



**Species Conservation and
Endangered Species Act Initiative**

YEAR TWO REPORT

2017



EXECUTIVE SUMMARY

The Western Governors' Species Conservation and Endangered Species Act Initiative (Initiative) was launched in 2015 by the Western Governors' Association (WGA), under the leadership of then-Chairman Wyoming Governor Matt Mead. The first year of the effort culminated in approval of the expansive WGA Policy Resolution *Species Conservation and the Endangered Species Act* (Resolution). It directs WGA to develop a multi-year work plan to advance the objectives of the resolution. During the past year and per the Governors' management directive, WGA worked to effect implementation of the resolution's policies.

While the Initiative has closely examined the Endangered Species Act (ESA or Act) in the first year of work plan implementation, the effort goes well beyond consideration of the Act. Governors also seek to encourage voluntary conservation through early identification of sensitive species and establishment of institutional frameworks that encourage collaborative voluntary conservation, thus avoiding the need to list species in the first place.

Work Plan Implementation (2016-17)

Since July of 2016, WGA has focused on development and initial implementation of a work plan to advance Governors' policy priorities. WGA has conducted a series of work sessions and webinars, and employed survey instruments to: refine key themes from year one; build bipartisan support for recommendations and policy principles; and assess regulatory, statutory or administrative hurdles that may impede implementation of policy recommendations. Stakeholder discussions expanded on the following themes.

- **INCENTIVIZING VOLUNTARY CONSERVATION**

Discussions focused on identifying opportunities to further incentivize voluntary conservation efforts as a means of pre-empting the need to list species and effectively recover imperiled species.

- **LISTING, CRITICAL HABITAT DESIGNATION, RECOVERY AND DELISTING**

Participants focused on potential improvements to each step in the ESA process, from petitioning to delisting.



The Initiative was launched in 2015 by then-Chairman Wyoming Governor Matt Mead. Since July of 2016, WGA has focused on development and implementation of a work plan based on the past year's work.

- **THE ROLE OF STATE AND LOCAL GOVERNMENTS IN SPECIES CONSERVATION AND ESA IMPLEMENTATION**

Robust engagement of local, state and federal agency officials is a fundamental gubernatorial priority. Discussions centered on how state resources such as data, science, analyses and manpower can be

better leveraged for the benefit of at-risk and listed species.

- **LANDSCAPE-SCALE CONSERVATION**

Participants examined principles and considerations of landscape-scale conservation efforts to prevent listings and more effectively recover species listed under the ESA.



- **BEST AVAILABLE SCIENCE**

The ESA mandates that decisions be based upon the “best available science.” Initiative stakeholders tackled questions regarding what science should be considered “best available,” and how to increase the transparency of, and accessibility to, science underpinning ESA decisions.

This 2016-17 report details mechanisms used by WGA to solicit input and shares a sample of stakeholder recommendations emerging from work sessions that informed Western Governors’ deliberations on a set of discrete policy recommendations to implement policy principles forwarded in the resolution.

As Congress and the Administration examine the ESA, Western Governors will continue to identify and advocate for bipartisan solutions to improve the operation of the Act for wildlife and people alike.



Idaho Gov. C.L. “Butch” Otter, left, and Hawaii Gov. David Ige hosted workshops during the first year of the Initiative.



Policy recommendations emerging from WGA’s 2016-17 work will lay the foundation for the second and third implementation workplans contemplated by the Governors under their resolution. WGA will continue

to rely on the expertise of the diverse coalition of stakeholders assembled through the Initiative to refine – and ultimately realize – goals set forth by Western Governors.



Work Plan Implementation (2016-17)

WORK SESSIONS

The five work sessions held in 2016-17 provided a mechanism to assemble state, local and federal wildlife experts – along with representatives from industry, conservation, academic and legal organizations. These parties explored bipartisan opportunities to: delve more deeply into principles laid out in WGA Policy Resolution *Species Conservation and the Endangered Species Act*; analyze themes introduced by stakeholders during the framing year of the effort; and further inform Governors' recommendations to implement policy principles embedded in the WGA Resolution. Conducted in an environment conducive to candor and in-depth discussion, the work sessions: were limited in size to roughly 30 individuals; did not include a media presence; did not feature roundtable

or panel discussions; and focused specifically on one or two specific themes per session.

