservation effort that has not yet been implemented or not yet demonstrated effectiveness prior to making a listing decision, we will evaluate the conservation effort in the context of the PECE criteria. If we receive new information on such an effort after we have decided to list a species, then we will consider this new information along with other measures that reduce threats to the species and may use this information in downlisting the species from endangered to threatened status or delisting. However, PECE will not control our analysis of the downlisting of the species.

Issue 6: One commenter stated that it is unrealistic and unreasonable to expect agreements to be in place at the time the conservation effort is evaluated. In addition, the commenter stated that it is particularly unrealistic and unreasonable to expect that conservation agreements or plans be submitted within 60 days of publication of a proposed rule.

Response 6: We strongly encourage parties to initiate formalized conservation efforts prior to publication of a proposal to list a species under the Act. If a formalized conservation effort is submitted during the public comment period for a proposed rule, and may be significant to the listing decision, then we may extend or reopen the comment period to allow time for comment on the new conservation effort. However, we can extend the public comment period only if doing so does not prevent us from completing the final listing action within the statutory timeframe.

Issue 7: One commenter stated that most existing conservation agreements are ineffective, and furthermore that we are unable to determine their effectiveness for several years.

Response 7: We agree that it could take several years for some conservation efforts to demonstrate results. However, the PECE criteria provide the framework for us to evaluate the likely effectiveness of such formalized conservation efforts. Some existing conservation efforts have proven to be very effective and have justifiably influenced our listing decisions.

Issue 8: Several commenters stated that funds are better spent to list species, designate critical habitat, and implement recovery efforts rather than to develop conservation agreements.

Response 8: Conservation agreements can be seen as early recovery efforts. Early conservation efforts to improve the status of a species before listing is necessary may cost less than if the

species' status has already been reduced to the point where it needs to be listed. Early conservation of candidate species can reduce threats and stabilize or increase populations sufficiently to allow us to use our resources for species in greater need of the Act's protective measures.

Issue 9: Some commenters questioned the 14 conservation agreements that we cited which contributed to making listing the covered species as threatened or endangered unnecessary. Commenters requested information on each plan to better allow the public to evaluate the adequacy of the agreements.

Response 9: We referenced the 14 conservation agreements in the Paperwork Reduction Act section of the draft policy and used them solely to estimate the information collection and recordkeeping burden that would result from our draft policy if it were made final. Therefore, we do not recommend using these to comment on the new policy.

Biological Issues

Issue 10: One commenter questioned our method for evaluating a conservation plan that addresses only a portion of a species' range.

Response 10: Using the PECE criteria, we will evaluate all formalized conservation efforts that have yet to be implemented or have yet to demonstrate results at the time we make our listing decision. This is true for efforts that are applicable to all or only a portion of the species' range. The PECE does not set standards for how much conservation is needed to make listing unnecessary. The significance of plans that address only a portion of a species' range will be evaluated in the context of the species' overall status. While a formalized conservation effort may be effective in reducing or removing threats in a portion of the species' range, that may or may not be sufficient to remove the need to list the species as threatened or endangered. In some cases, the conservation effort may lead to a determination that a species warrants threatened status rather than endangered.

In addition, parties may have entered into agreements to obtain assurances that no additional commitments or restrictions will be required if the species is listed. A landowner or other non-Federal entity can enter into a Candidate Conservation Agreement with Assurances (CCAA) (64 FR 32726, June 17, 1999), which are formal agreements between us and one or more non-Federal parties that address the conservation needs of proposed or

candidate species, or species likely to become candidates. These agreements provide assurances to non-Federal property owners who voluntarily agree to manage their lands or waters to remove threats to candidate or proposed species, or to species likely to become candidates. The assurances are authorized under the CCAA regulations (50 CFR 17.22(d)(5) and 17.32(d)(5)) and provide non-Federal property owners 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. Should the species eventually be listed under the Act, landowners will not be subjected to increased property use restrictions as long as they conform to the terms of the agreement. While one of these agreements may not remove the need to list, several such agreements, covering a large portion of the species' range, may.

Issue 11: Several commenters suggested that the Services should consider conservation efforts developed for species other than the species for which a listing decision is being made when the species have similar biological requirements and the conservation effort addresses protection of habitat of the species for which a listing decision is being made.

Response 11: We agree. When a decision whether or not to list a species is being made, we will consider all conservation efforts that reduce or remove threats to the species under review, including conservation efforts developed for other species. However, for all formalized conservation efforts that have not yet been implemented or have yet to demonstrate results, we will use the PECE criteria to evaluate the conservation effort for certainty of implementation and effectiveness for the species subject to the listing decision.

Issue 12: One commenter stated the "biology/natural history" of the species should be adequately known and explained in order to evaluate the effectiveness of the effort.

Response 12: When we consider the elements under the effectiveness criterion, we will evaluate whether the formalized conservation effort incorporates the best available information on the species' biology and natural history. However, due to variation in the amount of information available about different species and the threats to their existence, the level of information necessary to provide a high level of certainty that the effort will be effective will vary.

We believe it is important, however, to start conservation efforts as early as

possible even if complete biological information is lacking. Regardless of the extent of biological information we have about a species, there will almost always be some uncertainty about threats and the most effective mechanisms for improving the status of a species. We will include the extent of gaps in the available information in our evaluation of the level of certainty that the formalized conservation effort will be effective. One method of addressing uncertainty and accommodating new information is the use of monitoring and the application of adaptive management principles. The PECE criteria note that describing the threats and how those threats will be removed, including the use of monitoring and adaptive management principles, as appropriate, is critical to determining that a conservation effort that has yet to demonstrate results has reduced or removed a particular threat to a species.

Issue 13: Several commenters suggested that affected party(ies) should work with the Services to identify species that will be proposed for listing in the near future to help concentrate and direct efforts to those species that most warrant the protection, and help make the party(ies) aware of when and what actions should be taken to help conserve species in need.

Response 13: We do identify species in need of protection. The FWS publishes a Candidate Notice of Review (CNOR) in which the FWS identifies those species of plants and animals for which they have sufficient information on the species' biological status and threats to propose them as endangered or threatened under the Act, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. NMFS, which has jurisdiction over marine species and some anadromous 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. NMFS candidate species can be found on their web site at <http://www.nmfs.noaa.gov>. The FWS's CNOR is published in the **Federal Register** and can also be found on their web site at <http://endangered.fws.gov>.

We agree that it is important to start developing and implementing conservation efforts and coordinating those efforts with us as early as possible. Early conservation helps preserve management options, minimizes the cost of reducing threats to a species, and reduces the potential for land use restrictions in the future. Addressing the needs of species before the regulatory protections associated with listing

under the Act come into play often allows greater management flexibility in the actions necessary to stabilize or restore these species and their habitats. Early implementation of conservation efforts may reduce the risk of extinction for some species, thus eliminating the need for them to be listed as threatened or endangered.

Issue 14: One commenter stated that requiring an implementation schedule/timeline for conservation objectives is not feasible when baseline data on a species is poorly understood. The policy should recognize that variation in patterns of species distribution and land ownership will cause variation in the difficulty of developing conservation efforts. Thus, some conservation efforts should be allotted more time for their completion.

