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Response to Western Governors Association ESA questionnaire

Definitions of some terms as used in the following responses:

- *Imperiled species*: species listed as either threatened or endangered
- *At-risk species*: candidate species (species petitioned, proposed or being considered for listing)
- *Species of conservation concern*: non-listed and non-candidate species that appear to be rare or declining and likely in need of proactive conservation actions
- *Candidate conservation measures*: voluntary pre-listing conservation actions to conserve candidate species
- *Proactive conservation measures*: voluntary pre-listing conservation actions to conserve **non-candidate** as well as candidate and imperiled species. (Actions designed to maintain robust habitat and populations, thus avoiding the need for petitions and listing).

Multispecies and Ecosystem Management

How can a multi-species and landscape-level conservation approach be better incorporated in:

1. Prelisting conservation efforts, including land use planning by federal agencies?

(Summary of topics in this section: proactive, multi-species landscape focused actions; federal-state collaboration; programmatic (umbrella) landowner assurance agreements (tools such as CCAA's, Conference Reports, Biological Opinions, HCP's); and protection from either ESA or EPA regulation for voluntary recovery of riparian and wetland habitats)

Landowners (and federal land managers for that matter) are focused on specific units of land upon which they are managing for the welfare of multiple wild and domestic species as well as other land uses and users (e.g. recreation and energy development). This difference in perspective (ESA range-wide single-species focus vs. landowner focus on one ranch with

multiple goals) creates challenges to conservation. Whereas a single species recovery plan is designed to maximize conditions for one species across the landscape, a multi-species management plan requires a management strategy that optimizes the condition of the landscape to provide a home for many species (including imperiled, at-risk and species of conservation concern).

WLA believes the top priority for wildlife and other stakeholders is implementing pro-active conservation measures that maintain healthy habitat and wildlife populations, thereby averting a need to list species in the first place. Investments in outreach, technical support, funding and better assurances for voluntary, proactive conservation by landowners are likely to be the least expensive and most successful approach. When discussing proactive conservation actions, it is important to remember that the majority of non-listed and non-migratory species fall under state management authority, and that state participation is essential to success. Federal programs like Partners for Fish and Wildlife, Natural Resources Conservation Service (NRCS) must be linked with Cooperative Agreements with state wildlife agencies and the Western Association of Fish and Wildlife Agencies (WAFWA). When properly funded, tasked and staffed these federal-state collaborations have and can facilitate landowner participation in proactive conservation measures.

Use of Umbrella Agreements

WLA encourages the continued development of regional, state-wide and range-wide **programmatic, or ‘umbrella’ agreements**. A very promising, but sorely underfunded program is the Candidate Conservation Agreement and Conservation Agreement with Assurances program (CCA/CCAA). A recent example of how landscape scale conservation with landowner certainty can occur is the “Greater Sage Grouse CCAA for Wyoming Ranch Management” and the multi-disciplinary Sage Grouse Initiative (SGI). The umbrella CCAA was collaboratively developed by state, federal and private agencies and entities; it listed threats and candidate conservation measures to counter the threats, and included a monitoring and adaptive management process. The CCAA was administered by the Fish and Wildlife Service [FWS]; participating landowners developed individual conservation and monitoring plans, then enrolled their property as an individual CCAA. A companion CCA was also developed to cover ranching issues on federal leases.

In addition, FWS prepared a ‘Conference Report’ to the NRCS-led SGI, which evaluated the collective landscape-level effects of implementing all aspects of SGI on two species, the Gunnison and Greater Sage Grouse. The report provided cooperators who voluntarily implemented the approved practices the certainty that they would be in compliance with the ESA in the event sage grouse became listed. These assurance programs, combined with a FWS approved State Conservation Plan allowed species conservation to occur on working landscapes.

Building on the above example, once conservation measures have been defined and landowner assurances created for a landscape, protections could be expanded to include additional imperiled, at-risk and species of conservation concern in the same region or area. Multi-species Conference Reports or Biological Opinions from FWS to NRCS could provide assurances to landowners for following approved management practices (as appears to be happening in AZ). Regional CCAA's (with a certificate of inclusion for additional species) could also be used to provide landowner assurances and promote multi-species and landscape-scale proactive conservation measures. WLA urges FWS to work collaboratively with NRCS and state wildlife agencies (through Cooperative Agreements) to promote and increase the use of these mechanisms.

