

**Supporting Statement for Paperwork Reduction Act Submission
OMB Control Number 1018-0119**

**Policy for Evaluation of Conservation Efforts
When Making Listing Decisions
December 2, 2005**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 et seq.), specifies the process by which the Fish and Wildlife Service (Service, we) can list species as threatened or endangered. Section 4(a)(1) of the ESA requires the Service to determine whether any species is endangered or threatened (as defined by the ESA) because of any of five factors (e.g., the present or threatened destruction, modification, or curtailment of its habitat or range). The ESA further specifies that we must base the listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those conservation practices, if any, being made by any State or any political subdivision of a State to protect such species. In making a listing determination, we also consider the conservation efforts of entities other than States and political subdivisions of States.

States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or other similar documents. In some cases, the entity will develop these agreements/plans with the specific intent of trying to provide sufficient reduction or elimination of threats to a species so that listing is unnecessary. Sometimes, we must make a listing decision before these agreements/plans are implemented fully or their results are achieved. The agreements/plans may rely on future voluntary participation in various conservation efforts by private landowners or other entities, as opposed to enacted protective legislation or regulations.

The National Marine Fisheries Service and the Fish and Wildlife Service jointly developed and adopted the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (69 FR 15100) to ensure consistent and adequate evaluation of conservation efforts in agreements/plans when making listing decisions. Court rulings had found that in making certain listing determinations, both Services had inappropriately relied on conservation efforts that had not been implemented or had not yet demonstrated effectiveness in having reduced or eliminated one or more threats to a species. PECE applies specifically to conservation efforts that to date have not been implemented or have not demonstrated effectiveness. It provides criteria for evaluating the certainty of implementation and effectiveness of “formalized conservation efforts” (defined as conservation efforts identified in agreements/plans and similar documents), and a standard that must be met for the Service to consider, as part of a listing determination, the contribution that such efforts make to reducing or removing one or more threats to a species.

When a State or other entity voluntarily decides to develop a conservation agreement or plan with the specific intent of making listing the subject species unnecessary, the criteria in PECE can be construed as a requirement placed on the development of that agreement or plan, as these criteria must be satisfied to obtain and retain the desired benefit (i.e., making listing of a species as threatened or endangered unnecessary). The development of an agreement or plan containing conservation efforts that satisfy the PECE criteria and standard, with the involvement of the Service, constitutes an information collection.

One criteria in PECE is whether there are provisions for monitoring and reporting progress of a conservation effort. Monitoring is the mechanism for confirming the effectiveness of an effort, detecting failure, and detecting changes in conditions requiring modifications to the effort and/or the underlying agreement/plan, or possibly emergency conservation efforts by the Service, States, or others. In addition, monitoring sometimes is incorporated in agreements or plans as part of implementation of experimental measures. Under PECE, including provisions for monitoring and reporting is one of the criteria for demonstrating a high level of certainty that a conservation effort is likely to be effective. PECE also specifies that if the Service makes a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of formalized conservation efforts that were subject to the policy, we must track the status of the effort including the progress of implementation and effectiveness of the efforts, and if necessary, reevaluate the status of species and consider whether initiating the listing process is necessary. Thus, monitoring and reporting also constitutes an information collection.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

We may use the information as part of the basis for making findings on petitions to list species and for making decisions on whether to:

- (1) assign a species candidate status (meaning that a proposal to list it is warranted but precluded by other higher priority listing actions),
- (2) remove candidate status,
- (3) issue proposed listing rules, or
- (4) finalize or withdraw proposed listing rules.

PECE specifies that to consider that a conservation effort contributes to forming a basis for a decision that listing is not necessary or a decision to list a species as threatened rather than endangered, we must find the 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. Under PECE, the phrase “sufficiently certain” refers to having a high level of certainty. To gauge whether or not this standard has been met, we use the criteria in PECE to evaluate the certainty of implementation and the certainty of effectiveness of individual formalized conservation efforts (contained in conservation agreements/plans) that have not been implemented or have been implemented but have not demonstrated effectiveness. In evaluating

whether a species is endangered or threatened, we consider those conservation efforts that meet the standard in PECE along with other applicable information.

