DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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RIN 1018–BB08; 0648–BF79

Candidate Conservation Agreements with Assurances Policy

AGENCIES: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of revised policy.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services when referring to both, and Service when referring to when the action is taken by one agency), announce revisions to the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. We added a definition of "net conservation benefit" to this policy and eliminated references to the confusing requirement of "other necessary properties" to clarify the level of conservation effort each agreement needs to include in order for the Services to approve an agreement. In a separate document published in today's **Federal Register**, the U.S. Fish and Wildlife Service changed its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with these changes to the policy.

DATES: This policy is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This final policy is available on the Internet at http://www.regulations.gov at Docket Number FWS–HQ–ES–2015–0177. Comments and materials received, as well as supporting documentation used in the preparation of this policy, are also available at the same location on the Internet.

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Chief, Division of Recovery and Restoration, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171); or Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (telephone 301–427–8403, facsimile 301–713–0376). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) are charged with implementing the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.) (ESA or Act); among the purposes of the ESA are to provide a means to conserve the ecosystems upon which species listed as endangered or threatened depend and a program for listed species conservation. Through its Candidate Conservation program, one of the FWS's goals is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA (16 U.S.C. 1531 *et seq*.). The benefits of such conservation actions may contribute to not needing to list a

species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. The Services put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation plans for unlisted species: Candidate Conservation Agreements with Assurances (CCAAs). The policy for this type of agreement was finalized on June 17, 1999 (64 FR 32726), along with implementing regulations for FWS in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706). The FWS revised the CCAA regulations in 2004 (69 FR 24084; May 2, 2004) to make them easier to understand and implement by defining "property owner" and clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take.

To participate in a CCAA, non-Federal property owners agree to implement on their land the CCAA's specific conservation measures that reduce or eliminate threats to the species that are covered under the agreement. An ESA section 10(a)(1)(A) enhancement-of-survival permit is issued to the agreement participant providing a specific level of incidental take coverage should the property owner's agreed-upon conservation measures and routine property-management actions (e.g., agricultural, ranching, or forestry activities) result in take of the covered species if listed. Property owners receive assurances that they will not be required to undertake any other conservation measures than those agreed to, even if new information indicates that additional or revised conservation measures are needed for the species, and they will not be subject to additional resource use or land-use restrictions.

Under the 1999 policy, to approve a CCAA we had to "determine that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be

implemented on other necessary properties, would preclude or remove any need to list the covered species." This language had led some property owners to believe that the Services expected each individual CCAA to provide enough conservation benefits to the species to remove any need to list the species. The confusion created by the hypothetical concept of conservation measures that need to be implemented on "other necessary properties" is the reason we are clarifying and revising the CCAA standard to require a net conservation benefit to the covered species specifically on the property to be enrolled and eliminating references to "other necessary properties."

Changes from the Draft Policy

Based on comments we received on the draft policy, we include the following changes in this final policy:

(1) In Part 1 of the policy, we inserted language that states that the overall goal of the Services' candidate conservation program is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA. The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. CCAAs are one tool that can help to achieve this goal, and provides an important incentive for property owners to participate in a CCAA. However, we recognize that it is unrealistic to expect, in most situations, an individual CCAA for one property to be successful in reaching this goal (with the exception of an enrolled property that contains the majority of the populations and habitat of a species).

(2) In Parts 1 and 2 of the policy, we inserted the word "key" before "threats" in certain places to indicate that the conservation measures included in a single or individual CCAA must

be designed to address those threats that are of the highest priority or those threats where we expect to achieve the most benefit to the covered species by addressing them on the enrolled property. While a property owner will not be required to address every threat on the enrolled property, the property owner will be required to address the key threat(s) to the covered species that are under the landowner's control in order to participate in a CCAA and achieve a net conservation benefit for that species.

(3) In Part 2 of the policy, we revised the first part of the definition of "net conservation benefit (for CCAA)" by changing "and" to "or" to indicate that benefits from the conservation measures can be designed to improve the status of the species directly, or indirectly through improvements to its habitat, and we slightly revised this phrase to clarify that removing or minimizing threats leads to stabilized or improved populations or habitat improvement: **Net conservation benefit (for CCAA)** is defined as the cumulative benefits of the CCAA's specific conservation measures designed to improve the status of a covered species by removing or minimizing threats so that populations are stabilized, the number of individuals is increased, or habitat is improved.

(4) In Parts 1 and 2, in several places, we changed "likely to become candidates" to "may become candidates," so we do not imply that we are likely to find that a particular species should be a candidate for listing under the ESA.

(5) In Part 12 of the policy, we removed "when appropriate" in the second sentence. The Services are committed to coordinating with State fish and wildlife agencies, and the phrase "when appropriate" implied that the Services would not regularly coordinate with the States, which is not our intent.

(6) Throughout the policy, as appropriate, we added language regarding improving the status of the covered species after mention of "net conservation benefit" to provide more clarity on the requirements of a CCAA because FWS or NMFS staff biologists, CCAA applicants, or consultants may not utilize the definitions section of the policy. We also inserted "the CCAA's" before "specific conservation measures" in several places in the policy to prevent the potential misunderstanding of "cumulative benefits" to mean those other than ones associated with the CCAA.

Summary of Comments and Recommendations

On May 4, 2016, we published a draft revised Candidate Conservation Agreements with Assurances policy in the **Federal Register** (81 FR 26817) that requested written comments and information from the public. Concurrently with the revised proposed policy, we also published revised proposed regulations that reflected the revisions made in the CCAA policy (81 FR 26769). In both documents, we announced that the comment period would be open for 60 days, ending July 5, 2016. Because the vast majority of comments we received addressed revisions to the CCAA policy, other comments did not specifically identify whether the comment pertained to the policy or the regulations, and all the revisions in the regulations completely overlap with those in the policy, we are addressing all comments we received on the policy and the regulations together in this document. Comments we received are grouped into general categories specifically relating to the draft policy and proposed revisions to the regulations.

Comment (1): Many commenters supported the proposed changes, specifically the net-conservation-benefit standard and the deletion of the hypothetical references to "other necessary properties." Several other commenters stated that they believed the new standard will help clarify the intent of the CCAA program and may also encourage landowner enrollment and

facilitate greater participation in prelisting conservation actions.