Improve the quality of Habitat Conservation Plans

The role of Habitat Conservation Plans (HCP's) should be broadened from mitigating habitat loss or acquiring lands to one of promoting landscape-scale, multi-species, proactive conservation measures on working landscapes. As with umbrella CCAA's or Conference Reports, once conservation practices are described for imperiled species in a programmatic HCP, additional at-risk and species of conservation concern could be added using a certificate of inclusion.

Currently, some conservation-minded landowners feel that HCP's do not provide the desired level of staffing assistance, assurance and funding, nor focus on proactive conservation measures. Landowners have also expressed concern that HCP's are viewed by some NGO's as a flawed approach (since they allow limited development and incidental take within critical habitat). Landowners can end up mired in legal actions, which only stymie their conservation goals.

While the HCP's work for landowners needing a 'take' provision to develop part of their property, it may not be the best approach for conservation minded landowners wishing to improve habitat quality from a low quality 'baseline' to a higher quality level for the benefit of land health, wildlife conservation and water quality. Many landowners in the West are committed to restoring riparian habitat and water quality, yet in doing so potentially face negative consequences. For example, landowners who restore wetlands and therefore create suitable habitat for imperiled species may encounter regulation under the ESA (as critical habitat) or EPA (as wetlands under the Clean Water Act). What is needed is a **single landowner assurance 'tool'** that protects the landowner under both ESA and EPA. Elements of a multi-agency, landowner-friendly program promoting riparian habitat conservation for multiple species should include not only agreed-to conservation measures but should also:

- 1) Provide a (Safe Harbor-like) baseline from which the landowner begins and could return without penalty from **either** FWS **or** EPA-WOTUS (to cover unintended setbacks),
- 2) Fall under a programmatic agreement to which the landowner can enroll or exit,
- 3) Provide incidental take assurances for unintended losses of listed species attracted to the improved habitat,
- 4) Provide funding and technical assistance from the Partners for Fish and Wildlife Program and NRCS for planning, development, implementing and maintenance costs.

Again, the over-arching goal must be that landowners (or federal land managers) are not penalized, but supported and protected for creating or enhancing habitat quality especially if it better supports migratory and imperiled species.

2. Recovery planning under the Endangered Species Act?

(Summary: The black-footed ferret initiative as a landscape-scale, multi-species recovery program; use of programmatic Safe Harbor and HCP's, distinct population segments and experimental non-essential populations; landowner need for habitat protection and management flexibility to provide ecological function and economic sustainability).

An example of what could be an effective multi-species landscape-scale recovery program is the collaborative black-footed ferret conservation initiative. Range-wide assurances are in place and the effort is aimed at recovering and conserving an imperiled species across its former range. Since the ferret's recovery depends on the presence of large colonies of prairie dogs, and prairie dogs are 'keystone' species supporting numerous other species of conservation concern, this effort has the potential to recover an imperiled species and preclude the need for petitioning or listing others. The biggest challenge will be finding non-lapsing funding to compensate private landowners for forage losses to prairie dogs, treating ferrets and prairie dogs for disease and minimizing negative impacts to non-enrolled neighboring landowners.

Even more so than proactive and candidate conservation efforts, imperiled species recovery efforts need to provide **assurances and certainty** to participating landowners if we hope to recruit voluntary participants. Key elements include programmatic Safe Harbor and HCP-type agreements, developed by FWS, NRCS, federal land agencies and state government in consultation with landowner representatives. Landowner incentives and assurances can also be created in some situations by de-listing **distinct population segments** and the establishment of **experimental, non-essential populations**. As with pre-listing programs, conservation measures need to be based on best available science to assure the presence and

recovery of the ‘focal’ listed species. However, functional working ranches, as with any biological system, require many species working together synergistically. Suppose, for example, a landowner wishes to maintain populations of both black-footed ferrets (BFF) and coyotes (a potential BFF predator and disease carrier) or maintain a mix of dense upland sagebrush habitat (for pygmy rabbits) and upland grasslands (for white-tailed prairie dogs) - two species of conservation concern requiring different seral conditions. While ferret recovery might be better assured by coyote control, the land-system may function less efficiently with fewer coyotes. Similarly, maintaining critical habitat for both white-tailed prairie dogs and pygmy rabbits (both species have been petitioned for listing in recent years) may result in fewer occupied acres of each species.