Response 14: Biological uncertainty is a common feature of any conservation effort. Nevertheless, some conservation actions can proceed even when information on the species is incomplete. Implementation schedules are an important element of all formalized conservation planning efforts (e.g., recovery plans). The implementation schedule identified in PECE criterion A.8. establishes a timeframe with incremental completion dates for specific tasks. In light of the information gaps that may exist for some species or actions, schedules for completing certain tasks may require revision in response to new information, changing circumstances, and the application of adaptive management principles. Including an implementation schedule in a formalized conservation effort is critical to determining that the effort will be implemented and effective and has improved the status of the species under the Act at the time we make our listing determination.

We acknowledge that the amount of time required to develop and implement formalized conservation efforts will vary. Therefore, we encourage early development and implementation of conservation efforts for species that have not yet become candidates for listing and for those species that are already candidates. This policy does not dictate timeframes for completing conservation efforts. However, the Act mandates specific timeframes for many listing decisions, and we cannot delay final listing actions to allow for the development and signing of a conservation agreement or plan. We and participants must also acknowledge that, for species that are poorly known, or whose threats are not well understood, it is unlikely that conservation efforts that have not been implemented or that have yet to yield

results will have improved the status of the species sufficiently to play a significant role in the listing decision.

Issue 15: One commenter stated that the Services, when evaluating the certainty of conservation efforts while making listing decisions, should factor into the analysis the Services' ability to open or reopen the listing process at any time, and to list the species on an emergency basis if necessary.

Response 15: We will initiate or revisit a listing decision if information indicates that doing so is warranted, and on an emergency basis if there is an imminent threat to the species' well-being. However, we do not make any listing determinations based on our ability to change our decisions. We base our listing decisions on the status of the species at that time, not on some time in the future.

Criteria Issues

Issue 16: Several commenters requested that we further explain the criteria for both implementation and effectiveness. The commenters claim that our criteria are too vague and are subject to interpretation by the Services. One commenter said that, by stating "this list should not be considered comprehensive evaluation criteria," the policy allows the Services to consider criteria not addressed in the agreement, and allows for too much leeway for the Services to reject conservation efforts of an agreement, even if all criteria listed in the draft policy are satisfied.

Response 16: PECE establishes a set of criteria for us to consider when evaluating formalized conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness to determine if the efforts have improved the status of the species. At the time of the listing decision, we must find, with minimal uncertainty, that a particular formalized conservation effort will be implemented and will be effective, in order to find that the effort has positively affected the conservation status of a species. Meeting these criteria does not create an approval process. Some conservation efforts will address these criteria more thoroughly than others. Because, in part, circumstances vary greatly among species, we must evaluate all conservation efforts on a case-by-case basis at the time of listing, taking into account any and all factors relevant to whether the conservation effort will be implemented and effective.

Similarly, the list of criteria is not comprehensive because the conservation needs of species will vary greatly and depend on species-specific, habitat-specific, location-specific, and

action-specific factors. Because conservation needs vary, it is not possible to state all of the factors that might determine the ultimate effectiveness of formalized conservation efforts. The species-specific circumstances will also determine the amount of information necessary to satisfy these criteria. Evaluating the certainty of the effectiveness of a formalized conservation effort necessarily includes an evaluation of the technical adequacy of the effort. For example, the effectiveness of creating a wetland for species conservation will depend on soil texture, hydrology, water chemistry, and other factors. Listing all of the factors that we would appropriately consider in evaluations of technical adequacy is not possible.

Issue 17: One commenter suggested that we consider conservation plans in the development stage rather than waiting until finalized due to the possible benefits that may result from initial efforts.

Response 17: Plans that have not been finalized and, therefore, do not conform to the PECE criteria, may have some conservation value for the species. For example, in the process of developing a plan, participants and the public may become more informed about the species and its conservation needs. We will consider any benefits to a species that have accrued prior to the completion of an agreement or plan in our listing decision, under section 4(b)(1)(A) of the Act. However, the mere existence of a planning process does not provide sufficient certainty to actually improve the status of a species. The criteria of PECE set a rigorous standard for analysis and assure a high level of certainty associated with formalized conservation efforts that have not been implemented, or have yet to yield results, in order to determine that the status of the species has improved.

We encourage parties to involve the appropriate Service during the development stage of all conservation plans, whether or not they are finalized prior to a listing decision. Sharing of the best available information can lead to developing better agreements. In the event that the focus species is listed, these planning efforts can be utilized as the basis for development of Safe Harbor Agreements or Habitat Conservation Plans, through which we can permit incidental take under Section 10(a) of the Act, or provide a basis for a recovery plan.

Issue 18: Several commenters stated that the policy should provide more sufficient, clear criteria by which the implementation and effectiveness of conservation efforts is monitored and

assessed. One commenter also suggested that we require a specific reporting format to help show effectiveness of conservation efforts.

Response 18: When evaluating formalized conservation efforts under PECE, we will consider whether the effort contains provisions for monitoring and reporting implementation and effectiveness results (see criterion B.5).

Regarding a standard reporting format, the nature of the formalized conservation efforts we evaluate will probably vary a great deal. Efforts may range from complex to single-threat approaches. Therefore, for us to adopt a one-size-fits-all approach to report on monitoring efforts and results would be inappropriate.

Issue 19: One commenter stated that PECE is too demanding with respect to identification and commitment of resources "up-front," and that these strict requirements and commitments on conservation efforts harm the voluntary nature of agreements.

Response 19: Addressing the resources necessary to carry out a conservation effort is central to establishing certainty of plan implementation and effectiveness. Accordingly, we believe that PECE must establish a minimum standard to assure certainty of implementation and effectiveness. This certainty is necessary in determining whether the conservation effort has improved the status of species.

It is our intention and belief that the PECE criteria will actually increase the voluntary participation in conservation agreements by increasing the likelihood that parties' voluntary efforts and commitments that have yet to be implemented or have yet to demonstrate results will play a role in a listing decision.

Issues Related to Specific Changes

Several commenters recommended specific changes to the evaluation criteria. The recommended additions in language to the criteria are italicized and deletions are shown in strikeout to help the reader identify the proposed changes.

Issue 20: Commenters stated that there is potential confusion between evaluation criteria A.2. (authority) and A.3.(authorization) as they believed some Service staff may have difficulty distinguishing between an "authority," and an "authorization." To help eliminate this potential confusion, commenters requested that criterion A.2. be changed to read: "the legal authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal

procedural requirements necessary to implement the effort are described.” They also requested that we change criterion A.3. to read: The legal requirements (e.g. permits, environmental review documents) necessary to implement the conservation effort are identified, and an explanation of how the party(ies) to the agreement or plan that will implement the effort will fulfill these requirements is provided.”

Response 20: We agree with adding the word “legal” and also have incorporated additional language and separated this criterion (former criterion A.2) into two criteria (A.2. and A.3.). Evaluation Criterion A.2. now reads, “The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.” New evaluation Criterion A.3. reads, “The legal procedural requirements necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort.” In making these changes, we recognize that there may be overlap between new criterion A.3. and the criterion on authorizations (now A.4.), but our intent is to separate a criterion on procedural requirements from substantive authorizations (e.g. permits). We believe that we need to specifically determine that the parties to the agreement will obtain the necessary authorizations. We also recognize that parties may not be able to commit to some conservation efforts until they have fulfilled procedural requirements (e.g. under the National Environmental Policy Act) since some laws preclude commitment to a specific action until certain procedures are completed. Additionally, in creating a new criterion A.3., we find it unnecessary to incorporate the suggested changes to old A.3. (now A.4.).