In field offices with lead responsibility for the technical analyses involved in a listing decision, Service biologists conduct the initial evaluation of the status of a species, including consideration of conservation efforts that are subject to PECE, and prepare the draft listing determination. Regional and Washington office staff in the Endangered Species program, solicitors in the Department of the Interior, and the Assistant Secretary for Fish, Wildlife, and Parks review the draft determination and supporting documentation, including the evaluations conducted under PECE. If a determination results in a proposal to list a species under the ESA, the proposed rule and the supporting documentation are subject to public review and comment before we make a final listing determination. The Service Director signs listing determinations based on a delegation from the Secretary.

Service biologists review the monitoring and annual report information. They use this information to track the status of the conservation effort, including the progress of implementation and effectiveness. If monitoring or other new information indicates a possible substantial negative change in the status of the species, we may reevaluate the status of the species to determine if initiating the listing process is necessary.

From April 28, 2003, when PECE became effective, through the end of Fiscal Year 2005, the Service signed or was substantially involved in the development of nine conservation agreements/plans prepared with the intent of influencing a listing decision and which contained conservation efforts that we evaluated under PECE. Three of these agreements contained conservation efforts that were important factors for Service determinations that listing was unnecessary for four species (one of the agreements covered two species). Also, Service biologists considered monitoring information for two of these four species and did not find a need to reevaluate their status. Monitoring information and annual reports related to conservation efforts for the other two species, both of which were addressed in the same agreement signed in March 2005, are not scheduled to be submitted to the Service until March 2006 and will be reviewed by Service biologists at that time.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements].

We accept agreements/plans and reports electronically. We typically receive information on conservation efforts in an electronic format from State wildlife agencies, other Federal agencies, and other entities. When the Service publishes a public notice regarding the status of a species (e.g. the annual Candidate Notice of Review, a proposed or final rule to list a species), we specifically request comments and information and provide an e-mail address for electronic submission.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

We do not collect duplicate information in relation to this information collection. Conservation agreements/plans and the efforts they contain are species- and site-specific. As a matter of practice, the Service works with the parties to an agreement/plan to ensure that there is no duplication of effort within a monitoring plan.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

We do not believe this information collection will have a significant impact on small businesses. States or other units of government usually develop conservation efforts; however, small businesses or small entities may develop agreements/plans or may agree to implement certain conservation efforts identified in a State agreement/plan. Since the purpose of each plan and monitoring is to conserve a species so that it does not require protections of the ESA, the burden for developing a plan or monitoring conservation efforts will be the same for small entities as it is for State or other government entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The ESA requires that we base listing determinations on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those conservation efforts, if any, being made to protect such species. PECE applies only to conservation efforts that are planned but not yet implemented, or to those that have been implemented but have not yet demonstrated effectiveness. If we do not collect information under PECE, we would have to base listing determinations on a review of the status of the species that takes into account only conservation efforts that have been implemented and have demonstrated effectiveness. Conservation efforts that meet the standard in PECE occasionally are an important factor in decisions that listing is unnecessary. Absent that information, a different determination might be made and the involved species could become listed. In those circumstances, various restrictions and prohibitions on the activities of Federal and non-Federal entities would go into effect that we otherwise avoid.

If monitoring is not conducted and reported, we would not be able to meet our obligation to track the status of conservation efforts involved in a decision not to list a species (or to list the species as threatened rather than endangered). We do not require more monitoring than is necessary to accomplish the objectives of the conservation efforts and the agreements/plans. If we reduce the frequency of monitoring and reporting, there would be less information on which to confirm that the status of the species remains secure and listing is not necessary. Also, reducing the frequency of monitoring and reporting could result in failing to identify changes needed in conservation efforts.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

No special circumstances exist that would require this collection to be conducted in a manner inconsistent with OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe 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. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 15, 2005, we published in the Federal Register (70 FR 47845) a notice of our intent to request that OMB renew authority for this information collection. In that notice, we solicited public comments for 60 days, ending October 14, 2005. We did not receive any comments.