Conservation agreements and management plans must, at times, allow landowners to manage for species diversity, habitat diversity and functional systems within designated critical habitats for a listed species, since both the listed species and its critical habitat are dependent on whole functional systems. As with pre-listing conservation measures, funding and staffing assistance are essential.

HCP’s and Safe Harbors must provide management assurances beyond listed species-specific habitat and development. Assurance must be provided for maintaining multiple seral stages, multiple habitat conditions and multiple wildlife species.

Investment in Science and Measurable Outcomes

What can be done to ensure that species conservation actions are based on measurable outcomes and the best available science? How and where can investment in this science be increased?

(Summary: need for scientific research and practitioner knowledge; Cooperative Extension; cooperative case studies; need for professional peer-review or vetting of information).

Research scientists are adept at measuring and describing habitat conditions needed for recovery, and provide this information to Ecological Services in determining species status and habitat needs. However, practitioners (successful ranchers and other land managers) are equally adept at creating desired habitat conditions. In order for scientists to assess the effectiveness of novel but potentially beneficial practices, research scientists must be funded and paired with skilled land managers for testing and evaluation.

Traditionally, this was done by the USDA Cooperative Extension Programs through state land grant universities. The need for applied land and wildlife management research is great. Funding dedicated to developing practices that simultaneously improve both species recovery and working ranch sustainability is essential. Measurable outcomes include occupied acres, population numbers, survival

and reproductive success and persistence of focal species on working landscapes under alternate management scenarios.

A challenge to collaborative monitoring and management by academics, agencies and landowners is the perceived negative repercussions of finding candidate or listed species on the property. Landowners realize that by documenting imperiled species or critical habitat they **may** help avoid listing or hasten recovery. However, the possibility also exists that by remaining uncooperative they can better avoid unwanted regulation, scrutiny or litigation. If landowners were assured that having an imperiled species or critical habitat identified on their property would ease regulation, they may be more willing to cooperate. Ideally, finding an imperiled species or important habitat should reward the landowner by validating and documenting his past, successful voluntary pre-listing conservation efforts. Ranchers and researchers alike must be assured that negative experimental results are viewed as positive information, not punishable consequences.

The development of best management practices are often facilitated by the Western Association of Fish and Wildlife state-based scientists and practitioners, along with landowners and federal land managers. Such efforts such as the Lesser Prairie Chicken Agreement and Western Native Trout Initiative serve as examples of cooperative landscape scale conservation efforts.

Knowledge needs to flow from both the scientific and ranching communities to the FWS, and practitioners need a seat at the table when policies, programs and practices are developed and evaluated. Finally, all knowledge used in developing conservation programs – whether case studies, ‘gray’ research or scientific publications – should undergo a peer-review process or vetting process by professional scientists and managers knowledgeable in the field to avoid basing programs on poorly conducted or biased studies.

Incentives and Proactive Efforts

What incentives are needed to promote voluntary, proactive species conservation before species become imperiled?

(Summary: Incentives include financial aid, assurances, trust, program marketing and outreach, beginning discussions early, length of process, and including landowner knowledge; cost effectiveness of early intervention, landowner partnerships with agencies and programmatic CCAA’s. Successful case studies are discussed).

Primary incentives include compensation for the financial costs of implementation, and risk mitigation assurances. Other key considerations include: trust (of utmost importance), program marketing and outreach (by FWS), timeframes (the process is maddeningly slow), and the need to incorporate landowner knowledge in development of conservation measures (Womack 2008). To be successful in engaging landowners in conservation and recovery efforts, federal, state and NGO staff need to reach out and make personal connections with landowners, explain and promote (market) the effectiveness and assurances of conservation programs, reduce the cost and overall

difficulty of understanding, qualifying for, enrolling in, implementing and monitoring conservation programs, consider landowner experience, opinions and knowledge as essential in developing conservation actions and complete the process in a timely manner.