Issue 21: Commenters requested the following change to Criterion A.4. (now Criterion A.5.): “The level of voluntary participation (e.g., permission to enter private land or other contributions by private landowners) necessary to implement the conservation effort is identified, and an explanation of how the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation is provided (e.g., an explanation of why incentives to be provided are expected to result in the necessary level of voluntary participation)”.

Response 21: We do not believe that including “an explanation of how the

party(ies) * * * will obtain that level of voluntary participation * * *” will provide us with enough information in order to determine that necessary voluntary participation will, in fact, be obtained. Evaluation Criterion A.5. (formerly A.4.) now reads: “The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation).”

Issue 22: Commenters suggested that Evaluation Criterion A.5. (now criterion A.6.) be changed to read as “Any statutory or regulatory deficiency or barrier to implementation of the conservation effort is identified and an explanation of how the party(ies) to the agreement or plan that will implement the effort will resolve the deficiency or barriers is provided.”

Response 22: We do not agree with the suggested language change. We believe that all regulatory mechanisms, including statutory authorities, must be in place to ensure a high level of certainty that the conservation effort will be implemented.

Issue 23: The suggested change to Evaluation Criterion A.6. (now A.7.) is “A fiscal schedule and plan is provided for the conservation effort, including a description of the obligations of party(ies) to the agreement or plan that will implement the conservation effort, and an explanation of how they will obtain the necessary funding is provided.”

Response 23: We do not agree with the suggested language change since we believe that there must be a high level of certainty that the party(ies) will obtain the necessary funding to implement the effort. While we agree that including a fiscal schedule, a description of the obligations of the party(ies), and an explanation of how they will obtain the funding is important, this information, by itself, does not provide enough certainty for us to consider a formalized conservation effort that has not yet been implemented as contributing to a listing decision. Also see our response to Issue 41.

Issue 24: One commenter suggested that the Services should consider an incremental approach to evaluating

implementation dates for the conservation effort.

Response 24: We agree with the commenter’s suggested change. Evaluation Criterion A.8. (formerly A.7.) now reads as: “An implementation schedule (including incremental completion dates) for the conservation effort is provided.”

Issue 25: Commenters suggested that Criterion A.8. (now A.9.) be revised to read: “The conservation agreement or plan that includes the conservation effort include a commitment by the party(ies) to apply their legal authorities and available resources as provided in the agreement or plan.”

Response 25: The participation of the parties through a written agreement or plan establishes each party’s commitment to apply their authorities and resources to implementation of each conservation effort. Therefore, it is unnecessary to include the suggested language; criterion A.9. (formerly A.8.) remains unchanged.

Issue 26: A commenter also suggested adding a criterion: “Evidence that other conservation efforts have been implemented for sympatric species within the same ecosystem that may provide benefits to the subject species is provided.”

Response 26: We do not think it is necessary to add such a criterion. At the time of listing, we will take into consideration all relevant information, including the effect of other conservation efforts for sympatric species on the status of the species we are considering for listing.

Issue 27: Several commenters recommended that we make specific changes to the Criterion B.1. language to read as: “The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort will reduce the threats are defined.” In addition, commenters suggested we change Criterion B.2. to read as: “Explicit incremental objectives for the conservation effort and dates for achieving them should be stated.”

Response 27: We agree that, in addition to identifying threats, the plan should explain how formalized conservation efforts reduce threats to the species. Therefore, Evaluation Criterion B.1. now reads as: “The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described.” We agree that conservation efforts should include incremental objectives. This allows the parties to evaluate progress toward the overall goal of a conservation effort, which is essential for adaptive

management. In addition, setting and achieving interim objectives is helpful in maintaining support for the effort. Therefore, Evaluation Criterion B.2. now reads as: "Explicit incremental objectives for the conservation effort and dates for achieving them are stated."

Issue 28: Some commenters recommended that the party's (ies') prior record with respect to development and implementation of conservation efforts be recognized towards their credibility and reliability to implement future conservation efforts. A commenter also suggested adding a criterion to read as: "Demonstrated ability of the party(ies) to develop and implement effective conservation efforts for this or other species and habitats." Another comment suggested that the history and momentum of a program should be taken into account (e.g., watershed council programs) when considering the certainty of effectiveness and implementation. These considerations would help ensure a high level of certainty that regulatory mechanisms, funding authorizations, and voluntary participation will be adopted by a specified date adequate to provide certainty of implementation.

Response 28: Although it would be beneficial for the party(ies) to demonstrate their past abilities to implement effective formalized conservation efforts for the focus species or other species and habitats, we do not believe that this is necessary to demonstrate a high level of certainty that the conservation effort will be implemented. In addition, a criterion that emphasizes previous experience in implementing conservation efforts may limit formalized conservation efforts to only those party(ies) that have a track record and would unjustifiably constrain consideration of efforts by those who do not satisfy this criterion. Such parties can provide certainty in other ways. We agree that a party's (ies') prior record and history with respect to implementation of conservation efforts should be recognized towards their credibility and reliability. Information concerning a party's experience in implementing conservation efforts may be useful in evaluating how their conservation effort satisfies the PECE criteria. The momentum of a project is a good indication of the progress that is being made towards a party's (ies') conservation efforts, but momentum can decrease, and thus cannot be solely relied upon to determine the certainty that a formalized conservation effort will be implemented or effective.

Issue 29: One commenter stated that our use of "must" in meeting the criteria is inappropriate in the context of a policy, and the policy should rather be treated as guidance.

Response 29: The only mandatory statements in the policy refer to findings that we must make. In order for us to find that a particular formalized conservation effort has improved the status of the species, we must be certain that the formalized conservation effort will be implemented and will be effective. No party is required to take any action under this policy. Rather the policy provides us guidance on how we will evaluate formalized conservation efforts that have yet to be implemented or have yet to demonstrate effectiveness at the time of our listing decision.

Legal Issues

Issue 30: Many commenters mentioned past litigation (i.e., decisions on coho salmon and Barton Springs salamander) in which the courts have ruled against the Services in cases that have involved Candidate Conservation Agreements or other conservation efforts, and question how the PECE policy addresses this issue. Commenters question how this policy will keep the Services from relying on speculative conservation efforts.

Response 30: We referenced past adverse decisions when we published the draft policy. The purpose of PECE, in part, is to address situations similar to those in which some courts found past conservation efforts insufficient. We developed the PECE to establish a set of consistent standards for evaluating certain formalized conservation efforts at the time of a listing decision and to ensure with a high level of certainty that formalized conservation efforts will be implemented and effective. We agree that we may not rely on speculative promises of future action when making listing decisions.

Issue 31: Several commenters questioned the legality of considering private party's (ies') input when section 4(b)(1)(A) of the Act states " * * * and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *" In addition, commenters stated that the PECE policy is inconsistent with the plain language and the congressional intent of the Act by allowing agencies to evaluate any private measures. They also stated that this was inconsistent with considering section 4(a)(1)(D), which only permits agencies to evaluate "existing regulatory mechanisms." They also stated that the

Services incorrectly conclude that section 4(a)(1)(E), "other natural or manmade factors affecting [the species'] continued existence," allows the Services to consider actions of "any other entity" in making listing determinations. One commenter stated that there are no provisions to authorize the Services to consider voluntary conservation agreements by other Federal agencies. In 1982, the Act omitted 1973 language for listing determinations made with "other interested Federal agencies." In addition, the commenters stated that the Act imposes conservation duties on all Federal agencies only after the Services have taken the initial step in listing the species.

