



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Nos. FWS-HQ-ES-2017-0074 and 170918907-7907-01; FF09E41000 178

FXES111609C0000]

Candidate Conservation Agreements with Assurances Policy

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

ACTION: Policy review; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services when referring to both, and Service when referring to an action taken by one agency), announce the intention to review and potentially revise the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. In a separate document published in today's *Federal Register*, the U.S. Fish and Wildlife Service announces the intention to review and potentially revise its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with any changes to the policy.

DATES: We will accept comments that we receive on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Search box, enter docket

number FWS-HQ-ES-2017-0074. Then, click on the Search button. On the resulting page, you may enter a comment by clicking on “Comment Now!” Please ensure that you have found the correct document before submitting your comment.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS-HQ-ES-2017-0074; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: BPHC; Falls Church, VA 22041.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Request for Information**, for additional information).

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 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 agreements 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. The Services put in place a voluntary conservation program to provide incentives for non-Federal property owners to develop and implement conservation agreements 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 Services finalized a revision of the CCAA policy on December 27, 2016 (81 FR 95164). The FWS revised the CCAA regulations in 2004 (69 FR 24084; May 3, 2004), to make them easier to understand and implement by, among other things, defining "property owner" and clarifying several points, including the transfer of permits, permit revocation, and advanced notification of take. On December 27, 2016 (81 FR 95053), the FWS again revised the CCAA regulations to make the regulations consistent with the 2016 revisions to the policy.

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 it is 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” lead us to revise the CCAA standard to require a net conservation benefit to the covered species, specifically on the property to be enrolled, and eliminated references to “other necessary properties.” Although the policy states that this revision does not increase the conservation standard (but rather makes it easier to understand how we determine our standard), we are aware there has been some concern that this change is considered by some members of the public to be a higher standard while others considered it to be a lower standard than the previous standard. The Services are committed to strengthening the delivery of our voluntary conservation tools, such as CCAAs, by making it easier to work with us on conservation efforts, thus we are soliciting public review and comment on whether to revise the 2016 CCAA policy (and accompanying regulation).

Request for Information

During the comment period (see **DATES**), we will accept written comments and information on our 2016 CCAA policy (81 FR 95164; December 27, 2016). You may submit

your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information— will be posted on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments and recommendations, including names and addresses, will become part of the record for this review.

Authority

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

Dated: October 4, 2017

Signed: Gregory J. Sheehan

Principal Deputy Director, U.S. Fish and Wildlife Service.

Dated: October 4, 2017.

Signed: Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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