Species Conservation and Endangered Species Act Initiative

YEAR THREE UPDATE

2018
EXECUTIVE SUMMARY

The Western Governors’ Association (WGA), under the leadership of then-Chair Wyoming Governor Matt Mead, launched the *Species Conservation and Endangered Species Act Initiative* (Initiative) in 2015. The first year of the effort culminated in approval of the expansive WGA Policy Resolution 2017-11, *Species Conservation and the Endangered Species Act* (Resolution). In the second year of the Initiative, WGA assembled a suite of bipartisan Policy Recommendations (Recommendations). These Recommendations propose regulatory, statutory and administrative means of implementing the Resolution’s principles.

The focus of the Initiative’s third-year work sessions was incentivization of voluntary conservation as a means of precluding the need to list species under the Endangered Species Act (ESA). Initiative stakeholders made progress toward that by identifying a variety of options to reduce or remove barriers to that incentivization. WGA will continue to examine barriers and potential policy solutions outlined during the past year to help accomplish the goal of incentivizing proactive and voluntary species conservation.

Work Session Process

Work session attendees were asked to consider a set of framing questions presented prior to each session. During the sessions, participants engaged in facilitated discussions to: respond to the framing questions; identify areas of bipartisan agreement; propose actionable recommendations; and identify obstacles to the implementation of those recommendations.

At the conclusion of each work session, WGA compiled: a list of identified barriers; possible policy solutions; and discussion highlights from breakout groups that met during the session. These work sessions built upon the Governors’ previously adopted policy recommendations on species conservation and led to a greater understanding of the conservation efforts and options that could promote proactive and voluntary species conservation.
**Stakeholder-Identified Barrier**

- Conservation funding is disparate and unconnected. Funding streams may be targeted to the same species or habitat type, but often lack a clearly defined purpose and end goal.
- Accountability in determining how funds are used is lacking.
- The regulated community generally spends more money on regulatory compliance and administrative aspects of ESA, vis-à-vis on-the-ground conservation.

**Stakeholder-Identified Policy Options**

- Establish an entity that can pool and target funds for effective and efficient outcomes on the ground. The National Fish and Wildlife Foundation (NFWF) already serves a similar purpose. Consider channeling additional funds through NFWF or a similar quasi-governmental entity.
- Design measurable targets and goals, and allocate funding for their achievement.
- Analyze existing funding streams for overlaps and inefficiencies, and recommend re-purposing, re-allocating, or combining redundant programs.
- Compliance and environmental regulation can be effective drivers for species conservation efforts, but a greater emphasis on on-the-ground work is likely to make industry and landowners more likely to contribute funds.
- Focus on comprehensive recovery programs like the South Platte Water Related Activities Program,1 or the Upper Colorado River Recovery Program2 under which permittees contribute funding to a consolidating entity responsible for directing species recovery efforts and ESA compliance for all contributing members.