Response 31: Please refer to the Policy Scope section for an explanation of our authority under section 4 of the Act to assess all threats affecting the species status as well as all efforts that reduce threats to the species.

Issue 32: One commenter suggested that we formalize this policy by codifying it in the Code of Federal Regulations. They suggest that by adopting this policy as agency regulation, we can make the policy more binding, provide a basis for judicial deference, and thus hopefully reduce the amount of litigation.

Response 32: We believe that codifying PECE in the Code of Federal Regulations is not necessary because it is intended as a policy to guide how we will evaluate formalized conservation efforts when making listing decisions.

Issue 33: Some commenters believe that all regulatory mechanisms must be in place prior to finalizing a conservation plan, while other commenters feel that this requirement may dissuade voluntary conservation efforts of private landowners. One commenter stated that, based on the amount of time usually needed to enact most regulatory mechanisms, it seems appropriate to set this minimum standard for evaluating formalized conservation efforts. This criterion should prompt more serious political consideration of adopting a regulatory mechanism sooner rather than later. Another commenter suggested that, instead of requiring regulations, we should require cooperators to identify and address any regulatory deficiencies affecting the species.

Response 33: In order for us to determine with a high level of certainty that a formalized conservation effort will be implemented, among other things, all regulatory mechanisms necessary to implement the effort must be in place at the time we make our listing decision. However, there may be

situations where regulatory mechanisms are not necessary for implementing the conservation effort due to the nature of the action that removes threats, or there may be situations where necessary regulatory mechanisms are already in place.

Issue 34: One commenter stated that only when an alternative regulatory mechanism provides the same or higher protections than listing can the threat factors be said to be alleviated. A high level of certainty over future funding or voluntary participation might be acceptable if alternative regulatory mechanisms to prevent take in the interim are in place.

Response 34: Determinations to list species under the Act are based solely on whether or not they meet the definitions of threatened or endangered as specified by the Act. Through PECE, we will evaluate, at the time of our listing decision, whether a formalized conservation effort adequately reduces threats and improves the status of the species to make listing unnecessary. Additional alternative regulatory mechanisms to prevent take are not necessary if the threats to the species are reduced to the point that the species does not meet the definitions of threatened or endangered.

Issue 35: One commenter stated concern that the Services would not be able to provide assurances to private landowners because no specific provisions in the Act authorize conservation agreements in lieu of listing, and that third party lawsuits also undermine the Services' assurances. One commenter asked what future protection of their ongoing actions participants would receive.

Response 35: Satisfying the PECE criteria does not provide assurances that we will not decide to list a species. Also, because of the individual nature of species and the circumstances of their status, PECE does not address how much conservation is required to make listing unnecessary. Because of the numerous factors that affect a species' status, we may list a species despite the fact that one or more formalized conservation efforts have satisfied PECE. However, assurances can be provided to non-Federal entities through an approved Candidate Conservation Agreement with Assurances (CCAA) and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act. Many property owners desire certainty with regard to future regulatory restrictions to guarantee continuation of existing land or water uses or to assure allowance for future changes in land use. By facilitating this kind of individual land

use planning, assurances provided under the CCAA policy can substantially benefit many property owners. These agreements can have significance in our listing decisions, and we may also evaluate them according to the criteria in the PECE if they are not yet implemented or have not demonstrated results. However, we will make the determination of whether these CCAs preclude or remove any need to list the covered species on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Issue 36: Several commenters stated that the PECE does not always provide incentives to conserve species and is, therefore, not supported by the Congressional finding of section 2(a)(5) of the Act. The commenters stated that the parties lack incentives to develop conservation programs until after the species is listed (e.g., *Building Industry Association of Southern California v. Babbitt*, where listing the coastal California gnatcatcher encouraged enrollment in conservation programs.) In addition, they stated that PECE provides a means for the listing process to be avoided entirely, and, therefore, may often fail to provide incentives that Congress referred to in its findings in section 2(a)(5). They stated that the "system" of incentives to which that Congressional finding refers is already found in incidental take provisions in section 10 of the Act, which will better ensure development and implementation of successful conservation programs.

Response 36: PECE is not "a way to avoid listing" or an "in lieu of listing" policy. This policy outlines guidance on the criteria we will use to evaluate formalized conservation efforts in determining whether to list a species. Knowing how we will evaluate any unimplemented or unmeasured formalized conservation efforts may help parties draft more effective agreements. However, there is a conservation incentive because, if a species becomes listed, these efforts can contribute to recovery and eventual delisting or downlisting of the species. Also, see our response to Issue 35.

Issue 37: Several commenters stated that relying on unimplemented future conservation measures is inconsistent with the definitions of "threatened species" and "endangered species" as provided in section 3 of the Act, and that PECE's evaluation of future, unimplemented conservation efforts in listing determinations is inconsistent with both the plain language of the Act and Congressional intent. Also, the commenters stated that the PECE

erroneously claims that the definitions of "threatened species" and "endangered species" connote future status, not present status.

Response 37: We agree that, when we make a listing decision, we must determine the species' present status which includes, in part, an evaluation of current threats. However, deciding or determining whether a species meets the definition of threatened or endangered also requires us to make a prediction about the future persistence of a species. Central to this concept is a prediction of future conditions, including consideration of future negative effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. We cannot protect species without taking into account future threats to a species. The Act does not require that, and species conservation would be compromised if, we wait until a threat is actually impacting populations before we list the species as threatened or endangered. Similarly, the magnitude and/or imminence of a threat may be reduced as a result of future positive human actions. Common to the consideration of both the negative and positive effects of future human actions is a determination of the likelihood that the actions will occur and that their effects on the species will be realized. Therefore, we consider both future negative and future positive impacts when assessing the listing status of the species. The first factor in section 4(a)(1)—"the present or threatened destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, state, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation, regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected

by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status.

Issue 38: Several commenters stated that PECE's "sufficient certainty" standard is inconsistent with the Act's "best available science" standard. They stated that courts have ruled that any standard other than "best available science" violates the plain language and the Congressional intent of the Act. The commenters also stated that the "sufficient certainty" standard violates Congressional intent because it weakens the standard required by the Act to list species and can result in unnecessary, and potentially harmful, postponement of affirmative listing.

Response 38: We agree that our listing decisions must be based on the best available science. PECE does not address or change the listing criteria and procedures established under section 4 of the Act. Listing analyses include the evaluation of conservation efforts for the species under consideration. PECE is designed to help ensure a consistent and rigorous review of formalized conservation efforts that have yet to be implemented or efforts that have been implemented but have not yet shown effectiveness by establishing a set of standards to evaluate the certainty of implementation and effectiveness of these efforts.

