The Center for Growth and
Opportunity at Utah State University

Public Interest Comment on
The Fish and Wildlife Service's Proposed Rule:
Revision of the Regulations for Listing Species and Designating Critical Habitat

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The Center for Growth and Opportunity at Utah State University is a university-based research center located on the Logan campus of Utah State University. The Center for Growth and Opportunity is dedicated to producing policy-relevant research that explores the interactions between key institutions—business, government, and civil society—to better understand how to improve opportunity, broad-based economic growth, and individual well-being. As part of its mission, the Center conducts independent analyses addressing rulemakings and proposals. Therefore, this reply comment is designed to assist the agency as it explores these issues.

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Introduction

We appreciate the opportunity to provide the Fish and Wildlife Service and National Marine Fisheries Service (collectively referred to as "the Services"), as well as other readers, with feedback on proposed revisions to the regulations for listing species and designating critical habitat. Our comment is focused on the proposal to allow information about the economic impacts of a listing.

The changes being made to incorporate economic analysis are a beneficial step in helping the Services engage in more cooperative conservation efforts with private parties and local governments. Providing an upfront analysis of the economic impacts may go a long way in developing relationships with those that will be most affected by species designations. However, we suggest that it may be better for Congress to allow the Services to actively consider economic impacts in listing decisions.

These rule changes will contribute to better conservation outcomes by involving private landowners sooner and creating clear incentives to help species recover to the point that they can be delisted.

Economic Impacts

This rule change would allow the Services to include information about the economic impacts of a species listing in listing decisions. According to the Services, this rule change does not mean "that all listing determinations will include a presentation of economic or other impacts. Rather, there may be circumstances where such impacts are referenced while ensuring that biological considerations remain the sole basis for listing determinations."[1] This change would be helpful to affected stakeholders by more clearly outlining the potential impacts of designation.

We have suggested in previous research—along with Brown and Shogren, Shogren et. al., Frisvold, and others—that cooperative approaches are a more productive path to achieving species conservation.[2] Providing the public with information on the potential economic impacts of a species may not only help communities understand the impacts of potential designations, but also empower communities to take steps toward assisting the Services through cooperative approaches to species conservation.

Giving private parties as much notice as possible about the potential economic impacts of a species designation would be a good first step toward more cooperative conservation efforts for several reasons.

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[1] "Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat." Federal Register 83, no. 424 (July 25, 2018): 35193. https://www.federalregister.gov/documents/2018/07/25/2018-15810/endangered-and-threatened-wildlife-and-plants-revision-of-the-regulations-for-listing-species-and

[2] Randy T Simmons, Megan E. Hansen, Grant Patty, "Saving Endangered Species: Voluntary Solutions to Conservation," Strata, February, 2017.

Gardner M. Brown Jr. and Jason F. Shogren, "Economics of the Endangered Species Act," *Journal of Economic Perspectives* 12 no. 3 (Summer 1998): 3–20, DOI: 10.1257/jep.12.3.3

Shogren et. al., "Why Economics Matters for Endangered Species Protection," *Conservation Biology*, 13 no. 6 (December, 1999): 1257-1261 https://doi.org/10.1046/j.1523-1739.1999.98414.x

George Frisvold, "The Economics of Endangered Species," Resources for the Future, October 25, 2010.

Jordan Lofthouse and Camille Harmer, "Improving the Endangered Species Act," August 2017, Strata, https://www.strata.org/improving-esa/

First, if private landowners are able to access information about the potential economic impacts of a species listing then they will have the opportunity to anticipate these impacts. Second, private landowners will also have the opportunity to work with both public and private parties to minimize the negative economic impacts of a listing while working to help species on their land achieve recovery.

Because the majority of listed species rely on private land for their habitat, successful engagement with private landowners is crucial to conserving species. Many studies have outlined the potential of more cooperative, incentive-based approaches to involve private landowners as conservation partners. For example, surveys of private landowners in Washington and Oregon suggest incentive mechanisms that include compensation schemes and assurances against future regulation would be likely to increase the involvement of landowners in conservation efforts.[3]

While the proposed rule change will have positive effects, a more effective approach may be for Congress to allow the consideration of economic impacts when listing endangered species. As Shogren et. al. explain, "Ignoring whether the benefits of preservation outweigh the benefits of commercial use may ultimately cause these landowners, whose property helps shelter many listed species, to reject well-intentioned ESA policy."[4] As a result, landowners may be more likely to engage in cooperative conservation efforts when they feel that their livelihoods were considered in listing decisions and that the Services are willing to work with them. Informing landowners and the general public of the economic impacts of designations as well as considering those impacts in listing decisions could create a better relationship with private parties that are key partners in preserving species.