Work sessions helped WGA refine recommendations to improve proactive voluntary species conservation efforts and the ESA. Work session attendees were asked to consider responses to a set of framing questions developed and presented prior to each session. During the sessions, participants engaged in facilitated discussions to: respond to the framing questions; identify areas of bipartisan agreement; propose actionable recommendations; and identify obstacles to the implementation of those recommendations.

Through their structured work sessions,

WGA was able to: collect a range of stakeholder opinions on key themes identified in the Governors' resolution; identify areas of commonality among a diversity of stakeholders; and weigh the pros and cons of utilizing multiple avenues (regulatory, administrative and statutory) for implementing proposed recommendations.

At the conclusion of each work session, recommendations from breakout groups were compiled and a summary document including recommendations was distributed to interested parties and posted on the WGA website. (Note: while recommendations in work session summaries were widely supported in concept, their inclusion in the summary does not connote attendee consensus, unless noted.)

WORK SESSION 1: INCENTIVIZING VOLUNTARY CONSERVATION

(November 16, 2016)



The southwestern willow flycatcher was listed as endangered under the ESA in 1995. Since then, more than 8,000 acres of riparian habitat have been conserved with the help of incentives provided to private landowners by the Natural Resources Conservation Service.

Work session participants engaged in a facilitated discussion to identify obstacles and propose solutions to engaging industry and landowners in proactive voluntary conservation efforts for listed and non-listed species. A sample of the numerous recommendations (captured in full by the session summary posted on the WGA website) follows:

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“When landowners improve or maintain habitat as a condition of an assurance agreement, and conserve candidate or non-listed species, landowners should have the ability to sell mitigation credits for those species as long as they ensure the habitat is maintained in the appropriate condition through the life of the mitigation credit agreement.”

This comment was voiced in a discussion regarding what the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) consider “double dipping” when it comes to habitat improvements resulting from assurance agreements such as Candidate Conservation Agreements with Assurances (CCAA). Participants noted that enrollment in a regulatory assurance agreement is generally interpreted to be mutually exclusive with the sale of mitigation credits for additional habitat improvements. Financial incentives for landowners to enroll in various state or privately-run mitigation credit systems are increasingly prevalent.

A rancher stated that financial incentives available to landowners through marketing conservation credits are increasingly attractive options. If, however, the landowner is enrolled in a regulatory assurance agreement for a candidate species, he or she must choose between the options. In the case of a CCAA, if the species is not ultimately listed, landowners may be inclined to cancel regulatory assurances of the CCAA in favor of financial incentives to sell credits. Ultimately, the group agreed that the success of voluntary conservation efforts depends on flexibility. Accordingly, participants recommended reconsidering what constitutes “double dipping” to ensure that engagement in an assurance agreement does not preclude the opportunity to also market mitigation credits when appropriate.

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“Find a way to provide assurances on public land so that Candidate Conservation Agreements (CCAs) more closely resemble CCAAs.”

Participants examined the efficacy of Candidate Conservation Agreements (CCAs) and CCAAs where there are patchwork patterns of land ownership – as is common in the West. CCAs do not offer the regulatory assurances of CCAAs and primarily take the shape of agreements among the Services and



Voluntary conservation measures carried out by private landowners significantly contributed to the determination in 2014 that Arctic grayling did not warrant listing under the ESA.

other federal agencies and/or states. The lack of assurances provided by a CCA on federal land, however, may create a disincentive for landowners to enroll in a CCAA if their properties border federal land. Participants noted that CCAAs lose much of their appeal to private landowners when there is intermingled private and public land. It makes little sense to improve the private land, without improvements on neighboring federal land, as species do not recognize jurisdictional boundaries. If a landowner improves habitat on his or her land, and a species migrates to nearby federal land and is harmed, that can present major challenges to the landowner.

While providing landowners with regulatory assurances if they also work to improve neighboring land makes sense in concept, the reality is far more complex. The assurance attached to a CCAA is that an individual will not be required to do any additional conservation actions beyond the terms of the agreement if the species is listed. The Bureau of Land Management (BLM) and United States Forest Service

(USFS) cannot provide that assurance to landowners seeking to help improve federal land. If a species is listed, federal land management agencies are required under statute to modify land use planning to provide additional conservation support for listed species. Instead of proposing to attach assurances to CCAs, work session participants focused on other means of providing assurances to land owners that may reduce the disincentive to participate in CCAAs when operations span both private and federal lands.