Discussions about the conservation, recovery and management of species need to begin long prior to species becoming imperiled. In this case, an ounce of prevention truly can be worth more than a pound of cure. A renewed national commitment, funded at sufficient levels by Congress and endorsed by the states, to pro-active conservation and restoration of habitat and wildlife populations could avert ESA-related cost and conflict while providing significant economic and ecological benefits to the West.

Landowners operating on undeveloped private lands and associated federal leases are essential to keeping many species from listing. They provide a critical component of wildlife habitat - undeveloped space. Their lands and associated leases are the last remaining places for many species of conservation concern. In many cases, the high level of management control and lack of public access to private ranches increases the probability of conservation success than on less controllable public lands. However, since these species are a resource held in the public trust, for the public good, the financial cost of managing and maintaining them must be borne by all citizens--not just the landowners who still own suitable habitat. Congress must provide adequate funding through the FWS and other agencies to assist landowners in meeting conservation and recovery goals. Funding is essential, without adequate funding for ESA conservation little on-the-ground change can happen.

We should support, facilitate and reward landowners who, often unbidden and at their own expense, choose to take on additional management cost and complexity to maintain or improve habitat for species of conservation concern. A coordinated NRCS/FWS Partners for Fish and Wildlife program allowing landowners to enroll pro-actively in a kind of “good neighbor” program that includes a biological survey, conservation assessment, and habitat management plan, which in turn provides Safe Harbor or CCAA-like assurances and eligibility for funding would be very attractive to conservation-minded landowners.

A possible incentive for landowners who voluntarily enroll in CCAA-like programs could be priority consideration for conservation funding sources. Acceptance for enrollment in a FWS conservation program should minimize the time and additional scrutiny by NRCS, state or NGO funders – passing the eligibility requirements for enrollment should suffice.

In short, as we work through this process, we must be sure that conservation-minded landowners feel they are gaining assurance and value, and not inadvertently penalized in any way for making positive contributions to at-risk species conservation.

Landowners need more information about and greater access to programmatic CCAA’s providing assurances for participation. FWS needs **dedicated funding** for outreach, knowledge sharing, implementation, mitigation and other compensation programs for landowners and ranchers - to help offset the direct and opportunity costs of conserving habitat for proposed and listed species.

Are there any recent successes on species conservation that can be used to guide future voluntary efforts to preclude the need to list a species?

(Summary: Discusses organizations and partnerships which have accomplished collaborative species conservation efforts).

There are many organizations and partnerships (FWS Partners for Wildlife, NRCS, Joint Ventures, Audubon, Trout Unlimited, The Nature Conservancy, Rocky Mountain Bird Observatory, Rocky Mountain Elk Foundation, and many others) working throughout the West in partnership with landowners on proactive conservation of riparian, sagebrush, aspen and other habitats essential to species of conservation concern. If recognized, included and **documented** as part of a strategic and collaborative effort with federal and state partners (and adequately funded) these efforts can have significant proactive conservation impacts, and reduce the need for listing consideration of many species. Documentation of conservation accomplishments by FWS and involved state fish and wildlife agencies is essential.

The Greater Sage Grouse conservation effort provides an excellent guide to voluntary, proactive and collaborative landscape conservation. Key steps included: FWS enlistment of the Western Association of Fish and Wildlife agencies, support by western Governors, development of collaborative working groups within the states, funding and incorporating local knowledge and scientific research, developing and implementing a range-wide conservation plan that began at the local level, then-coalesced upward, and implementing regulatory mechanisms on federal lands to insure the implementation of the range-wide plan. If the state and federal governments continue to fund and follow the conservation plans, monitor populations and incorporate new findings, the Greater Sage Grouse and essential sagebrush habitats should remain conserved.

The Montana population of Fluvial Arctic Grayling provides a similar successful recovery story based on collaborative conservation planning and implementation.

Finally, Western Governors should support and help provide adequate funding for their state agencies to encourage and maintain these cooperative efforts.

Timelines

How can the timelines be streamlined, clarified or generally improved in both:

1. Prelisting agreements and decisions?

Fund collaboratively developed programmatic agreements which landowners can easily sign on to, and fund communication and outreach through the FWS Partners Program, NRCS, state wildlife agencies, conservation districts and collaborative NGO's regarding the benefits of early implementation of conservation measures to avoid the necessity of listing.

