

---

November 18, 2021

Adrienne Thomas  
Privacy Act Officer  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue NW  
Washington, DC 20230

Dear Officer Thomas:

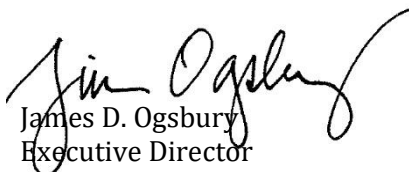
The Western Governors' Association (WGA) appreciates the opportunity to provide comments on the National Oceanic and Atmospheric Administration's (NOAA) Notice of Information Collection regarding the extension of the National Marine Fisheries Service's (NMFS) policy to identify criteria for evaluating the effectiveness of a conservation effort. 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 (ESA).

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

Thank you for your attention to this matter. Please let us know how Western Governors may be of assistance as NMFS continues to revise conservation plan evaluation criteria.

Western Governors submit these remarks through the public notice and comment process for administrative recordkeeping purposes. The Governors, however, maintain that this process is an insufficient channel for state-federal communication on federal actions that may affect state authority or administrative activity. Western Governors strongly urge you to engage in meaningful, substantive and ongoing consultation with states in advance of any such decisions or related public processes. Such consultation will result in more effective, efficient, and resilient federal policy that benefits our shared constituents.

Respectfully,



James D. Ogsbury  
Executive Director

Attachment



## Policy Resolution 2021-04

### Species Conservation and the Endangered Species Act

#### A. **BACKGROUND**

##### *Species Conservation*

1. Through broad trustee, statutory and police powers, states have primary management authority over fish and wildlife. States also exercise sovereign authority over the administration of water rights within their borders.
2. Western Governors applaud the intent of the Endangered Species Act (ESA). Since its enactment in 1973, the ESA has helped prevent the extinction and assisted the recovery of some threatened and endangered species, while providing ancillary benefits to other species.
3. Western states are proactively engaged in species conservation, including development of state and multi-state conservation plans to manage species at the local level and encouraging early voluntary measures taken by stakeholders and landowners with an aim to preclude the need for federal ESA regulation.
4. Through decades of work by staff and contractors, states have developed extensive science, expertise, and knowledge of species and habitats within their borders. The ESA requires that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively, the Services) use the best available science in making determinations about individual species' status for the purposes of the ESA. Biological information should be collected as thoroughly as possible, and should include scientific information and biological opinions from affected states.
5. Western states have a vested interest in the ESA. States are the primary recipients of economic benefits associated with healthy species and ecosystems. Tourism and recreation in wildlife-dependent communities help sustain rural economies and promote healthier communities throughout the West, and ESA compliance can benefit our states by maintaining and recovering iconic species that are a valued component of our western natural heritage. At the same time, species listings can affect western states' abilities to promote economic development, accommodate population growth, and maintain and expand infrastructure. In these circumstances, the economic costs of ESA compliance can fall heavily on western states and local communities.
6. The ESA is premised on a strong federal-state partnership. Such participation is largely optional under the current scheme and has been provided inconsistently. The role of states has also been limited by rigid internal federal processes and interagency jurisdictional disputes. This has prevented the sharing of scientific information and the consideration of state determined, science-based information.

7. Federal consultation with states in analyses and final decision making will result in more durable and implementable solutions, as well as better conservation outcomes. Given the effect ESA listing decisions have on vital state interests, states should be viewed as full partners in all ESA decisions, but particularly when reviewing and considering the challenges that could be faced by species in the future. States bring a wealth of observational knowledge and information about the current status of a species and its habitat that must be factored into any ESA analysis or decision beyond providing best available science. The full depth of state capabilities should be incorporated in any listing decision or critical habitat designation.
8. Species conservation on public lands is a critical element of threatened and endangered species recovery. Habitat for fish and wildlife often spans a patchwork of land ownership types, complicating state efforts to manage and conserve species under their management jurisdiction. This is particularly challenging in western states, where federal ownership constitutes a generally higher percentage of overall land. Public lands comprise over 46 percent of the land in the 11 contiguous western states and 61 percent of Alaska. Over 8,000 species, and over 450 species listed under the ESA, find habitat on these public lands.
9. Section 6 of the Endangered Species Act, also known as the Cooperative Endangered Species Conservation Fund, is a tool that provides grants to states and territories to participate in various voluntary conservation projects for candidate, proposed, and listed species on non-federal lands. Multiple Western Governors have entered into these agreements for both plant and animal species.
10. Helping the public appreciate natural resources and ecosystems has been a tool for states and the Services in achieving successful species recovery efforts. Programs such as the U.S. Forest Service's Conservation Education program help people of all ages understand the complexity and importance of species and ecosystem conservation.
11. Eighty-four percent of species listed under the ESA are "conservation reliant," meaning that due to human caused alterations to ecosystems, these species' recovery status can only be maintained through species-specific, long-term management activities even after outlined biological recovery goals have been met.
12. Invasive species have substantial negative effects on ecosystems, economies, and communities in the West. Studies have found that invasive species cost the U.S. more than \$120 billion every year, and the National Wildlife Federation estimates that 42 percent of threatened or endangered species are at risk due to invasive species.