Issue 39: Several commenters stated that PECE reduces or eliminates public comment on proposed rules to list species and is in violation of the Administrative Procedure Act (APA). Further, they stated that PECE violates the APA by allowing submission of formalized conservation measures after the proposed rule is issued to list species as threatened or endangered. Receiving "conservation agreements or plans before the end of the comment period in order to be considered in final listing decision" encourages landowners to submit conservation agreements at the last minute to avoid public scrutiny, and the PECE process could be a potential delay tactic used by landowners to postpone the listing of species. They stated that the Courts agree that failure of the Services to make available to the public conservation agreements on which listing decisions are based violates the public comment provision of the APA.

Response 39: All listing decisions, including those involving formalized conservation agreements, will comply with the requirements of the APA and ESA. If we receive a formalized conservation agreement or plan during an open comment period and it presents

significant new information relevant to the listing decision, we would either extend or reopen the public comment period to solicit public comments specifically addressing that plan or agreement. We recognize, however, that there may be situations where APA requirements must be reconciled with the ESA's statutory deadlines.

Issue 40: Several commenters expressed their concern that conservation efforts do not have binding obligations.

Response 40: While PECE does not require participants to have binding obligations, the policy does require a high level of certainty that a conservation effort will be implemented and effective at the time we make our listing decision. Furthermore, any subsequent failure to satisfy one or more PECE criteria would constitute new information and, depending on the significance of the formalized conservation effort to the species' status, may require a reevaluation of whether there is an increased risk of extinction, and whether that increased risk indicates that the species' status is threatened or endangered.

Funding Issues

Issue 41: Several commenters requested that we further specify our criteria stating that "a high level of certainty that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding is provided." In addition, one commenter questioned whether "a high level of certainty" for authorizations or funding was really an improvement over the status quo and suggested that we either list the required elements we will use to evaluate completeness of the conservation efforts or quantitatively define an evaluation standard.

Response 41: A high level of certainty of funding does not mean that funding must be in place now for implementation of the entire plan, but rather, it means that we must have convincing information that funding will be provided each year to implement relevant conservation efforts. We believe that at least 1 year of funding should be assured, and we should have documentation that demonstrates a commitment to obtain future funding, e.g., documentation showing funding for the first year is in place and a written commitment from the senior official of a state agency or organization to request or provide necessary funding in subsequent budget cycles, or documentation showing that funds are available through appropriations to existing programs and the

implementation of this plan is a priority for these programs. A fiscal schedule or plan showing clear links to the implementation schedule should be provided, as well as an explanation of how the party(ies) will obtain future necessary funding. It is also beneficial for entities to demonstrate that similar funding was requested and obtained in the past since this funding history can show the likelihood that future funding will be obtained.

Issue 42: One commenter suggested that the PECE policy holds qualifying conservation efforts to a higher standard than recovery plans. The commenter quoted several existing recovery plans that included disclaimers about budget commitments associated with specific tasks. Therefore, the commenter concluded that it is unrealistic and unreasonable to mandate that funding be in place when a conservation effort is evaluated.

Response 42: The Act does not require that certainty of implementation be provided for recovery management actions for listed species or conservation efforts for nonlisted species. Likewise, the PECE does not require that certainty of implementation be provided for during development of conservation efforts for nonlisted species. It is inappropriate to consider the PECE as holding conservation plans or agreements to a higher standard than the standard that exists for recovery plans because the PECE does not mandate a standard for conservation plans or agreements at the time of plan development. Rather, the PECE provides us guidance for the evaluation of conservation efforts when making a listing decision for a nonlisted species.

Recovery plans for listed species and conservation plans or agreements for nonlisted species identify needed conservation actions but may or may not provide certainty that the actions will be implemented or effective. However, when making a listing decision for nonlisted species, we must consider the certainty that a conservation effort will be implemented and effective. The PECE establishes criteria for us to use in evaluating conservation efforts when making listing decisions.

It is possible that we would evaluate a management action identified in a recovery plan for a listed species using the PECE. If, for example, a yet-to-be-implemented task identified in a recovery plan for a listed species would also benefit a nonlisted species, we, in making a listing decision for the nonlisted species, would apply the PECE criteria to that task to determine whether it could be considered as contributing to a decision not to list the

species or to list the species as threatened rather than endangered. In this situation, we would evaluate the management task identified in a recovery plan using the PECE criteria in the same way as other conservation efforts for the nonlisted species. That is, the recovery plan task would be held to the same evaluation standard in the listing decision as other conservation efforts.

Foreign Species Issues

Issue 43: One commenter asked why the proposed policy excluded conservation efforts by foreign governments, even though section 4(b)(1)(A) of the Act requires the Services to take such efforts into account. This commenter also stated that the proposed policy is contrary to "The Foreign Relations Law of the United States," which he argues requires the United States to defer to other nations when they have a "clearly greater interest" regarding policies or regulations being considered by the United States that could negatively affect their nations.

Response 43: As required by the Act, we have taken and will continue to take into account conservation efforts by foreign countries when considering listing of foreign species (sections 4(b) and 8 of the Act). Furthermore, whenever a species whose range occurs at least in part outside of the United States is proposed for a listing action (listing, change in status, or delisting), we communicate with and solicit the input of the countries within the range of the species. At that time, countries are provided the opportunity to share information on the status of the species, management of the species, and on conservation efforts within the foreign country. We will take those comments and information provided into consideration when evaluating the listing action, which by law must follow the analysis outlined in sections 4(a) and 4(b) of the Act. Thus, all listing decisions for foreign species will continue to comply with the provisions of the Act.

Issues Outside Scope of Policy

We received several comments that were outside of the scope of PECE. Below, we have briefly addressed these comments.

Issue 44: A comment was made that the Services should not list foreign species under the Act when such listing is in conflict with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response 44: Considerations regarding CITES are outside the scope of the PECE. However, we do not believe there is a conflict with CITES and listing of a foreign species under the Act. When evaluating the status of foreign species under the Act, we take into consideration whether the species is listed under CITES (and if listed, at what level) and all available information regarding the listing. If you have questions regarding CITES, please contact the FWS Division of Scientific Authority at 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 or by telephone at 703-358-1708.

Issue 45: One commenter stated that all conservation agreements/plans should be subject to independent scientific peer review. This commenter also argued that any conservation agreement or plan for a candidate species should remove all known major threats for the species and convey a reasonably high certainty that the agreement or plan will result in full conservation of the species.

Response 45: We believe that scientific review can help ensure that formalized conservation efforts are comprehensive and effective, and we expect that most or all participants will seek scientific review, but we will not require a formal independent peer review of conservation plans at the time of development. If a formalized conservation plan is presented for a species that has been proposed for listing, all relevant information, including formalized conservation efforts, will be subject to independent scientific review consistent with our policy on peer review (59 FR 34270). We will also solicit public comments on our listing proposals.

The amount or level of conservation proposed in a conservation plan (e.g., removal of all versus some of the major threats) is outside the scope of PECE. Assuming that all of the PECE criteria have been satisfied for the efforts to which they apply, it stands to reason that plans that comprehensively address threats are likely to be more influential in listing decisions than plans that do not thoroughly address the conservation of the species. We believe that by establishing the PECE criteria for certainty of implementation and effectiveness, we are promoting the development of plans that improve the status of species. We expect that in some cases this improvement will reduce the risk of extinction sufficiently to make listing under the Act unnecessary, to result in listing a species as threatened rather than endangered, or to make classifying a

species as a candidate for listing unnecessary.