Protecting species necessarily requires economic trade-offs. Montgomery, Brown, and Adams argued in 1994 that since both human development and species conservation rely heavily on "a finite resources base," tradeoffs are necessary.[5] Examples of this include the listing of the northern spotted owl, which triggered critical habitat designations that had large economic impacts on much of the Northwest. The critical habitat designation prevented the logging of many acres of forest and largely impacted small timber reliant communities in favor of expansive habitat protection for the species.[6]

Montgomery, Brown, and Adams, as well as Shogren and Brown, suggest that species protection will always come with negative economic impacts, since many species are endangered because of our use of natural resources.[7] Shogren and Brown state that, "Since development and conservation decisions depend

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[3] Christian Langpap, "Conservation of endangered species: can incentives work for private landowners? *Ecological Economics* 57, no. 4 (June 2006): 558 - 572.

[4] Shogren et. al., "Why Economics Matters for Endangered Species Protection," *Conservation Biology*, 13 no. 6 (December, 1999): 1257-1261 https://doi.org/10.1046/j.1523-1739.1999.98414.x

[5] The Marginal Cost of Species Preservation: The Northern Spotted Owl. Montgomery, Brown, and Adams. (1994). p. 4. https://doi.org/10.1006/jeem.1994.1007

[6] Northern Spotted Owl Conservation, "How are the Northern Spotted Owls Protected?" n.d. http://www.northernspottedowl.org/jurisdictions/nwfp.html

[7] The Marginal Cost of Species Preservation: The Northern Spotted Owl. Montgomery, Brown, and Adams. (1994). p. 4. https://doi.org/10.1006/jeem.1994.1007

Gardner M. Brown Jr. and Jason F. Shogren, "Economics of the Endangered Species Act," *Journal of Economic Perspectives* 12 no. 3 (Summer 1998): 3–20, DOI: 10.1257/jep.12.3.3

on economic parameters such as relative prices and income, so does the probability of species extinction."[8] In many cases, arguments in favor of or against considering the economic costs and impacts of species preservation seem to suggest the issue is all-or-nothing.[9]

Considering economic impacts in the designation of a species, however, does not require decisions about the conservation to be a simply "yes" or "no" question. Rather, thinking about economic trade-offs creates an environment for decision-making in which the primary question is not whether or not to protect a species but to consider protection in the context of the costs such steps would impose on others. This shifts conversations about species conservation toward an examination of the marginal benefit of one more added level of protection, or one more acre added to critical habitat designation.[10]

The Services can strike a balance by implementing a tiered approach to species designation. While a species' status as endangered or threatened is not an economic question, the steps taken by the Services in response to these classifications necessarily are economic in nature: they limit what is oftentimes otherwise productive activity and uses of shared natural resources.[11] The proposed rule "Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Species and Designating Critical Habitat" would provide different levels of protection for threatened and endangered species and allows the Services to acknowledge declining species without extending the full protections under the Act.[12]

A similar tiered approach for endangered species may help the Services better protect species. The Services should be able to list a species as endangered, then decide how to protect it by considering the economic impacts of their conservation plans. This would lead to the potential for more cooperation between private landowners and the Services in the name of preserving species.

