

How Far Will USFWS Expand Incentives for Voluntary Conservation Actions Under the Endangered Species Act?

The U.S. Fish and Wildlife Service tries to encourage landowners to take voluntary steps to benefit species that might become threatened or endangered. The hope is that the landowners' conservation actions will prevent the species from declining to the point that listing is required. But as USFWS has recognized, the beneficial actions of one or a handful of landowners are often not enough. And once listing occurs, landowners who have helped the species may be worse off than if they had done nothing, because if their efforts work, the result will be a wider distribution of the species on their land.

Through several mechanisms – Habitat Conservation Plans, Safe Harbor Agreements, and particularly Candidate Conservation Agreements with Assurances – USFWS attempts to give landowners enough to make voluntary conservation actions worthwhile. Dissatisfied with results to date, USFWS now seeks "suggestions to reduce the time and difficulty associated with CCAAs." It also plans to propose an important new type of assurance that "the benefits of appropriate voluntary conservation actions will be recognized as offsetting the adverse effects of activities carried out by that landowner or others after listing." In its March 15, 2012 Advance Notice of Proposed Rulemaking, USFWS also asked whether these offsets should take the form of credits that would be transferable to third parties.

So far, USFWS has docketed only 37 public comments on the proposed rulemaking. (By contrast, the Corps of Engineers/EPA proposal to change the rules for wetland delineations has attracted over 230,000 comments.) USFWS recently extended the comment period on the proposed rulemaking to July 13, 2012.

One of the most thoughtful comments comes from the Santa Ana Sucker Task Force, a group of cities, water districts, and other agencies in Southern California. With a goal of seeing the threatened Santa Ana Sucker delisted, task force members have taken on a long list of conservation actions to benefit the sucker, as well as several non-listed species, in the Santa Ana River watershed. The task force notes that its members "could devote more funding and resources to implement these beneficial projects if additional incentives were available, such as ecosystem credits that could be applied to future projects."

Fundamentally, the task force urges USFWS to think more broadly about the credit system. Like other commenters, the task force urges that credits should be transferable, and that creation of the accounting system for the credits should be developed "transparently and collaboratively." But rather than think in terms of individual species and individual plots of land, the task force asks USFWS to "recognize that purchasing and managing conservation lands is only one of many tools to promote ecosystem health and species recovery, and that acquiring land may not be the most effective conservation tool for aquatic species." It suggests that credits be given for activities that benefit an ecosystem, not just an individual species, and that USFWS should also accommodate credits for research "when all parties agree that research is the highest priority for species recovery or to prevent listing of an at-risk species." The task force also advocates including actions that benefit listed species, not just candidate species, in the program.

USFWS's proposed credit program presents an opportunity for stakeholders and USFWS, as well as key state agencies such as the California Department of Fish and Game, to reexamine how best to fulfill the Endangered

Species Act's mandate. The proposal has been well received in most quarters, but still needs to be translated into regulatory amendments. After the public comment period closes, we will learn whether USFWS will take up the challenges presented by the Santa Ana Sucker Task Force and other commenters.

[Advance Notice of Proposed Rulemaking, 77 Fed. Reg. 15352 \(Mar. 15, 2012\).](#)

[Extension of Comment Period, 77 Fed. Reg. 28347-28348 \(May 14, 2012\).](#)

[Santa Ana Sucker Task Force Comment Letter \(May 14, 2012\).](#)

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