
July 14, 2017

Greg Sheehan, Acting Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Chris Oliver, Assistant Administrator
NOAA Fisheries
U.S. Department of Commerce
1315 East West Highway
Silver Spring, MD 20910

Re: Western Governors' Species Conservation and Endangered Species Act Initiative Year Two Recommendations

Dear Acting Director Sheehan and Assistant Administrator Oliver:

The Western Governors' Association (WGA) represents the Governors of 19 western states and three U.S.-flag islands. The Association is an instrument of the Governors for bipartisan policy development, information-sharing and collective action on issues of critical importance to the western United States.

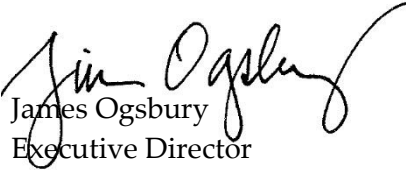
Over the past two years, WGA – through the *Western Governors' Species Conservation and Endangered Species Act Initiative* – has conducted “big-tent” stakeholder discussions focused on: identifying means of incentivizing voluntary conservation; elevating the role of states in species conservation; and improving the efficacy of the Endangered Species Act (ESA). Through a series of public workshops, intimate work sessions, substantive webinars and other tools, WGA engaged a wide range of interested parties in substantive, transparent and expansive discussions on proactive species conservation and the ESA.

One result of this effort is WGA Policy Resolution 2017-11, *Species Conservation and the Endangered Species Act*, which incorporates by reference the *Species Conservation and the ESA Initiative Year Two Recommendations*. To inform deliberations on regulatory and administrative actions to improve species conservation and the ESA, WGA respectfully submits those recommendations. For additional information please see the Western Governors' Species Conservation and the ESA [Year Two Report](#) and [Appendix](#).

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Thank you for your consideration.

Sincerely,



James Ogsbury
Executive Director

cc: Honorable Ryan Zinke, Secretary, U.S. Department of the Interior
Gary Frazer, Assistant Director for Endangered Species, U.S. Fish and Wildlife Service
Donna Wieting, Director, Office of Protected Resources, NOAA Fisheries

Attachment: *Species Conservation and the ESA Initiative Year Two Recommendations*



WGA Species Conservation and the Endangered Species Act Initiative Year Two Recommendations

Preamble

The Western Governors' Association (WGA), under the leadership of then-Chairman Wyoming Governor Matt Mead, launched the Western Governors' Species Conservation and Endangered Species Act Initiative (Initiative) in 2015. Since the Initiative's inception, WGA has hosted numerous workshops, webinars, and work sessions to create a forum for a diverse coalition of stakeholders to share best practices in species management, promote the role of states in species conservation, and explore options to improve the efficacy of the Endangered Species Act (ESA).

While the Initiative has closely examined the ESA, the effort goes well beyond consideration of the Act alone. Governors also are seeking to encourage voluntary conservation – through early identification of sensitive species and establishment of institutional frameworks that incentivize collaborative voluntary conservation – thus avoiding the need to list species in the first place.

The first year of the Initiative (2015-2016) resulted in approval of WGA Resolution [2016-08: Species Conservation and the Endangered Species Act](#) – an expansive resolution encapsulating Governors' principles informed by the Initiative. The Resolution instructs WGA staff to develop a multi-year workplan to further Governors' policy principals on Species Conservation and the ESA. What followed in the first year of workplan implementation (2016-2017) was a continuation of the transparent, inclusive, and stakeholder driven process to refine and examine avenues for implementation of Governors' policy statements expressed in the Resolution.

A suite of recommendations addressing proactive and incentive based voluntary conservation species and ESA implementation emerged from year two work sessions. Work session participants were not expected to reach full consensus on recommendations forwarded by the Governors. However, comity among work session participants gave rise to significant progress toward conceptual agreement and helped inform the Governors' deliberations on the recommendations contained in this document.

As interest within Congress and the Administration in examining the ESA builds, Western Governors' submit these bipartisan statutory, regulatory and funding-related recommendations consistent with implementation of the principles forwarded in WGA Resolution 2016-08, *Species Conservation and the Endangered Species Act*.

Importantly, with respect to statutory recommendations, Western Governors' acknowledge any Congressional effort to amend the ESA will be complicated and spark diverse opinions. WGA's ESA initiative enjoyed diverse stakeholder input and broad consensus; these resulting

recommendations represent bipartisanship at this stage. Each governor reserves judgment on whether to support Congressional action, based upon unknown future legislative language.

Statutory

1. A) Amend Section 4 of the Endangered Species Act to create flexibility for the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively, "Services") to create a prioritization schedule for petitions received. The Services must assign a petitioned species a listing priority within 12 months of a positive 90-day finding. Species in immediate risk of extinction will receive highest priority, while species with ongoing conservation efforts or species for which listing would provide limited conservation benefit within the foreseeable future will be placed in a lower priority category.

