DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Nos. FWS–HQ–ES–2015–0177 and 160223138-6138-01; FF09E40000 156 FXES11150900000]

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), Commerce.

ACTION: Announcement of draft revised policy and solicitation of public comment.

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 proposed revisions to the Candidate Conservation Agreements with Assurances policy under the Endangered Species Act of 1973, as amended. We propose to add a definition of "net conservation benefit" to this policy and to eliminate 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 Service to approve an agreement. In a separate document published in today's **Federal Register**, the U.S. Fish and Wildlife Service is proposing changes to its regulations regarding Candidate Conservation Agreements with Assurances to make them consistent with these proposed changes to the policy.

DATES: We will accept comments that we receive on or before July 5, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES,** below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box enter the Docket number for the draft policy, which is FWS–HQ–ES–2015–0177. 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–2015–0177; 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**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Jim Serfis, U.S. Fish and Wildlife Service, Chief, Branch of Conservation and Communications, U.S. Fish and Wildlife Service Headquarters, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171); or Angela Somma, National Marine Fisheries Service, Chief, Endangered Species Conservation Division, Office of Protected Resources, 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 the Candidate Conservation program, one of the Services' goals is to encourage the public to implement specific conservation measures for declining species prior to them being listed under the ESA. The cumulative outcome of such conservation measures may result in not needing to list a species, or may result in listing a

species as threatened instead of endangered and provide the basis for its recovery and eventual removal from the protections of the ESA. The Services put in place a voluntary conservation program for non-Federal property owners to help accomplish this goal: 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 specific conservation measures on their land 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 current policy, to approve a CCAA we must "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." The hypothetical concept of conservation measures needing to be implemented on "other necessary properties" has caused confusion, and therefore 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."

Proposed Revisions to Candidate Conservation Agreements with Assurances Policy

Based on our experience reviewing and approving CCAAs over the past 16 years, we are proposing changes to the policy that will clarify the level of conservation effort each agreement needs to include in order for the Service to approve an agreement. We are proposing the following changes to the policy primarily to (a) address confusion regarding the existing CCAA approval requirements (standards) and (b) make CCAAs more consistent with Safe Harbor Agreement requirements, because these agreements have similar purposes, which are to provide a conservation benefit to the covered species while providing assurances to non-Federal property owners:

(1) Add a new definition of "net conservation benefit" to *Part 2. What Definitions Apply to this Policy?*:

Net conservation benefit (for CCAA) is defined as the cumulative benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat. The benefit would be 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 current and 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 manage the species for a specified period of time with the anticipation that the population will increase or habitat quality will improve.

(2) Delete the definition of "other necessary properties" under *Part 2. What Definitions Apply to this Policy?* and delete references to this term from the CCAA policy as follows:

- Revise the third sentence in the second paragraph of *Part 1. What is the Purpose of the Policy?* to read as follows: Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the current and anticipated future threats that are under the property owner's control and will result in a net conservation benefit to the covered species.
- Revise the fifth paragraph under Part 1 to read as follows: 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 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.

- Revise section C of *Part 3. What Are Candidate Conservation Agreements With Assurances?* to read as follows: The benefits expected to result from the conservation measures described in B above (e.g., increase in population numbers; enhancement, restoration, or preservation of habitat; removal of threats) and from the conditions that the participating non-Federal 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.
- Revise *Part 4. What Are the Benefits to the Species?* to read as follows: 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 a CCAA would result in a net conservation benefit to the covered species. 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 specific conservation measures could include, but are not limited to: removal or reduction of current and anticipated future 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.

(3) Revise the definition of "Non-Federal property owner" in *Part 2. What Definitions Apply to this Policy?* to be consistent with the definition of "property owner" found at 50 CFR 17.3. The revised definition makes it clear that participants in a CCAA may include entities that own the property as well as entities that lease or hold other interests in the

property, as long as they have the authority to carry out the proposed management activities on the land covered by the CCAA. Also note for purposes of this policy that "management activities" includes the conservation measures included in the CCAA. The revised definition reads as follows:

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.

(4) Add language to Part 3 to further explain the assurances provided to a property owner who is enrolled in a CCAA if there are changed circumstances or unforeseen circumstances that could require changes to or additional conservation measures. This language is already included in FWS's regulations at 50 CFR 17.22(d)(5) and 17.32(d)(5) and does not represent a change in current CCAA practice. Adding this language to the policy will make the policy and regulations consistent.

(5) Add language to Part 8 to require that a property owner notify the Services prior to termination of their CCAA. Currently, the FWS includes this requirement as part of the conditions of the section 10(a)(1)(A) permit that is issued in conjunction with a CCAA. So while this is new language the Services are adding to the policy, it is not a new practice in how the FWS administers CCAAs.