Issue 46: Several commenters questioned the extent of state involvement in the development of conservation efforts. One commenter said that the policy should mandate that States be involved with plan development, and that states approve all conservation efforts.

Response 46: It is outside the scope of PECE to establish standards to determine who participates in the development of conservation efforts and at what level. In many cases, states play a crucial role in the conservation of species. For formalized conservation efforts to be effective, it is logical for the states to play an integral role. To that end, we highly encourage state participation to help ensure the conservation of the species, but we do not believe that states should be mandated to participate in the development of all conservation plans. In some cases, states may not have the resources to participate in these plans, and in other situations, individuals or non-state entities may have the ability to develop an effective and well-implemented plan that does not require state participation, but that contributes to the conservation of a species. Through our listing process, we will work with state conservation agencies, and, if the listing decision involves a public comment period, states have a formal opportunity to comment on any conservation efforts being considered in the listing decision.

Issue 47: Several comments were made regarding the feedback mechanisms to correct a party's (ies') inadequate or ineffective implementation of a conservation effort. It was suggested that the Services specify clearly, and based on scientific information, those factors which the Services believe indicate that a conservation effort is either not being implemented or not being effective. Comments also suggested that party(ies) be given reasonable time (e.g., 90-120 days) to respond to the Service's findings by either implementing actions, achieving objectives, or providing information to respond to the Services.

Response 47: PECE is not a regulatory approval process, and establishing a formal feedback mechanism between the Services and participants is not within the scope of PECE. The final determination whether to list a species under the Act will rest solely upon whether or not the species under consideration meets the definition of threatened or endangered as specified by the Act, which will include consideration of whether formalized

conservation efforts that meet PECE criteria have enhanced the status of the species. We will provide guidance to improve conservation efforts when possible, but we cannot delay listing decisions in order to participate in a corrective review process when the best scientific and commercial data indicate that a species meets the definition of threatened or endangered.

Issue 48: One commenter requested that we clarify how significant the conservation agreement must be to the species, and describe the anticipated overall impact/importance to the species and the estimated extent of the species' overall range that the habitat conservation agreement might cover.

Response 48: PECE does not establish standards for how much or what kind of conservation is required to make listing a species under the Act unnecessary. We believe that high-quality formalized conservation efforts should explain in detail the impact and significance of the effort on the target species. However, at the time of our listing decision, we will evaluate formalized conservation efforts using PECE to determine whether the effort provides certainty of implementation and effectiveness and improves the status of the species. Through our listing process, we will determine whether or not a species meets the definition of threatened or endangered.

Issue 49: Several commenters wrote that states do not have additional resources to be pro-active on candidate conservation efforts, and suggested that funding for conservation plans or efforts should be provided by the Federal Government.

Response 49: This comment is outside the scope of the PECE. This policy establishes a set of standards for evaluating formalized conservation efforts in our listing decisions and does not address funding sources to develop and implement these efforts.

Summary of Changes From the Proposed Policy

We have slightly revised some of the evaluation criteria as written in the proposed policy. We made the following changes to reflect comments that we received during the public comment period. We added the word "legal" to criterion A.2., incorporated additional language ("the commitment to proceed with the conservation effort is described."), and separated this criterion into two criteria (A.2. and A.3.). We revised criterion A.3. (formerly part of A.2.) to recognize that parties cannot commit to completing some legal procedural requirements (e.g. National Environmental Policy Act)

since some procedural requirements preclude commitment to a proposed action before the procedures are actually completed. We changed criterion A.5. (formerly A.4.) by adding "type" and "(e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved)" and by replacing "why" with "how" and "are expected to" with "will." We deleted the word "all" at the beginning of criterion A.6. as we felt it was redundant. We added "(including incremental completion dates)" to criterion A.8. (formerly A.7.). To criterion B.1. we added "and how the conservation effort reduces the threats is described."

Also in the proposed policy we stated that if we make a decision not to list a species, or to list the species as threatened rather than endangered, based in part on the contributions of a formalized conservation effort, we will monitor the status of the species. We have clarified this in the final policy to state that we will monitor the status of the effort, including the progress of implementation of the formalized conservation effort.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant policy and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This policy will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The policy for the evaluation of conservation efforts when making listing decisions does not pertain to commercial products or activities or anything traded in the marketplace.

(b) This policy is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This policy is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this policy may raise novel legal or policy issues and, as a result, this action has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the

Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this policy's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities since the policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. The criteria in this policy describe how we will evaluate elements that are already included in conservation efforts and do not establish any new implementation burdens. Therefore, we believe that no economic effects on States and other entities will result from compliance with the criteria in this policy.

Pursuant to the Regulatory Flexibility Act, at the proposed policy stage, we certified to the Small Business Administration that this policy would not have a significant economic impact on a substantial number of small entities, since we expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts. We received no comments regarding the economic impacts of this policy on small entities. Thus, we certify that this final policy will not have a significant adverse impact on a substantial number of small entities and conclude that a regulatory flexibility analysis is not necessary.

We have determined that this policy will not cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises (see Economic Analysis below).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this policy is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This policy will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. We expect that this policy will not result in any significant additional expenditures by entities that develop formalized conservation efforts.

(b) This policy will not produce a Federal mandate on state, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This policy imposes no obligations on state, local, or tribal governments (see Economic Analysis below).

Takings

In accordance with Executive Order 12630, this policy does not have significant takings implications. While state, local or Tribal governments, or private entities may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property.

Federalism

In accordance with Executive Order 13132, this policy does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce policy, we requested information from and coordinated development of this policy with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This policy contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by Office of Management and Budget (OMB). The FWS has OMB approval for the collection under OMB Control Number 1018-0119, which expires on December 31, 2005. The NMFS has OMB approval for the collection under OMB Control Number 0648-0466, which expires on December 31, 2005. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Public reporting burden for FWS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The FWS expects that six agreements with the intent of making listing unnecessary will be developed in one year and that four of these will be successful in making listing unnecessary, and therefore, the entities who develop these four agreements will carry through with their monitoring and reporting commitments. Public reporting burden for NMFS collections of information is estimated to average 2,500 hours for developing one agreement with the intent to preclude a listing, 320 hours for annual monitoring under one agreement, and 80 hours for one annual report. The NMFS expects that two agreements with the intent of making listing unnecessary will be developed in one year and that one of these will be successful in making listing unnecessary, and therefore, the entities who develop this agreement will carry through with their monitoring and reporting commitments. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to the FWS and NMFS (see ADDRESSES section of this policy).

National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6. This policy does not constitute a major Federal action significantly affecting the quality of the human environment. The FWS has determined that the issuance of the policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 (1.10) and 516 DM 6, Appendix 1. NOAA has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA Administrative Order 216-6, Environmental Review Procedure.

ESA Section 7 Consultation

We have determined that issuance of this policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this policy is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and the Department of Interior's 512 DM 2, this policy does not directly affect Tribal resources. The policy may have an indirect effect on Native American Tribes as the policy may influence the type and content of conservation plans and efforts implemented by Tribes, or other entities. The extent of this indirect effect will be determined on a case-by-case basis during our evaluation of individual formalized conservation efforts when we make a listing decision. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period for the listing decision or formal submissions. During the development of conservation plans, we can encourage the incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after

careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final listing decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with the affected Tribe(s). We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented and have yet to show effectiveness at the time we make a listing decision.