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<th>Stakeholder-Identified Barrier</th>
<th>Stakeholder-Identified Policy Options</th>
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<td><strong>Non-consumptive users generally provide direct funding for wildlife conservation at a lower level compared to those who hunt and fish.</strong></td>
<td><strong>Stakeholder discussion highlighted challenges regarding the viability of new or expanded taxes; opportunities do exist in the form of taxes or user fees to compensate for impacts associated with non-consumptive uses. Some states tax hotel rooms in recreational areas during peak seasons. One option would be to tax equipment (such as binoculars, backpacks or sleeping bags) associated with non-consumptive uses.</strong></td>
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<td><strong>Private landowners do not take advantage of programs designed to incentivize voluntary conservation due to fears that acceptance of funds will invite further regulation and federal scrutiny.</strong></td>
<td><strong>A recommendation that does not involve a tax is the creation of a funding pool to which outdoor industries could contribute; collected funds could be dispersed to states for non-game species conservation. In return, companies could place some sort of stamp or seal on their products representing that they are “wildlife friendly” (similar to what the fishing industry does for “dolphin-safe tuna”).</strong></td>
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<td><strong>There are likely species that are listed under ESA because the Services do not know enough about population distribution and abundance. This may be particularly true with species occupying vast tracts of private land. A listing may not be warranted, but without adequate data and analysis, the Service cannot defensibly claim that a species does not warrant listing.</strong></td>
<td><strong>Focus additional funding on programs that utilize outreach and technical support for landowners like the Fish and Wildlife Service’s (FWS) Partners for Fish and Wildlife Program and Working Lands for Wildlife Program administered by the Natural Resources Conservation Service (NRCS). Programs focused on technical support and outreach place agency officials in local communities and can help combat some of the fear surrounding the ESA.</strong></td>
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<td><strong>Collaborative efforts to collect additional information regarding distribution and population of petitioned species improves the defensibility of the decisions to list or not list species under the ESA.</strong></td>
<td><strong>Increase funding for scientific research on certain species; greater investment in science could significantly improve the efficacy of the ESA and how federal agencies are perceived.</strong></td>
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<td><strong>Industry can play an important role in funding these studies, but funding for science in general is overlooked.</strong></td>
<td><strong>Federal funding for conservation has been declining for over a decade.</strong></td>
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<td><strong>There is inconsistent statutory authority within states to require compensatory mitigation for state-managed habitat and species.</strong></td>
<td><strong>Look for new conservation investment opportunities at the state level. States are using bond measures, referendums, sales tax revenue and other mechanisms to conserve wildlife and habitat.</strong></td>
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<td><strong>Compensatory mitigation programs can lack a well-defined paradigm of cost and regulatory assurances received in exchange for the investment.</strong></td>
<td><strong>Recognize the role of local governments in building partnerships and empower their efforts to generate support for investing in species conservation.</strong></td>
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<td><strong>Federal funding for conservation has been declining for over a decade.</strong></td>
<td><strong>Examine statutory authority within states to require compensatory mitigation and encourage development of such authority where it does not exist.</strong></td>
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<td><strong>There is consistent statutory authority within states to require compensatory mitigation for state-managed habitat and species.</strong></td>
<td><strong>Encourage consistency with state mitigation standards where authority exists to ensure certainty and predictability.</strong></td>
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Governors have long promoted economic and regulatory incentives for voluntary conservation efforts to achieve results in efficient and cost-effective ways. Other partners share this goal and strive to encourage proactive efforts long before the threat of an ESA listing arises. Nevertheless, there remain significant regulatory barriers and systemic disincentives to participation in proactive voluntary efforts.

Attendees focused on identifying barriers and proposing solutions that would incentivize more widespread proactive and voluntary conservation efforts by industry and private landowners for both listed and non-listed species. The bulk of the discussion focused on non-listed species, as the session sought to develop policy options to push conservation upstream, prior to a species being petitioned for listing under the ESA.

Participants in this work session identified such barriers, then proposed regulatory and administrative ways to address them. As in the first work session, funding for outreach and facilitation of voluntary agreements were key considerations.

A summary of barriers and recommendations follows.

### Stakeholder-Identified Barrier | Stakeholder-Identified Policy Options
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Federal involvement is perceived by some landowners as a disincentive to engage in voluntary conservation programs. It often comes with unfunded mandates, such as archaeological surveys, and a heavy National Environmental Policy Act (NEPA) burden on landowners who want to engage in federal conservation programs. | Consider utilizing categorical exclusions under NEPA for certain conservation practices and agreements. If a landowner is able to demonstrate a conservation benefit on private land using federal dollars, permit the project to use streamlined NEPA procedures, including the use of Categorical Exclusions (CEs), to expedite the action and reduce implementation costs.
Federal land management agencies are unable to grant regulatory assurances on federal land. | Section 7(a)(1) of the ESA outlines federal responsibility to conserve listed species. This section could be used as the legal authority to provide regulatory assurances similar to Candidate Conservation Agreements with Assurances (CCAs) for permitted public land users. This could streamline the conservation agreement development process as well, if permittees were required to establish only one agreement for both private and public portions of an operation.
Timelines on assurances granted through conservation agreements on private lands don't always align with conservation commitments. | Federal land management agencies have additional policy regarding the management of species status (Bureau of Land Management Manual 6840 for instance). Investigate opportunities in that policy to create regulatory assurances similar to CCAAs or HCPs on public lands.
There is a lack of coordination and staff education within FWS regarding outreach and technical assistance to landowners. | FWS should utilize a Resource Advisory Committee to assist Service staff and landowners in establishing voluntary conservation initiatives.
Data collected for compliance and permitting is not shared or utilized for other purposes. | Explore policy changes to enhance data transparency to drive conservation efforts while respecting state data-sharing limitations.
State assurances must be transferred or continued if a species is listed or deemed a candidate for listing. | Regulatory assurances provided by states regarding pre-listed species should be respected at the federal level if a species becomes a candidate for listing.
Create more continuity between state and federal programs and assurance agreements. | Develop more robust guidance and handbook instructions for establishing voluntary agreements.
Remedy inconsistent agency approaches to community outreach and collaborative development. | Provide dedicated funding for proactive staff outreach to landowners. Devote additional resources to non-regulatory programs within the Services.
Increase the amount of outreach to landowners regarding proactive conservation programs. | Voluntary conservation agreements take too long and are overly burdensome financially. | Examine the possibility of minimizing NEPA barriers for CCAAs; consider CEs, additional funding, and added staff capacity at FWS to process agreements.
Funding for conservation of pre-listed species can be inconsistent. | Increase state wildlife funding; examine creative funding streams devoted to pre-listed species through either reallocation of federal funds or a new state tax or ballot initiative.