2. The ESA process.

Ideally the FWS should be tasked with developing a recovery plan with clearly defined recovery goals within a reasonable and defined time period. In order for this to occur, Congress must provide adequate funding to accomplish FWS recovery plans in a timely manner.

Economic Analysis

Should economic analysis be incorporated into ESA listing and recovery decisions? If so, how and at what point(s) in the regulatory process?

(Summary: economic costs of recovery are not appropriate in determining species status and recovery criteria, however costs should be borne equitably by the public. Economic analysis is appropriate in developing recovery implementation strategies. Costs of determining species status, developing recovery criteria and implementation strategies should not burden landowners who have maintained critical habitat. A clear definition of the term “range” in the ESA may be useful).

WLA does not believe estimated economic costs of listing or recovery should influence whether or not a species is listed. Biological criteria (species survival and distribution) should rule this determination. Due to gaps in monitoring data and scientific knowledge, it is difficult enough to assess the need for listing a species solely on biological merits. Furthermore, to ensure adherence to the spirit and intent of the ESA, economic assessment and funding requirements should not be considered in determining recovery criteria. Alternatively, economic assessment and other relevant socio-political aspects **should be** considered when determining the implementation strategy for satisfying recovery criteria.

There are significant costs to local, state and federal government in determining species status. The costs of monitoring species abundance and distribution can be significant, and because of this there is a lack of knowledge for many species. Once a species is petitioned for listing, there is generally a costly effort made by state and federal agencies and local stakeholders to determine species status. Urban and industrial development, invasive species, intensive agriculture, road systems and recreational activity have been largely responsible for reductions in habitat availability and wildlife populations. The full burden of conservation and recovery should not fall on those landowners who have maintained the necessary open space and habitat that support remaining imperiled species, but should be shared by the public as a whole. Congress should provide necessary funding to cover the federal costs of the pre-listing conservation measures, species status and listing determination, development of recovery criteria and implementation of recovery measures.

Funding should be provided by Congress to assist landowners located in imperiled species recovery areas. Recovery implementation strategies should include funding specifically designated to finance voluntary conservation measures and offset economic impacts associated with recovery efforts. If

Congress assured landowner funding were associated with recovery planning and implementation, they might view the plan with considerable more favor.

Disagreement regarding determining appropriate recovery criteria appears to be rooted in the interpretation of the language in the ESA. Many knowledgeable scientists feel that recovery requires that a species be nowhere threatened or endangered or threatened or endangered across no more than an insignificant portion of the species range. Unfortunately, the ESA does not define the term “range”, and there is debate over whether it refers to historic or current conditions. If recovery requires restoration of historic range, then habitat loss and degradation may preclude achieving recovery. Consequently, some have suggested that the definitions for endangered species and threatened species in the ESA be amended to include the phrase “across a significant portion of range where habitat remains suitable or practically can be made so”. Such an amendment to the definitions could, however, lead to a significant weakening of the ESA. Indeed this less stringent approach may be difficult to achieve while still complying with the intent and language in the Act. Certainly the overarching goal of recovery is to assure the species exists in sufficient numbers and across a broad enough area to satisfy the spirit and intent of the ESA.

State and Local Coordination

What can be done to improve coordination between federal, state and local governments on:

1. Voluntary species conservation activities?

(Summary: LIP funding for pro-active conservation; include local and state input early in development of collaborative solutions)

State wildlife agencies are responsible for the management of non-listed wildlife species, however often lack adequate funding. Federal funding assistance through programs like the Landowner Incentive Program (LIP) can potentially fund conservation of at risk species avoiding the need for listing. LIP is specifically designed to benefit species of conservation concern identified in state comprehensive wildlife conservation strategies (state wildlife action plans) and should be more rigorously funded. Millions of dollars spent on proactive conservation measures could save billions of tax-payer dollars by avoiding the need for listing and recovery.

Recovery of imperiled species and habitat, while a federal trust responsibility, impacts all levels of government. To be truly effective, representatives of federal, state and local governments should focus first on collaboratively developing possible conservation solutions, initially setting aside blame, funding concerns and jurisdictional ‘realities’ which can be addressed as secondary matters. Once developed, solutions should then be assessed based on their probability of conservation success. Once potentially effective conservation measures are developed, jurisdictional issues and funding responsibilities can be determined.

