

~~careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final listing decision and explain how the decision relates to our trust responsibility. Accordingly:~~

~~(a) We have not yet consulted with the affected Tribe(s). We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented and have yet to show effectiveness at the time we make a listing decision.~~

~~(b) We have not yet worked with Tribes on a government-to-government basis. We will address this requirement when we evaluate formalized conservation efforts that have yet to be implemented or have recently been implemented but have yet to show effectiveness at the time we make a listing decision.~~

~~(c) We will consider Tribal views in individual evaluations of formalized conservation efforts.~~

~~(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.~~

Information Quality

~~In Accordance with section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), OMB directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public (67 FR 8452). Under our Information Quality guidelines, if we use a conservation plan or agreement as part of our decision to either list or not list a species under the Act, the plan or agreement is considered to be disseminated by us and these guidelines apply to the plan or agreement. The criteria outlined in this policy are consistent with OMB, Department of Commerce, NOAA, and Department of the Interior. FWS information quality guidelines. The Department of the Interior's guidelines can be found at <http://www.doi.gov/ocio/guidelines/515Guides.pdf>, and the FWS's guidelines can be found at <http://irm.fws.gov/infoguidelines/>. The Department of Commerce's guidelines can be found at <http://www.osce.doc.gov/cio/oipr/iqg.html>, and the NOAA/NMFS's guidelines can be found at <http://www.noaa.gov/newsroom/stories/iq.htm>. Under these guidelines, any affected~~

~~person or organization may request from FWS or NMFS, a correction of information they believe to be incorrect in the plan or agreement. "Affected persons or organizations" are those who may use, be benefitted by, or be harmed by the disseminated information (i.e., the conservation plan or agreement). The process for submitting a request for correction of information is found in the respective FWS and NOAA guidelines.~~

Economic Analysis

~~This policy identifies criteria that a formalized conservation effort must satisfy to ensure certainty of implementation and effectiveness and for us to determine that the conservation effort contributes to making listing a species unnecessary or contributes to forming a basis for listing a species as threatened rather than endangered. We developed this policy to ensure consistent and adequate evaluation of agreements and plans when making listing decisions. The policy will also provide guidance to States and other entities on how we will evaluate certain formalized conservation efforts during the listing process.~~

~~The criteria in this policy primarily describe elements that are already included in conservation efforts and that constitute sound conservation planning. For example, the criteria requiring identification of responsible parties, obtaining required authorizations, establishment of objectives, and inclusion of an implementation schedule and monitoring provisions are essential for directing the implementation and affirming the effectiveness of conservation efforts. These kinds of "planning" requirements are generally already included in conservation efforts and do not establish any new implementation burdens. Rather, these requirements will help to ensure that conservation efforts are well planned and, therefore, increase the likelihood that conservation efforts will ultimately be successful in making listing species unnecessary.~~

~~The development of an agreement or plan by a state or other entity is completely voluntary. However, when a state or other entity voluntarily decides to develop an agreement or plan with the specific intent of making listing a species unnecessary, the criteria identified in this policy can be construed as requirements placed on the development of such agreements or plans. The state or other entity must satisfy these criteria in order to obtain and retain the benefit they are seeking, which is making listing of a species as threatened or endangered unnecessary.~~

~~The criteria in the policy require demonstrating certainty of implementation and effectiveness of formalized conservation efforts. We have always considered the certainty of implementation and effectiveness of conservation efforts when making listing decisions. Therefore, we believe that no economic effects on states and other entities will result from using the criteria in this policy as guidance.~~

~~Furthermore, publication of this policy will have positive effects by informing States and other entities of the criteria we will use in evaluating formalized conservation efforts when making listing decisions, and thereby guide states and other entities in developing voluntary formalized conservation efforts that will be successful in making listing unnecessary. Therefore, we believe that informational benefits will result from issuing this policy. We believe these benefits, although important, will be insignificant economically.~~

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

Policy Purpose

The Fish and Wildlife Service and National Marine Fisheries Service developed this policy to ensure consistent and adequate evaluation of formalized conservation efforts (conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents) when making listing decisions under the Act. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Definitions

"Adaptive management" is a method for examining alternative strategies for meeting measurable biological goals and objectives, and then, if necessary, adjusting future conservation management actions according to what is learned.

