



March 13, 2017

Acting Director  
U.S. Fish and Wildlife Service  
1848 C Street NW Room 3358  
Washington, DC 20240-0001

Acting Director, Office of Protected Resources  
NOAA Fisheries  
1315 East-West Highway  
Silver Spring, MD 20910

Attention: Request to Delay Implementation of Regulations for Candidate Conservation Agreements with Assurances (CCAAs), 50 CFR Part 17, Review and Revise those Regulations, and Revoke the CCAA Policy

Dear Acting Directors:

The American Petroleum Institute (API) is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8% of the U.S. economy, and since 2000 has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers.

The Independent Petroleum Association of America (IPAA) is the national association representing the thousands of independent crude oil and natural gas explorer/producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies which provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong and viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy. Members of both API and IPAA (together, "the Trades") use Candidate Conservation Agreements with Assurances (CCAAs) and will be negatively impacted by the rules and the policy discussed below.

On December 27, 2016, the U.S. Fish and Wildlife Service (FWS) published a final rule setting forth new regulations concerning enhancement-of-survival permits issued under the Endangered Species Act of 1973, as amended (ESA), associated with CCAAs at 81 Fed. Reg. 95,053. The new and revised rules are found in 50 CFR Part 17. Concurrent with this action, FWS and the National Marine Fisheries Service (NMFS) – together, "the Services" – also published revisions to the Candidate Conservation Agreements with Assurances policy under the ESA. Pursuant to notices published in the *Federal Register* on January

26, 2017, implementing a January 20, 2017 memorandum from the White House, the current effective date for the rule and policy is March 21, 2017. 82 Fed. Reg. 8501, 82 Fed. Reg. 8540. With this letter, the Trades request that FWS delay the implementation of these rules for CCAAs, and further review and revise them, and that the Services revoke the policy to allow additional time for the agency to carefully evaluate the negative impacts and disincentives the new rule and policy have on the development and use of voluntary pre-listing conservation agreements that benefit species and their habitat.

The existing CCAA regulations have proven effective in encouraging voluntary conservation. Large-scale CCAAs have garnered such high levels of participation that they have helped preclude the need to list species such as the greater sage-grouse and dunes sagebrush lizard. *See* 79 Fed. Reg. 71,444 (Dec. 2, 2014) (announcing availability of draft CCAA for the greater sage-grouse in multiple Oregon counties); 79 Fed. Reg. 48,243 (Aug. 15, 2014) (announcing availability of draft CCAA for the greater sage-grouse in two Oregon counties); 79 Fed. Reg. 2683 (Jan. 15, 2014) (announcing availability of draft CCAA for the greater sage-grouse in Harney County, Oregon). The high levels of participation in these efforts and the resulting conservation benefits reinforce the need to further encourage early voluntary pre-listing conservation efforts. The success of these conservation efforts reflects that the existing CCAA regulations have achieved their twin goals of encouraging voluntary conservation efforts and benefiting candidate species.

Among other concerns, the final rule revises FWS's regulations to include and define the term "net conservation benefit," and eliminate the consideration of "other necessary properties" when determining the benefits of the CCAA. The Trades believe that the imposition of a net conservation benefit is an unnecessary, ambiguous and burdensome standard for voluntary pre-listing efforts that are intended to avoid the listing of species. We believe that the final rule discourages rather than encourages voluntary pre-listing conservation efforts. Even though FWS has developed a definition for the term "net conservation benefit", the term remains insufficiently clear, and thus subjects voluntary conservation agreements to future subjective and inconsistent judgments by the FWS that may turn on arbitrary criteria. It is also not a concept directed by Congress, but instead stems from an Obama Administration memorandum. *See* Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, 80 Fed. Reg. 68,743 (Nov. 6, 2015).

The CCAA policy promulgated by the Services also makes use of the term "net conservation benefit". Furthermore, the preamble to the policy contains language suggesting that the Services view CCAAs as inappropriate for oil and gas development. No reasoning is supplied for this statement, which now puts oil and gas operators, some of whom have been at the forefront of CCAA development, at the mercy of capricious applications of this policy and, potentially, of the rules as well. We believe that including this language in the preamble of the revised policy is unjustified and fails to reflect the experience of the oil and gas industry in collaborative conservation efforts for the benefit of species and the environment.

We urge that implementation of the CCAA rules be delayed, and further that the rules be withdrawn and reviewed, to allow the FWS to more carefully examine the rules' elements, and the need for such a substantial revision to past approaches that have provided clear guidance to private parties and that have provided beneficial results for the conservation of species and their habitat. In addition, the policy recently adopted by the Services should be revoked, and a new policy developed after the revisions to the CCAA rules have been critically re-examined and, where necessary, re-written in a way that encourages flexibility in consideration of private proposals for species conservation and encouragement of private conservation actions generally.

Should you have any questions, please contact Richard Ranger at 202.682.8057, or via e-mail at [rangerr@api.org](mailto:rangerr@api.org).

Very truly yours,



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