Participants concluded that, while providing CCAA-like regulatory assurances on federal land might not be feasible, there may be promise in looking to provide increased operational certainty to stakeholders operating on federal lands. Proposed means of accomplishing this included amending the Grazing Improvement Act to allow landowners improving neighboring federal land to receive extended grazing lease renewal periods or increased Animal Unit Months on grazing permits in exchange for private conservation actions on federal land.



WORK SESSION 2: LISTING, CRITICAL HABITAT, RECOVERY AND DELISTING (JANUARY 31, 2017)

Work session participants engaged in a facilitated discussion on means of improving the efficacy of the ESA process (from petitioning to delisting). A sample of the numerous recommendations (captured in full by the session summary posted on the WGA website) follows:

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“Encourage USFS and NMFS to develop Species Status Assessments to help inform a listing determination. If listing is deemed warranted, use this same assessment to inform development of a recovery plan blueprint so stakeholders are able to implement effective recovery actions prior to the release of a formal species recovery plan.”

Participants discussed how to make the recovery planning process under ESA more inclusive and informative for conservation actions on the ground. Currently, recovery plans are often issued many years after a species is listed under the Act. This delay fosters uncertainty for stakeholders regarding what specific conservation actions can be implemented immediately following a listing to ameliorate threats and assist in species recovery. Generally, work session participants deemed it desirable to promulgate a recovery plan

as soon as possible following a listing decision to remove uncertainty around actions necessary to recover a species.

Discussion around this recommendation also addressed the desirability of recovery plans that are dynamic and adaptive to changing circumstances -- and that maintain consistent recovery goals tied to delisting. Some participants believe that, because recovery goals are frequently altered, the “goalposts” for delisting are ever moving. This dynamic effectively disenfranchises parties committed to recovery and discourages future collaborative conservation efforts.

In response to these frustrations with the recovery and delisting process, one participant remarked, “Is there a way to create a long-term vision of the ultimate range-wide recovery goal for a species that is defined at the time of listing? This may allow greater flexibility to tailor recovery actions for specific locations, but will keep the goalposts more firmly planted for the entire species range-wide.”

This led to a discussion about the Species Status Assessment (SSA) process employed by the Services. The work session participants agreed that the SSA framework provides an efficient and inclusive model for assembling

science that informs a decision to list. Participants noted that SSAs provide a collaborative means of assembling available science on a species prior to listing. This information will give a strong indication as to the primary threats to the species, highlighting early conservation actions (a “recovery blueprint”) that stakeholders could implement to recover a species prior to publication of a formal recovery plan.

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“Pair economic incentives with critical habitat and priority conservation designations on private land to alleviate the burden of critical habitat designations on private land while rewarding stewardship of quality habitat. Incorporate a scoring system – similar to, but not duplicative of, farm bill incentive scoring system – developed by stakeholders for private land conservation priority to assign varying economic incentives.”

When critical habitat or some other form of priority conservation designation is identified by the Services on private land, it is almost always regarded as a negative consequence to the landowner. A landowner stated, “If you have a rancher that is doing the right thing and maintaining prime habitat for a species, you want them to keep doing what they’re doing and reward that. Instead, when critical habitat is designated on that land, it is often perceived as agencies needing to protect that habitat from the rancher. This feels punitive and is a fundamental problem with critical habitat designations on private land.”

Participants discussed how private landowners currently perceive critical habitat designations. The group recommended that, rather than imposing restrictions and penalties that are often associated (fairly or not) with critical habitat designations,

“The most important part of what we are talking about is allowing the FWS to prioritize species listing work based on their expertise. This process grants stakeholders predictability on when listing decisions will be made. Regardless of how you feel about amending statutory deadlines, I think we generally agree that we need to focus on shielding the FWS with the legal authority to move forward without fear of litigation when it comes to prioritizing species for listing based on conservation needs and science.”



A proposed expansion to critical habitat designations for the Hawaiian monk seal proved controversial, highlighting the need for more collaborative and practical solutions under the ESA.

the Services should reward private landowners for their stewardship and success in maintaining habitat necessary to support species conservation and recovery.

The group suggested that if economic incentives were tied to critical habitat designations on private land, it might help shift the negative perception around critical habitat for landowners. Locally-developed conservation scoring systems that rate conservation suitability for particular species could be developed. Higher scores would indicate a stronger conservation value for the species, increasing the amount of money rewarded to a landowner for maintaining that habitat if it is included in a critical habitat designation.

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“Maintain a set of statutory timelines for findings on petitions to list, but allow for flexibility around timelines based on scientific assessments of risk to species. Use authority of the Services to initiate an emergency listing when necessary.”