### ***Wildlife Migration Corridors and Habitat***

13. Governors bear responsibility for managing state interests and authorities (including those regarding fish and wildlife) as well as safeguarding private property rights within state borders and overseeing state agencies charged with properly managing wildlife, habitat and related resources within their states.
14. Daily and seasonal fish and wildlife migration corridors and habitat are necessary to maintain healthy populations of numerous fish and wildlife species. Traditional wildlife

migratory routes and aquatic habitat connectivity, however, can be impeded, degraded or eliminated by land or resource development.

15. Several western states have adopted their own migration-specific policies and plans and are actively working to implement them in collaboration with governmental and non-governmental partners. Eleven Western states have adopted State Action Plans to identify big game habitat and migration priorities.
16. In western landscapes consisting of patchwork landownership patterns, private landowners play an invaluable role in conserving wildlife migration corridors and providing essential summer and winter range habitat. Multiple land ownerships across migration corridors complicate management efforts and necessitate the close collaboration of state agencies, federal agencies, private landowners and other stakeholders. Continued coordinated management, planning, funding, and project implementation across seasonal habitat and migration corridors is needed to ensure that wildlife populations remain strong for future generations.
17. Wildlife-vehicle collisions present a significant threat to public safety and wildlife populations. According to a recent State Farm Mutual Automobile Insurance Company report, it is estimated that there were over 1.9 million animal collision insurance claims in the U.S. between July 2018 and June 2019. When properly designed, wildlife crossing infrastructure (including fencing, overpasses, underpasses, motion sensors and other technology), has been shown to significantly reduce wildlife-vehicle collisions.
18. Following significant technical advances in wildlife movement tracking and analysis, western states are pursuing migration initiatives to research, identify, conserve and enhance essential migration corridors and habitat. Through implementation of Secretarial Order 3362, the Department of the Interior (DOI) is working to support western state efforts to conserve and improve priority western big game winter range and migration corridors.

## **B. GOVERNORS' POLICY STATEMENT**

### ***Species Conservation***

1. Western Governors support all reasonable proactive management efforts to conserve species and the ecosystems upon which they depend to sustain populations of diverse wildlife and habitats, preclude the need to list a species under the ESA, and retain the West's wildlife legacy for future generations. Western Governors also support initiatives that engage stakeholders to develop incentives for early, voluntary conservation measures to address multiple threats to species while preserving and enhancing western working landscapes.
2. Western Governors believe states should be full partners in listing, critical habitat designations, recovery planning, recovery efforts, and delisting decisions. The Services, working with the states, should establish consistent criteria to assess modeling related to projected scientific information, such as climate change, possible genetic distinction between populations, and long-term population viability among other factors in their scientific review. In these circumstances, federal agencies should partner with states and management authorities with expertise over the given model to develop and utilize

mutually acceptable predictive techniques and consensus-based metrics that are grounded in science and measurable outcomes.