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WEBINARS

Species Conservation Funding

Adequate and targeted funding for species conservation efforts and ESA implementation is a linchpin to the success of efforts to conserve at-risk species (precluding the need to list) and recover listed species to the point where the Act’s protections are no longer necessary. A group of experts representing state, federal and non-governmental interests examined current methods of funding species conservation efforts, as well as challenges and opportunities associated with the leverage of additional funding for conservation of at-risk and endangered species.

The webinar was moderated by Timothy Male, Executive Director of the Environmental Policy Innovation Center. Panelists included Gary Frazer, Assistant Director for Endangered Species, U.S. Fish and Wildlife Service; Virgil Moore, Director, Idaho Department of Fish and Game; and Christy Plumer, Chief Conservation Officer, Theodore Roosevelt Conservation Partnership.

Pecos Watershed Conservation Initiative

Cross-boundary and multi-jurisdictional approaches to species conservation present considerable opportunity to address threats and conserve priority habitat for species long before an ESA listing is considered. Cross-boundary efforts, however, often face significant administrative and funding related hurdles. Founding members of the Pecos Watershed Conservation Initiative discussed their effort to facilitate strategic conservation opportunities and restore water quality and wildlife habitat throughout the Permian Basin of Texas and New Mexico. The initiative brings together state and federal agencies, industry, and conservation organizations to craft proactive, pragmatic and collaborative solutions to conservation challenges at a broad-scale across the Permian Basin.

The webinar was moderated by Chris West, Director, Rocky Mountain Regional Office, National Fish and Wildlife Foundation. Panelists included Myles Culhane, Assistant General Counsel, Occidental Petroleum Corporation; Debbie Hughes, Executive Director, New Mexico Association of Conservation Districts; Ross Melinchuk, Deputy Executive Director – Natural Resources, Texas Department of Parks and Wildlife; and Nick Owens, Senior HSE Representative, Anadarko Petroleum.
WESTERN WORKING LANDS FORUM

WGA hosted the first-ever Western Working Lands Forum in Denver, Colorado on March 15-16, 2018. The Forum examined crosscutting issues in the management of wildlife, national forests and rangelands, and invasive species. Forum attendees considered challenges and opportunities associated with the implementation of cross-boundary and inter-jurisdictional land management strategies and discussed the definition of “landscape-scale” planning and management across a diverse spectrum of policy and resource management disciplines.

The Forum highlighted the importance of considering all aspects of the working landscape – communities, economies and wildlife – in building durable and truly “landscape-scale” conservation efforts. Attendees also emphasized the advisability of framing these efforts as a long-term investment in conservation, not just a limited activity aimed only at avoiding a species listing under the ESA. WGA intends to build on the themes and suggestions that emerged from the Forum by identifying areas for further study and examining how to better integrate landscape-scale considerations into local land management decisions.

CONCLUSION

Work session, webinar and forum discussions on sources of funding for wildlife conservation illuminated a need for a deeper understanding of the multitude of state, federal and private programs that contribute to species and habitat conservation. Year 3 stakeholder input will inform WGA’s future work to comprehensively examine funding programs for on-the-ground species conservation efforts.

On The Web:
Watch webinars, find resources at westgov.org