

results will have improved the status of the species sufficiently to play a significant role in the listing decision.

*Issue 15:* One commenter stated that the Services, when evaluating the certainty of conservation efforts while making listing decisions, should factor into the analysis the Services' ability to open or reopen the listing process at any time, and to list the species on an emergency basis if necessary.

*Response 15:* We will initiate or revisit a listing decision if information indicates that doing so is warranted, and on an emergency basis if there is an imminent threat to the species' well-being. However, we do not make any listing determinations based on our ability to change our decisions. We base our listing decisions on the status of the species at that time, not on some time in the future.

#### Criteria Issues

*Issue 16:* Several commenters requested that we further explain the criteria for both implementation and effectiveness. The commenters claim that our criteria are too vague and are subject to interpretation by the Services. One commenter said that, by stating "this list should not be considered comprehensive evaluation criteria," the policy allows the Services to consider criteria not addressed in the agreement, and allows for too much leeway for the Services to reject conservation efforts of an agreement, even if all criteria listed in the draft policy are satisfied.

*Response 16:* PECE establishes a set of criteria for us to consider when evaluating formalized conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness to determine if the efforts have improved the status of the species. At the time of the listing decision, we must find, with minimal uncertainty, that a particular formalized conservation effort will be implemented and will be effective, in order to find that the effort has positively affected the conservation status of a species. Meeting these criteria does not create an approval process. Some conservation efforts will address these criteria more thoroughly than others. Because, in part, circumstances vary greatly among species, we must evaluate all conservation efforts on a case-by-case basis at the time of listing, taking into account any and all factors relevant to whether the conservation effort will be implemented and effective.

Similarly, the list of criteria is not comprehensive because the conservation needs of species will vary greatly and depend on species-specific, habitat-specific, location-specific, and

action-specific factors. Because conservation needs vary, it is not possible to state all of the factors that might determine the ultimate effectiveness of formalized conservation efforts. The species-specific circumstances will also determine the amount of information necessary to satisfy these criteria. Evaluating the certainty of the effectiveness of a formalized conservation effort necessarily includes an evaluation of the technical adequacy of the effort. For example, the effectiveness of creating a wetland for species conservation will depend on soil texture, hydrology, water chemistry, and other factors. Listing all of the factors that we would appropriately consider in evaluations of technical adequacy is not possible.

*Issue 17:* One commenter suggested that we consider conservation plans in the development stage rather than waiting until finalized due to the possible benefits that may result from initial efforts.

*Response 17:* Plans that have not been finalized and, therefore, do not conform to the PECE criteria, may have some conservation value for the species. For example, in the process of developing a plan, participants and the public may become more informed about the species and its conservation needs. We will consider any benefits to a species that have accrued prior to the completion of an agreement or plan in our listing decision, under section 4(b)(1)(A) of the Act. However, the mere existence of a planning process does not provide sufficient certainty to actually improve the status of a species. The criteria of PECE set a rigorous standard for analysis and assure a high level of certainty associated with formalized conservation efforts that have not been implemented, or have yet to yield results, in order to determine that the status of the species has improved.

We encourage parties to involve the appropriate Service during the development stage of all conservation plans, whether or not they are finalized prior to a listing decision. Sharing of the best available information can lead to developing better agreements. In the event that the focus species is listed, these planning efforts can be utilized as the basis for development of Safe Harbor Agreements or Habitat Conservation Plans, through which we can permit incidental take under Section 10(a) of the Act, or provide a basis for a recovery plan.

*Issue 18:* Several commenters stated that the policy should provide more sufficient, clear criteria by which the implementation and effectiveness of conservation efforts is monitored and

assessed. One commenter also suggested that we require a specific reporting format to help show effectiveness of conservation efforts.

*Response 18:* When evaluating formalized conservation efforts under PECE, we will consider whether the effort contains provisions for monitoring and reporting implementation and effectiveness results (see criterion B.5).

Regarding a standard reporting format, the nature of the formalized conservation efforts we evaluate will probably vary a great deal. Efforts may range from complex to single-threat approaches. Therefore, for us to adopt a one-size-fits-all approach to report on monitoring efforts and results would be inappropriate.

*Issue 19:* One commenter stated that PECE is too demanding with respect to identification and commitment of resources "up-front," and that these strict requirements and commitments on conservation efforts harm the voluntary nature of agreements.

*Response 19:* Addressing the resources necessary to carry out a conservation effort is central to establishing certainty of plan implementation and effectiveness. Accordingly, we believe that PECE must establish a minimum standard to assure certainty of implementation and effectiveness. This certainty is necessary in determining whether the conservation effort has improved the status of species.

It is our intention and belief that the PECE criteria will actually increase the voluntary participation in conservation agreements by increasing the likelihood that parties' voluntary efforts and commitments that have yet to be implemented or have yet to demonstrate results will play a role in a listing decision.

#### Issues Related to Specific Changes

Several commenters recommended specific changes to the evaluation criteria. The recommended additions in language to the criteria are italicized and deletions are shown in strikeout to help the reader identify the proposed changes.

*Issue 20:* Commenters stated that there is potential confusion between evaluation criteria A.2. (authority) and A.3.(authorization) as they believed some Service staff may have difficulty distinguishing between an "authority," and an "authorization." To help eliminate this potential confusion, commenters requested that criterion A.2. be changed to read: "the legal authority of the party(ies) to the agreement or plan to implement the conservation effort and the legal