This recommendation addresses concerns of some participants that the current 90-day and 12-month deadlines for listing determinations under ESA can be impractical. Some noted that The Services are not adequately funded to meet the rigid deadlines mandated in the Act. This inadequacy, in turn, triggers litigation. Deadline litigation often ends in settlement between the Services and litigants that dictates future listing work. This can impede the ability of the Services to prioritize listing work based on a scientific assessment of risk to species.

Some participants proposed extending the 90-day and 12-month deadlines to give the Services more time to prioritize species needs and satisfy listing deadlines without the threat of litigation driving listing prioritization. Amending statutory deadlines in the Act was never formally agreed upon by a majority of participants, but there was wide agreement on the need to preserve the Services’ ability to prioritize listing work based on a science-driven assessment of risk to species.

The seven-year listing workplan released by the FWS in 2016 was cited as an example of how listing under the Act should proceed. The workplan was lauded by participants for its emphasis on prioritization of species listings based on threats, data availability and existing voluntary conservation actions expected to ameliorate threats.

One participant noted, “The most important part of what we are talking about is allowing the FWS to prioritize species listing work based on their expertise. This process grants stakeholders predictability on when listing decisions will be made. Regardless of how you feel about amending statutory deadlines, I think we generally agree that we need to focus on shielding the FWS with the legal authority to move forward without fear of litigation when it comes to prioritizing species for listing based on conservation needs and science. There needs to be backstop deadlines to ensure that listing work is not intentionally slipping through the cracks, but greater flexibility to prioritize listing work makes sense.”



WORK SESSION 3: THE ROLE OF STATE AND LOCAL GOVERNMENTS IN SPECIES CONSERVATION AND ESA IMPLEMENTATION (FEBRUARY 28, 2017)

Work session participants engaged in a facilitated discussion of the role of state and local governments in facilitating proactive species conservation and implementing the ESA. A sample of the numerous recommendations (captured in full by the session summary posted on the WGA website) follows:

. . .

“Afford states adequate time and opportunity to develop a conservation plan, in coordination with federal agencies, that precludes the need to list a species under the ESA. State-developed conservation plans endorsed by the Services should provide certainty that measurable goals – if met – will significantly preclude the need to list.”

This recommendation encapsulates the themes of assurance, coordination, regulatory flexibility and accountability referenced by stakeholders in regard to incentivizing voluntary conservation for at-risk species outside of the ESA.

Participants discussed the role of prelisting conservation efforts in listing determinations under the Act. An industry representative stated, “There needs to be some level of assurance that prelisting conservation efforts will be considered as a factor when the Services decide if listing is warranted. Otherwise, the lack of consideration by the Services serves as a disincentive for participation in future voluntary efforts.”

Some participants suggested that the ESA needs a more robust mechanism to manage expectations and ensure that

conservation efforts are considered in listing decisions. Some noted that, from a landowner perspective, it seems that the weight given to conservation efforts is heavily dependent on which Service employee is involved. Stakeholders from different regions shared very different experiences. At times, consultation can feel like a box-checking exercise by the Services. When this is the case, trust is eroded and stakeholders begin to wonder why they should bother engaging if their efforts are not going to be seriously considered. The group agreed that there was a need to thoroughly define a transparent process by which voluntary efforts will be thoroughly considered.

Participants also discussed regulatory flexibility around deadlines in the Act when existing state conservation plans are in development or being implemented. Participants generally agreed that it would be prudent to provide some regulatory flexibility for the Services to defer listing decisions for an agreed upon time period to evaluate the effectiveness of state conservation plans. Despite this general agreement, the specific means of achieving it are subject to further debate.

Participants discussed mechanisms for ensuring that a state-led prelisting conservation plan can – once endorsed by the Services – provide a defensible legal argument for FWS and NMFS to defer a listing decision for a set amount of time. A federal representative noted, “If we are talking about adding flexibility around deadlines mandated in the Act, the federal government needs to be involved in setting the bar and then step back to let states determine how to accomplish those goals.” This comment reflects the conclusion at which many participants arrived: States must be responsible for developing



Partnership-driven conservation efforts brought the Channel Island fox from the brink of extinction in 2004 to recovery in 2016 – the fastest successful recovery for any ESA-listed mammal in the United States.