"Agreements and plans" include conservation agreements, conservation plans, management plans, or similar documents approved by Federal agencies, State and local governments, Tribal governments, businesses, organizations, or individuals.

"Candidate species," as defined by regulations at 50 CFR 424.02(b), means

any species being considered for listing as an endangered or a threatened species, but not yet the subject of a proposed rule. However, the FWS includes as candidate species those species for which the FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The NMFS includes as candidate species those species for which it has information indicating that listing may be warranted, but for which sufficient information to support actual proposed listing rules may be lacking. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

"Conservation efforts," for the purpose of this policy, are specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. Conservation efforts may involve restoration, enhancement, maintenance, or protection of habitat; reduction of mortality or injury; or other beneficial actions.

"Formalized conservation efforts" are conservation efforts identified in a conservation agreement, conservation plan, management plan, or similar document. An agreement or plan may contain numerous conservation efforts.

Policy Scope

When making listing decisions, the Services will evaluate whether formalized conservation efforts contribute to making it unnecessary to list a species, or to list a species as threatened rather than endangered. This policy applies to those formalized conservation efforts that have not yet been implemented or have been implemented, but have not yet demonstrated whether they are effective at the time of a listing decision. We will make this evaluation based on the certainty of implementing the conservation effort and the certainty that the effort will be effective. This policy identifies the criteria we will use to help determine the certainty of implementation and effectiveness. Listing decisions covered by the policy include findings on petitions to list species, and decisions on whether to assign candidate status, remove candidate status, issue proposed listing rules, and finalize or withdraw proposed listing rules. This policy applies to formalized conservation efforts developed with or without a specific intent to influence a listing decision and with or without the involvement of the Services.

Section 4(a)(1) of the Endangered Species Act of 1973, as amended (16

U.S.C. 1533(a)(1)), states that we must determine whether a species is threatened or endangered because of any of the following five factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Although this language focuses on impacts negatively affecting a species, section 4(b)(1)(A) requires us also to "tak[e] into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas." Read together, sections 4(a)(1) and 4(b)(1)(A), as reflected in our regulations at 50 CFR 424.11(f), require us to take into account any State or local laws, regulations, ordinances, programs, or other specific conservation measures that either positively or negatively affect a species' status (i.e., measures that create, exacerbate, reduce, or remove threats identified through the section 4(a)(1) analysis). The manner in which the section 4(a)(1) factors are framed supports this conclusion. Factor (D) for example—"the inadequacy of existing regulatory mechanisms"—indicates that overall we might find existing regulatory mechanisms adequate to justify a determination not to list a species.

Factor (E) in section 4(a)(1) (any "manmade factors affecting [the species'] continued existence") requires us to consider the pertinent laws, regulations, programs, and other specific actions of any entity that either positively or negatively affect the species. Thus, the analysis outlined in section 4 of the Act requires us to consider the conservation efforts of not only State and foreign governments but also of Federal agencies, Tribal governments, businesses, organizations, or individuals that positively affect the species' status.

While conservation efforts are often informal, such as when a property owner implements conservation measures for a species simply because of concern for the species or interest in protecting its habitat, and without any specific intent to affect a listing decision, conservation efforts are often formalized in conservation agreements, conservation plans, management plans, or similar documents. The development

and implementation of such agreements and plans has been an effective mechanism for conserving declining species and has, in some instances, made listing unnecessary. These efforts are consistent with the Act's finding that "encouraging the States and other interested parties * * * to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants" (16 U.S.C. 1531 (a)(5)).