Fund, staff and task wildlife agencies: Conservation-minded biologists in the private sector, state and federal governments must likewise set aside jurisdictional concerns and focus on solutions to conserve species diversity and abundance. In order to develop effective solutions to avoid the need for listing, wildlife managers must be funded and tasked by government to develop mutually agreeable and effective conservation and management solutions for imperiled, at risk and species of conservation concern. If the state and federal agencies are adequately staffed and funded by biologists monitoring and managing species of concern, they will develop conservation plans and proceed to implement them. It is their purpose.

Convene (and fund) collaborative working groups: Once species status has been determined, task the wildlife biologists and managers to work collaboratively (with landowners, recreationists, industry and other interested public) to develop pre-listing conservation measures designed to avoid the need for listing (see Greater Sage Grouse and Fluvial Arctic Grayling examples above). These can then be unanimously presented to local, state and federal government decision makers.

Governmental leaders accept, fund and implement working group recommendations. These collaborative processes are long, arduous and (if properly staffed) representative of the people. Government should stand behind the plan (with minimal revisions), then accept, fund, promote/communicate, implement and monitor.

There is great frustration expressed by some landowners and state agency personnel regarding the inability of BLM and USFS field office staff to meaningfully participate in collaborative groups. Management authority for these agencies seems to be concentrated at very high levels, and response is slow when compared to local and state participants. The field personnel assigned to collaborative groups are given limited authority to speak for the agency in pursuit of solutions. This was the one significant criticism of the Greater Sage Grouse pre-listing process - the BLM and USFS personnel attended the collaborative meetings and were asked to participate in development of state plans. However, the proposed BLM and USFS management strategies for GSG were developed outside the collaborative process, to the consternation of the participants who worked the process. WGA could advance collaboration by working with the federal land agencies to shift greater management authority to the field offices involved in sanctioned collaborative processes like the Coordinated Resource Management Planning process (CRM).

2. Operation of the ESA on behalf of species?

Once species are listed, management responsibility shifts from state wildlife agencies to the FWS. Again, both federal and state agencies must be funded, staffed and tasked with collaboratively developing and implementing effective recovery measures. In this case, it is

the FWS responsibility to share their ‘turf’ (management responsibility) with the state government-to gain local knowledge, buy-in and implementation of the recovery plan. Then implement to the next two steps.

Then proceed to steps 2 (*Convene collaborative working groups*) and 3 (*Governmental leaders accept, fund and implement Working group recommendations*) described in the previous comment.

Collaboration

How can collaboration among relevant partners – including federal, state and local agencies; landowners; and nonprofits - be encouraged in:

1. Species conservation efforts outside of the ESA.

Support pro-active large-landscape collaborative conservation:

Successful management and conservation of wildlife habitat and populations requires ongoing collaboration across large landscapes, multiple jurisdictions and ownerships. Pro-active development of collaborative conservation networks can help to avert the need for listing and accelerate the recovery and delisting of imperiled species.

Landowners and producers must be included in these processes from the outset. However, these efforts take time and require the development of trusted relationships, coordination and sustained funding. A number of landowner-led collaborative conservation groups have demonstrated clear success but continue to struggle to find the funding and technical assistance necessary to sustain these efforts. Funding should be restored to Partners for Fish and Wildlife, the NRCS and federal agencies explicitly to support collaborative engagement and outreach. In addition, funding must be available for producer-led initiatives. Programs like the new RCPP and the Large Landscape Initiatives are a step in the right direction but need to be refined and expanded. Then *convene and fund collaborative groups*, and hope *governmental leaders accept, fund and implement working group recommendations*.

2. Recovery and delisting efforts for listed species. Recovery plans will be more broadly supported and accepted if they are developed by *collaborative working groups and governments accept, fund and implement the working group recommendations*.