B) Amend Section 4 of the Endangered Species Act to create a statutory exception for the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) (collectively, "Services") to defer 12 month findings for a species under the ESA when: 1) a conservation plan is either being developed or implemented to meet the conservation needs of the species. In the case of species that range across multiple states, this refers to a plan in each state or a range-wide plan. The Services may renew the deferral every five years so long as they have worked with states to complete a determination that the conservation plan continues to meet the conservation needs of the species; 2) a delay will allow time to complete data collection or complete studies relating to the petitioned species; 3) species for which listing would provide limited conservation benefit within the foreseeable future.
2. Require the Secretary to make a determination on whether or not to designate critical habitat for a species. The Secretary shall designate critical habitat if he or she determines such a designation is necessary to recover the species. If the Secretary determines that such designation is not critical to recovery of the species, the Secretary may decline to designate critical habitat for a species. If the Secretary designates critical habitat, it must link such designation to recovery objectives and plans. For many species, recovery planning cannot occur until years after a listing, leaving a lot of time for critical habitat to be compromised in the meantime. When necessary, critical habitat should continue to be designated at the time of listing, and re-evaluated as part of the recovery planning process. The Secretary will retain current authority to permit exclusions from critical habitat designations for discrete purposes.
3. Upon listing, the Services will convene a recovery team within 12 months. States will have the option to lead and develop that team. The Recovery Team shall create a recovery plan, and lead its implementation. The recovery plan shall include criteria, that when met, would require the Recovery Team to recommend delisting or downlisting to

the Services. Whenever necessary, the recovery plan should be updated to include the best available science and strategies to address all recognized threats to recovering the species. Upon receipt of the recommendation to delist or downlist a species from the Recovery Team, the Service shall initiate a status review of the species for purposes of considering delisting or downlisting. Once the Services issue a delisting rule, they shall develop a post-delisting monitoring plan in a timely fashion, and judicial review of the delisting rule will be delayed until the completion of the post-delisting monitoring review period so long as a federally endorsed conservation plan is in place.

Regulatory/Administrative

1. Examine the possibility of providing assurances on public land to minimize the disincentive to enrolling in Candidate Conservation Agreements with Assurances (CCAAs) for permitted public land users with operations spanning both federal and private land. Assurances provided may not come in the form of incidental take permit associated with CCAAs, but rather a suite of assurances such as increased AUMs or extended grazing lease renewal periods for operators providing conservation actions on public lands, providing the assurances would not compromise the intent of the CCAA to recover the species to the point that ESA listing is not necessary.
2. When a landowner implements conservation measures as a part of a federally endorsed conservation agreement, The Services may exclude private land covered under the agreement from any critical habitat designation. This authority currently exists under the ESA, but needs further clarification and guidance.
3. When making listing determinations, the Secretary must take into account conservation efforts to protect species, including efforts by states, federal agencies, and private landowners.
4. The Services should work with states to develop templates for voluntary conservation programs and conservation tools that are intended to incentivize voluntary conservation for a variety of species and habitats. These templates would provide a more streamlined process of implementing voluntary conservation programs for candidate and listed species.
5. Encourage the Service to develop Species Status Assessments to help inform a listing determination. If listing is deemed warranted, use this same assessment to inform development of a recovery plan blueprint so stakeholders are able to implement effective recovery actions prior to the release of a formal species recovery plan.
6. Given the Services' new policy of using Species Status Assessments (SSAs) as a routine part of listing and recovery decisions made under the ESA, recommend the Services promulgate regulations to ensure the SSAs serve their intended function of collecting

and analyzing foundational science on a species and updating that information promptly when new data or analysis becomes available. Give state wildlife agencies a leadership role on SSA teams commensurate with their position as the repository of the bulk of the data and expertise on many species. Most critically, provide an adequate internal appeals process for challenging the conclusions of an SSA, either to Ecological Services leadership or to the Regional Director, to ensure that a misguided determination does not become embedded in multiple future decisions about a species.

7. Develop a national policy for the implementation of 4(d) rules that details best practices and incentivizes strong local input.
8. Clarify or emphasize existing authority under the ESA for states to exercise concurrent jurisdiction with the Services to implement the ESA, including management of threatened species and issuance of Section 10 take permits, if states demonstrate a desire and capacity to do so.
9. If states decline to develop and lead a recovery team, as described in Statutory Recommendation #3, the Services shall still seek sufficient participation from states to assemble recovery teams. States maintain strong wildlife management expertise, relationships with their regulated communities, and are able to better identify those individuals and entities that can best contribute to the recovery planning process.
10. Establish an informative “playbook” to inform citizens on how to engage throughout various steps of the ESA process.
11. In the case of species which are listed as threatened or endangered where listing provides limited conservation benefit within the foreseeable future, concurrent with the listing, Services should issue a 4(d) rule that emphasizes regulatory flexibility. Services should also consider delaying critical habitat designations, as well as modify the way in which they conducts consultations.

Funding

1. Pair economic incentives with critical habitat and priority conservation designations on private land and public land permitted users to alleviate the burden of critical habitat designations on private land while rewarding stewardship of quality habitat. Incorporate a scoring system – similar to, but not duplicative of, farm bill incentive scoring system – developed by stakeholders and including states, for private land conservation priority to assign varying economic incentives.
2. The Services’ budget should include specific line items directing funding to assist stakeholders interested in seeking assurance agreements and other voluntary conservation efforts.

3. The Services currently allocate very little of their recovery budget to delisting or downlisting recovered species, which causes species to remain listed as threatened or endangered longer than the ESA intends. Congress should allocate money to the Services through a specific line-item in their budgets to enable the Services to timely delist or downlist species.

4. Congress should allocate additional funding to the Services' to implement the ESA. Western Governors believe that adoption of these recommendations will improve the efficacy of the ESA, but recognize that the Services and states require adequate funding to ensure successful implementation of the Act. Governors will work with Congress to identify priorities for funding that will facilitate voluntary species conservation efforts and improve the efficacy of the ESA.