Our Response: We agree with the commenters. The intent of the policy and regulation revisions was to provide a more understandable standard for approving CCAAs.

Comment (2): A commenter expressed concern that the new standard will be viewed by landowners as more onerous, setting a higher bar of required conservation and could discourage participation in CCAAs. Several other commenters believed the "net conservation benefit" definition was unclear and could be interpreted as lowering the conservation bar, while others interpreted it as raising the bar. Additionally, commenters stated that ensuring a "net conservation benefit" for all covered species in a multi-species CCAA may be difficult to achieve and further discourage the development of such CCAAs.

Our Response: Our only intent in redefining the CCAA standard was to create a standard that is easier for the public and the staff of the Services to understand. The new standard does not set a higher or lower bar than the standard contained in the original 1999 policy. Under the 1999 policy, a property owner participating in a CCAA was required to address key threats that were under their control to the species on the enrolled property, or in the case where a property owner was already appropriately managing for the benefit of the covered species, the property owner would need to continue those conservation measures for the duration of the CCAA. The revised standard explicitly states these provisions. For multiple-species CCAAs, we must ensure that the property owner meets the standard for all the species covered by the agreement. When designing a multi-species CCAA, we must have sufficient information regarding the species, their habitat and other needs; specific threats; and the conservation measures that can reasonably be expected to address those threats (that are under the control of the property owner) before including that species in the agreement.

Comment (3): Another commenter stated that the term "status" was unclear—did the FWS intend it to mean the status of the species as a whole, or the status of the covered species' population found on the site covered by the CCAA? Depending on which is meant, the conservation bar could be quite high or quite low.

Our Response: The term "status" in the definition of "net conservation benefit" refers to the status of the population on the enrolled property. While it is the overall goal of CCAAs and the Services' candidate program to improve the species' status as a whole, it would be unrealistic to expect, in most cases, that one CCAA would significantly improve the status of the entire species (unless a single enrolled property contains the majority of a species' populations and habitat).

Comment (4): One commenter questioned if the standard meant that a CCAA that is designed only to "stabilize populations" will never be approved or whether a CCAA that is designed only to preserve habitat would be approved. Another commenter recommended that the Services expand the definition of "net conservation benefit" to include consideration of measures that preserve habitat and populations, and measures that avoid or minimize incidental take. An additional commenter stated that any final CCAA rule or policy should also clarify that, when species and habitat are already effectively managed on a particular property, a CCAA could be appropriate even where no improvement of habitat quality or population increase can be anticipated to occur on the enrolled property, because such improvement is unnecessary. Another commenter stated that requiring an increase in population or improvement of habitat sets too high a threshold for CCAA approval and fails to recognize that the status of a species can be improved in other ways. For example, there will be benefits to the species associated

with actions that remove, reduce, or minimize threats; prevent or limit habitat degradation; promote resiliency; or otherwise slow or stabilize a declining population trajectory.

Our Response: As stated in the definition of "net conservation benefit," "In the case where the species and habitat is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to continuing to manage the species for a specified period of time, including addressing any future threats that are under the property owner's control, with the anticipation that the population will increase or habitat quality will improve." Thus, CCAAs that are designed to preserve habitat could be approved under the revised policy, as long as the property owners continued to manage their property for the species and addressed likely future threats that are under their control. In addition, CCAAs that are designed to "stabilize populations" could also be approved because, in order to stabilize a population, any threats to the covered species would need to be addressed by conservation measures included in the CCAA. Also, see our response below to *Comment (5)*.

Comment (5): Several commenters indicated that the FWS should not delete the phrase "preclusion or removal of any need to list"—believing this change suggests that the purpose of CCAAs and the policy is no longer to preclude or remove the need to list a species. The potential for a CCAA to preclude listing is a significant incentive for property owners to participate in it.

Our Response: Any conservation plan that provides a net conservation benefit to the candidate species will contribute to precluding the need to list the species. However, we have found that including that phrase in our issuance criterion has been problematic—it is a confusing and difficult standard for both our field practitioners and participating landowners to apply to an individual conservation plan, and it creates an expectation for an outcome that is often not

achievable for wide-ranging species or those that face threats not easily addressed by improved land management. Our objective in revising the issuance criterion is to simplify the conservation objective so that CCAAs can be developed and approved more quickly, while maintaining undiminished the primary incentive for entering into a CCAA: No Surprises assurances that, regardless of the listing determination, ensure that managing in accordance with the CCAA will be accepted by the Services as fully ESA compliant, with no additional obligations to the landowner. Also see our response to *Comment (3)* above.

Comment (6): A few commenters believed that a net-conservation-benefit standard was inappropriate for prelisting agreements and is ambiguous. They expressed that, given the successes already seen with the current CCAA policy, the FWS should just streamline the CCAA process and improve efficiencies in the approval of CCAAs rather than changing the standard. One commenter further stated that the changes are not needed because the very nature of the existing regulations and policy already establish principles of avoid, minimize, and/or mitigate that achieve demonstrated outcomes. Several commenters recommended that the Services withdraw the proposed rule and policy.

Our Response: The Services redefined the standard to require a net-conservation-benefit to eliminate confusion associated with the existing standard. We disagree that it is ambiguous or inappropriate, and believe the net-conservation-benefit standard is easier for the public and Service staff to understand. In addition, the Services believe clarifying the standard, which had been confusing to the public, should be a significant step toward streamlining and achieving efficiency in the CCAA approval process.

Comment (7): A couple of commenters stated that the FWS cannot require property owners to reduce or eliminate unknown or speculative threats. One commenter believed the

definition grants the FWS unlimited authority to require "specific conservation measures" for future, undetermined threats in order to increase a species' population or improve its habitat. The current CCAA policy already outlines mechanisms that will address anticipated and unanticipated changes in circumstances through its use of adaptive management and the ability to address unforeseen circumstances. Because these mechanisms already exist, the Services should not burden property owners with managing for unknown or speculative threats.