Funding

What can be done to ensure that species conservation efforts are adequately funded? How can federal and state conservation funding be re-prioritized to better meet the needs of all parties engaged in on-the-ground species management? Elaborate on funding needs for both:

1. Proactive species conservation efforts outside of the ESA.

(Summary: Federal funding for programs like LIP and CRP, develop multi-species programmatic tools)

Voluntary participation by landowners along with the availability of private land for habitat can significantly leverage state and federal investments in conservation while reducing costs associated with listing, federal management and litigation. Consider the following:

- Provide additional funding for the LIP or LIP-like programs that empower state wildlife agencies to better manage species of conservation concern and avoid the need for listing.
- Properly planned and administered regional, multi-species habitat conservation efforts (see NRCS-*Working Lands for Wildlife*, FWS Partners Program) are an effective and economical means of engaging landowner participation, avoiding species listing while benefitting multiple species and sustaining working lands. Programs (like programmatic and multi-species CCAA's) should be funded, provide technical assistance and assurances in the event species are listed. Improving key habitat components (i.e. riparian habitats) benefit multiple species, land health and ranch economics (high return on investment).
- Proactive conservation measures for species of conservation concern cannot be adequately funded by the sale of hunting and fishing licenses, industry mitigation and private donations alone. Federal, state and local governments can and should contribute to 'preemptive' conservation, because it is **less costly** to counties, states and the federal government to implement adequate conservation measures and **avoid listing** than to invoke the ESA. Pre-listing species conservation and measures can be funded through Federal taxes (i.e. triple Farm Bill spending for wildlife), state and local finances (conservation bonds, sales tax, state income tax, business tax, mineral royalties, etc.). According to Taxpayers for Common Sense, "Since 1985, [Farm Bill] conservation programs and practices have provided taxpayers with a positive return on investment." In addition, they found "In 2011, CRP generated \$3.5 billion in both market and nonmarket benefits, resulting in more than \$2 of benefits for every taxpayer dollar invested." USDA projected that EQIP will return slightly over \$1 back for every \$1 of spending. Conservation funding not only supports the conservation and recovery of wildlife species but also helps sustain livelihoods and local economies in the rural West.
- The Partners for Fish and Wildlife program is popular with many landowners but funding is limited and should be increased.

- While NRCS Farm Bill programs are available, private landowners and landowner alliances face several challenges in utilizing these funds. Some Farm Bill programs and practices are not well suited to the West. Greater input from Western landowners in the development of these programs is needed.
- The federal nexus that occurs with any federal funding creates both real and perceived costs, increased regulatory burdens and litigation vulnerabilities. As a result, many Western landowners are reluctant to utilize federal funding. Federal conservation funding programs should be reviewed to assess legitimate barriers associated with the federal nexus and identify solutions.
- Costs and legal actions associated with NEPA requirements are frequently cited by landowners, federal permittees and collaborative conservation groups as an impediment to conservation projects. The costs of archeological surveys, for example, are generally not covered by governmental or private grants.
- The Conservation Reserve Program (CRP), including the new grasslands CRP, is targeted primarily to avoid conversion of native vegetation to cropland. This has limited application in much of the West. A program similar to the Conservation Reserve Program (CRP) could be created to prioritize sensitive habitat and species conservation in the West. As the CRP program provides compensation to avoid conversion of marginal and sensitive lands to crops, so the proposed program could provide compensation for avoiding impacts to sensitive habitats within designated high-priority conservation areas.
- The roles of and relationships between the NRCS and FSA should be examined to eliminate redundancy and confusion. In addition, these agencies need adequate funding to function effectively. Improved sharing of information, application software and other tools would improve the process.
- Jointly funded conservation positions between NGO's and the NRCS have proven effective and should be continued.
- Non-federal funding sources (private, industry, state, municipalities and NGOs) should seek out and partner with well-planned but under-funded private land species conservation opportunities to avoid listing and potential land use restrictions.

2. Conservation and recovery efforts associated with the ESA.

(Summary: Develop programmatic Safe Harbor and HCP agreements; increase innovative private, state and federal funding sources for recover).

Provide funding for FWS (in collaboration with states and NGO's) to develop Programmatic Safe Harbor and HCP-type agreements with assurances and incentives for all listed species. Encourage participating NGO's and other private sector funders to participate in funding FWS-NRCS communication and outreach staff.

We cannot continue to adequately fund the public's demand for species diversity and abundance with just hunting and fishing license sales, industry mitigation and private donations. We also cannot shift the financial burden of conservation and recovery onto landowners who are managing the remaining open lands and habitats. Listed species conservation and recovery measures must be adequately funded through Federal taxes (i.e. triple Farm Bill spending for Wildlife), state and local finances (sales tax, state income tax, business tax, mineral royalties, etc.).