State-led development of the Range-Wide Conservation Plan for the lesser prairie chicken emphasizes tools and incentives to encourage landowners and industry to voluntarily partner with state agencies in habitat conservation efforts.

plans to preclude the need to list, but conservation planning must be done in a way that provides measurable goals and regulatory certainty if goals set by the Services are met.

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“Make new funding mechanisms available to the Services and states for Section 6 activities.

This recommendation evolved from a discussion around capacity for the Services to respond to increased interest in conservation financing efforts such as mitigation banking and habitat exchanges. One participant noted, “We don’t have nearly enough resources allocated to the planning side of things to even be able to implement much of what we have

discussed (incentive-based proactive conservation programs) in a timely fashion. We need to invest in research and planning to empower the Services to be responsive to industry when they are earnestly looking to engage in mitigation banking or similar efforts.”

This led to a discussion of the need to report on measurable outcomes delivered by voluntary conservation efforts. Participants noted that it will be difficult to build support for programs to incentivize proactive conservation before an ESA listing decision is imminent if there is not an effort to measure and report on outcomes of those efforts. Additional funding may be necessary to jump-start efforts, but an evaluation of efforts to see if they are yielding expected results must precede a

request for funding. Once an evaluation is conducted, reporting on outcomes must come next to validate and indicate the necessity of voluntary efforts.

Ultimately, participants noted that increased funding for implementation of Section 6 of the Act is critical. They recommended that funding for Section 6 activities be focused on empowering states to further engage in conservation of at-risk and listed species. While funding would be targeted for state-led conservation efforts, it would also necessarily increase the capacity of the Services to provide timely responses to state and industry conservation plans and increase the capacity to anticipate and respond to emerging issues.



WEBINAR: COLLABORATIVE SPECIES CONSERVATION IN THE SOUTHEAST



An objective of first-year work plan implementation was to expand the discussion to a national level beyond just the West. Collaborative work between state and federal agencies in the Southeast presented an excellent case study in leveraging state expertise and capacity to improve species conservation efforts. The webinar, *Collaborative Species Conservation in the Southeast*, examined the role of trust and communication in species conservation efforts and the collective work of state, federal and industry partners to ensure the conservation of numerous species endemic to the southeastern United States. Moderator Cindy Dohner, Southeast Regional Director, U.S. Fish and Wildlife Service, guided a discussion on how state-led efforts – in collaboration with federal partners – to establish a proactive plan to conserve hundreds of at-risk species has led to numerous not warranted findings and delistings (or down-listings) under the Endangered Species Act (ESA). Select comments from the webinar follow:

“State and federal agencies in the Southeast are integrating processes by pooling our financial and human resources across the region. All of us have limited resources, so optimizing these resources becomes critical to addressing a tidal wave of needs. When states come together to coordinate efforts in species conservation, we become more efficient and effective as stewards of wildlife in the region.”

**Gordon Myers,
Executive Director, North Carolina
Wildlife Resources Commission**

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“State agencies are working hard to improve management of at-risk species by developing imperiled species management plans. We are realizing that it is not necessarily how you classify a species that matters, but rather how you manage it and how you work with partners to address species needs and threats. These management plans have been critical in bringing together partners and leveraging limited resources.”

**Nick Wiley,
Executive Director, Florida Fish and
Wildlife Conservation Commission**

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“Many landowners would frown on a 30-year commitment with the FWS, but I have come to realize that voluntary and cooperative conservation is imperative to keep species and habitat healthy. This partnership is critically

important if we are going to facilitate conservation of species and prevent the need to list species under the ESA. Command and control conservation is counter-productive. Landowners need a seat at the table when regulatory efforts for conservation are developed.”

**Dr. Salem Saloom,
Alabama Landowner**

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“[The work of the National Alliance of Forest Owners] with the Fish and Wildlife Service came from a mutual understanding that working forests can and will help conserve at-risk and listed species. This work initially started in the Southeast, but have scaled efforts up to the national level. There is an understanding between NAFO and the Fish and Wildlife Service that NAFO members will work proactively to conserve species found in our working forests. The Fish and Wildlife Service will work to provide regulatory assurances in exchange for agreed upon and independently verified management practices. We are creating a new paradigm built on trust and collaboration.”

**Jimmy Bullock,
Senior VP, Forest Sustainability,
Resources Management Service, LLC**

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“One thing that we quickly realized when coming together to create the Southeast At-Risk Species Program (SEARS) was that we need to do a better

job sharing data, both between states and with the FWS. Most states have signed formal data sharing agreements that help us share data with the Fish and Wildlife Service when a species is petitioned. Also, states have been vocal supporters of the Species Status Assessment process. It creates a more inclusive and collaborative way for the FWS to collect information necessary for a listing decision.”

