

Prelisting Conservation Action Proposal Questions and Answers

Q: What is the purpose of the proposed policy?

A: The purpose of the proposed policy is to establish another vehicle to encourage and reward voluntary actions to conserve species that may be considered for listing as endangered or threatened under the Endangered Species Act (ESA). In March 2012, the Service published in the *Federal Register* an advance notice of proposed rulemaking (ANPR) inviting the public to identify potential changes or additions to our policies and regulations under the ESA. One of our goals was to create additional incentives, and improve or expand existing incentives, for landowners and others to invest in early voluntary conservation actions to benefit species that may be considered for listing under the ESA.

Comments and recommendations received following publication of the ANPR covered an array of issues, including the need for guidance on developing crediting programs. The proposed policy announced today responds to these comments and recommendations.

Q: Under the proposed policy, how would the Service treat voluntary prelisting conservation actions?

A: The proposed policy sets forth general terms for how the Service will give credit to voluntary prelisting conservation actions in the event of a subsequent listing of the species. Two possibilities are described. First, for non-federal actions that would harm a listed species and require a take permit under Section 10 of the ESA, credits from prelisting conservation actions can be carried forward and treated as mitigation to offset the impacts to that species from a development action. Second, for federal actions affecting a listed species and requiring consultation under section 7 of the ESA, credits from voluntary prelisting conservation actions already undertaken can be used to offset the adverse effects of the proposed action. It is a long-established practice that federal agencies or their permit applicants can incorporate mitigating measures into their proposed projects to reduce their overall impact. The proposed policy makes clear that voluntary prelisting conservation measures can be used in this manner.

The proposed policy also establishes that *anyone* (e.g., federal agency or private entity) who wants to participate can undertake a voluntary prelisting conservation action and carry credits forward as long as the action occurs in a participating state within the framework of an established conservation plan for the species.

Q: How does the proposed policy define prelisting conservation actions?

A: The prelisting conservation action must be undertaken as part of a state-administered program for conservation of the species and, as such, the proposed policy is designed in anticipation of the active engagement of states in designing and implementing a program to encourage voluntary prelisting conservation actions. The action has to be undertaken before the species it is intended to benefit is listed under the ESA, and it must be truly voluntary, meaning it is not required by any other federal, state or local regulation.

The proposed policy also makes it clear that states can use federal funds to monitor species and the impacts of conservation actions, and to provide oversight to ensure the successful implementation and maintenance of the voluntary prelisting conservation actions as they relate to species that are candidates for ESA listing.

Q: What is the relationship of these prelisting conservation agreements to Candidate Conservation Agreements with Assurances (CCAAs) and other, similar agreements?

A: Although CCAAs and voluntary prelisting conservation actions covered by the proposed policy serve the same purpose – conservation of species before they become listed – they employ different mechanisms, have different approval requirements and have other important differences.

Firstly, CCAAs are available only to non-federal property owners, whereas the proposed prelisting conservation policy applies to any property owner (federal or non-federal).

Secondly, CCAAs provide assurances to the landowner that if the species covered by the CCAA is later listed as threatened or endangered, no new restrictions or conservation obligations will be imposed for that species so long as the landowner operates under the approved conservation plan. In contrast, the proposed prelisting conservation policy provides that credits can be carried forward and used to mitigate the impacts of actions carried out subsequent to listing, either by the landowner who earned the credit or by a third party to whom it has been transferred or sold. This proposed prelisting conservation policy provides no assurances regarding future mitigation requirements that a landowner or third party may face, other than to establish that credits from voluntary prelisting conservation actions may be applied.

Thirdly, to qualify for a CCAA, a non-federal property owner must commit to carrying out conservation measures that would be sufficient to preclude the need to list a species, assuming other landowners undertook comparable measures. In contrast, to be treated as a voluntary pre-listing conservation action under the proposed policy, an action need only be beneficial to a particular species; the policy requires no specific magnitude of benefit.

Although it is possible for a voluntary prelisting conservation action to satisfy the requirements of both the CCAA policy and this proposed policy, the action cannot be treated under both policies. Using a conservation action as mitigation or a compensatory measure against a future detrimental action is inconsistent with the intent of the CCAA policy to secure durable conservation commitments that would constitute a particular property owner's necessary contributions to precluding the need to list a species.

Q: How will the Service quantify beneficial and detrimental impacts by a landowner?

A: Providing credit for an effort to mitigate or serve as a compensatory measure for the impacts of a detrimental action on a species requires measuring both the detrimental impact and the offsetting benefit of a mitigation action or compensatory measure. The proposed policy provides that the Service will use the same standards and metrics to quantify the former as it uses to quantify the latter. The proposed policy does not specify what those uniform criteria, standards or metrics are, or how they should be developed. The criteria will need to be developed separately and are likely to vary from species to species or situation to situation.

Ultimately, the benefit of a voluntary prelisting conservation action for which credit is given must be greater than the detriment from the action for which the credit is later redeemed, providing an overall benefit to the species. The specific manner in which this net gain is to be achieved will depend on the species and the nature of the actions. In addition, a voluntary prelisting conservation action can be supplemented with additional post-listing conservation actions so the combined benefit of pre-listing and post-listing conservation actions is greater than the detriment from the post-listing detrimental actions.

Q: How can the public contribute to the development of this proposed policy?

A: The Service requests public comment on the following specific aspects of the policy:

- 1) The policy requires an overall positive assistance to the species. How should we define this benefit?
- 2) The policy requires that a prelisting conservation action be part of a state plan. What approach should be taken if there is no state plan for the species?
- 3) For species for which the state does not have the authority or jurisdiction, should we revise the policy to allow prelisting conservation actions for these species to receive credit? If so, how would these prelisting conservation actions be tracked and monitored?
- 4) How should we quantify the value of the voluntary prelisting conservation actions and credits?

- 5) Based on the species and the nature of the actions, how should we determine the percentage set aside?
- 6) The policy allows for the transfer of credits. How could an uncomplicated trading system mechanism be developed?