(b) We have not yet worked with Tribes on a government-to-government basis. We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented but have yet to show effectiveness at the time we make a listing decision.

(c) We will consider Tribal views in individual evaluations of formalized conservation efforts.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Information Quality

In Accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), OMB directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public (67 FR 8452). Under our Information Quality guidelines, if we use a conservation plan or agreement as part of our decision to either list or not list a species under the Act, the plan or agreement is considered to be disseminated by us and these guidelines apply to the plan or agreement. The criteria outlined in this policy are consistent with OMB, Department of Commerce, NOAA, and Department of the Interior. FWS information quality guidelines. The Department of the Interior's guidelines can be found at <http://www.doi.gov/ocio/guidelines/515Guides.pdf>, and the FWS's guidelines can be found at <http://irm.fws.gov/infoguidelines/>. The Department of Commerce's guidelines can be found at <http://www.osec.doc.gov/cio/oipri/iqg.html>, and the NOAA/NMFS's guidelines can be found at <http://www.noaanews.noaa.gov/stories/iq.htm>. Under these guidelines, any affected

person or organization may request from FWS or NMFS, a correction of information they believe to be incorrect in the plan or agreement. "Affected persons or organizations" are those who may use, be benefitted by, or be harmed by the disseminated information (i.e., the conservation plan or agreement). The process for submitting a request for correction of information is found in the respective FWS and NOAA guidelines.

Economic Analysis

This policy identifies criteria that a formalized conservation effort must satisfy to ensure certainty of implementation and effectiveness and for us to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. We developed this policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions. The policy will also provide guidance to States and other entities on how we will evaluate certain formalized conservation efforts during the listing process.

The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.

The development of an agreement or plan by a state or other entity is completely voluntary. However, when a state or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans. The state or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.

The criteria in the policy require demonstrating certainty of implementation and effectiveness of formalized conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Therefore, we believe that no economic effects on states and other entities will result from using the criteria in this policy as guidance.

Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guide states and other entities in developing voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

Policy Purpose

The Fish and Wildlife Service and National Marine Fisheries Service developed this policy to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Definitions

"Adaptive management" is a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

"Agreements and plans" include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

"Candidate species," as defined by regulations at 50 CFR 424.02(b), means

any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted, but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation efforts," for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

"Formalized conservation efforts" are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document. An agreement or plan may contain numerous conservation efforts.

Policy Scope

When making listing decisions, the Services will evaluate whether formalized conservation efforts contribute to making it unnecessary to list a species, or to list a species as threatened rather than endangered. This policy applies to those formalized conservation efforts that have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision. We will make this evaluation based on the certainty of implementing the conservation effort and the certainty that the effort will be effective. This policy identifies the criteria we will use to help determine the certainty of implementation and effectiveness. Listing decisions covered by the policy include findings on petitions to list species, and decisions on whether to assign candidate status, remove candidate status, issue proposed listing rules, and finalize or withdraw proposed listing rules. This policy applies to formalized conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services.

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16

U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (i.e., measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—"the inadequacy of existing regulatory mechanisms"—indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence") requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status.

While conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision, conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development

and implementation of such agreements and plans has been an effective mechanism for conserving declining species and has, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that "encouraging the States and other interested parties * * * to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants" (16 U.S.C. 1531 (a)(5)).

In some situations, a listing decision must be made before all formalized conservation efforts have been implemented or before an effort has demonstrated effectiveness. We may determine that a formalized conservation effort that has not yet been implemented has reduced or removed a threat to a species when we have sufficient certainty that the effort will be implemented and will be effective.

Determining whether a species meets the definition of threatened or endangered requires us to analyze a species' risk of extinction. Central to this risk analysis is an assessment of the status of the species (i.e., is it in decline or at risk of decline and at what rate is the decline or risk of decline) and consideration of the likelihood that current or future conditions or actions will promote (see section 4(b)(1)(A)) or threaten a species' persistence. This determination requires us to make a prediction about the future persistence of a species, including consideration of both future negative and positive effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. The first factor in section 4(a)(1)—"the present or *threatened* destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, State, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation,

regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status. As part of our assessment of future conditions, we will determine whether a formalized conservation effort that has yet to be implemented or has recently been implemented but has yet to show effectiveness provides a high level of certainty that the effort will be implemented and/or effective and results in the elimination or adequate reduction of the threats.

For example, if a state recently designed and approved a program to eliminate collection of a reptile being considered for listing, we must assess how this program affects the status of the species. Since the program was just designed, an implementation and effectiveness record may not yet exist. Therefore, we must evaluate the likelihood, or certainty, that it will be implemented and effective, using evidence such as the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. Consequently, we would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

In another example, a state could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. Since the state has already implemented the program, the state does not need to provide certainty that it will be implemented. If the program was only recently implemented and no record of the effects of the program on the species' status existed, we would evaluate the effectiveness of this voluntary program at the time of our listing decision. To assess the effectiveness, we would evaluate the level of participation (e.g., number of participating landowners or number of stream-miles fenced), the length of time of the commitment by landowners, and whether the program reduces the threats on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to

produce a positive effect on the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a formalized conservation effort cannot be expected to produce results quickly enough to make listing unnecessary since we must determine at the time of the listing decision that the conservation effort has improved the status of the species.

Federal agencies, Tribal governments, state and local governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary and advisable for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

This policy provides us guidance for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. This policy is not intended to provide guidance for determining the specific level of conservation (e.g., number of populations or individuals) or the types of conservation efforts (e.g., habitat restoration, local regulatory mechanisms) specifically needed to make listing particular species unnecessary and does not provide guidance for determining when parties should enter into agreements. We do encourage early coordination in conservation measures to prevent the species from meeting the definition of endangered or threatened.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will track the status of the effort including the progress of implementation and effectiveness of the conservation effort. If any of the following occurs: (1) a failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat or to address other new information on threats; or (4) we receive any other new information

indicating a possible change in the status of the species, then we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule. In some cases, even if the parties fully implement all of the conservation efforts outlined in a particular agreement or plan, we may still need to list the species. For example, this may occur if conservation efforts only cover a portion of a species' range where the species needed to be conserved, or a particular threat to a species was not anticipated or addressed at all, or not adequately addressed, in the agreement or plan.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (i.e., actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to forming a basis for not listing a species, or for listing a species as threatened rather than endangered, we must evaluate whether the conservation effort improves the status of the species under the Act. Two factors are key in that evaluation: (1) for those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) for those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually and use the following criteria to direct our analysis.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort, the party(ies) to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.
2. The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.
3. The legal procedural requirements (e.g. environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does

not preclude commitment to the effort. 4. Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations. 5. The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation). 6. Regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place. 7. A high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding. 8. An implementation schedule (including incremental completion dates) for the conservation effort is provided. 9. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described. 2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated. 3. The steps necessary to implement the conservation effort are identified in detail. 4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified. 5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided. 6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also

depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort(s) contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the conservation 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 identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered. An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of "endangered species" or "threatened species" on the day of the listing decision, then we must proceed with appropriate rule-making activity under section 4 of the Act.