In some situations, a listing decision must be made before all formalized conservation efforts have been implemented or before an effort has demonstrated effectiveness. We may determine that a formalized conservation effort that has not yet been implemented has reduced or removed a threat to a species when we have sufficient certainty that the effort will be implemented and will be effective.

Determining whether a species meets the definition of threatened or endangered requires us to analyze a species' risk of extinction. Central to this risk analysis is an assessment of the status of the species (i.e., is it in decline or at risk of decline and at what rate is the decline or risk of decline) and consideration of the likelihood that current or future conditions or actions will promote (see section 4(b)(1)(A)) or threaten a species' persistence. This determination requires us to make a prediction about the future persistence of a species, including consideration of both future negative and positive effects of anticipated human actions. The language of the Act supports this approach. The definitions for both "endangered species" and "threatened species" connote future condition, which indicates that consideration of whether a species should be listed depends in part on identification and evaluation of future actions that will reduce or remove, as well as create or exacerbate, threats to the species. The first factor in section 4(a)(1)—"the present or *threatened* destruction, modification, or curtailment of [the species'] habitat or range"—identifies how analysis of both current actions affecting a species' habitat or range and those actions that are sufficiently certain to occur in the future and affect a species' habitat or range are necessary to assess a species' status. However, future Federal, State, local, or private actions that affect a species are not limited to actions that will affect a species' habitat or range. Congress did not intend for us to consider future actions affecting a species' habitat or range, yet ignore future actions that will influence overutilization, disease, predation,

regulatory mechanisms, or other natural or manmade factors. Therefore, we construe Congress' intent, as reflected by the language of the Act, to require us to consider both current actions that affect a species' status and sufficiently certain future actions—either positive or negative—that affect a species' status. As part of our assessment of future conditions, we will determine whether a formalized conservation effort that has yet to be implemented or has recently been implemented but has yet to show effectiveness provides a high level of certainty that the effort will be implemented and/or effective and results in the elimination or adequate reduction of the threats.

For example, if a state recently designed and approved a program to eliminate collection of a reptile being considered for listing, we must assess how this program affects the status of the species. Since the program was just designed, an implementation and effectiveness record may not yet exist. Therefore, we must evaluate the likelihood, or certainty, that it will be implemented and effective, using evidence such as the State's ability to enforce new regulations, educate the public, monitor compliance, and monitor the effects of the program on the species. Consequently, we would determine that the program reduces the threat of overutilization of the species through collecting if we found sufficient certainty that the program would be implemented and effective.

In another example, a state could have a voluntary incentive program for protection and restoration of riparian habitat that includes providing technical and financial assistance for fencing to exclude livestock. Since the state has already implemented the program, the state does not need to provide certainty that it will be implemented. If the program was only recently implemented and no record of the effects of the program on the species' status existed, we would evaluate the effectiveness of this voluntary program at the time of our listing decision. To assess the effectiveness, we would evaluate the level of participation (e.g., number of participating landowners or number of stream-miles fenced), the length of time of the commitment by landowners, and whether the program reduces the threats on the species. We would determine that the program reduces the threat of habitat loss and degradation if we find sufficient certainty that the program is effective.

In addition, we will consider the estimated length of time that it will take for a formalized conservation effort to

produce a positive effect on the species. In some cases, the nature, severity, and/or imminence of threats to a species may be such that a formalized conservation effort cannot be expected to produce results quickly enough to make listing unnecessary since we must determine at the time of the listing decision that the conservation effort has improved the status of the species.

Federal agencies, Tribal governments, state and local governments, businesses, organizations, or individuals contemplating development of an agreement or plan should be aware that, because the Act mandates specific timeframes for making listing decisions, we cannot delay the listing process to allow additional time to complete the development of an agreement or plan. Nevertheless, we encourage the development of agreements and plans even if they will not be completed prior to a final listing decision. Such an agreement or plan could serve as the foundation for a special rule under section 4(d) of the Act, which would establish only those prohibitions necessary and advisable for the conservation of a threatened species, or for a recovery plan, and could lead to earlier recovery and delisting.