Our Response: We do not require or expect property owners to address unknown or speculative threats in order for us to approve their conservation agreements, which are themselves voluntary undertakings; rather, property owners need to address future threats that are reasonably certain to occur, based on local conditions and the best available scientific information. While the current and revised policy includes provisions for changed and unforeseen circumstances and requires a CCAA to apply adaptive management, it is important to explicitly include a reference to future threats in the net-conservation-benefit standard. Managing for these types of future threats will allow us to make progress toward the goal of improving the species' status in the face of current threats and those future threats that are reasonably certain to occur within the duration of the agreement.

Comment (8): One commenter questioned the utility and benefit of re-designing the CCAA to be more similar to Safe Harbor Agreements (SHAs). They noted that a CCAA, in combination with other CCAAs in the range of a species, will preclude the need to list. SHAs, while important, do not act as a recovery tool by themselves. The commenter also believes the SHA standard for recovery "lift" can be quite small and in practice is a lower standard than those set by CCAAs. Another commenter believes the Services' proposal to apply the standard "net conservation benefit" to CCAAs with a different definition than in the Safe Harbor policy creates

a confusing situation in which CCAAs substantively are both similar but yet different from SHAs. Although the Services have proposed to apply the same standard, it has defined the two terms differently. In addition, another commenter noted that the definition of "net conservation benefit" in the proposed policy is not consistent with its definition in other FWS policies and regulations such as the definition of net conservation gain used in the Greater Sage-Grouse Range-Wide Mitigation Framework (2014).

Our Response: Both CCAAs and SHAs are designed to provide incentives to property owners to restore, enhance, or maintain habitats and/or populations of candidate species or listed species, respectively, in a manner that results in a net conservation benefit to these species. We agree that the slightly different definition of "net conservation benefit" that was proposed for CCAAs is confusing, and we are aligning the definition in our final rule and policy to that of our longstanding definition of "net conservation benefit" in the SHA context to remove this inconsistency and confusion.

Comment (9): One commenter requested that the FWS narrow the scope of the definition of "net conservation benefit" to provide landowners more certainty. That commenter and another stated that there was no explanation as to what level of "increase" would be required to approve CCAAs.

Our Response: While net conservation benefits must contribute, directly or indirectly, to the conservation of the covered species, we purposely did not specify a level of increase that would be required. It would be extremely difficult to broadly define a level of increase for all CCAAs because CCAAs vary in what species and habitat they cover and the scope of the agreement. We defined a net conservation benefit in terms of addressing key threats on the enrolled property, and each CCAA uses conservation measures that are designed to specifically

address those particular threats. The way in which species respond to the elimination of a single or multiple threats can vary dramatically based on the type and severity of a threat and the life history of the species.

Comment (10): One commenter stated that the new standard subjects efforts aimed at precluding a listing to a standard that is appropriate only for species already listed, sending the wrong signal to property owners and discouraging prelisting conservation. To require a "recovery" standard for a species that is not yet listed and may never need to be listed is inconsistent with the intended purpose of CCAAs.

Our Response: As noted in the response to *Comment (8)* above, the goals of both CCAAs and SHAs are to incentivize property owners to restore, enhance, or maintain habitats and/or populations of candidate species or listed species, respectively, in a manner that results in a net conservation benefit to these species. Seeking to improve the status of a species or its habitat is the most logical and appropriate objective for a conservation agreement, whether for a candidate species or a listed species.

Comment (11): One commenter thought the proposed changes would discourage rather than encourage voluntary conservation measures. Under the existing framework, property owners need to show that the voluntary conservation measures provided for in the CCAA will not worsen a species' situation. Under the proposed framework, landowners will need to demonstrate the conservation measures will improve the species' situation.

Our Response: It appears that the commenter did not understand that the goal of the 1999 policy was to benefit the species to the extent that listing was not necessary. In our experience with CCAAs since 1999, reaching this goal required that CCAAs improve the status of the covered species and not just prevent the species' status from declining.

Comment (12): One commenter also noted that the introduction of a net-conservation-benefit standard is unsupported by statutory authority and goes beyond the scope of the ESA.

Our Response: As stated in the response to comments on the 1999 policy (for our full response, see *Issue 7*; 64 FR 32729, June 17, 1999), sections 2, 7, and 10 of the ESA allow the implementation of this policy. As stated in the 1999 policy, for example, section 2 states that "encouraging the States and other interested parties through Federal financial assistance and a system of incentives, 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." Establishing a program for the development of CCAAs provides an excellent incentive to encourage conservation of the Nation's fish and wildlife. Section 7 requires the Services to review programs they administer and to "utilize such programs in furtherance of the purposes of this Act." In establishing this policy, the Services are utilizing their Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Of particular relevance is section 10(a)(1), which authorizes the issuance of permits to "enhance the survival" of a listed species. This interpretation of the Act is also true of this revised policy because we are not changing the overall goals or requirements of CCAAs. Although we are revising our policy and regulations to adopt the "net conservation benefit" standard, this revision does not substantively change the amount of conservation required to approve a CCAA. Rather, our purpose in making this change is to address confusion over the original CCAA standard and to make the CCAA standard consistent with the SHA standard.

Comment (13): One commenter stated that the net conservation benefit concept is predicated on the assumption, and potential requirement, that the success of a CCAA will be based upon an increase in species' populations or improvement in habitat. Because many other

critical factors, such as weather patterns, food sources, and disease, can have a major influence on species' populations, it is impractical to use population increase as a goal or metric for the success of a CCAA.

Our Response: We agree with the commenter that many factors influence a species' populations. CCAAs are designed to address key threats to a species and only include those actions that a property owner can take on their enrolled property. As long as the CCAA results in a net conservation benefit, the Service may approve the CCAA and issue the accompanying section 10(a)(1)(A) enhancement-of-survival permit. In addition, because we are not able to always monitor population sizes, particularly for cryptic species, habitat condition can serve as a surrogate to determine whether there will be a net conservation benefit to the species. Thus, in the revised policy, we are using either an increase in the species' population or an improvement in its habitat to determine how to evaluate the success of a CCAA.

Comment (14): One commenter believed the "net conservation benefit" standard was overly narrow and does not afford property owners flexibility in developing CCAAs tailored to their own needs and the needs of individual species. The policy should allow property owners to develop conservation measures tailored to their individual needs and the needs of the covered species.

