



The Western Landowners Alliance advances policies and practices that sustain working lands, connected landscapes and native species.

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Public Comments Processing

Attn: FWS-HQ-ES-2025-0049

U.S. Fish and Wildlife Service

MS: PRB/3W

5275 Leesburg Pike, Falls Church, VA 22041-3803

Re: FWS-HQ-ES-2025-0049 – Endangered Species Act Section 10(a) Program Comments

Submitted via the Federal e-Rulemaking Portal [<https://www.regulations.gov>]

The Western Landowners Alliance (WLA) appreciates the opportunity to submit the following comments in response to the U.S. Fish and Wildlife Service’s (FWS or “Service”) request for comments and information on Endangered Species Act (ESA) Section 10(a) Program Implementation; Development of Conservation Benefit Agreements and Habitat Conservation Plans, and Issuance of Associated Enhancement of Survival and Incidental Take Permits [Docket Number: FWS-HQ-ES-2025-0049].

Western Landowners Alliance is a West-wide, landowner-led organization, dedicated to sustaining working lands, connected landscapes and native species. As landowners, we enjoy and value wildlife and know that biodiversity is integral to the health and productivity of our lands and ecosystems. The majority of wildlife in the continental US depend on private lands and the actions of private landowners for survival. Increasingly, intact private lands provide the last refuge for many wildlife species. We need public policies that recognize, encourage and support the vital role that landowners play in wildlife conservation and recovery. Positive and enduring outcomes require close, constructive partnership with private landowners and agricultural producers.

We are submitting the following comments and information as a stakeholder with on-the-ground experience and more than a decade of focused engagement on this specific topic. From 2015 – 2018, WLA participated in the three-year initiative by the Western Governors Association focused on the Endangered Species Act (ESA). In 2017, WLA produced a landowners’ guide to the ESA featuring landowner perspectives, experiences and recommendations. From 2019 – 2024, WLA co-led a joint learning project with the FWS aimed at improving landowner access to regulatory assurance agreements. WLA is currently

collaborating with the FWS Pollinator Center to support landowners in conserving and recovering western pollinators, including exploring the development of programmatic Conservation Benefit Agreements (CBAs).

WLA supports the intent of the ESA to protect and recover imperiled species and the ecosystems on which they depend. At the same time, the law and its implementation can inadvertently discourage and penalize landowners for supporting conservation and recovery efforts. Those with the best habitat and last remaining species should be rewarded and supported but instead are often exposed to the greatest regulatory risk and cost. This has generated decades of unnecessary and counterproductive conflict over wildlife conservation and recovery, undermining the intent of Congress and the ability of the FWS to achieve recovery goals.

Safe Harbor and Candidate Conservation Agreements with Assurances (CCAAs) were designed to help address this issue. In some cases, these agreements have worked well, spurring greater landowner participation and cooperation. In practice, however, securing this type of regulatory assurance agreement in support of voluntary species conservation can be difficult to impossible for most landowners.

BARRIERS

The following comments highlight the barriers to landowner utilization of Conservation Benefit Agreements (CBAs) and recommendations for resolving these barriers:

I. Lack of dedicated capacity within FWS to support CBAs.

The FWS lacks adequate staff capacity, internal expertise and leadership directives to engage proactively and consistently in supporting the development of CBAs. Competing priorities and high staff turnover and reassignments compound the challenge.

Recommendations:

- a. Dedicate protected funding and staff resources within FWS Ecological Services.
- b. Create an agency-wide “strike team” with appropriate expertise, authority and support.
- c. Assign dedicated CBA leads in each regional office.

II. Lack of guidance and inconsistent interpretation within the agency.

FWS staff have widely varying knowledge, experience, and understanding of CBAs. Interest in and support of CBAs within the FWS also seems to vary by region. There is lack of clarity on legal requirements and parameters. Staff have also expressed confusion as to the correct application of CBAs vs. incidental take permits/Habitat Conservation Plans.

