



July 5, 2016

*Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>*

Public Comments Processing  
U.S. Fish and Wildlife Service  
MS: BPHC  
5275 Leesburg Pike, ABHC-PPM  
Falls Church, VA 22041-3803

**Re: Proposed Revisions to the Regulations and Policy for Candidate Conservation Agreements with Assurances, Docket No. FWS-HQ-ES-2015-0171 and Docket No. FWS-HQ-ES-2015-0177**

Dear Sir/Madam:

The Fish and Wildlife Service (FWS) has proposed changes to its regulation and policy governing Candidate Conservation Agreements with Assurances (CCAAs) that will discourage property owners from participating in voluntary conservation efforts and ultimately harm the species that CCAAs are intended to protect. FWS should withdraw the proposed regulation and policy revisions and focus any regulatory change on streamlining the CCAA process and providing more incentives for their use.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

The development and use of CCAAs is voluntary, and they have been successful at promoting species protection and precluding the listing of species in the past. Under the existing policy, FWS has successfully negotiated and approved dozens of CCAAs covering millions of acres of private property. The current program has achieved some notable successes, for instance precluding the need to list the dunes sagebrush lizard. A federal judge also recently vacated the listing of the lesser prairie chicken, finding that CCAAs for protection of the species could be sufficient to prevent a listing. Given the success of the current policy, there is no need for the revisions introduced in the draft policy and regulation.

Furthermore, in cases where a listing is ultimately necessary, CCAAs provide property owners the assurances they need to conduct conservation activities without concern for negative consequences in a post-listing environment. The program provides benefits for species, their habitat, and property owners, and Western Energy Alliance supports efforts

to improve the program by encouraging property owners to take voluntary actions that would benefit species and their habitat.

The preambles to both documents assert that the purpose of the proposed changes is merely to clarify the level of conservation effort required in each agreement in order for the Service to approve a CCAA. The proposed changes, however, would create a new and higher standard of net conservation benefit for CCAAs to be approved, per the November 2015 Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment. Rather than being a simple clarification, these documents introduce substantial policy changes which will limit enrollment of available land and weaken species protection efforts, so they should be withdrawn.

### **Net Conservation Benefit**

Requiring net conservation benefit is a departure from FWS's current policy. Specifically, the proposed policy requires that the conservation measures in a CCAA must be designed to ultimately "increase the species populations or improve its habitat." The proposed change ignores that benefits may accrue to a species from actions that do not directly impact population or habitat. For instance, actions that remove or minimize threats, prevent or limit any habitat degradation, promote resiliency, or otherwise slow or stabilize a declining population trajectory would all benefit a species relative to its baseline condition while not directly increasing the population or improving habitat.

The current CCAA program encourages voluntary implementation of conservation actions for species so that listing under the ESA may not be necessary. When assessing benefits of a CCAA, FWS should recognize any and all actions that would generally promote the welfare of the species.

By maintaining the current CCAA policy, FWS would continue to encourage broad enrollment in CCAAs which will ultimately promote the conservation of covered species; unfortunately, the proposed regulation and policy do the exact opposite. Imposing a standard of population increase or habitat improvement will limit the voluntary use of CCAAs by establishing a threshold that is needlessly restrictive. Doing so does nothing to promote species conservation; FWS should withdraw its proposed revisions.

### **Other Necessary Properties**

The provision to eliminate all references to "other necessary properties" when evaluating a CCAA should be removed. The provision would require each specific project to prove a direct benefit to the species, rather than the current practice of evaluating the cumulative effects of a systemic program to enhance habitat and promote population growth. FWS states in the proposed policy that it is merely "clarifying" the standard for CCAAs because the phrase "other necessary properties" has caused confusion. While it could be

worthwhile for FWS to explicitly define the relationship needed between a project and other properties, FWS has simply eliminated the concept altogether, which is a deletion, not a clarification, and one that we believe will remove an opportunity for cooperative species protection.

When numerous property owners in a given area or landscape participate in conservation activities, the benefits to a species population or habitat may be more than the simple sum of each property's contribution. Often it will be impossible to evaluate each individual contribution to species growth, but the aggregate may demonstrate that a systemic approach is working. FWS is proposing to make it much more difficult to implement a systemic response for a species by evaluating projects on a one-by-one basis. While it is reasonable that a project that provides no benefit to a species should not be granted a CCAA, the standard FWS would implement in the proposed policy goes too far. Clearly not all conservation efforts proposed or initiated can function at 100% benefit to the species upon initiation.

Removing the "other necessary properties" concept, rather than simply clarifying it, will diminish opportunities for collective conservation action and will serve to reduce landowner participation in CCAAs. FWS should acknowledge that a voluntary, systemic approach to conservation, where numerous connected properties combine to enhance the welfare of a species regardless of their individual contribution, is appropriate and in fact necessary. FWS should clarify, not delete, the language relating to "other necessary properties" in the policy.

### **Other Changes**

Western Energy Alliance supports the proposed revision that would delete "preclude or remove any need to list" from the evaluation of a CCAA. As discussed above, property owners may not be able to individually meet this standard, but the cumulative effects of multiple efforts may ultimately preclude a listing. The proposed revision would promote increased participation in the CCAA program, so FWS should include it in any final revision.

Furthermore, an updated CCAA policy should acknowledge that an evaluation of conservation efforts must be based upon what is economically and technologically feasible for the property owner. While a CCAA should be responsive to the needs of the species, the scale or scope of any conservation measure is necessarily limited by the resources available to the property owner. Implementing standards for conservation that are too burdensome will discourage property owners from participating. FWS should include economic and technical feasibility in the standard for participation.

Finally, we suggest FWS focus its efforts on those changes to the CCAA program that would actively enhance the program, rather than diminish it. FWS could enhance the use of CCAAs by streamlining the process, reducing the time and cost to develop them, allowing lands to be enrolled after a listing, and providing more incentives and flexibility to property

Candidate Conservation Agreements with Assurances  
July 5, 2016

Page 4 of 4

owners. Each of these changes would encourage greater participation from property owners, which can ultimately only be a benefit to species.

Western Energy Alliance appreciates the opportunity to provide these comments. Please do not hesitate to contact me with any questions.

Sincerely,



Kathleen M. Sgamma  
Vice President of Government and Public Affairs



**WESTERN ENERGY ALLIANCE**