Our Response: While we agree that each CCAA will be tailored to a particular property, the conservation measures in a CCAA will be based on the needs of the species and any key threats that are affecting the species on that property that are under the control of the property owner. Ongoing management activities on the property must be agreed to by the property owner and the Service and described in the CCAA.

Comment (15): A few commenters noted that the definition of "net conservation benefit" is also confusing because it does not consistently identify whether improvements in both populations and habitat must be anticipated to occur. The draft revised policy defines "net conservation benefit" as "the cumulative benefits of specific conservation measures designed to improve the status of a covered species by … increasing its numbers and improving its habitat." The draft revised policy, however, then explains that benefit is measured "by the projected increase in the species' population or improvement of the species' habitat." One commenter requested that the Services clarify whether the FWS will approve a CCAA if there is a "projected improvement of the species habitat," even if there is no "projected increase in the species population," and vice versa.

Our Response: We agree with the commenter that we were inconsistent in how we defined "net conservation benefit" in different sections of the policy. We have revised the policy so that it is clear that the anticipated improvements can be in either the species' populations or in its habitat, or both.

Comment (16): One commenter suggested that the FWS should utilize a CCAA standard that focuses on incentivizing voluntary participation and enhancing covered species by providing measures that will "beneficially contribute to the conservation of a species or habitat." This standard is more consistent with the intent and purpose of CCAAs and provides for an appropriate measure of positive contributions to species conservation.

Our Response: The recommended language, "beneficially contribute," may not result in an appropriate level of benefit to a species we are seeking to achieve under a CCAA. CCAAs are designed to provide incentives to landowners to undertake voluntary conservation efforts to benefit candidate species and species likely to become candidates or proposed for listing in the

near future. The "net conservation benefit" standard establishes that conservation efforts must contribute, directly or indirectly, to the conservation of the covered species and must be designed to reduce or eliminate threats on an enrolled property. Conservation benefits may include, but are not limited to, reduction of habitat fragmentation rates; the maintenance, restoration, or enhancement of habitats; increase in habitat connectivity; maintenance or increase of population numbers or distribution; reduction of the effects of catastrophic events; establishment of buffers for protected areas; and establishment of areas to test and develop new and innovative conservation strategies.

Comment (17): One commenter believed the net-conservation-benefit standard undermines the assurances provided in CCAAs because the standard raises the question of whether a failure to achieve expected conservation benefits affects the assurances provided in the associated enhancement-of-survival permit. The policy should not allow the Services to modify the terms of CCAAs or nullify the assurances provided in a permit if the CCAA's expected benefits are not achieved.

Our response: The assurances are based on the property owner implementing the agreed-to conservation measures and the monitoring or other requirements in the CCAA and are not tied to whether the CCAA reaches the expected net conservation benefit; the assurances are necessary only if the covered species is listed. While each CCAA is based on the best scientific information available and we expect implementation of the CCAA's conservation measures will result in the improvement of the species' populations or habitat, it is possible that the benefit may not be achieved. The adaptive-management features in a CCAA can help to address these situations. In any event, the assurances provided to the property owner are not affected if the

species or habitat does not achieve the expected response from the implemented conservation measures.

Comment (18): One commenter thought the inclusion of the phrase "cumulative benefits" in the definition of "net conservation benefit" creates ambiguity and suggests that the net conservation benefit determination could depend on actions occurring on other properties that are outside the control of the participant. Thus, the FWS should clarify this term in the definition. The commenter suggested we modify the definition to: "totality of qualitative and quantitative benefits from implementation of specific conservation measures identified in the CCAA on the property or properties to be enrolled."

Our Response: The net conservation benefit determination is made based only on actions that are taken under the CCAA and does not include those actions that are outside the control of the property owner enrolled in a CCAA. This is one of the reasons why we removed the phrase "other necessary properties" from the policy and regulations. The focus is on the key threats on the property and the ability of the property owner to address those threats. For these reasons, we did not modify the definition as recommended.

Comment (19): One commenter thought that the term "specified period of time" is problematic because it suggests that permittees or participants must manage the species for a period longer than their participation in the CCAA, such as the duration of a project or the duration of the impacts. The Services cannot obligate participants to commit to manage the species for a period longer than their participation in the CCAA.

Our Response: A participant in a CCAA is required to manage for the species, as agreed to in the CCAA, only for the length of the agreement. At the end of that time, the participant may choose to end the CCAA and not continue the conservation measures. We used the term

"specified period of time" to refer to the fact that CCAAs do expire and are valid only for a specified time period, unless the participant chooses to renew the agreement and the Service agrees to renew the CCAA.

Comment (20): One commenter expressed concern that it is difficult to determine whether management activities are equivalent to "conservation measures" or whether they reflect different types of actions. To avoid confusion, the commenter requested that the Services eliminate the terms "management actions" and "management activities." Another commenter thought the FWS should clarify the scope of activities that may qualify for incidental take coverage under a CCAA, i.e., better define what property-management activities could be covered, and suggested the language be revised to state: "property-management actions include, but are not limited, to agricultural, ranching, or forestry activities."

Our Response: The terms "management activities" and "conservation measures" reflect different types of actions. Conservation measures are those actions specified in the CCAA that are to be implemented in order to address the threats to the species. Management activities are those actions that a property owner does to manage their property for ranching, agricultural, or forestry purposes. A CCAA and the associated ESA section 10(a)(1)(a) enhancement-of-survival permit do not require management actions, but the permit can provide incidental take coverage for these actions, should the species become listed. We do not agree that the language should be revised to expand the types of property-management actions without limits. Some types of activities such as adding housing developments, mining, or other energy-development activities, are inappropriate for CCAAs.

Comment (21): One commenter stated that the FWS should acknowledge that CCAA measures be based upon what is economically and technologically feasible for the property owner to implement on the enrolled property.

Our Response: While the primary basis for determining which conservation measures are needed on a property is the nature of the threats to the species on the property, these are voluntary conservation agreements, and the conservation measures agreed to by participating landowners will obviously be accepted by the landowner as economically and technologically feasible to implement.

Comment (22): A commenter disagreed with the proposed language in Part 5 of the draft revised policy that would require incidental take permits to specify the "number of individuals of the covered species or quantity of habitat" that may be incidentally taken under a permit. The commenter believes the Services should not suggest that habitat modification necessarily results in incidental take or that habitat is the only surrogate available to estimate incidental take.

