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U.S. Fish and Wildlife Service Proposes Credit Program for Voluntary Conservation of At-Risk Species

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The U.S. Fish and Wildlife Service (FWS) announced a proposed policy establishing credits for voluntary conservation actions taken for species prior to listing under the Endangered Species Act (ESA). 79 Fed. Reg. 42525 (July 22, 2014). The proposed policy is intended to give landowners and others incentives to conduct voluntary conservation measures for at-risk species – including species that have not been nominated for listing consideration under the ESA.

The proposed policy was published in the Federal Register on July 22, and is available for comment until September 22, 2014.

FWS's proposal suggests that where a state has chosen to participate, private landowners can enroll in a state-administered program to track voluntary conservation measures for particular species. Should that species be listed as threatened or endangered under the ESA, the private landowner will then receive credits for pre-listing conservation measures. Those credits can be used by the person who performed conservation measures, or by a third party, such as an oil and gas company, to mitigate for impacts to the species' habitat.

As currently drafted, the proposed policy will only be available in states that design and implement a conforming program. All voluntary actions receiving credit must occur before the species is listed under the ESA, and they must be truly voluntary, *e.g.* they cannot be required pursuant to any federal, state, or local regulation.

This proposal follows FWS's March 2012 request for suggestions on how to change or improve policies and regulations under the ESA. FWS's goal with the proposed policy is to improve and expand existing incentives for landowners and others to invest in voluntary conservation actions to benefit at-risk species.

The Federal Register notice is available here. For further information about the proposed voluntary credit policy, please contact Theresa Sauer.