Dated: September 16, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

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BILLING CODES 4310-55-S and 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306-2306-01; I.D. 032403A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of pollock specified for Statistical Area 610.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2003, through 1200 hrs, A.l.t., March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the B season directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 19, 2003 (68 FR 13857, March 21, 2003).

NMFS has determined that, approximately 986 mt of pollock remain in the B season directed fishing allowance. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the B season allowance of pollock TAC specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., March 27, 2003.

paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and
 (B) may, from time-to-time thereafter as appropriate, revise such designation.

- (b) Basis for determinations
- (1)
 - (A) The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.
 - (B) In carrying out this section, the Secretary shall give consideration to species which have been -
 - (i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or
 - (ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.
- (2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.
- (3)
 - (A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section [553](#)(e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the

status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

- (B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:
 - (i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.
 - (ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).
 - (iii) The petitioned action is warranted, but that -
- (I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and
- (II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.
- (C)
 - (i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.
 - (ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.
 - (iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 [11](#) to prevent a significant risk to the well being of any such species.
- (D)
 - (i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section [553](#)(e) of title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.
 - (ii) Within 12 months after receiving a petition that is found under clause (i) to

present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

- (4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section [553](#) of title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.
- (5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall -
 - (A) not less than 90 days before the effective date of the regulation -
 - (i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and
 - (ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;
 - (B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;
 - (C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;
 - (D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and
 - (E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.
- (6)
 - (A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register -
 - (i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either -
 - (I) a final regulation to implement such determination,

- (II) a final regulation to implement such revision or a finding that such revision should not be made,
- (III) notice that such one-year period is being extended under subparagraph (B)(i), or
- (IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or
 - (ii) subject to subparagraph (C), if a designation of critical habitat is involved, either -
- (I) a final regulation to implement such designation, or
- (II) notice that such one-year period is being extended under such subparagraph.
- (B)
 - (i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.
 - (ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.
 - (iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.
- (C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that -
 - (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or
 - (ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one

additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

- (7) Neither paragraph (4), (5), or (6) of this subsection nor section [553](#) of title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if -
 - (A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and
 - (B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur. Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.
- (8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.
- (c) Lists
 - (1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.
 - (2) The Secretary shall -

- (A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and
 - (B) determine on the basis of such review whether any such species should -
 - (i) be removed from such list;
 - (ii) be changed in status from an endangered species to a threatened species; or
 - (iii) be changed in status from a threatened species to an endangered species. Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.
- (d) Protective regulations

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section [1538\(a\)\(1\)](#) of this title, in the case of fish or wildlife, or section [1538\(a\)\(2\)](#) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section [1535\(c\)](#) of this title only to the extent that such regulations have also been adopted by such State.
- (e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that -

 - (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;
 - (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and
 - (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.
- (f) Recovery plans
 - (1) The Secretary shall develop and implement plans (hereinafter in this subsection

referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable -

- (A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;
 - (B) incorporate in each plan -
 - (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;
 - (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and
 - (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.
 - (2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.
 - (3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.
 - (4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.
 - (5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).
- (g) Monitoring
 - (1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.
 - (2) The Secretary shall make prompt use of the authority under paragraph 7 [\[2\]](#) of subsection (b) of this section to prevent a significant risk to the well being of any such

recovered species.

- (h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments
The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to -
 - (1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;
 - (2) criteria for making the findings required under such subsection with respect to petitions;
 - (3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and
 - (4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

- (i) Submission to State agency of justification for regulations inconsistent with State agency's comments or petition
If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

Footnotes

[\[1\]](#) So in original. Probably should be paragraph "(7)".

[\[2\]](#) So in original. Probably should be paragraph "(7)".

DEPARTMENT OF COMMERCE**International Trade Administration****North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review**

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On June 24, 2005, Berg Steel Pipe Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the antidumping duty determination made by the Secretaria de Economia, respecting Pipe Line Longitudinally Welded with external or internal circle closed section, classified as tariff item 7305.11.01 and 7305.12.01 originating in the United States of America. This determination was published in the *Diario Oficial de la Federacion*, on May 27, 2005. The NAFTA Secretariat has assigned Case Number MEX-USA-2005-1904-01 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 24,

2005, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 25, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 8, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 6, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5-3677 Filed 7-11-05; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Submission of Conservation Efforts To Make Listings Unnecessary Under the Endangered Species Act**

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW.,

Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Marta Nammack, (301) 713-1401 or Marta.Nammack@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Services) announced a final policy on the criteria the Services will use to evaluate conservation efforts by states and other non-Federal entities. The Services take these efforts into account when making decisions on whether to list a species as threatened or endangered under the Endangered Species Act. The efforts usually involve the development of a conservation plan or agreement, procedures for monitoring the effectiveness of the plan or agreement, and an annual report.

II. Method of Collection

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

III. Data

OMB Number: 0648-0466.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and State, local or tribal governments.

Estimated Number of Respondents: 3.

Estimated Time per Response: 2,500 hours to complete each agreement or plan that has the intention of making listing unnecessary; 320 hours to conduct monitoring for successful agreements; and 80 hours to prepare a report for successful agreements.

Estimated Total Annual Burden Hours: 3,300.

Estimated Total Annual Cost to Public: \$165,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 6, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-13599 Filed 7-11-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070505B]

Endangered Species; File No. 1541

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Kristen M. Hart, Ph.D., United States Geologic Survey, Florida Integrated Science Center, Center for Coastal & Watershed Studies, has applied in due form for a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 11, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 427-2521; and Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1541.

FOR FURTHER INFORMATION CONTACT:

Patrick O'pay or Jason Blackburn, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The applicant proposes to capture up to 106 green sea turtles over the course of a three-year permit, utilizing dip nets or pound nets. The pound nets will be set up daily by the researchers, monitored at all times, and taken down when not in use. All 106 turtles will be captured, measured, Passive Integrated Transponder (PIT) and flipper tagged, blood sampled, skin biopsied, oral gastric lavaged, fecal sampled, and released. A subset of these turtles would have satellite or acoustic transmitters attached to their carapace. The purpose of the proposed research is to study juvenile and sub-adult green sea turtles found in the waters of the Big Sable Creek (BSC) complex in Everglades National Park in southwest Florida, to determine whether or not these animals are resident in BSC, or use it as a stopover point during migration; to determine whether the turtles use BSC as a foraging or nursery grounds; to determine the turtles' origin by use of genetic testing; to determine what the turtles forage on while in BSC; to determine their relative abundance over time; to detect changes in sea turtle size and age composition; and to track the turtles using a variety of tagging methods to monitor and document movement and migration patterns.

Dated: July 6, 2005.

Tammy C. Adams

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-13601 Filed 7-11-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board; Solicitation of Applications for National Technical Information Service Advisory Board Membership

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice.

SUMMARY: The National Technical Information Service (NTIS) is seeking qualified candidates to serve as members of the NTIS Advisory Board (Board). The Board will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than August 11, 2005.

ADDRESSES: Applications should be submitted to Director, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT:

Steven D. Needle (703) 605-6404.

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) is seeking five qualified members to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to Section 3704(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS' mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates should submit a resume and a statement explaining their interest in serving on the Board.

Dated: June 27, 2005.

Benjamin H. Wu,

Acting Director.

[FR Doc. 05-13639 Filed 7-11-05; 8:45 am]

BILLING CODE 3510-04-P