Our Response: It is necessary for incidental take permits to specify a number of individuals authorized to be taken and that it is sometimes appropriate to use the quantity of habitat as a surrogate measure of take. Property owners need certainty in regard to how the take, should it occur through implementation of their property management as described in their agreement, will be exempted through the incidental take permit, if the species is eventually listed under the ESA.

Comment (23): A few commenters suggested that the policy should specify that additional lands may be enrolled in a programmatic CCAA after the effective date of a rule listing a species covered by the CCAA, so long as the lands are within the area covered by the CCAA and permit.

Our Response: This comment is beyond the scope of what we proposed to change in the policy.

Comment (24): One commenter stated that the policy needs to clarify which species can be included in a CCAA since it includes two different definitions of "candidate species" and also defines "covered species" differently from either of the Services' definitions of "candidate species." The commenter recommended that the policy make it clear that CCAAs may be used for at-risk species, whether or not they have achieved "candidate" status.

Our Response: We do not think it is necessary to further clarify which species can be included in a CCAA; the policy is that species proposed for listing, candidates for listing (based on either the FWS or NMFS definition), and other at-risk species that may become candidates for listing can be included in a CCAA. We included the two definitions of "candidate species" because the FWS and NMFS have different definitions. We do note that we revised the policy to include other at-risk species that may become candidates; the policy now includes the phrase "other at-risk species that are likely to become candidates."

Comment (25): One commenter thought the revocation provision needs to be clarified. In Part 5, the proposed policy states that the FWS "is prepared as a last resort to revoke a permit implementing a CCAA where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit." In view of the fact that an enhancement-of-survival permit will be issued based on a projection of what the implementation of a CCAA can reasonably be expected to achieve in terms of an increase in a species' population or an improvement in habitat, FWS needs to make clear that a permit will not be revoked simply because, notwithstanding the property owner's full compliance with the CCAA, the projected benefits are not achieved.

Our Response: The policy is clear regarding that a permit associated with a CCAA could be revoked as a last resort when the permitted activity is determined to be likely to jeopardize the continued existence of a species covered by the permit. We will not revoke a permit simply because the conservation measures implemented through the CCAA fail to achieve the expected benefits to the species or its habitat despite the property owner's compliance with the provisions in the CCAA.

Comment (26): All of the commenters who submitted a comment on the proposed revisions to the definition of "property owner" supported the revision.

Our Response: We are pleased that the comments support this revision that clarifies that entities owning leasehold interests in non-Federal property may participate in CCAAs, as long as they have the authority to carry out the terms of CCAAs on their enrolled properties. This revision aligns the policy with the corresponding regulations for CCAAs.

Comment (27): Although all commenters agreed with the proposed definition of "property owner", a few commenters also suggested that the FWS further revise the definition of "property owner" to allow CCAAs on land or water under Federal ownership or control.

Our Response: CCAAs are not appropriate for land or water under Federal ownership or control. Under section 7(a)(1) of the ESA, Federal agencies are required to utilize their authorities in "furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species." However, a property owner could also enter into a Candidate Conservation Agreement without assurances with the Federal agency and carry out the same conservation actions on the Federal land that they are taking under a CCAA on their own property.

Comment (28): One commenter requested that the reference to an "up-to-date conservation strategy" be deleted because it is vague and redundant since the policy already states that the CCAA measures will be based on the "best available scientific information." Another commenter requested that the FWS clarify what a conservation strategy is—whether they are formal documents that supplement a CCAA or just components of a CCAA.

Our Response: A species conservation strategy is a planning tool that: includes an overall goal, objectives, and criteria for obtaining the goal; outlines the species' current condition and threats to that species; identifies and prioritizes conservation measures designed to address the threats and the partners that will implement the measures; identifies any science needs; and outlines the monitoring needed to determine if the conservation measures were implemented and successful in addressing the threats. A conservation strategy is not a component of a CCAA or a step in the CCAA process but is used to help plan and develop a CCAA and other types of agreements.

Comment (29): Several commenters thought the Services should include more recognition for the roles and responsibilities of State fish and wildlife agencies and the Services should enhance coordination with State agencies. A commenter pointed out that States often provide specific measures for avoiding take of State-listed species, and issue permits that contain required minimization and mitigation measures. It is, therefore, critical that the FWS coordinates with States when developing CCAAs. One commenter opposed the Services' proposal to delete the requirement that the Services develop CCAAs in "close" coordination with State agencies from Part 1 of the policy. Another commenter indicated that the policy should not include "when appropriate" when referring to coordination with the affected State fish and wildlife agency and any affected Tribal government.

Our Response: We agree that it is critical that the Services coordinate with States when developing CCAAs since States generally have jurisdiction over unlisted species and for the reasons stated by the commenters. Also in many instances State agencies administer programmatic CCAAs, ensuring close coordination. Our interagency policy regarding the role of State agencies in ESA activities (81 FR 8663, February 22, 2016) establishes that we will work collaboratively with State agencies to design and encourage the use of CCAAs. We have revised the policy by deleting the phrase "when appropriate," as suggested by the commenter.

Comment (30): A couple of commenters recommended that the FWS also focus attention to Candidate Conservation Agreements (CCAs) and revise its CCA policy and regulations to provide a basis for a Federal agency to seek to enter into a CCA and to facilitate development of agreements covering activities conducted jointly on lands in mixed government and private ownership.

Our Response: While we do not have a separate policy or regulations for CCAs, they play an important role in the conservation of species and have been the basis for a number of FWS decisions not to list a particular species. It is important for Federal agencies to work with non-Federal property owners to develop agreements that complement CCAAs so that there is seamless implementation of species-specific conservation measures across non-Federal and Federal lands for those species that inhabit multiple ownership lands.

Comment (31): One commenter suggested adding the crux of the definition "that improves the status of the covered species" after every mention in the policy of "net conservation benefit" to provide more clarity on the requirements of a CCAA since the commenter believes that staff biologists, CCAA applicants, or consultants will not utilize the definitions section of the policy. This commenter also recommended inserting "the CCAA's" before "specific

conservation measures" to prevent the potential misunderstanding of "cumulative benefits" to mean those other than ones associated with the CCAA.