**Todd Ewing,
Supervisor, Aquatic Wildlife Diversity
Program, North Carolina Wildlife
Resources Commission & Vice-
Chair, Wildlife Diversity Committee,
Southeastern Association of Fish and
Wildlife Agencies**

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“Relationships and trust are essential when you are working with private landowners. We certainly have more work to do there, but we are excited about continuing to build relationships and ramp up efforts for voluntary private lands conservation in the future. The work by the FWS in the Southeast region to work collaboratively across jurisdictional boundaries is paying off. There are 95 species in the region that have either not been listed, delisted or downlisted. A big reason why is collaborative work with the states to collect data and work with landowners to improve habitat.”

**Mike Harris,
At-Risk Species Coordinator,
Southeast Region,
U.S. Fish and Wildlife Service**



WORK SESSION 4: LANDSCAPE-SCALE CONSERVATION AND BEST AVAILABLE SCIENCE (APRIL 4, 2017)

Work session participants engaged in a facilitated discussion about landscape-scale conservation strategies and the best available science mandate under ESA. Dialogue included framing conservations for landscape-scale conservation efforts and examined how such efforts may interact with existing policy frameworks. The group never reached clarity around concrete recommendations for implementing landscape-scale conservation, and instead focused on framing necessary considerations for implementing successful landscape-scale conservation efforts. As such, rather than presenting a series of recommendations, the following is a summation (captured in full by the session summary posted on the WGA website) of key factors to consider in landscape-scale conservation as defined by session participants.

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Work session participants' discussion on landscape-scale conservation primarily centered on framing considerations (e.g. size, scope, and funding) and an examination of how landscape-scale efforts may interact with existing policy frameworks. Rather than developing discrete recommendations for Governors, participants focused on a deep examination of the factors that must be considered to establish a successful landscape-scale effort.

Participants discussed the definition of "landscape." Some participants noted that it involves consistent ecological processes that lend integrity to a piece of land. Once those ecological factors have been defined, it is important to consider cultural and socio-economic factors to define a workable landscape for management purposes.

Another participant noted that prior to defining the scale of a conservation effort, one must fully assess critical

issues and management objectives. "There need to be two parts of determining the scale of a landscape-scale conservation effort. First, look at the larger landscape for existing issues and examine the scale at which those issues exist. Then, determine the appropriate response to that assessment at a scale that is relevant to the objectives identified. It all comes down to relevancy. A small piece of land may be absolutely essential to the success of the plan."

Funding was deemed an essential consideration to address prior to initiating a landscape-scale conservation plan. Participants explored innovative opportunities to fund landscape-scale conservation through private investments in habitat stewardship and ecosystem services. These funding streams, however, can be volatile and dependent on consistent regulatory mechanisms to drive investor confidence. Establishing

consistent regulatory mechanisms to drive programmatic funding for landscape-scale efforts was deemed critical to success.

The group emphasized the importance of a proactive approach to the timing of landscape-scale efforts. One participant noted, "Until there is a systematic approach to looking at lands, we will continue to be reactive and fight these ESA battles. We need to get further in front of these looming issues and establish a programmatic approach to addressing issues at a landscape-scale."

This led to a discussion about motivating participation in proactive landscape-scale efforts. One participant stated, "I think all see the potential benefit of a landscape-scale approach, but there is some serious unease that is associated with the term. Many have come to think of it as necessarily meaning top-down,



In 2012, the National Marine Fisheries Service announced that ringed seal warranted listing as threatened under the ESA due to threats such as melting sea ice and reduced snowfall.



States, federal agencies, industry, private landowners and conservation groups undertook an unprecedented voluntary landscape-scale conservation effort to conserve the greater sage-grouse across its 257,000 square-mile range.

command and control management by federal agencies. In some instances that may be true. If a plan is too broad, you end up diluting local voices. It is critical to think in scale of influence to address this tension. Plans must be locally developed and relevant to local issues, with strong leadership across local, state, federal, industry, and non-governmental organization (NGO) participants to combat the narrative that landscape-scale means an oversized federal influence.”