Recommendations:

- a. Provide clear directives and prioritization from agency leadership.
- b. Provide region-wide and inter-agency training on CBAs.
- c. Develop and publish a publicly available “CBA Toolkit” that includes:
 - i. Step-by-step guidance
 - ii. Example timelines and cost expectations
 - iii. Sample or template agreements
 - iv. Monitoring protocols
 - v. Roles of landowners, FWS, state agencies, and third-party partners

III. Undefined roles among FWS, state agencies and third-party partners.

While FWS must ultimately approve CBAs, it is unclear whether the responsibility for developing, monitoring and administering these agreements should properly rest with the FWS, state wildlife agencies, landowners or third-party organizations. State wildlife agencies and FWS alike have expressed reluctance and/or refusal to assume this responsibility. Some staff within FWS have suggested that the responsibility and costs should rest with participating landowners. While this is reasonable in the case of incidental take permits (HCPs), it is not reasonable in the case of enhancement of survival permits (CBAs) where the goal is to support and encourage stewardship, rather than further burden the landowner for voluntary conservation actions.

Recommendations:

- a. Establish clear protocols through MOUs or guidance documents.
- b. Clarify which entities (FWS, state agencies, landowners, NGOs) can serve as lead administrators.
- c. Include role definitions within the CBA toolkit to increase transparency and streamline coordination.

IV. Lack of funding for long-term CBA implementation.

CBAs are designed to be long-term agreements, extending for decades. They require planning, coordination, legal guidance, data collection, monitoring, administrative oversight and reporting. However, there is no dedicated source of public or private funding to support this work, particularly over the long duration of these agreements. In some cases, where their financial interests were directly at stake, major industry groups have taken initiative and provided funding to develop programmatic regulatory assurance agreements such as CCAAs. In other cases, state wildlife agencies and major NGOs have taken responsibility. Outside of these limited cases, however, resources are not available, and most landowners do not have the knowledge, support or financial capacity to develop individual or programmatic CBAs. This important tool, therefore, remains largely out of reach.

Recommendations:

- a. Ensure Section 6 grants and other funding streams include CBA development and administration and that state wildlife agencies and NGO partners are aware of available funding.
- b. Ensure grant timelines allow for long-term permit responsibilities.
- c. Encourage partnerships between landowners, states, and NGOs to leverage funding and capacity.

V. High costs and long timelines.

In our joint learning project to make CBAs more readily accessible to landowners, WLA and FWS sought to design and implement a real-world, programmatic agreement within a one-year timeframe. We also sought to reduce costs and time demands on all parties. However, after five years of dedicated effort by the FWS, state agencies, WLA and landowners, we failed to complete an agreement, underscoring the difficulty of the process. In addition to the barriers and recommendations listed above, we found the following:

1. Determining the scope of a programmatic CBA involved tradeoffs in terms of efficiencies. A large geographic scope and the inclusion of multiple species in the agreement can avoid the need to create multiple agreements covering smaller geographies and individual species. This is desirable from a cost and efficiency standpoint, but the added complexity requires significantly more upfront investment of time on the part of proponents. The more species included in the CBA, the more biologists needed to be involved. Expanding the geography also required involvement of multiple state agencies and multiple regions of the FWS.
2. We found it difficult to estimate the capacity needs and costs associated with long-term CBA implementation (landowner outreach and engagement, agency coordination, monitoring and reporting, etc.). This also varies according to the scope of the agreement. Since no dedicated funding exists to support CBAs, we sought to minimize costs to the extent feasible. One of the greatest areas for potential cost-saving is to simplify monitoring and reporting. This can include designing annual monitoring and reporting protocols that are easy for landowners to implement (e.g. photo point monitoring and a simple activity reporting form) coupled with periodic biological monitoring of covered species by FWS, state wildlife agencies or qualified contractors. Given the 20+ year duration of these agreements, it is important to provide flexibility, particularly with a programmatic CBA, to change permit administrators, if necessary, without terminating the whole agreement for all participating landowners.

Recommendations:

- a. Take a multi-species habitat-based approach whenever feasible.
- b. Provide dedicated staff to support programmatic CBAs.
- c. Allow flexibility for change of permit administrator over time.

- d. Include simplified, cost-effective monitoring methods in the CBA Toolkit, such as landowner-implemented photo monitoring coupled with periodic biological surveys by trained professionals.