Acknowledging species as threatened without triggering automatic protections, like restrictions on takings, will lead to more successful cases of cooperative conservation. Take for example the greater sage-grouse, a game bird that lives in much of the Western states. In 2010, the Fish and Wildlife Service (FWS) announced the bird was now a candidate for listing under the ESA. Several western states, including Oregon, Utah, Idaho, and Wyoming acknowledged that the designation would have major economic impacts on their state economies. In an economic analysis completed by the Oregon FWS, the authors state that the listing of the greater sage-grouse would have had "serious economic, social, and cultural consequences across the Western United States."[13]

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[8] Gardner M. Brown Jr. and Jason F. Shogren, "Economics of the Endangered Species Act," *Journal of Economic Perspectives* 12 no. 3 (Summer 1998): 3–20, DOI: 10.1257/jep.12.3.3

[9] The Marginal Cost of Species Preservation: The Northern Spotted Owl. Montgomery, Brown, and Adams. (1994). p. 4. https://doi.org/10.1006/jeem.1994.1007

[10] The Marginal Cost of Species Preservation: The Northern Spotted Owl. Montgomery, Brown, and Adams. (1994). p. 4. https://doi.org/10.1006/jeem.1994.1007

[11] The Marginal Cost of Species Preservation: The Northern Spotted Owl. Montgomery, Brown, and Adams. (1994). p. 4. https://doi.org/10.1006/jeem.1994.1007

[12] "Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants." Federal Register 83, no. 17 (July 25, 2018): 35174. https://www.federalregister.gov/documents/2018/07/25/2018-15811/endangered-and-threatened-wildlife-and-plants-revision-of-the-regulations-for-prohibitions-to

[13] Hagen, C. (2011). Greater Sage-Grouse Conservation Assessment and Strategy for Oregon: A Plan to Maintain and Enhance Populations and Habitat. Oregon Department of Fish and Wildlife. Retrieved from http://www.dfw.state.or.us/wildlife/sagegrouse/docs/20110422_GRSG_ April_Final%2052511.pdf

The measured approach taken by the FWS, in not just listing the sage-grouse but instead working with states to allow them to take steps to mitigate the economic impacts, allowed states to take active steps toward protecting the species. Western states worked with the National Resources Conservation Service to form the Sage Grouse Initiative. This program established voluntary agreements with landowners covering 4.4 million acres as of 2015.[14] These efforts were successful enough that in 2015, the FWS found that the listing of the sage grouse was no longer warranted, and removed the species from the candidate list.[15] Being able to acknowledge a species as deserving conservation assistance without placing automatic protections on it may have similar effects for other species.

The most productive route the Services can take toward effective species recovery is to more actively engage private landowners in the process before listing occurs. By considering economic impacts in listing decisions, the Services would be forced to consider how listings will impact local communities. This consideration will likely lead to more cooperative conservation, with landowners taking a more active role earlier in the process, resulting in better protection of endangered species.

In addition, by incorporating economic considerations, the Services can better prioritize resources to focus on species that are more likely to recover and have less negative economics impacts. In 2016 Leah Gerber, a researcher with the Center for Biodiversity Outcomes and School of Life Sciences at Arizona State University suggested a "conservation triage" system that would allow the Services to better prioritize their scarce resources.[16] Her proposal would prioritize spending on species conservation by most endangered and most likely to be saved, placing species that are likely to have a high return for few resources near the top. If the Services were to implement such a system, it would enable them to consider the economic impacts of conservation efforts in their plans and prioritize conservation efforts that are more likely to benefit species while minimizing economic impacts.

While making tradeoffs between conservation and economic impacts will involve some subjectivity, clear economic analysis would create well-defined standards for when, how, and why species are protected. Under the current system, there is no room to consider the overall effectiveness or consequences certain regulatory approaches may have—listing triggers automatic protections. Approaching conservation in a more measured, flexible manner would benefit the Services, private parties, and most importantly, endangered and threatened species.

Conclusion

By allowing for increased use of economic analysis when considering species designation, the Services would be taking a positive step toward more effective species conservation through this rule change. The Services can more actively engage in cooperative, and thus more effective, conservation efforts by specifically considering the impacts on parties involved in listing decision.

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[14] U.S. Department of the Interior, "Historic Conservation Campaign Protects Greater Sage-Grouse," Press Release, September 22, 2015 https://www.doi.gov/pressreleases/historic-conservation-campaign-protects-greater-sage-grouse

[15] U.S. Fish and Wildlife Service, "Greater Sage-Grouse: 2015 Sage-Grouse Finding," n.d. https://www.fws.gov/greatersagegrouse/

[16] Leah R. Gerber, "Conservation triage or injurious neglect in endangered species recovery," *Proceedings of the National Academy of Sciences* March 2016, 201525085; DOI:10.1073/pnas.1525085113