(6) Revise the first sentence of Part 10 by adding "and meets the applicable permit issuance criteria" to make it clear that any property owner who agrees to become a party to an original Agreement, through a transfer, must meet the issuance criteria for a CCAA. While most of the issuance criteria would already be met, assuming the transferred

CCAA was not changing in any major way, in particular, the FWS would need to ensure the new property owner would meet issuance criteria at 50 CFR 17.22(d)(2)(vi) and 17.32(d)(2)(vi) which requires that the applicant (i.e., property owner) has shown capability for and commitment to implementing all of the terms of the Agreement. While this is new language being added to the policy, it is not a new requirement for a CCAA but serves to make the policy and regulations consistent.

(7) Revise additional language in the policy to improve clarity.

Draft Revised 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 likely to become candidates or proposed for listing in the near future, by giving non-Federal citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners 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 candidate species, or a species likely to 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 threats to the covered species so as to contribute to the conservation and stabilization of populations and habitat of the species.

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 remove the need to list the species. Accordingly, the Service will enter into an Agreement when we determine that the conservation measures to be implemented address the current and anticipated future threats that are under the property owner's control and will result in a net conservation benefit to the covered species. While some property owners are willing to manage their lands to benefit species proposed for listing, candidate species, or species likely to 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 restrictions 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 current and agreed-upon land uses that have the potential to cause take, provided the take is at or reduced to a level consistent with the overall goal of providing a net conservation benefit to the species. 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 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 Service 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 Service 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 Agreements 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 means 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. Also 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 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 or expansion of the species' habitat with the potential for an increase in the species' population numbers. 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 are likely to 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.

Net conservation benefit (for CCAA) is defined as the cumulative benefits of specific conservation measures designed to improve the status of a covered species by removing or minimizing threats, stabilizing populations, and increasing its numbers and improving its habitat. 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 current and 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 is already adequately managed to the benefit of the species, a net conservation benefit will be achieved when the property owner commits to manage the species for a specified period of time 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 negotiate 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 for the covered species to populate the property to be enrolled if they do not already exist on that property.

B. The conservation measures the participating property owner agrees to undertake to conserve the species included in the Agreement.

C. The benefits expected to result from the conservation measures described in 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.

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 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 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. 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 specific conservation measures could include, but are not limited to: removal or reduction of current and anticipated future 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. Prior to taking such a step, however, the Service will first have to 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) Environmental Review Procedures and NOAA Administrative Order Series 216–6). 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 the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216–6. 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 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. When appropriate, 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.

Request for Information

We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this draft policy. All comments, recommendations, and materials received by the date listed in **DATES**, above, will be considered prior to the approval of a final policy.

In addition to more general comments and information, we specifically request comment on the following aspects of the policy:

(1) Is the definition of "Net conservation benefit (for CCAA)" clear as a requirement (or standard)?

(2) Will the revisions be an improvement over the current policy?

You may submit your information concerning this draft revised policy by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we receive in response to this draft policy will be available for you to review at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

As discussed above, we intend to apply this policy, when finalized, in considering whether to approve a CCAA. Below we discuss compliance with several Executive Orders and statutes as they pertain to this draft 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 SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that the proposed revisions to the CCAA policy would not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale. This draft policy sets forth the Service's revisions to existing CCAA policy. A full description of the action, why it is being considered, and the legal basis for this action are set forth earlier in this document. The policy will provide clarity to State or local government agencies, Tribes, nongovernmental organizations, or private individuals who are considering entering into voluntary CCAAs.

The Services, States, local government agencies, Tribes, nongovernmental organizations, and private landowners are the entities that are affected by the draft revision to the existing policy. While the policy revision introduces and defines the term "net conservation benefit" for CCAAs and clarifies what must be achieved in order for a CCAA to be approved, the Services believe that this addition does not necessarily change the level of conservation currently required under a CCAA.

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 draft 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 draft 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, if finalized, 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 current CCAA policy. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630, this draft policy would not have significant takings implications. This draft 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 draft 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 draft 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 draft policy does not have significant Federalism effects and a federalism summary impact statement is not required. This draft 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 draft 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 draft 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 216-6 (May 20, 1999)).

We have determined that the draft 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 draft 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) 216–6. 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.* at § 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 draft policy. Our intent with the draft 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 finalize this draft 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 draft policy, if made final, 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.

Clarity of the Draft Policy

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise this draft policy, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

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: April 13, 2016.

Signed: Noah Matson

Acting Director, U.S. Fish and Wildlife Service.

Dated: April 13, 2016.

Signed: Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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