VI. Restrictive “double dipping” prohibition.

In the interest of ensuring “net conservation gain”, the FWS has taken the position that a landowner may not receive both regulatory assurances and financial compensation for the same voluntary conservation actions. Instead, where financial compensation is available, a landowner must choose between them. This counter-productive trade-off exacerbates the ESA dilemma for landowners. If a landowner accepts compensation to support wildlife, they face increased regulatory exposure which could compromise other, often more primary, sources of income such as agricultural production. If a landowner accepts regulatory assurances, they are precluded from generating conservation-related related income, such as species and habitat credits, to support those efforts. In short, while wildlife species may experience a net gain from the current policy, the landowner does not. Ultimately, this undermines habitat conservation.

This barrier could be addressed in part by taking a larger view of “net conservation gain.” The “double dipping” prohibition lacks sight of the forest for the trees. Given that the majority of wildlife, including up to two-thirds of threatened and endangered species in the continental US, rely on private lands and the actions of landowners for survival, landowner partnership in species conservation and recovery efforts is essential. The greatest net conservation gain for wildlife will occur when wildlife conservation also results in net positive regulatory and economic outcomes for landowners.

Recommendations:

- a. Reinterpret “net conservation gain” to allow for stacked incentives where appropriate.
- b. Align financial and regulatory tools to maximize participation and conservation outcomes.

VII. Lack of assurances on public lands.

In the American West, public and private lands are highly intermingled and both economically and ecologically interdependent. In addition to private deeded land, a single ranch operation may encompass leased US Forest Service, Bureau of Land Management and state trust land, among others. Wildlife species supported on the private portions can move readily to the public land side of the fence. In exchange for voluntary conservation actions, landowners may be eligible to receive regulatory assurances on the private portions, but under the ESA, they cannot receive the same assurances on the public portions, limiting CCAs *with Assurances* to private lands.

For example, if a landowner implements measures to increase populations of sage grouse on private ground and the birds expand onto the publicly owned portions of the

operation, the landowner may be subject to increased regulatory intervention and environmental litigation that could reduce or eliminate their ability to graze the leased public parcels. This, in turn, could undermine the economic viability of the entire operation. This creates a significant disincentive for landowners to participate in species conservation and recovery efforts, on both public and private land.

While options to address this issue are constrained by statute, FWS should consider ways to offer regulatory certainty in exchange for voluntary conservation actions for producers operating on public and/or intermingled public and private lands.

Recommendation:

- a. Explore new models or inter-agency coordination to extend regulatory certainty to leased public lands when paired with voluntary conservation.

COMMUNICATIONS

Three things could be improved in terms of communicating about CBAs:

- It is frustrating that the FWS and wildlife advocates promote the availability of CBAs as a tool to address landowner concerns about ESA regulations when, in fact, the tool is largely inaccessible. In communicating about CBAs, the FWS should provide specific guidance to landowners as to the purpose, process, costs and timelines involved. Sample agreements and templates should also be readily available.
- FWS should communicate more effectively to landowners about the purpose and value of CBAs. These agreements can take considerable time and investment on the part of the landowner, yet the return on investment to the landowner is not always clear. In part, this is because delayed recovery plans and gaps in scientific data often result in the regulatory risks of having imperiled species on private land being unclear. These uncertainties can make landowners reluctant both to enter into a CBA and to support having imperiled species on their property at all.
- The FWS should communicate and coordinate more closely with state wildlife management agencies on the purpose and implementation of CBAs. Improved written guidance, protocols, joint trainings and MOUs could help alleviate the confusion and tension that we experienced between agencies in our joint learning project. Communications should also include clarity on the intent and availability of federal funding to support CBAs.

STRATEGIES

Strategies to improve effectiveness:

- Work *with* rather than *against* landowners. The future of wildlife depends in great part on the goodwill, actions and investments of private landowners. This should be adopted as the priority mindset and approach within the FWS and in the development of CBAs.
- Measures of success for CBAs should include the extent of landowner utilization, cost and ease of deployment, and measurable benefits to both wildlife and landowners.
- The FWS should request (and we strongly encourage Congress to allocate) dedicated funding within Ecological Services to support pro-active, voluntary landowner cooperation in species recovery efforts, specifically including the development of CBAs.

Western Landowners Alliance deeply appreciates this opportunity to provide input on an issue of great consequence both to landowners and wildlife. We urge the Service to work closely with private landowners to ensure that voluntary conservation efforts are practical, well-supported, and central to species recovery under the ESA. WLA stands ready to support the FWS in improving outcomes for both people and wildlife.

Sincerely,

Lesli Allison
Chief Executive Officer