We solicited input from the following two entities involved in the conservation agreements during Fiscal Year 2004:

James Casell, Administrator
 Governor's Office of Species Conservation
 P. O. Box 83720
 Boise, Idaho 83720-0195
 Phone (208) 334-2189

R. Brian Neely
 NEPA Coordinator
 Mississippi National Guard
 1410 Riverside Drive
 Jackson, Mississippi 39202
 Phone (601) 313-6128

One person estimated it took approximately 500 hours to prepare the agreement, and the other estimated 2,500 hours to prepare the agreement. One person estimated approximately 400 hours annually for monitoring and 55 hours for report preparation. The other estimated approximately 2,625 hours annually for monitoring and 1,030 hours for report preparation. The nature of the monitoring and reporting component of an agreement or plan varies according to several factors, such as the species addressed, the number of land ownerships involved, and the number and nature of the specific conservation efforts that require monitoring. 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. In contrast, monitoring of other conservation efforts may involve much more complicated and/or time-consuming efforts; for example, monitoring habitat restoration efforts may involve conducting vegetation and species surveys on multiple occasions at multiple locations annually for several years. In addition, some species are relatively easy to survey while others require more time to locate. We note also that States and other entities often have management responsibility for the species that become the subject of conservation agreements or plans and they 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. Based on the feedback from these representatives and our experience during the past 3 years, we have revised our estimates of burden hours and costs for respondents (see paragraph 12).

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Not applicable. We do not promise confidentiality.

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. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information associated with the development of an agreement/plan as well as monitoring and reporting does not include any questions of a sensitive or personal nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

*** Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

*** If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**

*** Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

We estimate that the total annual burden is 13,040 hours and the total estimated annual cost is \$652,000.

ACTIVITY	NO. OF AGREEMENTS	TIME REQUIRED (HRS)	ANNUAL BURDEN (HRS)	ESTIMATED RATE/HR	TOTAL ANNUAL COST
Develop agreement (one-time burden)	4	2,000	8,000	\$50.00	\$400,000
Monitoring (annual)	7	600	4,200	\$50.00	210,000
Report preparation (annual)	7	120	840	\$50.00	42,000
Total			13,040		\$652,000

The time needed to prepare conservation agreements varies substantially (500 to 4,000 hours), due to differences in the size of the areas covered, the number of entities involved, and the complexity and scope of the conservation issues that need to be addressed for a given species. The nature of the monitoring and reporting component also varies substantially, depending on the species addressed, the number of land ownerships involved, and the number and nature of the specific conservation efforts that require monitoring.

We estimate that respondents will develop four agreements/plans annually, with an average burden of 2,000 hours for each. The annual burden to the respondents is approximately 8,000 hours. At an average rate of \$50 per hour, the estimated annual cost is \$400,000.

Based on our outreach and consideration of the scope and scale of pending draft agreements/plans, we estimate that respondents will spend an average of 600 hours to conduct monitoring and 120 hours to prepare reports associated with monitoring for each agreement, for a total of 720 hours annually per agreement. Based on a rate of \$50 per hour, we estimate the cost to conduct the monitoring and to prepare a report to average \$36,000 annually. During the 3-year term of this information collection, we expect the number of agreements subject to monitoring and reporting to increase by two per year. Adding these to the three existing agreements, we estimate an average of seven agreements per year will be the subject of monitoring and reporting (5 agreements 2006, 7 in 2007, and 9 in 2008). Therefore, the annual burden to complete monitoring and reporting is 5,040 hours (7 X 720 hours) and the estimated total annual cost is \$252,000 (5,040 hours X \$50 per hour).

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no nonhour burden costs to respondents except for those few who elect not to submit plans and reports electronically. Those respondents would incur a minimal cost to copy and mail the documents.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The estimated annual cost to the Service for managing this information collection is \$24,360 (696 hours X \$35 per hour). We estimate that it will take an average of 160 hours for us to review each agreement or plan. Therefore, the annual burden to the Service is 640 hours (4 agreements X 160 hours). We estimate that it will take an average of 8 hours for us to review the monitoring information/report submitted for an agreement (7), for an annual burden of 56 hours. We base the cost on an average rate of \$35.00 per hour (the average wage of a GS-13).

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

We have reduced the estimated annual burden hours by 3,560. This is an adjustment based on our experience during the last 3 years. At the time of our previous request for approval of this information collection, PECE was still in draft form and we could not base our estimates on actual experience.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

While we do not formally publish this information in publications or reports, we make agreements/plans and annual reports from States or other entities available through the Internet.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable. We are not seeking a waiver of the requirement to display the expiration date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable. There are no exceptions to the certification statement in item 19 of OMB 83-I.

B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.