Finally, participants discussed the policy challenges of permitting and planning within a landscape-scale framework. A conservation

representative asked, “How do you connect permitting or management decisions to landscape goals? You are asking people to be able to make regulatory decisions with landscape goals in mind through site specific management processes. How do you accomplish this without a government mandate? Successful landscape-scale efforts are organically driven from the ground up, but connecting the landscape goals with the existing regulatory process is difficult without some sort of government mandate to do so. This may come across as overreach and could chill efforts at the local level.”

Participants generally agreed that there is no one-size-fits all solution to this problem. Early coordination is essential to successful landscape-scale conservation within existing regulatory frameworks. Bringing state and federal agencies together early on to establish a common vision and build a comprehensive plan is critical. With a broader plan in place, each agency can develop its specific plan within the confines of the broader vision. That one specific plan can be tailored to address the agency’s specific mandates.

Following the discussion on landscape-scale conservation, work session participants engaged in a

facilitated discussion on transparency, accessibility and validity of science as it informs decisions under the ESA. A sample of the numerous recommendations follows:

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“Put mechanisms in place for third-party aggregation and reporting of confidential data.”

This recommendation speaks to challenges associated with states sharing location-specific raw data with the Services to inform ESA decision-making, (viz. fears that data cannot be protected from publication under the Freedom of Information Act (FOIA)). Participants noted that, in many instances, there is a wealth of scientific information hosted on private lands that goes unobserved and unreported due to fears over private, location-specific data being publicly released by federal agencies. In general, the Services may have little ability to keep location-specific data shielded from publication under FOIA. This is a serious impediment to collecting the most complete body of science on species being considered for listing.

States often enjoy a closer working relationship with landowners that may result in collection of data on private land that the Services cannot otherwise obtain. States, however, risk violating the trust of landowners – and in many cases their own statutory imperatives – if location-specific data collected on private property is turned over to the Services for consideration and then disclosed through a FOIA request.

One federal participant noted that certain federal agencies (e.g. National Park Service and United States Department of Agriculture) enjoy statutory exceptions from FOIA that allow them to shield location-specific data in some circumstances. The Services’ limited ability to withhold sensitive raw data from public disclosure under FOIA, combined with an increased congressional appetite for ensuring transparency around ESA decisions, presents a challenge to

ensuring complete consideration of state data, especially when such data is collected with permission of private landowners under the condition that it will not become public.

Participants noted that outside of amending FOIA or authorizing a statutory exception for the Services, there is likely not a one-size-fits-all solution to this problem. They recommended that Governors investigate the possibility of utilizing trusted third parties to review and aggregate raw state data, and then allow the Services to view that data through a secure portal. This may advance the use of state data and data collected on private land as a principal source in ESA decisions.

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“Agencies should publish guidelines on how they weigh uncertainty associated with the use of predictive modeling in listing decisions, critical habitat designations, recovery planning and delisting decisions.”

Participants discussed the role of predictive modeling in informing listing decisions under the ESA. While other forms of predictive modeling (such as population viability models) were discussed, in the context of this work session discussion, “predictive modeling” primarily referred to climate change models. Participants began with a focus on the historic use of predictive modeling when assessing the status of a species and examined considerations that factor into the Services’ decision on how to weigh projections and models in a listing decision.

Federal representatives noted that current agency procedures for integrating predictive climate models in ESA decisions are evaluated on a case-by-case basis. Generally, the philosophy is not to base listing decisions solely on predictive modeling. In the case of species dependent on sea ice, the Services believe that models give a clear enough indication of decline to warrant a listing under the Act. To arrive at that

conclusion, numerous assessments must be made to warrant confidence in the model. If the interpretation of data drifts into the realm of speculation after assessment and analysis, then the predictive data will not inform a listing decision.

Participants also discussed how predictive modeling may inform ESA decisions outside of the listing process. One attendee noted, “I am concerned that, through increasing reliance on predictive modeling for climate change, the Services are anticipating changes in critical habitat for species 50-100 years out based on what areas models suggest will have characteristics necessary to recover that species in the future. I recognize the value of predictive modeling and realize that it applies beyond just modeling climate change, but I am concerned about what appears to be a growing reliance on these models. The language in the ESA is very clear and I’m not sure the Act is even equipped to deal with species threatened solely on the basis of climate change.”

Some other participants shared this concern and suggested potential policy recommendations to increase transparency and confidence in decisions based on predictive modeling. The group ultimately concluded that it is appropriate to consider threats posed by climate change in ESA decisions. Accordingly, it is reasonable to rely on predictive modeling to a certain extent, but modeling must be performed in a way that is transparent and accessible to anyone who wants to see how the Services arrived at a decision. Participants recommended that the Services publish guidelines on how uncertainty associated with the use of predictive modeling is weighed in ESA decisions. The Services also should periodically assess whether predictive models used to inform decisions remain valid. Accountability and transparency will be essential to continued use of predictive modeling to inform decisions under the Act.