This policy provides us guidance for evaluating the certainty of implementation and effectiveness of formalized conservation efforts. This policy is not intended to provide guidance for determining the specific level of conservation (e.g., number of populations or individuals) or the types of conservation efforts (e.g., habitat restoration, local regulatory mechanisms) specifically needed to make listing particular species unnecessary and does not provide guidance for determining when parties should enter into agreements. We do encourage early coordination in conservation measures to prevent the species from meeting the definition of endangered or threatened.

If we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of a formalized conservation effort, we will track the status of the effort including the progress of implementation and effectiveness of the conservation effort. If any of the following occurs: (1) a failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat or to address other new information on threats; or (4) we receive any other new information

indicating a possible change in the status of the species, then we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule. In some cases, even if the parties fully implement all of the conservation efforts outlined in a particular agreement or plan, we may still need to list the species. For example, this may occur if conservation efforts only cover a portion of a species' range where the species needed to be conserved, or a particular threat to a species was not anticipated or addressed at all, or not adequately addressed, in the agreement or plan.

Evaluation Criteria

Conservation agreements, conservation plans, management plans, and similar documents generally identify numerous conservation efforts (i.e., actions, activities, or programs) to benefit the species. In determining whether a formalized conservation effort contributes to forming a basis for not listing a species, or for listing a species as threatened rather than endangered, we must evaluate whether the conservation effort improves the status of the species under the Act. Two factors are key in that evaluation: (1) for those efforts yet to be implemented, the certainty that the conservation effort will be implemented and (2) for those efforts that have not yet demonstrated effectiveness, the certainty that the conservation effort will be effective. Because the certainty of implementation and effectiveness of formalized conservation efforts may vary, we will evaluate each effort individually and use the following criteria to direct our analysis.

A. The certainty that the conservation effort will be implemented:

1. The conservation effort, the party(ies) to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified.
2. The legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described.
3. The legal procedural requirements (e.g. environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does

not preclude commitment to the effort. 4. Authorizations (e.g., permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations. 5. The type and level of voluntary participation (e.g., number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (e.g., an explanation of how incentives to be provided will result in the necessary level of voluntary participation). 6. Regulatory mechanisms (e.g., laws, regulations, ordinances) necessary to implement the conservation effort are in place. 7. A high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding. 8. An implementation schedule (including incremental completion dates) for the conservation effort is provided. 9. The conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan.

B. The certainty that the conservation effort will be effective:

1. The nature and extent of threats being addressed by the conservation effort are described, and how the conservation effort reduces the threats is described. 2. Explicit incremental objectives for the conservation effort and dates for achieving them are stated. 3. The steps necessary to implement the conservation effort are identified in detail. 4. Quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified. 5. Provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided. 6. Principles of adaptive management are incorporated.

These criteria should not be considered comprehensive evaluation criteria. The certainty of implementation and effectiveness of a formalized conservation effort may also

depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We will consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort(s) contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the section 4(a)(1) analysis. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered. An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of "endangered species" or "threatened species" on the day of the listing decision, then we must proceed with appropriate rule-making activity under section 4 of the Act.

Dated: September 16, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

December 23, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Services.*

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BILLING CODES 4310-55-S and 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306-2306-01; I.D. 032403A]

~~Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska~~

~~AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.~~

~~ACTION: Modification of a closure.~~

~~SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the B season allowance of the total allowable catch (TAC) of pollock specified for Statistical Area 610.~~

~~DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 26, 2003, through 1200 hrs, A.l.t., March 27, 2003.~~

~~FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.~~

~~SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.~~

~~NMFS closed the B season directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on March 19, 2003 (68 FR 13857, March 21, 2003).~~

~~NMFS has determined that, approximately 986 mt of pollock remain in the B season directed fishing allowance. Therefore, in accordance with 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the B season allowance of pollock TAC specified for Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., March 27, 2003.~~