



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2015–0171; FF09E40000 167 FXES11150900000]

RIN 1018-BB25

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Candidate Conservation Agreements with Assurances

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), propose changes to the regulations concerning enhancement of survival permits issued under the Endangered Species Act of 1973, as amended (ESA), associated with Candidate Conservation Agreements with Assurances. We propose to add the term “net conservation benefit” to the Candidate Conservation Agreements with Assurances regulations, and to eliminate references to “other necessary properties” to clarify the level of conservation effort we require each agreement to include in order for us to approve a Candidate Conservation Agreement with Assurances. We are also proposing these changes to the Candidate Conservation Agreement with Assurances policy in a separate document published in today’s **Federal Register**.

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, 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:

- *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter the docket number for this proposed rule, which is FWS–HQ–ES–2015–0171. Then click on the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Comment Now!” Please ensure that you have found the correct document before submitting your comment.

- *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0171, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

FOR FURTHER INFORMATION CONTACT: Jim Serfis, 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. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Through its Candidate Conservation program, one of the FWS’s goals is to encourage the public to take specific conservation actions for declining species prior to

them being listed under the ESA (16 U.S.C. 1531 *et seq.*). The cumulative outcome of such conservation actions 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 the species' recovery and eventual removal from the Federal List of Endangered and Threatened Wildlife. The Service put in place a voluntary conservation program for non-Federal property owners to help accomplish this goal: Candidate Conservation Agreements with Assurances (CCAAs). On June 17, 1999, the policy for this type of agreement (64 FR 32726) and implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) (64 FR 32706) were made final. On May 3, 2004, we published a final rule (69 FR 24084) to revise the CCAA regulations to make them easier to understand and implement by, among other things, defining "property owner" and by 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 actions 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 actions 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 conservation actions other than those agreed to 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.

Based on our experience reviewing and approving CCAAs over the past 16 years, we are proposing changes to the regulations that will clarify the level of conservation effort each agreement needs to include in order for FWS to approve an agreement and issue a permit.

Purpose of Proposed Changes to Current Regulations at 50 CFR 17.22 and 17.32

We are proposing changes to the CCAA regulations at 50 CFR 17.22(d) and 17.32(d) consistent with the proposed revisions to the CCAA policy published separately in today's **Federal Register**. The regulation changes are to (1) include the term "net conservation benefit" to clarify the level of conservation effort that is necessary in order to issue a permit associated with a CCAA and (2) eliminate references to "other necessary properties."

Under the current policy and regulations, 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 confusion created by the hypothetical concept of conservation measures needing to be implemented on "other necessary properties" is why 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."

In concert with the proposed revisions to our CCAAs policy, published elsewhere in today's **Federal Register**, these changes to the regulations would help reassure landowners participating in CCAAs that additional conservation measures above and beyond those contained in the CCAA would not be required, and that additional land, water, or resource use restrictions would not be imposed upon them should a species that resides on their property become listed in the future.

Request for Information

Any final rule based on this proposal will consider information and recommendations submitted in a timely manner from all interested parties. 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 proposed rule. All comments and materials we receive by the date listed in **DATES**, above, will be considered prior to the approval of a final rule.

You may submit your information concerning this proposed rule 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 proposed rule 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

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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 regulations 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 rule in a manner consistent with these requirements. This proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed "to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal 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 effect 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 an agency, or his or her designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities.

The proposed rule would revise the regulations governing issuance of an enhancement of survival permit in conjunction with a CCAA to clarify but not change current practice and does not place any new requirements on any non-Federal property owner that may seek to apply for approval of a CCAA.

Paperwork Reduction Act of 1995 (PRA)

This proposed rule 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 proposed rule will not impose new recordkeeping or reporting requirements on State, local, or tribal 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. We 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.

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 proposed rule would not “significantly or uniquely” affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule 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, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule 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 proposed rule (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 proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to approving enhancement of survival permits in conjunction with a CCAA under the ESA, 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 (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the issuance criteria for an enhancement of survival permit associated with a CCAA under the ESA.

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, and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have considered possible effects on federally recognized Indian tribes and have preliminarily determined that there are no potential adverse effects of issuing this proposed rule. Our intent 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 keep our tribal obligations in mind as we finalize this proposed rule.

National Environmental Policy Act

We analyzed the proposed regulations 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 determined that the proposed regulations are 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 proposed regulations do not constitute a major Federal action significantly affecting the quality of the human environment.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule, if made final, is not expected to 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 This Proposed Rule

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 the proposed rule, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend part 17, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.22 by revising paragraph (d)(8) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(d) * * *

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit, which 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.

(i) 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.

(ii) The conservation measures and 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.

(iii) 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.

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3. Amend § 17.32 by revising paragraph (d)(8) to read as follows:

§ 17.32 Permits—general.

* * * * *

(d) * * *

(8) *Duration of the Candidate Conservation Agreement.* The duration of a Candidate Conservation Agreement covered by a permit issued under this paragraph (d) must be sufficient to achieve a net conservation benefit, which 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.

(i) 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.

(ii) The conservation measures and 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.

(iii) 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.

Dated: April 13, 2016.

Signed: Noah Matson

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

Billing Code 4333–15

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