Our Response: We agree that the suggested edits will help to clarify the intent of the policy; we have revised the policy accordingly.

Candidate Conservation Agreements with Assurances Policy

Part 1. What Is the Purpose of the Policy?

This policy is intended to facilitate the conservation of species proposed for listing under the Endangered Species Act (ESA) and candidate species, and species that may become candidates or proposed for listing in the near future, by giving non-Federal property owners, such as individuals, States, local governments, Tribes, businesses, and organizations, incentives to implement conservation measures for declining species by providing regulatory assurances with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as endangered or threatened under the ESA. Under the policy, property owners who commit in a Candidate Conservation Agreement with Assurances (CCAA or Agreement) to implement mutually agreed-upon conservation measures for a species proposed for listing or a candidate species, or a species that may become a candidate or proposed for listing in the near future, will receive assurances from the Service that additional conservation measures above and beyond those contained in the Agreement will not be required, and that additional land, water, or resource use restrictions will not be imposed upon them should the species become listed in the future. In determining whether to enter into a CCAA, the Service will consider the extent to which the Agreement reduces key threats to the covered species so as to contribute to the conservation and stabilization of populations or habitat of the species and provides a substantial net conservation benefit.

The overall goal of the Service's candidate conservation program is to encourage the public to voluntarily develop and implement conservation plans for declining species prior to them being listed under the ESA. The benefits of such conservation actions may contribute to not needing to list a species, to list a species as threatened instead of endangered, or to accelerate the species' recovery if it is listed. Candidate Conservation Agreements with Assurances are one conservation tool that can contribute toward this goal. While the Services recognize that the actions of a single property owner usually will not sufficiently contribute to the conservation of the species to remove the need to list it, we also recognize that the collective result of the conservation measures of many property owners may result in not needing to list the species or other benefits mentioned above. Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the key current and anticipated likely future threats that are under the property owner's control and will result in a net conservation benefit to and improve the status of the covered species. While some property owners are willing to manage their lands to benefit species proposed for listing, candidate species, or species that may become candidates or proposed for listing in the near future, most desire some degree of regulatory certainty and assurances with regard to possible future land, water, or resource use limitations that may be imposed if the species is listed in the future.

The Service will provide regulatory assurances to a non-Federal property owner who enters into a CCAA by authorizing, through issuance of an enhancement-of-survival permit under section 10(a)(1)(A) of the ESA, a specified level of incidental take of the covered species. Incidental take authorization and the associated agreement benefit property owners in two ways. First, in the event the species is listed, incidental take authorization enables property owners to

continue existing and agreed-upon land uses that have the potential to cause take, provided the property owner is properly implementing the CCAA. Second, the property owner is provided the assurance that, if the species is listed, no additional conservation measures will be required and no additional land-use restrictions will be imposed.

These Agreements will be developed in coordination and cooperation with appropriate State fish and wildlife agencies and other affected State agencies and Tribes. Coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. These Agreements must be consistent with applicable State laws and regulations governing the management of these species.

The Service must determine that the benefits of the conservation measures to be implemented by a property owner under a CCAA are reasonably expected to improve the status of and result in a net conservation benefit to the covered species. Pursuant to section 7 of the ESA, the Service must also ensure that the conservation measures and ongoing property-management activities included in a CCAA, and the incidental take allowed under the enhancement of survival section 10(a)(1)(A) permit for these measures and activities, are not likely to jeopardize listed species or species proposed for listing and are not likely to destroy or adversely modify proposed or designated critical habitat.

Because some property owners may not have the necessary resources or expertise to develop a CCAA, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements and prepare enhancement-of-survival permit applications. Also, based on available resources, the Services may assist or train property owners to implement conservation measures. Development of a

biologically sound Agreement and enhancement-of-survival permit application is intricately linked. The Services will process the permit application following the procedures described in 50 CFR 17.22(d)(1) and 17.32(d)(1), and part 222, as appropriate. All terms and conditions of the permit must be consistent with the specific conservation measures included in the associated CCAA.

Part 2. What Definitions Apply to this Policy?

The following definitions apply for the purposes of this policy.

Candidate Conservation Agreement (CCA) means an agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or a citizen that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species. There are no specific requirements for entering into a CCA and no standard has to be met; no incidental take permit or assurances are provided under these Agreements.

Candidate Conservation Agreement with Assurances means a Candidate Conservation Agreement with a non-Federal property owner that meets the standards described in this policy and provides the property owner with the assurances described in this policy.

Candidate Conservation Assurances mean the associated assurances that are authorized by an enhancement-of-survival permit. Such assurances may apply to a whole parcel of land, or a portion, as identified in the Agreement. The assurances provided to a non-Federal property owner in a CCAA are that no additional conservation measures and no land, water, or resource use restrictions, in addition to the measures and restrictions described in the Agreement, will be imposed should the covered species become listed in the future. In addition, the enhancement-

of-survival permit provides a prescribed level of incidental take that may occur from agreed-upon, ongoing property-management actions and the conservation measures.

Candidate species are defined differently by the Services. The U.S. Fish and Wildlife Service (FWS) defines "candidate species" as species for which FWS has sufficient information on file relative to status and threats to support issuance of proposed listing rules. The National Marine Fisheries Service (NMFS) defines "candidate species" as (1) species that are the subject of a petition to list and for which NMFS has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the ESA, and (2) species that are not the subject of a petition but for which NMFS has announced the initiation of a status review in the **Federal Register**. The term "candidate species" used in this policy refers to those species designated as candidates by either of the Services.

Conservation measures as it applies to CCAAs are actions that a property owner voluntarily agrees to undertake when entering into a CCAA that, by addressing the threats that are occurring or have the potential to occur on their property, will result in an improvement in the species' populations or an improvement or expansion of the species' habitat with the potential for an improvement in the species' population. The appropriate conservation measures designed to address the threats that are causing the species to decline will be based on the best available scientific information relative to the conservation needs of the species such as those contained in an up-to-date conservation strategy.

Covered species means those species that are the subject of a CCAA and associated enhancement-of-survival permit. Covered species are limited to species that are candidates or proposed for listing and species that may become candidates or proposed for listing in the near future.