Delisting Criteria

What can be done to ensure that delisting criteria are specific, measurable and attainable, and that species are delisted upon meeting recovery goals?

(Summary: Expert review of recovery process and recommendations for improvement; include broad state and local input in development of recovery goals early in the process to increase support; publish proposed recovery criteria in peer-reviewed journal; develop a mediation mechanism for appealing proposed recovery strategies).

It may be time for the FWS to convene a select group of knowledgeable scientists, managers and other stakeholders (and/or the National Academy of Sciences) tasked with reviewing the effectiveness of the recovery process to date, and proposing a more effective recovery planning process. Some elements to be considered in a comprehensive process could be collaborative stakeholder engagement, genetic diversity, population abundance, current and historic range, ecological function, distinct population segments, critical and suitable habitat, and other land uses and users.

Clearly defined and defensible recovery criteria which remain unchanged through the recovery process would build trust in the process and encourage participation in the recovery implementation process from states, local governments, industry and landowners. Including relevant input from state wildlife agencies other parties with knowledge of species status and needs during development of recovery criteria should increase support and participation in the recovery process.

Conversely, changing cooperatively developed recovery criteria late in the game hinders participation and delays recovery. A possible way to ensure adoption of recovery plans with recovery criteria that are less susceptible to litigation would be for the US Fish and Wildlife Service to insist that recovery teams make every reasonable effort to publish the salient features of recovery plans (e.g., down-listing and delisting criteria, identification of recovery region, critical habitat designation) in appropriate, peer-reviewed outlets. A publication expectation would help ensure that the best

scientific and commercial data are in fact used to assemble recovery plans, which in turn should ensure their longstanding sufficiency and durability. Subsequent scrutiny by the scientific community would either affirm the sufficiency of the plan, and thus advance its durability by increasing the odds that any eventual judicial review is favorable, or identify inadequacies that the agency could address in a timely manner.

While litigation provides an option for unsatisfied parties to appeal the sufficiency and satisfaction of recovery criteria, litigation is generally a poor means of building broadly supported programs. Consider implementing a process that includes collaboratively developed recovery criteria (with state, local and landowner input), and a mandatory mediated negotiation step providing unsatisfied parties a voice during the implementation of recovery strategies.

Other Thoughts

Are there any other comments or insight that you would like to provide regarding species conservation or the ESA that were not addressed in the previous questions?

Despite much political and fundraising rhetoric, landowners in the West enjoy and value wildlife and support conservation. Healthy landscapes and healthy economies go hand in hand. Investments in conservation integrated into working landscapes yield clear returns to taxpayers and provide for the well being of human communities. The ESA should be viewed and applied as originally intended—a last stop measure to prevent species extinction, not as a tool to advance anti-grazing or other agendas. The primary public policy emphasis should not be on dismantling or defunding implementation of the ESA, but on cost-effective, pro-active solutions that avoid the need to list species in the first place and to accelerate recovery of those that are listed.

Increased knowledge and understanding about the ESA itself would serve all stakeholders well and provide a stronger platform for discussion and engagement, both in the WGA forums and beyond. One suggestion is that future workshops could include an ESA primer at the outset, explaining its purpose and application, and a brief explanation of associated programs and acronyms such as CCAA's, HCPs, Biological Opinions, etc. Discussion could include ways in which the ESA does or does not currently address some of the questions in this document.

The collaborative species and habitat conservation and efforts that involve federal agencies, states and landowners are often beset with complications that arise from distinguishable differences between how various local and regional offices of the federal agencies interpret regulations and guidelines. There needs to be a strong effort to make the federal agencies provide more uniform and similar interpretations of rules and regulations, especially when the conservation efforts cross state and federal office designations of responsibility.

Thank you for the opportunity to comment on this important issue.

Literature Cited:

Womack, Kendra, "Factors Affecting Landowner Participation in the Candidate Conservation Agreements with Assurances Program". (2008). *All Graduate Theses and Dissertations*. Paper 29. <http://digitalcommons.usu.edu/etd/29>

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