3. Western Governors support the use of best available science in ESA decisions. State agencies often have the best available science, expertise and other scientific and institutional resources such as mapping capabilities, biological inventories, biological management goals, state wildlife action plans and other important data. All listing, recovery and delisting decisions made by the federal government should recognize, consult, and employ these vast state resources and utilize objective, peer-reviewed scientific literature, and scientific observations. When making a listing decision for a species where state or multi-state conservation plans employing the best available science have been primarily used in the management of that species, upon review, consultation and endorsement, the Services should give careful consideration to those management activities. A review of the scientific and management provisions contained within listing, recovery and de-listing decisions by acknowledged independent experts is important to ensure the public that decisions are well-reasoned and scientifically based. Scientific and management review committees, as well as the scope and extent of the appropriate scientific and management review, should be agreed upon by the Services and the affected states. Federal agencies may delegate their responsibility to name these review committees and determine the scope of review to states in order to enhance state ownership of the committee's decision.
4. Western Governors believe that states need clear, concrete guidance from the Services about the requirements of state and multi-state conservation plans in meeting species and habitat conservation goals and objectives that would lead to stable or increasing populations, eliminate perceived threats to the species, and eliminate the need for listing.
5. The Services should acknowledge that variability in state approaches for conservation of species is acceptable, particularly for species with a wide geographic range, as long as established conservation goals and objectives are met. The Services should explore expanded use of detail positions and shared staff between state and federal agencies to increase interagency coordination and familiarity with processes. These types of well-rounded personnel can then more effectively serve as conveners and facilitators for multiagency actions.
6. Governors support legislative initiatives, court rulings, petitions or regulatory measures which allow local, state, federal and private conservation efforts adequate time to be implemented and demonstrate their efficacy. States can help local efforts achieve success by supporting them with tools for assessing and stabilizing priority habitats and species.
7. Western Governors believe funding and economic incentives for proactive, voluntary conservation efforts are essential. Such efforts may lead to more rapid conservation outcomes and even obviate the need to list a species in the first instance. Additional incentives for willing private landowners to participate in voluntary conservation efforts are likely to achieve more efficient and cost-effective results. Funded and incentivized activities should include:
  - Restoration of native habitat on public and private lands;
  - Amelioration of threats to species populations;

- Long-term management activities for conservation-reliant species;
  - Management of invasive species adversely affecting species and habitat;
  - Management of public lands in a way that supports multiple uses; and
  - Monitoring and enforcement to ensure species and habitat conservation goals and activities are being met.
8. Western Governors believe adequate post-listing funding of species management is necessary as state and federal agencies increasingly assume ESA management activities and embrace ecosystem and multi-species management strategies. Funding for ESA-related activities, especially recovery plans and recovery efforts, should be enhanced to address the growing list of threatened and endangered species. A broad range of programs, from the Farm Bill to the Water Resources Development Act, should be reviewed for opportunities to assist communities and landowners in their efforts to conserve listed species in a manner that respects water and property rights. The Cooperative Endangered Species Conservation Fund authorized under ESA Section 6 should also be funded and managed as a block grant, with state discretion on spending priorities.
  9. Western Governors support funding for wildlife conservation education and recreation programs to help better connect people with their natural surroundings and experience wildlife in their natural habitat. Funding for educational and community-based programs such as conservation literacy and field observation competency can encourage younger generations to learn about fish and wildlife conservation early and obtain the skills to partake in efforts and activities themselves.

### ***Wildlife Migration Corridors and Habitat***

10. Western Governors believe that federal land management agencies should support state and tribal efforts to identify key wildlife migration corridors and habitat in the West and engage in early and substantive consultation with Governors prior to the promulgation of any policy pertaining to the management of wildlife corridors and habitat. Western Governors also encourage federal land management agencies to take proactive steps to ensure that management plans and projects are consistent with and supportive of state migration priorities, programs, and policies.
11. Western Governors urge federal land management agencies and non-governmental organizations – in coordination with state fish and wildlife agencies – to work with private landowners and local communities to identify monetary and non-monetary incentives to encourage voluntary corridor and habitat conservation efforts. Western Governors encourage dialogue among relevant partners in the West to identify collaborative solutions to wildlife corridor and habitat conservation across land ownerships.
12. Western Governors encourage DOI and the U.S. Department of Agriculture to maintain a financial investment in research and habitat improvement projects to conserve migration corridors through the National Fish and Wildlife Foundation’s Improving Habitat Quality in Western Big Game and Migration Corridors Program.

13. Western Governors commend the considerable efforts already underway to increase coordination between state fish and wildlife agencies and state departments of transportation to integrate consideration of wildlife corridors and habitat connectivity into transportation infrastructure planning and development. The Governors also support development of best practices to expand state agency coordination.
14. Western Governors urge DOI and the U.S. Department of Transportation to cooperate in a similar manner on projects under their jurisdiction and support intra-state efforts when appropriate. The Governors also support proactive planning on public lands that seeks to direct future development actions including renewable energy, recreation, and other developments away from large tracts of intact wildlife habitat and connectivity corridors.
15. Western Governors believe that any federal efforts to identify, regulate, or conserve wildlife migration corridors through administrative or legislative action must rely upon coordination and consultation with states and should advance collaborative, locally driven initiatives to conserve key wildlife corridors and habitat. Governors further encourage Congress and the Administration to support collaborative and locally developed initiatives through financial and technical assistance.
16. Governors urge Congress to include funding and provisions in its next reauthorization of federal surface transportation programs for state-supported transportation infrastructure projects that support fish and wildlife crossings and habitat connectivity.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

*This resolution will expire in December 2023. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.*