CONCLUSION

Delivery of this 2016-17 report to Western Governors' signals the conclusion of the first year of work plan implementation. The wide array of stakeholders' input collected through work plan implementation has informed Governors' deliberations on a set of discrete recommendations to advance and implement policy principles embedded in the resolution.

Policy recommendations emerging from WGA's first year of work plan implementation will lay the foundation for the second and third year work plans contemplated by the Governors under their resolution. Significant work remains to promote Governors' recommendations and collaborate with Congress and the Administration in identifying avenues for implementation of bipartisan principles.

WGA will continue to rely on the expertise of a diverse coalition of stakeholders to develop additional recommendations to improve proactive conservation efforts that will diminish the need to apply the ESA. WGA will also rely on this coalition to recommend further means of improving the efficacy of the ESA for wildlife and people.

WGA thanks those organizations that contributed to this year of the Initiative through participation in work sessions, surveys and webinars

Alaska Department of Fish and Game
Anadarko Petroleum Corporation
Arizona Association of Conservation Districts
Arizona Farm Bureau
Arizona Game and Fish Department
Backcountry Hunters & Anglers
California Department of Fish & Wildlife
California Farm Bureau Federation
Center for Biological Diversity
Chesapeake Energy
Collaboration-in-Governance,
a California Non-profit Corporation
Colorado Attorney General's Office
Colorado Cattlemen's Association
Colorado Counties, Inc.
Colorado Department of Law
Colorado Off Highway Vehicle Coalition
Colorado Parks, Wildlife and Lands
Concho Resources
ConocoPhillips
CropLife America
Davis Graham & Stubbs LLP
Defenders of Wildlife
Devon Energy
Endangered Species Coalition
Environmental Defense Fund
Family Farm Alliance
Hawaii Department of Land and Natural Resources
Hogan Lovells
Holland & Hart LLP

Idaho Governor's Office of Species Conservation
National Endangered Species Act Reform Coalition
National Marine Fisheries Service
Nature Conservancy Wyoming
Occidental Petroleum Corporation
Office of Governor Matthew H. Mead
Pacific Legal Foundation
Public Lands Council/National Cattlemen's Beef Association
QEP Resources, Inc.
Sweetwater River Conservancy
The National Audubon Society
The Nature Conservancy
The Ruckelshaus Institute of Environment and Natural Resources
The Wilderness Society
Theodore Roosevelt Conservation Partnership
Tri-State Generation and Transmission
United States Fish and Wildlife Service
University of Wyoming
USDA/NRCS
Van Ness Feldman LLP
Washington Department of Fish and Wildlife
Western Association of Agricultural Experiment State Directors
Western Association of Fish and Wildlife Agencies
Western Energy Alliance
Western Interstate Region & Wyoming
County Commissioners Association
Western Landowners Alliance
Wyoming Association of Conservation Districts
Wyoming County Commissioners Association
Wyoming Stock Growers Association



ON THE WEB

westgov.org/initiatives/esa-initiative

A central objective of the Species Conservation and Endangered Species Act Initiative has been to ensure that the exchange of ideas by its participants reaches the widest possible audience. WGA has accomplished that goal in part through an online resource that features videos of all year-one workshops, a webinar series, and species conservation resources such as the case study series, *Species Spotlight*.

The website also includes downloadable versions of the reports that document the work accomplished during the first two years of the Initiative. Website visitors also may download the *Chairman's Initiative Appendix*, a document that delivers expanded detail on the conversations at year-one workshops, as well as participant responses to questionnaires.



WEBINARS

“Collaborative Species Conservation in the Southeast” examined the role of trust and communication in species conservation efforts and the collective work of state, federal and industry partners to ensure the conservation of numerous species endemic to the southeastern U.S. Find all Initiative webinars on the WGA website.



SPECIES SPOTLIGHT

Learn about the conservation agreement that keeps Graham’s and White River beardtongues off the ESA threatened list and how proactive conservation efforts brought the Channel Island fox from endangered to recovered in record time. Find all Species Spotlight case studies on the WGA website.

WGA THANKS . . .

The Western Governors’ Association would like to thank the following for their support during year two of the Species Conservation and ESA Initiative.





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