Enhancement-of-survival permit means a permit issued under section 10(a)(1)(A) of the ESA that, as related to this policy, authorizes the permittee to incidentally take species covered in a CCAA should the species be listed in the future.

Net conservation benefit (for CCAA) is defined as the cumulative benefits of the CCAA's specific conservation measures designed to improve the status of a covered species by removing or minimizing threats so that populations are stabilized, the number of individuals is increased, or habitat is improved. The benefit is measured by the projected increase in the species' population or improvement of the species' habitat, taking into account the duration of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement-of-survival permit. The conservation measures and property-management activities covered by the agreement must be designed to reduce or eliminate those key current and likely future threats on the property that are under the property owner's control in order to increase the species' populations or improve its habitat. In the case where the species and habitat are already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to continuing to manage the species for a specified period of time, including addressing any likely future threats that are under the property owner's control, with the anticipation that the population will increase or habitat quality will improve.

Property owner means a person with a fee simple, leasehold, or other property interest (including owners of water rights or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

Part 3. What Are Candidate Conservation Agreements With Assurances?

A CCAA will identify or include:

A. The population levels (if available or determinable) of the covered species existing at the time the parties sign the Agreement; the existing habitat characteristics that sustain any current, permanent, or seasonal use, or potential use by the covered species on lands or waters in which the participating property owner has an interest; and consideration of the existing and anticipated condition of the landscape of the contiguous lands or waters not on the participating owner's property so that the property enrolled in a CCAA may serve as a habitat corridor or connector or as a potential source of the covered species to populate the enrolled property if they do not already exist on that property.

B. The conservation measures the participating property owner agrees to undertake to address specific threats identified in order to conserve the species included in the Agreement.

C. The benefits expected to result from the conservation measures described in Part 3–B, above (e.g., increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threats), and from the conditions that the participating property owner agrees to maintain. The Service must determine that the benefits of the conservation measures implemented by a property owner under a CCAA will reasonably be expected to provide a net conservation benefit and to improve the status of the covered species.

D. Assurances related to take of the covered species will be authorized by the Service through a section 10(a)(1)(A) enhancement-of-survival permit (see Part 5). Assurances include that no additional conservation measures will be required and no additional land, water, or resource use restrictions will be imposed beyond those described in Part 3–B, above, should the covered species be listed in the future. If conservation measures not provided for in the CCAA are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the property

owner, provided the CCAA is being properly implemented. If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the property owner where the CCAA is being properly implemented, only if those measures maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA without the consent of the property owner. The permit also allows a prescribed amount of incidental take that may result from the conservation measures or from the agreed-to ongoing property-management actions.

E. A monitoring provision that requires measuring and reporting on: (1) Progress in implementing the conservation measures described in Part 3–B, above, and (2) changes in habitat conditions and the species' status resulting from these measures.

F. As appropriate, a notification requirement to provide the Service or appropriate State agencies with a reasonable opportunity to rescue individuals of the covered species before any authorized incidental take occurs.

Part 4. What Are the Benefits to the Species?

Before entering into a CCAA, the Service must make a written finding that the benefits of the conservation measures to be implemented by a property owner under an Agreement would reasonably be expected to result in a net conservation benefit to the covered species and improve its status. If the Service and the participating property owner cannot agree on conservation measures that satisfy this requirement, the Service will not enter into the Agreement. Expected benefits of the CCAA's specific conservation measures could include, but are not limited to:

removal or reduction of current and anticipated future key threats for a specified period of time; restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of impacts to the species from agreed-upon, ongoing property-management actions.

Part 5. What Are Assurances to Property Owners?

Through a CCAA, the Service will provide the assurance that, if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating property owner, the Service will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those the property owner voluntarily committed to under the terms of the original Agreement. Assurances involving incidental take will be authorized through issuance of a section 10(a)(1)(A) enhancement-of-survival permit, which will allow the property owner to take a specific number of individuals of the covered species or quantity of habitat, should the species be listed, as long as the level of take is consistent with those levels agreed upon and identified in the Agreement. The Service will issue an enhancement-of-survival permit at the time of entering into the CCAA. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Service is prepared as a last resort to revoke a permit implementing a CCAA where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit or adversely modify the species' designated critical habitat. Prior to taking such a step, however, the Service will first exercise all possible means to remedy such a situation.

Part 6. How Does the Service Comply With the National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and the regulations of the Council on Environmental Quality (CEQ) require all Federal

agencies to examine the environmental impacts of their actions, to analyze a full range of alternatives, and to use public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements either by preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or by showing that the proposed action is categorically excluded from individual NEPA analysis. The Service will review each proposed CCAA and associated enhancement-of-survival permit application for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and the National Oceanic and Atmospheric Administration's (NOAA's) NOAA Administrative Order 216–A and its authorized Companion Manual for NMFS). If the Service determines that the Agreement and permit will likely result in any of the above effects, preparation of an EA or EIS will be required. General guidance on when the Service excludes an action categorically and when and how to prepare an EA or EIS is found in 43 CFR part 46 for FWS and NOAA Administrative Order Series 216–6A and its authorized Companion Manual for NMFS. The Services expect that most CCAAs and associated enhancement-of-survival permits will result in minor or negligible effects on the environment and will be categorically excluded from individual NEPA analysis.

Part 7. Will There Be Public Review?

Public participation in the development of a proposed CCAA will be provided only when agreed to by the participating property owner. However, the Service will make every proposed Agreement available for public review and comment as part of the public evaluation process that is statutorily required for issuance of the associated enhancement-of-survival permit. This

comment period will generally be 30 days. The public will also be given other opportunities to review CCAAs in certain cases. For example, when the Service receives an Agreement covering a species proposed for listing, and when the Service determines, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule to list the species under the ESA, the comment period for the proposed rule will be extended or reopened to allow for public comments on the CCAA's adequacy in removing or reducing threats to the species. However, the statutory deadlines in the ESA may prevent the Service from considering in their final listing determination those CCAAs that are not received within a reasonable period of time after issuance of the proposed rule.

Part 8. Do Property Owners Retain Their Discretion?

