

above address, telephone 301/713-1401 or facsimile 301/713-0376.

SUPPLEMENTARY INFORMATION:

Background

This policy provides direction to Service personnel in determining how to consider a conservation agreement when making a decision on whether a species warrants listing under the Act. It also provides information to the groups interested in developing agreements or plans that would contribute to making it unnecessary for the Services to list a species under the Act.

On June 13, 2000, we published in the **Federal Register** (65 FR 37102) a draft policy for evaluating conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness when making listing decisions under the Act. The policy establishes two basic criteria: (1) The certainty that the conservation efforts will be implemented and (2) the certainty that the efforts will be effective. The policy provides specific factors under these two basic criteria that we will use to direct our analysis of the conservation effort. At the time of making listing determinations, we will evaluate formalized conservation efforts (i.e., conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document) to determine if the conservation effort provides certainty of implementation and effectiveness and, thereby, improves the status, as defined by the Act, of the species such that it does not meet the Act's definition of a threatened or endangered species.

When we evaluate the certainty of whether the formalized conservation effort will be implemented, we will consider the following: Do we have a high level of certainty that the resources necessary to carry out the conservation effort are available? Do the parties to the conservation effort have the authority to carry it out? Are the regulatory or procedural mechanisms in place to carry out the efforts? And is there a schedule for completing and evaluating the efforts? If the conservation effort relies on voluntary participation, we will evaluate whether the incentives that are included in the conservation effort will ensure the level of participation necessary to carry out the conservation effort. We will also evaluate the certainty that the conservation effort will be effective. In making this evaluation, we will consider the following: Does the effort describe the nature and extent of the threats to the species to be addressed and how these threats are reduced by

the conservation effort? Does the effort establish specific conservation objectives? Does the effort identify the appropriate steps to reduce threats to the species? And does the effort include quantifiable performance measures to monitor for both compliance and effectiveness? Overall, we need to be certain that the formalized conservation effort improves the status of the species at the time we make a listing determination.

This policy is important because it gives us a consistent set of criteria to evaluate formalized conservation efforts. For states and other entities that are developing agreements or plans, this policy informs them of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guides States and other entities that wish to develop formalized conservation efforts that may contribute to making listing unnecessary.

In the notice of the draft policy, we specifically requested comments on the criteria that we would use to evaluate the certainty that a formalized conservation effort will be implemented. Also, we requested comments on the timing of the development of conservation agreements or plans. We have learned that timing is the most critical element when developing a successful conservation agreement or plan. Encouraging and facilitating early development of conservation agreements or plans is an important objective of this policy. Last-minute agreements (i.e., those that are developed just before or after a species is proposed for listing) often have little chance of affecting the outcome of a listing decision. Once a species is proposed for listing under the Act, we may have insufficient time to include consideration of a newly developed conservation plan in the public notice and comment process and still meet our statutory deadlines. Last-minute efforts are also less likely to be able to demonstrate that they will be implemented and effective in reducing or removing threats to the species. In addition, there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary. Accordingly, we encourage the early development of formalized conservation efforts before the threats become too extreme and imminent and when there is greater flexibility in sufficiently improving a species' status to the point

where listing the species as threatened or endangered is unnecessary.

Summary of Comments and Recommendations

In response to our request for comments on the draft policy, we received letters from 44 entities. Thirty-five were in support of the policy and nine were against. We reviewed all comments received and have incorporated accepted suggestions or clarifications into the final policy text. Because most of these letters included similar comments (several were form letters) we grouped the comments according to issues. The following is a summary of the relevant comments and our responses. We also received comments that were not relevant to the policy and, therefore, outside the policy's scope. We responded to some of these comments where doing so would clarify the process for determining whether a species is endangered or threatened (the listing process) or clarify the nature of conservation plans, agreements, and efforts.

Policy Scope Issues

Issue 1: Many commenters felt that this policy should also apply to downlisting species from endangered to threatened status and delisting actions, or else parties to an agreement where the final decision is to list the species would not have any incentives to take action on a listed species until a recovery plan is developed. In addition, one commenter suggested that the policy scope should be expanded to include the process of designating critical habitat.

Response 1: We believe that the immediate need is to develop criteria that will guide consistent and predictable evaluation of conservation efforts at the time of a listing determination. We may consider such a policy for downlisting or delisting actions in the future. However, we note that a recovery plan is the appropriate vehicle to provide guidance on actions necessary to delist a species. Also, we may consider developing a similar policy for critical habitat designations.

Issue 2: Two commenters stated that our estimates of time needed to develop, implement, monitor, and report on conservation efforts are underestimated.

Response 2: We agree that our original estimates were too low. We have increased our estimate to an average of 2,500 person-hours to complete a conservation agreement (with a range of 1,000 to 4,000 person-hours). We also increased our estimate of the average number of person-hours to conduct monitoring and to prepare a report to