Nothing in this policy prevents a participating property owner from implementing conservation measures not described in the Agreement, provided such measures are consistent with the conservation measures and conservation goal described in the CCAA. The Service will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the property owner is required to notify the Service prior to termination. The enhancement-of-survival permit is terminated at the same time, and the property owner would no longer have the assurances.

Part 9. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter into a CCAA at any time. Entering into an Agreement is voluntary for property owners and the Service. Unless specifically noted, a CCAA does not otherwise create or waive any legal rights of any party to the Agreement.

Part 10. Can Agreements Be Transferred?

If a property owner who is a party to a CCAA transfers ownership of the enrolled property, the Service will regard the new property owner as having the same rights and obligations as the original property owner if the new property owner agrees to become a party to the original Agreement and meets the applicable permit issuance criteria. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains and properly implements the terms and conditions of the original Agreement. If the new property owner does not become a party to the Agreement, the new owner would neither incur responsibilities nor receive any assurances relative to the ESA take prohibitions resulting from listing of the covered species. An Agreement must commit the participating property owner to notify the Service of any transfer of ownership at the time of the transfer of any property subject to the CCAA. This provision allows the Service the opportunity to contact the new property owner to explain the prior CCAA and to determine whether the new property owner would like to continue the Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Service will honor the terms and conditions of that Agreement and associated permit.

Part 11. Is Monitoring Required?

The Service will ensure that necessary monitoring provisions are included in the CCAA and associated enhancement-of-survival permit. Monitoring is necessary to ensure that the conservation measures specified in an Agreement and permit are being implemented and to learn about the effectiveness of the agreed-upon conservation measures. In particular, when adaptive-management principles are included in an Agreement, monitoring is especially helpful for obtaining the information needed to measure the effectiveness of the conservation program and

detect changes in conditions. However, the level of effort and expense required for monitoring can vary substantially among CCAAs depending on the circumstances. For many, monitoring can be conducted by the Service or a State agency and may involve only a brief site inspection and appropriate documentation. Monitoring programs must be agreed upon prior to public review and comment. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. These monitoring programs will provide valuable information that the Services can use to evaluate program implementation and success.

Part 12. How Are Cooperation and Coordination With the States and Tribes Described in the Policy?

Coordination between the Service, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of CCAAs. The Service will coordinate and consult with the affected State fish and wildlife agency and any affected Tribal government that has a treaty right to any fish or wildlife resources covered by a CCAA.

Required Determinations

As discussed above, we intend to apply this policy in considering whether to approve a CCAA. Below we discuss compliance with several Executive Orders and statutes as they pertain to this policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this policy is not a significant rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that our regulatory system must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this policy in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Chief Counsel for Regulation of the Department of Commerce and the Department of Interior both certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed policy stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed policy and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none

was prepared.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq*.):

(a) On the basis of information contained in the "Regulatory Flexibility Act" section above, this policy would not "significantly or uniquely" affect small governments. As explained above, small governments could potentially be affected if they chose to enter into a CCAA. However, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this policy would not impose a cost of $100 million or more in any given year on local or State governments or private entities.

(b) This policy would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action"' under the Unfunded Mandates Reform Act. This policy does not impose any additional obligations on State, local, or tribal governments who participate in a CCAA by requiring them to take additional or different conservation measures above what they would be required to take under the 1999 CCAA policy. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this policy would not have significant takings implications. This policy would not pertain to "taking" of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this policy (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This policy would substantially advance a legitimate government interest

(clarify existing policy through which non-Federal entities may voluntarily help to conserve unlisted and listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this policy does not have significant Federalism effects and a federalism summary impact statement is not required. This policy revision pertains only to the Service's requirement of a net conservation benefit to the covered species for approval of a CCAA and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), this policy would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are revising the existing policy for CCAAs specifically for the purpose of eliminating ambiguity and presenting the policy provisions in clear language.

Paperwork Reduction Act of 1995 (PRA)

This policy revision does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 et seq.). This policy will not impose new recordkeeping or reporting requirements on State or local governments; individuals; businesses; or organizations. OMB has reviewed and approved the application form that property owners use to apply for approval of a CCAA and associated enhancement-of-survival permit (Form 3–200–54) and assigned OMB control number 1018–0094, which expires January 31, 2017. An agency may not conduct or sponsor and a person is

not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

We have analyzed the policy in accordance with the criteria of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46) and NOAA's Administrative Order regarding NEPA compliance (NAO 216–6A (April 22,2016)).

We have determined that the policy is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are "of an administrative, financial, legal, technical, or procedural nature." This action does not trigger an extraordinary circumstance, as outlined in 43 CFR 46.215, applicable to the categorical exclusion. Therefore, the policy does not constitute a major Federal action significantly affecting the quality of the human environment.

We have also determined that this action satisfies the standards for reliance upon a categorical exclusion under NOAA Administrative Order (NAO) 216–A. NAO 216-6A superseded NAO 216-6 (May 20, 1999), but temporarily left in effect the categorical exclusions in NAO 216-6 until they are superseded by a Companion Manual authorized under NAO 216-6A, which has not yet been finalized. Therefore, this policy was evaluated under the categorical exclusions in NAO 216-6. Specifically, the policy fits within two categorical exclusion provisions in § 6.03c.3(i)—for "preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance" and for

"policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature." NAO 216–6, § 6.03c.3(i). The policy would not trigger an exception precluding reliance on the categorical exclusions because it does not involve a geographic area with unique characteristics, is not the subject of public controversy based on potential environmental consequences, will not result in uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, will not have significant cumulative impacts, and will not have any adverse effects upon endangered or threatened species or their habitats. *Id.* § 5.05c. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this policy. Our intent with the policy revision is to provide clarity in regard to the net conservation benefit requirements for a CCAA to be approved, including any agreements in which Tribes may choose to participate. We will continue to work with Tribes as we implement this policy.

Energy Supply, Distribution, or Use

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The policy is not expected to significantly affect energy

supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Authors

The primary authors of the policy are staff members of the Ecological Services Program, Branch of Communications and Candidate Conservation, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803.

Authority

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

Dated: December 20, 2016

Signed: Daniel M. Ashe

Director, U.S. Fish and Wildlife Service.

Dated: December 20, 2016

Signed: Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

Billing Code 4333–15

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